

IDAPA 32 – ENDOWMENT FUND INVESTMENT BOARD

DOCKET NO. 32-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED FEE RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule(s) listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 57-728(2) of the Idaho Code, which gives the Endowment Fund Investment Board (EFIB) authority to promulgate rules necessary to discharge EFIB's duties for the administration of the Credit Enhancement Program.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 32, Title 01, Chapter 01, rules of the Endowment Fund Investment Board:

DAPA 32.01.01, *Rules Governing the Credit Enhancement Program for School Districts*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The rule governing the Credit Enhancement Program for School Districts is beneficial for Idaho's public schools because it lowers the cost of financing associated with the construction of new schools.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. 2010 Idaho Attorney General Opinion 01 concludes that EFIB must charge fees to offset the cost of the Credit Enhancement Program to the Endowments.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The Endowment Fund Investment Board charges school districts an application fee of \$500 and a one-time bond guarantee fee equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature,

and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Chris Anton at (208) 334-3312.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Chris Anton
Manager of Investments
Endowment Fund Investment Board
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Boise, ID 83702
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**IDAPA 32
TITLE 01
CHAPTER 01**

IDAPA 32 – ENDOWMENT FUND INVESTMENT BOARD

32.01.01 – RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

000. LEGAL AUTHORITY.

Section 57-728(2), Idaho Code, gives the Endowment Fund Investment Board authority to promulgate rules necessary to the discharge of the EFIB's duties for the administration of the Credit Enhancement Program. 2010 Idaho Attorney General Opinion 01 concludes that the EFIB must charge fees to offset the costs of the Credit Enhancement Program to the Endowments. (4-7-11)

001. TITLE AND SCOPE

01. Title. These rules are titled IDAPA 32, Title 01, Chapter 01, "Rules Governing the Credit Enhancement Program for School Districts." (4-7-11)

02. Scope. These rules contain the provisions for implementation of the Credit Enhancement Program. (4-7-11)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the EFIB's office. (4-7-11)

003. ADMINISTRATIVE APPEALS.

The EFIB's determination to invest through the Credit Enhancement Program is a discretionary exercise of its fiduciary duties to the Endowments. This chapter does not provide for appeal of the requirements under the Credit Enhancement Program as contested cases pursuant to the provisions of Title 67, Chapter 52, Idaho Code. (4-7-11)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (4-7-11)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The location and mailing address of the EFIB is 816 West Bannock Street, Suite 301, Boise, Idaho 83702. The offices are open daily from 8 a.m. to noon, and 1 p.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed for mandatory leave without pay. The EFIB's telephone number is (208) 334-3311 and the facsimile number is (208) 334-3786. (4-7-11)

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (4-7-11)

007. -- 009. (RESERVED)

010. DEFINITIONS AND REFERENCES.

01. Administrative Fees. Application Fees and Pass-through Fees charged to School Districts applying for and receiving guarantees under the Credit Enhancement Program. (4-7-11)

02. Application Fee. The amount determined by the EFIB and set forth in this chapter as the cost of reviewing applications to the Credit Enhancement Program and administering the Credit Enhancement Program. (4-7-11)

03. Credit Enhancement Program. The Credit Enhancement Program for School District Bonds established in Section 57-728, Idaho Code. (4-7-11)

04. EFIB. Endowment Fund Investment Board. (4-7-11)

05. Endowments. The trusts granted to the state of Idaho by the Idaho Admission Bill, 26 Statutory Laws 215, chapter 656 as amended. The Endowments include the Public School Endowment established by Idaho Admission Bill sections 4 and 13. (4-7-11)

06. Guarantee Fee. The amount determined by the EFIB and set forth in this chapter as the cost of guaranteeing a school bond under the Credit Enhancement Program. The cost of guaranteeing a school bond includes the difference in the investment return to the Public School Endowment projected by the EFIB to arise from the guarantee and additional costs to the Endowments arising from investment of the Public School Endowment in the Credit Enhancement Program. (4-7-11)

07. Guaranty Program. The Idaho School Bond Guaranty Program established in Title 33, Chapter 53, Idaho Code. (4-7-11)

08. Pass-Through Fee. A direct cost to the EFIB for reviewing an application to the Credit Enhancement Program or for issuing a note to pay a debt service payment under the Credit Enhancement Program. Direct costs include the costs billed to the EFIB by legal, accounting, and financial professionals. (4-7-11)

