RESPONSE TO COMMENTS

FY2026 Rules for Administration of Wastewater and Drinking Water Loan Funds IDAPA 58.01.12

Public Comment Period April 9, 2025 to April 24, 2025

NO.	Name	Date Received	Comment Received	General Comment / Concerns Category	DEQ Response
1	Kristina Gillespie-Jaques, Merrick & Company	4/9/2025	...our concern is in the proposed language set forth in Subsection 01.d. Special Conditions and Adjustments, that states if a community's service area is not within the boundaries of a municipality, the community may use "....Census data for the county in which it is located...". Historically, the Letter of Interest form has allowed an unincorporated community to use the "...smallest and most representative area for the community...", which may include a zip code, a school district boundary, or a Census block, all of which better reflects an unincorporated community's demographics. Although the option to use a county's Census data is informative, if used alone, it could inadvertently obscure the local community's ability to provide evidence of economic disparity within its service area. County Census data could include several (hundred or thousand) additional individuals that could skew the MHI for the community members served by the utility. Therefore, we would recommend including the phrase "...or the smallest and most representative area for the community..." verbiage into Subsection 01.d. Special Conditions and Adjustments to provide this option to unincorporated communities.	MHI Determination	Thank you for your comment. DEQ agrees that using county level data can skew the data as described. DEQ does provide and allow the information in the Letters of Interest. Although the change was not made for the current negotiated rulemaking, DEQ is adding the language, "...the applicant may use the census data for the county or the most representative area or use a representative survey..."
2			Second, regarding Section 58.01.12.050 Loan Offer and Acceptance, Subsection 04.d. Requirements for Professional Engineer Liability, proposed modifications in this subsection intends to provide additional guidance to communities regarding professional engineering liability insurance limits. In addition, the proposed modifications also intend to provide language for a potential waiver of coverage limits. However, the additional language could be viewed as additional bureaucracy by the State, deepening the layers of governance and possibly making decisions outside of its professional expertise as defenders of public health and safety (not as risk management experts). In addition, the language could be deemed as outside the standards of care established by professional engineeringlimits that are grounded in professional engineering rules and State of Idaho requirements. This could remove any unseen liability on the part of the State acting outside the limits of its expertise. All recommended actions would be in line with the streamlined process of reducing government red tape, as requested by the Governor. Furthermore, the language excludes liability limits of subconsultants. Finally, the proposed language could inadvertently exclude smaller firms that may not have the resources to carry extended insurance requirements and/or have the expertise necessary to provide the State with justification for any proposed reduced coverage. Therefore, it is recommended that IDEQ consult with the State's professional risk manager to help craft universal language that could support engineering firms of all sizes, include standard liability	Professional Liability Insurance	Thank you for your comment. The Department appreciates your input on the professional liability insurance requirement outlined in Section 58.01.12.050(04)(d) and acknowledges your concerns about administrative burden and equitable access for firms of all sizes. The intent behind Section 050.04.d is not to impose unnecessary bureaucracy but to ensure protection for both the loan recipient and the public when engineering services are procured using SRF funds. The insurance requirement helps safeguard against design-related errors that could lead to significant public costs if unaddressed.Errors and omissions liability is uniquely addressed through professional liability insurance, which is considered an industry standard and best practice for this type of risk management. That said, we also understand the importance of balancing protection with flexibility, especially for smaller engineering firms. That's why the draft includes a waiver provision, which is designed to allow case-by-case adjustments where appropriate. The intent is to provide flexibility where there was no flexibility in the pre-negotiated rule set. The Department is committed to streamlining regulatory processes in line with the Governor's Zero-Based Regulation directive while continuing to uphold our responsibility to safeguard public resources and infrastructure investments. No changes were made.
2	James Bledsoe, Keller Associates	4/10/2025	For Section 50.5.d, we suggest considering an insurance limit "up to $5m." This request would mitigate the need for waiver requests and is consistent with the upper end of insurance maintained by most engineering firms. Additionally, our experience is that claims risks are not necessarily proportional to engineering fees. A project with $50k engineering fee has the potential for a much higher risk than $100k. However, most claims on even very large design projects are typically well below $5M.	Professional Liability Insurance	Thank you for your comment. DEQ created an additional allowance for a reduction of the insurance limit to provide flexibility while ensuring protection of public funds. No changes were made.

