

Dear Senators MORTIMER, Thayn, Buckner-Webb, and  
Representatives DEMORDAUNT, VanOrden, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Office of the State Board of Education:

IDAPA 08.01.02 - Rules Governing the Postsecondary Credit Scholarship Program - (New Chapter)  
Temporary and Proposed (Docket No. 08-0102-1601);

IDAPA 08.01.04 - Residency - Temporary and Proposed Rule (Docket No. 08-0104-1601);

IDAPA 08.01.09 - Rules Governing the GEAR UP Idaho Scholarship Program - (Chapter Repeal)  
Proposed Rule (Docket No. 08-0109-1601).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 10/25/2016. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/23/2016.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Education Committee and the House Education Committee

**FROM:** Deputy Division Manager - Katharine Gerrity

**DATE:** October 05, 2016

**SUBJECT:** Office of the State Board of Education

IDAPA 08.01.02 - Rules Governing the Postsecondary Credit Scholarship Program - (New Chapter) Temporary and Proposed (Docket No. 08-0102-1601)

IDAPA 08.01.04 - Residency - Temporary and Proposed Rule (Docket No. 08-0104-1601)

IDAPA 08.01.09 - Rules Governing the GEAR UP Idaho Scholarship Program - (Chapter Repeal) Proposed Rule (Docket No. 08-0109-1601)

#### **1. IDAPA 08.01.02 - Rules Governing the Postsecondary Credit Scholarship Program**

The Office of the State Board of Education submits notice of temporary and proposed rule at IDAPA 08.01.02 - Rules Governing the Postsecondary Credit Scholarship Program. According to the board, the proposed rule creates a new chapter establishing the administrative procedures for applying for the Postsecondary Credit Scholarships that was created in HB 477a during the 2016 legislative session. The board notes that the rule also provides clarification relating to the required business or industry matching scholarship. The board notes that the temporary rule, which became effective on August 11, 2016, was necessary to comply with the current law.

The board notes that negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Section 33-4605, Idaho Code.

#### **2. IDAPA 08.01.04 - Residency**

The Office of the State Board of Education submits notice of temporary and proposed rule at IDAPA 08.01.04 - Residency. According to the board, statutory changes made to Section 33-3717B, Idaho Code, made during the 2016 legislative session, streamlined the residency requirements for tuition purposes, making many of the existing provisions set forth in rule unnecessary. The board indicates that the rule brings provisions into compliance with statute. The board notes that specific changes include the deletion of unnecessary definitions and the addition of definitions for "accredited secondary school" and "armed forces." The board indicates that the rule also provides timelines for submitting requests for reclassification of residency determinations, simplifies factors for determining domicile, simplifies the appeals procedure and deletes sections that are no longer

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

applicable. The board notes that the temporary rule, which became effective on August 1, 2016, was justified to bring the provisions into compliance with the statute.

The board states that negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Section 33-3717B, Idaho Code.

### **3. IDAPA 08.01.09 - Rules Governing the GEAR UP Idaho Scholarship Program**

The Office of the State Board of Education submits notice of proposed rulemaking at IDAPA 08.01.09 - Rules Governing the GEAR UP Idaho Scholarship Program. This is a proposal for a rule repeal. According to the board, due to changes in federal requirements for the GEAR UP program, it will no longer be necessary to have administrative rules governing the scholarship program. The board notes that participation and award amounts will be based on the federal program requirements. The board indicates that the existing language in the administrative code is no long necessary.

The board states that negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Section 33-105, Idaho Code.

cc: Office of the State Board of Education  
Tracie Bent

## IDAPA 08 - STATE BOARD OF EDUCATION

### 08.01.02 - RULES GOVERNING THE POSTSECONDARY CREDIT SCHOLARSHIP PROGRAM

#### DOCKET NO. 08-0102-1601 (NEW CHAPTER)

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 11, 2016.

**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 33-4605, 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 19, 2016.

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:

The proposed rule will create a new section of administrative code establishing the administrative procedures for applying for the Postsecondary Credit Scholarship and provide clarification around the required business or industry matching scholarship.

**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:

HB 477a (2016) created a new section of code, Section 33-4605, Idaho Code, which created a new state administered scholarship titled the Postsecondary Credit Scholarship. The temporary rule is necessary to come into compliance with the new statute.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 48](#).

