

AT 38 NJR 1556(A)

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RULE PROPOSALS

**TREASURY - GENERAL
DIVISION OF ADMINISTRATION**

38 N.J.R. 1556(a)

Proposed New Rules: N.J.A.C. 17:26

Rules for Implementation of the Higher Education Incentive Funding Act

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 2006-66.

Submit written comments by June 2, 2006 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 proposed new rules re-establish the procedures for institutions of higher education to apply for State matching funds available from the Higher Education Incentive Endowment Fund and the Higher Education Incentive Grant Fund in accordance with the Higher Education Incentive Funding Act, *N.J.S.A. 18A:62-29* et seq. The New Jersey Department of the Treasury has reviewed the expired rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally published. Pursuant to Executive Order No. 66 (1978) and *N.J.S.A. 52:14B-5.1*, *N.J.A.C. 17:26* expired on September 18, 2005. The expired rules are proposed herein as new rules, pursuant to *N.J.A.C. 1:30-6.4(h)*.

The proposed new rules are contained in four subchapters. Subchapter 1 describes the purpose of the chapter and defines words and terms used therein. Subchapter 2 establishes standards for endowment contributions and donations to be eligible for matching funds. Subchapter 3 establishes the application process by prescribing required statements, filing deadlines, and financial record retention requirements. Subchapter 3 also addresses an institution's decision not to file an application. Subchapter 4 establishes the payment process, the amounts of matching fund percentages, and the

Department's obligations to notify applicants of expected matching fund disbursement dates and to provide applicants with explanations of claim denials.

The New Jersey Department of the Treasury has determined that the comment period for this proposal shall be 60 days; therefore, pursuant to *N.J.A.C. 17:30-3.3(a)5*, this proposal is excepted from the rulemaking calendar requirements.

Social Impact

The proposed new rules are relevant to New Jersey public colleges and universities and the independent institutions eligible to receive public funds under the Independent College and University Assistance Act. The availability of State matching funds for endowment contributions and donations to institutions of higher education may increase the incentive to make such contributions and donations. Having rules in place will streamline the application process.

Economic Impact

The proposed new rules will expedite the Department of the Treasury's review, approval and payment process to the institutions, allowing State matching funds to benefit more than 360,000 students enrolled in New Jersey colleges and universities. The availability of funding will be determined by budget legislation.

Institutions applying for State matching funds will incur costs to complete the application, including salaries for administrative staff, office supplies and postage expense. The Department of the Treasury assumes that an institution's existing financial officer and staff will perform the work effort required. Although these rules do not require applicant institutions to retain professional legal services, institutions may choose to retain legal services to assist in completing applications and with respect to overseeing other legal matters relevant to the institution's receipt of endowment contributions and donations.

Federal Standards Statement

The proposed new rules are not subject to a Federal standards analysis because the Higher Education Incentive Endowment Fund and the Higher Education Incentive Grant Fund were established by New Jersey legislation, are unconditionally supported by State appropriations, and are not subject to any Federal requirements or standards.

Jobs Impact

The proposed new rules 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 new rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting requirements on small businesses as defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The proposed new rules pertain to public four-year colleges and universities and two-year colleges, none of which qualify as a small business as the 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 new rules will not have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the expired rules proposed herein as new rules can be found in the New Jersey Administrative Code at *N.J.A.C. 17:26*.

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TITLE 17. DEPARTMENT OF THE TREASURY-GENERAL
CHAPTER 26. RULES FOR IMPLEMENTATION OF THE HIGHER EDUCATION INCENTIVE FUNDING ACT

N.J.A.C 17:26 (2006)

Title 17, Chapter 26 -- Chapter Notes

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

SOURCE AND EFFECTIVE DATE:

R.2000 d.379, effective September 18, 2000.

See: *32 New Jersey Register 2586(a)*, *32 New Jersey Register 3456(b)*.

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATE:

Chapter 26, Rules for Implementation of the Higher Education Incentive Funding Act, expires on September 18, 2005.

CHAPTER HISTORICAL NOTE:

Chapter 26, Interim Rules for the Processing of Damage Claims Pursuant to the Spill Compensation and Control Act (P.L. 1976, c.141), was adopted as emergency new rules by R.1977 d.116, effective April 1, 1977. See: 9 New Jersey Register 241(d).

Subchapter 2, Regulations Governing New Jersey Spill Compensation Fund Expenditures in Light of Federal Superfund Law, was adopted as R.1982 d.79, effective March 15, 1982. See: 14 New Jersey Register 36(b), 14 New Jersey Register 285(b).

Chapter 26, Interim Rules for the Processing of Damage Claims Pursuant to the Spill Compensation and Control Act (P.L. 1976 c.141), was repealed by R.1993 d.2, effective January 4, 1993. See: 24 New Jersey Register 1255(a), 25 New Jersey Register 68(a).

