

Discussion of Proposed Amendment to 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter D, Uniform Bank Bid or Request for Proposal and Depository Contract, §109.51, Uniform Depository Bank Bid or Proposal Form

November 17, 2016

COMMITTEE ON SCHOOL FINANCE/PERMANENT SCHOOL FUND: DISCUSSION

STATE BOARD OF EDUCATION: NO ACTION

SUMMARY: This item provides the opportunity for the committee to discuss a proposed amendment to 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter D, Uniform Bank Bid or Request for Proposal and Depository Contract, §109.51, Uniform Depository Bank Bid or Proposal Form. The proposed amendment would facilitate the acquisition of a depository contract that is in compliance with current banking standards.

STATUTORY AUTHORITY: Texas Education Code (TEC), §§7.102(c)(34), 45.206, and 45.208.

TEC, §7.102(c)(34), requires the State Board of Education (SBOE) to prescribe uniform bid blanks for school districts to use in selecting a depository bank.

TEC, §45.206, requires school districts to use the uniform bid blank and request for proposal forms prescribed by the SBOE when selecting a depository bank.

TEC, §45.208, requires that a school district and a bank selected as a depository enter into a depository contract using the form prescribed by the SBOE.

BOARD RESPONSE: This item is presented for review and comment.

PREVIOUS BOARD ACTION: The SBOE adopted 19 TAC §109.51 effective September 1, 1997. The rule was last amended effective May 15, 2014.

FUTURE ACTION EXPECTED: Proposed amendment to 19 TAC §109.51 will be presented for first reading and filing authorization at the January/February 2017 SBOE meeting.

BACKGROUND INFORMATION AND SIGNIFICANT ISSUES: The rules in 19 TAC Chapter 109, Subchapter D, establish rules related to a school district's selection of and contract with a bank to serve as the district's depository for all funds.

Specifically, §109.51 establishes the requirement that each school district, before the current depository contract expires, choose whether to select a depository bank through competitive bidding or through requests for proposals and then submit a blank uniform bid or proposal form to each bank in the district and, if desired, to other interested banks. Section 109.51 also establishes the requirement that a district file the selected form with the Texas Education Agency (TEA). The section includes the bid and proposal forms prescribed by the SBOE.

**The proposed amendment to §109.51 would update the rule to comply with current banking standards by facilitating the acquisition of a depository contract that a school district must use with a depository bank.**

**Both the uniform bid blank form, adopted as Figure: 19 TAC §109.51(c), and the uniform proposal blank form, adopted as Figure: 19 TAC §109.51(d), would be revised as follows.**

**The Definitions and Instructions section would be revised to include the right to use a sub-depository bank other than the primary bank and specify that those deposits will be collateralized.**

**The Bank Compensation section would specify that the district may pay for the bank's services by targeted balances or by fees and change the methodology when appropriate. The bank would be required to detail any differences in related costs for either option.**

**The Compensation Based on a Targeted Balance section would specify that a money market mutual fund used for excess collected balance daily investments must be one that strives to maintain a \$1 NAV (Net Asset Value).**

**The District Investments section would be modified to update the single maturity time deposits amount from more than \$100,000 to more than \$250,000.**

**The Collateral section would be amended to remove language that requires the bank to specify whether it will use corporate surety bonds or pledged securities as collateral for the district's funds. Removing the language would avoid duplication and contradiction with the section on Eligible Collateral.**

**The Collateral Conditions section would be amended to remove language stating that the district may specify any limitations on its preferred custodial arrangement.**

**The Eligible Collateral section would be revised to add language relating to voluntary pooled collateral (if available) or a Federal Home Loan Bank Letter of Credit.**

**The Banking Services Fees section would be modified to include language stating that all fees that may be charged to supply the services must be included or will not be eligible under the contract and that both the district and the bank reserve the right to mutually agree upon any change of contract terms or pricing during the contract extension periods.**

