ARKANSAS REGISTER

Proposed Rule Cover Sheet

Secretary of State
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Little Rock, Arkansas 72201-1094
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Name of Department: Department of Education

Agency or Division Name: Division of Higher Education

Other Subdivision or Department, If Applicable:

Previous Agency Name, If Applicable:

Contact Person: Andres Rhodes

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Contact Phone: 501-682-4234

Name of Rule: Division of Higher Education Rules Governing Productivity-Based Funding for State-Supported Institutions of Higher Education

Newspaper Name: Arkansas Democrat - Gazette

Date of Publishing: May 3-5, 2024

Final Date for Public Comment: June 6, 2024

Location and Time of Public Meeting: ADE Auditorium, Four Capitol Mall, Little Rock, AR 72201, May 20, 2024 at 10:00 a.m.

~~PRODUCTIVITY FUNDING DISTRIBUTION POLICY~~

~~Background~~

~~Act 148 of 2017 repealed the needs-based and outcome-centered funding formulas as prescribed in Arkansas Code § 6-61-210, Arkansas Code § 6-61-224, Arkansas Code § 6-61-228, Arkansas Code § 6-61-229, Arkansas Code § 6-61-230, and Arkansas Code § 6-61-233, and amended Arkansas Code § 6-61-234. The Act directs the Arkansas Higher Education Coordinating Board (AHECB) to adopt polices developed by the Department of Higher Education (ADHE) necessary to implement a productivity-based funding model for state-supported institutions of higher education.~~

~~Productivity-based funding is a mechanism to align institutional funding with statewide priorities for higher education by incentivizing progress toward statewide goals. At the same time, such models encourage accountability to students and policymakers by focusing on the success of students through the achievement of their educational goals. The new funding model is built around a set of shared principles developed by institutions and aligned with goals and objectives for post-secondary attainment in our state.~~

~~The AHECB shall use the productivity-based funding model as the mechanism for recommending funding for applicable state-supported institutions of higher education. The Board shall recommend funding for the state-supported institutions of higher education as a whole and the allocation of funding to each state-supported institution of higher education. The AHECB shall make separate recommendations for the two-year institutions and four-year institutions. The framework for those recommendations is described in this policy.~~

~~Funding Distribution Framework~~

~~A productivity index for each institution will be calculated based on the Productivity Funding Model policies for four and two-year institutions. Each institution's current productivity index will be compared to its previous year's index to determine productivity changes. One productivity index will be calculated to represent productivity changes for institutions of higher education as a whole and will be used to determine how much new state funding is recommended. The AHECB will limit the funding recommendation generated by the productivity-based funding model to no more than a 2% growth over the prior year's Revenue Stabilization Act (RSA) general revenue funding amount for four and two-year institutions.~~

~~When new state funding is recommended, the proportion of new monies to be distributed among four and two-year institutions will be divided into two separate funding pools based upon the percentage of existing RSA general revenue. If any RSA general revenue funds remain unallocated to state-supported institutions of higher education~~

~~due to productivity declines, ADHE shall utilize the funds to address statewide needs in higher education.~~

~~New RSA general revenue allocated to four and two-year institutions will be distributed among the institutions with productivity index increases. The percentage of new RSA general revenue funding recommended for institutions with productive index increases will be calculated as a percentage of the contribution to the overall four or two-year institutions productivity index increases.~~

~~Within each four and two-year institution group, RSA general revenue funding will be recommended for reallocation from institutions with productivity index declines to institutions with productivity index increases. Reallocation of RSA general revenue funding to institutions with productivity increases will be calculated as a percentage of the contribution to the overall four or two-year institution productivity index increases. Reallocation for institutions with productivity index declines will be based on their percentage of productivity index decline. Recommended reallocation will be introduced on a graduated scale starting with 1% of an institution's RSA general revenue funding being reallocated in 2019-2020; up to 1.5% in 2020-2021; and up to 2% in 2021-2022 and thereafter.~~

~~The total RSA general revenue recommendation for each four and two-year institution will include any new state funding recommendation and reallocated funding recommendation. If an institution's funding recommendation is greater than a 1% increase in 2018-2019; 1.5% increase in 2019-20; 2% increase thereafter over its existing RSA general revenue funding, the Board will recommend that the amount of funding recommendation up to 2% based on the graduated scale would be added to an institutions existing RSA general revenue and any funding recommendation in excess would be one-time incentive funding for that institution. The AHECB will recommend redistribution of one-time incentive funding in the following year based on productivity index changes.~~

~~In the event that an institution of higher education's RSA general revenue funding declines by more than 5% of the 2018-2019 fiscal year level due to productivity declines, ADHE shall not further recommend reductions in funding for that institution, but shall assist the institution in developing a plan for improvement and progression.~~