Chapter 26, Rules for Implementation of the Higher Education Incentive Funding Act, was adopted as new rules by R.2000 d.379, effective September 18, 2000. See: Source and Effective Date.

SUBCHAPTER 1. GENERAL PROVISIONS

§ 17:26-1.1 Purpose and authority

The rules in this chapter are established to implement the Higher Education Incentive Funding Act, *N.J.S.A. 18A:62-29* et seq. (the "Act").

§ 17:26-1.2 Scope

This chapter establishes procedures for institutions to apply for State matching funds and delineates how and when the matching funds will be distributed to institutions.

§ 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.

"Act" means the Higher Education Incentive Funding Act, *N.J.S.A. 18A:62-29 et seq.*

"Amount" of a contribution or a donation means cash amount or, in the case of marketable securities, the value of the 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.

"Contribution year" means the fiscal year in which the endowment contribution or contributions were made, with respect to which State matching funds under sections 5 through 7 of P.L. 1999, c.226 (*N.J.S.A. 18A:62-33 through 35*) are sought or have been paid.

"Contributor" means a person, corporation or other business entity, or foundation making an endowment contribution.

"Date received" means the date on which cash is deposited by the institution or the date on which the institution acquires ownership of the marketable securities.

"Donation" means the conveyance by gift of property consisting of cash or 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.

"Donation year" means the fiscal year in which the donation or donations were made, with respect to which State matching funds under sections 9 through 11 of P.L. 1999, c.226 (*N.J.S.A. 18A:62-37 through 39*) are sought or have been paid.

"Donor" means a person, corporation or other business entity, or foundation making a donation.

"Endowment contribution" means the conveyance by gift of property consisting of cash or 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 be used for particular purposes stipulated by the contributor.

"Fiscal Year" means the State fiscal year.

"Fund" means both the Higher Education Incentive Endowment Fund and the Higher Education Incentive Grant Fund, unless one fund is specified.

"Gift" means a completed irrevocable transfer of property, including transfer by testamentary disposition, for which transfer the transferor receives no consideration, and in which property the transferee's interest is not subject to any retained interest of the transferor or to any concurrent or future interest of any other person.

"Institution" means a New Jersey public college or university or private institution of higher education eligible to receive public funds under the Independent College and University Assistance Act, *N.J.S.A. 18A:72B-15 et seq.*

"Institutionally related foundation" means a foundation which is qualified with the Internal Revenue Service under *IRC 501(c)(3)* and which designates the related institution of higher education as the sole beneficiary of its proceeds. The foundation must be formally designated by resolution of the institution's board of trustees as a foundation eligible for participation in the Higher Education Incentive Funding Program.

SUBCHAPTER 2. ELIGIBILITY

N.J.A.C. 17:26-2.1 (2006)

§ 17:26-2.1 Institution eligibility for matching funds

(a) A four-year public institution may apply for matching funds for any endowment contribution or donation of \$ 1,000,000 or more made to the institution or its institutionally related foundation during the contribution year by single contributors.

(b) A two-year public institution may apply for matching funds for:

1. Any endowment contribution or donation of \$ 100,000 or more made to the institution or its institutionally related foundation during the contribution year by single contributors;

2. Any cumulative total of \$ 250,000 or more consisting of three or more endowment contributions, each of which was \$ 50,000 or more but less than \$ 100,000; or

3. Any cumulative total of \$ 250,000 or more consisting of three or more donations, each of which was \$ 50,000 or more but less than \$ 100,000.

(c) A four-year independent institution may apply for matching funds for any endowment contribution or donation of \$ 1,000,000 or more made to the institution or its institutionally related foundation during the contribution year by single contributors.

§ 17:26-2.2 Endowment contribution and donation eligibility

(a) Multiple endowment contributions or donations from a single contributor or donor in one contribution or donation year shall each be eligible for matching funds if the amount of each contribution or donation is equal to or greater than the amounts delineated in *N.J.A.C. 17:26-2.1*.

(b) Multiple endowment contributions or donations from a single contributor or donor in one contribution or donation year which are each less than the amounts delineated in *N.J.A.C. 17:26-2.1* shall be eligible cumulatively for matching funds if the cumulative total is equal to or greater than the amounts delineated in *N.J.A.C. 17:26-2.1*.

(c) If the employer or family foundation of a contributor or donor, or a corporation in which the contributor or donor holds a controlling interest, submits a matching amount in the name of the contributor or donor, the endowment contribution or donation and the matching amount together shall be considered one endowment contribution or donation.

§ 17:26-2.3 Ineligibility for matching funds

(a) No institution having a total endowment of more than \$ 1,000,000,000 and no foundation institutionally related to such an institution is eligible for matching funds.

(b) No endowment contribution or donation to an institution from a foundation institutionally related to that institution is eligible for matching funds.

