

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## HIGHER EDUCATION

### (a)

#### SECRETARY OF HIGHER EDUCATION

#### Rules and Procedures for Implementation of the Higher Education Technology Infrastructure Fund Act

#### Proposed Readoption with Amendments: N.J.A.C. 9A:13

Authorized By: Dr. Brian K. Bridges, Secretary of Higher Education.

Authority: N.J.S.A. 18A:72A-59 through 71; and P.L. 1997, c. 238.

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

Proposal Number: PRN 2022-049.

Submit written comments by June 3, 2022, to:

Eric Taylor, Esq.  
Director, Office of Licensure  
Office of the Secretary of Higher Education  
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The agency proposal follows:

#### Summary

In September 1997, the Higher Education Technology Infrastructure Fund Act (the Act), P.L. 1997, c. 238, was enacted, establishing the Higher Education Technology Infrastructure Fund (the "Technology Fund" or "Fund") within the New Jersey Educational Facilities Authority (Authority), to be used to develop technology infrastructure within and among New Jersey's institutions of higher education. The purposes of the Act were to provide effective and efficient access to information, educational opportunities, workforce training, and to enhance the connectivity of higher education institutions to libraries, elementary, and secondary schools. In accordance with the provisions of the Reorganization Plan, No. 005-2011, the Commission on Higher Education was abolished, and its powers, functions, and duties were transferred to the Secretary of Higher Education (Secretary), who is responsible for the rules governing implementation of the Act. The rules in this chapter, N.J.A.C. 9A:13, were scheduled to expire on August 18, 2022; pursuant to N.J.S.A. 52:14B-5.1.c(2), the submission of this notice of proposal to the Office of Administrative Law extended that expiration date 180 days to February 14, 2023.

After reviewing the rules and consulting with the Authority, the Secretary proposes to readopt the chapter with amendments. A summary of N.J.A.C. 9A:13 follows.

N.J.A.C. 9A:13-1.1, Purpose and authority, states that the purpose of this chapter is to implement the Act and notes that the Act grants the Secretary regulatory authority. The Secretary proposes to amend this section to specifically indicate that the chapter is adopted in order to provide a mechanism by which eligible institutions may apply for and receive grants from the Higher Education Technology Infrastructure Fund.

N.J.A.C. 9A:13-1.2, Definitions, provides the definitions of terms used in the chapter. It is proposed that the term "amending act," as defined at P.L. 2012, c. 42, be added. It is proposed that the term "Higher Education Technology Infrastructure" be reduced to simply "Technology" in the definition of "Grant" to streamline references to the grant program across the document and maintain the reference to the statute. It is also proposed that the term and definition for "Infrastructure Fund" be deleted. It is proposed that a hyphen be added to the terms "inter-institutional" and "intra-institutional," and the definition provided for "Intra-institutional" be edited to hyphenate the word "multi-campus." It is proposed that the definition for "matching funds" be amended to include the words "the amount of the" preceding the first instance of the word "grant." It is also proposed that "infrastructure fund" be replaced with "Technology Fund" (this change is proposed throughout the chapter). The proposed amendment also adds "as matching funds" to the last sentence of the "matching funds" definition after the word "used."

Further, at N.J.A.C. 9A:13-1.2, it is proposed that the definition of "project" be amended for clarity and to change that the project be "funded by an infrastructure fund grant and matching funds to develop technology infrastructure" to mean the "acquisition and installation of technology infrastructure." It is also proposed that "Technology Fund" be defined as the Higher Education Technology Infrastructure Fund established through the Higher Education Technology Infrastructure Fund Act, P.L. 1997, c. 238. The definition of "technology infrastructure" is proposed for amendment to clarify the term, without any substantive change.

N.J.A.C. 9A:13-1.3, Funding eligibility, specifies the funding eligibility criteria for institutions of higher education to receive a grant from the Fund. It is proposed that "infrastructure fund" be replaced with "Technology Fund" at N.J.A.C. 9A:13-1.3(a). It is proposed that "or development" be added at N.J.A.C. 9A:13-1.3(a)1. It is proposed that N.J.A.C. 9A:13-1.3(a)2 be amended to delete "infrastructure fund" and indicate that the institution "agrees to use." At N.J.A.C. 9A:13-1.3(a)3, 4, and 8, "funds" is revised to mean "grant funds." It is proposed that new N.J.A.C. 9A:13-1.3(a)5 be added to encourage institutions of higher education to solicit bids from, and award contracts to, minority- and women-owned businesses. It is proposed that recodified N.J.A.C. 9A:13-1.3(a)7 be amended to include "or greater than" following "equal to," to indicate that the matching funds must only be "equal to" at a minimum, and they can exceed the grant funds amount as well.

