

TITLE 90. COUNCIL OF BOND OVERSIGHT
CHAPTER 10. ADMINISTRATION OF THE OKLAHOMA BOND OVERSIGHT AND
REFORM ACT

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

90:10-1-1 [AMENDED]

Subchapter 3. Application Procedure

90:10-3-2 [AMENDED]

90:10-3-3 [AMENDED]

90:10-3-4 [AMENDED]

90:10-3-5 [AMENDED]

90:10-3-7 [AMENDED]

90:10-3-8 [AMENDED]

Subchapter 5. Fees

90:10-5-1 [AMENDED]

Subchapter 7. Evaluation Standards and Criteria

90:10-7-5 [AMENDED]

Subchapter 9. Reporting

90:10-9-1 [AMENDED]

90:10-9-2 [AMENDED]

SUMMARY:

The proposed rule amendments replace references to the State Bond Advisor with the amended statutory title of Deputy Treasurer for Debt Management.

AUTHORITY:

Oklahoma Bond Oversight and Reform Act. 62 O.S., Section 695.7 through Section 695.11. Council of Bond Oversight.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 5:00 p.m. on January 17, 2020 at the following address: Office of the State Treasurer 9520 N. May Avenue, Lower Level, Oklahoma City, Oklahoma, 73120 or by email to andrew.messer@treasurer.ok.gov.

PUBLIC HEARING:

A public hearing will be held at 9:45 a.m. on Thursday, January 30, 2020 in the Board Room of the Oklahoma Finance Authorities Office, 9220 N. Kelley Avenue, Oklahoma City, Oklahoma 73131. Anyone who wishes to speak must sign in at the door prior to the start of the hearing.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Deputy Treasurer for Debt Management requests that business entities affected by these proposed rules provide the Deputy Treasurer for Debt Management, within the comment period (in dollar amounts if possible), information about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the particular business entity due to

compliance with the proposed rules. Business entities may submit this information in writing to Andrew Messer, at the above addresses, before the close of the comment period on January 17, 2020.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the State Treasurer's Office, 9520 N. May Avenue, Lower Level, Oklahoma City, Oklahoma, 73120. The proposed rules are also available on the Council of Bond Oversight's website at <http://www.ok.gov/bondadvisor/>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement has been prepared and may be obtained from the State Treasurer's Office at the above address.

CONTACT PERSON:

Andrew Messer, Deputy Treasurer for Debt Management, (405) 521-4504, andrew.messer@treasurer.ok.gov.

TITLE 90. COUNCIL OF BOND OVERSIGHT
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SUBCHAPTER 1. GENERAL PROVISIONS

90:10-1-1. Purpose and scope

The Council of Bond Oversight was created to implement the Oklahoma Bond Oversight and Reform Act found at 62 O.S., Section 695.1 et.seq. ("the Act") The Council is responsible for oversight of debt issuance by State Governmental Entities and certain Local Governmental Entities as provided in 62 O.S., Section 695.9(C). To implement the Act, the rules of this Chapter establish time frames, methods, criteria for evaluation, fees, and information required on application forms for such entities in order to facilitate the business of the Council ~~and State Bond Advisor~~ and of such entities.

SUBCHAPTER 3. APPLICATION PROCEDURE

90:10-3-2. Submission of Provisional Approval Application

(a) Provisional Approval Applications must be made on a form provided by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management. Each completed application must be submitted ~~to the State Bond Advisor at the official office in Oklahoma City.~~ All applications shall be submitted as with an original and one copy.

(b) The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management may reject any application which is incomplete or filed with insufficient information. Such a rejection shall be in writing, outlining additional information needed and/or reasons for rejection of the application. An application shall not be considered filed until after such time that all required and requested information has been received and accepted.

(c) Applications must be filed ~~with the official office~~ no later than 20 calendar days prior to a regularly scheduled meeting. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management is authorized to waive this provision in his discretion if the proposed issuance will be jeopardized by further delay.

