

EDUCATION COMMITTEE
ADMINISTRATIVE RULES REVIEW
Table of Contents
2010 Legislative Session

IDAPA 08 - STATE BOARD OF EDUCATION

***08.01.11 - Registration of Postsecondary Educational Institutions
and Proprietary Schools***

Docket No. 08-0111-09012

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

***32.01.01 - Rules Governing the Credit Enhancement Program
for School Districts***

Docket No. 32-0101-0901 (New Chapter)17

IDAPA 08 - STATE BOARD OF EDUCATION

08.01.11 - REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS

DOCKET NO. 08-0111-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is August 20, 2009. This pending rule has been adopted by the agency and is now pending review by the 2010 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 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule and amended a temporary rule. The action is authorized pursuant to Sections 33-105, 33-2402, and 33-2403, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary 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:

Title 33, Chapter 1 and 24, Idaho Code were amended to clarify that postsecondary institutions need to register to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate. Criteria for evaluating these institutions and schools are set forth in this rule. Criteria are essential for determining the legitimacy of the institution for degree granting purposes and the legitimacy of proprietary schools. Additionally, in order to provide protection for Idaho Citizens, the underfunded tuition recovery account has been replaced by the requirement of a surety bond.

The changes to the rule from proposed to pending are in the calculation of the surety bond. The purpose of the surety bond is to cover the amount of tuition that a student has paid into a program should the school go out of business prior to the completion of the program or course of study, allowing students to be refunded their costs. The amended formula better captures this amount.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the State Board of Education amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, page(s) 189 through 198.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. This fee or

charge is being imposed pursuant to Section 33-2402 and 33-2403, Idaho Code. The following is a specific description of the fee or charge imposed or increased:

The current fee of one hundred dollars (\$100) per course or course of study has been changed to the amount of one-half of one percent of the gross Idaho tuition revenue of the institution or school during the previous registration year, but not less than one hundred dollars (\$100) and not to exceed five thousand dollars (\$5,000). Fees assessed are to be dedicated for use by the board in connection with its responsibilities under Section 33-2401, Idaho Code.

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.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending fee rule, contact Harv Lyter, Proprietary Schools Registration Coordinator at (208)332-1587.

DATED this 13th Day of November, 2009.

Tracie Bent
Chief Planning, Policy & HR Officer
State Board of Education
PO Box 83720-0037
Boise, ID 83720-0037
(208) 332-1582 phone
(208) 334-2632 FAX

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the temporary rule is August 20, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-105, 33-2402, and 33-2403, 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 21, 2009.

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 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:

Title 33, Chapter 1 and 24, Idaho Code, were amended to clarify that postsecondary institutions need to register to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate. Criteria for evaluating these institutions and schools are set forth in this rule. Criteria are essential for determining the legitimacy of the institution for degree granting purposes and the legitimacy of proprietary schools.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To be in compliance with amendments to governing law or federal programs.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

The current fee of one hundred dollars (\$100) per course or course of study has been changed to the amount of one-half of one percent (.5%) of the gross Idaho tuition revenue of the Institution during the previous registration year, but not less than one hundred dollars (\$100) not to exceed five thousand dollars (\$5,000). Fees assessed are to be dedicated for use by the Board in connection with its responsibilities under Section 33-2401, Idaho Code.

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:
N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the nature of the changes are specific to bringing the rule in compliance with the new statute. Additionally, informal meetings were conducted by the Boards Proprietary/Postsecondary Schools Program Coordinator with those parties that will be impacted by this rule to inform them of the changes and gather feedback.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent at 332-1582.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

010. DEFINITIONS.

01. Accredited. Defined in Section 33-2401(1), Idaho Code, and means that a post-secondary educational institution has been recognized or approved as meeting the standards established by an accrediting organization recognized by the Board. (4-9-09)

02. Agent. Defined in Section 33-2401(2), Idaho Code, and means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school. (4-9-09)

03. Agent's ~~Permit~~ Certificate of Identification. Defined in Section 33-2401(3), Idaho Code, and means a nontransferable written document issued to an agent by ~~the Board or its designee~~ the proprietary school that the agent represents. (4-9-09)()

