

3333-1-15

**Payment of bond service charges under the state credit enhancement program.**

(A) A used in this rule:

- (1) "Allocated state share of instruction" has the same meaning as is in section 3333.90 of the Revised Code.
- (2) "Bond service charge payments" means payments from a college district to provide for the payment of bond service charges on obligations (including monthly or other periodic deposits required in connection with future bond service charges on obligations). Bond service charge payments shall be payable by a college district on the first day of a calendar month or, if such day is not a business day, the business day immediately preceding that date.
- (3) "Bond service charges" has the same meaning as in sections 152.09 and 3345.12 of the Revised Code, as the context requires;
- (4) "College district" means any of the following institutions of higher education that are state-supported or state-assisted:
  - (a) A community college district as defined in section 3354.01 of the Revised Code;
  - (b) A technical college district as defined in section 3357.01 of the Revised Code;
  - (c) A state community college district as defined in section 3358.01 of the Revised Code.

In addition, as the context requires or permits, "college district" also means the college operated by any of the foregoing districts.
- (5) "Fiscal agent" means the primary paying agent or fiscal agent for the obligations in question, and includes any bank or trust company serving as paying agent for such obligations. The fiscal agent may not be an officer or employee of the college district.
- (6) "Obligations" has the same meaning as in section 152.09 or 3345.12 of the Revised Code, as context requires.
- (7) "State credit enhancement program" or "program" means the program authorized by section 3333.90 of the Revised Code and implemented by this rule.

(B) The board of trustees of any college district seeking approval from the chancellor of the Ohio board of regents for participation in the state credit enhancement program shall submit to the chancellor a copy of a board-approved resolution requesting

participation in the program and determining whether the proposed obligations are to be issued under section 152.09 of the Revised Code, and any information requested by the chancellor, which may include, but is not limited to, the following information:

- (1) Payment schedules and identification information for:

  - (a) Current outstanding obligations of the college district to which the college district's allocated state share of instruction is not pledged;
  - (b) Current outstanding obligations to which the college district's allocated state share of instruction is pledged;
  - (c) The obligations proposed to be secured under section 3333.90 of the Revised Code as then presently estimated;
  - (d) All the items in paragraph (B)(1) of this rule combined;

- (2) The most recent college district quarterly financial report as required by Rule 126:3-1 of the Ohio Administrative Code;
- (3) The current year's board-approved budget for unrestricted current funds as reported pursuant to Rule 126:3-1 of the Ohio Administrative Code;
- (4) A statement as to how participation in the state credit enhancement program will enhance the marketability of the proposed obligations;
- (5) A statement of the current and project allocated state share of instruction due to the college district per the most recent release and distribution schedule provided by the chancellor;
- (6) The ratio of the projected amount of allocated state share of instruction to be distributed to the college district for the current fiscal year to the maximum annual bond service charges due in the current or any future fiscal year and the identification of the fiscal year in which the maximum annual bond service charges occur;
- (7) The ratio of the projected amount of allocated state share of instruction remaining to be distributed to the college district for the current fiscal year to the bond service charge payments remaining to be paid in the fiscal year;
- (8) A statement regarding the purpose of the obligations to be secured under section 3333.90 of the Revised Code (if the issue is for refunding purposes, explain what previous obligations are being refunded and whether they are secured under the state credit enhancement program);
- (9) A statement indicating the estimated savings afforded to the college district

through participation in the state credit enhancement program in connection with the proposed obligations;

- (10) Contract information for the bond underwriter, bond counsel, and fiscal agent for the proposed obligations, if available;
  - (11) Estimated timeframe for the issuance and sale of the proposed obligations. Approval of the request for participation in the state credit enhancement program shall be valid only during the estimated timeframe for the issuance and sale of such obligations or up to twelve months from the receipt of the approval, and only if the aggregate of all bond service charges in each year does not exceed the amount shown for such year in the payment schedule required by paragraph (B)(1)(d) of this rule.
- (C) Approval by the chancellor of the request for participation in the state credit enhancement program shall only be granted if all of the following are met:
- (1) The chancellor finds that such approval will enhance the marketability of the obligations for which the request is made;
  - (2) The chancellor and the office of budget and management, and the Ohio building authority in the case of obligations to be issued by the authority, have no reason to believe the requesting college district or the college it operates will be unable to pay when due the bond service charges on the obligations for which the request is made, and bond service charges on those obligations are therefore not anticipated to be paid pursuant to section 3333.90 of the Revised Code from the allocated state share of instruction for purposes of Section 17 of Article VIII, Ohio Constitution;
  - (3) The chancellor finds that the specific request to participate in the state credit enhancement program does not jeopardize the ability of the college district to maintain compliance with Rule 126:3-1 of the Ohio Administrative Code;
  - (4) The projected amount to be distributed to the college district from allocated state share of instruction for the current fiscal year exceeds the maximum annual bond service charges due in the current or any future fiscal year as shown in the schedule required by paragraphs (B)(1)(b) and (c) of this rule by a ratio of not less than 2.5 to one and at any time during the current or any fiscal year, the projected amount of allocated state share of instruction remaining to be distributed in the fiscal year exceeds such bond service charges remaining to be paid in that fiscal year by a ratio of not less than 1.25 to one. For purposes of these calculations, bond service charges include outstanding and proposed obligations under the state credit enhancement program.
- (D) If after the college district has been approved for the state credit enhancement program, the college district receives an advance of its allocated state share of

