



Date: January 6, 2023

Re: Changes adopted to the Nevada Administrative Code for the Safe Drinking Water Revolving Fund (NAC 445A.6751 to NAC 445A.67644)

Changes to the Office of Financial Assistance (OFA) drinking water regulations have been adopted. These regulatory changes specifically address the Safe Drinking Water Revolving Loan Fund (DWSRF) and do not impact any other program or regulation.

These changes are a culmination of many months of research of federal changes, public outreach, and analysis to ensure the DWSRF remains an attractive alternative to the public market for drinking water infrastructure financing. The DWSRF mission is to provide below market loans for drinking water systems to address needed infrastructure improvements, making the projects more affordable for Nevada residents. These changes will provide greater flexibility and sustainability within the DWSRF program.

What does this mean?

The regulatory changes have been officially adopted into the Nevada Administrative Code (NAC). These regulatory changes may take some time to be codified and published in the NAC but are now enforceable by the Nevada Division of Environmental Protection (NDEP) and OFA for the DWSRF. Some of the changes give OFA the flexibility to outline processes within the program's annual Intended Use Plan. Once this plan is updated and published for public comment, the new regulations will be enforceable by NDEP and OFA.

What has changed?

The updates address six (6) key areas of the current drinking water state revolving fund regulations:

1. Define the term “disadvantaged community”

The previous definition utilized a single economic metric (median household income) and did not account for other economic, environmental, or health conditions a community could face that may impact their ability to secure a loan to address needed drinking water infrastructure improvements. The new definition is as follows:

“Disadvantaged community” means an area in which, as compared to other communities in this State, residents disproportionately experience economic, environmental or health issues, including, without limitation, high rates of poverty or unemployment.

OFA will prepare a 2023 Intended Use Plan that will include a system of assigning points to water systems/projects that includes these additional metrics. OFA anticipates this will

significantly expand the number of systems qualifying as disadvantaged, making the limited principal forgiveness funding accessible to more systems.

Additionally, the point ranking system for projects on the priority list has been modified to prioritize disadvantaged systems above other systems for funding. Twenty-five points will be added to systems meeting the definition of disadvantaged before the final cumulative points are sorted and ranked.

2. Address emergency situations for drinking water systems

Drinking water systems now have an expedited approval process when they are facing an emergency as defined by NAC 445A.67527:

“Emergency situation” occurs when:

- 1. Water at a public water system is contaminated or is likely to be contaminated to such an extent that it causes an imminent danger to public health and the contamination could not have been prevented by the operator of the system; or*
- 2. There is a reduction of a source of potable drinking water for an extended period; or*
- 3. There is an impact to the delivery of potable drinking water that is caused by an emergency or disaster and, in relation to that emergency or disaster, a state of emergency or declaration of disaster has been proclaimed by the Governor or by resolution of the Legislature pursuant to NRS 414.070.*

Drinking water systems facing an emergency should contact the OFA office immediately for information about availability of emergency funding from the DWSRF. Systems do not need to be on the priority list to obtain funding from the DWSRF program if they are facing an emergency. The Board for Financing Water Projects will now be able to approve funding to projects that were not previously on the priority list if they are facing an emergency. Additional points towards disadvantage status are also provided for a system facing an emergency. However, it is not guaranteed that the system will receive principal forgiveness funding for an emergency.

3. Changes in the Environmental Review

Three changes to the Environmental Review process were adopted in response to federal changes to the National Environmental Policy Act:

- a. Language was added that recognizes the regulations as the Nevada Environmental Review Process for the Environmental Protection Agency.
- b. The public notice period for categorical exclusion determinations was *reduced* from 30 days to 15 days.
- c. The public notice period for environmental impact statement determinations was *increased* from 30 days to 45 days.

4. Addition of an administrative fee for drinking water loans

The DWSRF program must remain sustainable indefinitely as required by the Safe Drinking Water Act, as amended. Currently, federal grants provide administrative support for the program. Due to an influx of additional grant dollars, there is no guarantee that Congress will continue to appropriate funds to states. A secondary revenue source to maintain program assets and operations is needed to ensure sustainability. Evaluations of other state SRF programs were conducted. As a result, the program is adopting new loan service fees, and the program's interest rate was reduced to offset this fee increase; the addition of the fees is

expected to have no financial impact (subject to market conditions). The following service fees were adopted:

1. Except as otherwise provided in subsection 5, the Division shall charge a recipient a loan origination fee of:
 - (a) If the recipient receives a principal forgiveness loan or a short-term loan, \$1,000.
 - (b) If the recipient receives a long-term loan, 0.5 percent of the total amount of the long-term loan.
2. A loan origination fee required pursuant to subsection 1 is due to the Division not later than 30 days after the closing of the loan.
3. Except as otherwise provided in subsection 5, in addition to a loan origination fee, the Division shall charge a recipient:
 - (a) If the recipient issues a bond, a fee equal to 0.5 percent of the original loan amount.
 - (b) If the recipient does not issue a bond, a fee equal to 0.75 percent of the original loan amount.
4. Any fee required pursuant to subsection 3 must be paid to the Division in equal installments over the life of the loan and is due to the Division not later than January 1 of each year.
5. The Division shall not collect from a recipient any fee set forth in this section if the recipient receives financial assistance for a water project that will serve a disadvantaged community.

Examples:

| | Loan Amount | Origination Fee | Service Fee |
|--|--------------------|---|--|
| Disadvantaged Community | \$1,000,000 | \$0 | \$0 |
| Public entity Receiving a traditional loan (entity able to issue a municipal bond) | \$1,000,000 | \$5,000 collected within 30 days of loan closing (0.50% of loan amount) | \$166.67 per year collected over the life of the bond (0.50% of loan amount) |
| Private entity receiving a traditional loan (entity not able to issue a municipal bond) | \$1,000,000 | \$5,000 collected within 30 days of loan closing (0.50% of loan amount) | \$250 per year collected over the life of the bond (0.75% of loan amount) |
| Any entity receiving a principal forgiveness or short-term loan and is not disadvantaged | \$1,000,000 | \$1,000 | |

5. Changes to conform with federal law

Over the last several years, Congress has updated the DWSRF program and allowed greater flexibility with the use of funds. Nevada incorporated those changes to remain competitive with other funding sources for borrowers, and to sustain our mission of providing below market loans for drinking water needs. These changes include:

- a. Long-term loans from the DWSRF program are now 30years, or the life of the assets, whichever is shorter. This was increased from 20years.
- b. Long-term loans for disadvantaged communities can be extended to 40years, or the life of the assets, whichever is shorter.
- c. The allowance for funding certain types of projects when the Environmental Protection Agency provides a deviation to a previously unacceptable project type. This includes funding projects that are for:

- a. Water rights
- b. Dams or reservoirs
- d. Including flexibility in the state regulations for federal requirements surrounding disadvantaged business enterprises. This requirement is only applicable up to the value of the grant.
- e. Updating points on the priority list to encourage the development of asset management plans and reserve accounts for sustainability.

6. **Housekeeping items**

“Housekeeping items” in this case is to simply clarify or update processes, procedures, and definitions that have evolved over time. This section:

- a. Updates definitions within the DWSRF regulations to align with definitions already in other sections of the regulations as they pertain to the federal Safe Drinking Water Act, as amended.
- b. Updates the submission process for loan applications from hard copy to the Nevada Infrastructure Financial System (NIFS).

What are the next steps?

OFA will begin preparing a 2023 DWSRF Intended Use Plan to incorporate any changes needed to be addressed in that document. This will then give OFA the ability to use a new method to score systems for disadvantaged status. Once the Intended Use Plan has been publicly noticed for 30 days, the priority list will be opened to add more projects, and re-rank the projects already on the list.

Borrowers should be on the lookout from OFA for this important document to be coming out soon. However, pre-applications to add projects to the priority list are accepted **continually**. To submit a pre-application to add a project to the priority list, please login to NIFS at: <https://ndepifs.ndep.nv.gov/Default> or contact OFA at ndep-ofa@ndep.nv.gov to see if your system qualifies for funding.

Where can I find more information?

The OFA website is updated frequently: <https://ndep.nv.gov/water/financing-infrastructure>. A copy of the regulation changes is posted under Current Topics and News.

Program documents, including a complete start-to-finish checklist, is available on the Nevada SRF webpage: <https://ndep.nv.gov/water/financing-infrastructure/state-revolving-fund-loans>

Guidance documents for program funding are available on the DWSRF webpage: <https://ndep.nv.gov/water/financing-infrastructure/state-revolving-fund-loans/drinking-water>

Additionally, OFA sends out email announcements periodically to interested parties. Consider joining the OFA mailing list: <https://lp.constantcontactpages.com/su/Stbj4Jx>

To contact us directly, please email us at: ndep-ofa@ndep.nv.gov.