04. Course. Defined in Section 33-2401(5), Idaho Code, and means instruction imparted in a series of lessons or class meetings to meet an educational objective. (4-9-09)

05. Course or Courses of Study. Defined in Section 33-2401(6), Idaho Code, and means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise. A course of study is sometimes also referred to in this rule as a program. (4-9-09)

06. Degree. Defined in Section 33-2401(7), Idaho Code, and means any ~~written or any academic, vocational, professional technical or honorary title or designation, mark, appellation, series of letters, numbers, or words such as, but not limited to,~~ that contains, in any language, the word "associate," "bachelor's," "baccalaureate," "master's," "doctorate," or "fellow," ~~which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, vocational, professional technical, educational or professional program of study beyond the secondary school level or for a recognized title conferred for meritorious recognition, and an associate of arts or associate of science degree awarded by a community college or other public or private post-secondary educational institution or other entity which may be used for any purpose whatsoever~~ any abbreviation thereof, and that indicates or represents, or is intended to indicate or represent, that the person named thereon, in the case of any writing, or the person it is awarded thereto, in the case of any academic title, is learned in or has satisfactorily completed a prescribed course of study in a particular field or that the person has demonstrated proficiency in any field of endeavor as a result of formal preparation or training. (4-9-09)()

07. Nonprofit. Means an entity that is recognized under the Internal Revenue Code and applicable regulations as being tax exempt, or an entity such as a nonprofit or not-for-profit organization that possesses the following characteristics that distinguish it from a business enterprise: (a) contribution of significant amounts of resources from resource providers who do not expect commensurate or proportionate pecuniary return, (b) operating purposes other than to

provide goods or services at a profit, and (c) absence of ownership interests like those of business enterprises. (4-9-09)

08. Post-Secondary Educational Institution. Sometimes referred to in this rule simply as an institution, is defined in Section 33-2401(8), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within, the state of Idaho, and which provides a course or courses of study that lead to a degree, or which provides, offers or sells degrees. (4-9-09)

09. Proprietary School. Sometimes referred to in this rule simply as a school, is defined in Section 33-2401(9), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees. (4-9-09)

(BREAK IN CONTINUITY OF SECTIONS)

200. REGISTRATION OF POST-SECONDARY EDUCATIONAL INSTITUTIONS.

01. Delegation. Section 33-2403, Idaho Code, provides that a proprietary school must hold a valid certificate of registration issued by the Board. The Board delegates authority to its executive director, or his designee, and the Office of the State Board of Education to administer the registration of proprietary schools, in accordance with Title 33, Chapter 24, Idaho Code, and this rule. ()

012. Registration Requirement. (4-9-09)

a. Unless exempted by statute or this rule, as provided herein, a post-secondary educational institution which maintains a presence within the state of Idaho, or that operates or purports to operate from a location within the state of Idaho, shall register and hold a valid certificate of registration issued by the Board. An institution shall not conduct, provide, offer, or sell a course or courses of study, or degree unless registered. An institution shall not solicit students on behalf of such institution, or advertise in this state, unless registered. ~~The Board shall maintain a register of approved postsecondary educational institutions pursuant to Section 33-107(6)(a), Idaho Code.~~ (4-9-09)()

b. ~~Initial r~~Registration shall be for the period beginning on July 1 of any year and the date a certificate of registration is issued and continue through June 30 of the next succeeding year. For an institution that has not previously registered with the Board, registration shall be for the period beginning on the date of issue of an initial certificate of registration and continue through June 30 of the next succeeding year. A registered post-secondary educational institution must renew its certificate of registration annually, and renewal of registration is not automatic. (4-9-09)()

c. Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (4-9-09)

023. Idaho Presence. An institution shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an electronic or Internet website, to have an Idaho street or mailing address, including a post office box in Idaho. (4-9-09)

