

APPROVED

JUNE 29, 2022

Item #F-2
June 29, 2022

REGULATIONS – CAPITAL INVESTMENT GRANT PROGRAM FOR INDEPENDENT COLLEGES

Submitted for: Action.

Summary: This item requests approval for the Executive Director to engage in rulemaking for the Capital Investment Grant Program for Independent Colleges, pursuant to the Private Colleges and Universities Capital Distribution Formula Act. 30 ILCS 769/25-7. Specifically, the Executive Director seeks approval to 1) publish the proposed rules, attached as Exhibit A, in the Illinois Register for a 45-day first notice period, where interested persons or agencies may provide comments; and 2) submit the proposed rules to the Joint Committee on Administrative Rules (JCAR) for review. These actions by the Executive Director are specifically contemplated in 2 Ill. Admin. Code 5050.100. Once JCAR approves the regulations, the Executive Director will submit the final regulations to the Board for adoption, as required by 2 Ill. Admin. Code 5050.100 (d) and will seek authority to issue grants at a later Board meeting.

Action Requested: That the Illinois Board of Higher Education hereby authorizes the Executive Director to engage in rulemaking for the Capital Investment Grant Program and approves the proposed rules, attached as Exhibit A, for publication in the Illinois Register for first notice and subsequent submission to JCAR for second notice.



STATE OF ILLINOIS
BOARD OF HIGHER EDUCATION

REGULATIONS – CAPITAL INVESTMENT GRANT PROGRAM FOR INDEPENDENT COLLEGES

This item details the rulemaking process for the Capital Investment Grant Program for Independent Colleges, pending further action by the Secretary of State and the legislative Joint Committee on Administrative Rules (JCAR). The Private Colleges and Universities Capital Distribution Formula Act requires the Illinois Board of Higher Education (IBHE) to “establish a Capital Investment Grant Program for independent colleges.” 30 ILCS 769/25-7 (a). IBHE is also required to adopt rules to administer the program. 30 ILCS 769/25-7 (b). The Act defines independent colleges as “non-public, non-profit colleges and universities based in Illinois. The term does not include any institution that primarily or exclusively provided online education services as of the fall 2017 term.” 30 ILCS 769/25-5.

The General Assembly re-appropriated \$400,000,000 for the program in the FY23 Budget, which was originally appropriated as part of the Rebuild Illinois capital program in 2019. The funds come from the Build Illinois Bond Fund and are subject to the sale of bonds. It is contemplated that these funds will be administered over the course of six years as bond funds are made available, subject to continued appropriation. The program is administered jointly by IBHE and the Capital Development Board. 30 ILCS 769/25-7.

IBHE has drafted proposed rules, attached here as Exhibit A. Illinois regulations require proposed rules drafted by IBHE to be “presented at an open public meeting of the Board prior to publication in the Illinois Register.” 2 Ill. Admin. Code 5050.100 (a). “Following Board approval, proposed rules . . . will be published in the Illinois Register” for a 45-day first notice period where “interested persons or agencies may provide comments.” 2 Ill. Admin. Code 5050.100 (b). Following first notice, the proposed rules and any public comments are reviewed by JCAR during the second notice period. 2 Ill. Admin. Code 5050.100 (c). After proposed rules have met the requirements of first and second notice, they will be resubmitted to the Board for adoption. 2 Ill. Admin. Code 5050.100 (d). At that time, IBHE will also seek Board approval to issue the grants.

Recommendation

The staff recommends the adoption of the following resolution:

The Illinois Board of Higher Education hereby authorizes the Executive Director to engage in rulemaking pursuant to the Private Colleges and Universities Capital Distribution Formula Act. 30 ILCS 769/25-7. The Executive Director is authorized 1) to make appropriate changes recommended by JCAR staff in their pre-draft technical review; 2) to publish proposed rules for the Capital Investment Grant Program for Independent Colleges, attached to this Item as Exhibit A, in the Illinois Register for a 45-day first notice period, where interested persons or agencies may provide comments; and 3) to submit the proposed rules to the Joint Committee on Administrative Rules (JCAR) for review. 2 Ill. Admin. Code 5050.100.

EXHIBIT A

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1031

CAPITAL INVESTMENT GRANT PROGRAM INDEPENDENT COLLEGES

AUTHORITY: Implementing and authorized by the Private Colleges and Universities Capital Distribution Formula Act [30 ILCS 769/25], Build Illinois Act [30 ILCS 750], Section 4 of the Build Illinois Bond Act [30 ILCS 425], and Section 45 of the State Finance Act [30 ILCS 105].

