

## **Title 6. Education**

### **Chapter I. Division of Elementary and Secondary Education**

#### **Subchapter I. Finance**

#### **Part 274. Rules Governing Loans and Bond Applications**

##### **Subpart 1. Generally**

###### **6 CAR § 274-101. Purpose.**

(a) This part is enacted to set forth the criteria that shall be used by the:

(1) Department of Education's Loans and Bonds Committee ("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;

(2) State board in reviewing loan and bond applications from school districts and revolving loan applications from education service cooperatives; and

(3) Commissioner of Elementary and Secondary Education ("commissioner") in consideration of certain loan and bond applications.

(b) Also, this part is enacted to set forth the criteria that shall be used by the Division of Public School Academic Facilities and Transportation, the State Funding/Loans and Bonds Unit, and the committee in reviewing and recommending to the state board Academic Facilities High-Growth School District Loan Program loans to qualifying school districts.

###### **6 CAR § 274-102. Definitions.**

As used in this part:

(1) "Academic Facilities Factor" means the ratio of the total square footage of academic facilities financed with outstanding bonded indebtedness over the combined square footage of academic and nonacademic facilities with outstanding bonded indebtedness;

(2) "Academic Facilities High-Growth School District Loan Program" means a program under which the Department of Education 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 exceed the maximum expected millage for the high-growth school district;

(3) "Average daily membership" means:

(A) The total number of days of school attended; plus

(B) The total number of days absent by students in kindergarten through grade twelve (K-12) during the first three (3) quarters of each school year; divided by

(C) The number of school days actually taught in the school district during that period of time; and

(D) Rounded up to the nearest hundredth;

(4) "Bonded indebtedness incurred for academic facilities" will be calculated by the Division of Public School Academic Facilities and Transportation as:

(A) The Academic Facilities Factor; multiplied by

(B) Total bonded indebtedness;

(5) "High-growth school district" means a public school district in which the average daily membership (ADM) for the public school district in the present school year is at least four percent (4%) higher than the ADM for the public school district in the school year that is two (2) years prior to the present school year, excluding growth resulting from annexation or consolidation; and

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

(B)(i) A school district that has "raised the maximum expected millage" must have ten (10) or more debt service mills based on the most recent millage election prior to the:

(a) April 15 application submission deadline, in the case of current year special elections; or

(b) Prior calendar year final millage report, in the absence of current year special elections.

(ii) The final millage report will include rollback information.

(iii) The determination of the required academic debt service mills for a consolidated or annexed school district that does not have a unified millage rate will be calculated on a case-by-case basis.

(C) "Revenue generated from the maximum expected millage" is calculated by multiplying the prior calendar year assessment data by ten (10) mills.

**6 CAR § 274-103. Application.**

(a) This part shall apply to all:

(1) Loan and bond applications filed by school districts and all revolving loan applications filed by education service cooperatives with the Department of Education; and

(2) Academic Facilities High-Growth School District Loan Program loan applications filed by school districts with the Division of Public School Academic Facilities and Transportation.

(b) Loans approved as part of a court-approved settlement agreement to which the department or State Board of Education are signatory are exempt from the general application of this part.

**6 CAR § 274-104. Loans and Bonds Committee.**

(a) The Loans and Bonds Committee shall consist of these eight (8) members or designees:

- (1) Assistant Commissioner, Division of Fiscal and Administrative Services;
- (2) Associate Director, Internal/External Agency Finance Unit;
- (3) Coordinator, Local Education Agency Fiscal Distress Services and Support Unit;
- (4) Coordinator, Local Education Agency State Funding/Loans and Bonds Unit;
- (5) Program Manager of Equity, Division of Academic Accountability;
- (6) Director of the Division of Public School Academic Facilities and Transportation;
- (7) Coordinator, Financial Accountability and Reporting; and

(8) Senior Transportation Manager, Division of Public School Academic Facilities and Transportation.

