

**Tennessee Local Development Authority
State Revolving Fund
Policy & Guidance for Borrowers**

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Tennessee Local Development Authority State Revolving Fund Policy & Guidance for Borrowers

Introduction

The purpose of the Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs (together, the “SRF program”) is to provide financial assistance to address federal and state health, safety, and environmental requirements for clean water and safe drinking water. Through the SRF program, local governments and water systems are eligible to apply for below market rate loans to finance the infrastructure to meet these requirements. The purpose of this Tennessee Local Development Authority State Revolving Fund Policy & Guidance for Borrowers (“Policy and Guidance”) is to provide guidance to SRF program borrowers.

- Over the years, the Tennessee Local Development Authority (the “TLDA”) has established policies and other guidance to assist program borrowers. The TLDA has conducted a review of these documents with regards to their clarity and efficacy for SRF program borrowers, alignment with SRF program goals, and compliance with SRF program requirements. This resulting Policy and Guidance supersedes any policy or guidance previously approved by the TLDA.

The Tennessee General Assembly passed legislation in 2015 and 2021 to allow privately owned for-profit community public water systems and wastewater treatment systems (“Private Systems”) to borrow and access funding from the Drinking and Clean Water SRF program Is. Refer to the section titled Privately Owned For-Profit Community Public Water and Wastewater Systems for more information on the enacted legislation. At the time of the approval of this Policy and Guidance, no loans had been made to Private Systems nor had any applications been received.

Definitions

For purposes of this Policy and Guidance, terms defined in Tenn. Code Ann. Title 68, Chapter 221, Parts 10 and 12, shall have the same meaning as defined in those parts unless the context otherwise requires. Any subsequent amendment to definitions in those parts or statutes cited in the definitions below is hereby incorporated by this Policy and Guidance.

“Borrower” means any municipality, system, or utility district for which a SRF program loan has received final approval by the TLDA in accordance with Tenn. Code Ann. § 68-221-1005(c) or Tenn. Code Ann. § 68-221-1205(g) unless such loan has been paid in full.

“Municipality” means a county, incorporated town or city, or metropolitan government.

“State-shared taxes” means taxes imposed and collected by the state pursuant to law and allocated by law to local government units, whether allocated for a particular purpose or for the general use of such local government units as defined in Tenn. Code Ann. § 4-31-102(20).

“System” means:

(1) A water/wastewater authority or an energy authority; or

(2) Any instrumentality of government created by one or both of the entities described in this definition; a municipality; or by an act of the General Assembly but does not mean a utility district.

“Utility district” or “UD” means a utility district formed pursuant to the Utility District Law, compiled in Title 7, Chapter 82.

“Privately-owned for-profit community public water system or wastewater treatment system” or “Private System” means a system eligible to apply for Drinking Water SRF Loans pursuant to Code of Federal Regulations (“CFR”) Part 35 and Tenn. Code Ann. § 68-221-1203(6) or a system eligible to apply for Clean Water SRF loans pursuant to Tenn. Code Ann. § 68-221-1003(7)

“Tennessee Local Development Authority” or “TLDA” means the entity created by Tenn. Code Ann. Title 4, Chapter 31.

“Tennessee Department of Environment and Conservation” or “TDEC” means the department created by Tenn. Code Ann. § 4-3-501.

Issuance of Additional Debt

Purpose

The SRF program provides Borrowers with low-cost loans to fund water and wastewater projects; however, the SRF program may not be able to meet all the financing needs of all Borrowers or potential borrowers. Rapidly growing local governments, systems, and UDs may also need to issue additional debt to address their project funding needs. By blending a below market interest rate SRF program loan (“SRF Loan”) with a higher rate debt sold in the public market, a Borrower may be able to incur lower overall costs and as a result, provide service to their customers at lower average user fees than would be available if such Borrowers relied solely upon the issuance of capital markets debt. While recognizing a Borrower’s need for additional funding outside of the SRF program, the TLDA has a responsibility to ensure the financial stability and integrity of the SRF program, through the repayment of monies from its borrowers. Therefore, the TLDA must carefully consider a request from a Borrower to issue additional debt that could impair the security of the Borrower’s SRF Loan. This also includes a Borrower’s request to modify the lien position of its SRF Loan relative to the new debt.

