

**Coronavirus State and Local Fiscal Recovery Funds
Federal Assistance Listing Number (ALN) 21.027**

**Grants to community colleges for a capital project or for
offering a course or program that meets the criteria
established by the federal American Rescue Plan Act of 2021
and the commission.**

31 CFR Part 35 and LB 1014 (2022), Sec. 36
Guidance Document

June 13, 2022



This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

As required by LB 1014, "All grants utilizing Federal Funds allocated to the State of Nebraska from the federal Coronavirus State Fiscal Recovery Fund shall meet the eligible uses under the federal American Rescue Plan Act of 2021 and any relevant guidance on the use of such funds by the United States Department of the Treasury."

"Each agency, board, or commission shall complete guidance documents related to the distribution of the Federal Funds appropriated pursuant to this act within sixty days after the effective date of this act."

(Due 6/13/2022)

As defined in Neb. Rev. Stat. § 84-901(5) "Guidance document shall mean any statement developed by an agency which lacks the force of law but provides information or direction of general application to the public to interpret or implement statutes or such agency's rules or regulations. A guidance document is binding on an agency until amended by the agency. A guidance document shall not give rise to any legal right or duty or be treated as authority for any standard, requirement, or policy. Internal procedural documents which provide guidance to staff on agency organization and operations shall not be considered guidance documents."

The Coordinating Commission for Postsecondary Education, through the grant application process, has outlined procedures and guidance for the community colleges to follow when applying for grant funds appropriated under LB 1014, Sec. 36.

Additionally, the grant agreement outlines requirements of the grant including, but not limited to, reporting and auditing.

Both the grant application and the grant agreement are included as guidance documents.

LB1014 Sec. 36/ARPA GRANT AGREEMENT

This Grant Agreement (Agreement) is entered into by and between Nebraska's Coordinating Commission for Postsecondary Education (Commission) and ~~xxxxxxx~~ Community College listed (Grantee), a political subdivision of the state of Nebraska (State).

WHEREAS, the State is the recipient of a Coronavirus State and Local Fiscal Recovery Funds grant – Assistance Listing Number 21.027(ARPA Grant) made available under the American Rescue Plan Act (ARPA) from the United States Treasury;

WHEREAS, the Grantee has submitted, and may in the future submit, to the Commission one or more applications for subawards to be funded from the ARPA Grant (each application approved by the Commission and attached hereto from time to time in Exhibit A, an Application), and in reliance on the representations, certifications, and warranties made by the Grantee herein and in the Applications, the Commission is, or will be, willing to provide one or more restricted grants in the Grant Amount identified in the applicable Application (Grant) to the Grantee on the terms and conditions stated herein;

WHEREAS, the Grantee is willing to accept the Grant evidenced by each Application, and to thereby become a sub-recipient of the ARPA Grant, on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree and bind themselves as follows:

I. REPRESENTATIONS OF THE GRANTEE

Recognizing that the Commission is relying hereon, the Grantee represents, as of the date of this Agreement, as follows:

- A. Organization; Power, Etc. The Grantee is a political subdivision of the State with full legal right and power to authorize, execute, and deliver this Agreement, to receive each Grant, to undertake and implement the use of grant funds described in each Application and to carry out and consummate all transactions contemplated by the foregoing (including without limitation the recordkeeping and reporting described herein);
- B. Authority. The Grantee has duly and validly authorized the execution and delivery of this Agreement and has or will have so authorized the execution of each Application, and all approvals, consents, and other governmental or corporate proceedings necessary for the execution and delivery of the foregoing or required to make this Agreement the legally binding obligation of the Grantee that it purports to be, in accordance with its terms, have been obtained or made. The representatives of the Grantee executing this Agreement have all necessary power and authority to execute this Agreement and to bind the Grantee to the terms and conditions herein.

- C. No Litigation. No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, other than as disclosed to the Commission in writing, is pending or, to the knowledge of the authorized representatives of the Grantee executing this Agreement, threatened (1) seeking to restrain or enjoin the execution and delivery of this Agreement, or the undertaking of any Project (defined below) or (2) contesting or affecting the validity of this Agreement; and neither the corporate existence of the Grantee nor the title to office of any authorized representatives of the Grantee executing this Agreement, is being contested.

- D. No Conflicts. The authorization, execution, and delivery of this Agreement, and performance by the Grantee of the project described in the applicable Application ("Project) and of its obligations under this Agreement, will not constitute a breach of, or a default under any law, ordinance, resolution, agreement, indenture, or other instrument to which the Grantee is a party or by which it or any of its properties is bound.