N.J.A.C. 9A:13-1.4, Grant application, details the grant application process. At N.J.A.C. 9A:13-1.4(a)6, the proposed amendment adds “proposed” before “interinstitutional” and hyphenates “inter-institutional.” At paragraph (a)7, it is proposed that acquisition “or development” be added. At paragraph (a)8, the Secretary proposes to delete the requirement to itemize associated expenditures of up to 10 percent of matching funds. Paragraph (a)11 is amended to add “to be purchased with grant funds the useful life” after the word “equipment” and the remaining text be included within the parenthesized statement that explains “useful life.” Paragraph (a)12 is proposed for amendment to replace “acquisition and installation of the technology infrastructure” with “project.” It is proposed that subsection (b) be amended to include that the grant award is approved by the Legislature Joint Budget Oversight Committee. At subsection (d), “grant request” is changed to “grant applications.”

N.J.A.C. 9A:13-1.5, Application review and approval process, outlines the grant application review and approval process. At subsection (a), it is proposed that “applications” is clarified to be “grant applications.” At N.J.A.C. 9A:13-1.5(a)1, the proposed amendment replaces “bearing the earliest submission date” with “being from an eligible institution.”

At N.J.A.C. 9A:13-1.5(b), “technology infrastructure purchase” is changed to “project.” In addition, paragraphs (b)1, 4, 5, 9, and 10 are proposed for deletion and replaced with new paragraphs (b)6, 7, 8; while existing paragraphs (b)2, 3, 6, 7, and 8 are recodified within the subsection with minor, non-substantive amendments to streamline the objectives and better align them with the State Plan for Higher Education.

N.J.A.C. 9A:13-1.6, Authorization process, states the grant authorization process. It is proposed that “New Jersey Educational Facilities” be deleted from the list of entities at N.J.A.C. 9A:13-1.6(a), as the term “Authority” is already defined in the chapter to mean the New Jersey Educational Facilities Authority. At subsection (c), “purchase of technology infrastructure” is replaced with “project” and “lease agreement” is replaced with “grant agreement.” At subsection (d), for clarity and consistency throughout the chapter, technical, grammatical, and non-substantive changes are proposed. Further, the substantive change of replacing a reference to the “Authority’s issuance of the corresponding bond” to the “Legislature Joint Budget Oversight Committee’s approval of the corresponding list of projects” is proposed to clarify the process that occurs.

N.J.A.C. 9A:13-1.7, Cancellation or reduction in grants, defines when the Secretary may cancel or reduce an institution’s approved grant. At subsection (a), “an agreement” is clarified to be “a grant agreement.” At paragraph (b)1, “to modify the grant” is added to clarify what is being requested for approval. Proposed new N.J.A.C. 9A:13-1.7(c) is added to outline the provisions for the Secretary to approve or disapprove modifications to an approved project.

Existing N.J.A.C. 9A:13-1.8, Reporting requirements, specifies that the Authority shall annually report its purchases resulting from the Act to the Secretary. The Secretary, in turn, will report to the Governor and Legislature on the use of the funds from the Technology Fund. This section is proposed for amendment to require that the institution report to the Authority, prior to the Authority’s affirmative requirements, and timeframes and procedures for such reporting are added.

Pursuant to N.J.A.C. 1:30-3.3(a)5, as the Secretary has provided a 60-day comment period on this notice of proposal, therefore, this notice is excepted from the rulemaking calendar requirement at N.J.A.C. 1:30-3.1 and 3.2.

#### **Social Impact**

An integrated technology infrastructure that includes interconnectivity with, and among, institutions of higher education and with libraries, elementary, and secondary schools, will enable students and faculty to continue to access information and educational opportunities. Moreover, consortia arrangements and distance learning offer significant potential for increasing access to higher education. The Technology Fund fosters technological enhancements to promote these aims. All public New Jersey colleges and universities, as well as private institutions eligible for aid under the Independent College and University Assistance Act, N.J.S.A. 18A:72B-15 et seq., are eligible to apply for grants from the Technology Fund. The rules proposed for readoption with amendments will expedite

institutional applications and project approval, if and when, the Technology Fund is renewed.

