

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

7/23/2007

NOTICE OF AN EMERGENCY RULE

AGENCY: School Building Authority of WV TITLE NUMBER: 164

CITE AUTHORITY: §18-9D-20

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Funding School Building Authority Projects

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The School Building Authority (SBA) is already operating under an existing procedural rule. Due to a provision of the School Access Safety Act, which was passed in the recent 2007 Legislative Session, all SBA policies, both current and new, must be filed with LOCEA and sent through the legislative review process. Due to the fact that revisions made in this rule could possibility affect the funding cycle scheduled for this December, 2007, this rule is being filed as an emergency rule.

Use additional sheets if necessary


Authorized Signature

**Brief Summary of the rule entitled
Funding School Building Authority Projects**

This rule provides explanations of the various grants available for educational agencies and instructions regarding application for grant funding. The rule provides direction regarding utilization of various SBA grant funding. It also provides instructions regarding the reimbursement procedures and project closeout procedures used by the SBA.

TITLE 164
LEGISLATIVE RULE
SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA

SERIES 2
Funding School Building Authority Projects

§164-2-1 General

- 1.1. Scope – This legislative rule establishes the guidelines and procedures related to requirements for funding School Building Authority projects.
- 1.2. Authority - §18-9D-20.
- 1.3. Filing Date – July 24, 2007
- 1.4. Effective Date –

§164-2-2 Incorporation by Reference

- 2.1. A copy of Appendix B, D, E and F from the School Building Authority Policies and Procedures Manual is attached and incorporated by reference into this policy. Copies may be obtained in the Office of the Secretary of State and in the office of the School Building Authority of WV.

§164-2-3 Funding School Building Authority Projects

3.1 Matching Funds

With exception of School Access Safety Funds, no matching local funds shall be required to obtain SBA funds, however, each facility plan shall address the history of efforts taken by the county board of education to propose or adopt local school bond and/or special levies for capital improvements.

3.2 Federal Fund

Expenditure of any federal funds designated for construction and/or capital improvements of school facilities shall be approved by the SBA. SBA/SBE Form 106 and/or SBA Exhibit C is/are to be utilized for approval request if funds are to be approved initially for use on a new project or if federal funds are to be amended into an existing project budget.

3.3 Eligibility and Distribution of Funds

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It is the intent of the legislature that the SBA fund the improvement and construction of school facilities to meet the needs of the people of West Virginia in an efficient and economical manner. To be eligible for funding, educational agencies must have on file in the SBA office an approved CEFP and all required pre-qualification data for any particular funding category from which funding is being requested. Failure to provide this information or project proposals by the deadlines established by the Authority will eliminate the submitted project from consideration. These funds shall be distributed as follows:

3.3.A Three Percent (3%) Statewide Grants

Three percent (3%) of the total funds available to the Authority for distribution from the school construction fund during any funding cycle may be utilized for projects. Facilities eligible for three percent (3%) funding:

1. Must serve the statewide educational community,
2. House educational programs under the jurisdiction of the SBE, or
3. House vocational programs at comprehensive high schools and/or vocational schools cooperating with community and technical college programs.

Any project funded, must be included in an approved ten-year facilities plan submitted by the State Board or Administrative Board of the facility. Projects submitted must include any and all other funding sources potentially available for the project. Grant funds shall expire based on a three year contractual agreement between the SBA and the grantee.

3.3.B Emergency Grants

Funds amounting to no more than two percent (2%) of the total funds available for distribution from school construction funds shall be set aside as an emergency fund to be distributed in emergency situations as defined by the Authority. Application for such funds shall be in accordance with SBA procedures. (Appendix D) Grant funds shall expire based on a three year contractual agreement between the SBA and the grantee.

3.3.C Planning Grants

Effective and efficient use of resources can best be assured through appropriate development of the ten-year Comprehensive Educational Facilities Plan required in SBE Policy 6200. Therefore, if funds are deemed available, the SBA may provide grants to assist counties with the development of their CEFP for

the successive ten-year planning period. These grants will be made available only during the final two years of each ten-year planning period. Planning grants will be used to assist the county boards and area vocational centers with a portion of the cost for professional services associated with the research and development of the ten year CEFP. The SBA will establish the amount available for distribution prior to each ten year planning cycle.

3.3.D School Construction Grant "Need"

The remaining monies determined by the Authority to be available for distribution from school construction funds shall be allocated and expended on the basis of needs and efficient use of resources. The SBA shall make funding determinations in accordance with the provisions of the Code of West Virginia and shall assess existing school facilities and each facilities plan in relation to the needs of the individual student, general school population, the communities served by the facilities and facility needs statewide. Grant funds shall expire based on a three year contractual agreement between the SBA and the grantee and may be extended up to two years at the discretion of the SBA.

3.3.E Major Improvement Program Grants

Funds appropriated by the legislature to the school major improvement fund shall be distributed by the SBA on the basis of need. These funds are for major renovation or rehabilitation of existing facilities and for additions to existing schools. Grants to counties from the major improvement fund are for projects of at least \$50,000 but not exceeding \$500,000. A county may be eligible for major improvement funds provided:

1. The county has an approved Major Improvement Plan (MIP). (Appendix B)
2. The county is ready to expend the funds in the fiscal year monies are distributed to them.
3. The county has spent, in the previous year, an amount in maintenance of their schools equal to the average of the lowest three of the past five years maintenance budget.
4. The county has budgeted in their current maintenance budget an amount equal to or greater than the average determined in item three above.

3.3.F School Access Safety Grant

Funds appropriated by the legislature to the School Access Safety Fund shall be distributed by the SBA based on the availability of

funding. These funds are for improvements of school access safety and will be distributed in accordance with SBA Policy provided the county board is in compliance with all requirements in Appendix K of the SBA Policy and Procedures Manual.