034. Institutions Exempt from Registration. (4-9-09)

a. Idaho public post-secondary educational institutions. Section 33-2402(1), Idaho Code, provides that a public institution supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register. (4-9-09)

b. Certain Idaho private, not for profit, post-secondary educational institutions. A private, nonprofit, post-secondary educational institution that is already established and operational as of the effective date of this rule and located within the state of Idaho, and that is accredited by an accreditation organization recognized by the Board, as set forth in Section 100 of this rule, shall not be required to register. A private, nonprofit, institution is located within the state of Idaho only if it has been lawfully organized in the state of Idaho and its principal place of business is located within the state of Idaho. (4-9-09)

045. Institutions that Must Register. (4-9-09)

a. Out-of-state public post-secondary educational institutions. A public institution that is supported primarily by taxation from another state, or from a local source not within the state of Idaho, must register as provided herein. (4-9-09)

b. Out-of-state private, nonprofit, post-secondary educational institutions. An out-of-state private, nonprofit, post-secondary educational institution must register as provided herein. (4-9-09)

c. Certain Idaho private, nonprofit, post-secondary educational institutions. A private, nonprofit, post-secondary educational institution that is located within the state of Idaho, but that is not exempt under Subsection 200.03.b. of this rule, must register as provided herein. (4-9-09)

d. For-profit post-secondary educational institutions. A post-secondary educational institution that operates for profit, or which is an operating subsidiary of a publicly or privately held corporation that operates for profit, must register as provided herein. (4-9-09)

056. ~~Exception~~ Alternative to Registration Requirement for Certain Post-Secondary Institutions. (4-9-09)()

a. A post-secondary educational institution that demonstrates to the satisfaction of the Board that its primary mission and objectives are to offer courses or courses of study that do not lead to the awarding of degrees, may instead register as a proprietary school, in accordance

with Section 300 of this rule. (4-9-09)

b. A request to register as a proprietary school must be submitted in writing to the Board by the first business day of December preceding a registration year. A decision on such request will be issued by the Board within thirty (30) days after it is received. A request to register as a proprietary school must be made on an annual basis. (4-9-09)

067. Application. A post-secondary educational institution that is required to register under this rule must submit to the Board office an application for registration (either an application for initial registration or renewal of registration, as applicable), on ~~a~~ the form ~~approved~~ provided by the Board office. The application must include a list of each course, course of study, and degree the applicant institution intends to conduct, provide, offer, or sell in Idaho during the registration year. (4-9-09)()

078. Registration Fees. The Board shall assess an annual registration fee for initial registration or renewal of registration of a post-secondary educational institution. The registration fee must accompany the application for registration, and shall be in the amount of one-half of one percent (.5%) of the gross Idaho tuition revenue of the institution during the previous registration year, but not less than one hundred dollars (\$100) for each course that the institution intends to conduct, provide, offer or sell during the registration year, as set forth in the registration application, not to exceed ~~two~~ five thousand dollars (\$25,000). The institution must provide financial documentation to substantiate the amount of revenue reported. Registration fees are not refundable. (4-9-09)()

089. Deadline for Registration. An initial application for registration may be submitted to the Board at anytime. An institution should expect the Board's review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to the Board on or before the first business day of May that precedes a registration year. (4-9-09)

0910. Information Required. Such application must include the information requested on the application form, as well as the following information: (4-9-09)

a. If an institution that is required to register under this rule is accredited by an accreditation organization recognized by the Board in Section 100 of this rule, such institution must submit documentation demonstrating that it has received accreditation status, and that it will maintain its accreditation from such agency during the entire registration year. An institution that is so accredited qualifies for a streamlined registration process, and will not be required to submit information and/or documentation that documents compliance with Standards I through VI, set forth in ~~Subsections 200.10.a. through 200.10.f.~~ Section 301 of this rule. Such institution must submit the following information or documentation, or both, with its application for registration: (4-9-09)()

- i. Copy of most recent accreditation report; (4-9-09)
- ii. Current list of chief officers - e.g. president, board chair, chief academic officer, chief fiscal officer; (4-9-09)

