

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	03/03/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/17/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

24 05 22 01-.12

3. Name of Promulgating Authority

Department of Business and Economic Development

4. Name of Regulations Coordinator Telephone Number

Anita L Diven 410.767.6451

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5. Name of Person to Call About this Document Telephone No.

Thomas S. Dann 410-767-6379

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: .

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Lara L. Hjortsberg, Assistant Attorney General, (telephone #410-767-3383) on February 19, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

R. Michael Gill

Title

Acting Secretary

Telephone No.

410-767-6301

Date

February 23, 2015

Title 24
DEPARTMENT OF BUSINESS AND ECONOMIC
DEVELOPMENT

Subtitle 05 ECONOMIC DEVELOPMENT

24.05.22 Maryland E-Nnovation Initiative Program

Authority: Economic Development Article, §§2-108, 6-601—6-623; Annotated Code of Maryland

Notice of Proposed Action

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The Department of Business and Economic Development proposes to adopt new Regulations .01-.12 under a new chapter, COMAR 24.05.22 Maryland E-Nnovation Initiative Program.

Statement of Purpose

The purpose of this action is to implement the Maryland E-Nnovation Initiative Program (the "Program") and provide requirements and procedures for nonprofit institutions of higher education to submit applications for allocations of matching funds under the Program; for the Maryland E-Nnovation Initiative Fund Authority to review and evaluate such applications; and for nonprofit institutions of higher education to make requests for distributions from the Maryland E-Nnovation Initiative Fund following an allocation decision by the Authority.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

Because the Program is designed to stimulate innovation at nonprofit institutions of higher education, it is difficult to provide an accurate economic impact in the short run. However, research and development (R&D) is crucial to economic growth and business creation, and the Program will play an important role in helping nonprofit institutions of higher education acquire or complement those resources through the attraction of qualified donations to deepen their R&D activities. It is generally a well-accepted notion that there is a proven positive connection between the availability of scientists and the high rate of innovation. The best example of this is the Johns Hopkins University, which in 2011 occupied number four ranking among world's top educational institutions in filing for the largest number of patents. This innovative environment then leads to real business opportunities such as "FastForward" incubator which in February expanded to a new large office in East Baltimore to accommodate

the high demand of applications from about 80 firms. In addition, as competition for top talent has gone global, matching funds awarded to nonprofit institutions of higher education under the Program would also play a role in hiring scientists from around the world and bringing them to the State. Foreign-born inventors in the United States play a crucial role in spreading innovation at institutions of higher education across the country. That foreign-born inventor's play an out-sized role in country's high rate of innovation became evident when the "Partnership for a New American Economy" report came out in 2012, which found that 76% of patents awarded to top ten universities in the United States had at least one foreign-born person. The long-term positive economic impact of the Program is doubtless as R&D and innovation are crucial to productivity and creation of business especially in a state like Maryland, which is heavily dependent in its educated workforce and knowledge-based economy.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	(+)	Undeterminable
F. Direct and indirect effects on public:	(+)	Undeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

E. Nonprofit institutions of higher education may benefit from the Program if they submit applications for allocations of matching funds from the Program; the Authority approves the allocation of matching funds to the nonprofit institution of higher education; and the Authority approves the distribution of matching funds from the Program upon receipt of a request for such distribution, all in accordance with the requirements of the Program set forth in the Act and the regulations promulgated thereunder.

F. The economic impact of the Program on the public is expected to be the same as the potential long-term effect on the economy as described in the "Summary" section above.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Thomas S. Dann, Managing Director, Department of Business and Economic Development, 401 E. Pratt St., Suite 1747, Baltimore, MD 21202, or call 410-767-6379, or email to thomas.dann@maryland.gov, or fax to 410-333-6931. Comments will be accepted through May 18, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

Pursuant to Economic Development Article, §6-604(e), Annotated Code of Maryland, the Governor shall include in the budget bill an appropriation to the Maryland E-Innovation Initiative Fund in an amount that when combined with the amount estimated to be distributed to the Maryland E-Innovation Initiative Fund under Economic Development Article, §6-604(d), Annotated Code of Maryland, equals at least \$8,500,000. The application process for which these regulations are necessary will begin in the fiscal year prior to the statutorily required inclusion of funds in the budget bill.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations will have no or minimal direct impact on small businesses. Small businesses are not subject to these regulations, and any impact on (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation,

competition, and economic development; and (6) consumer choice would also be none to minimal. The regulations are intended to implement the Program, which is an endowment matching fund for nonprofit institutions of higher education.

G. Small Business Worksheet:

1a. Nonprofit institutions of higher education engaged in the scientific fields of study designated in the Act and by the Authority.

1b. Not applicable

1c. Nonprofit institutions of higher education who submit applications for an allocation of matching funds from the Program, obtain qualified donations from donors and subsequently submit a request for disbursement of matching funds from the Program will receive matching funds from the Program to augment their qualified donations to endowment funds. The regulations are not expected to have a direct economic impact on small businesses.

2a. Adverse direct or indirect impacts are not anticipated in connection with the Program.

2b. Any positive direct or indirect impacts are not determinable.

3. Long-term impacts on small businesses are not determinable.

4. These regulations will have no or minimal direct impact on small businesses, and any impact on (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice would also be none to minimal.

Attached Document:

Title 24 DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

Subtitle 05 Economic Development

Chapter 22 Maryland E-Nnovation Initiative Program

Authority: Economic Development Article, §§2-108, 6-601—6-623; Annotated Code of Maryland

.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-Nnovation Initiative Fund Authority established under Economic Development Article, §6-605, Annotated Code of Maryland.

(4) "Cash equivalent" means U.S. government 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 shall request a distribution of matching funds under the Program.

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

(8) "Fund" means the Maryland E-Nnovation 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" means:

(a) A public or private nonprofit institution of postsecondary education located in the State that:

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

(ii) Limits enrollment to graduates of secondary schools;

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

(b) A 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-Nnovation 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) A qualified donation is 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 .04 of this chapter.

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

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

.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.

.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 .04 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.

.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.

.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 use of the endowment proceeds furthers the purposes of the Program and addresses 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(1) through (11) of this regulation and any other responses included in the research endowment plan previously provided to the Authority.

.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, B and 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.

.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.

.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 .06 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 .05 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.

.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.

.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 of 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, 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)-(6) of this regulation for the selection and approval of an auditor will continue until the Authority will have approved 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.

.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 .08 of this chapter and audit or inquiry responses from a nonprofit institution of higher education to the Authority as set forth in Regulation .09 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.

.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.