

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF EMERGENCY RULES

- 1) Heading of the Part: Business Interruption Grant Program
- 2) Code Citation: 14 Ill. Adm. Code 690
- 3)

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
690.10	New Section
690.20	New Section
690.30	New Section
690.40	New Section
690.50	New Section
690.60	New Section
690.70	New Section
690.80	New Section
690.90	New Section
690.100	New Section
690.110	New Section
690.120	New Section
690.130	New Section
690.140	New Section
690.150	New Section
690.160	New Section
690.170	New Section
690.180	New Section
- 4) Statutory Authority: Implementing Section 75-5 of Article 75 of PA 101-636 and Article 30 of PA 101-637 and authorized by 20 ILCS 605/605-95 and 20 ILCS 605-605-55.
- 5) Effective Date of Rules: July 21, 2020
- 6) If these emergency rules are to expire before the end of the 150-day period, please specify the date on which they are to expire: The Department has not specified an expiration date.
- 7) Date Filed with the Index Department: July 21, 2020
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection: The Department maintains a copy of the adopted rules including any reference materials in its principal office in Springfield, Illinois and is available for public inspection.

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- 9) Reason for Emergency: Emergency rulemaking authorized by 5 ILCS 100/5-45.3; reason for emergency is to provide timely economic assistance to businesses affected by the COVID-19 public health emergency.
- 10) A Complete Description of the Subjects and Issues Involved: The proposed rules implement the Business Interruption Grant Program authorized by PA 101-636, Article 30 [20 ILCS 605/605-1050]. The proposed rules provide the administrative framework required for the Department to administer this program, which provides financial support to businesses that have incurred expenditures or suffered losses because of the COVID-19 public health emergency. Also provides for technical assistance grants to help businesses in underserved areas to apply for financial assistance.
- 11) Are there any other rulemakings pending on this Part pending? No
- 12) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805].
- 13) Information and questions regarding these emergency rules shall be directed in writing to:

Jolene Clarke
Rules Administrator
Department of Commerce and Economic Opportunity
500 E. Monroe
Springfield IL 62701

217/557-1820
fax: 217/524-3701
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The full text of the Emergency Rules begins on the next page:

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SUBTITLE C: ECONOMIC DEVELOPMENT
CHAPTER I: DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITYPART 690
BUSINESS INTERRUPTION GRANT PROGRAM

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AUTHORITY: Implementing Section 605-1050, and authorized by Sections 605-95 and 605-55, of the Department of Commerce and Economic Opportunity Law [20 ILCS 605].

SOURCE: Emergency rules adopted at 44 Ill. Reg. 13111, effective July 21, 2020, for a maximum of 150 days.

SUBPART A: GENERAL PROVISIONS

Section 690.10 Purpose**EMERGENCY**

The purpose of the Business Interruption Grant Program (Program) is *to provide financial support to businesses that have experienced interruption of business or other adverse conditions attributable to the COVID-19 public health emergency* [20 ILCS 605/605-1050]. Financial assistance provided through the Program established in this Part shall be consistent with the requirements of section 5001 of the federal Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) and any rules or guidance issued by the U.S. Department of the Treasury or other responsible federal agency. The provision of support to for-profit and not-for-profit businesses that have experienced adversity attributable to the COVID-19 epidemic is necessary response to the public health emergency. Financial assistance shall be prioritized for communities most in need of assistance, as determined by numbers or rates of infection and economic measures identified in this Part. The Program will be implemented in multiple phases of funding.

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**Section 690.20 Definitions
EMERGENCY**

"Affiliate" means a business that is at least 50% or more owned or controlled by another person with at least 50% ownership or control. Control is not required to be exercised to establish an affiliate relationship; it is sufficient for one person to possess the authority to control the other person to establish an affiliate relationship.

"Allotment Tier" means the classification of a county as either having received a direct allotment from the CRF or not having received a direct allotment from the CRF.

"Allowable Expenditure" means a necessary expenditure that the Department has authorized for reimbursement under the Program in accordance with Section 90 of this Part.