**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 temporary and proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

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 26th, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer  
Office of the State Board of Education  
Phone: (208) 332-1582  
Fax: (208) 334-2632

650 W State St.  
PO Box 83720  
Boise, ID 83720-0037

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 08-0102-1601**

**IDAPA 08**  
**TITLE 01**  
**CHAPTER 02**

**08.01.02 - RULES GOVERNING THE POSTSECONDARY CREDIT SCHOLARSHIP PROGRAM**

**000. LEGAL AUTHORITY.**

In accordance with Sections 33-105, 33-4601A, and 33-4605, Idaho Code the State Board of Education (Board) shall promulgate rules implementing the provisions of Title 33, Chapter 46, Idaho Code. (8-11-16)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 08.01.02, "Rules Governing the Postsecondary Credit Scholarship Program." (8-11-16)T

**02. Scope.** These rules constitute the requirements for the Postsecondary Credit Scholarship Program. (8-11-16)T

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, written interpretations, if any, of the rules of this chapter are available at the Office of the State Board of Education. (8-11-16)T

**003. ADMINISTRATIVE APPEALS.**

Unless otherwise provided for in the rules of the Board or in the Board Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein. (8-11-16)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. (8-11-16)T

**005. OFFICE INFORMATION.**

**01. Office Hours.** The offices of the Board are open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. (8-11-16)T

**02. Street Address.** The offices of the Board are located at 650 W. State Street, Boise, Idaho. (8-11-16)T

**03. Mailing Address.** The mailing address of the Board is P.O. Box 83720, Boise, Idaho 83720-0037. (8-11-16)T

**04. Telephone Number.** The telephone number of the Board is (208) 334-2270. (8-11-16)T

**05. Facsimile.** The facsimile number of the Board is (208) 334-2632. (8-11-16)T

**06. Electronic Address.** The electronic address of the Board of Education is at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (8-11-16)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (8-11-16)T

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

For the purposes of this section the following definitions shall apply: (8-11-16)T

**01. Board.** Idaho State Board of Education. (8-11-16)T

**02. Business Scholarship.** A competitive scholarship awarded from a business entity registered with the Idaho Secretary of State or other state or federal entity that registers businesses and whose purpose is not postsecondary education nor is the entity affiliated with a postsecondary educational institution; or an association representing businesses as described herein. (8-11-16)T

**03. Executive Director.** Executive Director for the Idaho State Board of Education. (8-11-16)T

**04. Grade Point Average (GPA).** Average secondary grade earned by a student, figured by dividing the grade points earned by the number of credits attempted. (8-11-16)T

**05. Industry Scholarship.** A competitive scholarship in which the recipient must enter into a program of study for a specific occupational area. (8-11-16)T

**06. Merit Based Scholarship.** A scholarship in which a minimum academic standard must be met to be eligible for the scholarship. (8-11-16)T

**011. -- 100. (RESERVED)**

**101. APPLICATION PROCESS.**

**01. Initial Applications.** An eligible student must complete and submit the scholarship program application to the Board electronically on or before the date specified in the application, but not later than March 1 for guaranteed consideration of an award during the proceeding fall academic term. An applicant without electronic capabilities may submit an application on the form established by the Executive Director through the United States Postal Service, which must be postmarked no later than March 1. Applications received after March 1 of each year must be received at least 60 days prior to the start of the term for which the applicant has enrolled for consideration during the next academic term. (8-11-16)T

**02. Communication with State Officials.** Failure to respond within the time period specified will result in cancellation of the application or forfeiture of the scholarship unless extenuating circumstances are involved and approved by the Executive Director or designee. (8-11-16)T

**102. -- 299. (RESERVED)**

**300. SCHOLARSHIP AWARDS.**

**01. Selection Process.** Scholarship awards will be based on the availability of scholarship program funds. In the event more eligible applications are received than funds are available, those applications received by March 1 of each year will be awarded based on their GPA ranking. Applications received after March 1 of each year will only be considered after all initial applications have been processed and awardees have accepted or rejected their awards, and will be based on their GPA ranking. (8-11-16)T

**02. Monetary Value of the Opportunity Scholarship.** The monetary value of the award will be based

on the maximum amount the applicant is eligible to receive based on the number of postsecondary credits accepted by the institution they attend and the amount of the matching scholarship for each year they are eligible. The award amount shall not be more than the matching merit based business or industry scholarship received by the applicant within the limits of the maximum eligible amount. (8-11-16)T

