

IDAPA 32 – ENDOWMENT FUND INVESTMENT BOARD

32.01.01 – RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

DOCKET NO. 32-0101-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 57-238(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 credit enhancement program allows School Districts to issue bonds to construct schools with an improved credit rating which lowers debt service expenses. In order to participate in the program, School Districts pay a \$500 application fee and a one-time fee equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service.

This is a long-standing rule, however, the text was simplified to comply with the [Zero-Based Regulation E. O. 2020-01](#). There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 1, 2023, Idaho Administrative Bulletin, [Vol. 23-11, pages 72-75](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

This rulemaking does not impose a new fee or charge, or increase an existing fee or charge, beyond what has been previously submitted for review in prior rules. This rule indicated that the Endowment Fund Investment Board will change 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 to provide credit enhancement for bonds issue to construct public schools. The fee or charge is being imposed pursuant to Section 57-728, 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: This rulemaking is not anticipated to have any fiscal impact on the state General Fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Chris Anton, Manager of Investments, Endowment Fund Investment Board, 816 West Bannock Street, Suite 301, Boise, ID 83702, (208)334-3312, chris.anton@efib.idaho.gov.

DATED this 30th of November, 2023.

Chris Anton
Endowment Fund Investment Board
816 West Bannock Street, Suite 301
Boise, ID 83712
Phone: (208)334-3312
Fax: (208)334-3786

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED 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 57-238(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 November 15, 2023.

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:

In accordance with the [Zero-Based Regulation E. O. 2020-01](#) and the Board's 5-year review schedule, the goal of this rulemaking is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, and provide overall clarity.

FEE SUMMARY: The following identifies the fee or charge imposed or increased through this rulemaking:

This rulemaking does not impose a new fee or charge, or increase an existing fee or charge, beyond what has been previously submitted for review in the prior rules. This rule indicates the Endowment Fund Investment Board will charge 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 to provide credit enhancement for bonds issued to construct public schools. This fee or charge is being imposed pursuant to Section 57-728, 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 resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the August 2, 2023, Idaho Administrative Bulletin, [Vol. 23-8, pages 333-334](#).

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 Chris Anton, Manager of Investments, Endowment Fund Investment Board, 816 West Bannock Street, Suite 301, Boise, ID 83702, (208)334-3312, chris.anton@efib.idaho.gov.

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 November 22, 2023.

DATED this 10th Day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 32-0101-2301

**32.01.01 – RULES GOVERNING THE CREDIT ENHANCEMENT
PROGRAM FOR SCHOOL DISTRICTS**

000. LEGAL AUTHORITY.

Section 57-728(2), Idaho Code. ()

001. SCOPE.

These rules contain the provisions for implementation of the Credit Enhancement Program pursuant to Section 57-728, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS AND REFERENCES.

01. EFIB. Endowment Fund Investment Board. ()

02. 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. ()

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

04. School District. As defined in Section 33-5302, Idaho Code. ()

05. 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 must 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. ()

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. ()

e. Application fee of five hundred dollars (\$500). ()

021. -- 029. (RESERVED)

030. ADMINISTRATIVE FEES.

01. Fees to Administer Program. Pursuant to Section 57-728(2), Idaho Code, EFIB may impose, when necessary, the following administrative fees to effectively administer the Credit Enhancement Program: ()

a. Application Fee. The fee required under Subsection 020.01.e. to pay the costs of reviewing applications. Any unexpended Application Fees will be deposited in the Public School Endowment at the end of each fiscal year. ()

b. Guarantee Fee. School Districts must remit to the EFIB a one-time fee, necessary to guarantee a school bond, equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service. 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. The cost 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. ()

c. Pass-through Fee. The EFIB may incur a Pass-through Fee, which consists of costs billed to EFIB for any necessary professional services, related to the review of an application in its discretion and without prior approval of the School District. The EFIB will not invoice a School District for the full amount of Pass-through Fees related to the review of an application without the prior written approval of the School District. School Districts shall remit each invoiced Pass-through Fee to the EFIB within thirty (30) days of invoice. EFIB may deny an application for failure to pay any invoiced fee. ()

031. -- 039. (RESERVED)

040. APPROVAL AND DENIAL OF APPLICATIONS.

01. Review Periods. The EFIB will provide written approval or denial of a completed application within twenty (20) days. 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. ()

041. -- 999. (RESERVED)

[Agency redlined courtesy copy]

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.~~ (3-25-22)()

001. SCOPE.

These rules contain the provisions for implementation of the Credit Enhancement Program pursuant to Section 57-728, Idaho Code. (3-25-22)()

002. -- 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. (3-25-22)~~

~~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. (3-25-22)~~

~~03. **Credit Enhancement Program.** The Credit Enhancement Program for School District Bonds established in Section 57-728, Idaho Code. (3-25-22)~~

~~041. **EFIB.** Endowment Fund Investment Board. ()~~

~~052. **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. (3-25-22)~~

~~073. **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. (3-25-22)~~

~~094. **School District.** As defined in Section 33-5302, Idaho Code. ()~~

~~105. **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 must 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.~~ (3-25-22)()

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. ()

e. Application fee of five hundred dollars (\$500). ()

021. -- 029. (RESERVED)

030. **ADMINISTRATIVE FEES.**

01. **Fees to Administer Program.** Pursuant to Section 57-728(2), Idaho Code, EFIB may impose, when necessary, the following administrative fees to effectively administer the Credit Enhancement Program: ()

a. **Application Fee.** The fee required under Subsection 020.01.b.e. to pay the costs of reviewing applications. Any unexpended Application Fees will be deposited in the Public School Endowment at the end of each fiscal year. ()

b. **Guarantee Fee.** School Districts must remit to the EFIB a one-time fee, necessary to guarantee a school bond, equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service. 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. The cost 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. (3-25-22)()

~~02. **Administrative Fees.** (3-25-22)~~

~~**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. (3-25-22)~~

bc. **Pass-through Fee.** The EFIB may incur a Pass-through Fee, which consists of costs billed to EFIB for any necessary professional services, related to the review of an application in its discretion and without prior approval of the School District. The EFIB will not invoice a School District for the full amount of 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.~~ EFIB may deny an application for failure to pay any invoiced fee. (3-25-22)()

031. -- 039. (RESERVED)

040. **APPROVAL AND DENIAL OF APPLICATIONS.**

01. **Review Periods.** The EFIB will provide written approval or denial of an completed 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. (3-25-22)()

~~02. **Delegation of Review and Approval.** The EFIB may delegate review of applications to EFIB staff or experts including legal, accounting, and financial professionals. The EFIB may delegate approval of applications to the EFIB's manager of investments. (3-25-22)~~

~~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. (3-25-22)~~

~~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~~

~~(3-25-22)~~

041. -- 999. (RESERVED)