

# **TITLE 5: POST-SECONDARY EDUCATION**

## **CHAPTER 1: POST-SECONDARY EDUCATION - GENERAL PROVISIONS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: [RESERVED]**

### **PART 3: FEDERAL PROGRAM ADMINISTRATION**

#### **5.1.3.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[12/31/98; 5.1.3.1 NMAC - Rn & A, 5 NMAC 1.3.1, 7/31/05]

#### **5.1.3.2 SCOPE:**

Provisions for 5.1.3 NMAC apply to all public private non-profit postsecondary institutions in New Mexico.

[12/31/98; 5.1.3.2 NMAC - Rn, 5 NMAC 1.3.2, 7/31/05]

#### **5.1.3.3 STATUTORY AUTHORITY:**

Section 21-1-26 NMSA 1978.

[12/31/98; 5.1.3.3 NMAC - Rn, 5 NMAC 1.3.3, 7/31/05]

#### **5.1.3.4 DURATION:**

Permanent.

[12/31/98; 5.1.3.4 NMAC - Rn, 5 NMAC 1.3.4, 7/31/05]

#### **5.1.3.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[12/31/98; 5.1.3.5 NMAC - Rn & A, 5 NMAC 1.3.5, 7/31/05]

#### **5.1.3.6 OBJECTIVE AND PURPOSE:**

Several laws passed by congress dealing with higher education call upon the governor of a state to designate an agency to administer various federal programs in the state. On several occasions, the governor of New Mexico has designated the higher education department to be responsible for administering federal programs dealing with higher education, teacher quality and adult basic education in New Mexico. In addition to having responsibility for administering certain acts, the staff is often called upon to serve on advisory committees dealing with other federal legislation and programs, both at the state and federal levels. The purpose of 5.1.3 NMAC is to describe the higher education department's responsibilities for administering certain federal acts.

[12/31/98; 5.1.3.6 NMAC - Rn & A, 5 NMAC 1.3.6, 7/31/05]

#### **5.1.3.7 DEFINITIONS:**

**[RESERVED]**

#### **5.1.3.8 HIGHER EDUCATION DEPARTMENT RESPONSIBILITIES:**

In administering federal programs, the policy of the higher education department shall be to carry out its interpretation of the intent of applicable federal laws as well as to comply with the statute itself and applicable regulation.

A. The higher education department and its staff will render all reasonable assistance to institutions of higher education in carrying out its responsibility under any federal program. This reasonable assistance includes the preparation of applications for grants where necessary.

B. The higher education department staff shall stay informed of trends in federal programs and report to the secretary promptly any problem regarding any federal program concerning higher education.

C. The staff is authorized to attend U.S. department of education conferences when requested to participate.

D. The higher education department will comply with requests for information submitted by the U.S. department of education and to prepare whatever reports are required concerning both public and private institutions of higher education in the state in order to supply the U.S. department of education with the information requested.

[12/31/98; 5.1.3.8 NMAC - Rn & A, 5 NMAC 1.3.8, 7/31/05]

## **CHAPTER 2: ESTABLISHMENT OF POST-SECONDARY EDUCATIONAL INSTITUTIONS**

## **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2: REQUIREMENTS FOR ESTABLISHING POST-SECONDARY INSTITUTIONS, LEARNING CENTERS, OR CAMPUSES**

### **5.2.2.1 ISSUING AGENCY:**

Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico, 87501, (505)827-7383.

[3/16/51, 7/1/94; Recompiled 10/31/01]

### **5.2.2.2 SCOPE:**

All public post-secondary educational institutions, any local public school board(s), or any community group wishing to establish within their community a learning center or institution, or campus of an existing learning center or institution, whose purpose is to offer post-secondary educational services to citizens within the community. Proposals to establish new campuses of existing two-year institutions within the current taxing district of that two-year institution shall not be subject to the requirements of 5 NMAC 2.2 [now 5.2.2 NMAC]. In addition, any employer wishing to offer services only for the benefit of its employees shall not be subject to the requirements of 5 NMAC 2.2 [now 5.2.2 NMAC]. Any local public school board(s) wishing to join an existing contiguous taxing district of an existing institution or branch campus must follow the requirements of 5 NMAC 2.2 [now 5.2.2 NMAC].

[11/30/96; Recompiled 10/31/01]

### **5.2.2.3 STATUTORY AUTHORITY:**

Section 21-2-5 of the Post-Secondary Educational Planning Act authorizes the commission on higher education to identify cases where "establishment of new institutions and programs are needed in order to meet the present and projected needs for post-secondary education on a statewide basis in an effective and efficient manner." Requirement that specific new educational sites receive approval from the commission prior to their operation is established through a pattern of statutory requirements, specifically in Sections 21-13-5, 21-14-2, and 21-14A-3 NMSA 1978 (1996 Repl. Pamph.).

[7/1/73, 7/1/85, 6/18/93; Recompiled 10/31/01]

### **5.2.2.4 DURATION:**

Permanent.

[11/30/96; Recompiled 10/31/01]

#### **5.2.2.5 EFFECTIVE DATE:**

November 30, 1996 [unless a later date is cited at the end of a section].

[11/30/96; Recompiled 10/31/01]

#### **5.2.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 2 [now 5.2.2 NMAC] is to delineate standards and procedures required to establish publicly supported institutions, learning centers, or campuses of existing institutions or learning centers, whose purpose is to provide or broker post-secondary educational services in New Mexico. These standards and procedures are intended to summarize statutory guidelines for the establishment of higher education institutions as well as to define procedures for the creation of public post-secondary educational learning centers. It is anticipated that these learning centers will provide for rapid response to community needs and will collaborate with existing institutions, public schools, government agencies and the private sector to share resources in ways that promote efficiency and productivity.

[11/30/96; Recompiled 10/31/01]

#### **5.2.2.7 DEFINITIONS:**

A. Campus: The grounds of an institution or learning center, whether leased or owned, upon which there is a continuous administrative presence, and which is identifiable by the community as belonging to the institution or learning center. The grounds upon which the primary administrative support for the governing board are found shall constitute the main campus of the institution or learning center. Other locations in which there is a continuous administrative presence shall constitute branch campuses.

B. Commission: The New Mexico commission on higher education.

C. Course provider: A regionally accredited institution that provides a course to an institution or learning center for inclusion in a program leading to a degree or a certificate provided by another institution, or for other educational purposes not associated with a degree or certificate program.

D. Delivery model: The organizational structure for providing access to post-secondary educational services. This can include institutions or learning centers.

E. Extended learning: The full range of available and developing modes for bringing instruction to learners, including live instructor delivery, instructional television, computer conferencing, video conferencing, audio conferencing, etc.

F. Institution: A public post-secondary educational organization whose primary purpose is to provide post-secondary educational services, which is governed by a statutorily or constitutionally created governing board, and which is eligible to receive state support. Institutions can include structures commonly called community colleges, branch community colleges, junior colleges, technical and vocational institutes, area vocational institutes, comprehensive or regional institutions, research institutions, and the statutorily defined instructional centers. Not included are learning centers, which broker services by [sic] which cannot provide services. Institutions can both directly provide and broker post-secondary educational services.

G. Learning center: A public organization whose purpose is to broker post-secondary educational services, but which cannot directly employ instructors to provide programs leading to degrees or certificates, which is governed by a community based governing board, and which is eligible to receive state support. Learning centers contract with program providers or course providers to offer services in the community.

H. Program provider: A regionally accredited institution that provides academic or vocational programs leading to degrees or certificates to an institution or a learning center on a contractual basis.

[11/30/96; Recompiled 10/31/01]

#### **5.2.2.8 GENERAL PRINCIPLES:**

A. The commission believes that extended learning programs from existing institutions can offer high quality post-secondary educational services to under served communities in an efficient manner. Therefore, communities should collaborate with existing institutions to meet educational needs through extended learning programs. Communities should consider the establishment of a new institution or learning center only after it has been demonstrated that services offered through extended learning programs are not sufficient.

B. As evidence of local support for a new institution, learning center, or campus of an institution or learning center that would be eligible for state support, it must be demonstrated that the community is willing to impose a local tax levy that is appropriate to the nature of the proposed institution, learning center, or campus.

C. The commission believes that learning centers, which contract with institutions to provide services rather than provide those services directly, will be able to respond to rapidly changing educational needs in a community efficiently and effectively. It is anticipated that a learning center would contract with regionally accredited institutions to provide needed educational programs through the learning center for a limited period of time. At the end of the contract, the community based governing board would reassess the contract to determine whether the services called for in the contract were still needed, and if so, whether those services were being provided in an efficient and effective manner. If demand for the program were no longer sufficient, or if services

were not being provided efficiently and effectively, then the contract would not be renewed.

D. The commission believes that learning centers can provide a more efficient option for providing access to higher education when extended learning is not sufficient. Therefore, an applicant for a new institution will have to demonstrate that a learning center is inadequate before a proposal to establish that institution will be considered by the commission.

E. It is important to the commission that any programs offered by institutions or through learning centers maintain high standards of quality.

(1) In order to help ensure the quality of programs offered through a learning center, learning centers will only enter into contracts with regionally accredited institutions. In other words, individual programs offered through a learning center need not be accredited, but the providing institution must be regionally accredited. It is also expected that any new institution will be eligible for regional accreditation either directly or through a possible parent campus's accreditation.

(2) Any existing institution that is unable to maintain regional accreditation shall be subject to special review by the commission.

F. Students enrolled in programs through a learning center shall generally be deemed students of the provider institution of the degree or certificate program in which they are enrolled, and any degrees or certificates shall be awarded by that provider institution and the student's permanent records shall be maintained by that provider institution. Records for students not enrolled in programs leading to degrees or certificates, but enrolled in individual courses, shall generally be maintained by the course provider unless the center has specifically contracted with an accredited institution to provide those record keeping services.

G. The commission believes that significant educational need must be demonstrated before a new institution, learning center, or campus can be endorsed. In addition, it is expected that existing institutions, learning centers, or campuses should continue to be able to demonstrate significant educational need within the community.

(1) The following conditions shall be considered evidence of need for the establishment of a new institution, learning center, or campus:

(a) evidence that efforts to use extended learning programs have been made, and that those efforts have been insufficient;

(b) ability to maintain appropriate enrollment levels;

(c) evidence of collaboration with other institutions, government agencies, and/or private sector organizations;

(d) indication from employers in the community that the programs provided will be useful, and evidence that employment opportunities will be available for graduates if the mission of the institution, center, or campus is to prepare students for the workforce.

(2) Existing institutions, learning centers, or branch campuses of institutions or learning centers that can no longer provide the minimum evidence of need required for establishment will be subject to special review by the commission.

H. It is the expectation of the commission that a preliminary plan for creating an institution, learning center, or campus of an existing institution or learning center, shall demonstrate that there is evidence of community need for post-secondary educational services sufficient to justify further detailed planning and analysis needed for state approval or disapproval of the establishment of institution, learning center, or campus. Therefore, all proposals for the establishment of an institution, learning center, or campus must contain a preliminary plan following the guidelines in 5 NMAC 2.2.9 [now 5.2.2.9 NMAC] . If the commission determines that there is sufficient evidence of need, the commission shall accept the preliminary plan, and a detailed plan and survey will be prepared. The detailed plan and survey shall provide information sufficient for the commission to verify that there is significant need for establishing a new post-secondary entity that cannot be met by existing post-secondary institutions, that the community is fully ready and equipped to support the institution or learning center, and that there is a high expectation that the proposed institution or learning center will succeed in its mission at a cost acceptable to the state.

[9/21/84, 11/30/96; Recompiled 10/31/01]

#### **5.2.2.9 PRELIMINARY PLAN:**

A sponsoring institution(s), board(s) of education, or community group shall present to the commission a preliminary plan meeting the specifications described below. The commission shall invite public comment on the preliminary plan prior to reaching its decision regarding the justification for further detailed planning and analysis of need.

A. The preliminary plan shall identify the organizing group, the entities that have been involved in the preparation of the preliminary plan, and the individuals primarily responsible for developing and advancing the request.

B. The preliminary plan shall indicate the post-secondary delivery model that the organizing group wishes to create. If the organizing group wishes to establish an institution by following one of the various statutes for creating a post-secondary institution, then that statute must be clearly identified.

C. The preliminary plan shall describe the rationale for establishing a new institution, learning center, or campus, including the principal arguments why existing institutions cannot meet the educational needs to be addressed by the proposed institution,

learning center or campus. It shall describe existing post-secondary educational opportunities offered by both public and private institutions that may be available in the community including but not limited to: degree/certificate programs offered; courses offered leading to a degree or certificate but not a part of a degree or certificate program available in the community, and continuing education courses offered. For any programs or courses that are available, the plan should include a description of which post-secondary institution is offering those courses, the accreditation status of the offering institution, how those programs/courses are being delivered, why those offerings are insufficient, and why additional post-secondary education opportunities are needed in the community.

D. The preliminary plan shall describe the proposed governance structure for an institution or learning center.

E. The preliminary plan shall indicate the nature and level of educational programs to be provided. This should include a description of the rationale for choosing the proposed program(s).

F. The preliminary plan shall describe the population(s) and numbers of students to be served.

G. The preliminary plan shall describe the geographic area from which students are primarily expected to be enrolled.

[9/21/84; Recompiled 10/31/01]

#### **5.2.2.10 LETTER(S) OF SUPPORT:**

The organizing group must submit, along with the preliminary plan, letters of support from existing community organizations or agencies indicating their willingness to develop agreements to share facilities, equipment, or other resources with the new institution, learning center, or campus. If the proposal is to create a branch campus of an existing institution or learning center, then a letter of endorsement from the governing board of the institution or learning center must be included.

[11/30/96; Recompiled 10/31/01]

#### **5.2.2.11 PETITION:**

In addition to the preliminary plan and letter(s) of support, local board(s) of education or interested community groups wishing to establish either an independent community college or a technical-vocational institute must also present a petition as required by Sections 21-13-4, 21-13-5, 21-16-3, 21-16-14, and 21-16-15 NMSA 1978.

[9/21/84; Recompiled 10/31/01]



#### **5.2.2.12 DETAILED PLAN AND SURVEY:**

After reviewing the preliminary plan, if the commission determines that there is sufficient need for post-secondary educational services that cannot be met by existing institutions, that the proposed model promotes efficiency and effectiveness through the sharing of all types of resources among existing institutions, public schools, government agencies, communities, and/or the private sector, that the proposed model allows for rapid response to changing educational needs in the community, and that the community and organizing group are prepared to fully accomplish the goals of the proposed post-secondary entity, then the commission shall act to accept the preliminary plan. If the decision of the commission is to accept the preliminary plan, then the commission shall request a detailed plan and survey. The purpose of the detailed plan and survey shall be to document sound and verifiable evidence of significant need for the proposed post-secondary educational services, and to provide strong evidence that the proposed delivery model will be successful in addressing that need in an efficient and effective manner. The advocates shall meet with commission staff to agree upon a procedure and schedule for development and presentation of the detailed plan for consideration by the commission. It shall be the responsibility of the organizing group to prepare a detailed plan and survey of need consistent with specifications agreed upon between the commission and the organizing group. At a minimum, the detailed plan and survey shall include the components described below.

A. An objective survey of need for and support for establishment of the institution, learning center, or campus should be conducted. The survey shall be sufficient in its scope and methodology to provide reliable information about the extent of community endorsement for the project, and the likelihood of residents to enroll in courses.

B. A written statement of support for the establishment of the institution, learning center, or campus should be provided by the governing board of the sponsoring institution, if applicable, and by each local school board within the area to be served by the proposed institution or learning center. Each local school board within the proposed taxing district should indicate its support or objection to local taxation for support of the institution, learning center, or campus.

C. A statement of the educational mission of the proposed institution, learning center, or campus and a list of educational programs that will initially be available, including for each: a brief description of its purpose and content; the certificate or degree to be awarded; a draft of request for proposals for programs to be offered through learning centers or an objective analysis of available staff and qualifications of key faculty if the institution will provide programs directly; the method(s) for course delivery; and the number of students expected to enroll during each of the first three years.

D. The plan should include an analysis of the local economy which provides evidence that the proposed programs are needed in the community and will contribute to the community's economic growth.

E. A description of the nearest similar program(s), and the distance to those programs should be provided. This analysis should include a description of the nearest similar programs available through extended learning programs by other institutions.

F. The plan must identify all efforts made by the organizing group to work with existing institutions to address the educational need of the community by using extended learning methods.

G. The plan shall include detailed evidence that the physical facilities, equipment, and support services available through collaboration with other institutions, government agencies, or private sector entities or those provided directly by the new institution or learning center are sufficient to provide high quality educational programs. This analysis shall include information about academic support services, including library and electronic information resources and access to experiential education opportunities, and student support services, including academic and career advisement and financial assistance.

H. The plan must provide evidence that a proposed institution or campus of an institution will be of sufficient quality to receive regional accreditation either directly or through a possible parent campus's accreditation.

I. The plan shall include a detailed analysis of the financial need of the proposed institution, learning center, or campus over at least a five year period and how that need will be met. The financial plan operating revenue shall address all potential sources of revenue, including tuition and fees, local support, federal support, and the projected need for state general fund revenue. A proposed budget for the first two years of operation should be included.

J. The plan shall include enrollment projections for the next ten years.

K. The plan shall include a general plan for proposed construction for the next ten years.

L. For proposals that would establish an institution following guidelines found in existing statutes, the proposal must also include any additional requirements specified in the appropriate statute but not detailed here.

[11/30/96; Recompiled 10/31/01]

#### **5.2.2.13 ENDORSEMENT OF THE DETAILED PLAN AND SURVEY:**

Upon receipt of the detailed plan and survey, the commission shall determine whether there is sound and verifiable empirical evidence of significant need for establishing a new post-secondary entity that cannot be met by existing post-secondary institutions, whether the proposed model demonstrates a commitment to promoting innovation, collaboration, and cooperation among institutions, government agencies, public schools,

business, and communities, whether the model will allow for rapid response to changing community needs and allow for the easy elimination of programs that are no longer necessary, whether the proposed model is the most efficient and effective option for the community, whether the community is ready and equipped to support the institution, learning center, or campus, and whether there is a sufficiently high expectation that the proposed institution, learning center, or campus will succeed in its mission at a cost acceptable to the state. If so, the commission will endorse the creation of the new institution, learning center or campus.

[11/30/96; Recompiled 10/31/01]

#### **5.2.2.14 ELECTION:**

If the commission decides to endorse the establishment of the institution, learning center or campus, the commission shall authorize an election as required by the appropriate statute.

[9/21/84; Recompiled 10/31/01]

### **PART 3: ESTABLISHMENT OF NEW PROGRAMS AND SERVICE AREAS FOR FOUR-YEAR PUBLIC POST-SECONDARY INSTITUTIONS**

#### **5.2.3.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.2.3.1 NMAC - N, 05/15/07]

#### **5.2.3.2 SCOPE:**

All public four-year post-secondary institutions operating within and receiving financial support from the state of New Mexico.

[5.2.3.2 NMAC - N, 05/15/07]

#### **5.2.3.3 STATUTORY AUTHORITY:**

Authority for 5.2.3 NMAC is found in NMSA 1978 Sections 21-1-26, 21-1-26.3, 21-2-5, and 21-2A-11 (1996 Repl. Pamph.).

[5.2.3.3 NMAC - N, 05/15/07]

#### **5.2.3.4 DURATION:**

Permanent.

[5.2.3.4 NMAC - N, 05/15/07]

**5.2.3.5 EFFECTIVE DATE:**

May 15, 2007, unless a later date is cited at the end of a section.

[5.2.3.5 NMAC - N, 05/15/07]

**5.2.3.6 OBJECTIVE:**

A. The objective of 5.2.3 NMAC is to establish the effective planning and delivery of four-year public post-secondary educational programs and services throughout New Mexico, with due regard for economy and efficiency of delivery and the avoidance of unnecessary program duplication.

B. This policy recommendation acknowledges that New Mexico is a diverse state and flexibility in serving different regions must be embedded and honored in the implementation of this policy. Since state resources are limited, the purpose of 5.2.3 NMAC is to create a more efficient structure for the delivery of programs and services, without limiting local community options for services to be provided by preferred educational providers.

[5.2.3.6 NMAC - N, 05/15/07]

**5.2.3.7 DEFINITIONS:**

- A. "**Department**" means the New Mexico higher education department.
- B. "**DFA**" means the state of New Mexico division of finance and administration.
- C. "**LC**" means the state of New Mexico legislative council.
- D. "**LESC**" means the state of New Mexico legislative education study committee.
- E. "**LFC**" means the state of New Mexico legislative finance committee.
- F. "**Advisory board**" means the New Mexico higher education advisory board.

[5.2.3.7 NMAC - N, 05/15/07]

**5.2.3.8 ESTABLISHMENT OF NEW PROGRAMS AND SERVICES:**

A. As four-year institution begins preparation, or wishes to expand, to offer instructional programs in a community wherein it has not previously offered programs or if it wishes to expand current offerings in a community other than the one in which the institution is located, it must notify the department. The department then notifies all

public institutions, DFA, LFC, and the state board of finance. Objections must be filed with the department within thirty (30) days. Objections may be filed by any notified entity.

B. Following notification of an objection, the presidents and the chairs of the governing boards of the involved institutions are required to meet with the secretary of higher education to discuss the problem and develop a resolution. If the department is the objector, a representative of the DFA or state board of finance will preside over the meeting.

C. If a resolution cannot be developed, the secretary of higher education will convene a third party to review the context and details of the objection. The third party review will occur within sixty (60) days. The third party will be a nine (9) member committee authorized to make a final recommendation. The makeup of the committee as determined by the secretary and confirmed with the governor's chief of staff will be the following:

- (1) three (3) executive members (DFA, governor's office, NMHED);
- (2) three (3) legislative members (LC, LESC, LFC);
- (3) three (3) higher education members (community college, regional university, research university); these individuals are selected by the higher education advisory board.

D. Every effort must be made to partner for the delivery of new programs and the opportunity for partnerships will be part of the review process.

E. Committee determinations are final and apply for a set period of time up to five (5) years after the decision of the committee. The decision will be filed with the department as a matter of public record.

[5.2.3.8 NMAC - N, 05/15/07]

## **PART 4: GEOGRAPHIC AREAS OF RESPONSIBILITY**

### **5.2.4.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.2.4.1 NMAC - N, 05/01/07]

### **5.2.4.2 SCOPE:**

All public two-year postsecondary institutions operating within and receiving financial support from the state of New Mexico, offering associate degree and certificate programs.

[5.2.4.2 NMAC - N, 05/01/07]

**5.2.4.3 STATUTORY AUTHORITY:**

Authority for 5.2.4 NMAC is found in NMSA 1978 Sections 21-1-26, 21-1-26.3, 21-2-5, and 21-2A-11 (1996 Repl. Pamph.).

[5.2.4.3 NMAC - N, 05/01/07]

**5.2.4.4 DURATION:**

Permanent.

[5.2.4.4 NMAC - N, 05/01/07]

**5.2.4.5 EFFECTIVE DATE:**

May 1, 2007, unless a later date is cited at the end of a section.

[5.2.4.5 NMAC - N, 05/01/07]

**5.2.4.6 OBJECTIVE:**

A. The objective of 5.2.4 NMAC is to establish geographic areas of responsibility encompassing the entire state to facilitate the effective planning and delivery of public two-year postsecondary educational programs and services throughout New Mexico, with due regard for economy and efficiency of delivery and the avoidance of unnecessary program duplication.

B. This policy acknowledges that New Mexico is a diverse state and flexibility in serving different regions must be embedded and honored in the implementation of this policy. Since state resources are limited, the purpose of 5.2.4 NMAC is to create a more efficient structure for the delivery of programs and services.

[5.2.4.6 NMAC - N, 05/01/07]

**5.2.4.7 DEFINITIONS:**

A. "**Department**" means the New Mexico higher education department.

B. "**Existing programs**" means academic, career-technical, and remedial programs leading to a certificate or associate degree that was offered by a two-year

public postsecondary institution within a geographic area of responsibility as of January 1, 2006.

C. **"Geographic area of responsibility (GAR)"** is an assigned geographic region encompassing one or more public school districts where a public postsecondary educational institution has the exclusive right to meet the lower division postsecondary educational needs of the area, subject only to the limitations imposed by its enabling legislation and consistent with the provisions of this policy.

D. **"Two-year postsecondary institution"** is a publicly supported postsecondary educational institution that has the exclusive right to meet the lower division postsecondary educational needs of this assigned geographic region, subject only to limitations imposed by its enabling legislation and consistent with the provisions of this policy, including the two-year programs of western New Mexico university and northern New Mexico college.

E. **"Host institution"** means the public postsecondary educational institution that has been assigned to a geographic area of responsibility.

F. **"Partner institution"** means a public two-year postsecondary educational institution that agrees through a formal memorandum of understanding to provide educational programs and services within a geographic area of responsibility assigned to another public two-year postsecondary educational institution.

G. **"Right of first refusal"** means that an institution assigned to a geographic area of responsibility must first decline, in writing, to the New Mexico higher education department within 60 days, to provide requested educational services before another New Mexico public postsecondary institution may offer those services in that service area. This provision shall not apply to existing programs as defined in this policy.

[5.2.4.7 NMAC - N, 05/01/07]

#### **5.2.4.8 ESTABLISHMENT OF GEOGRAPHIC AREAS OF RESPONSIBILITY:**

A. By April 16, 2007, each public postsecondary institution offering associate degrees and certificate programs, upon approval of its governing board, shall petition the department to establish a GAR for the institution. The proposed GAR shall consist of all public school districts or portions thereof which are currently part of the local taxing district that supports the institution, or areas outside of its taxing district which the institution has historically served (grandfather clause).

B. By May 1, 2007, the department shall assign GARs to each public postsecondary educational institution offering associate degrees and certificate programs in such a manner that all geographic areas of the state are included.

C. The department shall consider the following factors, while determining which public school districts are to be assigned to the GAR for each public postsecondary institution:

- (1) boundaries of the current local taxing district, if applicable;
- (2) market share of existing educational services within the proposed GAR as determined through an analysis conducted by the department;
- (3) county boundaries, public K-12 districts or portions thereof that have provided courses and/or programs prior to the implementation of this policy by a two-year institution, i.e. the "grandfathering in" of areas served by a two-year institution outside of its taxing district;
- (4) boundaries of the local small business development center (SBDC) service area shall be given consideration if college level coursework has historically been provided within the assigned SBDC region;
- (5) requested boundaries of the proposed service area outside of the current taxing district; this could include areas in which more than one institution is currently providing services, as well as areas where no services are currently provided.

[5.2.4.8 NMAC - N, 05/01/07]

#### **5.2.4.9 RESPONSIBILITIES OF HOST INSTITUTION:**

Upon assignment of a GAR by the department, the host institution shall assume the following responsibilities.

A. Coordinate a needs assessment to determine the programs needed to support current and future workforce demands within the GAR.

B. Provide educational services to address identified needs in a cost-effective and efficient manner. These services may include lower-division course work offered for academic credit, dual-credit programs, developmental education services, adult basic education and literacy programs, and non-credit workforce training and community education programs.

C. Partner with other two-year postsecondary educational institutions to serve the needs of the GAR by serving as a broker to bring in appropriate programs not offered by the host institution.

D. Maintain the facility and support services, unless otherwise negotiated with partnering institutions.

E. Assume the leadership role in providing library services.



F. Provide leadership in the crafting of a memorandum of understanding (MOU) with partnering institutions, which shall define the programs and services to be provided by each party and provide for a fair and equitable distribution of tuition and formula revenue resources. At a minimum, each MOU must address the following issues:

- (1) cost and revenue sharing arrangements;
- (2) student credit hour reporting arrangements;
- (3) accommodations for alternative delivery methods at the receive site;
- (4) arrangements and responsibilities for evaluating the effectiveness of the joint venture;
- (5) provision of student support services;
- (6) provision of academic support services; and
- (7) provision for termination in the event necessary.

G. Upon approval by the governing boards, all MOU's will be submitted to the department for its records and use in developing formula funding recommendations.

[5.2.4.9 NMAC - N, 05/01/07]

#### **5.2.4.10 DISTRIBUTION OF REVENUES:**

A. Revenues generated by programs offered within the GAR by the host institution shall belong to the host institution. The host institution may assess tuition and fees as necessary to cover the cost of all programs and services offered within the GAR, including appropriate surcharges for services provided outside of the institution's taxing district.

B. Distribution of revenues generated as a result of programs offered by a partner institution within the geographic area of responsibility of a host institution shall be divided between the institutions based on the MOU approved by the governing boards of the institutions.

[5.2.4.10 NMAC - N, 05/01/07]

#### **5.2.4.11 IMPLEMENTATION OF POLICY:**

The department recognizes that implementation of this policy must recognize the current status of state-supported postsecondary educational services within newly-defined GARs.

A. The provisions of this policy do not apply to existing programs as defined in 5.2.4.7 NMAC. Existing programs offered within any GAR shall continue to be eligible for formula funding as provided in 5.3.12 NMAC.

B. A governing board has the authority to approve and offer a new competing program in a GAR to which their institution is not designated. However, the competing program will not receive state formula funding support through the higher education funding formula.

C. The provisions of this policy do not apply to programs or courses delivered via instructional television or web-based instruction.

D. The provisions of this policy do not apply to tribal governments or schools which may broker educational services from any public or private postsecondary educational institution.

[5.2.4.11 NMAC - N, 05/01/07]

#### **5.2.4.12 TEMPORARY PROVISION:**

Until such time as the department approves a network of GARs encompassing the entire state, the department maintains that each two-year institution's local taxing district shall constitute its GAR for the direct provision of lower division instruction, subject only to limitations imposed by its enabling legislation, and otherwise consistent with the provisions of this policy.

[5.2.4.12 NMAC - N, 05/01/07]

## **CHAPTER 3: POST-SECONDARY EDUCATION INSTITUTION FINANCES**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: [RESERVED]**

### **PART 3: [RESERVED]**

### **PART 4: OPERATING BUDGETS - APPROVAL BY COMMISSION ON HIGHER EDUCATION**

#### **5.3.4.1 ISSUING AGENCY:**

State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, (505) 827-7383.

[12/31/98; Recompiled 10/31/01]

**5.3.4.2 SCOPE:**

Provisions of 5 NMAC 3.3 [now 5.3.4 NMAC] apply to all state public post secondary institutions in the state of New Mexico.

[12/31/98; Recompiled 10/31/01]

**5.3.4.3 STATUTORY AUTHORITY:**

Section 21-1-26 NMSA 1978.

[12/31/98; Recompiled 10/31/01]

**5.3.4.4 DURATION:**

Permanent.

[12/31/98; Recompiled 10/31/01]

**5.3.4.5 EFFECTIVE DATE:**

December 31, 1998, unless a different date is cited at the end of a section or paragraph.

[12/31/98; Recompiled 10/31/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**5.3.4.6 OBJECTIVE AND PURPOSE:**

The objective of 5 NMAC 3.4 [now 5.3.4 NMAC] is to establish a policy and guidelines for the review and approval of institutional operating budgets.

[12/31/98; Recompiled 10/31/01]

**5.3.4.7 DEFINITIONS:**

"Commission" means the New Mexico commission on higher education.

[12/31/98; Recompiled 10/31/01]

**5.3.4.8 GENERAL PRINCIPLES:**

A. The commission will review the operating budgets. As a matter of information, the budgets will be viewed in light of the factors utilized in the funding formulas. However, it is the commission's policy that when the appropriation has been made to the institution, its governing board can, in general, adopt an operating budget within the limits of available income.

B. Budgets shall be comprehensive, reflecting the total program and activities of the institution. Budgets shall conform to the principles and procedures contained in the commission financial reporting manual. To the extent feasible, developments expected to materialize within the fiscal year should be reflected in the original operating budget.

[9/21/84, 12/31/98; Recompiled 10/31/01]

#### **5.3.4.9 SCOPE OF COMMISSION REVIEW:**

Budgets will be carefully checked for the following:

- A. arithmetic accuracy and cross referencing;
- B. reasonableness of amounts of revenue budgeted;
- C. budgeted expenditures being within budgeted resources;
- D. consistency with the commissions financial reporting manual;.

[12/31/98; Recompiled 10/31/01]

#### **5.3.4.10 ITEMS OF BUDGETARY CONTROL:**

The total expenditures in each of the following budgetary functions will be used as the items of budgetary control. Total expenditures or transfers in each of these items of budgetary control may not exceed the amount shown in the approved budget.

- A. Unrestricted expenditures and restricted expenditures.
- B. Instruction and general.
- C. Each budget function in current funds other than instruction and general (exhibits 15 - 22).
- D. Within the plant funds budget: major projects, library bonds, equipment bonds, minor capital outlay, renewals and replacements, and debt service.
- E. Each individual item of transfer between funds and/or functions.

[9/21/84, 12/31/98; Recompiled 10/31/01]

[Compiler's note: Subsection C of 5.3.4.10 contains a reference to *exhibits 15 - 22*. The exhibits were not submitted with the rule material filed.]

#### **5.3.4.11 MAJOR CAPITAL OUTLAY PROJECTS:**

Major capital outlay projects for which commission on higher education and board of finance approval is required may be budgeted, but funds will not be expended until final approval has been secured from these boards and the contract let.

[9/21/84, 12/31/98; Recompiled 10/31/01]

#### **5.3.4.12 BUDGET ADJUSTMENT REQUESTS:**

A. The executive director will approve budget revisions meeting the tests of paragraphs 12.3.2 and 12.3.3 [now Paragraphs (2) and (3) of Subsection C of 5.3.4.12 NMAC] without action by the commission. He will use his discretion regarding a revision falling under paragraph 12.3.4 [now Paragraph (4) of Subsection C of 5.3.4.12 NMAC]; he may approve it if he finds it to be in the best interests of the institution and the state, or he may hold it and refer it to the next meeting of the commission for decision.

B. After a budget revision has been approved by the executive director of the commission, it will be transmitted for approval by the budget division of the department of finance and administration.

C. The following principles will govern commission on higher education approval of budget revisions:

(1) Budget adjustment requests must be approved by the institution's governing board before it is submitted to the commission for approval.

(2) Institutions may expect automatic approval where a requested increase in restricted expenditures in an item subject to budgetary control is accompanied by an increase in restricted income for that item sufficient to cover the increased expenditure.

(3) Budget revisions involving simply the budgeting of a major capital outlay project following approval by the commission on higher education, the board of finance when appropriate, and the letting of the contract, or involving the budgeting of receipts for capital outlay following action or approval of the commission on higher education and the board of finance, will be automatically approved.

(4) Budget revisions other than those covered by paragraphs 12.3.2 and 12.3.3 [now Paragraphs (2) and (3) of Subsection C of 5.3.4.12 NMAC] will be subjected to a more detailed review by the commissions staff.

[9/21/84, 12/31/98; Recompiled 10/31/01]

#### **5.3.4.13 PROCEDURES:**

The following procedures will be used by the commission in the approval of operating budgets:

A. Budgets will be presented in the format prescribed by the commission on higher education through the commission's staff. Budgets will be in compliance with the financial reporting manual as adopted by the commission on higher education. Any significant changes in the format or manual will be reviewed with the institutional budgetary officers before being put into effect.

B. Each institution will submit a draft of the operating budget to the commission's staff by May 1. The commission's staff will review and check this draft and then consult with the appropriate institutional officials for clarification, correction of errors, and consistency in budgetary format.

C. The institution will then submit four original copies that have been approved by the institution's governing board to the commission's office by a specified date. This will be reproduced by the commission's staff and copies provided to each commissioner upon request.

D. The commission's staff will analyze each budget and, to the extent possible, report the results of its analyses to the commission members in advance of the commission meeting when approval of budgets is to be considered. Particular attention will be given to the proposed use of balances.

[9/21/84; Recompiled 10/31/01]

#### **5.3.4.14 DEADLINES:**

The commission will meet about the middle of June and act on approval of the budgets. The budgets as approved by the commission will be transmitted to the budget division of the department of finance and administration for official approval prior to July 1.

[9/21/84; Recompiled 10/31/01]

### **PART 5: OPERATING BUDGETS - FUNDING RECOMMENDATIONS**

#### **5.3.5.1 ISSUING AGENCY:**

State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, (505) 827-7383.

[12/31/98; Recompiled 10/31/01]

#### **5.3.5.2 SCOPE:**

Provisions of 5 NMAC 3.3 [now 5.3.5 NMAC] apply to all state public post secondary institutions in the state of New Mexico.

[12/31/98; Recompiled 10/31/01]

#### **5.3.5.3        STATUTORY AUTHORITY:**

Section 21-1-26 NMSA 1978.

[12/31/98; Recompiled 10/31/01]

#### **5.3.5.4        DURATION:**

Permanent.

[12/31/98; Recompiled 10/31/01]

#### **5.3.5.5        EFFECTIVE DATE:**

December 31, 1998, unless a different date is cited at the end of a section or paragraph.

[12/31/98; Recompiled 10/31/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

#### **5.3.5.6        OBJECTIVE:**

The objective of 5 NMAC 3.3 [now 5.3.5 NMAC] is to establish a policy for the development of funding recommendations for institutional operating budgets, which includes provisions for the use of funding formulas; procedures for research, public service, and other special projects; and procedures for non-formula institutions.

[12/31/98; Recompiled 10/31/01]

#### **5.3.5.7        DEFINITIONS:**

A. "Base contribution methodology" means that inflationary and compensation adjustments to expenditures are made according to the proportion of state general fund appropriations to total revenues.

B. "Commission" means the New Mexico commission on higher education.

C. "Off-campus credits" are student credit hours earned from courses offered that do not meet the definitions of on-campus credits but are offered for regular academic credit and are applicable to an approved degree or certification program, taught by

regular faculty or equivalent and delivered via extended learning instruction. Off-campus credits are reported in separate extended services data files to generate funding and include additional data fields to indicate the delivery location(s) of the instruction.

D. "On-campus credits" are student credit hours earned from courses that are offered within the geographical boundaries of the campus for academic credit and for which regular main campus tuition is charged.

[12/31/98; Recompiled 10/31/01]

#### **5.3.5.8 GENERAL PRINCIPLES:**

A. In an effort to maintain equitable funding among institutions, present a reasonable and appropriate funding package to the executive and the legislature, and serve their intended purpose as an analytical and unbiased screen for legislative proposals, the following principles are adopted:

(1) The commission will consider only those institutional requests which have been approved by their governing boards.

(2) Any institutional request requiring action by the commission, along with supporting information, must be in the commission's office thirty (30) days prior to the meeting at which the proposal will be considered. After consideration of any unique circumstances (e.g., nature of commission responsibility, prior commission action on similar proposals, and funding sources), the executive director may waive this requirement.

(3) The commission will not support legislative proposals for funding to higher education institutions which were not reviewed and approved by the commission in the development of its funding recommendations.

B. Appropriations for instruction and general (I and G) purposes are determined through comprehensive funding formulas, which are developed and reviewed annually by commission staff with the cooperation of institutional representatives. When necessary, proposed formula revisions will be adopted by the commission.

[9/21/84, 12/31/98; Recompiled 10/31/01]

#### **5.3.5.9 WORKLOAD BASE FOR CALCULATING THE I AND G FORMULA:**

A. For four-year institutions, the instructional portion of the I and G formula will generally be calculated using an average of the three previous academic years unrestricted student credit hours. Each year, the average will roll forward, drop the earliest years data, and add the most recent years actuals.



B. For two-year institutions, the instructional portion of the I and G formula is calculated on the most recent academic years unrestricted student credit hours. Adjustments may be made when dictated by anticipated enrollment growth in relation to size of instructional budget.

C. For both four-year and two-year institutions, the general portion of the I and G formula is calculated on the most recent academic year's workload factors.

[9/21/84, 12/31/98; Recompiled 10/31/01]

#### **5.3.5.10 INSTRUCTION AND GENERAL - FORMULA INSTITUTIONS:**

A. Appropriate expenditure levels will be calculated taking into consideration such factors as compensation levels, the effect of inflation on nonsalary items, and the differential costs attributable to levels of instruction and fields of study at institutions of varying sizes.

B. The commission will, as a part of its regular legislative recommendation process, review the revenue credit assumptions contained in the prior general fund appropriation, and use these assumptions as a basis for making recommendations when taking credit against formula expenditure levels.

C. Revenue from other non-general fund sources will be projected and credit will be taken against expenditure levels on the basis of guidelines developed annually by the commission.

D. Formula transfers for state scholarships, building renewal and replacement, and equipment replacement will be added to formula expenditures. An amount equal to these formula transfers will be required as a transfer to the appropriate budget exhibits.

E. Revenue required by statute from district ad valorem taxes will be projected and will be credited against the formula expenditure level in support of the I and G budget for institutions maintaining local taxing districts.

F. Revenue from federal and other grants for instructional and general programs will be counted as available for support of the I and G budget when these programs have been recognized in expenditure calculations. Grants from such sources for instructional programs not recognized in expenditure calculations will not be counted as available for support of the I and G budget.

G. After taking into account revenue available directly for minor capital outlay, transfers from I and G will be allowed in support of minor capital outlay expenditures.

[9/21/84, 12/31/98; Recompiled 10/31/01]

#### **5.3.5.11 INSTRUCTION AND GENERAL - NON-FORMULA INSTITUTIONS:**

The recommended appropriation for these institutions will be determined by taking the calculated justified expenditures, adding the beginning balance, adding net transfers from I and G, subtracting ending balance, and subtracting income available for support of the I and G budget from sources other than appropriation.

[9/21/84, 12/31/98; Recompiled 10/31/01]

#### **5.3.5.12 RESEARCH, PUBLIC SERVICE, AND OTHER SPECIAL PROJECTS:**

A. Line item appropriations will be recommended where appropriate for research, public service and certain other activities. In general, calculations of these recommendations will be based on justified expenditures to maintain a desirable level of program activity, minus income other than appropriations. Proposed expansion of programs or initiation of new programs will be evaluated on the basis of specific written justification. New programs, if recommended by the commission, will be submitted as separate line item appropriations requests.

B. The commission on higher education must determine when it is appropriate to recommend the expansion of existing research, public service and other special projects and the establishment of new ones. New projects should be established to meet identified statewide needs upon a finding that one of the state's higher education institutions can most effectively meet the need. Proposed expansion must also be intended to meet identified statewide needs effectively and efficiently. All possible sources of funding should be explored before a request for state funding is made.

C. Once established, research, public service and other special projects should be subject to periodic review to determine the ongoing need for the project and the effectiveness of the project in meeting the need. Likewise, the relationship of each project to the institutional and, when appropriate, statewide priority needs should be periodically established.

##### **D. Existing Projects:**

(1) The budget of each project shall be separately identified and reported on forms provided by the commission.

(2) Each project shall be subject to a review by the commission at least once every four years. This review shall include a hearing before the commission. The hearing shall include a presentation by an institutional representative on the activities of the project, and a presentation by the commission staff of the staff findings of the review of the project. On the basis of the hearing, the commission shall decide whether or not to recommend an ongoing state appropriation for the project.

(3) Projects that receive significant revenues from sources other than the state general fund shall be evaluated using the base contribution methodology. The state contribution is considered "seed" money to encourage the continuation of the

project. However, specific projects may be evaluated using an alternative method where more appropriate.

E. New projects or requests to expand existing projects:

(1) All requests for new or expanded projects shall be submitted to the commission by September 15. Each request shall include a description of the project or expansion, a statement of the need for the project or expansion, a description of alternative funding sources which were considered and a proposed budget. Each new project or expansion request should also state whether the project is to be ongoing or for a specified period of time.

(2) All new project and expansion requests from an institution shall be reported in priority order by the institution.

(3) All new projects and expansion requests will be reported to the commission for review. commission staff will prepare a summary report of the requests for consideration by the commission's finance committee. The finance committee will prepare a list of recommended projects in priority order and will report its findings to the full commission.

(4) The commission will recommend individual projects to the legislature and the executive in priority order as a part of the commissions overall funding recommendations for higher education.

[9/21/84, 6/28/85, 12/31/98; Recompiled 10/31/01]

**5.3.5.13 PROCEDURES FOR THE DEVELOPMENT OF THE COMPLETE INSTITUTIONAL FUNDING RECOMMENDATIONS:**

The following procedures and policies will be used by the commission in arriving at recommendations as to the amounts of appropriations to be made to support state-funded activities, including both I and G and other, at each institution.

A. Early in the fall, the commission will schedule a hearing on matters relating to legislative funding requests. The commission will instruct the staff regarding certain criteria and factors, such as salary increases, impact of inflation, etc., to be used in staff calculations.

B. After being approved by the governing boards, legislative funding requests will be submitted to the office of the commission. These requests may include proposed formula revisions as well as research, public service, or other special project requests. The commission's staff will review the requests with appropriate officials of the institutions.

C. The commission's staff will analyze the institutional requests and will prepare preliminary staff calculations for each institution, incorporating the criteria and factors as instructed by the commission, and will distribute these calculations together with supporting information to the commission members and to each of the institutions.

D. The commission will hold hearings at which representatives of each institution will support their requests and present their reactions to the preliminary staff calculations. At the conclusion of the hearings, the commission will instruct the staff as to further calculations and adjustments to be made in preparation for subsequent meetings.

E. The commission will meet to adopt final funding recommendations.

F. The staff will transmit the commission's recommendations to the governor and consult with the governor regarding incorporation of the commission's recommendations in the executive budget.

G. The staff will transmit the commission's recommendations to the appropriate legislative committees to explain the recommended appropriations and assist the committees in their review of the recommendations.

[9/21/84, 12/31/98; Recompiled 10/31/01]

## **PART 6: HIGHER EDUCATION ENDOWMENT FUND**

### **5.3.6.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.3.6.1 NMAC - N, 10/15/2015]

### **5.3.6.2 SCOPE:**

Provisions for 5.3.6 NMAC apply to all public post-secondary institutions in New Mexico.

[5.3.6.2 NMAC - N, 10/15/2015]

### **5.3.6.3 STATUTORY AUTHORITY:**

Sections 21-1-26 and 21-1-27 NMSA 1978.

[5.3.6.3 NMAC - N, 10/15/2015]

### **5.3.6.4 DURATION:**

Permanent.

[5.3.6.4 NMAC - N, 10/15/2015]

**5.3.6.5 EFFECTIVE DATE:**

October 15, 2015, unless a later date is cited at the end of a section.

[5.3.6.5 NMAC - N, 10/15/2015]

**5.3.6.6 OBJECTIVE:**

The objective and purpose of 5.3.6 NMAC is to outline the distribution of monies in the higher education endowment fund. Money in the higher education endowment fund is appropriated by the legislature to the higher education department. The department shall distribute funds to New Mexico public post-secondary educational institutions that submit proposals and receive award determinations from the department to establish endowments at the institutions for purposes outlined in 21-1-27 NMSA 1978 and 5.3.6 NMAC.

[5.3.6.6 NMAC - N, 10/15/2015]

**5.3.6.7 DEFINITIONS:**

**A. "Committee"** means the higher education endowment committee.

**B. "Department"** means the New Mexico higher education department.

**C. "Eligible institution"** means a New Mexico public post-secondary institution.

**D. "Endowment"** means the higher education endowment fund.

**E. "Non-Government Funds"** as used in Subsection E of 5.3.6.8 NMAC herein means no portion of the matching funds from an eligible institution may be derived from any federal, state or local government grant, allocation or appropriation of any type without limitation.

**F. "Proposal"** means a formal request submitted to the higher education endowment committee to establish endowments at an eligible institution for endowment purposes.

[5.3.6.7 NMAC - N, 10/15/2015]

**5.3.6.8 HIGHER EDUCATION ENDOWMENT FUND:**

**A.** The "higher education endowment fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests.

**B.** The higher education endowment fund shall be administered by the department. Money shall be disbursed only on warrant of the secretary of finance and administration upon receipt of voucher signed by the secretary of higher education or the secretary's authorized representative.

**C.** Money in the higher education endowment fund is appropriated to the department for distribution to the public post-secondary educational institutions listed in Subsection D of 5.3.6.8 NMAC that submit proposals and receive award determinations from the department to establish endowments at the institutions for endowment purposes. Endowment purposes shall include:

(1) establishing endowed chairs, lectureships, professorships, research positions, graduate assistantships and faculty development programs that will enhance the quality of public post-secondary education in New Mexico; and

(2) addressing one or more of the governor's initiatives, including research and development initiatives; technology transfer initiatives; science, technology, engineering and mathematics initiatives; health, education, water and agriculture initiatives; and work force development initiatives.

**D.** Appropriations to the higher education endowment fund shall be distributed to public post-secondary educational institutions as awards made by the department or the higher education endowment committee pursuant to competitive proposals submitted by institutions, as follows:

(1) 62% of the total amount to be distributed may be awarded to the university of New Mexico, the university of New Mexico health sciences center, New Mexico state university and the New Mexico institute of mining and technology;

(2) 20% of the total amount to be distributed may be awarded to the New Mexico military institute and any independent community college, branch community college and technical and vocational institute; and

(3) 18% of the total amount to be distributed may be awarded to New Mexico highlands university, eastern New Mexico university, western New Mexico university and northern New Mexico college.

**E.** Following an award determination, a public post-secondary educational institution shall not receive a distribution until that institution provides documentation to the department that it has received or will receive matching funds, pursuant to a written gift agreement, for the endowment from non-governmental sources in an amount equal to at least 50% of the award amount. Distributions from the higher education endowment fund are made over a two-year cycle with unmatched balances reverting to the general fund at the end of the second fiscal year. Allocations not matched during the first year of a cycle are made available during the second year of a cycle for supplemental or second round matching by any institution listed in Subsection D of 5.3.6.8 NMAC.

**F.** The endowment funds of the institutions shall not be expended but shall be invested by the institutions in accordance with the Uniform Prudent Management of Institutional Funds Act and the provisions of Section 21-1-38 NMSA 1978. The income from the investments shall be expended only for endowment purposes.

[5.3.6.8 NMAC - N, 10/15/2015]

#### **5.3.6.9 HIGHER EDUCATION ENDOWMENT COMMITTEE:**

The committee is composed of the secretaries of higher education, economic development and finance and administration or their designees.

**A.** Additional ex-officio members of the committee may be appointed by the department pursuant to policies and procedures set forth by the committee. Ex-officio members will serve only in an advisory capacity and shall not make any vote or otherwise determine the outcome of any proposal submitted to the committee. The advisory members shall be composed of:

(1) two representatives of the council of university presidents, consisting of one person representing the research institutions and one person representing the comprehensive institutions;

(2) a representative of New Mexico independent community colleges;

(3) a representative of the New Mexico association of community colleges;  
and

(4) other representatives as appointed by the department.

**B.** The responsibilities of the committee shall include:

(1) review proposals submitted to the committee for sufficiency, quality and merit;

(2) determine whether the proposals and award determinations meet endowment purposes;

(3) determine whether the endowment funds are being distributed pursuant to the provisions of this section;

(4) recommend ways to support or change the endowment purposes award and distribution processes;

(5) make recommendations to the department for the purpose of distribution of endowment funds; and

(6) give advice or other assistance to the department as requested.

C. The committee shall meet no less than twice per year to review proposals and make award determinations.

[5.3.6.9 NMAC - N, 10/15/2015]

#### **5.3.6.10 PROPOSAL REQUIREMENTS:**

A. To be considered eligible for a distribution from the endowment, a proposal submitted by a public postsecondary institution shall:

(1) demonstrate how the funds will be used to enhance the quality of public post-secondary education in New Mexico;

(2) indicate which of the governor's initiatives the proposal addresses; and

(3) identify the source and eligibility of matching funds.

B. All proposals shall include a report identifying:

(1) The status of all legislative endowment funds held by the institution, including the value of the corpus and any income from investment of said corpus; and

(2) All activities currently supported by the investment income from the endowment.

[5.3.6.10 NMAC - N, 10/15/2015]

#### **5.3.6.11 SELECTION OF PROPOSALS:**

A. The committee shall develop a timeline of application periods setting forth deadlines for proposal submission and a schedule of review.

B. The committee shall develop a scoring matrix that scores all proposals received pursuant to the requirements of 5.3.6.10 NMAC.

C. No award determination shall be made until all proposals submitted within an application period have been reviewed and scored by the committee.

[5.3.6.11 NMAC - N, 10/15/2015]

#### **5.3.6.12 REPORTS:**

The department shall report annually to the legislative finance committee on award determinations made pursuant to this section. The report shall include the amounts



awarded to each institution, the amount of matching funds and their sources and the purposes of the endowments and awards.

[5.3.6.12 NMAC - N, 10/15/2015]

## **PART 7: BUILDING AND IMPROVEMENT BONDS**

### **5.3.7.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[12/31/98; 5.3.7.1 NMAC - Rn & A, 5 NMAC 3.7.1, 07/31/05]

### **5.3.7.2 SCOPE:**

All public post-secondary educational institutions operating within and receiving financial support from the state of New Mexico.

[12/31/98; 5.3.7.2 NMAC - Rn, 5 NMAC 3.7.2, 07/31/05]

### **5.3.7.3 STATUTORY AUTHORITY:**

Authority for 5.3.7 NMAC is found in NMSA 1978 Sections 6-13-1 through 6-13-26; Sections 6-17-1 through 6-17-14; and Sections 21-7-13 through 21-7-25.

[12/31/98; 5.3.7.3 NMAC - Rn, 5 NMAC 3.7.3, 07/31/05]

### **5.3.7.4 DURATION:**

Permanent.

[12/31/98; 5.3.7.4 NMAC - Rn, 5 NMAC 3.7.4, 07/31/05]

### **5.3.7.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[12/31/98; 5.3.7.5 NMAC - Rn & A, 5 NMAC 3.7.5, 07/31/05]

### **5.3.7.6 OBJECTIVE:**

The objective and purpose of 5.3.7 NMAC is to establish a process upon which public higher education institutions may initiate their statutory authority to borrow money for certain improvements.

[12/31/98; 5.3.7.6 NMAC - Rn, 5 NMAC 3.7.6, 07/31/05]

#### **5.3.7.7 DEFINITIONS:**

**[RESERVED]**

#### **5.3.7.8 REVIEW CRITERIA:**

A. The state educational institutions clearly have statutory authority to borrow money.

(1) Sections 6-13-1 through 6-13-26 NMSA 1978 authorizes each of the governing boards to issue and sell bonds for the purpose of erecting, purchasing or otherwise acquiring, altering, improving furnishing and equipping any necessary buildings or structures or acquiring any necessary land. Permanent fund income and income from the lease of the institutions lands may be pledged as security for the repayment of the bonds. Board of finance approval is required prior to the issuance and sale of bonds. Board of finance policy requires higher education department approval prior to their consideration of any matter related to higher education.

(2) Section 6-17-1 through 6-17-13 NMSA 1978 authorizes the boards of regents of each of the state educational institutions to borrow money for the purpose of purchasing, erecting, altering, improving, repairing furnishing and/or the equipping of any income-producing dormitory, auditorium, dining hall, refectory, stadium, swimming pool, or any type of building including classroom buildings and administration buildings. For income-producing projects, the board of regents shall impose charges and student fees in the amount needed to retire the debt plus enough to operate and maintain the facility. Approval by the board of finance is required.

(3) Section 6-17-14 allows the pledge of additional revenues including the net income from all auxiliary facilities, land and permanent fund income, and lease and rental income.

(4) Various articles in Section 21 grant each individual board of regents authority to borrow money through the issuance and sale of bonds. For example, Section 21-7-13 NMSA 1978 states: That for the purpose of erecting, altering, improving, furnishing or equipping any necessary buildings at the university of New Mexico at Albuquerque, or for acquiring any necessary land for the use of said university, or for retiring the whole or any part of any series of bonds previously issued under the provisions hereof, or for any of such purposes, the board of regents of the university of New Mexico is hereby authorized to borrow money in conformity with the terms of this act (Sections 21-7-13 to 21-7-25 NMSA 1978).

(5) Section 21-7-19 describes the income pledged for redemption of building and improvement bonds as follows: "For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent fund of the university of New Mexico in

the hands of the treasurer of this state, as shall be necessary to provide the interest and retirement fund herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of its lands as remain unsold, as may be necessary to fully protect the interest and retirement fund for the ensuing year, and keep the same at all times in proper amount as herein provided."

(6) Similar provisions are included in Section 21 for each of the state educational institutions.

B. A proposal to issue revenue bonds must contain the following information:

- (1) current bonded debt including debt service requirements and revenue sources being used to meet the principal and interest payments;
- (2) amount of new bonds to be issued;
- (3) projected bond retirement schedule;
- (4) sources of revenue to be used for debt retirement;
- (5) projects to be funded with bond issue proceeds.

C. Typical sources of revenue available for debt service include required student fees, net revenues from auxiliaries including athletics, lease and rental income, and land and permanent fund income. It is expected that bonds sold to finance income-producing facilities (auxiliary activities) will be retired without the use of land and permanent fund income. Since the use of land and permanent fund income for debt service reduces the amount of revenue available from that source for operating purposes, it increases the level of need from the general fund. Because of this legislative impact, the higher education department shall report all revenue bond issue approvals to the legislative finance committee, particularly noting any proposed use of land and permanent fund income.

[12/31/98; 5.3.7.8 NMAC - Rn & A, 5 NMAC 3.7.8, 07/31/05]

## **PART 8: EDUCATIONAL TELEVISION EQUIPMENT REPLACEMENT FUND**

### **5.3.8.1 ISSUING AGENCY:**

State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, (505) 827-7383.

[7-1-98; Recompiled 10/31/01]

**5.3.8.2 SCOPE:**

The three publicly funded educational television stations operating within and receiving financial support from the state of New Mexico; KENW (Portales), KNME (Albuquerque), and KRWG (Las Cruces).

[7-1-98; Recompiled 10/31/01]

**5.3.8.3 STATUTORY AUTHORITY:**

Authority for 5 NMAC 3.8 [now 5.3.8 NMAC] is found in NMSA 1978 Section 21-1-34.

[7-1-98; Recompiled 10/31/01]

**5.3.8.4 DURATION:**

Permanent.

[7-1-98; Recompiled 10/31/01]

**5.3.8.5 EFFECTIVE DATE:**

July 1, 1998 [unless a later date is cited at the end of a section].

[7-1-98; Recompiled 10/31/01]

**5.3.8.6 OBJECTIVE:**

A. The objective of 5 NMAC 3.8 [now 5.3.8 NMAC] is to provide a mechanism for equitable disbursement of yearly appropriations to the educational television equipment replacement fund.

B. The purpose of 5 NMAC 3.8 [now 5.3.8 NMAC] is to equitably distribute available funds among the three educational television stations operating within and receiving financial support from the state of New Mexico; KENW (Portales), KNME (Albuquerque), and KRWG (Las Cruces).

[7-1-98; Recompiled 10/31/01]

**5.3.8.7 DEFINITIONS:**

A. "Eligible equipment" means the broadcast equipment of the three educational television stations operating within and receiving financial support from the state of New Mexico; KENW (Portales), KNME (Albuquerque), and KRWG (Las Cruces), with a replacement cost of over \$10,000.

B. "Useful life" means the amortization schedule of the internal revenue service (IRS) used by public New Mexico colleges and universities for equipment replacement purposes.

[7-1-98; Recompiled 10/31/01]

#### **5.3.8.8 DISBURSEMENT CRITERIA:**

A. Process to inform: The educational television stations will submit equipment inventories to the commission on higher education on September 15th of each year. These inventories will contain detailed listings of eligible equipment showing the useful life of the equipment.

B. Recommendations: Based on these inventories, and the equipment scheduled to be replaced, the commission on higher education will annually make a recommendation to the legislature regarding appropriations to the educational television replacement fund.

C. Disbursement: Upon receipt of the appropriation, the commission on higher education will make an equitable disbursement of the funds, corresponding to the previously submitted inventories from the three educational television stations operating in the state of New Mexico; KENW (Portales), KNME (Albuquerque), and KRWG (Las Cruces).

[7-1-98; Recompiled 10/31/01]

### **PART 9: CAPITAL BUDGETS - PLANNING AND FUNDING RECOMMENDATIONS**

#### **5.3.9.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[12/31/98; 5.3.9.1 NMAC - Rn & A, 5 NMAC 3.9.1, 07/31/05]

#### **5.3.9.2 SCOPE:**

All public post-secondary educational institutions operating within and receiving financial support from the state of New Mexico.

[12/31/98; 5.3.9.2 NMAC - Rn, 5 NMAC 3.9.2, 07/31/05]

#### **5.3.9.3 STATUTORY AUTHORITY:**

Authority for 5.3.9 NMAC is found in NMSA 1978 Sections 12-1-21.

[12/31/98; 5.3.9.3 NMAC - Rn, 5 NMAC 3.9.3, 07/31/05]

**5.3.9.4 DURATION:**

Permanent.

[12/31/98; 5.3.9.4 NMAC - Rn, 5 NMAC 3.9.4, 07/31/05]

**5.3.9.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[12/31/98; 5.3.9.5 NMAC - Rn & A, 5 NMAC 3.9.5, 07/31/05]

**5.3.9.6 OBJECTIVE:**

A. The objective of 5.3.9 NMAC is to establish a process by which the higher education department will review capital outlay funding recommendation packages developed by institutions and present those to the higher education department and submit those approved to the legislature annually.

B. The purpose of 5.3.9 NMAC is to provide public higher education institutions with an equitable process by which the department can review packages from institutions that contain capital projects, listed in priority order, that are considered to represent the greatest needs of the state and of the institutions. The higher education department, will review requests for capital outlay funding submitted by postsecondary institutions and special constitutional schools, recommend the projects in priority order, and present funding recommendations for approval by the department.

[12/31/98; 5.3.9.6 NMAC - Rn & A, 5 NMAC 3.9.6, 07/31/05]

**5.3.9.7 DEFINITIONS:**

**[RESERVED]**

**5.3.9.8 REVIEW CRITERIA:**

A. Reviewing and recommending: In reviewing and recommending capital project requests, the higher education department will be guided by the general criteria listed below. Specific determinants for evaluating the projects may vary from year to year as the immediate capital needs of the institutions evolve and as requirements for code compliance are revised. These influences will be explained each year in the capital project recommendations document prepared for the New Mexico legislature. In general, the higher education department will give preference to the following types of projects:

- (1) projects which are strongly related to instructional programs and which support an institutions mission and particular role;
- (2) projects to provide high quality educational settings which represent up-to-date technologies;
- (3) projects which are necessary to accommodate enrollment growth;
- (4) projects to address major health and safety problems and elimination of physical barriers to handicapped persons;
- (5) projects resulting from unforeseen conditions that if uncorrected would result in major property deterioration;
- (6) projects to renovate facilities or to make wise use of other existing resources whenever feasible and economical;
- (7) projects to improve utilities systems or building energy efficiency that will result in rapid capitalization of initial costs and long-term reduction of energy costs;
- (8) projects for which there is no other available or more appropriate funding source, such as building renewal and replacement funds, local bonds, revenue bonds, auxiliary revenues, or research revenues.

B. Projects eligible for capital outlay recommendation: Capital outlay projects which are primarily used to support the following activities are eligible for consideration by the higher education department for state funding:

- (1) Instruction: Instructional space includes classrooms, laboratories, other teaching facilities, and office space for faculty deans, and instructional department heads and related clerical staff.
- (2) Library: All activities necessary to operate libraries are eligible.
- (3) Administration services: All activities related to student services or institutional administration are included in this category (e.g., admissions, administrative vice presidents, comptroller, computer center, dean of students, maintenance work shops, placement services, university architect, vocational director).
- (4) Research: Only four-year institutions may submit requests for state funds for capital outlay projects to house research activities which will enhance fulfillment of the institution's mission. All sponsored research and organized research units, including administration and management of research activities, may qualify for support.
- (5) Public service: Institutions may submit requests for state funds for capital outlay projects to house public service activities. Eligibility under this category is limited

to sponsored public service activities and organized public service units, such as public broadcasting services, small business development centers, and cooperative extension services. See Subsection C of 5.3.9.8 NMAC below for activities not eligible for state funding.

(6) Physical plant: Circulation and support space, such as halls, restrooms, and mechanical equipment rooms, for buildings housing eligible activities will be included in all capital outlay projects. In addition, the following types of projects are eligible for consideration: stand-alone utility structures such as heating and cooling plants, electric substations, and utility tunnels; physical plant shops offices and storage areas; and site improvements for infrastructure systems such as roads, parking lots, drainage or storm sewers, water or wastewater, telecommunications cables, or heating/cooling loops.

(7) Multi-use facilities: Capital projects with buildings that house more than one activity, one or more of which are eligible for state funding, may be submitted. However, only space devoted to eligible activities may be considered for state funding. A plan for funding the ineligible space from non-state sources must be included with the proposed project. For individual projects with common space used for both eligible and ineligible activities, state funding will be prorated based upon the percentage of time and amount of space allocated to eligible activities; the balance must be supported from other sources. (See the proration formula in Subsection D of 5.3.9.8 NMAC.)

(8) Land acquisitions: Land to be used for eligible activities will be considered for state funding.

C. Projects ineligible for capital outlay recommendation: Capital outlay projects which are primarily used for the following activities are not eligible for higher education department recommendation:

(1) Non-instructional athletics, such as intercollegiate sports. Examples of ineligible facilities are Pan American center at NMSU and the UNM arena.

(2) Recreational or entertainment events, for either students or the general public. Single purpose auditoriums such as Popejoy hall at UNM are ineligible.

(3) All auxiliaries, such as bookstores, golf courses, student unions, student housing, etc. These operations are not eligible for state funding and are expected to be fully self-supporting and self-liquidating from the revenues generated by their operations.

D. Proration of funding: When a multi-use building will be used for both eligible and ineligible activities, the funding request must be prorated between state and other sources according to the amount of time and space devoted to eligible vs. ineligible activities. For example: A new fine arts building is being proposed with a total of 70,000 gross square feet (GSF) at a cost of \$80/GSF, for a total of \$5,600,000. Net assignable



square feet (NASF) within the building will be 56,000. Of this amount, 35,000 NASF will be used by activities eligible for state funding; 15,000 NASF will be multi-use 60 percent of the time for eligible activities (instruction) and 40 percent of the time for ineligible activities (community concerts); and 6,000 NASF is ineligible. To determine the portion of the total capital project that is eligible for consideration for state funding, the following formula is used:

$$(1) \quad \frac{(ES + (MU \times EU))}{\text{NASF}} \times \text{GSF} \times \text{cost per GSF} = \text{State funding for eligible space}$$

$$(2) \quad \frac{(35,000 + (15,000 \times .60))}{45,000} \times 70,000 \times \$80 = \$4,400,000$$

(3) ES = Eligible net assignable square feet

(4) MU = Multi-use net assignable square feet

(5) EU = Eligible use (percent of available time used for eligible activities)

(6) NASF = Net assignable square feet

(7) GSF = Gross square feet

E. Exceptions for two-year colleges: Space for certain functions that are ineligible for state funding at four-year institutions, such as bookstore operations, food services, community services, and student social, cultural, recreational activities, may be included as a portion of capital projects submitted by two-year colleges. The rationale for this exception is that two-year colleges usually do not have large-scale auxiliary enterprises which can provide an adequate revenue stream for financing auxiliary facilities. These exceptions apply only if a two-year college has provided the required local match of 25 percent as described in the following Subsection F of 5.3.9.8 NMAC.