**03. Payment.** Payment of scholarship award will be made in the name of the recipient and will be sent to the designated official at the eligible Idaho postsecondary educational institution in which the recipient is enrolled. The official must transmit the payment to the recipient student's account within a reasonable time following receipt of the payment. (8-11-16)T

**04. Duration.** Scholarships will be awarded on an annual basis and payments will correspond to academic terms, semesters, or equivalent units. In no instance will the entire amount of a scholarship be paid in advance to, or on behalf of, a scholarship recipient. The scholarship is valid for up to four (4) educational years from the date the recipient graduated from high school. Awards are contingent on annual appropriations by the legislature and continued eligibility of the student. (8-11-16)T

**05. Eligibility.** If a student receives a scholarship payment and it is later determined that the student did not meet all of the scholarship program eligibility requirements, then the student is considered in overpayment status, and the remaining program funds must be returned to the Office of the State Board of Education. (8-11-16)T

**302. CONTINUING ELIGIBILITY.**

To remain eligible for the scholarship, the recipient must comply with all of the provisions of the scholarship program and these rules, in addition to the following requirements. (8-11-16)T

**01. Interruption of Continuous Enrollment.** A student may request an interruption of continuous enrollment for eligible students due to military service in the United States armed forces, medical circumstances, or extenuating circumstances approved by the Executive Director. A scholarship recipient whose continuous enrollment is interrupted for more than four (4) months but less than two (2) years for any reason but who intends to re-enroll in an eligible Idaho postsecondary educational institution must file a letter of intent to withdraw no later than sixty (60) days prior to the first day of the academic term of the discontinued attendance to the Office of the State Board of Education. Failure to do so may result in forfeiture of the scholarship. In addition, the individual must file a statement with the Board declaring his intent to re-enroll as a full-time student in an academic or career-technical program in an eligible Idaho postsecondary educational institution for the succeeding academic year no later than thirty (30) days prior to the first day of the academic term in which the individual intends to re-enroll and within two (2) years of the approval of the request to withdraw. Failure to do so will result in forfeiture of the scholarship unless an extension has been granted. All requests for extension must be made sixty (60) days prior to the start of the succeeding academic year. At no time may the extension extend beyond the expiration period of the scholarship. (8-11-16)T

**303. -- 999. (RESERVED)**

# IDAPA 08 - STATE BOARD OF EDUCATION

## 08.01.04 - RESIDENCY

### DOCKET NO. 08-0104-1601

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 11, 2016.

**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 33-3717B, 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 19, 2016.

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:

Legislative changes to Section 33-3717B, Idaho Code, streamlined the residency requirements for tuition purposes, making many of the existing provisions in administrative rule unnecessary. Amendments are being proposed to IDAPA 08.01.04 to bring it into compliance with the provisions of Section 33-3717B, Idaho Code. The proposed rule includes the following amendments:

- Deletes unnecessary definitions of terms that are either no longer used or are defined within the statute itself;
- Adds a definition of accredited secondary school and armed forces. These terms were previously undefined;
- Sets out timelines for submitting requests for reclassification of residency determinations;
- Simplifies the factors for determining domicile and specifies which items can be used as factor and which items must be used in conjunction with other factors;
- Simplifies the appeals procedure; and
- Deletes sections that are no longer applicable and makes additional technical changes.

**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:

During the 2016 legislative session changes were made to Section 33-3717B, Idaho Code, residency requirements for tuition purposes. The temporary rule amendments are necessary to come into compliance with the changes made to Section 33-3717B, Idaho Code.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 49](#).