This section provides guidance to Borrowers that plan to issue additional debt, clarifies the TLDA’s position with respect to requests from Borrowers to modify the TLDA’s lien position on a SRF Loan, and outlines factors the TLDA should contemplate when considering a Borrower’s request to modify such lien position.

UDs and Systems

Requests from UDs and Systems to Issue Additional Revenue Debt

UDs and Systems are not allowed to issue general obligation debt because they do not have taxing authority, . Therefore, any additional debt issued by a UD or System that is a Borrower, would be payable from the same revenues that are pledged to repay the Borrower’s SRF Loan), and must first meet all representations and covenants in the Borrower’s SRF Loan agreement. All requests to issue such additional revenue debt must be approved by the TLDA prior to the issuance of such debt. (See section Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position)

In order to allow adequate time for such consideration, all written requests should be submitted to the TLDA at least 45 days or additional time as necessary prior to the anticipated sale date.

A Borrower that seeks either a parity or senior lien position for its new revenue debt must submit a written request to the TLDA for approval and the TLDA must approve any modification of the SRF program’s lien position prior to the sale of any new debt. (See section titled Lien Position.)

For revenue debt that is being issued solely to refund previously outstanding debt, approval may be granted by the Vice-Chairman of the TLDA, as outlined below in the section titled Approval for the Issuance of Refunding Debt.

Borrowers should always consult their bond or disclosure counsel to obtain advice on the appropriate disclosure to be made in offering documents for any new debt issued relative to the lien position of the SRF program.

Security and Representations and Covenants Required for Consideration of a UD or System's Request to Issue Additional Revenue Debt

UDs and Systems do not have State-shared or ad valorem taxes to pledge as security for their SRF Loans which means, that in most cases, there are no state funds to be intercepted in the event of a SRF Loan payment default; therefore, these entities are required to secure their SRF Loans with user fees and other revenues collected by the Borrowers. To secure these loans, procedures and loan covenants relating to these entities have been established to the effect that a UD or System Borrower is required to pledge and assign any funds that are payable to it from various sources.

The requirements summarized below are stipulated in the representations and covenants of the SRF Loan agreements for UD and Systems. Upon entering into a SRF Loan agreement, a UD and System is required:

- To do, file or cause to be done or filed any action or statement required to perfect or continue the lien(s) or pledge(s) granted or created under the loan agreement;
- To establish and collect, and to increase user fees and charges sufficient to meet a 1.20x debt service coverage to net revenues. Net revenues are gross earnings, fees and charges, less current expenses. Current expenses are those incurred in the operation of the system, determined in accordance with generally accepted accounting principles ("GAAP"), including the reasonable and necessary costs of operating, maintaining, repairing, and insuring the system, salaries, wages, cost of material and supplies, and insurance premiums, but specifically excluding depreciation and debt service payments; and
- To ensure that no additional debt payable from the revenues of the system will be issued or entered into unless:
 - (1) Prior approval is received from the TLDA;
 - (2) The annual audit required by the terms of the loan agreement for the most recent fiscal year has been delivered not later than six months after the end of such fiscal year [See section titled Filing of Annual Audit Report];
 - (3) The covenant that requires 1.20x debt service coverage to net revenues has been met for the most recent fiscal year;
 - (4) The net revenues of the system for the next three fiscal years ending after the issuance of the additional debt shall be sufficient to meet a 1.20x debt service coverage to net revenues; and

- (5) The UD or System has adopted a revised schedule of rates and fees and taken action to put such revisions in effect at or prior to the issuance of the additional debt.

