

ARKANSAS DEPARTMENT OF EDUCATION
PROPOSED RULES GOVERNING LOAN AND BOND APPLICATIONS
January 8, 2008

1.00 AUTHORITY

- 1.01 These ~~regulations~~ rules shall be known as the Arkansas Department of Education Rules Governing Loan and Bond Applications.
- 1.02 These ~~regulations~~ rules are enacted pursuant to the State Board of Education's authority under Ark. Code Ann. § 6-11-105.

2.00 PURPOSE

These ~~regulations~~ rules are enacted to set forth the criteria that shall be used by the Arkansas Department of Education Loans and Bonds Committee in reviewing and recommending loan and bond applications from school districts and revolving loan applications from Education Service Cooperatives to the State Board of Education, by the State Board of Education in reviewing loan and bond applications from school districts and revolving loan applications from Education Service Cooperatives, and by the Commissioner of the Department of Education in consideration of certain loan and bond applications. Also, these rules are enacted to set forth the criteria that shall be used by the Arkansas Division of Public School Academic Facilities and Transportation in reviewing and recommending, to the Arkansas Commission of Public School Academic Facilities and Transportation, High Growth Program and Extraordinary Circumstances Program loans to qualifying school districts

3.00 APPLICATION

- 3.01 These rules shall apply to all loan and bond applications filed by school districts and all revolving loan applications filed by Education Service Cooperatives with the Arkansas Department of Education (Department) and High Growth Program and Extraordinary Circumstances Program loans filed by school districts with the Arkansas Division of Public School Academic Facilities and Transportation.
- 3.02 Loans approved as part of a court approved settlement agreement to which the Department or State Board of Education (State Board) are signatory are exempt from the general application of these regulations.

4.00 DEFINITIONS

- 4.01 "Average daily membership" means the total number of days attended plus the total number of days absent by students in grades kindergarten through twelve (K-12) during the first three (3) quarters of the school year divided by the number of school days actually taught in the district during that period of time rounded up to the nearest hundredth.
- 4.02 "Bonded indebtedness incurred for academic facilities" as used in these Rules will be calculated by the Department as follows:
- a. In determining the amount of a district's bonded indebtedness incurred for academic facilities, the Department should assume that all construction on academic and non-academic facilities during the period of the existing bond is included in bonded indebtedness incurred prior to

the application for the loan and that revenues were distributed proportionately to each project.

b. If a school district believes the assumption concerning the distribution of revenues will produce a result that is contrary to the intent of the loan program, the school district is responsible for documenting, to the Department's satisfaction, any other allocation of cash and bonded indebtedness for academic and non-academic facilities built within the same time frame.

1. The documentation should include, but should not be limited to, the bond election ballot.

2. The consideration of the school district's documentation in no way limits the Department's discretion in making the final determination of the amount of a school district's bonded indebtedness incurred for academic facilities.

4.03 "High-growth school district" means a public school district in which the average daily membership for the public school district in the present school year is four percent (4%) higher than the school year that is two (2) years prior to the present school year.

4.04 "Maximum expected millage" means, for the purposes of these Rules, ten (10) mills, representing the maximum number of mills that a public school district is expected to raise to service its bonded indebtedness incurred for academic facilities.

4.00 5.00 LOANS AND BONDS COMMITTEE

- 45.01 The Arkansas Department of Education Loans and Bonds Committee (Committee) shall consist of these nine members of the Department staff:
- ~~45.01.1~~ ~~Assistant Director~~ Commissioner, Public School Finance and Administrative Support ~~Fiscal and Administrative Services~~
 - ~~4.01.2~~ 5.01.2 Associate Director, Finance
 - ~~4.01.3~~ 5.01.3 Associate Director, School Finance
 - ~~45.01.4~~ Coordinator, Loans and Bonds
 - ~~4.5.01.5~~ Program Manager, Equity Assistance Center
 - ~~45.01.6~~ Director, Public School Academic Facilities and Transportation
 - ~~45.01.7~~ Coordinator, Local Fiscal Services
 - ~~45.01.8~~ Coordinator, Financial Accountability
 - ~~45.01.9~~ Senior Transportation Manager, Public School Academic Facilities and Transportation
- 45.02 Applications considered by the Committee may be acted upon in any of the following ways:
- ~~4.02.1~~ 5.02.1 The application may be recommended for approval to the State Board, to the Commissioner, or to the Commission;
 - ~~45.02.2~~ The application may be recommended for disapproval to the State Board, to the Commissioner, or to the Commission;
 - ~~4.02.3~~ 5.02.3 The application may be tabled pending receipt of additional information, further study by the Department staff or Division staff, or verification of information regarding the application.
 - ~~45.02.4~~ A revolving loan application may be recommended to the State Board for partial approval of the loan for a lesser amount than the amount requested pursuant to Ark. Code Ann. § 6-20-805.

