

TITLE 2 PUBLIC FINANCE
CHAPTER 61 STATE INDEBTEDNESS AND SECURITIES
PART 8 APPROVAL OF REFUNDING BONDS

2.61.8.1 ISSUING AGENCY: Department of Finance and Administration, 180 Bataan Memorial Building, Santa Fe, NM 87501.
[2.61.8.1 NMAC - N, 2/29/2016]

2.61.8.2 SCOPE: Any issuance of refunding bonds that, pursuant to Section 3-31-9 NMSA 1978, Section 4-62-8 NMSA 1978, or Section 6-15-11 NMSA 1978, requires department of finance and administration approval.
[2.61.8.2 NMAC - N, 2/29/2016]

2.61.8.3 STATUTORY AUTHORITY:

A. Section 3-31-9 NMSA 1978 provides that a municipality shall receive from the department of finance and administration written approval of any gross receipts tax refunding revenue bonds, gasoline tax refunding revenue bonds or project refunding revenue bonds pursuant to the provisions of Sections 3-31-8 through 3-31-12 NMSA 1978.

B. Section 4-62-8 NMSA 1978 provides that a county shall receive from the department of finance and administration written approval of any non-utility gross receipts tax refunding bonds, gasoline tax refunding revenue bonds, fire protection refunding revenue bonds, environmental refunding revenue bonds, or non-utility project refunding revenue bonds issued pursuant to the provisions of Sections 4-62-7 through 4-62-10 NMSA 1978.

C. Section 6-15-11 NMSA 1978 provides that the governing body of any county, municipality or school district in this state may, with the approval of the department of finance and administration, issue bonds in such form as the governing body may determine, to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the county, municipality or school district which has or will become due and payable or which has or will become payable at the option of the county, municipality or school district by consent of the bondholders or by any lawful means.

D. Section 6-15-12 NMSA 1978 provides that whenever a governing body of a county, municipality or school district deems it expedient to issue refunding bonds under the provisions of Sections 6-15-11 to 6-15-22 NMSA 1978, the governing body shall adopt an ordinance or resolution setting out the facts making the issuance of such refunding bonds necessary or advisable, the determination of such necessity or advisability of said governing body, and the amount of such refunding bonds which it is deemed necessary and advisable to issue.
[2.61.8.3 NMAC - N, 2/29/2016]

2.61.8.4 DURATION: Permanent.
[2.61.8.4 NMAC - N, 2/29/2016]

2.61.8.5 EFFECTIVE DATE: February 29, 2016, unless a later date is cited at the end of a section.
[2.61.8.5 NMAC - N, 2/29/2016]

2.61.8.6 OBJECTIVE: This rule provides general guidance regarding the financial and legal requirements for department approval of certain refunding bond issues as required by state statute. The rule is intended to benefit the state's political subdivisions in their refunding bond policies. Department approval of proposed refunding bonds is not intended to protect investors and does not evidence the soundness of any investment. Department approval is based solely on information provided by the issuing authority. The department has no duty to independently investigate, and does not independently investigate, the merits and risks involved in the refunding bonds.
[2.61.8.6 NMAC - N, 2/29/2016]

2.61.8.7 DEFINITIONS:

A. "All-inclusive interest cost" means the total cost of the refunding bonds, expressed as a discount rate calculated using the present value of all debt service payments on the refunding bonds and the total proceeds of the refunding bonds. The amount of refunding proceeds is adjusted by any accrued interest, original issue discount, original discount premium, costs of issuance, credit enhancement fees, and underwriter's spread.

B. "Costs of issuance" means all costs incurred by the issuing authority incident to the planning and sale of the refunding bonds. Costs of issuance include but are not limited to underwriters' spread, discount, or fees, counsel fees, financial advisor fees, credit enhancement costs, rating agency fees, trustee fees, accountant fees,

printing costs, loan origination fees, administrative costs and costs incurred in connection with the required public notice process.

C. “Department” means the department of finance and administration.

D. “Financing documents” means any official statement, bond purchase agreement, indenture, liquidity facility, credit enhancement agreement, loan agreement or other similar agreement associated with the issuance of the refunding bonds.

