

Revised May 2023

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
 BOARD/COMMISSION _____
 BOARD/COMMISSION DIRECTOR _____
 CONTACT PERSON _____
 ADDRESS _____
 PHONE NO. _____ EMAIL _____
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
 PRESENTER EMAIL(S) _____

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.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
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 Are two (2) rules being repealed in accord with Executive Order 23-02?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If yes, please list the rules being repealed.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.

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).

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?

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: _____

Time: _____

Place: _____

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. _____

15. What is the proposed effective date for this rule? _____

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 _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

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 _____

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

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

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

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

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

\$ _____

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

\$ _____

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.



Division of Elementary and Secondary Education

Transforming Arkansas to lead the nation in student-focused education

Jacob Oliva
Secretary

October 9, 2023

Stacy Smith
Deputy
Commissioner

Proposed Rules Governing The Educational Freedom Account Program Payment Processing

**State Board of
Education**

PURPOSE

The Division of Elementary and Secondary Education is seeking the Governor's review of proposed Rules Governing the Educational Freedom Account Program Payment Processing.

Dr. Sarah Moore
Stuttgart
Chair

BACKGROUND

Pursuant to Act 237 of 2023, the Division is charged with promulgating rules regarding the Educational Freedom Account Program, which is codified at Ark. Code Ann. § 6-18-2501, et seq.

Kathy Rollins
Springdale
Vice-Chair

KEY POINTS

- Establishes authority for the Department of Education to continue making payments to approved service providers.

Steve Sutton
Marion

DISCUSSION

The DESE Rules Governing the Educational Freedom Account Program were promulgated per Act 237 of 2023, codified at Ark. Code Ann. § 6-18-2501 et seq. via the emergency rule provisions of the Arkansas Administrative Procedures Act so that the Department of Education could prepare for the implementation of the newly-created Educational Freedom Account Program before the 2023-2024 school year began. The Department is working on promulgation of a permanent rule. This rule would give the Department authority and set out the process to continue to make payments pursuant to the program, ensuring continuity for students, parents, schools, and service providers until the permanent rule is in place. This is an emergency rule, and the estimated effective date is December 1, 2023.

Adrienne Woods
Rogers

Randy Henderson
Blytheville

Lisa Hunter
White Hall

Jeff Wood
Little Rock

RECOMMENDATION

The Division of Elementary and Secondary Education recommends Governor's Office approval of this rule.

Ken Bragg
Sheridan

Leigh Keener
Little Rock

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES
GOVERNING PAYMENTS UNDER THE EDUCATIONAL FREEDOM ACCOUNT
PROGRAM
November 1, 2023

1.00 CONTINUATION OF PAYMENTS

1.01 Once families and participating schools have been approved to participate in the Educational Freedom Account (EFA) program, the Department of Education shall continue to make quarterly payments on behalf of the approved students and families to the approved participating schools or service providers:

1.01.1 The department shall make four (4) equal payments in quarterly installments from the participating student's educational freedom account to the participating school or service provider.

1.01.1.1 A third-party payment processing vendor shall create and set up payment accounts for participating families as determined by the department.

1.01.1.2 Participating schools or service providers, or third-party vendors shall issue an itemized invoice to the family for documentation of expense type, amount, and recipient.

1.01.1.3 Family shall verify and submit payment requests, identifying the participating school or service provider to receive payment, the payment amount, and the expense type.

1.01.1.4 Family shall include invoice for review and documentation during payment submission process via the third-party payment processing vendor.

1.01.1.5 The third-party payment processing vendor shall remit payment to participating school or service provider for authorized expenditures, unless expenditure is not authorized by law, following review and approval of expense request and documentation by the department.

1.02 This rule shall be effective until amended, rescinded, or superseded by permanent rules promulgated by the department, or until the rule's expiration, whichever comes first.