**The Depository Information section would be amended to remove reference to the Uniform Bank Performance Report and add a requirement that audited financial statements are required each year of the contract.**

**The Consolidated Account Structure with Sweep Mechanism section would be updated to add an option for the district to specify that it will not accept offshore investments as sweep investment vehicles; clarify that the district does not guarantee that it will maintain the account structure at the same level; and state that a money market fund used for the sweep proposal must strive to maintain a \$1 NAV.**

**The Automated Cash Management Information section would include language that the district is interested in online retention of cash management information. The amendment would also make optional the language relating to controlled disbursement presentment totals and the questions about controlled disbursements.**

**The Remote Deposit section would be modified to clarify that the district is interested in using remote check deposit for certain locations.**

**The Standard Disbursing Services section would update language to ask if the bank images all paid checks, deposit items, and deposit slips.**

**The Positive Pay section would be modified to state that the district requires positive pay services if available at the bank for designated accounts on which checks are written. In addition, "payroll" would change to "payee" in subsection g.**

**The Account Reconciliation section would include a new subsection requesting that the bank provide references of customers who use the XX ledger system.**

**The Funds Transfer and Wire Services section would be revised in subsection f to ask if templates and template storage are available for repetitive transfers.**

**The Optical Imaging section would include new language in subsection a to ask how long certain items and reports are available online.**

**The Automated Clearinghouse (ACH) Services section would be amended to state that the district requires ACH transactions for payable and receivable transactions. The section would also include new subsections f and g that ask if ACH positive pay is available and if ACH debits the account on day of initiation or settlement.**

**The title of section 10 would change to Safekeeping Services. Language in the section would be amended to specify that the district may require the bank or another eligible offeror to provide book-entry safekeeping services for any securities the district owns and that the district will make all its investments and transmit instructions for clearing and safekeeping to the bank in writing or electronically. Language relating to the Federal Reserve or a Federal Home Loan Bank would be updated.**

**The Collateral Requirements section would be revised to state that the bank must meet all the requirements, including those beyond the Public Funds Collateral Act, as stated in the section. An update would also be made to specify that authorized collateral includes only approved securities as specified by the Texas Government Code, Chapter 2257, Public Funds Collateral Act, and noted previously in the section.**

**The Account Analysis section would be amended in subsection b to ask if account analysis is imaged monthly on electronic media.**

**The Monthly Statements section would be modified to specify that the bank must state when monthly statements will be available online and on paper. In addition, language would be amended to ask if statements are imaged and/or put on electronic media monthly.**

**Two new sections would be added under Optional Services. Section 5 relates to check printing and asks if the bank offers check printing services, the deadline for same-day and next day printing, and where checks are printed and sent from. Section 6 relates to smart safes and asks if the bank offers smart safes and if smart safes are cost effective given the district's deposit history.**

FISCAL IMPACT: The TEA does not anticipate any additional costs to persons or entities required to comply with the proposed amendment; however, fiscal implications will be assessed after the committee gives direction regarding the proposed amendment to bring forward for first reading and filing authorization.

PUBLIC AND STUDENT BENEFIT: The proposed amendment would update the process for a district to select and contract with a depository bank.

PROCEDURAL AND REPORTING IMPLICATIONS: The proposed amendment would require school districts to use a new process to select and contract with a depository bank.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: The proposed amendment would have no new locally maintained paperwork requirements.

PUBLIC COMMENTS: The official public comment period will begin when the proposal, approved for first reading and filing authorization by the SBOE, is published in the Texas Register.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: None.

Staff Members Responsible:

Leo Lopez, Associate Commissioner

School Finance / Chief School Finance Officer

David Marx, Director

Financial Compliance

Attachments:

I. Statutory Citations (PDF, 24KB)

II. Text of Proposed Amendment to 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter D, Uniform Bank Bid or Request for Proposal and Depository Contract, §109.51, Uniform Depository Bank Bid or Proposal Form (PDF, 211KB)