6.00 EQUITY STATUS – Any changes to this section following court-decision concerning LRSD?

- 6.01 All school districts submitting loan or bond applications to fund a proposed facility project, excluding maintenance and operation facilities, transportation facilities, and other non-instructional facilities, shall submit written documentation showing:
- 6.01.1 That the proposed facility project is necessary to meet an important educational goal of the district. Completion of the proposed project should enable the applying district to provide a better quality, desegregated education, necessary to meet the needs of its present and projected population. The district must provide a desegregation impact statement showing that the proposed improvements do not have a segregative effect. A detailed outline or explanation of the educational goal to be met shall be included;
 - 6.01.2 That the proposed facility project is necessary to comply with Department rules, and/or state and federal statutes and regulations; and
 - 6.01.3 That the Department has received a current Annual Equity Compliance Report from the school district.
- 6.02 The applying district shall have as its goal not to establish or enlarge a school, unless the enrollment in such school is reasonably projected to be within a twenty-five percent (25%) range of its district-wide percentage of majority-minority students by organizational level, as established in the Little

Rock School District v. Pulaski County Special School District case, E. D. Ark. LR-C-82-866.

- 6.03 The applying district shall submit a written Assurance Impact Statement that the facility project will not, in any manner, establish, continue, or ignore segregative activities within the district.
- 6.04 Any school in any county contiguous to Pulaski County shall submit a written Assurance Impact Statement that the proposed facility project will not have a substantial negative impact on the ability of any district in Pulaski County to desegregate effectively. Upon receipt of the application, the school district shall be notified by the Department or Division that this section applies to the school district.
- 6.05 The Committee shall not recommend approval of any application from any district not submitting the documentation required in Sections 5.01 and 5.03.
- 6.06 The Committee may recommend approval of any application from a district submitting the information in Section 5.01 if the Committee agrees with the documentation.
- 6.07 The State Board or Commission shall not approve an application from any district not submitting the information required in Section 5.01.
- 6.08 The State Board or Commission may consider a school district's application not approved by the Committee under Section 5.03 after reviewing the documentation submitted by the applying district.

6.007.00REVOLVING LOAN PROGRAM

~~6.047.01~~ *Revolving loan applications from school districts or education service cooperatives whose current ending funds balance is less than the total annual payments of principal and interest on the loan, will be recommended for disapproval by the Committee to the State Board. Per Dr. Davis, the definition of current ending funds balance has been changed to exclude categorical funding – so this requirement needs to be changed or removed.*

~~6.027.02~~ Revolving loans may be refunded or paid in full without penalty on any scheduled interest payment date. The district or education service cooperative is required to submit written notification to the Loans and Bonds Unit of the Department regarding its intent to prepay an outstanding revolving loan. The Notice of Intent to Prepay must be received by the Loans and Bonds Unit of the Department at least thirty-two (32) days prior to the scheduled payoff date. If a district or education service cooperative chooses to refund or pay off a revolving loan on a date other than an interest payment date, it will be required to pay the total interest accrued to the next scheduled payment date.

7.008.00COST EFFICIENCY

Loan and bond applications for projects that substantially exceed the cost of similar projects will be recommended for disapproval to the State Board by the Committee unless written justification for the excess cost is provided by the district or education service cooperative. The Division of Public School Academic Facilities and Transportation will provide average cost estimates of projects to school districts and education service cooperatives upon request.

8.008.00NON-VOTED REFUNDING BONDS

~~8.049.01~~ A separate application package must be submitted for each bond issue to be paid off with a non-voted refunding issue. The application package must include, but is not limited to, (A) the application, (B) a contract between the applying school district and its fiscal agent, (C) a preliminary Debt Service Comparison Schedule as prescribed in Section 8.02, (D) a current certificate of assessment from the county clerk, and (E) a final Debt Service Comparison Schedule including the Certificate of Savings is required after the issue has been sold, as prescribed in Section 8.02.

~~8.029.02~~ Each non-voted refunding bond issue must generate minimum principal and interest savings, over the life of the refunding (new) issue, based on the existing debt schedule, of the lesser of one hundred thousand dollars (\$100,000) or five percent (5%) of total principal and interest over the life of the bond on the refunded (old) issue. This calculated savings must be reduced by agent's fees and related issuance costs. For purposes of this savings calculation, investment income earned on deposited proceeds of the refunding (new) issue shall be offset by corresponding interest charges on the refunding (new) issue. Also, principal and interest charged on the refunded (old) issue must be included in the calculation of savings until the debt is retired.

~~8.039.03~~ Non-voted refunding issues may not be combined in order to achieve required savings, as prescribed in Section 8.02. Each non-voted refunding bond must meet the minimum savings requirement independently.