3	Lee C. Belt, on behalf of City of Greenleaf	4/24/2025	The cost of professional liability insurance is a valid concern for design professionals, so the request for a waiver process is understandable. However, while it is important that DEQ funded water and wastewater projects include a requirement for engineering professional liability insurance, I would submit that requirement of this policy is not providing the protection of the public dollar that we think it provides. Let me digress a bit to provide context for the recommendation below. It is my privilege to serve as the city clerk of one of the 75% of cities in Idaho that has a population under 3,000, and I am now in my 21st year in this position. My city performed a major water project from 2006 to 2010 funded primarily by USDA-RD bonds which took the system from one that only provided potable water to a system that provides fire-flows - the backbone of the old system used four-inch main, where six-inch is necessary to adequately feed a fire hydrant. The city estimates that the community's water system was 95%+ replaced in this project, giving the city in essence a 'new' water system. My city constructed a completely new sanitary sewer collection system and wastewater treatment plant (WWTP) project from 2009 to 2013 funded primarily through the DEQ revolving fund which literally took the community from septic tanks & drain-fields to a new collection system with modern materials and an efficient, resilient, and expandable oxidation ditch WWTP design with summer land application and winter discharge of treated water. The community pays dearly through user fees for the financed debt on these projects, but also has the benefit of well designed and well maintained systems with capacity to accommodate growth. Not all Idaho communities are so fortunate. Within the past twenty years, I can immediately think of three cities (Parma, Emmett, and McCall - and there are probably multiple others I'm not aware of...) that I believe continue to suffer financially from multi-million dollar design-build water or wastewater infrastructure projects that didn't work as intended at end of construction. It may have been the fault of the the engineer, data provided by the city, or the contractor (more likely a combination of factors) and finger-pointing doesn't matter at the end of the day because professional liability and contractor liability insurance coverage is insufficient to cover re-design and corrective measures to bring the new multi-million dollar facility into functional status. Nobody involved wants to see the community pay debt service for a new facility that doesn't work, and the city and it's funding partners also have the task of finding a path forward to afford to fix it. DEQ's engineering design review for approval requirement has value, but design review has not, and cannot be expected to, protect against this type of failure. I would recommend addition of project-specific insurance to safeguard DEQ drinking water and wastewater loan funded projects over a set threshold (perhaps $2 million). A portion of loan funding could be earmarked for this insurance policy outside of the loan amount provided (similar to Idaho Community Block Grant funding for a certified community block grant administrator at ten-percent of grant amount, above the grant awarded and realized by the grant recipient) to protect the publicly funded project through an Owner's Protective Professional Indemnity (OPPI) or equivalent project specific insurance policy to provide financial resource to the owner of the project to fix catastrophic design-build issues that are financially too large for affordable professional liability and contractor liability insurance carried by engineering and construction firms.	Professional Liability Insurance	Thank you for your comment and for sharing your city's extensive experience with major water and wastewater infrastructure projects. The Department acknowledges the serious risks and long-term consequences communities may face when infrastructure projects do not perform as intended. We agree that protecting the public investment is a critical objective of the State Revolving Fund (SRF) programs. While the SRF provides financing for public water infrastructure, it is important to clarify that SRF loans cannot be used to fund professional liability insurance or project-specific policies such as Owner's Protective Professional Indemnity (OPPI). These types of financial protections—though potentially beneficial—are not considered eligible costs under the SRF. The requirement for professional liability insurance is in place to ensure that engineering firms hold coverage for errors and omissions that may arise during design. While this type of insurance may not fully cover catastrophic failures, it represents the standard risk mitigation tool in the engineering and public works sectors. DEQ's engineering design review complements, but does not replace, this responsibility. DEQ will evaluate adding this information in SRF guidance to assist communities. No changes were made.
4	Shelley Roberts, Chief Executive Officer, Idaho Rural Water Association	4/24/2025	We were unable to attend the initial negotiated rule making meeting held on April 17, 2025, however, we have reviewed the draft rules posted on the Idaho DEQ Rulemaking website. We appreciate DEQ's efforts to clarify the term "Disadvantaged Community" and "Affordability" in the proposed rule. The introduction of the tiered approach to determine disadvantaged communities based upon affordability is viewed as an improvement to better align loan modifications with those communities most in need. Project specific performance bonds for design as well as construction may be an alternative to OPPI coverage.	Affordability/disadvantaged community	Thank you for your comment and support for the changes made to the affordability section. No action required.