

## Chapter 5 Federal Funds Procedures Act

### Part 1 General Provisions

#### **63J-5-102 Definitions.**

(1) As used in this chapter:

(a)

(i) "Agency" means a department, division, committee, commission, council, court, or other administrative subunit of the state.

(ii) "Agency" includes:

- (A) executive branch entities;
- (B) judicial branch entities; and
- (C) the State Board of Education.

(iii) "Agency" does not mean higher education institutions or political subdivisions.

(b) "Contingency disclosure and plan" means, with respect to a federal funds reauthorization or new federal funds request, the submitting or requesting agency's:

(i) disclosure of:

- (A) the likelihood that the amount or value of the federal funds will be reduced, and how that likelihood changes over time; and
- (B) the likelihood that the federal funds will become unavailable, and how that likelihood changes over time;

(ii) explanation of:

- (A) whether accepting the federal funds may create an expectation of ongoing funding by any beneficiary of the funds; and
- (B) as applicable, how the agency will communicate to stakeholders that services funded by the federal funds may or will be temporary;

(iii) plan for how the agency will:

- (A) proceed if the amount or value of the federal funds are unexpectedly reduced in any material degree or amount;
- (B) proceed if the federal funds become unavailable unexpectedly;
- (C) wind down the program or services funded by the federal funds when the federal funds are exhausted; and
- (D) transition any beneficiaries of the funds to a different program or service provider if the agency is unable to continue providing the same program or services due to a decrease or loss of federal funds; and

(iv) designation of the federal funds and the program or purpose for which the funds will be used as either:

- (A) mandatory under federal or state law;
- (B) high priority; or
- (C) low priority.

(c)

(i) "Federal funds" means cash or other money received from the United States government or from other individuals or entities for or on behalf of the United States and deposited with the state treasurer or any agency of the state.

- (ii) "Federal funds" includes federal assistance and federal assistance programs, however described.
- (d) "Federal funds reauthorization" means:
  - (i) the formal submission from an agency to the federal government applying for or seeking reauthorization of federal funds which the state is currently receiving;
  - (ii) the formal submission from an agency to the federal government applying for or seeking reauthorization to participate in a federal program in which the state is currently participating that will result in federal funds being transferred to an agency; or
  - (iii) that period after the first year of a previously authorized and awarded grant or funding award, during which federal funds are disbursed or are scheduled to be disbursed after the first year because the term of the grant or financial award extends for more than one year.
- (e)
  - (i) "Federal funds request summary" means a document detailing:
    - (A) the amount of money that is being requested or is available to be received by the state from the federal government for each federal funds reauthorization or new federal funds request;
    - (B) those federal funds reauthorizations and new federal funds requests that are included as part of the agency's proposed budget for the fiscal year, and the amount of those requests;
    - (C) the amount of new state money, if any, that will be required to receive the federal funds or participate in the federal program;
    - (D) the number of additional permanent full-time employees, additional permanent part-time employees, or combination of additional permanent full-time employees and additional permanent part-time employees, if any, that the state estimates are needed in order to receive the federal funds or participate in the federal program;
    - (E) any requirements that the state must meet as a condition for receiving the federal funds or participating in the federal program; and
    - (F) for each federal funds reauthorization for qualifying federal funds and each new federal funds request for qualifying federal funds, a contingency disclosure and plan, and a state jurisdiction evaluation.
  - (ii) "Federal funds request summary" includes, if available:
    - (A) the letter awarding an agency a grant of federal funds or other official documentation awarding an agency a grant of federal funds; and
    - (B) a document detailing federal maintenance of effort requirements.
- (f) "Federal maintenance of effort requirements" means any matching, level of effort, or earmarking requirements, as defined in Office of Management and Budget requirements, that are imposed on an agency as a condition of receiving federal funds.
- (g)
  - (i) "Intergovernmental transfer program" means an existing reimbursement program or category that is authorized by the Medicaid state plan or waiver authority for intergovernmental transfers.
  - (ii) "Intergovernmental transfer program" does not include the addition of a provider to an existing intergovernmental transfer program.
- (h) "Local education agency" or "LEA" means:
  - (i) a school district;
  - (ii) a charter school; or
  - (iii) the Utah Schools for the Deaf and the Blind.
- (i) "New federal funds" means:

- (i) federal assistance or other federal funds that are available from the federal government that:
    - (A) the state is not currently receiving; or
    - (B) exceed the federal funds amount most recently approved by the Legislature by more than 25% for a federal grant or program in which the state is currently participating;
  - (ii) a federal assistance program or other federal program in which the state is not currently participating; or
  - (iii) a one-time TANF request.
- (j) "New federal funds request" means:
- (i) the formal submission from an agency to the federal government:
    - (A) applying for or otherwise seeking to obtain new federal funds; or
    - (B) applying for or seeking to participate in a new federal program that will result in federal funds being transferred to an agency; or
  - (ii) a one-time TANF request.
- (k)
- (i) "New state money" means money, whether specifically appropriated by the Legislature or not, that the federal government requires Utah to expend as a condition for receiving the federal funds or participating in the federal program.
  - (ii) "New state money" includes money expended to meet federal maintenance of effort requirements.
- (l) "One-time TANF request" means a proposed expenditure by the Department of Workforce Services from its reserves of federal Temporary Assistance for Needy Families funds:
- (i) for a project or program that will last for a fixed amount of time and is not an ongoing project or program of the Department of Workforce Services; and
  - (ii) that is greater than \$1,000,000 over the amount most recently approved by the Legislature.
- (m) "Qualifying federal funds" means federal funds that are:
- (i) greater than 10% of the receiving entity's annual budget; or
  - (ii) greater than \$2,000,000.
- (n) "State" means the state of Utah and all of its agencies, and any administrative subunits of those agencies.
- (o) "State jurisdiction evaluation" means:
- (i) a disclosure of:
    - (A) whether accepting the federal funds or participating in the federal program will require the use of state funds or increase the administrative costs of the state or agency;
    - (B) the extent to which accepting the federal funds or participating in the federal program will impair or impact the exclusive police power jurisdiction of the state to protect or provide for the health, safety, welfare, and morals of the state; and
    - (C) the extent to which accepting the federal funds or participating in the federal program will impair or impact the jurisdiction of the state over federal areas within the state; and
  - (ii) to the extent that accepting the federal funds or participating in the federal program will impair or impact the state's jurisdiction as described in Subsection (1)(o)(i)(B) or (C), an identification of the constitutional authority supporting federal assertion of jurisdiction or authority for the funding, program, or an associated regulation or restriction.
- (2) When this chapter describes an employee as a "permanent full-time employee" or a "permanent part-time employee," it is not intended to, and may not be construed to, affect the employee's status as an at-will employee.

Amended by Chapter 286, 2024 General Session

**63J-5-103 Scope and applicability of chapter.**

- (1) Except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to each agency and govern each federal funds request.
- (2) The governor need not seek legislative review or approval of federal funds received by the state if:
  - (a) the governor has declared a state of emergency; and
  - (b) the federal funds are received to assist victims of the state of emergency under Section 53-2a-204.

Amended by Chapter 286, 2024 General Session

**Part 2  
Federal Funds Review and Approval**

**63J-5-201 Legislative appropriation subcommittees to review certain federal funds reauthorizations -- Executive appropriations review -- Legislative approval.**

- (1) The Governor's Office of Planning and Budget shall annually prepare and submit a federal funds request summary for each agency to the Legislative Fiscal Analyst at the same time the governor submits the confidential draft budget under Section 63J-1-201.
- (2)
  - (a) The Legislative Fiscal Analyst, as directed by the Executive Appropriations Committee, may include federal funds in the base budget appropriations act or acts, when those acts are prepared as provided in JR3-2-402.
  - (b) The Legislative Fiscal Analyst shall submit a federal funds request summary for each agency to the legislative appropriations subcommittee responsible for that agency's budget for review during each annual general session.
- (3) Each legislative appropriations subcommittee shall review the federal funds request summary and may:
  - (a) recommend that the agency accept the federal funds or participate in the federal program for the fiscal year under consideration; or
  - (b) recommend that the agency not accept the federal funds or not participate in the federal program for the fiscal year under consideration.
- (4) The Legislative Executive Appropriations Committee shall:
  - (a) review each subcommittee's recommendation;
  - (b) determine whether or not the agency should be authorized to accept the federal funds or participate in the federal program; and
  - (c) direct the Legislative Fiscal Analyst to include or exclude those federal funds and federal programs in an annual appropriations act for approval by the Legislature.
- (5) Legislative approval of an appropriations act containing federal funds constitutes legislative approval of the federal grants or awards associated with the federal funds for the purposes of compliance with the requirements of this chapter.

