

## MARYLAND E-NOVATION INITIATIVE FUND NONPROFIT INSTITUTION OF HIGHER EDUCATION INDIRECT COSTS PROPOSAL

I CERTIFY THAT THE NONPROFIT INSTITUTION OF HIGHER EDUCATION ("NPIHE") IS PROPOSING ONE OF THE THREE FOLLOWING METHODS FOR CALCULATING INDIRECT COSTS ASSOCIATED WITH THE E-NOVATION PROGRAM:

1. \_\_\_\_ At the same rate the NPIHE has negotiated and received for indirect costs under a direct federal award. **(NOTE: a copy of the federal award must be attached to this submission)**
2. \_\_\_\_ At the same rate the NPIHE has negotiated and received from a nonfederal entity based on the cost principles in Subpart E of OMB Uniform Guidance. **(NOTE: a copy of the award or agreement must be attached to this submission)**
3. \_\_\_\_ At a de minimis rate of 10% of the costs that would be considered modified total direct costs under OMB Uniform Guidance.

### A. INTRODUCTION

\_\_\_\_\_ is a Nonprofit Institution of Higher Education (NPIHE) located in \_\_\_\_\_. The NPIHE administers a variety of programs funded by Federal, State, and Local agencies. NPIHE programs that share costs with E-Nnovation include (but may not be limited to):

### B. COST ALLOCATION METHODOLOGY

This proposal is for an indirect cost rate based on the NPIHEs actual costs for its fiscal year beginning \_\_\_\_\_ and ending \_\_\_\_\_. The proposal is based on the NPIHEs audit report for the year ended \_\_\_\_\_. This proposal addresses all elements of cost incurred by \_\_\_\_\_ and *identifies shared costs that require allocation.*

### C. ALLOWABLE EXPENSES: SALARIES (COMAR 24.05.22.02 §C1)

The payment of base salaries of newly endowed department chairs, new professorship positions, new research scientists, or new research staff positions, including research technicians and support personnel, and to fund affiliated graduate or undergraduate student research fellowships, if the positions or fellowships are engaged in the areas of research identified in §A of this regulation.

#### **D. ALLOWABLE EXPENSES: BASIC INFRASTRUCTURE** (COMAR 24.05.22.02 §C2)

The purchase of basic infrastructure, including, but not limited to, laboratory and scientific equipment or other essential equipment and materials, related to an area of research identified in §A of this regulation.

#### **E. ALLOWABLE EXPENSES: INDIRECT COSTS** (Per Section 1.06 Indirect Costs of NPIHE E-Innovation contract)

If the Institution is a nonprofit entity under Section 501(c)(3), (4) or (6) of the Internal Revenue Code, the **Matching Funds** may be applied to indirect costs in accordance with §2-208 of the State Finance and Procurement Article, Annotated Code of Maryland.

#### **F. INDIRECT COSTS CALCULATION**

##### **METHOD FOR CALCULATING INDIRECT COSTS**

The 10% de minimis calculation would be calculated against the total of the enumerated allowable Modified Total Direct Costs (MTDC) under CFR 200.68:

*§ 200.68 Modified Total Direct Cost (MTDC).*

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

#### **G. SUPPORTING FINANCIAL STATEMENTS**

*The Computation of Base and Pool Costs contained in this proposal is assumed to agree to the NPIHE audited financial statements.*

**NOTE:** NPIHE must include a complete copy of the audited financial statements with their proposal submission. If an audited financial statement is not available, the NPIHE will need to communicate with the Maryland Department of Commerce of the use of sufficient substitute(s). A sufficient substitute would be a document or combination of documents that verify the ending cash balance of the fund and direct costs. Third party documentation is preferable. Acceptable documentation could include bank screenshots, a combined audited financial statement, bank verification letter, general ledger detail, fund reconciliation, etc. You will most likely need to submit multiple documents for verification.

