

265—26.4(16) Infrastructure construction loans.

26.4(1) *Loan agreements.* The authority will prepare a loan agreement after an application has been approved by the authority board. Prior to execution of the agreement, the recipient shall provide an enforceability opinion and, if applicable, a bond counsel opinion as to the status of interest on the obligation in forms acceptable to the authority.

26.4(2) *Loan terms.* The extent to which the loan terms and fees is established in the IUP are required by 40 CFR 35.3150 and 40 CFR 35.3555.

a. Interest rates. Loan interest rates shall be established in the IUP based on factors including but not limited to:

- (1) The average daily Bloomberg BVAL General Obligation Municipal AAA 20-year yield;
- (2) Taxable and tax-exempt status;
- (3) Length of loan term;
- (4) Interest rate cost of funds to the program;
- (5) Availability of other program funds;
- (6) Prevailing market interest rates of comparable loans; and
- (7) Long-term program viability.

b. Fees.

(1) The loan initiation fee shall be established in the IUP. The fee shall be payable on the closing date of the loan agreement. The loan initiation fee will be waived for projects located in a disadvantaged community.

(2) The annual loan servicing fee shall be established in the IUP. Payment of the loan servicing fee will be made semiannually along with scheduled interest payments.

c. Revenue pledge. The recipient shall establish sufficient revenue sources for the repayment of the loan, as determined by the authority. To ensure repayment of obligations according to the terms of the loan agreement, the recipient shall agree to impose, collect, and increase, if necessary, user charges, taxes, or other dedicated revenue sources identified for the loan repayment in order to maintain annual net revenues at a level equal to at least 110 percent of the amount necessary to pay debt service on all revenue obligations during the next fiscal year. At the discretion of the director or director's designee, the authority may allow other revenue sources and coverage of less than 110 percent. At the discretion of the director or director's designee, the authority may require revenue sources and coverage in excess of 110 percent of the amount necessary to pay all revenue obligations if the recipient has a history of default on its revenue obligations or insufficient credit history, as determined by the authority. The loan agreement shall authorize the authority to require revenue adjustment to collect delinquent loan payments.

d. Security.

(1) A loan may be secured by a first lien upon the net revenues of the recipient's system. Loans secured by net revenues of a system may rank on a parity basis with other outstanding obligations, or, with the approval of the director or director's designee, those loans may be subordinate in right of payment to the recipient's other outstanding revenue obligations.

(2) A loan may be secured by a general obligation of the recipient, and the recipient may achieve this through the provision for a levy of taxes to repay the loan.

e. Construction payment schedules. The loan agreement shall include an estimated construction drawdown schedule provided by the recipient.

26.4(3) *Loan commitments.* Loan funds are considered a binding commitment at the time a loan agreement is executed.

26.4(4) *Costs.* The recipient shall use the program loan proceeds solely for the purpose of eligible costs of the approved project. The recipient must document all eligible costs to the satisfaction of the authority and the department before loan proceeds are disbursed.

26.4(5) *Loan amount and repayment period.* All loans shall be made contingent on the availability of funds. The maximum loan term will be 30 years. Repayment of the loan must begin no later than one year after the project is substantially complete.

26.4(6) *Prepayment.* A recipient may prepay a loan, in whole or in part, on any date with the prior written consent of the authority.

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