

Wyoming Administrative Rules

Lands and Investments, Office of

Loan and Investment Board

Chapter 11: Clean Water State Revolving Fund Loans

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Chapter 11

Clean Water State Revolving Fund Loans

Section 1. Authority.

This Chapter is adopted pursuant to Wyoming Statute 16-1-203(a).

Section 2. Definitions.

As used in this Chapter

- (a) “County” means a political subdivision of the State of Wyoming pursuant to W.S. 18-1-101(a)-(y).
- (b) “DEQ” means the Wyoming Department of Environmental Quality.
- (c) “Director” means the Director of the Office of State Lands and Investments.
- (d) “Initiating Operations” means the earliest point in time when a capital infrastructure project is ready for use even if only for system testing purposes.
- (e) “Intended Use Plan (IUP)” means the annual plan that priority ranks eligible Wyoming projects for funding consideration by the Board that meet 1987 Clean Water Act amendments and the requirements of W.S. 16-1-203(c)(i).
- (f) “Joint Powers Board(s)” means legally organized Wyoming entities authorized to engage in joint or cooperative action by the Wyoming Joint Powers Act pursuant to W.S. 16-1-101 et. seq.
- (g) “Municipalities” means incorporated towns and cities in Wyoming.
- (h) “OSLI” means the Office of State Lands and Investments which provides administrative and operational management of the State Loan and Investment Board’s programs.
- (i) “Special District” means any legally formed special district in Wyoming that is eligible for program funding.
- (j) “Special Program Incentives” include, but are not limited to, grants, principal forgiveness and negative interest rates authorized by state or federal legislation and as adopted by the Board.
- (k) “Special Program Requirements” include, but are not limited to, restrictions on the types of project materials that may be used, required funding reserves and minimum wage requirements as set forth in state or federal legislation and as adopted by the Board.

(l) “State Environmental Review Process (SERP)” means the review conducted by DEQ, pursuant to W.S. 16-1-204(a), of potential environmental impacts of projects receiving assistance from the Account.

(m) “Substantial Completion” means that stage in a project when the capital infrastructure constructed is capable of initiating operations or can be used for its intended purpose.

(n) “USEPA” means the United States Environmental Protection Agency.

Section 3. General Policy.

(a) The Board shall approve loans and Special Program Incentives under the provisions of this Chapter in such a manner and to such applicants as shall, in the judgment of the Board, inure to the greatest benefit of the citizens of the State of Wyoming and represent a prudent use of loan funds.

Section 4. Special Program Incentives and Special Program Requirements.

(a) Notice. OS LI and DEQ will assess, at least annually, the impacts of state and federal legislation on the Clean Water State Revolving Fund loan program administered under this Chapter. OS LI will provide timely notice to eligible applicants of changes in Special Program Incentives and Special Program requirements. Said notice will be not less than thirty (30) calendar days prior to any application deadline. Methods of notice include, but are not limited to, electronic, telephonic, written, website postings, video conferences or combinations of the same.

Section 5. Loan and Special Program Incentives Eligibility.

(a) Applicants. Municipalities, counties, state agencies, special districts, and joint powers boards in Wyoming shall be eligible applicants for loans under this Chapter. This includes eligibility for Special Program Incentives when available.

(b) Special Program Incentives shall be awarded in accordance with all federal regulations. OS LI shall utilize one (1) of two (2) methods, depending on federal regulations, to determine the amount of Special Program Incentives an applicant is eligible for.

(i) The primary method OS LI will use includes awarding points based on population trend, income data, and unemployment data. Applicants whose total points are six (6) or greater are eligible for Special Program Incentives of up to seventy-five percent (75%) of their loan amount. Applicants whose total points are between four (4) and five (5) are eligible for Special Program Incentives of up to fifty percent (50%) of their loan amount. Applicants whose total points are between two (2) and three (3) are eligible for Special Program Incentives of up to twenty-five percent (25%) of their loan amount. Applicants whose total points are less than two (2) are not eligible for Special Program Incentives using this method.

