



DEPARTMENT OF NATURAL RESOURCES

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DRAFT MEMORANDUM

DATE:

TO: John Madras, Director
Water Protection Program

THROUGH: Eric Crawford, Director
Financial Assistance Center

FROM: Emily Carpenter
Financial Assistance Center

SUBJECT: Clean Water State Revolving Fund Affordability Criteria

Pursuant to the Federal Water Pollution Control Act (FWPCA) as amended, Missouri is required to establish affordability criteria for the Clean Water State Revolving Fund program no later than September 30, 2015.

Background

On June 10, 2014, President Obama signed into law the Water Resources and Development Act of 2014 (WRRDA). Among its provisions are amendments to Titles I, II, V, and VI of the FWPCA. These amendments affected the Clean Water State Revolving Funding program.

As amended, the FWPCA now includes section 603(i) and reads:

(i) **ADDITIONAL SUBSIDIZATION.**—

(1) **IN GENERAL.**—In any case in which a State provides assistance to a municipality or intermunicipal, interstate, or State agency under subsection (d) the State may provide additional subsidization, including forgiveness of principal and negative interest loans—

(A) to benefit a municipality that—

(i) meets the affordability criteria of the State established under paragraph (2);
or

(ii) does not meet the affordability criteria of the State if the recipient—
(I) seeks additional subsidization to benefit individual ratepayers in the residential user rate class;
(II) demonstrates to the State that such ratepayers will experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is sought; and



- (III) ensures, as part of an assistance agreement between the State and the recipient, that the additional subsidization provided under this paragraph is directed through a user charge rate system (or other appropriate method) to such ratepayers; or
- (B) to implement a process, material, technique, or technology—
- (i) to address water-efficiency goals;
 - (ii) to address energy-efficiency goals;
 - (iii) to mitigate stormwater runoff; or
 - (iv) to encourage sustainable project planning, design, and construction.
- (2) AFFORDABILITY CRITERIA.—
- (A) ESTABLISHMENT.—
- (i) IN GENERAL.—Not later than September 30, 2015, and after providing notice and an opportunity for public comment, a State shall establish affordability criteria to assist in identifying municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity eligible for assistance under subsection (c)(1) if additional subsidization is not provided.
 - (ii) CONTENTS.—The criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined by the State, including whether the project or activity is to be carried out in an economically distressed area, as described in section 301 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161).
- (B) EXISTING CRITERIA.—If a State has previously established, after providing notice and an opportunity for public comment, affordability criteria that meet the requirements of subparagraph (A)—
- (i) the State may use the criteria for the purposes of this subsection; and
 - (ii) those criteria shall be treated as affordability criteria established under this paragraph.
- (C) INFORMATION TO ASSIST STATES.—The Administrator may publish information to assist States in establishing affordability criteria under subparagraph (A).
- (3) LIMITATIONS.—
- (A) IN GENERAL.—A State may provide additional subsidization in a fiscal year under this subsection only if the total amount appropriated for making capitalization grants to all States under this title for the fiscal year exceeds \$1,000,000,000.
- (B) ADDITIONAL LIMITATION.—
- (i) GENERAL RULE.—Subject to clause (ii), a State may use not more than 30 percent of the total amount received by the State in capitalization grants under this title for a fiscal year for providing additional subsidization under this subsection.

(ii) EXCEPTION.—If, in a fiscal year, the amount appropriated for making capitalization grants to all States under this title exceeds \$1,000,000,000 by a percentage that is less than 30 percent, clause (i) shall be applied by substituting that percentage for 30 percent.

(C) APPLICABILITY.—The authority of a State to provide additional subsidization under this subsection shall apply to amounts received by the State in capitalization grants under this title for fiscal years beginning after September 30, 2014.

(D) CONSIDERATION.—If the State provides additional subsidization to a municipality or intermunicipal, interstate, or State agency under this subsection that meets the criteria under paragraph (1)(A), the State shall take the criteria set forth in section 602(b)(5) into consideration.

The Environmental Protection Agency has issued two interpretive guidance documents regarding WRRDA on September 18, 2014 and January 6, 2015.

Missouri must establish affordability criteria by September 30, 2015 including an opportunity for public comment and a public notice period. The department may offer additional subsidization or SRF grant funds to applicants identified by the affordability criteria as having difficulty financing the proposed clean water infrastructure project. The affordability analysis must include the applicant’s income, unemployment data, population trends, and other data determined relevant by the department.

The department may provide the following percentage of their federal capitalization grant as SRF grants funds as shown in the table below.