F. Required local match: For two-year institutions, the higher education department requires local matching participation in the amount of 25 percent of the total cost for each project or group of projects. However, the higher education department may waive or reduce the 25 percent matching requirement if the institution is not authorized to issue local general obligation bonds, is at maximum bonding capacity, or has already contributed from local sources at least 25 percent of all construction costs, including the cost of the proposed project.

[12/31/98; 5.3.9.8 NMAC - Rn & A, 5 NMAC 3.9.8, 07/31/05]

#### **5.3.9.9 INSTITUTIONAL FACILITY PLANNING:**

Each four-year university and two-year college must have on file at the higher education department a current five-year institutional plan containing the information on capital resources which is required by the institutional planning guidelines. The required information for branches of four-year institutions may be included in the main campus institutional plan, but must be provided in full for each branch campus.

[12/31/98; 5.3.9.9 NMAC - Rn & A, 5 NMAC 3.9.9, 07/31/05]

## **PART 10: CAPITAL PROJECTS APPROVAL BY THE NEW MEXICO HIGHER EDUCATION DEPARTMENT**

### **5.3.10.1 ISSUING AGENCY:**

State of New Mexico higher education department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505-2100, (505)476-8400.

[5.3.10.1 NMAC - Rp, 5.3.10.1 NMAC, 10/31/2017]

### **5.3.10.2 SCOPE:**

All public post-secondary educational institutions operating within and receiving financial support from the state of New Mexico.

[5.3.10.2 NMAC - Rp, 5.3.10.2 NMAC, 10/31/2017]

### **5.3.10.3 STATUTORY AUTHORITY:**

Section 21-1-21 NMSA 1978, Sections 21-2A-1 et seq. NMSA 1978, Section 9-25-13 NMSA 1978, and Section 9-25-8 NMSA 1978.

[5.3.10.3 NMAC - Rp, 5.3.10.3 NMAC, 10/31/2017]

### **5.3.10.4 DURATION:**

Permanent.

[5.3.10.4 NMAC - Rp, 5.3.10.4 NMAC, 10/31/2017]

### **5.3.10.5 EFFECTIVE DATE:**

October 31, 2017 [unless a later date is cited at the end of a section].

[5.3.10.5 NMAC - Rp, 5.3.10.5 NMAC, 10/31/2017]

### **5.3.10.6 OBJECTIVE:**

**A.** The objective of 5.3.10 NMAC is to assume responsibility for approving all building construction, major remodeling projects, and purchases of real property at public post-secondary educational institutions.

**B.** The purpose of 5.3.10 NMAC is to provide approval of proposed capital outlay projects for which funding is available and to be handled by the department.

[5.3.10.6 NMAC - Rp, 5.3.10.6 NMAC, 10/31/2017]

#### **5.3.10.7 DEFINITIONS:**

**A. "Capital outlay committee"** means the standing committee of the New Mexico department of higher education that reviews all capital projects.

**B. "Department"** means the New Mexico department of higher education.

**C. "FTE enrollments"** means the total number of student credit hours divided by 30 at the undergraduate level and divided by 24 at the graduate level, on an annual basis.

**D. "Institutional plan"** means the plan that each university, branch campus, college and special school must have on file at the department. It is a current five-year institutional plan containing the information on capital resources which is required by the institutional planning guidelines. The required information for branches of four-year institutions may be included in the main campus institutional plan, but must be provided in full for each branch campus.

**E. "Legal description"** means the legal description of the subject property as described by the meets and bounds survey as completed and verified by a certified New Mexico land surveyor.

**F. "Real property"** means land and all interests in it such as buildings and fixtures.

[5.3.10.7 NMAC - Rp, 5.3.10.7 NMAC, 10/31/2017]

#### **5.3.10.8 PRINCIPLES AND PROCEDURES:**

Following are the principles and procedures for approval of proposed capital outlay projects:

**A.** All projects submitted for department approval must have the prior approval of the institution's governing board.

**B.** Proposed projects should be consistent with the institutions long-range capital planning as presented in the institutional plan.

**C.** All projects that fall under the following categories must be submitted to the department for approval:

- (1)** any purchase of real property;
- (2)** any project which results in the addition of square footage, whether from construction or long-term lease of a new facility or a building addition, or purchase of portable buildings;
- (3)** any proposal to issue bonds;
- (4)** the approval authority for any alterations or site improvements is as follows, based on total project cost:
  - (a)** For institutions with FTE enrollments of 1,500 or less:
    - (i)** over fifty thousand (\$50,000) - staff approval;
    - (ii)** over three hundred thousand (\$300,000) - capital outlay committee approval;
  - (b)** For institutions with FTE enrollments over 1,500:
    - (i)** over three hundred thousand (\$300,000) - staff approval;
    - (ii)** over five hundred thousand (\$500,000) - capital outlay committee approval;
    - (iii)** Exception: The New Mexico institute of mining and technology will be included with the over 1,500 FTE institutions when a particular project is entirely funded by restricted funds.
  - (c)** In determining the total project cost, in-house labor costs and burden, along with all materials, subcontract costs, and reasonable charge for owned equipment, must be included.
  - (d)** Projects may not be artificially segmented or phased in a manner designed to avoid review by the Department.
- (5)** Any demolition of an existing building must be submitted for approval by the department staff.

[5.3.10.8 NMAC - Rp, 5.3.10.8 NMAC, 10/31/2017]

**5.3.10.9 INFORMATION TO BE SUBMITTED:**

For construction, renovation, or site improvement projects, institutions must complete the department capital request forms and ensure that information is provided on:

- A.** need for the proposed facility or improvement and a discussion of how the project relates to the overall institutional plan;
- B.** if the project was included in the department recommendations for legislative funding, and if applicable, information outlining any departures from descriptions used in obtaining the initial recommendation;
- C.** a statement that the institutions board of regents or governing board has approved the project;
- D.** a summary of the types and sizes of facilities to be included in the project;
- E.** a copy of the project program;
- F.** completed preliminary floor plan drawings of the project, including elevations, with each space identified as to function;
- G.** a plot plan indicating the site of the project;
- H.** the anticipated use of any facilities to be vacated when the project is completed;
- I.** the projects estimated budget and source of funding.

[5.3.10.9 NMAC - Rp, 5.3.10.9 NMAC, 10/31/2017]

#### **5.3.10.10 FOR PURCHASES OF REAL PROPERTY:**

For purchase of real property, institutions must submit to the department:

- A.** a legal description of the property;
- B.** a copy of the appraisal and a report from the property tax division of the taxation and revenue department containing their appraised value;
- C.** a site improvement survey to verify the legal description and to uncover the existence of recorded and unrecorded easements and encroachments;
- D.** a title insurance policy;
- E.** a description of the use to which the property will be put;
- F.** a phase one environmental report stating that an environmental review or assessment has been done and that the property is free of environmental hazards and

contamination; a written statement that a phase two environmental survey is recommended or is not required;

**G.** the sources of funds for the purchase;

**H.** to obtain the approval of the state board of finance, institutions will be required to submit additional documents, as listed in the boards rules and regulations;

**I.** a copy of warranty deed

[5.3.10.10 NMAC - Rp, 5.3.10.10 NMAC, 10/31/2017]

#### **5.3.10.11 APPROVAL PROCESS:**

The department's approval process will proceed as follows:

**A.** The department's staff will review the proposed project and will present the project to the capital outlay committee in advance of the meeting at which the project is to be acted upon.

**B.** Representatives of the institution will appear to present the proposed project to the capital outlay committee.

**C.** The capital outlay committee will approve or disapprove the project and will present this recommendation to the department. The capital outlay committee may forward a project to the department with no recommendation.

**D.** The department will act to approve or disapprove the project.

[5.3.10.11 NMAC - Rp, 5.3.10.11 NMAC, 10/31/2017]

#### **5.3.10.12 REVISED PROJECTS:**

**A.** When the development of a project has reached the stage just short of advertising for bids, if substantial changes have occurred in the size of the project, types of spaces, or estimated costs, the institution should resubmit the appropriate forms and plans to the department's staff. The staff will then determine whether the project should proceed or be reconsidered by both the capital outlay committee and the department. Substantial changes are defined as:

**(1)** a change in the size of the project of 10 percent or over 1,000 net assignable square feet, whichever is larger;

**(2)** a 10 percent change in the type or purpose of planned space; or

**(3)** a change in the total project cost of 10 percent or one hundred thousand (\$100,000), whichever is larger.

**B.** After bids have been received, if it is necessary to make substantial changes as defined in, Paragraph (1), (2), and (3) of Subsection A of 5.3.10.12 NMAC in either the plans or the budget, other than those changes made by alternates, the appropriate forms and plans should be resubmitted reflecting the proposed changes. The staff will then determine whether the project should proceed or be reconsidered by the capital outlay committee or the department.

[5.3.10.12 NMAC - Rp, 5.3.10.12 NMAC, 10/31/2017]

### **5.3.10.13 NOTICE OF DISPOSITION OF REAL PROPERTY:**

Notice of the sale or trade of real property must be submitted to department staff when the property exceeds a current appraisal value of one hundred thousand (\$100,000). The following information should be submitted:

**A.** a description of the land parcel being sold or traded, including a location map and a statement of the appraised value;

**B.** the reason for the disposition;

**C.** the amount of anticipated revenue from the sale and the expected use of this revenue;

**D.** to obtain the approval of the state board of finance, institutions will be required to submit additional documents, as listed in the boards rules and regulations.

[5.3.10.13 NMAC - Rp, 5.3.10.13 NMAC, 10/31/2017]

### **5.3.10.14 EMERGENCY SITUATIONS:**

The capital outlay committee or the department may modify or suspend any of these procedures to expedite projects which are necessary to address emergency situations.

**A.** Deadline dates: 30 days prior to the capital outlay committee meeting at which approval is requested.

**B.** Reporting Forms: Form 1 through 6 - Department of higher education capital project request forms.

[5.3.10.14 NMAC - Rp, 5.3.10.14 NMAC, 10/31/2017]

## **PART 11: FISCAL OVERSIGHT**

**5.3.11.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.3.11.1 NMAC - N, 12/11/2018]

**5.3.11.2 SCOPE:**

Provisions of 5.3.11 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico.

[5.3.11.2 NMAC - N, 12/11/2018]

**5.3.11.3 STATUTORY AUTHORITY:**

Section 9-25-8 NMSA 1978, Section 21-1-26 NMSA 1978, Section 21-1-26.3 NMSA 1978, Section 21-1-26.12 NMSA 1978, and Section 21-1-33 NMSA 1978.

[5.3.11.3 NMAC - N, 12/11/2018]

**5.3.11.4 DURATION:**

Permanent.

[5.3.11.4 NMAC - N, 12/11/2018]

**5.3.11.5 EFFECTIVE DATE:**

December 11, 2018, unless a later date is cited at the end of a section.

[5.3.11.5 NMAC - N, 12/11/2018]

**5.3.11.6 OBJECTIVE:**

The objective of 5.3.11 NMAC is to:

**A.** establish regulations and procedures for the fiscal oversight of institutions designated in Article 12, Section 11 of the Constitution of New Mexico and any other public higher education institutions operating within and receiving financial support from the state of New Mexico;

**B.** develop a system that measures, monitors, and verifies the fiscal health of institutions and ensures governing boards continually monitor the overall fiscal health of their institutions;

**C.** provide fiscal oversight of institutions through accountability reporting; and



D. establish procedures to redress problems of finance or poor fiscal health of institutions through use of the enhanced fiscal oversight program (EFOP).

[5.3.11.6 NMAC - N, 12/11/2018]

#### **5.3.11.7 DEFINITIONS:**

A. **"Accrediting agency"** means an accrediting agency recognized by the United States department of education that has issued an accreditation status to the institution.

B. **"Attorney general"** means the New Mexico office of the attorney general.

C. **"Board"** or **"Governing Board"** means the board of an institution, charged by law with determining financial policy and providing the management and control to implement the financial policies at the institution. In the case of branch community colleges, means both the board of regents and the advisory board of the institution.

D. **"Department"** means the New Mexico higher education department.

E. **"EFOP"** means the enhanced fiscal oversight program.

F. **"Higher education institution"** or **"Institution"** means a public post-secondary higher education institution operating within and receiving financial support from the state of New Mexico.

G. **"IPA"** means an independent public accountant.

H. **"OSA"** means the New Mexico office of the state auditor.

I. **"Risk factor"** or **"risk factors"** means the factors outlined in Paragraphs 1 through 24 of Subsection A of 5.3.11.9 NMAC, to be utilized by the department to detect potential problems of finance and to evaluate fiscal health of institutions, pursuant to 5.3.11.9 NMAC.

J. **"Substantial mitigation"** or **"substantially mitigate"** or **"substantially mitigated"** means significant remedial action to address any risk factor(s) and demonstrable evidence that the risk factor(s) will be eliminated within 90 days.

[5.3.11.7 NMAC - N, 12/11/2018]

#### **5.3.11.8 STANDARD REPORTING REQUIREMENTS:**

A. Institutions shall file financial reports in accordance with deadlines set by the department, pursuant to a schedule published by the department. The department shall make the published reporting schedule available on its website.

**B.** Institutions shall submit all requested documentation to the department in the manner requested by the department, utilizing any applicable forms.

**C.** The department may request any additional supporting documentation to verify an institution's required submission.

**D.** Institutions designated by the department to participate in the EFOP shall continue to comply with standard reporting requirements as well as EFOP reporting requirements.

[5.3.11.8 NMAC - N, 12/11/2018]

#### **5.3.11.9 EVALUATION OF FISCAL HEALTH:**

The department shall evaluate the reports submitted pursuant to 5.3.11.8 NMAC, in order to ensure accountability, detect potential problems of finance, and to evaluate fiscal health of institutions. In its evaluation, the department will assess potential risk factors exhibited by institutions that have predictive value to identify problems of finance related to fiscal solvency or fiscal control concerns of the institution. The department shall make careful consideration of the severity, frequency, and the potential impact to the institution's financial stability when evaluating the risk factors. The department shall also consider whether the institution has already remedied the risk factor(s) or the likelihood that the institution can quickly redress the risk factor(s) to mitigate financial impact to the institution.

**A.** The department may determine that potential problems of finance exist within an institution, if the institution exhibits one or more of the following risk factors:

(1) financial ratios analysis which may highlight liquidity or solvency issues (examples include, but are not limited to unrestricted instruction and general fund balance as a percentage of total expenditures or financial responsibility composite scores);

(2) weak unrestricted cash position;

(3) negative year-end fund balance;

(4) inability to pay vendor invoices promptly;

(5) delays in making pension retirement contributions;

(6) failure to make scheduled payroll payments;

(7) non-payment of debt principal or interest payment;

(8) requests for advanced state funding or emergency loans;

- (9)** failure to complete an annual financial audit;
  - (10)** late submission of annual financial audit as determined by OSA;
  - (11)** annual financial audit with a disclaimer, adverse, or modified audit opinion, as determined by an IPA;
  - (12)** repeat audit findings classified as material weaknesses or significant deficiencies, as determined by an IPA;
  - (13)** a finding of fraud, waste, or abuse by OSA in a special audit or investigation;
  - (14)** an allegation of fraud or other crimes that relate to financial control of the institution, made by a law enforcement agency;
  - (15)** designation by accrediting agency of "show cause" or "probation" status;
  - (16)** determinations by the accrediting agency or IPA that indicate concerns with board fiscal governance and control;
  - (17)** lack of financial systems or resources to support strong internal control (examples include, but are not limited to inadequate staffing resources or lack of accounting infrastructure);
  - (18)** significant negative variance between budget and actual spending, as determined by an IPA;
  - (19)** material control weaknesses, material legal non-compliance or discussion and analysis comments by institutional management in the annual financial audit, which could indicate a significant effect to the financial condition of the institution in the current and future years, as determined by an IPA;
  - (20)** failure to obtain proper capital projects approval required by law or regulation from the department or the state board of finance, as determined by the department;
  - (21)** failure to comply with any law or regulation related to capital projects, as determined by the department;
  - (22)** failure to comply with any law, regulation, or restriction related to bonds or tax levies, as determined by the department;
  - (23)** failure to comply with the department's standard reporting requirements;
- or

**(24)** any other occurrence that indicates a lack of financial stability or lack of strong internal control.

**B.** If in its evaluation of the institution's fiscal health, the department determines that an institution exhibits one or more of the risk factors specified in Paragraphs (1) through (24) of Subsection A of 5.3.11.9 NMAC, the department may assign the institution to participate in the enhanced fiscal oversight program.

[5.3.11.9 NMAC - N, 12/11/2018]

#### **5.3.11.10 ENHANCED FISCAL OVERSIGHT PROGRAM OVERVIEW:**

The EFOP is administered by the department for institutions found to exhibit risk factors indicating potential problems of finance. An institution assigned by the department to participate in the EFOP will be considered by the department to be on EFOP status until the institution satisfactorily completes all conditions of EFOP, as determined by the department. The program will establish reporting requirements for the institution, increased monitoring and verification by the department, and establish a systematic approach to substantially mitigate or eliminate institutional risk factors.

[5.3.11.10 NMAC - N, 12/11/2018]

#### **5.3.11.11 NOTICE OF CONTEMPLATED EFOP STATUS:**

If in its evaluation of fiscal health the department determines that potential problems of finance exist within the institution, the department shall issue notice of contemplated EFOP status to the institution. The notice shall indicate the risk factor(s) identified by the department that provide the basis of the contemplated EFOP status. Notice of contemplated EFOP status shall be sent via certified mail to the president of the institution, the chair of the governing board, and the chief financial officer of the institution.

[5.3.11.11 NMAC - N, 12/11/2018]

#### **5.3.11.12 INITIAL MEETING:**

The institution shall schedule an initial meeting with the department within 30 days of issuance of notice of contemplated EFOP status. Representatives from the institution in attendance at the initial meeting shall include the president of the institution, the chair of the governing board, and the chief financial officer of the institution. Representatives from the department in attendance at the initial meeting shall include the department cabinet secretary and designated department staff. During the initial meeting, the department shall make available the reports or documents utilized in identifying the risk factor(s) that served as the basis of the contemplated EFOP status. The institution may provide additional documentation or information during the initial meeting, to be considered by the department. Any documentation or information provided by the

institution shall be considered when determining whether the institution shall be placed on EFOP status. The department shall consider information provided by the institution that demonstrates the risk factor or risk factors have already been remedied or the likelihood that the institution can quickly redress the risk factor(s) to mitigate financial impact to the institution.

[5.3.11.12 NMAC - N, 12/11/2018]

#### **5.3.11.13 NOTICE OF EFOP STATUS:**

Within 15 days of the initial meeting, the department shall issue notice regarding its decision of whether the institution will be placed on EFOP status to the president of the institution, the chair of the governing board, and the chief financial officer of the institution via certified mail.

**A.** If the department determines that the institution demonstrated the substantial mitigation or elimination of the risk factor(s) that led to the notice of contemplated EFOP status at the initial meeting, the department shall send notice to the institution stating as such and withdraw the notice of contemplated EFOP status.

**B.** If the department determines that the risk factor(s) which led to the notice of contemplated EFOP status have not been substantially mitigated or eliminated and potential problems of finance continue to exist within the institution, the department shall issue notice of EFOP status to the institution. If notice of EFOP status is issued, the department shall also issue notice of the EFOP status to:

- (1) the legislative finance committee;
- (2) any accrediting agency of the institution;
- (3) the department of finance and administration; and
- (4) other entities, as determined by the department, that may be concerned with any identified risk factor(s).

[5.3.11.13 NMAC - N, 12/11/2018]

#### **5.3.11.14 CORRECTIVE ACTION PLAN:**

**A.** The institution shall submit to the department a corrective action plan to redress the risk factor(s) identified in the notice of EFOP status, within 30 days of the department's issuance of notice of EFOP status.

**B.** The institution may consult with the department in developing its corrective action plan. The institution is strongly encouraged to engage in discussions with the

department during the development of a corrective action plan designed to substantially mitigate or eliminate the risk factor(s).

**C.** After receipt of the corrective action plan, the department may either accept the plan as proposed, request additional information to accompany the plan, or reject the plan as proposed. If the department rejects the plan as proposed, the department shall issue its reasoning in writing to the institution. If the initial plan is rejected, the institution shall submit a new or revised plan within 15 days of issuance of the rejection. The corrective action plan proposed by the institution shall focus on actions which will rapidly address and substantially mitigate or eliminate the risk factor(s) and must:

- (1) identify responsible representatives of the institution that will regularly communicate with the department while the institution is on EFOP status;
- (2) establish a clear timeline and deadlines to complete proposed action steps to resolve the risk factor(s) that prompted EFOP status;
- (3) provide a description of the efforts or initiatives proposed to address the risk factor(s) that prompted EFOP status; and
- (4) provide analysis of how the proposed efforts or initiatives will resolve the risk factor(s) that prompted EFOP status.

[5.3.11.14 NMAC - N, 12/11/2018]

#### **5.3.11.15 EFOP REPORTING:**

**A.** An institution placed on EFOP status shall provide periodic financial reports, as determined by the department, in accordance with deadlines set by the department.

**B.** The department shall establish additional financial reporting requirements for an institution placed on EFOP status. The department shall establish a timeline and deadlines for institutional reporting. In establishing the reporting requirements for an institution on EFOP status, the department shall consider the risk factor(s) exhibited by the institution and request reports that will help the department monitor institutional progress to complete its corrective action plan.

**C.** All reports requested by the department shall be prepared pursuant to generally accepted accounting principles. The department may require the institution to submit one or more of the following reports, on dates set by the department:

- (1) year-to-date revenue and expenditure results;
- (2) monthly revenue and expenditure results;
- (3) budget comparisons;

- (4) cash position;
- (5) associated bank reconciliations;
- (6) projected monthly cash flows for the remainder of the fiscal year;
- (7) projected monthly cash flows for the following twelve-month period;
- (8) monthly financial reports; or
- (9) control gap closure report to include:
  - (a) listing of each control concern;
  - (b) action plan to correct concerns;
  - (c) expected gap closure date; and
  - (d) responsible party to ensure closure.

**D.** EFOP reports shall be issued to other entities, in accordance with the department's determination. The department shall determine the frequency in which other entities receive ongoing reports and which of the ongoing reports shall be sent. Other entities that may receive ongoing EFOP reports, based on the determination of the department, include, but are not limited to:

- (1) the legislative finance committee;
- (2) the department of finance and administration;
- (3) any accrediting agency of the institution;
- (4) the United States department of education;
- (5) OSA;
- (6) the attorney general; or
- (7) other entities, as determined by the department, that may be concerned with any identified risk factor(s).

[5.3.11.15 NMAC - N, 12/11/2018]

#### **5.3.11.16 CAMPUS VERIFICATION VISITS:**

**A.** An on-site verification visit may be scheduled at any campus location of an institution on EFOP status. During its on-site verification visit, the department may:

- (1)** seek to verify any information reported by the institution;
- (2)** determine the institution's compliance with EFOP reporting requirements;
- (3)** verify the institution's compliance with its corrective action plan; and
- (4)** verify progress toward completion of the corrective action plan and substantial mitigation or elimination of risk factor(s).

**B.** Prior to an on-site verification visit, the department shall issue notice to the institution of its intent to conduct a verification visit no less than 10 days prior to the visit. The department shall coordinate the verification visit with the institution and provide information to be used by the department during the verification process.

**C.** The department shall conduct meetings with institutional representatives at the beginning and end of the verification visit to discuss objectives, procedures, time frame and post-visit follow-up. A preliminary and final report of the visit shall be shared with the institution for review and comment. In its report, the department may offer suggested remedies to cure any deficiencies discovered through the verification process.

[5.3.11.16 NMAC - N, 12/11/2018]

#### **5.3.11.17 ONGOING COMMUNICATION:**

**A.** An institution on EFOP status shall keep the department informed of any new risk factor or risk factors that develop at the institution. The institution shall report any new risk factor(s) immediately upon gaining actual knowledge of the new risk factor(s), but no more than 10 days after gaining actual knowledge. The institution's failure to report any new risk factor(s) while on EFOP status may result in the department extending the length of the EFOP status or additional reporting requirements. The institution may be required to submit an updated corrective action plan addressing the new risk factor(s). Action taken to extend EFOP, modify EFOP reporting requirements, or amend the corrective action plan will be based on the type of new risk factor(s), at the discretion of the department. The department shall make careful consideration of the severity, frequency, and the potential impact of the newly identified risk factor(s) to the institution's financial stability and the institution's demonstrated diligence in reporting the risk factor(s). If the institution is required to submit an amended corrective action plan, the department may either accept the amended plan as proposed, request additional information to accompany the amended plan, or reject the amended plan as proposed. If the department rejects the amended plan as proposed, the department shall issue its reasoning in writing to the institution and the institution shall submit a new or revised amended plan within 15 days of issuance of the rejection.



**B.** An institution on EFOP status and the department may engage in periodic meetings. Meetings may be convened to identify reporting problems, clarify reporting requirements and procedures, solicit information or assistance, ensure ongoing progress toward completion of the corrective action plan, discuss current operating results, discuss pending or proposed budget adjustment requests, or any other potential issues related to EFOP.

**C.** If during the course of implementing the corrective action plan, the institution determines that all or part of the plan cannot be implemented as originally approved, the institution must work with the department to submit an amended corrective action plan. The department may either accept the amended plan as proposed, request additional information to accompany the amended plan, or reject the amended plan as proposed. If the department rejects the amended plan as proposed, the department shall issue its reasoning in writing to the institution and the institution shall submit a new or revised amended plan within 15 days of issuance of the rejection.

**D.** Representatives from the department may request to address the governing board at scheduled governing board meetings.

[5.3.11.17 NMAC - N, 12/11/2018]

#### **5.3.11.18 REMOVAL OF EFOP STATUS:**

**A.** The EFOP status of an institution shall remain in effect until the department determines the risk factor(s) that led to the status have been substantially mitigated or eliminated. Once the department determines EFOP status may be removed, a letter issuing notice of removal from EFOP status will be sent from the department cabinet secretary to the president of the institution, the chair of the governing board, the chief financial officer of the institution, and any other entity that was previously notified when the EFOP status was initiated. The notice of removal from EFOP status will include the specific criteria utilized by the department in its determination to remove EFOP status. Examples of conditions supporting removal of the EFOP status may include, but are not limited to the following:

**(1)** material improvement in the fiscal stability of the institution as documented in financial reports; or

**(2)** demonstration that fiscal controls have been implemented and are functioning adequately as shown by:

**(a)** the institution's ability to produce materially accurate and complete financial statements and reports of account balances and transactions; and

**(b)** audit opinions which are no longer modified, qualified, adverse, or disclaimed.

**B.** The EFOP seeks to ensure that potential problems of finance are substantially mitigated or eliminated in a timely manner as demonstrated by fiscal liquidity, strong internal controls and substantial mitigation or elimination of any risk factor(s) that led to the EFOP status. In making its determination to remove an institution from EFOP status the department will consider progress made toward substantially mitigating or eliminating the risk factor(s), ability of the institution to implement its corrective action plan, measures taken by the institution to sustain efforts made through the corrective action plan, and the fiscal outlook for the institution.

[5.3.11.18 NMAC - N, 12/11/2018]

#### **5.3.11.19 FAILURE TO COMPLY WITH EFOP REQUIREMENTS:**

**A.** The following conditions shall constitute institutional non-compliance with EFOP:

- (1)** failure to schedule or attend the initial meeting pursuant to 5.3.11.12 NMAC;
- (2)** failure to submit a corrective action plan pursuant to 5.3.11.14 NMAC;
- (3)** failure to obtain department approval of the proposed corrective action plan or any amendments to the corrective action plan;
- (4)** failure to take steps to implement the corrective action plan or any amendments to the corrective action plan;
- (5)** non-compliance with provisions of the corrective action plan or any amendments to the corrective action plan;
- (6)** failure to submit EFOP reports in accordance with deadlines set by the department;
- (7)** failure to report any new risk factor(s) while the institution is on EFOP status pursuant to Subsection A of 5.3.11.17 NMAC; or
- (8)** failure to comply with any other aspect of the EFOP established by the department within 5.3.11 NMAC.

**B.** If the department finds that the institution has met one or more conditions of institutional non-compliance with EFOP, the department shall issue notice stating the basis of the non-compliance to:

- (1)** the president of the institution, the chair of the governing board of the institution, and the chief financial officer of the institution;
- (2)** the legislative finance committee;

- (3) the department of finance and administration; and
- (4) any accrediting agency of the institution.

**C.** The department shall provide a report regarding the risk factor(s) identified that led to the institution's EFOP status, the conditions that constitute institutional non-compliance, and any relevant facts or circumstances surrounding the non-compliance to the legislative finance committee during funding evaluations.

**D.** In its discretion, the department may send notice of institutional non-compliance with EFOP to:

- (1) the United States department of education;
- (2) OSA;
- (3) the attorney general; or
- (4) other entities, as determined by the department, that may be concerned with any identified risk factor(s).

[5.3.11.19 NMAC - N, 12/11/2018]

## **PART 12: INSTRUCTIONAL FUNDING**

### **5.3.12.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[3/16/51, 7/1/94; 5.3.12.1 NMAC - Rn & A, 5 NMAC 3.12.1, 11/30/01; A, 7/31/05]

### **5.3.12.2 SCOPE:**

All public post-secondary educational institutions operating within and receiving financial support from the State of New Mexico.

[9/30/96, 5.3.12.2 NMAC - Rn, 5 NMAC 3.12.2; 11/30/01]

### **5.3.12.3 STATUTORY AUTHORITY:**

Authority for 5.3.12 NMAC is found in NMSA 1978 Sections 21-1-26, 21-1-26.3, 21-2-5, and 21-2A-11 (1996 Repl. Pamph.).

[7/1/73, 7/1/86, 7/1/94, 6/16/95, 5.3.12.3 NMAC - Rn, 5 NMAC 3.12.3; 11/30/01]

### **5.3.12.4 DURATION:**

Permanent.

[9/30/96, 5.3.12.4 NMAC - Rn, 5 NMAC 3.12.4; 11/30/01]

#### **5.3.12.5 EFFECTIVE DATE:**

September 30, 1996.

[1/10/91, 9/30/96, 5.3.12.5 NMAC - Rn, 5 NMAC 3.12.5; 11/30/01]

#### **5.3.12.6 OBJECTIVE AND PURPOSE:**

A. The objective of 5.3.12 NMAC is to identify and define on- and off-campus instruction that is eligible to receive funding through New Mexico's higher education funding formulae.

B. The purpose of 5.3.12 NMAC is to provide public higher education institutions with adequate and equitable funding in support of on-campus instruction as well as with the resources to enhance educational opportunities for the many New Mexico citizens who can not readily attend on-campus courses or programs. It is also anticipated that this funding will better enable post-secondary educational institutions to quickly respond to changing community and workforce educational needs. The New Mexico higher education department believes that the delivery of instructional programming to students via alternative delivery modes will not only provide them improved educational opportunities, but will also provide the state a cost-effective alternative to the development of additional new campuses and facilities.

C. Department policy encourages the evolution of existing campuses and the development of new models of delivery that take advantage of the opportunities offered by technology. Use of the internet to deliver instruction has revealed that students participating in web-based courses may be located on-campus or off-campus. In order to recognize and support the increased use of technology, the department has adopted a policy that regards web-based courses as on-campus instruction for reporting purposes.

[9/30/96, 5.3.12.6 NMAC - Rn & A, 5 NMAC 3.12.6, 11/30/01; A, 7/31/05]

#### **5.3.12.7 DEFINITIONS:**

A. "**Academic credit**" means student credit hours for courses that through institutional policy and academic convention are determined to have the academic resources and support to meet traditional expectations for certificate and degree credit in academic and vocational programs.

B. "**Department**" means the New Mexico higher education department.

C. "**Course file**" is the department's data file containing one record for each course-section at a given public post-secondary educational institution per academic term.

D. "**Developmental credit**" means student credit hours for courses which provide preparatory work (basic skills) that is prerequisite to the level of work expected for college.

E. "**Extended learning**" means the full range of available and developing modes for bringing instruction to learners, including live instructor delivery, instructional television, computer conferencing, video conferencing, audio conferencing, etc.

F. "**Extension, correspondence, or self-study credits**" are student credit hours for courses that are limited in academic content, academic resources and/or setting (such as formal and regular student-instructor contact), or are so specialized that they do not meet traditional standards of applicability to degree program requirements. These courses are marked by the label, "extension," "correspondence," "self-study," or "home study" so that their special nature is considered in evaluation for degree credit.

G. "**Off-campus credits**" are student credit hours earned from courses offered that do not meet the definition of on-campus credits but are offered for regular academic credit and are applicable to an approved degree or certification program, taught by regular faculty or equivalent and delivered via extended learning instruction. Off-campus credits are reported in separate extended services data files to generate funding and include additional data fields to indicate the delivery location(s) of the instruction.

H. "**On-campus credits**" are student credit hours earned from courses that are offered within the geographical boundaries of the campus or via institutional web-based delivery systems for academic credit and for which regular main campus tuition is charged.

I. "**Registrar file**" is the department's data file containing summary data of enrollments and residency of students at a given public post-secondary educational institution for fall term only.

J. "**Restricted credits**" are student credit hours earned in a course offered for academic credit for which the expenses of delivery are covered by funds from restricted sources (i.e., grants or contracts), by direct third-party payment (e.g., ROTC), or by the pooling of tuition and fees (i.e., self support).

K. "**Right of first refusal**" means that an institution assigned a service area must first decline to provide requested educational services before another New Mexico public post-secondary institution may offer those services in that service area.

L. "**Service area**" is an assigned geographic region where the local two-year higher education institution has the exclusive right to meet the lower division post-secondary

educational needs of the area, subject only to limitations imposed by its enabling legislation, and consistent with the provisions of this policy. An institution may utilize its right of first refusal to allow other public higher education institutions to deliver offerings within its designated service area.

M. **"Student file"** is the department's data file containing one record for each student taking courses at a given public post-secondary educational institution per academic term.

N. **"Student-course file"** is the department's data file containing one record for each course that each student at a given public post-secondary educational institution is enrolled in each academic term.

O. **"Student credit hours"** are instructional time units derived from the structure of academic degrees and programs. Generally, one student credit hour is considered to require no less than fifteen contact hours between the student and instructor and thirty hours of independent effort by the student in course preparations per academic term.

P. **"Tuition credit base"** means the base revenue anticipated to be available from tuition sources to assist in funding the cost of instruction at New Mexico's public post-secondary educational institutions.

Q. **"Unrestricted credits"** are student credit hours earned in a course offered for academic credit for which the faculty salary is paid by funds from the regular instruction and general sources and for which the student cost is the regular, on-campus tuition.

R. **"Web-based courses"** are courses offered for academic credit and delivered synchronously or asynchronously over the Internet to students located at sites other than the classroom, including sites that may be off-campus. A web-based course may include the requirement that a student meet in a physical setting for lecture, laboratory, examination or other purposes as long as the required student presence in the physical setting does not exceed 25% of the total course time.

[2/27/85, 1/10/91, 9/30/96, 5.3.12.7 NMAC - Rn & A, 5 NMAC 3.12.7, 11/30/01; A, 7/31/05]

#### **5.3.12.8 GENERAL PRINCIPLES GUIDING INSTRUCTIONAL FUNDING:**

A. **Funding priorities:** The department is committed to ensuring equitable access to quality educational services to give all citizens the opportunity to fulfill their potential, regardless of their place of residence. Therefore, a major objective of the department's annual funding recommendations will be to encourage the most effective and efficient means of delivering higher education services to citizens throughout New Mexico.

B. **Academic quality:** Quality is an essential component of the department's agenda for higher education in New Mexico.

(1) By reporting student credit hours earned for state support, an institution concurs and agrees that all credits are derived from courses and programs that meet generally accepted principles of quality as used by the appropriate regional accrediting association, including, but not limited to:

(a) Each program of study results in learning outcomes appropriate to the rigor and breadth of the degree or certificate awarded.

(b) Degree or certificate programs are coherent and complete.

(c) The program provides for appropriate interaction between faculty and students and among students.

(d) Qualified faculty provide appropriate oversight of each course and program.

(e) The program is consistent with the institution's role and mission.

(f) Institutional review and approval processes ensure that each course and program is appropriate for the learning delivery system being used.

(g) The institution provides appropriate training and support services for faculty.

(h) The program ensures that appropriate learning resources are available to students.

(i) The program provides students with clear, complete and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technological competence and skills, technical equipment required, availability of support services and financial aid resources, and cost and payment policies.

(j) Students accepted for the course or program have the background, knowledge and technical skills needed to undertake the program.

(k) Students enrolled in the course or program have reasonable and adequate access to the range of student services appropriate to support their learning.

(l) The institution evaluates the program's educational effectiveness, including assessment of student learning outcomes, student retention, and student and faculty satisfaction. Students have access to such program evaluation data.

(m) Policies for faculty evaluation include appropriate consideration of teaching and scholarly activities related to various learning delivery systems.

(n) The institution demonstrates a commitment to ongoing support, both financial and technical, and to continuation of the program for a period sufficient to enable students to complete a degree/certificate.

(2) In implementing regular enrollment audit and program review processes, the department has both a right and a responsibility to test credits to ensure these standards are met.

**C. Funding mechanisms:** The department affirms its expectation that educational services provided to students be of the highest quality regardless of where or when instruction is offered. Therefore, in order to provide an adequate and equitable distribution of state funds to public higher education institutions in support of both on- and off-campus instruction, all eligible student credit hours will be used in the calculation of the recommended instructional and general appropriation.

**D. Tuition credit:** While the governing boards of New Mexico's public higher education institutions are assigned the responsibility for setting tuition and fee charges at their respective institutions, as part of its statutory responsibility the department is concerned with the adequate financing of these institutions and with the equitable distribution of funds among them. Because it is the policy of the department that every New Mexico citizen who desires public post-secondary education should have access to these educational opportunities, tuition credit for off-campus instruction shall be established for the sponsoring institutions at the same level as that set for resident and nonresident students on-campus.

**E. Funding eligibility:** To meet its responsibility to ensure access to high quality education for New Mexico's residents in a manner that promotes the effective and efficient use of available public tax dollars, the department recognizes that it is necessary to define types of instruction eligible for state funding. Therefore, the department asserts as a matter of public policy, that courses and programs provided by public institutions of higher education in New Mexico that are received within the geographic boundaries of the state are eligible for state funding if they meet the following criteria:

(1) Courses and programs must demonstrate academic quality, consistent with the expectations stated in Subsection B of 5.3.12.8 NMAC.

(2) Courses must be offered for academic credit, or for developmental credit at non-doctoral institutions.

(3) Courses typically must be accessible to members of the general public who meet admissions standards and prerequisites. However, this paragraph is not intended to preclude state funding for course sections offered to specialized audiences or at locations inaccessible to the general public (e.g., secure areas on military reservations).



(4) In order to promote the responsible use of public resources and build upon existing institutional strengths, courses available off-campus must be related to educational programs offered by the institution to students on-campus. Likewise, programs available off-campus must fall within program areas offered on-campus and degrees available off-campus may not be at a level higher than offered on-campus.

**F. Geographic service areas:** The department acknowledges that rapidly evolving information technologies can deliver instructional services to many individuals without regard to their geographic location. However, the department also acknowledges that public two-year post-secondary institutions are provided supplemental funding through local tax levies, and are thus expected to meet the local taxpayers' educational needs. The department is committed to responding to the changing needs of the state and will examine alternative means of ensuring access and local accountability. At this time the department maintains that each two-year higher education institution's local taxing district shall constitute its geographic service area for the direct provision of lower division instruction, subject only to limitations imposed by its enabling legislation, and consistent with the provisions of Subsection C of 5.3.12.9 NMAC until June 30, 2006.

[1/10/91, 9/30/96, 5.3.12.8 NMAC - Rn & A, 5 NMAC 3.12.8; 11/30/01; A, 7/31/05]

### **5.3.12.9 IMPLEMENTATION:**

In order to ensure uniformity and equity in the implementation of this policy, it is necessary to clarify and make formal certain concepts described in Section 8 that determine differences in the fundability of certain types of credits.

**A. Types of credit:** Generally courses offered for academic credit are also eligible to count toward certificate and degree requirements; however, in some cases the special nature of the courses and their purpose make them inappropriate for degree credit, and thus ineligible for certain types of state funding.

(1) **Academic credit:** Credits for these courses are eligible for reporting to generate regular funding, as long as they meet all eligibility criteria contained in this policy.

(2) **Developmental credit:** Developmental course credits are not eligible for funding credit at the doctoral institutions, nor for degree or certificate credit at any institution.

(3) **Extension, correspondence, self-study credit:** Credits for courses that do not award credit applicable to a certificate or degree, or courses that do not include formal and regular contact between a student and instructor but are delivered through self-study, are not eligible for reporting to generate regular funding and must be supported by restricted or self-support funding.

**B. Sources of revenue:**The sources of revenue used to generate current instructional credits affect the state's interest in funding future activities based upon this record of past credits.In particular, the state may choose not to generate new funding levels from past activity that was compensated by a non-state source, thus avoiding double support for the same activity.For this reason, concepts of unrestricted and restricted credits are delineated within this policy.See also 5.3.12.7 NMAC for definitions.

(1)     **Unrestricted credit:**Unrestricted credits are counted by the department as credits in the regular state funding process.Tuition for unrestricted credits is estimated as a revenue credit in developing the Instruction and general funding recommendations.

(2)     **Restricted credit:**Restricted credits do not count as credits in the regular state funding process and are not considered by the department when determining instruction and general funding recommendations.

**C. Boundaries of a campus:**In order to differentiate between on-campus and off-campus instruction, it is necessary to define the limits of a campus.This policy provides such definitions, noting the differences between two-year and four-year boundaries relating to the unique circumstances of local supplementary funds for two-year institutions.

(1)     **On-campus credits:**These are earned from courses that are offered within the defined boundaries of the campus for academic or developmental credit, including credits generated from institutional web-based delivery systems, and for which regular main campus tuition is charged.

(a) For four-year institutions:The geographic boundaries of the campus are the limits of the municipality or metropolitan statistical area where the university is located.

(b) **Special and arranged on-campus credits:**Because of the special nature of some courses, there are circumstances which of necessity require that they be taught, either in whole or in part, beyond the geographical boundaries of the campus and yet be classified as on-campus credit.These courses include those listed below or those arranged through timely, written agreement with the commission and the chief academic officer of the institution.The approved special on-campus programs include:

- (i)     student teaching;
- (ii)    internships;
- (iii)   cooperatives;
- (iv)    practica;

- (v) field instruction;
- (vi) physical education and recreation activity courses;
- (vii) study abroad; and
- (viii) thesis and dissertation courses.

(c) For two-year institutions: The geographic boundaries of the campus are the geographic boundaries of their taxing district or approved service area.

(d) Service areas - enabled: The department hereby assigns service areas to the public two-year higher education institutions consistent with the geographic boundaries of their taxing districts and subject only to limitations imposed by their enabling legislation. One institution will not deliver courses in another institution's service area without contacting that institution in a timely manner and obtaining concurrence in writing from that institution's chief academic officer, copy to the commission. Subparagraph (d), Paragraph 1, Subsection C of 5.3.12.9 NMAC shall expire on June 30, 2006.

(e) For areas of the state without local taxing districts, both four-year and two-year post-secondary institutions may offer educational services on a free-market basis.

(f) Right of first refusal - general provision: Two-year post-secondary institutions assigned a service area shall have a right of first refusal to meet lower division instructional needs within their service area and have an obligation to assist that area's citizens in obtaining appropriate institutional services where financially, programmatically, and otherwise feasible. See also 5.3.12.7 NMAC for definitions.

(g) Right of first refusal - overlapping campus boundaries: No lower division offerings of any main campus of a four-year post-secondary institution that is located within a two-year higher education institution's local taxing district shall be subject to the provisions of Subparagraphs (d) or (f), Paragraph 1, Subsection C of 5.3.12.9 NMAC of this policy with regard to that two-year institution.

(h) Right of first refusal - branch campuses and educational centers: While branch campuses and educational centers have the right of first refusal with regard to the offerings of other post-secondary institutions within their service area, the right of first refusal does not extend to the offerings of their own main campuses. Such offerings are subject only to internal institutional decision making.

(2) Off-campus credits: These are earned from courses offered that do not meet the above definitions of on-campus credits but are offered for academic or developmental credit and are part of an approved degree or certification program, taught by regular faculty or equivalent and/or delivered via extended learning. Tuition for

off-campus credits reported for formula funding is estimated as a revenue credit in the calculation of the instruction and general funding recommendations.

(a) Types of off-campus instruction credit: Public post-secondary educational institutions should use any appropriate form of instruction and/or delivery mode to meet the needs of students and programs, consistent with the provisions of Subsection B of 5.3.12.8 NMAC of this policy.

(b) Two-year institutions may offer course work for off-campus credits at sites remote from their defined service area that are not in another designated service area, or where the two-year institution has obtained concurrence from another two-year institution to provide the course within the latter's service area. Such course work will be at the lower division level, subject only to limitations imposed by their enabling legislation, provided that main campus academic expectations for staff and support are met.

(c) Four-year institutions may offer course work for off-campus credits at sites remote from the main campus provided that they meet main campus academic expectations for staff and support. Generally, such course work will be at the upper division or graduate levels, except where there is no designated two-year institutional service area or where the four-year institution has obtained concurrence from the two-year institution to provide the course within the latter's service area.

(d) Any public post-secondary institution offering off-campus instruction in the vicinity of another public post-secondary institution will notify and seek the cooperation of that institution.

(e) The department has the authority to resolve disputes between or among higher education institutions regarding the delivery of instruction both within or outside of designated service areas.

**D. Collaborative efforts, consortia, and extended learning instruction:** The department supports efforts to promote the sharing of resources by existing public post-secondary educational institutions to provide quality educational services. Where appropriate, the development of collaborative approaches to deliver courses and programs to students is encouraged. In order to ensure the efficient and effective provision of such services, public post-secondary institutions engaging in such joint ventures must have written agreements clarifying the various responsibilities and benefits of the collaborating parties. These agreements must address, but need not be limited to, the following points:

- (1) cost and revenue sharing arrangements;
- (2) student credit hour reporting arrangements;
- (3) accommodations for alternative delivery methods at the receiving site;

(4) arrangements and responsibilities for evaluating the effectiveness of the joint venture;

(5) provision of student support services; and

(6) provision of academic support services.

[9/21/84, 1/10/91, 9/30/96, 5.3.12.9 NMAC - Rn & A, 5 NMAC 3.12.9; 11/30/01; A, 7/31/05]

#### **5.3.12.10 REPORTING:**

In order to ensure uniformity and equity in the implementation of this policy, it is necessary to clarify and make formal certain concepts and credit reporting procedures. Institutions must report the student credit hours that they generate in categories according to enrollment and data reporting policies and procedures promulgated by the commission. Eligibility for funding will be determined by the commission and may require a combination of categorization from these definitions. Credits from courses offered at reporting institutions are to be categorized according to the classifications below. In some cases, this policy defines credits that are ineligible for funding. In other cases, credits are to be reported and their use in or eligibility for funding depends on formulae and other calculations that are used in the annual recommendation process.

A. **Credits:** Enrollments that are eligible for funding are defined by counting student credit hours or "credits." See also 5.3.12.7 NMAC for definitions.

B. **Level:** Generally, courses are structured in a pattern of increasing levels of difficulty, preparation and specificity in the following pattern:

(1) Lower division: Courses designed primarily for freshman (100's) and sophomore (200's) level students and for high school students enrolled under advanced placement agreements or under concurrent enrollment agreements.

(2) Upper division: Courses designed primarily for junior (300's) and senior (400's) level students.

(3) Graduate division: Courses designed primarily for master's (500's) and doctoral (600's, 700's) level students.

C. **Source of revenue:** Student credit hours from a course are designated by their revenue sources.

(1) Unrestricted credits are reported in the commission's course file and counted as credits in the regular funding formulae.

(2) Restricted credits are reported in the commission's course file but are coded so that they do not count as credits for the regular funding formulae.

**D. Data file submission requirements for off-campus instruction:** Institutions must report the student credit hours that they generate from off-campus instruction in accordance with the commission's enrollment and data reporting policies and procedures.

(1) Course file: Courses offered for off-campus credit must be reported in an extended services course file. This file uses a special campus code of 61. The point of delivery fields in this data file must have valid values for extended services file submissions. Students enrolled in these courses should be included in the extended services student and student-course files. See also 5.3.12.7 NMAC for definitions.

(2) Student file: Students enrolled in courses offered for off-campus credit must be included in an extended services student file. This file uses a special campus code of 61. See also 5.3.12.7 NMAC for definitions.

(3) Student-course file: Students enrolled in courses offered for off-campus credit must be included in an extended services student-course file. This file uses a special campus code of 61. See also 5.3.12.7 NMAC for definitions.

(4) Registrar file: If there is an extended services student file then a registrar file also must be generated. This file uses a special campus code of 61. See also 5.3.12.7 NMAC for definitions.

[1/10/91, 9/30/96, 5.3.12.10 NMAC - Rn, 5 NMAC 3.12.10; 11/30/01]

## **PART 13: ALLOCATION AND DISTRIBUTION OF THE ADULT BASIC EDUCATION FUND**

### **5.3.13.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.3.13.1 NMAC - Rp, 6 NMAC 8.2.1.1, 6/30/2003; A, 7/31/2005]

### **5.3.13.2 SCOPE:**

5.3.13 NMAC applies to the allocation and distribution of money appropriated to the adult basic education fund including funding for instructional materials for adult basic education students by the legislature for use in a given fiscal year and further applies to the allocation and distribution of those monies made available to the state of New Mexico for basic education of adults and available for formula allocation and distribution to pay for the establishment or expansion of adult education programs to be carried out by public schools and school districts, universities, community based organizations of

demonstrated effectiveness, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14-1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, state-supported educational programs, postsecondary educational institutions operated by tribal entities, and bureau of Indian affairs controlled postsecondary schools located in New Mexico.

[5.3.13.2 NMAC - Rp, 6 NMAC 8.2.1.2, 6/30/2003; A, 12/30/2004; A, 7/31/2005; A, 3/31/2008; A, 7/1/2010]

#### **5.3.13.3 STATUTORY AUTHORITY:**

Section 21-1-27.5, 21-1-27.6 NMSA 1978.

[5.3.13.3 NMAC - Rp, 6 NMAC 8.2.1.3, 6/30/2003, A, 7/31/2005]

#### **5.3.13.4 DURATION:**

Permanent

[5.3.13.4 NMAC - Rp, 6 NMAC 8.2.1.4, 6/30/2003]

#### **5.3.13.5 EFFECTIVE DATE:**

June 30, 2003 unless a different date is cited at the end of a section.

[5.3.13.5 NMAC - Rp, 6 NMAC 8.2.1.5, 6/30/2003]

#### **5.3.13.6 OBJECTIVE:**

This regulation establishes a formula funding process whereby monies appropriated by the New Mexico legislature to the adult basic education fund including funding for instructional materials for adult basic education students and monies made available to the state of New Mexico for basic education of adults and available for formula allocation and distribution to pay for the establishment or expansion of adult education programs are allocated and distributed.

[5.3.13.6 NMAC - Rp, 6 NMAC 8.2.1.6, 6/30/2003; A, 12/30/2004, A, 7/31/2005; A, 7/1/2010]

#### **5.3.13.7 DEFINITIONS:**

A. "Adult basic education" (ABE) means adult education as defined by 20 U.S.C. Section 9202(1).

B. "Adult basic education fund" means that fund established pursuant to Section 21-1-27.5 NMSA 1978 for the purpose of funding adult basic education programs for educationally disadvantaged adults.

C. "Department" means the higher education department.

D. "Educational media" means a system of instructional materials, computer software, interactive videodisc, magnetic media, CD-ROM, DVD, computer courseware, on-line services, an electronic medium, or other means of conveying information to the student or otherwise containing intellectual content and contributing to the learning process.

E. "Instructional material" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, assessments, supplementary material and electronic media.

F. "Instructional material fund" means that fund established pursuant to Section 22-15-9 NMSA 2009 for the purpose of funding adult basic education student instructional materials.

G. "State administrative site" means an entity submitting a proposal meeting the criteria established by the higher education department and approved for formula funding through the adult basic education fund for a given fiscal year, including public schools and school districts, universities, community based organizations of demonstrated effectiveness, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14 -1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, state-supported educational programs, postsecondary educational institutions operated by tribal entities, and bureau of Indian affairs controlled postsecondary schools located in New Mexico.

[5.3.13.7 NMAC - Rp, 6 NMAC 8.2.1.7, 6/30/2003; A, 12/30/2004; A, 7/31/2005; A, 3/31/2008; A, 7/1/2010]

#### **5.3.13.8 RESPONSIBILITIES OF DEPARTMENT AND STATE ADMINISTRATIVE SITES:**

A. The higher education department will convene a task force on ABE formula funding with members representing ABE programs, post-secondary institution fiscal offices, and the association of community colleges to make recommendations on changes to the funding formula as appropriate.

B. The department shall review the formula and any proposed changes with the adult basic education administrative sites prior to adoption or amendment.



C. The department shall develop, implement and maintain procedures and training to address the purchase and reporting of instructional materials for the free use by adult basic education students.

D. Each state administrative site may purchase items of instructional material by issuing a purchase order to the publisher or the publisher's authorized agent. The entity is responsible for payment to the vendor/publisher, etc. The cost of the items, plus transportation charges, will be charged against the instructional material allocation.

E. Annually, at a time specified by the department, each state administrative site acquiring instructional material pursuant to the Instructional Material Law (22-15-1 to 22-15-14 NMSA 1978) shall file a report with the department.

F. If closure of a site is imminent, the site shall contact the department in writing within 30 days of closure to obtain approval to dispose of materials.

[5.3.13.8 NMAC - Rp, 6 NMAC 8.2.1.8, 6/30/2003; A, 12/30/2004; A, 7/31/2005; A, 7/1/2010]

#### **5.3.13.9 BUDGET:**

A. The higher education department will notify each state administrative site of its program allocation no later than June 15 of the fiscal year immediately preceding the fiscal year for which the allocation is being made.

B. State administrative sites will submit to the higher education department budgets based upon program allocations, together with executed written agreements as required by the higher education department, no later than June 30 of the fiscal year immediately preceding the fiscal year for which the allocations are made.

C. State administrative sites will comply with reporting dates and reporting requirements established by the higher education department.

[5.3.13.9 NMAC - Rp, 6 NMAC 8.2.1.9, 6/30/2003; A, 12/30/2004; A, 7/31/2005]

#### **5.3.13.10 DISTRIBUTIONS:**

A. Adult basic education program fund

(1) Distributions will be made to state administrative sites upon timely submission of expenditure and program reports in accordance with procedures established by the higher education department. Distributions may be requested on a monthly basis.

(2) Distributions will be made solely on a reimbursement basis.

(3) Unless otherwise provided by law, reimbursement will not be made for expenditures not obligated on or before June 30 of the fiscal year for which the allocation is being made.

(4) Performance based funding components will be used to distribute the adult basic education program allocations.

#### B. Instructional material fund

(1) Distributions will be made to state administrative sites according to New Mexico department of finance and administration rules.

(2) A state administrative site that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years.

[5.3.13.10 NMAC - Rp, 6 NMAC 8.2.1.10, 6/30/2003; A, 7/31/2005; A, 7/1/2010]

### **PART 14: TECHNOLOGY ENHANCEMENT FUND**

#### **5.3.14.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.3.14.1 NMAC - N, 10/25/2022]

#### **5.3.14.2 SCOPE:**

Provisions for 5.3.14 NMAC apply to state research institutions and tribal colleges in New Mexico.

[5.3.14.2 NMAC - N, 10/25/2022]

#### **5.3.14.3 STATUTORY AUTHORITY:**

Section 21-1-27.2 NMSA 1978.

[5.3.14.3 NMAC - N, 10/25/2022]

#### **5.3.14.4 DURATION:**

Permanent.

[5.3.14.4 NMAC - N, 10/25/2022]

#### **5.3.14.5 EFFECTIVE DATE:**

October 25, 2022 unless a later date is cited at the end of a section.

[5.3.14.5 NMAC - N, 10/25/2022]

#### **5.3.14.6 OBJECTIVE:**

The objective and purpose of 5.3.14 NMAC is to outline the distribution of monies in the technology enhancement fund. Money in the technology enhancement fund is appropriated by the legislature to the higher education department. The department shall distribute funds to New Mexico state research institutions or tribal colleges that submit proposals and receive award determinations from the department for purposes outlined in Section 21-1-27 NMSA 1978 and 5.3.14 NMAC.

[5.3.14.6 NMAC - N, 10/25/2022]

#### **5.3.14.7 DEFINITIONS:**

- A. "Committee"** means the technology enhancement committee.
- B. "Department"** means the New Mexico higher education department.
- C. "Eligible institution"** means a state research university or tribal college located in New Mexico.
- D. "Fund"** means the technology enhancement fund.
- E. "Institutional share"** means funds to be matched by the technology enhancement fund. No portion of the institutional share may be derived from any other state appropriation.
- F. "Proposal"** means a formal request submitted to the technology enhancement committee for the purposes of the fund.
- G. "State research institution"** means an institution of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico conducting research within the scope of Section 21-1-27.2 NMSA 1978.
- H. "Tribal College"** means a tribally, federally or congressionally chartered postsecondary educational institution located wholly or partly in New Mexico conducting research within the scope of Section 21-1-27.2 NMSA 1978.

[5.3.14.7 NMAC - N, 10/25/2022]

#### **5.3.14.8 TECHNOLOGY ENHANCEMENT FUND:**

**A.** The technology enhancement fund is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests.

**B.** The technology enhancement fund shall be administered by the department. Money shall be disbursed only on warrant of the secretary of finance and administration upon receipt of voucher signed by the secretary of higher education or the secretary's authorized representative.

**C.** Money in the fund shall be used to provide matching funds to state research universities to support innovative foundational and applied research and equipment that advances knowledge and creates new products and production processes in the fields of agriculture, biotechnology, biomedicine, energy, materials science, microelectronics, water resources, aerospace, telecommunications, manufacturing science and similar research areas.

**D.** Grants from the fund are available to eligible institutions that are conducting collaborative research with corporate organizations, nonprofit organizations, other eligible institutions, or other public entities as determined by the department. An eligible institution may apply for a grant from the fund pursuant to an application schedule issued by the department.

**E.** Allocations from the fund shall be based on a competitive process with applications reviewed by the committee.

**F.** Following an award determination, an eligible institution shall not receive a distribution until that institution provides documentation to the department that it has received or will receive institutional share funding equal or greater than the state contribution. Distributions from the technology enhancement fund are made at least quarterly. Allocations not matched or not currently obligated to a proposal in review during any quarter of the cycle are made available during the following quarter for supplemental or second round matching by the corporate organization, nonprofit organization, other eligible institution, or other public entity as determined by the department pursuant to Subsection D of 5.3.14.8 NMAC.

[5.3.14.8 NMAC - N, 10/25/2022]

#### **5.3.14.9 TECHNOLOGY ENHANCEMENT COMMITTEE:**

The committee is composed of panel of scientific and business experts established by the department. The committee shall judge proposals based on excellence in research design and possible innovation in cross-disciplinary, multi-campus and higher education-industry research collaboration. The review panel may determine new research areas.

**A.** The committee shall consist of the following representatives:

(1) The vice presidents for research from the New Mexico institute of mining and technology, New Mexico state university, the university of New Mexico or their designates;

(2) a representative from the research community of the health sciences center at the university of New Mexico;

(3) a representative from the appropriate entities at New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico that have expertise in economic development; and

(4) other designees as appointed by the cabinet secretary of the department.

**B.** The responsibilities of the committee shall include:

(1) review proposals submitted to the committee for sufficiency, quality and merit;

(2) determine whether the proposals and award determinations meet the purposes of the fund;

(3) determine whether funds are being distributed pursuant to the provisions of this section;

(4) recommend ways to support or change award and distribution processes;

(5) make recommendations to the department for the purpose of distribution of funds; and

(6) give advice or other assistance to the department as requested.

**C.** The committee shall meet as needed, but no less than four times per year, to review proposals and make award determinations.

[5.3.14.9 NMAC - N, 10/25/2022]

**5.3.14.10 PROPOSAL REQUIREMENTS:**

To be considered eligible for a distribution from the technology enhancement fund, a proposal submitted by an eligible institution shall:

**A.** demonstrate how the funds will be used to enhance public post-secondary education and research that benefits New Mexico;

**B.** indicate which of the purposes specified within Subsection C of 5.3.14.8 NMAC the proposal addresses; and

C. identify the source and eligibility of the institutional share.

[5.3.14.10 NMAC - N, 10/25/2022]

#### **5.3.14.11 SELECTION OF PROPOSALS:**

A. The committee shall develop a timeline of quarterly application periods setting forth deadlines for proposal submission and a schedule of review. The department may accept applications on nonstandard intervals upon request of the institution submitting the proposal.

B. The committee shall develop a scoring rubric that scores all proposals received pursuant to the requirements of 5.3.14.10 NMAC.

C. No award determination shall be made until all proposals submitted within an application period have been reviewed and scored by the committee.

[5.3.14.11 NMAC - N, 10/25/2022]

#### **5.3.14.12 REPORTS:**

Institutions shall report annually the status of awards made pursuant to 5.3.14.11 NMAC. The department shall report annually to the legislative finance committee on award determinations made pursuant to this section. The report shall include the number of proposals submitted by each institution, the number of proposals selected for funding from each institution, the amounts requested by each institution, the amounts awarded to each institution, the amount of matching funds and their sources and the purposes of the awards.

[5.3.14.12 NMAC - N, 10/25/2022]

## **CHAPTER 4: POST-SECONDARY EDUCATIONAL PLANNING [RESERVED]**

## **CHAPTER 5: POST-SECONDARY EDUCATIONAL PROGRAMS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: APPROVAL OF NEW GRADUATE PROGRAMS**

#### **5.5.2.1 ISSUING AGENCY:**

New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505, (505) 476-8400.

[5.5.2.1 NMAC - Rp, 5.5.2.1 NMAC, 06/12/2018]

#### **5.5.2.2 STATUTORY AUTHORITY:**

Section 9-25-8 NMSA 1978, Section 21-2-5 NMSA 1978, Section 21-1-26 NMSA 1978, and Section 21-1-24 NMSA 1978.

[5.5.2.2 NMAC - Rp, 5.5.2.2 NMAC, 06/12/2018]

#### **5.5.2.3 SCOPE:**

All graduate programs offered by a public research or comprehensive higher education institution, as defined in Article XII, Section 11 of the New Mexico constitution.

[5.5.2.3 NMAC - Rp, 5.5.2.3 NMAC, 06/12/2018]

#### **5.5.2.4 DURATION:**

Permanent.

[5.5.2.4 NMAC - Rp, 5.5.2.4 NMAC, 06/12/2018]

#### **5.5.2.5 EFFECTIVE DATE:**

June 12, 2018, unless a later date is cited at the end of a section.

[5.5.2.5 NMAC - Rp, 5.5.2.5 NMAC, 06/12/2018]

#### **5.5.2.6 OBJECTIVE:**

To provide a process for objective review of proposed graduate programs. Any public research or comprehensive higher education institution, as defined in Article XII, Section 11 of the New Mexico constitution operating within and receiving financial support from the state of New Mexico shall follow the procedures set out by the department before creating a new graduate degree program.

[5.5.2.6 NMAC - Rp, 5.5.2.6 NMAC, 06/12/2018]

#### **5.5.2.7 DEFINITIONS:**

**A. "Department"** means the New Mexico higher education department.

**B. "Dormant programs"** means degree programs that have not admitted new students for a period of three consecutive years.

**C. "Graduate program" or "program"** means a sequence of courses, activities or experiences in an academic discipline or sub-discipline which leads to award of any degree in the academic discipline or sub-discipline beyond the baccalaureate degree, including a master's degree, doctoral degree, or professional degree in fields such as law, medicine or other professions.

**D. "Institution"** means a public research or comprehensive higher education institution, as defined in Article XII, Section 11 of the New Mexico constitution operating within and receiving financial support from the state of New Mexico.

**E. "Institutional review"** means the process by which an institution conducts internal evaluation and approval of new courses, programs or any other matter related to curriculum. The required review process may differ between institutions and is set by each individual institution.

**F. "New graduate program"** means one that differs from currently approved programs at the proposing institution, in terms of degree level or academic discipline or sub-discipline.

**G. "Post-baccalaureate certificate"** means a program of study that is designed to develop or enhance a focused area of expertise, provide specific skill training and to enhance employability.

[5.5.2.7 NMAC - Rp, 5.5.2.7 NMAC, 06/12/2018]

#### **5.5.2.8 GENERAL REQUIREMENTS:**

**A.** No graduate degree program established after the effective date of 5.5.2 NMAC, nor any student enrolled in that program, shall be eligible for inclusion in any of the department's funding recommendations unless the program has been approved by the department cabinet secretary and New Mexico state board of finance.

**B.** The department will maintain an inventory of graduate degree programs that are offered at each institution. The department shall update the degree inventory to include changes reported to the department by the institutions.

**C.** A program, option, concentration or specialization that has been prepared to meet a request of a particular employer and that will be financially supported by that employer is not subject to approval by the department or the New Mexico state board of finance. However, such programs are considered restricted and do not receive state funding. Students enrolled in such programs are not eligible for any state support until the program is approved pursuant to 5.5.2 NMAC and the program becomes unrestricted.



**D.** Any change to an existing graduate program's curriculum that is equivalent to more than one-third of the program's degree requirements will be considered a new graduate program for the purposes of 5.5.2.9 NMAC.

[5.5.2.8 NMAC - Rp, 5.5.2.8 NMAC, 06/12/2018]

#### **5.5.2.9 SUBJECT TO APPROVAL:**

The following actions require the approval of the department cabinet secretary and the New Mexico state board of finance:

**A.** Addition of a new graduate program.

**B.** Addition of a doctoral degree in an academic discipline or sub-discipline in which a master's degree is already awarded.

**C.** Addition of a master's degree in an academic discipline or sub-discipline in which a doctoral degree is already awarded.

**D.** Addition or deletion of a program option, concentration or specialization that will result in a new degree level or academic discipline or sub-discipline. For example, the addition of a concentration or specialization in British literature to an existing master of arts in English would not be subject to 5.5.2 NMAC; however, the addition of an option of British literature in an English department that would result in a new master of arts in British literature would be subject to 5.5.2 NMAC.

**F.** Addition of a post-baccalaureate certificate that requires additional funding, faculty or facilities.

[5.5.2.9 NMAC - Rp, 5.5.2.9 NMAC, 06/12/2018]

#### **5.5.2.10 ADVISORY REVIEW COMMITTEE:**

**A.** The department shall convene an advisory review committee, chaired by the department cabinet secretary or designee, to evaluate applications submitted by institutions seeking approval of a new graduate program. The advisory committee shall make a recommendation to the department cabinet secretary. The authority to determine whether a program is submitted to the New Mexico state board of finance rests solely with the department cabinet secretary.

**B.** The advisory review committee shall be convened at the request of the department at least four times per year if there are programs to be reviewed.

**C.** The advisory review committee shall consist of:

(1) the cabinet secretary or designee of the New Mexico higher education department;

(2) the cabinet secretary or designee of the New Mexico department of workforce solutions;

(3) the cabinet secretary or designee of the New Mexico department of finance and administration;

(4) the cabinet secretary or designee of the New Mexico department of economic development;

(5) the director or designee of the New Mexico legislative finance committee;

(6) the chief academic officer from a two-year independent community college;

(7) the chief academic officer from a two-year branch community college;

(8) the chief academic officer from a four-year research university; and

(9) the chief academic officer from a four-year comprehensive college or university.