§164-2-4 HVAC Engineering Studies

- 4.1 Needs and MIP projects involving heating, ventilating and air-conditioning renovations must be accompanied by an engineering study and complete estimate of probable cost to be considered for funding. The engineer performing the study must be licensed in the State of West Virginia and must be registered in the discipline for which the proposed renovation relates. Projects involving the redesign of HVAC systems must be accompanied by an engineering study outlining the scope of work proposed and cost estimate for completion.

§164-2-5 Awarding of Funds

- 5.1 Any project for which funds are being requested from the SBA must be part of an approved CEFPP identified either as a major need or major improvement.

5.1.A Three Percent (3%) Statewide Grants

1. Projects eligible for three percent (3%) statewide funds include any facility that serves the educational community statewide or houses educational programs that are under the jurisdiction of the SBE, regional vocational-technical centers, as well as county vocational centers.
2. Projects submitted for competitive funding from the three percent (3%) designation must include information regarding the following areas as described in the "Handbook on Planning School Facilities" wherein applicable:
 - a. An analysis of the community being served.
 - b. A study of the population and enrollment.
 - c. The education plan.
 - d. An evaluation of the existing facility.
 - e. The financing plan for the project.
 - f. Translation of educational needs into facility needs.
 - g. A School Construction Fund Project ("Needs") Executive Summary (SBA 120)

- b. Funds from federal, state and local sources for emergency repairs and replacements must have been identified and included in the project budget.
 - c. All insurance claims must have been filed and amount of settlement determined. Insurance coverage of a facility should be equal to the cost of replacement.
3. State School Improvement funds including Emergency Grants will only be considered for buildings covered by flood insurance or buildings effected by flooding that are outside the established 100 year flood plain and therefore not eligible for flood insurance. Buildings eligible for flood insurance but not insured by the county will not be eligible for SBA funding.
4. Because of limited resources in the Emergency Fund, and to encourage local boards of education to appropriately insure their facilities, grants from the Emergency Fund shall be limited to an amount not to exceed two million dollars for any and all damage to schools incurred during any given catastrophic event.
5. Application shall be made within ten days after said emergency to the SBA and in accordance with adopted SBA procedures. (Appendix D)

5.1.D CEFPP Planning Grants

1. It is the responsibility of each county to develop and implement a ten-year Comprehensive Educational Facilities Plan (CEFP) in accordance with SBE Policy 6200 beginning with the year 1990 and for each successive ten-year planning period thereafter.
2. The SBA may provide a one time grant during the allotted planning period to attain professional consultation in the development of said county-wide CEFP. (Appendix E)
3. The planning/grant period shall include the final two years of the existing ten-year planning period and shall be available during each successive ten-year planning period as funds are determined available for distribution by the Authority.
4. The effective date for new CEFPs shall be established by the Authority. Therefore, the current grant period shall incorporate both the year before the end of the ten year

planning cycle and the year of the expiration of the ten year planning cycle. Availability of funds shall begin on July 1, twenty-four months prior to the deadline for submission of the ten year plan and expire on June 30, of the year the plan is completed. Any monies remaining in the fund shall be expired to the construction fund.

5. Grants shall not exceed 50% of a county's cost for said consulting services and limits of the grant amount shall be established by the Authority for each ten year planning period.
6. Professional consultants shall be selected in a manner approved by the SBA. To achieve consistency among all county plans, the SBA may provide educational facilities planners and architectural/engineering consulting professionals to assist with the preparation of each county plan. (Appendix E)
7. The SBA and SBE may monitor the planning process and set submission deadlines for portions of the CEFP.

5.1.E School Construction Funds "Needs" Grants

1. Each county in West Virginia who has an approved CEFP is eligible for capital improvement funds from the SBA based on the needs of the facilities in their district.
2. Each county is responsible for determining in their facilities plan the specific project(s) for which SBA School Construction Fund ("Needs") will be requested. This individual project will be fully developed in regard to the issues indicated in 1.1 in the SBA Policy and Procedures Handbook and have a SBA School Construction Funds Project ("Needs") – Executive Summary completed. (SBA 120)
3. Proposals for School Construction Fund projects must be part of an approved CEFP, and submitted at the request of the Authority based upon the availability of funds for distribution.
4. The SBA will appoint a plan review advisory team that will assist the SBA staff in an advisory role during the review of each project submitted by the counties. The Authority reserves the right to request review of any or all projects submitted to them that they feel has special merit or extenuating circumstances. (Appendix F)

5. The Authority will review and evaluate the projects based upon criteria set forth in WV Code 18-9D-16(d) and 1.1 of the SBA Policy and Procedures Handbook. The SBA staff will provide on-site information and project evaluations for all projects to the Authority for final review and funding consideration along with a prioritized list of potential projects based on staff and advisory team evaluations. At the conclusion of each funding cycle, each county shall receive an explanation of the evaluating factors underlining the decision of the Authority to fund or not to fund the project. Additionally, prior to final action on approving projects for funding, the Authority shall submit a certified list of the projects to the Joint Committee on Government and Finance.

5.1.F Major Improvement Funds

1. Each county or educational agency that has an approved Major Improvement Plan (MIP) as part of an approved CEFP and meets the criteria in Section 2.3 of the SBA Policy and Procedures Handbook is eligible for capital improvement funds from the SBA's Major Improvement Fund.
2. Major Improvement Plan (MIPs) are developed by each county or educational agency in accordance with the guidelines in Appendix B and approved by the SBA. The MIP shall address how the proposed plan, and any project in it, meets the following goals and objectives as established by the SBA in Appendix B.
3. Each county shall submit as part of their annual CEFP Update a prioritized list of MIP projects for SBA review. The most needed project shall be further developed to address the criteria of the SBA as indicated in Appendix B and submitted for funding consideration.
4. The SBA shall review and rate the projects for funding each year in the manner prescribed in Appendix B.
5. MIP Funds shall expire based on a two year contractual agreement between the SBA and the grantee. An extension of funds will not be granted.

