

Texas Water Development Board



Review of Select Closing Processes

Project #2021.07
September 2022

Executive Summary

We reviewed agency processes and controls over closings for the agency's four primary financial assistance programs. The review focused on those commitments closed in fiscal year 2021 by execution of grants, principal forgiveness, loans, and bond purchases, and was limited to the closing process beginning from the time the borrower provided all final closing documentation to the agency.

The primary objective of the review was to determine whether the agency's closing processes and controls ensured that documentation was accurate, complete, and prepared in accordance with applicable laws, rules, requirements, and agency policies and procedures. We also assessed current practices and opportunities to improve efficiency and effectiveness of select related processes.

Overall, we found that processes and controls have been established to ensure that closing processes are performed in accordance with applicable laws, rules, requirements, and agency policies and procedures. We also noted that certain complementary controls, related to the reviews conducted during the closing process, exist to provide a greater combined effectiveness.

Specifically:

- Processes exist to ensure that required closing documentation is accurate, complete, and prepared in accordance with applicable laws, rules, requirements, and agency policies and procedures.
- Controls exist to verify the accuracy of the first outlay payment with the requirements at the time of closing.
- Primary controls and complimentary controls exist to ensure that reviews are conducted in accordance with requirements prior to closing.

Although no systemic issues related to the closing process were noted, our review identified areas where improvements should be made to enhance compliance and improve efficiency during the closing process.

We recommend that closing procedures are strengthened to proactively assist borrowers in meeting the agency established submittal deadlines prior to closing.

Background

The TWDB offers a variety of cost-effective loan and grant financial assistance programs that provide for the planning, acquisition, design, and construction of water-related infrastructure, as well as other water quality improvements.¹

Commitments for financial assistance are offered by the Board to an applicant who fulfills the conditions required in a Board Resolution.² After a Board approval of each commitment, additional legal, financial, and engineering documentation must be submitted to the agency by the borrower in order to close and release funds. In most cases, funds are delivered to an escrow account and then released upon the agency's approval to the borrower's construction account.³

Subsequent to a borrower receiving a commitment for financial assistance⁴, the agency closes the commitment through the execution of one or more financial agreements. These financial agreements include grants, principal forgiveness, loans, and purchase of bonds. Commitments may consist of multiple or a combination of financial agreements. For example, a borrower may receive Board approval of a commitment for financial assistance that is executed using both an individual grant agreement, as well as an individual loan agreement.

During fiscal year 2021 (September 1, 2020, to August 31, 2021), the agency closed 175 financial agreements totaling \$1,240,996,404. Of the 175 financial agreements, 168 (96%) were closed through the following four agency programs:

Programs	Number of Agreements	Amount
Flood Infrastructure Fund (FIF)	71	\$137,718,777
State Water Implementation Fund (SWIFT)	20	\$599,645,000
Clean Water State Revolving Fund (CWSRF)	38	\$310,324,440
Drinking Water State Revolving Fund (DWSRF)	39	\$172,577,187
Total	168	\$1,220,265,404

These four programs represented the largest amount in dollars closed, totaling approximately \$1,220,265,404.

The established statutes, requirements, rules, and agency procedures that govern the closing processes include the Texas Water Code, Sections 15.606, 15.608, and 15.609 and Texas

¹ www.twdb.texas.gov/financial/index.aspx

² Texas Administrative Code, Title 31, Part 10, Chapter A, Division 1, Rule 363.2

³ www.twdb.texas.gov/financial/Closing_commitment.aspx

⁴ www.twdb.texas.gov/financial/Closing_commitment.aspx

Administrative Code (TAC) 371.71 and 371.72 and 375.91 and 375.92, which are specific to the CWSRF and the DWSRF, and Sections 15.405 and 15.435 pertain to FIF and SWIFT programs. Additionally, Texas Administrative Code (TAC) rules 363.42 and 363.43 govern all financial assistance programs, and the agency has internal policies and procedures to further assist with processing guidance.