**D.** A chief academic officer serving on the advisory review committee shall recuse himself or herself from voting on any matters from his or her institution brought before the advisory review committee.

[5.5.2.10 NMAC - Rp, 5.5.2.10 NMAC, 06/12/2018]

#### **5.5.2.11 APPROVAL BY THE DEPARTMENT:**

**A.** Before submitting an application to create a new graduate program, an institution must have completed all institutional reviews required by the institution, including approval by the board of regents.

**B.** An institution must submit a completed application to the department, on a form provided by the department, by the deadline published by the department.

**C.** A completed application shall include approval by the New Mexico council of graduate deans. It is the sole responsibility of the institution to comply with all requirements of the council of graduate deans and seek approval within a timeframe that allows the institution to comply with all necessary deadlines set by the department.

**D.** The department shall conduct initial review of an application. The department may request additional information from the institution for use in its initial review. The

department shall determine whether the application is correctly and fully completed. If the department determines that an application is not correctly and fully completed, the department shall return the application to the institution with recommendations as to how deficiencies may be remedied. An application shall not be presented to the advisory review committee until the department has completed its initial review and determines that the application is correctly and fully completed.

**E.** If the application is submitted on or before the deadline published by the department, consideration of the application shall be placed on the next advisory committee meeting agenda. If the institution submits the form after the published deadline, consideration of the application will be postponed until the subsequent advisory committee meeting.

**F.** The department shall have a representative present during the advisory committee meeting to present the application. The department representative shall not be an advisory committee member.

**G.** A representative from the applicant institution shall be present during the advisory committee meeting and shall be prepared to respond to questions presented by the advisory committee. The institutional representative shall not be considered a member of the advisory committee and may not cast a vote on any matters before the committee.

**H.** The advisory committee may recommend to approve, disapprove, or return a proposal to the sponsoring institution, for modification.

**I.** After receiving a recommendation from the advisory review committee, the department cabinet secretary shall make the final written determination as to whether the new program shall be presented to the New Mexico state board of finance within 10 business days after the advisory review committee meeting.

**J.** At any point during the review process, the institution may withdraw its application.

**K.** If the department cabinet secretary determines the application for a new graduate program will not be presented to the New Mexico state board of finance, the institution may file an appeal to the department within 10 business days of issuance of the decision by the department cabinet secretary. The appeal must contain the institution's arguments for reversal of the decision, clearly labeled accordingly. The appeal must be mailed to the department cabinet secretary via certified mail. The department cabinet secretary will evaluate the merits of the appeal and consider the arguments of the institution. Upon review by the department cabinet secretary, a final written determination will be sent to the institution within 20 business days of receipt of the appeal. While an appeal is pending, the institution and the department are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter.

by agreement and reestablish productive working relations. The institution may withdraw an appeal at any time before the secretary reaches a final decision.

[5.5.2.11 NMAC - N, 06/12/2018]

#### **5.5.2.12 APPROVAL BY THE NEW MEXICO STATE BOARD OF FINANCE:**

**A.** If the department cabinet secretary determines that the proposed graduate program shall be presented to the New Mexico state board of finance, the department shall notify the institution of the date when the New Mexico state board of finance has scheduled its consideration of the proposal.

**B.** The department will submit a summary of the proposed program along with the recommendation of the department cabinet secretary to the New Mexico state board of finance by a deadline set by the New Mexico state board of finance. A representative of the applicant institution shall be present to answer questions, present information or provide justification of the proposal to the New Mexico state board of finance.

**C.** If the New Mexico state board of finance denies the request for a new program, the department will not reconsider the application. The institution must initiate a new application process addressing the concerns of the New Mexico state board of finance.

**D.** No new graduate program shall be effective unless approved by the New Mexico state board of finance.

**E.** New graduate programs shall not be included in institutional catalogs until the institution receives the approval of the New Mexico state board of finance.

[5.5.2.12 NMAC - N, 06/12/2018]

#### **5.5.2.13 FACTORS CONSIDERED IN APPLICATION REVIEW:**

The department and advisory committee will consider factors from both an institutional and statewide perspective when reviewing an application for a new graduate degree program. The department and advisory committee reserve the right to consider additional factors and to weigh factors differentially when reaching decisions that best meet the interests of the state of New Mexico. Factors that may be considered include, but are not limited to the following:

**A.** purpose that is consistent with the mission of the proposing institution;

**B.** curriculum;

**C.** state and regional needs met by the program;

**D.** duplication of existing programs and cooperative arrangements with other institutions;

**E.** enrollment and credit hour projections for the first five years;

**F.** the extent to which the institution is ready to initiate the program, citing the remaining needs and recognizing each of those needs in the cost analysis developed pursuant to Subsection H of 5.5.2.13 NMAC;

**G.** assessment for program effectiveness, including criteria and timeline; and

**H.** projected cost of the program and the sources of funding that will support it, completed in collaboration with the institution's financial office.

[5.5.2.13 NMAC - N, 06/12/2018]

**5.5.2.14 REQUESTING A CLASSIFICATION INSTRUCTIONAL PROGRAMS CODE:**

**A.** When a new graduate program is approved, the institution must submit a classification of instructional programs (CIP) code request form, provided by the department, and documentation of approval by the New Mexico state board of finance to the planning and research division of the department within 30 business days of New Mexico state board of finance approval.

**B.** The planning and research division of the department will assign and approve the use of a new CIP code.

[5.5.2.14 NMAC - N, 06/12/2018]

**5.5.2.15 REPORTING:**

**A.** Institutions shall report to the department within 30 days of implementation:

- (1)** new graduate programs;
- (2)** new post-baccalaureate certificate programs; and
- (3)** discontinued graduate programs.

**B.** Any items reported to the department in Subsection A of 5.5.2.15 NMAC shall include CIP code, curriculum, campus location, and program requirements.

**C.** Institutions shall annually report dormant programs to the department on a date set by the department.

[5.5.2.15 NMAC - N, 06/12/2018]

### **PART 3: PROGRAMS OF TECHNICAL EXCELLENCE AT TWO-YEAR INSTITUTIONS DESIGNATION OF**

#### **5.5.3.1 ISSUING AGENCY:**

State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, (505) 827-7383.

[12/31/98; Recompiled 10/31/01]

#### **5.5.3.2 SCOPE:**

All public post-secondary educational institutions operating within and receiving financial support from the state of New Mexico.

[12/31/98; Recompiled 10/31/01]

#### **5.5.3.3 STATUTORY AUTHORITY:**

Authority for 5 NMAC 5.3 [5.5.3 NMAC] is found in NMSA 1978 Sections 21-1-26 and 21-2-5.

[12/31/98; Recompiled 10/31/01]

#### **5.5.3.4 DURATION:**

Permanent.

[12/31/98; Recompiled 10/31/01]

#### **5.5.3.5 EFFECTIVE DATE:**

December 31, 1998.

[12/31/98; Recompiled 10/31/01]; Recompiled 10/31/01]

#### **5.5.3.6 OBJECTIVE AND PURPOSE:**

A. The designation of institutions for specialized technical programs is one way in which New Mexico's two-year institutions can function more effectively as a system. Such designation can avoid duplication of effort and make technical education more available to the citizens of the state. This concept also offers the potential for the state to concentrate limited resources on high technology programs which have significant potential to impact the economic development of the state.

B. Programs designated as "programs of technical excellence" may receive supplementary funding on a priority basis. Priority will normally be given to existing programs.

[12/31/98; Recompiled 10/31/01]

#### **5.5.3.7 DEFINITIONS:**

**[RESERVED]**

[Recompiled 10/31/01]

#### **5.5.3.8 CRITERIA FOR PROGRAMS OF TECHNICAL EXCELLENCE:**

The commission will recognize as programs of technical excellence a limited number of technology programs (one to two per year after initial designations) at two-year institutions according to the following criteria:

A. **Uniqueness of the program:** designation as a "program of technical excellence" will generally be reserved for highly specialized and/or state-of-the-art technical programs which are unique within the state of New Mexico. These programs will usually be characterized by high operating, equipment, or facilities costs which the state cannot afford to duplicate. Special consideration will also be given to programs which, although not totally unique, meet the other criteria for program of technical excellence designation and are of particular significance in terms of meeting state educational and economic development goals.

B. **Educational Demand:** There must be a demonstrated and well-documented demand for the program in terms of meeting present and future needs of the state and nation. Such evidence will include current and projected job market requirements, past and projected student enrollment, support of employer advisory committees, and other relevant data.

C. **Program Planning:** Programs of technical excellence should be specifically identified in the institution's five-year plan. Current and projected data on enrollments, equipment and other costs, placement rates, economic conditions in the industry and plans for future development of the program should be incorporated in the plan.

D. **Operational Costs:** By virtue of its specialization and/or high level of technical sophistication, a program of technical excellence may require financial support above the level provided through current funding mechanisms for operational costs. Annual inflationary adjustments would be recommended on the same basis as provided for other higher education activities.

E. **Availability of Student Housing:** Programs of technical excellence are intended to serve students from a broader geographic area than the local community. The

institution must demonstrate that it can arrange or provide suitable housing on-campus or off-campus for students from outside of the local community.

**F. Program Evaluation:** An annual program evaluation by the institution is required for all programs of technical excellence.

(a) The commission in conjunction with the state department of education will provide direction to institutions regarding the content and format of the evaluation report, which should be submitted by August 1 of each year.

(b) The evaluation should document the continued need and demand for the program, performance of the program based on program objectives, enrollment levels, placement of graduates, and similar criteria. The evaluation report will be used by the commission to determine whether the program is meeting the educational needs of the state and merits continued designation of program of technical excellence.

(c) A full program review will be conducted by the commission and state department of education staff every three to five years.

**G. Articulation:** Courses included in the general education component of a program of technical excellence should be offered at other public degree-granting institutions and fully transferable and applicable to the degree requirements of the program of technical excellence.

[12/31/98; Recompiled 10/31/01]

#### **5.5.3.9 SCHEDULE:**

Proposals for designation as a program of technical excellence should address the criteria outlined above and should be submitted to the commission on higher education by July 1 annually after the first year. Submissions for the first year should be submitted by September 1, 1990.

[12/31/98; Recompiled 10/31/01]

### **PART 4: EXTENDED LEARNING FUND**

#### **5.5.4.1 ISSUING AGENCY:**

State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, (505) 827-7383.

[3/16/51, 7/1/94; Recompiled 10/31/01]

#### **5.5.4.2 SCOPE:**



All public schools and public post-secondary institutions in New Mexico are qualified to request funding through 5 NMAC 5.4 [now 5.5.4 NMAC].

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.3 STATUTORY AUTHORITY:**

Authority for 5 NMAC 5.4 [now 5.5.4 NMAC] is found in NMSA 1978; Sections 21-2A-11 and 21-2A-12.

[6/16/95; Recompiled 10/31/01]

#### **5.5.4.4 DURATION:**

Permanent.

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.5 EFFECTIVE DATE:**

September 30, 1996 [unless a later date is cited at the end of a section].

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.6 OBJECTIVE:**

A. The objective of 5 NMAC 5.4 [now 5.5.4 NMAC] is to encourage and support the development and operation of extended learning programs that ensure equitable student access to educational opportunities throughout New Mexico.

B. The extended learning fund was created in the state treasury for the purpose of making awards to public schools and public post-secondary institutions to develop and operate extended learning programs throughout the state. Money in this fund is appropriated to the New Mexico commission on higher education, which is charged with making awards for the purpose of establishing pilot programs that focus on:

- (1) the creation and operation of community based extended learning centers;
- (2) the development of regional resources; and
- (3) the expanded use of technology in instruction.

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.7 DEFINITIONS:**

A. "Commission" means the New Mexico commission on higher education.

B. "ELF" means the extended learning fund.

C. "Extended learning" means the full range of available and developing modes for bringing instruction to learners, including live instructor delivery, instructional television, computer conferencing, video conferencing, audio conferencing, etc.

D. "RFP" means request for proposal.

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.8 ADMINISTRATION:**

A. The commission shall assign a separate fund and organization code for the ELF in an interest-bearing account with the New Mexico state treasurer and the New Mexico department of finance and administration.

B. At the beginning of each fiscal year, the commission shall budget funds available in the ELF for expenditure.

C. Upon receipt of a list of proposals approved by the commission for awards, commission staff shall implement the appropriate purchase documents and vouchers to distribute awarded funds to the appropriate institutions.

D. Interest on unexpended and unencumbered balances shall be credited to the ELF, and budgeted in the following fiscal year for expenditure.

E. Institutions shall refund to the commission any balances remaining in project accounts at the end of the fiscal year(s) for which ELF funds were awarded.

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.9 ELIGIBILITY:**

All public state-supported colleges, universities, off-campus instructional centers, area-vocational schools, technical-vocational schools, special schools and public schools in New Mexico are eligible to submit proposals for ELF funding.

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.10 AWARDS:**

A. The selection of projects will be based on a competitive process.

B. Priority will be given to proposals from educational institutions for collaborative projects designed to increase educational services to New Mexico residents through resource sharing efforts. It is intended that educational institutions receiving awards

shall collaborate with other higher education institutions, public schools, school districts, state agencies community-based organizations, and/or the private sector in the utilization of allocated funds.

C. Acceptable proposals include those requesting support for initial pilot programs, as well as expansion of existing extended learning efforts. Proposals may include requests ranging from support for technical needs (e.g., the purchase of technology and equipment) to non-technical support services (e.g., teacher training or academic support).

D. The criteria below will generally be used in reviewing and ranking program proposals:

- (1) extent to which the proposal addresses the objective of the ELF;
- (2) demonstration of educational need for the proposal;
- (3) congruence of the proposal with institutional mission(s) and strengths;
- (4) evidence in the proposal of collaborative planning and support;
- (5) capacity of the proposal to interconnect existing educational delivery systems and/or develop technologically compatible educational delivery systems;
- (6) evidence in the proposal of institutional commitment and availability of support services;
- (7) inclusion in the proposal of a rigorous assessment/evaluation component;
- (8) cost of the proposal and extent of matching funds provided; and
- (9) staff qualifications.

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.11 DELIVERABLES:**

A. Proposals receiving funding from the ELF must result in a demonstrable product(s) (such as installed equipment, infrastructure connectivity, on-line library databases, faculty training programs, course syllabi, planning documents, etc.).

B. Progress reports from ELF-funded projects will be required semi-annually to the commission.

C. ELF project leaders may be invited to make presentations to the commission or other groups from time to time.

D. Other program products may be determined at the time of reaching agreement on the ELF proposal award.

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.12 DURATION OF AWARDS:**

Up to three years of funding may be provided on an annual basis, contingent upon funding being provided by the New Mexico legislature and the governor, and the nature of the project being funded.

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.13 PROCESS FOR AWARDS:**

A. The specific requirements for submitting proposals, and the time line for awards and submission of project reports will be specified annually in a published RFP. This RFP will be developed by commission staff in consultation with the commission.

B. Proposals must be submitted through the chief executive officer of the applicant public school, school district or public post-secondary institution. Collaborative proposals involving more than one party should include evidence of each party's willingness to participate and commitment to share resources. The signature of the chief executive officer of each participating party is required on the proposal.

C. Proposals will be subject to a competitive review process with points assigned to the preceding award criteria (see Section 10.4) [now Subsection D of 5.5.4.10 NMAC].

D. Proposals will be evaluated by commission staff and thence by members of the commission. Funding recommendations will be based on the relative rankings of the proposals determined by the review process. Final awards will be determined by the commission in a public meeting.

[9/30/96; Recompiled 10/31/01]

#### **5.5.4.14 EVALUATION AND REPORTING ON EXTENDED LEARNING AND THE EXTENDED LEARNING FUND:**

A. The commission annually will request information about extended learning activities from each public post-secondary institution.

B. All recipients of awards from the ELF will be required to provide progress and performance reports to the commission on a schedule set by the commission.

C. The commission will periodically evaluate the statewide extended learning initiative, including the performance of the ELF in meeting its stated objectives.

D. A report on the status of the statewide extended learning initiative and the performance of the ELF in meeting its stated objectives will be submitted by the commission to the New Mexico legislature and the governor by October 1 of each year.

[9/30/96; Recompiled 10/31/01]

## **PART 5: CLOSURE AND STUDENT COMPLAINT PROCEDURES FOR PUBLIC INSTITUTIONS**

### **5.5.5.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.5.5.1 NMAC - Rp, 5.5.5.1 NMAC, 12/11/2018]

### **5.5.5.2 SCOPE:**

Provisions of 5.5.5 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico.

[5.5.5.2 NMAC - Rp, 5.5.5.2 NMAC, 12/11/2018]

### **5.5.5.3 STATUTORY AUTHORITY:**

Section 9-25-8 NMSA 1978, Section 21-1-26 NMSA 1978, Section 21-2-5 NMSA 1978, and Section 21-1B-5.1 NMSA 1978.

[5.5.5.3 NMAC - Rp, 5.5.5.3 NMAC, 12/11/2018]

### **5.5.5.4 DURATION:**

Permanent

[5.5.5.4 NMAC - Rp, 5.5.5.4 NMAC, 12/11/2018]

### **5.5.5.5 EFFECTIVE DATE:**

December 11, 2018, unless a later date is cited at the end of a section.

[5.5.5.5 NMAC - Rp, 5.5.5.5 NMAC, 12/11/2018]

### **5.5.5.6 OBJECTIVE:**

A. The purpose of 5.5.5 NMAC is to create a process for administration of student complaint resolution for public post-secondary institutions and to establish procedures for student program completion and student record maintenance and retention in the

event an institution closes, ceases program offerings that contain enrolled students, or substantially relocates.

**B.** No public post-secondary institution located in New Mexico operating within and receiving financial support from the state shall close, cease program offerings that contain enrolled students, or substantially relocate without proper notice and complying with the provisions set out in 5.5.5 NMAC. A public post-secondary institution that closes shall provide for the perpetual care and maintenance of student records and ensure students have access to transcripts in perpetuity.

**C.** Pursuant to Federal regulation Section 600.9 of 34 C.F.R. (as amended in 2010), for a public post-secondary institution (established by name as an educational institution by a state through a charter, statute, constitutional provision, or other action) to be eligible for state authorization, the institution must be legally authorized by a state that has a process to review and appropriately act on complaints concerning the institution including enforcing applicable state laws.

**D.** Institutions concurrently offering distance education pursuant to 5.99.1 NMAC as a SARA institution, through distance education authorization, or through any other method detailed in Section 5.99.1.10 NMAC:

**(1)** shall be subject to complaint procedures detailed in 5.99.1 NMAC, as related only to students enrolled exclusively as distance education students; and

**(2)** shall be subject to 5.99.2 NMAC, if the institution seeks to close, cease program offerings that contain enrolled students, or substantially relocate as defined in 5.99.2 NMAC, as related only to students enrolled exclusively as distance education students.

[5.5.5.6 NMAC - Rp, 5.5.5.6 NMAC, 12/11/2018]

#### **5.5.5.7 DEFINITIONS:**

**A "Accrediting body"** means an accreditor or accrediting agency that has issued an accreditation status to the institution.

**B. "Custodian of records"** means an entity with which the institution has arranged for the perpetual care, maintenance and accessibility of all records and transcripts for all students receiving credit from the institution during the period of its existence. The entity must be in compliance with the Family Educational Rights and Privacy Act (FERPA) and be capable of servicing student record requests. Documentation evidencing such compliance shall be submitted to the department

**C. "Department"** means the New Mexico higher education department.

**D. "Manager"** means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of an institution.

**E. "Post-Secondary Institution" or "Institution"** means a public post-secondary higher education institution operating within and receiving financial support from the state of New Mexico.

**F. "Program"** means any certificate or degree program or for purposes of closure, a college, school or department within an institution.

**G. "Substantially relocating" or "substantially relocates" or "substantial relocation"** means a relocation of the institution's physical site that is beyond the proximity a student is normally required to travel for educational offerings.

[5.5.5.7 NMAC - Rp, 5.5.5.7 NMAC, 12/11/2018]

#### **5.5.5.8 NOTICE:**

**A.** An institution shall provide formal written notice of closure to the department, enrolled students, and the legislature immediately upon gaining actual knowledge of the institution's intent to close, but no less than 90 days prior to closure.

**B.** An institution shall provide formal written notice of intent to substantially relocate to the department, enrolled students, and the legislature immediately upon gaining actual knowledge of the institution's intent to substantially relocate, but no less than 90 days prior to moving operations.

**C.** An institution that seeks to close any other campuses (branch, satellite, or main) associated with the institution's accreditation shall provide formal written notice to the department, enrolled students and the legislature immediately upon gaining actual knowledge of the institution's intent to close, but no less than 90 days prior to closure.

**D.** An institution shall provide formal written notice of intent to cease program offerings that contain enrolled students, to the enrolled students and the department immediately upon gaining actual knowledge of the institution's intent to cease the program offerings, but no less than 90 days prior to ceasing offerings. If an institution is unable to comply with the 90 day notice period to cease program offerings that contain enrolled students, the institution must notify the department. The department may grant approval for a deviation from the required 90 day notice period if the institution presents evidence and articulable facts and circumstances that demonstrate the institution's inability to comply with the 90 day notice period.

[5.5.5.8 NMAC - Rp, 5.5.5.8 NMAC, 12/11/2018]

#### **5.5.5.9 PLAN:**

**A.** An institution that intends to close, cease program offerings that contain enrolled students, or substantially relocate shall present a plan to the department.

**B.** An institution that is required to seek approval from an accrediting body of a plan to close, cease program offerings that contain enrolled students, or substantially relocate, must submit a copy of the approved plan to the department within seven days of receiving approval by the accrediting body.

**C.** An institution that is not required to seek approval of a plan by an accrediting body must submit a plan to the department as soon as practical, but no less than 90 days prior to closure, ceasing a program offering that contains enrolled students, or making substantial change to location.

**D.** The plan must include provisions for teach-out agreements, completion of programs by enrolled students, perpetual care and maintenance of student records, and identification and location of a responsible agent for the institution for a period of at least one year following closure.

[5.5.5.9 NMAC - N, 12/11/2018]

#### **5.5.5.10 TEACH-OUT AGREEMENT OR PLAN:**

**A.** An institution that seeks to close, cease program offerings that contain enrolled students, or substantially relocate, shall enter into a teach-out agreement with another institution offering similar programs for provision of the remaining program requirements of enrolled students or provide a teach-out plan that allows students to complete their program of study at the closing institution.

**B.** An institution that has served notice to close, cease program offerings that contain enrolled students, or substantially relocate, shall provide to the department a copy of the approved teach-out agreement or plan. If an institution enters into a teach-out plan that allows students to complete their program of study at the closing institution, the timeframe to complete the plan must be accepted by the department.

**C.** Enrolled students impacted by teach-out agreements or plans must be notified of the agreement or plan when it is finalized. Teach-out agreements or plans shall be made available and arranged at no additional cost to the student beyond that originally agreed to by the student.

**D.** The department may determine that a teach-out agreement or plan is not feasible after consideration of evidence submitted to the department. The department may find that teach-out arrangements are not feasible for students in one or more programs offered by the institution, in which case the institution shall refund all tuition and fees paid by the students in question for the current period of enrollment and shall provide appropriate transcripts and evaluations to assist students in transferring their work to another institution.



**E.** An institution that seeks to relocate may be exempt from entering into a teach-out agreement or plan if the institution can demonstrate to the department that students will not be substantially burdened by the change in location. The institution will be required to complete a form published by the department demonstrating possible impact to students.

[5.5.5.10 NMAC - N, 12/11/2018]

#### **5.5.5.11 RECORDS MAINTENANCE:**

**A.** Prior to closure, an institution must ensure that records are in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, regulations of any other authorizing agency, or laws, regulations, and rules of any other authorizing jurisdiction or territory, whichever is longest in time. If another authorizing agency of the institution requires a longer period of retention than that of 1.21.2 NMAC, the longest retention period shall prevail.

**B.** If an institution discontinues its operation, the manager shall file with the designated custodian of records, the original or legible true copies of all educational records required to be maintained pursuant to law, the United States department of education, the accrediting body of the institution, and at a minimum, the student's enrollment agreement, student transcript, record indicating program completion (either certificate, diploma, degree, or other like proof of completion) and student financial aid records. A written detailed description for how records will be maintained following the closure shall be provided to the department in a plan for the perpetual care and maintenance of records. The written plan must include, but is not limited to the following:

(1) certification that the post-secondary institution is in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, records retention requirements of any other authorizing agency, or laws, regulations, and rules of any other authorizing jurisdiction or territory related to records retention, whichever is longest in time;

(2) designation of a custodian of records;

(3) physical address of hard copy files;

(4) physical address of digital files; and

(5) process for obtaining transcripts or other records from the custodian of record.

**C.** The department must be notified of any update related to the custodian of records or upon any change to the custodian of records.

**D.** The department must be provided a copy of any contractual arrangements made for the perpetual care, maintenance and accessibility of all records. The department may request any additional records or information to help students gain access to transcripts in perpetuity.

**E.** In the event that the institution does not comply with the records maintenance provisions within 5.5.5 NMAC, the department may seek a court order to protect and if necessary take possession of the records.

**F.** Students must be made aware of the process to request student records from the custodian of records. The process must be provided in writing to the student and made available on the institution's website.

[5.5.5.11 NMAC - N, 12/11/2018]

#### **5.5.5.12 FINAL EXECUTION REPORT:**

Before any post-secondary institution closes it shall submit to the department a summary of all actions taken pursuant to the requirements set forth in all applicable Sections of 5.5.5 NMAC. The institution must also submit certification that it has met all rules of the department pertaining to the termination of operations by institutions.

[5.5.5.12 NMAC - N, 12/11/2018]

#### **5.5.5.13 STUDENT COMPLAINTS:**

**A.** An institution shall adopt student complaint procedures which allow students to seek resolution to complaints or grievances. Institutions shall retain records that make available the student complaint received and record of the institution's processing the complaint (that comports with the institution's policies and procedures for handling grievances or complaints) as required by law. The institution shall have and make available to all students, the adopted complaint procedure that describes in detail, how students may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

(1) requirement that students with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;

(2) a timeframe within which the institution will investigate and respond to the complainant;

(3) assurance that the representative of the institution investigating or addressing the complaint will serve as an impartial representative and is not directly involved in the subject matter to which the complaint is related;

(4) assurance that no adverse action will be taken against the complainant for registering the complaint; and

(5) identification of the department as the agency to be contacted in cases where a complaint cannot be resolved and include the mailing address, website and phone number for the department.

**B.** The initial responsibility for the investigation and resolution of complaints resides with the institution. A student not satisfied with the outcome of a complaint or the institution's handling of the complaint process may submit the complaint to the department. The department shall not engage in any complaint resolution procedures unless a student has exhausted all complaint procedures set by the institution or can demonstrate the institution's refusal to utilize its complaint resolution procedures. If the student can demonstrate all complaint procedures of the institution have been exhausted and the student is not satisfied with the outcome, the department may help facilitate resolution where possible, if the complaint contains a question of fact or potentially involves a violation of or a deviation from policy, regulation, or law.

**C.** Complaints regarding student grades or student conduct violations shall be governed entirely by institutional policy and shall not be reviewed by the department. Complaints containing allegations of fraud, abuse, or consumer protection violations, rising to the level of violation of state or federal law, as demonstrated through substantial evidence (evidence of such weight and quality that it is sufficient to persuade a reasonable person to support the allegation asserted), shall be reported to law enforcement, the United States department of education, and the institution's accreditor, or any other applicable oversight entities.

**D.** Upon receipt of a student complaint, the department shall determine whether the complaint meets initial criteria to permit use of the department's complaint procedure. The following initial complaint criteria must be satisfied:

(1) a student must file a complaint with the department within three years of the student's last date of enrollment;

(2) the complaint must be made to the department in writing utilizing the designated complaint form published by the department. The student may include supporting documentation or evidence related to the complaint. The department may request additional documentation from the student, as needed, to conduct an initial assessment;

(3) the complaint must detail and provide evidence that the student has exhausted all complaint procedures at the institution;

(4) the complaint must contain a question of fact or question regarding potential violation of or deviation from policy, regulation, or law;

**E.** If the department determines the complaint meets the initial complaint criteria, it shall serve as an intermediary in attempting to facilitate a resolution or to obtain information from the institution to eliminate questions of fact or possible violations or deviations from policy, regulation or law raised by the complaint. Satisfaction of initial complaint criteria, in no way means the department has assigned greater weight to the student's allegations. If the department finds that the subject matter of the complaint falls within the investigatory purview of another entity, it may forward the complaint and cease further review (for example the office for civil rights).

(1) Acting as an intermediary, the department shall request a response from the institution addressing the student's complaint. The complaint and any documentation provided by the student shall be sent to the institution with a request for a written response. The institution shall have 10 days to forward its response to the department. The institution may request additional response time, if inquiry into the complaint requires greater than 10 days. The institution may provide any supporting documentation or evidence to address questions or concerns raised by the complaint with the response.

(2) After considering the institution's response and any documentation or evidence supplied by the institution, the department may conduct further inquiry of the parties or may continue to serve as an intermediary for possible compromise between the parties. The department may seek additional clarifying information or supporting documentation from either party and may request additional response from either party.

(3) If the institution accepts the desired outcome proposed by the student in the complaint, the department shall inform the student. If the institution proposes an alternate desired outcome, the department shall convey such information to the student and the student shall indicate acceptance or denial of the alternate proposed outcome, or create a different proposed outcome, to allow for compromise. If at any point, the student and the institution reach an agreed upon outcome, the department may help facilitate fulfillment of the outcome, as necessary.

(4) If the parties are unable to reach a mutually agreeable outcome, the department may, but is not obligated to, convene a meeting between the parties. Such meetings, if held, shall be informal and for the purpose of clarifying the facts surrounding the complaint and to facilitate the parties reaching a resolution or compromise, if possible. If a meeting is convened, the department shall give written notice to the institution and to the student, regarding the time, date, and place of the meeting.

**F.** The department may help facilitate a compromised resolution between the parties. However, the department shall not impose an outcome and shall not act as an adjudicatory entity. If the department has received evidence to support potential violation of or a deviation from policy, regulation, or law through the department's inquiry, the department may refer the complaint to either law enforcement, the United States department of education, the institution's accreditor, or any other applicable

oversight entities for further investigation, as applicable to the type of potential violation or deviation. If the department determines, at any time, that questions raised by the complaint are alleviated or the complaint relates to grades or student conduct violations, it shall cease further inquiry into the complaint and inform the student that the complaint will be closed with no further action by the department.

[5.5.5.13 NMAC - N, 12/11/2018; A, 2/11/2025]

## **PART 6: APPROVAL OF NEW UNDERGRADUATE PROGRAMS**

### **5.5.6.1 ISSUING AGENCY:**

New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505, (505) 476-8400.

[5.5.6.1 NMAC - N, 06/12/2018]

### **5.5.6.2 STATUTORY AUTHORITY:**

Section 9-25-8 NMSA 1978, Section 21-2-5 NMSA 1978, Section 21-13-12 NMSA 1978, and Section 21-1-26 NMSA 1978.

[5.5.6.2 NMAC - N, 06/12/2018]

### **5.5.6.3 SCOPE:**

All undergraduate programs offered by any public higher education institution operating within and receiving financial support from the state of New Mexico.

[5.5.6.3 NMAC - N, 06/12/2018]

### **5.5.6.4 DURATION:**

Permanent.

[5.5.6.4 NMAC - N, 06/12/2018]

### **5.5.6.5 EFFECTIVE DATE:**

June 12, 2018, unless a later date is cited at the end of a section.

[5.5.6.5 NMAC - N, 06/12/2018]

### **5.5.6.6 OBJECTIVE:**

To provide a process for objective review of proposed undergraduate programs. Any public higher education institution operating within and receiving financial support from

the state of New Mexico shall follow the procedures set out by the department before creating a new undergraduate program.

[5.5.6.6 NMAC - N, 06/12/2018]

#### **5.5.6.7 DEFINITIONS:**

**A. "Certificate"** means a program of study that is designed to develop or enhance a focused area of expertise, provide specific skill training and to enhance employability.

**B. "Department"** means the New Mexico higher education department.

**C. "Dormant programs"** means programs that have not admitted new students for a period of three consecutive years

**D. "Institution"** means a public higher education institution operating within and receiving financial support from the state of New Mexico.

**E. "Institutional review"** means the process by which an institution conducts internal evaluation and approval of new courses, programs or any other matter related to curriculum. The required review process may differ between institutions and is set by each individual institution.

**F. "New undergraduate program"** means a sequence of courses, activities or experiences which leads to the award of an associate's or bachelor's degree in a new academic discipline or sub-discipline or creates a new level of degree in a previously created academic discipline or sub-discipline that differs from currently approved programs at the proposing institution.

**G. "Undergraduate program" or "program"** means any sequence of courses, activities or experiences which leads to the award of an associate's or bachelor's degree.

[5.5.6.7 NMAC - N, 06/12/2018]

#### **5.5.6.8 GENERAL REQUIREMENTS:**

**A.** No new undergraduate program that initiates institutional review after August 1, 2018, nor any student enrolled in that program, shall be eligible for inclusion in any of the department's funding recommendations unless the program has been approved by the department cabinet secretary.

**B.** The department will maintain an inventory of undergraduate programs that are offered at each institution. The department's staff shall update the degree inventory and list of degree requirements to include changes reported to the department by the institutions.

**C.** A program, option, concentration or specialization that has been prepared to meet a request of a particular employer and that will be financially supported by that employer is not subject to approval by the department. However, such programs are considered restricted and do not receive state funding. Students enrolled in such programs are not eligible for any state support until the program is approved pursuant to 5.5.6 NMAC and the program becomes unrestricted.

**D.** Proposed new undergraduate programs that initiate institutional review after August 1, 2018 are subject to 5.5.6 NMAC. Proposed new undergraduate programs that initiated institutional review prior to August 1, 2018 are not subject to 5.5.6 NMAC.

[5.5.6.8 NMAC - N, 06/12/2018]

#### **5.5.6.9        SUBJECT TO APPROVAL:**

The following actions require the approval of the department cabinet secretary.

**A.** Addition of a new undergraduate program.

**B.** Addition of a bachelor's degree in an academic discipline or sub-discipline in which an associate's degree is already awarded.

**C.** Addition of an associate's degree in an academic discipline or sub-discipline in which a bachelor's degree is already awarded.

**D.** Addition or deletion of a program option, concentration or specialization that will result in a new degree level or academic discipline or sub-discipline. For example, the addition of a concentration or specialization in British literature to an existing bachelor of arts in English would not be subject to 5.5.6 NMAC; however, the addition of an option of British literature in an English department that would result in a new bachelor of arts in British literature would be subject to 5.5.6 NMAC.

**E.** Addition of an undergraduate program acquired from another institution.

**F.** Addition of a hybrid undergraduate program where two or more previously approved programs are combined to create a new degree level or academic discipline or sub-discipline.

[5.5.6.9 NMAC - N, 06/12/2018]

#### **5.5.6.10        ADVISORY REVIEW COMMITTEE:**

**A.** The department shall convene an advisory review committee, chaired by the department cabinet secretary or designee, to evaluate applications submitted by institutions seeking approval of a new undergraduate program. The advisory committee shall make a recommendation to the department cabinet secretary. The authority to

determine whether a program is approved rests solely with the department cabinet secretary.

**B.** The advisory review committee shall be convened at the request of the department at least four times per year if there are programs to be reviewed.

**C.** The advisory review committee shall consist of:

(1) the cabinet secretary or designee of the New Mexico higher education department;

(2) the cabinet secretary or designee of the New Mexico department of workforce solutions;

(3) the cabinet secretary or designee of the New Mexico department of finance and administration;

(4) the cabinet secretary or designee of the New Mexico department of economic development;

(5) the director or designee of the New Mexico legislative finance committee;

(6) a chief academic officer from a two-year independent community college;

(7) a chief academic officer from a two-year branch community college;

(8) a chief academic officer from a four-year research university; and

(9) a chief academic officer from a four-year comprehensive college or university.

**D.** A chief academic officer serving on the advisory review committee shall recuse himself or herself from voting on any matters from his or her institution brought before the advisory review committee.

[5.5.6.10 NMAC - N, 06/12/2018]

#### **5.5.6.11 APPROVAL BY THE DEPARTMENT:**

**A.** Before submitting an application to create a new undergraduate program, an institution must have initiated institutional review. It is the sole responsibility of the institution to comply with all requirements of the institution and seek approval within a timeframe that allows the institution to comply with all necessary deadlines set by the department. If any decision in the institutional review process affects the content of the application submitted to the department, the institution must re-submit the application to



the department with updated information. Updates to the application by the institution may impact the timeline of review by the department.

**B.** An institution must submit a completed application to the department, on a form provided by the department, by the deadline published by the department.

**C.** The department shall conduct an initial review of a submitted application. The department may request additional information from the institution for use in its initial review. The department shall determine whether the application is correctly and fully completed. If the department determines that an application is not correctly and fully completed, the department shall return the application to the institution with recommendations as to how deficiencies may be remedied. An application shall not be presented to the advisory review committee until the department has completed initial review and determines that the application is correctly and fully completed.

**D.** If the application is submitted on or before the deadline published by the department, consideration of the application shall be placed on the next advisory committee meeting agenda. If the institution submits the form after the published deadline, consideration of the application will be postponed until the subsequent advisory committee meeting.

**E.** The department shall have a representative present during the advisory committee meeting to present the application. The department representative shall not be an advisory committee member.

**F.** A representative from the applicant institution shall be present during the advisory committee meeting and shall be prepared to respond to questions presented by the advisory committee. The institutional representative shall not be considered a member of the advisory committee and may not cast a vote on any matters before the committee.

**G.** The advisory committee may recommend to approve, disapprove, or return a proposal to the sponsoring institution for modification.

**H.** After receiving a recommendation from the advisory committee, the department cabinet secretary shall make the final written determination as to whether the new undergraduate program shall be approved, disapproved, or returned to the sponsoring institution for modification. The final written determination shall be sent to the institution within 10 business days of the advisory committee meeting.

**I.** At any point during the review process, the institution may withdraw its application.

**J.** If the department cabinet secretary denies the application for a new undergraduate program the department shall issue a statement in writing to the institution detailing the reasons for denial. If the department cabinet secretary

determines that the application shall be returned to the sponsoring institution for modification, the department shall issue a statement in writing to the institution detailing the reasons.

**K.** If the institution receives a denial, the institution may file an appeal to the department within 10 business days of issuance by the department cabinet secretary. The appeal must contain the institution's arguments for reversal of the decision, clearly labeled. The appeal must be mailed to the department cabinet secretary via certified mail. The department cabinet secretary will evaluate the merits of the appeal and consider the arguments of the institution. Upon review by the department cabinet secretary, a final written determination will be sent to the institution within 20 business days of receipt of the appeal. While an appeal is pending, the institution and department are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. The institution may withdraw an appeal at any time before the secretary reaches a final decision.

**L.** If the department cabinet secretary denies the request for a new program, the department will not reconsider the same application. The institution must initiate a new application process addressing the concerns of the advisory committee or department cabinet secretary.

**M.** No new undergraduate program shall be effective unless approved by the department cabinet secretary. If the department cabinet secretary does not approve a new program, the program and any student enrolled in that program, shall not be eligible for inclusion in any of the department's funding recommendations.

[5.5.6.11 NMAC - N, 06/12/2018]

#### **5.5.6.12 FACTORS CONSIDERED IN APPLICATION REVIEW:**

The department and advisory committee will consider factors from both an institutional and statewide perspective when reviewing an application for a new undergraduate program. The department and advisory committee reserve the right to consider additional factors and to weigh factors differentially when reaching decisions that best meet the interests of the state of New Mexico. Factors that may be considered include, but are not limited to the following:

- A.** purpose that is consistent with the mission of the proposing institution;
- B.** curriculum;
- C.** state and regional needs met by the program;
- D.** duplication of existing programs and cooperative arrangements with other institutions;

**E.** enrollment and credit hour projections for the first five years;

**F.** the extent to which the institution is ready to initiate the program, citing the remaining needs and recognizing each of those needs in the cost analysis developed pursuant to Subsection H of 5.5.6.12 NMAC;

**G.** assessment for program effectiveness, including criteria and timeline; and

**H.** projected cost of the program and the sources of funding that will support it, completed in collaboration with the institution's financial office.

[5.5.6.12 NMAC - N, 06/12/2018]

**5.5.6.13 REQUESTING A CLASSIFICATION OF INSTRUCTIONAL PROGRAMS CODE:**

**A.** A classification of instructional programs (CIP) code will not be assigned nor approved by the department until department and institutional review have been completed.

**B.** When a new undergraduate program is approved, the institution must submit a CIP code request form and documentation of approval by the department cabinet secretary and the institution's governing board to the planning and research division of the department.

**C.** The planning and research division of the department will assign and approve the use of a new CIP code.

[5.5.6.13 NMAC - N, 06/12/2018]

**5.5.6.14 REPORTING:**

**A.** Institutions shall report to the department the following, in a manner determined by the department, within 30 business days of implementation:

- (1)** new undergraduate programs;
- (2)** new sub-baccalaureate certificate programs;
- (3)** discontinued undergraduate programs; and
- (4)** any change to the curriculum of an existing undergraduate program.

**B.** Any items reported to the department in Subsection A of 5.5.6.14 NMAC shall include CIP code, curriculum, location, and program requirements.

C. Institutions shall annually report dormant programs to the department on a date set by the department.

[5.5.6.14 NMAC - N, 06/12/2018]

## **PART 7-19: [RESERVED]**

## **PART 20: EDUCATIONAL LOAN PURCHASE PROGRAM**

### **5.5.20.1 ISSUING AGENCY:**

New Mexico Educational Assistance Foundation, 3900 Osuna NE, Albuquerque, New Mexico 87109.

[2-28-98; 5.5.20.1 NMAC - Rn, 5 NMAC 5.20.1, 10-13-00]

### **5.5.20.2 SCOPE:**

New Mexico Educational Assistance Foundation

[2-28-98; 5.5.20.2 NMAC - Rn, 5 NMAC 5.20.2, 10-13-00]

### **5.5.20.3 STATUTORY AUTHORITY:**

Sections 21-21A-1 through 21-21A-23 NMSA 1978(Act).

[2-28-98; 5.5.20.3 NMAC - Rn, 5 NMAC 5.20.3, 10-13-00]

### **5.5.20.4 DURATION:**

Permanent.

[2-28-98; 5.5.20.4 NMAC - Rn, 5 NMAC 5.20.4, 10-13-00]

### **5.5.20.5 EFFECTIVE DATE:**

February 28, 1998 unless a different date is cited at the end of a section or paragraph and applies to all student loan bonds issued on or after this date.

[2-28-98; 5.5.20.5 NMAC - Rn, 5 NMAC 5.20.5, 10-13-00]

### **5.5.20.6 OBJECTIVE:**

To establish rules and regulations governing the origination and acquisition of student loans by the New Mexico Educational Assistance Foundation pursuant to the Educational Assistance Act (Sections 21-21A-1 through 21-21A-23 NMSA 1978.)

**5.5.20.7 DEFINITIONS:**

**A. "Additional Bonds"** means any Bonds, other than the 1998 Bonds, the Series 1999 Bonds and the Series 2000 Bonds, issued pursuant to the Indenture.

**B. "Bond" or bonds** means the 1998 Bonds, the Series 1999 Bonds, the Series 2000 Bonds and any Additional Bonds.

**C. "Borrower Benefit Programs"** means collectively the More Money Program, the Instant Savings Program, the Easy Pay Program, the Pot of Gold Program, the Teachers for Tomorrow Program and similar borrower benefit programs, approved by the Board and permitted by the Indenture.

**D. "Certificate of Insurance"** means a certificate of federal loan insurance evidencing that a Financed Eligible Loan is Insured pursuant to a Contract of Insurance.

**E. "Contract of Insurance"** means the Contract of Federal Loan Insurance, dated February 12, 1982, between the Foundation and the Secretary, and any amendment thereof which is hereafter entered into.

**F. "Derivative Product"** means a written contract or agreement the Foundation and a Reciprocal Payor, which provides that the Foundation's obligations thereunder will be conditioned on the absence of (i) of failure by the Reciprocal Payor to make any payment required thereunder when due and payable, or (ii) a default thereunder with respect to the financial status of the Reciprocal Payor, and:

**G. "Educational Assistance Act"** means Sections 21-21A-1 to 21-21A-23 NMSA 1978, as amended from time to time.

**H. "Easy Pay Program"** means the Borrower Benefit Program that provides for an interest rate reduction of one quarter of one percent per annum if a borrower agrees to automatic loan payments with respect to a borrower's Eligible Loan.

**I. "Eligible Borrower"** means a student, parent or other borrower who is eligible under the Higher Education Act to be the obligor of a loan for financing a program of post-secondary education.

**J. "Eligible Institution"** shall mean an "eligible institution" as defined under the Higher Education Act which is a "participating school" within the meaning of the Higher Education Act.

**K. "Eligible Loan"** shall mean any loan made to finance post-secondary education that is (a) made under the Higher Education Act and is Guaranteed or Insured and has not been tendered to the Guaranty Agency or the Secretary for payment (unless the

situation giving rise thereto has been cured) or (b) otherwise permitted to be acquired or originated by the Foundation pursuant to its Program (provided that loans described in this clause (b) shall not be originated or acquired pursuant to the Indenture unless the Trustee and the Foundation shall have received a Favorable Opinion (with respect to the use of the proceeds of Tax-Exempt Bonds) and a written confirmation from each Rating Agency that the origination or acquisition of such additional loans ( or a particular amount thereof) will not adversely affect the Rating on any of the Bonds then outstanding.

**L. "Eligible Student"** shall mean a student who is eligible under the Higher Education Act to receive a loan, which is Insured or Guaranteed, for financing a program of post-secondary education, including a student who is eligible under the Higher Education Act to be a student for whose benefit a PLUS/SLS Loan is made.

**M. "Federal Reimbursement Contracts"** means the agreements, dated July 1, 1981, as amended and supplemented, between NMSLGC and the Secretary providing for the payment by the Secretary of amounts authorized to be paid pursuant to the Higher Education Act, including (but not necessarily limited to) reimbursement of amounts paid or payable upon defaulted Financed Eligible Loans and other student loans Guaranteed or Insured by NMSLGC and interest subsidy payments to holders of qualifying student loans guaranteed or insured by NMSLGC.

**N. "Financed" or "financing"**, when used with respect to the Eligible Loans, shall mean or refer to Eligible Loans (i) acquired or originated by the Foundation with balances in the Acquisition Fund or otherwise deposited in or accounted for in the Acquisition Fund or otherwise constituting a part of the Trust Estate and (ii) Eligible Loans substituted or exchanged for Financed Eligible Loans, but does not include Eligible Loans from the lien of the Indenture and sold or transferred, to the extent permitted by the Indenture.

**O. "Fiscal Year"** means the fiscal year of the Foundation as established from time to time.

**P. "Foundation"** means the New Mexico Educational Assistance Foundation, a nonprofit corporation duly organized and existing under the laws of the State, and any successor to its functions relating to the Program.

**Q. "Guarantee" or "Guaranteed"** means with respect to an Eligible Loan, the insurance or guarantee by the Guaranty Agency pursuant to such Guaranty Agency's Guarantee Agreement of the maximum percentage of the principal of and accrued interest on such Eligible Loan allowed by the terms of the Higher Education Act with respect to such Eligible Loan at the time it was originated and the coverage of such Eligible Loan by Federal Reimbursement Contracts, providing, among other things, for reimbursement to such Guaranty Agency for payments made by it on defaulted Eligible Loans insured or guaranteed by such Guaranty Agency of at least the minimum

reimbursement allowed by the Higher Education Act with respect to a particular Eligible Loan.

**R. "Guaranty Agency"** means the NMSLGC, and any other entity authorized to guarantee student loans under the Higher Education Act, and their respective successors and assigns.

**S. "Guarantee Agreements"** means a guarantee or lender agreement with any Guaranty Agency, and any amendments thereto.

**T. "Guarantee Fund"** means a Guarantee Fund established in accordance with the Guarantee Agreement.

**U. "Guarantee Program"** means a Guaranty Agency's student loan insurance program pursuant to which a Guaranty Agency guarantees or insures student loans.

**V. "Higher Education Act"** means the Higher Education Act of 1965, as amended or supplemented from time to time, and all regulations, directives, bulletins and guidelines proposed or promulgated from time to time thereunder.

**W. "Indenture"** means the Indenture of Trust dated as of February 1, 1998 as amended and supplemented by the First Amendment to Indenture of Trust dated as of November 15, 1998, as supplemented and amended by the Second Supplemental Indenture of Trust dated as of May 1, 1999 and as supplemented and amended by the Third Supplemental Indenture of Trust dated as of October 1, 2000 including all supplements and amendments thereto.

**X. "Insurance", "Insured" or "Insuring"** means, with respect to an Eligible Loan, the insuring by the Secretary (as evidenced by a Certificate of Insurance or other document or certification issued under the provisions of the Higher Education Act) of 100% of the principal of and accrued interest on such Eligible Loan.

**Y. "Insured Loan"** means an Eligible Loan which is Insured.

**Z. "Instant Savings Program"** means the Borrower Benefit Program that provides for an interest rate reduction of one half of one percent with respect to a Stafford Loan or a PLUS Loan guaranteed on or after May 1, 1998, when the loan enters repayment with the Foundation.

**AA. "Lender"** means any "eligible lender," as defined in the Higher Education Act and the Loan Purchase Regulations, permitted to participate as a seller of Eligible Loans to the Foundation under the Program and which has received an eligible lender designation from the Secretary of Education with respect to Insured Loans or from a Guaranty Agency with respect to Guaranteed Loans.

**BB. "Loan Purchase Agreement" or "Educational Loan Purchase Agreement"** means an agreement between the Foundation and a Lender providing for the sale by the Lender to the Foundation of Eligible Loans under the Program.

**CC. "Loan Purchase Regulations"** means the rules and regulations of the Foundation duly adopted by the Board which pertain to the Program.

**DD. "More Money Program"** means the Borrower Benefit Program which provides for the payment of the guarantee fee of up to one percent of the loan principal which would otherwise be deducted from the proceeds of the loan and paid to the Guaranty Agency by the Foundation for all Stafford Loans and PLUS Loans guaranteed on or after June 1, 1999.

**EE. "NMGSLC"** means the New Mexico Student Loan Guarantee Corporation, a non-profit corporation organized under the laws of the State.

**FF. "Outstanding"** shall mean, when used in connection with any bond, a bond which has been executed and delivered pursuant to the Indenture which at such time remains unpaid as to principal or interest, and when used in connection with a Derivative Product, a Derivative Product which has not expired or been terminated, unless in all cases provision has been made for such payment pursuant to Section 10.02 of the Indenture, excluding bonds which have been replaced pursuant to Section 2.09 of the Indenture.

**GG. "Pot of Gold Program"** means the Borrower Benefit Program that provides for a one time five percent reduction of the principal amount of all Eligible Loans entering repayment on or after June 30, 1994 for Eligible Borrowers who have made all forty eight of their consecutive monthly payments on time as required by the applicable loan documents.

**HH. "PLUS/SLS Loan"** means a Student Loan authorized under Section 428A or Section 428B of the Higher Education Act.

**II. "Program"** means the Foundation's program for the origination of Eligible Loans as the same may be modified from time to time.

**JJ. "Secretary"** means the Secretary of the United States Department of Education or any successor to the pertinent functions thereof under the Higher Education Act.

**KK. "Special Allowance Payments"** means special allowance payments authorized to be made by the Secretary of Education by Section 438 of the Higher Education Act, or similar allowances authorized from time to time by federal law or regulation.

**LL. "State"** means the State of New Mexico.



**MM. "Teachers for Tomorrow"** means the Borrower Benefit Program that provides full interest forgiveness for an Eligible Borrower when a Stafford Loan that is guaranteed on or after May 1, 2000 enters repayment if an Eligible Borrower is a full-time teacher in New Mexico and such Stafford Loan is guaranteed by the Guaranty Agency and disbursed by the Foundation or one of its participating lenders.

**NN. "Trustee"** means Zions First National Bank, acting in its capacity as Trustee under the Indenture, or any successor trustee designated pursuant to the Indenture.

[2-28-98, 5-14-99; 5.5.20.7 NMAC - Rn & A, 5 NMAC 5.20.7, 10-13-00]

**5.5.20.8 RESERVED:**

[2-28-98; 5.5.20.8 NMAC - Rn, 5 NMAC 5.20.8, Repealed, 10-13-00]

**5.5.20.9 PURCHASE OF NOTES OR BONDS:**

Prohibited Purchases. No Eligible Borrower or any related person thereto within the meaning of Section 144(a) (3) of the Internal Revenue Code of 1986, as amended, shall purchase, pursuant to any arrangement, formal or informal, any notes, bonds or any other obligations of the Foundation in an amount related to such Eligible Borrower's Financed Student Loans.

[2-28-98; 5.5.20.9 NMAC - Rn, 5 NMAC 5.20.9, 10-13-00]

**5.5.20.10 SERVICING OF LOANS:**

Servicing of the Foundation. Eligible Loans purchased by the Foundation shall be serviced by the Foundation or on behalf of the Foundation by a servicer in accordance with such procedures as may be approved by the Foundation from time to time.

[2-28-98; 5.5.20.10 NMAC - Rn, 5 NMAC 5.20.10, 10-13-00]

**5.5.20.11 MAXIMUM STUDENT LOAN AMOUNTS:**

Maximum Amount Permitted. The maximum amount of Eligible Loans permitted for an Eligible Borrower shall be determined in accordance with the Higher Education Act.

[2-28-98; 5.5.20.11 NMAC - Rn, 5 NMAC 5.20.11, 10-13-00]

**5.5.20.12 INFORMATION TO BE PROVIDED BY LENDERS TO ELIGIBLE BORROWERS:**

Lenders Required Information. At the time a Lender makes an Eligible Loan to an Eligible Borrower, the Lender shall provide thorough and accurate loan information to the Eligible

Borrower as required by the Higher Education Act and the Guaranty Agency, which shall include:

- A. the yearly and cumulative maximum amounts that may be borrowed by an Eligible Borrower;
- B. the terms on which repayment will begin;
- C. the maximum number of years in which the Eligible Loan must be repaid;
- D. the interest rate and the maximum amount of required monthly payments;
- E. any special options that an Eligible Borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the Eligible Loan;
- F. a definition of default and the consequences to the Eligible Borrower if the Eligible Borrower should default, including a description of any arrangement made with credit bureau organizations; and

[2-28-98; 5.5.20.12 NMAC – Rn & A, 5 NMAC 5.20.12, 10-13-00]

#### **5.5.20.13 BORROWER BENEFIT PROGRAMS:**

Borrower Benefit Programs Authorized. The Borrower Benefit Programs known as the Easy Pay Program, Instant Savings Program, More Money Program, Pot of Gold Program, Teachers for Tomorrow Program and similar borrower benefit programs are authorized to be implemented by the Foundation as may be permitted by the Indenture.

[5.5.20.13 NMAC - N, 10-13-2000]

#### **5.5.20.14 REVISIONS IN REGULATIONS:**

A. Required Revisions. These regulations shall be subject to amendment, modification and revisions from time to time to conform to the same provision of the Higher Education Act or for any other purpose.

B. Prohibited Revisions. If any such amendment, modification or revision will materially adversely affect the rights of a Lender pursuant to a Loan Purchase Agreement which is then in effect or the rights of the holders of then outstanding Bonds, such amendment, modification or revision will not be effective with regard to such Loan Purchase Agreements or the holders of such Bonds.

[2-28-98; 5.5.20.14 NMAC - Rn, 5 NMAC 5.20.13, 10-13-00]

#### **PART 21-39: [RESERVED]**

## **PART 40: GRADUATE PROGRAMS**

### **5.5.40.1 ISSUING AGENCY:**

State Board of Finance Division.

[Recompiled 10/31/01]

### **5.5.40.2 SCOPE:**

All institutions of higher learning.

[Recompiled 10/31/01]

### **5.5.40.3 STATUTORY AUTHORITY:**

**[RESERVED]**

[Recompiled 10/31/01]

### **5.5.40.4 DURATION:**

Permanent.

[Recompiled 10/31/01]

### **5.5.40.5 EFFECTIVE DATE:**

[Filed on January 23, 1976.]

[Recompiled 10/31/01]

### **5.5.40.6 OBJECTIVE:**

In 1968, the board requested the following information be submitted to the board of educational finance when establishing a new program of instruction at any of the degree-granting New Mexico institutions of higher learning. The state board of finance at its meeting held March 11, 1975, re-established the following policy.

[Recompiled 10/31/01]

### **5.5.40.7 DEFINITIONS:**

**[RESERVED]**

[Recompiled 10/31/01]

#### **5.5.40.8 GRADUATE PROGRAMS:**

A. A description of proposed new program.

B. If the proposed new program is already being offered at one or more New Mexico institutions of higher learning, give the f.t.e. enrollment for present year and the projected enrollment for the next five years, as well as present cost of program and projected cost for each of the next five years for any New Mexico institution offering the program.

C. List any nearby non-New Mexico institution of higher learning where the program is being planned or offered, especially WICHE member institutions.

D. Give particular reasons the program should be established at the requesting New Mexico institution.

E. Give the projected f.t.e. enrollment in subject program for the first school year of establishment and also for the next five school years.

F. Give the projected cost of the program for each of the years.

G. [signed:] Vincent J. Montoya, Executive Officer

[Recompiled 10/31/01]

#### **PART 41-49: [RESERVED]**

#### **PART 50: INDUSTRIAL DEVELOPMENT TRAINING PROGRAM**

##### **5.5.50.1 ISSUING AGENCY:**

Economic Development Department.

[5.5.50.1 NMAC - Rp, 5.5.50.1 NMAC, 6/26/2018]

##### **5.5.50.2 SCOPE:**

The rules apply to New Mexico residents.

[5.5.50.2 NMAC - Rp, 5.5.50.2 NMAC, 6/26/2018]

##### **5.5.50.3 STATUTORY AUTHORITY:**

General management of the industrial development training program shall be the responsibility of the industrial training board as prescribed by governing legislation (Section 21-19-7, NMSA 1978).

[5.5.50.3 NMAC - Rp, 5.5.50.3 NMAC, 6/26/2018]

**5.5.50.4 DURATION:**

Permanent.

[5.5.50.4 NMAC - Rp, 5.5.50.4 NMAC, 6/26/2018]

**5.5.50.5 EFFECTIVE DATE:**

June 26, 2018, unless a later date is cited at the end of a section.

[5.5.50.5 NMAC - Rp, 5.5.50.5 NMAC, 6/26/2018]

**5.5.50.6 OBJECTIVE:**

The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves.

**A. Company eligibility:** Companies that increase the economic base of New Mexico are eligible to be considered for JTIP funds. They are broken out into two broad categories: manufacturers and companies that provide services that are non-retail in nature and export at least fifty percent of the services to a customer base outside New Mexico. The company must be creating new jobs as a result of expansion, startup, or relocation to the State of New Mexico. Companies are required to have a physical presence (real estate either purchased or leased) in New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP.

**B. Job eligibility:** Jobs eligible for funding through JTIP must be newly created, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions must directly support the primary mission of the business and include human resources and those directly related to the creation of the product or service provided by the company to its customers. Other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to twenty percent of the total number of jobs applied for in the proposal. Companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications within two years of the most recent board approval date. Jobs must also meet a wage requirement to be eligible for funding. The entry level wage requirements for JTIP eligibility are specified in the "Reimbursable Expenses" section of this policy manual. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels

eligible for the high wage job tax credit, and utilize the WorkKeys® program as part of the hiring process. In urban areas, companies with more than 20 employees must offer health insurance coverage to employees and their dependents and pay at least fifty percent of the premium for employees who elect coverage.

**C. Trainee eligibility:** To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a HSE (high-school equivalency). The one-year residency requirement may not apply to a trainee hired into an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company. Companies are reimbursed at a reduced, flat reimbursement rate for trainees that meet these criteria.

**D. Reimbursable training costs:** Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A portion of trainee wages up to seventy-five percent for up to six months of initial training.

(b) A portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(2) Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC.

(3) Companies that hire trainees who have graduated within the past twelve months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent wage reimbursement above the standard rates.

(4) Companies that hire trainees who are U.S. veterans may be eligible for an additional five percent wage reimbursement above the standard rates.

(5) Companies that hire trainees who have graduated out of the NM foster care system may be eligible for an additional five percent reimbursement above the standard rates.

(6) Companies may combine the additional five percent wage reimbursement for high-wage jobs with any one of the conditions described in paragraphs (3), (4) or (5) above, for a total additional wage reimbursement not to exceed ten percent above the standard rates.

(7) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed one hundred percent.

(8) For companies that hire remote workers, the reimbursement percentage for the remote employee shall be linked to the location of the employee. Urban companies must also offer the remote workers that reside in a rural or frontier location a wage that is consistent with the urban location. Conversely, a rural or frontier company that hires a remote worker from an urban location, the reimbursement percentage will be linked to the urban location and must also meet the minimum entry wage requirement respective to the O\*NET job zone for an urban location in order to qualify for the hours of training assigned to that job zone.

(a) Rural – sixty-five percent.

(b) Frontier, Tribal and Federally designated Colonias – seventy-five percent.

(9) JTIP approved employers that utilize business support services through the recognized New Mexico workforce connection offices across the state or through other independent human resource support service providers that help small businesses develop successful recruitment strategies to grow and retain their workforce may be eligible for an additional five percent wage reimbursement above the standard rates.

(10) For companies with a workforce of less than 50 and have a designated Human Resources representative that will be responsible for developing and implementing an internship program and utilize JTIP for internship training and subsequently transition an intern into a full-time position with the company will receive an additional \$1,000 incentive.

**E. Program management and administration:** General management of the job training incentive program is the responsibility of the industrial training board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the year. The board has the authority to make funding decisions based on the availability of funds,

sufficient appropriations, and the board's determination of the qualifications of the business. The board may elect to implement measures to conserve funds when available funds become limited.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021, A 7/16/2024]

#### **5.5.50.7 DEFINITIONS:**

**[RESERVED]**

#### **5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:**

**A. Company qualifications and requirements:** The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds: companies that manufacture a product in New Mexico and certain non-retail service providers. Manufacturing businesses are typically included in sectors 31-33 of the North American industry classification system (NAICS). Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). A company whose employees are compensated solely on piecework is not eligible. Other types of companies that may be eligible under the manufacturing category are listed below:

(a) Manufacturers that perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere. Start-ups and early-stage manufacturing companies. The company must be adequately capitalized to reach first production and be able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(b) Renewable power generators.

(c) Film post-production companies, and film digital production companies (such as animation and video game production companies).

(d) Non-traditional agricultural entities may be eligible under the manufacturing category provided that the operation is a year-round, value-added production facility in a controlled and enclosed environment. Such operations may have mechanized processes, require a specialized workforce or may be involved with research and development or technology transfer.



(e) Manufacturers that perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible.

(f) Start-ups and early-stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(2) Non-retail service businesses provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public. Eligible non-retail service businesses must demonstrate that at least fifty percent of their revenues come from a customer base outside New Mexico. Businesses that may be eligible as non-retail service providers may include:

(a) Companies that exist for the sole purpose of producing, installing, or integrating environmentally sustainable products (see definition of green industries in glossary). Companies that meet the green industry criteria are not required to generate out-of-state revenues.

(b) Service companies that provide a non-retail service to government agencies may be eligible provided at least fifty percent of revenue is from a customer base outside New Mexico. Revenue derived from contracts with national research laboratories or military bases located in New Mexico is not considered out-of-state. National research laboratories in New Mexico or companies that operate national research laboratories in New Mexico are not eligible.

(c) Logistics companies that provide inbound and outbound transportation management, fleet management, warehousing, materials handling, order fulfillment, logistics network design, inventory management, supply and demand planning, third-party logistics management, and other support services. Logistics services are involved at all levels in the planning and execution of the movement of goods and information from point of origin to point of consumption for the purpose of conforming to customer requirements. Distribution and transloading services are included within the logistics category.

(d) Aviation maintenance, repair and overhaul (MRO) operations may be eligible. MRO's provide airframe, engine and component services to the aviation industry, including aircraft such as planes, jets and helicopters in need of regular maintenance, repair and adjustments to keep in working order according to federal regulations. A contracted third-party or the owner of the aircraft may bring the aircraft to New Mexico for service.

(e) Start-ups and early-stage companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(f) Business operations that do not generate gross receipts within New Mexico may be eligible if at least fifty percent of the customer-base is outside New Mexico and service is provided to customers who are not physically present at the New Mexico facility. Companies in this category may be part of a multi-state entity or corporation that have a location in New Mexico and whose revenues flow to the New Mexico business operation, which in turn pay the wages of the New Mexico employees and contribute to the New Mexico tax base in the form of corporate and payroll taxes. Businesses that may be eligible under this category may include:

(i) Headquarters operations: The center of operations of a business where corporate staff employees are physically employed; centralized functions are performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including operating a call center; the function and purpose of which is to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; from which final authority over regional or sub-regional offices, operating facilities and any other offices of the business are issued; and including national and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters.

(ii) Shared services centers: The entity within a corporation responsible for the execution and the handling of specific operational tasks, such as accounting, human resources, payroll, IT, legal, compliance, purchasing, for a regional or national division.

(iii) Customer support centers. Customer support centers must service a customer who is not physically present at the facility. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions that require outbound sales, solicitation, collections, or telemarketing are not eligible for JTIP funds, unless they are in response to inbound requests and existing clients, or business to business. Contract-based customer support centers must meet special requirements. Contract-based customer support centers are outsourcing vendors that provide information to customers of their clients on behalf of those clients. Contract-based customer support centers do not have a core expertise; rather they communicate information provided to them by their clients. Contract-based customer support centers must provide evidence of a minimum five-year lease or purchase of a facility in New Mexico; offer employees and their dependents health insurance coverage; and contribute at least fifty percent of the premium for healthcare insurance for those employees who choose to enroll. Eligibility as an expanding company is determined by peak employment over the four prior years. For first-time applicants, peak employment is based on the employment average from four previous years or the present employment level, whichever is higher. The company must meet or exceed the average employment level for the past four years in order to be considered an expanding company and eligible for JTIP. Contract-based customer support centers that

have been funded in the past four years must be expanding beyond the peak employment count achieved with previous JTIP funds.

(3) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. An expanding company is defined as an existing business that requires additional employees or workforce due to a market or product expansion. Eligibility as an expanding company is determined by peak employment over the two prior years. For first-time applicants, peak employment is based on the employment average from two previous years or the present employment level, whichever is higher. The company must meet or exceed the average employment level for the past two years in order to be considered an expanding company and eligible for JTIP. For companies that have been funded by the program within the past two years, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels. A company may be allowed to exclude JTIP intern positions and apprentices when calculating the two-year average headcount.

(4) If a company hires twenty or more trainees in a municipality with a population of more than 40,000 according to the most recent decennial census or in a class H county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM insurance code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(5) Companies are required to submit three years of financial statements (profit and loss, balance sheets, statements of cash flow, and financing term sheets) as part of the application process. Year-to-date financials may also be requested. Start-ups and early-stage companies that do not have three years of financials are required to submit financials for the period for which they are available. Other documentation that may be requested may include but is not limited to tax returns, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, pro forma financial statements and sales projections which would substantiate their business expansion. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(6) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board

of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

(7) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within one year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) that were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP reimbursement exceeds \$100,000. The board will require a refund of funds within 90 days of notification.