~~In any fiscal year for which the aggregate general revenue funding forecast to be available for state-supported institutions of higher education is greater than 2% less than the amount provided for the immediate fiscal year, the ADHE shall not further implement the productivity-based funding model until the following fiscal year.~~

~~This policy will be reviewed every three (3) years to ensure that productivity funding distribution continues to respond to the needs and priorities of the state. However, if it is determined that the funding distribution framework created unintended consequences, this policy will be reviewed immediately.~~

Division of Higher Education Rules Governing Productivity-Based Funding for State-Supported Institutions of Higher Education

1.00 Purpose.

1.01 The Arkansas Higher Education Coordinating Board shall use the productivity-based funding model as the mechanism for recommending to the General Assembly funding for applicable institutions.

1.02 The board shall recommend funding for the institutions as a collective and funding to each individual institution.

1.03 The board shall make separate recommendations for the two-year institutions and four-year institutions.

2.00 Definitions.

2.01 "Institution" means a state supported:

2.01.1 Two-year institution of higher education; or

2.01.2 Four-year institution of higher education.

2.02 "Productivity-based funding" means a mechanism to align institutional funding with statewide priorities for postsecondary education by incentivizing progress toward statewide goals.

2.03 "RSA" means the Revenue Stabilization Act.

3.00 Funding Distribution Framework

3.01 A productivity index for each institution will be calculated based on the Productivity Funding Model Policies for Universities and Colleges.

3.01.1 Each institution's current productivity index will be compared to its previous year's index to determine productivity changes.

3.01.2 One productivity index will be calculated to represent productivity changes for institutions as a collective and will be used to determine how much new state funding is recommended.

3.01.3 The Arkansas Higher Education Coordinating Board will limit the funding recommendation generated by the productivity-based funding model to no more than a 2% growth over the prior year's RSA general revenue funding amount for institutions.

3.02 When new state funding is recommended, the proportion of new monies to be distributed among institutions will be divided into two separate funding pools for four and two-year institutions based upon the percentage of existing RSA general revenue.

3.02.1 If any RSA general revenue funds remain unallocated to institutions due to productivity declines, the Division of Higher Education shall utilize the funds to address statewide needs in higher education.

3.02.2 New RSA general revenue allocated to institutions will be distributed among the institutions with productivity index increases.

3.02.3 The percentage of new RSA general revenue funding recommended for institutions with productivity index increases will be calculated as a percentage of the contribution to the overall institutions' productivity index increases.

3.03 Within each four and two-year institution group, RSA general revenue funding will be recommended for reallocation from institutions with productivity index declines to institutions with productivity index increases.

3.03.1 Reallocation of RSA general revenue funding to institutions with productivity increases will be calculated as a percentage of the contribution to the overall four or two-year institution productivity index increases.

3.03.2 Reallocation for institutions with productivity index declines will be based on their percentage of productivity index decline.

3.03.3 Recommended reallocation will be introduced on a graduated scale starting with 1% of an institution's RSA general revenue funding being reallocated in 2019-2020; up to 1.5% in 2020-2021; and up to 2% in 2021-2022 and thereafter.

3.04 The total RSA general revenue recommendation for each institution will include any new state funding recommendation and reallocated funding recommendation.

3.04.1 If an institution's funding recommendation is greater than a 1% increase in 2018-2019; 1.5% increase in 2019-20; or 2% increase thereafter over its existing RSA general revenue funding, the board will recommend that the amount of funding recommendation up to 2% based on the graduated scale would be added to an institutions existing RSA general revenue and any funding recommendation in excess would be one-time incentive funding for that institution.

3.04.2 The board will recommend redistribution of one-time incentive funding in the following year based on productivity index changes.

3.05 In the event that an institution of higher education's RSA general revenue funding declines by more than 5% within any consecutive five-year period due to productivity declines, the division shall not further recommend reductions in funding for that institution.

3.06 In any fiscal year for which the aggregate general revenue funding forecast to be available for state-supported institutions of higher education is greater than 2% less than the amount provided for the immediate fiscal year, the division shall not further implement the productivity-based funding model until the following fiscal year.

3.07 This rule will be reviewed every three (3) years to ensure that productivity funding distribution continues to respond to the needs and priorities of the state.