#### **Economic Impact**

The rules proposed for readoption with amendments will allow higher education to continue to contribute to the economic development of the nation and State by supplying an educated and trained workforce, by advancing knowledge through research and scholarship, and by serving as an information repository. The rules proposed for readoption will assist in providing an integrated technology infrastructure, which will increase the cost-efficiency and effectiveness of colleges and universities in contributing to economic development, through both enhanced learning opportunities for students and increased opportunities for institutions to collaborate, share resources, and reduce costs. A dedicated source of funding for higher education’s technology infrastructure is an investment in strengthening New Jersey’s competitiveness in a global and technological economy.

#### **Federal Standards Statement**

The rules proposed for readoption with amendments do not require a Federal standards analysis pursuant to Executive Order No. 27 (1994) because they implement the Act, which was established by the New Jersey Legislature, is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

#### **Jobs Impact**

The rules proposed for readoption with amendments governing the Fund govern only the process eligible institutions must follow to receive approval for purchases made with Technology Fund grant moneys. There will be short-term and long-term job increases associated with funded purchases. The rules proposed for readoption with amendments will not result in the loss of any jobs.

#### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

#### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not apply to small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to public and publicly funded independent colleges and universities and private institutions of higher education in New Jersey, none of which qualify as a small business because they are either public institutions or private institutions employing more than 100 full-time employees.

#### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will not impact housing affordability and there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing because the rules govern the implementation of the Act, which created the Technology Fund to be used to develop technology infrastructure within and among New Jersey’s institutions of higher education.

#### **Smart Growth Development Impact Analysis**

The Secretary believes there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the rules govern the implementation of the Act, which created the Technology Fund to be used to develop technology infrastructure within and among New Jersey’s institutions of higher education.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Secretary has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9A:13.

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

SUBCHAPTER 1. GENERAL PROVISIONS

9A:13-1.1 Purpose and authority

This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Technology Infrastructure Fund Act, P.L. 1997, c. 238, as amended by P.L. 2012, c. 42. **This chapter is promulgated to provide a mechanism by which eligible institutions may apply for and receive grants from the Higher Education Technology Infrastructure Fund.**

9A:13-1.2 Definitions

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

...  
**“Amending Act” means P.L. 2012, c. 42, the law that supplements and amends the Act.**

...  
**“Grant” means a grant of moneys from the [Higher Education Technology Infrastructure] Technology Fund, approved by the Secretary.**  
**[“Infrastructure fund” means the Higher Education Technology Infrastructure Fund as created by chapter 238, P.L. 1997.]**

...  
**“[Interinstitutional] Inter-institutional” means between two or more institutions.**

**“[Intrastitutional] Intra-institutional” means within an institution’s campus or between campuses of a [multi campus] multi-campus institution.**

**“Matching funds” means funds equal to or greater than [a] the amount of the grant from the [infrastructure fund] Technology Fund, which are allocated by the institution for the specific project for which the grant funds are used, and which are generated from institutional sources, other grants, borrowing through the Authority, or other sources as permitted in the grant approval process. Notwithstanding anything in this definition to the contrary, grants from State government sources may not be used as matching funds to satisfy the matching requirement [in] at N.J.A.C. 9A:13-1.3(a)6.**

**“Presidents’ Council” means a body established in accordance with N.J.S.A. 18A:3B-7, which consists of the presidents of the 45 public and independent institutions of higher education that receive State aid and four presidents who represent the 10 degree-granting religious and proprietary institutions in New Jersey.**

**“Project” means [a project funded by an infrastructure fund grant and matching funds to develop] the acquisition and installation of technology infrastructure in, and for institutions of, higher education to enhance connectivity within [or] and among [institutions of] higher education [or] institutions and between such institutions [and] of higher education, libraries, [or] and elementary/secondary schools.**

...  
**“Technology Fund” means the Higher Education Technology Infrastructure Fund as created at P.L. 1997, c. 238.**

**“Technology infrastructure” means video, voice, and data telecommunications equipment and linkages, including transport services and network interconnections, as well as future developments in multimedia equipment and linkages. [Only] Technology infrastructure also includes computer software that is part of the operating or data base management systems [is considered part of technology infrastructure for the purpose of the Amending Act]; however, technology infrastructure does not include application software[,] used for purposes such as word processing, spreadsheets, desktop publishing, and [e-mail, does not qualify as technology infrastructure] email.**

9A:13-1.3 Funding eligibility

(a) The Secretary shall only approve a grant from the [infrastructure fund] **Technology Fund**, if the institution:

1. Commits, by resolution of its governing board, to maintaining the technology infrastructure proposed for purchase **or development**;
2. Has a long-range facilities plan for technology and **agrees it will use[s] the [infrastructure fund] grant to advance that plan;**

3. Certifies that it will use the **grant** funds to enhance [inter institutional] **inter-institutional** or [intra institutional] **intra-institutional** connectivity and information technology as it relates to advancing the instructional, research, or service/economic development missions of the institution;

4. Certifies that it will use the **grant** funds to advance the institution toward the next level in establishing integrated voice, video, and data networks;

**5. Certifies that it will use its best efforts to solicit bids from and/or award contracts to minority and women-owned businesses;**

[5.] **6.** (No change in text.)

