

***HOUSE EDUCATION COMMITTEE***

***ADMINISTRATIVE RULES REVIEW***

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***2011 Legislative Session***

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**IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD**  
**32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM**  
**FOR SCHOOL DISTRICTS**

**DOCKET NO. 32-0101-1001 (FEE RULE - NEW CHAPTER)**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 57-728(2), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 448 through 452.](#)**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 57-728, Idaho Code.

**Pursuant to Section 57-728, Idaho Code, and 2010 Attorney General Opinion 01, the rules impose an application fee calculated to reflect the overhead costs to the EFIB for processing an application. This fee allows the EFIB to more accurately allocate its overhead costs and will likely result in a minor reduction in the cost allocation to the Endowment Funds, the Judges' Retirement Fund, and the State Insurance Fund. Without the imposition of the fee, the other clients of the EFIB may bear the costs of Program administration through the EFIB's existing process of cost allocation. The rules also implement a guaranty or insurance fee authorized by the legislature as of April 17, 2009 and discussed in 2010 Idaho Attorney General Opinion 01. The fee, which would be deposited in the Public School Endowment Fund, allows the Public School Endowment to benefit from the issuance of the guaranties and reinforces the holding in *Endowment Fund Investment Board v. Crane* that the Program is a permissible investment for the Fund.**

**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:

The rules will not result in a fiscal impact to the State of Idaho general fund. School districts will experience lower interest rates on school bonds through participation in the Program. The Public School Endowment will recover its costs for providing the benefit to school districts.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Larry Johnson, Manager of Investments, (208) 334-3312.

DATED this 28th day of October, 2010.

Larry Johnson  
Manager of Investments  
Endowment Fund Investment Board  
816 W. Bannock St., Ste. 301  
P. O. Box 83720, Boise, ID 83720-0046  
Phone: (208) 334-3312 / Fax: (208) 334-3786

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 57-728(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Amendments to Section 57-728, Idaho Code, became effective April 17, 2009. The amendments require the Endowment Fund Investment Board (EFIB) to promulgate rules furthering the Credit Enhancement Program for School Districts (Program). The new chapter of rules specifies the application procedure for school districts seeking to participate in the Program. 2010 Idaho Attorney General Opinion 01 concludes that the EFIB must charge fees to offset the costs of the Program to the Endowments. The rules specify the fees for the Program and allow the EFIB to continue offering guarantees to school districts.**

**This docket was published as a temporary rule in the [May 5, 2010 Idaho Administrative Bulletin, Vol. 10-5, pages 54 through 58](#), with a temporary effective date of **March 30, 2010**.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

Pursuant to Section 57-728, Idaho Code, and 2010 Attorney General Opinion 01, the rules impose an application fee calculated to reflect the overhead costs to the EFIB for processing an application. This fee allows the EFIB to more accurately allocate its overhead costs and will likely result in a minor reduction in the cost allocation to the Endowment Funds, the Judges' Retirement Fund, and the State Insurance Fund. Without the imposition of the fee, the other clients of the EFIB may bear the costs of Program administration through the EFIB's existing process of cost allocation. The rules also implement a guaranty or insurance fee authorized by the legislature as of April 17, 2009 and discussed in 2010 Idaho Attorney General Opinion 01. The fee, which would be deposited in the Public School Endowment Fund, allows the Public School Endowment to benefit from the issuance of the guaranties and reinforces the holding in *Endowment Fund Investment Board v. Crane* that the Program is a permissible investment for the Fund.

**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 resulting from this rulemaking:

The rules will not result in a fiscal impact to the State of Idaho general fund. School districts will experience lower interest rates on school bonds through participation in the Program. The Public School Endowment will recover its costs for providing the benefit to school districts.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this new chapter of rules was necessary to confer a benefit by allowing the Program to provide guarantees to school districts.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Larry Johnson, Manager of Investments, (208) 334-3312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 12th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 32-0101-1001***

**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.

( )

**001. TITLE AND SCOPE**

**01. Title.** These rules shall be cited as IDAPA 32, Title 01, Chapter 01, "Rules Governing the Credit Enhancement Program for School Districts."

( )

**02. Scope.** These rules contain the provisions for implementation of the Credit Enhancement Program.

( )

**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.

( )

**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.

( )

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules.

( )

**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.

( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This agency operates pursuant to the Idaho Public Records Act, Sections 9-337 through 9-348, Idaho Code. ( )

**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. ( )

**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. ( )

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

**04. EFIB.** Endowment Fund Investment Board. ( )

**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. ( )

**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. ( )

**07. Guaranty Program.** The Idaho School Bond Guaranty Program established in Title 33, Chapter 53, Idaho Code. ( )

**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. ( )

**09. School District.** Shall have the meaning provided in Section 33-5302, Idaho Code. ( )

**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). ( )

**011. -- 019. (RESERVED).**

**020. APPLICATION.**

**01. Required Materials.** School Districts shall submit the following application materials to the EFIB: ( )

**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. ( )

**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. ( )

**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. ( )

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

**02. Submission Deadlines.** School Districts may submit an application at any time. ( )

**021. -- 029. (RESERVED).**

**030. FEES.**

**01. Guarantee Fee.** ( )

**a.** Amount. School Districts shall 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. ( )

**b.** When Paid. School Districts shall remit the Guarantee Fee to the EFIB within five (5) days of the sale of bonds guaranteed by the Credit Enhancement Program. ( )

**c.** Use of Fee. The EFIB will deposit the Guarantee Fee in the Public School Endowment. ( )

**02. Administrative Fees.** ( )

**a.** Application Fee. ( )

**i.** Amount. School Districts shall submit to the EFIB an Application Fee of five hundred dollars (\$500). ( )

**ii.** When Paid. School Districts shall submit the Application Fee to the EFIB with the application materials. ( )

**iii.** Use of Fee. 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. ( )

**b.** Pass-through Fee. ( )

i. Amount. 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. ( )

ii. When Paid. School Districts shall remit each invoiced Pass-through Fee to the EFIB within thirty (30) days of invoice. ( )

iii. Use of Fee. 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. ( )

**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. ( )

**02. Delegation of Review and Approval.** ( )

**a.** Staff Review. The EFIB may delegate review of applications to EFIB staff. ( )

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

**c.** Staff Approval. The EFIB may delegate approval of applications to the EFIB's manager of investments. ( )

**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. ( )

**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. ( )

**041. -- 999. (RESERVED).**