

**Regulations
Governing Literary Loan Applications
in Virginia**

**PART I
POLICY**

§1.1. Policy.

It is the policy of the Board of Education to assist localities in borrowing from the Literary Fund to the greatest extent feasible, taking into consideration, the size of the Literary Fund, the availability to school divisions of alternative financing, the number and repayment ability of school divisions desiring to borrow from the Literary Fund, and the sense of the General Assembly for the administration and equitable distribution of the Literary Fund.

**PART II
DEFINITIONS**

§2.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning:

"Approved Application List" means the list maintained by the Department of Education of those Literary Loan applications which initially have been approved as to form by the Board of Education but have not been placed on the "Waiting List".

"Board" means the State Board of Education.

"Department" means the State Department of Education.

"Project" means capital construction for the purpose of erecting, altering, or enlarging a school building in a public school division of Virginia, or a regional center operating under a Board of Control as defined by board regulations.

"Waiting List" means the list maintained by the department of those Literary Loan applications which the board has placed on the Waiting List of loans anticipating the release of loan funds from the Literary Fund.

PART III
APPLICATION APPROVAL

§3.1. Application Form.

A school division applying for a Literary Loan shall meet the statutory requirements for such a loan as set forth in §§22.1-142 through 22.1-161 of the Code of Virginia and the Appropriations Act. The application shall be submitted to the department on Form V.A. 005, completed, signed and sealed by the appropriate local officials and examining attorney certifying to the information contained in the application.

§3.2. Application Review.

After examination and review of the contents of the application by the staff of the department and review of the application and the certifications by the Office of the Attorney General, the Department shall recommend to the board the approval of those applications which are in proper form for further consideration by the board and for placement on the Approved Application List.

§3.3. Application approval.

Upon approval of a Literary Fund loan application, a Memorandum of Lien form, properly executed, and recorded in the appropriate circuit court is to be returned to the department. It is recognized that the lien is not effective until the Board of Education approves the initial release/commitment of funds against the project. Section 22.1-157 of the Code of Virginia provides that no recordation tax shall be assessable.

§3.4. Nonapproval of application.

Applications for Literary Fund loans will not be approved by the board if the project already has been bid prior to receipt of the application in the department, except in the case of a documented emergency.

PART IV
APPROVED APPLICATION LIST

§4.1. Placement on list.

The board shall place applications on the Approved Application List upon the recommendation of the department made by the Superintendent of Public Instruction or his designee.

§4.2. Qualification for placement.

For applications on the Approved Application List to qualify for placement on the Waiting List, school divisions shall submit a copy of the plans and specifications with a letter of approval by the division superintendent, accompanied with a statement by an architect or professional engineer licensed by the Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects that such plans and specifications are, to the best of his knowledge and belief, in compliance with the regulations of the Board of Education and the [Virginia] Uniform [Statewide] Building Code.

§4.3. Removal from list.

Applications which remain on the Approved Application List for three years shall be removed from the list. Localities shall be notified at the end of the second year of the three-year cancellation policy.

PART V
RANGE AND DURATION OF LOANS

§5.1. Maximum loan amount.

The maximum loan amount available for any single project through the Literary Fund is \$5 million (effective for all applications approved by the Board subsequent to the effective date of these regulations).

§5.2. Minimum loan amount.

The minimum loan amount available for any single project through the Literary Fund is \$50,000. The several applications to fund a regional project shall be combined for the purpose of meeting this minimum amount.

§5.3. Duration of loans.

Literary Fund loans shall be made for a period of not less than five years nor more than 20 years. Literary Fund loans in an amount between \$50,000 and \$100,000 shall be for a period of five years.

PART VI
INTEREST RATES

§6.1. Composite index.

Except as modified by Section 6.3, the interest rate for a Literary Loan shall be based on the school division's Composite Index, used for distribution of State Basic Aid, in effect when the board places the project on the Waiting List.

§6.2. Determination of interest rate.