[6.] **7.** Provides matching funds equal to **or greater than** the amount of [the] **grant funds** requested; and

[7.] **8.** Addresses training, staffing, and other indirect costs related to the proposed use of **grant** funds.

9A:13-1.4 Grant application

(a) Following approval by the governing board at a duly authorized meeting, an institution of higher education may apply to the Secretary for a grant from the [infrastructure fund] **Technology Fund**. The institution’s application shall include the following items:

1.-3. (No change.)

4. A description of how the proposed project enhances [interinstitutional or intrastitutional] **inter-institutional or intra-institutional** connectivity and information technology as these relate to advancing the instructional, research, or service/economic development missions of the institution;

5. (No change.)

6. A description of how [interinstitutional] **proposed inter-institutional** networking enhancements are compatible with the technology infrastructure plan for New Jersey higher education originally established;

7. Identification of all direct costs associated with the acquisition **or development** of the proposed technology infrastructure;

8. An itemization of the proposed expenditure of [the] **grant funds** and matching funds, including, **but not limited to**, all telecommunications equipment and linkages, transport services, network interconnections, and associated [expenditures of up to 10 percent of matching funds,] with estimated costs;

9. Identification of all revenue sources for the proposed project, including the specific source(s) of revenue for matching funds [for the grant requested];

10. (No change.)

11. The useful life of any equipment **to be purchased with grant funds (the useful life** as determined either by reference to the Internal Revenue Service Class Life Asset Depreciation Range System set forth [in] **at** Revenue Procedure 87-56, as amended, supplemented, or superseded, or by appraisal of any independent engineering or accounting firm, as appropriate);

12. The estimated timetable for completing the [acquisition and installation of the technology infrastructure] **project**;

13. (No change.)

14. Any additional information the institution deems necessary to demonstrate how the institution’s proposed [infrastructure] project meets the objectives identified [in] **at** N.J.A.C. 9A:13-1.5(b); and

15. (No change.)

(b) Institutions shall not use as matching funds, and grant funds may not be used, to reimburse[,] any expenditures made before the approval of a grant award **by the Legislature Joint Budget Oversight Committee**, except in the discretion and upon approval by the Secretary and provided that the expenditures were made for technology infrastructure and meet the requirements [of] **at** N.J.A.C. 9A:13-1.3.

(c) The specific acquisitions proposed may be revised as a result of bidding processes, advances in technology, or for other reasons provided, **however**, that the revisions are consistent with the application approved by the governing board of the affected institution and by the Secretary.

(d) Grant [requests] **applications** shall be submitted in a format provided by the Secretary.

## 9A:13-1.5 Application review and approval process

(a) The Secretary shall conduct a review of the **grant** applications. Such applications will be reviewed based on:

1. The completed application [bearing the earliest submission date] **being from an eligible institution.**

2. A competitive application process whereby all applications will be submitted by a [date] certain **date** and will be evaluated to determine which applications are the most qualified to receive funding.

(b) In determining whether an application shall be approved for a grant, the Secretary shall consider the degree to which the proposed [technology infrastructure purchase] **project** supports the following objectives:

[1. Advancement of student education in the State of New Jersey;]

Recodify existing 2.-3. as **1.-2.** (No change in text.)

[4. Promotion of innovation and improvement in the delivery of higher education;

5. Advancement of study at all levels in science, technology, engineering, and mathematics education;]

Recodify existing 6.-7. as **3.-4.** (No change in text.)