5.1.G School Access Safety Grants

Each county board with an approved School Access Safety Plan who meets the eligibility requirements of the School Access Safety Act (Rule 7 and Appendix K) will qualify for school access funds.

5.1.H Reserve Funds – Needs Projects

SBA Reserve Grant funding may be provided by the Authority at its discretion in an amount not to exceed \$500,000 for meritorious projects determined to be eligible under the “Needs” based school construction fund. These funds shall be set aside and not expended awaiting final approval of the project budget by the SBA. The purpose of these funds is to establish SBA support for a project and to acknowledge the intent of the Authority to fund the appropriate balance of the project as funds become available and the county finalizes an SBA approved finance plan for the project. These funds will be held by the Authority for a period established in the grant agreement between the county board and the SBA not to exceed eighteen months. Upon approval of the actual needs grant to develop the project an additional three (3) years will be provided to complete the design and construction of the facilities established in WV Code 18-9D-15(f). Should the grant recipient fail to secure the remaining project funds to complete the entire finance plan for the project these funds will automatically revert to the school construction fund and be made available for distribution to other projects.

§164-2-6 Utilization of Funds – Authorized Expenditures

6.1 Bond Retirement

6.1.A With approval of the funding agency, SBA funds may be dedicated to the payment of local bonds that were used for the purposes defined in an approved facility plan.

6.1.B With SBA approval, state funds may be used for the repayment of local bonds issued by the Authority for the benefit of the county, but are in addition to bond monies made available by the Authority.

1. Construction Costs –

SBA funds may be used for capital improvement projects including new construction, additions or renovations to existing facilities, provided, such project meet the SBA guidelines and are approved by the SBA. Allowable costs of construction will be reviewed and approved annually by the Authority on or before the June Quarterly meeting. SBA funds cannot be transferred from one project to another.

2. Major Improvement Funds

MIP Grants awarded to an agency for projects from their MIP must be for projects of at least \$50,000 but not

exceeding \$500,000. It is intended that each county's routine maintenance budget be responsible for general repairs and upkeep of school facilities. Projects designed to supplant these county funds will not be considered as fundable from the major improvement fund.

§164-2-7 SBA Funds Accounting

7.1 Treasurer's Report

7.1.A A separate account shall be set up within the fiscal records of the individual county to account for all SBA funds. All records shall be maintained pending a final project audit.

7.1.B Funds expended for a multi-county project shall be distributed to the county designated as the fiscal agent for the project.

7.2 Budget Coding

7.2.A County budgets must be supplemented when a grant transfer letter is received from the SBA. This letter will accompany the Grant Agreement and will inform the county that monies will be transferred from the state account to the county's account at the custodial bank at the time the signed contract is received by the SBA.

7.2.B Monies must be supplemented into the general current expenditure funds (Fund 1).

7.2.C. All funds to be utilized for capital improvement, regardless of the source, are to be coded in project 25 utilizing the following code numbers:
25X1X – All SBA Funds
25X3X – Local Funds
25X4X – Federal Funds
25X5X – Better School Amendment Funds
25X9X – Other Funds

§164-2-8 Reimbursement Procedures

8.1 Funds will be distributed through a requisition process wherein:

8.1.A Original invoices are submitted to the SBA offices and to the trustee of the account (bank) before the fifth (5th) day of each month. Submission to both entities is required to transact payment to the county.

- 8.1.B Invoices for each project code will be grouped together with one requisition cover sheet for each project code. (SBA 104)
- 8.1.C Each requisition sheet must be signed by the superintendent of schools with certification that the previous month's invoices were paid to the vendors (Item C on Exhibit B)
- 8.1.D Invoices are reviewed in the SBA Office between the fifth (5th) and the tenth (10th) of each month.
- 8.1.E Checks are written to reimburse the counties for approved expenditures on the fifteenth (15th) of the invoice month unless additional data is requested by the SBA.
- 8.1.F Should clarification of a specific invoice or the status of a specific project be required, payment may be delayed until support data to verify the expenditure is provided to the SBA.
- 8.1.G A BP-13-A or SBA Certificate of Contract Completion for Multiple Prime Projects (SBA 139) form to verify completion of a contract must be submitted prior to the request for final payment on every contract. A retainage equal to five percent (5%) of the total contract construction cost will be held by the SBA until the contract is officially closed by submission of the completed BP-13-A and signed by a representative of the SBA. (WVDE BP-13A & SBA 139)
- 8.1.H No educational facility shall be occupied without prior approval from the Authority and the appropriate state and county regulatory agencies.

Appendix B

SCHOOL MAJOR IMPROVEMENT PLAN

The West Virginia Legislature amended 18-9D of the West Virginia Code in 1994 creating guidelines pertaining to quality educational facilities and creating a School Major Improvement Fund to be administered by the School Building Authority of West Virginia. The purpose of the major improvement program is to provide needs based grants to county boards of education, the State Board of Education for certain statewide educational facilities and/or administrative councils of area vocational centers for facility renovations, maintenance and construction projects with a cost greater than fifty thousand dollars but may not exceed five hundred thousand dollars. Projects selected for funding by the SBA must be included in an approved Major Improvement Plan (MIP) and must meet the following goals:

1. Student health and safety, including, but not limited to, critical health and safety needs; and
2. Economies of scale, including scheduled preventive maintenance: Provided, that each county board's school maintenance plan shall address scheduled maintenance for all facilities within the county.

The Major Improvement Plan shall include a prioritized list of all the major improvement projects within the county. Such prioritized list shall be one of the criteria to be considered by the authority in determining how available funds shall be expended. In prioritizing the projects, the agency submitting a plan shall make determinations in accordance with objective criteria provided in their MIP. The MIP shall include a repair and replacement schedule for all school facilities and the manner and timeline for all activities within the plan.