(A) Population trend points are awarded based on the category that the applicant was in as of the last decennial census (or other available population data acceptable to OSLI if decennial census data is not available). If an applicant can show population trend data demonstrating that it has likely dropped to a smaller category since the last decennial census, its points will be adjusted up accordingly.

(I) Applicants whose population is five hundred (500) or less will receive three (3) points.

(II) Applicants whose population is between five hundred one (501) and three thousand, three hundred (3,300) will receive two (2) points.

(III) Applicants whose population is between three thousand, three hundred one (3,301) and ten thousand (10,000) will receive one (1) point.

(IV) Applicants whose population is ten thousand, one (10,001) or greater will receive zero (0) points.

(B) Income data points are awarded based on ratio of the local annual median household income (AMHI) to the State AMHI, using data from the most recently released American Community Survey 5-year estimates. If no data directly corresponding to the applicant is available, the county AMHI will be used as the default. The applicant may provide alternate data acceptable to OSLI, such as an income survey, at the applicant's expense and in lieu of American Community Survey 5-year estimates.

(I) Applicants whose AMHI is less than sixty percent (60%) will receive five (5) points.

(II) Applicants whose AMHI is sixty percent (60%) or greater, but less than seventy percent (70%) will receive four (4) points.

(III) Applicants whose AMHI is seventy percent (70%) or greater, but less than eighty percent (80%) will receive three (3) points.

(IV) Applicants whose AMHI is eighty percent (80%) or greater, but less than ninety percent (90%) will receive two (2) points.

(V) Applicants whose AMHI is ninety percent (90%) or greater, but less than one hundred ten percent (110%) will receive one (1) point.

(VI) Applicants whose AMHI is one hundred ten percent (110%) or greater will receive zero (0) points.

(C) Unemployment data points are awarded based on relationship of the local unemployment rate to the State unemployment rate. Local and State unemployment rates for the most recent quarter by county as published by the Wyoming Department of

Workforce Services will be used.

(I) Applicants whose unemployment rate is equal to or greater than the State rate will receive one (1) point.

(II) Applicants whose unemployment rate is less than the State rate will receive zero (0) points

(ii) The second method OS LI may use, when allowed by federal regulation, is based on the applicant's AMHI compared to Wyoming's AMHI.

(A) Applicants whose AMHI is less than seventy percent (70%) of Wyoming's AMHI are eligible for Special Program Incentives of up to seventy-five percent (75%) of their loan amount.

(B) Applicants whose AMHI is seventy percent (70%) or greater, but less than ninety percent (90%) of Wyoming's AMHI, are eligible for Special Program Incentives of up to fifty percent (50%) of their loan amount.

(C) Applicants whose AMHI is over ninety percent (90%) of Wyoming's AMHI are eligible for Special Program Incentives of up to twenty-five percent (25%) of their loan amount.

(b) AMHI data is based on information obtained from the most recent American Community Survey of the U.S. Census Bureau. Median household income data for special districts must be established by an income survey at district expense or other financial data acceptable to OS LI and the Board. If the applicant is a special district or a joint powers board, it must be legally formed and approved prior to submitting its loan application. Applicants must be in compliance with all applicable reporting requirements of both the Wyoming Department of Revenue and the Wyoming Department of Audit prior to its application being considered by the Board. For consideration at the October Board meeting, applicants must file their current financial reports by September 10th with the Department of Audit and notify the OS LI in writing that the filing was done.

(c) Purposes. Loans and Special Program Incentives may be awarded by the Board pursuant to W.S. 16-1-205(a). The Board may also award loans and Special Program Incentives consistent with changes in state or federal law.

(d) Project Eligibility. Only projects on the current Clean Water State Revolving Fund Intended Use Plan are eligible for loans and Special Program Incentives under this Chapter. Eligible applicants are responsible for ensuring that their project(s) are listed on the current Clean Water State Revolving Fund Intended Use Plan.