Section 1031.20 Definitions

“Act” means the Private Colleges and Universities Capital Distribution Formula Act, 30 ILCS 769/25.

“Grantee” means, for the purposes of this Part, an institution of higher education in Illinois that carries out a State award as a recipient of this grant program.

“Board” means the Illinois Board of Higher Education.

“Capital Projects” means the *construction, repair, renovation, and miscellaneous capital improvements, including the planning, engineering, acquisition, reconstruction, remodeling, improvement, repair and installation of capital facilities and costs of planning, supplies, equipment, materials, services, and all other required expenses.* 30 ILCS 425/4(c). Capital Projects do not include the following:

Any use of funds barred by the Act;

The repair, renovation or construction of facilities used for sectarian instruction, religious worship or a school or department of divinity or in which a majority of the functions of the facilities are subsumed in a religious mission. For the purposes of this grant, a “school or department of divinity” means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

The repair, renovation or construction of the proportional share of joint use facilities that either:

provide personal residential space for owners, administrators, or persons who are not students of the institution; or

provide office, retail or storage space used for business activities unrelated to the educational mission of the institution.

“CDB” means the Capital Development Board.

“Equity Plan” means a plan specific to an institution *to increase the access, retention, completion, and student loan repayment rates of minorities, rural students, adult students, women, and individuals with disabilities who are traditionally underrepresented in education programs and activities* through that Capital Project. 110 ILCS 205/9.16.

“Grant Period” means the time during which the Grantee may incur new obligations to carry out the work authorized under the State award. The Board includes the start and end dates of the Grant Period in the award.

“Independent Colleges” are defined by Section 25-5 of the Act. In addition non-public, non-profit institutions that have been in continuous operation and granted degrees within the State of Illinois before the effective date of the Private College Act [110 ILCS 1005] and/or the Academic Degree Act [110 ILCS 1010] and have not modified the business entity since the effective dates of those Acts. Schools that are solely authorized under the Private Business and Vocational Schools Act [105 ILCS 426] *et seq.* are not Independent Colleges for purposes of the Act.

The term does not include any institution that primarily or exclusively provided online education services as of the fall 2017 term. 30 ILCS 769/25-5. For the purposes of this Part, primarily or exclusively means greater than 75 percent of the courses offered by the institution.

The term does not include any educational organization primarily used for sectarian instruction, as a place of religious teaching or worship or for any religious denomination or the training of ministers, priests, rabbis, or other professional persons in the field of religion; for the purposes of this Part, primarily used means greater than 75 percent of the students enrolled in theology and religious vocation programs.

Section 1031.30 Eligibility

- a) In order to be eligible, institutions shall be Independent Colleges as defined in Section 1031.20 and meet all other requirements of the Act.
- b) In order to be eligible, institutions must be in compliance with any surveys and evaluations required by the Board pursuant to the Board of Higher Education Act. 110 ILCS 205/9.01. This information is required to determine each institution’s FTE, as defined by the Act. 30 ILCS 769/25-5. To ensure the validity and

reliability of the FTE measures used in the disbursement calculations, institutions must also follow all IBHE requests for aggregate information and student-level data pursuant to the P-20 Longitudinal Education Data System Act. 105 ILCS 13/1.

- c) Grants will be awarded only for Capital Projects as defined in Section 1031.20.
- d) Consistent with the requirement that institutions *offer facilities and services in a manner that supports and fulfills the mission of Board of Higher Education* (30 ILCS 769/25-7) institutions must specify, as outlined in the grant application, how proposed projects further the Board’s Strategic Plan. 110 ILCS 205/6. This includes but is not limited to explaining how the institution is developing *an equity plan and implement[ing] practices that, at a minimum, close gaps in enrollment, retention, completion, and student loan repayment rates for underrepresented groups.* 110 ILCS 205/9.16.
- e) Each institution must be determined qualified pursuant to the Grant Accountability and Transparency Act (GATA). 44 Ill. Admin. Code 7000.70.
- f) Institutions that the United States Department of Education places on either the Heightened Cash Monitoring payment method (HCM2) or the reimbursement payment method, as authorized under 34 CFR 668.162, are not eligible.