The interest rate for a loan generally shall be determined on the basis of a composite index of the applying school division as follows:

	Per Annum Interest Rate
Step 1. Composite Index between .2 and .2999	2.0%
Step 2. Composite Index between .3 and .3999	3.0%
Step 3. Composite Index between .4 and .4999	4.0%
Step 4. Composite Index between .5 and .5999	5.0%
Step 5. Composite Index between .6 and .8000	6.0%

§6.3. Fixed rate.

The board reserves its option under §22.1-150 of the Code of Virginia to fix the actual rate for a Literary Loan, on the date funds for the Literary Loan are approved for release, at one percentage point above or below the rate applicable on the date the application was placed on the Waiting List.

PART VII
WAITING LIST

§7.1. Placement on Waiting List.

After a loan application initially has been approved by the department and the division submits a copy of the plans, approval by the division superintendent and architect, the board shall consider placement of the application on the Waiting List.

§7.2. Priorities.

Applications shall be placed into priorities on the Waiting List as follows:

Priority 1: Applications placed on the Waiting List by the Board of Education from school divisions having a composite index less than .6000, and an outstanding indebtedness (including the

application considered for release of funds by the Board of Education) to the Literary Fund less than \$20 million.

Priority 2: Applications placed on the Waiting List by the Board of Education from school divisions having a composite index of .6000 or above, or an outstanding indebtedness (including the application considered for release of funds by the Board of Education) to the Literary Fund greater than \$20 million.

ə7.3. Eligibility for release of funding.

Within each priority, applications shall become eligible for release of funding in the same relative order as having been approved by the board as having met all conditions for a Literary Fund loan.

ə7.4. Eligibility of Priority 2 applications.

Applications in Priority 2 shall be eligible for funding only when the board determines that all applications, current and anticipated, and the applications to be added from Priority 2 can be funded within one year.

ə7.5. Reassignment of application.

The board may place an individual application ahead of its position assigned by ə7.3, if the board finds that the best interest for the education in the state is served by such placement. Reasons for such placement may include, but are not limited to (i) asbestos containment or removal; (ii) natural disasters; (iii) unique circumstances that may be detrimental to education in the absence of a Literary Fund loan. Such placement shall be acted on by the board on an individual application basis when all requirements for release of a Literary Fund loan have been met by the school division.

ə7.6. Priority funding.

The board shall provide priority funding for any application resulting directly from the consolidation of two or more divisions into a single school division.

PART VIII
RELEASE OF LITERARY FUNDS

ə8.1. Unencumbered sum available.

The release of Literary Funds shall be approved by the board for an application when the Literary Fund has an unencumbered sum available that is at least equal to the amount of the application.

ə8.2. Expenditure of other funds.

All other funds committed to a Literary Fund project shall be

expended before the Literary Fund loan shall be available for disbursement to the locality for the approved project.

§8.3. Actual disbursements.

Actual disbursements charged to the approved Literary Fund loan shall be subject to the submission of actual invoices or other evidence of bills paid or due and payable by the locality.

§8.4. Award of construction contract.

Upon the award of the construction contract for an application in Priority 1 on the Waiting List, funds shall be released for the reimbursement of the design phase of architectural and engineering services for the project. Applications in Priority 2 shall be eligible for reimbursement of the design phase of architectural and engineering services only when the application has been certified to be eligible for funding by the board under §7.4.

§8.5. Conditions.

After the submission to the Superintendent of Public Instruction of a copy of the plans and specifications with a letter of approval by the division superintendent, accompanied with a statement by an architect or professional engineer licensed by the Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects that such plans and specifications are, to the best of his knowledge and belief, in compliance with the regulations of the Board of Education and the [Virginia] Uniform [Statewide] Building Code, the locality may proceed with a Literary Fund project and still qualify for reimbursement from the Literary Fund under the following conditions.

(1) A formal declaration is made by the governing body of intent to reimburse itself for prior expenditures paid for out of its general fund or to refinance debt that was used to pay or to reimburse itself for prior expenditures.