All MIP facility needs must be identified in Section E of an approved Comprehensive Educational Facilities Plan. Expenditures for all facility improvements other than normal routine maintenance shall be documented and included in the annual update provided to the SBA. Routine maintenance remains the responsibility of local educational agencies and these costs will be reported through the annual financial reporting process provided to the State Department of Education.

MAJOR IMPROVEMENT PLAN (MIP)

General

Each county board of education, State Board of Education, when applicable or administrative council of an area vocational center shall develop a ten year school Major Improvement Plan (MIP) as a section of their CEFP before seeking funds from the School Building Authority (SBA) for major improvement projects. An approved school Major Improvement Plan (MIP) is required prior to the distribution of state funds for a project pursuant to the requirements of West Virginia Code Chapter 18-9D-15. Initially, the MIP shall be submitted to the school Building Authority for approval by April 1, 1995 to qualify for MIP funding available in 1995 and shall be amended annually to summarize activities and to identify progress being made on school improvements. The MIP shall be part and parcel of the county Comprehensive Educational Facilities Plan (Section E of the CEFP) and together address the renovation, repair and safety upgrading of existing facilities, and equipment, building systems, utilities, and other similar items in connection with renovations, repair and upgrading of facilities. Major Improvement Projects may not include such items as books, computers, equipment used for instructional purposes, fuel, supplies, routine utility service fees, routine maintenance costs, ordinary course of business improvements and other items which are customarily deemed to result in current or ordinary course of business operating expenses.

Major Improvement funding shall be provided by the Authority on the basis of need and efficient use of state funds for construction and renovation projects. In so doing, both short and long term effects of building repairs and maintenance will be considered. All projects submitted to the Authority for funding consideration must be compatible with the county CEFP goals and objectives as well as the overall goals of the Authority.

Funding will not be distributed to any county board that does not have an approved school Major Improvement Plan and is not prepared to commence expenditures of such funds during the fiscal year in which the moneys are distributed: grant funds allocated to a county board and not distributed to that county board shall be available to the county board for a period of two years. Any funds which are unexpended after a two-year period shall be redistributed by the SBA on the basis of need from the school major improvement fund in that fiscal year.

I. KEY ELEMENTS OF THE PLAN

The following key elements of the major improvement plan must be included:

- A. Goals and Objectives of the Major Improvement Plan
- B. Historical Data Regarding Previous Building Improvement Activities
- C. Maintenance Plan
- D. Financing Plan
- E. Objective Evaluation of the Effectiveness of the Plan

- F. Summary of Project Submitted for Competitive Funding
- G. Annual Update
- H. Public Input Assurances

A. Goals and Objectives of the Major Improvement Plan

Each county board of education or other administrative unit qualifying for major improvement funds shall formulate goals and objectives to be accomplished by the MIP. The goals and objectives shall reflect an objective means to resolve deficiencies in educational facilities identified within the plan. The following aspects must be addressed within the plan:

- 1. Improving Health and Safety
 - a. Improving facilities to meet all applicable codes and federal and State Mandates (examples – EPA, Asbestos, ADA, Fire Marshal, Board of Risk, Health Department – Radon, Lead, Underground Tanks, and other applicable codes)
 - b. Improving Indoor Air Quality (i.e., ASHRAE)
 - 1. Temperature
 - 2. Humidity
 - 3. Filtration
 - 4. Ventilation
 - 5. VOC (Volatile Organic Compounds)
- 2. Improving the Facilities Ability to Deliver the Instruction Program
- 3. Increasing the Life Expectancy of Building Components by:
 - a. Establishing or improving a Routine Maintenance Schedule
 - b. Establishing or improving a Preventive Maintenance Schedule
- 4. Assuring the Prudent and Resourceful Expenditure of Local and State Funds by:
 - a. Establishing Short and Long Range Cost Effective Maintenance Planning
 - b. Effectively and Efficiently Managing Energy Sources
 - c. Performing Life Cycle Cost Analysis When Purchasing Building Components
 - d. Establishing Cost Effective Purchasing Practices

- e. Establishing Staff Training Programs for Effective and Current Maintenance and Custodial Methods

B. Historical Data Regarding Previous Building Improvement Activities

1. A survey of the previous five year building improvement activities must be performed to provide a historical baseline of expenditures and improvements. Previous maintenance budgets and records of building improvements can be used to identify where funding has been concentrated, where the greatest needs may exist and the scope of future countywide improvements.
2. A five year history of maintenance expenditures must be performed to qualify for funding. County boards of education must have budgeted in the current fiscal year, an amount equal to the average of the lowest three years expenditures out of the past five years. This information must be included with the annual CEFPP update.
3. County maintenance expenditures should be comparable to the average regional and national square footage costs and reflect sufficient funding to adequately support the number of facilities being maintained. When insufficient funding is discovered, a plan of action should be implemented to address the shortfall. Areas of consideration should be:
 - a. An increase in local building improvement funding
 - b. More efficient use of funds
 - c. Increased performance of the in-house staff (i.e., staff development)
 - d. Additional staff or assistance through contracted maintenance
 - e. A reduction in the number of buildings to be maintained
 - f. Life cycle cost analysis is recommended to help identify the most cost effective means to improve maintenance activities

C. The Maintenance Plan

Included as a component of the Major Improvement Plan shall be a facility maintenance plan. The Maintenance Plan shall further the goals and objectives of the overall Major Improvement Plan and address specific needs of each facility by identifying building maintenance and improvement strategies that will improve the health and safety of the facility and extend the building's useful life. Major components of the Maintenance Plan are:

- Facility Evaluations
- Building Components
- Priorities List of Deficiencies
- Preventive and Routine Maintenance Plan

- Methods for Performing Maintenance
- Maintenance Plan Cost Summary
- Timeline for Implementing the Plan

1. Facility Evaluation (SBA Form 134)

Determining the present condition of building components as well as the overall condition of each facility is a vital part of school improvement. An evaluation of the building envelope and major components must occur and a detailed assessment performed in order to determine prioritized needs. Local and state funding should be directed toward improving those areas of the facility that address the goals and objectives of the CEF, Major Improvement Plan and those of the Authority.

