

RULES – CAPITAL INVESTMENT GRANT PROGRAM FOR INDEPENDENT COLLEGES

Submitted for: Action.

Summary: This item requests approval of the final rules for the Capital Investment Grant Program Independent Colleges, pursuant to the Private Colleges and Universities Capital Distribution Formula Act. 30 ILCS 769/25-7. On June 29, 2022, the Board granted the Executive Director authority to 1) publish the proposed rules 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 (specifically contemplated in 2 Ill. Admin. Code 5050.100.). Once JCAR approves the regulations, the Executive Director is to submit the final regulations to the Board for adoption, as required by 2 Ill. Admin. Code 5050.100(d). On October 18, 2022, JCAR approved the rules. This item is for the Executive Committee to approve the final rules on behalf of the Board. No changes were made to the rules since the Board's June 29, 2022, approval and Executive Committee action will expedite the implementation of the program.

Action Requested: That the Executive Committee, on behalf of the Illinois Board of Higher Education, approve the final rules as approved by JCAR and attached as Exhibit A and authorizes the Executive Director to seek applications for and award grants under the Capital Investment Grant Program for Independent Colleges statute and approved final rules.



STATE OF ILLINOIS
BOARD OF HIGHER EDUCATION

RULES – CAPITAL INVESTMENT GRANT PROGRAM FOR INDEPENDENT COLLEGES

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).

The General Assembly re-appropriated \$400,000,000 for the program in the Fiscal Year 23 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 is also required by the Act 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.

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.

At its June 29, 2022, meeting, the Board authorized 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 was authorized 1) to make appropriate changes recommended by JCAR staff in their pre-draft technical review of the proposed rules then reviewed by the Board; 2) to publish proposed rules for the Capital Investment Grant Program for Independent Colleges 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.

The Executive Director followed these steps and on October 18, 2022, JCAR approved the rules as submitted, with no changes.

The Executive Director requests approval of the final rules, included in Exhibit A, and authority to seek applications for and award grants under the Capital Investment Grant Program for Independent Colleges statute and approved final rules.

Recommendation

The staff recommends the adoption of the following resolution:

The Executive Committee, acting on behalf of the Board, approves the Capital Investment Grant Program for Independent Colleges final rules in Exhibit A that have met the requirements of first and second notice and received approval from the Joint Committee on Administrative Rules, as required by 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

JOINT RULES OF THE BOARD OF HIGHER EDUCATION AND THE CAPITAL DEVELOPMENT BOARD:
INDEPENDENT COLLEGES CAPITAL INVESTMENT GRANT PROGRAM

Section

1031.20	Definitions
1031.30	Eligibility
1031.40	Distribution Formula
1031.60	Use of Grant Funds
1031.70	Grant Application Procedures
1031.80	Accountability
1031.90	Accessing Awards
1031.100	Post-Award Requirements
1031.110	Transfer of Funds to Another Independent College

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

SOURCE: Adopted at 46 Ill. Reg. _____, effective _____.

Section 1031.20 Definitions

"Act" means the Private Colleges and Universities Capital Distribution Formula Act [30 ILCS 769/25].

"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:

The use of funds for purposes 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; and

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.* [110 ILCS 205/9.16.]

"GATA" means the Grant Accountability and Transparency Act [30 ILCS 708].

"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.

"Grantee" means, for the purposes of this Part, an institution of higher education located in Illinois that carries out a State award as a recipient of the Independent Colleges Capital Investment Grant Program.

"Independent Colleges" has the same meaning as prescribed in 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, July 17, 1945, [110 ILCS 1005/2] or the Academic Degree Act, August 14, 1961, [110 ILCS 1010/4] and have not modified the business entity since the effective dates of those Acts. Institutions that are solely authorized under the Private Business and Vocational Schools Act [105 ILCS 426] are not independent colleges for purposes of the Act.

"Independent colleges" does not include: *any institution that primarily or exclusively provided online education services as of the fall 2017 term.* (Section 25-5 of the Act) For the purposes of this definition, primarily or exclusively provided online education services means greater than 75 percent of the courses offered by the institution; and

Any institution 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 definition, primarily used means greater than 75 percent of the students are 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 Section 9.01 of the Board of Higher Education Act [110 ILCS 205]. The surveys and evaluations are required to determine each institution's full time equivalent enrollment (FTE), as defined by Section 25-5 of the Act. To ensure the validity and reliability of the FTE measures used in the disbursement calculations, institutions must also follow all Board requests for aggregate information and student-level data pursuant to the P-20 Longitudinal Education Data System Act [105 ILCS 13].
- 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 the Board of Higher Education* institutions must specify, as outlined in the grant application, how proposed projects further the Board's Strategic Plan established by Section 6 of the Board of Higher Education Act. (Section 25-7 of the Act) This includes but is not limited to explaining how the institution is developing an *equity plan and implementing 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 GATA and 44 Ill. Adm. 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 Section 25-10 of the Act.
- 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 as specified in Section 25-10 of the Act, 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 for Project (\$)/120 (months) X Duration of Noncompliance (months) = Required Refund (\$)

- 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.

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);
 - 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); 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 the Board's website at www.ibhe.org, and post the application availability notice as a notice of funding opportunity in the GATA portal operated 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. (Section 25-10 of the Act)*
- 1) Application materials shall be on prescribed forms provided by the Board and shall include, without being limited to, the following:
 - A) Uniform Grant Application provided by 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. Adm. Code 7000.330.)
 - B) Certification by an authorized representative of the independent college that:
 - i) The institution is an independent college as defined in Section 1031.20;
 - ii) There is no by-law, article of incorporation, policy or other barrier to receiving State funds;
 - iii) Grant funds will be used for capital projects as defined in Section 1031.20; and
 - iv) 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].* This requirement is in addition to the requirement that the grant agreement contain a provision that grantee will comply with the aforementioned statutes. [30 ILCS 105/45]
 - v) 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 Section 20-20 of the Illinois Works Jobs Program Act. [30 ILCS 559]
 - 2) Applications must be received by the announced deadline for the submission of applications, as published in the GATA portal and on the Board's website.
 - 3) Board staff shall review application documents of all independent colleges for compliance with the eligibility requirements in section 1031.20. 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

- a) This State-funded grant program is subject to GATA and its associated regulations at 44 Ill. Adm. Code 7000.
- 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 the 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 (see 110 ILCS 205/9.16 and 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. [30 ILCS 105/45]*
 - 3) Specify the grant period;
 - 4) Contain a provision that the 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 Section 20-20 of the Illinois Works Jobs Program Act.
 - 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.

$$\text{Grant Funds Used for Project (\$)} / 120 \text{ (months)} \times \text{Duration of Noncompliance (months)} = \text{Required Refund (\$)}$$
- d) The Board shall withhold or suspend the distribution of grant funds for failure to file required reports as specified in the GATA grant agreement.

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

Revision of Budget and Program Plan (see 44 Ill. Adm. Code 7000.370).

- a) 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.
- b) 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.
- c) The grantee shall comply with GATA closeout procedures to complete grant closeout at the end of the grant period. (See 44 Ill. Adm. Code 7000.440.)
- d) The grantee must promptly refund any balances of unobligated cash that the Board 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.* (Section 25-15 of the Act)
- 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.* (Section 25-15 of the Act)