(b) Applications considered by the committee may be acted upon in any of the following ways:

(1) The application may be recommended for approval to the:

(A) State Board of Education; or

(B) Commissioner of Elementary and Secondary Education;

(2) The application may be recommended for disapproval to the:

(A) State board; or

(B) Commissioner;

(3) The application may be tabled pending:

(A) Receipt of additional information;

(B) Further study by Department of Education staff or Division of Public School Academic Facilities and Transportation staff; or

(C) Verification of information regarding the application; or

(4) A revolving loan application may be recommended to the state board for approval of the loan for a lesser amount than the amount requested pursuant to Arkansas Code §§ 6-20-805 and 6-20-2511.

**6 CAR § 274-105. Equity status.**

(a) All school districts submitting loan or bond applications to fund a proposed facility project, excluding maintenance and operation facilities, transportation facilities, and other noninstructional facilities, shall submit written documentation showing that the:

(1)(A) Proposed facility project is necessary to meet an important educational goal of the district.

(B) 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.

(C) The district must provide a desegregation impact statement showing that the proposed improvements do not have a segregative effect.

(D) A detailed outline or explanation of the educational goal to be met shall be included;

(2) Proposed facility project is necessary to comply with Department of Education rules and/or state and federal statutes and regulations; and

(3) Department has received a current annual Equity Compliance Report from the school district.

(b) 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 Little Rock Sch. Dist. v. Pulaski Cnty. Spec. Sch. Dist., 666 F. Supp. 159 (1987).

(c) 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.

(d)(1) 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.

(2) Upon receipt of the application, the school district shall be notified by the department or Division of Public School Academic Facilities and Transportation that this section applies to the school district.

(e) The Loans and Bonds Committee shall not recommend approval of any application from any district not submitting the documentation required in subsections (a) and (c) of this section.

(f) The committee may recommend approval of any application from a district submitting the information in subsection (a) of this section if the committee agrees with the documentation.

(g) The State Board of Education or Commissioner of Elementary and Secondary Education shall not approve an application from any district not submitting the information required in subsection (a) of this section.

(h) The state board or commissioner may consider a school district's application not approved by the committee under subsection (c) of this section after reviewing the documentation submitted by the applying district.

**6 CAR § 274-106. Revolving loan program.**

(a)(1) Revolving loans may be refunded or paid in full without penalty on any scheduled interest payment date.

(2) The district or education service cooperative is required to submit written notification to the State Funding/Loans and Bonds Unit of the Department of Education regarding its intent to prepay an outstanding revolving loan.

(3) The notice of intent to prepay must be received by the unit at least thirty-two (32) days prior to the scheduled payoff date.

(4) 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.

(b) During the time that a high-growth loan is in repayment, the high-growth loan school district shall:

(1) Not issue revolving loan refunding bonds or revolving loan refunding certificates of existing revolving loan bonds or revolving loan certificates, as provided under Arkansas Code § 6-20-815; and

(2) Comply with Arkansas Code § 6-20-2511(d)(3).

**6 CAR § 274-107. Nonvoted refunding bonds.**

(a)(1) A separate application package must be submitted for each bond issue to be paid off with a nonvoted refunding issue.

(2) 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 subsection (b) of this section;

(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 subsection (b) of this section.

(b)(1) Each nonvoted 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.

(2) This calculated savings must be reduced by agent's fees and related issuance costs.

(3) 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.

(4) Also, principal and interest charged on the refunded (old) issue must be included in the calculation of savings until the debt is retired.

(c)(1) Nonvoted refunding issues may not be combined in order to achieve required savings, as prescribed in subsection (b) of this section.

(2) Each nonvoted refunding bond must meet the minimum savings requirement independently.

(d)(1) The amount of the new bond issue shall not exceed the approved loan amount on the application.

(2) 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 Elementary and Secondary Education for the increased amount prior to the sale of the refunding bonds.

(3) A revised preliminary Debt Service Comparison Schedule, as prescribed in subsection (b) of this section, must be provided to the commissioner at this time.

**6 CAR § 274-108. Procedural requirements.**

(a) No loan or bond application will be recommended for approval to the State Board of Education by the Loans and Bonds Committee and no loan or bond application will be approved by the state board or the Commissioner of Elementary and Secondary Education until the application complies with all statutory requirements.

(b)(1) All documents, excluding nonvoted refunding bond applications, must be received by the State Funding/Loans and Bonds Unit of the Department of Education thirty-one (31) days before the state board meeting at which the applications will be considered.

(2) 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.