2. Building Component Inventory (SBA Form 135)

The success of the MIP will be contingent upon accurate information compiled on building components and an effective plan to maintain these components in a well organized cost effective manner. An inventory of types and quantities of equipment and materials including descriptive data must be recorded and placed in a maintenance inventory plan for reference. The identified building component within the inventory can then be maintained based on a prioritized schedule for optimum use.

3. A List of Priorities Deficiencies (SBA Form 136)

The maintenance plan shall include a list of site specific building deficiencies prioritized by need as reflected in the goals and objectives of the major improvement plan. Such priority list shall be one of the criteria to be considered by the Authority in determining how available funds shall be expended. Prioritized maintenance projects may qualify for MIP funding.

4. Preventive and Routine Maintenance Plans

The ultimate goal of any maintenance program is to maintain building components in a manner that reduces emergency repairs and extends their useful life. The maintenance plan should begin with a program to perform maintenance on building components that may fail if not properly maintained and in so doing may adversely affect the health and safety of the building occupants and the operational budget of the county. The preventative and routine maintenance program that is to be established must include long and short range objectives, identify the specific programs for each building and a detailed list of scheduled maintenance to be performed.

5. Methods for Performing Maintenance

Various approaches will be taken to performing building maintenance. In-house and contracted maintenance staff or a combination of the two are currently being used. The program should identify the most cost effective manner of performing the vital maintenance program. Special emphasis must be given to staff development for in-house maintenance staff and the development of experience and qualification requirements for contracted maintenance services. A copy of the staff development program and staff experience for persons performing maintenance duties shall be made available for SBA review upon request.

6. Maintenance Plan Budget Cost Summary

The annual and long range cost of implementing the maintenance plan as well as the anticipated expenditures should the program not be implemented must be included in the plan. Identified cost should include but may not be limited to the following:

- a. Maintenance Plan Program Development
- b. Staff Development
- c. Preventive Maintenance Initiative
- d. Routine Maintenance
- e. Equipment Replacement Cost
- f. Materials and Equipment Associated with the Program
- g. Show on separate form Avoided Expenditures (should the program be implemented)

7. Timeline for Implementing the Plan

The full implementation of the maintenance plan will occur over the ten year period covered by the initial plan. However, milestone dates must be established that coincide with the prioritized list of maintenance to be performed. Specific objectives must be indicated in the plan and progress toward the completion of projects reported in the annual update submitted to the SBA. Also, included in the timeline for the replacement of facilities should be directly related to the costs required for its maintenance and its ability to facilitate the delivery of the desired educational program.

D. Major Improvement Finance Plan

Financing for the Major Improvement Plan may come from a number of sources, the major contributor being local funds. The intent of the School Building Authority's Major Improvement Program is to provide state funds on an annual basis to assist the counties in doing major improvements for projects exceeding \$50,000 and less than \$500,000. These funds shall not supplant local funding for school improvements and will be distributed on a school construction fund

“needs” basis. However, county boards of education must comply with the provisions of 18-9D as well as the SBA guidelines described herein to qualify for funding. Projects that do not comply with the funding criteria established by the SBA must be addressed using other funding sources. Consideration should be given to the local maintenance budget, local bond proceeds or federal and state grants (Energy, Asbestos, ADA, and Special Education Grants, etc.). Consideration should also be given to approved lease purchase programs, performance based contracting or reinvestment of saving derived from capital improvement projects funded from local or state dollars.

The Major Improvement Plan must identify the funding source for each project identified in the ten year plan regardless of the immediate availability of the proposed funding. Additionally, the following criteria should be considered when preparing the financial strategy to implement the plan:

1. Major Improvement Funds shall be used in conjunction with local funds to effectively and efficiently meet the needs of educational facilities. Major Improvement Plan funds will not be used to supplant local maintenance funds.
2. Major Improvement Plan funding should not be used for projects in schools/facilities targeted to close within the Comprehensive Educational Facilities Plan.
3. Student occupied facilities shall be given first priority for improvements.
4. Funding for schools that do not meet Economies of Scale will be based on:
 - a. A waiver being granted for a school project when the specific school is determined to be geographically isolated from other school populations and eliminates the potential for attaining enrollment economies.
 - b. A waiver being granted when a school is the only facility in the county that provides service to students in the particular grade levels included in the school. For example – Is this the only middle/high school or elementary school in the county?
5. Projects within the Maintenance Plan that are eligible for Major Improvement Plan funding will be awarded on their ability to further the overall goals of the Agency’s CEFP, Major Improvement Plan and the overall goals of the SBA.
6. Funding will not be distributed to any agency that does not have an approved school major improvement plan or to any agency that is not prepared to commence expenditures of such funds during the fiscal year in which the monies are distributed. Funding shall be deposited in an SBA

account to the credit of that agency, such funds will remain to the credit of and available to the agency for a period of two years. Any monies which are unexpended after a two-year period shall be redistributed by the SBA on the basis of need from the school major improvement fund in that fiscal year.

7. Agencies may use monies provided by the authority in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center will be in accordance with a payment method approved by the authority.

E. Objective Evaluation of the Effectiveness of the Plan

Evaluating the success or failure of building improvement strategies must be quantified and adjustments made when the effects of a particular project or series of projects is known. Each project submitted to the SBA for funding consideration must be accompanied by a specific objective to be accomplished and thereby creating a means to evaluate how the project succeeded or failed to further the goals and objectives of the project and the overall plan. The evaluation shall be submitted upon request to the SBA at intervals appropriate to measure the short and long range affects of a project or improvement plan.

