

DECLARATION OF EMERGENCY

Department of Treasury Office of the Treasurer

Fiscal Administrator Revolving Loan Fund (LAC 71:IX.Chapter 1)

The Department of the Treasury, Office of the Treasurer is exercising the emergency provisions of the Administrative Procedure Act, specifically R.S. 49:953(B)(1), to promulgate an Emergency Rule to facilitate disbursement of loans from monies appropriated by the Legislature to the Fiscal Administrator Revolving Loan Fund, R.S. 39:1357. The Department of Treasury has determined that this Emergency Rule is necessary to prevent imminent peril to the public health, safety, and welfare.

The Legislature through the process established in R.S. 39:1351, et seq. has provided a process for the court-ordered fiscal administration of political subdivisions who are determined to no longer be in a status of “financial stability” or who have failed to comply with the provisions of the Audit Law, R.S. 24:513, et seq. for three consecutive years. Political Subdivisions that are determined to be in need of fiscal administration due to non-compliance with the Audit Law are prohibited from receiving State appropriated funds or Federal assistance which passes through the State pursuant to R.S.39:72.1 until such time as a fiscal administrator is appointed by the court and in accordance with the law. The Legislature has enacted the Fiscal Administrator Revolving Loan Fund to provide a source of borrowing for political subdivisions to assist in funding the initial costs of fiscal administration. The Legislature appropriated monies into the Fiscal Administrator Revolving Loan Fund during the 2019 Regular Session.

Currently, there are municipalities that are in need of fiscal administration but do not have the financial resources to pay for the services of the court-appointed fiscal administrator in order to begin fiscal administration. During this time, the municipalities are unable to obtain State and Federal assistance needed to address public health, safety and welfare, specifically addressing issues concerning urgent needed repairs to public water systems.

Effective October 1, 2019, the Department of Treasury hereby implements this Emergency Rule. The Department of Treasury has begun the process of promulgation of a Rule, but due to the immediate need for fiscal administration and access to state and federal assistance, an interim process is needed to allow for disbursements from the Fiscal Administrator Revolving Loan Fund. This Emergency Rule shall be effective for 120 days or until a final Rule is promulgated, whichever occurs first.

Title 71

TREASURY—PUBLIC FUNDS

Part IX. State Assistance to Local Government

Chapter 1. Fiscal Administrator Revolving Loan Fund

§101. Definitions

A. For the purpose of this Chapter, the following shall mean:

Application—formal request for loan from the fund for the payment of fiscal administration costs.

Court—the state district court ordering the independent fiscal administration of the political subdivision and

appointment of a fiscal administrator pursuant to R.S. 39:1351, et seq.

Estimated Costs—the estimated costs and expenses associated with the independent fiscal administration of the political subdivision, including but not limited to all costs and expenses incurred by the fiscal administrator, the legislative auditor, the attorney general, the state treasurer, an any other persons engaged in connection with the independent fiscal administration.

Fiscal Administration Costs—the actual costs and expenses associated with the independent fiscal administration of the political subdivision, including but not limited to all costs and expenses incurred by the fiscal administrator, the legislative auditor, the attorney general, the state treasurer, an any other persons engaged in connection with the independent fiscal administration.

Fiscal Administrator—the court appointed fiscal administrator pursuant to R.S. 39:1351, et seq.

Fund—the fiscal administrator revolving loan fund, as established in R.S. 39:1357.

Loan—maximum principal amount authorized to the political subdivision from the fund through a loan agreement to the department of treasury for the sole purpose of paying fiscal administration costs.

Loan Agreement—the executed evidence of indebtedness of the political subdivision to repay the loan from the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1357.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Office of the Treasurer, LR 45:

§103. Restricted Use of Funds

A. The monies within the fund shall only be used for the purpose of paying the costs and expenses associated with the independent fiscal administration of the political subdivision, including but not limited to all costs and expenses incurred by the fiscal administrator, the legislative auditor, the attorney general, the state treasurer, an any other persons engaged in connection with the independent fiscal administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1357.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Office of the Treasurer, LR 45:

§105. Process for Obtaining Loan from the Fund

A. After passing the resolution or ordinance as described in R.S. 39:1357(E) and (F), the political subdivision shall transmit an application, using the form established by the department of treasury, to the legislative auditor.