## H. COMPUTATION OF BASE AND POOL COSTS

Below is the computation of the indirect cost rate for the year ended June 30, \_\_\_\_\_. A summary of the rate calculation is as follows:

### All direct

Salaries and wages _____	Maximum allowable expense (the lesser of)
Applicable fringe benefits _____	10% de minimis _____
Materials and supplies _____	(per subaward) \$ 25,000
Services _____	
Travel _____	
TOTAL: _____	

(Applicable up to the first \$25,000 of each subaward)

## MARYLAND DEPARTMENT OF COMMERCE

By: \_\_\_\_\_ (SEAL)

Name: Kelly M. Schulz

Title: Secretary of Commerce

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[NAME OF INSTITUTION OF HIGHER EDUCATION]

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**§2-208 of the State Finance and Procurement Article, Annotated Code of Maryland**

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Indirect costs” means any costs that would be considered to be indirect costs under OMB Uniform Guidance.
- (3) “Nonprofit organization” means an organization that is tax exempt under § 501(c)(3), (4), or (6) of the Internal Revenue Code.
- (4) “OMB Uniform Guidance” means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards adopted by the Office of Management and Budget in 2 C.F.R. 200 and any related guidance published by the Office of Management and Budget.
- (b) If a nonprofit organization is a direct recipient or subrecipient of a grant or contract for the provision of services that is funded wholly with State funds or with a combination of State and other nonfederal funds, the terms of the grant or contract shall allow for reimbursement of indirect costs:
- (1) at the same rate the nonprofit organization has negotiated and received:
- (i) for indirect costs under a direct federal award; or
- (ii) from a nonfederal entity based on the cost principles in Subpart E of OMB Uniform Guidance; or
- (2) if the nonprofit organization has not negotiated and received an indirect cost rate described in item (1) of this subsection, at a rate of at least 10% of the costs that would be considered modified total direct costs under OMB Uniform Guidance.
- (c) This section applies whether or not the funds awarded through the grant or contract are transferred directly by the State or through a third party to the nonprofit organization.

**OMB Uniform Guidance**

**§ 200.56 Indirect (facilities & administrative (F&A)) costs**

Indirect (F&A) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

**§ 200.68 Modified Total Direct Cost (MTDC).**

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

**§ 200.413 Direct costs.**

(a) General. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405 Allocable costs.

(b) Application to Federal awards. Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- (1) Administrative or clerical services are integral to a project or activity;
- (2) Individuals involved can be specifically identified with the project or activity;
- (3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
- (4) The costs are not also recovered as indirect costs.

(d) Minor items. Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

- (1) Include the salaries of personnel,
- (2) Occupy space, and
- (3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

- (1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454 Memberships, subscriptions, and professional activity costs.
- (2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 Memberships, subscriptions, and professional activity costs and 200.450 Lobbying.
- (3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 Advertising and public relations and 200.450 Lobbying.
- (4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432 Conferences.
- (5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also § 200.442 Fund raising and investment management costs.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431 Compensation - fringe benefits.

24.05.22.01

**.01 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Act” means Economic Development Article, Title 6, Subtitle 6, Annotated Code of Maryland.

(2) “Affiliated foundation” means a corporation created, organized, and located in the State that meets the following conditions:

(a) With respect to public nonprofit institutions of higher education, an affiliated foundation created and operated in accordance with Education Article, §15-104, Annotated Code of Maryland; and

(b) With respect to private nonprofit institutions of higher education, a corporation created, organized, and located in the State that meets the following conditions:

(i) Is organized and operated for educational purposes in support of one or more nonprofit institutions of higher education and other affiliated organizations;

(ii) Is designated by the governing board of one or more nonprofit institutions of higher education to receive charitable contributions for educational purposes on behalf of the nonprofit institution or institutions of higher education;

(iii) Does not have any part of its earnings inuring to the benefit of any private shareholder or individual;

(iv) Is not disqualified for tax exemption under 26 U.S.C. §501(c)(3) of the Internal Revenue Code for any reason;

(v) Does not participate or intervene in, on behalf of or in opposition to, any political campaigns for public office; and

(vi) Has its fiscal affairs audited annually by an independent certified public accountant.

(3) “Authority” means the Maryland E-Innovation Initiative Fund Authority established under Economic Development Article, §6-605, Annotated Code of Maryland.

(4) “Cash equivalent” means U.S. Treasury bills, bank certificates of deposit, bankers’ acceptances, corporate commercial paper, and other money market instruments.

(5) “Endowment proceeds” means those investment earnings accruing to a research endowment of a nonprofit institution of higher education and available for expenditure by the nonprofit institution of higher education in accordance with Economic Development Article, §6-612, Annotated Code of Maryland.