90:10-3-4. Final approval form

(a) The Request for Final Approval form shall be provided by the ~~State Bond Advisor~~, and shall include but not be limited to the following:

(1) Material changes. The Applicant is required to list and explain any material changes from the information provided on the issuer's Provisional Approval form that have taken place since the date of provisional approval.

(2) Project information. The Applicant is required to provide more detailed information on the status of the project, including the anticipated construction draw schedule and the estimated completion date. Descriptions of any collateral pledged for the borrowing, the revenue stream dedicated for repayment of the loan, and any credit enhancement provider are also required.

(3) Attachments. The following attachments are required:

(A) Evidence of provisional approval from the Council unless the applicant elects to apply for provisional and final approval simultaneously, pursuant to 90:10-3-4(b).

(B) Letter from issuer certifying that due diligence has been completed.

(C) Letter from issuer's attorney or bond counsel stating that they have reviewed the proposed transaction and it will comply with state and federal law.

(D) Copy of the document that authorizes the bond issue. Such documentation would include enabling act, legislation, resolution or ordinance from the issuer's governing board, and/or other documentation authorizing the obligation.

(E) Letter from the issuer stating that there are no conflicts of interest between the Applicant, any borrowers, service providers affiliated with the issuance, or any other participants in the transaction.

(F) Form of Opinion Letter from Bond Counsel regarding the valid authorization and tax status of the issue. The Council may approve an application pending receipt of bond counsel opinion letter; however, the letter must be received prior to closing.

(G) In the case of obligations backed by the Credit Enhancement Reserve Fund, the report prepared by the Program Development and Credit Review Committee and the Credit Enhancement Reserve Fund Supplemental Information form.

(H) Preliminary Official Statement, Offering Circular or Private Placement Memorandum. This information may be submitted in draft form, provided the issuer identifies any missing information or data that is incomplete and/or subject to change.

(I) Letter from issuer's attorney or bond counsel stating that there is no litigation pending or threatened relating to outstanding or proposed obligations or the issuer's authority to enter into any agreements necessary to complete the proposed transaction.

(b) In addition to the above, the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management may require an issuer to submit any other materials or information deemed by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management to be necessary to consideration of the application.

(c) An issuer may elect to apply for final and provisional approval simultaneously. An application must include both the provisional and final approval request forms and all required supporting documentation and be submitted together in accordance with the provisions of 90:10-3-2.

90:10-3-5. ~~State Bond Advisor~~ Deputy Treasurer for Debt Management review of request for proposals and approval of fees

(a) State and Local Governmental Entities subject to the provisions of Section 695.7(C) of the Act, must submit request for proposals to the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management for review and comment. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall have seven (7) days from the date requests for proposals are submitted to provide written or oral comment to the applicant, State or Local Government Entity, prior to an applicant's use of a request for proposals. Requests for proposals shall make provision for the submission of cost information in a format approved by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management. Applicants shall also provide to the ~~State Bond Advisor~~ copies of final Requests for Proposals. One copy of each response to a request for proposals shall be provided to the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management within seven (7) days of its receipt. State or Local Governmental Entities subject to Section 695.7(C) of the Act shall prepare a written statement indicating the basis for selections, and make such statement available on request to the Council.

(b) State or Local Governmental Entities subject to the provisions of Section 695.7(C) of the Act, must submit fee approval requests in such form as the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management may require at any time. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall approve or disapprove the fees and expenses for goods and services requisite or deemed

desirable in the issuance of obligations, including, but not limited to the following:

- (1) Underwriter's Discount:
 - (A) Management Fee
 - (B) Expenses
 - (C) Underwriting
 - (D) Average Takedown
- (2) Bond Counsel or Tax Counsel
- (3) Trustee/Paying Agent (new money and escrow agent)
- (4) Financial Advisor
- (5) Financial Printer
- (6) Credit Enhancement
- (7) Cash Flow Validation
- (8) Bond Pricing
- (9) Investment Contracts
- (10) Remarketing Agent
- (11) Escrow Verification Agent

(c) Unless otherwise provided by law, the provisions of (a) and (b) of this section shall be applicable to an applicant, regardless of whether or not the applicant directly engages such services or such services are engaged by another party to a financing transaction.

