

TO: July 20, 2020

To: Board Members

Through: Jeff Walker, Executive Administrator
Amanda Lavin, Assistant Executive Administrator
Ashley Harden, General Counsel
Rebecca Trevino, Chief Financial Officer

From: Glenna Bowman, Deputy Chief Financial Officer

SUBJECT: Rulemaking relating to the use of Automated Clearing House (ACH) payments for RWF Loans

ACTION REQUESTED

Consider authorizing publication of a proposed amendment to 31 Texas Administrative Code (TAC) §365.41 relating to Loan Closing for the Rural Water Assistance Fund (RWF) program.

BACKGROUND

The Texas Water Development Board (the Board) presently has outstanding loan agreements in the RWF program for which we receive payments directly from borrowers, rather than through paying agents. In accordance with current TAC §365.41, these borrowers may remit their payments only by wire transfer. Many RWF loans require monthly payments and wire transfers can cost the borrower \$30 or more per transaction for the life of the loan.

The RWF borrowers could use ACH payments to save time and reduce their cost to remit loan re-payments to the TWDB. ACH payments are generally provided at no cost to the requestor. The TWDB would also benefit from improved administrative processes related to these loan repayments.

Approval of this request provides payment options to RWF borrowers that have not issued publicly registered debt service through the Depository Trust Corporation. Those that have issued publicly registered debt in the RWF or any other TWDB financing program must continue to wire debt service payments through their respective paying agents.

KEY ISSUES

This request affects eighteen existing borrowers that have twenty-five targeted RWAF loans. It will be available to any new loans under the program.

RECOMMENDATION

Authorize publication and amendment of 31 Texas Administrative Code (TAC) §365.41 to allow the Executive Administrator to authorize the acceptance of payments made “by wire transfer or in a manner acceptable to the Executive Administrator,” which would allow use of ACH payments by borrowers in the RWAF loan program.

The Texas Water Development Board (“TWDB” or “board”) proposes an amendment to 31 Texas Administrative Code (TAC) §365.41 regarding Loan Closing for the Rural Water Assistance Fund (RWAFF) program.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

TWDB presently has outstanding loans in the RWAFF program for which we receive payments directly from borrowers, rather than through paying agents. In accordance with current TAC §365.41, these borrowers may remit their payments only by wire transfer. Many RWAFF loans require monthly payments, and wire transfers can cost the borrower \$30 or more per transaction for the life of the loan. The proposed rule would expand allowable payments forms, including allowing Automated Clearing House (ACH) payments. The proposed rules would save time and reduce costs to TWDB borrowers and would improve TWDB’s administrative processes.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 365.41(a)(2)(J) would be amended to add the words “or in a manner acceptable to the Executive Administrator.”

All other wording in the rule would remain unchanged.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from its administration.

These rules are not expected to result in significant reductions in costs to either state or local governments. The TWDB may benefit from improved administrative processes related to the use of ACH for RWAFF loan repayments. Borrowers that use ACH payments may save time and reduce their cost to issue payments (\$30 or more per transaction for the life of the loan).

These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments’ costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules

are amended to reduce the burden or responsibilities imposed on regulated persons by the rule.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public may benefit from the rulemaking as it may reduce the administrative burden and processing costs for the remittance of loan repayments to the TWDB.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. A “major environmental rule” is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to reduce the administrative burden for local governments that are the recipients of TWDB financial assistance.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express

requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather §15.995. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to reduce the administrative burden and processing costs for the remittance of loan repayments to the TWDB. The proposed rule would substantially advance this stated purpose by providing more repayment options to TWDB borrowers

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the Rural Water Assistance Fund.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule reduces the administrative burden and processing costs for the remittance of loan repayments to the TWDB. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register. Include Chapter 365 in the subject line of any comments submitted.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §§6.101 and 15.995.

Texas Water Code, Chapter 15, Subchapter R is affected by this rulemaking.

<rule>

PART 10 TEXAS WATER DEVELOPMENT BOARD CHAPTER 365 RURAL WATER ASSISTANCE FUND SUBCHAPTER C CLOSING AND RELEASE OF FUNDS

§365.41. Loan Closing.

(a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:

(1) no change

(2) a certified copy of the bond ordinance, order or resolution adopted by the governing body authorizing the issuance of debt to be sold to the board, or an executed promissory note and loan agreement, that is acceptable to the executive administrator and which shall have sections providing as follows:

(A) – (I) no change

(J) that all payments shall be made to the board via wire transfer or in a manner acceptable to the executive administrator at no cost to the board;

(K) – (N) no change

(3) – (7) no change

(b) – (c) no change