(2) Short term financing, or advances from other fund balances and current operating funds, is used for that portion of the project to be financed by a Literary Fund loan (§ 22.1-148.B of the Code of Virginia) which shall be subject to the restrictions found in § 22.1-110 of the Code of Virginia; or permanent financing such as bond funds authorized through locally approved referenda, by local charter, the Virginia Public School Authority, or other funding mechanisms are used for the Literary Fund portion of the project, and the literary funds can be used for the refinancing or redemption of such negotiable notes, bonds, or other evidences of indebtedness or obligations.

§8.6. Returning application to Approved Application List.

An application which has been approved for release of funds and which has not been bid within two months of the board action to release funds will be returned to the Approved Application List.

Upon the written request by the locality for reinstatement, any application so returned shall be reinstated by the board at the bottom of the appropriate priority (§ 7.2) of the Waiting List. The date of the board's reinstatement on the Waiting List by this section shall determine the relative order for eligibility of funding.

PART IX
PROPERTY TRANSFER

§9.1. Property Transfer.

When a school board or a local governing body sells or transfers property on which there is an outstanding balance on a Literary Loan, such balance becomes due and must be paid before title to the property is conveyed to the new owner. In no event, however, shall this provision be applicable where a court of competent jurisdiction decrees otherwise in an annexation settlement, or where fee simple title, after sale or transfer, remains in either the school board or its governing body.

Authority: Chapter 10 (§22.1-140 and §22.1-142 et seq.) of Title 22.1 of the Code of Virginia; §8 of Article VIII of the Constitution of Virginia

Virginia Department of Education
Non-Regulatory Supplemental Guidance for
Literary Fund Regulations

Please note: The non-regulatory supplemental guidance provided in this section restates certain Literary Fund regulations and then provides additional **non-regulatory** guidance for the regulation in italicized font.

§3.4. Nonapproval of application.

Applications for Literary Fund loans will not be approved by the board if the project already has been bid prior to receipt of the application in the department, except in the case of a documented emergency.

Non-Regulatory Supplemental Guidance for §3.4. Nonapproval of application: *If you consider applying for a loan from the Literary Fund, please note that Literary Fund Loan applications must be received in the Department of Education prior to the advertisement of bids. Neither the Board of Education nor the Superintendent of Public Instruction has the authority to waive this requirement. Section 3.4 of the Regulations Governing Literary Loans in Virginia (8 VAC 20-100-60) provides that applications for Literary Fund loans will not be approved by the Board of Education if the project already has been bid prior to receipt of the application in the Department of Education, except in the case of a documented emergency. "To Bid" is to issue the Invitation for Bid (IFB) (as defined in §2.2-4301 of the Code of Virginia). The issuance date is the date when the project is advertised to the public.*

§4.2. Qualification for placement.

For applications on the Approved Application List to qualify for placement on the Waiting List, school divisions shall submit a copy of the plans and specifications with a letter of approval by the division superintendent, accompanied with a statement by an architect or professional engineer licensed by the Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects that such plans and specifications are, to the best of his knowledge and belief, in compliance with the regulations of the Board of Education and the [Virginia] Uniform [Statewide] Building Code.

Non-Regulatory Supplemental Guidance for §4.2. Qualification for placement: *In addition, please note that §22.1-140 of the Code of Virginia states that school divisions are required to send to the*

Department of Education (1) an approval letter from the division superintendent; (2) a letter from the architect/engineer that the plans and specifications are in compliance with the School Building Regulations and Uniform Statewide Building Code; and, (3) a complete set of final plans and specifications. Your application will not be placed on the Waiting List until each of these required items have been received by the department. Please submit this information to the department as soon as it is available.

§5.1. Maximum loan amount.

The maximum loan amount available for any single project through the Literary Fund is \$5 million (effective for all applications approved by the Board subsequent to the effective date of these regulations).

Non-Regulatory Supplemental Guidance for §5.1. Maximum loan amount:
The 1998 General Assembly amended §22.1-147, Code of Virginia, that required the Board of Education to increase the maximum amount of a Literary Fund loan from \$5.0 million to \$7.5 million for a project. This statutory provision supersedes the current Board regulations (§5.1. Maximum loan amount) that set the maximum amount at \$5.0 million. The maximum indebtedness to the Literary Fund will still remain at \$20.0 million in order for projects to be eligible for the First Priority Waiting List.

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