(d) State and Local Governmental Entities subject to the Act may request proposals for services in connection with multiple issuances if the services will be performed and completed in a twelve (12)~~12~~ month period and where each issue is part of a single program or related plan of financing as determined by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management. The twelve (12) month period will begin at the date of first issuance. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management may extend any engagement under this section if he or she determines that a change in the financing team would result in unnecessary delays and/or additional cost.

90:10-3-7. Lease Purchase Request for Approval form

(a) State governmental entities requesting approval of a lease purchase obligation must complete and submit the Lease Purchase Request for Approval form provided by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management to the Council. The Request for Provisional Approval form and Request for Final Approval form are not applicable to lease purchase agreement applications. Such a submission shall be governed by the filing periods and procedures at 90:10-3-2. The Lease Purchase Request for Approval form is comprised of:

(1) Proposed lease purchase agreement. The applicant must provide information regarding the anticipated amount, financing terms, equipment or real property description and budget implications of the proposed lease purchase. An analysis of the method of financing must be obtained from the ~~State Bond Adviser~~ Deputy Treasurer for Debt Management if the amount of the financing is \$1 million or greater, or if determined by the ~~State Bond Adviser~~ Deputy Treasurer for Debt Management and Director of Central Purchasing to be in the best interest of the issuer. Requests for negotiated sale of such lease obligations must be approved by the ~~State Bond Adviser~~ Deputy Treasurer for Debt Management. [Title 74 O.S., Sections 85.4(G) and 85.4(I)]

(2) User information. The applicant must provide a description of the purpose, nature and need for the lease purchase.

(3) Attachments. The attachments requested include:

(A) Letter from body approving lease purchase agreement. (Examples: Regents, Regents for Higher Education, Commission, Board, etc.)

(B) Letter indicating whether litigation is pending or threatened concerning the applicant's outstanding and/or proposed obligations.

(C) If the applicant is a College or University, it must complete the Outstanding Lease Purchase Information form provided by the ~~State Bond Adviser~~.

(D) Where applicable, each applicant must provide a completed ~~Department of Central Services~~ Office of Management and Enterprise Services Central Purchasing or Construction & Properties Requisition, Justification, etc.

(E) If lease purchasing computer or telecommunications equipment, the application must include a letter from ~~Office of State Finance~~ Office of Management and Enterprise Services Information Services Division stating compliance with budget request; as well as the provisions of Title 62 O.S., Sections 41.5(m) and 41.5(j).

(F) For lease purchase requests of equipment related to an energy savings program (including those done through the Oklahoma Development Finance Authority's Master Lease Program), the following documentation must be provided with an application.

(i) Any proposed Master Agreement; including, but not limited to, Guaranteed Savings Contract, Construction Draw Schedule, and Maintenance Agreement.

(ii) Any performance-based energy contract relating to the proposed lease obligation. Any such contract should be structured to allow the State adequate remedies in the event of an Energy Services Company's (Vendor's) default under the terms of the contract(s).

(iii) Any other bonds or guarantees to be entered into by the applicant in connection with the proposed lease obligation.

(b) Refer to 74 O.S., Section 85.4 for statutory limitations and requirements of State Governmental Entities entering into lease purchase agreements. The provisions of (a)(1) of this section do not exempt any application for lease purchase financing from the provisions of the statutes referenced.