(8) Layoff is defined as a strategic and organized event of separation of employees from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(9) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for the remaining training hours.

(10) Businesses that are not eligible include but are not limited to retail, construction, traditional agriculture and farming, mining and extractive industries, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the North American industry classification system (NAICS) as a general guideline to establish industry classification and eligibility.

(11) Companies must be in good standing with the Economic Development Department in order to be considered for participation in JTIP.

**B. Position qualifications and requirements:** The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which may be eligible for the high wage job tax credit. These levels are \$60,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$40,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Las Cruces, Rio Rancho, and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under

JTIP must directly support the primary mission of the business and include human resources. In addition, other newly created positions may be funded up to a maximum of twenty percent of the total number of jobs for which funding is requested, and may include non-executive, professional support positions. Rural companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications. For headquarter facilities as described under Paragraph (1) of Subsection A above, eligible positions may only include professional support, non-executive positions.

(5) Intern positions may be eligible provided the trainee is enrolled in, or has graduated within the past 12 months from, a training or academic program and meets JTIP eligibility requirements. Intern positions may be part-time (less than 32 hours per week). The intern position must be relevant to the post-secondary training or academic program in which the trainee is enrolled, or from which the trainee has graduated, but is not required to be production or service related. Companies will be reimbursed upon evidence of direct full-time employment offered within 90 days of completion of the internship and graduation from the training or education program, or within 90 days of completion of the internship by a recent graduate.

(6) Remote worker trainees may be eligible if all of the trainee qualifications and requirements as defined in policy under trainee eligibility.

**C. Trainee qualifications and requirements:** The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the JTIP program. Individuals who have been previously employed by or have worked as contractors to the company are not eligible to be hired under JTIP in the same or similar position as the one previously occupied or contracted. JTIP staff determines eligibility of these positions and trainees on a case by case basis, and if deemed eligible, training hours may be reduced. The vacancy left by an existing employee moving in to a JTIP position must be filled by the end of the project period. Individuals who have been employed temporarily in a position classified as intern or apprentice in order to gain practical training that connects an academic pathway into work based or relevant business experience may be eligible. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training. The one-year residency requirement may not apply to a trainee hired in to an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New

Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company. All trainees must currently be domiciled in New Mexico.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or HSE (high-school equivalency) certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP project may be eligible to participate again with the same company if the trainee is being promoted into a position that is uniquely different from the position currently occupied. or the trainee. The vacancy left by the trainee must be filled by the end of the project period. Interns from a current or previous JTIP project transitioning into a full-time, permanent position with the same company may also be eligible to participate again.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications should remain fixed during the program. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a regular/permanent full-time employee following the temporary agency's contract agreement that stipulates the number of consecutive work hours the assigned trainee must meet, not to exceed "520" hours.

(b) JTIP training hours will begin when the trainee has been converted to a regular/permanent full-time position of the JTIP company.

(c) The trainee must not have worked at the company in a temporary position through a staffing agency prior to the board approval date.

(10) Employees hired by a company through a professional employer organization (PEO) may be eligible for funding provided the PEO agrees to comply with all JTIP requirements for the compliance and final auditor's reviews as outlined in Subsection K of 5.5.50.12 NMAC and in the JTIP project closeout guide.

(11) Companies are reimbursed for wages as each trainee completes the approved training hours.

(12) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

(13) Remote worker trainees may be eligible if all of the trainee qualifications and requirements as defined in policy under trainee eligibility.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 6/26/2018; A, 7/7/2021; A, 7/16/2024]

#### **5.5.50.9 ELIGIBLE TRAINING PROGRAMS:**

##### **A. The authorizing legislation establishes the following criteria for training.**

(1) Training projects shall, to the extent possible, be customized to meet the company's specific needs.

(2) Training projects shall provide quick-response classroom and on-the-job training.

(3) Training shall provide New Mexico residents with improved economic status through employment.

(4) Training shall provide measurable growth to the economic base of New Mexico.

##### **B. The types of training projects eligible under the job training incentive program are:**

(1) structured on-the-job training (OJT) and "hands on" skill development at the company's facility;

(2) custom classroom training provided by a New Mexico post-secondary public educational institution;

(3) a combination of classroom and OJT as described above.

**C. On-the-job training:** Training is conducted at the participating company's facility and generally involves structured on-the-job training (OJT) or 'hands-on' skill development. Although certain modules may be conducted in a classroom setting at the company location, the training is still considered OJT. The training must be customized to develop essential skills particular to the company's needs.

(1) A comprehensive training plan is required as part of the proposal for funding. The training plan must include the company job description, O\*NET job description, and training units. Each unit will include core content or objectives, methods and materials, methods of evaluation and requested hours. The training plan must cover the entire period for which reimbursement is requested. A more detailed description of the training plan requirements is included in the JTIP online application and proposal guide.

(2) The participating company is responsible for providing the necessary facilities, equipment, materials and training staff. Trainer's wages are not eligible for funding through JTIP.

(3) The executed contract will comply with governing legislation.

**D. Custom training provided by a New Mexico post-secondary public educational institution:** Training is conducted by a New Mexico post-secondary public educational institution in a classroom setting either on campus or at the work site. This type of training is typically coordinated through the institution's workforce training center. At least three trainees must participate in classroom training, which should be customized to meet the specific needs of the company. Only JTIP trainees are eligible to attend the training at JTIP's expense. If appropriate training opportunities are not available through public institutions, private institutions may be considered. The educational institution must provide a separate proposal to the JTIP board. The custom training outlined in this proposal must be integrated with the proposal submitted by the company for trainee wages.

(1) The contracted institution or the participating company will work with the economic development department to establish the contract, its content, scope, and training standards to ensure that the program meets or exceeds the company's requirements.

(2) The contracted custom training will be integrated into the training plans submitted by the company in the coordinating JTIP proposal.

(3) The contracted custom training will be conducted within the initial training period approved by the JTIP board.

(4) Payment for classroom training services shall be made only for a qualified and approved program. Reimbursement for classroom training is consistent with JTIP policy and range from fifty percent to seventy-five percent based on company location. If the employer's in-kind contribution to the training (employee wages paid to JTIP trainee while attending classroom training exceed the cost of the training, then the reimbursement will be one hundred percent. Industry recognized certification programs are eligible for JTIP funding. The training may be provided through public or private educational institutions in New Mexico, private training organizations, national training certification programs, corporate trainers or a combination of training providers. The



training may be conducted at the business's own facility, at the training provider's facility or virtually. Reimbursement for classroom training will have a cap of \$6,000 per trainee.

(5) Facilities rental outside a public educational institution and equipment rental or purchase are not eligible for JTIP funds unless facilities are not available at the company or the educational institution.

(6) The executed contract shall comply with the governing legislation.

[5.5.50.9 NMAC - Rp, 5.5.50.9 NMAC, 6/26/2018; A, 6/27//2023]

#### **5.5.50.10 REIMBURSABLE EXPENSES:**

**A.** The following expenses may be eligible for reimbursement through JTIP.

(1) A percentage of trainee wages for up to six months of initial training.

(2) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution with a cap of \$6,000 per trainee. Reimbursement for classroom training is consistent with JTIP policy and ranges from fifty percent to seventy-five percent based on company location.

(3) A percentage of intern wages for up to [640] 1040 training hours.

**B.** Standard reimbursement rates for wages range up to seventy-five percent. Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be also eligible for an additional five percent wage reimbursement. Positions filled by trainees who meet any of the three following criteria may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(1) Trainee has graduated out of the New Mexico Foster Care System.

(2) Trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education.

(3) Trainee is a U.S. veteran. Companies may combine any one of the three conditions above with the additional five percent wage reimbursement for high-wage positions, for a total additional wage reimbursement not to exceed ten percent above the standard rates. If a company is participating in other job reimbursement training programs such as the Workforce Innovation and Opportunity Act (WIOA), the combined reimbursement to the company may not exceed one hundred percent.

**C.** JTIP approved employers that utilize business support services through the recognized New Mexico Workforce Connection offices across the state or through other independent human resource support service providers that help small businesses develop successful recruitment strategies to grow and retain their workforce may be eligible for an additional five percent reimbursement above the standard rates.

**D.** The job training incentive program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

**E. Wage reimbursement:**

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of standard reimbursement ranges up to seventy-five percent, depending on the business location.

(2) The number of hours eligible for reimbursement varies by position, up to 1,040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O\*NET (occupational information network) job zone classification for the O\*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O\*NET system, sponsored by the US department of labor, is available at <http://onetonline.org>. Each job in the O\*NET system is assigned to one of five job zones, with recommended training hours for each zone. For fiscal year [2024,] 2025, the JTIP board may maintain wage requirements effective in the first year of JTIP approval for the length of the job ramp within the project participation agreement (PPA) for companies that are also engaged in a LEDA agreement with the economic development department provided the company meets job creation requirements within the period and wages do not fall below the statewide minimum wage.

The number of recommended hours for fiscal year 2025 are outlined in the table below.

General Guideline for Duration of Reimbursable Training Time/Wages for FY2025 (July 1, 2024-June 30, 2025)							
Job Zone	Definitions	SVP Range/Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks

1	Little or no preparation needed	Below 4.0	320	15.50	13.18	40	8
2a	Some preparation needed	4.0 to < 6.0	480	17.00	13.68	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.50	14.18	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	20.00	15.68	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.50	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.50	17.68	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

(3) The JTIP staff will ensure that the O\*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O\*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O\*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the tables above. If a company establishes a wage range

which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O\*NET recommended hours as per criteria and procedures set forth by and at the discretion of the JTIP board, which may include consideration of the company benefits package. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Companies located in urban areas (cities with population above 60,000 in the most recent federal decennial census) and Class H counties (i.e., Los Alamos) are reimbursed at up to fifty percent for all eligible training hours. Urban communities are: Albuquerque 562,599, Las Cruces 112,914, Rio Rancho [105,834,] 111,803, and Santa Fe 88,193.

(b) Companies located in rural areas, outside those listed above are reimbursed at up to sixty-five percent for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to seventy-five percent for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to seventy-five percent reimbursement. To receive up to seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for up to seventy-five percent reimbursement.

(f) Companies located in federally designated colonias in New Mexico are eligible for up to seventy-five percent reimbursement for all eligible training hours.

(6) JTIP eligible positions with starting wages eligible for the high wage job tax credit may be eligible for an additional five percent reimbursement. These requirements are a hiring salary of \$60,000 or higher in an urban or class H county and a hiring salary of \$40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements are still factors for JTIP eligibility. The percentage of wages reimbursed for high-wage positions filled by trainees who do not meet the one-year

residency requirement is unique and not subject to any additional wage reimbursement above the standard rate. Companies located in urban areas and Class H counties are reimbursed up to thirty percent for all eligible training hours. Companies located in rural areas are reimbursed up to forty percent for all eligible training hours. Companies located in frontier areas are reimbursed up to fifty percent for all eligible training hours.

(7) JTIP eligible positions filled by trainees who have graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent reimbursement.

(8) JTIP eligible positions filled by U.S. veterans may be eligible for an additional five percent reimbursement.

(9) Trainee has graduated out of the NM Foster Care System may be eligible for an additional five percent reimbursement.

(10) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed 1,040 hours per trainee (six months) based on the company's scheduled workweek, not to exceed 40 hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, commission and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIOA, the combined reimbursement to the company may not exceed one hundred percent.

(f) Additional wage reimbursement may not exceed ten percent above the standard rates. Companies may combine the additional five percent wage reimbursement for high-wage jobs with one of the three following conditions for an additional five percent wage reimbursement provided the entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(i) the trainee has graduated out of the New Mexico foster care system;

(ii) the trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education;

(iii) the trainee is a U.S. veteran. High-wage positions filled by trainees who do not meet the one-year residency requirement are not eligible for additional wage reimbursement above the standard rate.

**F. Reimbursement for custom classroom training:** Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of [\$1,000] \$6,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. No training equipment may be purchased or rented using JTIP funds.

[5.5.50.10 NMAC - Rp, 5.5.50.10 NMAC, 6/26/2018; A, 1/1/2020; A, 7/14/2020; A, 7/7/2021; A, 7/12/2022; A, 7/16/2024]

#### **5.5.50.11 REQUIREMENTS FOR FUNDING REQUEST:**

**A.** A company must submit a written proposal to the JTIP staff one month before the board meeting to be considered for funding. The JTIP online application and supporting documentation are what make up the complete proposal. Information and documentation which must be included in the proposal is explained in detail in the JTIP online application and proposal guide, which describes the requirements for initial applications for funding and for companies which are submitting subsequent requests.

**B.** The board considers a number of factors when evaluating proposals. These include:

- (1) being a corporate or established industry leader;
- (2) quality of jobs with respect to wages and benefits; companies are encouraged to pay at levels which may be eligible for the high wage job tax credit (\$60,000 in urban locations and \$40,000 in other locations);
- (3) return on investment, including impact on local and state economies; factors include number of jobs, impact on average wage and household earnings; increase in per capita income; annual local purchases impacting local/state sales taxes; dollar amount of new construction; environmental impact; and overall economic support to the community;
- (4) the company's financial strength should indicate a capacity for long-term employment for JTIP trainees;

- (5) charitable and community contributions;
- (6) current on NM CRS-1 and UI reporting and payment obligations.
- (7) any other factors the board deems relevant.

[5.5.50.11 NMAC - Rp, 5.5.50.11 NMAC, 6/26/2018]

#### **5.5.50.12 PROCEDURAL OVERVIEW:**

The procedures for completing a funding proposal and the administration of a project are explained in detail in the JTIP online application and proposal guide and the JTIP policy and procedures manual.

**A.** Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding.

**B.** The contract start date is the date of the board meeting at which funding was approved.

**C.** Eligible job openings must be registered with the New Mexico workforce connection.

**D.** The company must hire trainees within six months of the contract start date.

**E.** The company must submit an online hiring report at the end of the six month hiring period.

**F.** Claims for reimbursement should be submitted as trainees complete training.

**G.** Each project is subject to compliance reviews throughout the term of the contract.

**H.** The company must arrange for an agreed upon procedure in accordance with generally accepted standards and the general requirements included in the statements on standards for attestation engagements, as issued by the American institute of certified public accountants upon completion of the training.

**I.** The final claim for reimbursement should be submitted with the completed agreed upon procedures report.

**J.** Yearly follow-ups may be conducted to show effectiveness of the program, including surveys to address company retention, wage rates of program trainees and business and industry needs for industry recognized certifications and credentials by the

economic development department, the department of workforce solutions and the public education department.

**K.** Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

**L.** Companies that are not in good standing with other Economic Development Department programs may not be eligible for JTIP.

[5.5.50.12 NMAC - Rp, 5.5.50.12 NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021; A, 7/12/2022; A, 6/27/2023]

#### **5.5.50.13 AMENDMENTS:**

**A.** Amendments to the contract may be allowed in special circumstances. Procedures for submitting amendment applications are explained in detail in the JTIP policy and procedures manual and the online application and procedure guide.

**B.** All project amendment requests must be submitted in writing through the JTIP online application one month prior to the board meeting.

[5.5.50.13 NMAC - Rp, 5.5.50.13 NMAC, 6/26/2018]

#### **5.5.50.14 [RESERVED]**

[5.5.50.14 NMAC, Repealed, 6/26/2018]

#### **5.5.50.15 GLOSSARY:**

**A. Apprentice:** Individual who has participated in a work-based training program through the NM Department of Workforce Solutions with the JTIP company.

**B. Agriculture (traditional)/mining/extractive industries:** Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

**C. Company:** A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.



**D. Distribution:** A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer or customer.

**E. Economically distressed areas:** Companies located in an economically distressed area in New Mexico are eligible for seventy-five percent reimbursement. To receive a seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or downsizing, a decline in population, loss of gross receipts or other factors.

**F. Expanding company:** An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the two prior years. (Refer to "peak employment.")

**G. Film and multimedia post production:** Film digital production and post-production companies are considered manufacturing provided the company operates year round and is primarily engaged in any of the following: animation, editing, foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year-round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

**H. Frontier:** A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

**I. Green industries:** Those that exist for the sole purpose of contributing directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

**J. High wage job tax credit:** The high wage job tax credit provides a tax credit of ten percent of the wages and benefits paid for each new economic-based job created on or after July 1, 2015, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$40,000 per year in a community with a population of less than 60,000 and \$60,000 per year in a community with a population of 60,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

**K. Independent Human Resource Support Services:** Are third-party services other than staffing agencies and professional employment agencies (PEO's), used by businesses to compliment existing HR processes or to fill the gap when business completely lacks HR personnel or capabilities. HR support services include recruiting and retention strategies, interviewing effectiveness training, job description and training plan development, skills assessment tools, salary benchmarking, fostering company culture as well as organizational and employee data management, and activities in learning and development.

**L. Intern:** A student or recent graduate (within one year) of an academic or training program who works at a trade or occupation in order to gain work experience.

**M. Manufacturing:** Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined in Subsection E of Section 7-4-10 NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include:

- (1) construction;
- (2) farming;
- (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or
- (4) processing natural resources, including hydrocarbons."

**N. NAICS:** North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at [www.census.gov/cgi-bin/sssd/naics/naicsrch](http://www.census.gov/cgi-bin/sssd/naics/naicsrch).

**O. Native American crafts:** Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

**P. New company:** A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID when applying for JTIP funds.

**Q. Non-retail service sector business:** To be considered for JTIP funding, the company must provide services which are not retail in nature and must export fifty percent of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public and is provided to customers who are not physically present at the New Mexico facility. Non-retail service businesses which meet the JTIP criteria for green industry are exceptions to the requirement that at least fifty percent of the customer base be located outside New Mexico.

**R. O\*NET:** The occupational information network - O\*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O\*NET. The O\*NET database is available at <http://onetonline.org>.

**S. Peak employment:** First time JTIP applicants: Peak employment will be based on the employment average from two previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

**T. Peak employment:** Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last two years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

**U. Remote Worker:** A person who is working partially or entirely at a remote work site. Remote work site is any location where a worker performs work duties that is separate from the physical location of the company.

**V. Retail trade:** Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise, such as installation. Retailers may operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers, or use other forms of sales techniques, including the sale of goods through the internet, online catalogs, portable stalls, and infomercials. Retail trade is usually the final step in the production and distribution of goods and usually sells small amounts of a product to individuals.

**W. Renewable energy:** is a source of power generated from resources which are naturally replenished, including but not limited to electricity or heat derived from solar, wind, tidal power, hydropower, biomass, geothermal resources and biofuels or hydrogen produced from renewable resources.

**X. Southwestern arts and crafts:** Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

**Y. Transloading services:** The process of transferring a shipment from one mode of transportation to another in order to have goods reach their final destination. It is most commonly employed when it is physically impossible or is not economically efficient to transport goods to a final destination using only one mode of transportation. Companies that ship goods internationally are likely to use multiple methods of transport, especially if both the shipping point and the destination are located inland.

**Z. Urban communities:** An urban community is defined as a municipality with a population of sixty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (545,852), Las Cruces (97,618), Rio Rancho (87,521), and Santa Fe (67,947). Class H counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

**AA. Metropolitan statistical area:** An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Tarrant counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

**AB. Rural:** Any area located outside communities defined as urban in the JTIP policy.

**AC. Veteran:** A New Mexico resident who is registered with the New Mexico workforce connection, and who served in the active military, naval or air service and who was discharged or released under conditions other than dishonorable.

[5.5.50.15 NMAC - Rp, 5.5.50.15 NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021; A, 6/27/2023]

## **PART 51: DEVELOPMENT EMPLOYMENT FUNDING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES**

### **5.5.51.1 ISSUING AGENCY:**

New Mexico Economic Development Department.

[5.5.51.1 NMAC - Rp, 5.5.51.1 NMAC, 6-30-2016]

### **5.5.51.2 SCOPE:**

Film and multimedia production companies and New Mexico residents in film and multimedia crew professions.

[5.5.51.2 NMAC - Rp, 5.5.51.2 NMAC, 6-30-2016]

### **5.5.51.3 STATUTORY AUTHORITY:**

Section 21-19-7.1 NMSA 1978, established in 2003, directs the industrial training board, also referred to as the job training incentive program (JTIP) board, to consult with the New Mexico film division of the New Mexico economic development department to create and adopt rules for development funding for film and multimedia production companies. The program is administered by the New Mexico film division of the New Mexico economic development department and the training reimbursement of fifty percent of salaries (wages) of qualified participants shall be made by the New Mexico film division without further action or approval of the industrial training board.

[5.5.51.3 NMAC - Rp, 5.5.51.3 NMAC, 6-30-2016]

### **5.5.51.4 DURATION:**

Permanent.

[5.5.51.4 NMAC - Rp, 5.5.51.4 NMAC, 6-30-2016]

### **5.5.51.5 EFFECTIVE DATE:**

June 30, 2016, unless a later date is cited at the end of a section.

[5.5.51.5 NMAC - Rp, 5.5.51.5 NMAC, 6-30-2016]

#### **5.5.51.6 OBJECTIVE:**

The object of this rule is to establish standards for an on-the-job development training programs for film and multimedia companies in New Mexico. These training programs are divided into three sub-programs which include: the film crew advancement program **(FCAP) for physical production**, intended to provide reimbursement funds to film and television production companies for the training of New Mexico residents working primarily in below-the-line job positions for the preparation and advancement of continual employment in the industry; and for **FCAP for qualifying permanent companies**, intended to provide reimbursement funds to film and multimedia production companies creating new jobs as a result of expansion, startup or relocation to New Mexico. To the extent possible, training shall be technical and directly contribute to the creation of a production as determined by the New Mexico film office (NMFO) and shall not relate to distribution of end product(s); and **FCAP for qualifying permanent emerging media and digital media companies**, intended to provide reimbursement funds to emerging and digital media companies creating new jobs, similar to internships, as a result of expansion, startup or relocation to New Mexico by providing training opportunities. To the extent possible, training shall be technical and directly contribute to the creation of a production as determined by the NMFO and shall not relate to distribution of end product(s).

[5.5.51.6 NMAC - Rp, 5.5.51.6 NMAC, 6-30-2016]

#### **5.5.51.7 DEFINITIONS:**

For use in this part, the following definitions apply.

**A. "Above-the-line"** is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

**B. "Below-the-line"** is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew that does not have direct creative or financial control of the project nor receive residuals.

**C. "Company"** means the company that either is or creates a temporary film, multimedia and digital media production company to produce one film, multimedia and digital media product, as it applies to FCAP for physical production or a company that is permanently based in New Mexico with full-time employees and creates film, multimedia and digital media production products.

**D. "Craft"** means the specialized area or department in which a film technician works.

**E. "Crew"** means the employees hired by a company to complete a film or multimedia project(s).

**F. "Deal memo"** means the film industry contract that defines the exact terms of a crew member's employment including but not limited to position title and pay rate.

**G. "Digital media company"** refers to a company engaged in the business of producing digital media intended for: (i.) film, special effects, holography, computer vision, virtual reality, television, and online web based production; (ii.) video game production and immersive or augmented reality industries; (iii.) aiding in education, defense, disaster relief, medical, health care, or scientific visualization.

**H. "Emerging media"** includes, but is not limited to: (i.) video game industries that develop technology and content intended for online-multiplayer, console, mobile, and social environments; (ii.) immersive and augmented reality industries focused on the display of imagery and information in three dimensional and holographic form, video-mapping, multi-touch surfaces, and other forms of advanced visualization; (iii.) the design of new platforms and display environments for data and information visualization of social, medical, scientific and industrial information through the use of creative computing; and (iv.) the production of images using special effects, and software developed for the exclusive use of a special effects production company, as approved by the New Mexico film division. Emerging media does not include: software development designed and developed primarily for internal or operational purposes of the digital media production company; however, this exclusion does not apply to software developed for the exclusive use of a New Mexico company producing images using special effects where the software makes the company uniquely competitive; nor (v.) largely static Internet sites designed to provide information about a person, business, company, or firm.

**I. "FCAP"** means film crew advancement program.

**J. "Film"** for this program means work on a film or television production.

**K. "Film or television credit"** for this program means work on a film or television production for more than one week which was not a student film, internship, unpaid position, documentary, commercial, nor on a project where the budget was under five hundred thousand dollars (\$500,000.00) and the company did not participate in this program.

**L. "Film technician"** means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

**M. "General safety certified"** means a crew member has completed a class or course that meets Occupational Safety and Health Administration standards for general safety associated with working on a film and multimedia project.

**N. "JTIP"** means job training incentive program.

**O. "Intern"** means a trainee who is enrolled in, or has graduated within the past twelve months from a post-secondary training or academic program as it relates to the film, television and emerging media and meets the FCAP for qualifying permanent emerging media and digital media company eligibility requirements. The intern is a student or trainee who is supervised and monitored in order to learn a new skill set or while investing practical applications of academically learned skill sets.

**P. "Non-union"** means the job position is not in the contractual jurisdiction of a film union or film guild.

**Q. "Mentor"** means the go-to person for questions and direction or the supervisor of a program participant and has a stronger skill set in relation to the job position in which that participant was hired.

**R. "NM"** means New Mexico.

**S. "Open hours"** means a trainee that qualified for FCAP during a production did not use all 1,040 hours available. Hours that remain are considered "open" and may be used for that job position on another production upon qualification.

**T. "On-the-job training"** means gaining experience in a hired position increasing job opportunities for continual employment in the film and multimedia industry.

**U. "Payroll report"** means the report generated from a payroll company hired by the company to act as the crew's payment agent for the film and multimedia project.

**V. "Physical production"** means companies that produce a project or series on location or at a temporary location.

**W. "Principal photography"** means the cameras have started filming and the majority of preparation for a film and multimedia project has been completed; call sheets are now issued to crew members and production reports are completed daily.

**X. "Production"** means the film or multimedia project preparation, principal photography and set break down periods while creating a film or television project.

**Y. "Reserve component members"** refers to a New Mexico member who served in the army, naval, marine corps, air force and coast guard reserves and the national and air national guard of the United States.



**Z. "Resident"** means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

**AA. "Salaries"** means wages or the hourly pay rate for hours physically worked by trainee during a production.

**BB. "Trainee"** means an applicant that shall be learning a new skill set or graduating to a higher job classification through FCAP and is synonymous with the term "program participant" or "crew member".

**CC. "Veterans"** means a New Mexico resident who is registered with the New Mexico workforce connection, and who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

**DD. "Wages"** means the hourly pay rate for hours physically worked by trainee during production. It does not include film payments to trainees such as kit rental, holiday pay, travel time, mileage reimbursements, or any payment to employee due to penalties incurred by company during production of the project.

[5.5.51.7 NMAC - Rp, 5.5.51.7 NMAC, 6-30-2016]

#### **5.5.51.8 PROGRAM OUTLINE:**

**A.** The following shall apply for **FCAP for physical production:**

**(1)** The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

**(2)** Trainee's pay rate shall be consistent with the trainee's job position per this crew member's contract with company, and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee per union contractual agreement where applicable.

**(3)** Any requests for a different job position or mentor to qualify for the program shall be considered by the New Mexico film division and if approved, noted in file.

**(4)** Each trainee qualifies for a maximum of 1,040 hours. As the trainee works on a film or television project, the hours shall be deducted accordingly.

(5) Trainees shall work at least 80 hours in their hired position in order to qualify.

(6) Trainees may qualify for an additional 1,040 hours if the training received through this program is used to progress from their current job to a higher job classification or to move laterally into a new skill set and the individual meets program qualifications.

(7) Qualifying participants may apply any unused hours to future on-the-job training work opportunities in the specified job position until the 1,040 hours are exhausted.

(8) Unused training hours in a lower level position are forfeited once a trainee moves to a higher level within that skill set and department.

(9) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for individual projects produced by companies.

(10) The number of film and television production credits and the amount of experience required for a participant to qualify shall be determined by the New Mexico film division based on the total budget of the project and the extent to which the participant is adding to their skill set.

(11) The number of trainees allowed to participate in each craft department shall be determined by the New Mexico film division based on the total budget of the project, department crew size and the company location.

**B. The following shall apply to FCAP for qualifying permanent companies:**

(1) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(2) Trainee's pay rate shall be consistent with trainee's job position per this crew member's contract with company, and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee per contractual agreement where applicable.

(3) Any requests for a different job position or mentor to qualify for the program shall be considered by the New Mexico film division and if approved, noted in file.

(4) Trainees shall complete a minimum of 80 hours and up to 1,040 hours to qualify.

(5) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(6) Qualifying trainees shall work in standard industry job positions as determined by New Mexico film division for permanent companies creating products.

(7) Qualifying participants may only participate one time in the program as an employee of this company; however, where the trainee has completed all 1,040 hours in the original hired position, requests to participate again will be considered upon written documentation submitted by the company and by the trainee that verifies the trainee will be advancing to a higher job classification.

**C. The following shall apply for FCAP for qualifying permanent emerging media and digital media companies:**

(1) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(2) Trainee's pay rate shall be consistent with trainee's job position per this crew member's contract with company, and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee per union contractual agreement where applicable.

(3) Any requests for a different job position or mentor to qualify for the program shall be considered by the New Mexico film division and if approved, noted in file.

(4) Trainees shall complete a minimum of 80 hours and up to 640 hours to qualify.

(5) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(6) Qualifying trainees shall work in standard industry job positions as determined by New Mexico film division for permanent companies creating products.

(7) Qualifying participants may only participate one time in the program as an intern of this company; however, where the trainee has completed all 640 hours in the original hired position, requests to participate again will be considered upon written documentation submitted by the company and by the trainee that verifies the trainee will be advancing to a higher job classification.

(8) The New Mexico film division shall contract qualified companies to provide training opportunities, similar to internships, to students currently enrolled in a higher education institution or a graduate who has recently graduated within one year from a higher education institution that relates to digital or post-production technology (emerging or digital media) for the multi-media and entertainment-related industries as approved by the New Mexico film division.

[5.5.51.8 NMAC - Rp, 5.5.51.8 NMAC, 6-30-2016]

#### **5.5.51.9 TRAINEE ELIGIBILITY:**

##### **A. The following shall apply for FCAP for physical production:**

(1) Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

(2) Trainee applicants shall be at least 18 years of age.

(3) Qualifying trainees shall not be permitted to participate in JTIP manufacturing.

(4) Trainee applicants shall be New Mexico residents.

(5) Trainee applicants shall raise their film or television position to a higher classification or add a completely new skill set.

(6) Applicants shall not have a film or television credit as defined by this program in a higher position in that department to qualify for a maximum 1,040 training hours for that position. However, exceptions may be considered by the New Mexico film division if the participant's credits are from a project's budget that did not exceed two million dollars (\$2,000,000.00) and the participant is applying to the program again on a qualifying production with a larger total budget and a higher degree of complexity.

(7) Trainee shall not be a mentor simultaneously.

(8) Additional positions are available for veterans and or reserve component members.

(9) Qualifying trainees shall be approved as such by the New Mexico film division.

##### **B. The following shall apply to FCAP for qualifying permanent companies:**

(1) Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

- (2) Trainee applicants shall be at least 18 years of age.
- (3) Trainee applicants shall be New Mexico residents.
- (4) Qualifying trainees shall be approved as such by the New Mexico film division.

**C. The following shall apply for FCAP for qualifying permanent emerging media and digital media companies:**

- (1) Training applicants shall be certified as a film, multimedia and digital media trainee by the New Mexico film division.
- (2) Trainee applicants shall be at least 18 years of age.
- (3) Company shall ensure all trainees have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training or qualified for in-state tuition by their higher educational institution during at least two of their most recent semesters in which they were enrolled in the emerging/digital media-related program.
- (4) Qualifying trainees shall be approved as such by the New Mexico film division.

[5.5.51.9 NMAC - Rp, 5.5.51.9 NMAC, 6-30-2016]

**5.5.51.10 MENTOR ELIGIBILITY AND QUALIFICATIONS:**

**A.** Mentors shall be certified as a film or television and multimedia mentor by the New Mexico film division.

**B.** A mentor shall not be a trainee simultaneously during a production on projects produced by temporary companies.

**C.** Mentors shall work in the same or directly related department with the trainees that they supervise for this program.

[5.5.51.10 NMAC - Rp, 5.5.51.10 NMAC, 6-30-2016]

**5.5.51.11 COMPANY ELIGIBILITY AND ADMINISTRATIVE REQUIREMENTS:**

**A.** The following shall apply for **FCAP for physical production:**

- (1) Company shall submit the JTIP for film and multimedia application part one for FCAP prior to when training begins.

**(2)** Company shall enter into a contract as outlined by the New Mexico film division; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

**(3)** The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

**(4)** Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

**(5)** The company shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

**(6)** Company entering into a contractual agreement with the New Mexico film division shall return the program contractual agreement and program application to the New Mexico film division. This contract will be requested by the New Mexico film division prior to principal photography.

**(7)** Completed FCAP trainee applications shall be submitted to the New Mexico film division by the company.

**(8)** Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

**(9)** Company reimbursement shall not exceed fifty percent of the trainees' rates for up to 1,040 hours per participant.

**(10)** Company shall submit time records and reimbursement invoices as established by the New Mexico film division, which is the payment agent.

**(11)** The participating company shall submit forms and reports as established by the New Mexico film division which may include:

- (a)** JTIP for film & multimedia application part one for FCAP;
- (b)** department of finance and administration (DFA) tax information form or federal tax information form;
- (c)** JTIP for film & multimedia application part two for FCAP;
- (d)** JTIP for film & multimedia agreement for FCAP;
- (e)** industry top sheet of budget;

(f) FCAP participant applications and resumes;

(g) a production's crew list or production report or equivalent as determined by the New Mexico film division;

(h) a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division;

(i) payroll reports for each qualified trainee that verify hours worked and all rates per hours; and

(j) a claim or invoice.

(12) All paperwork and forms shall be submitted to the development training program administrator or manager of the New Mexico film division.

(13) Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

(14) The company shall submit paperwork including the claim or invoice to the development training program administrator or manager of the New Mexico film division.

(15) Total project budget shall be equal to or greater than two-hundred thousand dollars (\$200,000.00), but shall not exceed two million dollars (\$2,000,000.00); or

(16) Where the total project budget exceeds two million dollars (\$2,000,000.00), companies shall employ eight New Mexico residents in standard first level or key job positions or higher level job positions in a minimum of six different craft departments as determined by the New Mexico film division.

**B. The following shall apply to FCAP for qualifying permanent companies:**

(1) Company shall submit the JTIP for film & multimedia application part one for FCAP prior to when training begins.

(2) Company shall enter into a contract as outlined by the New Mexico film division of the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

(3) The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

**(4)** Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

**(5)** The company shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

**(6)** Company entering into a contractual agreement with the New Mexico film division shall return the program contractual agreement and program application to the New Mexico film division. This contract will be requested by the New Mexico film division prior to training begins.

**(7)** Completed FCAP trainee applications shall be submitted to the New Mexico film division by the company.

**(8)** Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

**(9)** Company reimbursement shall not exceed fifty percent of the trainees' rates for up to 1,040 hours per participant.

**(10)** Company shall submit time records and reimbursement invoices as established by the New Mexico film division, which is the payment agent.

**(11)** The participating company shall submit forms and reports as established by the New Mexico film division, which may include:

**(a)** JTIP for film & multimedia application part one for FCAP;

**(b)** department of finance and administration (DFA) tax information form or federal tax information form;

**(c)** JTIP for film & multimedia application part two for FCAP;

**(d)** JTIP for film & multimedia agreement for FCAP;

**(e)** industry top sheet of budget;

**(f)** FCAP participant applications and resumes;

**(g)** a production's crew list or production report or equivalent as determined by the New Mexico film division;

**(h)** a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division;



(i) payroll reports for each qualified trainee that verify hours worked and all rates per hours;

(j) a claim or invoice;

(k) company shall submit financials for the period for which they are available to include: company business plan, pro forma financial statements, tax returns, evidence of operating capital and investment funding, evidence of signed contracts, and sales projections which would substantiate their business expansion and sustainability;

(l) company shall submit overview documents to include: background/history, target markets, NM operations summary, equal employment statement and supplemental information; and

(m) a training plan, job description of duties and responsibilities for each applicant and estimated job wage per JTIP manufacturing job zone and job description.

(12) All paperwork and forms shall be submitted to the development training program administrator or manager of the New Mexico film division.

(13) Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

(14) The company shall submit paperwork including the claim or invoice to the development training program administrator or manager of the New Mexico film division.

(15) Each trainee shall complete 1,040 hours to qualify.

**C. The following shall apply for FCAP for qualifying permanent emerging media and digital media companies:**

(1) Company shall submit the JTIP for film & multimedia application part one for FCAP prior to when training begins.

(2) Company shall enter into a contract as outlined by the New Mexico film division of the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

(3) The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

**(4)** Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

**(5)** The company shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

**(6)** Company entering into a contractual agreement with the New Mexico film division of the New Mexico economic development department shall return the program contractual agreement and program application to the New Mexico film division. This contract will be requested by the New Mexico film division prior to principal photography.

**(7)** Completed FCAP trainee applications shall be submitted to the New Mexico film division by the company.

**(8)** Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

**(9)** Company reimbursement shall not exceed fifty percent of the trainees' rates for up to 640 hours per participant.

**(10)** Company shall submit time records and reimbursement invoices as established by the New Mexico film division of the New Mexico economic development department, which is the payment agent.

**(11)** The participating company shall submit forms and reports as established by the New Mexico film division of the New Mexico economic development department which may include:

**(a)** JTIP for film & multimedia application part one for FCAP;

**(b)** department of finance and administration (DFA) tax information form or federal tax information form;

**(c)** JTIP for film & multimedia application part two for FCAP;

**(d)** JTIP for film & multimedia agreement for FCAP;

**(e)** industry top sheet of budget;

**(f)** FCAP participant applications and resumes;

**(g)** a production's crew list or production report or equivalent as determined by the New Mexico film division;

**(h)** a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division;

**(i)** payroll reports for each qualified trainee that verify hours worked and all rates per hours;

**(j)** a claim or invoice;

**(k)** company shall submit financials for the period for which they are available to include: company business plan, pro forma financial statements, tax returns, evidence of operating capital and investment funding, evidence of signed contracts, and sales projections which would substantiate their business expansion and sustainability;

**(l)** company shall submit overview documents to include: background/history, target markets, NM operations summary, equal employment statement and supplemental information; and

**(m)** a training plan, job description of duties and responsibilities for each applicant and estimated job wage per JTIP manufacturing job zone and job description.

**(12)** All paperwork and forms shall be submitted to the development training program administrator or manager of the New Mexico film division.

**(13)** Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

**(14)** The company shall submit paperwork including the claim or invoice to the development training program administrator or manager of the New Mexico film division.

**(15)** Each trainee shall complete up to 640 hours to qualify.

**(16)** Qualifying companies must be creating new jobs as a result of expansion, startup or relocation to the state of New Mexico. The company shall be financially stable to ensure training opportunities as determined by the New Mexico film division.

**(17)** An approved company may participate more than once in this program if the company is able to show expansion of employees or has hired a recent participating trainee.

**(18)** Company shall ensure that the trainee's pay rate shall be consistent throughout training and meet applicable minimum wage ordinances per JTIP job zone and job descriptions.

**(19)** Company shall qualify trainees based on additional criteria required by the company.

**(20)** Number of trainees permissible:

**(a)** Companies with five or fewer full-time employees at a given time may train two participants for up to 640 hours.

**(b)** Companies with five or more full-time employees at a given time may train four participants for up to 640 hours.

**(21)** Training of each participant shall not exceed one semester or 16 weeks.

**(22)** Company shall only allow a trainee to participate one time in the program. A trainee who has participated in the program previously for any company shall not be approved unless the company and trainee can demonstrate to the satisfaction of the New Mexico film division, which the training applies to a new skill set and a new job position.

**(23)** Companies approved for reimbursement through this program shall not be approved for any other JTIP for film and multimedia programs; however, they may apply to JTIP manufacturing if they meet that program's requirements.

[5.5.51.11 NMAC - Rp, 5.5.51.11 NMAC, 6-30-2016]

#### **5.5.51.12 REIMBURSEMENT OF TRAINING COSTS:**

**A.** Reimbursement shall be made to the participating company in accordance with the terms of JTIP for film and multimedia agreement for FCAP.

**B.** Failure to fully and accurately complete administrative requirements may delay reimbursement payment.

**C.** The claim or invoice for reimbursement may be submitted during the agreement period, when trainees complete the number of agreement hours.

**D.** Trainee wages shall be reimbursed upon completion of the training project, not to exceed 1,040 hours for (FCAP) for physical production and FCAP for qualifying permanent companies and not to exceed 640 for FCAP for qualifying permanent emerging media and digital media companies, at the conclusion of the production in New Mexico.

**E.** Reimbursement from the state shall be based on the FCAP agreement.

**F.** Reimbursements shall be based upon the number of trainees who have qualified for the training program.

**G.** Reimbursement shall not exceed fifty percent of the trainees' rates.

**H.** Training costs shall be reimbursed to the company based on the number of qualified participants and their wages from hours physically worked.

**I.** The agreement amount established shall remain the same for the length of the agreement.

**J.** Trainee wages shall be reimbursed upon completion of training with the company which shall not exceed 1,040 hours per approved trainee application at the conclusion of training in New Mexico and when company qualifications and requirements have been met.

**K.** The New Mexico film division shall make arrangements to have an audit at the end of the agreement that may be facilitated by and completed at the New Mexico film division to verify program compliance by either an independent accountant or a representative of the New Mexico film division.

**L.** In the case where overpayment has been made by the state of New Mexico to the company, the company shall refund the department the difference of the correct reimbursement payment from the paid reimbursement amount.

**M.** The New Mexico film division may not issue reimbursement payment until all obligations the company has incurred have been paid in New Mexico as related to the New Mexico film credit program.

[5.5.51.12 NMAC - Rp, 5.5.51.12 NMAC, 6-30-2016]

## **PART 52: DEVELOPMENT PRE-EMPLOYMENT TRAINING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES**

### **5.5.52.1 ISSUING AGENCY:**

New Mexico Economic Development Department.

[5.5.52.1 NMAC - Rp, 5.5.52.1 NMAC, 4-30-2009]

### **5.5.52.2 SCOPE:**

New Mexico residents pursuing film and multimedia professions.

[5.5.52.2 NMAC - Rp, 5.5.52.2 NMAC, 4-30-2009]

### **5.5.52.3 STATUTORY AUTHORITY:**

Section 21-19-7.1.B NMSA 1978, established in 2003, directs the New Mexico film division of the economic development department to establish a film and multimedia pre-employment training program to furnish qualified manpower resources for the film

and multimedia industry. The New Mexico film division has adopted rules implementing the pre-employment training program.

[5.5.52.3 NMAC - Rp, 5.5.52.3 NMAC, 4-30-2009]

**5.5.52.4 DURATION:**

Permanent.

[5.5.52.4 NMAC - Rp, 5.5.52.4 NMAC, 4-30-2009]

**5.5.52.5 EFFECTIVE DATE:**

April 30, 2009, unless a later date is cited at the end of a section.

[5.5.52.5 NMAC - Rp, 5.5.52.5 NMAC, 4-30-2009]

**5.5.52.6 OBJECTIVE:**

The object of this rule is to establish standards for pre-employment development training for New Mexican residents through the job training incentive program (JTIP) for film and multimedia production companies. Pre-employment training program (PETP) is intended to furnish qualified manpower resources for the film and multimedia industry. The intention of PETP **workshop training** is to assist the development of New Mexico's economy by providing reimbursement funds to contractors facilitating short-term intensive courses, workshops or lectures that primarily relate to below-the-line film and television job positions. The intention of PETP **project training** is to assist the development of New Mexico's economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions.

[5.5.52.6 NMAC - Rp, 5.5.52.6 NMAC, 4-30-2009; A, 6-29-2012; A, 6-30-2014]

**5.5.52.7 DEFINITIONS:**

For use in this part, the following definitions apply.

**A. "Above-the-line"** is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

**B. "Below-the-line"** is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job

positions, this term means technical crew working in temporary positions and these individuals do not have creative or financial control of the project nor receive residuals.

**C. "Craft"** means the specialized area or department in which a film technician works.

**D. "Credit"** means the employee hired by a production company is officially acknowledged by name by the company either on a final list of employees (crew list) or on the actual screen as having worked in the hired position on their film or multimedia project.

**E. "Film technician"** means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

**F. "Hands-on classes"** mean classes or workshops where materials, tools or chemicals are utilized by participants.

**G. "JTIP"** means job training incentive program.

**H. "PETP"** means pre-employment training program.

**I. "Production company"** means the entity creating a film or television project, which includes film or multimedia project preparation, principal photography and set break down periods.

**J. "Resident"** means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

**K. "Trainee"** means the attendee participating in the class, course, workshop, lecture or project available through this program and who will be trained. learning a new skill set or graduating to a higher job classification.

**L. "Turn-around-time"** means the time between leaving a project and returning to a project to continue training.

[5.5.52.7 NMAC - Rp, 5.5.52.7 NMAC, 4-30-2009, A, 6-29-2012; A, 6-30-2014]

#### **5.5.52.8 PRE-EMPLOYMENT WORKSHOP TRAINING PROGRAM OUTLINE:**

**A.** The New Mexico film division of the economic development department shall contract a qualified contractor to provide venues, staff, equipment and materials to

conduct short-term, intensive training New Mexicans in primarily below-the-line film and television crafts and that shall increase the employment opportunities of New Mexican crew on film and television projects.

**B.** Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of the economic development department.

**C.** Total course cost shall not exceed twenty thousand dollars (\$20,000.00) regardless of the number of contractors.

**D.** The potential contractor shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

**E.** Approved contractor shall enter into an agreement as outlined by the New Mexico economic development department.

**F.** The approval from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

**G.** The term of the contract shall be based on a time period, which shall allow the contractor to complete its obligation to facilitate and provide training classes or workshops for the qualified individuals and complete the paper-work involved.

**H.** Contractor shall ensure that all trainees are pursuing work in or are currently working in the film and television industry and shall either be training in a new classification or are in need of additional training in this classification.

**I.** Contractor shall ensure all trainees are New Mexico residents.

**J.** Contractor shall ensure all trainees are at least 18 years of age for all "hands-on" classes or workshops and must be accompanied by an adult if under the age of 18 years for lectures.

**K.** Contractor shall qualify registrants based on class pre-requisites and specific industry experience when applicable.

**L.** Contractors may require trainees to pay a nominal fee per the approval of the New Mexico film division.

**M.** All instructors and facilitators shall be certified as such by the New Mexico film division.



**N.** The contractor is subject to compliance visits and program surveys at any time during the training class or workshop.

**O.** The contractors that fail to comply with all established operating requirements and closeout procedures are not eligible to apply for future participation.

**P. Eligible costs for reimbursement per PETP workshop application:**

- (1) tuition and registration fees; and
- (2) certification and licensing fees for trainees when applicable; and
- (3) instructional literature; and
- (4) expendable supplies; and
- (5) instructor and facilitator fees where these individuals are not employee of the contractor's business; and
- (6) additional temporary insurance if required to conduct class or workshop; and
- (7) facility rental; and
- (8) equipment rental; and
- (9) approved travel expenses which is based on department of finance administration rule 2.42.2 NMAC, Regulations Governing Per Diem and Mileage Act.

**Q. Reimbursement of training costs:**Reimbursement amount shall be made to the participating contractor in accordance with the terms of the training contract.Funds from the state shall be based on the negotiated contractual agreement as outlined in the contract.

**R. Reporting:**The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys:

- (1) PETP workshop film and multimedia pre-employment training application and documents noted within; and
- (2) applicable insurance certificate(s); and
- (3) New Mexico tax information form or current state vendor number; and
- (4) PETP workshop film and multimedia pre-employment agreement; and

- (5) PETP trainee forms when applicable; and
- (6) receipts per approved expenditures in application; and
- (7) roster of trainees; and
- (8) evaluation forms when applicable; and
- (9) invoice.

**S.** The mailing address to submit paperwork including the invoice is to the development training program administrator or manager, New Mexico Film Division of the Economic Development Department, 1100 St. Francis Drive, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600.

[5.5.52.8 NMAC - Rp, 5.5.52.8 NMAC, 4-30-2009, A, 6-30-2011, A, 6-29-2012]

#### **5.5.52.9 PRE-EMPLOYMENT PROJECT TRAINING:**

**A. Project training** shall assist the development of New Mexico's economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions. This program shall increase the hirability of New Mexico crew on film and television projects, increase economic status upon employment, and increase crew availability to productions. Pre-employment project training shall pertain to industry and production needs as determined by the New Mexico film division of the economic development department.

#### **B. Production company qualifications and requirements:**

(1) The production company shall provide an outline of each training concept with the NMFO proposal form to be considered for approval.

(2) The production company shall be required to provide qualifications of instructors and mentors, all relevant details, certificates and costs per the program application; and upon approval of the New Mexico film division shall enter into the film and multimedia pre-employment project training agreement as outlined by the New Mexico film division of the economic development department; and the approval from the New Mexico film division shall grant training funds to the production company for the purpose of conducting this training.

(3) The production company entering into a contractual agreement with New Mexico economic development department shall return the contractual agreement to the department within 15 business days from the issue date or commencement of project whichever date comes first.

**(4)** The production company shall interview and consider trainees endorsed by the New Mexico above-the-line mentorship panel (NM AMP) for this training.

**(5)** The production company ensures that all trainees are New Mexico residents.

**(6)** The production company ensures that all trainees shall receive specialized training to work in the film industry.

**(7)** The production company shall not have more than two trainees per mentor or instructor.

**(8)** The production company shall ensure each trainee completes project trainee certification form.

**(9)** The production company shall ensure the trainee shall be covered under their production insurance.

**(10)** The production company is subject to compliance visits and program surveys at any time during the training.

**(11)** Breaks and meals per film industry standards shall apply to participants training on production project.

**(12)** A minimum turn-around-time of eight hours shall apply to all training participants.

**C.** The production company that fail to comply with all established operating requirements and close-out procedures are not eligible to apply for future participation and may not receive the training reimbursement.

**D.** Instructors and mentor qualifications shall be certified as such by the New Mexico film division.

**E.** The New Mexico film division will determine the number of days per participant on a given production's project based on the number of approved trainees, length of production and available funding.

**F.** Total training cost shall equate to twenty-five percent (25%) for participating above-the-line mentors and for mentors working as department heads in specialized crafts as listed in the application.

**G.** Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of economic development department.

**H.** The term of the contract shall be based on a time period, which shall allow the production company to complete its obligation to facilitate and provide training classes or workshops for the qualified individuals and complete the paper-work involved.

**I.** Reimbursement of training costs shall be made to the participating production company in accordance with the terms of the contract which is based upon the costs to facilitate training.

**J.** The rate established in the contract shall remain the same for the length of the agreement.

**K.** The invoice shall include all costs accepted and stated in the application and contract.

**L.** The mailing address to submit the invoice and all required information is development training program administrator of the New Mexico Film Division of the Economic Development Department, 1100 St. Francis Drive, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600.

**M. Reporting:** The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys:

- (1) PETP project proposal; and
- (2) New Mexico tax information form; and
- (3) film and multimedia pre-employment project training application and supporting documents noted within; and
- (4) film and multimedia pre-employment project agreement; and
- (5) project trainee certification form for each trainee and supporting documentation noted within; and
- (6) copy of production insurance; and
- (7) final roster of trainees that have completed the training with individual's contact information; and
- (8) call sheet or equivalent documentation as determined by the New Mexico film division for each day of training; and
- (9) time cards or equivalent documentation as determined by the New Mexico film; and

(10) evaluation forms; and

(11) invoice.

**N.** All records shall be submitted to the New Mexico film division of the economic development department and they are subject to review during compliance visits and program surveys.

[5.5.52.9 NMAC - Rp, 5.5.52.9 NMAC, 4-30-2009, A, 6-30-2011, A, 6-29-2012]

#### **5.5.52.10 [RESERVED]**

[5.5.52.10 NMAC - Rp, 5.5.52.10 NMAC, 4-30-2009, A, 6-30-2011, 5.5.52.10 NMAC, N, 6-29-2012; Repealed, 6-30-2014]

#### **5.5.52.11 OTHER PROGRAM INFORMATION:**

**A.** The pre-employment training program through the job training incentive program for film and multimedia was created by the New Mexico film division of the economic development department of state of New Mexico.

**B.** Public or private entities outside the state of New Mexico shall contact the New Mexico film division of the economic development department for consideration to obtain permission to use any part of this program content at 505-476-5600.

[5.5.52.10 NMAC - Rp, 5.5.52.10 NMAC, 4-30-2009, 5.5.52.11 NMAC - Rn, 6-29-2012]

## **CHAPTER 6: POST-SECONDARY ENROLLMENT AND DATA REPORTING**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: DATA REPORTING**

#### **5.6.2.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.6.2.1 NMAC - Rp, 5.6.2.1 NMAC, 7/24/2018]

#### **5.6.2.2 SCOPE:**

All public post-secondary educational institutions operating within and receiving financial support from the state of New Mexico.

[5.6.2.2 NMAC- Rp, 5.6.2.2 NMAC, 7/24/2018]

**5.6.2.3 STATUTORY AUTHORITY:**

Section 9-25-8 NMSA 1978, Section 21-2-5 NMSA 1978 and Section 21-2-7 NMSA 1978.

[5.6.2.3 NMAC- Rp, 5.6.2.3 NMAC, 7/24/2018]

**5.6.2.4 DURATION:**

Permanent.

[5.6.2.4 NMAC- Rp, 5.6.2.4 NMAC, 7/24/2018]

**5.6.2.5 EFFECTIVE DATE:**

July, 24 2018, unless a later date is cited at the end of a section.

[5.6.2.5 NMAC- Rp, 5.6.2.5 NMAC, 7/24/2018]

**5.6.2.6 OBJECTIVE:**

To establish data reporting requirements and procedures for public post-secondary institutions operating within and receiving financial support from the state of New Mexico report data to the New Mexico higher education department.

[5.6.2.6 NMAC- Rp, 5.6.2.6 NMAC, 7/24/2018]

**5.6.2.7 DEFINITIONS:**

**A. "Department"** means the New Mexico higher education department.

**B. "Campus"** means any physical location of the institution.

**C. "Institution"** means a public post-secondary institution operating within and receiving financial support from the state of New Mexico.

[5.6.2.7 NMAC- Rp, 5.6.2.7 NMAC, 7/24/2018]

**5.6.2.8 GENERAL REQUIREMENTS:**

**A.** The department shall maintain the electronic data and editing reporting (eDEAR) system to collect data from institutions. The department shall maintain a reporting manual to assist institutions in utilizing the eDEAR reporting system. The eDEAR reporting manual shall be updated and maintained by the department and include data

reporting requirements and eDEAR user guidance. The department shall make the most current version of the eDEAR reporting manual available to institutions on the department website. Any changes to the eDEAR reporting manual shall be made available to institutions at least 30 days prior to reporting deadlines.

**B.** Institutions shall comply with all data reporting requirements set by the department in the eDEAR reporting manual. Data submitted by institutions may be used by the department to develop reports and to conduct statewide planning.

**C.** Any tribal college or tribal university that has executed a memorandum of understanding with the department expressing its intent to implement the common course numbering system pursuant to 5.55.5 NMAC, the statewide general education curriculum pursuant to 5.55.6 NMAC, or the statewide meta-majors and transfer modules pursuant to 5.55.7 NMAC, shall be considered an institution as defined in 5.6.2.7 NMAC.

[5.6.2.8 NMAC- Rp, 5.6.2.8 NMAC, 7/24/2018]

#### **5.6.2.9 DATA REPORTING SUBMISSION SCHEDULE:**

The department shall set and publish reporting deadlines for data submission within the eDEAR reporting manual. An institution shall report required data to the department pursuant to the reporting deadlines set and published by the department.

[5.6.2.9 NMAC- Rp, 5.6.2.9 NMAC, 7/24/2018]

#### **5.6.2.10 DATA REPORTING VERIFICATION:**

**A.** An on-site data verification visit may be scheduled at any campus location of an institution. During its on-site data verification visit, the department may seek to verify any data reported by the institution and determine the institution's compliance with data reporting requirements set by the department in the eDEAR reporting Manual.

**B.** The on-site data verification campus visit will be conducted to complete the following:

(1) clarify department data requirements, definitions, and procedures with campus personnel;

(2) evaluate campus compliance with department data submission requirements and policies;

(3) identify data reporting problem areas for the campus through evaluation of campus compliance with department data requirements; and

**(4)** solicit institutional assistance in refining department data elements, submission procedures, and data use.

**C.** Prior to an on-site data verification campus visit, the department shall issue notice to the institution of its intent to conduct a visit no less than 60 days prior to the visit. The department shall coordinate the visit with the institution and provide data to be used by the department during the verification process. The department shall conduct meetings with institutional administration at the beginning and end of the verification visit to discuss objectives, procedures, time frame and follow-up. A preliminary and final report of the visit shall be shared with the institution for review and comment. In its report, the department shall offer suggested remedies to cure any deficiencies discovered through the verification process.

[5.6.2.10 NMAC- N, 7/24/2018]

### **PART 3: VARIABLE SCHEDULING [REPEALED]**

[This part was repealed on July 24, 2108.]

### **PART 4: ENROLLMENT VERIFICATION [REPEALED]**

[This part was repealed on July 24, 2018.]

## **CHAPTER 7: TUITION AND FINANCIAL AID**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: NEW MEXICO HEALTH PROFESSIONS STUDENT LOAN-FOR-SERVICE ACTS**

#### **5.7.2.1 ISSUING AGENCY:**

New Mexico Higher Education Department (NMHED).

[7/15/1998, 5.7.2.1 NMAC - Rn & A, 5 NMAC 7.2.1, 6/29/2001; A, 5/30/2008]

#### **5.7.2.2 SCOPE:**

Provisions of 5.7.2 NMAC apply to New Mexico residents that are selected to participate in one of the loan-for-service programs described in this rule. Participants must be pursuing a certification/license in an eligible health profession.

[7/15/1998, 5.7.2.2 NMAC - Rn, 5 NMAC 7.2.2, 6/29/2001; A, 5/30/2008]

#### **5.7.2.3 STATUTORY AUTHORITY:**



Sections 21-1-26, and 21-22-1 through 21-22C-10 NMSA 1978.

[7/15/1998, 5.7.2.3 NMAC - Rn, 5 NMAC 7.2.3, 6/29/2001]

**5.7.2.4 DURATION:**

Permanent.

[7/15/1998, 5.7.2.4 NMAC - Rn, 5 NMAC 7.2.4, 6/29/2001]

**5.7.2.5 EFFECTIVE DATE:**

July 15, 1998.

[7/15/1998, 5.7.2.5 NMAC - Rn, 5 NMAC 7.2.5, 6/29/2001]

**5.7.2.6 OBJECTIVE:**

The objective and purpose of the New Mexico Health Professions Student Loan-for-Service Acts are to increase the number of health professionals in areas of the state which have experienced shortages of health practitioners, by making educational loans to students seeking certification/licensure in an eligible health profession. The acts require, as a condition of each loan, that the student declare their intent to practice as a health professional within one of the areas of the state designated by the health profession advisory committee, of the New Mexico higher education department, as a health professional shortage area.

[7/15/1998, 5.7.2.6 NMAC - Rn, 5 NMAC 7.2.6, 6/29/2001; A, 5/30/2008; A, 12/11/2018]

**5.7.2.7 DEFINITIONS:**

**A. "Department"** means the New Mexico higher education department.

**B. "Committee"** means the health professions advisory committee of the department.

**C. "Designated shortage area"** means an area in New Mexico determined by the committee as not being adequately served by eligible health professionals.

**D. "Eligible health profession"** means:

**(1)** for the Allied Health Student Loan-for-Service Act, dental hygienist, physical therapy, occupational therapy, speech-language pathology, audiology, pharmacy, nutrition, respiratory care, laboratory technology, radiologic technology, mental health services, emergency medical services, or a licensed or certified health profession as defined by the department;

(2) for the Medical Student Loan-for-Service Act: physicians and physician assistants, including osteopathic physicians and osteopathic physician assistants.

(3) for the Nursing Student Loan-for-Service Act: nurses; and,

(4) for the Osteopathic Medical Student Loan-for-Service Act: osteopathic physicians and osteopathic physician assistants.

**E. "Eligible institution" means:**

(1) for the Allied Health Student Loan-for-Service Act: an accredited public postsecondary educational institution which provides an eligible allied health program; preference in awarding Allied Health Student Loan-for-Service Act funds shall be to students accepted for enrollment at a New Mexico public postsecondary educational institution;

(2) for the Medical Student Loan-for-Service Act: an accredited school of medicine in the United States; preference in awarding Medical Student Loan-for-Service Act funds shall be to students accepted for enrollment at an accredited New Mexico medical school;

(3) for the Nursing Student Loan-for-Service Act: an accredited New Mexico public post-secondary educational institution which provides a program of nursing; and,

(4) for the Osteopathic Medical Student Loan-for-Service Act: an accredited program of osteopathic education in the United States.

**F. "Extenuating circumstances"** means circumstances not within the control of the recipient.

**G. "Loan"** means a grant of funds to defray the costs incidental to an eligible health profession education, under a contract between the department and a student, requiring repayment with services or repayment of principal and interest and any fees.

**H. "Student"** means a student who is a resident of New Mexico and is enrolled at least half-time in, or has been accepted by an accredited program for one of the eligible health professions, and will be enrolled at least half-time.

**I. "Service"** means full-time, on-site practice in an eligible health profession; unless otherwise provided for by the committee;

[7/15/1998, 5.7.2.7 NMAC - Rn, 5 NMAC 7.2.7, 6/29/2001; A, 5/30/2008; A, 12/11/2018]

**5.7.2.8 HEALTH PROFESSION ADVISORY COMMITTEE:**

The health profession advisory committee is created to advise the department on matters relating to the administration of the health professions student loan-for-service acts.

**A.** The committee shall be appointed by the department pursuant to policies and procedures of the department and shall be composed of:

- (1) a representative of the department of health;
- (2) a representative of the New Mexico health policy commission;
- (3) representatives of public post-secondary health and medical training programs;
- (4) representatives of recruiting and placement organizations;
- (5) representatives of professional health and medical associations; and
- (6) other representatives as appointed by the department.

**B.** The responsibilities of the committee shall include:

- (1) designate health professional shortage areas of the state;
- (2) make recommendations to the department on applicants for allied health, medical, osteopathic, and nursing, loan-for-service acts; and,
- (3) give advice or other assistance to the department as requested.

[7/15/1998, 5.7.2.8 NMAC - Rn, 5 NMAC 7.2.8, 6/29/2001; A, 5/30/2008]

#### **5.7.2.9 STUDENT ELIGIBILITY:**

To be eligible for this program, a student must:

**A.** be pursuing an eligible health profession program, as defined in Subsection C in 5.7.2.7 NMAC, and enrolled in or accepted by an eligible public institution as defined in Subsection G in 5.7.2.7 NMAC;

**B.** be enrolled at the time the loan is awarded and disbursed, for at least half-time in a program leading to a eligible health profession degree/certification, at an eligible institution;

**C.** be a citizen of the United States, or a permanent resident alien, and a resident of New Mexico; and

**D.** declare their intent to practice in one of the eligible health professions as outlined in Section 5.7.2.13 NMAC for at least one year within a designated shortage area in New Mexico.

[7/15/1998, 5.7.2.9 NMAC - Rn, 5 NMAC 7.2.9, 6/29/2001]

#### **5.7.2.10 SELECTION OF LOAN RECIPIENTS:**

Selection shall be based on the following considerations and preferences:

**A.** the ability, character, and qualifications of each applicant; this is to include a review of the applicant's educational transcripts, letters of recommendation, and references;

**B.** the demonstrated interest of the applicant in serving in a designated shortage area of the state;

**C.** the applicant's lack of resources to pay for their education expenses, as determined by a standardized needs analysis system, and shall be the basis for preference among otherwise eligible students;

**D.** a designated shortage area endorsement of the applicant;

**E.** a designated shortage area funding match of the applicant; and,

**F.** an applicant seeking to obtain a certificate, license, or degree, in a New Mexico certified/accredited program outlined in Subsection C in 5.7.2.7 NMAC, which requires two years or more of study for completion.

[7/15/1998, 5.7.2.10 NMAC - Rn, 5 NMAC 7.2.10, 6/29/2001; A, 5/30/2008]

#### **5.7.2.11 RESPONSIBILITIES OF THE DEPARTMENT:**

**A.** develop program guidelines;

**B.** advertise the program;

**C.** process applications,

**D.** presenting a list of eligible candidates to the committee;

**E.** and administer the loans, including:

**(1)** disbursing funds;

**(2)** keeping records on borrowers and processing of contracts;

- (3) administration of and record keeping on loan repayments;
- (4) record keeping on location and time of service of those student loan recipients who have completed their education and are providing health service in designated shortage area in New Mexico;
- (5) verification of qualification for forgiveness for service as defined in 5.7.2.13 NMAC;
- (6) preparing the following information for each of the loan-for-service acts:
  - (a) number of loans granted;
  - (b) names and addresses of borrowers;
  - (c) names of accredited programs attended; and,
  - (d) names and locations of practice of those who have completed their education and have become licensed/certified health practitioners in New Mexico.

[7/15/1998, 5.7.2.11 NMAC - Rn, 5 NMAC 7.2.11, 6/29/2001; A, 5/30/2008]

#### **5.7.2.12 LOANS:**

Loans can be made to students to defray expenses incurred in obtaining an eligible health profession education under the following conditions and limitations.

**A.** The amount is dependent upon the relative need of each student, but may not exceed twenty-five thousand (\$25,000) per year. The department may set lower maximum award amounts based on the level of degree being obtained and other considerations. The exact amount of the loan for which the applicant is eligible will be determined as a result of an analysis of the financial situation of each applicant using a standard needs analysis carried out by the financial aid office of the student's institution.

**B.** Upon approval of the loan, a contract shall be drawn between the student and the department and signed by the student (for additional contract details see Section 5.7.2.14 NMAC).

[7/15/1998, 5.7.2.12 NMAC - Rn, 5 NMAC 7.2.12, 6/29/2001; A, 5/30/2008]

#### **5.7.2.13 LOAN REPAYMENT AND FORGIVENESS:**

All loans shall be repaid to the state together with interest or forgiven according to the following:

**A.** If a loan recipient of the Allied Health, Nursing, Medical, or Osteopathic Student Loan-for-Service Acts completes their professional education and does not serve in a designated shortage area for a period of at least one year, the department shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the department finds acceptable extenuating circumstances for why the student cannot serve and comply with the forgiveness provisions outlined in this section.

**(1)** The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorata basis reasonably reached based upon the degree of control which the recipient has over the decision not to serve. The recipient shall have the burden of proof.

**(2)** If the department does not find acceptable extenuating circumstances for the student's failure to carry out their declared intent to serve in a designated shortage area in the state, the department shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

**(3)** In all other cases, loans will bear interest at seven percent per year.

**B.** Loans made to students who fail to complete their eligible health profession education shall come due together with interest immediately upon termination of their education. The department, in consultation with the student, shall establish terms of repayment, alternative service, or cancellation terms.