**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 temporary and proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

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 26th, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.  
PO Box 83720  
Boise, ID 83720-0037  
Phone: (208) 332-1582  
Fax: (208) 334-2632

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 08-0104-1601  
(Only Those Sections With Amendments Are Shown.)**

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is Residency. (8-11-16)T

**02. Scope.** This chapter ~~has the following scope:~~ governs residency classification for tuition purposes for the four-year institutions and Eastern Idaho Technical College under the supervision governance of the State Board of Education and the Regents of the University of Idaho, ~~the University of Idaho, Boise State University, Idaho State University, and Lewis Clark State College are required to make residency determinations~~ pursuant to Section 33-3717B, Idaho Code, ~~and these rules.~~ (5-8-09)(8-11-16)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS.**

~~Provisions for appeal of a residency determination are set forth in Section 103 of this chapter.~~ Unless otherwise provided for in the rules of the State Board of Education or in the State Board of Education Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein. (1-1-94)(8-11-16)T

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into these rules. (8-11-16)T

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

The principal place of business of the State Board of Education is in Boise, Idaho. (8-11-16)T

**01. Mailing Address.** The mailing address is PO Box 83720, Boise, Idaho 83720-0037. (8-11-16)T

**02. Street Address.** The State Board of Education's street address is 650 West State Street, Room 307, Boise, Idaho 83702. (8-11-16)T

**03. Office Hours.** The office hours are from 8 a.m. to 5 p.m., except Saturday, Sunday and legal

holidays.

(8-11-16)T

**0046. PUBLIC RECORDS ACT COMPLIANCE.**

~~All rules required to be adopted by this chapter are public records. This rule has been promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and is a public record. (1-1-94)~~(8-11-16)T

**007. -- 009. (RESERVED)**

**00510. DEFINITIONS.**

~~01. Resident Student. For any public institution of higher education in Idaho, resident student is defined in Section 33-3717B, Idaho Code, and specifically includes: (3-29-10)~~

~~a. Any student who has one (1) or more parent or parents or court appointed guardians who are domiciled in the state of Idaho for at least twelve (12) months prior to the opening day of the term for which the student matriculates, and the parent or parents or guardians provide at least fifty percent (50%) of the student's support. (5-8-09)~~

~~b. Any student who receives less than fifty percent (50%) of his support from a parent, parents, or legal guardians and who has continuously resided and maintained a bona fide domicile in the state for twelve (12) months immediately preceding the opening day of the term during which the student proposes to attend primarily for purposes other than educational. (5-8-09)~~

~~c. Unless disqualified as a nonresident student as defined in Subsection 005.02, any student who is a graduate of an accredited secondary school in the state of Idaho and who matriculates during the term immediately following such graduation. (1-1-94)~~

~~d. The spouse of a person who is classified or is eligible for classification as a resident of the state for purposes of attending a college or university, provided that the institution shall require the filing of proof of marriage by the applicant. (1-1-94)~~

~~e. A member of the armed forces of the United States stationed in the state on military orders. (1-1-94)~~

~~f. An officer or an enlisted member of the Idaho national guard. (5-8-09)~~

~~g. A student whose parent or guardian is a member of the armed forces and stationed in the state on military orders and who receives fifty percent (50%) or more of his support from a parent or guardian, provided that the student, while in continuous attendance, shall not lose residency status when the student's parent or guardian is transferred on military orders. (1-1-94)~~

~~h. A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state within one (1) year of the date of separation. (1-1-94)~~

~~i. Any person who has been domiciled in the state, has qualified and would otherwise be qualified under Section 33-3717B, Idaho Code, and who is away from the state for a period of less than thirty (30) months and has not established legal residence elsewhere, provided a twelve-month (12) period of continuous residence has been established immediately prior to departure. However, time spent away from the state while enrolled in a postsecondary education program shall not be included in the thirty (30) months. Such time spent away from the state while enrolled shall include normal academic year breaks, such as summer breaks or breaks between semesters or quarters, that occur prior to the receipt of the postsecondary degree. (3-29-10)~~

~~j. A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: members of the following Idaho Native American Indian tribes, whose traditional and customary tribal~~

~~boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho:~~ (5-8-09)

- ~~i. Coeur d'Alene tribe;~~ (5-8-09)
- ~~ii. Shoshone-Paiute tribes;~~ (5-8-09)
- ~~iii. Nez Perce tribe;~~ (5-8-09)
- ~~iv. Shoshone-Bannock tribes;~~ (5-8-09)
- ~~v. Kootenai tribe.~~ (5-8-09)

~~02. Nonresident Student. Nonresident student is defined in Section 33-3717B, Idaho Code, and includes:~~ (5-8-09)