E. “Issuing authority” for purposes of refunding bonds that by law require department approval, means the governmental unit or public body in the name of which refunding bonds are issued. For these purposes, issuing authorities include, but are not limited to, counties, school districts and municipalities.

F. “Refunded bonds” means a written promise to pay a specified sum of money (par value or principal amount) at a specified date or dates in the future (maturity dates) together, if applicable, with interest, that is proposed to be refunded through the issuance of refunding bonds. Refunded bonds include, for these purposes, but without limitation:

(1) tax revenue bonds, gasoline tax revenue bonds, or project revenue bonds issued by a municipality pursuant to Sections 3-31-1 through 3-31-7 NMSA 1978;

(2) non-utility gross receipts tax bonds, gasoline tax revenue bonds, fire protection revenue bonds, environmental revenue bonds, or non-utility project revenue bonds issued pursuant to the provisions of Sections 4-62-1 through 4-62-6 NMSA 1978; or

(3) general obligation bonds issued by a county, municipality or school district pursuant to Sections 6-15-3 through 6-15-10 NMSA 1978.

G. “Refunding bonds” means bonds issued to refinance refunded bonds. These include current and advance refunding within the meaning of the Internal Revenue Code of 1986, as amended.

H. “True-interest-cost” means that yield, which if used to compute the present worth as of the delivery date of the refunding bonds of all payments of principal and interest to be made on the refunding bonds from their delivery date to their respective maturity dates (as specified in the maturity schedule and without regard to the possible optional prior redemption of the refunding bonds), using the interest rate specified in the bid or purchase contract produces an amount equal to the principal amount of the refunding bonds, plus any premium or minus any discount bid or stated in the purchase contract. Such calculation shall be based on a 360 day year consisting of 12, 30-day months and a semi-annual compounding interval.

[2.61.8.7 NMAC - N, 2/29/2016]

2.61.8.8 FINANCING PLAN FOR REFUNDING BONDS:

A. In order to obtain approval of the issuance of refunding bonds, the issuing authority must prepare a financing plan prior to the sale of the refunding bonds that addresses the following:

(1) Refunding details:

(a) Estimated gross and net present value savings annually, if any, by each series of refunded bonds. If the refunding bonds are being issued together with new money bonds, the net present value savings calculation on the refunding bonds should exclude any interest payments or proceeds associated with the new money bonds.

(b) Interest rate and debt service comparisons between refunding bonds and their respective refunded bonds.

(c) Description of sources and uses of funds.

(d) If request is for approval of advance refunding bonds, redemption dates and call premiums on refunded bonds with an analysis of the potential costs and benefits of delay of issuing the refunding bonds, description of any special arbitrage issues, and type of proposed investments to be used for escrow accounts.

(2) Debt management:

(a) Current outstanding debt and relation of the proposed refunding bonds to financial, parity bond and rate limits, if any.

(b) Five-year history of pledged revenues used for proposed debt service based on fiscal year audited financial statements.

(c) Current and five-year projected coverage ratios, based on current revenues, on annual debt service requirements by:

(i) Pledged revenue.

(ii) Total revenue legally available for debt service.

(iii) Maximum fiscal year debt service as a percentage of prior fiscal year audited pledged revenue, if available.