**C.** The contract shall further provide that immediately upon completion or termination of the student's eligible health profession education, all interest then accrued due shall be capitalized.

**D.** If the borrower, after completion of their eligible health profession education and any period of internship or residency, serves in one of the designated shortage areas of the state, loan principal and interest may be forgiven according to the following formula:

**(1)** loan terms of one academic year or less shall require one year of practice in a designated shortage area; upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

**(2)** loan terms of two academic years shall require one year of practice in a designated shortage area for each academic year of the loan; upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven; upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and,

**(3)** for loan terms of three academic years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated shortage area, thirty percent of the principal plus accrued

interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

**E.** Recipients must serve a complete year of service in order to receive credit for that year. The minimum credit for a year of service shall be established by the department.

**F.** Subject to applicable statutory limitations, the department may extend or modify the foregoing repayment periods for good cause.

**G.** In the event it becomes necessary, the department may suspend loan payments using the following forbearance provisions:

**(1)** If the borrower is willing, but financially unable to make payments under the repayment schedule, the borrower may request forbearance to allow for any of the following:

**(a)** a short period during which no payments are made, interest would continue to accrue;

**(b)** an extension of time for making payments, interest would continue to accrue; or

**(c)** a period during which the borrower makes smaller payments than were originally scheduled, interest would continue to accrue on the unpaid principal.

**(2)** Forbearance following completion of program, internship, or residency will not be granted for periods extending beyond six months. The granting of a subsequent forbearance must be approved by the designated staff representative of the department.

**(3)** The borrower must submit a written request accompanied by a financial statement and a consent-waiver for authorization for current employment and address information concerning the borrower, and other information as requested.

**(4)** Deferral of repayment obligation may be as follows, at the determination of the department:

**(a)** the borrower is serving up to a maximum of three years as an active duty member of the armed forces of the United States;

**(b)** the borrower is temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;

**(c)** the borrower is seeking but unable to find full-time employment for a single period not to exceed twelve months;

(d) the borrower is unable to secure employment for a period not to exceed 12 months while caring for a disabled spouse;

(e) the borrower is unable to satisfy the terms of the repayment schedule while seeking but unable to find full-time employment in an eligible health profession, in a designated shortage area, for a single period not to exceed 27 months; or

(f) other extenuating circumstances as provided for under the American Family Leave Act.

**H.** Loans may be prepaid at any time, subject to the penalty provision set forth in this Section. Payment on a loan not in repayment may be made in any amount. Payments on a matured promissory note shall be in the amounts of and be applied on the principal installments due on such note in the inverse order of the maturities of such installments, unless otherwise agreed.

**I. Authorized charges and fees:**

(1) Late charges: Borrower may be charged a late charge in the amount of five percent of the installment payment or five dollars, whichever is less, on any payment made later than 10 days after it is due.

(2) Attorney's fees, other charges, and costs: Borrower shall agree to pay all reasonable attorney's fees, and other costs and charges necessary for the collection of any loan amount not paid when due.

**J.** Borrower has the responsibility to notify the department in advance of any change of address and of any action which necessitates reconsideration of a promissory note (the failure to serve in a designated shortage area, the termination of service in a designated shortage area, or their ceasing to be enrolled in an eligible institution in an eligible health profession program. Borrower's failure to notify the department and to execute a promissory note on request shall cause the full amount of principal and accumulated interest to become due immediately.

[7/15/1998, 5.7.2.13 NMAC - Rn & A, 5 NMAC 7.2.13, 6/29/2001; A, 5/30/2008]

**5.7.2.14 CONTRACTS:**

A contract shall be drawn between each student receiving a loan and the department on behalf of the state of New Mexico. The contract shall:

**A.** provide for the payment by the department of a specified sum as determined in 5.7.2.13 NMAC;

**B.** state that the borrower shall select from the list of designated shortage areas at the time borrower is ready to begin service;



**C.** state that immediately upon completion or termination of the student's eligible health profession education, all interest then accrued shall be capitalized;

**D.** state the conditions of repayment or forgiveness as detailed in 5.7.2.13 NMAC;

**E.** state that the loan shall bear interest at the designated rate per annum from the date of disbursement until paid, make provision for conversion to a payout note as shown in 5.7.2.13 NMAC, and state that interest will be charged on the unpaid balance of the principal only;

**F.** state the legal responsibilities of the borrower and that delinquent loans shall be referred to the department for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

**G.** state that the borrower's obligations of the contract with the department shall be binding on borrower's estate;

**H.** state that the department may cancel any contract on 30 days written notice for any reasonable and sufficient cause;

**I.** state that in the event the borrower fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the department, become immediately due and payable; and

**J.** state that jurisdiction and venue shall be proper in Bernalillo or Santa Fe county, New Mexico for purposes of any suit to enforce the contract.

[7/15/1998, 5.7.2.14 NMAC - Rn, 5 NMAC 7.2.14, 6/29/2001; A, 5/30/2008]

#### **5.7.2.15      REPORTS:**

The department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics, and analysis of the progress of the Health Professions Student Loan-for-Service Acts in meeting the health and medical needs of the citizens of the state.

[7/15/1998, 5.7.2.15 NMAC - Rn, 5 NMAC 7.2.15, 6/29/2001; A, 5/30/2008]

### **PART 3: NEW MEXICO HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM (HPLRP)**

#### **5.7.3.1      ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[7/15/1998; 5.7.3.1 NMAC - Rn & A, 5 NMAC 7.3.1, 7/31/2005]

**5.7.3.2 SCOPE:**

Provisions for 5.7.3 NMAC apply to certain practicing health professionals in New Mexico.

[7/15/1998; 5.7.3.2 NMAC - Rn, 5 NMAC 7.3.2, 7/31/2005]

**5.7.3.3 STATUTORY AUTHORITY:**

Sections 21-1-26 and 21-22D NMSA 1978.

[7/15/1998; 5.7.3.3 NMAC - Rn, 5 NMAC 7.3.3, 7/31/2005]

**5.7.3.4 DURATION:**

Permanent.

[7/15/1998; 5.7.3.4 NMAC - Rn, 5 NMAC 7.3.4, 7/31/2005]

**5.7.3.5 EFFECTIVE DATE:**

July 15, 1998, unless a later date is cited at the end of a section.

[7/15/1998; 5.7.3.5 NMAC, Rn & A, 5 NMAC 7.3.5, 7/31/2005]

**5.7.3.6 OBJECTIVE:**

The objective and purpose of 5.7.3 NMAC is to increase the number of health professionals in underserved areas of the state through a program of loan repayment of eligible educational loans. The program will pay its participants for the principal and reasonable interest accrued on loans obtained for educational purposes. The program requires, as a condition of each eligible participant, that they practice their profession within one of the areas of the state designated by the health profession advisory committee as a health professional shortage area for a minimum period of three years.

[7/15/1998; 5.7.3.6 NMAC - Rn, 5 NMAC 7.3.6, 7/31/2005; A, 8/15/2023]

**5.7.3.7 DEFINITIONS:**

**A. "Commission"**, without further specification, means the New Mexico higher education department.

**B. "Committee"** means the health professions advisory committee of the department.

**C. "Department"** means the New Mexico higher education department.

**D. "Eligible educational loan"** means government and commercial loans for actual costs paid for tuition, reasonable education expenses including fees, books, supplies and materials; and reasonable living expenses including room and board and other itemized expenses incurred during an individual's enrollment at a post-secondary institution in a health occupation educational program. Expenses incurred must be related to the acquiring of said education.

**E. "Eligible participant"** includes physicians, physician assistants, advanced practice nurses, registered nurses, dentists, podiatrists, optometrists, allied health care providers and other specialties approved by the committee.

**F. "Extenuating circumstances"** means circumstances not within the control of the recipient.

**G. "Health professional shortage area"** means an area of the state or a facility which has been determined by the health professions advisory committee as an acceptable practice site in which program participants may fulfill their commitment.

**H. "Physician"** means a physician, allopathic or osteopathic with a specialty in family or general medicine, general internal medicine, general pediatrics and obstetrics and gynecology and other specialties approved by the committee.

[7/15/1998; 5.7.3.7 NMAC - Rn & A, 5 NMAC 7.3.7, 7/31/2005; A, 5/16/2023; A, 8/15/2023]

#### **5.7.3.8 HEALTH PROFESSION ADVISORY COMMITTEE:**

The health profession advisory committee is created to advise the department on matters relating to the administration of the Health Professions Student Loan-for-Service Acts and the Health Professional Loan Repayment Act.

**A.** The committee shall be appointed by the department pursuant to policies and procedures of the commission and shall be composed of:

- (1) a representative of the department of health;
- (2) a representative of the New Mexico health policy commission;
- (3) representatives of public post-secondary health and medical training programs;
- (4) representatives of recruiting and placement organizations;
- (5) representatives of professional health and medical associations; and

(6) other representatives as appointed by the department.

**B.** The responsibilities of the committee shall include:

(1) designate health professional shortage areas of the state;

(2) make recommendations to the department on applicants for Medical, Osteopathic, Nursing and Allied Health Loan-For-Service Acts and the Health Professional Loan Repayment Act; and

(3) give advice or other assistance to the department as requested.

[7/15/1998; 5.7.3.8 NMAC - Rn & A, 5 NMAC 7.3.8, 7/31/2005]

#### **5.7.3.9 PARTICIPANT ELIGIBILITY:**

To be eligible for this program, an applicant must:

**A.** submit an application containing biographical, educational and health profession education loan information including lender name, address, telephone number, loan numbers, loan balances, interest rates and remaining payments for review;

**B.** be licensed or certified in the state of New Mexico to practice their profession;

**C.** be a citizen of the United States or a permanent resident alien and a resident of New Mexico;

**D.** provide service in a clinical practice of their profession full time (36 hours per week), the committee may consider part-time service, with prorated awards, on a case-by-case basis;

**E.** practice in an approved health professional shortage area for a minimum period of three years, the committee may consider longer periods of service on a case-by-case basis;

**F.** charge for their professional services at the usual and customary rates prevailing in the areas in which such services are provided, except that if a person is unable to pay such a charge, such person shall be charged at a reduced rate or not charged any fee;

**G.** agree that, in providing health services, they will not, in the case of an individual seeking care, discriminate on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the program established in Title XVIII (medicare) of the Social Security Act or pursuant to the program established in Title XIX (medicaid) of such act; and

**H.** agree that they will accept assignment under Section 1842(b)(3)(B)(ii) of the Social Security act for all services for which payment may be made under Part B of Title XVIII and will enter into an appropriate agreement with the state agency that administers the state plan for medical assistance under Title XIX of such act to provide service to individuals entitled to medical assistance under the plan.

[7/15/1998; 5.7.3.9 NMAC - Rn, 5 NMAC 7.3.9, 7/31/2005; A, 5/16/2023; A, 8/15/2023]

#### **5.7.3.10 SELECTION OF LOAN REPAYMENT PARTICIPANTS:**

**A.** Upon receipt of application forms and supporting documentation from eligible participants, a committee will be convened by the commission staff person charged with the administration of this program to make award recommendations. Applicants will be notified within 30 days of the results of this review.

**B.** Preference in awarding funds will be to individuals that have graduated from a New Mexico post-secondary institution.

**C.** Recruitment awards will be made to eligible participants who agree to relocate to an approved practice site.

**D.** Retention awards will be made to eligible participants who agree to remain in an approved practice.

**E.** Award amounts will be dependent upon the location of the practice, the applicant's total health professional educational indebtedness, and certain characteristics of the practice; the committee may modify the amount of the awards based upon available funding or other special circumstances.

**(1)** No award amount may exceed the total medical educational indebtedness of any participant.

**(2)** Highest priority will be given to those participants in practices which are hard to fill (vacancies in excess of 12 months), practices which require after-hours call at least every other night, and those which have heavy obstetrical responsibilities.

**F.** Payments will be made on a quarterly basis upon receipt of a certified quarter (three months) of service which verifies that the participant is satisfactorily providing primary health care services in an approved area.

**G.** Payments will not be made until participants are actually providing services in their approved practice sites, and no payments will be made prior to the date of application and execution of a participation agreement.

**H.** Participants with consolidated loans will be asked to detail the consolidation in writing at the time of application, segregating those loan amounts which qualify under this program for repayment.

**I.** The program will not pay fines, penalties or other financial damages assessed as a result of delinquent payments on eligible loans, other loans or as a result of other legal action taken against participants.

[7/15/1998; 5.7.3.10 NMAC - Rn, 5 NMAC 7.3.10, 7/31/2005; A, 12/11/2018]

#### **5.7.3.11 PARTICIPATION AGREEMENT:**

Upon approval, a participation agreement shall be drawn between each eligible participant receiving loan repayment and the department on behalf of the state of New Mexico. The agreement shall state both the participant's obligation under the program as well as the department's responsibility. No payment will be made until a duly signed document is on file at the department offices. The participation agreement shall include, but not be limited to, the following stipulations:

**A.** provide for the repayment of a specified sum as determined in Section 10; the commission will pay the amount due for each quarter of completed service by the program participant, directly to the participant or their lender(s) for payment of their health professional education loans; any amounts allocated to repay loans will be divided equally by the number of quarters in the service period covered by the award; quarters comprise an average of thirteen weeks including paid leave or any combination of hours and weeks thereof for the entire service period;

**B.** state that the department will complete annual reports to all tax authorities delineating award payments made to the program participant;

**C.** state that payment of the award is conditioned upon the program participant submitting timely reports and requests for reimbursement to the department or its designee, as required by the commission;

**D.** state the participant's obligations including a minimum three year period of service in a practice providing continuous clinical services in the field of their profession in an area designated by the committee as eligible;

**E.** state that the program participant is responsible for payment(s) of their eligible health professional education loans until such time that actual loan repayment is performed by the department. Repayment by the department will begin following the first certified quarter of completed clinical service in an area designated by the committee;

**F.** state that the recipient will charge for professional services at the usual and customary rate prevailing in the area where the services are provided, except that if a

person is unable to pay such charge, such person shall be charged at a reduced rate or not charged any fee;

**G.** in providing health services, the participant shall not discriminate against any person on the basis of such person's ability to pay for such services or because payment for the health services provided to such person will be made under the insurance program established under Part A or B of Title XVIII of the Social Security Act or under a state plan for medical assistance approved under Title XIX of such act;

**H.** the participant will accept assignment under Sections 1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be under Part B of Title XVIII of such act and enter into an appropriate agreement with the state agency which administers the state plan for medical assistance under Title XIX of such act to provide services to individuals entitled to medical assistance under the plan;

**I.** the award will be terminated if any of the following should occur:

(1) the participant fails to perform continuous clinical service at the approved facility, unless a change of facility or an interruption in service is approved in advance and in writing by the department; no interruption in service exceeding six months will be approved;

(2) the employment of the participant at an approved location is terminated;

(3) the participant loses their professional license, board certification or billing privileges for medicaid or medicare; or

(4) the department deems termination is warranted for any other reasonable cause.

**J.** in the event this agreement is terminated by the commission, the commission shall have no obligation to make any further payments to or on behalf of the participant;

**K.** penalties as outlined in Section 12; and

**L.** shall state that the participant further promises:

(1) to use the allocated award solely for the purposes of repaying health professional education loans, including principal, interest and related expenses or, where approved by the commission;

(2) to be responsible for all tax liabilities incurred in the acceptance of the award; and

(3) to complete all necessary reports and requests for loan repayment required by commission and submit them to the commission or its designee on a timely basis.

[7/15/1998; 5.7.3.11 NMAC - Rn & A, 5 NMAC 7.3.11, 7/31/2005; A, 12/11/2018; A, 8/15/2023]

#### **5.7.3.12 PENALTIES:**

**A.** If a program participant does not comply with the terms of the participation agreement, the department shall assess a penalty of up to three times the amount of award disbursed, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the participant could not serve and comply with the terms of the provisions. If the commission does not find acceptable extenuating circumstances for the participant's failure to comply, the commission shall require immediate repayment plus the amount of any penalty assessed pursuant to this section.

(1) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorata basis reasonably reached based upon the degree of control which the recipient has over the decision not to serve. The recipient shall have the burden of proof.

(2) If the commission does not find acceptable extenuating circumstances for the recipient's failure to carry out their declared intent to serve in a designated shortage area in the state, the commission shall require immediate repayment of the award granted to the recipient plus the amount of any penalty assessed pursuant to this subsection.

**B.** Participants who have signed a participation agreement for three years and fail to complete a quarter of service will not receive a prorated award amount.

[7/15/1998; 5.7.3.12 NMAC - Rn & A, 5 NMAC 7.3.12, 7/31/2005; A, 8/15/2023]

#### **5.7.3.13 INELIGIBLE DEBTS:**

The following educational debts are not eligible for repayment under this program:

**A.** amounts incurred as a result of participation in any department administered loan-for-service program or other state programs whose purpose states that service be provided in exchange for financial assistance, such as the New Mexico health service corps;

**B.** scholarships which have a service component/obligation such as the national health service corps scholarship; and



C. personal loans from friends, relatives and other family members, loans which exceed individual standard school expense levels; the committee may consider cases of extenuating circumstances.

[7/15/1998; 5.7.3.13 NMAC - Rn & A, 5 NMAC 7.3.13, 7/31/2005]

#### **5.7.3.14 REPORTS:**

The department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the program activity during the previous years, including the statistics, and analysis of the progress of the Health Professional Loan Repayment Act in meeting the health and medical needs of the citizens of the state.

[7/15/1998; 5.7.3.14 NMAC - Rn & A, 5 NMAC 7.3.14, 7/31/2005]

### **PART 4: PRIMARY CARE PHYSICIAN STUDENT LOAN-FOR-SERVICE PROGRAM**

#### **5.7.4.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.4.1 NMAC - N, 10/31/2013]

#### **5.7.4.2 SCOPE:**

Provisions of 5.7.4 NMAC apply to New Mexico residents that are selected to participate in primary care physician loan for service program described in this rule. Participants must be pursuing a medical doctor degree in with the intent to serve as primary care physician in an underserved area.

[5.7.4.2 NMAC - N, 10/31/2013]

#### **5.7.4.3 STATUTORY AUTHORITY:**

Sections 9-25-8, 21-1-26 and 21-22G-1 through 21-22G-4, NMSA 1978.

[5.7.4.3 NMAC - N, 10/31/2013]

#### **5.7.4.4 DURATION:**

Permanent.

[5.7.4.4 NMAC - N, 10/31/2013; A, 12/31/2019]

#### **5.7.4.5 EFFECTIVE DATE:**

October 31, 2013, unless a later date is cited at the end of a section.

[5.7.4.5 NMAC - N, 10/31/2013]

#### **5.7.4.6 OBJECTIVE:**

The objective and purpose of 5.7.4 NMAC is to increase the number of primary care physicians in underserved areas of the state, by making educational loans to medical students seeking to become primary care physicians. The program requires, as a condition of each loan, that the student declare the intent to practice as a primary care physician within one of the counties of the state designated by the U.S. department of health and human services as having a shortage of primary care physicians.

[5.7.4.6 NMAC - N, 10/31/2013]

#### **5.7.4.7 DEFINITIONS:**

**A. "Course of study"** means a medical student's medical education, including residency program.

**B. "Department"** means New Mexico higher education department.

**C. "Extenuating circumstances"** means circumstances not within the control of the recipient.

**D. "Fund"** means the primary care physician loan for service fund.

**E. "Loan"** means a grant of funds or waiver to defray the educational expenses of medical school, under a contract between the department and a student, requiring repayment with services or repayment of principal and interest and any fees.

**F. "Participant"** means an individual that has applied to participate in, has been accepted into and has signed a contract agreeing to the terms of the program.

**G. "Primary care physician"** means a medical doctor with specialty training in family medicine, general internal medicine or general pediatrics.

**H. "Program"** means the primary care physician student loan for service program.

**I. "Residency"** means three years of specialty training in family medicine, general internal medicine or general pediatrics after medical school.

**J. "Secretary"** means the secretary of higher education.

**K. "Service"** means full-time, on-site practice area as a primary care physician.

**L. "Student"** means a student who is a resident of New Mexico and is enrolled at least half-time in, or has been accepted by a university for medical school.

**M. "Underserved area"** means a health care underserved area as defined in the Rural Primary Health Care Act (Section 24-1A-1 NMSA 1978).

**N. "University"** means the university of New Mexico school of medicine.

[5.7.4.7 NMAC - N, 10/31/2013]

#### **5.7.4.8 STUDENT ELIGIBILITY:**

To be eligible for this program, a student must:

**A.** be pursuing a medical degree, and enrolled in or accepted by the university;

**B.** be enrolled at the time the loan is awarded and disbursed in a program leading to a medical degree at the university.

**C.** be a resident of New Mexico and either a graduate of a New Mexico high school or a graduate of a New Mexico college or university; and

**D.** declare his/her intent to practice as a primary care physician for at least one year, not to exceed five years, with year to year renewal within an underserved area.

[5.7.4.8 NMAC - N, 10/31/2013]

#### **5.7.4.9 SELECTION OF LOAN RECIPIENTS:**

The department shall select participants according to rules it promulgates and, in consultation with the university, shall create a standard process for medical students to declare their intentions to be primary care physicians and to apply to participate in the program. The department shall select loan recipients based on the following considerations and preferences:

**A.** the ability, character, and qualifications of each applicant; this is to include:

**(1)** review of the applicant's educational transcripts,

**(2)** letters of recommendation from educational and medical field professionals, and

**(3)** references;

- B.** the demonstrated interest of the applicant in serving in an underserved area;
- C.** an underserved area endorsement of the applicant; and
- D.** an applicant seeking to obtain a medical degree in a New Mexico certified/accredited program.

[5.7.4.9 NMAC - N, 10/31/2013]

#### **5.7.4.10 RESPONSIBILITIES OF THE DEPARTMENT:**

The department shall:

- A.** promulgate rules for implementing the program in consultation with the university;
- B.** publicize the program to medical students and to prospective medical students;
- C.** collect and manage repayments from students who do not meet their obligations under the program;
- D.** solicit and accept funds for the program, including grants and donations;
- E.** award no more than 10 new loans a year, in addition to renewing existing waivers for eligible participants, subject to the availability of funding;
- F.** promulgate rules setting the maximum amount of the reasonable living stipend. The department shall determine the maximum amount of the living stipend based upon the availability of funds and information provided by the university regarding the current cost of attendance at the school of medicine;
- G.** for a period of no more than five years, allow participants to remain in the program and receive continued loans in accordance with the availability of funds and the department's finding that the participant is meeting the university's standards for satisfactory academic progress;
- H.** shall award loans to participants from the fund. Approve the amount of the loan granted to a participant. The amount of the loan awarded to a participant shall not exceed a reasonable living stipend plus the amount of resident tuition and fees that a participant incurs.

[5.7.4.10 NMAC - N, 10/31/2013]

#### **5.7.4.11 LOANS:**

Loans can be made to students to defray educational expenses incurred in obtaining a medical degree under the following conditions and limitations:

**A.** the amount is dependent upon relative need of each student, but may not exceed \$30,000 per academic year;

**B.** upon approval of the loan, a contract shall be drawn between the student and the department and signed by the student and the department;

**C.** a student may receive a loan on the following terms:

**(1)** interest shall accrue upon termination of the participant's course of study; the waiver amount shall bear interest at the rate of eighteen percent per year if the participant completes a course of study and no portion of the principal and interest is forgiven pursuant to Subsection D of this section; and

**(2)** the maximum period for repayment shall be 10 years, commencing six months from the date the participant completes or discontinues the course of study, including a residency; and

**D.** the contract shall provide that the department forgive a portion of the waiver for each year that a participant practices as a primary care physician in an underserved area of New Mexico as defined in the Rural Primary Health Care Act (Section 24-1A-1 NMSA 1978).

[5.7.4.11 NMAC - N, 10/31/2013]

#### **5.7.4.12 LOAN REPAYMENT AND FORGIVENESS:**

All loans shall be repaid to the state together with interest or forgiven.

**A.** the loan shall be forgiven as follows:

**(1)** a loan term of one year shall require one year of practice as a primary care physician in an underserved area of the state for the one-year term of the loan received. Upon completion of service, one hundred percent of the loan and accrued interest shall be forgiven;

**(2)** a loan term of two years shall require two years of practice as a primary care physician in an underserved area of the state for the two-year term of the loan received. Upon completion of the first year of service, fifty percent of the loan and accrued interest shall be forgiven; upon completion of the second year of service, the remainder of the loan and accrued interest shall be forgiven;

**(3)** a loan term of three years shall require three years of practice as a primary care physician in an underserved area of the state for the three-year term of the loan received. Upon completion of the first year of service, twenty-five percent of the loan and accrued interest shall be forgiven; upon completion of the second year of service, fifty percent of the loan and accrued interest shall be forgiven; and upon

completion of the third year of service, the remainder of the loan and accrued interest shall be forgiven;

**(4)** a loan term of four years shall require four years of practice as a primary care physician in an underserved area of the state for the four-year term of the loan received. Upon completion of the first year of service, thirty percent of the loan and accrued interest shall be forgiven; upon completion of the second year of service, forty percent of the loan and accrued interest shall be forgiven; upon completion of the third year of service, fifty percent of the loan and accrued interest shall be forgiven; and upon completion of the fourth year of service, the remainder of the loan and accrued interest shall be forgiven; or

**(5)** a loan term of five years shall require five years of practice as a primary care physician in an underserved area of the state for the five-year term of the loan received. Upon completion of the first year of service, ten percent of the loan and accrued interest shall be forgiven; upon completion of the second year of service, twenty percent of the loan and accrued interest shall be forgiven; upon completion of the third year of service, thirty percent of the loan and accrued interest shall be forgiven; upon completion of the fourth year of service, fifty percent of the loan and accrued interest shall be forgiven; and upon completion of the fifth year of service, the remainder of the loan and accrued interest shall be forgiven;

**B.** in the event that a participant completes the participant's course of study and does not meet the program obligation to serve as a primary care physician in an underserved area of the state, the department shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the department finds acceptable extenuating circumstances for why the participant cannot serve. The department shall collect the penalty and remit it to the state treasury for deposit in the fund;

**C.** the department is authorized to cancel any contract made between it and any participant pursuant to the Conditional Tuition Waiver for Primary Care Medical Students Act, or set terms of alternative service in lieu of monetary repayment, for any cause the department deems reasonable;

**D.** the department shall be responsible for collecting repayments made pursuant to this section and shall exercise due diligence in collecting repayments and maintaining all necessary records to ensure that full repayments are made. The department shall collect and service repayments under this section to the full extent of the law, including wage garnishment where practicable. The department shall forgive all or parts of repayments under the criteria established in this section and shall maintain all necessary records of repayments it forgives; and

**E.** when a participant makes payment of principal or interest to the department pursuant to the provisions of this section, the department shall deposit these payments into the fund and shall use these payments to cover the costs of granting waivers and

the administrative expenses associated with the program and collection activity on its behalf. The department shall maintain accurate records of these expenses, and all receipts beyond those necessary to pay these expenses shall be used to grant waivers to participants.

[5.7.4.12 NMAC - N, 10/31/2013]

#### **5.7.4.13 CONTRACTS:**

A contract shall be drawn between each student receiving a loan and the department on behalf of the state of New Mexico. The contract shall:

**A.** provide for the payment by the department of a specified sum as determined in 5.7.4.12 NMAC;

**B.** state that the borrower shall select from the list of underserved areas at the time he/she is ready to begin service;

**C.** state that immediately upon completion or termination of the student's eligible medical degree education, to include residency, the loan shall become due;

**D.** state the conditions of repayment or forgiveness as detailed in 5.7.4.12 NMAC;

**E.** state that the loan shall bear interest at the designated rate per annum from the date of default until paid, making provision for conversion to a payout note, and state that interest will be charged on the unpaid balance of the principal only;

**F.** state the legal responsibilities of the borrower and that delinquent loans shall be referred to the department for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

**G.** state that the borrower's obligations of the contract with the department shall be binding on borrower's estate;

**H.** state that the department may cancel any contract on 30 days written notice for any reasonable and sufficient cause;

**I.** state that in the event the borrower fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the department, become immediately due and payable; and

**J.** state that jurisdiction and venue shall be proper in Bernalillo or Santa Fe county, New Mexico for purposes of any suit to enforce the contract.

[5.7.4.13 NMAC - N, 10/31/2013]

#### **5.7.4.14      REPORTS:**

The department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics, and analysis of the progress of the program in meeting the health and medical needs of the citizens of the state.

[5.7.4.14 NMAC - N, 10/31/2013]

### **PART 5: TEACHER LOAN REPAYMENT PROGRAM**

#### **5.7.5.1      ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.5.1 NMAC - N, 10/31/2013]

#### **5.7.5.2      SCOPE:**

Provisions for 5.7.5 NMAC apply to certain teachers that are selected to participate in the loan repayment program described in this rule.

[5.7.5.2 NMAC - N, 10/31/2013; A, 7/30/2019]

#### **5.7.5.3      STATUTORY AUTHORITY:**

Sections 9-25-8, 21-1-26 and 21-22H-1 through 21-22H-9, NMSA 1978.

[5.7.5.3 NMAC - N, 10/31/2013]

#### **5.7.5.4      DURATION:**

Permanent.

[5.7.5.4 NMAC - N, 10/31/2013]

#### **5.7.5.5      EFFECTIVE DATE:**

October 31, 2013, unless a later date is cited at the end of a section.

[5.7.5.5 NMAC - N, 10/31/2013]

#### **5.7.5.6      OBJECTIVE:**

The objective and purpose of 5.7.5 NMAC is to increase the number of teachers in public schools and the number of teachers in high-need positions in public schools



through an educational loan repayment program. The program provides for repayment of the principal and reasonable interest accrued on loans obtained from the federal government for teacher education purposes.

[5.7.5.6 NMAC - N, 10/31/2013; A, 7/30/2019]

#### **5.7.5.7 DEFINITIONS:**

**A. "Department"** means the New Mexico higher education department.

**B. "Loan"** means a grant of funds to defray the educational expenses incidental to a teacher education, under a contract between the federal government and a teacher, requiring repayment of principal and interest.

[5.7.5.7 NMAC - N, 10/31/2013; A, 7/30/2019]

#### **5.7.5.8 HIGHER EDUCATION DEPARTMENT - POWERS AND DUTIES:**

**A.** The department may grant a loan repayment award to repay loans obtained for the teacher educational expenses of a teacher upon such terms and conditions as may be imposed by rules of the department.

**B.** The department and the public education department shall jointly make a full and careful investigation of the ability and qualifications of each applicant and determine the fitness of a teacher to participate in the teacher loan repayment program.

[5.7.5.8 NMAC - N, 10/31/2013]

#### **5.7.5.9 TEACHER ELIGIBILITY:**

**A.** To be considered for the program, an applicant must:

- (1)** be a licensed New Mexico teacher;
- (2)** be a bona fide citizen and resident of the United States and New Mexico;  
and
- (3)** have taught at least three school-years in New Mexico.

**B.** To be considered a high-priority applicant for a loan repayment award the applicant shall be a teacher in a designated high-need position in the state. High-need positions include positions that are:

- (1)** for teachers who are endorsed and teach bilingual education;

(2) for teachers who are endorsed and teach early childhood education or special education;

(3) for teachers who are endorsed and teach science, technology, engineering, mathematics or career technical education courses; or

(4) in a public school that is low performing or serves a high percentage of economically disadvantaged students.

C. Teachers that are not in a designated high-need teacher position may also be considered for loan repayment awards.

[5.7.5.9 NMAC - N, 10/31/2013; A, 7/30/2019]

**5.7.5.10 LOAN REPAYMENT AWARD CRITERIA; CONTRACT TERMS; PAYMENT:**

A. Loan repayment award criteria shall provide that:

(1) for high-priority applicants, award amounts shall be dependent upon a specific public school's need for the designated high-need teacher position, as determined by the public education department, the teacher's total teacher education indebtedness and available balances in the teacher loan repayment fund;

(2) award amounts for other teachers shall be based on the need for a teacher position that can be filled by the applicant, as determined by the public education department, the teacher's total teacher education indebtedness and available balances in the teacher loan repayment fund;

(3) preference in making awards shall be to teachers who are historically underrepresented minorities in New Mexico's teaching profession or teachers who have graduated from a New Mexico public postsecondary educational institution;

(4) award amounts shall not exceed six thousand dollars (\$6,000) per year and may be modified based upon funding availability or other special circumstances; and

(5) the total amount of awards made to any one teacher shall not exceed the total teacher education indebtedness remaining for that teacher.

B. The following teacher education debts are not eligible for repayment pursuant to the Teacher Loan Repayment Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

- (2) scholarships that have a service component or obligation;
- (3) loans from a commercial lender;
- (4) personal loans from friends or relatives; and
- (5) loans that exceed individual standard school expense levels.

**C.** Every loan repayment award shall be evidenced by a contract between the teacher and the department acting on behalf of the state. The contract shall provide for the annual payment by the state of a stated sum to the teacher's federal government lender and shall state the obligations of the teacher under the program, including a minimum two-school year period of service in a designated high-need teacher position, quarterly employment reporting requirements and other obligations established by the department.

**D.** Execution of the contracts shall occur prior to the start of a school year and the two school year period of service starts at the execution of the contract. Each contract shall be for an initial two school year period. Following completion of the contract a teacher may reapply for consideration of an additional contract. Teachers may receive a maximum of three additional two-year contracts. Contracts between a teacher and the department shall not provide for more than a total of eight years of repayment.

**E.** The department shall make an annual payment pursuant to the contract only after the teacher provides verification of satisfactory completion of a full year of teaching as certified by the public education department. If a teacher does not complete the first full year of teaching, the teacher shall forfeit any right to that year's payment under the contract.

**F.** Loan repayment awards shall be in the form of payments from the teacher loan repayment fund directly to the federal government lender of a teacher who has received the award and shall be considered a payment on behalf of the teacher pursuant to the contract between the department and the teacher. A loan repayment award shall not obligate the state or the department to the teacher's federal government lender for any other payment and shall not be considered to create any privity of contract between the state or the department and the lender.

[5.7.5.10 NMAC - N, 10/31/2013; A, 7/30/2019]

#### **5.7.5.11 CONTRACTS:**

The general form of a contract required pursuant to the Teacher Loan Repayment Act shall be prepared and approved by the attorney general, and each contract shall be signed by the teacher and the designated representative of the department on behalf of the state.

[5.7.5.11 NMAC - N, 10/31/2013; A, 7/30/2019]

**5.7.5.12 TEACHER LOAN REPAYMENT FUND CREATED AND METHOD OF PAYMENT:**

**A.** The "teacher loan repayment fund" is created in the state treasury. All money appropriated for the teacher loan repayment program shall be credited to the fund. Income from the fund shall be credited to the fund, and balances in the fund shall not revert to any other fund. Money in the fund is subject to appropriation by the legislature to the department for making loan repayment awards pursuant to the Teacher Loan Repayment Act.

**B.** All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the department and upon a warrant issued by the secretary of finance and administration.

[5.7.5.12 NMAC - N, 10/31/2013; A, 7/30/2019]

**5.7.5.13 CANCELLATION:**

The department may cancel any contract made between it and a teacher pursuant to the Teacher Loan Repayment Act for any reasonable cause deemed sufficient by the department.

[5.7.5.13 NMAC - N, 10/31/2013]

**5.7.5.14 REPORTS:**

Prior to each regular session of the legislature, the department shall make annual reports to the governor and the legislature of the department's activities pertaining to the Teacher Loan Repayment Act; the loan repayment awards granted; the names and addresses of teachers who received loan repayment awards; the names and locations of the positions filled by those teachers; the name of each teacher who received a loan repayment award who is not serving in a designated high-need teacher position; the amount owed on each teacher's loan and the amount paid on each teacher's loan by loan repayment awards; and the number of teachers who did not complete a full year of teaching.

[5.7.5.14 NMAC - N, 10/31/2013; A, 7/30/2019]

**PART 6: FIRE FIGHTER AND PEACE OFFICER SURVIVORS SCHOLARSHIP**

**5.7.6.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.6.1 NMAC - N, 08/29/2014]

**5.7.6.2 SCOPE:**

Provisions of 5.7.6 NMAC apply to New Mexico residents that apply to and are selected to participate in the fire fighter and peace officer survivors scholarship program.

[5.7.6.2 NMAC - N, 08/29/2014; A, 7/24/2018]

**5.7.6.3 STATUTORY AUTHORITY:**

Sections 21-21F-1 through 21-21F-5 NMSA 1978.

[5.7.6.3 NMAC - N, 08/29/2014]

**5.7.6.4 DURATION:**

Permanent.

[5.7.6.4 NMAC - N, 08/29/2014]

**5.7.6.5 EFFECTIVE DATE:**

August 29, 2014, unless a later date is cited at the end of a section.

[5.7.6.5 NMAC - N, 08/29/2014]

**5.7.6.6 OBJECTIVE:**

The objective and purpose of 5.7.6 NMAC is to provide a guideline for implementing the Fire Fighters and Peace Officer Survivors Scholarship Act. The purpose of this act is to provide a scholarship opportunity to the eligible dependents of fire fighters and peace officers who lost their lives in the line of duty.

[5.7.6.6 NMAC - N, 08/29/2014]

**5.7.6.7 DEFINITIONS:**

**A. "Academic year"** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

**B. "Cost of attendance"** means the price of attendance, the publication of which is required by federal law, and includes tuition and fees, books and supplies, room and board, transportation and any additional costs for a program in which a student is enrolled.

**C. "Department"** means the New Mexico higher education department.

**D. "Educational institution" or "institution"** means any public post-secondary institution in the United States.

**E. "Fire Fighter"** means any member of a fire department that is part of or administered by the state or any political subdivision of the state.

**F. "Line of duty"** means any action which a member is obligated or authorized by law, rule, regulation, written condition of employment or authorized volunteer membership to perform.

**G. "Member"** means a full-time or part-time paid employee or a paid or unpaid volunteer who is authorized by the police department, sheriff's department or fire department to be involved in and perform the duties and responsibilities of the department.

**H. "Peace officer"** means any member of a police or sheriff's department that is part of or administered by the state or any political subdivisions of the state and officers in the department of corrections.

**I. "Political subdivision"** means any entity of the state or local government, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; and school districts.

**J. "Recipient"** means a student awarded the fire fighter peace officer survivors scholarship.

**K. "Research institution"** means the university of New Mexico, New Mexico state university or New Mexico institute of mining and technology.

**L. "Satisfactory academic progress"** means maintaining the required academic progress toward degree completion as determined by the institution.

**M. "Survivor"** means a spouse, adopted child, or natural child of a fire fighter or peace officer who was killed in the line of duty. The survivor, if a child, must have been 21 years of age or under at the time of the qualifying parent's death.

**N. "Tuition"** is the basic educational charge that all students are required to pay as a condition of admission and attendance for academic services or the course fee charged for certificate programs. The actual rate per semester or year is set by each institution.

[5.7.6.7 NMAC - N, 08/29/2014; A, 7/24/2018]

#### **5.7.6.8 STUDENT ELIGIBILITY:**

All determinations of survivors of peace officers, fire fighters or other similar decedents employed by a political subdivision of the state of New Mexico shall be made by the department's financial aid director. Appeal of any such determination shall be determined by the cabinet secretary of the higher education department.

[5.7.6.8 NMAC - N, 08/29/2014]

#### **5.7.6.9 DURATION OF SCHOLARSHIP:**

The scholarship shall continue for such time as the recipient maintains satisfactory academic progress at the educational institution, but in no event shall any recipient receive the scholarship for more than six academic years.

[5.7.6.9 NMAC - N, 08/29/2014; A, 7/24/2018]

#### **5.7.6.10 AMOUNT OF SCHOLARSHIP:**

The amount of the scholarship awarded to a recipient shall be based on the location of the institution the recipient chooses to attend:

**A.** New Mexico institutions: If the institution is in New Mexico, the amount of the scholarship shall be equal to the amount of tuition, room and board charged by the institution attended.

**B.** Institution outside of New Mexico: If the institution is not in New Mexico, the amount of the scholarship shall not exceed the average cost of attendance at New Mexico research institutions.

[5.7.6.10 NMAC - N, 08/29/2014; A, 7/24/2018]

#### **5.7.6.11 ADMINISTRATION OF FIRE FIGHTER AND PEACE OFFICER SURVIVORS SCHOLARSHIP:**

**A.** The department shall authorize payments to educational institutions, for recipients, upon receipt of documentation required by the department.

**B.** Awards shall be limited for reimbursements to educational institutions for the actual incurred cost of tuition, room and board. For recipients attending an institution not in New Mexico, the scholarship award shall not exceed the average cost of attendance of New Mexico research institutions. No cash shall be released by an educational institution to a recipient except to reimburse actual payments.

**C.** Money shall be allocated in the order that payment requests are received and approved.

**D.** To request payment institutions shall invoice the department on a semester basis; institutions shall provide supporting documents for each recipient including class schedule, degree or certificate program catalog requirements and any additional documentation the department may require to process the request.

**E.** Reimbursement payments may also be authorized by administrative rulings under specific conditions.

[5.7.6.11 NMAC - N, 08/29/2014; A, 7/24/2018]

#### **5.7.6.12 TERMINATION OF SCHOLARSHIP:**

A scholarship is terminated upon the occurrence of one or more of the following:

**A.** Withdrawal by the recipient from the institution to which the recipient was granted the scholarship to attend. In the event the recipient seeks to transfer the scholarship to another institution the recipient must notify and obtain prior approval from the department.

**B.** Failure to achieve satisfactory academic progress by the recipient as determined by the educational institution.

**C.** Substantial noncompliance by the scholarship recipient with the fire fighters and peace officer survivors scholarship act or the rules, regulations or procedures promulgated by the state of New Mexico higher education department.

[5.7.6.12 NMAC - N, 08/29/2014; A, 7/24/2018]

### **PART 7: CHILDREN, YOUTH AND FAMILIES WORKER LOAN REPAYMENT PROGRAM**

#### **5.7.7.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.7.1 NMAC - N, 7/15/2015]

#### **5.7.7.2 SCOPE:**

Provisions for 5.7.7 NMAC apply to certain professionals employed with the children youth and families department that are selected to participate in the loan repayment program described in this rule.

[5.7.7.2 NMAC - N, 7/15/2015]

#### **5.7.7.3 STATUTORY AUTHORITY:**



Sections 9-25-8, 21-1-26 and 21-22I-1 through 21-22I-8, NMSA 1978.

[5.7.7.3 NMAC - N, 7/15/2015]

**5.7.7.4 DURATION:**

Permanent

[5.7.7.4 NMAC - N, 7/15/2015]

**5.7.7.5 EFFECTIVE DATE:**

July 15, 2015, unless a later date is cited at the end of a section.

[5.7.7.5 NMAC - N, 7/15/2015]

**5.7.7.6 OBJECTIVE:**

The objective and purpose of 5.7.7 NMAC is to increase the number of public service workers in critical need positions at the children youth and families department through an educational loan repayment program. The program provides for repayment of the principal and reasonable interest accrued on federal and commercial loans obtained for education purposes.

[5.7.7.6 NMAC - N, 7/15/2015]

**5.7.7.7 DEFINITIONS:**

**A. "CYFD"** means the New Mexico children, youth, and families department.

**B. "Department"** means the New Mexico higher education department.

**C. "Designated critical need positions"** means positions that have been designated by the secretary of CYFD as positions in geographic areas with shortages of public service workers or where vacancies are difficult to fill.

**D. "Loan"** means a grant of funds to defray the educational expenses incidental to an education related to the employment at CYFD, under a contract between the federal government or commercial lender and the worker, requiring repayment of principal and interest.

**E. "Public Service Worker"** means an employee with a completed bachelor's or master's degree, directly related to the worker's position, in a critical need positions and who works directly with children and families in either the protective services division or juvenile justice division of CYFD.

[5.7.7.7 NMAC - N, 7/15/2015]

**5.7.7.8 HIGHER EDUCATION DEPARTMENT - POWERS AND DUTIES:**

**A.** The department may grant a loan repayment award to repay loans obtained for the educational expenses of a public service worker upon such terms and conditions as may be imposed by rules of the department.

**B.** The department and the children youth and families department shall jointly make a full and careful investigation of the ability and qualifications of each applicant.

[5.7.7.8 NMAC - N, 7/15/2015]

**5.7.7.9 PUBLIC SERVICE WORKER ELIGIBILITY:**

**A.** Applicants shall have satisfactorily completed at least one (1) year of service past their initial probationary year with the CYFD as a public service worker.

**B.** Applicants shall not be participants in any other federal or state loan repayment program that provides loan repayment assistance in exchange for service.

[5.7.7.9 NMAC - N, 7/15/2015]

**5.7.7.10 LOAN REPAYMENT AWARD CRITERIA; CONTRACT TERMS; PAYMENT:**

**A.** The secretaries of the department and the CYFD shall designate a selection committee for the purpose of review and selection of qualified applicants.

**B.** Loan repayment award criteria shall provide that:

**(1)** award amounts shall be dependent upon a specific need for the designated critical need public service worker position as determined by the department, the public service worker's total education indebtedness, and available balances in the public service worker loan repayment fund;

**(2)** preference in making awards shall be to public service workers who have graduated from a New Mexico public post-secondary educational institution;

**(3)** awards shall be made to eligible public service workers who fill a designated critical need position;

**(4)** award amounts may be modified based upon funding availability or other special circumstances;

(5) awards may be distributed on a pro-rata basis for each year of service completed; and

(6) an award for each public service worker shall not exceed twenty-five thousand dollars (\$25,000) or the loan indebtedness of the worker, whichever is less.

**C.** The following public service worker education debts are not eligible for repayment pursuant to the Children, Youth and Families Worker Loan Repayment Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from friends or relatives;

(4) loans that exceed individual standard school expense levels; and

(5) loans that are eligible for another federal or state loan repayment program.

**D.** Every loan repayment award shall be evidenced by a contract between the public service worker and the department acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum to the public service worker's approved lender and shall state the obligations of the public service worker under the program, including a minimum period of service in a designated critical need public service worker position, quarterly reporting requirements, and other obligations established by the department.

**E.** Public service workers who have completed their probationary period and serve an additional year in a designated critical need position shall receive credit for one (1) year for the purpose of calculating any loan repayment award amounts.

**F.** The contract between a public service worker and the department shall provide that, if the public service worker does not comply with the terms of the contract, the public service worker shall reimburse the department for all loan payments made on the public service worker's behalf, plus reasonable interest at a rate to be determined by the department, unless the department finds acceptable extenuating circumstances for why the public service worker cannot comply with the terms of the contract.

**G.** Loan repayment awards shall be in the form of payments from the public service worker loan repayment fund directly to the federal government or commercial lender of a public service worker who has received the award and shall be considered a payment on behalf of the public service worker pursuant to the contract between the department and the public service worker. A loan repayment award shall not obligate the state or the department to the public service worker's federal government lender for any other

payment and shall not be considered to create any contract between the state or the department and the lender.

**H.** The department, after consulting with the CYFD, shall develop policies and procedures to implement the Children, Youth and Families Worker Loan Repayment Act. The policies and procedures:

**(1)** shall provide a procedure for determining the amount of a loan that will be repaid for each year of service in a designated public service worker position; the maximum annual award amount shall be based on program demand and available appropriations;

**(2)** shall incorporate scoring criteria including but not limited to geographic area or facility served, total loan indebtedness of the worker, years of service in a critical need position, and prior loan repayment or other financial support provided to the worker; and

**(3)** shall provide for the disbursement of loan repayment awards to a public service worker's federal government or commercial lender in annual or other periodic installments.

[5.7.7.10 NMAC - N, 7/15/2015]

#### **5.7.7.11 CONTRACTS AND ENFORCEMENT:**

**A.** The general form of a contract required pursuant to the Children, Youth and Families Worker Loan Repayment Act shall be prepared and approved by the department's general counsel, and each contract shall be signed by the public service worker and the designated representative of the department on behalf of the state.

**B.** The department is vested with full and complete authority and power to sue in its own name for any balance due the state from a public service worker under any such contract.

[5.7.7.11 NMAC - N, 7/15/2015]

#### **5.7.7.12 PUBLIC SERVICE WORKER LOAN REPAYMENT FUND CREATED AND METHOD OF PAYMENT:**

**A.** The "children, youth and families worker loan repayment fund" is created in the state treasury. All money appropriated for the public service worker loan repayment program shall be credited to the fund, and any repayment of awards and interest received by the department shall be credited to the fund. Income from the fund shall be credited to the fund, and balances in the fund shall not revert to any other fund. Money in the fund is appropriated to the department for making loan repayment awards pursuant to the Children, Youth and Families Worker Loan Repayment Act.

**B.** All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the department and upon a warrant issued by the secretary of finance and administration.

[5.7.7.12 NMAC - N, 7/15/2015]

**5.7.7.13 CANCELLATION:**

The department may cancel any contract made between it and a public service worker pursuant to the Children, Youth and Families Worker Loan Repayment Act for any reasonable cause deemed sufficient by the department.

[5.7.7.13 NMAC - N, 7/15/2015]

**5.7.7.14 REPORTS:**

The department shall make annual reports to the governor and the legislature prior to each regular session of its activities, the loan repayment awards granted and the title and job duties of each loan recipient. The report shall also include any contract cancellations and any enforcement actions the department has taken.

[5.7.7.14 NMAC - N, 7/15/2015]

**PART 8: NEW MEXICO STUDENT INCENTIVE GRANT (NMSIG) PROGRAM**

**5.7.8.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[7/15/98; 5.7.8.1 NMAC - Rn & A, 5 NMAC 7.8.1, 8/30/2007]

**5.7.8.2 SCOPE:**

Provisions for 5.7.8 NMAC apply to the higher education department and any public or private non-profit post-secondary institution in New Mexico.

[7/15/98; 5.7.8.2 NMAC - Rn & A, 5 NMAC 7.8.2, 8/30/2007]

**5.7.8.3 STATUTORY AUTHORITY:**

Title IV, Part 692, Subparts A and B, HEA of 1965 as amended.

[7/15/98; 5.7.8.3 NMAC - Rn & A, 5 NMAC 7.8.3, 8/30/2007]

**5.7.8.4 DURATION:**

Permanent.

[7/15/98; 5.7.8.4 NMAC - Rn, 5 NMAC 7.8.4, 8/30/2007]

**5.7.8.5 EFFECTIVE DATE:**

July 15, 1998.

[7/15/98; 5.7.8.5 NMAC - Rn, 5 NMAC 7.8.5, 8/30/2007]

**5.7.8.6 OBJECTIVE:**

The objective and purpose of 5.7.8 NMAC is to provide aid for undergraduate students with substantial financial need who are attending public and selected private non-profit post-secondary institutions in New Mexico.

A. Title IV, Part 692, Subparts A and B, of the Higher Education Act of 1965, as amended, established the leveraging educational assistance partnership (LEAP) program to make federal funds available to the states for the establishment or expansion of grant programs for undergraduate students who are able to demonstrate substantial financial need.

B. Utilizing these funds, New Mexico can provide grants to qualified students of up to \$2,500 per academic year, including summer session enrollment. Recipients of such grants must be residents of New Mexico who exhibit substantial financial need. They must also be undergraduates enrolled at least half-time at accredited public and private non-profit post-secondary institutions within the state.

C. To obtain the LEAP funds, New Mexico has designated the higher education department as the "single state agency" to administer the program under Title IV, Part 692, Subparts A and B, of the Higher Education Act of 1965, as amended.

[7/15/98; A, 6/30/99; 5.7.8.6 NMAC - Rn & A, 5 NMAC 7.8.6, 8/30/2007]

**5.7.8.7 DEFINITIONS:**

A. "**Academic year**" means any consecutive period of two semesters, three quarters or other comaprabable units commencing with the fall term each year.

B. "**Act**" means the Higher Education Act of 1965, as amended.

C. "**Department**" means the higher education department.

D. "**Cost of education**" means the cost of attending an institution as defined by the institution and approved by the state agency.

E. **"Expected family contribution"** is defined and calculated according to a formula established by federal law.

F. **"Full-time student"** means a student carrying a full-time academic workload, other than by correspondence, as measured by both of the following:

- (1) coursework or other required activities, as determined by the institution that the student attends or by the state;
- (2) the tuition and fees normally charged for full-time study by that institution.

G. **"Half-time student"** means an enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

- (1) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester or quarter system;
- (2) 12 semester hours or 18 quarter hours per academic year for an institution using standard credit hours to measure progress, but not using a standard semester, trimester or quarter system, or the prorated equivalent for a program of less than 1 year;
- (3) 12 clock hours per week for an institution using clock hours.

H. **"National of the United States"** means a citizen of the United States, or a person who is an eligible non-citizen.

I. **"State"** means New Mexico.

J. **"Substantial financial need"** is defined as the relative need, as measured by cost of attendance minus available resources.

K. **"Undergraduate student"** means a student who:

- (1) is in attendance at an institution of higher education; and
- (2) has not earned his or her first baccalaureate degree.

[7/15/98; 5.7.8.7 NMAC - Rn & A, 5 NMAC 7.8.7, 8/30/2007]

#### **5.7.8.8 ADMINISTRATION OF THE PROGRAM:**

A. The program shall be called the New Mexico student incentive grant program (NMSIG).

B. The department provides that such grants will not be in excess of \$2,500 per academic year for attendance on a full-time basis at approved post-secondary institutions as designated by the state;

C. The program shall be administered by the department staff under regulations adopted by the department.

D. The primary responsibility of the department is to provide for the equitable distribution of available funds.

E. The department shall request annually the total amount of funds available to the state from the federal program.

F. The department shall maintain files and review participating institutions' records to assure that federal and state laws and regulations are followed.

G. The department shall request the total federal funds available to New Mexico for each fiscal year be reserved to be matched by an equal amount of state funds.

H. The department as the designated state agency will provide decentralized administration of the New Mexico student incentive grant program by allocating general funds and federal matching contributions to eligible institutions based on a need formula approved by the department.

I. The department shall submit to the U.S. department of education periodic fiscal and performance reports, based on data provided by the participating institutions.

J. Reallocation of unused New Mexico student incentive grant program funds: Any New Mexico student incentive grant program funds which have been allocated to an eligible participating institution and which cannot be used by that institution will be reallocated by the department. These unused funds will be reallocated in an equitable manner.

K. It is the responsibility of each institution to comply with all requirements of federal laws, rules and regulations of the LEAP program, in addition to the operating procedures contained herein.

L. If a student withdraws or drops below half-time student status and is entitled to a refund for any tuition, fee or other charges as determined by each institution's refund policy, the institution shall pay back to the NMSIG fund in the same ratio as the NMSIG has to the total aid awarded

M. The institutional financial aid officers will:

(1) determine whether or not the student meets the eligibility requirements for a New Mexico student incentive grant award;



- (2) determine the financial need of the student;
- (3) recommend the amount of the NMSIG awards;
- (4) disburse the NMSIG award to the student in accordance with the established procedures of the department and the institution;
- (5) maintain adequate fiscal control and accounting records in accordance with approved state and federal procedures; and
- (6) provide to the department such financial and other information as may be required to meet federal reporting and auditing requirements.

[7/15/98; 5.7.8.8 NMAC - Rn & A, 5 NMAC 7.8.8 & 13, 8/30/2007]

#### **5.7.8.9 [RESERVED]**

[7/15/98; 5.7.8.9 NMAC - Rn, 5 NMAC 7.8.9, Repealed, 8/30/2007]

#### **5.7.8.10 INSTITUTION ELIGIBILITY REQUIREMENTS:**

To participate in the New Mexico student incentive grant program, a New Mexico post-secondary educational institution must be a public or other nonprofit institution which:

A. admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance and who have the ability to benefit from the training offered;

B. is legally authorized by the state of New Mexico to provide a program of education beyond secondary education;

C. provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit towards such a degree or provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation;

D. is accredited by a nationally recognized accrediting agency or association; and

E. is included in the current bureau of higher and continuing education accreditation list of institutions eligible for federal grants.

[7/15/98; 5.7.8.10 NMAC - Rn, 5 NMAC 7.8.10, 8/30/2007]

#### **5.7.8.11 STUDENT ELIGIBILITY:**

To be eligible for a grant from the New Mexico student incentive grant program, a student must:

- A. be a United States citizen or eligible non-citizen;
- B. be a resident of the state of New Mexico as defined in 5.7.18.11 NMAC;
- C. be enrolled or accepted for enrollment at least as a half-time undergraduate level student at a New Mexico post-secondary educational institution which has met the institutional eligibility requirements in 5.7.8.10 NMAC;
- D. complete the free application for federal student aid (FAFSA) or other financial aid applications that may be required at an eligible institution;
- E. have a substantial financial need;
- F. maintain satisfactory progress;
- G. not owe a refund on a grant overpayment under the Pell grant or supplemental educational opportunity grant programs; if a student owes a refund on a LEAP overpayment, the student is still eligible to receive additional federal student aid (FSA) funds as long as he or she meets all other eligibility requirements and as long as the school can eliminate the overpayment by adjusting financial aid payments (other than federal Pell grants) in the same award period in which the overpayment occurred;
- H. not be in default on a loan made by the institution under the national defense/direct student loan programs unless the student has made arrangements satisfactory to the institution to repay the loan;
- I. not be in default on a loan insured under the guaranteed student loan or the parent loans for undergraduate students (PLUS) program unless the secretary or a guarantee agency determines that the student has made satisfactory arrangements to repay the loan.

[7/15/98; 5.7.8.11 NMAC - Rn & A, 5 NMAC 7.8.11, 8/30/2007]

#### **5.7.8.12 [RESERVED]**

[7/15/98; 5.7.8.12 NMAC - Rn, 5 NMAC 7.8.12, Repealed, 8/30/2007]

#### **5.7.8.13 [RESERVED]**

[7/15/98; 5.7.8.13 NMAC - Rn, 5 NMAC 7.8.13, Repealed, 8/30/2007]

### **PART 9: NEW MEXICO SCHOLARS PROGRAM**

**5.7.9.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[7/15/98; 5.7.9.1 NMAC - Rn & A, 5 NMAC 7.9.1, 8/30/2007]

**5.7.9.2 SCOPE:**

Provisions of 5.7.9 NMAC apply to the higher education department and any public or private non-profit post-secondary institution in New Mexico.

[7/15/98; 5.7.9.2 NMAC - Rn & A, 5 NMAC 7.9.2, 8/30/2007]

**5.7.9.3 STATUTORY AUTHORITY:**

Section 21-21-H-1, NMSA 1978.

[7/15/98; 5.7.9.3 NMAC - Rn & A, 5 NMAC 7.9.3, 8/30/2007]

**5.7.9.4 DURATION:**

Permanent.

[7/15/98; 5.7.9.4 NMAC - Rn, 5 NMAC 7.9.4, 8/30/2007]

**5.7.9.5 EFFECTIVE DATE:**

July 15, 1998.

[7/15/98; 5.7.9.5 NMAC - Rn, 5 NMAC 7.9.5, 8/30/2007]

**5.7.9.6 OBJECTIVE:**

The objective and purpose of 5.7.9 NMAC is to encourage New Mexico students to attend college in New Mexico, thereby making it possible for them to pursue their studies and develop their talents at both public school and higher education levels to the greater benefit of the state.

[7/15/98; 5.7.9.6 NMAC - Rn, 5 NMAC 7.9.6, 8/30/2007]

**5.7.9.7 DEFINITIONS:**

A. "Academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

B. "Award recipient" means a student awarded a New Mexico Scholars Act scholarship.

C. "Combined family income" means the adjusted gross income for the student's family as taken from the federal income tax form(s) filed in compliance with internal revenue service (IRS) regulations and guidelines.

D. "Department" means the higher education department.

E. "Eligible institution" means any public or private non-profit post-secondary institution in New Mexico.

F. "Satisfactory academic progress" means completion of at least twenty-four semester credit hours per year (or the equivalent in quarter hours) and maintenance of a cumulative grade point average of a minimum of 3.0 or higher on a scale of 4.0.

G. "Scholarship" means a scholarship awarded pursuant to the New Mexico Scholars Act.

H. "Top five percent" means total headcount of the student's New Mexico high school graduating class times .05 rounded upward to the next whole number regardless of the fraction.

I. "Tuition" means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit.

J. "Required fees" means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. Excluded are specific services or fines (transcript copy fees, graduation fees, library fines, etc.).

K. "Books" is the amount used by the financial aid office for books in the calculation of cost of attendance for campus based programs.

[7/15/98; 5.7.9.7 NMAC - Rn & A, 5 NMAC 7.9.7, 8/30/2007]

#### **5.7.9.8 STUDENT ELIGIBILITY:**

A. First year eligibility. A scholarship may be awarded to a New Mexico high school graduate who:

(1) is a citizen of the United States or an eligible non-citizen and resident of New Mexico as defined in 5.7.18.9 NMAC;

(2) will graduate or has graduated from a New Mexico high school and who enrolls in an eligible institution by the end of his twenty-first year provided that the graduate meets the resident requirements defined in 5.7.18.9 NMAC;

(3) has met the admission requirements and is accepted for enrollment as a full-time undergraduate student at an eligible institution;

(4) has maintained a level of performance in high school reflected by a junior or senior score or placement level of:

(a) a composite score of at least twenty-five on the American college test (ACT) or a total of at least one thousand one hundred and forty on the scholastic aptitude test (SAT); or

(b) top five percent of the student's high school graduating class in either the student's junior or senior year;

(5) has a total combined family income of no more than sixty thousand dollars (\$60,000) per year in either of the calendar years ending within the student's junior or senior years in high school; in the case of a student whose immediate family has more than one family member enrolled full-time in an eligible institution of post-secondary education, the total combined family income shall be an amount as determined by the department as of August 19, 1991; and

(6) has complied with all the rules and regulations adopted by the department for award of the scholarship and the provisions regarding the administration of scholarships adopted pursuant to the New Mexico Scholars Act.

B. Continuing eligibility. A New Mexico scholars award may be re-awarded to a student who:

(1) maintains satisfactory academic progress as defined in these rules and regulations;

(2) stays enrolled for consecutive academic years.

[7/15/98; 5.7.9.8 NMAC - Rn & A, 5 NMAC 7.9.8, 8/30/2007; A, 10/31/2013]

#### **5.7.9.9 DURATION OF SCHOLARSHIP:**

Each scholarship is for a period of one academic year. The scholarship may be renewed annually until the award recipient has received four annual scholarship awards or until the student graduates from a four-year institution, whichever is earlier. An award recipient may use the award at a two-year institution until he or she receives two annual scholarship awards. In no case shall a student receive more than four annual awards.

[7/15/98; 5.7.9.9 NMAC - Rn, 5 NMAC 7.9.9, 8/30/2007]

**5.7.9.10 AMOUNT OF SCHOLARSHIP:**

A. State institutions shall make awards in amounts sufficient to pay for tuition, required student fees and books for an academic year.

B. Non-state institutions shall make awards in amounts equal to the highest state institution tuition plus required fees and books for an academic year.

[7/15/98; 5.7.9.10 NMAC - Rn, 5 NMAC 7.9.10, 8/30/2007]

**5.7.9.11 ADMINISTRATION OF SCHOLARS PROGRAM:**

A. Institution of higher education shall designate an officer responsible for the scholars program. The officer designated by the institution shall be responsible for determining initial and continuing student eligibility for the scholars program under the terms of these rules and regulations and shall:

(1) maintain a listing of each participating student to include but not be limited to:

(a) social security number;

(b) ACT composite or SAT total;

(c) high school graduating class ranking (e.g., 2 of 140);

(d) total family adjusted gross income;

(e) cumulative GPA (for continuing students);

(f) proof of initial or continuing enrollment;

(2) send to the department or its authorized agent a request for payment of tuition, required fees and book stipend for each consecutive period of enrollment; the request for payment shall include a listing of participants by name, social security number, tuition, required fees and book stipend; and

(3) adjust the cost of attendance, expected family contribution or other factors to make the program responsive to a student's special financial circumstances, within the parameters authorized for this program when a financial aid officer may exercise professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant and adjustment.

B. Higher education department shall:

(1) develop a standard request for payment; this request for payment shall be used by all participating institutions;

(2) convene an annual meeting with the responsible officers; the responsible officers shall meet at least annually to review the scholars program; and

(3) conduct audits to ascertain compliance with rules and regulations; at least a random audit of each participating institution's records shall take place on an annual basis by members of the department staff.

[7/15/98; 5.7.9.11 NMAC - Rn & A, 5 NMAC 7.9.11, 8/30/2007]

#### **5.7.9.12 TERMINATION OF SCHOLARSHIPS:**

A scholarship is terminated upon substantial noncompliance by the award recipient with the New Mexico Scholars Act or the rules, regulations or procedures promulgated by the department pursuant to that act.

[7/15/98; 5.7.9.12 NMAC - Rn & A, 5 NMAC 7.9.12, 8/30/2007]

### **PART 10: STATE WORK STUDY PROGRAM**

#### **5.7.10.1 ISSUING AGENCY:**

State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico, 87501-4295, (505) 827-7383.

[7/15/98; Recompiled 10/31/01]

#### **5.7.10.2 SCOPE:**

Provisions of 5 NMAC 7.10 [now 5.7.10 NMAC] apply to public or selected private non-profit post-secondary institutions in New Mexico.

[7/15/98; Recompiled 10/31/01]

#### **5.7.10.3 STATUTORY AUTHORITY:**

Laws of 1982, Chapter 88, Sections 21-21B-1 to 9, NMSA 1978.

[7/15/98; Recompiled 10/31/01]

#### **5.7.10.4 DURATION:**

Permanent.

[7/15/98; Recompiled 10/31/01]

**5.7.10.5 EFFECTIVE DATE:**

July 15, 1998 [unless a later date is cited at the end of a section].

[7/15/98; Recompiled 10/31/01]

**5.7.10.6 OBJECTIVE:**

The objective and purpose of 5 NMAC 7.10 [now 5.7.10 NMAC] is to provide a financial aid program for resident needy students; therefore, a distribution formula reflecting changing demographics of such students is to be used for allocating appropriated funds.

[7/15/98; Recompiled 10/31/01]

**5.7.10.7 DEFINITIONS:**

A. "Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

- (1) two semesters;
- (2) two trimesters; or
- (3) three quarters of instruction;

B. "Act" means the Work Study Act;

C. "Commission" means the New Mexico commission on higher education;

D. "Cost of education" means the cost of attending an institution as defined by the institution and approved by the commission;

E. "Dependent student" is a student who does not qualify as self-supporting or independent student;

F. "Eligible institution" means any state post-secondary educational institution and any private nonprofit post-secondary educational institution within New Mexico;

G. "Expected family contribution of a dependent student" means the sum of the amounts which reasonably may be expected from the student and his or her spouse to meet the student's cost of education and the amount which reasonably may be expected to be provided by his or her parents for such purpose;



H. "Expected family contribution of an independent or self-supporting student" means the amount which reasonably may be expected from the student and his or her spouse to meet the student's cost of education;

I. "Fund" means the New Mexico work study fund;

J. "Half-time student" means a student carrying a [sic] at least six semester hours during regular session and three semester hours during summer session as work-load, other than by correspondence, as measured by both of the following:

(1) coursework or other required activities, as determined by the institution that the student attends or by the state;

(2) the tuition and fees normally charged for half-time study by that institution;

K. "Monetary need" is established when a student's expected family contribution as determined by the federal methodology is less than the cost of attendance determined by the institution.