- E. Binding Agreement. This Agreement is, or when executed and delivered, will be the legal, valid, and binding obligation of the Grantee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally.

- F. Information Submitted. All information, reports, and other documents and data submitted to the Commission in connection with this Agreement (including without limitation, the Application(s) attached hereto as of the date of execution and each other Application, if any, to be later attached and made a part hereof pursuant to the terms hereof) were, at the time the same were (or will be) furnished, and are, as of the date hereof (or will be as of the date the same are furnished), true, correct and complete in all material respects.

- G. Ratification. By executing this Agreement, the Grantee (i) affirms and ratifies all statements, representations, and warranties contained in all written documents that it has submitted to the Commission in connection with this Agreement (including, without limitation, that this Agreement and the Application(s) attached hereto as Exhibit A as of the date hereof) and (ii) agrees that on each date, if any, that an additional Application is attached hereto and made a part hereof, it will be deemed to have affirmed and ratified all such statements, representations and warranties (including, without limitation, those contained or provided in connection with such additional Application).

II. GRANT AWARD

A. GRANT AMOUNT

The Commission agrees to make, and the Grantee agrees to accept, on the terms and conditions stated in this Agreement, from and after the date hereof, one or more Grants, in the Grant Amount(s) specified on the Application(s) attached as Exhibit A hereto, not to exceed a total of \$10 million. Applications received after the Agreement date will be attached hereto on Exhibit A and shall become a part of this Agreement.

B. GRANT (PROJECT) DISBURSEMENT SCHEDULE

The Grant will not pay any costs other than those incurred (obligated) during the period from approval of a Grant application to December 31, 2024. All Grant proceeds that remain unexpended as of December 31, 2026, (or such later date to which the U.S. Treasury or other federal agency shall extend such deadline) shall be returned to the Commission promptly (and in any event within thirty (30) business days thereafter).

Payments to the Grantee will be made according to the quarterly disbursement schedule below which is based on the Grantee’s estimated cash flow needs for all projects. This schedule may be updated as additional projects are approved.

June 2022	_____
September 2022	_____
December 2022	_____
March 2023	_____
June 2023	_____
September 2023	_____
December 2023	_____
March 2024	_____
June 2024	_____
September 2024	_____
December 2024	_____

Funds must be obligated by December 31, 2024

March 2025	_____
June 2025	_____
September 2025	_____
December 2025	_____
March 2026	_____
June 2026	_____
September 2026	_____
December 2026	_____

III. GRANT COMPLIANCE REQUIREMENTS

The U.S. Treasury has issued extensive documents concerning eligible uses and compliance and reporting requirements that adherence by the Grantee is required and include:

[Final Rule](#)

[Interim Final Rule](#)

[Compliance and Reporting Guidance](#) (applies to the SLFRF program only)

[Project and Expenditure Report User Guide](#)

[Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#) (“Uniform Guidance” or 2 CFR Part 200)

[Labor Standards Applicable to Contracts Covering Federally Financed and Assisted Construction - Department of Labor Regulations \(29 CFR Part 5\)](#)

Civil Rights as referenced on page 12 of the *Compliance and Reporting Guidance*

IV. GRANT (PROJECT) REPORTING REQUIREMENTS

Grantees are expected to follow the *Compliance and Reporting Guidance*. Specifically, the following sections found under *Part 2: Reporting Guidance* beginning on page 14 of the *Compliance and Reporting Guidance*. The State Accounting and State Budget divisions of Administrative Services created the spreadsheets referenced below to facilitate the required reporting and must be used to ensure consistency and timeliness during the roll-up of data for the state-wide ARPA reports to the U.S. Treasury.

- A. **3. Required Information through 3.g. Subawards, Contracts, Grants, Loans, Transfers, and Direct Payments, pages 19-22**, completing the Grant Project and Expenditure Report spreadsheet will satisfy the requirements of this section. **These grants are considered subawards and therefore column J of the *Project and Expenditure Report tab* must be Yes.**
- B. **3.j. Required Programmatic Data (other than infrastructure projects), pages 23-24**, completing the ARPA Expenditure Category Baseline and Updates spreadsheet will satisfy the requirements of this section.
- C. **C. Recovery Plan Performance Report, pages 28-33**, completing the Recovery Plan spreadsheet will satisfy the requirements of this section.

V. TERMS AND CONDITIONS

If a conflict or ambiguity arises after the Addendum to Contract Award have been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

- A. If only one Party has a particular clause then that clause shall control;
- B. If both Parties have a similar clause, but the clauses do not conflict, the clauses shall be read together;
- C. If both Parties have a similar clause, but the clauses conflict, the State’s clause shall control.