- iii. Most recent copy of strategic plan; (4-9-09)
- iv. Enrollment data for current and past two (2) years; (4-9-09)
- v. Copy of annual audited financial statement; (4-9-09)
- vi. Any additional information that the Board may request. (4-9-09)

b. All other institutions applying for registration must submit information and/or documentation with its application for registration that documents compliance with all of the Standards I through VI, set forth in ~~Subsections 201.01 through 201.06~~ Section 301 of this rule. (4-9-09)()

c. The Board may, in connection with a renewal of registration; request that an institution only submit information that documents changes from the previous year, provided that the institution certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 200.078 of this rule, shall remain applicable. (4-9-09)()

(BREAK IN CONTINUITY OF SECTIONS)

202. THE BOARD MAY NOTIFY THE POST-SECONDARY EDUCATIONAL INSTITUTION OF ADDITIONAL INFORMATION REQUIRED.

If the Board is unable to determine the nature and activities of an institution on the basis of the information provided by the institution under this rule, then the Board may notify the institution of additional information that it will be required to provide in connection with the application for registration. (4-9-09)

01. Verification of Information. The Board may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant institution shall be responsible for any costs the Board incurs, including travel, associated with this review. (4-9-09)

02. Criteria for Approval of Registration. To be approved for registration, the institution must demonstrate that it is in compliance with Chapter 24, Title 33, Idaho Code and this rule. An institution must remain in compliance for the registration year. (4-9-09)

03. Public Information. All information submitted to the Board in connection with the application is public information, and is subject to disclosure as set forth in the Public Records Act, Title 9, Chapter 3, Idaho Code. (4-9-09)

04. Certificate of Registration. (4-9-09)

~~04.~~ A certificate of registration will be issued to a post-secondary educational institution that has paid its registration fee and has been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30

of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No institution that is registered with the Board shall advertise or represent in any manner that it is accredited by the Board. An institution may only represent that it is "Registered with the Idaho State Board of Education." Registration is not an endorsement of the institution. (4-9-09)

~~**b.** If an institution wishes to offer additional courses, courses of study, or degrees during the course of a registration year that were not included in its application to the Board prior to issuance of the certificate of registration, then the institution may submit a supplemental application to the Board, on a form approved by the Board and pay any additional registration fees that are applicable. If approved, the Board will issue a revised certificate of registration evidencing such approval. (4-9-09)~~

05. Disapproval and Appeal. If a post-secondary educational institution's request for initial registration, or renewal of registration, is disapproved by the Board, then the institution may appeal such decision in accordance with Chapter 52, Title 67, Idaho Code. The request must be in writing and made to the office within thirty (30) days of the date the institution is notified of the disapproval. (4-9-09)

06. Withdrawal of Approval. (4-9-09)

a. The Board may refuse to renew, or may revoke or suspend approval of, an institution's registration by giving written notice and the reasons therefore to the institution. The institution may request a hearing relating to such decision under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-9-09)

b. Withdrawal of approval may be for one (1) or more of the following reasons: (4-9-09)

i. Violation of Chapter 24, Title 33, Idaho Code or this rule; (4-9-09)

ii. Providing false, misleading, deceptive, or incomplete information to the Board; (4-9-09)

iii. Presenting to prospective or current students information about the institution which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or (4-9-09)

iv. Refusing to allow reasonable inspection or to supply reasonable information after a written request by the Board has been received. (4-9-09)

c. If any information contained in the application submitted by the institution becomes incorrect or incomplete, then the registered institution shall notify the Board of such change within thirty (30) days. An institution that ceases operation during the course of a registration year shall immediately inform the Board of this event. (4-9-09)

203. -- 299. (RESERVED).

