

**TREASURY-GENERAL
DIVISION OF ADMINISTRATION
RULES FOR IMPLEMENTATION OF THE HIGHER EDUCATION INCENTIVE FUNDING ACT
DEFINITIONS; INELIGIBILITY; APPLICATION PROCESS; PAYMENTS FROM THE FUND**

Proposed Amendments: N.J.A.C. 17:26-1.3, 2.3, 3.1 and 4.1

Authorized By: Charles Chianese, Associate Deputy State Treasurer and Director and Chief Financial Officer.

Authority: N.J.S.A. 18A:62-29 et seq. and P.L. 1999, c.368.

Calendar Reference: See Summary below for explanation of exception to calendar requirements.

Proposal Number: PRN 2004-203.

Submit written comments by July 16, 2004 to:

Nancy Kuprewicz
Coordinator, Higher Education Incentive Funding
Department of the Treasury
Division of Administration
Fiscal and Resources
PO Box 211
Trenton, NJ 08625-0211

The agency proposal follows:

Summary

The State of New Jersey, Department of the Treasury (Treasury) is proposing amendments to N.J.A.C. 17:26 to clarify the definitions of "donations" and "endowment contributions" as gifts for matching funds. The proposed amendment submitted March 2003 at the Higher Education Incentive Fund 35 N.J.R. 1523(a) were not adopted because of insufficient notification. No comments were received during the prior proposal.

The New Jersey Department of Law and Public Safety, Division of Law advised Treasury that the Higher Education Incentive Funding Act, N.J.S.A. 18A:62-29 et seq., (the Act) provides for matching funds for gifts of cash or marketable securities only and that gifts of other forms of property do not qualify for matching funds. This determination is supported by the Legislature's intent in how the Act defines a "donation" and an "endowment contribution." The Division of Law further advises Treasury that the statute is clear in its definitions of "donations" and "endowment contributions" explicitly containing the words "consisting of cash or marketable securities." Full support must be given when the language is plain and clearly reveals the meaning of the statute.

The definitions of "donations" and "endowment contributions" at N.J.A.C. 17:26-1.3 must be amended to include cash and marketable securities only, so as to be consistent with the Act and clear on intent of the original statute. The definitions of "amount" and "date received" are needed to conform to these amendments. The definition

of "fair market value" will no longer be relevant due to the inclusion of the refined definition of property.

Within the ineligibility section, N.J.A.C. 17:26-2.3 subsection (d) is added to clarify specifically that gifts of property other than cash and marketable securities will not be considered for matching funds.

The application section, N.J.A.C. 17:26-3.1, is amended to delete paragraphs (a)4 and 5 on real estate appraisers and values of real property along with qualifying credentials due to the elimination of property, other than cash and marketable securities, as a gift.

In Subchapter 4, Payments From the Fund, N.J.A.C. 17:26-4.1(c) is amended to allow for subsequent year payments from the fund to be made by February 28, rather than November 30, to be consistent with the current year payments.

A 60-day comment period is provided on this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments are relevant to New Jersey public institutions of higher education, and independent institutions eligible to receive public funds under the Independent College and University Assistance Act. The main purpose of this proposed amendment is to clarify the eligibility criteria when making application for matching funds. Property other than cash and marketable securities will no longer be eligible for the purposes of matching funds. The general public will not be affected by these amendments because only institutions of higher learning can make application for matching funds.

Economic Impact

The proposed amendments will lessen the number of eligible applications from institutions of higher education for matching funds because property other than cash and marketable securities is excluded as acceptable donations. The general public will not be affected by these amendments because only institutions of higher learning can make application for matching funds. Property other than cash and marketable securities will continue to be acceptable donations, but will not be considered for matching funds.

The proposed amendment to N.J.A.C. 17:26-4.1(c), involving payments from the endowment fund, will lessen the payments to the institution because current endowment applications will be included in the payment distribution along with prior year endowment applications.

Federal Standards Statement

The proposed amendments are not subject to a Federal standards analysis under Executive Order No. 27 (1994), P.L. 1995, c.65 because the Higher Education Incentive Endowment Fund and the Higher Education Incentive Grant Fund were established by New Jersey legislation, and are unconditionally supported by State appropriations, and are not subject to any Federal requirements or standards.

Jobs Impact

The proposed amendments will not create nor generate loss of any jobs because the rules govern only the process that eligible institutions must follow to receive State-matching funds.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments pertain to public four-year colleges and universities and two-year colleges, none of which qualify as a small business as that term is defined by the Act, and four-year independent institutions, each of which employs more than 100 people full-time.

Smart Growth Impact

The proposed amendments will not have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

17:26-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Amount" of a contribution or a donation means cash amount or, in the case of [property other than cash] **marketable securities**, the [fair market] value of the [property] **marketable securities** contributed or donated as of

the close of business on the day on which the recipient of that contribution or donation acquires ownership [of the property].

...

"Date received" means the date on which cash is deposited by the institution or the date on which the institution acquires ownership of [property other than cash] **the marketable securities**.

"Donation" means the conveyance by gift of property consisting of cash[, property] or [other] marketable securities, the corpus of which property may, under the terms of the gift, be expended by the donee, and the income from which property may, but need not, be restricted under those terms as to use for particular purposes stipulated by the donor.

...

"Endowment contribution" means the conveyance by gift of property consisting of cash [, property] or [other] **marketable securities**, the corpus of which property may not, under the terms of the gift, be expended by the institution to which the contribution is made , and the income from which property may, but need not, be restricted under those terms as to [use] be used for particular purposes stipulated by the contributor.

["Fair market value" means the amount that a willing buyer would pay a willing seller if neither was under any compulsion: the standard at which property is valued for estate tax purposes.]

...

17:26-2.3 Ineligibility for matching funds

(a)-(c) (No change.)

(d) Gifts of property other than cash or marketable securities are ineligible for matching funds.

17:26-3.1 Application for State matching funds

(a) Upon approval by the governing board of an institution or an entity authorized to act on its behalf, interested institutions, or their institutionally related foundations, shall apply to the Department of Treasury for matching funds against endowment contributions and donations. No application shall be submitted for endowment contributions or donations which are less than the required minimum provided at N.J.A.C. 17:26-2.1. All applications shall include:

1.-3. (No change.)

[4. An affidavit, from a real estate appraiser licensed in the state where the property is located, affirming the fair market value of a real property endowment contribution or donation for which application for matching funds is made. The Department of Treasury may request additional proof of fair market value on a case-by-case basis with respect to a particular endowment contribution or donation:]

5. A notarized affidavit as to the fair market value of a personal property endowment contribution or donation and as to the affiant's credentials and qualifications to assess such value. The Department of Treasury may request additional proof of fair market value on a case-by-case basis with respect to a particular endowment contribution or donation:

Recodify existing 6.-8. as **4.-6.** (No change in text.)

(b) (No change.)

17:26-4.1 Time Limits

(a)-(b) (No change.)

(c) In the second fiscal year following the contribution or donation year, and in each of the eight subsequent fiscal years following the second fiscal year, Treasury shall make payments from the endowment fund to public institutions or their institutionally related foundations by [November 30] **February 28**. The second through tenth year payments shall be made without application by the eligible institution.