



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <https://rules.wyo.gov>

Revised June 2020

1. General Information			
a. Agency/Board Name* Office of State Lands and Investments/State Loan and Investment Board			
b. Agency/Board Address 122 West 25th Street, Herschler Building, Suite W103		c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Beth Blackwell		f. Agency Liaison Telephone Number 307-777-6373	
g. Agency Liaison Email Address elizabeth.blackwell@wyo.gov			
h. Date of Public Notice 2-12-2021		i. Comment Period End Date 3-30-2021	
j. Public Comment URL or Email Address: elizabeth.blackwell@wyo.gov			
k. Program Loan and Investment Board			
Amended Program Name (if applicable):			
* <input type="checkbox"/> By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.			
2. Legislative Enactment For purposes of this Section 2, "new" only applies to regular non-emergency rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.			
a. Are these non-emergency regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?			
<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes. If the rules are new, please provide the Legislative Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154):			
3. Rule Type and Information For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.			
a. Provide the Chapter Number, Title and Proposed Action for Each Chapter. Please use the "Additional Rule Information" form to identify additional rule chapters.			
Chapter Number: 37	Chapter Name: Student Dormitory Capital Construction Loans	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/repealed to comply with federal law or regulatory requirements. No. Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:

Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. The Agency has completed a takings assessment as required by W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

(Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

(Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	Jenifer E. Scoggin
<i>Title of Authorized Individual</i>	Director, Office of State Lands and Investments
<i>Date of Authorization</i>	February 8, 2021

STATEMENT OF PRINCIPAL REASONS FOR ADOPTION OF RULES:

The following areas within Chapter 37, Student Dormitory Capital Construction Loans, of the State Loan and Investment Board's Rules and Regulations are being amended to update the disbursement provisions and to provide additional methods for refinancing loans. The following areas have been identified for amendment:

- Section 2(c) - removed definition due to a change in how loan funds will be disbursed.
- Section 7(c) - amended repayment language to align with actual practice and to provide the Board flexibility when negotiating loan terms.
- Section 9(a) - amended language due to a change in process that no longer has all loan funds deposited into a Demand Deposit Account upon the loan being closed.
- Section 9(b) - removed certain language due to changes in processes.
- Section 11 - amended language to reflect options for refinancing a loan if the loan is in default or there is a potential for the loan to go into default.
- Section 12(a)(ii) – removed section due to a change in loan administration.
- Additional non-substantive typographical corrections were made throughout the Chapter.

Chapter 37

Student Dormitory Capital Construction Loans

Section 1. Authority. This Chapter is adopted pursuant to Wyoming Statute (W.S.) 21-18-319.

Section 2. Definitions. In addition to the definitions in Chapter 1, as used in this Chapter:

(a) “Capital renewal” is the planned replacement of building subsystems such as roofs, electrical systems, HVAC systems and plumbing systems that have reached the end of their useful life.

(b) “Community college” means Casper College District, Central Wyoming College District, Eastern Wyoming College District, Laramie County Community College District, Northern Wyoming Community College District, Northwest College District or Western Wyoming Community College District.

(c) “Financial review” means audited financial statements.

Section 3. General Policy. Loans shall be made in such a manner and to such community colleges as shall, in the judgement of the Board, represent a wise investment of state funds.

Section 4. Eligible Applicants.

(a) To be an eligible applicant, community colleges must be able to demonstrate:

(i) A commitment to adequately maintain the project for the term of the loan;

(A) A commitment to adequately maintain the project shall be demonstrated by:

(I) A resolution, adopted by the governing body of the community college, describing its commitment to maintain the project for at least the term of the loan and identifying a funding source for maintenance, and

(II) A maintenance plan.

(ii) All costs for the construction of the dormitory will be funded at the time of receipt of the loan.

(b) Applicants must be compliant with all applicable reporting requirements of the Community College Commission, State Budget Office, and Department of Audit prior to the

application being considered by the Board.

Section 5. Eligible Purposes.

(a) Applications for loan shall be made only for the following purposes:

- (i) Construct new student dormitories;
- (ii) Renovate or upgrade buildings or existing student dormitories; and
- (iii) Capital renewal.

(b) Applications for loan may include amounts for the costs associated with the purchase of land, buildings, facilities and rights of way necessary to complete the dormitory project.

Section 6. Application Procedure.

(a) Applications.

(i) Each applicant shall submit a written loan application, on the form furnished by the Office. At a minimum, the application shall include:

(A) A signed resolution stating the amount and term of the loan being requested, name of project, repayment source(s), and agreeing to maintain the project for the life of the loan;

(B) A detailed project summary which includes a breakdown of total project costs, a project timeline and repayment source(s);

(C) Commitment letters from all funding sources, if applicable;

(D) An engineer's Feasibility Statement; and

(E) A formal maintenance plan documenting how the applicant will adequately maintain the project for the life of the loan.