F. Project Submission Requirements (SBA Form 144 – Executive Summary)

Supportive data for projects submitted for funding consideration by the SBA shall meet the requirements of the Major Improvement Plan indicated herein. Sufficient data must be included to address how the current facilities do not meet and how the proposed project does meet the following goals:

1. Student health and safety;
2. Curriculum improvement and diversification, including computerization and technology and advanced senior courses in science, mathematics, language arts and social studies;
3. Adequate space for projected student enrollments;
4. Economies of scale, including compatibility with similar schools that have achieved the most economical organization, facility utilization and pupil-teacher ratios;
5. Reasonable travel time and practical means of addressing other demographic considerations;

6. Multi-county and regional planning to achieve the most effective and efficient instructional delivery system – If a project is to benefit more than one county in the region, the submission data shall state the manner in which the cost and funding of the project shall be apportioned among the counties;
7. Innovations in education;
8. To what extent does the project demonstrate an effective and efficient use of funding;
9. To what extent does the project impact the agency's preventive maintenance plan; and
10. To what extent does the project further the overall goals and objectives of the SBA and the MIP.

G. Annual Update (SBA Form 145)

The Major Improvement Plan shall be updated annually to reflect projects completed and new or continued needs remaining to be addressed. Also, building improvement activities in the previous year shall be documented and a detailed summary of the accomplishments provided to SBA for review. This information shall be provided to the SBA with the CEFP Annual Update on or before December 1, 1996, and continue each subsequent year. The SBA may require that a county, the state board or the administration council of an area vocational center modify, update, supplement or otherwise submit changes or additions to an approved Major Improvement Plan pursuant to the requirements of 18-9D-16(J).

H. Public Input Assurances

Pursuant to Section 18-9D-16c of the West Virginia Code, the Major Improvement Plan shall include assurances of broad based public input in the planning process. The submission of each plan shall be accompanied by a synopsis of all comments received and a formal comment by the county board, the State Board or the administrative council of an area vocational educational center submitting the plan. A committee made up of the administrative staff having expertise in school construction and maintenance, and other staff members as determined by the superintendent as well as lay persons from the community shall cooperatively develop the plan. Once developed, the proposed plan shall then be made available for public comment for a period of 30 days prior to public hearing and submission to agency's board for approval. The approved plan shall then be submitted to the SBA for final review and approval.

I. Amending the Plan

The Major Improvement Plan may require amendments in response to changing facility conditions. SBA Form 106 must be used to amend the scope of a project. Budget Amendments relating to the plan or a specific project within the plan must also be requested using SBA Form 106. Refer to Section 1.6 of the SBA Policy and Procedures Handbook for additional amendment requirements.

J. Project Selection Process

MIP Grant requests shall be submitted as a part of the annual CEFP and MIP update in accordance with 2.4 F of the SBA Policy and Procedure Handbook. MIP Projects will be reviewed and evaluated by the SBA staff using the Project Evaluation Instrument (SBA Form 134). Meritorious projects will be selected on the basis of their compliance with the following review criteria:

1. Health and safety
2. Curriculum and improvements
3. Adequate space for project enrollment
4. Economies of scale
5. Travel time and demographics
6. Multi-county and regional cooperation
7. Educational innovations
8. Effective and efficient use of funds
9. Preventive maintenance
10. Furtherance of local and SBA goals and objectives

Projects shall be submitted annually for SBA consideration on or before January 15. Each project submitted will be evaluated by the SBA staff and on-site visits will be performed as necessary to familiarize the staff with all aspects of the project and to verify the submitted data. Interviews will be held with the superintendents or project representatives for statewide or area vocational projects when additional information regarding the specifics of the proposal is needed. After the staff review process is complete, the project data will be provided to the School Building Authority for final consideration. The staff review will include a recommended priorities list of statewide projects for SBA consideration. The Authority will determine the number of projects to be considered in each funding cycle and award meritorious projects to the extent funds are available.

Appendix D

SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA EMERGENCY FUND

- I. Eligibility Criteria
 - A. The emergency situation must have been generated by an Act of God, i.e., fire, wind, flood, storm, earthquake, etc.
 - B. Federal, state and local funds for emergency repair/replacement must have been identified and exhausted.
 - C. All insurance claims must have been filed and amount of settlements determined. Insurance should be at the cost of replacement level.
- II. Application Process
 - A. Immediate Notification
 1. If it is anticipated that SBA funds will be requested, immediate notification and involvement of the SBA staff is required.
 2. Within 10 days of the emergency, the county must submit to the SBA a detailed report to describe:
 - a. the extent of the damages,
 - b. the effect of the damages on the educational program, and
 - c. the temporary measures taken to provide services to students.
 - B. Formal Application Process
 1. The county must submit to the SBA documentation to verify the eligibility of the project based on the eligibility criteria above.
 2. A facility plan designed to repair or replace the damaged properties must be submitted to the SBA. The facility plan must include data regarding:
 - a. enrollments, present and 8th year projection,
 - b. economies to be implemented by the project,
 - c. effect of the project on the educational plan, and

- d. detailed description of work to be completed.
3. A Finance Plan for the project must be submitted to the SBA. The plan is to include:
 - a. Amount and description of local funds committed to the project,
 - b. Amount and description of federal funds available for the project,
 - c. Amount of any insurance settlement from the damages,
 - d. Amount of funds available from all other sources, and
 - e. Amount requested from the SBA. Support data must be provided to verify estimates of costs.
4. All data must be submitted at least one month prior to the quarterly SBA meeting at which the request will be made. This will provide time for staff review and visitation.
5. Any grant from the SBA Emergency Fund is subject to the approval of the Authority and shall not exceed two million dollars (\$2,000,000). The county superintendent must appear before the SBA with a formal proposal presentation regarding the request for funds. Presentation is to be limited to ten minutes.
6. Emergency Fund Grants are subject to the usual guidelines and regulations of the SBA regarding the expenditure of funds, including the economies of scale. Any project proposed for funding from the SBA Emergency Fund must be included in the county and regional CEF.