(6) "First submission date" means the June 1 before the beginning of a fiscal year in which a nonprofit institution of higher education requests a distribution of matching funds under the Program.

(7) "Fiscal year" means the fiscal year of the State.

(8) "Fund" means the Maryland E-Innovation Initiative Fund.

(9) "Governing board" has the meaning stated in Education Article, §10-101, Annotated Code of Maryland.

(10) "Governing body" means:

(a) A governing board;

(b) The governing entity of private nonprofit institutions of higher education; or

(c) The governing entity of a regional higher education center.

(11) "Marketable securities" means securities for which market quotations are readily available on an established public securities market or exchange at the time of the donation or gift and are readily convertible into cash.

(12) Nonprofit Institution of Higher Education.

(a) "Nonprofit institution of higher education" means a public or private nonprofit institution of postsecondary education located in the State that:

(i) Receives State funds in the annual operating budget;

(ii) Limits enrollment to graduates of secondary schools; and

(iii) Awards degrees at the associate, baccalaureate, or graduate level.

(b) "Nonprofit institution of higher education" includes its affiliated foundation for purposes of receiving and depositing qualified donations and matching funds in a research endowment under Economic Development Article, Title 6, Subtitle 6, Annotated Code of Maryland.

(13) "Private nonprofit institution of higher education" has the meaning stated in Education Article, §10-101, Annotated Code of Maryland.

(14) "Program" means the Maryland E-Innovation Initiative Program, as authorized by the Act.

(15) Qualified Donation.

(a) "Qualified donation" means any private donation, gift, irrevocable pledge, or bequest to a research endowment in accordance with Economic Development Article, §6-613, Annotated Code of Maryland.

(b) "Qualified donation" includes a donation, gift, pledge, or bequest in the form of cash and cash equivalents or marketable securities.

(16) "Regional higher education center" has the meaning stated in Education Article, §10-101, Annotated Code of Maryland.



(17) "Research endowment" means an account established at or administered by a nonprofit institution of higher education in accordance with Economic Development Article, §6-612, Annotated Code of Maryland.

(18) "Research endowment plan" means a plan adopted by a governing body and submitted to the Authority for approval, outlining how a nonprofit institution of higher education proposes to use matching funds from the program in accordance with Economic Development Article, §6-615, Annotated Code of Maryland, and Regulation .05 of this chapter.

(19) "Second submission date" means the November 1 during a fiscal year in which a nonprofit institution of higher education requests a distribution of matching funds under the Program.

(20) "Submission date" means the first submission date or the second submission date.

24.05.22.02

**.02 Designated Fields of Scientific and Technical Fields of Study; Expenditure of Endowment Proceeds.**

A. The Authority designates the following scientific and technical fields of study as eligible for the expenditure of endowment proceeds under the Program:

- (1) Physical sciences;
- (2) Life and neuro sciences;
- (3) Engineering;
- (4) Mathematical and computational sciences;
- (5) Regulatory science;
- (6) Autonomous systems;
- (7) Aeronautical and space science;
- (8) Environmental sciences;
- (9) Behavioral and language science;
- (10) Health sciences;
- (11) Agriculture; and
- (12) Cybersecurity.

B. At least 90 days prior to the first submission date, the Authority may announce that certain scientific and technical fields of study will be awarded greater weight in the Authority's evaluation of the applications in the upcoming fiscal year if the Authority has determined that certain scientific and technical fields will enhance the economic competitiveness of the State or build on existing clusters of research and innovation. If no announcement is made, the scientific and technical fields of study shall be weighted equally. An announcement of the greater weight assigned to certain scientific and technical fields of study shall remain in effect unless the Authority announces revised weightings.

C. Endowment proceeds may be expended by a nonprofit institution of higher education for:

(1) The payment of base salaries of newly endowed department chairs, new professorship positions, new research scientists, or new research staff positions, including research technicians and support personnel, and to fund affiliated graduate or undergraduate student research fellowships, if the positions or fellowships are engaged in the areas of research identified in §A of this regulation; or

(2) The purchase of basic infrastructure, including, but not limited to, laboratory and scientific equipment or other essential equipment and materials, related to an area of research identified in §A of this regulation.

24.05.22.03

### **.03 Application — Requirements.**

A. A nonprofit institution of higher education shall first submit an application to the Authority prior to submitting its first request for a distribution of matching funds from the Fund in a fiscal year.