- (d) For general obligation refunding bonds, current ad valorem mill levy imposed, maximum mill levy allowable by law, and the anticipated impact the refunding bonds will have on the mill levy.
- (3) Debt structure and terms:
 - (a) Maturity structure of proposed refunding bonds.
 - (b) Estimated interest rates on proposed refunding bonds including true-interest-cost, all-inclusive interest cost, and average coupon.
 - (c) Estimated life of the refunding bonds.
 - (d) Table showing, on a fiscal year basis, total future debt payments by:
 - (i) New refunding issue.
 - (ii) Outstanding issues less refunded bonds.
 - (iii) Total debt payments (new refunding issue and outstanding issues less refunded bonds).
 - (e) Estimated terms and conditions of refunding bonds including covenant and call provisions, if applicable.
 - (f) Maximum principal amount and the maximum interest rate allowed for refunding bond sale.
- (4) Sales management:
 - (a) Representation and compensation of financial advisor, if any, and method of selection.
 - (b) Method of sale, including justification for a negotiated sale, if any, and, if negotiated, method of selection of underwriter.
 - (c) Representation and compensation of bond counsel, special tax counsel, if any, and disclosure counsel, if any, and indication of method of selection.
 - (d) Breakout of costs of issuance. For negotiated sales, cost of issuance breakout should include underwriters' discount as broken out by management fee, structuring fee, take down and estimated expenses.
 - (e) Anticipated timing of sale.
- (5) Legal documents:
 - (a) All resolutions and ordinances previously adopted by the issuing authority relating to the refunding bonds.
 - (b) Drafts of all resolutions and ordinances to be adopted by the issuing authority relating to the refunding bonds.
 - (c) Copies (or drafts if not in final form) of all financing documents.
- (6) Additional information:
 - (a) A certification of the issuing authority certifying that the issuing authority has complied with all statutory requirements for the issuance of refunding bonds.
 - (b) Any other information that the department, in its discretion, needs and requests in order to fulfill its duty to review and approve the refunding bonds.

B. The department shall make its determination to approve or disapprove of refunding bonds based on its assessment of the financing plan, including, in part, whether the refunding bonds will achieve net present value savings of at least three percent of the par amount of refunded bonds. The department may approve refunding bonds that generate less than three percent savings or disapprove refunding bonds that generate more than three percent savings in its sole discretion, depending upon other factors related to the refunding bonds.

C. The department, in its sole discretion, may waive specific provisions of this rule when circumstances warrant.

[2.61.8.8 NMAC - N, 2/29/2016]

2.61.8.9 FINAL STATUTORY APPROVAL BY THE DEPARTMENT ON ISSUANCE OF REFUNDING BONDS:

A. If the refunding bonds have not yet been sold at the time department approval is contemplated, the department may approve the issuance of refunding bonds by sending correspondence establishing parameters including the maximum principal amount, the maximum true interest cost, maximum coupon on each maturity, the maximum final maturity date, and final closing date for the refunding bonds. The issuing authority must include proposed parameters in its request to the department for approval and the department may request changes to the proposed parameters as a condition of its approval. Following the sale but at or before closing, the issuing authority will certify in writing to the department that the results of the sale are in compliance with all parameters, terms and

conditions set by the department and include in the certification a report of the results of the sale with respect to each parameter. An issuing authority's failure to provide a full and accurate certification to the department on or before the final closing date will result in the department not having provided its approval to the issuing authority.

B. If the refunding bonds have been sold but not yet issued or closed at the time department approval is contemplated, the department may approve the issuance of the refunding bonds by sending correspondence communicating its final approval.

C. The issuing authority shall not deliver the refunding bonds to the purchasers until after the issuing authority has received written confirmation from the department that it has given its final approval.

D. The refunding bonds must be delivered to the purchasers by the issuing authority no later than any date established in the department correspondence. If the refunding bonds are not delivered to the purchasers by the issuing authority by any date set in the department correspondence, the issuing authority must prepare and present a new financing plan to the department.

E. If the department denies approval of the refunding bonds, the department will send written communication to the issuing authority stating that the request for approval of refunding bonds has been denied and summarizing the basis for its denial.

[2.61.8.9 NMAC - N, 2/29/2016]

2.61.8.10 SUBMISSION OF FINANCING PLAN TO THE DEPARTMENT:

A. A financing plan submitted to the department must address each of the specific items in this rule, if applicable.

B. One original hard copy and one identical electronic version of the financing plan must be submitted to the department. Municipalities and counties must also submit copies to the local government division of the department, and school districts must also submit copies to the public education department. The hard copy must be tabbed for easy reference and the electronic version should be bookmarked.

C. A financing plan, in its entirety, must be submitted at least 15 business days before the date on which established parameters or final approval is requested to be communicated by the department.

[2.61.8.10 NMAC - N, 2/29/2016]

HISTORY OF 2.61.8 NMAC: [RESERVED]