instruction, (i) calculation of the ratios for (C)(4) above shall not include the advance, and (ii) the amount of the advance for any period shall not be an amount which would reduce the remaining allocated state share of instruction to be received for such period to an amount less than the aggregate bond service charge payments payable during such period.

(E) If the chancellor approves the request of a college district to withhold and deposit its allocated state share of instruction pursuant to section 3333.90 of the Revised Code and this rule, the college district shall identify a fiscal agent for the obligations to be issued. In addition, when it becomes available, the college district shall provide the chancellor and the director of budget and management with a finalized bond service charge payments schedule for the obligations to be secured under section 3333.90 of the Revised Code. The chancellor shall then enter into a written agreement with the college district and the fiscal agent, subject to the consent of the director of budget and management, and to the consent of the Ohio building authority if the authority is the issuer of the proposed obligations, for the withholding of funds pursuant to section 3333.90 of the Revised Code and this rule for the payment of bond service charges on those obligations according to such bond service charge payments schedule. This agreement shall include the following provisions:

(1) The amount of allocated state share of instruction deposited by the chancellor shall not be greater than the next periodic distribution due to the college district regardless of the amount owed by the college district on the payment date in question;

(2) At least fifteen business days prior to the date on which a bond service charge payment is due, the college district shall certify to the chancellor and the fiscal agent the amount of any insufficiency in the amount of funds needed to pay in full the bond service charge payment when due, provided that (i) payment by the college district to the fiscal agent of less than the full amount of such payment when due shall be deemed to constitute the certification required by this paragraph, and (ii) failure of the college district to make such certification shall not prevent payment by the chancellor of amounts described below; and

(3) On each date on which a bond service charge payment is due, the college district must make a deposit with the fiscal agent in an amount sufficient to pay in full the bond service charge payment due, and if the amount of such deposit is less than the bond service charge payment then due, the fiscal agent shall notify the chancellor of such insufficiency by the next business day following the due date and in any case, not later than the 5th day of the month in which such insufficiency occurs.

(F) Upon receipt of a notification of insufficiency from the fiscal agent, the chancellor shall immediately determine whether the college district is able to make the bond

service charge payment to cover the insufficiency. If the chancellor confirms or determines that the college district will be unable to make such bond service charge payment, the chancellor shall deposit with the fiscal agent by two p.m. (Ohio time) on the regularly-scheduled date for periodic distribution of the college district's allocated state share of instruction, in immediately available funds, the amount of the deficiency (not exceeding the amount of allocated state share of instruction due to the college district for such periodic distribution). Bond service charge payments made under this provision shall be made prior to any advance payment of the college district's allocated state share of instruction. If any such insufficiency remains after any payments made pursuant to this paragraph, the college district shall request the chancellor for an advance of its allocated state share of instruction sufficient to pay such insufficiency, and if the chancellor approves such request, the chancellor shall deposit with the fiscal agent the amount of the remaining insufficiency from any amount so advanced. If the amounts deposited by the chancellor pursuant to this paragraph are insufficient to pay the amount of any remaining insufficiency in the amounts then due the fiscal agent for the payment of bond service charge payments, the chancellor shall continue to deposit with the fiscal agent from each successive periodic distribution of such college district's allocated state share of instruction, until the full amount due the agent for unpaid bond service charge payments is paid in full, the lesser of the remaining amount due the fiscal agent for bond service charge payments or the amount of the next periodic distribution scheduled to be made to the college district in respect of its allocated state share of instruction.

Receipt of a notification of insufficiency and a payment made under this paragraph are reportable events under Rule 126:3-1 of the Administrative Code.

(G) If a transfer of allocated state share of instruction is required by paragraph (F) of this rule, the college district, in consultation with the chancellor, will evaluate its inability to pay the bond service charge payments and will develop and implement corrective actions to ensure full and timely bond service charge payments by the college district of future bond service charge payments. This plan for corrective action shall be presented by way of letter to the chancellor.

(H) The agreement required by paragraph (E) of this rule shall be irrevocable as long as any of the college district's obligations secured by the state credit enhancement program are outstanding.

(I) Any credit rating agency which has a current rating of this program will be notified of future material changes to this rule.

Effective: 04/29/2010

R.C. 119.032 review dates: 04/29/2015

CERTIFIED ELECTRONICALLY

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Certification

04/19/2010

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Date

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