B. The application shall be on a form provided by the Authority and shall include the following information:

(1) A copy of the proposed research endowment plan for a research endowment at the nonprofit institution of higher education that includes the information required by Economic Development Article, §6-615, Annotated Code of Maryland, and Regulation .05 of this chapter;

(2) The legal name of the nonprofit institution of higher education;

(3) The street address of the principal place of business of the nonprofit institution of higher education and the mailing address, email address, and telephone number of the nonprofit institution of higher education;

(4) The name, business mailing address, telephone number, and email address of an individual with authority to act on behalf of the nonprofit institution of higher education with respect to the application;

(5) The federal employer identification number of the nonprofit institution of higher education; and

(6) Any other information requested by the Authority.

C. Applications must be received by the Authority on or before a submission date in order for the nonprofit institution of higher education to be considered for an allocation of matching funds available for a fiscal year.

D. The Authority may allocate all of the matching funds available under the Program for a fiscal year after reviewing applications submitted for the first submission date for that fiscal year, and there can be no guarantee that funds will be available under the Program for allocation to applications received after the first submission date.

E. A nonprofit institution of higher education may submit more than one application to the Authority during the fiscal year. Each application shall include one research endowment plan for a research endowment at the nonprofit institution of higher education.

24.05.22.04

### **.04 Application — Authority Review.**

A. The Authority shall review each application for compliance with the Act and this chapter. If the Authority determines that an application is not responsive to the requirements under Regulation .03 of this chapter, the Authority shall notify the nonprofit institution of higher education of the deficiency, and the nonprofit institution of higher education shall have 5 business days to cure the deficiency.

B. The Authority shall provide notice to a nonprofit institution of higher education of the Authority's approval or rejection of an application, including the research endowment plan submitted with the application, and any allocation of matching funds under the Program within 60 days after the Authority has deemed the application complete. If an application is not approved, the notice from the Authority shall include the reason(s) the application could not be approved.

C. The Authority shall encumber the matching funds allocated to a nonprofit institution at the time the Authority approves an application. Subject to Regulation .08 of this chapter, Program funds encumbered at the time of approval shall remain encumbered until the end of the fiscal year in which the application is approved.

24.05.22.05

#### **.05 Research Endowment Plan — Requirements.**

A. The research endowment plan shall provide the Authority with an explanation of the nonprofit institution of higher education's comprehensive research objectives and plans to build competitive research infrastructure in the specified scientific and technical fields of study as designated by the Authority, as well as comprehensive measures for achieving this goal.

B. The proposed research endowment plan shall include the following:

(1) A description of the nonprofit institution of higher education's current research initiatives in the fields of study designated by the Authority for which the nonprofit institution of higher education will be seeking matching funds under the Program;

(2) The designated field(s) of study covered by the research endowment plan;

(3) The total amount of Program funds for which the nonprofit institution of higher education is requesting approval under the research endowment plan;

(4) The proposed use of the matching funds to be requested by the nonprofit institution of higher education with respect to the research endowment plan, including:

(a) An explanation of how the proposed uses of the endowment proceeds satisfies the criteria for eligible uses of endowment proceeds under Economic Development Article, §6-614, Annotated Code of Maryland;

(b) The anticipated costs associated with the proposed uses of the endowment proceeds;

(c) An explanation of how the proposed uses of the endowment proceeds further the purposes of the Program and address the research needs of the nonprofit institution of higher education; and

(d) The identification of any specific disciplinary hires to be made with the endowment proceeds, if known to the nonprofit institution at the time of the submission of the research endowment plan.

(5) A designation of the applicable research endowment(s) into which Program funds are to be deposited;

(6) A description of how the research endowment plan will play a role in achieving institutional research objectives in the designated field(s) of study and its relation to and impact on the colleges, schools, departments, centers, institutes, or other academic units proposed, currently under development, or currently operating;

(7) A description of the current or proposed collaborations, particularly with other institutional partners, that play or will play a significant collaborative role in achieving institutional objectives;

(8) An analysis of possible strategies to enhance current research initiatives;

(9) An evaluation of how the research plan furthers the purposes of the Program's goals and the research needs of the institution;

(10) Documentation of the demonstrations of interest to make qualified donations in a form satisfactory to the Authority; and

(11) Such other information as requested by the Authority from time to time.