As additional security for a SRF Loan, prior to the first disbursement of funds under a SRF Loan agreement, a UD or System must deposit with the TLDA an amount of cash equal to the maximum annual debt service on such SRF Loan (or a portion of such amount, to be paid in up to four equal installments in accordance with the section titled Incremental Funding of Security Deposit). The security deposit must be funded from cash available to a UD or System meaning that no portion of a security deposit may be funded with proceeds from the SRF Loan.

Municipalities

Requests from Municipalities to Issue General Obligation Debt

Municipal Borrowers are not required to seek approval from, or provide notification to, the TLDA to issue general obligation debt unless the general obligation debt is also secured by a pledge of revenues derived from the water/wastewater system with a security lien on parity with or senior to the SRF Loan(s). In such case, see section titled Requests from Municipalities to Issue Revenue Debt.

Requests from Municipalities to Issue Revenue Debt

Municipal Borrowers are not required to seek approval from, or provide notification to, the TLDA to issue revenue debt that will be secured by a source of revenue other than the revenues of its water/wastewater system. If the revenue debt is to be secured by the revenues of the water/wastewater system, but the Borrower is not requesting a parity or senior lien position of the debt to be issued, the Borrower must only provide a written notification to the TLDA at least 45 days prior to the sale of the debt. No approval is required from the TLDA, and the notice must include a statement that the Borrower acknowledges that the debt will be issued subordinate to its outstanding SRF Loan(s). If a Borrower seeks a parity or senior lien position for the revenue debt (new money or refunding), the Borrower must submit a written request for approval from the TLDA to modify the SRF program's lien position at least 45 days prior to the sale date of any revenue debt (new money or refunding). (See sections titled Lien Position Please refer to section titled Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position for information used to analyze requests.

Note that:

To recognize the time sensitivity in issuing refunding debt, if the additional revenue debt is being issued to refund previously outstanding debt, a Borrower may seek approval from the Vice-Chairman of the TLDA, as outlined below in the section titled Approval for the Issuance of Refunding Debt.

Borrowers are required by state law and the loan agreement to file an annual audit report with the Comptroller of the Treasury. (See section titled Filing of Annual Audit Report.)

Borrowers should always consult bond or disclosure counsel when issuing revenue debt to obtain advice on the appropriate disclosure to be made in offering documents concerning the lien position of the SRF program.

Encumbrance of State-shared Taxes

If the additional debt is to be secured by a pledge of State-shared taxes, the Borrower must submit a written request for approval from the TLDA to encumber the Borrower's State-shared taxes, and the TLDA must approve any encumbrance of the Borrower's State-shared taxes prior to the issuance of any such new debt. Such request should be submitted at least 45 days in advance of the proposed sale date of such debt or as soon as possible.

Approval for the Issuance of Refunding Debt

The issuance of refunding debt usually progresses through an accelerated timetable to take advantage of market conditions to achieve certain savings. In the event that a meeting of the TLDA cannot be scheduled during this timeframe, the Vice-Chairman of the TLDA is authorized to approve the issuance of refunding debt by a Borrower under the following conditions:

- The refunding does not extend the life of the debt;
- The refunding debt is structured to generate debt service savings of at least 3 percent net present value savings of the refunded debt;
- Documentation is provided to the Vice-Chairman, in the form of a projected savings report certified by a financial advisor or underwriter, demonstrating such savings can be achieved;
- The refunding debt will be issued subordinate to SRF debt or the lien position of the existing SRF debt will remain the same or be improved.
- Staff has analyzed the transaction and has concluded that any prerequisites for TLDA approval of the issuance of additional debt have been met; and,
- The Borrower agrees to provide a final savings report to the Vice-Chairman, that shows the actual savings achieved by the refunding.

A written request must be submitted to the TLDA at the same time that the plan of finance for the issuance of refunding debt is submitted to the Director of the Division of Local Government Finance pursuant to Tenn. Code Ann. § 7-82-501. The Vice-Chairman will report any such approvals at the next meeting of the TLDA. At that time, or as soon as it is available, the Vice-Chairman will provide the final savings report to all members of the TLDA for review. Please refer to section titled Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position for information used to analyze requests.