Emergency Clause

Whereas Act 237 of 2023 requires that the State of Arkansas through the Department of Education to administer the Educational Freedom Account program through rules promulgated by the State Board of Education no later than the beginning of the 2023-2024 school year; and

Whereas, emergency promulgation of the Rules Governing The Educational Freedom Account Program is necessary for the department to continue implementing the program; without which the State cannot efficiently administer the program, empower parents, or hold participating schools accountable. The rules are specifically necessary for the department to process and issue payments pursuant to the program.

THEREFORE, the State Board of Education hereby determines pursuant to Ark. Code Ann. § 25-15-204 that immediate peril to the welfare of the State, specifically students and parents, will result without emergency promulgation of these Rules.

DRAFT

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GOVERNING PAYMENTS UNDER THE EDUCATIONAL FREEDOM ACCOUNT
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**STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH**

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Matthew Miller, Assistant Director
for Legal Services
Jessica Whittaker, Assistant Director
for Research Services
Eric Sanders, Assistant Director
for Information Technology Services

Memorandum

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research;
Rebecca Miller-Rice, Administrator, Administrative Rules Review Section,
Legal Services Division

FROM: Jason Kearney, Legislative Attorney, Administrative Rules Review Section,
Legal Services Division

DATE: October 26, 2023

SUBJECT: Legal Authorization for the Emergency Promulgation of Proposed Division of
Elementary and Secondary Education Rules Governing Payments Under the
Educational Freedom Account Program

The Arkansas Department of Education's Division of Elementary and Secondary Education seeks legislative review and approval of the emergency promulgation of its Rules Governing Payments Under the Educational Freedom Account Program. Pursuant to Arkansas Code Annotated § 6-18-2504(a), as amended by Act 237 of 2023, § 42, the division shall administer the Arkansas Children's Educational Freedom Account Program, which shall be subject to the rules adopted by the State Board of Education. The rules adopted by the state board under Ark. Code Ann. § 6-18-2501 et seq., also known as the Arkansas Children's Educational Freedom Account Program, shall include without limitation the: (1) process for determining the eligibility of students and service providers, including the awarding of accounts to eligible students and removal of unnecessary barriers or disincentives to participation by potential participating service providers; (2) process for conducting account and program audits, including establishing the authority for the division to conduct or contract for the auditing of accounts; (3) authority of the division to deem any participating student ineligible for the program, and refer a case involving the misuse of account funds for

investigation to the Attorney General or the Secretary of the Department of the Inspector General; (4) authority of the division to contract with a vendor or other supplier for the administration of the program or parts of the program; (5) requirement that the program shall begin enrolling participating students no later than the beginning of the 2023-2024 school year and be fully implemented to serve all Arkansas children eligible to enroll in a public school by the beginning of the 2025-2026 school year; (6) establishment or creation of a contract for the establishment of an online anonymous fraud reporting service, including without limitation a telephone hotline; (7) requirement for a surety bond for a participating service provider that receives more than one hundred thousand dollars (\$100,000) in account funds; (8) mechanism for the refunding of payments from service providers back to the account from which they were paid; (9) required compliance with all state procurement laws and procedures; and (10) means for preventing unreasonable inflation or fraud in participating school tuition and fees. *See Ark. Code Ann. § 6-18-2504(b).*

Additional authority for the rulemaking can be found at Ark. Code Ann. § 6-18-2506(d), which provides that the state board shall promulgate rules: (1) for the implementation of the Arkansas Children’s Educational Freedom Account Program; and (2) to effectively and efficiently administer the Arkansas Children’s Educational Freedom Account Program, including without limitation the awarding of funds to participating students, the oversight of the Arkansas Children’s Educational Freedom Account Program, and any other necessary aspects for the operation of the Arkansas Children’s Educational Freedom Account Program. *See also Ark. Code Ann. § 6-18-2505(j) and § 6-18-2507(h)*(providing that the state board may promulgate rules to implement the Arkansas Children’s Educational Freedom Account Program).