A. GENERAL

The contract resulting from this solicitation shall incorporate the following documents:

- A. Grant Application and Addenda;
- B. Amendments to the Application;
- C. Questions and Answers;
- D. Contractor’s proposal (Application and properly submitted documents);
- E. The executed Contract and Addendum One to Contract, if applicable; and,
- F. Amendments/Addendums to the Contract.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda, and 5) the Contractor’s submitted Proposal.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

B. NOTIFICATION

Contractor and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

Communications regarding the executed contract shall be in writing via email to the parties at their respective addresses set forth below. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

	Community College	CCPE
Contract Manager	_____	_____
Email	_____	_____
Community College	_____	_____
Address	_____	_____

Either party may change its address for notification purposes by giving notice of the change and setting forth the new address and an effective date.

C. GOVERNING LAW (Statutory)

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

D. BEGINNING OF WORK

The Grantee shall not commence any billable work until a valid grant agreement has been fully executed by the State and the Grantee.

E. AMENDMENT

This Contract may be amended in writing, within scope, upon the agreement of both parties.

F. NOTICE OF POTENTIAL GRANTEE BREACH

If Grantee breaches the contract or anticipates breaching the contract, the Grantee shall immediately give written notice to the Commission. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The Commission may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the Commission does not forfeit any rights or remedies to which the Commission is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

G. BREACH

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. The Commission's failure to make payment shall not be a breach, and the Grantee shall retain all available statutory remedies and protections.

H. NON-WAIVER OF BREACH

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

I. SEVERABILITY

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

J. INDEMNIFICATION

A. GENERAL

The Grantee agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Grantee, its employees, subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Grantee liability is attenuated by any action of the State which directly and proximately contributed to the claims.

B. PERSONNEL

The Grantee shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

C. SELF-INSURANCE

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Grantee may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

D. ALL REMEDIES AT LAW

Nothing in this agreement shall be construed as an indemnification by one Party of the other for liabilities of a Party or third parties for property loss or damage or death or personal injury arising out of and during the performance of this contract. Any liabilities or claims for property loss or damages or for death or personal injury by a Party or its agents, employees, contractors or assigns or by third persons, shall be determined according to applicable law.

The Parties acknowledge that the Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

K. ATTORNEY'S FEES

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if ordered by the court, including attorney's fees and costs, if the other Party prevails.

L. FORCE MAJEURE

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other Party and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.

M. CONFIDENTIALITY

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

N. EARLY TERMINATION

The contract may be terminated as follows:

A. The State and the Grantee, by mutual written agreement, may terminate the contract at any time.

B. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Grantee of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Grantee shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

C. The State may terminate the contract immediately for the following reasons:

1. if directed to do so by statute;
2. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the agreement;
3. grantee has or announces it will discontinue support of the deliverable; or
4. in the event funding is no longer available.

O. SAM.GOV REGISTRATION

Grantee is registered with the System for Award Management (SAM) and confirms that the Sam profile is current and the Data Universal Numbering System (DUNS) number listed in the Grant proposal is the correct such number for the Grantee as of the date hereof.

P. RECORDKEEPING REQUIREMENTS

Grantee shall establish and maintain a reasonable accounting system that enables the State to readily audit all components of the contract. The State and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this agreement kept by or under the control of the Grantee, including, but not limited to those kept by the Grantee, its employees, agents, assigns, and successors. Such records shall include, but not be limited to, accounting records, written policies and procedures; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Grantee shall, at all times during the term of this contract and for a period of five (5) years after the completion of this contract, maintain such records, together with such supporting or underlying documents and materials. The Grantee shall at any time requested by the State, whether during or after completion of this contract and at Grantee's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the State. Such records shall be made available to the State during normal business hours at the Grantee's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the State.

Q. SINGLE AUDIT REQUIREMENTS

Subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.