Note: If the refunding debt will be issued to extinguish all SRF debt and the Borrower will have no other SRF Loan authorizations upon which funds can be drawn, then the Borrower should provide written notification to the TLDA of its intent to payoff its SRF Loans in full. The repayment should occur simultaneously with the issuance/closing of the bonds.

Lien Position

Requests from UD, Systems, or Municipalities to Modify Lien Position

Generally, lien position, or lien priority, is determined by the effective date the debt. The date of any SRF Loan shall be the date that the TLDA approves the loan request (as evidenced on the SRF Loan agreement).

Following the general rule of lien priority, a new SRF Loan would be issued with a subordinate lien position to a lien position of existing debt. Likewise, any debt issued after the approval of a SRF Loan would be subordinate to the SRF Loan. However, a Borrower may request a modification of such standard lien position. For example, a Borrower may have outstanding debt in the capital markets and plans to obtain a SRF Loan. The TLDA would consider a request to issue a new SRF Loan on parity with such existing debt. In another instance, a Borrower with an existing SRF Loan agreement plans to issue additional debt in the capital market. If a Borrower requests a modification of the TLDA's lien position to the new debt, the TLDA will only consider a modification upon demonstration from a Borrower of good cause, sufficient resources to repay the SRF Loan, and ability to satisfy any other such requirements as set forth by the TLDA at the time of the request. The TLDA must give careful consideration to a request for subordination of the lien position of the SRF debt to a Borrower's debt because it poses more risk to the SRF Loan program than a request for parity lien. The TLDA may approve a request for subordination under limited circumstances if a Borrower demonstrates a substantial need, meets all requirements set forth by the TLDA, and the TLDA deems such request to be in the best interest of the Borrower and the users of the UD, System, or Municipal system.

Written requests to modify a SRF program lien position must be submitted for approval by the TLDA prior to the issuance of any such debt (new money or refunding). In order to allow adequate time for such consideration, all written requests should be submitted to the TLDA at least 45 days prior (or as soon as possible) to the anticipated sale date of such new debt. (See section Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position)

Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position

The TLDA will analyze several factors, as appropriate, when considering requests to issue additional debt and to modify the SRF program's lien position. These factors shall include but are not limited to:

- The Borrower's compliance with the covenants and representations set forth in its SRF Loan agreement ;
- The Borrower's amount of authorized and outstanding SRF program debt;
- Borrower's history of timely SRF Loan repayments;
- Borrower's timely filing of financial statements with the Division of Local Government Audit, Tennessee Comptroller of the Treasury (See section titled Filing of Annual Audit Report);
- Amount and purpose of proposed debt issuance;

- Borrower’s credit rating (if applicable);
- Borrower’s current and pro-forma (projected) debt service coverage;
- Borrower’s amount of unobligated state-shared taxes (if applicable);
- Percentage of the system’s total revenues generated by its largest user(s);
- The lien position of existing SRF debt; and
- The impact the health, safety, and well-being of the citizens of the state of Tennessee.

Consent to Modify Lien Position

Any consent by the TLDA to modify its SRF program lien position applies only to revenues pledged to serve the SRF Loan. Consent to modify the SRF lien position does not affect any pledge of State-shared taxes or any rights to security deposits held by the TLDA (if applicable).

Consent of the TLDA to modify the SRF program’s lien position is subject to the condition that the documentation authorizing the new debt: 1) clearly states that debtholders have no rights to any security deposits required by, and securing, the SRF Loan agreement(s) and 2) does not provide debtholders acceleration rights that are superior to, or more generous than, those provided under the SRF Loan agreement(s). Neither the TLDA nor the TDEC shall have any rights to any debt service reserve fund established in favor of the new debt.

The Borrower will be responsible for ensuring completeness and accuracy of all documents. The TLDA makes no representation that the issuance of additional debt by the Borrower complies with all applicable laws, or that such issuance is in the best interest of the Borrower. The TLDA is not a municipal financial advisor and offers no financial advice to Borrowers concerning such requests.