(c) A pledge of an endowment or donation is considered ineligible for matching funds. Endowment contributions and donations must involve the transfer of cash or property to the donee.

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

SUBCHAPTER 3. APPLICATION PROCESS

N.J.A.C. 17:26-3.1 (2006)

§ 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. A copy of the governing board or authorized entity resolution approving the submission of application for matching funds;

2. An itemized statement of eligible endowment contributions received during the contribution year that includes:

- i. The contributor's name or the word "anonymous" if applicable;
- ii. The endowment contribution amount; and
- iii. The date received;

3. An itemized statement of eligible donations received during the donation year that includes:

- i. The donor name or the word "anonymous" if applicable;
- ii. The donation amount; and
- iii. The date received;

4. A statement certified by the financial officer of the institution or its institutionally related foundation that the amounts itemized are included in the institution's or foundation's annual financial report;

5. A copy of the annual independent financial audit of the institution or its institutionally related foundation for the contribution or donation year; and

6. If the applicant is an institution or foundation receiving State matching funds, in each fiscal year the annual average amount of endowment contributions and donations received in the contribution and donation year and in the five previous contribution and donation years.

(b) The Department of Treasury accepts the word "anonymous" in the itemized statements of endowment contributions and donations since these statements will become a matter of public record. The Department of Treasury reserves the right to inspect the financial records of an institution or its institutionally related foundation that support anonymous endowment contributions and donations.

§ 17:26-3.2 Time limits

(a) Applications for State matching funds shall be submitted by November 30 following the close of the contribution or donation year. In 2000, the Department of the Treasury shall accept applications for two prior contribution or donation years. In 2001 and thereafter, applications shall be submitted annually.

(b) Applications must be received by 4:00 P.M. on November 30 by:

Department of Treasury

Division of Administration

50 West State Street

PO Box 211

Trenton, New Jersey 08625-0211

(c) Applications submitted to the Department of the Treasury in advance of the deadline may be amended or withdrawn at any time prior to the deadline. Applications submitted after the deadline are not eligible for consideration by the Department of the Treasury.

§ 17:26-3.3 Decision not to file an application

The Department of Treasury shall not require an institution or its institutionally related foundation to submit an application for State matching funds for endowment contributions or donations in any given contribution or donation year.

§ 17:26-3.4 Retention of records

(a) A public institution or its institutionally related foundation shall maintain the financial records that support an application for matching funds for endowment contributions for a period of at least 10 fiscal years following the contribution year.

(b) A public institution or its institutionally related foundation shall maintain the financial records which support an application for matching funds for donations for a period of at least seven fiscal years following the donation year.

(c) An independent institution or its institutionally related foundation shall maintain the financial records that support an application for matching funds for endowment contributions or an application for matching funds for donations for a period of at least seven fiscal years following the contribution or donation year.

SUBCHAPTER 4. PAYMENTS FROM THE FUND

§ 17:26-4.1. Time limits

(a) In the first fiscal year following the contribution or donation year, the Department of the Treasury shall determine the amount to which each applicant institution or institutionally related foundation is entitled to receive from the fund after November 30 and shall pay that amount from the fund by February 28.

(b) An explanation of any claim denial shall be included with the payment. If no payment is being made, an explanation of any claim denial shall be made by February 28 of the first fiscal year following the contribution or donation year.

(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 February 28. The second through tenth year payments shall be made without application by the eligible institution.

§ 17:26-4.2 Amount of matching funds

(a) An applicant four-year public institution or its institutionally related foundation shall receive:

1. Ten percent of eligible endowment contributions for 10 consecutive fiscal years following the contribution year.
2. Ten percent of eligible donations in the first fiscal year only following the donation year.

(b) An applicant two-year public institution or its institutionally related foundation shall receive:

1. Ten percent of eligible endowment contributions for the 10 consecutive fiscal years following the contribution year.

2. Ten percent of the highest exact multiple of \$ 250,000 that is less than or equal to the cumulative total of \$ 250,000 or more consisting of three or more endowment contributions of \$ 50,000 but less than \$ 100,000 each, for 10 consecutive fiscal years following the contribution year.

3. Ten percent of eligible donations in the first fiscal year only following the donation year.

4. Ten percent of the highest exact multiple of \$ 250,000 that is less than or equal to the cumulative total of \$ 250,000 or more consisting of three or more donations of \$ 50,000 or more but less than \$ 100,000 each in the first fiscal year only following the donation year.

(c) An applicant four-year independent institution or its institutionally related foundation shall receive:

1. \$ 100,000 for each eligible endowment contribution in the first fiscal year only following the contribution year.
2. \$ 100,000 for each eligible donation in the first fiscal year only following the donation year.

(d) If, in any fiscal year, the fund balance in either the Higher Education Incentive Endowment Fund or the Higher Education Incentive Grant Fund is insufficient to fund payment in full, the amount of available funds shall be prorated among all eligible applicants.