B. Such application should contain the following:

1. name of the public entity, including:
 - a. names of chief administrative officer and board/council members;
 - b. physical address;
 - c. mailing address;
 - d. email of chief administrative officer; and
 - e. phone number.
2. name of fiscal administrator, including:
 - a. physical address;
 - b. mailing address;
 - c. email;
 - d. phone number;
 - e. date of appointment; and
 - f. certified copy of court order appointing fiscal administrator.

3. a copy of the written report required to be prepared under R.S. 39:1352(B)(1). In the event that the written report has not yet been prepared, or was prepared more than a year prior to the application, the application shall contain an estimate of the revenues and expenditures of the political subdivision for the remainder of its current fiscal year and the following fiscal year.

4. current budget of the political subdivision with projected expenditures to fiscal year end;

5. financial statements of the political subdivision;

6. a list of current creditors showing existing balances and payment schedules;

7. a list of assets not identified in financial statements;

8. a list of insurance policies, including insurance company name, policy numbers, and type of insurance;

9. sources of funds and evidence of ability to repay the loan requested by this application;

10. anticipated date for end of fiscal administration;

11. the estimated costs as determined by the political subdivision and fiscal administrator; and

12. the requested maximum principal amount of loan.

C. The legislative auditor in its review and approval of the application shall ensure all financial information is included in the application.

D. Upon approval of the application, the legislative auditor shall forward the application to the state treasurer and attorney general for their review and approval.

E. Upon receiving the approval of the application from the legislative auditor, state treasurer, and attorney general, the attorney general shall file a motion to approve the application with the court.

F. Following issuance of an order by the court approving of the political subdivision's application, the political subdivision shall submit, in addition to the requirements of the state bond commission, the following to the state bond commission for its review and approval:

1. the application;

2. a copy of the approvals of the state treasurer, attorney general, legislative auditor, and fiscal administrator;

3. a certified copy of the court order approving the application;

4. a draft of the proposed loan agreement to secure repayment of the loan from the fund;

5. proof of publication of the resolution or ordinance in the official journal of the political subdivision as required in R.S. 39:1357(F); and

6. a copy of a resolution or ordinance adopted by the political subdivision authorizing the fiscal administrator to execute a loan agreement with the department on behalf of the political subdivision for a loan from the fund setting forth the following:

a. maximum principal amount under the loan;

b. maximum interest rate;

c. maximum term of the loan;

d. repayment schedule of the loan;

e. security for the loan, if any;

f. any redemption features of the loan agreement, including a maximum redemption premium, if any.

G. Upon approval from the state bond commission, the fiscal administrator on behalf of the political subdivision shall execute a loan agreement with the department of treasury containing the details set forth in the application and the adopted resolution or ordinance.

H. Payments from the fund shall be made by the department of treasury upon receipt of invoices from the fiscal administrator approved by the legislative auditor. Such payments shall not exceed the maximum principal amount as established in the loan agreement.

I. Payments from the fund shall be made in the order of approval by the bond commission, absent circumstances where the department of treasury determines that an emergency exists or where the fiscal review committee has adopted a motion prioritizing payments from the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1357.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Office of the Treasurer, LR 45:

§107. Loan Conditions and Repayment

A. Each loan shall be evidenced by a loan agreement on a form prescribed or approved by the department of treasury.

B. The interest rate on each loan shall be established by the department of treasury and shall be an interest rate that is less than or equal to the market interest rate.

C. The political subdivision shall tender payments to the department of treasury in accordance with the repayment schedule set forth in the loan agreement.

D. The department of treasury shall credit any payments received to the fund for additional lending under this chapter.

E. The department of treasury may by suit, action, mandamus, or other proceedings, protect and enforce any covenant relating to and the security provided in connection with any indebtedness issued pursuant to R.S. 39:1357, and may by suit, action, mandamus, or other proceedings enforce and compel performance of all of the duties required to be performed by the governing body or officials of any political subdivision hereunder and in any proceedings authorizing the issuance of the loan agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1357.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Office of the Treasurer, LR 45:

John M. Schroder
State Treasurer

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