Report on Debt Obligation

A Report on Debt Obligation (the “Report”) must be prepared for all debt obligations issued or entered into by any public entity and filed with its governing body with a copy sent to the Division of Local Government Finance/Comptroller of the Treasury for the State of Tennessee. The purpose of the Report is to provide clear and concise information on the debt to members of the governing or legislative body that authorized and is responsible for the debt issued.

A Local Government that applies for a SRF Loan but is not in compliance with this law should file the Report as soon as possible and provide notification of filing to the SRF Loan program to proceed with its loan application. Furthermore, a Report is required to be filed once a SRF Loan has been approved by the TLDA and the agreement has been executed by the borrower.

Instructions on how to file the Report are located in the “Debt” category for “Local Finance” on the website of the Tennessee Comptroller of the Treasury.

Disclosure

The Electronic Municipal Market Access (EMMA) website was created by the Municipal Rulemaking Securities Board (MSRB) to provide municipal market information, such as official statements, continuing disclosure documents, advanced refunding documents, and trade data for all municipal securities in the United States. All local government issuers are required to perform continuing disclosure undertakings related to Securities and Exchange Commission Rule 15c2-12 via EMMA.

Local governments that issue municipal securities on or after February 27, 2019, should be aware that the Securities and Exchange Commission (SEC) adopted amendments to Rule 15c2-12 of the Securities Exchange Act that require reporting on material financial obligations that could impact an issuer's financial condition or security holder's rights. The amendments add two events to the list of events that must be included in any continuing disclosure agreement that is entered into after the compliance date:

- Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and

Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties. A local government may need to disclose information concerning its SRF Loan on the MSRB's EMMA website. The local government should consult with bond and/or disclosure counsel to determine the appropriate disclosures. More information about EMMA can be found on the MSRB's website.

Forgiveness of Principal

Purpose

Small, economically-disadvantaged communities may be eligible for some level of principal forgiveness on a SRF Loan, which can significantly reduce the repayable amount. These loans are subsidized with an annual EPA capitalization grant that requires the SRF program to set aside a portion of the funds to subsidize loans to eligible borrowers.

Pursuant to Tenn. Code Ann. § 68-221-1005(l)(1), “[t]he department and the authority may use any federal funds allocated to the state to make loans and to subsidize loans made through the program authorized by this part, through such mechanisms as forgiveness of principal and negative interest rates.” The Intended Use Plan (“IUP”) prepared by TDEC is a required part of TDEC's annual application for the EPA Capitalization Grants. The IUP outlines the percent of principal forgiveness that will be given for each loan made from that EPA Capitalization Grant. No principal shall be forgiven except as allowed by the IUP and specified in the SRF Loan agreements. Furthermore, privately owned for-profit community public water systems that qualify for SRF

Loans pursuant to 40 CFR Part 35 are not eligible for loans with principal forgiveness pursuant to Tenn. Code Ann. § 68-221-1206(f)(11)(A).

Terms and Conditions

SRF Loan agreements that provide for principal forgiveness shall specify the amount of principal to be forgiven. The amount of principal forgiveness funds shall be disbursed pro rata with the amount of the loan. If a Borrower submits requests for reimbursement that in total are less than the amount of SRF program funding awarded, then pro rata shares of principal forgiveness and loan shall be deemed to have been disbursed. For example:

Project A

Total SRF Funding Awarded:	\$1,000,000
Total Principal Forgiveness Awarded:	\$ 150,000 (15%)
Total Loan Awarded:	\$ 850,000 (85%)
Reimbursement Request #1:	\$ 350,000
Principal Forgiveness:	\$ 52,500 (15%)
Loan Amount to be Repaid:	\$ 297,500 (85%)
Reimbursement Request #2:	\$ 300,000
Principal Forgiveness:	\$ 45,000 (15%)
Loan Amount to be Repaid:	\$ 255,000 (85%)
Reimbursement Request #3 (Final):	\$ 300,000
Principal Forgiveness:	\$ 45,000 (15%)
Loan Amount to be Repaid:	\$ 255,000 (85%)
Total Disbursements to Borrower:	\$ 950,000
Total Principal Forgiveness:	\$ 142,500 (15%)
Total Loan Amount to be Repaid:	\$ 807,500 (85%)

Incremental Funding of Security Deposit for UDs and Systems

Purpose

Pursuant to Section 8 of the loan agreement, UDs and Systems are required to fund a security deposit in an amount equal to the maximum annual debt service of the SRF Loan.