Amended by Chapter 382, 2021 General Session

**63J-5-202 Governor to approve certain new federal funds requests.**

- (1)
  - (a) Before obligating the state to accept or receive new federal funds or to participate in a new federal program, and no later than three months after submitting a new federal funds request, and, where possible, before formally submitting the new federal funds request, an executive branch agency shall submit a federal funds request summary to the governor or the governor's designee for approval or rejection when:
    - (i) the state will receive total payments of \$1,000,000 or less per year if the new federal funds request is approved;
    - (ii) receipt of the new federal funds will require no additional permanent full-time employees, permanent part-time employees, or combination of additional permanent full-time employees and permanent part-time employees; and
    - (iii) no new state money will be required to match the new federal funds or to implement the new federal program for which the grant is issued.
  - (b) The Governor's Office of Planning and Budget shall report each new federal funds request that is approved by the governor or the governor's designee and each new federal funds request granted by the federal government to:
    - (i) the Legislature's Executive Appropriations Committee;
    - (ii) the Office of the Legislative Fiscal Analyst; and
    - (iii) the Office of Legislative Research and General Counsel.
- (2) The governor or the governor's designee shall approve or reject each new federal funds request submitted under the authority of this section.
- (3)
  - (a) If the governor or the governor's designee approves the new federal funds request, the executive branch agency may accept the new federal funds or participate in the new federal program.
  - (b) If the governor or the governor's designee rejects the new federal funds request, the executive branch agency may not accept the new federal funds or participate in the new federal program.
- (4) If an executive branch agency fails to obtain the governor's or the governor's designee's approval under this section, the governor may require the agency to:
  - (a) withdraw the new federal funds request;
  - (b) return the federal funds;
  - (c) withdraw from the federal program; or
  - (d) any combination of Subsections (4)(a), (4)(b), and (4)(c).
- (5) If a letter or other official documentation awarding an agency a grant of federal funds is not available to be included in a federal funds request summary submitted to the Governor's Office of Planning and Budget under this section, the agency shall submit to the Governor's Office of Planning and Budget the letter or other official documentation awarding the agency a grant of federal funds before expending the federal funds granted.

Amended by Chapter 382, 2021 General Session

**63J-5-203 Judicial council to approve certain new federal funds requests.**

- (1)
  - (a) Before obligating the state to accept or receive new federal funds or to participate in a new federal program, and no later than three months after submitting a new federal funds request, and, where possible, before formally submitting the new federal funds request, a judicial

branch agency shall submit a federal funds request summary to the Judicial Council for its approval or rejection when:

- (i) the state will receive total payments of \$1,000,000 or less per year if the new federal funds request is approved;
  - (ii) receipt of the new federal funds will require no additional permanent full-time employees, additional permanent part-time employees, or combination of additional permanent full-time employees and permanent part-time employees; and
  - (iii) no new state money will be required to match the new federal funds or to implement the new federal program for which the grant is issued.
- (b) The Judicial Council shall report each new federal funds request that is approved by it and each new federal funds request granted by the federal government to:
- (i) the Legislature's Executive Appropriations Committee;
  - (ii) the Office of the Legislative Fiscal Analyst; and
  - (iii) the Office of Legislative Research and General Counsel.
- (2) The Judicial Council shall approve or reject each new federal funds request submitted to it under the authority of this section.
- (3)
- (a) If the Judicial Council approves the new federal funds request, the judicial branch agency may accept the new federal funds or participate in the new federal program.
  - (b) If the Judicial Council rejects the new federal funds request, the judicial branch agency may not accept the new federal funds or participate in the new federal program.
- (4) If a judicial branch agency fails to obtain the Judicial Council's approval under this section, the Judicial Council may require the agency to:
- (a) withdraw the new federal funds request;
  - (b) return the federal funds;
  - (c) withdraw from the federal program; or
  - (d) any combination of Subsections (4)(a), (4)(b), and (4)(c).
- (5) If a letter or other official documentation awarding a judicial branch agency a grant of federal funds is not available to be included in a federal funds request summary submitted to the Judicial Council under this section, the judicial branch agency shall submit to the Judicial Council the letter or other official documentation awarding the judicial branch agency a grant of federal funds before expending the federal funds granted.

