

Public Disclosure of Non-Voter-Approved Debt

This fiscal alert serves as a reminder to school districts and county superintendents of schools regarding the requirements related to non-voter-approved debt, pursuant to Education Code (EC) sections 17150(a) and 17150.1(a), and Government Code (GC) section 53635.7.

Issuing non-voter-approved debt can be an appropriate way to finance capital projects and obtain working capital, but it must be accompanied by prudent fiscal management and consistent monitoring to preserve a district's creditworthiness and financial solvency. Public disclosure of proposed debt provides stakeholders with vital information about the implications of any financial obligation, including how it may affect a district's financial status and its ability to meet instructional priorities.

Regardless of its budget certification status, a school district is required to disclose all planned issuances of non-voter-approved debt to the county superintendent of schools and the county auditor at least 30 days prior to the district's governing board's approval of any such debt issuances, including:

1. Certificates of participation (COPs)
2. Lease purchases secured by real property
3. Revenue bonds
4. Bond anticipation notes (BANs)*
5. Tax and revenue anticipation notes (TRANS)
6. Any debt Instrument secured by real property and not subject to voter approval

* Unless the source of repayment is restricted solely to the proceeds of specific general obligation bonds already authorized by voters and not yet issued.

A school district is required to provide its governing board, the county auditor, the county superintendent of schools and the public with information about its planned debt issuance, including repayment schedules, cost of issuance, evidence of the district's ability to repay the obligation, and other information needed to assess the anticipated effects of the debt issuance.

The district should submit to the county superintendent of schools all information the district used to determine that the debt is affordable so that the county superintendent of schools can understand the decision-making process. Criteria the county superintendent will use for review will include key questions such as the following:

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- Why is the district borrowing?
- What will the district's annual obligation be, including debt service payments and administrative costs?
- What is the risk that the annual obligation will vary from year to year, and by how much?
- What sources does the district plan to use to repay the debt?
- What is the likelihood that the sources of funds for repayment will be sufficient to repay the entire debt?
- What is the cost of funds, and is this reasonable?

Within 15 days of receipt of the information from a district, the county superintendent of schools and the county auditor may comment publicly to the district's governing board regarding the district's capability to repay the debt. Whenever possible, the county superintendent of schools should coordinate with the county auditor to share information.

County boards of education have a disclosure obligation similar to that of school districts when issuing non-voter-approved debt, and for their proposed debt issuances the State Superintendent of Public Instruction (SPI) has a similar ability to comment publicly, per EC 17150(b) and 17150.1(b).

A school district or county office of education that has a qualified or negative interim financial report certification in the current or prior fiscal year may not issue non-voter-approved debt without approval in advance from the county superintendent of schools or SPI, respectively. That approval will only be given if the county superintendent of schools or SPI determines that repayment of the debt is probable (EC 42133(a) and (b)). To prevent delays to a desired schedule and to allow adequate time for the county superintendent or SPI to determine whether repayment is probable, earlier notification of potential debt issuance is recommended. FCMAT also recommends that a county superintendent of schools ensure that the letter that approves or denies such debt issuance is addressed to the district's governing board so that they are made fully aware of the county superintendent's decision.

The proceeds from COPs and other non-voter-approved debt secured by real property cannot be used for a district's general operations, regardless of the district's budget certification (EC 42133.5).

Government Code section 53635.7 specifies that proposed non-voter-approved debt of \$100,000 or more should not be placed on the consent calendar:

In making any decision that involves borrowing in the amount of one hundred thousand dollars (\$100,000) or more, the legislative body of the local agency shall discuss, consider, and deliberate each decision as a separate item of business on the agenda of its meeting . . .

To comply with current disclosure requirements, local educational agencies should contact their respective oversight agencies to obtain locally-developed disclosure forms. Alternatively, FCMAT has updated its Public Disclosure of Non-Voter Approved Debt form, which can be found at <https://www.fcmat.org/publicationsreports/NVA-Debt-Disclosure-Form.pdf>.