Section 8 of the loan agreement states, in part:

Prior to the first disbursement of funds under this Agreement, the Local Government will deposit with the Authority an amount of funds equal to the maximum annual debt service (the “security deposit”). The amount of the security deposit will be adjusted to reflect adjustments in the payment schedule.

The amount of the security deposit is calculated based on the total approved loan amount. It is important to note that the Borrower shall not use loan proceeds to fund the security deposit. A Borrower must fund the required deposit from its own resources prior to any disbursement of loan proceeds. The TLDA recognizes that, although a Borrower may have increased its user rates and fees to generate necessary cash flow needed for a project, sufficient cash flow might not be available at the beginning of a project to fully fund an upfront security deposit, since completion of the project could take one to three years. Consequently, the TLDA has authorized its Assistant Secretary, upon the concurrence of TDEC, to approve Borrower requests for incremental funding of security deposits.

Upon approval of incremental funding by the Assistant Secretary, a Borrower would be allowed to deposit with the TLDA its security deposit in up to four equal installments (see Exhibit A). The Assistant Secretary shall determine the number of installments that will be allowed, based upon the amount of the required security deposit. Upon the concurrence of TDEC with such recommendation, the Assistant Secretary will notify the Borrower of the required incremental amounts to be deposited. When the first incremental deposit is made, a pro rata share of project reimbursement requests may be disbursed. . Pro rata project reimbursement disbursements will continue to be made as long as, and until, the required incremental funding is received and deposited.

Terms and Conditions

Incremental funding of a security deposit is subject to the following:

- The Borrower has submitted a written request for approval to the TLDA and has received written approval from the Assistant Secretary;
- The Borrower has provided financial statements that demonstrate the Borrower's ability to make the approved incremental installments from current and/or projected cash flows; and
- The construction completion date for the project, as outlined in the loan conditions section of the SRF Loan agreement, must be at least two (2) years after the date that the loan was approved by the TLDA.

The Borrower may request disbursements in any amount and any frequency within the conditions listed above.

A Borrower who has been granted approval for incremental funding of the security deposit:

- Has no right to additional reimbursements of project costs under the SRF Loan agreement until the required increment of the security deposit has been received and deposited by TLDA staff; and
- Is eligible to earn and receive interest only on the amount of the security deposit held by the TLDA.

Exhibit A

This example illustrates an example of incremental funding in which the funding for the security deposit is divided into four equal installments.

Loan Amount	\$	20,000,000
Term		20 years
Interest Rate		2.50%
Maximum Annual Debt Service	\$	1,271,767

Required Security Deposit	Reimbursement Request		
\$ 317,942	\$ 1	to	\$ 5,000,000
\$ 635,883	\$ 5,000,001	to	\$ 10,000,000
\$ 953,825	\$ 10,000,001	to	\$ 15,000,000
\$ 1,271,767	\$ 15,000,001	to	\$ 20,000,000

Modification of SRF Loan Repayment Schedules for Financially Distressed Borrowers

Purpose

The TLDA has a responsibility to ensure the integrity and financial strength of the SRF program, which relies on the borrower’s repayment of monies to fund future loans. However, the TLDA recognizes that if a Borrower experiences financial distress it may seek assistance from the TLDA through payment relief. As such, the TLDA must carefully consider any request from a Borrower that may impact the SRF program, including Borrower requests to modify loan repayment schedules. The Borrower must provide a written request to the TLDA for approval to modify a SRF Loan repayment schedule.