Amended by Chapter 272, 2016 General Session

**63J-5-203.5 State Board of Education to approve certain new federal funds requests.**

- (1)
- (a) Before obligating the state to accept or receive new federal funds or to participate in a new federal program, and no later than three months after submitting a new federal funds request, and, where possible, before formally submitting the new federal funds request, the State Board of Education shall review a federal funds request summary of the State Board of Education when:
    - (i) the state will receive total payments of \$1,000,000 or less per year if the new federal funds request is approved;
    - (ii) receipt of the new federal funds will require no additional permanent full-time employees, additional permanent part-time employees, or a combination of additional permanent full-time employees and permanent part-time employees; and

- (iii) no new state money will be required to match the new federal funds or to implement the new federal program for which the grant is issued.
- (b) The State Board of Education shall approve or reject each new federal funds request reviewed under this section.
- (2) The State Board of Education shall report each new federal funds request that is approved by the board and each new federal funds request granted to the board by the federal government to:
  - (a) the Legislature's Executive Appropriations Committee;
  - (b) the Office of the Legislative Fiscal Analyst; and
  - (c) the Office of Legislative Research and General Counsel.
- (3) If a letter or other official documentation awarding the State Board of Education a grant of federal funds is not available to be included in the federal funds request summary submitted under this section, the letter or other official documentation awarding the State Board of Education a grant of federal funds shall be submitted to the State Board of Education before expending the federal funds granted.

Enacted by Chapter 272, 2016 General Session

**63J-5-204 Legislative review and approval of certain federal funds requests.**

- (1) As used in this section:
  - (a) "High impact federal funds request" means a new federal funds request that will or could:
    - (i) result in the state receiving total payments of \$10,000,000 or more per year from the federal government;
    - (ii) require the state to add 11 or more permanent full-time employees, 11 or more permanent part-time employees, or combination of permanent full-time and permanent part-time employees equal to 11 or more in order to receive the new federal funds or participate in the new federal program; or
    - (iii) require the state to expend more than \$1,000,000 of new state money in a fiscal year in order to receive or administer the new federal funds or participate in the new federal program.
  - (b) "Medium impact federal funds request" means a new federal funds request that will or could:
    - (i) result in the state receiving total payments of more than \$1,000,000 but less than \$10,000,000 per year from the federal government;
    - (ii) require the state to add more than zero but less than 11 permanent full-time employees, more than zero but less than 11 permanent part-time employees, or a combination of permanent full-time employees and permanent part-time employees equal to more than zero but less than 11 in order to receive or administer the new federal funds or participate in the new federal program; or
    - (iii) require the state to expend \$1 to \$1,000,000 of new state money in a fiscal year in order to receive or administer the new federal funds or participate in the new federal program.
- (2)
  - (a)
    - (i) Before obligating the state to accept or receive new federal funds or to participate in a new federal program under a medium impact federal funds request that was not authorized during a legislative session as provided in Section 63J-5-201, an agency shall:
      - (A) submit the federal funds request summary to the governor, the Judicial Council, or the State Board of Education, as appropriate, for approval or rejection; and

- (B) if the governor, the Judicial Council, or the State Board of Education approves the new federal funds request, submit the federal funds request summary to the Legislative Executive Appropriations Committee for its review and recommendations.
- (ii) The procedures required under Subsection (2)(a)(i) shall be performed, if possible, before the date that the medium impact funds request is formally submitted, but not later than three months after the date of formal submission.
- (b) The Legislative Executive Appropriations Committee shall review the federal funds request summary and may:
  - (i) recommend that the agency accept the new federal funds;
  - (ii) recommend that the agency not accept the new federal funds; or
  - (iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the acceptance of the new federal funds.
- (3)
  - (a)
    - (i) Before obligating the state to accept or receive new federal funds or to participate in a new federal program under a high impact federal funds request that was not authorized during a legislative session as provided in Section 63J-5-201, an agency shall:
      - (A) submit the federal funds request summary to the governor, the Judicial Council, or the State Board of Education, as appropriate, for approval or rejection; and
      - (B) if the governor, the Judicial Council, or the State Board of Education approves the new federal funds request, submit the federal funds request summary to the Legislature for its approval or rejection in an annual general session or a special session.
    - (ii) Except as provided in Subsection (3)(a)(iii), the procedures required under Subsection (3)(a)(i) shall be performed, if possible, before the date that the high impact funds request is formally submitted, but not later than three months after the date of formal submission.
    - (iii) For a high impact federal funds request for the Medical Assistance Program, commonly known as Medicaid, or the Children's Health Insurance Program, the procedures required under Subsection (3)(a)(i) shall be performed, if possible, before the date that the high impact funds request is formally submitted, but not later than the end of the earlier of the next annual general session or special session of the Legislature after the date of formal submission.
  - (b)
    - (i) If the Legislature approves the new federal funds request, the agency may accept the new federal funds or participate in the new federal program.
    - (ii) If the Legislature fails to approve the new federal funds request, the agency may not accept the new federal funds or participate in the new federal program.
- (4) If an agency fails to comply with the procedures of this section or fails to obtain the Legislature's approval:
  - (a) the governor, the Judicial Council, or the State Board of Education, as appropriate, may require the agency to withdraw the new federal funds request or refuse or return the new federal funds;
  - (b) the Legislature may, if federal law allows, opt out or decline to participate in the new federal program or decline to receive the new federal funds; or
  - (c) the Legislature may reduce the agency's General Fund appropriation in an amount less than, equal to, or greater than the amount of federal funds received by the agency.
- (5) If a letter or other official documentation awarding an agency a grant of federal funds is not available to be included in the agency's federal funds request summary to the governor, the Judicial Council, or the State Board of Education, as appropriate, under this section, the