[7/15/98; Recompiled 10/31/01]

#### **5.7.10.8 STUDENT ELIGIBILITY:**

A student is eligible to receive New Mexico work study funds if the student:

A. is a resident (for tuition purposes) of New Mexico;

B. is a citizen of the United States or a permanent resident alien;

C. is enrolled at least six semester hours during regular session and three semester hours during summer session as a student at an eligible institution;

D. is in compliance with the institution's satisfactory academic progress requirements; and

E. is eligible according to a standard needs analysis or when a financial aid officer exercises professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant adjusting the cost of attendance, expected family contribution or other factors to make the program responsive to a student's special financial circumstances, within the parameters authorized for this program.

[7/15/98; Recompiled 10/31/01]

#### **5.7.10.9 ADMINISTRATION AND ALLOCATION OF FUNDS:**

A. The commission shall assure that expenditures from the work study fund are apportioned equitably among eligible institutions.

B. The commission shall require reports from participating institutions as deemed necessary.

C. The commission or its administrative agent shall disburse funds to participating institutions when necessary.

D. All administrative costs for the program will be borne by participating schools. No New Mexico general fund monies appropriated for the New Mexico work study program will be expended for administration. In addition, should an audit be required, costs will accrue to the school involved in the program and will in no way represent an obligation of the state of New Mexico.

E. The institution shall comply with all parts of the Work Study Act and the New Mexico work study program regulations.

F. The institution shall employ only eligible students with each student's earnings limited to the amount indicated in the financial aid award letter.

G. The institution shall determine that at least the amount allocated by the need portion of the commission approved distribution formula shall be awarded to financially needy students.

H. The institution shall arrange employment for students limited to post-secondary nonprofit institutions, state political subdivisions, state agencies and nonprofit organizations that are approved by the commission.

I. The institution shall not arrange employment for the students in any of the following:

- (1) jobs that advance a religious purpose;
- (2) jobs that have an objective that is primarily religious;
- (3) jobs that involve excessive entanglements with a religious organization; or
- (4) jobs that involve partisan political activity.

J. The institution shall ensure that the employer contributes at least twenty percent of the salary and benefits for the student.

K. The institution shall ensure that students are not paid less than the rate set forth in Section 50-4-22, NMSA 1978.

L. The institution shall maintain normally accepted accounting procedures in regard to all aspects of the New Mexico work study program.

M. The institution shall in a timely manner provide the commission with a report of expenditures through December 31 and June 30 in each year of participation.

N. The institution shall keep intact and accessible records of the receipt and expenditure of New Mexico work study program funds, including all accounting records and original and supporting documents necessary to document how the funds are spent. The records shall be retained in compliance with New Mexico records retention requirements.

O. Students are not eligible for benefits under the unemployment compensation law because of participation in the work study program.

P. The institution may employ a student during a special session (e.g., summer school) if the student is otherwise eligible.

[7/15/98; Recompiled 10/31/01]

## **PART 11: STUDENT CHOICE PROGRAM**

### **5.7.11.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[7/15/98; 5.7.11.1 NMAC - Rn & A, 5 NMAC 7.11.1, 8/30/2007]

### **5.7.11.2 SCOPE:**

Provisions of 5.7.11 NMAC apply to the higher education department and selected private non-profit post-secondary institutions in New Mexico.

[7/15/98; 5.7.11.2 NMAC - Rn & A, 5 NMAC 7.11.2, 8/30/2007]

### **5.7.11.3 STATUTORY AUTHORITY:**

Sections 21-21C-1 through 21-21C-9, NMSA 1978.

[7/15/98; 5.7.11.3 NMAC - Rn, 5 NMAC 7.11.3, 8/30/2007]

### **5.7.11.4 DURATION:**

Permanent.

[7/15/98; 5.7.11.4 NMAC - Rn, 5 NMAC 7.11.4, 8/30/2007]

**5.7.11.5 EFFECTIVE DATE:**

July 15, 1998.

[7/15/98; 5.7.11.5 NMAC - Rn, 5 NMAC 7.11.5, 8/30/2007]

**5.7.11.6 OBJECTIVE:**

The objective and purpose of the Student Choice Act and of the regulations promulgated thereunder is to make available state funds to students attending independent not-for-profit institutions of higher education, thereby broadening student choice and maximizing use of existing post-secondary educational resources and facilities, both public and independent, and thus benefitting the residents of the state of New Mexico. The broadening of educational choice will reduce the financial demands on the taxpayers of New Mexico.

[7/15/98; 5.7.11.6 NMAC - Rn, 5 NMAC 7.11.6, 8/30/2007]

**5.7.11.7 DEFINITIONS:**

A. "Academic year" means a period of time during which a full-time student is expected to complete the equivalent of two semesters.

B. "Act" means the New Mexico Student Choice Act.

C. "Department" means the higher education department.

D. "Cost of education" means the cost of attending an institution, as defined by the institution and approved by the state agency.

E. "Expected family contribution" is defined and calculated according to a formula established by federal law.

F. "Full-time student" means a student carrying twelve semester credit hours or more in a semester.

G. "Institution" means a financially independent non-profit nonsectarian four-year college or university whose New Mexico campus is accredited by the north central accreditation association.

H. "Part-time student" means a student carrying less than twelve semester credit hours, but at least six semester credit hours in a semester.

I. "Student choice grant" means a grant awarded to a student by the department pursuant to the provisions of the Student Choice Act.

J. "Substantial financial need" is defined as the relative need, as measured by cost of attendance minus available resources.

K. "Undergraduate student" means a student who:

- (1) is in attendance at an institution of higher education;
- (2) has not earned his or her first baccalaureate degree.

[7/15/98; 5.7.11.7 NMAC - Rn & A, 5 NMAC 7.11.7, 8/30/2007]

#### **5.7.11.8 STUDENT ELIGIBILITY:**

To be eligible for a grant, a student shall:

A. be a resident of New Mexico as defined in 5.7.18.9 NMAC or be eligible for a waiver as defined in 5.7.18.10 NMAC, provided all other eligibility requirements are fulfilled;

B. be enrolled at the time the grant is awarded and disbursed, for at least six semester credit hours in a program leading to a degree, at an eligible institution;

C. offer proof of substantial financial need;

D. be in satisfactory academic standing, as defined by the institution, or be making his first application to the institution;

E. not owe a refund on a grant received for attendance at any institution under the federal Pell grant, federal supplemental educational opportunity grant, New Mexico student incentive grant program or student choice grant program;

F. not be in default on a loan made by the institution under the Perkins loan program unless the student has made arrangements satisfactory to the institution to repay the loan;

G. not be in default on a loan insured under the Stafford loan or the parent loans for undergraduate students (PLUS) program unless the secretary of education or a guarantee agency determines that the student has made satisfactory arrangements to repay the loan;

H. complete an application for financial assistance supplied by the institution the student wishes to attend.

[7/15/98; 5.7.11.8 NMAC - Rn & A, 5 NMAC 7.11.8, 8/30/2007]

#### **5.7.11.9 INSTITUTIONAL REQUIREMENTS:**

For its students to participate in the student choice grant program, an institution shall:

A. grant to the department or its agent authority to inspect any of the academic or financial records of the student in the possession or under the control of the institution, which records are necessary to the proper administration of the provisions of the act and the regulations promulgated thereunder;

B. determine each applicant's financial need;

C. recommend the amount of grant for the student in accordance with the established procedures of the department and the institution;

D. disburse the grant to the student in accordance with the established procedures of the department and the institution;

E. audit the program annually and report the findings to the department or its agent;

F. adjust the cost of attendance, expected family contribution or other factors to make the program responsive to a student's special financial circumstances, within the parameters authorized for this program when a financial aid officer may exercise professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant an adjustment.

[7/15/98; 5.7.11.9 NMAC - Rn & A, 5 NMAC 7.11.9, 8/30/2007]

#### **5.7.11.10 ADMINISTRATION AND ALLOCATION OF FUNDS:**

A. The department shall administer the student choice grant program in accordance with the act and the regulations promulgated thereunder. Administration shall include but not be limited to disbursements of funds to eligible institutions for students approved by the department.

B. Administrative costs for the program shall be borne by participating institutions. Each institution shall maintain all records concerning student eligibility.

C. The department shall maintain financial records of all disbursements made under the act. These records shall include the amount of each student grant and the period for which it was disbursed.

D. At year end the names of students who received individual grants shall be submitted to the department by each institution via data reporting methods specified by the department. Annual reporting schedules shall be submitted to the participating colleges. Any audit exceptions shall be the responsibility of the participating institution, and not the responsibility of the department.

E. The department shall allocate student choice grant funds to an institution based on methodology approved by the department.

F. Any funds which have been allocated to an institution, but cannot be used by that institution, as determined by the department, may be reallocated by the department.

G. If a student withdraws from an institution and is entitled to a refund of tuition or other charges, as determined by the institution's refund policy, the institution shall refund to the department the amount previously paid by the department to the institution on behalf of the student. Such funds shall be paid at the ratio of the grant to the total financial aid disbursed, not to exceed the amount of the student choice grant disbursed to the student.

H. The maximum amount of the student choice grant shall be equal to the number of semester credit hours for which the student is enrolled (maximum of eighteen semester credit hours), multiplied by the department certified hourly rate. The hourly rate shall be calculated by taking the general fund appropriations for instruction and general purposes for the university of New Mexico, New Mexico state university, New Mexico Highlands university, eastern New Mexico university and western New Mexico university for the fiscal year in which the student choice grant is to be made, subtracting from that sum the portion deemed by the department to be attributable to other than undergraduate education, and dividing by the aggregate number of undergraduate credit hours which are used in the calculation by the department of the general fund appropriations.

I. A student choice grant to a part-time student shall be proportional to a student choice grant paid to a full-time student, during the same academic term, and shall be based on the ratio of part-time credit hours to full-time credit hours.

[7/15/98; 5.7.11.10 NMAC - Rn & A, 5 NMAC 7.11.10, 8/30/2007]

## **PART 12: MINORITY DOCTORAL LOAN REPAYMENT ASSISTANCE**

### **5.7.12.1 ISSUING AGENCY:**

State of New Mexico higher education department.

[5.7.12.1 NMAC – Rp, 5.7.12.1 NMAC, 10/31/2017]

### **5.7.12.2 SCOPE:**

Provisions of 5.7.12 NMAC apply to higher education department and four-year public post-secondary institutions in New Mexico.

[5.7.12.2 NMAC – Rp, 5.7.12.2 NMAC, 10/31/2017]

### **5.7.12.3 STATUTORY AUTHORITY:**

Sections 21-21I-1 through 21-21I-8, NMSA 1978.

[5.7.12.3 NMAC – Rp, 5.7.12.3 NMAC, 10/31/2017]

### **5.7.12.4 DURATION:**

Permanent.

[5.7.12.4 NMAC – Rp, 5.7.12.4 NMAC, 10/31/2017]

### **5.7.12.5 EFFECTIVE DATE:**

October 31, 2017 [unless a later date is cited at the end of a section].

[5.7.12.5 NMAC – Rp, 5.7.12.5 NMAC, 10/31/2017]

### **5.7.12.6 OBJECTIVE:**

The objective and purpose of 5.7.12 NMAC is to increase the number of ethnic minorities and women available to teach engineering, physical or life sciences, mathematics and other academic disciplines in which ethnic minorities and women are demonstrably underrepresented in New Mexico colleges and universities.

[5.7.12.6 NMAC – Rp, 5.7.12.6 NMAC, 10/31/2017]

### **5.7.12.7 DEFINITIONS:**

**A. "Award"** is a payment of funds on behalf of the recipient to defray the cost of educational loans accumulated in the course of study. The total amount of the award shall be an amount up to a maximum of twenty-five thousand dollars (\$25,000) for the first year of doctoral study and renewed annually for up to four years;

**B. "Department"** means the New Mexico higher education department;

**C. "Eligible doctoral field of study"** means the fields of engineering, physical or life sciences, mathematics and other academic disciplines in which certain ethnic or gender groups are demonstrably underrepresented in the teaching faculty at the sponsoring institution;

**D. "Eligible institution"** means an accredited institution of higher education that offers a doctoral degree-granting program in the fields of engineering, physical or life sciences, mathematics or other academic disciplines in which ethnic minorities or women are demonstrably underrepresented;



**E. "Loan"** means a grant of funds pursuant to a contract between a recipient and a lender requiring repayment of principal with interest. A lender may include the federal government, a bank or the state;

**F. "Public postsecondary educational institution"** means a research or comprehensive institution, as defined in Article 12, Section 11 of the Constitution of New Mexico, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14 and 16 NMSA 1978.

**F. "Recipient"** means an individual who is a member of an ethnic minority or is a woman and who has successfully completed a doctoral degree-granting program at an eligible institution in the field of engineering, physical or life sciences or mathematics or another academic discipline in which ethnic minorities or women are underrepresented; and

**G. "Tenure track faculty position"** means a full-time faculty appointment at a public postsecondary educational institution that has passed any probationary period and can be terminated only for cause or under extraordinary circumstances, as determined by the institution.

[5.7.12.7 NMAC – Rp, 5.7.12.7 NMAC, 10/31/2017]

#### **5.7.12.8 CONDITIONS FOR ELIGIBILITY:**

**A.** The department may award a minority doctoral loan repayment assistance grant to a recipient who:

- (1)** has completed a doctoral degree in an eligible doctoral field of study;
- (2)** has been hired by a public post-secondary educational institution in New Mexico for a full time, tenure-track faculty position;
- (3)** has complied with all of the rules adopted by the department pursuant to the Minority Doctoral Loan Repayment Assistance Act; and
- (4)** is a citizen of the United States

**B.** The department shall give preference to a recipient who has completed a post-secondary degree at an institution designated in Article 12, Section 11 of the constitution of New Mexico.

[5.7.12.8 NMAC – N, 10/31/2017]

#### **5.7.12.9 LOAN REPAYMENT AWARD CRITERIA; CONTRACT TERMS; PAYMENT:**

**A. Loan repayment award criteria shall provide that:**

(1) award amounts shall be dependent upon a specific need for the recipient as determined by the department, the recipient's total education indebtedness, and available balances in the minority doctoral loan repayment fund;

(2) awards shall be made to eligible tenure track faculty teaching in the fields of engineering, physical or life sciences, mathematics or other academic disciplines in which ethnic minorities or women are demonstrably underrepresented;

(3) award amounts may be modified based upon funding availability or other special circumstances;

(4) awards may be distributed on a pro-rata basis for each year of service completed; and

(5) the recipient shall teach in a full-time faculty position at a public post-secondary educational institution in New Mexico for a minimum of one year for each year a minority doctoral loan repayment assistance grant is awarded.

**B. The following education debts are not eligible for repayment pursuant to the Minority Doctoral Loan Repayment Assistance Act:**

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from friends or relatives;

(4) loans that exceed individual standard school expense levels; and

(5) loans that are eligible for another federal or state loan repayment program.

**C. Every loan repayment award shall be evidenced by a contract between the recipient and the department acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum to the recipient's approved lender and shall state the obligations of the recipient under the program, including a minimum period of service in a designated critical need recipient position, quarterly reporting requirements, and other obligations established by the department.**

**D. Recipients who have completed their probationary period and serve an additional year in a tenure track faculty position shall receive credit for one year for the purpose of calculating any loan repayment award amounts.**

**E.** The contract between a recipient and the department shall provide that, if the recipient does not comply with the terms of the contract, the recipient shall reimburse the department for all loan payments made on the recipient's behalf, plus reasonable interest at a rate to be determined by the department, unless the department finds acceptable extenuating circumstances for why the recipient cannot comply with the terms of the contract.

**F.** Loan repayment awards shall be in the form of payments from the minority doctoral loan repayment fund directly to the federal government or commercial lender of a recipient who has received the award and shall be considered a payment on behalf of the recipient pursuant to the contract between the department and the recipient. A loan repayment award shall not obligate the state or the department to the recipient's federal government lender for any other payment and shall not be considered to create any contract between the state or the department and the lender.

**G.** The department shall develop policies and procedures to implement the Minority Doctoral Loan Repayment Assistance Act. The policies and procedures:

**(1)** shall provide a procedure for determining the amount of a loan that will be repaid for each year of service in a designated recipient position; the maximum annual award amount shall be based on program demand and available appropriations;

**(2)** shall incorporate scoring criteria including but not limited to public postsecondary institution served, eligible doctoral field of study, total loan indebtedness of the worker, years of service in a tenure track faculty position, and prior loan repayment or other financial support provided to the worker; and

**(3)** may provide for the disbursement of loan repayment awards to lender on behalf of the recipient in annual or other periodic installments.

[5.7.12.9 NMAC – N, 10/31/2017]

#### **5.7.12.10 REPORTS:**

The higher education department shall submit a report to the governor and the legislature prior to each regular legislative session.

[5.7.12.10 NMAC – Rp, 5.7.12.12 NMAC, 10/31/2017]

#### **5.7.12.11 [RESERVED]**

[5.7.12.11 NMAC - Repealed, 10/31/2017]

#### **5.7.12.12 [RESERVED]**

[5.7.12.12 NMAC - Repealed, 10/31/2017]

## **PART 13: TEACHER LOAN-FOR-SERVICE ACT**

### **5.7.13.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.13.1 NMAC - N, 11/15/2001, A, 8/30/2007]

### **5.7.13.2 SCOPE:**

Provisions of 5.7.13 NMAC apply to New Mexico residents that are selected to participate in the loan-for-service program described in this rule. Participants must be enrolled in or accepted by an undergraduate or graduate teacher preparation program at a regionally accredited post-secondary educational institution in New Mexico.

[5.7.13.2 NMAC - N, 11/15/2001]

### **5.7.13.3 STATUTORY AUTHORITY:**

Section 21-22E-1 through 21-22E-10, NMSA 1978

[5.7.13.3 NMAC - N, 11/15/2001]

### **5.7.13.4 DURATION:**

Permanent

[5.7.13.4 NMAC - N, 11/15/2001]

### **5.7.13.5 EFFECTIVE DATE:**

November 15, 2001.

[5.7.13.5 NMAC - N, 11/15/2001]

### **5.7.13.6 OBJECTIVE AND PURPOSE:**

The objective and purpose of the New Mexico Teacher Loan-for-Service Act is to proactively address New Mexico's looming teacher shortage by providing students with the financial means to complete or enhance their post-secondary teacher preparation education.

[5.7.13.6 NMAC - N, 11/15/2001]

### **5.7.13.7 DEFINITIONS:**

- A. "Department" means the New Mexico higher education department.
- B. "Committee" means the teaching professions advisory committee of the department.
- C. "Loan" means a grant of funds to defray the costs incidental to an eligible teacher preparation education, under a contract between the department and a student, requiring repayment with services or repayment of principal and interest and any fees.
- D. "Student" means a United States citizen or eligible non-citizen and resident of New Mexico who is enrolled in or accepted by an undergraduate or graduate teacher preparation program at a regionally accredited post-secondary educational institution in New Mexico.
- E. "Teacher preparation program" means a program that has been formally approved as meeting the requirements of the public education department and that leads to initial licensure or to additional licensure endorsements, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section [21-1B-4](#) NMSA 1978.
- F. "Eligible institution" means an accredited post-secondary educational institution in New Mexico offering a teacher education program which meets the requirements of the public education department.
- G. "Service" means full-time, on site practice as a certified/licensed public school teacher in a designated teacher shortage area of New Mexico.
- H. "Teacher shortage area" means one of the areas of unmet teacher demand which may be either geographic locations or specific teaching fields.
- I. "Extenuating circumstances" means circumstances not within the control of the recipient.

[5.7.13.7 NMAC - N, 11/15/2001; A, 8/30/2007]

#### **5.7.13.8 TEACHING PROFESSION ADVISORY COMMITTEE:**

The teaching profession advisory committee is created to advise the department on matters relating to the administration of the Teaching Loan-For-Service Act.

A. The committee shall be appointed by the department pursuant to policies and procedures of the department and shall be composed of:

- (1) a representative from the state department of education;

- (2) a representative from a teacher organization;
- (3) representatives selected from local school districts;
- (4) representatives from teacher preparation programs; and
- (5) other representatives as appointed by the department.

B. The responsibilities of the committee shall include:

- (1) designate teaching shortage areas of the state;
- (2) make recommendations to the department on applicants for the teacher loan-for-service program; and
- (3) give advice or other assistance to the department as requested.

[5.7.13.8 NMAC - N, 11/15/2001; A, 8/30/2007]

#### **5.7.13.9 TEACHER LOANS AUTHORIZED/QUALIFICATIONS:**

To be eligible for this program, a student must:

A. be pursuing an eligible teacher preparation program, as defined in Subsection E in 5.7.13.7 NMAC, and enrolled in or accepted by an eligible public institution as defined in Subsection F in 5.7.13.7 NMAC;

B. be enrolled at the time the loan is awarded and disbursed, for at least half-time in a program leading to initial licensure or to additional licensure endorsements at an eligible institution;

C. be a citizen of the United States, or eligible non-citizen and a resident of New Mexico as defined in 5.7.18.9 NMAC; and

D. declare the intent to serve as a public school teacher in a designated shortage area (either geographic or discipline specific) for at least one year.

[5.7.13.9 NMAC - N, 11/15/2001; A, 8/30/2007]

#### **5.7.13.10 SELECTION OF LOAN RECIPIENTS:**

Selection shall be based on the following considerations and preferences:

A. the ability, character, and qualifications of each applicant; this is to include a review of the applicant's educational transcripts, letters of recommendation, and references;

B. the demonstrated interest of the applicant in serving in a designated shortage area of the state;

C. the applicant's lack of resources to pay for education expenses, as determined by a standardized needs analysis system, and shall be the basis for preference among otherwise eligible students; and

D. a designated shortage area endorsement for the applicant.

[5.7.13.10 NMAC - N, 11/15/2001; A, 08/30/2007]

#### **5.7.13.11 RESPONSIBILITIES OF THE DEPARTMENT:**

A. develop program guidelines;

B. advertise the program;

C. process applications, and present a list of eligible candidates to the committee;

D. administer the loans, including:

(1) disbursing funds;

(2) keeping records on borrowers and processing of contracts;

(3) administration of and record keeping on loan repayments;

(4) record keeping on location and time of service of those student loan recipients who have completed their education and are providing teaching service in a designated shortage area in New Mexico;

(5) verification of qualification for forgiveness for service as defined in 5.7.13.13 NMAC; and

(6) preparing the following information for the teacher loan-for-service program:

(a) number of loans granted;

(b) names and addresses of borrowers;

(c) names of accredited programs attended; and

(d) names and locations of practice of those who have completed their education and have become public school teachers in New Mexico.

[5.7.13.11 NMAC - N, 11/15/2001; A, 8/30/2007]

#### **5.7.13.12 LOANS:**

Loans may be made to students to defray expenses incurred in obtaining initial licensure or to additional licensure endorsements under the following conditions and limitations:

A. The amount is dependent upon the relative need of each student, but may not exceed four thousand dollars (\$4,000) per academic year for five consecutive years (maximum of \$20,000.00). The department may set lower maximum award amounts based on the level of degree being obtained and available funding. The exact amount of the loan for which the applicant is eligible will be determined as a result of an analysis of the financial situation of each applicant using a standard needs analysis carried out by the financial aid office of the student's institution.

B. A loan recipient enrolled in an eligible education program in an institution for less than the regular academic year, less than full-time study, or during summer sessions, may receive a pro rata share of the authorized loan amount at the discretion of the department. The total loan amount may not exceed four thousand dollars (\$4,000) in a twelve (12) month period.

C. Upon approval of the loan, a contract shall be drawn between the student and the department and signed by the student (for additional contract details see 5.7.13.14 NMAC).

[5.7.13.12 NMAC - N, 11/15/2001; A, 8/30/2007]

#### **5.7.13.13 LOAN REPAYMENT AND FORGIVENESS:**

All loans shall be repaid to the state together with interest or forgiven according to the following:

A. If a loan recipient of the Teacher Student Loan-for-Service Act completes his/her professional education and does not serve in a designated shortage area in a public school for a period of at least one year, the department shall assess a penalty of up to three (3) times the principal due, plus eighteen percent (18%) interest, unless the department finds acceptable extenuating circumstances for why the student cannot serve and comply with the forgiveness provisions outlined in this section.

(1) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorated basis reasonably reached based upon the degree of control which the recipient has over the decision not to serve. The recipient shall have the burden of proof.



(2) If the department does not find acceptable extenuating circumstances for the student's failure to carry out his/her declared intent to serve in a designated shortage area in the state, the department shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

(3) In all other cases, loans will bear interest at seven percent (7%) per year.

B. Loans made to students who fail to complete their graduate or undergraduate teaching program shall come due together with interest immediately upon termination of their education. The department, in consultation with the student, shall establish terms of repayment, alternative service, or cancellation terms.

C. The contract shall further provide that immediately upon completion or termination of the student's teaching program, all interest then accrued due shall be capitalized on all loans prior to July 1, 2005. On all loans made after July 1, 2005, provide a statement that the loan shall not accrue interest until:

(1) the department determines the loan recipient has terminated the recipient's education prior to completion;

(2) the department determines the loan recipient has failed to fulfill the recipient's obligation to serve in a designated teacher shortage area; or

(3) the department cancels a contract.

D. If the borrower, after completion of their teaching program serves in one of the designated shortage areas of the state, loan principal and interest may be forgiven according to the following formula:

(1) loan terms of one (1) academic year or less shall require one (1) year of practice in a designated shortage area; upon completion of service, one hundred percent (100%) of the principal plus accrued interest shall be forgiven;

(2) loan terms of two (2) academic years shall require one (1) year of practice in a designated shortage area for each academic year of the loan; upon completion of the first year of service, fifty percent (50%) of the principal plus accrued interest shall be forgiven; upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three (3) academic years or more, forty percent (40%) of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated shortage area, thirty percent (30%) of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

E. Recipients must serve a complete year of service in order to receive credit for that year. The minimum credit for a year of service shall be established by the department.

F. Subject to applicable statutory limitations, the department may extend or modify the foregoing repayment periods for good cause.

G. In the event it becomes necessary, the department may suspend loan payments using the following forbearance provisions:

(1) If the borrower is willing, but financially unable to make payments under the repayment schedule, the borrower may request forbearance to allow for any of the following:

(a) a short period during which no payments are made, interest would continue to accrue;

(b) an extension of time for making payments, interest would continue to accrue; or

(c) a period during which the borrower makes smaller payments than were originally scheduled, interest would continue to accrue on the unpaid principal.

(2) Forbearance following completion of program, internship, or residency will not be granted for periods extending beyond six (6) months. The granting of a subsequent forbearance must be approved by the designated staff representative of the department.

(3) The borrower must submit a written request accompanied by a financial statement and a consent-waiver for authorization for current employment and address information concerning the borrower, and other information as requested.

(4) Deferral of repayment obligation may be as follows, at the determination of the department:

(a) the borrower is serving up to a maximum of three (3) years as an active duty member of the armed forces of the United States;

(b) the borrower is temporarily disabled, for a period not to exceed three (3) years, as established by sworn affidavit of a qualified physician;

(c) the borrower is seeking but unable to find full-time employment for a single period not to exceed twelve (12) months;

(d) the borrower is unable to secure employment for a period not to exceed twelve (12) months while caring for a disabled spouse;

(e) the borrower is unable to satisfy the terms of the repayment schedule while seeking but unable to find full-time employment in an eligible public school system, in a designated shortage area, for a single period not to exceed twenty-seven (27) months; or

(f) other extenuating circumstances as provided for under the American Family Leave Act.

H. Loans may be prepaid at any time, subject to the penalty provision set forth in Subsection A of this section. Payment on a loan not in repayment may be made in any amount. Payments on a matured promissory note shall be in the amounts of and be applied on the principal installments due on such note in the inverse order of the maturities of such installments, unless otherwise agreed.

I. Authorized charges and fees:

(1) Late charges: Borrower may be charged a late charge in the amount of five percent (5%) of the installment payment or five dollars (\$5.00), whichever is less, on any payment made later than ten (10) days after it is due.

(2) Attorney's fees, other charges, and costs: Borrower shall agree to pay all reasonable attorney's fees, and other costs and charges necessary for the collection of any loan amount not paid when due.

J. Borrower has the responsibility to notify the department in advance of any change of address and of any action which necessitates reconsideration of a promissory note (the failure to serve in a designated shortage area, the termination of service in a designated shortage area, or his/her ceasing to be enrolled in an eligible institution in an eligible health profession program. Borrower's failure to notify the department and to execute a promissory note on request shall cause the full amount of principal and accumulated interest to become due immediately.

[5.7.13.13 NMAC - N, 11/15/2001; A, 8/30/2007]

#### **5.7.13.14 CONTRACTS:**

A contract shall be drawn between each student receiving a loan and the department on behalf of the state of New Mexico. The contract shall:

A. provide for the payment by the department of a specified sum as determined in 5.7.13.13 NMAC;

B. state that the borrower shall select from the list of designated shortage areas at the time he/she is ready to begin service;

C. state the conditions of repayment or forgiveness as detailed in 5.7.13.13 NMAC;

D. state that the loan shall bear interest as detailed in 5.7.13.13 NMAC;

E. state the legal responsibilities of the borrower and that delinquent loans shall be referred to the department for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

F. state that the borrower's obligations of the contract with the department shall be binding on borrower's estate;

G. state that the department may cancel any contract on thirty (30) days written notice for any reasonable and sufficient cause;

H. state that in the event the borrower fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the department, become immediately due and payable; and

I. state that jurisdiction and venue shall be proper in Bernalillo or Santa Fe county, New Mexico for purposes of any suit to enforce the contract.

[5.7.13.14 NMAC - N, 11/15/2001; A, 8/30/2007]

#### **5.7.13.15 REPORTS:**

The department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics, and analysis of the progress of the Teacher Loan-For-Service Act in addressing New Mexico's teaching shortages and the needs of the citizens of the state.

[5.7.13.15 NMAC - N, 11/15/2001; A, 8/30/2007]

### **PART 14: NEW MEXICO COMPETITIVE SCHOLARSHIP PROGRAM**

#### **5.7.14.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[9/30/98; 5.7.14.1 NMAC - Rn & A, 5 NMAC 7.14.1, 8/30/2007]

#### **5.7.14.2 SCOPE:**

Provisions for 5.7.14 NMAC apply to all four-year public post-secondary institutions in the state of New Mexico.

[9/30/98; 5.7.14.2 NMAC - Rn, 5 NMAC 7.14.2, 8/30/2007]

**5.7.14.3 STATUTORY AUTHORITY:**

Section 21-1-4G, NMSA 1978.

[9/30/98; 5.7.14.3 NMAC - Rn & A, 5 NMAC 7.14.3, 8/30/2007]

**5.7.14.4 DURATION:**

Permanent.

[9/30/98; 5.7.14.4 NMAC - Rn, 5 NMAC 7.14.4, 8/30/2007]

**5.7.14.5 EFFECTIVE DATE:**

September 30, 1998.

[9/30/98; 5.7.14.5 NMAC - Rn, 5 NMAC 7.14.5, 8/30/2007]

**5.7.14.6 OBJECTIVE:**

The objective and purpose of 5.7.14 NMAC is to attract out-of-state undergraduate students who have demonstrated high academic achievement in their respective high schools to enroll in institutions of higher education in the state of New Mexico.

[9/30/98; 5.7.14.6 NMAC - Rn, 5 NMAC 7.14.6, 8/30/2007]

**5.7.14.7 DEFINITIONS:**

- A. "ACT score" means the ACT composite score.
- B. "Department" means the New Mexico higher education department.
- C. "Declaration of residency" means a nonspecific intention to remain a resident of New Mexico.
- D. "GPA" means the student's cumulative grade point average.
- E. "Large university" means a university that produces more than 150,000 student credit hours per academic year.
- F. "SAT equivalent" means the total score of both verbal and mathematical scores on the SAT test.
  - (1) ACT score of 20 equals 950 total points on the SAT test;
  - (2) ACT score of 23 equals 1,070 total points on the SAT test;

(3) ACT score of 26 equals 1,180 total points on the SAT test.

G. "Small university" means a university that produces 150,000 or fewer student credit hours per academic year.

H. "Tuition" means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit.

I. "Required fees" means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. Excluded are specific services or fines (transcript copy fees, graduation fees, library fines, etc.).

[9/30/98; 5.7.14.7 NMAC - Rn & A, 5 NMAC 7.14.7, 8/30/2007]

#### **5.7.14.8 STUDENT ELIGIBILITY:**

To be eligible for a scholarship, a student must:

A. be a citizen of the United States;

B. at small universities, have either:

(1) a high school GPA of 3.5 or higher and an ACT score of 20 or higher, or SAT equivalent;

(2) a high school GPA of 3.0 or higher and an ACT score of 23 or higher, or SAT equivalent;

C. at large universities, have either:

(1) a high school GPA of 3.5 or higher and an ACT score of 23 or higher, or SAT equivalent;

(2) a high school GPA of 3.0 and an ACT score of 26 or higher, or SAT equivalent;

D. as an undergraduate transfer student, meet the requirements stated in Subsections B or C of 5.7.14.8 NMAC, or have a transfer college GPA of 3.50 or higher;

E. be required to sign a statement of declaration of residency;

F. be enrolled or accepted for enrollment as a full-time undergraduate student;

G. or, a non-citizen of the United States: under this provision, participating institutions must submit a proposal for ensuring that non-citizens meet merit requirements for eligibility that are comparable to those required of United States citizens under this program; only after said proposal is reviewed and approved by the commission can participating institutions allow foreign nationals that are undergraduate and graduate students to participate in the program.

[9/30/98; 5.7.14.8 NMAC - Rn, 5 NMAC 7.14.8, 8/30/2007; A, 8/31/2010]

#### **5.7.14.9 INSTITUTION ELIGIBILITY:**

To participate in the competitive scholarship program, a New Mexico post-secondary educational institution must be a public institution which:

A. admits as regular students only persons having a certificate of graduation from a school providing secondary education within the United States;

B. provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit towards such a degree; and

C. is accredited by a nationally recognized accrediting agency.

[9/30/98; 5.7.14.9 NMAC - Rn, 5 NMAC 7.14.9, 8/30/2007]

#### **5.7.14.10 AMOUNT OF SCHOLARSHIP:**

Out-of-state undergraduate students who are granted a competitive scholarship of at least \$100 per semester are eligible to receive in-state tuition and fee rates at institutions of higher education in New Mexico.

[9/30/98; 5.7.14.10 NMAC - Rn & A, 5 NMAC 7.14.10, 8/30/2007]

#### **5.7.14.11 SELECTION OF SCHOLARSHIP RECIPIENTS:**

A. Students who wish to apply for a competitive scholarship must:

(1) submit a scholarship application to the institution the student wishes to attend;

(2) have an official high school and/or college transcript on file with the institution's admissions office; and

(3) have an official report of their ACT scores or SAT scores on file with the institution's admissions office.

B. Scholarships may be renewed annually for up to four years provided the student completes the appropriate number of semester credits with the minimum grade point average as required of other academic scholarships at the university in which the student is enrolled. This may vary from university to university but will be a similar policy to that required under other academic scholarships at that school.

C. The number of competitive scholarships selected are not to exceed the number outlined in Subsection A of 5.7.14.13 NMAC. Should the number of eligible applicants exceed this allotment, selection will be from criteria determined by each educational institution.

D. If the scholarship recipient does not meet the criteria listed in Subsection B of 5.7.14.11 NMAC, the student will be placed on provisional status and will assume the responsibility of non-resident tuition. Reinstatement to the scholarship requires that the student meet the minimum semester credits and grade point average as determined by the institution in which the student is enrolled.

E. Participation in the competitive scholarship program does not serve to fulfill residency requirements established by the department.

[9/30/98; 5.7.14.11 NMAC - Rn & A, 5 NMAC 7.14.11, 8/30/2007]

#### **5.7.14.12 PROGRAM REQUIREMENTS:**

A. Scholarships are to be granted only to those students who meet the eligibility requirements as outlined in 5.7.14.8 NMAC.

B. Institutions may grant only the number of scholarships as outlined in Subsection A of 5.7.14.13 NMAC.

C. Funds to support these scholarships must be from non-state general sources.

[9/30/98; 5.7.14.12 NMAC - Rn, 5 NMAC 7.14.12, 8/30/2007]

#### **5.7.14.13 ADMINISTRATION OF COMPETITIVE SCHOLARSHIPS:**

A. The number of competitive scholarships granted by any university cannot exceed 6 percent of their previous year's full-time equivalent enrollment (FTE).

B. The higher education department is the authorizing agency and shall maintain the necessary records to assure that all program requirements are being met.

C. Each institution will have the responsibility to assure that all program requirements are being met.



[9/30/98; 5.7.14.13 NMAC - Rn & A, 5 NMAC 7.14.13, 8/30/2007; A, 8/31/2010, A, 9/30/2010]

#### **5.7.14.14 REPORTS:**

Each institution shall forward a report to the higher education department staff at the end of each academic year and each report will provide the number of students participating in the program, the average ACT/SAT score and average GPA for each academic year.

[9/30/98; 5.7.14.14 NMAC - Rn & A, 5 NMAC 7.14.14, 8/30/2007]

### **PART 15: GRADUATE SCHOLARSHIP PROGRAM**

#### **5.7.15.1 ISSUING AGENCY:**

State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico, 87501-4295, (505) 827-7383.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.2 SCOPE:**

Provisions for 5 NMAC 7.15 [now 5.7.15 NMAC] apply to New Mexico residents who are graduate students enrolled at New Mexico four-year public post-secondary institutions.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.3 STATUTORY AUTHORITY:**

Section 21-21G, NMSA 1978.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.4 DURATION:**

Permanent.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.5 EFFECTIVE DATE:**

July 15, 1998 [unless a later date is cited at the end of a section].

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.6 OBJECTIVE:**

The objective and purpose of 5 NMAC 7.15 [now 5.7.15 NMAC] is to increase graduate enrollment in the state's public universities of students from groups underrepresented in graduate education. By encouraging groups underrepresented in graduate education to pursue advanced degrees in accredited graduate programs, particularly in academic fields of high regional and national priority and fields where their under-representation is most severe, the state will benefit by increasing the number of professionals for industry, business, research and development, economic development and public service.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.7 DEFINITIONS:**

A. "Academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

B. "Award recipient" means a student awarded a graduate scholarship.

C. "Commission" means the New Mexico commission on higher education.

D. "Eligible institution" means any graduate-degree-granting New Mexico public university accredited by the north central association of colleges and schools.

E. "Financial need" means the difference between a student's projected costs for the year, including books, materials, supplies, room and board and other reasonable costs, and the student's resources, including available income and other available assets as determined by an approved standardized needs analysis system.

F. "Graduate and professional field" means any program of study intended to result in a master's or doctoral degree, excluding the degree in medicine.

G. "Groups underrepresented in graduate education" means women, minorities, the visually handicapped, the physically disabled and other groups that have traditionally been underrepresented in the specific area of graduate study or profession for which the scholarship is awarded.

H. "Scholarship" means an award made by an institution of higher education to a person for graduate study under the Graduate Scholarship Act.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.8 STUDENT ELIGIBILITY:**

A. Conditions for First-Year Eligibility: Priority will be given to New Mexico students from those groups with the most severe under-representation and students with the greatest financial need. A scholarship may be awarded to an individual who:

(1) is a citizen of the United States or a permanent resident alien and is a member of a group underrepresented in his/her intended graduate or professional field of study;

(2) has met the admission requirements and is accepted for enrollment as a full-time student in a graduate or professional field of study with high priority or underrepresentation, as determined by the institution;

(3) has complied with all the rules and regulations adopted by the commission for award of the scholarship and the provisions regarding the administration of state graduate scholarships adopted pursuant to the Graduate Scholarship Act;

(4) agrees to serve in an unpaid internship or assistantship at the eligible institution, a government agency or private industry approved by his major department for ten hours per week during the academic year; and

(5) is eligible according to a standard needs analysis or when a financial aid officer exercises professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant adjusting the cost of attendance, expected family contribution or other factors to make the program responsive to a student's special financial circumstances, within the parameters authorized for this program.

B. Conditions for Continuing Eligibility: A scholarship may be re-awarded to a student who:

(1) has been an award recipient of a New Mexico graduate scholarship the previous year;

(2) remains in good academic standing as determined by the institution;

(3) is enrolled as a full-time graduate student as determined by the institution;

(4) is pursuing the second year of a master's degree or the second, third or fourth year post-baccalaureate of a doctoral degree;

(5) agrees to serve in an unpaid internship or assistantship at the eligible institution, a government agency or private industry approved by his major department for ten hours per week during the academic year; and

(6) is eligible according to a standard needs analysis or when a financial aid officer exercises professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant adjusting the cost of attendance, expected family contribution or other factors to make the program responsive to a

student's special financial circumstances, within the parameters authorized for this program.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.9 INSTITUTIONAL RESPONSIBILITIES:**

A. The eligible institution must agree to give preference to students enrolled in academic programs where their underrepresentation is most severe and must agree to give full consideration to students with physical, visual or hearing disabilities.

B. The eligible institution must agree to give preference to:

(1) students who have previously been awarded a graduate scholarship under this program, within the limits of eligibility established in Section 8 [now 5.7.15.8 NMAC], then

(2) students who have been newly recruited to the institution, thereby adding to its enrollment of graduate and professional students from underrepresented groups.

C. The institution must agree not to reduce its level of financial aid from other sources for award recipients.

D. The eligible institution must agree to appoint an individual with appropriate educational background, experience and institutional authority and responsibility, to administer this program.

E. The eligible institution must agree to establish appropriate scholarship selection procedures and maintain appropriate data and records. Each major department involved in the program must agree to provide appropriate orientation, practical experiences and assistance designed to prepare scholarship recipients for academic and/or professional careers.

F. In addition to the unpaid internship or assistantship required in Section 8 [now 5.7.15.8 NMAC], the institution must award to the recipient a paid internship or assistantship in her or his major department for ten hours per week during the academic year and summer sessions.

G. The institution must provide adequate financial support for recipients maintaining satisfactory progress and requiring more than two years to complete their master's degrees and for recipients requiring more than four years post-baccalaureate to complete their doctorates.

H. By September 1 of each year, the institution must submit to the commission an annual report summarizing for the prior academic year the number of scholarship

recipients, by group and field; the expenditures and beginning and year-end balances for the program; and such other information as may be requested by the commission.

I. Periodically, at the request of the commission, representatives of eligible institutions will meet to discuss and coordinate the definition of academic fields of high regional and national priority and other matters pertaining to the program.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.10 APPLICATION PROCEDURES:**

A student applies directly to an institution of higher education that has received an allocation of scholarships.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.11 AMOUNT OF SCHOLARSHIPS:**

A. Scholarship awards shall be for seven thousand two hundred dollars (\$7,200) per academic year.

B. Scholarship awards shall be disbursed in equal installments over the period of an academic year or period of enrollment.

C. An award recipient who is enrolled in the program for less than an academic year shall receive a pro rata share of the stipend.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.12 TENURE OF SCHOLARSHIP:**

A. Each scholarship is awarded for a period of one academic year.

B. A recipient who remains in good academic standing in his/her course of study, as determined by the institution, may receive the scholarship for a total of two years for master's degree program students, or for a total of four years post-baccalaureate for doctoral degree students, subject to the availability of funds.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.13 DISTRIBUTION OF SCHOLARSHIPS:**

A. Each eligible institution will receive its annual share of new scholarship dollars based upon the average of its:

- (1) total graduate and professional enrollment of women;

(2) total graduate and professional enrollment of underrepresented minorities (Hispanics, Native Americans and Blacks); and

(3) total graduate and professional enrollment.

B. No university shall receive fewer than three scholarships per year. If any university is to be allocated fewer than three scholarships, a pro rata share of scholarships shall be taken from the two universities with the highest number of scholarships and allocated to those universities which would otherwise receive fewer than three scholarships.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.14 VACATED SCHOLARSHIPS:**

If a recipient vacates a scholarship prior to the end of an award period, that scholarship may be offered to another eligible student, with first priority given to a student who is not currently enrolled for graduate study at the university.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.15 TERMINATION OF SCHOLARSHIPS:**

Scholarship is terminated upon the occurrence of:

A. withdrawal from the institution by the award recipient, failure to re-enroll for consecutive academic years or failure to be a full-time graduate student; or

B. substantial noncompliance by the award recipient with the Graduate Scholarship Act or the rules, regulations or procedures promulgated by the commission.

[7/15/98; Recompiled 10/31/01]

#### **5.7.15.16 DELEGATION OF ADMINISTRATION:**

The commission may designate an administrative agent for this program. The administrative agent shall be responsible for disbursement of funds to participating institutions through the individual appointed by the institution as administrator for the scholarship program.

[7/15/98; Recompiled 10/31/01]

### **PART 16: VIETNAM VETERANS' SCHOLARSHIPS**

#### **5.7.16.1 ISSUING AGENCY:**

State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, (505) 827-7383.

[7/15/98; 5.7.16.1 NMAC - Rn, 5 NMAC 7.16.1, 7/15/02]

**5.7.16.2 SCOPE:**

Provisions of 5.7.16 NMAC apply to the commission on higher education, public and selected private non-profit post-secondary institutions in New Mexico.

[7/15/98; 5.7.16.2 NMAC - Rn, 5 NMAC 7.16.2, 7/15/02]

**5.7.16.3 STATUTORY AUTHORITY:**

Section 21-21E (Laws of 1985, Chapter 171; Laws 1989, Chapter 167 and Laws of 1991, Chapter 262), NMSA 1978

[7/15/98; 5.7.16.3 NMAC - Rn, 5 NMAC 7.16.3, 7/15/02]

**5.7.16.4 DURATION:**

Permanent.

[7/15/98; 5.7.16.4 NMAC - Rn, 5 NMAC 7.16.4, 7/15/02]

**5.7.16.5 EFFECTIVE DATE:**

July 15, 1998.

[7/15/98; 5.7.16.5 NMAC - Rn, 5 NMAC 7.16.5, 7/15/02]

**5.7.16.6 OBJECTIVE:**

The objective and purpose of the Vietnam veterans' scholarship fund to set aside all money appropriated to the fund and any grants, gifts and bequests made to the fund to provide higher education to veterans who served in the Vietnam war. Any money in the fund that was the result of grants, gifts or bequests shall not revert to the general fund at the end of any fiscal year.

[7/15/98; 5.7.16.6 NMAC - Rn, 5 NMAC 7.16.6, 7/15/02]

**5.7.16.7 DEFINITIONS:**

**A. "Award letter"** means official notification to a Vietnam veteran of eligibility to attend an educational institution and participate in the Vietnam veterans' scholarship program.

**B. "Books"** is the actual expenditure for course required books for classes in which the student is enrolled, not to exceed the amount used by the financial aid office for books in the calculation of cost of attendance for campus-based programs.

**C. "Commission"** means the New Mexico commission on higher education.

**D. "Educational institution"** for undergraduate instruction means any New Mexico state-supported post-secondary institution; for graduate instruction means the university of New Mexico, New Mexico state university, western New Mexico university, eastern New Mexico university, New Mexico institute of mining and technology and New Mexico highlands university.

**E. "Eligible class for reimbursement"** means a course for credit included in a student's official transcript and creditable toward a certificate or degree-granting program.

**F. "Master's degree course"** means a class for students who hold a bachelor's degree who have been admitted to a graduate school for the purpose of pursuing a master's degree and has not yet completed a master's degree.

**G. "Non-state college"** means a financially independent nonprofit nonsectarian four-year college or university located in New Mexico and accredited by the north central association of colleges and secondary schools.

**H. "Required fees"** are the special fee charges students are required to pay for additional services as a condition of admission to the institution. Excluded are "specific service fees" charged only to students who enroll in certain programs or courses (i.e., course specific fees), or receive specific services (transcript copy fees, graduation fees, etc.).

**I. "Recipient"** means a New Mexico resident for tuition purposes and Vietnam veteran as reviewed and certified by the New Mexico veterans' service commission. Any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at original time of entry into the armed forces or who has lived in New Mexico for ten years or more and who has been awarded a Vietnam campaign medal for services in the armed forces of this country in Vietnam during the period of August 5, 1964 to the official termination of the Vietnam conflict as designated by executive order of the president of the United States is eligible for certification.

**J. "Scholarship fund"** means the Vietnam veterans' scholarship fund created in the state treasury to receive any appropriated money, grants, gifts or bequests.

**K. "Tuition"** is the basic educational charge that all students are required to pay as a condition of admission and attendance for academic services or the course fee charged for certificate programs. The actual rate per semester or year is set by each institution.



**L. "Undergraduate post-secondary student"** means a matriculated student who has been admitted to the college and has not yet completed a bachelor's degree.

[7/15/98; 5.7.16.7 NMAC - Rn & A, 5 NMAC 7.16.7, 7/15/02; A, 6/30/03]

#### **5.7.16.8 STUDENT ELIGIBILITY:**

A New Mexico resident for tuition purposes and Vietnam veteran as reviewed and certified by the New Mexico veterans' service commission. Any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at original time of entry into the armed forces or who has lived in New Mexico for ten years or more and who has been awarded a Vietnam campaign medal for services in the armed forces of this country in Vietnam during the period of August 5, 1964 to the official termination of the Vietnam conflict as designated by executive order of the president of the United States, is eligible for certification.

[7/15/98; 5.7.16.8 NMAC - Rn, 5 NMAC 7.16.8, 7/15/02; A, 6/30/03]

#### **5.7.16.9 ADMINISTRATION OF VIETNAM VETERANS' SCHOLARSHIPS:**

**A.** The commission shall authorize payments to public educational institutions and non-state colleges upon request once per semester, for recipients, upon receipt of documentation required by the commission or its administrative agent.

**B.** Awards shall be limited for reimbursements to:

**(1)** educational institutions of tuition, required fees and books, actually incurred. No cash shall be released by an educational institution to a recipient except to reimburse actual payments;

**(2)** non-state institutions for actual tuition, not to exceed an amount equal to the highest resident tuition charged by a state institution, plus required fees and actual cost of books not to exceed financial aid guidelines.

[7/15/98; 5.7.16.9 NMAC - Rn, 5 NMAC 7.16.9, 7/15/02]

#### **5.7.16.10 TERMINATION OF SCHOLARSHIP:**

A scholarship is terminated upon the occurrence of one or more of the following:

**A.** withdrawal by the recipient from the institution;

**B.** failure to remain enrolled in a satisfactory academic activity;

**C.** failure to achieve satisfactory academic progress by the recipient as determined by the institution; and

**D.** substantial noncompliance by the scholarship recipient with the Vietnam Veterans' Scholarship Fund Act or the rules, regulations or procedures promulgated by the commission on higher education or New Mexico veterans' service commission;

**E.** Money in the fund shall be allocated in the order that payment requests are received and approved.

**F.** Reimbursement payments may also be authorized by administrative rulings under specific conditions.

[7/15/98; 5.7.16.10 NMAC - Rn, 5 NMAC 7.16.10, 7/15/02]

## **PART 17: MILITARY WAR VETERAN SCHOLARSHIP**

### **5.7.17.1 ISSUING AGENCY:**

New Mexico Higher Education Department (NMHED).

[5.7.17.1 NMAC - N, 11/15/2016]

### **5.7.17.2 STATUTORY AUTHORITY:**

Section 21-21E-3 NMSA 1978, authorizes the NMHED to adopt rules and procedures necessary for the administration of the military war veteran scholarship fund.

[5.7.17.2 NMAC - N, 11/15/2016]

### **5.7.17.3 SCOPE:**

The provisions of 5.7.17 NMAC apply to military war veterans as certified by the New Mexico department of veterans' services (NMDVS) that are attending a New Mexico public post-secondary educational institution.

[5.7.17.3 NMAC - N, 11/15/2016]

### **5.7.17.4 DURATION:**

Permanent.

[5.7.17.4 NMAC - N, 11/15/2016]

### **5.7.17.5 EFFECTIVE DATE:**

November 15, 2016, unless a later date is cited at the end of a section.

[5.7.17.5 NMAC - N, 11/15/2016]

#### **5.7.17.6 OBJECTIVE:**

The objective of 5.5.17 NMAC is to adopt procedures to implement 21-21E-3 NMSA 1978 known as the military war veteran scholarship fund; purpose; administration; disbursements.

[5.7.17.6 NMAC - N, 11/15/2016]

#### **5.7.17.7 DEFINITIONS:**

**A. "Department"** means the New Mexico higher education department.

**B. "Educational institution"** means any New Mexico public post-secondary institution.

**C. "Military war veteran"** means a person who has been honorably discharged from the armed forces of the United States; who was a resident of New Mexico at the original time of entry into the armed forces or who has lived in New Mexico for 10 years or more; and who has been awarded a southwest Asia service medal, global war on terror service medal, Iraq campaign medal, Afghanistan campaign medal or any other medal issued for service in the armed forces of the United States in support of any United States military campaign or armed conflict as defined by congress or presidential executive order or any other campaign medal issued for service after August 1, 1990 in the armed forces of the United States during periods of armed conflict as defined by congress or by executive order.

**D. "Recipient"** means a student awarded the military war veteran scholarship.

**E. "Satisfactory academic progress"** means maintaining the required academic progress toward degree completion as determined by the institution.

**F. "Scholarship fund"** means the military war veteran scholarship fund created in the state treasury to receive any appropriated money, grants, gifts or bequests and income from investment in the fund.

[5.7.17.7 NMAC - N, 11/15/2016]

#### **5.7.17.8 STUDENT ELIGIBILITY, AWARD AND DURATION:**

**A.** A military war veteran must submit a scholarship application to the New Mexico department of veterans' services (NMDVS).

**(1)** Applicant must provide a certified copy of their DD Form 214, Certificate of Release or Discharge from Active Duty, showing a combat campaign or service medal and an honorable discharge.

**(2)** Applications will be approved on a first come, first served basis.

**B.** Scholarship applies to tuition costs, required student fees and books directly associated with undergraduate, master's or doctoral degree work.

**C.** The amount of tuition to be covered by the scholarship shall not exceed the highest full time undergraduate tuition charged at an educational institution.

**D.** Scholarship is renewable.

[5.7.17.8 NMAC - N, 11/15/2016]

#### **5.7.17.9 ADMINISTRATION OF MILITARY WAR VETERAN SCHOLARSHIP:**

**A.** NMDVS shall determine the eligibility of the applicant and certify approved applicants.

**B.** The department shall make disbursements from the fund to reimburse post-secondary institutions for tuition, fees, and book costs incurred by the certified scholarship recipient.

**(1)** Disbursements will be made following the receipt of an invoice from the educational institution.

**(2)** The invoice must be accompanied by a certification issued by NMDVS. To request payment the educational institution shall invoice the department on a semester basis.

**C.** Disbursements will be made in the order that invoices and accompanying certifications are received and approved.

**D.** Awards are subject to the availability of the scholarship fund.

[5.7.17.9 NMAC - N, 11/15/2016]

#### **5.7.17.10 TERMINATION OF SCHOLARSHIP:**

A scholarship is terminated upon the occurrence of one or more of the following:

**A.** Failure to achieve satisfactory academic progress by the recipient as determined by the educational institution.

**B.** Substantial noncompliance by the scholarship recipient with the rules, regulations or procedures promulgated by the department for the military war veteran scholarship.

[5.7.17.10 NMAC - N, 11/15/2016]

## **PART 18: RESIDENCY FOR TUITION PURPOSES**

### **5.7.18.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.18.1 NMAC - Rp, 5.7.18.1 NMAC, 8/30/2007]

### **5.7.18.2 SCOPE:**

Provisions of 5.7.18 NMAC apply to all state public postsecondary institutions in the state of New Mexico.

[5.7.18.2 NMAC - Rp, 5.7.18.2 NMAC, 8/30/2007]

### **5.7.18.3 STATUTORY AUTHORITY:**

Section 21-1-4.5 NMSA 1978 and 21-1-3 NMSA 1978.

[5.7.18.3 NMAC - Rp, 5.7.18.3 NMAC, 8/30/2007; A, 10/15/2015]

### **5.7.18.4 DURATION:**

Permanent.

[5.7.18.4 NMAC - Rp, 5.7.18.4 NMAC, 8/30/2007]

### **5.7.18.5 EFFECTIVE DATE:**

August 30, 2007, unless a later date is cited at the end of a section.

[5.7.18.5 NMAC - Rp, 5.7.8.5 NMAC, 8/30/2007]

### **5.7.18.6 OBJECTIVE:**

The objective of 5.7.18 NMAC is to establish a policy for the purpose of determining resident and nonresident tuition classifications for students enrolling at public postsecondary institutions in New Mexico.

[5.7.18.6 NMAC - Rp, 5.7.8.6 NMAC, 8/30/2007]

### **5.7.18.7 DEFINITIONS:**

**A. "Armed forces"** means the United States army, navy, air force, marine corps or coast guard.

**B. "Department"** means state of New Mexico higher education department.

**C. "Dependent minor"** means a person determined to be financially dependent upon a parent or guardian and who has not reached the age of majority (eighteen years of age) or is not an emancipated minor. The legal residence of a dependent minor is that of their parent(s) or custodial parents; or, if both parents are dead, of their legally appointed guardian(s) or of the adult person with whom he or she lives with for more than one-half of the preceding consecutive twelve months. In the event a non-custodial parent is a legal resident of New Mexico as determined in 5.7.18.9 NMAC the dependent minor shall be accorded resident status.

**D. "Emancipated minor"** means any person sixteen years of age or older shall be regarded as an adult for the purposes of determining residency status for tuition charges, provided they:

(1) have entered into a valid marriage, whether or not such marriage was terminated by dissolution; or

(2) are on active duty with any of the armed forces of the United States of America; or

(3) are willingly living separate and apart from their parents, guardian or custodian, are managing their own financial affairs and the court finds it in the minors best interest to grant a declaration of emancipation pursuant to Section 32A-21-7 NMSA 1978. Mere absence from parental residence does not prove emancipation.

**E. "Enrollment"** means the first day of the term or semester for the student.

**F. "Financially dependent"** means that dependency will be determined according to Section 152 of the 1954 Internal Revenue Code. This includes any person for whom the parent, guardian, or spouse provides at least one-half of their support.

**G. "General fees"** means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

**H. "New Mexico resident for tuition purposes"** means a person who is a United States citizen or has established permanent residence in the United States and has satisfied the requirement(s) and regulations of 5.7.18.9 NMAC.

**I. "Nonresident"** means a student who enters and remains in this state principally to enroll in postsecondary education, is presumed to continue to reside outside this

state, and such presumption continues in effect until rebutted by clear and convincing evidence of bona fide residence.

**J. "Tuition"** means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit.

**K. "Tuition reciprocity participants"** mean any nonresident, undergraduate student participating in a tuition reciprocity agreement. Pursuant to Section 21-1-6 NMSA 1978, these participants are ineligible for residency. Furthermore, students may not begin to establish residency (i.e., twelve 12-month durational requirement) until discontinuing from such a program. Refer to department negotiated reciprocity agreements for additional detail.

**L. "Veteran"** means any person meeting the definition of veteran as used in the Veterans' Service Department Act and provided in 9-22-3 NMSA.

[5.7.18.7 NMAC - Rp, 5.7.18.7 NMAC, 8/30/2007; A, 5/30/2008; A, 10/15/2015]

#### **5.7.18.8 DETERMINATION OF RESIDENCY STATUS:**

**A. At time of first admission.** A person's residency classification for tuition purposes shall be determined at time of admission and must be completed by the census date of that first enrollment in a given public postsecondary educational institution. A person not meeting the residency requirements shall be classified as a nonresident for purposes of tuition charges. The student's classification at time of admission remains in effect unless the individual is re-admitted to the institution or until the individual petitions to become a New Mexico resident.

**B. Petition for resident tuition classification.** Once determined a nonresident at the time of census date, a student can petition to be classified as a New Mexico resident by completing the "petition for resident tuition classification" form (see Paragraph (3) of Section B of 5.7.18.12 NMAC, procedure to petition for resident tuition classification).

[5.7.18.8 NMAC - Rp, 5.7.18.10 NMAC, 8/30/2007]

#### **5.7.18.9 REQUIREMENTS TO ESTABLISH NEW MEXICO RESIDENCY:**

To become a legal resident of New Mexico for tuition purposes each of the following requirements must be satisfied.

**A. Twelve (12) month durational requirement.** A person must physically reside in New Mexico for the twelve (12) consecutive months immediately preceding the term for which the resident classification is requested. Exceptions may be granted for student's participating in an internship or student exchange program (excluding those described in 5.7.18.11 NMAC) and not exceeding one (1) semester in duration.

**B. Financial independence requirement.** Only persons who are financially independent may establish residency apart from parents or guardians. A student cannot be approved for residency who is financially dependent upon his or her parents or legal guardians who are nonresidents of New Mexico. Dependency will be determined according to the 1954 Internal Revenue Service Code, Section 152 and is always based on the previous tax year for residency purposes. If under the age of 23 at the time the student applies for residency, a copy of his/her parents' or guardians' 1040 or 1040A U.S. income tax form for the previous tax year is required. If the student is shown to be a dependent on this tax form, he/she will not be considered financially independent or eligible for residency during the current year.

**C. Written declaration of intent requirement.** The student or person must sign a written declaration of intent to relinquish residency in any other state and to establish it in New Mexico.

**D. Overt acts requirement.**

(1) Overt acts are required to evidence support of the written declaration of intent to establish permanent residency in New Mexico. Any act considered inconsistent with being a New Mexico resident will cause the request for resident classification to be denied. The required overt acts are evidence of any two (2) of the following:

(a) if the applicant is financially dependent, a copy of the parent or guardians' previous year income tax showing the applicant as a dependent and the parent address as New Mexico; or

(b) a New Mexico high school transcript issued in the past year confirming attendance at a New Mexico public or private high school within the past twelve (12) months; or

(c) a transcript from an online high school showing a New Mexico address confirming attendance within the past twelve (12) months; or

(d) a New Mexico driver's license or ID card with an original date of issue or a renewal date issued prior to the first day of the term or semester; or

(e) proof of payment of New Mexico state income tax for the previous year; or

(f) evidence of employment within the state of New Mexico; or

(g) New Mexico vehicle registration; or

(h) voter registration in New Mexico; or

(i) proof of residential property ownership in New Mexico; or



(j) a rental agreement within New Mexico; or

(k) utility bills showing the applicant name and a New Mexico address; or

(l) other evidence which would reasonably support the individual's intent to establish and maintain New Mexico residency.

(2) The department recognizes that there may be circumstances in which a student would not be able to fulfill the requirements of an overt act as listed in this section, such as: 1) individual is physically disabled and does not have a driver's license, or 2) individual is a convicted felon and therefore cannot vote, etc. In instances such as these, the institution will afford the student an opportunity to provide other documentary evidence or reasonable explanation which demonstrates that permanent residency in New Mexico has been established by the student.

**E. Exceptions to the twelve (12) month requirement.** If a student has met the requirements of one (1) of the following exceptions, and is granted residency status, the student shall continue to be classified and reported as a resident for subsequent, continuing enrollment.

(1) An individual married to a legal resident of New Mexico and providing appropriate evidence shall not be required to complete the twelve 12-month durational requirement but must satisfy all other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

(2) Any person, their spouse and dependents who move to New Mexico or who now live in New Mexico and who provide appropriate evidence that they work in a permanent full-time position or practice a profession or conduct a business full-time in New Mexico, shall not be required to complete the twelve 12-month durational requirement but must satisfy all other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

(3) Any person entering the active service of the United States while a resident of New Mexico and who enters a state institution of postsecondary education in New Mexico after separation from such service may be classified as having been a legal resident in New Mexico during the time spent in the service provided they:

(a) have not while in the service done anything (such as voting in another state) to show abandonment of their New Mexico residency;

(b) have not established residence in some other state subsequent to being separated from service;

(c) return to New Mexico within three (3) years after separation from service with the intention of maintaining this state as their legal residence;

(d) are not a dependent minor with parent(s) or guardian(s) whose place of residence classifies him or her as a nonresident of New Mexico.

(4) Any person, their spouse and dependents, who move to New Mexico for retirement purposes, and who provide appropriate evidence of retirement shall not be required to complete the twelve 12-month durational requirement. They must, however, satisfy the other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

**F. Inconsistent acts.** A person that demonstrates an inconsistent act, such as residing primarily out of state or maintaining a valid out of state driver's license, may be denied residency irrespective of other overt acts that would establish their residency. An officer of the public postsecondary institution shall exercise professional judgement to determine if an inconsistent act should cause the residency petition to be denied.

[5.7.18.9 NMAC - Rp, 5.7.18.11 & 12 NMAC, 8/30/2007; A, 5/30/2008; A, 10/15/2015; A, 11/15/2016]

#### **5.7.18.10 WAIVERS:**

If a student has met the requirement of one of the following waivers, the student shall continue to be considered a non-resident for reporting purposes but will receive the benefit of the in-state tuition rates. In receiving a waiver pursuant to Subsection A through J of 5.7.18.10 NMAC, the student does not become eligible for state funded student financial aid, unless the regulations for a particular aid program allow for such eligibility.

**A. American Indian nations, tribes and pueblos.** All out of state members of an American Indian nation, tribe and pueblo, located wholly or partially in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution shall be eligible to pay the in-state tuition rate. These include members of the following tribes or pueblos: Navajo Nation, Jicarilla Apache, Mescalero Apache, Taos pueblo, Picuris pueblo, Ohkay Owingeh, Santa Clara pueblo, Nambe pueblo, San Ildefonso pueblo, Pojoaque pueblo, Tesuque pueblo, Cochiti pueblo, Jemez pueblo, Santo Domingo pueblo, San Felipe pueblo, Zia pueblo, Santa Ana pueblo, Sandia pueblo, Isleta pueblo, Laguna pueblo, Acoma pueblo, Zuni pueblo, and the Ute Mountain tribe.

**B. Armed forces.** Any person, their spouse or dependent child, not otherwise entitled to claim residence, who is a member of the armed forces of the United States or armed forces of a foreign country assigned to active duty in the state of New Mexico, will be assessed in-state tuition rates.

(1) Assignment to active duty within New Mexico must be certified by the military person's commanding officer upon the student's initial enrollment. Such students may continue paying resident rates for as long as they attend consecutive semesters at the same institution.

(2) A spouse or child of a veteran of the armed forces is entitled to pay tuition and fees at the rate provided for New Mexico residents; provided that spouse or child is eligible for benefits pursuant to the federal Post-9/11 Veterans Educational Assistance Act of 2008 or any other federal law authorizing educational benefits for a veteran and the dependents of a veteran.

**C. National guard.** Pursuant to Section 20-4-14, NMSA 1978, an active member of the national guard and the member's spouse and children shall be deemed in-state residents for purposes of determining tuition and fees at all state institutions of higher learning.

**D. Part-time students.** During regular academic year semesters, nonresident tuition may be waived, according to the institution's tuition policy, for students (U.S. citizens and foreign nationals) enrolling for no more than six semester hours during a regular term.

**E. Summer session.** During summer sessions, nonresident tuition may be waived according to the institution's tuition policy.

**F. Certain Texas residents.** Pursuant to Subsection D of Section 21-1-3, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, the board of regents of any post-secondary, state educational institution, as defined in Article 12, Section 11 of the constitution of New Mexico (specifically, NMHU, ENMU, NMSU, or WNMU), may determine that any Texas resident who resides within a 135 mile radius of that institution may qualify for in-state tuition rates.