"Applicant" means a qualifying business that applies for funding under the Program.

"Barbershops and Salons" means an entity possessing an active license under Article IIID of the Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985 [225 ILCS 410], or a person possessing an active barber, cosmetologist, esthetician, nail technician, or hair braider license under that Act who is self-employed and has no employees or contractors.

"Business" means a for-profit enterprise or non-profit organization lawfully conducting business in Illinois. This term does not include any business that is prohibited from receiving funds under section 5001(b) of the CARES Act.

"CARES Act" means the federal Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136).

"Cost of Business Interruption" means:

decreases in revenue caused by closing or limiting access to the business establishment to comply with COVID-19 prevention directives or to otherwise prevent the spread of COVID-19 within the business establishment;

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decreases in revenue caused by decreased customer demand as a result of the COVID-19 emergency; or

other revenue reductions approved for reimbursement from the CRF by the U.S. Department of the Treasury.

"COVID-19" means *the novel coronavirus disease deemed COVID-19 by the World Health Organization on February 11, 2020*. [20 ILCS 605/605-1050(g)(1)]

"COVID-19 Emergency" means the national public health emergency declared March 13, 2020.

"COVID-19 Prevention Directives" means all laws, orders, regulations, and guidance relevant to and in effect during the COVID-19 emergency that pertain to preventing the spread of COVID-19, including Executive Orders and preventative guidelines issued by the Illinois Governor, the Illinois Emergency Management Agency, the Department, or the Illinois Department of Public Health.

"CRF" means the Coronavirus Relief Fund established by the CARES Act.

"DCFS" means the Illinois Department of Children and Family Services.

"Department" means the Illinois Department of Commerce and Economic Opportunity.

"DHS" means the Illinois Department of Human Services.

"Disproportionately Impacted Area" means those ZIP Codes most severely affected by the COVID-19 emergency, to be determined based on positive COVID-19 case per capita rates, and high rates in at least one of the following poverty-related categories relative to other ZIP Codes within their region:

share of population consisting of children age 6 to 17 in households with income less than 125% of the federal poverty level;

share of population consisting of adults over age 64 in households with income less than 200% of the federal poverty level;

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share of population in household with income less than 150% of the federal poverty level; and

share of population consisting of children ages 5 and under in households with income less than 185% of the federal poverty level.

The Department, using these criteria, may determine different eligibility thresholds when allocating funding for the Allotment Tiers.

"DOA" means the Illinois Department of Agriculture.

"Eligible Loan" means *a loan of up to \$50,000 that was deemed eligible for funding under the Department's Emergency Loan Fund Program and for which repayment will be eligible for reimbursement from CRF monies pursuant to section 5001 of the CARES Act and any related federal guidance.* [20 ILCS 605/605-1050(g)(3)]

"Emergency Loan Fund Program" means a program implemented *by the Department by which the State Small Business Credit Initiative Fund is utilized to guarantee loans released by a financial intermediary or qualified partner.* [20 ILCS 605/605-1050(g)(4)]

"Financial Assistance" means financial support to an Illinois business in the form of a grant, expense reimbursement, or subsidy.

"Fitness Center" means a business consisting of at least one fixed establishment that is open to members or the general public to participate in activities related to physical fitness at that location, with those activities including:

instruction, training, or assistance in physical culture, bodybuilding, exercising, weight loss, figure development, judo, karate, self-defense training, or any similar activity;

access to the business' facilities for self-directed exercise; or

membership in any group formed by a physical fitness center for any of the above purposes.

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"Food and Beverage Establishment" means a restaurant or bar business enterprise consisting of at least one establishment that is licensed or otherwise permitted to sell food or beverages for on-site consumption, and does not include event spaces or banquet halls, grocery or convenience stores, night clubs or strip clubs, or a business that derives less than 80% of its gross revenue from food and beverage sales.

"GATA" means the Illinois Grant Accountability and Transparency Act [30 ILCS 708].

"GATA Rule" means 44 Ill. Adm. Code 7000.