300. REGISTRATION OF PROPRIETARY SCHOOLS.

01. Delegation. Section 33-2403, Idaho Code, provides that a proprietary school must hold a valid certificate of registration issued by the Board ~~or its designee~~. The Board delegates authority to ~~its executive director, or his designee, and the Idaho Division of Professional Technical Education (PTE) to register~~ Office of the State Board of Education to administer the registration of proprietary schools, in accordance with Title 33, Chapter 24, Idaho Code, and this rule. (4-9-09)()

02. Registration Requirement. (4-9-09)

a. Unless exempted by statute or this rule, as provided herein, a proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually and hold a valid certificate of registration issued by ~~PTE the Board~~. A school shall not conduct, provide, offer, or sell a course or courses of study unless registered. A school shall not solicit students for or on behalf of such school, or advertise in this state, unless registered. ~~The Board shall maintain a register of approved proprietary schools pursuant to Section 33-107(6)(c), Idaho Code.~~ (4-9-09)()

b. Registration shall be for the period beginning July 1 of any year and continue through June 30 of the next succeeding year. For a school that has not previously registered with ~~PTE the Board~~, registration shall be for the period beginning on the date of issue of a certificate of registration and continue through June 30 of the next succeeding year. A registered proprietary school must renew its certificate of registration annually and renewal of registration is not automatic. (4-9-09)()

c. Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (4-9-09)

03. Idaho Presence. A school shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an electronic or Internet website, to have an Idaho street or mailing address, including a post office box in Idaho. (4-9-09)

04. Exemptions from Registration. The following individuals or entities are specifically exempt from the registration requirements of this rule: (4-9-09)

a. An individual or entity that offers instruction or training solely a vocational or recreational in nature, as determined by the Board. (4-9-09)

b. An individual or entity that offers courses recognized by the Board which comply in whole or in part with the compulsory education law. (4-9-09)

c. An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student. (4-9-09)

d. An individual or entity which is otherwise regulated, licensed, or registered with

another state agency pursuant to Title 54, Idaho Code. (4-9-09)

~~e. Aviation school or instructors approved by and under the supervision of the Federal Aviation Administration. (4-9-09)~~

fe. An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation. (4-9-09)

gf. An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days. (4-9-09)

hg. A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted. (4-9-09)

ih. An individual or entity that offers post-secondary credit through a consortium of public and private colleges and universities under the auspices of the western governors. (4-9-09)

05. Application. A proprietary school that is required to register under this rule must submit to PTE the Board office an application for registration (either an application for initial registration, or renewal of registration, as applicable), on a form approved by PTE provided by the Board office. The application must include a list of each course or courses of study the applicant school intends to conduct, provide, offer or sell in Idaho during the registration year.

(4-9-09)()

06. Registration Fees and Costs. ~~A~~ The Board shall assess an annual registration fee shall accompany each application for initial registration or renewal of registration. The fixed portion of such annual registration fee shall be in the amount of one hundred dollars (\$100) for each school. The variable portion of such annual registration fee shall be in the amount of one hundred dollars (\$100) for each course to be offered by the school during the registration year. The registration fee must accompany the application for registration, and shall be one-half of one percent (.5%) of the gross Idaho tuition revenue of the school during the previous registration year, but not less than one hundred dollars (\$100) and not to exceed five thousand dollars (\$5,000). The school shall provide documentation to substantiate the amount of revenue reported. Registration fees are not refundable.

(4-9-09)()

07. Deadline for Registration. An initial application for registration may be submitted to PTE the Board at anytime. A school should expect PTE's the Board review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to PTE the Board on or before the first business day of May that precedes a registration year. Schools that have not completed annual renewal of registration by July 1st must cease all active operations until approval of registration is received.

(4-9-09)()

08. Information Required. (4-9-09)

~~a.~~ Such application must include the information requested on the application form.

In addition, a school applying for registration must submit information and/or documentation with its application for registration that documents compliance with ~~all of the~~ Standards I through V set forth in ~~Subsections 400.08.a. through 400.08.e.~~ Section 301 of this rule. (4-9-09)

~~b.~~ *PTE* The Board may, in connection with a renewal of registration, request that a school only submit information that documents changes from the previous year, provided that the school certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 300.056 of this rule, shall remain applicable. (4-9-09)()

(BREAK IN CONTINUITY OF SECTIONS)

302. THE BOARD MAY NOTIFY THE PROPRIETARY SCHOOL OF ADDITIONAL INFORMATION REQUIRED.

If *PTE* the Board is unable to determine the nature and activities of a school on the basis of the information provided by the school under this rule, then *PTE* the Board may notify the school of additional information that it will be required to provide in connection with the application for registration. (4-9-09)()