(ii) Incomplete applications shall not be submitted to the Board for consideration.

(iii) Any false or misleading statements made by the applicant in an application shall be grounds for summary rejection of the application.

(iv) Timing. Loan applications must be received by the Office at least ninety (90) calendar days prior to any regularly scheduled meeting of the Board.

(b) Consideration.

(i) The Office shall conduct a preliminary review of all applications received. If the Office identifies issues with the application which would result in a negative recommendation to the Board, the Office shall notify the applicant within thirty (30) days of receiving the application of the issues and the applicant shall have the opportunity to correct the application or withdraw the application. Applicants must cure any defects in their application no later than forty-five (45) calendar days before any regularly scheduled meeting of the Board.

(ii) All applications shall be reviewed by the Attorney General to certify the legality of the transaction and to determine if an election is required by law.

(iii) When determining whether to make a loan, the Board shall consider the following:

(A) The need for the project; and

(I) Need may be demonstrated by:

(1.) Occupancy rate;

(2.) Student enrollment compared to available dormitory space;

(3.) The number of students on a community college's dormitory waiting list; and/or

(4.) Any other relevant information demonstrating the need for the project.

(B) The community college's ability to repay the loan.

(I) Ability to repay may be demonstrated by:

(1.) Other efforts to fund the dormitory projects;

(2.) The community college's budget; and

(3.) Any other relevant information demonstrating financial need.

(c) Funding Prioritization.

(i) First priority shall be granted to community colleges with a significant

demonstrated need to increase student dormitory capacity on campus. When determining whether a project qualifies for first priority funding, the Board may consider:

- (A) The number of dormitory rooms available compared to number of enrolled students and how that ratio compares to other community colleges in the state;
- (B) Student enrollment trends over the past five (5) school years;
- (C) Age of current dormitories;
- (D) Other affordable available rental space in the community; and
- (E) Any other relevant information that would help the Board determine a community college's need to increase student dormitory capacity on campus.

Section 7. Loan Terms.

(a) Interest rate. The interest rate for loans under this Chapter shall be pursuant to Chapter 14 of the rules as established by the Board and a one-half of one percent (0.5%) origination fee shall be collected on the amount approved.

(b) Length. The term of each loan shall be set by the Board with due regard given to repayment ability, the useful life of the project, and the security offered, but in no event shall the term be less than five (5) years or exceed twenty-five (25) years.

(c) Repayment. Payments shall be made in accordance with the agreed upon terms within the executed loan documents.

Section 8. Security.

(a) Every loan shall be evidenced by a promissory note for the principal sum of the loan.

(b) Every loan shall have adequate security in the form of:

(i) Pledge of revenues from the student dormitory for which the loan was granted;

(ii) Pledge of other revenue available to a community college; and/or

(iii) Any other security deemed adequate to secure repayment of the loan.

(c) If an appraisal for the purchase of land is required, the applicant shall be responsible for ensuring one is completed prior to submitting a loan application.

(i) Office staff shall review and approve the methodology used for valuation

of the project and security and the overall market value prior to loan closing.

Section 9. Disbursements.

(a) Requests for disbursements shall be submitted on a form provided by the Director and include supporting invoices establishing the eligibility of costs submitted for disbursement. Loan proceeds will only be disbursed for eligible project costs as set forth in this Chapter and within established guidelines following review by the Office.

(b) The Office shall inspect and verify any reports and records required by the Board and submitted by the borrower before proceeds shall be released for payment.

Section 10. Ineligible Project Costs.

(a) The following costs are ineligible:

(i) Costs related to any other infrastructure needs of the community college that are not directly associated with the development and construction, renovation, or capital renewal of student dormitories;

(ii) Costs for preparation or presentation of loan application;

(iii) Costs incurred prior to loan award, except costs for architectural and engineering design, surveying and environmental review, if required;

(iv) Engineering fees, including design, inspection and contract administration costs, over fifteen percent (15%) of the project cost;

(v) Markups by engineers/architects of sub-contractor and other outside charges;

(vi) Costs for transportation, meals, lodging and incidentals incurred offsite from the project or that exceeds the current federal per diem reimbursement rate;

(vii) Costs associated with the borrower's own employees and equipment;

(viii) Costs for real property in excess of current fair market value and costs for an amount of real property in excess of that needed for project purposes;

(ix) Costs related to issuance of bonds;

(x) Legal fees;

(xi) Costs for sidewalks that are owned or maintained by a private property owner; and

(xii) Costs for a contingency or extra work allowance in excess of ten percent (10%) of estimated construction costs.