Total Federal Appropriation Amount	State SRF Additional Subsidization Percentage
≤ \$1,000,000,000	0%
\$1,000,000,000 – \$1,300,000,000	A percentage equal to the percentage by which the appropriation exceeds \$1 billion (e.g. \$1.1 billion = 10%)
≥ \$1,300,000,000	30%

Missouri Cost Analysis for Compliance

In 2011, the department was required to adopt procedures to determine whether a permit or enforcement decision is affordable and make a finding of affordability for each permit or enforcement decision related to combined or separate sanitary sewer systems or publically owned treatment works in accordance with Section 644.145 RSMo.

The department issued an interim procedure on affordability on September 12, 2011. Since that time, stakeholder meetings were held to discuss the affordability procedure. On September 17, 2014, the department issued a guidance document for conducting and developing a “cost

analysis for compliance” previously known as a “finding of affordability”. The department continues to host stakeholder meetings to refine the affordability process.

The cost analysis for compliance evaluates many socioeconomic factors to determine the financial burden of a community to implement upgrades to the collection system or wastewater treatment facility. The cost analysis for compliance includes but is not limited to the following indicators:

- Median household income (MHI);
- Percent unemployment; and
- Percent population growth/decline.

Implementation

The Financial Assistance Center has chosen to utilize the established affordability process or cost analysis for compliance. This process began in 2011 and has been refined over the years. The affordability indicators required by the FWPCA are included the cost analysis for compliance. By employing the cost analysis for compliance process, templates, and data sources a community will receive consistent affordability determinations throughout the Water Protection Program.

Once a SRF application is received by the department, staff will determine whether a cost analysis for compliance will be performed based upon the condition that the proposed user charge is equal to or greater than 1.5 percent of the applicant’s MHI. Applicants who qualify for a cost analysis for compliance may waive their right, if they believe the proposed project is affordable without additional grant funds. Department staff may request applicants to complete the Financial Questionnaire form, available online at dnr.mo.gov/forms/780-2511-f.pdf, to collect additional financial information.

In some cases, a community may believe the American Community Survey did not accurately reflect the demographics of their community. If an applicant submits a United States Department of Agriculture Rural Development or Missouri Department of Economic Development’s Community Development Block Grant approved income survey, the income value will replace the reported MHI in the cost analysis for compliance.

After a “complete” facility plan has been received and the applicant has provided documentation of an acceptable debt instrument, staff will draft a cost analysis for compliance. Staff will provide the applicant with a 15 day pre-review period in order to obtain comments. Applicants may request a reasonable time extension with justification during the 15 day pre-review period. Following the pre-review period, staff will finalize the cost analysis for compliance and send a copy to the applicant and retain a copy for the project file.

Staff may incorporate applicant and project specific information in the cost analysis for compliance. Examples of this information may include the following:

- SRF application received date and determined priority points value;
- Intended Use Plan ranking;
- Acceptable debt instrument amount and date of election;
- Income survey results;
- Facility plan received date, recommended project alternative description, estimated project cost and user rate; and
- Plans and specifications received date.

A community may have a previous cost analysis for compliance completed by staff in the Water Protection Program. If the existing cost analysis for compliance was dated after September 17, 2014 and is applicable to the proposed project, staff will recognize this previous work effort and will not perform an additional cost analysis for compliance. Staff must still document and make an effort to collect the most recent financial information from the applicant by way of requesting the Financial Questionnaire form. If however the existing cost analysis for compliance is not applicable to the proposed project, staff will precede with drafting a cost analysis for compliance.

When five or more years have elapsed since the last appropriate cost analysis for compliance or when plans and specifications are received, staff will reevaluate the affordability determination to ascertain if there has been a change in the applicant's economic conditions or a substantial change to the scope of work. If no change is evident, staff will make note of this evaluation in the project file. However if there has been an alteration, staff will draft a cost analysis for compliance as instructed above.

The department plans to incorporate the affordability criteria conditions in a rule amendment of 10 CSR 20-4.040 in the future.

Stakeholder Meetings

Three stakeholder meetings are scheduled to discuss the draft policy and implementation for Clean Water SRF projects. The dates for these meetings are as follows: May 20, 2015, June 17, 2015, and July 29, 2015.

Public Notice Period

The department will provide a 30 day public notice period for public comments beginning July 6, 2015. Persons wishing to comment on the proposed policy are invited to submit them in writing to Mrs. Emily Carpenter, Missouri Department of Natural Resources, Financial Assistance Center, P.O. Box 176, Jefferson City, MO 65102-0176. E-mail comments will be accepted at the following address: DNR.SRFPublicNotice@dnr.mo.gov. All comments must be received or postmarked by 5:00 p.m. on August 5, 2015.

Comments should be confined to the issues relating to the proposed policy. The department will consider all written comments in preparation for the final policy decision.

Questions regarding this memorandum can be directed to Mrs. Emily Carpenter of the Water Protection Program at (573) 751-6569 or emily.carpenter@dnr.mo.gov.

EC/

c: Financial Assistance Center

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