Appendix E

PLANNING GRANTS

The SBA may make available funds to assist each county in contracting for the services of a professional planner to develop the ten year CEFP that is to be completed and approved based on the schedule provided by the SBA. These funds shall not exceed 50% of the actual planning contract amount. The SBA will determine the amount of available funding to be provided prior to each ten year planning cycle. The CEFP shall be developed in accordance with State Board Policy 6200 and the attached SBA procedural flow chart.

In order to receive these funds, the county must utilize the following procedures:

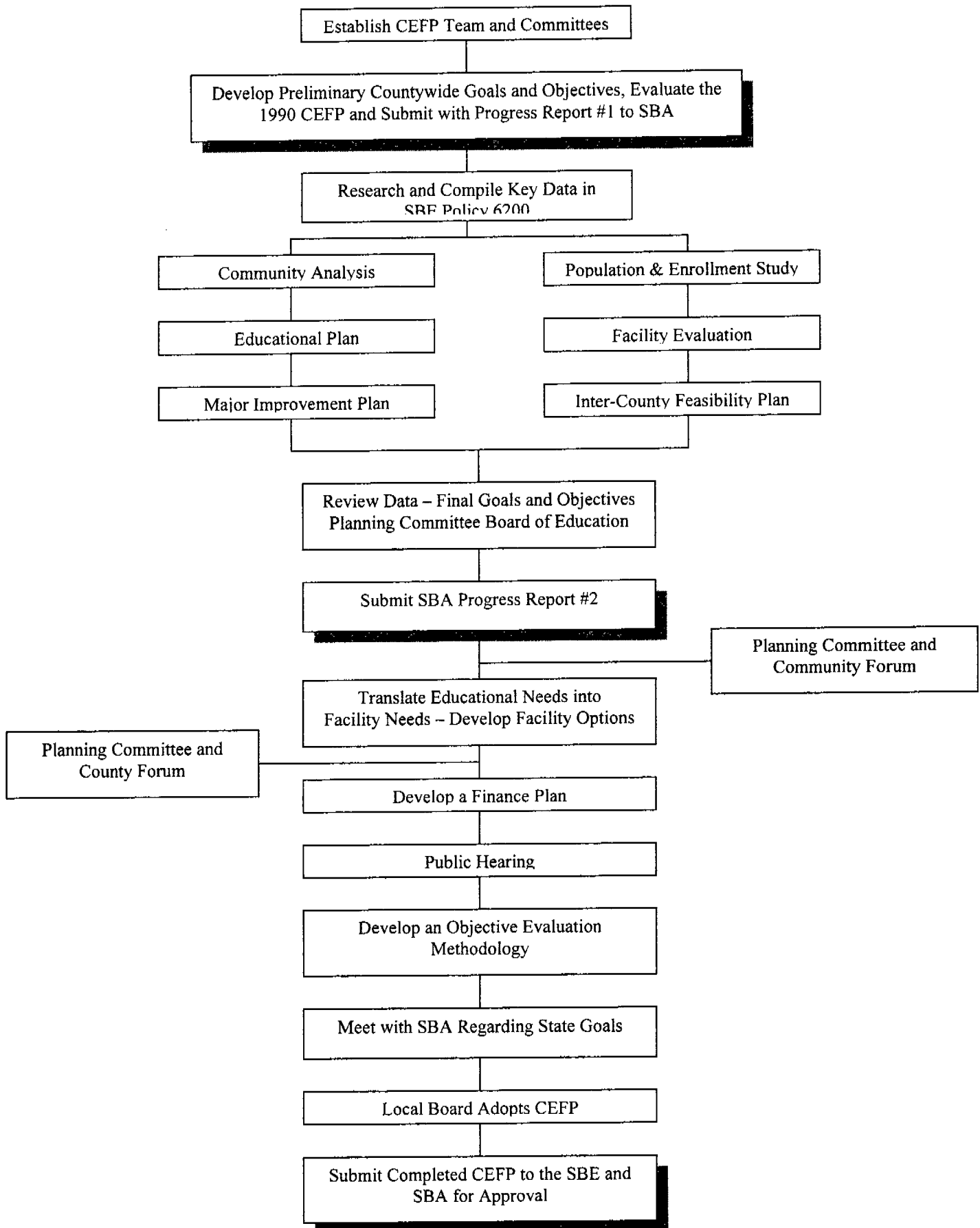
1. Appropriate application shall be made to the SBA for the funds in advance of advertising for consulting firms to assist with the development of the CEFP.
2. The county will utilize an SBA approved Request for Proposal (RFP) for selection of Professional Services and select a team in accordance with the procedures defined in WV Code 5G-1-3. The team shall consist of qualified educational planners (REFP) as well as a qualified architect licensed in the State of West Virginia. To encourage consistency in demographics and enrollment projections throughout each plan, the SBA may provide a demographer to perform demographics and school enrollment projections.

The RFP shall define the scope of work to be performed in the development of the CEFP. The SBA will monitor the progress of the plan development at various stages and upon request the county will adjust the process to comply with SBA requirements.

3. A list of all firms responding to the RFP will be submitted to the SBA for review and approval of each firm's qualifications.
4. Upon completion of the selection process and successful negotiations with the highest qualified professional firm, a copy of the contractual agreement shall be provided to and approved by the SBA. Any changes in the scope of work or change order to the contracted amount must be approved by the SBA to attain state reimbursement for the expenditure.
5. Upon completion of CEFP Progress Reports #1 and #2, the county may submit a request for payment to the SBA for review and consideration. If all expenses are deemed appropriate, a payment shall be made to the county equivalent to 50% of the total planning grant contracted fee or an amount not to exceed 50% of the SBA Planning Grant amount. The SBA will remit the balance of the planning grant upon completion of the CEFP and its approval by the SBE and the SBA.

planninggrants

COMPREHENSIVE EDUCATIONAL FACILITIES PLAN DEVELOPMENT



* Shadow boxes indicate that submissions or approvals are required at that step.