- ~~a. A student who does not qualify as a resident student as defined in Subsection 005.01. (1-1-94)~~
- ~~b. A student attending an institution in this state with financial assistance provided by another state or governmental entity thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided. (1-1-94)~~
- ~~e. A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or who does not hold "refugee parolee" or "conditional entrant" status with the United States Immigration and Naturalization Service, or is not otherwise permanently residing in the United States under color of law, and who does not also comply with and meet all applicable sections of Section 33-3717B, Idaho Code, and this chapter. (5-8-09)~~

**051. Accredited Secondary School.** ~~"Accredited secondary school" means a~~ **An Idaho secondary school accredited by a body recognized by the State Board of Education.** (1-1-94)(8-11-16)T

**072. Armed Forces.** ~~"Armed forces" means~~ **The United States Army, Navy, Air Force, Marine Corps, and United States Coast Guard, and their reserve forces. It does not include the National Guard or any other reserve force.** (3-30-01)(8-11-16)T

**03. Continuously Resided.** ~~The term "continuously resided" as used in this chapter means~~ **Physical presence in the state for twelve (12) consecutive months. Absence from the state for normal vacations, family travel, work assignments, short-term military training, and similar occasions totaling not more than thirty (30) days during the twelve (12) month qualifying period, in and of itself, will not be regarded as negating the continuous residence of the individual.** (1-1-94)(8-11-16)T

~~04. Continuous Attendance. For purposes of Subsection 005.01.g., "continuous attendance" means attendance at a college or university for continuing and succeeding semesters or terms excluding summer semesters or terms. (5-8-09)~~

~~06. Term Immediately Following Graduation. For purposes of Subsection 005.01.e., "the term immediately following graduation" does not include the summer semester or term of a college or university. (1-1-94)~~

~~08. Domicile. "Domicile" means an individual's true, fixed, and permanent home and place of habitation; the place where the individual intends to remain and to which the individual expects to return when he leaves without intending to establish a new domicile elsewhere. The establishment of domicile in Idaho occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter. (1-1-94)~~

**04. Full-time Employment.** **Employment consisting on average of at least thirty (30) hours of service per week, or one hundred twenty (120) hours of service per month.** (8-11-16)T

**05. Full-time Student.** A student taking the number of credits set by the State Board of Education to constitute a full course load. (8-11-16)T

**096. Support.** "Support" means financial support given to the student during the twelve (12) months preceding the opening date of the term for which resident status is requested, but shall not include educational scholarships or grants provided to the student to attend a postsecondary educational institution. Any student who receives less than fifty percent (50%) support may demonstrate this by showing that he is not claimed as a dependent by a parent or guardian for income tax purposes or that a parent or guardian provides less than fifty percent (50%) of the cost of attending an institution according to the financial aid office of that institution or that other similar evidence exists of parental support such as dental bills, medical bills, etc. (5-8-09)

~~006~~**11. -- 099. (RESERVED)**

**100. RESIDENT CLASSIFICATION BY ALL INSTITUTIONS.**

Any student classified as a resident student for purposes of higher education tuition by one of the institutions or Eastern Idaho Technical College ~~must shall~~ be considered a resident by all other institutions. "Institutions" means the University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, and Eastern Idaho Technical College. (5-8-09)(8-11-16)T

**101. RESIDENCY CLASSIFICATION PROCESS.**

All requests for residency reclassification must be submitted by the student to the institution by the 10th day of the term in which reclassification is sought. Each institution ~~is to~~ shall develop its own procedures to determine the residency status of applicants, disseminate information about the classification process, and determine the documentation required of each applicant to the institution. The institution may require whatever records, documents, or affidavits it deems necessary to classify each applicant correctly. It is the responsibility of the institution to notify the student in a timely manner of the documentation required for the classification process, and it is the responsibility of the student to provide the documentation by the deadline established by the institution. Each student ~~must shall~~ be notified in writing of the residency classification decision ~~made by the institutional personnel responsible for determining residency status~~ within fifteen (15) days of such determination being made. (7-1-93)(8-11-16)T

**102. FACTORS FOR DETERMINING DOMICILE.**

~~Pursuant to Section 33-3717B, Idaho Code, the overriding factor for determining whether a student is a "resident student" is domicile. For these purposes, the establishment of~~ The following, if supported by documentation, support a claim of domicile in Idaho. ~~occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter. In determining whether a student is domiciled in Idaho primarily for purposes other than educational, the institutions shall consider the following:~~ (5-8-09)(8-11-16)T