~~8.049.04~~ The amount of the new bond issue shall not exceed the approved loan amount on the application. If there is a sudden drop in interest rates after the application has been approved, and more bonds must be sold to refund the outstanding bonds, written approval must be granted by the Commissioner of the Department of Education (Commissioner) for the increased amount prior to the sale of the refunding bonds. A revised preliminary Debt Service Comparison Schedule, as prescribed in Section 8.02, must be provided to the Commissioner at this time.

~~8.059.05~~ This section on non-voted refunding bonds excludes non-voted refunding bonds that do not meet the savings requirement and second-lien bond refundings that do not meet the savings requirement.

9.0010.00PROCEDURAL REQUIREMENTS

~~9.04-10.01~~ No loan or bond application will be recommended for approval to the State Board by the Committee and no loan or bond application will be approved by the State Board or the ~~Director~~ Commissioner until the application complies with all statutory requirements.

~~9.02-10.02~~ All documents, excluding non-voted refunding bond applications, must be received by the Loans and Bonds Unit of the Department thirty-one 31 days before the State Board meeting at which the applications will be considered. If thirty-one (31) days before the scheduled meeting date falls on a holiday or weekend, the deadline for filing shall be extended to the next business day. Loan or bond applications for which documents are received after this date will be considered in the next application cycle.

~~9.03~~10.03 All loan and bond applications shall include a specific and detailed description of each intended use of the proceeds pursuant to Ark. Code Ann. § 6-20-801 et seq., and each respective cost estimate. Bond applications shall include a declaration (date voted) of the millage being used to secure the bond. Applications that do not include this information will be tabled by the Committee pending receipt of the required information.

~~9.04~~ 10.04 An approved second lien bond, non-voted refunding bond, or voted bond application package submitted to the Loans and Bonds Unit of the Department is valid for one year following the date of approval by the State Board. *If the district has not issued the bonds (or series of bonds within an issue) on or before May 30, an updated application and new approval are required. Check with Amy regarding current procedure for this and ask if changes to current procedure would be helpful?*

~~10.00~~ 11.00 SECURITY OF LOANS AND BONDS

~~10.04~~11.01 In the case of default on principal or interest payments on a revolving loan, the Department shall withhold any and all state aid to the district in an amount sufficient to cure the default and use those funds to cure the default, as authorized under Ark. Code Ann. § 6-20-814.

~~10.02~~ 11.02 In the case of default on principal or interest payments on a bond, depending on the circumstances, one of the following shall occur:

~~40~~ 11.02.1 If the school district board of directors has passed a resolution, as authorized under Ark. Code Ann. § 6-20-1212, all revenue received by the district, with the exception of revenue derived from the uniform rate of tax, shall be used to cure the default;

~~40~~ 11.02.2 If the school district board of directors has passed a resolution, as authorized under Ark. Code Ann. § 6-20-1212, but is still unable to cure the default under Section 10.02.1, the Commissioner shall withhold any and all state aid to the district, in an amount sufficient to cure the default, and use those funds to cure the default, as authorized under Ark. Code. Ann. § 6-20-1204; or,

~~40~~ 11.02.3 If a school district board of directors has not passed a resolution, as authorized under Ark. Code Ann. § 6-20-1212, the Commissioner, after notification as required under Ark. Code. Ann. § 6-20-1204, shall withhold any and all future state aid to the district in an amount sufficient to cure the default and use those funds to cure the default, as authorized under Ark. Code. Ann. § 6-20-1204.

~~10.03~~ 11.03 If a default occurs simultaneously on a bond and another type of debt, the bond default shall be cured in its entirety before other debt payment defaults are cured.

~~10.04~~ 11.04 Should the State Board and the Department be required to withhold state aid to cure the default of any school district, pursuant to Ark. Code Ann. § 6-20-1204(c)(1) and (2), then that school district shall be classified as a school district in fiscal distress, pursuant to Ark. Code Ann. § 6-20-1204(c)(3) and Ark. Code Ann. § 6-20-1609.

11.00 12.00 EDUCATION SERVICE COOPERATIVE REVOLVING LOAN APPLICATIONS

44.0412.01 Education Service Cooperatives shall submit an authorization signed by the Board President and Secretary authorizing the Department to withhold state aid in case of default on a revolving loan.

44.02 12.02 Education Service Cooperatives shall submit an authorization signed by the Board President and Secretary pledging any or all state aid in an amount sufficient to secure the loan in the event of default.

13.00 LOANS TO HIGH-GROWTH SCHOOL DISTRICTS

13.01 There is established the Academic Facilities High-Growth School District Loan Program under which the Department shall provide an interest-free loan to a high-growth school district in which the mills required to service the bonded indebtedness incurred for academic facilities exceeds the maximum expected millage for the high-growth school district.