(c) Applicants proposing to lease purchase equipment or real property with a cost of \$1 million or more, must consult with the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management as to the most cost-effective method of financing. Title 74 O.S., Section 85.4 authorizes negotiated financings when determined by the Council of Bond Oversight to be more cost-effective than competitive bidding through the ~~Department of Central Services Office of Management and Enterprise Services~~ Central Purchasing Division. All provisions of the Bond Oversight and Reform Act apply to such negotiated financings. Prior to submitting an application for approval of a lease purchase of \$1 million or greater cost, an applicant should send notification to the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management. This notification shall include the following information, in order to determine the method of financing:

- (1) Description of equipment and/or real property;
- (2) Desired term of financing;
- (3) Cost of equipment and/or real property;
- (4) Source of funding of lease payments; and
- (5) If equipment, letter from Director of Central Purchasing quoting interest rates which could be obtained through competitive bidding. The Director of Central Purchasing will contact at least three (3) certified leasing companies for interest rate quotations. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall notify the issuer of the recommended method of financing. Issuers should give the

~~State Bond Adviser~~ Deputy Treasurer for Debt Management at least two weeks to perform such analysis.

90:10-3-8. Substantial changes to Council of Bond Oversight approved applications

(a) The following shall be considered substantial changes to the nature of an obligation and shall require the issuer to submit a new application to the Council for approval:

(1) a change in the mode of the obligation from fixed rate to variable rate;

(2) an increase of more than ten percent (10%)~~10%~~ in the amount of variable rate obligations to be issued;

(3) an extension of the final maturity of the proposed issue;

(4) a change in the security pledge, excluding any decision by the issuer to utilize widely accepted credit enhancement techniques; and/or

(5) any other change the ~~State Bond Adviser~~ Deputy Treasurer for Debt Management deems substantial.

(b) A change in the amount of the obligation shall not be deemed substantial if the amount of the proposed increase is not greater than 10% of the authorization.

(c) If the amount of the change of an approved obligation is between ten percent (10%) and twenty percent (20%)~~10% and 20%~~ of the authorization, the ~~State Bond Adviser~~ Deputy Treasurer for Debt Management shall, in his discretion, determine whether or not such change is substantial. The ~~State Bond Adviser~~ Deputy Treasurer for Debt Management shall prepare a memorandum for the Council stating reasons as to why the increase is not considered a substantial change and does not need to be returned to the Council for approval.

(d) Any change in the amount of the obligation greater than twenty percent (20%) ~~20%~~ of the original amount approved shall be deemed a substantial change and must be resubmitted to the Council.

(e) All increases in the amount of obligations backed by the Credit Enhancement Reserve Fund shall be deemed substantial changes. For purposes of applications to approve obligations backed by the Credit Enhancement Reserve Fund, any resubmission of a previously approved application shall not constitute an "appeal" pursuant to 62 O.S., Section 695.9(B)(2).

(f) Approval shall expire one hundred eighty (180) days after such approval. If such approval expires, nothing shall prevent the State Governmental Entity from submitting a new application for Council approval.

(g) Applicants having received approval may request and the ~~Oklahoma State Bond Advisor~~ Deputy Treasurer for Debt Management may grant, at ~~the Oklahoma State Bond Advisor's~~ his or her discretion, a single ~~one hundred eighty day~~ one hundred eighty (180) day extension. Any request for an extension must be made at least five (5) business days prior to the expiration of the original approval. Applicants failing to request an extension in this manner may re-file with the Council.

SUBCHAPTER 5. FEES

90:10-5-1. Fee payment requirements

(a) Applicants must pay a fee to the Council if their submitted application is approved by the Council or if their application is deemed approved by operation of law, but only if the financing subject to an application is issued and closed. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management may enter into written agreements with issuers to provide for periodic payment if the approved obligation will be in the form of draws or a line of credit. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management may waive fee payment if the issue is a conduit financing with a state entity loan program financed with bond proceeds.

(b) The fee shall be paid to the Council by means of a check or negotiable instrument upon receipt of an invoice from the official office of the Council and shall be paid within two weeks.