**01. Domicile Established Tax Returns and Employment.** Any Both of the following, if done for at least twelve (12) months before the term in which the student proposes to enroll ~~as a resident student~~, proves the establishment and maintenance of domicile in Idaho for purposes other than educational: (5-8-09)(8-11-16)T

**a.** Filing of Idaho state income tax returns covering a period of at least twelve (12) months before the term in which the student proposes to enroll as a resident student: ~~and~~ (5-8-09)(8-11-16)T

**b.** ~~Permanent~~ Full-time employment or the hourly equivalent ~~thereof~~ in the state of Idaho. (5-8-09)(8-11-16)T

**e.** ~~Ownership by the student of the student's living quarters.~~ (5-8-09)

**02- Rebuttable Presumption.** ~~A student who is enrolled for more than eight (8) hours in any semester or quarter during a twelve (12) month period shall be presumed to be in Idaho for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile in the state unless the student proves, in fact, establishment of a bona fide domicile in the state primarily for purposes other than educational. A student who establishes at least five (5) of the seven (7) factors listed in Subsection 102.03 of these~~

~~rules, if done for a least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational.~~ (5-8-09)

**032.** ~~Additional Multiple Factors to Determine Domiciliary Intent.~~ A student who establishes at least five (5) of the ~~seven (7)~~ following factors, if done for at least twelve (12) months before the term in which the student proposes to enroll ~~as a resident student~~, proves the establishment and maintenance of domicile in Idaho for purposes other than educational: (5-8-09)(8-11-16)T

**a.** Ownership or leasing of a residence in Idaho. (8-11-16)T

**a.b.** Registration and payment of Idaho taxes or fees. ~~Registration, other than sales or income tax, including registration~~ and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property for which state registration and the payment of state tax or fee is required. (5-8-09)(8-11-16)T

**b.c.** Registration to vote for state elected officials in Idaho at a general election. (1-1-94)

**b.d.** Holding of an Idaho driver's license. ~~An Idaho or~~ state-issued ~~ID~~ identification card ~~may be used in lieu of an Idaho driver's license.~~ (5-8-09)(8-11-16)T

**b.e.** Evidence of the abandonment of a previous domicile. (1-1-94)

~~e.~~ ~~The presence of household goods in Idaho.~~ (1-1-94)

**f.** The establishment of accounts with ~~Idaho~~ financial institutions in Idaho. (5-8-09)(8-11-16)T

**g.** ~~And~~ Other similar factors indicating intent to be domiciled in Idaho and the maintenance of such domicile. Factors may include, but are not limited to, enrollment of dependent children in Idaho ~~primary elementary~~ or secondary schools, establishment of acceptance of an offer of permanent employment for self in Idaho, ~~or~~ documented need to care for a relative in Idaho, utility statements, or employment documentation. (5-8-09)(8-11-16)T

**04.** Idaho Elementary and Secondary Students. If a student meets the requirements set forth under Idaho Code, Section 33-3717B(1)(c), that student shall not be required to meet the twelve (12) month requirement for establishing domicile. (8-11-16)T

### 103. APPEALS PROCEDURE.

Any student who contests the residency classification decision made ~~pursuant to IDAPA 08.01.04.101~~ by the institution may appeal the decision. The student must shall be informed of his right to appeal; by the institution at the time the student is notified of the residency classification decision. The student must request the appeal in writing and agree to the release of information provided to determine residency to the review body, and must comply with deadlines established by the institution for requesting such appeal. (1-1-94)(8-11-16)T

**01.** Internal Institution Appeal. The chief executive officer of each institution or his designee must shall appoint or cause to be appointed a committee of no less than three (3) ~~to no more than~~ five (5) members who represent faculty and administration and who will constitute a residency review committee. ~~The individual responsible for the initial determination of residency of any student is ineligible for membership on the review committee. The committee will elect a chairman, secretary, or other position as may be deemed necessary to carry out the work of the committee.~~ Within thirty (30) days following receipt of the student's written request to appeal the residency classification decision ~~made pursuant to IDAPA 08.01.04.101~~, the committee must meet and review the ruling. The student appealing is responsible for presenting such evidence as the committee may request and such other evidence as the student may deem pertinent to his residency status. The individual who made responsible for the initial residency classification decision ~~pursuant to IDAPA 08.01.04.101~~ may be present ~~to submit such information as he may desire for each case being appealed, if requested by the committee, to answer questions from the committee.~~ The student must be notified in writing of the review committee's decision. The decision of the committee is final unless the student elects to appeal ~~further~~ the decision to the State Board of Education. (7-1-93)(8-11-16)T