Section 11. Refinancing.

(a) If a borrower anticipates that it will be unable to make a required loan payment, the Board may refinance the loans, provided that:

(i) The borrower's inability to make payment is due to causes completely beyond its control and without the fault or negligence of the borrower;

(ii) The Board determines that refinancing is necessary for the better protection of the permanent mineral trust fund; and

(iii) The term of the refinanced loan does not exceed twenty-five (25) years from the date of refinancing.

(b) If a borrower becomes delinquent on its required loan payment, the Board may refinance the loan, provided that:

(i) The Board determines that refinancing is necessary for the better protection of the permanent mineral trust fund; and

(ii) The term of the refinanced loan does not exceed twenty-five (25) years from the date of refinancing.

(c) Interest rate. The interest rate for refinanced loans under this Chapter shall be pursuant to Chapter 14 of the rules as established by the Board.

(d) If the Board approves the refinancing of a loan, the borrower shall pay a refinancing fee pursuant to W.S. 21-18-319(b)(x) prior to the execution of the loan amendment.

Section 12. Reporting Requirements.

(a) Annually, by April 30th, the borrower shall provide to the Office a report on the progress of the project.

(b) When the loan is paid in full, the borrower shall provide a comprehensive report to the Office that, at a minimum, includes:

(i) A financial review; and

(ii) A list of accomplishments as a result of the loan.

Section 13. Audits and Inspections.

(a) On an annual basis, records of the borrower shall be, at a minimum, compiled by an independent accounting firm. The borrower shall provide the Office a Compilation, Review or Audited Financial Statement.

(b) The Board may, at its expense, conduct an independent audit of the borrower's records and inspect the construction and operation of the project.

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~~(c) “DDA” means demand deposit account.~~

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(II) A maintenance plan.

(ii) All costs for the construction of the dormitory will be funded at the time of receipt of the loan.

(b) Applicants must be compliant with all applicable reporting requirements of the Community College Commission, State Budget Office, and Department of Audit prior to the application being considered by the Board.

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(B) A detailed project summary which includes a breakdown of total project costs, a project timeline and repayment source(s);

(C) Commitment letters from all funding sources, if applicable;

(D) An engineer's Feasibility Statement; and

(E) A formal maintenance plan documenting how the applicant will adequately maintain the project for the life of the loan.

(ii) Incomplete applications shall not be submitted to the Board for consideration.

(iii) Any false or misleading statements made by the applicant in an

application shall be grounds for summary rejection of the application.

(iv) Timing. Loan applications must be received by the Office at least ninety (90) calendar days prior to any regularly scheduled meeting of the Board.

(b) Consideration.

(i) The Office shall conduct a preliminary review of all applications received. If the Office identifies issues with the application which would result in a negative recommendation to the Board, the Office shall notify the applicant within thirty (30) days of receiving the application of the issues and the applicant shall have the opportunity to correct the application or withdraw the application. Applicants must cure any defects in their application no later than forty-five (45) calendar days before any regularly scheduled meeting of the Board.

(ii) All applications shall be reviewed by the Attorney General to certify the legality of the transaction and to determine if an election is required by law.

(iii) When determining whether to make a loan, the Board shall consider the following:

(A) The need for the project; and

(I) Need may be demonstrated by:

(1.) Occupancy rate;

(2.) Student enrollment compared to available dormitory space;

(3.) The number of students on a community college's dormitory waiting list; and/or,

(4.) Any other relevant information demonstrating the need for the project.

(B) The community college's ability to repay the loan.

(I) Ability to repay may be demonstrated by:

(1.) Other efforts to fund the dormitory projects;

(2.) The community college's budget; and,

(3.) Any other relevant information demonstrating financial need.

(c) Funding Prioritization.

(i) First priority shall be granted to community colleges with a significant demonstrated need to increase student dormitory capacity on campus. When determining whether a project qualifies for first priority funding, the Board may consider:

(A) The number of dormitory rooms available compared to number of enrolled students and how that ratio compares to other community colleges in the state;

(B) Student enrollment trends over the past five (5) school years;

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Section 7. Loan Terms.

(a) Interest rate. The interest rate for loans under this Chapter shall be pursuant to Chapter 14 of the rules as established by the Board and a one-half of one percent (0.5%) origination fee shall be collected on the amount approved.

(b) Length. The term of each loan shall be set by the Board with due regard given to repayment ability, the useful life of the project, and the security offered, but in no event shall the term be less than five (5) years or exceed twenty-five (25) years.