R. CIVIL RIGHTS COMPLIANCE

Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

Michael Baumgartner
Executive Director
Coordinating Commission for
Postsecondary Education

Date

xxxxxxxxx
President
xxxxxxxxx Community College

Date

**Coronavirus State and Local Fiscal Recovery Funds
Federal Assistance Listing Number (ALN) 21.027
31 CFR Part 35 and LB 1014 (2022)
*Grant Application***

May 20, 2022



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Coronavirus State and Local Fiscal Recovery Funds (SLFRF) 31 CFR Part 35 and LB 1014 (2022)

GRANT APPLICATION

I. INTRODUCTION

Purpose

The purpose of this grant program is to provide federal American Rescue Plan Act of 2021 (ARPA) grants to Nebraska's community colleges to fund eligible projects. The U.S. Department of the Treasury has issued its final rule at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>. **The community colleges should be familiar with both the Interim Final Rule and the Final Rule prior to submitting any grant proposal as both contain numerous examples of allowable and unallowable uses of grant funds.**

Eligible uses of funds are identified under four broad categories: 1) responding to the public health and negative economic impacts of the pandemic (which includes several sub-categories), 2) providing premium pay to essential workers, 3) providing government services to the extent of revenue loss due to the pandemic, and 4) making necessary investments in water, sewer, and broadband infrastructure. (Final Rule page 8.)

LB 1014 (2022), Sec. 35 requires a community college to make a grant application to the Commission for funding for a capital project or for offering a course or program that meets the criteria established by the federal American Rescue Plan Act of 2021 and the Commission. A community college receiving funding from this program shall meet all necessary federal and Commission compliance and reporting requirements. The grant funds shall not be used to offset student or institutional costs for (1) individuals currently enrolled in secondary school or (2) individuals enrolled in programs with the primary purpose of earning general academic transfer credits applicable toward a four-year degree.

Eligible Applicants

Nebraska community college areas: Central Community College, Metropolitan Community College, Mid-Pains Community College, Northeast Community College, Southeast Community College, and Western Nebraska Community College.

Amount of Funds

LB 1014 (2022) allocated up to \$60 million of federal ARPA funds to the six community college areas with a per area maximum allotment of \$10 million. Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. For additional information on administrative costs, see [Compliance and Reporting Guidance](#), page 9.

Capital Projects and Academic Programs Eligibility Requirements

Each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to the others. Therefore, community colleges must first determine and document within the proposal which eligible use category a potential use of funds fits within, then assess and document within the proposal whether the potential use of funds meets the eligibility standard or criteria for that category. In the case of uses to respond to the public health and negative economic impacts of the pandemic, community colleges should also determine and document within the proposal which sub-category the eligible use fits within (i.e., public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, or public sector capacity and workforce), then assess and document within the proposal whether the potential use of funds meets the eligibility standard for that sub-category. The four categories and related sub-categories are identified under section *II. ELIGIBLE USES* in the Final Rule - Table of Contents in Appendix B. (Final Rule page 8.)

In the final rule, Treasury maintained the interim final rule's approach that general economic development or workforce development, meaning activities that do not respond to negative economic impacts of the pandemic and rather seek to more generally enhance the jurisdiction's business climate, would generally not be eligible under this eligible use category. To identify an eligible use of funds under this category, a recipient must identify a beneficiary or class of beneficiaries that experienced a harm or impact due to the pandemic, and eligible uses of funds must be reasonably designed to respond to the harm, benefit the beneficiaries that experienced it, and be related and reasonably proportional to that harm or impact. (Final Rule page 218.)

In addition to eligible uses enumerated in the final rule, federal, state, and local laws and regulations also apply, including for example, environmental laws and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, disability, age, or familial status (having children under the age of 18). (Final Rule pages 10-11.)

Additionally, requirements contained in 2 CFR 200 (Uniform Guidance) must also be met, including all contracts made by a subrecipient in excess of \$100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Treasury will seek information from recipients on their workforce plans and practices related to capital expenditures undertaken under the public health and negative economic impacts eligible use category with SLFRF funds. (Final Rule page 206.)

LB 1014 (2022), Sec. 35 requires funds to be used only for capital projects or to offer courses that meets the criteria established by ARPA and the Commission. Grant funds shall not be used to offset student or institutional costs for (1) individuals currently enrolled in secondary school or (2) individuals enrolled in programs with the primary purpose of earning general academic transfer credits applicable toward a four-year degree.

Request for Proposal Timeline

Grant proposals can be submitted any time during the grant period provided the project can be completed within the deadlines for obligating and expending funds.

Release of Grant Application	May 20, 2022
Project Start Date	Upon approval
Funds Obligated by	December 31, 2024
Funds Expended by	December 31, 2026

Repayment of Funds Post-award

Determination of eligibility by the Commission is subject to review by the awarding federal agency. If a project or program is determined ineligible for funding by the awarding federal agency after the funds have been awarded or disbursed by the Commission, the community college is responsible to reimburse the awarding federal agency for unallowable costs.