Information systems used in closing processes include the Texas Water Information System Expansion (TxWISE), Abila Micro Information Products (MIP), the DTC portal⁵, and the Trust portal⁶. The TxWISE application is used to track and process financial assistance. While MIP is the software used for financial management and accounting. The DTC portal is used to determine whether approval is granted to close loans backed by bonds, and the Trust portal is used to approve disbursements from local funds.

Organizationally, there are three primary divisions that play a role in closing processes. Those divisions include Finance, Office of General Counsel, and Water Supply & Infrastructure. Each division contributes to the review process to help ensure continued compliance with laws, rules and regulation that govern closings and the release of funds.

Objectives, Scope, and Methodology

Objectives

The objectives of this engagement were to (1) determine whether closing review processes and controls ensured documentation was accurate, complete, and prepared in accordance with applicable laws, rules, requirements, and agency policies and procedures, and to (2) identify opportunities to improve efficiency and effectiveness of the related processes.

Scope and Methodology

The scope of the audit covered commitments closed in fiscal year 2021 (September 1, 2020, to August 31, 2021) for the agency's four primary financial assistance programs ⁷and included a review of those commitments closed by execution of grants, principal forgiveness, loans, and bond purchases. The audit was limited to the closing process beginning when the borrower provided all final closing documentation to the agency.

The methodology for the audit consisted of a review of the following information:

- Texas Water Code, Sections 15.405, 15.435, 15.606, 15.608, and 15.609.
- Texas Administrative Code 371.71 - 371.72, 375.91 - 375.92, and 363.42 - 363.43.
- Internal agency policies and procedures related to closing processes.
- Data contained in TxWISE, MIP, the DTC portal, and the Trust portal as needed.

⁵ Depository Trust and Clearing Corporation (DTC)

⁶ Texas Treasury Safekeeping Trust Company (Trust)

⁷ CWSRF, DWSRF, FIF and SWIFT

- Closing file documentation, including bond ordinances, promissory notes, and grant and principal forgiveness agreements, board write-ups, financial advisor's closing instruction memos, and other forms and required contract documents.
- Payment information, including outlay reports, engineer memos and ceiling memos.
- Engineer, attorney, and finance review checklists.

Tests and procedures included the following:

- Examined closing files to determine whether closing documents were present, as required by Texas Administrative Code, and the agency's internal policies and procedures.
- Evaluated deadlines and milestones of required documentation submittals to the agency.
- Verified whether the first outlay payment was accurate.
- Analyzed the reviewer's checklists used to review files prior to closings.

This engagement was conducted in accordance with *Generally Accepted Government Auditing Standards* and the *International Standards for the Professional Practice of Internal Auditing*. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives.

The audit team consisted of:

Michelle Cooper, CGAP, CFE, CISA
Nicky Carter, CICA
Nicole Campbell, CIA, CISA

Detailed Results

Texas Administrative Code (TAC) and internal policies and procedures govern the agency's closing processes. TAC 363.42 outlines the instruments needed for closings, and specifies the documents that are required at the time of closing. TAC 371.71 - 375.72 and TAC 375.91 - 375.92 are specific to Clean Water and Drinking Water State Revolving Funds, and outline the required documents and conditions necessary in order to close financial assistance secured by bonds, or other authorized securities, promissory notes, and deeds of trust.

A sample of nine closing files were tested, which included the following:

Agency Programs	Closing File Types
Flood Infrastructure Fund	Grant Only
Flood Infrastructure Fund	Grant and Bond
State Water Implementation Fund for Texas	Board Participation and Bond
State Water Implementation Fund for Texas	Bond Only
Clean Water State Revolving Fund	Principal Forgiveness
Clean Water State Revolving Fund	Bond
Drinking Water State Revolving Fund	Loan Only

Closing File Documentation

The sample of closing files was reviewed to determine whether processes and controls ensure that the documentation was accurate, complete, and prepared in accordance with applicable rules and internal agency policies and procedures. The review tested whether specific closing documents were included in the files, and whether those closing documents were prepared appropriately, and included all the required information.