Terms and Conditions

The TLDA may consider modification of a SRF Loan repayment schedule under the following conditions:

- The Comptroller has filed a copy of the Borrower’s audited financial statements with the Utility Management Review Board pursuant to Tenn. Code Ann. §7-82-

703(a), or the Borrower's audit report with the Water and Wastewater Financing Board, pursuant to Tenn. Code Ann. § 68-221-1010(a); or

- A significant event beyond the control of the Borrower occurs and impacts the Borrower's ability to repay the SRF Loan, such as:
 - (1) A natural disaster; or
 - (2) Loss (or reduction in capacity) of a large customer (commercial, industrial, governmental); or
 - (3) Similar unforeseen event beyond the control of the Borrower and despite prudent action taken; or
- The TLDA deems such action to be for the benefit of the citizens of the state in the performance of essential public functions and that such action serves a public purpose in improving and otherwise promoting the health, welfare, and prosperity of the citizens of the state.

In considering a request to modify a SRF Loan repayment schedule, the TLDA will take into account whether or not the Borrower has:

- Implemented or is about to implement a plan to adopt a multi-year rate increase schedule to address its financial difficulties;
- Established rates sufficient to cover debt service on a new debt issuance for capital improvements necessary to bring the Borrower into compliance with any TDEC administrative orders, including, but not limited to: Agreed Orders, Commissioner's Orders, Director's Orders, or Consent Decrees;
- A history of timely debt service payments on its SRF Loan in accordance with the current payment schedule;
- A plan to attract new customers or to expand the existing customer base;
- A plan to reduce expenses or make efficiency improvements to the system; and
- A debt management policy in compliance with the State Funding Board's directive under Tenn. Code Ann. § 9-21-151 that addresses actions to be taken to avoid default or to provide adequate rates to service debt (rates will be set to provide at least a 1.20x debt service coverage).

Payment Relief

A Borrower may request payment relief from the TLDA through a reduction or waiver of the interest due on the loan for a specified time period. The TLDA may consider additional measures on a case-by-case basis, however, no principal will be forgiven except as originally contemplated under federal directives and approved by the TLDA in the loan agreement.

A Borrower in financial distress with outstanding capital market securities may be required to disclose the financial distress as an event pursuant to SEC Rule 15c2-12. Borrowers should seek the advice of bond or disclosure counsel in determining what disclosure is appropriate.

Filing of Annual Audit Report

Tennessee state law¹ requires local governments to file an annual audit report with the Office of the Comptroller of the Treasury. Furthermore, SRF program Borrowers agree to make such annual filing as a condition of the loan agreement. Failure to file such report in compliance with statutory or contractual requirements may cause a delay in the approval process for SRF funding, and in certain cases may result in disapproval. SRF Loan applicants and Borrowers that have not met the filing deadline, or anticipate a delay, should provide written notification to the TLDA prior to the applicable deadline and provide the reason for the delinquent filing and the expected filing date.

In accordance with the provisions of the SRF Loan agreement, UDs and Systems are prohibited from issuing or entering into additional debt payable from the revenues of the system unless the annual audit for the most recent fiscal year has been delivered within six months after the end of such fiscal year. See section titled Requests from UDs and Systems to Issue Additional Revenue Debt. A Borrower who has not met this requirement and plans to issue such debt must request a waiver of the enforcement of the requirement. The potential borrower needs to submit a written request to the TLDA and include the reason for the delinquent filing and the expected filing date. Once the delinquent report has been filed, a separate waiver request will not be required for subsequent requests related to that fiscal year-end audit unless the TLDA deems otherwise. The TLDA does not require a waiver request if a borrower is applying for additional SRF Loan funding. However, the Department of Environment and Conservation may, at its discretion, require additional information related to a delinquent filing during the SRF Loan application process.

A Municipality, UD, or System seeking modification of lien position that has failed to timely file its report should include in its modification request the reason for the delinquent filing and the expected filing date. See section titled Lien Position.