II. PROPOSAL FORM AND PROCESS

Each capital project and each academic program is considered a separate grant request and requires a separate grant proposal. This will ensure each request can be properly evaluated for eligibility and either approved or denied for grant funding without jeopardizing other proposals.

It is important the narrative for each proposal clearly describes 1) the identified need or negative impact of the COVID–19 public health emergency and 2) how the program, service, or other intervention in the proposal addresses the identified need or impact. The Commission will review each proposal and submit any questions to the institution via email. These responses to the questions will become part of the proposal.

All proposals must include the first three sections:

Section I: Community College Information

Section II: Eligible Uses Identification

Section III: Proposal Completion

a. Eligibility of Proposal

b. How the Proposal Addresses an Identified Need

Section IV: Written Justification for Capital Expenditures \$1 million and Greater

Section V: Funding Source Estimate for Capital Project – Operations and Maintenance Costs

SECTION I: Community College and Project Information

Institution – Identify the community college submitting the proposal.

Contact Information – Provide contact information for Commission questions, emails, etc.

Project Name – Provide a descriptive name that will differentiate the proposal from other proposals.

Estimated Project Cost – Provide the amount of Federal funds requested for the capital expenditure or academic program project. If a capital expenditure project, include an estimate of local funds (capital project levy) and of other funds needed for this project. This will allow the Commission to determine if the project will require review per Neb. Rev. Stat. § 85-1414.

Project Expenditure Category – Identify the specific number and description from Appendix C that most accurately describes the project. This should correspond closely with Section II of this proposal.

Capital Expenditure Enumerated Uses per Compliance and Reporting Guidance – If the project is a Capital Expenditure, please include the specific enumerated use found in Appendix D. This listing can also be found on page 60 of the [Compliance and Reporting Guidance – State and Local Fiscal Recovery Funds](#).

Project Summary – Brief summary of the purpose of the project.

SECTION II: Eligible Uses Identification

Based on the categories included in Appendix B, Table of Contents of the Final Rule, identify which of the four main Eligible Use Categories the proposal supports. Once the main Eligible Use Categories has been identified, determine the lowest level subcategory the proposal supports. There may be proposals that support multiple categories and subcategories. As mentioned previously, each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to the others.

SECTION III: Proposal Eligibility

Each capital project and each academic program proposal is considered a separate grant request and requires a separate grant proposal. This will ensure each request can be properly evaluated for eligibility and either approved or denied for grant funding without jeopardizing other proposals. The Proposal Form can be found in Appendix A. There are many specific questions from commenters and answers from Treasury within the final rule. Whenever possible, the institution should utilize these in its proposals.

Eligibility of Proposal

Once an institution has identified the Eligible Uses Subcategories on the proposal form, the institution must review the appropriate section, including General Provisions, in the final rule and describe, in detail, how the proposal is eligible for funding. If the proposal meets an enumerated use included in the final rule, this should be noted with the appropriate final rule page number referenced. If the proposal does not meet a specific enumerated use, then the institution must support its reasoning, referencing specific pages within the final rule, why the proposal is eligible.

If the proposal identifies a specific class, household, small business, etc., as the intended beneficiary, the proposal must include supporting documentation why this group is considered impacted or disproportionately impacted. For example, if the beneficiary is a low-income household, then the proposal must include support that the intended beneficiaries meet the definition of low income.

Whether a class, household, or community is considered impacted or disproportionately impacted is also a factor when determining eligibility use. The more the proposal can reference specific sections within the final rule to support a case for eligible use, the less likely the proposal will be denied either by the Commission or the U.S. Treasury.

Capital Expenditures (equipment, property, and facilities)

Capital expenditures, in certain cases, can be appropriate responses to the public health and economic impacts of the pandemic, in addition to programs and services. Like other eligible uses of SLFRF funds in this category, capital expenditures should be a related and reasonably proportional response to a public health or negative economic impact of the pandemic. (Final Rule, page 192)

Section IV of the proposal form must be used to document the written justification for capital expenditures \$1 million and greater.

In considering whether a capital expenditure would be eligible under the public health and negative economic impacts eligible use category, recipients must satisfy the requirements for all uses under the public health and negative economic impacts eligible use category, including identifying an impact or harm and designing a response that addresses or responds to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. (Final Rule, page 194)

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients must refer to the General Provisions: Other, Capital Expenditures section of the final rule (page 190) for details about the eligibility of capital expenditures. Note that capital expenditures are not considered “programs and services” and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. (Final Rule, page 57)

Capital Expenditures are referenced in several sections of the final rule. While not an all-inclusive list, three important references identified are 1) capital expenditures related to a public health response, 2) capital expenditures related to assistance to unemployed and underemployed workers, and 3) General Provisions: Other – Capital Expenditures section.