Our review found that all nine closing files included the required documents.

Specifically, we observed that:

- Bond ordinances, promissory notes, or grant and principal forgiveness agreements were included in the closing files, as applicable.
- All closing files included the required sections, and were signed and dated.
- Approved board write-ups, along with the required signed forms, as well as other signed contract documents, were included in the closing files.
- The financial advisor's closing instruction memos included all the required information, and were consistent with the various other forms and letters reviewed.

Outlay Payment

A review of payment information was performed to determine whether accurate payments were released at the time of closing. Outlay reports were compared against the engineer's memo to determine whether the first outlay payment was accurate, and reconciled to the engineer's ceiling memo.

Our review found that the outlay reports matched the engineer's memo for all nine files tested.

Checklists

Review checklists contain items which list specific required documentation that the borrower is responsible for submitting to the agency prior to closing. Each discipline owns and reviews a separate checklist to ensure those items within their purview are received from the borrower prior to the approval closing.

We evaluated the checklists to identify duplication or potential content that could be reduced in an effort to improve efficiency and mitigate overlap.

Our evaluation of the checklists identified one item that fully overlapped between the engineer and attorney checklists. In this instance, both disciplines review the same content to help ensure that regulations of all identified, local, state, and federal agencies have been met. However, we found that the overlap of this item served as a second level of review and therefore, an additional complementary control that assisted in mitigating the risk of noncompliance of any local state and federal requirements.

Submittal Deadlines

Agency procedures require that certain closing documents are received by the eighth day prior to the closing date. They also specify that the Comptroller's Certificate and the Attorney General's Opinion are received by the fifth day prior to the closing date, and that the final closing file is submitted to Finance's loan closing team by the sixth day prior to closing.

We examined the sample of nine closing files to determine whether the borrower submitted the required closing documentation by the deadlines specified in agency procedures. We noted:

- 1. Agency procedures have been implemented to establish deadlines for certain closing documents to be submitted by the borrower to the agency prior to closing; however, processes should be strengthened to proactively assist the borrower to help ensure they are meeting those agency established deadlines timely.**

Three of the sample of nine closing files reviewed did not meet the document submittal deadline for submitting certain documents by the eighth day prior to closing, as required. These files were from the Clean Water State Revolving Fund, Flood Infrastructure Fund, and SWIFT programs.

Additionally, one closing file did not meet the required document submittal deadline specified in agency procedures for borrowers to submit the Comptroller's Certificate and Attorney General Opinion by the fifth day prior to closing. This file was from the State Water Implementation Fund for Texas program.

In all instances, the required documentation was submitted an average of four days after the specified deadline. However, our review noted that the files were subsequently submitted to the loan closing team timely and there were no associated DTC costs as a result of receiving the initial documents after the initial receipt deadline. We also noted that delays were typically a result of revisions to documents in which the borrowers were required to make after the initial receipt of the documents.

Recommendation

We recommend that closing procedures are strengthened to proactively assist borrowers in meeting the agency established submittal deadlines prior to closings.

Managements Response:

Management agrees with the recommendation. Processes have been implemented that include providing documentation to the entity notifying them of the documentation that is due 10 days prior to closing, scheduling and conducting a closing meeting with external and TWDB staff, as well as internal processes for ensuring WSI and Finance are communicating on the status of the loan closing prior to the submission of closing file.

Responsible Party: Tyrone Alcorn, Application and Closing Team Manager

Implementation Date: 9/01/2022

Closing

We would like to express our appreciation to all of the management and personnel for their cooperation and assistance provided to the internal audit staff during this review. For questions or additional information concerning this report, please contact Nicole Campbell at (512) 463-7978.

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