02. **Board Appeal.** Any student who contests the decision of the residency review committee may appeal to the State Board of Education. In such case, the student must advise the chief executive officer of the institution, in writing, of his request to submit an appeal. The chief executive officer ~~must arrange for a~~ will submit the request to the Office of the State Board of Education for review by the Board or the Board's designated representatives. The decision of the State Board of Education is the final determination and is binding on all parties concerned, subject to the student's statutory right to appeal the final determination to district court.

(7-1-93)(8-11-16)T

~~104. INTERPRETATIONS RELATING TO RESIDENCY CLASSIFICATION.~~

~~01. **Common Law Marriage.** Any student who wants to establish residency on the basis of a common law marriage must complete an Affidavit of Common Law Marriage as approved by the Board. (7-1-93)~~

~~02. **Nonresident Aliens — Marital Privilege.** Nonresident aliens who marry Idaho residents become eligible for residency classification for purposes of higher education, as provided in Section 33-3717B, Idaho Code, upon filing proof of marriage in the admissions office. However, the institutions remain responsible for complying with requirements set forth in regulations of the U.S. Immigration and Naturalization Service relating to non-immigrant alien students until such time as the alien is granted lawful resident alien status by the U.S. Immigration and Naturalization Service. (5-8-09)~~

~~105. RESIDENCY REQUIREMENTS FOR SPECIAL GRADUATE OR PROFESSIONAL PROGRAMS.~~

~~01. **RESIDENCY REQUIREMENT.** As provided in Section 33-3717B, Idaho Code, a residency requirement of at least one (1) calendar year is in effect for certain special graduate and professional programs. (3-29-12)~~

~~a. Those programs include, but are not limited to, the WAMI Regional Medical Program, the WICHE Professional Student Exchange Program, the Idaho Dental Education Program, the Creighton Dental Education Program, the WOI Regional Veterinary Program, and the University of Utah Medical Program. (3-29-12)~~

~~b. For purposes of this section, the requirement of "at least one (1) calendar year" means a period of twelve (12) consecutive months of continuous residency consistent with the requirements of Section 33-3717B, Idaho Code, immediately prior to the date of application. (3-29-12)~~

~~02. **Appeal to the State Board of Education.** Applicants for the special graduate and professional programs, upon institutional denial of residency status, may petition the Board for a hearing on the denial. The decision to grant such a hearing is discretionary with the Board and will be granted for errors in determination of residency pursuant to Section 33-3717B, Idaho Code. (5-8-09)~~

1061. -- 999. (RESERVED)

## IDAPA 08 - STATE BOARD OF EDUCATION

### 08.01.09 - RULES GOVERNING THE GEAR UP IDAHO SCHOLARSHIP PROGRAM

#### DOCKET NO. 08-0109-1601 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - 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 33-105, 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 19, 2016.

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:

The original scholarship was available to students who had attended a school participating in the GEAR UP Idaho program and who had participated in the programs early intervention component in grades seven (7) through ten (10). To be eligible for participation in the GEAR UP 1 scholarship, the student must have graduated in 2012, 2013, or 2014. Idaho received a second GEAR UP grant, referred to as GEAR UP 2. The scholarship component of GEAR UP 2 is available to students who will graduate from high school in 2017 and 2018. The student eligibility requirements for the GEAR UP 2 program are slightly different than those of GEAR UP 1.

Due to the changes in federal requirements for this program, it will no longer be necessary to have administrative rules governing the scholarship program. Participation and award amounts will be based on the federal program requirements. Due to these changes the existing language in administrative code is no longer necessary. The proposed amendments repeal the section in its entirety.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, page 20](#).

**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 Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

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 26th, 2016.

DATED this 26th day of August, 2016.

Tracie Bent, Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St., PO Box 83720

Boise, ID 83720-0037  
Phone: (208) 332-1582  
Fax: (208) 334-2632

**IDAPA 08.01.09 IS BEING REPEALED IN ITS ENTIRETY**