1) Capital expenditures related to a public health response

In recognition of the importance of capital expenditures in the COVID-19 public health response (Final Rule, Section II. A. 2.), Treasury enumerates that the following projects are examples of eligible capital expenditures, as long as they meet the standards for capital expenditures in section Capital Expenditures in General Provisions: Other: (Final Rule, page 60)

- For a list of enumerated uses under this category, see page 60 of the Final Rule.

2) Assistance to Unemployed and Underemployed Workers

As part of Treasury’s response in the Final Rule, Treasury enumerated that job and workforce training centers are eligible capital expenditures, so long as they adhere to the standards and presumptions detailed in the section Capital Expenditures in General Provisions: Other.

(Final Rule page 117.)

3) General Provisions: Other – Capital Expenditures section (Final Rule page 190.)

This section provides 1) an overview of general standards governing capital expenditures; 2) presumptions on capital expenditures, which help guide recipients in determining whether the expenditure meets the standards and the associated documentation requirements; and 3) additional standards and requirements that may apply. (Final Rule page 193.)

How the Proposal Addresses an Identified Need

Once the institution has explained why its proposal is eligible for funding, the institution must describe how the proposal will address the identified need or impact. Responses must be reasonably designed to benefit the individual or class that experienced the public health impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiaries and the ability of the response to address the impact or harm experienced by those beneficiaries. Responses must also be related and reasonably proportional to the extent and type of public health impact or harm experienced. (Final Rule, page 22)

SECTION IV: Written Justification for Capital Expenditures \$1 Million and Greater

Treasury requires written justification for any capital expenditure greater than or equal to \$1 million. The Written Justification should 1) describe the harm or need to be addressed; 2) explain why a capital expenditure is appropriate to address the harm or need; and 3) compare the proposed capital expenditure against alternative capital expenditures that could be made. (Final Rule page 196.)

Section IV of the proposal form must be used to document this justification.

- 1) *Description of harm or need to be addressed:* Recipients should provide a description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. When appropriate, recipients may provide quantitative information on the extent and type of the harm, such as the number of individuals or entities affected.
- 2) *Explanation of why a capital expenditure is appropriate:* Recipients should provide an independent assessment demonstrating why a capital expenditure is appropriate to address the specified harm or need. This should include an explanation of why existing capital equipment, property, or facilities would be inadequate to addressing the harm or need and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures. Recipients are not required to demonstrate that the harm or need would be irremediable but for the additional capital expenditure; rather, they may show that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the harm without additional capital expenditure.
- 3) *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients should provide an objective comparison of the proposed capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably feasible. Where relevant, recipients should compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Recipients should use quantitative data when available, although they are encouraged to supplement with qualitative information

and narrative description. Recipients that complete analyses with minimal or no quantitative data should provide an explanation for doing so. In determining whether their proposed capital expenditure is superior to alternative capital expenditures, recipients should consider the following factors against each selected alternative.

- a. *A comparison of the effectiveness of the capital expenditures in addressing the harm identified.* Recipients should generally consider the effectiveness of the capital expenditures in addressing the harm over the useful life of the capital asset and may consider metrics such as the number of impacted or disproportionately impacted individuals or entities served, when such individuals or entities are estimated to be served, the relative time horizons of the project, and consideration of any uncertainties or risks involved with the capital expenditure.
- b. *A comparison of the expected total cost of the capital expenditures.* Recipients should consider the expected total cost of the capital expenditure required to construct, purchase, install, or improve the capital assets intended to address the public health or negative economic impact of the public health emergency. Recipients should include pre-development costs in their calculation and may choose to include information on ongoing operational costs, although this information is not required.

SECTION V: Funding Source Estimate for Capital Project – Operations and Maintenance Costs

The Commission has a constitutional responsibility to review capital projects that meet certain thresholds. The first threshold is if the project will be directly financed in whole or in part with tax funds totaling \$2 million or more as identified in Section I of the proposal. The second is if, as the result of the project, operations and maintenance costs increase \$95,000 or more in any fiscal year within a period of ten years from the date of substantial completion. This form will assist in calculating the O&M costs.