C. The Authority shall conduct a thorough review of the research endowment plan for compliance with the provisions of the Act and this chapter. The Authority may request additional information from a nonprofit institution of higher education as it deems necessary and appropriate for consideration of the research endowment plan and the implementation of the Program.

D. In evaluating whether to allocate matching funds to a nonprofit institution of higher education for a research endowment plan, the Authority may consider:

(1) The compliance by the nonprofit institution of higher education with other research endowment plans approved by the Authority for the nonprofit institution of higher education; and

(2) Such other evaluation criteria as the Authority shall establish from time to time.

E. At least 90 days prior to the first submission date, the Authority shall publish the evaluation criteria to be considered by the Authority in its evaluation of research endowment plans for the upcoming fiscal year. The Authority may change the evaluation criteria applicable to subsequent applications by publishing revised evaluation criteria at least 90 days prior to the applicable submission date. Evaluation criteria published by the Authority shall remain in effect until the Authority publishes revised evaluation criteria.

F. The approved research endowment plan shall serve as the document for guiding future endowment activities, research investments and reports for the designated research endowment. If a nonprofit institution of higher education desires to amend an approved research endowment plan, it shall submit a written request for such approval to the Authority at least 45 days prior to the desired effectiveness of the amendment. A request to amend a research endowment plan shall include a description of the proposed amendment to the approved research endowment plan, including any changes to the responses to §B of this regulation and any other responses included in the research endowment plan previously provided to the Authority.

24.05.22.06

#### **.06 Distributions — Documentation Required.**

A. A nonprofit institution of higher education seeking a distribution of matching funds from the Fund first shall obtain qualified donations in an amount equal to or greater than the amount of matching funds requested for distribution and shall submit a request to the Authority on such form as designated by the Authority from time to time that includes:

(1) The amount requested for distribution to the nonprofit institution of higher education;

(2) The amount of all previous distributions of matching funds from the Fund;

(3) The total amount of matching funds allocated to the nonprofit institution of higher education by the Authority for the fiscal year;

(4) The amount of qualified donations designated for use in requesting the distribution of matching funds from the Fund; and

(5) A certification by the nonprofit institution of higher education that the information provided to the Authority in the approved research endowment plan remains true and correct as of the date of the distribution request and that the nonprofit institution of higher education does not anticipate any changes to that information.

B. If the nonprofit institution of higher education is not able to provide the certification required by §A(5) of this regulation, the nonprofit institution of higher education shall submit an amendment to the approved research endowment plan pursuant to Regulation .05F of this chapter.

C. In addition to the written request for distribution, the nonprofit institution of higher education shall submit documentation for the qualified donations including:

(1) A cover letter that transmits the documentation and information required by §§A—C of this regulation;

(2) For a qualified donation that includes cash and cash equivalents or marketable securities that has already been received by the nonprofit institution of higher education, a deposit ticket or gift receipt and any designation identified by the donor;

(3) For a qualified donation that includes marketable securities, evidence in a form satisfactory to the Authority that the marketable securities are not subject to a lock-up agreement or other restriction on transfer that would prohibit or otherwise restrict the ability of the nonprofit institution of higher education to sell or otherwise dispose of the marketable securities;

(4) For a qualified donation that includes an unrestricted gift or bequest, or a portion of an unrestricted gift or bequest, a designation made in writing by the nonprofit institution of higher education and submitted with the request;

(5) Complete contact information for a technical manager or responsible institutional contact such as a dean, academic officer, or research director, who shall oversee the implementation or supervision of the activity, program, or individual sponsored by the endowed funds; and

(6) Complete contact information for a financial manager or compliance officer who shall be responsible for all associated financial statements or reports relating to the endowed funds or expenditures of proceeds.

D. State matching funds distributed to a nonprofit institution of higher education are to be invested in the same manner as other institutional endowment funds of the nonprofit institution of higher education.

24.05.22.07

#### **.07 Distributions — Authority Review.**

A. The Authority shall conduct a review of each request for distribution of matching funds from the Fund for compliance with the provisions of the Act and this chapter.

B. The Authority shall use the nonprofit institution of higher education's approved research endowment plan to determine if requests for distributions from the Fund are valid and shall consider any additional information or details that expand upon the specific area of research, including endowment research plans, strategies, objectives, and projected outcomes.