A Borrower may be required to disclose audited financial information pursuant to federal law or other contractual agreements, including, but not limited to, the Federal Single Audit Act and the Securities and Exchange Commission's Rule 15c2-12 for continuing disclosure. Other such requirements do not supersede a Borrower's audit filing responsibility under Tennessee state law or covenants contained in the SRF Loan agreement. Also, a Borrower's notification to the TLDA of a delinquent filing does not relieve it of any responsibilities related to other state contracts or contracts with federal or other agencies. The Borrower should notify other interested parties of a delinquent filing, including, but not limited to, lenders, grantors, bond counsel, regulatory boards, and federal or other state agencies and should contact other parties to determine if any additional action is necessary pursuant to other agreements.

¹ Tenn. Code Ann. §§ 6-56-105, 7-82-401, 9-3-212, and 4-3-304(4)

Single Audit Requirement

The clean water and drinking water SRF programs are established in each State with capitalization grants from the Environmental Protection Agency (EPA). States use these grant funds, in addition to state funds and borrower repayments, to provide SRF Loans and other types of financial assistance to qualified local governments. Local governments receiving SRF Loans are considered subrecipients.

2 CFR 200 Subpart F requires a single audit to be performed for any assistance recipient expending \$750,000 in federal financial assistance from any source, not just the SRF Loan program. For the SRF Loan program, certain federal requirements apply to “an amount made available by the capitalization grant.” The EPA has interpreted this language to mean that requirements apply only to assistance agreements equaling the amount of the federal capitalization grant, rather than all loans funded by the SRF programs. The Tennessee Department of Environment and Conservation (TDEC) is required by the Federal Funding Accountability and Transparency Act of 2010 (FFATA) to report to the federal government “equivalency projects” which will thereafter be considered “federal projects” and subject to federal Single Audit requirements. Pursuant to EPA guidance, loans selected to comply with the federal requirements do not actually need to receive a federal dollar.

Although federal guidance does not require that all SRF Loan funding be subject to single audit requirements, TDEC requires that SRF Borrowers report all funding received as “federal” for purposes of the single audit threshold.

Any questions regarding sources of funds and/or federal and state audit and compliance requirements under OMB’s Administrative Requirements, Cost Principles, and TDEC Loan/Grant Agreements, should be directed to TDEC at ask.srf@tn.gov.

Privately Owned For-Profit Community Public Water and Wastewater Systems

On April 20, 2015, Tenn. Code Ann. § 68-221-1203(6) was amended by Public Chapter No. 207 to allow privately owned for-profit community public water systems to borrow from the Drinking Water State Revolving Fund program. On March 18, 2021, Tenn. Code Ann. § 68-221-1003(7) was amended by Public Chapter No. 99 to allow privately owned for-profit community public wastewater treatment systems to borrow from the Clean Water State Revolving Fund program.

Conditions and Requirements

Tennessee state law includes conditions and requirements for Private Systems that seek to borrow from the Drinking Water and Clean Water SRF Loan programs.

Tenn. Code Ann. § 68-221-1206(f)(11) and § 68-221-1006(a) stipulate that loans may be made to Private Systems pursuant to 40 C.F.R Part 35; provided, that:

- No Private System shall be considered for loans with principal forgiveness under this program;
- Private Systems shall be categorized as one hundred percent (100%) ability to pay on the index established pursuant to § 68-221-1205 and § 68-221-1005;
- A Private System borrower shall have a debt service coverage ratio of at least 1.25;
- Private Systems shall provide security determined by the TLDA to be acceptable to secure a loan under this part; and
- The TLDA has the authority to direct a Private System to the water and wastewater financing board for compliance as set forth in § 68-221-1009 and § 68-221-1010, and by the Comptroller of the Treasury.

At the time of the approval of this Policy and Guidance, no loans have been made to Private Systems nor have any applications been received.

Adoption of Policy and Guidance

The Authority adopted this Policy and Guidance at its publicly held meeting on September 21, 2016, effective September 21, 2016. The Authority adopted revisions at its publicly held meetings on May 5, 2018, and July 22, 2021.



Vice Chair

Tennessee Local Development Authority