01. Verification of Information. *PTE* The Board may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant school shall be responsible for any costs *PTE* incurs including travel, associated with this review. (4-9-09)()

02. Criteria for Approval or Denial of Registration. To be approved for registration, the school must demonstrate that it is in compliance with Chapter 24, Title 33, Idaho Code and this rule, including all of the standards described in ~~Subsections 300.08.a. through 300.08.e.~~ Section 301 of this rule. A school must remain in compliance for the registration year. (4-9-09)()

03. Public Information. All information submitted to *PTE* the Board is public information, and is subject to disclosure as set forth in the Public Records Act, Title 9, Chapter 3, Idaho Code. (4-9-09)()

04. Certificate of Registration. (4-9-09)

a. A certificate of registration will be issued to a proprietary school that has paid its registration fee and been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30 of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No school that is registered with *PTE* the Board shall advertise or represent in any manner that it is accredited by *PTE* the Board. An institution may only represent that it is "Registered with Idaho Division of Professional-Technical Education." Registration is not an endorsement of the school. (4-9-09)()

b. If a school wishes to offer additional courses or courses of study during the course of a registration year that were not included in its application to ~~PTE~~ the Board prior to issuance of the certificate of registration, then the school may submit a supplemental application to ~~PTE~~ the Board, on a form approved by PTE, and pay any additional registration fees that are applicable. If approved, ~~PTE~~ the Board will issue a revised certificate of registration evidencing such approval. (4-9-09)()

05. Disapproval and Appeal. If a proprietary school's request for initial registration or a renewal of registration is disapproved by ~~PTE~~ the Board, then the school may appeal such decision in accordance with Chapter 52, Title 67, Idaho Code. The request must be in writing and made to ~~PTE~~ the Board within thirty (30) days of the date the school is notified of the disapproval. (4-9-09)()

06. Withdrawal of Approval. (4-9-09)

a. ~~PTE~~ The Board may refuse to renew, or may revoke or suspend approval of a school's registration by giving written notice and the reasons therefore to the school. The school may request a hearing under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-9-09)()

b. Withdrawal of approval may be for one (1) or more of the following reasons: (4-9-09)

i. Violation of Chapter 24, Title 33, Idaho Code or this rule. (4-9-09)

ii. Providing false, misleading, deceptive, or incomplete information to ~~PTE~~ the Board. (4-9-09)()

iii. Presenting to prospective or current students information about the school which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or (4-9-09)

iv. Refusing to allow reasonable inspection or to supply reasonable information after a written request by ~~PTE~~ the Board has been received. (4-9-09)()

c. If any information contained in the application submitted by the school becomes incorrect or incomplete, then the registered school shall notify ~~PTE~~ the Board of such change within thirty (30) days. A school that ceases operation during the course of a registration year shall immediately notify ~~PTE~~ the Board of this event. (4-9-09)()

07. Agent's ~~Permit~~ Certificate of Identification. Each proprietary school shall ensure that its agents have a valid ~~permit~~ certificate of identification, and that all of its agents are in compliance with Section 33-2404, Idaho Code. The school shall complete a criminal history check that includes, at a minimum, the State Bureau of Identification, and statewide sex offender registry for each agent having unsupervised contact with minors in the minor's home or at secondary schools, prior to making application for the agent's ~~permit~~ certificate of identification. The criminal history check shall be valid for five (5) years. When an employee returns to any proprietary school after a break in service of six (6) months or more a new criminal history check must be obtained. When an employee changes employment between proprietary schools, a new

criminal history check must be obtained.