**G. Colorado and Arizona reciprocity.** Tuition reciprocity participants from Colorado and Arizona shall be selected by eligible institutions to pay in-state tuition rates based on criteria set forth by each eligible institution. The department will notify each eligible institution of the maximum waivers allocated on an annual basis.

**H. Athletic scholarship recipients.** Pursuant to Subsection E of Section 21-1-3, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, any student (U.S. citizens and foreign nationals) receiving an athletic scholarship from a post-secondary educational institution set forth in Article 12, Section 11 of the Constitution of New Mexico (specifically, UNM, NMSU, NMHU, ENMU, WNMU, or NNMC) may qualify for in-state tuition rates.

**I. Competitive scholarship recipients.** Any student participating in this program shall be recognized as a competitive scholar and reported as such, unless the student petitions for and is granted residency status.

**J. Graduate assistants,** including research and teaching assistants, employed at least one-fourth time (10 hours weekly), will be assessed in-state tuition rates. To be eligible, students (U.S. citizens and foreign nationals) must be enrolled full-time, as

defined in the graduate catalogue of the public postsecondary institution, during regular terms.

**K. Nondiscrimination principle.** Notwithstanding the provisions of Subsection H of 5.7.18.7 NMAC, any tuition or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one year and who have either graduated from a New Mexico high school or received a high school equivalency credential (such as a general educational development GED) in New Mexico. State-funded financial aid programs with an employment component may require U.S citizenship or eligible non-citizen status.

[5.7.18.10 NMAC - Rp, 5.7.18.12 NMAC, 8/30/2007; A, 5/30/2008; A, 10/15/2015; A, 2/27/2024]

#### **5.7.18.11 STUDENT EXCHANGE PROGRAMS:**

programs established under the auspices of the western interstate commission on higher education (WICHE). Participating students may not begin to establish residency (i.e., 12-month durational requirement) until discontinuing from such a program.

**A. Western undergraduate exchange (WUE).** Institutions must apply to the WICHE to participate in the WUE program where students in western states may enroll in many two-year and four-year college programs at a reduced tuition level, which is 150 percent of the institution's regular resident tuition

**B. Western regional graduate program (WRGP).** Residents of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming are eligible to enroll in available graduate programs outside of their home state at resident tuition rates. Students need not meet financial aid criteria. To be included in WRGP, programs must meet the criteria of distinctiveness and quality. Programs are nominated by their institutions, peer reviewed by other graduate institutions in the west, and approved biannually by the student exchange program advisory council, a policy body that represents all participating states.

[5.7.18.11 NMAC - N, 8/30/2007]

#### **5.7.18.12 ADMINISTRATION OF POLICY:**

**A.** The higher education department shall:

**(1)** publish, disseminate, and distribute pamphlets on residency determination; the department assumes responsibility for the publishing, printing, distribution of the residency pamphlets, and other related printed matter;

**(2)** develop a standard "petition for change in residency classification;" this standardization petition form for residency for tuition purposes shall be utilized by all postsecondary institutions; similarly, all applications for admission shall require standardized information for the initial residency determination;

**(3)** convene an annual meeting to review residency issues; classification officers shall meet at least annually to review and discuss residency cases in order to assure uniformity and fairness in residency determination;

**(4)** conduct audits to ascertain compliance with policy; at least a random audit of each postsecondary institution's residency decisions shall take place on an annual basis by members of the department staff;

**(5)** annually prepare and disseminate a report of the number and type of exceptions granted, by institution; the report shall include exceptions granted to both U.S. citizens and foreign nationals.

**B.** Institution of postsecondary education shall:

**(1)** designate a classification officer. An officer designated by each state postsecondary educational institution shall be responsible for determining the residence status of students for tuition purposes under the terms of this policy.

**(a)** Such administrators or residency classification officers shall strive for uniformity in applying this policy. A common brochure, "establishing New Mexico residency for in-state tuition classification," shall be utilized by all postsecondary educational institutions.

**(b)** Nothing contained herein precludes a student from contesting the postsecondary institution's decision in the courts.

**(c)** Classification officers may require copies of appropriate legal, personal, business, or family documents in order to make an informed decision on residency. Such documents are considered confidential and are to be utilized for the residency determination alone.

**(2)** develop procedures for determining residency; the burden of proving a change of status from nonresident to resident shall be on the applicant in every case by submitting satisfactory evidence thereof to the designated official of the postsecondary educational institution; such evidence shall include:

**(a)** information demonstrating that the applicant, or their parent or guardian if the applicant is a minor, has been physically present in this state for a period of at least twelve consecutive months immediately preceding the enrollment date on which the change of status is to take effect;

(b) for purposes of determining financial dependency, a signed copy of page 1 of the 1040 or 1040A United States internal revenue service income tax form for the previous year for the applicant's parent(s) or guardian(s) is required (if under age of 23). Such dependency will be determined according to Section 152 of the 1954 Internal Revenue Code;

(3) develop procedure to petition for resident tuition classification; a nonresident student must obtain a "petition for resident tuition classification" from the appropriate postsecondary institutional residency classification officer and file the petition with this officer; all petitions must be filed before the third Friday after the beginning of classes for that term or the institution's census date if different;

(4) develop procedure for appeal; each postsecondary institution shall organize an appeals board for students who feel the residency classification officer has made a wrongful determination; the appeals board shall be the student's last recourse prior to the courts.

[5.7.18.12 NMAC - Rp, 5.7.18.13 NMAC, 8/30/2007]

## **PART 19: REDUCED TUITION FOR SENIOR CITIZENS**

### **5.7.19.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[7/15/1998; 5.7.19.1 NMAC - Rn & A, 5 NMAC 7.19.1, 7/31/2005]

### **5.7.19.2 SCOPE:**

Provisions of 5.7.19 NMAC apply to any public post-secondary degree-granting educational institution in New Mexico.

[7/15/1998; 5.7.19.2 NMAC - Rn, 5 NMAC 7.19.2, 7/31/2005]

### **5.7.19.3 STATUTORY AUTHORITY:**

Sections 21-21D-1 through 21-21D-5, NMSA 1978.

[7/15/1998; 5.7.19.3 NMAC - Rn, 5 NMAC 7.19.3, 7/31/2005; A, 7/30/2019]

### **5.7.19.4 DURATION:**

Permanent.

[7/15/1998; 5.7.19.4 NMAC - Rn, 5 NMAC 7.19.4, 7/31/2005]

#### **5.7.19.5 EFFECTIVE DATE:**

July 15, 1998, unless a later date is cited at the end of section.

[7/15/1998; 5.7.19.5 NMAC - Rn & A, 5 NMAC 7.19.5, 7/31/2005]

#### **5.7.19.6 OBJECTIVE:**

The objective and purpose of 5.7.19 NMAC is to provide a guideline for implementing the Senior Citizens Reduced Tuition Act. The purpose of the act is to provide educational opportunities for senior citizens in New Mexico. Each public post-secondary degree-granting institution in New Mexico must grant a reduction in tuition to senior citizens upon request by the student. The charge will be \$5 per credit hour for up to 10 hours per semester.

[7/15/1998; 5.7.19.6 NMAC - Rn, 5 NMAC 7.19.6, 7/31/2005; A, 7/30/2019]

#### **5.7.19.7 DEFINITIONS:**

**A. "Act"** means the Senior Citizens Reduced Tuition Act.

**B. "Credit course"** means a course that can be applied toward the completion of a degree.

**C. "Department"** means the New Mexico higher education department.

**D. "Eligible institution"** means any public post-secondary degree-granting educational institution in New Mexico.

**E. "Full-time equivalent credit"** means credit in courses which are included in the department's formula for funding purposes.

**F. "Non-credit courses"** means courses which cannot be applied toward completion of a degree.

**G. "Senior citizen"** means a person who has reached the sixty-fifth birthday by the third Friday of classes (by the census date).

**H. "Space available"** means that the maximum number of students in a class has not been reached by the end of the first day of registration, therefore providing room for enrollees.

[7/15/1998; 5.7.19.7 NMAC - Rn & A, 5 NMAC 7.19.7, 7/31/2005; A, 7/30/2019]

#### **5.7.19.8 ELIGIBILITY REQUIREMENTS:**

In order to be eligible for the reduction in tuition which is stipulated in the act, students shall:

- A.** request the reduction in tuition;
- B.** demonstrate evidence that they have met the age required;
- C.** be a resident of New Mexico according to existing criteria for residency for tuition purposes set by the department in 5.7.18 NMAC;
- D.** be enrolled at an eligible institution for credit or noncredit courses offered either on or off campus;
- E.** meet all course prerequisites;
- F.** pay for any course specific fees, including extraordinary course fees in continuing education programs; and
- G.** enroll in a course in which there is space available.

[7/15/1998; 5.7.19.8 NMAC - Rn & A, 5 NMAC 7.19.8, 7/31/2005; A, 7/30/2019]

#### **5.7.19.9 ADMINISTRATION OF PROGRAM:**

- A.** Institutions must allow students to register under provisions of this act if there is space available.
- B.** If a minimum number of students is required by the institution to offer a class, students registered under this act may not be counted toward the minimum.
- C.** Students enrolling under provisions of this act are eligible for all grading options for the same courses, including audit, as permitted by the institution.
- D.** Students are required to comply with all rules and regulations of the institution related to registration, withdrawal from courses, transaction deadlines, academic performance and decorum.
- E.** Students enrolled under this act are entitled to all rights and privileges afforded all students including receipt of an I.D. card, use of library, and access to other campus facilities in accordance with institutional regulations affecting all students.
- F.** No full-time equivalent credit may be given to the institutions by the department for any courses taken by students under the provision of this act.
- G.** Institutions must exclude student credit hours registered under this act from enrollment reports to the department.



[7/15/1998; 5.7.19.9 NMAC - Rn & A, 5 NMAC 7.19.9, 7/31/2005; A, 7/30/2019]

## **PART 20: LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM**

### **5.7.20.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.20.1 NMAC - Rp, 5.7.20.1 NMAC, 6/25/2024]

### **5.7.20.2 SCOPE:**

Provisions of 5.7.20 NMAC apply to all state public post-secondary institutions and tribal colleges in the state of New Mexico.

[5.7.20.2 NMAC - Rp, 5.7.20.2 NMAC, 6/25/2024]

### **5.7.20.3 STATUTORY AUTHORITY:**

Sections 6-24-1 et seq. NMSA 1978 and Sections 21-21N-1 et seq. NMSA 1978.

[5.7.20.3 NMAC - Rp, 5.7.20.3 NMAC, 6/25/2024]

### **5.7.20.4 DURATION:**

Permanent.

[5.7.20.4 NMAC - Rp, 5.7.20.4 NMAC, 6/25/2024]

### **5.7.20.5 EFFECTIVE DATE:**

June 25, 2024, unless a later date is cited at the end of a section.

[5.7.20.5 NMAC - Rp, 5.7.20.5 NMAC, 6/25/2024]

### **5.7.20.6 OBJECTIVE:**

**A.** The objective of 5.7.20 NMAC is to provide a level of financial support to qualified New Mexico students who are enrolled full-time at an eligible New Mexico public post-secondary educational institution or tribal college. This level of financial support is intended to help defray the cost of tuition at the public post-secondary educational institution or tribal college where the student is enrolled.

**B.** A further purpose of 5.7.20 NMAC is to encourage New Mexico high school students who pursue a post-secondary education in New Mexico to complete a first four-year degree within a maximum of eight semesters or two-year degree within a

maximum of four semesters (the number of semesters is so determined as the initial award is not made until the second semester of college enrollment and shall not include summer semesters; provided that in no case shall the award fund more than three summer semesters).

**C.** As it applies to students with disabilities who may require special accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution that serves students with disabilities, shall review both the definition of "full-time" and the maximum number of consecutive semesters of eligibility and adjust either or both as deemed reasonable and appropriate, based on the student's disability needs. In no case shall "full-time" mean fewer than six credit hours per semester during the fall and spring semesters or three credit hours per summer semester, if attending, and in no case shall eligibility extend beyond 14 consecutive program semesters at a four-year institution and seven consecutive program semesters at a two-year institution. If a New Mexico resident had to leave the state to receive an education pursuant to the federal Individuals with Disabilities Education Act the student shall be eligible for the scholarship if they graduated from an accredited high school in another state and otherwise met the qualifications for a legislative lottery scholarship pursuant to the definition of a qualified student in Subsection N of 5.7.20.7 NMAC.

[5.7.20.6 NMAC - Rp, 5.7.20.6 NMAC, 6/25/2024]

#### **5.7.20.7 DEFINITIONS:**

**A. "Academic year"** means a consecutive period of three semesters to include fall, spring and summer.

**B. "Accelerated program"** means one in which a summer semester is a program requirement and not a student choice; a cohort that requires sequence of courses taken in summer semester.

**C. "Community college"** means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978, respectively.

**D. "Comprehensive institution"** means eastern New Mexico university, New Mexico highlands university, northern New Mexico college or western New Mexico university.

**E. "Consortium"** means a written agreement between a home institution and one or more host institutions for consideration of combined enrollment for eligibility:

(1) home institution is the institution where the student is enrolled in a degree or certificate seeking program and is receiving lottery scholarship funds;

(2) host institution is the secondary institution where the student is taking part of their program requirements.

**F. "Department"** means the New Mexico higher education department (NMHED).

**G. "Full-time"** means 30 credit hours successfully completed each regular academic year at a research institution, comprehensive institution or tribal institution or 24 successfully credit hours completed per academic year at a community college. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student's home institution.

**H. "GPA"** means grade point average.

**I. "Legislative lottery scholarship"** means a scholarship that provides tuition assistance per semester for qualified students awarded from the proceeds of the New Mexico lottery tuition fund to defray all or part of the cost of tuition.

**J. "Non-enrollment"** means a student is not enrolled in a public post-secondary educational institution.

**K. "Probation"** means a period of time that a student fails to meet continuing eligibility for exceptional mitigating circumstances as determined by the lead financial aid officer at the institution; as described in Subsection D of 5.7.20.8 NMAC.

**L. "Program semesters"** means those semesters for which a qualified student may receive a legislative lottery scholarship, which includes the summer semester and excludes the first semester of full-time attendance at a public post-secondary educational institution or tribal college; provided that the first semester cannot be the summer semester.

**M. "Public post-secondary educational institution"** means a four-year state educational institution or a community college.

**N. "Qualified student"** means a full-time student who graduated from a public or accredited private New Mexico high school or completed the requirements of a home-based or nonpublic secondary educational program in New Mexico or received a high school equivalency credential recognized by the state of New Mexico while maintaining residency in New Mexico and who either:

(1) within 16 months of graduation or completion of a secondary educational program specified in this subsection, was accepted for entrance to and subsequently enrolled full-time at a public post-secondary educational institution or tribal college without having previously enrolled at a non-qualifying public post-secondary institution or tribal college; or

(2) within four months of graduation or completion of a secondary educational program specified in this subsection, began service in the United States armed forces and within 16 months of completion of honorable service or medical discharge from the service, subsequently enrolled full-time at a public post-secondary educational institution or tribal college without having previously enrolled at a non-qualifying public post-secondary institution or tribal college; and

(3) successfully completed the qualifying semester at a public post-secondary educational institution or tribal college with a GPA of 2.5 or higher on a 4.0 scale during the first semester of and completes twelve or more credit hours.

**O. "Research institution"** means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

**P. "State educational institution"** means an institution of higher education enumerated in Article 12, Section 11 of the Constitution of New Mexico.

**Q. "Summer semester"** means a semester equal to fall or spring semester in duration or intensity.

**R. "Tribal college"** means a tribally, federally or congressionally chartered post-secondary educational institution with a physical campus in New Mexico that is accredited by the higher learning commission.

[5.7.20.7 NMAC - Rp, 5.7.20.7 NMAC, 6/25/2024]

#### **5.7.20.8 STUDENT ELIGIBILITY:**

**A.** A scholarship may be awarded to a student in their second semester who has met first semester eligibility requirements as follows:

(1) has established and maintained New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC. All residency requirements must be met upon completion of high school, graduation, or receipt of a high school equivalency credential recognized by the State of New Mexico;

(2) has been determined to be a qualified student pursuant to Subsection N of 5.7.20.7 NMAC;

(3) has enrolled in no fewer than twelve credit hours in the fall and spring semesters and between three and nine credit hours for summer semesters; provided that the student is not required to attend summer semesters to maintain eligibility unless required as part of an accelerated program; and further provided that during a summer semester the student may enroll in more than nine credit hours but the legislative lottery scholarship shall be capped at the tuition charged for nine credit hours; and

(4) has met requirements in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC or students with exceptional mitigating circumstances as determined by the institution's lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the legislative lottery scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution's lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution's lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC; and

(b) if, in the professional judgment of the institution's lead financial aid officer, the student's exceptional mitigating circumstance is recognized as a valid reason for the student's inability to meet the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC the student's initial eligibility for the legislative lottery scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraph (4) of Subsection A of 5.7.20.8 NMAC.

**B. Other provisions regarding initial eligibility.**

(1) Students with disabilities or their legal guardian shall obtain a referral from the student services division of the post-secondary educational institution where the student is enrolled that oversees students with special needs requests to change the credit hours to be considered full-time for scholarship eligibility; referrals and any sufficient documentation shall be received no later than 30 days after the student's enrollment start date for their first semester.

(2) Students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for lottery scholarship eligibility.

(3) During the 16 months after graduation from a public or accredited private New Mexico high school or completion of the requirements of a home-based or nonpublic secondary educational program in New Mexico or receipt a high school equivalency credential recognized by the state of New Mexico a student may attend a public post-secondary educational institution or tribal college prior to their qualifying semester less than full-time without affecting future program eligibility. Once a student is enrolled and attends a public post-secondary educational institution or tribal college full-time during the 16 months after graduation from a public or accredited private New Mexico high school or completion of the requirements of a home-based or nonpublic secondary educational program in New Mexico or receipt a high school equivalency credential recognized by the state of New Mexico the student shall be considered to

have commenced the qualifying semester and must meet the qualifying semester eligibility requirements within Subsection N of 5.7.20.7 NMAC.

[5.7.20.8 NMAC -Rp, 5.7.20.8 NMAC, 6/25/2024]

#### **5.7.20.9 CONTINUING ELIGIBILITY:**

Upon satisfaction of the qualifying semester eligibility requirements, the scholarship will be awarded to the student beginning with their second semester of enrollment. A student's continuing eligibility shall be determined on a semester basis. A legislative lottery scholarship award may be re-awarded to a student who:

**A.** maintains a minimum of a 2.5 cumulative GPA on a 4.0 scale; provided that a student may request use of the student's cumulative GPA earned at all New Mexico public post-secondary educational institutions and tribal colleges;

**B.** successfully completes thirty credit hours within the academic year if attending a four-year public post-secondary educational institution or a tribal college. The credit hours may be apportioned among fall, spring and summer semesters, with no fewer than twelve credit hours in the fall and spring semesters and between three and nine credit hours for summer semesters; provided that a student is not required to attend summer semesters to maintain eligibility unless required as part of an accelerated program; and further provided that the student satisfies the credit hour requirement for the academic year; and further provided that credit-hour limits do not apply to the last semester before graduation; or

**C.** successfully completes twenty-four credit hours within the academic year if attending a two-year public post-secondary educational institution. The credit hours may be apportioned among fall, spring and summer semesters, with no fewer than nine credit hours in the fall and spring semesters and between three and nine credit hours for summer semesters; provided that:

(1) a student is not required to attend summer semesters to maintain eligibility unless required as part of an accelerated program; provided that the student satisfies the credit hour requirement for the academic year; and further provided that credit-hour limits do not apply to the last semester before graduation; and

(2) upon transferring from a two-year public post-secondary educational institution to a four-year public post-secondary educational institution or a tribal college at the start of a fall or spring semester the student has started a new academic year. The following conditions apply for students transferring the scholarship:

(a) a transfer transcript is required for continuation.

(b) student transfers shall defer to the receiving institution to determine continued eligibility; and

(c) an eligible student that transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation; and

**D.** continues to meet the requirements for students with disabilities if requesting a reduction in the credit hours to be considered full-time by obtaining a referral from the student services division of the student's post-secondary educational institution where the student is enrolled; provided that referrals and sufficient documentation shall be received no later than 30 days after the student's enrollment start date for the semester.

[5.7.20.9 NMAC – N, 6/25/2024]

#### **5.7.20.10 PROBATION:**

Students who have been determined eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

**A.** the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

**B.** the lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraph (4) of Subsection A of 5.7.20.8 NMAC; and

**C.** a student may receive scholarship funding while on probationary status, however under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.11 NMAC.

[5.7.20.10 NMAC – Rp, 5.7.20.11 NMAC, 6/25/2024]

#### **5.7.20.11 DURATION OF SCHOLARSHIP:**

**A.** Upon qualification, the student's initial scholarship shall begin with the second semester of enrollment at a public post-secondary educational institution or tribal college. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a semester basis until the award recipient has received the legislative lottery scholarship for a maximum of seven fall and spring program semesters and a maximum of three summer semesters, or no more than three and one-half years for a bachelor's degree.

**B.** An award recipient may use the award at an eligible two-year public post-secondary educational institution until the student receives a maximum of three fall and spring program semesters of scholarship awards or an associate's degree and can

continue to use the award at an eligible New Mexico four-year public post-secondary educational institution or tribal college if the student transfers to a four-year public post-secondary educational institution or tribal college without a break in attendance or the semester following receipt of the associate's degree. In no case shall a student receive more than seven program semesters of the award with the exception of students with disabilities.

**C.** A student may transfer from a four-year public post-secondary educational institution or tribal college to a two-year public post-secondary educational institution, but in no case shall a student receive more than three program semesters of awards at the two-year institution (including those awarded at the prior public post-secondary educational institution or tribal college) or until the student graduates with an associate degree, whichever is sooner.

**D.** For students with disabilities in no case shall eligibility extend beyond 14 consecutive program semesters at a four-year institution and seven consecutive program semesters at a two-year institution. The maximum number of program semesters shall include no more than three summer semester awards.

**E.** A student who has been previously eligible may request a leave of absence for cooperative education, military obligations, participation in a study abroad program through the home institution or other exceptional mitigating circumstances.

**F.** The student's institutional lead financial aid officer may approve a leave of absence for a period of up to one year if in the lead financial aid officer's professional judgment the student has provided sufficient documentation to justify the leave of absence. Subsequent requests for an additional leave of absence by a student may be considered by the institution's lead financial aid officer in increments not to exceed one year.

**G.** The lead financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.11 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.

**H.** If a student becomes ineligible for a different state scholarship that is designated for one hundred percent tuition, but satisfies the first semester eligibility requirements and thereafter is eligible for the legislative lottery scholarship, the student may begin receiving the legislative lottery scholarship for the remaining number of semesters of enrollment, not to exceed those prescribed in Subsections A and B of 5.7.20.11 NMAC.

[5.7.20.11 NMAC – Rp, 5.7.20.9 NMAC, 6/25/2024]

#### **5.7.20.12     AMOUNT OF SCHOLARSHIP:**



**A.** To the extent that funds are made available from the fund, the board of regents or governing bodies of public post-secondary educational institutions and tribal colleges shall award legislative lottery scholarships in department-approved amounts to qualified students.

**B.** In no case shall a student receive a legislative lottery scholarship award exceeding the total amount of tuition charged to the student by the institution for a maximum of 18 credit hours per fall or spring semester or nine credit hours for a summer semester.

**C.** Qualified students in their graduating semester shall receive a legislative lottery scholarship proportional to the number of credit hours required to graduate.

**D.** If the fund does not cover full legislative lottery scholarships, the method the department will use for calculating the legislative lottery scholarship is as follows:

(1) estimate the total amount available in the lottery tuition fund, based on past lottery fund transfers, current year balances and additional funds made available through legislation;

(2) estimate the number of lottery scholarship recipients for each institution, based on department endorsed institutional projections;

(3) calculate the legislative lottery scholarship for each sector (research, comprehensive and community college) and tribal college in accordance with Section 21-21N-4 NMSA 1978;

(4) calculate the total amount needed to pay full tuition to all estimated recipients;

(5) compute an award for each scholarship recipient; and

(6) notify institutions.

[5.7.20.12 NMAC – Rp, 5.7.20.10 NMAC, 6/25/2024]

#### **5.7.20.13 ADMINISTRATION OF THE LEGISLATIVE LOTTERY SCHOLARSHIP:**

**A.** Eligible public post-secondary educational institutions and tribal colleges shall:

(1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the legislative lottery scholarship at previous institutions;

(2) designate their institution's lead financial aid officer to be responsible for determining initial and continuing student eligibility for the legislative lottery scholarship under the terms of these rules and regulations;

(3) maintain a listing of each participating student to include, but not be limited to:

(a) social security number as appropriate;

(b) cumulative GPA and completed enrollment hours in prior semesters;

(c) proof of initial and continuing enrollment;

(d) award semester; and

(e) other data fields deemed important by the department;

(4) draw-down files should be submitted to the department for eligible students as defined in 5.7.20.10 NMAC per semester; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;

(5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative GPA requirement or successfully maintain full-time enrollment as defined in Subsection G of 5.7.20.7 NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their appropriate institution as follows: comprehensive, research institution in their second through eighth program semester including qualified students in their fifth through eighth program semesters who transferred from a community college; projected enrollment at each community college at each community college in their second through fourth program semesters;

(7) publish the probation policy as defined in 5.7.20.10 NMAC;

(8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program;

(9) each semester, ensure during the qualifying semester all available merit-based aid packages, three percent scholarships, institutional award packages, and state aid are awarded first before granting the New Mexico opportunity scholarship for tuition. If the student does not qualify for any merit-based aid packages, three percent

scholarships, institutional award packages or state aid the student may qualify to receive the New Mexico opportunity scholarship for tuition and fees during the qualifying semester at the discretion of the lead financial aid officer.

**B. The department shall:**

(1) determine the scholarship award pursuant to the provisions of 5.7.20.10 NMAC; all eligible institutions will be notified prior to June 1 annually;

(2) conduct audits to ascertain compliance with rules and regulations, if, during the audit process, evidence indicates that a student should not have received a legislative lottery scholarship, the department will provide guidance to the institutions for appropriate action;

(3) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) legislative lottery scholarship program participation data aggregated for each public postsecondary education institution and tribal college to show:

(i) the number of qualified students who received legislative lottery scholarships and in the prior 12 month period;

(ii) the total number of qualified students enrolled in the prior 12-month period;

(iii) the amount of legislative lottery scholarships funded by semester and the amount of tuition costs that were not offset by the legislative lottery scholarship by semester; and

(iv) the number of qualified students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.

[5.7.20.13 NMAC – Rp, 5.7.20.11 NMAC, 6/25/2024]

**5.7.20.14 TERMINATION OF SCHOLARSHIPS:**

A scholarship is terminated upon noncompliance by the award recipient with the legislative lottery scholarship rules, regulations or procedures as promulgated by the department.

[5.7.20.14 NMAC – Rp, 5.7.20.12 NMAC, 6/25/2024]

## **PART 21: WICHE LOAN-FOR-SERVICE PROGRAM**

### **5.7.21.1 ISSUING AGENCY:**

State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, (505) 827-7383.

[9/30/97; Recompiled 10/31/01]

### **5.7.21.2 SCOPE:**

Provisions of 5 NMAC 7.21 [now 5.7.21 NMAC] apply to the commission on higher education and all eligible student participants.

[9/30/97; Recompiled 10/31/01]

### **5.7.21.3 STATUTORY AUTHORITY:**

Section 21-29-1 to 21-29-6, NMSA 1978.

[9/30/97; Recompiled 10/31/01]

### **5.7.21.4 DURATION:**

Permanent.

[9/30/97; Recompiled 10/31/01]

### **5.7.21.5 EFFECTIVE DATE:**

September 30, 1997 [unless a later date is cited at the end of a section].

[9/30/97; Recompiled 10/31/01]

### **5.7.21.6 OBJECTIVE:**

The objective and purpose of 5 NMAC 7.21 [now 5.7.21 NMAC] is to make educational loans available to students wishing to participate in student exchange and enroll at an out-of-state university. The act requires, as a condition of each loan, that the student declare his or her intent to return to New Mexico upon degree completion and practice in their licensed or chosen field.

[9/30/97; Recompiled 10/31/01]

### **5.7.21.7 DEFINITIONS:**

A. "Commission" means the New Mexico commission on higher education.

B. "Eligible institution" means an out-of-state institution participating in WICHE PSEP or an approved an out-of-region contract;

C. "Eligible profession" means a professional field not offered at a New Mexico public post-secondary institution; a program available through the WICHE compact; and a program that the WICHE commissioners have chosen to make available for eligible students;

D. "Extenuating circumstances" means circumstances not within the control of the student recipient.

E. "Loan" means a grant of funds to defray the costs incidental to an eligible profession education, under a contract between the commission and a student, requiring repayment with services or repayment of principal and interest, penalties, and any fees;

F. "Program" means the WICHE loan-for-service program;

G. "Service" means full-time, on-site practice in an eligible profession; unless otherwise provided for by the WICHE commissioners;

H. "Student" means a New Mexico resident who graduates from a New Mexico high school or has resided in New Mexico for three consecutive years immediately preceding application to the program and who attends or is about to attend a graduate or professional program of education through the auspices of the compact for western regional cooperation for higher education; and, has been accepted by an accredited program for one of the eligible professions (Pursuant to NM Constitution, this clause is effective May 20, 1998);

I. "WICHE commissioners" means the three individuals designated by the New Mexico governor to be representatives of the state to the WICHE commission; and

J. "WICHE PSEP" means the western interstate commission on higher education's professional student exchange program;

[9/30/97; A, 12/31/98; Recompiled 10/31/01]

#### **5.7.21.8 STUDENT ELIGIBILITY:**

A scholarship may be awarded to a New Mexico resident who:

A. is a citizen of the United States or a permanent resident alien and resident of New Mexico;

B. is a graduate of a New Mexico high school;

C. is enrolled in or accepted by an eligible institution;

D. is enrolled, at the time the loan is awarded and disbursed, for at least half-time in a program leading to a eligible profession degree/certification, at an eligible institution; and

E. declares his/her intent to practice in an eligible profession for at least one year in New Mexico.

[9/30/97; Recompiled 10/31/01]

#### **5.7.21.9      SELECTION OF LOAN RECIPIENTS:**

Selection shall be based on the following considerations and preferences:

A. the ability, character, and qualifications of each applicant. This is to include a review of the applicants educational transcripts, letters of recommendation and references;

B. the demonstrated intent of the applicant to return to the state and practice in their eligible profession;

C. the academic ranking as determined by the eligible institution upon admission; and

D. the degree being sought by the applicant is deemed necessary to address the workforce needs of the population in New Mexico.

[9/30/97; Recompiled 10/31/01]

#### **5.7.21.10     ADMINISTRATION:**

The commission shall be responsible for:

A. developing program guidelines;

B. advertising the program;

C. processing applications and presenting a list of eligible candidates to the WICHE commissioners;

D. administering loans, including:

(1)     disbursing funds;

(2)     keeping records on borrowers and processing of contracts;

- (3) administering and keeping record on loan repayments;
- (4) maintaining records of location and time of service of those student loan recipients who have completed their education and are providing service in New Mexico;

E. verifying qualifications for forgiveness for service;

F. preparing the following information for the program:

- (1) number of loans granted;
- (2) names and addresses of borrowers;
- (3) names of accredited programs attended; and
- (4) names and locations of practice of those who have completed their education and have become licensed/certified service providers in New Mexico.

[9/30/97; Recompiled 10/31/01]

#### **5.7.21.11 LOANS:**

Loans can be made to students to defray expenses incurred in obtaining an eligible profession education under the following conditions and limitations:

A. the amount of the loan shall not exceed the amount equivalent to the negotiated support fee for the graduate or professional program; and

B. upon approval of the loan, a contract shall be drawn between the student and the commission and signed by the student.

[9/30/97; Recompiled 10/31/01]

#### **5.7.21.12 LOAN REPAYMENT AND FORGIVENESS:**

A. All loans shall be repaid to the state together with interest or forgiven according to the following:

(1) If a program loan recipient completes his/her professional education and does not provide service in New Mexico for a period of at least one year, the commission may assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the WICHE commissioners find acceptable extenuating circumstances for why the student cannot serve and comply with the forgiveness provisions outlined in this section.

(a) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorata basis reasonably reached based upon the degree of control which the recipient has over the decision not to serve. The recipient shall have the burden of proof.

(b) If the WICHE commissioners do not find acceptable extenuating circumstances for the student's failure to carry out his/her declared intent to provide service in New Mexico, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed plus the amount of any penalty assessed pursuant to this section

(2) If a program loan recipient fails to complete their eligible profession education, the principal shall come due together with interest immediately upon termination of their education. The commission, in consultation with the student, shall establish terms of repayment, alternative service or cancellation terms. Loans meeting this provision will bear interest rate of seven percent per year.

B. The contract shall further provide that immediately upon completion or termination of the student's eligible profession education, all interest then accrued due shall be capitalized.

C. If the borrower, after completion of their eligible profession education and any period of internship and/or residency, provides service in New Mexico, loan principal and interest may be forgiven according to the following formula:

(1) loan terms of one academic year or less shall require one year of practice in New Mexico. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two academic years shall require one year of practice in New Mexico for each academic year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and,

(3) for loan terms of three academic years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service in New Mexico, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

D. Recipients must serve a complete year of service in order to receive credit for that year. The minimum credit for a year of service shall be established by the WICHE commissioners.



E. Subject to applicable statutory limitations, the WICHE commissioners may extend or modify the foregoing repayment periods for good cause.

F. In the event it becomes necessary, the WICHE commissioners may suspend loan payments using the following forbearance provisions:

(1) If the borrower is willing, but financially unable to make payments under the repayment schedule, the borrower may request forbearance to allow for any of the following:

(a) a short period during which no payments are made, interest would continue to accrue;

(b) an extension of time for making payments, interest would continue to accrue; or

(c) a period during which the borrower makes smaller payments than were originally scheduled, interest would continue to accrue on the unpaid principal.

(2) Forbearance following completion of program, internship, or residency will not be granted for periods extending beyond six months. The granting of a subsequent forbearance must be approved by the designated staff representative of the commission.

(3) The borrower must submit a written request accompanied by a financial statement and a consent-waiver for authorization for current employment and address information concerning the borrower and other information as requested.

(4) Deferral of repayment obligation may be as follows, at the determination by the designated staff representative of the commission:

(a) the borrower is serving up to a maximum of three years as an active duty member of the Armed Forces of the United States;

(b) the borrower is temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;

(c) the borrower is seeking but unable to find full-time employment for a single period not to exceed twelve months;

(d) the borrower is unable to secure employment for a period not to exceed twelve months while caring for a disabled spouse;

(e) the borrower is unable to satisfy the terms of the repayment schedule while seeking but unable to find full-time employment in an eligible health profession, in a designated shortage area, for a single period not to exceed twenty-seven months; or

(f) other extenuating circumstances as provided for under the American Family Leave Act.

G. Loans may be prepaid at any time, subject to the penalty provision set forth in this section. Payment on a loan not in repayment may be made in any amount. Payments on a matured promissory note shall be in the amounts of and be applied on the principal installments due on such note in the inverse order of the maturities of such installments, unless otherwise agreed.

H. Authorized charges and fees:

(1) Borrower may be charged a late charge in the amount of five percent of the installment payment or five dollars (\$5.00), whichever is less, on any payment made later than ten days after it is due.

(2) Attorney's fees, other charges, and costs: Borrower shall agree to pay all reasonable attorney's fees, and other costs and charges necessary for the collection of any loan amount not paid when due.

I. Borrower has the responsibility to notify the commission in advance of any change of address and of any action which necessitates reconsideration of a promissory note (i.e. the failure to serve in a designated shortage area) the termination of service in a designated shortage area, or his/her ceasing to be enrolled in an eligible institution in an eligible health profession program. Borrower's failure to notify the commission and to execute a promissory note on request shall cause the full amount of principal and accumulated interest to become due immediately.

[9/30/97; Recompiled 10/31/01]

#### **5.7.21.13 CONTRACT:**

A contract shall be drawn between each student receiving a loan and the commission on behalf of the state of New Mexico. The contract shall:

A. provide for the payment by the commission of a specified sum as determined in Section 12 [now 5.7.21.12 NMAC];

B. state that the borrower shall return to New Mexico, upon degree completion, to begin service;

C. state that immediately upon completion or termination of the student's eligible profession education, all interest then accrued shall be capitalized;

D. state the conditions of repayment or forgiveness as detailed in Section 12 [now 5.7.21.12 NMAC];

E. state that the loan shall bear interest at the designated rate per annum from the date of disbursement until paid, make provision for conversion to a payout note as shown in Section 12 [now 5.7.21.12 NMAC], and state that interest will be charged on the unpaid balance of the principal only;

F. state the legal responsibilities of the borrower and that delinquent loans shall be reviewed for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

G. state that the commission may cancel a contract with a student for reasonable cause deemed sufficient by the WICHE commissioners;

H. state that in the event the borrower fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the commission, become immediately due and payable; and

I. state that jurisdiction and venue shall be proper in Bernalillo or Santa Fe county, New Mexico for purposes of any suit to enforce the contract.

[9/30/97; Recompiled 10/31/01]

#### **5.7.21.14     REPORTS:**

The commission shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics.

[9/30/97; Recompiled 10/31/01]

### **PART 22: LEGISLATIVE ENDOWMENT SCHOLARSHIP PROGRAM [REPEALED]**

[This part was repealed effective 5/16/2023]

### **PART 23: COLLEGE AFFORDABILITY GRANT [REPEALED]**

[This part was repealed effective 5/16/2023]

### **PART 24: EDUCATIONAL LOAN PURCHASE PROGRAM REGULATIONS**

#### **5.7.24.1     ISSUING AGENCY:**

New Mexico Educational Assistance Foundation.

[Recompiled 10/31/01]

**5.7.24.2 SCOPE:**

These regulations shall be of application to those activities of the foundation undertaken by it in connection with the program.

[Recompiled 10/31/01]

**5.7.24.3 STATUTORY AUTHORITY:**

**[RESERVED]**

[Recompiled 10/31/01]

**5.7.24.4 DURATION:**

Permanent.

[Recompiled 10/31/01]

**5.7.24.5 EFFECTIVE DATE:**

[Filed December 11, 1992] The effective date of these regulations shall be December 10, 1992.

[Recompiled 10/31/01]

**5.7.24.6 OBJECTIVE:**

**[RESERVED]**

[Recompiled 10/31/01]

**5.7.24.7 DEFINITIONS:**

Terms:

A. "Bank" shall mean the bank providing a letter of credit under a letter of credit agreement applicable to a particular indenture.

B. "Bonds" shall mean the bonds issued by the foundation under the terms of the indenture applicable to a loan purchase agreement.

C. "Certificate of insurance" shall mean a certificate of federal loan insurance issued with respect to an eligible loan by the secretary of education pursuant to the provisions of the higher education.

D. "Contract of insurance" shall mean an agreement between the secretary of education and the foundation or the lender providing for insurance with respect to student loans under the program.

E. "Educational Assistance Act" shall mean the New Mexico Educational Assistance Act, codified as Sections 21-21A-1 to 21-21A-23, New Mexico Statutes Annotated, 1978, as amended and supplemented.

F. "Eligible borrower" shall mean a student, parent or other borrower who is eligible under the Educational Assistance Act to be the obligor of a loan for financing a program of post-secondary education.

G. "Eligible institution" shall mean an "eligible institution" as defined under the Higher Education Act which is a "participating school" within the meaning of the Higher Education Act.

H. "Eligible loan" shall mean a student loan which:

(1) has been or will be made to an eligible borrower for the post-secondary education of:

(a) a resident of the state attending a post-secondary school located within or without the state, or

(b) a resident of a state other than the state attending a post-secondary school located within the state;

(2) is either guaranteed or insured;

(3) is an "eligible loan" as defined in Section 438 of the Higher Education Act for purposes of receiving special allowance payments;

(4) bears interest at a rate per annum not less than or in excess of the applicable interest rate provided by the Higher Education Act;

(5) is subject to the repurchase obligations of the lender from whom it was acquired (except in the case of student loans purchased from the New Mexico state treasurer); and

(6) has not been tendered at any time to either the secretary of education or any guarantee agency, including the guarantee agency, for payment unless the situation giving rise to the tender has been cured.

I. "Eligible student" shall mean a student who is eligible under the Higher Education Act to receive a loan, which is insured or guaranteed, for financing a program of post-

secondary education, including a student who is eligible under the Higher Education Act to be a student for whose benefit a PLUS/SLS loan is made

J. "Federal reimbursement contracts" shall mean the agreements, dated July 1, 1981, as amended, between the guarantee agency and the secretary of education providing for the payment by the secretary of education of amounts authorized to be paid pursuant to the Higher Education Act, including (but not necessarily limited to) reimbursement of amounts paid or payable upon defaulted financed eligible loans and other student loan guaranteed or insured by the guarantee agency and interest subsidy payments to holders of qualifying student loans guaranteed or insured by the guarantee agency.

K. "Financed", when used with respect to student loans, shall mean student loans originated, acquired or refinanced with moneys in the acquisition fund provided by the indenture, or otherwise substituted or exchanged thereunder as set forth in the indenture.

L. "Fiscal year" means the fiscal year of the foundation which shall begin on July 1 of each year and end on June 30 of the following year, unless the board of directors of the foundation shall act to amend its bylaws to change its fiscal year.

M. "Foundation" shall mean the New Mexico educational assistance foundation, a New Mexico nonprofit corporation established and existing in accordance with the laws of the state, and any successor to its functions relating to the program.

N. "Guarantee" or "guaranteed" shall mean, with respect to a student loan, the insurance or guarantee by the guarantee agency of 100 percent of the principal of and accrued interest on such student loan and the coverage of such student loan by the federal reimbursement contracts, providing, among other things, for reimbursement to the guarantee agency for losses incurred by it on defaulted financed student loans insured or guaranteed by the guarantee agency to the extent provided in the Higher Education Act.

P. "Guarantee agency" shall mean The New Mexico student loan guarantee corporation, a New Mexico nonprofit corporation established and existing in accordance with the laws of the state, its successors and assigns.

Q. "Guarantee agreement" means an agreement between the guarantee agency and the foundation or the lender providing for insurance or guarantee by the guarantee agency of student loans under the program.

R. "Guarantee fund" shall mean the guarantee fund established in accordance with the guarantee agreement.

S. "Guarantee program" shall mean the guarantee agency's student loan insurance program pursuant to which the guarantee agency guarantees or insures student loans.

T. "Higher Education Act" shall mean the Higher Education Act of 1965, as amended or supplemented from time to time, and all regulations promulgated thereunder.

U. "Indenture" means the trust indenture, dated as of December 1, 1992, between the foundation and the trustee, providing for the issuance of bonds, and any amendment or supplement thereto in accordance with the terms of the indenture.

V. "Insurance" or "insured" or "insuring" shall mean, with respect to a student loan, the insuring by the secretary of education (as evidenced by a certificate of insurance or other document or certification issued under the provisions of the Higher Education Act) under the Higher Education Act of one hundred percent of the principal of and accrued interest on such student loan; provided, however, that a student loan for which an application for insurance commitment was received by the secretary of education prior to March 1, 1973, shall be deemed insured if insured by the secretary of education to the extent of one hundred percent of the principal amount of such student loan and if at the same time the foundation acquires such a pre-March 1, 1973, student loan it also acquires a post-March 1, 1973, insured loan executed by the same borrower.

W. "Insured loan" means a student loan which is insured.

X. "Lender" means any "eligible lender" as defined in the Higher Education Act that is permitted to participate as a seller of student loans to the foundation under the program and which has received an eligible lender designation from the secretary of education with respect to insured loans or from the guarantee agency with respect to guaranteed loans.

Y. "Letter of credit agreement" means the letter of credit agreement referenced in the indenture applicable to a particular loan purchase agreement between the foundation and a lender.

Z. "Loan purchase agreement" or "educational loan purchase agreement" means an agreement between the foundation and a lender providing for the sale by the lender to the foundation of eligible loans under the program.

AA. "Loan purchase regulations" shall mean the rules and regulations of the foundation, also known as the educational loan purchase program regulations, duly adopted by its board of directors, that establish criteria for the acquisition, origination, administration and collection of student loans under the Higher Education Act.

BB. "PLUS/SLS loans" shall mean student loans authorized under the auxiliary loans to assist students program established under Section 428A or 428B of the Higher Education Act for which there shall be no deferment with respect to the payment of interest thereon.

CC. "Program" shall mean the foundation's program for the origination of student loans and the acquisition of student loans from the state treasurer or from other lenders to increase the supply of moneys available for new student loans, thereby assisting students in obtaining a post-secondary school education.

DD. "Repurchase obligation" shall mean those obligations described in Section 8 [now 5.7.24.13 NMAC] of the loan purchase agreements under the terms of which the lender is required to repurchase any student loan.

EE. "Residency" shall mean the maintenance of a place of abode within the state.

FF. "Secretary of education" shall mean the commissioner of education, department of health, education and welfare of the United States, and the secretary of the United States department of education (who succeeded to the functions of the commissioner of education pursuant to the Department of Education Organization Act), or any other officer, board, body, commission or agency succeeding to the functions thereof under the Higher Education Act.

GG. "Special allowance payments" shall mean special allowance payments authorized to be made by the secretary of education pursuant to Section 438 of the Higher Education Act, or similar allowances authorized from time to time by federal law or regulation.

HH. "State" shall mean the state of New Mexico.

II. "Student loan" shall mean a loan made to an eligible borrower for post-secondary education authorized to be made or acquired by the foundation pursuant to its articles of incorporation and the Educational Assistance Act.

JJ. "Trustee" shall mean the entity serving as trustee under the indenture.

[Recompiled 10/31/01]

#### **5.7.24.8 REINVESTMENT OF LOAN PURCHASE PROCEEDS:**

A. For eligible loans originated prior to the date of a loan purchase agreement and which are to be sold to the foundation pursuant to such loan purchase agreement, the lender must certify and agree, as an inducement and a condition of the purchase of such eligible loans by the foundation, that the lender, within a reasonable time from receipt of the proceeds of such purchase by the foundation shall originate new student loans in a manner and subject to the conditions specified in these regulations.

B. For eligible loans originated after the date of a loan purchase agreement, and which are to be sold to the foundation pursuant to such loan purchase agreement, the requirements of paragraph 2.01 [now Subsection A of 5.7.24.8 NMAC] shall not apply.



C. If the lender shall fail to satisfy its reinvestment obligation under paragraph 2.01 [now Subsection A of 5.7.24.8 NMAC], the foundation may assert such rights and take such other action, in law or equity, as it may deem appropriate to insure that interest payable on the notes or bonds or other obligations issued by the foundation to capitalize the purchase of eligible loans or meet other expenses of the foundation does not, if such notes or bonds or other obligations were issued with the intention that they be federally tax-exempt, become taxable, including requiring that the lender repurchase, eligible loans from the foundation in an aggregate principal amount equal to the amount of the reinvestment obligation not satisfied.

D. In fulfilling its obligations under paragraph 2.01 [now Subsection A of 5.7.24.8 NMAC] a lender shall:

- (1) make available loan applications and other documentation, together with qualified loan personnel, at locations reasonably accessible to eligible borrowers, and
- (2) undertake promotional activities to publicize the availability of student loans.

[Recompiled 10/31/01]

#### **5.7.24.9 PURCHASE OF NOTES OR BONDS:**

Any persons (or any related person, as defined in Section 147 (a) (2) of the Internal Revenue Code of 1986, as amended), from whom the foundation may, under the program, acquire student loans shall not, pursuant to any arrangement, formal or informal, purchase bonds, notes or obligations of the foundation, if such notes or bonds or other obligations were issued with the intention that they be federally tax-exempt, in an amount related to the amount of the student loans to be acquired under the program from such person by the foundation.

[Recompiled 10/31/01]

#### **5.7.24.10 SERVICING OF LOANS:**

Student loans purchased by the foundation shall be serviced by the foundation or on behalf of the foundation by a servicer in accordance with such procedures as may be approved by the foundation from time to time.

[Recompiled 10/31/01]

#### **5.7.24.11 MAXIMUM STUDENT LOAN AMOUNTS:**

The maximum amount of student loans permitted for an eligible borrower shall be determined in accordance with the Higher Education Act.

[Recompiled 10/31/01]

**5.7.24.12 INFORMATION TO BE PROVIDED BY LENDERS TO ELIGIBLE BORROWERS:**

A. At the time a lender makes an eligible loan to an eligible borrower the lender shall provide thorough and accurate loan information to the eligible borrower as required by the Higher Education Act and the guarantee corporation, which shall include:

- (1) the yearly and cumulative maximum amounts that may be borrowed by an eligible borrower;
- (2) the terms on which repayment will begin;
- (3) the maximum number of years in which the eligible loan must be repaid;
- (4) the interest rate that will be repaid, and the maximum amount of required monthly payments;
- (5) any special options that an eligible borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the eligible loan;
- (6) a definition of default and the consequences to the eligible borrower if the eligible borrower should default, including a description of any arrangement made with credit bureau organizations; and
- (7) to the extent practicable, the effect of accepting the eligible loan on the eligibility of the eligible borrower for other forms of student assistance.

B. The foundation may refuse to purchase eligible loans not made in accordance with this requirement.

[Recompiled 10/31/01]

**5.7.24.13 REVISIONS IN REGULATIONS:**

These regulations shall be subject to amendment, modification and revision from time to time to conform the same to the provision of the Higher Education Act or for any other purpose. If any such amendment, modification or revision will materially adversely affect the rights of a lender pursuant to a loan purchase agreement which is then in effect or the rights of the holders of then outstanding bonds, such amendment, modification or revision will not be effective with regard to such loan purchase agreements or the holders of such bonds.

[Recompiled 10/31/01]

## **PART 25: TAX REFUND INTERCEPT PROGRAM REGULATIONS**

### **5.7.25.1 ISSUING AGENCY:**

New Mexico Educational Assistance Foundation.

[Recompiled 10/31/01]

### **5.7.25.2 SCOPE:**

**[RESERVED]**

[Recompiled 10/31/01]

### **5.7.25.3 STATUTORY AUTHORITY:**

**[RESERVED]**

[Recompiled 10/31/01]

### **5.7.25.4 DURATION:**

Permanent.

[Recompiled 10/31/01]

### **5.7.25.5 EFFECTIVE DATE:**

Filed July 7, 1988.

[Recompiled 10/31/01]

### **5.7.25.6 OBJECTIVE:**

**[RESERVED]**

[Recompiled 10/31/01]

### **5.7.25.7 DEFINITIONS:**

**[RESERVED]**

[Recompiled 10/31/01]

### **5.7.25.8 SUBMITTING REQUESTS TO THE TAXATION AND REVENUE DIVISION ("TRD"):**

A. Eligible accounts: Requests for collection by refund offset may be made by the foundation to enforce repayment of educational loan debts pursuant to the Tax Refund Intercept Program Act, Laws 1985 Ch. 106, Sec. 1, et seq., as amended by Laws 1987, Ch. 125 Sec. 1 et seq.

B. Criteria for submittal: Debts must meet the following requirements to be eligible for the tax refund offset process:

- (1) the debt must be a loan for educational purposes;
- (2) the debt must be equal to or more than \$150.00;
- (3) the debt must be:

(a) owned by the foundation or the New Mexico student loan guarantee corporation; or

(b) guaranteed by the guarantee corporation, or

(c) owned by a publicly owned or operated institution of higher education or other publicly owned or operated post-secondary educational facility located within the state of New Mexico, provided that the foundation has lawfully contracted to collect the debt; and

- (4) the debt must have been reduced to judgment.

C. Procedure for setoff request to TRD/suspense account:

(1) Submitting requests: All submissions for setoffs should be made to TRD by December 16 of the current tax filing year. The list of setoffs requested will contain information such as debtor name, social security number, unpaid balance of judgment against debtor and such other information as TRD may require.

(2) Corrections: The foundation should submit corrections to TRD by December 30 of each year.

D. Suspense account: Upon receipt of money transferred from the TRD, the foundation shall deposit and hold the money in a suspense account until a final determination of the offset is made.

[Recompiled 10/31/01]

#### **5.7.25.9 NOTICE PROCEDURES:**

A. Notice to debtor: Within ten days after the foundation receives notice from TRD of a match of an offset request the foundation shall send a notice to the affected debtor

substantially in the form of the attached Exhibit A [now 5.7.25.14 NMAC]. The notice will inform the debtor of the following:

- (1) that a transfer of the refund will be made and that the foundation intends to offset the amount of the transfer against a claimed judgment balance owed by the debtor;
- (2) the amount of the claimed judgment balance and that the judgment arose from an educational loan;
- (3) the name, address and telephone number of the foundation;
- (4) the amount of the refund to be offset against the claimed judgment balance;
- (5) that the debtor has 30 days from the date of the notice to contest the offset by applying to the foundation for a hearing with respect to the validity of the judgment balance asserted by the foundation; and
- (6) that failure by the debtor to apply for a hearing within 30 days will be deemed a waiver of the opportunity to contest the offset and to a hearing.

B. Notice to the debtor's spouse: Except as provided in the following paragraph C [now Subsection C of 5.7.25.9 NMAC], within ten days after the foundation receives notice from TRD of a match on a offset request resulting from a joint tax return the foundation shall send a notice to the spouse of the affected debtor substantially in the form of the attached Exhibit B [now 5.7.25.15 NMAC]. The notice will inform the debtor's spouse of the following:

- (1) a statement that a transfer of the refund will be made and that the foundation intends to offset the amount of the transfer against a claimed judgment balance owing by the debtor;
- (2) the total amount of the refund and the amount of the claimed judgment balance;
- (3) the name, address and telephone number of the foundation;
- (4) a statement that no debt is claimed against the spouse and that the spouse may be entitled to receive all or part of the refund regardless of the claimed judgment balance against the debtor;
- (5) a statement that to assert a claim to all or part of a refund the spouse must apply to the foundation for a hearing within 30 days of the date indicated on the notice with respect to the entitlement of the spouse to all or part of the refund from which a transfer will be made at the request of the foundation; and

(6) a statement that failure of the spouse to apply for a hearing within 30 days may be deemed a waiver of any claim of the spouse with respect to the refund.

C. Judgments against debtor and spouse jointly: In the event the foundation is asserting a claim for tax refund offset based on a judgment entered jointly against the debtor and spouse, the foundation shall send notice under the foregoing paragraph IIA [now Subsection A of 5.7.25.9 NMAC] to both persons and no notice under the foregoing paragraph IIB [now Subsection B of 5.7.25.9 NMAC ] will be sent.

[Recompiled 10/31/01]

#### **5.7.25.10 PROCESSING OF ADMINISTRATIVE HEARING REQUESTS:**

A. Written request: All requests for administrative review must be made in writing.

B. Submittal deadline: All requests for administrative review must be received at the foundation within 30 days of the date of the applicable notice. Failure to submit a request within the prescribed time will be deemed a waiver of the opportunity to contest the offset and to a hearing.

C. Debtor/appellant: The person against whom an educational loan judgment debt is claimed shall be known as the "debtor". The person submitting a request for administrative review shall be the person whose tax refund has been offset, or his or her spouse, and shall be known as the "appellant" in the administrative review process.

D. Grounds for administrative review: The grounds for administrative review shall be limited to the following:

(1) no judgment has been filed against the appellant or the appellant's spouse for an educational loan;

(2) the judgment has been paid in full;

(3) the judgment creditor has agreed to accept other arrangements for payment of the judgment and the arrangements have been fully complied with;

(4) the amount of the intercepted refund exceeds the unpaid balance of the judgment; or

(5) the appellant is entitled to receive all or part of the refund regardless of the claimed judgment debt against the appellant's spouse based upon New Mexico's community property laws.

E. Filing of requests for administrative review: The foundation loan servicing representative (LSR) responsible for the debtor's account will receive the request for

administrative review submitted by the appellant and shall file the request in the debtor's loan file.

F. Acknowledgement of receipt of request for administrative review: The LSR will, upon receipt of the appellant's request for administrative review, send the appellant an acknowledgment of receipt of the request and will file a copy of the acknowledgment in the debtor's loan file. The acknowledgment may be combined with a notice of rejection of the request under the following subparagraph G [now Subsection G of 5.7.25.10 NMAC], a notice of informal resolution under the following subparagraph H [now Subsection H of 5.7.25.10 NMAC], or notice of submission of the request to the administrative hearing officer under the following subparagraph I [now Subsection I of 5.7.25.10 NMAC].

G. Rejection of request for administrative review: The LSR shall review the appellant's request for administrative review to determine if the request specifies an allowable ground for review as provided in the foregoing subparagraph D [now Subsection D of 5.7.25.10 NMAC]. If the appellant has failed to specify an allowable ground for review, the LSR will prepare and send to the appellant a notice that the request has been rejected for such failure. The LSR will file a copy of this notice in the debtor's loan file. A request for administrative review which has been rejected shall be treated as if no request had been submitted.

H. Informal resolution by LSR: If the request for administrative review specifies an allowable ground for review, the LSR shall check for possible error and attempt to resolve the request prior to formal hearing, as follows:

(1) Resolution prior to transfer of the refund to the foundation:

(a) Certified judgment balance incorrect, no judgment, or other arrangements to pay judgment: If, prior to transfer of the refund to the foundation, the LSR determines that the debtor owes nothing, that there is no judgment against debtor, or that the debtor has made other arrangements for payment of the judgment and is not in default, the LSR shall cause the debtor's name to be removed from the tax refund intercept list.

(b) Community property claim by spouse: If, prior to transfer of the refund to the foundation, the LSR determines that the debtor's spouse is entitled to all or part of the refund, the LSR must take steps to correct the amount.

(2) Resolution after transfer of the refund to the foundation:

(a) Improper offset against debtor's refund: If the LSR determines that an amount which has already been offset is improper because there is no judgment against the debtor, the judgment is paid in full, or the debtor has made other arrangements for payment of the judgment and is not in default, the LSR must take steps to refund the

amount to the debtor promptly. In cases of joint tax returns, the refund check should be made payable to both the debtor and spouse.

(b) Excess offset against debtor's refund: If the LSR determines that an amount which has been offset exceeds the amount of the debtor's unpaid judgement balance, the LSR must take steps to refund the excess amount to the debtor promptly. In cases of joint tax returns, the refund check should be made payable to both the debtor and spouse.

(c) Resolution of error-community property claim by spouse: If the LSR determines that the debtor's spouse is entitled to a share of the refund, the LSR must take steps to refund the proper share to the spouse. The refund check should be made payable solely to the spouse.

(3) Notice to appellant of informal resolution: In the event that the LSR determines that an error exists, the LSR shall send the appellant a notice acknowledging the determination of error and resolution. If the foundation's action fully resolves the request for administrative review in favor of the appellant, the notice shall state that the informal resolution shall be a final resolution of the request unless the appellant requests further review within 15 days of the date of this notice.

(4) No determination of error or determination of error does not fully resolve appeal: If the LSR determines that no error has been made, or a determination of error does not fully resolve the appeal, the LSR must provide the appellant with information concerning the administrative review process. If any dispute remains between the foundation and the appellant at this point, the appellant must be advised that the dispute will be resolved by the administrative hearing officer.

I. Submission of hearing request to administrative hearing officer: When the appellant has specified an allowable ground for administrative review and the LSR makes a determination of no error, or a determination of error does not fully resolve the appeal and a dispute remains, the LSR shall transmit the appellant's hearing request to the administrative hearing officer together with such information as may be requested by the hearing officer.

[Recompiled 10/31/01]

#### **5.7.25.11 ADMINISTRATIVE HEARINGS:**

A. Purpose: The purpose of an administrative hearing is to provide the appellant with a fair and equal opportunity to be heard so that the administrative hearing officer may be completely informed in the matter and enabled to render a proper determination based on all the facts and applicable laws and rules. The burden of proof shall be on the appellant to prove by a preponderance of the evidence that the appellant is entitled to all or a portion of the tax refund.



B. Preliminary conference: Upon receipt of a request for an administrative hearing, the administrative hearing officer may schedule a preliminary conference, which may be conducted by telephone, at which the parties may:

- (1) identify all of the issues;
- (2) secure stipulation on those matters not in dispute;
- (3) identify witnesses to be called and the general subject matter of their testimony;
- (4) agree on procedures for exchange of information; and
- (5) set a date for the hearing.

C. Procedure:

(1) Conduct of hearings: The administrative hearing officer may conduct the hearing by telephone or may require the parties to appear at the foundation's business office. If a hearing is to be conducted by telephone, the administrative hearing officer will inform the parties of the required manner of identification and submission of exhibits. If the appellant or the appellant's authorized representative, without sufficient cause, fails to appear at a hearing, such failure may be treated as a withdrawal of the request for review and the administrative hearing officer may dismiss the request for review. If the foundation representative, without sufficient cause, fails to appear at the hearing, such failure may be treated as a default to the appellant. The administrative hearing officer in either case may adjourn the hearing to a future date or take such action as may be just and proper. All hearings will be conducted in as informal a manner as possible, provided that good order is maintained. The technical rules of evidence shall not apply. The administrative hearing officer may clear the room of witnesses not under examination and of any person who is disruptive. The administrative hearing officer shall consider all evidence, including affidavits, having reasonable probative value, but shall exclude immaterial, irrelevant or unduly cumulative testimony.

(2) Consolidation: When two or more requests for hearing are received involving a common question of law or fact arising out of the same or similar circumstances, the administrative hearing officer may consolidate them into one hearing.

(3) Waiver: In all cases the appellant's request for hearing must be postmarked or received within thirty (30) days of the date of the notice informing the debtor or spouse of the right to hearing. Failure of the debtor or spouse to request a hearing within the time required shall constitute a waiver of the right of hearing.

(4) Hearing Date: Hearings should be held within 60 days of the date the administrative hearing officer receives the request for hearing unless the administrative hearing officer determines there is good cause for a delay. The administrative hearing officer shall be responsible for providing timely notice of the hearing to the appellant and the foundation.

(5) Notice of time for decision: At the conclusion of the hearing, the administrative hearing officer must inform the parties that a decision will be made in thirty days.

D. Decision: The administrative hearing officer's determination of the validity and the amount of the offset asserted on the foundation's application for offset to a refund to which a debtor or spouse asserts entitlement in whole or in part shall be final. The administrative hearing officer should send or deliver a written decision to the parties within thirty days of the hearing date.

[Recompiled 10/31/01]

#### **5.7.25.12 FINAL DETERMINATION AND NOTICE OF OFFSET:**

A. Final determination: A final determination occurs:

- (1) when the administrative hearing officer makes his decision; or
- (2) if no request for hearing has been properly and timely submitted, thirty days following the date of the notice provided in accordance with the foregoing Section II [now 5.7.25.9 NMAC]; or
- (3) upon informal resolution of any dispute as provided in the foregoing Section III H [now Subsection H of 5.7.25.10 NMAC].

B. Refunds: Upon final determination of the entitlement of an appellant to any or all of that portion of a refund which has been transferred to the foundation, the foundation shall remit to the appellant from the suspense fund the amount determined to be due together with all such interest as is required by law to be paid and an appropriate accounting. A copy of the accounting shall be sent to TRD.

C. Remittances to the foundation: Upon final determination the foundation shall remit to itself from the suspense account that amount determined to be due the foundation or the educational institutions it services, as applicable and shall credit that amount against the debt. Upon such remittance the foundation shall notify the debtor in writing of the final determination of the offset. A copy of the notice shall be sent to TRD. The notice shall include:

- (1) a final accounting of the refund against which the debt was offset, including the amount of the refund to which the debtor was entitled prior to offset;

(2) the final determination of the amount of the debt that has been satisfied and the amount of the debt, if any, still due and owing; and

(3) the amount of the refund in excess of the debt finally determined to be due and owing and the amount of any interest due.

[Recompiled 10/31/01]

**5.7.25.13 CONFIDENTIALITY:**

The information obtained by the foundation from the TRD under the Tax Refund Intercept Program Act shall be confidential and shall be used by the foundation only in pursuit of the collection of a judgment debt on an educational loan under the act.

[Recompiled 10/31/01]

**5.7.25.14 EXHIBIT A:**

Because there is an outstanding educational loan judgment balance which has not been paid, your name has been referred to the New Mexico Taxation and Revenue Department for the collection of this obligation. Any tax refund to which you may be entitled may be retained in full or partial satisfaction of this obligation. This action involving the Taxation and Revenue Department is authorized by the Tax Refund Intercept Program Act, Laws 1985, Ch. 106 Sec. 1 et. Seq., as amended by Laws 1987, Ch. 125 Sec. 1 et. seq.

Our records shows \$ \_\_\_\_\_ total unpaid judgment balance, including principal, accrued interest, costs and attorney's fees as of \_\_\_\_\_, 19\_\_\_\_.

Case Number: Bernalillo County Court Case No.

CV\_\_\_\_\_

Judgment  
Creditor:

\_\_\_\_\_

Social Security  
No:  
Notice

Date of the

Refund Amount:

Applied to Judgment  
Balance:

\_\_\_\_\_

\_\_\_\_\_

HEARING REQUEST

If you disagree with this notice, you have the right to a hearing. In order for you to request a hearing, you must return this portion of the notice within 30 days from the date indicated on the notice, and you must indicate to the office below that you are requesting a hearing based on one or more of the following grounds: (1) [---] no judgment has been filed against me for an educational loan in the referenced case; (2) [---] the judgment filed against me in the referenced case has paid in full; (3) [---] the amount of the intercepted refund exceeds the unpaid balance of the judgment filed against me in the referenced case; (4) [---] the judgment creditor has agreed to accept other arrangements for payment of the judgment and I am not in default thereon. FAILURE TO APPLY FOR A HEARING WITHIN 30 DAYS OF THIS NOTICE SHALL BE DEEMED A WAIVER OF ANY CLAIM WITH RESPECT TO THE REFUND.

Your Telephone Number: \_\_\_\_\_ Best Time to Call  
\_\_\_\_\_

Send request for hearing to: NEW MEXICO EDUCATIONAL ASSISTANCE  
FOUNDATION

P.O. BOX 27020, ALBUQUERQUE, NM 87125-  
7020

TEL. (505) 345-3371

[Recompiled 10/31/01]

**5.7.25.15 EXHIBIT B:**

Because a judgment for an educational loan debt has been filed against your spouse, your name has been referred to the New Mexico State Taxation and Revenue Department for collection of this obligation. Any tax refund to which you may be entitled may be retained in full or partial satisfaction of this obligation. This action applies because you filed jointly for an income tax refund with a spouse who owes the obligation. No debt is claimed against you, however, and you may be entitled to receive all or part of the refund regardless of the claimed judgment balance against your spouse. This action involving the Taxation and Revenue Department is authorized by the Tax Refund Intercept Program Act, Laws 1985, Ch. 106 Sec. 1 et. seq., as amended by Laws 1987, Ch. 125, Sec. 1 et seq.

Our records show \$\_\_\_\_\_ total unpaid judgment balance, including principal, accrued interest, costs and attorney's fees as of \_\_\_\_\_, 19\_\_\_\_.

Case Number: Bernalillo County District Court Case  
No. CV\_\_\_\_\_

Judgment Creditor:

Social Security  
No.

Refund  
Amount:  
this Notice

Date of

Amount of refund to be Applied to Judgment  
Balance:

### HEARING REQUEST

If you disagree with this notice, you have a right to request a hearing. In order for you to request a hearing, you must return this portion of the notice within 30 days from the date indicated on the notice to the office below, and you must indicate that you are requesting a hearing based on the ground that:

[---] I am entitled to receive all or part of the refund regardless of the claimed judgment debt against my spouse based upon New Mexico Community Property Laws.