13.02 A high growth school district may apply for an interest-free loan when the high-growth school district has raised the maximum expected millage and the revenue generated from the maximum expected millage is less than the amount required to service the bonded indebtedness incurred for academic facilities.

13.03 The purpose of the loan to a high-growth school district is to assist such a school district with building new academic facilities that, as a result of high growth, will cause the school district to incur indevtedness for academic facilities that exceeds the maximum expected millage.

13.04 Applications for the Academic Facilities High-Growth School District Loan Program must be submitted to the Department no later than the last business day in February of every even-numbered year, beginning in 2008.

13.05 The amount of the loan shall be the amount of moneys required for academic facilities less the sum of:

- 13.05.1 The revenues generated by the maximum expected millage; and
- 13.05.2 The state revenue received by the high-growth school district under the Academic Facilities Partnership Program.

13.06 The high-growth school district shall apply for the loan from the Revolving Loan Fund, subject to Ark. Code Ann. §§ 6-20-801 – 6-20-816 and these Rules.

13.07 When the revenue required to service the bonded indebtedness incurred for the high-growth school district's academic facilities is less than the revenue generated by maximum expected millage, the high-growth school district shall repay the loan.

13.08 The high-growth school district shall make annual payments to the Department in the amount of:

- 13.08.1 The revenue generated by the high-growth school district's millage up to the amount of the revenues generated from the maximum expected millage for the year; less
- 13.08.2 The revenue required to service the high-growth school district's bonded indebtedness for academic facilities.

- 13.08.3 The payments under Sections 13.05 and 13.06 of these Rules shall continue until the loan is paid in full.
- 13.09 During the time that the loan to the high-growth school district is in repayment, the high-growth school district:
- 13.09.1 Shall use all revenues generated above academic debt service payments and below the maximum expected millage to repay the loan;
- 13.09.2 Shall not issue refunding bonds or refunding certificates, as provided under Ark. Code Ann. § 6-20-815; and
- 13.09.3 Shall not otherwise change the amount of revenues available to repay the loan without the prior approval of the department.
- 13.10 Within a reasonable time after its receipt, each application under Sections 13.02 – 13.06 of these Rules shall be examined by the Department in accordance with rules established by the State Board of Education as to the accuracy of the answers contained therein.
- 13.11 In considering the merits of each application, the Department shall determine:
- a. That the district meets the definition of a ‘high-growth school district’ as contained in Section 4.03 of these rules;
- b. That the space available in the high-growth school district is less than the amount needed to accommodate the high growth; and
- c. Whether the high growth school district can restructure the delivery of education to use all available space without incurring additional debt.
- 13.12 After considering the merits of each application, the Department may, in its discretion:
- 13.12.1 Approve the application for the full amount of the proposed loan, approve the application for a loan of a lesser amount than the amount requested, or disapprove the application.
- 13.12.2 Prior to approving the application, the Department shall make a determination that the total space available in the high-growth school district is less than the amount needed to accommodate the growth of students.
- 13.13 The Department shall notify each applicant school district and the Loans and Bonds Committee by June 15 of each even-numbered year if the school district meets the criteria under Section 13.11 of these Rules.
- 13.14 The Loans and Bonds Committee should notify each applicant school district by June 30 of each even-numbered year as to whether the high-growth school district loan has been approved or denied.
- 13.15 The Department shall promulgate forms and documents to be used by school districts in the loan application process.

42.0014.00 REPORTING

- 42.04 14.01 School districts that call mandatory callable bonds or other commercial bonds must report such calls to the Loans and Bonds Unit of the Department

prior to *May 30 of each fiscal year. The notification must include the call date, series, face amount, and price paid for the called bonds. Is this okay? Could this be reported earlier now that the May 30 date is not in law regarding issuance of bonds.*

~~12.02~~ 14.02 For a school district to qualify for state aid under Ark. Code Ann. § 6-20-2503, the school district must submit, to the Arkansas Public School Facilities and Transportation Commission, prior to the date the refunding bonds are sold at public sale, a certification that the yearly debt service savings resulting from the refinancing will be used for the new construction of academic facilities or the purchase of academic equipment.

~~13.00~~ 15.00 **TRUSTEE FEES**

~~13.04~~15.01 Fees assessed by trustee banks for acting as paying agent and for providing other services necessary to manage school district bond issues shall be approved by the State Board. A fee schedule will be provided, by the Loans and Bonds Unit of the Department, upon request.

~~13.02~~ 15.02 Fees set by the State Board will be reviewed on a regular basis by the Loans and Bonds Unit of the Department for the purpose of recommending, to the State Board, adjustments reflecting current cost of services.