"Necessary Expenditure" means an expenditure of funds that is eligible for reimbursement from the CRF and necessary to:

respond to the COVID-19 emergency; or

reimburse the cost of business interruption.

"Non-Profit Organization" means an organization that is registered as a non-profit corporation with the Illinois Secretary of State.

"Program" means the financial assistance program funding opportunities administered by the Department and implemented in this Part. The Department may implement financial assistance programs in cooperation with DHS and DOA to more effectively target specific industries.

"Program Participant" means the business that receives financial assistance under the Program.

"Qualifying Business" means *a business or organization that experienced or is experiencing business interruption due to the COVID-19 public health emergency and for which provision of financial assistance under the Program is eligible for reimbursement as prescribed by section 601(a) of the Social Security Act (42 USC) as added by section 5001 of the CARES Act, or other federal legislation addressing the COVID-19 emergency. A qualifying business includes self-employed individuals and independent contractors.* [20 ILCS 605/605-1050(g)(2)]

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"Qualified Partner" means *a financial institution or nonprofit with which the Department, or another State agency pursuant to an intergovernmental agreement with the Department, has entered into an agreement or contract to provide or incentivize assistance to qualifying businesses.* [20 ILCS 605/605-1050(g)(5)]

"Qualifying Small Business" means a small business that is a qualifying business, as those terms are defined in this Section.

"Restore Illinois Plan" means the framework announced by the Governor of the State of Illinois to safely reopen Illinois in five phases, with any modifications to that plan.

"Severely Disproportionately Impacted Area" means a disproportionately impacted area that has experienced heightened adverse economic conditions since March 13, 2020, which may include high rates of business closures or losses, unemployment, poverty rates, or other economic factors.

"Small Business" means a business enterprise that:

is physically operating in Illinois;

generated 51% or more of its revenue in Illinois in 2019; and

has fewer than 250 full-time employees prior to March 13, 2020 or is not dominant in its field within Illinois, as determined by the Department.

"Uniform Guidance" means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified at 2 CFR 200, as amended.

Section 690.30 GATA Requirements
EMERGENCY

- a) The Program established in this Part is subject to the Grant Accountability and Transparency Act [30 ILCS 708], with any exceptions granted.
- b) To the extent the Program is implemented using Grant Agreements, at minimum the following provisions of the Uniform Guidance apply to grant recipients: 2 CFR 200.303 and 330 through 332.

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**Section 690.40 Qualified Partners
EMERGENCY**

- a) The Department may enter into Grant Agreements, contracts, or intermediary agreements with qualified partners to implement the Program. The nature of the services provided by the qualified partner shall determine whether the arrangement is a grant, procurement, or other relationship. The Department may award grants to qualified partners to provide financial assistance to qualifying businesses or contract with qualified partners to secure services to implement the Program.
- b) A qualified partner shall include a non-profit agency or organization registered to conduct business in the State of Illinois or a financial institution that has demonstrated experience providing financing or services to businesses or residents located in disproportionately impacted areas.
- c) An agreement with a qualified partner shall specify the qualified partner's responsibility, if any, for determining eligibility for financial assistance and monitoring program participants for compliance with Program requirements.
- d) Nothing in this Part shall restrict the Department from securing services from entities other than qualified partners to assist in implementing the Program.

**Section 690.50 Identifying Disproportionately Impacted Areas
EMERGENCY**

- a) The Department will allocate funding within the Program such that no less than 30% will be provided to qualifying businesses located in disproportionately impacted areas. The Department will determine which ZIP Codes constitute disproportionately impacted areas based on available COVID-19 case information and economic data at the time it announces funding opportunities under the Program, and areas may be added or removed from prioritization based on changes in relative COVID-19 rates and economic distress.
- b) Within each Allotment Tier, the Department will rank each ZIP Code by COVID-19 cases per capita and by each of the poverty-related criteria. ZIP Codes with moderate, high, and very high COVID-19 cases per capita will be considered to be disproportionately impacted areas if they also have moderate to high rates of

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economic distress, as demonstrated by high rates within at least one of the poverty-related criteria (see Section 690.20 (Disproportionately Impacted Area)). The Department will include areas with significantly higher rates of COVID-19 cases per capita and lower levels of the poverty-related criteria, as well as areas with significantly higher levels of the poverty-related criteria and lower relative COVID-19 cases per capita.