C. In addition to the factors set forth in Economic Development Article, §6-618(c), Annotated Code of Maryland, in evaluating a request for distribution from the Fund, the Authority shall consider the following factors:

(1) Whether the request for a distribution is consistent with and will further the goals and objectives of the nonprofit institution of higher education as expressed in the approved research endowment plan; and

(2) Whether the qualified donation is greater than the amount of the requested distribution of matching funds from the Fund.

D. If the Authority determines to grant a request for distribution of matching funds to a nonprofit institution of higher education, the Authority shall issue an approval letter to the nonprofit institution of higher education.

E. Before the earlier to occur of the end of the fiscal year in which the Authority has approved a request for distribution of matching funds or 90 days after the Authority approves a request for distribution of matching funds, the nonprofit institution of higher education shall deposit an amount of qualified donations equal to or greater than the total amount of funds allocated for distribution to the nonprofit institution of higher education into the applicable research endowment.

F. If the Authority determines not to grant a request for distribution to a nonprofit institution of higher education, the Authority shall issue a letter to the nonprofit institution of higher education detailing the reason(s) the distribution of matching funds to the nonprofit institution of higher education could not be approved.

24.05.22.08

#### **.08 Reallocation of Funds.**

A. If a nonprofit institution of higher education fails to have deposited into its research endowment the required amount of qualified donations within 90 days after the Authority approves a request for distribution of matching funds:

(1) The nonprofit institution of higher education shall return any matching funds received from the Authority with respect to the distribution request within 10 business days of the expiration of the 90-day period; and

(2) Any funds allocated to that nonprofit institution of higher education for the fiscal year that have not been distributed shall be reallocated by the Authority in accordance with the Act and this chapter.

B. Notwithstanding §A of this regulation, if the Authority has approved a distribution of matching funds under Regulation .07 of this chapter but the nonprofit institution of higher education fails to deposit into its research endowment the required amount of qualified donations prior to the end of the fiscal year, the nonprofit institution shall return the matching funds to the Authority within 10 business days of the end of the fiscal year, and the Authority shall reallocate the matching funds in the next fiscal year in accordance with the Act and this chapter.

C. If a nonprofit institution of higher education which has been allocated matching funds for a fiscal year fails to submit a request for matching funds in accordance with Regulation .06 of this chapter equal to the total of funds allocated to the nonprofit institution of higher education before the end of the fiscal year, the matching funds allocated which have not been requested shall be reallocated by the Authority in the next fiscal year in accordance with the Act and this chapter.

24.05.22.09

#### **.09 Reporting Requirements.**

A. By September 30, 2016, and annually thereafter, a nonprofit institution of higher education which has received matching funds shall provide an annual report to the Authority, for the 12-month period ending June

30 of that year, that includes a full accounting of the matching funds, endowment proceeds, and adherence to the objectives established by the research endowment plan approved by the Authority.

B. A nonprofit institution of higher education which has received matching funds shall include with the annual report a certification in the form provided by the Authority that the matching funds received by the nonprofit institution of higher education have been used in accordance with the approved research endowment plan and the requirements of the Program.

C. A nonprofit institution of higher education which has received matching funds shall detail in its annual report to the Authority the total amount of qualified donations received, the investment earnings realized, and any anticipated expenditures of the endowment proceeds in its annual operating budget.

D. By September 30, 2021, a nonprofit institution of higher education which has received matching funds shall provide a comprehensive report to the Authority on the impact of the Program on research competitiveness, institutional growth, and infrastructure development. The nonprofit institution of higher education shall articulate clearly the strategic goals realized and those anticipated as a result of its participation in the Program. The comprehensive report shall include a full accounting of all matching funds distributed to the nonprofit institution of higher education, endowment proceeds, outcomes, and designated endowments.

24.05.22.10

## **.10 Audits and Inquiries.**

### **A. Audits.**

(1) The Authority may require at any reasonable time an audit of any information submitted to the Authority by the nonprofit institution of higher education in its application, research endowment plan, or request for distribution of matching funds from the Fund.

(2) An audit under §A(1) of this regulation shall be conducted at the expense of the nonprofit institution of higher education by an independent auditor selected by the nonprofit institution of higher education and reasonably satisfactory to the Authority.