[8.] **5.** The cost-effectiveness of the proposed [infrastructure] project;

[9. Consistency of the proposed infrastructure project with the State's goals and priorities for development and redevelopment, including the promotion of industry clusters, job and business opportunities in areas designated by the State for growth, transportation choice and efficient mobility of goods and people, and promotion of access to opportunity for all New Jersey residents; and

10. Whether it serves the best interests of higher education in the State as a whole.]

**6. Demonstrated commitment over the past 10 years to appropriate maintenance of facilities previously funded by State grant programs;**

**7. Increased capacity for industry-valued credentialing programs, stackable credential pathways, and experiential learning opportunities; and**

**8. Enrichment of existing material and course-work in support of current academic curricula.**

## 9A:13-1.6 Authorization process

(a) The Secretary shall establish a review committee comprised of representation from the Office of the Secretary of Higher Education, the [New Jersey Educational Facilities] Authority, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, and an external advisor with technical expertise to evaluate project grant applications and make recommendations on funding.

(b) The Secretary shall examine the recommendations of the review committee and shall, via a written certification, provide preliminary approval or disapproval [of the grant], pursuant to N.J.A.C. 9A:13-1.5(b), **of the grant** and [the amount of] the **grant amount.**

(c) The Secretary shall forward to the Authority a copy of the institution's application and a copy of the written certification of such approval, including the amount of the grant. The Authority shall submit a copy of the proposed **grant** agreement in connection with the [purchase of technology infrastructure] **project** approved by the Secretary, to the Legislature Joint Budget Oversight Committee for review. The Legislature Joint Budget Oversight Committee shall approve or disapprove each [lease] **grant** agreement within 10 working days of receipt, or the **grant** agreement shall be deemed approved by the Legislature Joint Budget Oversight Committee and by the Secretary.

(d) Each grant awarded shall be contingent upon the recipient's governing board[s] entering into a contract or contracts [to acquire technology infrastructure] **with respect to the project**, within one year of the date on which the grant funds are made available. The **grant** funds shall be considered available on the date of the [Authority's issuance] **Legislature Joint Budget Oversight Committee's approval** of the corresponding [bond] **list of projects** or on the date of the Secretary's written certification of the grant **approval pursuant to (c) above**, whichever is later.

(e) The Authority shall not enter into [an] **a grant** agreement with an institution of higher education without the review and approval of the Legislature Joint Budget Oversight Committee.

(f) (No change.)

(g) Each recipient of a grant shall provide such information as the Secretary may request regarding the use of [the] grant [and the] **funds and/or** progress of the project.

## 9A:13-1.7 Cancellation or reduction in grants

(a) The Secretary may reduce or cancel entirely the amount of a grant if the amounts are not committed within 18 months of the allocations made by the Secretary. Funds will be considered committed when [an] **a grant** agreement has been entered into between an institution and the Authority.

(b) No reduction in the grant shall be made pursuant to (a) above if:

1. The request for approval **to modify the grant** has been received by Secretary within 18 months of the allocation;

2.-4. (No change.)

(c) **In the event that an institution requires a modification to a project approved for a grant, a formal request must be sent to the Secretary, prior to any action being taken by the institution, in order to evaluate the merits of the proposed modification against the purpose of the Act and the objectives set forth at N.J.A.C. 9A:13-1.5(b). The Secretary may exercise discretion to allow an institution to modify its project, if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the project originally approved for a grant, and if such modification does not constitute a material change. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the grant agreement, tax certificate, and any other applicable bond documents.**

## 9A:13-1.8 Reporting requirements

(a) The [Authority] **institution** shall annually report to the **Authority** and the Secretary its purchases resulting from the [Act] **Technology Fund**. The Secretary then shall report to the Governor and Legislature on the use of the funds from the [Act] **Technology Fund**.

1. **Each institution shall annually submit, by May 31st, or such other date as determined by the Secretary, a report to the Authority pursuant to, and in accordance with, the requirements as set forth by the grant agreement.**

2. **Each institution shall, whenever requested by the Authority, provide and certify, in a form satisfactory to the Authority, such information concerning the institution and the project, the operations and finances of the institution, and such other matters that the Authority considers to be necessary in order to enable the Authority to make any reports, including reports to the Secretary, which are required by any law or rule in connection with the bonds issued pursuant to the Act.**

## HUMAN SERVICES

## (a)

## THE COMMISSIONER

**County Human Services Advisory Councils; the State Human Services Advisory Council; and the Commissioner's Executive Advisory Committee  
Proposed Readoption with Amendment: N.J.A.C. 10:2**

Authorized By: Sarah Adelman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12.

Calendar Reference: See Summary below for an explanation of the exception to the rulemaking calendar requirement.

Proposal Number: PRN 2022-040.

Submit comments in writing by June 3, 2022, to:

Gerard Hughes, Assistant Commissioner  
Office of Legal and Regulatory Affairs