~~(4-9-09)~~()

a. The Board shall revoke any agent's certificate of identification issued or authorized under this Section and shall deny the application for issuance of a new certificate of identification of a person who pleads guilty to, or is found guilty of, notwithstanding the form of the judgment or withheld judgment, any of the following felony offenses against a child: ()

i. The aggravated assault of a child, Section 18-905, Idaho Code, or the assault with intent to commit a serious felony against a child, Section 18-909, Idaho Code. ()

ii. The aggravated battery of a child, Section 18-907, Idaho Code, or the battery with intent to commit a serious felony against a child, Section 18-911, Idaho Code. ()

iii. The injury or death of a child, Section 18-1501, Idaho Code. ()

iv. The sexual abuse of a child under sixteen (16) years of age, Section 18-1506, Idaho Code. ()

v. The ritualized abuse of a child under eighteen (18) years of age, Section 18-1506A, Idaho Code. ()

vi. The sexual exploitation of a child, Section 18-1507, Idaho Code. ()

vii. Possession of photographic representations of sexual conduct involving a child, Section 18-1507A, Idaho Code. ()

viii. Lewd conduct with a child under the age of sixteen (16) years, Section 18-1508, Idaho Code. ()

ix. The sexual battery of a minor child sixteen (16) or seventeen (17) years of age, Section 18-1508A, Idaho Code. ()

x. The sale or barter of a child for adoption or other purposes, Section 18-1511, Idaho Code. ()

xi. The murder of a child, Section 18-4003, Idaho Code, or the voluntary manslaughter of a child, Section 18-4006 1., Idaho Code. ()

xii. The kidnapping of a child, Section 18-4502, Idaho Code. ()

xiii. The importation or exportation of a juvenile for immoral purposes, Section 18-5601, Idaho Code. ()

xiv. The abduction of a person under eighteen (18) years of age for prostitution, Section 18-5610, Idaho Code. ()

xv. The rape of a child, Section 18-6101 or 18-6108, Idaho Code. ()

b. The general classes of felonies listed in Section 302 shall include equivalent laws of federal or other state jurisdictions. For the purpose of Subsection 302.07, “child” means a minor or juvenile as defined by the applicable state or federal law. ()

~~**08.** *Annual Agent’s Permit Fee.* The annual fee for the agent’s permit shall be fifty dollars (\$50.00). The agent’s permit must be renewed annually upon reapplication and proper qualifications, as required by Section 33-2404, Idaho Code.~~ (4-9-09)

098. **Surety Bond.** Each proprietary school shall comply with the provisions in Section 33-2406, Idaho Code, relating to a surety bond. (4-9-09)

~~**a.** *The amount of the surety bond shall be equal to the total tuition and fees charged by the school during the previous registration year. If a school is just starting or expects a significant expansion during the next year, the surety bond must cover the expected total tuition and fees. The amount of the surety bond shall be not less than the total tuition and fees to be collected by the school from its students that covers the period from the beginning through completion of such students’ instructional program at the school during the upcoming registration year. This amount shall be based upon the tuition and fees collected by the school from its students covering such period during the previous registration year, subject to modification in the event a school is beginning operations and has no previous revenue or satisfactorily demonstrates that it expects significant changes in tuition and fee revenue during the upcoming year. The Executive Director shall determine the appropriate format and method by which this bond value is to be calculated and reported.*~~ (8-20-09)F()

b. Schools shall ensure that all bonds include “extended coverage” clauses to remain in effect for one hundred twenty (120) days after the date of closure. ()

c. No party to the surety bond may cancel without one hundred twenty (120) day prior notice to all parties, including the Office of the State Board of Education. ()

d. The Board shall be the beneficiary of the bond and shall oversee the distribution of funds to students who file claims. Schools shall provide proof of the required bond and submit said documentation with their registration applications. ()

~~**10.** *Student Tuition Recovery Account.* Each proprietary school shall comply with the provisions of Section 33-2407, Idaho Code, relating to a student tuition recovery account.~~ (4-9-09)

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

DOCKET NO. 32-0101-0901 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is April 30, 2009. This pending rule has been adopted by the agency and is now pending review by the 2010 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 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule and amended a temporary 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 amending the temporary 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 Endowment Fund Investment Board received additional public comment and discussed the pending and temporary rule at public meetings on August 12, 2009 and August 27, 2009. After a thorough discussion, the Board determined that its fiduciary responsibilities to the Public School Endowment Fund require the Board provide a range of fees in rule so that it may rapidly adjust the fees to address investment market conditions and to allow for changes in actual administrative costs. Subsection 020.02 and Section 030 of these rules are thus revised to establish a range of fees and provide that the Board will set the applicable fee within the range in Board policy. Board policy is set at public Board meetings. EFIB staff plans to recommend the Board adopt an initial policy of a one hundred dollar (\$100) application fee and a 2 basis point guaranty fee, consistent with the original temporary rule and comments by the Board in the two recent meetings.