- c) The Department will reserve funding opportunities for qualifying businesses located in or predominantly serving severely disproportionately impacted areas.

**Section 690.60 Form of Financial Assistance
EMERGENCY**

Financial assistance under the Program may be in the form of a grant, subsidy, or expense reimbursement. Regardless of the form of assistance, a program participant shall be obligated to comply with requirements set forth in this Part and in any agreement or certification executed as part of applying for financial assistance.

**Section 690.70 Financial Assistance Application Process
EMERGENCY**

- a) The Department will announce funding availability and application procedures on its website as funding opportunities are made available. The Department may direct prospective applicants to apply via qualified partners or another State agency that has agreed to implement a financial assistance program for a particular industry.
- b) As part of applying for financial assistance, applicants may be required to complete an application form and sign a certification that attests to eligibility for the Program and conditions funding on compliance with programmatic requirements.
- c) Applicants will be required to demonstrate eligibility for the funding. Supporting documents required for the application may include, but are not limited to:
 - 1) applicant's 2018 (for applications prior to August 15, 2020) or 2019 income tax return;
 - 2) completed W-9 form;

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- 3) proof of eligible necessary expenditures;
 - 4) information or records identifying the applicant and its owners;
 - 5) proof of licensure, if applicable;
 - 6) DUNS number or other unique identifier requested by the Department;
 - 7) any other information or proof necessary to confirm the existence of the applicant and its eligibility to participate in the Program.
- d) Completed application materials must be signed by the applicant's authorized representative and received by the Department, or the entity processing the application, by the announced deadline for the submission of applications.

**Section 690.80 Selection Process
EMERGENCY**

The Department, its qualified partners, or other State agencies administering parts of the Program will select recipients of financial assistance using competitive scoring, first-come first-served basis, lotteries, or discretionary selection procedures set forth in a financial assistance opportunity notice. The method of selection may vary based on industry and population served to maximize the effectiveness of the amount of financial assistance available and the equitable distribution of financial assistance among disproportionately impacted areas and other impacted areas, industries, and businesses.

**Section 690.90 Eligibility Requirements and Allowable Expenditures
EMERGENCY**

- a) The following business types are excluded from the Program:
- 1) a private club or business that limits membership for reasons other than capacity;
 - 2) a government-owned business entity (except for businesses owned or controlled by a Native American tribe);

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- 3) a business that derives at least 33% of its gross annual revenue from legal gambling activities, unless, subject to the Department's approval, the business is a restaurant with gaming terminals;
 - 4) a business engaged in pyramid sales, in which a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or
 - 5) payday lenders.
- b) A business shall be ineligible to participate in the Program if it:
- 1) did not comply with COVID-19 prevention directives;
 - 2) is delinquent on payment of any State of Illinois tax obligation;
 - 3) is on the Illinois Stop Payment List or in default of any contractual obligation to the Department, DHS, or DOA;
 - 4) is engaged in a business that is unlawful under Illinois or federal law;
 - 5) has already received assistance under the Program, unless the Department allocates funding specifically for severely impacted businesses that have already received assistance;
 - 6) is on the federal System for Award Management excluded parties list; or
 - 7) does not meet any other eligibility criteria established in a financial assistance application.
- c) Allowable expenditures must be incurred on or after March 1, 2020 and by the deadline identified in any announcement or certification applicable to any financial assistance opportunity.
- d) Ineligible expenditures include:
- 1) expenses that have been or will be reimbursed under any State, local, or federal program, such as expense or losses that were reimbursed by a loan forgiven under the CARES Act's Payroll Protection Program;

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- 2) damages covered by insurance;
 - 3) expenditures prohibited by section 5001(b) of the CARES Act;
 - 4) reimbursement to donors for donated items or services;
 - 5) workforce bonuses other than hazard pay or overtime;
 - 6) severance pay;
 - 7) legal settlements; or
 - 8) any other expense not reasonably incurred due to the COVID-19 emergency.
- e) Expenses shall be submitted to the State agency or qualified partners for review, either as part of the application process or following selection for financial assistance. Expenses shall be reviewed for eligibility and funding will be provided to program participants after verifying allowable expenditures.