09. School District. As defined in Section 33-5302, Idaho Code. (4-7-11)

10. Total Debt Service. The total amount to be repaid to bond purchasers over the stated maturity of the School District bond (principal plus interest). (4-7-11)

011. -- 019. (RESERVED)

020. APPLICATION.

01. Required Materials. School Districts must submit the following application materials to the EFIB: (4-7-11)

a. Correspondence from the Idaho State Treasurer certifying that the School District has been approved to participate in the Guaranty Program and setting forth the maximum credit enhancement amount available to the School District within the limitations set forth in Section 57-728(8), Idaho Code. (4-7-11)

b. A fully completed application form as prescribed by the EFIB from time to time executed by a party authorized to bind the School District. (4-7-11)

c. Copies of the complete audited financial statements of the School District prepared pursuant to Section 33-701, Idaho Code, for the preceding three (3) fiscal years and the adopted budget for the current fiscal year. (4-7-11)

d. Upon request of the EFIB, documentation substantiating the information set forth in materials submitted pursuant to Subsection 020.01 of these rules. (4-7-11)

02. Submission Deadlines. School Districts may submit an application at any time. (4-7-11)

021. -- 029. (RESERVED)

030. FEES.

01. Guarantee Fee. School Districts must remit to the EFIB a one-time fee equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service. When Paid. School Districts must remit the Guarantee Fee to the EFIB within five (5) days of the sale of bonds guaranteed by the Credit Enhancement Program. The EFIB will deposit the Guarantee Fee in the Public School Endowment. (4-7-11)

02. Administrative Fees. (4-7-11)

a. Application Fee. School Districts shall submit to the EFIB an Application Fee of five hundred dollars (\$500). School Districts shall submit the Application Fee to the EFIB with the application materials. The EFIB will use Application Fees to pay costs of reviewing applications and administering the Credit Enhancement Program. At the conclusion of each fiscal year, the EFIB will deposit unexpended Application Fees in the Public School Endowment. (4-7-11)

b. Pass-through Fee. The EFIB may incur a Pass-through Fee related to the review of an application in its discretion. The EFIB will not invoice a School District for Pass-through Fees related to the review of an application without the prior written approval of the School District. The EFIB may incur a Pass-through Fee related to the issuance of a note without prior approval of the School District. The EFIB will invoice School Districts for the full amount of any Pass-through Fees related to the issuance of a note. School Districts shall remit each invoiced Pass-through Fee to the EFIB within thirty (30) days of invoice. The EFIB will use a Pass-through Fee to pay the direct costs to the EFIB under the Credit Enhancement Program giving rise to the fee. (4-7-11)

031. -- 039. (RESERVED)

040. APPROVAL AND DENIAL OF APPLICATIONS.

01. Review Periods. The EFIB will provide written approval or denial of an application within twenty (20) days of the submission of all required materials. If the Board requests substantiating documentation, the EFIB will provide written approval or denial of the application within twenty (20) days of the submission of the substantiating documentation. (4-7-11)

02. Delegation of Review and Approval. (4-7-11)

a. Staff Review. The EFIB may delegate review of applications to EFIB staff. (4-7-11)

b. Experts. The EFIB may engage experts to review an application. Experts include legal, accounting, and financial professionals. (4-7-11)

c. Staff Approval. The EFIB may delegate approval of applications to the EFIB's manager of investments. (4-7-11)

03. Discretionary Investment. The EFIB will invest in a School District bond issuance under the Credit Enhancement Program in its sole discretion and within its fiduciary responsibilities as trustees of the financial assets of the Endowments. The EFIB may deny an application for participation in the Credit Enhancement Program if the EFIB determines the investment is not in the best interests of one (1) or more of the Endowments. (4-7-11)

04. Denial of Application for Unpaid Fees. The EFIB may deny an application for participation in the Credit Enhancement Program if a School District has not paid a fee under a pending application or a prior guarantee issued by the Credit Enhancement Program. (4-7-11)

041. -- 999. (RESERVED)