Section 1031.40 Distribution Formula

- a) The distribution formula is specified in the Act. 30 ILCS 769/25-10.
- b) It is anticipated that the appropriation of funds from the Build Illinois Bond Fund will be made available in multiple rounds as bonds are sold and funds become available for this program. If for any reason the amount of funds available in a given round is not sufficient to distribute the base grant amounts or any FTE grant amounts, the Board shall release prorated shares to Grantees along with an explanation.
- c) If, within 10 years after the completion of any capital project for which a grant was made under this program, the property ceases to meet the nonsectarian requirements of a Capital Project as defined in this Part or the institution ceases to be an Independent College as defined in the Act and this Part, the Grantee shall refund to the State an amount determined as follows. For purposes of this formula, the grant agreement shall define the scope of the project upon which the refund is required.

Grant funds used <u>for Project (\$)</u> 120 Months	x	Duration of Noncompliance (months)	=	Required Refund (\$)
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- d) The amount of funds available to each institution that receives an award over the life of the program will be estimated during the application phase. If any additional funds subsequently become available for redistribution because an institution that received a grant subsequently fails to meet the definition of “independent College”, or for any other reason, the Board will redistribute these funds as provided in this section 1031.40 and section 25-10 of the Act. 30 ILCS 769/25-10.

Section 1031.60 Use of Grant Funds

- a) Grant funds may be used for services and goods directly related to an eligible capital project that are not prohibited by subsection (b).
- b) Grant funds shall not be used for the following:
 - 1. Any spending barred by the Act;
 - 2. Expenses incurred prior to the execution of a grant agreement;
 - 3. Capital projects built on leased property;
 - 4. Operational and administrative expenses (e.g., travel, recurring supplies or other recurring expenditures that are similar in character);
 - 5. Indirect costs;
 - 6. Expenditures for leasing or rental of equipment and/or capital facilities;
 - 7. Decorative models, plaques and other commemorative memorabilia;
 - 8. Commodity-type consumable items having a relatively brief expected useful life (e.g., books, instructional consumables and other expenditures that are similar in character); or
 - 9. Expenditures for services or goods not directly associated with an eligible capital project.

Section 1031.70 Grant Application Procedures

Each eligible independent college, after an appropriation has been enacted, must apply for a Capital Investment Grant in order to be eligible to receive funds under this Program. (Section 25-10 of the Act)

- a) Application Availability Notice. The Board shall send an application availability notice to the chief executive officer of each institution that may meet the program eligibility

requirements in Section 1031.30, based on Board records, post the application availability notice on Board's website at www.ibhe.org, and post the application availability notice as a notice of funding opportunity in the Grant Accountability and Transparency Act Portal run by the Governor's Office of Management and Budget.

b) *Application. An independent college may apply for an amount not to exceed the distribution amount determined by the Board of Higher Education. 30 ILCS 769/25-10*

1. Application materials shall be on prescribed forms provided by the Board and shall include, without being limited to, the following:
 - i. Uniform Grant Application provided by the the Grant Accountability and Transparency Unit within the Governor's Office of Management and Budget and signed by an authorized representative of the Independent College. *See 44 Ill. Admin. Code 7000.330.*
 - ii. Certification by an authorized representative of the Independent College that:
 - a. the institution is an independent college as defined in Section 1031.20;
 - b. There is no by-law, article of incorporation, policy or other barrier to receiving State funds;
 - c. Grant funds will be used for Capital Projects as defined in Section 1031.20; and
 - d. Grantee will *comply with the business enterprise program practices for minority-owned businesses, women-owned businesses, and businesses owned by persons with disabilities of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575/) and the equal employment practices of Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/2-105).* 30 ILCS 105/45. This requirement is in addition to the requirement that the grant agreement contain a provision that Grantee will comply with the aforementioned statutes. *See id.*
 - e. Grantee will comply with all requirements of the Illinois Works Apprenticeship Initiative, which is required "on all public works projects estimated to cost \$500,000" subject to the exceptions in the Illinois Works Jobs Program Act. 30 ILCS 559/20-20.

2. Applications must be received by the announced deadline for the submission of applications.
3. Board staff shall review application documents of all independent colleges for compliance with the application and eligibility requirements. The Board may request additional documentation and/or a meeting between its staff and institutional representatives to resolve questions about application documents. If materials submitted by an applicant institution are incomplete or not of sufficient detail to provide an understanding of the proposed project, the Board may request additional information.