(3) Loan or bond applications for which documents are received after this date will be considered in the next application cycle.

(c)(1) All loan and bond applications shall include a specific and detailed description of each:

- (A) Intended use of the proceeds; and
- (B) Respective cost estimate.

(2) Bond applications shall include a declaration, the date voted or date of proposed millage election, of the millage being used to secure the bond.

(3) Applications that do not include this information will be tabled by the committee pending receipt of the required information.

(d)(1) An approved second lien bond, nonvoted refunding bond, or voted bond application package submitted to the State Funding/Loans and Bonds Unit of the department is valid for one (1) year following the date of approval by the state board.

(2) If the district has not issued the bonds or series of bonds within an issue within twelve (12) months of the date that the state board approved the application, an updated application is required.

(3) An updated application provided pursuant to this section from a school district identified or classified in fiscal distress is subject to review by the Fiscal Services and Support Unit of the department.

**6 CAR § 274-109. Security of loans and bonds.**

(a) In the case of default on principal or interest payments on a revolving loan, the Department of Education shall withhold state foundation funding due to the district in an amount sufficient to cure the default and use those funds to cure the default as authorized under Arkansas Code § 6-20-814.

(b) In the case of default on principal or interest payments on a bond, depending on the circumstances, one (1) of the following shall occur:

(1) If the school district board of directors has passed a resolution as authorized under Arkansas Code § 6-20-1212, the first unrestricted moneys coming to the school district from any source other than the uniform rate of tax shall be paid into the debt service fund and applied on past due principal or interest on the bonds until paid in full;

(2) If the school district board of directors has passed a resolution as authorized under Arkansas Code § 6-20-1212 but is still unable to cure the default under subdivision (b)(1) of this section, the Commissioner of Elementary and Secondary Education shall withhold state foundation funding due to the district in an amount sufficient to cure the default and use those funds to cure the default as authorized under Arkansas Code § 6-20-1204; or

(3) If a school district board of directors has not passed a resolution as authorized under Arkansas Code § 6-20-1212, the commissioner, after notification as required under Arkansas Code § 6-20-1204, shall continue to withhold state foundation funding as due to the district and remit to the paying agent until the payment deficiency has been cured as authorized under Arkansas Code § 6-20-1204.

(c) 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.

(d) Should the State Board of Education and the department be required to withhold state foundation funding to cure the default of any school district pursuant to Arkansas Code § 6-20-1204(c), then that school district shall be classified as a school district in fiscal distress pursuant to Arkansas Code § 6-20-1204(c)(3).

**6 CAR § 274-110. Education service cooperative revolving loan applications.**

Education service cooperatives shall submit an authorization signed by the board president and secretary:

- (1) Pledging all state aid in an amount sufficient to secure the revolving loan; and
- (2) Authorizing the Department of Education to withhold state aid in case of default on a revolving loan.

**6 CAR § 274-111. Academic facilities high-growth school district loan program.**

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

(b) A school district may be eligible for the HGLP if:

- (1) The district participates in the Academic Facilities Partnership Program;
- (2) The 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;
- (3) The ADM of the school district in the present school year is at least four percent (4%) higher than the ADM of the school year that is two (2) years prior to the present year; and

(4) Total space available in the district is less than the amount needed to accommodate the growth of students.

(c)(1) The purpose of the loan to a high-growth school district is to assist such a school district with building new academic facilities.

(2) All projects submitted through the HGLP must first have approval through the Academic Facilities Partnership Program.

(d)(1) Applications for the HGLP must be submitted to the Division of Public School Academic Facilities and Transportation between February 1 and April 15 of each year.

(2) The application process is as follows:

(A)(i) In January of each year, the department will publish a preliminary list of school districts that:

(a) Have voted at least ten (10) debt service mills; and

(b) Require at least ten (10) debt service mills to service outstanding bonded indebtedness.

(ii) The required breakdown into academic and nonacademic debt service mills required and voted will not be available at the time of the publication of this list;

(B)(i) The division will verify that school districts submitting applications meet the requirement of participation in the partnership program.