agency shall submit to the governor, the Judicial Council, or the State Board of Education, as appropriate, the letter or other official documentation awarding the agency a grant of federal funds before expending the federal funds granted.

Amended by Chapter 286, 2024 General Session

**63J-5-205 Federal funds awards that exceed approved appropriations.**

Each agency that receives federal funds greater than the amount approved through the process provided for in this chapter may, using those excess funds, expend up to 25% in excess of the of the amount approved if:

- (1) receipt or use of the excess federal funds will not require the addition of one or more permanent full-time employees or permanent part-time employees;
- (2) no new state money will be required to match the excess federal funds; and
- (3) receipt or use of the excess federal funds will not require the state to comply with new requirements or conditions in order to receive the federal funds or to participate in the federal program.

Enacted by Chapter 326, 2011 General Session

**63J-5-206 Intergovernmental transfers for Medicaid.**

- (1) Subject to Subsections (2) and (3), an intergovernmental transfer program under Section 26B-3-130 is subject to the same review provisions as a federal funds request under this chapter.
- (2) Notwithstanding Subsection (1), if a new intergovernmental transfer program created under Subsection 26B-3-130(3) will result in the state receiving total payments of \$10,000,000 or more per year from the federal government, the intergovernmental transfer program is subject to the same review provisions as a high impact federal funds request in Subsections 63J-5-204(3), (4), and (5).
- (3)
  - (a) Beginning on July 1, 2017, an intergovernmental transfer program created before July 1, 2017, is subject to the federal funds review process of Section 63J-5-201 for periods after July 1, 2017.
  - (b) The addition of a new participant into an existing intergovernmental transfer program, or the addition by the department of a nursing care facility or a non-state government entity to the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, is not subject to the requirements of this section.

Amended by Chapter 330, 2023 General Session

**Part 3  
Federal Funds Contingency Plan**

**63J-5-301 Definitions.**

As used in this part:

- (1) "Federal receipts" means the federal financial assistance, as defined in 31 U.S.C. Sec. 7501, that is reported as part of a single audit.

- (2) "Qualifying agency" means an agency that, in a single fiscal year, has federal receipts composing more than 33% of the agency's total budget.
- (3) "Single audit" means the same as that term is defined in 31 U.S.C. Sec. 7501.

Enacted by Chapter 286, 2024 General Session

**63J-5-302 Federal funds contingency plan.**

- (1) A qualifying agency shall prepare a federal funds contingency plan that meets the requirements described in Subsection (2).
- (2) A federal funds contingency plan shall:
  - (a) identify short-term and long-term risks to the agency if there is a reduction in the amount or value of federal funds the agency receives;
  - (b) identify short-term and long-term strategies the agency may use to respond to the risks described in Subsection (2)(a); and
  - (c) designate agency personnel who are responsible for implementing the strategies described in Subsection (2)(b).
- (3) A qualifying agency shall update the agency's federal funds contingency plan:
  - (a) at least every other year; and
  - (b) in any year in which the qualifying agency submits a new federal funds request that exceeds \$10,000,000.
- (4) On or before December 31 of each year that a qualifying agency prepares a federal funds contingency plan or an update to a federal funds contingency plan, the qualifying agency shall provide a copy of the contingency plan or update to:
  - (a) the Governor's Office of Planning and Budget;
  - (b) the Executive Appropriations Committee; and
  - (c) the Legislative Fiscal Analyst.

Enacted by Chapter 286, 2024 General Session