(e) Ineligible Project Costs. The following project costs shall be ineligible for reimbursement:

- (i) Costs for any asset that is owned by a private property owner;
- (ii) Costs for tap fees, sewer and water fees, and plant investment fees;
- (iii) Engineering fees, including design, inspection and contract administration costs, over twenty percent (20%) of Board approved project costs;
- (iv) All non-cash costs except land which is integral to the treatment process and if allowable under federal law but not costs for land in excess of current fair market value and/or costs for an amount of land in excess of that needed for project purposes;
- (v) Costs for preparation or presentation of grant or loan applications for any source of funding;
- (vi) Costs for transportation, meals, and lodging, and incidentals incurred anywhere away from the site of the project or that exceed the current federal per diem reimbursement rate;
- (vii) Costs of tools, supplies and furnishings for capital projects not included in DEQ approved construction contract documents, including but not limited to, capital equipment, hammers, tools, furniture, drapes, blinds, file cabinets, file folders, and survey stakes;
- (viii) Legal fees, except as pre-approved by DEQ and OS LI;
- (ix) Costs related to the issuance of bonds;
- (x) Costs of elections;
- (xi) Costs to establish and form special districts or joint powers boards;
- (xii) Costs incurred prior to loan award, except costs incurred for architectural and engineering design, surveying, state environmental review process (SERP) requirements or in emergency circumstances;
- (xiii) Costs for change orders not approved by DEQ and OS LI;
- (xiv) Lump sum contracts unless approved by DEQ and OS LI;
- (xv) Costs in excess of \$50.00, unless approved by DEQ and OS LI, based on an invoice(s) or additional documentation submitted by applicant;
- (xvi) Costs associated with the applicant's own employees and equipment, unless pre-approved by DEQ;
- (xvii) Markups by engineers/architects of sub-consultant and other outside charges;

(xviii) Projects undertaken using alternate design and construction delivery methods under W.S. 16-6-701, unless pre-approved by DEQ.

Section 6. Application Procedure.

(a) Applications. There are two (2) types of applications under this Chapter, Special Program and Core.

(b) Special Program loan applications are a pared down version of a Core loan application and these applications are the initial application for a Clean Water State Revolving Fund Loan involving Special Program Incentives and/or requirements only. Separate Special Program loan applications shall be prepared for each eligible project involving Special Program Incentives and/or requirements. Applicants shall submit a Special Program loan application Part I on a form provided by the Director. Special Program loan applications must be timely submitted by applicants in advance of scheduled meetings of the Board. A Special Program loan application must be received by OSJI by close of business on the day of an application deadline to be considered timely submitted. Special Program loan applicants who are conditionally approved for project funding by the Board must complete Special Program loan application Part II within sixty (60) days of the Board's conditional approval. If applicants fail to timely complete their applications, the Board will be informed by the Director at the Board's next scheduled meeting. The Board reserves the right to revoke any conditional approval for lack of post award due diligence to timely completing Application Part II.

(c) Core Loan Applications. The second type of application for a Clean Water State Revolving Fund loan is a Core loan application for a Core program loan. Separate Core loan applications shall be prepared for each eligible project. Applicants shall submit a Core loan application on a form provided by the Director. Applicants must timely submit Core loan applications on or before the established deadline in advance of scheduled meetings of the Board. An application must be received by OSJI by close of business on the day of an application deadline to be considered timely submitted.

(d) Public Meeting Requirement. All eligible applicants must hold a minimum of one public meeting in advance of submitting a Special Program or Core loan application for Board consideration. Notice of the public meeting is to be published in a local or regional newspaper fifteen (15) days prior to the same. The public meeting must provide the public an overview of the proposed project, financing and sustainability. The overview aspect of the public meeting must, at a minimum, address project scope, milestones and costs. The financing aspect of the public meeting must, at a minimum, address the financial impact of project costs upon the public. The sustainability aspect of the public meeting must, at a minimum, address the revenue streams, adjustments of water and sewer rates or other sources required to sustain the proposed project. Eligible applicants must verify compliance with the public meeting requirement through documentation submitted with their Special Program or Core loan applications.

(e) Timing of Board Consideration. Special Program or Core loan applications must be received by the Director at least eighty (80) days prior to any scheduled meeting of the Board.

Applicants must cure any defects in their applications no later than forty-five (45) calendar days before any scheduled meeting of the Board. The Board may consider Special Program or Core loan applications for loans under this Chapter at any scheduled meeting.