**Section 690.100 Reporting, Cooperation, and Record Retention
EMERGENCY**

- a) Program participants shall not deviate from the budget, project scope, or objectives stated in the financial assistance agreement or certification, except with prior approval of the Department and any qualified partner or other State agency administering the Program.
- b) On or before March 31, 2021, Program participants shall submit a report to the Department on the use of financial assistance, in relation to the project and initial budget, and any information about the impact of the Program requested by the Department.
- c) Program participants shall:
 - 1) permit access to their premises, and inspection of records relating to the Program, to any lawful governmental authority, including, but not limited to, the Department, DHS, DOA, the Illinois Attorney General, the Illinois

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Auditor General, the Illinois Office of the Executive Inspector General, the Office of Inspector General of the U.S. Department of the Treasury; and

- 2) cooperate in any audit, monitoring, or investigation relating to the Program.
- d) Program participants shall retain records relating to the Program until at least December 31, 2026, unless another retention period is set forth in the financial assistance agreement or certification or until after the conclusion of all litigation, claims, or audit exceptions involving the records have been resolved and final action taken.
- e) Participation in the Program requires a business to have complied with, and remain in compliance with, all laws, orders, and regulations that are relevant to operation of the business, including the COVID-19 Prevention Directives.

**Section 690.110 Noncompliance
EMERGENCY**

A Program participant shall return all funds provided under the Program if it makes any material misrepresentation in applying for, or reporting on, the use of financial assistance or if it does not comply with any requirements in this Part or breaches any material term of the financial assistance agreement or certification. A material term is any term that relates to eligibility for Program participation, reimbursement under the CRF, or compliance with State and federal law, including COVID-19 Prevention Directives. Recovery of funds in the event of noncompliance may be effectuated by any means authorized under Illinois law, including the Grant Funds Recovery Act [30 ILCS 705] for any financial assistance in the form of a grant.

SUBPART B: FINANCIAL ASSISTANCE TO SEVERELY
IMPACTED AREAS, BUSINESSES, AND INDUSTRIES

**Section 690.120 Prioritizing Severely Impacted Businesses and Industries
EMERGENCY**

- a) The Department will provide targeted funding opportunities for industries and businesses most impacted by the COVID-19 emergency. In determining which industries and businesses to prioritize, the Department will consider the impact of compliance with the COVID-19 Prevention Directives on business operations or

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impact of the COVID-19 emergency on the workforce. The Department will also prioritize funding to qualifying small businesses. The targeted funding opportunities will be announced on the Department's website.

- b) Targeted funding opportunities to qualifying businesses will include financial assistance to:
- 1) Bars and restaurants that: earned between \$80,000 and \$3 million in revenue in 2019, or a pro-rated amount of revenue if the establishment was in business for less than the entire year; operated for at least the three months prior to March 2020; did not provide outdoor food and beverage service during phase 3 of the Restore Illinois Plan; and incurred necessary expenditures of at least \$10,000 since March 21, 2020.
 - 2) Businesses in severely disproportionately impacted areas that: earned between \$80,000 and \$2 million in revenue in 2019, or a pro-rated amount of revenue if the establishment was in business for less than the entire year; operated for at least the three months prior to March 2020; and incurred necessary expenditures of at least \$10,000 since March 21, 2020.
 - 3) Barbershops and salons that: earned between \$80,000 and \$500,000 in revenue in 2019, or a pro-rated amount of revenue if the establishment was in business for less than the entire year; operated for at least the three months prior to March 2020; and incurred necessary expenditures of at least \$10,000 since March 21, 2020.
 - 4) Fitness centers that: earned between \$80,000 and \$2 million in revenue in 2019, or a pro-rated amount of revenue if the establishment was in business for less than the entire year; operated for at least the three months prior to March 2020; incurred necessary expenditures of at least \$10,000 since March 21, 2020; and operated out of a single permanent location.
 - 5) Qualifying small business having experienced severe impacts during the COVID-19 emergency, in particular those whose return to normal activity is limited by phases of the Restore Illinois Plan or COVID-19 Prevention Directives.