(c) Repayment. ~~Loans shall be payable in equal installments. Payments shall begin within one (1) year from the date of loan funds being deposited into the required DDA or secured account at a FDIC insured financial institution~~ be made in accordance with the agreed upon terms within the executed loan documents.

Section 8. Security.

(a) Every loan shall be evidenced by a promissory note for the principal sum of the loan.

(b) Every loan shall have adequate security in the form of:

(i) Pledge of revenues from the student dormitory for which the loan was granted;

- (ii) Pledge of other revenue available to a community college; and/or,
- (iii) Any other security deemed adequate to secure repayment of the loan.

(c) If an appraisal for the purchase of land is required, the applicant shall be responsible for ensuring one is completed prior to submitting a loan application.

(i) Office staff shall review and approve the methodology used for valuation of the project and security and the overall market value prior to loan closing.

Section 9. Disbursements.

~~(a) Upon closing, the loan proceeds shall be deposited in a DDA or a secured account at a FDIC insured financial institution to be disbursed solely for the approved loan purpose. The borrower shall pay all costs associated with the DDA or secured account. Interest earned shall be credited to the borrower. Requests for disbursements shall be submitted on a form provided by the Director and include supporting invoices establishing the eligibility of costs submitted for disbursement. Loan proceeds will only be disbursed for eligible project costs as set forth in this Chapter and within established guidelines following review by the Office.~~

~~(b) Borrower shall submit all requests for payment from the DDA or secured account on a form provided by the Office, with supporting documentation, as required by the Director.~~

~~(i)——The Office shall inspect and verify any reports and records required by the Board and submitted by the borrower before proceeds shall be released from the DDA or secured account for payment.~~

Section 10. Ineligible Project Costs.

(a) The following costs are ineligible:

(i) Costs related to any other infrastructure needs of the community college that are not directly associated with the development and construction, renovation, or capital renewal of student dormitories;

(ii) Costs for preparation or presentation of loan application;

(iii) Costs incurred prior to loan award, except costs for architectural and engineering design, surveying and environmental review, if required;

(iv) Engineering fees, including design, inspection and contract administration costs, over fifteen percent (15%) of the project cost;

(v) Markups by engineers/architects of sub-contractor and other outside charges;

- (vi) Costs for transportation, meals, lodging and incidentals incurred offsite from the project or that exceeds the current federal per diem reimbursement rate;
- (vii) Costs associated with the borrower's own employees and equipment;
- (viii) Costs for real property in excess of current fair market value and costs for an amount of real property in excess of that needed for project purposes;
- (ix) Costs related to issuance of bonds;
- (x) Legal fees;
- (xi) Costs for sidewalks that are owned or maintained by a private property owner; and,
- (xii) Costs for a contingency or extra work allowance in excess of ten percent (10%) of estimated construction costs.

Section 11. ~~Defaults and Refinancing.~~

(a) If a borrower anticipates that it will be unable to make a required loan payment, the Board may refinance the loans, provided that:

(i) The borrower's inability to make payment is due to causes completely beyond its control and without the fault or negligence of the borrower;

(ii) The Board determines that refinancing is necessary for the better protection of the permanent mineral trust fund; and

(iii) The term of the refinanced loan does not exceed twenty-five (25) years from the date of refinancing.

~~(ab) If a borrower becomes delinquent on its required loan payment, the Board, if deemed necessary for the better protection of the permanent mineral trust fund, may refinance the loan, provided that:~~

(i) The Board determines that refinancing is necessary for the better protection of the permanent mineral trust fund; and

(ii) The term of the refinanced loan does not exceed ~~for not more than~~ twenty-five (25) years from the date of refinancing.

~~(bc) Interest rate. The interest rate for refinanced loans under this Chapter shall be pursuant to Chapter 14 of the rules as established by the Board.~~

(ed) If the Board approves the refinancing of a loan, the borrower shall pay a The refinancing fee shall be pursuant to W.S. 21-18-319(b)(x) prior to the execution of the loan amendment.

Section 12. Reporting Requirements.

(a) Annually, by April 30th, the borrower shall provide to the Office:

~~(i) A report on the progress of the project; and,~~

~~(ii) An account statement for the DDA or secured account used for holding the loan proceeds.~~

(b) When the loan is paid in full, the borrower shall provide a comprehensive report to the Office that, at a minimum, includes:

(i) A financial review; and,

(ii) A list of accomplishments as a result of the loan.

Section 13. Audits and Inspections.

(a) On an annual basis, records of the borrower shall be, at a minimum, compiled by an independent accounting firm. The borrower shall provide the Office a Compilation, Review or Audited Financial Statement.

(b) The Board may, at its expense, conduct an independent audit of the borrower's records and inspect the construction and operation of the project.