Appendix F

SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA

PROCEDURES FOR REVIEW OF CONSTRUCTION FUND PROJECTS (Needs Funding)

The SBA staff will utilize the following approach to review the projects submitted by each county for competitive school construction funding.

Each county in West Virginia who has an approved CEFP is eligible for capital improvement funds from the SBA based on the needs of the facilities in their district.

Each county is responsible for determining in their facilities plan the specific project(s) for which SBA school construction funds will be requested. This individual project will be fully developed in regard to the issues indicated in Section 1.1 of the SBA Policy and Procedures Handbook and have a SBA School Construction Fund Project Summary Report completed.

Proposals for school construction fund projects must be part of an approved CEFP, and submitted at the request of the Authority based upon the availability of funds for distribution.

The Authority will review and evaluate the projects based upon criteria set forth in 1.1 of the SBA Policy and Procedures Handbook. A prioritized list of projects to be funded equal to the amount of the funds available during the specific funding cycle will be developed by the Authority.

The SBA will appoint a project review team that will assist the SBA staff in an advisory role during the review of each project submitted by the counties. The Authority reserves the right to request review of any or all projects submitted to them that they feel has special merit or extenuating circumstances.

1. Review of the competitive school construction fund projects
 - a. The SBA staff will evaluate the school construction fund projects in accordance with WV Code 18-9D-16 as well as the mission and goals of the Authority as in 18-9D-15.
 - b. This review will utilize the following criteria to evaluate and make recommendations concerning merit for school construction funding.
 - (1) Health and safety
 - (2) Curriculum and Instruction
 - (3) Adequate Space for Projected Enrollment
 - (4) Economies of Scale
 - (5) Travel Time and Demographics

- (6) Multi-county/Regional Aspects
 - (7) Educational Innovations
 - (8) History of local funding efforts
(to the extent constitutionally permissible)
2. Verification of Evaluations of Existing Facilities – School Construction Fund Projects
- a. An on-site evaluation report will be prepared by the SBA staff for all school construction fund projects throughout the state as identified by the Authority. This report will:
- (1) Verify the scope of the project
 - (2) Assess cost estimates of proposed facilities
 - (3) Evaluate the feasibility of the project
 - (4) Consider the option of new vs. renovation
 - (5) Address transportation and demographic issues
3. The on-site evaluation report will be provided to the Authority for consideration in their deliberation and final selection of projects to be funded from the construction funds account.
4. Administrative Interview

Before the Authority determines the statewide prioritized list, members will identify projects where specific questions or clarifications are needed in order to consider the project for funding. Superintendents and county board presidents will be asked to appear before the Authority to make presentations regarding their individual projects and to answer questions of the Authority members.

Upon a majority affirmative vote of the members present, the interviews may be held in Executive Session in accordance with WV Code 6-9A-4 (9) which provides that such session may be held for: “matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interest of the state or any political subdivision.”

- a. Purpose of the Interviews
- (1) To provide an opportunity for the local board of education to express the importance of the project to the school system and its impact on the students who will attend the school;
 - (2) To clarify any issue or question regarding the project;
 - (3) To familiarize the SBA Members with individual projects and provide opportunity for questions prior to deliberations.

- b. Interview Format
 - (1) A short presentation by the county administration emphasizing both cost savings to be gained as well as educational opportunities to be achieved should the project be funded. A strict limitation of 5 minutes for oral presentations by each county will be enforced by the Authority.
 - (2) Questions will be asked by the SBA Members concerning the project. A 10 minute limitation will be used for this phase of the interview component.

- c. Content of the Superintendent's Comments
 - (1) The presentation should address the specific costs and savings as can best be estimated from the data available to the administration. This should include such items as transportation, personnel, O & M and administrative costs.
 - (2) Projected timelines should be provided on the completion of design, bidding and construction components. Status of the project including architectural designs, site selection, and/or other work that has been completed prior to the interview date should be emphasized.
 - (3) Any handouts and/or photos that will help clearly address the need of this project, its impact on the quality of education, and the efficiency of administering the county school system maybe utilized during the interview process.
 - (4) Be prepared to work with the SBA to develop a project budget for the construction of the proposed facility during this session.

- 5. After these steps are completed, the Authority will have gathered and compiled sufficient data to make judgmental decisions as to which projects will be funded through school construction fund grants.

- 6. Prior to final action on approving projects for funding, the Authority shall submit a certified list of the projects to the Joint Committee of Government and Finance.

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EMERGENCY RULE QUESTIONNAIRE

DATE: July 20, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) School Building Authority of WV

2300 Kanawha, Blvd., Charleston, WV 25311

Phone (304) 558-2541

EMERGENCY RULE TITLE: Funding School Building Authority Projects

1. Date of filing July 23, 2007

2. Statutory authority for promulgating emergency rule:

§18-9D-20

3. Date of filing of proposed legislative rule: July 23, 2007

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? ~~The rule revises language that is in SBA's current procedural policy but~~
this is the first time that this rule has been filed with LOCEA and

processed through the legislative review process.

5. Has the same or similar emergency rule previously been filed and expired?

No, this is the first time that this rule has been filed as a legislative rule

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

One or more provisions of this rule may affect the the funding cycle scheduled for

December, 2007. Therefor it is necessary to file this rule as an emergency rule.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

One or more of the provisions included in this rule could possibly affect the SBA
funding cycle scheduled for December, 2007.