(f) **Incomplete Loan Applications.** Incomplete loan applications, those missing one or more of the information items requested and/or failing to meet established deadlines, shall not be presented to the Board for consideration.

Section 7. Evaluation.

- (a) **Criteria.** The Board shall evaluate applications utilizing the following criteria:
- (i) Whether the applicant is current on all its repayment obligations to the Board;
 - (ii) Whether the applicant's dedicated source of revenue is acceptable to the Board and will be sufficient to repay its requested loan;
 - (iii) Whether the applicant is ready to proceed with construction or implementation of the project;
 - (iv) Whether the applicant has established an adequate operations and maintenance costs fund for the project for which applicant seeks funding;
 - (v) Whether the applicant has made a significant commitment of funding resources for the project for which it seeks funding;
 - (vi) The percentage of the applicant's population directly served by the project;
 - (vii) The project's priority rank on the current intended use plan (IUP); and
 - (viii) Whether the project is appropriately sized for the population to be served by the project.
 - (ix) If assessments are included as part of the dedicated source of repayment, applicant shall establish an annual assessment equal to, or greater than, the amount of the annual debt service payment on the loan. This assessment schedule will be filed with the County Assessor's Office on or before February 15th of each year for the full term of the loan, a copy of which will be sent to the OSLI annually.
- (b) **Interagency Consultation.** The OSLI shall facilitate interagency consultation with DEQ through the review of applications for loans and Special Program Incentives and the opportunity to provide comments to the Director for Board consideration. The Board shall request the DEQ to provide the services required under W.S. 16-1-201 through W.S. 16-1-207.

Section 8. Board Consideration.

(a) The Board shall consider each application, and allow for comments from the applicant and from the Director. The Board shall also establish loan amounts and terms. Loan terms shall not exceed thirty (30) years, or the useful life of the project, whichever is less.

Section 9. Interest Rates.

(a) The interest rate to the DEQ for corrective actions at leaking underground and aboveground storage tank sites shall be established by the Board pursuant to Chapter 14 of these rules.

(b) The interest rate for eligible applicants that qualify for the funding reserves Special Program requirement, when available, shall be established by the Board pursuant to Chapter 14 of these rules.

(c) The interest rate for all other Clean Water State Revolving Fund loans shall be pursuant to Chapter 14 of these rules.

Section 10. Repayment.

(a) Annual payments for all loans shall begin one year after substantial completion of the project as indicated in the final project contract.

Section 11. Disbursement of Loan Proceeds.

(a) Requests for disbursements shall be submitted on a form provided by the Director and include supporting invoices establishing the eligibility of costs submitted for disbursements. Loan proceeds will only be disbursed for eligible project costs as set forth in this Chapter and within federal guidelines following review by the OSLI and DEQ.

Section 12. Audits and Inspections.

(a) The Board shall ensure compliance with the provisions of the Federal Single Audit Act, 1966 Amendments and Office of Management and Budget (OMB) Circular A-133. On an annual basis records of loan recipients shall be, at a minimum, compiled by an independent accounting firm. Notification of compliance shall be made to the Board in the form of a Compilation, Review, or Audited Financial Statement prepared by an independent accounting firm. The Board may, at its expense, conduct an independent audit of the loan recipient's records and inspect the construction and operation of the project. Loan recipients shall maintain project accounts in accordance with Generally Accepted Government Accounting Standards (GAGAS).

Section 13. Reports.

(a) The Director, or the Director's designee, shall review all reports prepared by the

OSLI and DEQ for submission to the USEPA.

Section 14. Program Compliance.

(a) The Board shall administer the water pollution control revolving loan account program in accordance with all applicable federal laws and regulations. The Board shall enter into, and periodically update, a Memorandum of Understanding with the OSLI and DEQ to implement the program and facilitate program compliance.

Section 15. Fees.

(a) A loan origination fee of one-half of one percent (0.5%) of the amount of the loan will be collected at loan closing. The fees will be deposited to the Administrative Account as authorized by W.S. 16-1-205(d).