(3) The Authority may initiate an audit by delivering to the nonprofit institution of higher education a written request for the performance of an audit stating the scope of the audit to be undertaken and the matters to be examined in the course of the audit.

(4) Within 10 business days after a nonprofit institution of higher education receives a request from the Authority for the performance of an audit under this regulation, the nonprofit institution of higher education shall submit to the Authority a written response naming the independent auditor selected by the nonprofit institution of higher education.

(5) If the Authority approves the auditor, it shall give written notice to the nonprofit institution of higher education that the Authority approves the auditor and shall provide instructions to the auditor for the scope and conduct of the audit.

(6) If the Authority disapproves the auditor, it shall give written notice to the nonprofit institution of higher education of the disapproval and of the reasons for it. The nonprofit institution of higher education, within 5 business days after receipt of the Authority's disapproval of an auditor, shall select an alternative auditor and submit to the Authority a written response naming the alternative independent auditor selected by the nonprofit institution of higher education.

(7) The process under §A(5) and (6) of this regulation for the selection and approval of an auditor will continue until the Authority approves an alternative auditor.

B. Inquiries; Duty of Nonprofit Institution of Higher Education to Respond.

(1) In order to ensure compliance with the Program requirements and to satisfy the Authority's reporting obligations under Economic Development Article, §6-623, Annotated Code of Maryland, the Authority may make written inquiry, including a request for the production, inspection, or copying of documents specified in the inquiry, of a nonprofit institution of higher education's receipt of matching moneys from the Fund and use of endowment proceeds to obtain information on the compliance with the requirements of the Act, and this chapter. The inquiry may include whether an individual in a position funded by endowment proceeds under the Program satisfies the requirements of Economic Development Article, §6-614, Annotated Code of Maryland.

(2) A nonprofit institution of higher education to which a written inquiry from the Authority is directed under §B(1) of this regulation shall submit a full and complete written response, with copies of all requested documents, within 45 days of the date of the inquiry. The response shall be verified as true and correct by oath or affirmation by the president of the nonprofit institution of higher education or the president's designee in the form prescribed by the Authority.

24.05.22.11

**.11 Noncompliance with Approved Research Endowment Plan.**

A. If the Authority discovers from any source, including the reports submitted by a nonprofit institution of higher education to the Authority as set forth in Regulation .09 of this chapter and audit or inquiry responses from a nonprofit institution of higher education to the Authority as set forth in Regulation .10 of this chapter, that a nonprofit institution of higher education is not in compliance with the approved research endowment plan for which the matching funds have been allocated, the Authority shall notify the nonprofit institution of higher education of the noncompliance.

B. Within 10 business days of receipt of notice from the Authority under §A of this regulation, the nonprofit institution shall provide the Authority with a complete written explanation of the noncompliance, including:

(1) All of the facts and circumstances surrounding the noncompliance;

(2) The manner in which the nonprofit institution of higher education proposes to address the noncompliance; and

(3) Such other information as the Authority may request in its notice to the nonprofit institution of higher education under §A of this regulation.

C. If the Authority determines in its sole discretion that the noncompliance is capable of cure by the nonprofit institution, the Authority may provide the nonprofit institution of higher education with a reasonable period of time, as determined by the Authority in its sole discretion, to cure the noncompliance.

D. If the Authority determines in its sole discretion that the noncompliance is not capable of cure or the nonprofit institution of higher education fails to cure the noncompliance within the time period determined by the Authority under §C of this regulation, the Authority may impose sanctions on the nonprofit institution of higher education, including the return of all matching funds received by the nonprofit institution of higher education with respect to the approved research endowment plan.

E. In making a determination under §C or D of this regulation, the Authority may invite the nonprofit institution of higher education to engage in discussions with the Authority to explain the noncompliance. Any oral clarification of an explanation of noncompliance by the nonprofit institution of higher education shall be confirmed in writing by the nonprofit institution of higher education within 5 business days of the making of the clarification.

24.05.22.12



**.12 Waiver.**

The Authority may waive or vary particular provisions of this chapter to the extent that a waiver is not inconsistent with the Act if:

A. Conformance to the requirement of any federal, State, or local program necessitates waiver or variance of a regulation; or

B. In the determination of the Authority, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.