(ii) If this requirement is met, the division will calculate the Academic Facilities Factor;

(C) The division will provide the Academic Facilities Factor to the department within five (5) business days of the receipt of the application;

(D) The department will use the Academic Facilities Factor to determine that the school district qualifies based on the maximum expected millage;

(E) Following receipt of the ADM data for the school district from APSCN, the department will verify that the school district qualifies based on growth;

(F) The division will:

(i) Verify that the total space available in the high-growth district is less than the amount needed to accommodate the growth of students;

(ii) Determine if the district has restructured the delivery of education to use all available space; and

(iii) Forward the school district loan application to the department;

(G) The application will be considered at the May Loans and Bonds Committee meeting;

(H) The State Funding/Loans and Bonds Unit will present applications to the State Board of Education at its June meeting; and

(I) The district will be notified in writing of the decision by the state board.

(e) The amount of the loan shall be the amount of moneys required for academic facilities less the sum of:

(1) The revenues generated by the maximum expected millage; and

(2) The state revenue received by the high-growth school district under the Academic Facilities Partnership Program.

(f) The high-growth school district shall apply for the loan from the Revolving Loan Fund, subject to:

(1) Arkansas Code §§ 6-20-801 – 6-20-816;

(2) Arkansas Code § 6-20-2511; and

(3) This part.

(g) 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.

(h)(1) The high-growth school district shall make annual payments to the department in the amount of:

(A) 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

(B) The revenue required to service the high-growth school district's bonded indebtedness for academic facilities.

(2) The payments under subsections (g) and (h) of this section shall continue until the loan is paid in full.

(i) During the time that the loan to the high-growth school district is in repayment, the high-growth school district:

(1) Shall use all revenues generated below the maximum expected millage to repay the loan;

(2) Shall not issue revolving loan refunding bonds or revolving loan refunding certificates as provided under Arkansas Code § 6-20-815; and

(3)(A) Shall not otherwise change the amount of ad valorem tax revenues from debt service mills available to repay the loan without the prior approval of the department.

(B) Bonds issuances or millage changes that would adversely affect the repayment of this loan will not be considered in the calculation of the annual payment under subsection (h) of this section.

(j)(1) Within a reasonable time after its receipt, each application under subsections (b) – (f) of this section shall be examined by the department and division in accordance with rules established by the state board as to the accuracy of the answers contained therein.

(2) Changes to information contained in the application may be submitted up to the date of the May committee meeting.

(3) Subsequent changes will not be considered.

(4) If a determination is made by the department that the district knowingly provided false or misleading information in the application process, the department has the discretion to void the loan approval, seek restitution, and/or revoke the superintendent's license as allowed under Arkansas Code § 6-17-410.

(k) In considering each application, the division shall determine:

(1) That the district meets the definition of a "high-growth school district" as contained in 6 CAR § 274-102(5);

(2) That the total space available in the high-growth school district is less than the amount needed to accommodate the high growth; and

(3) That the high-growth school district has already restructured the delivery of education to use all available space.

(l) After considering each application, the committee may in its discretion recommend:

(1) Approval of the application to the state board for:

(A) The full amount of the proposed loan; or

(B) A lesser amount than the amount requested; or

(2) Disapproval of the application to the state board.

(m) The committee should notify each applicant school district by June 30 of each year as to whether the high-growth school district loan has been approved or denied.

(n) The department and division shall promulgate forms and documents to be used by school districts in the loan application process.

(o) This implementation of this program is subject to funding specifically made available for this purpose.

**6 CAR § 274-112. Reporting.**

(a)(1) School districts that call mandatory callable bonds or other commercial bonds must report such calls to the State Funding/Loans and Bonds Unit of the Department of Education prior to April 30 of each fiscal year.

(2) The notification must include the call date, series, face amount, and price paid for the called bonds.

(b) For a school district to qualify for state financial assistance under Arkansas Code § 6-20-2503, the school district must submit to the Division of Public School Academic Facilities and Transportation, 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:

(1) New construction of, capital repairs to, or renovation of academic facilities;

or

(2) Purchase of academic equipment.

**6 CAR § 274-113. Trustee fees.**

(a)(1) 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 of Education.

(2) A fee schedule will be provided by the State Funding/Loans and Bonds Unit of the Department of Education upon request.

(b) Fees set by the state board will be reviewed on a regular basis by the unit for the purpose of recommending to the state board adjustments reflecting current cost of services.