3.08 However, if the division determines that the funding distribution framework created unintended consequences, this rule will be reviewed immediately.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Department of Education
BOARD/COMMISSION Higher Education Coordinating Board
BOARD/COMMISSION DIRECTOR Ken Warden
CONTACT PERSON Andres Rhodes
ADDRESS Four Capitol Mall Little Rock, Arkansas 72113
PHONE NO. (501) 682-4234 **EMAIL** andres.rhodes@ade.arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Andres Rhodes; Stephen Reynolds
PRESENTER EMAIL(S) andres.rhodes@ade.arkansas.gov; stephen.reynolds@ade.arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

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1. What is the official title of this rule?
   Division of Higher Education Rule Governing Productivity Funding Distribution

2. What is the subject of the proposed rule? Productivity funding for institutions of higher education

3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

   If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

   If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☑ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

If yes, what was the effective date of the emergency rule? ______________________________

On what date does the emergency rule expire?______________________________________

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☑

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☐ No ☑

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☑ No ☐

If yes, please list the rules being repealed.
If no, please explain.

DESE Rule Governing the Duty to Report Student Criminal Acts; DESE Rule Governing the Succeed Scholarship Program

8. Is this a new rule? Yes ☐ No ☑

Does this repeal an existing rule? Yes ☐ No ☑
If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☑ No ☐
If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

Arkansas Code § 6-61-202

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☐ No ☑

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

Currently, the distribution policy states that once an institution has reached a threshold of 5% loss below the initial FY2018 base funding level, then no further recommendations to reduce funding will be made. This amendment changes that section of the policy to allow for any institution to lose no more than 5% in any given consecutive five-year period. This will allow institutions time to correct negative trends, but also to continue to allow involvement from all institutions in the process. The language allows for a 5% reduction on a rolling basis, rather than tying the 5% to FY 2018 funding levels.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes ☑ No ☐

If yes, please complete the following:

Date: May 20, 2024

Time: 10:00 a.m.

Place: ADE Auditorium, Four Capitol Mall Drive, Little Rock, Arkansas 72201

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. June 6, 2024

15. What is the proposed effective date for this rule? July 1, 2024

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes ☐ No ☑

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Education
BOARD/COMMISSION Higher Education Coordinating Board
PERSON COMPLETING THIS STATEMENT Stephen Reynolds
TELEPHONE NO. (501) 682-4899 **EMAIL** stephen.reynolds@ade.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Division of Higher Education Rule Governing Productivity Funding Distribution

1. Does this proposed, amended, or repealed rule have a financial impact?
   Yes ☐ No ☑

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
   Yes ☑ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☑ No ☐

   If no, please explain:

   (a) how the additional benefits of the more costly rule justify its additional cost;

   (b) the reason for adoption of the more costly rule;

   (c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

   (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:

   (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year	**Next Fiscal Year**
General Revenue ________	General Revenue ________
Federal Funds ________	Federal Funds ________
Cash Funds ________	Cash Funds ________
Special Revenue ________	Special Revenue ________
Other (Identify) ________	Other (Identify) ________
Total $ 0.00	Total $ 0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year	**Next Fiscal Year**
General Revenue ________	General Revenue ________
Federal Funds ________	Federal Funds ________
Cash Funds ________	Cash Funds ________
Special Revenue ________	Special Revenue ________
Other (Identify) ________	Other (Identify) ________
Total $ 0.00	Total $ 0.00

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year	**Next Fiscal Year**
$ 0.00	$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year	**Next Fiscal Year**
$ 0.00	$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars ($100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☑

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:
(a) justifies the agency's need for the proposed rule; and
(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
(a) the rule is achieving the statutory objectives;
(b) the benefits of the rule continue to justify its costs; and
(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Division of Higher Education is considering new administrative rules. A public comment hearing will be held for the following rules: DHE Rule Governing The Arkansas Teacher Academy Scholarship Program; DHE Rule Governing The Arkansas Concurrent Challenge Scholarship Program; DHE Rule Governing The Arkansas Future Grant Program; DHE Rule Governing The Arkansas Governor's Scholars Program; DHE Rule Governing The Arkansas Workforce Challenge Scholarship Program; DHE Rule Governing The Governor's Higher Education Transition Scholarship Program; DHE Rule Governing Productivity-Based Funding for State-Supported Institutions of Higher Education. The hearing will be held May 20, 2024, at 10:00 a.m., at the Arkansas Department of Education, Arch Ford Building, Four Capitol Mall, Little Rock, AR, 72201. The public comment period for these rules ends on June 6, 2024. Written comments regarding these proposed rules may be mailed to ADE Legal Services, Four Capitol Mall, Room 302A, Little Rock, AR, 72201. Comments may be emailed to ADE.RulesComments@ade.arkansas.gov. A copy of the proposed rules can be found on the Division of Higher Education's website at: https://adhe.edu/data-publications/pending-policies. Copies also may be obtained by contacting ADE's Office of Legal Services at the above address, via phone at (501) 683-1390, or via email at legal@ade.arkansas.gov.