In addition to the above, a citation to Idaho Code is being corrected in Paragraph 020.01.a., a new Subsection 020.05 is being added to provide for submission deadlines, and Section 030 is modified to specify that guaranty fees must be deposited in the Public School Endowment Fund.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Endowment Fund Investment Board amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 125 through 128.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. This fee or charge is being imposed pursuant to Section 57-728, Idaho Code. The following is a specific description of the fee or charge imposed or increased:

Pursuant to Section 57-728, Idaho Code, as revised effective April 17, 2009, 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. 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.

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.

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 be charged a small application fee reflecting the overhead costs of the EFIB's administration of the Program and the EFIB's other clients will see a corresponding reduction in their expenses. The Public School Endowment will receive a guarantee fee that will be reflected in the Endowment's investment returns.

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

DATED this 28th day of August, 2009.

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
TEMPORARY AND PROPOSED FEE RULE**

EFFECTIVE DATE: The effective date of the temporary rule is April 30, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. 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 August 19, 2009.

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 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:

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. The rules will allow the reopening of the Program, which was closed to new applications in 2008. The new chapter of rules specifies the application procedure for school districts seeking to participate in the Credit Enhancement Program.

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

The temporary rulemaking is necessary to comply with deadlines in amendments to governing law. In addition, the temporary rules confer a benefit by allowing the Program to re-open.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Pursuant to Section 57-728, Idaho Code, as revised effective April 17, 2009, 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. 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 be charged a small application fee reflecting the overhead costs of the EFIB's administration of the Program and the EFIB's other clients will see a corresponding reduction in their expenses. The Public School Endowment will receive a guarantee fee that will be reflected in the Endowment's investment returns.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Larry Johnson, Manager of Investments, (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 on or before August 26, 2009.

DATED this 1st day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

**IDAPA 32
TITLE 01
CHAPTER 01**

**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. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 32, Title 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 endowment funds. 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, and legal holidays. 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.

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

02. EFIB. Endowment Fund Investment Board. ()

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

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

05. Total Debt Service. The total amount to be repaid to purchasers over the stated

maturity of the School District bond (principal plus interest). ()

06. Treasurer. The Idaho State Treasurer. ()

011. -- 019. (RESERVED).

020. APPLICATION.

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

a. Correspondence from the 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. If the audit of the last fiscal year has not been completed, an unaudited, draft financial statement or financial summary for that year will be accepted up to six (6) months after the end of the last fiscal year. ()

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

02. Application and Administrative Fees. School Districts shall submit an application fee ~~of with the application materials in an amount established by EFIB policy. The application fee shall not exceed one hundred thousand dollars (\$1000) with the application materials.~~ The EFIB may charge the applicant an administrative fee equal to the actual charges to the EFIB for the review of application materials by outside experts, including certified public accountants. ~~(4-30-09)F()~~

03. Staff Review. The EFIB may delegate review of applications to EFIB staff. The EFIB may delegate approval of applications to the EFIB's manager of investments. ()

04. 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 information substantiating audit materials, the EFIB will provide written approval or denial of the application within twenty (20) days of the submission of the substantiating information. ()

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

021. -- 029. (RESERVED).

030. GUARANTY FEE.

School Districts shall remit to the EFIB, *for deposit in the Public School Endowment Fund* within five (5) days of the sale of the bonds covered under the Credit Enhancement Program, a one-time fee ~~equal to as set forth in EFIB policy.~~ *Such fee shall not exceed ~~two~~ five one-hundredths of one percent (0.025% or ~~two~~ five basis points) of the Total Debt Service.* ~~(4-30-09)F()~~

031. -- 999. (RESERVED).