SUBCHAPTER 7. EVALUATION STANDARDS AND CRITERIA

90:10-7-5. Documentation of Council action

(a) The Council shall provide a written determination by means of a statement signed by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management reflecting the decision of the Council with respect to its consideration of any application. Such statement shall be copied and sent to the applicant. If the application is disapproved, the statement will indicate the reason(s) for this determination.

(b) The Council may make its provisional or final approvals contingent upon certain conditions being met or material submitted. The Council may delegate the authority to determine if these conditions have been met or the sufficiency of the material to the State Bond Advisor on an application by application basis. The Council may also delegate to the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management the authority to sign, on behalf of

the Council, written statements setting forth the Council's actions on applications to the Council.

(c) The Council may grant conditional final approval in cases where additional information is needed. In such a conditional approval, the Council may require the issuer to appear before the Council at a later time to present additional information before final approval. Where a delay until the next Council meeting would be detrimental to the issuer, the Council may authorize the ~~State Bond Adviser~~ Deputy Treasurer for Debt Management to determine if the additional information provided is sufficient to meet the stated requirements of the Council.

(d) In the case of disapproval, except of proposed obligations supported by the Credit Enhancement Reserve Fund, the applicant may request rehearing or reconsideration of the disapproval by submitting a new application to the Council along with an explanation of the basis for the appeal or reconsideration within ten (10) days of disapproval.

(e) If a previously disapproved application is reconsidered, the Council shall first vote on whether or not to reconsider the application. Only if the Council affirmatively votes to reconsider such an application shall the Council proceed to vote on the merits of the proposed financing.

SUBCHAPTER 9. REPORTING

90:10-9-1. Closing documentation to the ~~State Bond Adviser~~ Deputy Treasurer for Debt Management

(a) Prior to closing, issuers subject to Council approval must obtain the ~~State Bond Adviser's~~ Deputy Treasurer for Debt Management's approval of all fees and expenses paid or to be paid in connection with the transaction. Such approval shall be obtained on a form provided for that purpose by the ~~State Bond Adviser~~. For the approval of any fees or expenses that may not be known prior to closing, the issuer shall make arrangements with the ~~State Bond Adviser~~ Deputy Treasurer for Debt Management for formal approval of such fees and expenses when final information is available. Such post-closing approval will become a part of the official record of the transaction.

(b) In the case of State or Local Governmental Entity obligations subject to Council approvals, the following documents shall be submitted to the ~~State Bond Adviser~~ Deputy Treasurer for Debt Management within thirty (30) days of the closing of a bond issue or obligation transaction:

(1) Official Notice of Sale, Official Statement, Private Placement memorandum or other applicable document indicating the conditions, amortization, pricing, and terms of a bond or Certificate of Participation sale; or

(2) a copy of an executed lease purchase agreement along with amortization schedules. For all certificated lease obligations, whether sold publicly or privately placed, the issuer shall provide a schedule showing the dates of repayment for all certificates.

(C) Within two (2) working days of a bond closing, a State or Local Governmental Entity subject to Council approval shall notify the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management in writing and/or orally of such closing including, but not limited to, the date and amount of issuance.

90:10-9-2. Local governmental entities

(a) Local Governmental Entity issuers whose obligations are not subject to Council approval, must file a copy of the Official Statement, Offering Circular or Private Placement Memorandum within ten days following the date funds become available to the issuer from the sale of the obligations. In addition, the Local Governmental Entity must also complete and file the Notice by Local Governmental Entity form provided by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management. This form shall include, but not be limited to the following:

- (1) issue information including size, dated date, delivery date and maturity schedule;
- (2) interest rates and reoffering yields; ~~and~~
- (3) call provisions; and
- (4) a listing of the fees paid by the issuer, or by any third party on behalf of the issuer, for services rendered in connection with the issuance or sale of the obligations, whether or not such fees are paid with proceeds of the obligations.