Section 1031.80 Accountability

Board of Higher Education, jointly with the Capital Development Board, shall adopt rules to implement this Section and shall create an application procedure for grants to be awarded. The rules shall specify: . . .the manner in which grantees must account for the use of grant moneys.
30 ILCS 769/25-5

- a) This State-funded grant program is subject to the Grant Accountability and Transparency Act (GATA) and associated regulations. *See 30 ILCS 708/1 et seq.; see also 23 Ill. Admin. Code 7000.10 et seq.* The Legislature intended GATA to function as *a coordinated, non-redundant process for the provision of effective and efficient oversight of the selection and monitoring of grant recipients, thereby ensuring quality programs and limiting fraud, waste, and abuse, and . . . [to] define the purpose, scope, applicability, and responsibilities in the life cycle of a grant.* 30 ILCS 708/5.
- b) In order to account for the use of grant moneys, Grantees shall comply with GATA throughout the life of the grant, from qualification and application to audits, grant closeout and continuing responsibilities.
- c) Grant funds may not be expended except pursuant to a written grant agreement, and disbursement of grant funds without a grant agreement is prohibited. At a minimum, a grant agreement shall:
 1. Contain demonstrable milestones on the development of the Equity Plan as submitted by the institution as part of its application and as contemplated by the Board of Higher Education Act, 110 ILCS 205/9.16, *see also* 44 Ill. Admin. Code 7000.370 (a) (7); and
 2. Contain a provision that the Grantee *agrees to comply with the provisions of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575/) and the equal employment practices of Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/2-105).* 30 ILCS 105/45.

3. Specify the Grant Period;
4. Contain a provision that grantee will comply with all requirements of the Illinois Works Apprenticeship Initiative for any project estimated to cost over \$500,000, subject to the exceptions in the Illinois Works Jobs Program Act. 30 ILCS 559/20-20.
5. Contain a provision that if, within 10 years after the completion of any capital project for which a grant was made under this program, the property ceases to meet the nonsectarian requirements of a Capital Project as defined in this Part or the institution ceases to be an Independent College as defined in the Act and this Part, the Grantee shall refund to the State an amount determined as follows. For purposes of this formula, the grant agreement shall define the scope of the project upon which the refund is required.

Grant funds used <u>for Project (\$)</u> 120 Months	x	Duration of Noncompliance (months)	=	Required Refund (\$)
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- d) The Board shall withhold or suspend the distribution of grant funds for failure to file required reports.

Section 1031.90 Accessing Awards

Upon the execution of a grant agreement, the Board will release the grant funds to the Grantee in accordance with the terms of the grant agreement, provided that the funds have been appropriated or reappropriated and have been made available to the Board by the CDB.

Section 1031.100 Post-Award Requirements

- a) Revision of Budget and Program Plan. *See* 44 Ill. Admin. Code 7000.370.
 1. A Grantee shall not deviate from the budget, project scope, or objective stated in the Grant Agreement except with mutual agreement of the Board and the Grantee. Any such deviation approved by the Board shall be executed as an amendment to the grant agreement.
 2. When requesting approval for budget revisions to capital projects, including but not limited to budget transfers between capital projects, a written request shall be

sent to the Board. Any budget revision approved by the Board must be executed as an amendment to the grant agreement.

3. The Grantee shall comply with GATA closeout procedures and take the following actions to complete grant closeout at the end of the Grant Period. *See 44 Ill. Admin. Code 7000.440.*
4. The Grantee must promptly refund any balances of unobligated cash that the agency paid in advance and that are not authorized to be retained by the Grantee for use in other projects.

Section 1031.110 Transfer of Funds to Another Independent College

- a) If an institution received a grant award under this program and subsequently fails to meet the definition of an independent college in Section 1031.20 and fails to meet the eligibility criteria in Section 1031.30, the remaining funds shall be re-distributed as provided in Section 1031.70, *unless the campus or facilities for which the grant was given are operated by another independent college.* 30 ILCS 769/25-15.
- b) If the facilities of a former eligible independent college are operated by another that meets the definition of "independent college" in Section 1031.20 and meets the eligibility criteria in Section 1031.30, then the entire balance of the grant provided under this program remaining *on the date the former independent college ceased operations, including any amount that had been withheld after the former independent college ceased operations, shall be transferred to the successor independent college for the duration of the grant.* 30 ILCS 769/25-15.