III. SUBMISSION REQUIREMENTS

Applicants must submit the proposal in electronic format to:

Coordinating Commission for Postsecondary Education
Attention: Gary Timm
140 N. 8th Street, Suite 300
P.O. Box 95005
Lincoln, NE 68509-5005
gary.timm@nebraska.gov

Grant proposals can be submitted any time during the grant period provided the project can be completed within the deadlines for obligating and expending funds. Proposals that do not include the minimum required content (Section II) or are incomplete will be returned for correction and resubmission.

IV. PROPOSAL REVIEW, AWARD NOTIFICATION, AND DETERMINATION REVIEW

The Commission will review proposals for eligibility based on the criteria in the U.S. Department of Treasury's final rule and the compliance and reporting guidelines. Applicants will be notified, via email, of the Commission's determination of eligibility. Once an award has been determined eligible, a grant agreement outlining responsibilities will be signed by the CCPE executive director and the community college president prior to any funds being disbursed.

If the Commission determines a community college's proposal is ineligible, the applicant community college may request that the Commission seek an opinion from the State Budget Administrator. The Commission will request that the State Budget Administrator review the proposal and provide a written eligibility determination.

V: CASH MANAGEMENT AND DISBURSEMENT TO COMMUNITY COLLEGES

SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR Part 205 or 2 CFR 200.305(b)(8)-(9). As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award. ([Compliance and Reporting Guidance](#), page 9.)

An estimated drawdown schedule of funds needed each quarter will be developed by the community colleges and approved by the Commission. This will limit the amount of institutional funds a community college would expend until federal reimbursement of funds is disbursed by the Commission.

VI: REPORTING

All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of the [Compliance and Reporting Guidance](#). Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1 of the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#).

The community college should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles. In addition, where appropriate, the community college needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting.

Because the state is required to submit Project and Expenditure Reports as outlined beginning on page 17 of the [Compliance and Reporting Guidance](#), community colleges will be expected to report similar information to the Commission. Capital Expenditures reporting guidance is found on pages 23 and 24 of the Compliance and Reporting Guidelines. Specific requirements will be provided as they are developed for the state as a single reporting entity.

VII: LINKS TO OTHER DOCUMENTS

The U.S. Department of the Treasury website referencing multiple documents is located at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>. Community colleges should be familiar with the information on this site. Below are some key documents referenced in the RFP.

[Final Rule](#) – attachment (Treasury format used as reference for Appendix B)

[Final Rule](#) (Federal Register format)

[Interim Final Rule](#)

[Compliance and Reporting Guidance](#) (applies to the SLFRF program only)

[Project and Expenditure Report User Guide](#)

[Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal](#)

[Awards](#) (“Uniform Guidance” or 2 CFR Part 200)

[Labor Standards Applicable to Contracts Covering Federally Financed and Assisted Construction](#) -

Department of Labor Regulations (29 CFR Part 5)

Coronavirus State and Local Fiscal Recovery Funds (SLFRF) GRANT PROPOSAL FORM

SECTION I: Community College and Project Information

Community College Information

Institution: _____

Institution's DUNS #: _____

Institution's Address: _____

Proposal Contact Name: _____

Proposal Contact Email: _____

Proposal Contact Phone: _____

Project Information

Project Name: _____

Project Name

Estimated Project Cost: _____

Local and Other for Capital Exp. only

Federal Funds

Local Funds

Other Funds

Project Expenditure Category: _____

From Appendix C

Number

Description

Capital Expenditure Project Only

Capital Expenditure

Enumerated Use:

From Appendix D

Number

Description

Project Summary (50 – 250 words)

SECTION II: Eligible Uses Identification

- Eligible Uses Category** A. Public Health and Negative Economic Impacts
 (check one) B. Premium Pay
 C. Revenue Loss
 D. Investments in Water, Sewer, and Broadband Infrastructure

Eligible Uses Subcategories

Must list the lowest level of subcategory from the table of contents under one of the four Eligible Uses Categories above. May include multiple subcategories. List each different subcategory separately.

Example: A. (from above) 3. Negative Economic Impacts, a. Assistance to Households, 2. Emergency housing assistance.

1.	
2.	
3.	
4.	
5.	

SECTION III: Proposal Eligibility

Eligibility of Proposal

Based on the eligibility requirements for Eligible Uses Categories and Subcategories found in the final rule, describe why the proposal meets the requirements identified by the institution in Section II. The institution must describe why they believe the proposal meets each of the identified subcategory eligibility requirements. When citing a specific reason from the final rule, please provide the page number.

How the Proposal Addresses an Identified Need

Describe how the proposal will address the identified need or impact.