**Section 690.130 Applicant Affiliations
EMERGENCY**

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In a financial assistance opportunity that may be applied for on or after July 21, 2020, a business' revenue and headcount shall include that of any parent company, affiliate, and subsidiary for the purposes of any revenue or employee headcount eligibility criteria set forth in this Subpart.

SUBPART C: FINANCIAL ASSISTANCE TO CHILD CARE PROGRAMS
THROUGH THE CHILD CARE RESTORATION GRANTS PROGRAM

Section 690.140 Requirements for Child Care Restoration Grants
EMERGENCY

In order to qualify for a Child Care Restoration Grant, the applicant must:

- a) be a licensed child care provider holding a valid day care license from DCFS (see 89 Ill. Adm. Code 406, 407 or 408).
- b) regularly provide full-day, year-round child care services.
- c) typically rely on private-pay tuition receipts and/or payments through the Child Care Assistance Program (CCAP) for at least 25% of its revenues.
- d) be open and receiving children at the time of application.
- e) comply with all COVID-19 requirements outlined in DCFS rules for child care providers.
- f) certify that their operating capacity has been reduced due to the group size and restrictions imposed by DCFS emergency rules.

Section 690.150 Calculation of Child Care Restoration Grant Award Amounts
EMERGENCY

- a) Grant amounts will be determined based on four factors:
 - 1) The licensed capacity of the applicant, as indicated on its day care license as of March 1, 2020. If the applicant received its license after March 1, 2020, then its grant award amount will be determined based on its licensed capacity as of the date of its application.

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- 2) The applicant's current Circle of Quality in the ExceleRate Illinois Quality Rating and Improvement System (see 23 Ill. Adm. Code 235.65).
 - 3) The CCAP county grouping in which the applicant is located.
 - 4) Whether the applicant is in a disproportionately impacted area.
- b) If an applicant is located in a disproportionately impacted area, its grant amount will be increased by 10%.
- c) The first round of grants will be issued between July 1, 2020 and September 30, 2020. If funds allow, a second round of grants will be made in September 2020 to cover the period of October 1, 2020 through November 30, 2020. The amount of the grants will be determined using the same criteria as the first round (see Section 690.140).

Section 690.160 Eligible Expenses**EMERGENCY**

- a) Grant awards may be used to cover any operational cost that is not otherwise covered by a grant or refundable loan from any source (e.g., Paycheck Protection Program, Economic Disaster Injury Loan, other disaster relief, Head Start or Early Head Start, Early Childhood Block Grant, philanthropic grants) and is eligible for reimbursement through the CRF.
- b) Examples of eligible operational costs include, but are not limited to, staff wages and benefits, occupancy costs, materials and supplies, and professional services.

Section 690.170 Reporting Requirements**EMERGENCY**

- a) Program participants shall provide monthly expenditure reports documenting how grant funds were used. Reporting will be in a format determined by DHS. Expenditure reports will be due the 15th of the month following the month of expenditure. Documented expenses will be reconciled with grant funds received on a quarterly basis.
- b) Program participants shall provide a final expenditure report of all grant funds by December 15, 2020.

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**Section 690.180 Monitoring
EMERGENCY**

Program participants will be monitored for compliance with contractual obligations, applicable administrative rules, and legislation, ensuring that Child Care Restoration Grant funds are spent appropriately as specified in the financial assistance agreement/certification. Monitoring may include desk reviews and on-site reviews of the Program participant.