FW: Notice of Rulemaking

Stephen Reynolds (ADE) <Stephen.Reynolds@ade.arkansas.gov>
Wed 5/1/2024 8:39 AM
To:LaBria Brown (ADE) <LaBria.Brown@ade.arkansas.gov>

Stephen M. Reynolds
Attorney Specialist
Arkansas Department of Education

From: Legal Ads <legalads@arkansasonline.com>
Sent: Tuesday, April 30, 2024 5:30 PM
To: Stephen Reynolds (ADE) <Stephen.Reynolds@ade.arkansas.gov>
Subject: Re: Notice of Rulemaking

Caution: This is an external email and may contain a suspicious subject or content. Please take care when clicking links or opening attachments. When in doubt, contact ADE IT Services.

Will run Fri 5/3, Sat 5/4, and Sun 5/5.

Thank you.

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Stephen Reynolds, ADE" <Stephen.Reynolds@ade.arkansas.gov>
To: "legalads" <legalads@arkansasonline.com>
Cc: "Andres Rhodes (ADE)" <Andres.Rhodes@ade.arkansas.gov>, "LaBria Brown, ADE" <LaBria.Brown@ade.arkansas.gov>, "Alisha N. Price (ADE)" <Alisha.Price@ade.arkansas.gov>, "Whitney James, ADE" <Whitney.James@ade.arkansas.gov>
Sent: Monday, April 29, 2024 10:58:25 AM
Subject: Notice of Rulemaking

Good morning,

Please find attached a notice of rulemaking for several Division of Higher Education administrative rules and confirm receipt. Please run for three consecutive days, from Friday, May 3, 2024, through Sunday, May 5, 2024. Let me know if you have any questions.

Thanks,

Stephen M. Reynolds
Associate Legal Counsel
Arkansas Department of Education
4 Capitol Mall, Suite 302
Little Rock, Arkansas 72201
Office: (501) 682-4899

Division of Higher Education
101 E. Capitol Ave., Suite 300 • Little Rock, Arkansas • 72201 • (501) 371-2000

Jacob Oliva
Secretary

Ken Warden, Ph.D.
Commissioner

January 30, 2024

Proposed Rule Governing Productivity Funding Distribution

PURPOSE

The Division of Higher Education is seeking Governor's Office review and approval of the proposed amendments to the Rule Governing Productivity Funding Distribution.

BACKGROUND

Pursuant to Ark. Code Ann. § 6-61-234, the Arkansas Higher Education Coordinating Board (AHECB) shall adopt policies developed by the Division of Higher Education necessary to implement a productivity-based funding model for state-supported institutions of higher education. The AHECB uses the productivity-based funding model as the mechanism for recommending funding for applicable state-supported institutions of higher education. The AHECB recommends funding for the state-supported institutions of higher education as a whole and the allocation of funding to each state-supported institution of higher education. The AHECB makes separate recommendations for the two-year institutions and four-year institutions. The framework for those recommendations is described in the Productivity Funding Distribution Policy. This policy was originally developed pursuant to Act 148 of 2017, which required that the policy be reviewed "every five (5) years to ensure the productivity-based funding model continues to respond to the needs and priorities of the state." The then-Department of Higher Education met with institutions of higher education and the institutions agreed that when an institution's RSA general revenue funding declines by more than 5% of the 2018-2019 fiscal year level (the baseline) due to productivity declines, the DHE would not recommend further reductions in funding, essentially recommending a cap on losses. By FY2023, the end of the initial five-year cycle, three institutions of higher education had declined more than 5% below fiscal year 2018 baseline RSA funding, and there was no guidance in the law on how to address that issue. After that initial five-year cycle, the Division convened a work group to review the policy, which resulted in the proposed changes to the policy.

KEY POINTS

- Removal of outdated language regarding the 2018-2019 fiscal year
- Addition of language stating that the division will not recommend a reduction due to productivity declines of an institution of higher education's RSA (Revenue Stabilization Act) funding by more than 5% within any consecutive five-year period.

DISCUSSION

Currently, the distribution policy states that once an institution has reached a threshold of 5% loss below the initial FY2018 base funding level, then no further recommendations to reduce funding will be made. This amendment changes that section of the policy to allow for any institution to lose no more than 5% in any given consecutive five-year period. This will allow institutions time to correct negative trends, but also to continue to allow involvement from all institutions in the process. The language allows for a 5% reduction on a rolling basis, rather than tying the 5% to FY 2018 funding levels.

The ”Department of Higher Education” was changed to the “Division of Higher Education.”

There were some minor technical changes made to the rule.

RECOMMENDATION

The Division of Higher Education recommends Governor’s Office approval of this rule.