SECTION IV: Written Justification for Capital Expenditures \$1 million and Greater

**Coronavirus State and Local Fiscal Recovery Funds (SLFRF)
 Proposal Form - Section V
 Funding Source Estimate for Capital Project
 Operations and Maintenance Cost Calculation**

CAPITAL PROJECT NAME: _____

	ESTIMATED EXPENDITURES	GROSS SQUARE FEET	COST / GSF
A. Admin. of Plant O & M			
<i>Funding:</i>			
(1) State Aid/Property Tax			
(2) Revolving/Auxiliary			
(3) Revenue Bond			
(4) Foundation/Donations			
SUBTOTAL Admin. of Plant O & M	\$0	0	
B. Building Maintenance			
<i>Funding:</i>			
(1) State Aid/Property Tax			
(2) Revolving/Auxiliary			
(3) Revenue Bond			
(4) Foundation/Donations			
SUBTOTAL Building Maintenance	\$0	0	
C. Custodial Services			
<i>Funding:</i>			
(1) State Aid/Property Tax			
(2) Revolving/Auxiliary			
(3) Revenue Bond			
(4) Foundation/Donations			
SUBTOTAL Custodial Services	\$0	0	
D. Utilities			
<i>Funding:</i>			
(1) State Aid/Property Tax			
(2) Revolving/Auxiliary			
(3) Revenue Bond			
(4) Foundation/Donations			
SUBTOTAL Utilities	\$0	0	
E. Major Repairs			
<i>Funding:</i>			
(1) State Aid/Property Tax			
(2) Revolving/Auxiliary			
(3) Revenue Bond			
(4) Foundation/Donations			
SUBTOTAL Major Repairs	\$0	0	
SUBTOTAL (A through E)			
<i>Funding:</i>			
(1) State Aid/Property Tax	\$0		
(2) Revolving/Auxiliary	\$0		
(3) Revenue Bond	\$0		
(4) Foundation/Donations	\$0		
TOTAL (1), (2), (3), (4)	\$0	0	
F. Grounds Maintenance			
<i>Funding:</i>			
(1) State Aid/Property Tax			
(2) Revolving/Auxiliary			
(3) Revenue Bond			
(4) Foundation/Donations			
SUBTOTAL Grounds Maintenance	\$0	0.00	
Grand Total			
<i>Funding:</i>			
(1) State Aid/Property Tax	\$0		
(2) Revolving/Auxiliary	\$0		
(3) Revenue Bond	\$0		
(4) Foundation/Donations	\$0		
SUBTOTAL Grand Total	\$0		

COMMENTS

DEPARTMENT OF THE TREASURY

[31 CFR Part 35 RIN 1505-AC77]

Coronavirus State and Local Fiscal Recovery Funds

Final Rule

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*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details, [Compliance and Reporting Guidance](#), page 24)

^Denotes areas where recipients must report on whether projects are primarily serving disproportionately impacted communities (see Project Demographic Distribution section, [Compliance and Reporting Guidance](#), page 6)

**Coronavirus State and Local Fiscal Recovery Funds
Compliance and Reporting Guidance
Capital Expenditures Enumerated Uses**

If you are completing a proposal for a capital expenditure project, you must include on the proposal form one of the following enumerated uses.

1. COVID-19 testing sites and laboratories, and acquisition of related equipment
2. COVID-19 vaccination sites
3. Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment)
4. Temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs
5. Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment
6. Emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems)
7. Installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities
8. Public health data systems, including technology infrastructure
9. Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility)
10. Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces)
11. Behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers)
12. Technology and equipment to allow law enforcement to efficiently and effectively respond to the rise in gun violence resulting from the pandemic
13. Affordable housing, supportive housing, or recovery housing development
14. Food banks and other facilities primarily dedicated to addressing food insecurity
15. Transitional shelters (e.g., temporary residences for people experiencing homelessness)
16. Devices and equipment that assist households in accessing the internet (e.g., tablets, computers, or routers)

17. Childcare, daycare, and early learning facilities
18. Job and workforce training centers
19. Improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint)
20. Medical equipment and facilities designed to address disparities in public health outcomes (includes primary care clinics, hospitals, or integrations of health services into other settings)
21. Parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, streetlights, neighborhood cleanup, and other projects to revitalize public spaces
22. Rehabilitations, renovation, remediation, cleanup, or conversions of vacant or abandoned properties
23. Schools and other educational facilities or equipment to address educational disparities
24. Technology and tools to effectively develop, execute, and evaluate government programs
25. Technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs

Source: Coronavirus State and Local Fiscal Recovery Funds, Compliance and Reporting Guidance, page 23-24.