

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

**Distribution of ARPA funds to community colleges to support
discounting of tuition assessed for dual enrollment courses.**

31 CFR Part 35 and LB 1014 (2022), Sec. 50

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 agreement, has outlined procedures and guidance for the community colleges to follow when reporting data appropriated under LB 1014, Sec. 50.

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

The grant agreement is included as a guidance document.

LB1014 Sec. 50/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 State, through LB2014 (2022) Section 50, has appropriated \$15 million for dual enrollment in direct proportion to the full-time equivalent enrollment in dual credit courses delivered by the respective community college areas based upon dual enrollment credit hour data reported to the Coordinating Commission for Postsecondary Education by the respective community college areas for the year in which those enrollments occurred for the purpose of discounting of tuition assessed for enrollment in such courses.

WHEREAS, the Grantee is willing to accept ARPA funds 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, ARPA funds as calculated by the Commission and outlined in LB1014 (2022) Section 50.

B. FUNDING DISBURSEMENT SCHEDULE

Payments to the Grantee will be made according to the annual disbursement schedule below provided required data has been received from all Grantees. 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).

<u>Academic Year data</u>	<u>Distribution</u>	<u>Appropriation Available</u>	<u>Appropriation</u>
07/01/22 - 06/30/23	By August 31, 2023	\$5,000,000	FY2022-23
07/01/23 - 06/30/24	By August 31, 2024	\$5,000,000	FY2023-24
07/01/24 - 06/30/25	By August 31, 2025	\$5,000,000	FY2024-25

C. DATA REQUIREMENTS

Funds will be allocated to each of the six community colleges proportionally based on their full-time equivalency enrollment of eligible students enrolled in eligible courses during the requested enrollment period. Colleges will submit required data no later than July 31 after the academic year noted under B. Funding Disbursement Schedule.

- Full-time is considered as:
 - 30 hours at the five community colleges where the academic year is based on a semester calendar
 - 45 hours at the community college where the academic year is based on a quarter calendar
- An eligible student must:
 - Be enrolled in a Nebraska public, private, parochial, or Nebraska-based home high school during the requested enrolment period
 - Meet the lawful presence requirements as stated in Nebraska Revised Statute 4-111 if a scholarship is awarded directly to the student. Determination of lawful presence is not required if the tuition rate for dual enrollment courses applies to all students.
- For a course to be considered an eligible course it must be academic in nature.
 - The course **cannot** be a personal growth class (such as Golf or Swim Lessons, Bowling, etc.)
 - The course **cannot** be a developmental class

College must provide the following data for each eligible student in an Excel spreadsheet*:

- Column A - First name of student
- Column B - Last name of student
- Column C - Birthday of student
- Column D - High school enrolled in during the enrollment period (if a home high school put Home)
- Column E - Eligible course student was enrolled in during the enrollment period
- Column F – Number of credit hours of the course
- Column G – Tuition charged

*If the student is enrolled in more than one course, list the student and each course on a separate line.

To protect the personally identifiable information during electronic transmission to the Commission, each community college must encrypt the tracking spreadsheet with a password prior to submission. This password must be emailed to gary.timm@nebraska.gov in a separate email from the spreadsheet.

III. FUNDING 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. REPORTING REQUIREMENTS

As the State has determined funds must be used for the discounting of tuition assessed for enrollment in such dual enrollment courses, the Commission is responsible for completing reporting requirements found under Part 2: Reporting Guidance beginning on page 14 of the *Compliance and Reporting Guidance*. The Commission will determine compliance with intended use through data required of the community college under II. Grant Award, C. Data Requirements Schedule. As this data is required for the three years of the appropriation, the community colleges must continue submitting this data for the final two years of the following schedule.

Additional reporting data, as required by CCPE to complete reporting under Part 2: Reporting Guidance of the *Compliance and Reporting Guidance*, including quarterly obligations, quarterly expenditures, and narrative information on the project will also be required with the reporting format being determined on a later date.

<u>Academic Year data</u>	<u>Due by</u>
07/01/21 - 06/30/22	07/31/22
07/01/22 - 06/30/23	07/31/23
07/01/23 - 06/30/24	07/31/24
07/01/24 - 06/30/25	07/31/25
07/01/25 - 06/30/26	07/31/26

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		Gary Timm
Email		gary.timm@nebraska.gov
Community College		Coordinating Commission for Postsecondary Education
Address		140 N. 8 th St. Suite 300 Lincoln, NE 68508

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	_____ xxxxxxxxxxxxx President xxxxxxx Community College	_____ Date
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