FAILURE TO APPLY FOR A HEARING WITHIN 30 DAYS SHALL BE DEEMED A  
WAIVER OF ANY CLAIM WITH RESPECT TO THE REFUND.

Social Security No:

Your Telephone Number:

Best Time to Call:

Send request for hearing to:                      New Mexico Educational Assistance Foundation  
P. O. Box 27020  
Albuquerque, New Mexico, 87125-7020  
Tel . (505) 345-3371.

[Recompiled 10/31/01]

## **PART 26: EDUCATIONAL LOAN PURCHASE PROGRAM REGULATIONS**

### **5.7.26.1      ISSUING AGENCY:**

New Mexico Educational Assistance Foundation.

[Recompiled 10/31/01]

**5.7.26.2 SCOPE:**

These regulations shall be of application to those activities of the foundation undertaken by it in connection with the program.

[Recompiled 10/31/01]

**5.7.26.3 STATUTORY AUTHORITY:**

**[RESERVED]**

[Recompiled 10/31/01]

**5.7.26.4 DURATION:**

Permanent.

[Recompiled 10/31/01]

**5.7.26.5 EFFECTIVE DATE:**

Filed November 29, 1993. The effective date of these regulations shall be September 23, 1993.

[Recompiled 10/31/01]

**5.7.26.6 OBJECTIVE:**

**[RESERVED]**

[Recompiled 10/31/01]

**5.7.26.7 DEFINITIONS:**

Terms:

A. "Bond" or "bonds" means any bond or all of the bonds issued under and at any time outstanding pursuant to the indenture.

B. "Certificate of insurance" means a certificate of federal loan insurance issued with respect to a student loan by the secretary of education pursuant to the provisions of the Higher Education Act.

C. "Contract of insurance" means the contract of federal loan insurance, dated February 12, 1982, between the foundation and the secretary of education, and any amendment thereof which is hereafter entered into.

D. "Educational Assistance Act" means Sections 21-21A1 to 21-21A-23 NMSA 1978, as amended from time to time.

E. "Eligible borrower" means a student, parent or other borrower who is eligible under the Higher Education Act to be the obligor of a loan for financing a program of post-secondary education.

F. "Eligible institution" means an "eligible institution" as defined under the Higher Education Act which is a "participating school" within the meaning of the Higher Education Act.

G. "Eligible loan" means a student loan which:

(1) has been or will be made to an eligible borrower for the post-secondary education of:

(a) a resident of the state attending a post-secondary school located within or without the state; or

(b) a resident of a state other than the state attending a post-secondary school located within the state;

(2) is either guaranteed or insured;

(3) is an "eligible loan" as defined in Section 438 of the Higher Education Act for purposes of receiving special allowance payments;

(4) bears interest at a rate per annum not less than or in excess of the applicable rate of interest provided by the Higher Education Act; and

(5) has not been tendered at any time to either the secretary of education or any guarantee agency, including the guarantee agency, for payment unless the situation giving rise to the tender has been cured.

H. "Eligible student" shall mean a student who is eligible under the Higher Education Act to receive a loan, which is insured or guaranteed, for financing a program of post-secondary education, including a student who is eligible under the Higher Education Act to be a student for whose benefit a PLUS/SLS loan is made.

I. "Federal reimbursement contracts" means the agreements, dated July 1, 1981, as amended and supplemented, between the guarantee agency and the secretary of education providing for the payment by the secretary of education of amounts authorized to be paid pursuant to the Higher Education Act, including (but not necessarily limited to) reimbursement of amounts paid or payable upon defaulted financed student loans and other student loans guaranteed or insured by the guarantee

agency and interest subsidy payments to holders of qualifying student loans guaranteed or insured by the guarantee agency.

J. "Financed", when used with respect to student loans, as of the date such student loans are included in the trust estate, student loans originated, acquired or refinanced by the foundation with moneys in the acquisition fund, eligible loans substituted for student loans which are not eligible loans pursuant hereto, and any eligible loans received in exchange for financed student loans upon the sale thereof in accordance with Section 402 hereof, but does not include student loans released from the lien of this indenture and sold, as permitted in this indenture, to any purchaser, including a trustee for the holders of the foundation's bonds, notes or other evidences of indebtedness.

K. "Fiscal year" means the fiscal year of the foundation as established from time to time.

L. "Foundation" means the New Mexico educational assistance foundation, a nonprofit corporation duly organized and existing under the laws of the state, and any successor to its functions relating to the program.

M. "Guarantee", or "guaranteed" means, with respect to a student loan, the insurance or guarantee by the guarantee agency of at least ninety-eight percent of the principal of and accrued interest on such student loan and the coverage of such student loan by the federal reimbursement contracts, providing, among other things, for reimbursement to the guarantee agency for losses incurred by it on defaulted financed student loans insured or guaranteed by the guarantee agency to the extent provided in the Higher Education Act.

N. "Guarantee agency" means the New Mexico student loan guarantee corporation, a nonprofit corporation duly organized and existing under the laws of the state, its successors and assigns.

O. "Guarantee agreement" means that certain educational loan guarantee agreement, dated as of August 18, 1981, between the foundation and the guarantee agency, including any supplement thereto or amendment thereof entered into in accordance with the provisions thereof and hereof.

P. "Guarantee fund" means the guarantee fund established in accordance with the guarantee agreement.

Q. "Guarantee program" means the guarantee agency's student loan insurance program pursuant to which the guarantee agency guarantees or insures student loans.

R. "Higher Education Act" means the Higher Education Act of 1965, as amended or supplemented from time to time, and all regulations promulgated thereunder.



S. "Indenture" means the trust indenture, dated as of September 1, 1993, between the foundation and the first national bank of Santa Fe as trustee and each supplemental indenture entered into in accordance with the terms of the indenture.

T. "Insurance" or "insured" or "insuring" means, with respect to a student loan, the insuring by the secretary of education (as evidenced by a certificate of insurance or other document or certification issued under the provisions of the Higher Education Act) under the Higher Education Act of one hundred percent of the principal of and accrued interest on such student loan.

U. "Insured loan" means a student loan which is insured.

V. "Lender" means any "eligible lender" as defined in the Higher Education Act and the loan purchase regulations, permitted to participate as a seller of student loans to the foundation under the program and which has received an eligible lender designation from the secretary of education with respect to insured loans or from the guarantee agency with respect to guaranteed loans.

W. "Loan purchase agreement" or "educational loan purchase agreement" means an agreement between the foundation and a lender providing for the sale by the lender to the foundation of eligible loans under the program.

X. "Loan purchase regulations" shall mean the rules and regulations of the foundation duly adopted by the board which pertain to the program.

Y. "PLUS/SLS loans" means a student loan made pursuant to Section 428A or Section 428B of the Higher Education Act as amended prior to October 7, 1986, which is the effective date of the higher education amendments of 1986.

Z. "Program" means the foundation's program for the origination of student loans and the acquisition of student loans from the state treasurer or from other lenders to increase the supply of moneys available for new student loans, thereby assisting students in obtaining a post-secondary school education.

AA. "Repurchase obligation" shall mean those obligations described in Section 8 [now 5.7.26.13 NMAC] hereof under the terms of which the lender is required to repurchase any student loan.

BB. "Residency" shall mean the maintenance of a place of abode within the state.

CC. "Secretary of education" means the commissioner of education, department of health, education and welfare of the United States, and the secretary of the United States department of education (who succeeded to the functions of the commissioner of education pursuant to the Department of Education Organization Act) ,

or any other officer, board, body, commission or agency succeeding to the functions thereof under the Higher Education Act.

DD. "Special allowance payments" means special allowance payments authorized to be made by the secretary of education by Section 438 of the Higher Education Act, or similar allowances authorized from time to time by federal law or regulation.

EE. "State" means the state of New Mexico.

FF. "Student loan" means a loan made to an eligible borrower for post-secondary education authorized to be made or acquired by the foundation pursuant to its articles of incorporation and the Educational Assistance Act.

GG. "Trustee" means the first national bank of Santa Fe and any successor under the indenture.

[Recompiled 10/31/01]

#### **5.7.26.8 LENDERS CERTIFICATION OF INTENT:**

A. For eligible loans originated prior to the date of a loan purchase agreement, and which are to be sold to the foundation pursuant to such loan purchase agreement, the lender must certify that the eligible loans were originated by lender with the reasonable expectation that such eligible loans would be acquired by the foundation and not with the intent that lender retain ownership of such eligible loans.

B. In fulfilling its obligations under paragraph 2.01 [now Subsection A of 5.7.26.8 NMAC] a lender shall:

(1) make available loan applications and other documentation, together with qualified loan personnel, at locations reasonably accessible to eligible borrowers, and

(2) undertake promotional activities to publicize the availability of student loans.

[Recompiled 10/31/01]

#### **5.7.26.9 PURCHASE OF NOTES OR BONDS:**

No eligible borrower or any related person thereto within the meaning of Section 144 (a) (3) of the Internal Revenue Code of 1986, as amended, shall purchase, pursuant to any arrangement, formal or informal, any notes, bonds or any other obligations of the foundation in an amount related to such eligible borrower's financed student loans.

[Recompiled 10/31/01]

#### **5.7.26.10      SERVICING OF LOANS:**

Student loans purchased by the foundation shall be serviced by the foundation or on behalf of the foundation by a servicer in accordance with such procedures as may be approved by the foundation from time to time.

[Recompiled 10/31/01]

#### **5.7.26.11      MAXIMUM STUDENT LOAN AMOUNTS:**

The maximum amount of student loans permitted for an eligible borrower shall be determined in accordance with the Higher Education Act.

[Recompiled 10/31/01]

#### **5.7.26.12      INFORMATION TO BE PROVIDED BY LENDERS TO ELIGIBLE BORROWERS:**

A. At the time a lender makes an eligible loan to an eligible borrower the lender shall provide thorough and accurate loan information to the eligible borrower as required by the Higher Education Act and the guarantee corporation, which shall include:

- (1) the yearly and cumulative maximum amounts that may be borrowed by an eligible borrower;
- (2) the terms on which repayment will begin;
- (3) the maximum number of years in which the eligible loan must be repaid;
- (4) the interest rate that will be repaid, and the maximum amount of required monthly payments;
- (5) any special options that an eligible borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the eligible loan;
- (6) a definition of default and the consequences to the eligible borrower if the eligible borrower should default, including a description of any arrangement made with credit bureau organizations; and
- (7) to the extent practicable, the effect of accepting the eligible loan on the eligibility of the eligible borrower for other forms of student assistance.

B. The foundation may refuse to purchase eligible loans not made in accordance with this requirement.

[Recompiled 10/31/01]

#### **5.7.26.13 REVISIONS IN REGULATIONS:**

These regulations shall be subject to amendment, modification and revision from time to time to conform the same to the provision of the Higher Education Act or for any other purpose. If any such amendment, modification or revision will materially adversely affect the rights of a lender pursuant to a loan purchase agreement which is then in effect or the rights of the holders of then outstanding bonds, such amendment, modification or revision will not be effective with regard to such loan purchase agreements or the holders of such bonds.

[Recompiled 10/31/01]

### **PART 27: NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION ALTERNATIVE LOAN FUND PROGRAM REGULATIONS**

#### **5.7.27.1 ISSUING AGENCY:**

New Mexico Educational Assistance Foundation.

[Recompiled 10/31/01]

#### **5.7.27.2 SCOPE:**

Scope of program regulations. These program rules are binding on alternative loan fund participants.

[Recompiled 10/31/01]

#### **5.7.27.3 STATUTORY AUTHORITY:**

**[RESERVED]**

[Recompiled 10/31/01]

#### **5.7.27.4 DURATION:**

Permanent.

[Recompiled 10/31/01]

#### **5.7.27.5 EFFECTIVE DATE:**

[Filed October 4, 1995]

[Recompiled 10/31/01]

#### **5.7.27.6 OBJECTIVE:**

**[RESERVED]**

[Recompiled 10/31/01]

#### **5.7.27.7 DEFINITIONS:**

A. Borrower. The individual who signs the promissory note, receives the proceeds of the loan, and is liable for repayment. A student who is either a credit-worthy individual or who obtains a credit-worthy individual as cosigner may be a borrower. A borrower maybe someone who is not a student but is a credit-worthy individual.

B. Citizen or permanent alien resident. A citizen of the United States or person who has been granted permanent alien resident status by the U.S. department of justice immigration and naturalization service.

C. Cosigner. A credit-worthy individual who signs the promissory note along with the borrower, but does not receive the proceeds of the loan. The cosigner is equally liable with the borrower for repayment of the loan. The cosigner is usually a parent of the student borrower, but can also be any credit-worthy individual willing to be liable for the loan.

D. Credit-worthy individual. An individual who meets the credit criteria established in Section Seven [now 5.7.27.13 NMAC].

E. Default. The failure to make payments on the loan when due, or to meet any of the other terms of the promissory note under circumstances where the lender finds it reasonable to conclude that the borrower, and/or cosigner no longer intend to honor the obligation to repay. Upon default, the outstanding loan balance will be accelerated with the total amount of principal and interest being immediately due and payable.

F. Disbursement. The transfer of funds to the borrower by means of a check payable to the order of the borrower.

G, Due Diligence. The utilization by the lender of the practices set forth in Section Three [now Section 5.7.27.9 NMAC] in the making, servicing, and collection of the loan.

H. Eligible school. A two-year (if located in New Mexico) or four-year public or non-profit collegiate or graduate degree granting educational institution which has been approved by the lender for participation in the NMALF program.

I. Enrolled. The status of a student who has completed the registration requirements at an eligible school, and has commenced attendance.

J. Estimated cost of attendance. As defined in the most current regulations promulgated under the Federal Higher Education Act of 1965, as amended.

K. Estimated financial assistance. The estimated amount of assistance a student has been or will be awarded in federal, state, or privately supported scholarship, grant, work study, or loan programs for the period of time for which the loan is sought.

L. Full-time student. An individual enrolled at an eligible school who is carrying a full-time academic workload as determined by the school, under standards applicable to all students enrolled in that individual's particular program. The individual's workload may include any combination of courses, work experience, research or special studies that the school considers sufficient to classify the student as a full-time student.

M. Half-time student. An individual enrolled in an eligible school who is carrying a workload as determined by an eligible school that is at least one half the workload of a full-time student.

N. Lender. The New Mexico educational assistance foundation is the lender in the NMALF program.

O. Loan. The amount of money lent to the borrower by the lender for the purpose of financing educational costs of a student at an eligible school.

P. New Mexico educational assistance foundation (NMEAF). A private, non-profit organization established to assist students and their families in financing post-secondary education. NMEAF is the lender, manager, and operator of the New Mexico alternative loan fund program (NMALF). NMEAF is an equal opportunity lender and does not discriminate on the basis of gender, race, color, national origin, religion, age, disability, sexual orientation, marital status or ancestry.

Q. Promissory note. The instrument used to evidence the loan.

R. Repayment period. The repayment period begins on the day the loan is disbursed and ends when the loan is paid in full. The repayment period is 60 to 120 months depending on the original amount of the loan and as otherwise set forth in the promissory note.

S. Student. A full-time student or a half-time student.

[Recompiled 10/31/01]

#### **5.7.27.8 GENERAL PROVISIONS:**

A. Program purpose: The New Mexico alternative loan fund program (NMALF) is an alternative loan program designed to supplement the educational financing needs of New Mexico students attending eligible schools, or out of state students attending New

Mexico eligible schools, and their parents. The loan funds are intended to pay for the estimated cost of attendance at eligible schools not met by estimated financial assistance.

B. Participants in the NMALF: Participants in the NMALF include:

- (1) lender which provides the funds for the loan and manages and operates the NMALF program;
- (2) students, borrowers, and credit-worthy individuals borrowing to assist students attending eligible schools;
- (3) eligible schools.

C. Repayment:

(1) The borrower and/or cosigner under the NMALF program are obligated to repay the lender the full amount borrowed, plus interest, late fees, and collection costs, if any. Interest begins to accrue on the day the loan is disbursed. The first payment of principal and interest is due within 60 days of the date the loan is disbursed. The lender may schedule the first payment to the first calendar day of the following month. The repayment period is set forth in Paragraph 1-18 [now Subsection R. of 5.7.27.7 NMAC].

(2) If the borrower is also the student, he/she has the choice to make interest only payments while in school, for up to four consecutive years. The interest only payments begin sixty days after the date of disbursement. The lender may schedule the first payment to the first calendar day of the following month. Payment of principal and interest begin sixty days after the student is no longer enrolled on at least a half-time basis at an eligible school, or at the end of the fourth year. If the student returns to school, he/she will still be obligated to make principal and interest payments as the interest only option is only available during the original in-school period.

(3) If the student to whom or on whose behalf the loan was made has not been or will not be enrolled or attending an eligible school after the loan is disbursed, the outstanding loan balance may be accelerated with the total amount of interest and principal being immediately due and payable.

(4) The obligation to repay the loan will not be cancelled in the event of the borrower's and/or the cosigner's death or total and permanent disability. The borrower, the borrower's estate, the cosigner, the cosigner's estate remain liable on the loan.

D. Interest rate: Each promissory note will bear a fixed or variable rate of interest to be established by the lender from time to time, and as otherwise set forth in the promissory note.

E. Fee payable upon origination. The lender will charge the borrower a five percent fee payable upon origination as a condition of making the loan. This fee will be paid out of the loan proceeds.

[Recompiled 10/31/01]

#### **5.7.27.9 THE PROGRAM:**

A. Minimum/maximum loan amounts. The annual loan limits apply to a twelve month period. Loans made under the NMALF program will have the following annual limits:

- (1) the minimum annual amount is \$1,500.00;
- (2) the maximum annual amount is the lesser of:

(a) the student's estimated cost of attendance for the loan period less the estimated financial assistance to be received for the loan period;

(b) the amount of allowable debt after a credit analysis is performed by the lender.

- (3) The lender reserves the right to limit the maximum amount borrowed.

B. Loan origination: NMALF loan applications are processed as follows:

(1) The student, borrower, and/or cosigner obtains a NMALF application. The student completes the student portion; the borrower completes the financial section; and if the borrower is not a credit-worthy individual, he/she is required to obtain a cosigner to complete the financial section.

(2) The application must be sent to the lender with the non-refundable application fee. Applications will be analyzed based on the credit criteria set forth in Section 7 [now 5.7.27.13 NMAC]. The granting of a loan will be at the sole discretion of the lender.

C. Disbursements: The lender will disburse NMALF loan proceeds net of the fee payable upon origination by a check payable to and sent directly to the borrower.

D. Repayment: Repayment shall be in accordance with Paragraph 2-3 [now Subsection C of 5.7.27.8 NMAC].

E. Due diligence: The lender shall exercise due diligence in the making, servicing, and collection of the loans, and shall utilize practices which are at least as stringent as those set forth herein.



- (1) Days past due: Action:
- (a) 10 days past due: reminder notice to borrower and cosigner
  - (b) 25 days past due: past due letter 1 to borrower and cosigner
  - (c) 31-60 days past due: phone call 2 attempts or 1 contact to borrower and cosigner
  - (d) 40 days past due: past due letter 2 to borrower and cosigner
  - (e) 55 days past due: past due letter 3 to borrower and cosigner
  - (f) 61-90 days past due: phone call 2 attempts or 1 contact to borrower and cosigner
  - (g) 70 days past due: past due letter 4 to borrower and cosigner
  - (h) 85 days past due: final demand letter to borrower and cosigner
  - (i) 100 or more days past due: initiation of legal action and/or claim on loan insurance.

(2) Failure to exercise due diligence does not affect the lender's right to collect the loan.

F. Insurance requirement: All loans must be insured by a private loan insurance policy issued by an insurance company acceptable to the lender or covered by NMEAF's self-insurance program.

[Recompiled 10/31/01]

#### **5.7.27.10 ELIGIBILITY:**

A. Student eligibility requirements: A student is eligible to be a borrower from the NMALF program if the student:

- (1) is enrolled as at least a half-time student at an eligible school; and
- (2) is a citizen or permanent alien resident of the United States; and
- (3) is a resident of the state of New Mexico if attending an eligible school outside the state of New Mexico, or if not a resident of the state of New Mexico is attending an eligible school in the state of New Mexico; and
- (4) has satisfied the NMALF program requirements; and

(5) is not a credit-worthy individual, secures a credit-worthy individual as a cosigner.

B. Credit-worthy individual eligibility requirements. A credit-worthy individual may be a borrower or cosigner if:

(1) the student meets the criteria set forth in Paragraph 4-1 (a)(b)(c)(d) [now Paragraphs (1), (2), (3) and (4), of Subsection A of 5.7.27.10 NMAC]; and

(2) the credit-worthy individual completes the financial section of the NMALF application, and satisfies, in the sole judgment of the lender, the credit requirements set forth in Section 7 [now 5.7.27.13 NMAC]; and

(3) is a citizen or permanent alien resident of the United States.

[Recompiled 10/31/01]

#### **5.7.27.11 PERMISSIBLE CHARGES:**

A. Application fee: A non-refundable application fee must accompany the NMALF application at the time it is submitted to the lender.

B. Fee payable upon origination: The lender will charge the borrower a five percent fee payable upon origination as a condition of making the loan. This fee will be paid out of the loan proceeds.

C. Interest:

(1) Accrual of Interest: Interest will accrue daily on the unpaid principal balance of the loan beginning on the date the loan is disbursed, and ending on the day the loan is paid in full. Disbursement takes place the day the check is mailed to the borrower.

(2) Interest Rate: Interest shall accrue at a fixed or variable rate of interest to be established by the lender from time to time, and as otherwise set forth in the promissory note.

D. Late charges: The lender will assess late charges against a borrower when payments are past due. The late charge will be the lesser of five percent of the installment payment, or \$5.00. The late charge will be assessed on any payment received ten days or more after the due date.

E. Collection and litigation expenses. The lender will assess attorney fees, and other reasonable and necessary costs of collection and litigation against a borrower who defaults.

F. Jurisdiction and venue. Borrower will consent to jurisdiction and venue in the state of New Mexico, county of Bernalillo for any litigation involving the NMALF program. The borrower and/or the cosigner waive the right to trial by jury for any litigation involving the NMALF program.

[Recompiled 10/31/01]

#### **5.7.27.12 MISCELLANEOUS:**

A. Amendments: These program regulations may be amended or revised by the lender from time to time.

B. Headings: The headings used in the NMALF program regulations are for convenience only.

[Recompiled 10/31/01]

#### **5.7.27.13 CREDIT CRITERIA:**

A. Debt to income test:

(1) The debt to income ratio shall not exceed forty percent.

(2) Debt is defined as all monthly installment, revolving credit, mortgage payments, or rent, and the anticipated monthly payment on the NMALF loan.

(3) Income is defined as the gross monthly income of the borrower or cosigner including salary, wages, interest, dividends, pensions, self-employment income (less expenses), commissions, and rental income. The documentation required to support the income must include at least one of the following:

(a) prior year's signed tax return;

(b) prior year's W-2/1099, etc.;

(c) signed employment contracts;

(d) letter from CPA;

(e) the last two pay periods paystub.

(4) If only one spouse applies for an NMALF loan as either a borrower and/or cosigner, but filed a joint tax return, there must be documentation to support the allocation of income for the spouse who has applied.

Employment can be verified by:

(a) a current paystub;

(b) telephone call to listed employer to verify employment.

B. Citizenship requirement: The borrower and/or cosigner must be a citizen or permanent alien resident of the United States. The lender will not obtain a foreign credit report.

C. Analysis of credit report: A minimum of one credit bureau report for each borrower and cosigner must be obtained.

(1) A responsible financial history pattern must be demonstrated in the credit report by:

(a) minimum two year credit history;

(b) no more than one retail account rated sixty days or more delinquent, or no more than one bank obligation rated thirty days or more delinquent;

(c) no more than two accounts can be rated sixty days or more delinquent during the past two years;

(d) no record of a charged off account during the past five years greater than \$100.00 per charge off unless there is written documentation demonstrating to the lender's satisfaction that the charge off has been paid in full;

(e) no record of foreclosure, repossession, open judgment, lawsuit, unpaid tax lien, or unpaid negative public record in the past seven years unless there is written documentation demonstrating to the lender's satisfaction that the obligation has been paid;

(f) no record of a bankruptcy in the past seven years. Exceptions may be granted where there is written documentation demonstrating the circumstances leading up to the bankruptcy were beyond the borrowers and/or cosigners control. Examples - large medical expenses; unemployment due to being laid off, etc.

(g) no record of any educational loans being delinquent or in default.

(2) If the borrower and/or cosigner provide the lender with written documentation that any of the delinquencies or negative credit information was either wrong or has been paid, that item will not be automatic grounds for denial of a loan. The lender will use reasonable judgment in determining if credit should be granted. The lender's decision to grant or deny a loan is final.

D. Assets to liabilities: Assets must be at least equal to one hundred percent of liabilities.

E. Personal/professional stability: Demonstrated by:

- (1) three years at current address; or
- (2) three years at past address; or
- (3) three years with current employer; or
- (4) three years with past employer; or
- (5) two years at current address if homeowner rather than renter.

[Recompiled 10/31/01]

## **PART 28: NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION ALTERNATIVE LOAN FUND PROGRAM REGULATIONS OF THE SELF- INSURANCE PROGRAM**

### **5.7.28.1 ISSUING AGENCY:**

New Mexico Educational Assistance Foundation.

[Recompiled 10/31/01]

### **5.7.28.2 SCOPE:**

**[RESERVED]**

[Recompiled 10/31/01]

### **5.7.28.3 STATUTORY AUTHORITY:**

**[RESERVED]**

[Recompiled 10/31/01]

### **5.7.28.4 DURATION:**

Permanent.

[Recompiled 10/31/01]

### **5.7.28.5 EFFECTIVE DATE:**

[Filed October 4, 1995]

[Recompiled 10/31/01]

**5.7.28.6 OBJECTIVE:**

The New Mexico educational assistance foundation ("NMEAF") has adopted program regulations ("program regulations") governing its alternative loan fund program ("program"). A requirement of the New Mexico Educational Assistance Act, Sections 21-21A-1 et seq. NMSA 1978 ("Act") is that student loans acquired with the proceeds of NMEAF revenue bonds be "insured," and the program regulations require that student loans made under the program be insured privately or through self-insurance. The purpose of these self-insurance regulations is to establish rules and regulations governing the NMEAF's self-insurance for the program.

[Recompiled 10/31/01]

**5.7.28.7 DEFINITIONS:**

**[RESERVED]**

[Recompiled 10/31/01]

**5.7.28.8 PROGRAM REGULATIONS:**

The program regulations set forth definitions, credit criteria, due diligence criteria in servicing and collecting the student loans made under the program and other provisions relating to the program, all of which are incorporated in these self-insurance regulations by reference.

[Recompiled 10/31/01]

**5.7.28.9 THE SELF-INSURANCE PROGRAM:**

A. Loan Insurance Fund: The NMEAF shall establish, under the trust indenture and any supplemental trust indenture relating to the issuance of bonds under the act to finance the program (the "indenture") a loan insurance fund into which shall be deposited, at the election of the NMEAF or as required by the terms of any indenture, NMEAF funds (which may be derived from bond proceeds if permitted by the indenture) and insurance premiums collected from the borrower or netted from the proceeds of the student loan made to a borrower under the program. The loan insurance fund, to the extent of moneys available therein, shall be used to pay the unpaid principal balance and accrued and unpaid interest thereon (the "claim amount") with respect to any student loan made under the program upon the happening of any of the following events:

(1) if after 18 months in litigation against the borrower and any co-signer, the borrower has not resumed making regularly scheduled payments;

(2) if the NMEAF determines that litigation is inappropriate with regard to a specific student loan, after the student loan has been delinquent for a period of 150 days;

(3) the debt is discharged as a result of the bankruptcy of the borrower and/or the co-signer.

B. Insurance Premium: A nonrefundable premium equal to five percent of the principal amount of any student loan made under the program will be paid into the loan insurance fund at the time of origination of the student loan.

C. Certificate of Insurance. A certificate of insurance, in the form attached as Appendix A [now 5.7.28.11 NMAC], will be delivered to the trustee acting under any indenture at the time of initial disbursement of any student loan under the program.

[Recompiled 10/31/01]

#### **5.7.28.10 AMENDMENTS:**

These self-insurance regulations may be amended or revised by the NMEAF from time to time.

[Recompiled 10/31/01]

#### **5.7.28.11 APPENDIX A:**

##### **CERTIFICATE OF INSURANCE:**

The undersigned officer of the New Mexico Educational Assistance Foundation (the "Foundation") hereby certifies that the Foundation has insured the following student loan under the Foundation's Self-Insurance Program:

Borrower: \_\_\_\_\_

Borrower Address: \_\_\_\_\_

\_\_\_\_\_

Loan No.: \_\_\_\_\_

Date: \_\_\_\_\_

Amount: \_\_\_\_\_

The undersigned further certifies that the requisite insurance premium relating to the student loan has been ordered to be deposited into the Insurance Loan Fund.

This Certificate is being delivered to Sunwest Bank of Albuquerque, National Association, as trustee, under the Foundation's Trust Indenture dated as of \_\_\_\_\_, 1995.

DATED: \_\_\_\_\_

NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

[Recompiled 10/31/01]

## **PART 29: EDUCATIONAL LOAN PURCHASE PROGRAM REGULATIONS**

### **5.7.29.1 ISSUING AGENCY:**

New Mexico Educational Assistance Foundation.

[Recompiled 10/31/01]

### **5.7.29.2 SCOPE:**

**[RESERVED]**

[Recompiled 10/31/01]

### **5.7.29.3 STATUTORY AUTHORITY:**

**[RESERVED]**

[Recompiled 10/31/01]

### **5.7.29.4 DURATION:**

Permanent.

[Recompiled 10/31/01]

### **5.7.29.5 EFFECTIVE DATE:**

[Filed November 27, 1995]

[Recompiled 10/31/01]



**5.7.29.6 OBJECTIVE:**

**[RESERVED]**

[Recompiled 10/31/01]

**5.7.29.7 DEFINITIONS:**

Terms:

A. "Bond" or "bonds" means any bond or all of the bonds issued under and at any time outstanding pursuant to the indenture.

B. "Certificate of insurance" means a certificate of federal loan insurance issued with respect to a student loan by the secretary of education pursuant to the provisions of the Higher Education Act.

C. "Contract of insurance" means the contract of federal loan insurance, dated February 12, 1982, between the foundation and the secretary of education, and any amendment thereof which is hereafter entered into.

D. "Educational Assistance Act" means Sections 21-21A-1 to 21-21A-23 NMSA 1978, as amended from time to time.

E. "Eligible borrower" means a student, parent or other borrower who is eligible under the Higher Education Act to be the obligor of a loan for financing a program of post-secondary education.

F. "Eligible institution" means an "eligible institution" as defined under the Higher Education Act which is a "participating school" within the meaning of the Higher Education Act.

G. "Eligible loan" means a student loan which:

(1) has been or will be made to an eligible borrower for the post-secondary education of

(a) a resident of the state attending a post-secondary school located within or without the state, or

(b) a resident of a state other than the state attending a post-secondary school located within the state;

(2) is either guaranteed or Insured;

(3) is an "eligible loan" as defined in Section 438 of the Higher Education Act for purposes of receiving special allowance payments;

(4) bears interest at a rate per annum not less than or in excess of the applicable rate of interest provided by the Higher Education Act and

(5) has not been tendered at any time to either the secretary of education or any guarantee agency, including the guarantee agency, for payment unless the situation giving rise to the tender has been cured.

H. "Eligible student" shall mean a student who is eligible under the Higher Education Act to receive a loan, which is insured or guaranteed, for financing a program of post-secondary education, including a student who is eligible under the Higher Education Act to be a student for whose benefit a PLUS/SLS loan is made.

I. "Federal reimbursement contracts" means the agreements, dated July 1, 1981, as amended and supplemented, between the guarantee agency and the secretary of education providing for the payment by the secretary of education of amounts authorized to be paid pursuant to the Higher Education Act, including (but not necessarily limited to) reimbursement of amounts paid or payable upon defaulted financed student loans and other student loans guaranteed or insured by the guarantee agency and interest subsidy payments to holders of qualifying student loans. guaranteed or insured by the guarantee agency.

J. "Financed", when used with respect to student loans, as of the date such student loans are included in the trust estate, student loans originated, acquired or refinanced by the foundation with moneys in the acquisition fund, eligible loans substituted for student loans which are not eligible loans pursuant hereto, and any eligible loans received in exchange for financed student loans upon the sale thereof in accordance with Section 402 hereof, but does not include student loans released from the lien of this indenture and sold, as permitted in this indenture, to any purchaser, including a trustee for the holders of the foundation's bonds, notes or other evidences of indebtedness.

K. "Fiscal year" means the fiscal year of the foundation as established from time to time.

L. "Foundation" means the New Mexico educational assistance foundation, a nonprofit corporation duly organized and existing under the laws of the state, and any successor to its functions relating to the program.

M. "Guarantee" or "guaranteed" means, with respect to a student loan, the insurance or guarantee by the guarantee agency of at least ninety-eight percent of the principal of and accrued interest on such student loan (or such lower percentage as set forth in the current cash flow certificate and cash flows) and the coverage of such student loan by the federal reimbursement contracts, providing, among other things, for

reimbursement to the guarantee agency for losses incurred by it on defaulted financed student loans insured or guaranteed by the guarantee agency to the extent provided in the Higher Education Act.

N. "Guarantee agency" means the New Mexico student loan guarantee corporation, a nonprofit corporation duly organized and existing under the laws of the state, its successors and assigns.

O. "Guarantee agreement" means that certain educational loan guarantee agreement, dated as of August 18, 1981, between the foundation and the guarantee agency, including any supplement thereto or amendment thereof entered into in accordance with the provisions thereof and hereof.

P. "Guarantee fund" means the guarantee fund established in accordance with the guarantee agreement.

Q. "Guarantee program" means the guarantee agency's student loan insurance program pursuant to which the guarantee agency guarantees or insures student loans.

R. "Higher Education Act" means the Higher Education Act of 1965, as amended or supplemented from time to time, and all regulations promulgated thereunder.

S. "Indenture" means the trust indenture, dated as of November 1, 1995 between the foundation and the first security bank of New Mexico as trustee as supplemented by the first supplemental trust indenture dated as of November 1, 1995 and each supplemental indenture entered into in accordance with the terms of the indenture.

T. "Insurance" or "insured" or "insuring" means, with respect to a student loan, the insuring by the secretary of education (as evidenced by a certificate of insurance or other document or certification issued under the provisions of the Higher Education Act) under the Higher Education Act of one hundred percent of the principal of and accrued interest on such student loan.

U. "Insured loan" means a student loan which is insured.

V. "Lender" means any "eligible lender" as defined in the Higher Education Act and the loan purchase regulations, permitted to participate as a seller of student loans to the foundation under the program and which has received an eligible lender designation from the secretary of education with respect to insured loans or from the guarantee agency with respect to guaranteed loans.

W. "Loan purchase agreement" or "educational loan purchase agreement" means an agreement between the foundation and a lender providing for the sale by the lender to the foundation of eligible loans under the program.

X. "Loan purchase regulations" shall mean the rules and regulations of the foundation duly adopted by the board which pertain to the program.

Y. "PLUS/SLS loans" means a student loan made pursuant to Section 428A or Section 428B of the Higher Education Act as amended prior to October 17, 1986, which is the effective date of the higher education amendments of 1986.

Z. "Program" means the foundation's program for the origination of student loans and the acquisition of student loans from the state treasurer or from other lenders to increase the supply of moneys available for new student loans, thereby assisting students in obtaining a post-secondary school education.

AA. "Repurchase obligation" shall mean those obligations described in the educational loan purchase agreements under the terms of which the lender is required to repurchase any student loan.

BB. "Residency" shall mean the maintenance of a place of abode within the state.

CC. "Secretary of education" means the commissioner of education, department of health, education and welfare of the United States, and the secretary of the United States department of education (who succeeded to the functions of the commissioner of education pursuant to the Department of Education Organization Act), or any other officer, board, body, commission or agency succeeding to the functions thereof under the Higher Education Act.

DD. "Special allowance payments" means special allowance payments authorized to be made by the secretary of education by Section 438 of the Higher Education Act, or similar allowances authorized from time to time by federal law or regulation.

EE. "State" means the state of New Mexico.

FF. "Student loan" means a loan made to an eligible borrower for post-secondary education authorized to be made or acquired by the foundation pursuant to its articles of incorporation and the Educational Assistance Act.

GG. "Trustee" means first security bank of New Mexico, N.A. and any successor under the indenture.

[Recompiled 10/31/01]

#### **5.7.29.8 LENDERS CERTIFICATION OF INTENT:**

A. For eligible loans originated prior to the date of a loan purchase agreement, and which are to be sold to the foundation pursuant to such loan purchase agreement, the

lender must certify that the eligible loans were originated by lender with the reasonable expectation that such eligible loans would be acquired by the foundation and not with the intent that lender retain ownership of such eligible loans.

B. In fulfilling its obligations under paragraph 2.01 [now Subsection A of 5.7.29.8] NMAC a lender shall:

(1) make available loan applications and other documentation, together with qualified loan personnel, at locations reasonably accessible to eligible borrowers, and

(2) undertake promotional activities to publicize the availability of student loans.

[Recompiled 10/31/01]

#### **5.7.29.9 PURCHASE OF NOTES OR BONDS:**

No eligible borrower or any related person thereto within the meaning of Section 144 (a) (3) of the Internal Revenue Code of 1986, as amended, shall purchase, pursuant to any arrangement, formal or informal, any notes, bonds or any other obligations of the foundation in an amount related to such eligible borrower's financed student loans.

[Recompiled 10/31/01]

#### **5.7.29.10 SERVICING OF LOANS:**

Student loans purchased by the foundation shall be serviced by the foundation or on behalf of the foundation by a servicer in accordance with such procedures as may be approved by the foundation from time to time.

[Recompiled 10/31/01]

#### **5.7.29.11 MAXIMUM STUDENT LOAN AMOUNTS:**

The maximum amount of student loans permitted for an eligible borrower shall be determined in accordance with the Higher Education Act.

[Recompiled 10/31/01]

#### **5.7.29.12 INFORMATION TO BE PROVIDED BY LENDERS TO ELIGIBLE BORROWERS:**

At the time a lender makes an eligible loan to an eligible borrower the lender shall provide thorough and accurate loan information to the eligible borrower as required by the Higher Education Act and the guarantee corporation, which shall include:

A. the yearly and cumulative maximum amounts that may be borrowed by an eligible borrower;

B. the terms on which repayment will begin;

C. the maximum number of years in which the eligible loan must be repaid;

D. the interest rate that will be repaid, and the maximum amount of required monthly payments;

[Recompiled 10/31/01]

## **PART 30: EDUCATION TRUST BOARD AND COLLEGE SAVINGS PROGRAM**

### **5.7.30.1 ISSUING AGENCY:**

Education Trust Board, State of New Mexico.

[5.7.30.1 NMAC - Rp, 5.7.30.1 NMAC, 10/31/2017]

### **5.7.30.2 SCOPE:**

Provisions for 5.7.30 NMAC apply to the Education Trust Board and the college savings program

[5.7.30.2 NMAC - Rp, 5.7.30.2 NMAC, 10/31/2017]

### **5.7.30.3 STATUTORY AUTHORITY:**

Sections 21-21K-1 through 21-21K-7 NMSA 1978

[5.7.30.3 NMAC - Rp, 5.7.30.3 NMAC, 10/31/2017]

### **5.7.30.4 DURATION:**

Permanent

[5.7.30.4 NMAC - Rp, 5.7.30.4 NMAC, 10/31/2017]

### **5.7.30.5 EFFECTIVE DATE:**

October 15, 2017

[5.7.30.5 NMAC - Rp, 5.7.30.5 NMAC, 10/31/2017]

#### **5.7.30.6 OBJECTIVE:**

The Education Trust Board is responsible for developing and administering a college savings program under the Education Trust Act in a manner that allows account owners and beneficiaries to obtain and maintain federal tax benefits or treatment provided by the Internal Revenue Code for qualified state tuition programs and exemptions under federal securities laws. The promulgation of these rules is intended to inform the public and provide an orderly procedure to accomplish the board's responsibilities as provided by law.

[5.7.30.6 NMAC - Rp, 5.7.30.6 NMAC, 10/31/2017]

#### **5.7.30.7 DEFINITIONS:**

The following terms shall have the following meanings in this rule:

- A. "Act"** means Section 21-21K-1 et seq. NMSA 1978.
- B. "Board"** means the education trust board of the state of New Mexico.
- C. "Chair"** means the chair of the board or any person acting under the delegated authority of the chair.
- D. "College investment agreement"** means an agreement between an account owner and the board providing for the establishment by the account owner of an account within the education trust fund and for the administration of such account for the benefit of the account owner and of the beneficiary.
- E. "College savings program"** means the college savings program administered by the board as described in and governed by the act and this rule, which may include one or more college savings plans.
- F. "Federal requirements"** means the provisions of the internal revenue code, as amended from time to time, for qualified state tuition programs, and includes any promulgated regulations, proposed regulations and any administrative or judicial rulings, if such are applicable in the opinion of the chair or board counsel.
- G. "Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended.
- H. "Members"** means the members of the education trust board of the state of New Mexico.
- I. "Program procedures and guidelines"** means such operating procedures and guidelines for administration of the college savings program, consistent with the act, this rule and federal requirements, as may be established by the board.

[5.7.30.7 NMAC - Rp, 5.7.30.7 NMAC, 10/31/2017]

**5.7.30.8 EXECUTIVE DIRECTOR AND ADMINISTRATION:**

**A.** The board shall select and hire an executive director, based upon a demonstrated history of relevant skills and abilities, whose responsibility it shall be to perform such duties as may be delegated by the board, including but not necessarily limited to the direction and oversight of the day-to-day administration of the education trust fund.

**B.** The executive director shall have the authority to act in the areas delegated to the executive director by the board.

**C.** The executive director shall select and supervise staff and contractors or consultants appointed or retained by the board, and shall perform such other functions as may be necessary to supervise, direct, conduct and administer the day-to-day duties of the board as authorized by law or by rules and policies adopted by the board.

[5.7.30.8 NMAC - Rp, 5.7.30.8 NMAC, 10/31/2017]

**5.7.30.9 COLLEGE SAVINGS PROGRAM:**

**A.** Account applications requirements:

(1) each applicant shall submit an application to the board or any agent or contractor designated by the board on such forms and with such attachments as the board may require;

(2) the application shall contain such information as the board may determine to be necessary or appropriate to evidence compliance with the federal requirements; and

(3) one person shall be designated as the beneficiary for each account.

**B.** College investment agreements:

(1) the board will enter into a college investment agreement with each account owner;

(2) the college investment agreement may include such information as the board may determine to be necessary or appropriate to evidence compliance with the federal requirements; and

(3) applications and college investment agreements may be submitted, accepted and become binding contracts by electronic means (including over the internet) as may be set forth in the program procedures and guidelines.



**C.** Participation in the college saving program is available to any individual or legal entity with a valid social security number or taxpayer identification number for the benefit of any individual with a valid social security number or tax identification number. Any contract entered into before the effective date of this regulation that does not allow for the use of taxpayer identification numbers must provide for the use of taxpayer identification numbers if renewed upon the expiration of the contract. Any new contract entered into after the effective date of this regulation must allow the use of taxpayer identification numbers.

**D.** Investment of account assets; limitations on contributions:

(1) no account owner or beneficiary may directly or indirectly direct the investment of any contributions or of any other amounts held in an account except as permitted under the federal requirements; however, at the time an account owner opens an account, an account owner may choose among any investment options offered by the board;

(2) contributions may be made at any time subject to any minimum deposit requirements established by the board; and

(3) total contributions to all accounts established under the college savings program which have the same beneficiary may not exceed the maximum amount as determined by the board in accordance with program procedures and guidelines and federal requirements.

**E.** Ownership of contributions and earnings; withdrawals:

(1) the account owner shall retain ownership and control of all contributions made to an account under any college investment agreement and earnings on those contributions while held in such account;

(2) only the account owner for each account may close an account and receive or direct a withdrawal of amounts contributed (and earnings);

(3) upon receipt of documentation required in accordance with program procedures and guidelines, the board will make distributions from an account as expressly directed by the account owner; and

(4) although the board will report the earnings portion of all withdrawals from an account, it will solely be the responsibility of the account owner to calculate, report and pay any resulting tax liability.

**F.** Fees and penalties:

(1) each college investment agreement may provide for payment to the board of an annual administrative fee based on amounts in the account accrued daily at an

annualized rate or as otherwise calculated and at a level as determined by the board, and such fees may be used by the board only for costs permitted by the act; and

**(2)** customary and usual investment costs (including fees and expenses of any fund in which account assets are invested) and distribution costs approved by the board may be deducted from an account in connection with the investment thereof and are not included in the administrative fee, and any customary and usual account maintenance fees approved by the board may also be deducted from accounts.

**G.** Waiver of rule. The board may waive any requirements of this rule, except to the extent that the requirement is mandated by the act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the college savings program.

[5.7.30.9 NMAC - Rp, 5.7.30.9 NMAC, 10/31/2017]

**5.7.30.10 CONTACT ENTITY INQUIRIES REGARDING THIS ISSUANCE SHOULD BE ADDRESSED TO:**

Education Trust Board, State of New Mexico, attention: Executive Director.

[5.7.30.10 NMAC - Rp, 5.7.30.10 NMAC, 10/31/2017]

**5.7.30.11 EXHIBITS:**

**[RESERVED]**

[5.7.30.11 NMAC - Rp, 5.7.30.12 NMAC, 10/31/2017]

**PART 31: PUBLIC SERVICE LAW LOAN REPAYMENT PROGRAM**

**5.7.31.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.31.1 NMAC - N, 12/31/2007]

**5.7.31.2 SCOPE:**

Provisions for 5.7.31 NMAC apply to certain practicing public law professionals in New Mexico.

[5.7.31.2 NMAC - N, 12/31/2007]

**5.7.31.3 STATUTORY AUTHORITY:**

Sections 21-22F-1 through 21-22F-11, NMSA 1978.

[5.7.31.3 NMAC - N, 12/31/2007]

**5.7.31.4 DURATION:**

Permanent.

[5.7.31.4 NMAC - N, 12/31/2007]

**5.7.31.5 EFFECTIVE DATE:**

December 31, 2007, unless a later date is cited at the end of a section.

[5.7.31.5 NMAC - N, 12/31/2007]

**5.7.31.6 OBJECTIVE:**

The objective of the public service law loan repayment program is to improve access to the justice systems in New Mexico by increasing the number of attorneys in public service employment through a legal education loan repayment program.

[5.7.31.6 NMAC - N, 12/31/2007]

**5.7.31.7 DEFINITIONS:**

**A. "Department"** means the New Mexico higher education department.

**B. "Committee"** means the public service law advisory committee.

**C. "Legal education"** means education at an American bar association accredited law school and any bar review preparation courses for the state bar examination.

**D. "Loan"** means money allocated to defray the costs incidental to a legal education under a contract between the federal government or a commercial lender and a law school student, requiring either repayment of principal and interest or repayment in services.

**E. "Participating attorney"** means an attorney who receives a loan repayment award from the department pursuant to the provisions of the public service law loan repayment program.

**F. "Public service employment"** means employment with:

(1) an organization that is exempt from taxation pursuant to Section 501 (c) (3) of Title 26 of the United States Code and that provides for the care and maintenance of indigent persons in New Mexico through civil legal services;

(2) the public defender department; or

(3) a New Mexico district attorney's office.

[5.7.31.7 NMAC - N, 12/31/2007; A, 7/24/2018]

#### **5.7.31.8 HIGHER EDUCATION DEPARTMENT - POWERS AND DUTIES:**

**A.** The department may:

(1) grant an award to repay loans obtained for legal education expenses of a participating attorney as consideration and inducement to the attorney to engage in public service employment; and

(2) delegate to other agencies or contract for the performance of services required by the provisions of the public service law repayment program.

**B.** The department shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a participating attorney in the public service law loan repayment program.

[5.7.31.8 NMAC - N, 12/31/2007]

#### **5.7.31.9 LOAN REPAYMENT PROGRAM ELIGIBILITY AND AWARD CRITERIA:**

**A.** An applicant shall be licensed to practice in New Mexico as an attorney and shall declare intent to practice as an attorney in public service employment.

**B.** Prior to submitting an application to the public service law loan repayment program, an applicant shall apply to all available legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies.

**C.** An applicant who intends to practice as an attorney in a public service employment position in which the annual salary exceeds an amount to be determined by the department is not eligible for participation.

**D.** Prior to receiving a loan repayment award, the applicant shall file with the department:

(1) a declaration of intent to practice as an attorney in public service employment;

(2) proof of prior application to all legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies; and

(3) documentation that includes the applicant's total legal education debt, salary, any amounts received by the applicant from other law loan repayment programs and other sources of income deemed by the department as appropriate for consideration; provided that the applicant shall not be required to disclose amounts of income from military service.

**E. Award criteria shall provide that:**

(1) preference in making awards shall be to applicants who:

(a) have the greatest financial need based on legal education indebtedness and salary;

(b) work in public service employment that has the lowest salaries;

(c) work in public service employment in underserved areas of New Mexico that are in greatest need of attorneys practicing in public service employment; and

(d) have graduated from the university of New Mexico school of law.

(2) an applicant's employment as an attorney in public service employment prior to participation in the public service law loan repayment program shall not count as time spent toward the minimum three-year period of service requirement pursuant to the contract between the participating attorney and the department acting on behalf of the state;

(3) award amounts are dependent upon the applicant's total legal education debt, salary and other sources of income, other than income from military service, deemed by the department as appropriate for consideration;

(4) award amounts may be modified based upon available funding or other special circumstances;

(5) an award shall not exceed the total legal education debt of any participant; and

(6) award amounts shall be reduced by the sum of the total award amounts received by the participant from other legal education loan repayments programs.

**F. The following legal education debts are not eligible for repayment pursuant to the public service law loan repayment program:**

(1) amounts incurred as a result of participation in state or law school loan-for-service programs or other state or law school programs whose purposes state that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from relatives or friends; and

(4) loans that exceed individual standard school expense levels;

(5) an award determination may be appealed to the secretary of higher education.

[5.7.31.9 NMAC - N, 12/31/2007; A, 5/30/2008; A, 10/31/2013; A, 7/24/2018; A, 6/25/2024]

#### **5.7.31.10 LOAN REPAYMENT CONTRACT TERMS:**

**A.** The loan repayment award shall be evidenced by a contract between the participating attorney and the department acting on behalf of the state. The contract shall state the amount of the award and the obligations of the participating attorney under the public service law loan repayment program, including a minimum three-year period of service, quarterly reporting requirements and other policies established by the department.

**B.** A participating attorney shall serve a complete year in order to receive credit for that year. The credit for a year shall be established by the department but shall not exceed seven thousand two hundred dollars (\$7,200).

(1) Payments are made quarterly during each year of service.

(2) The advisory committee will conduct an annual review of eligibility for every participant. If participant becomes ineligible, future payments may be terminated.

(3) Once a full year (12 months) of service is completed, no penalty which might thereafter be imposed would be assessed with respect to the credit amount satisfied by that year of completed service.

(4) Once two years of service is completed, no penalty which might thereafter be imposed would be assessed with respect to the credit amounts satisfied by those two years of completed service.

**C.** If a participating attorney does not comply with the terms of the contract, the department shall require immediate repayment of the award plus eighteen percent interest and may assess a penalty of up to three times the amount of award disbursed, unless the department finds acceptable extenuating circumstances for why the

participating attorney cannot serve or comply with the terms of the contract. If the department does not find acceptable extenuating circumstances for the participating attorney's failure to comply with the contract, the department shall require immediate repayment of the award plus the amount of the penalty.

**D.** The department, in consultation with the committee, shall adopt rules to implement the provisions of this section.

[5.7.31.10 NMAC - N, 12/31/2007]

#### **5.7.31.11 CONTRACTS AND ENFORCEMENT:**

**A.** The general form of the contract required shall be prepared and approved by the attorney general and the department of finance and administration and signed by the participating attorney and by the cabinet secretary of the department or the cabinet secretary's designated representative on behalf of the state.

**B.** The department is vested with full and complete authority and power to sue in its own name for any balance due the state from any attorney on any such contract.

[5.7.31.11 NMAC - N, 12/31/2007]

#### **5.7.31.12 PUBLIC SERVICE LAW ADVISORY COMMITTEE:**

**A.** The "public service law advisory committee" is created to advise the department on matters relating to the administration of the public service loan repayment program.

**B.** The committee is composed of:

(1) the dean of the university of New Mexico law school or the dean's designee;

(2) the executive director of New Mexico legal aid or the director's designee who shall be an attorney employed with an organization that is exempt from taxation pursuant to Section 501 (c) (3) of Title 26 of the United States Code and that provides civil legal services to indigent persons in New Mexico;

(3) the chief public defender or the chief's designee;

(4) a district attorney appointed by the New Mexico district attorney's association; and

(5) a financial aid or career services officer of the university of New Mexico law school designated by the dean.

**C.** The committee shall:

(1) make recommendations to the department on applicants for the public service law loan repayment program;

(2) advise the department on the adoption of rules to implement the provisions of the public service law loan repayment program; and

(3) give advice or other assistance to the department as requested.

[5.7.31.12 NMAC - N, 12/31/2007]

#### **5.7.31.13 CANCELLATION:**

The department may cancel any contract made between it and any participating attorney for any reasonable cause deemed sufficient by the department.

[5.7.31.13 NMAC - N, 12/31/2007]

#### **5.7.31.14 REPORTS:**

The department shall make an annual report to the governor and the legislature, prior to each regular session, of its activities, including the loan repayment awards granted, the names and addresses of participating attorneys and their employers who are in public service employment pursuant to the public service law loan repayment program and the names of participating attorneys who are not employed in public service employment, the reason they are not employed in public service employment and the amounts owed and paid on loans and loan repayment awards.

[5.7.31.14 NMAC - N, 12/31/2007]

### **PART 32: NURSE EDUCATOR LOAN-FOR-SERVICE PROGRAM**

#### **5.7.32.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.32.1 NMAC - N, 1/15/2008]

#### **5.7.32.2 SCOPE:**

Provisions of 5.7.32 NMAC apply to New Mexico residents that are selected to participate in Nurse Educator loan-for-service program described in this rule.

[5.7.32.2 NMAC - N, 1/15/2008]

#### **5.7.32.3 STATUTORY AUTHORITY:**



Sections 21-1-27.7, NMSA 1978.

[5.7.32.3 NMAC - N, 1/15/2008]

**5.7.32.4 DURATION:**

Permanent.

[5.7.32.4 NMAC - N, 1/15/2008]

**5.7.32.5 EFFECTIVE DATE:**

January 15, 2008, unless a later date is cited at the end of a section.

[5.7.32.5 NMAC - N, 1/15/2008]

**5.7.32.6 OBJECTIVE:**

The objective and purpose of the New Mexico nurse educator loan-for-service program is to enhance the ability of current and future nursing educators to obtain bachelor's of science, master's of science and doctoral philosophy degrees.

[5.7.32.6 NMAC - N, 1/15/2008; A, 7/15/2015]

**5.7.32.7 DEFINITIONS:**

**A. "Department"** means the New Mexico higher education department.

**B. "Committee"** means the health professions advisory committee of the department.

**C. "Loan"** means a grant of funds to defray the costs incidental to a nursing education, under a contract between the department and a student, requiring repayment with services or repayment of principal and interest and any fees.

**D. "Student"** means an individual who is a resident of New Mexico and is degree seeking and enrolled in at least three (3) credit hours in a nurse education program at a New Mexico public college or university.

**E. "Service"** means employment in a nurse faculty position at a New Mexico college or university.

**F. "Extenuating circumstances"** means circumstances not within the control of the recipient.

**G. "Eligible institution"** means any New Mexico public, post-secondary institution.

[5.7.32.7 NMAC - N, 1/15/2008]

**5.7.32.8 HEALTH PROFESSION ADVISORY COMMITTEE:**

The health profession advisory committee is created to advise the department on matters relating to the administration of the nurse educator loan-for-service program.

**A.** The committee shall be appointed by the department pursuant to policies and procedures of the department and shall be composed of:

- (1) a representative of the department of health;
- (2) a representative of the New Mexico health policy commission;
- (3) representatives of public post-secondary health and medical training programs;
- (4) representatives of recruiting and placement organizations;
- (5) representatives of professional health and medical associations; and
- (6) other representatives as appointed by the department.

**B.** The responsibilities of the committee shall include:

- (1) make recommendations to the department on applicants for the nurse educator loan-for-service program; and
- (2) give advice or other assistance to the department as requested.

[5.7.32.8 NMAC - N, 1/15/2008]

**5.7.32.9 STUDENT ELIGIBILITY:**

To be eligible for this program, a student must:

- A.** be a New Mexico resident;
- B.** be a citizen of the United States, or a permanent eligible non-citizen;
- C.** be accepted by a public post-secondary institution into a degree granting, nursing education program necessary to enhance or gain employment in a nursing faculty position at a New Mexico public post-secondary institution;
- D.** be enrolled in at least three (3) credit hours at the time the loan is awarded and disbursed; and

E. be currently practicing or declare an intent to practice as a nurse educator at an eligible institution.

[5.7.32.9 NMAC - N, 1/15/2008]

#### **5.7.32.10 SELECTION OF LOAN RECIPIENTS:**

Selection shall be based on the following considerations and preferences:

A. the ability, character, and qualifications of each applicant including a review of the individual's complete application; and

B. the demonstrated interest of the applicant in serving in a nursing faculty position.

[5.7.32.10 NMAC - N, 1/15/2008]

#### **5.7.32.11 RESPONSIBILITIES OF THE DEPARTMENT:**

The department shall be responsible for:

A. developing program guidelines;

B. advertising the program;

C. processing applications, and presenting a list of eligible candidates to the committee;

D. administering the loans, including:

(1) disbursing funds;

(2) keeping records on borrowers and processing of contracts;

(3) administration of and record keeping of loan repayments;

(4) record keeping of location and time of service of student loan recipients;  
and

(5) verification of qualification for forgiveness for service.

[5.7.32.11 NMAC - N, 1/15/2008]

#### **5.7.32.12 LOANS:**

Loans can be made to students to defray expenses incurred while obtaining eligible degree under the following conditions and limitations:

**A.** The amount may not exceed seven thousand five hundred dollars \$7,500 per academic year. The department may set lower maximum award amounts based on the level of degree being obtained and other considerations.

**B.** Upon approval of the loan, a contract shall be drawn between the student and the department and signed by the student (for additional contract details see 5.7.32.14 NMAC).

[5.7.32.12 NMAC - N, 1/15/2008; A, 7/15/2015]

### **5.7.32.13 LOAN REPAYMENT AND FORGIVENESS:**

All loans shall be repaid to the state together with interest or forgiven according to the following.

**A.** If a loan recipient fails to fulfill or is unable to commence their service obligation, the loan shall become due with interest at seven percent (7%) per year. The department, in consultation with the student, shall establish terms of repayment, alternative service, or cancellation terms.

**B.** Interest will only begin to accrue if loan recipient ceases employment or fails to complete the degree program as a nurse educator prior to completing their service obligation.

**C.** If the borrower teaches as a nursing faculty at an eligible institution, loan principal may be forgiven according to the following formula.

**(1)** Loan terms less than one (1) academic year shall require one (1) academic year of practice as a nurse educator. Upon completion of first year of service, one hundred percent (100%) of the principal shall be forgiven.

**(2)** Loan terms of two (2) academic years shall require two (2) academic years of practice as a nurse educator at an eligible institution. Upon completion of the first year of service, fifty percent (50%) of the principal shall be forgiven. Upon completion of the second year of service, the remainder of the principal shall be forgiven.

**(3)** Loan terms of three (3) academic years or more shall require three (3) years of practice as a nurse educator at an eligible institution. Forty percent (40%) of the principal shall be forgiven upon completion of the first year of service as a nurse educator, thirty percent (30%) of the principal shall be forgiven upon completion of the second year of service, and the remainder of the principal shall be forgiven upon completion of the third year of service.

**D.** Recipients must serve a complete academic year of service in order to receive credit for that year. Service as a nurse educator while attending college courses will be credited toward the service obligation.

**E.** Subject to applicable statutory limitations, the department may extend or modify the foregoing repayment periods for good cause.

**F.** In the event it becomes necessary, the department may suspend or defer loan payments using the following provisions. The borrower must submit a written request accompanied by a financial statement and a consent-waiver for authorization for current employment and address information concerning the borrower, and any other information as requested.

**(1)** If the borrower is willing, but financially unable to make payments under the repayment schedule, the borrower may request forbearance for a period not to exceed six (6) months. Interest will accrue during this period.

**(2)** The borrower may request deferment of payment obligation for a period not to exceed three (3) years for any purpose deemed acceptable by the department.

**G.** Loans may be prepaid at any time. Payment on a loan not in repayment status may be made in any amount. Payments on a matured promissory note shall be in the amounts of and be applied on the principal installments due on such note in the inverse order of the maturities of such installments, unless otherwise agreed.

**H.** Authorized charges and fees:

**(1)** Late charges: Borrower may be charged a late charge in the amount of five percent (5%) of the installment payment or five dollars (\$5.00), whichever is less, on any payment made later than ten (10) days after it is due.

**(2)** Attorney's fees, other charges, and costs: Borrower shall agree to pay all reasonable attorney's fees, and other costs and charges necessary for the collection of any loan amount not paid when due.

**I.** Borrower has the responsibility to notify the department in advance of any change of address and of any action which necessitates reconsideration of a promissory note.

[5.7.32.13 NMAC - N, 1/15/2008; A, 7/15/2015]

#### **5.7.32.14 CONTRACTS:**

A contract shall be drawn between each student receiving a loan and the department on behalf of the state of New Mexico. The contract shall:

**A.** provide for the payment by the department of a specified sum as determined in 5.7.32.13 NMAC;

**B.** state that interest will only begin to accrue if loan recipient ceases employment as a nurse educator prior to fulfilling service obligation;

**C.** state the conditions of repayment or forgiveness as detailed in 5.7.32.13 NMAC;

**D.** state the legal responsibilities of the borrower and that delinquent loans shall be referred to the department for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

**E.** state that the borrower's obligations of the contract with the department shall be binding on borrower's estate;

**F.** state that the department may cancel any contract on thirty (30) days written notice for any reasonable and sufficient cause;

**G.** state that in the event the borrower fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the department, become immediately due and payable; and

**H.** state that jurisdiction and venue shall be proper in Santa Fe county, New Mexico for purposes of any suit to enforce the contract.

[5.7.32.14 NMAC - N, 1/15/2008]

## **PART 33: TAX REFUND INTERCEPT BY NEW MEXICO HIGHER EDUCATION DEPARTMENT**

### **5.7.33.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.7.33.1 NMAC, N, 10/31/2017]

### **5.7.33.2 SCOPE:**

**[RESERVED]**

[5.7.33.2 NMAC, N, 10/31/2017]

### **5.7.33.3 STATUTORY AUTHORITY:**

Sections 7-2C-1 through 7-2C-13 NMSA 1978.

[5.7.33.3 NMAC, N, 10/31/2017]

**5.7.33.4 DURATION:**

Permanent.

[5.7.33.4 NMAC, N, 10/31/2017]

**5.7.33.5 EFFECTIVE DATE:**

October 31, 2017

[5.7.33.5 NMAC, N, 10/31/2017]

**5.7.33.6 OBJECTIVE:**

Subject to the limitations contained in the Tax Refund Intercept Program Act, the taxation and revenue department, upon request from the New Mexico higher education department, shall render assistance in collection of education debt originated and owned by the New Mexico higher education department.

[5.7.33.6 NMAC, N, 10/31/2017]

**5.7.33.7 DEFINITIONS:**

**A. "Appellant"** means the person submitting a request for administrative review whose tax refund has been offset, or his or her spouse, in the administrative review process.

**B. "Debtor"** means the person against whom an educational loan judgment has been obtained as a result of debt owned and originated by the New Mexico higher education department.

**C. "Department"** means the New Mexico higher education department.

**D. "TRD"** means the New Mexico taxation and revenue department.

[5.7.33.7 NMAC, N, 10/31/2017]

**5.7.33.8 SUBMITTING REQUESTS TO THE TAXATION AND REVENUE DEPARTMENT ("TRD"):**

**A. Eligible accounts:**Requests for collection by refund offset may be made by the department to enforce repayment of educational loan debts pursuant to the Tax Refund Intercept Program Act, Section 7-2C-3 et seq. NMSA 1978.

**B. Criteria for submittal:** Debts must meet the following criteria set by TRD for the tax refund offset process:

- (1) the debt must be a loan for educational purposes;
- (2) the debt must be equal to or more than one-hundred (\$100);
- (3) the debt must be:
  - (a) originated by the department; and
  - (b) owned by the department
- (4) the debt must have been reduced to judgment.

**C. Procedure for setoff request to TRD/suspense account:** Submitting requests: All submissions for setoffs should be made to TRD in the manner required by TRD and by the required date set by TRD. The list of setoffs requested will contain information such as debtor name, social security number, unpaid balance of judgment against debtor and such other information as TRD may require.

**D. Suspense account:** Upon receipt of money transferred from the TRD, the department shall deposit and hold the money in a suspense account until a final determination of the offset is made.

[5.7.33.8 NMAC, N, 10/31/2017]

#### **5.7.33.9 NOTICE PROCEDURES:**

**A. Notice to debtor:** Within ten days after the department receives notice from TRD of a match of an offset request the department shall send a notice to the affected debtor substantially in the form of Exhibit A in 5.7.33.14 NMAC. The notice will inform the debtor of the following:

- (1) that a transfer of the refund will be made and that the department intends to offset the amount of the transfer against a claimed judgment balance owed by the debtor;
- (2) the amount of the claimed judgment balance and that the judgment arose from an educational loan;
- (3) the name, address and telephone number of the department;
- (4) the amount of the refund to be offset against the claimed judgment balance;



(5) that the debtor has 30 days from the date of the notice to contest the offset by applying to the department for a hearing with respect to the validity of the judgment balance asserted by the department; and

(6) that failure by the debtor to apply for a hearing within 30 days will be deemed a waiver of the opportunity to contest the offset and to a hearing.

**B. Notice to the debtor's spouse:** Except as provided in Subsection C of 5.7.33.9 NMAC, within ten days after the department receives notice from TRD of a match on a offset request resulting from a joint tax return the department shall send a notice to the spouse of the affected debtor substantially in the form of Exhibit B in 5.7.33.15 NMAC. The notice will inform the debtor's spouse of the following:

(1) a statement that a transfer of the refund will be made and that the department intends to offset the amount of the transfer against a claimed judgment balance owing by the debtor;

(2) the total amount of the refund and the amount of the claimed judgment balance;

(3) the name, address and telephone number of the department;

(4) a statement that no debt is claimed against the spouse and that the spouse may be entitled to receive all or part of the refund regardless of the claimed judgment balance against the debtor;

(5) a statement that to assert a claim to all or part of a refund the spouse must apply to the department for a hearing within 30 days of the date indicated on the notice with respect to the entitlement of the spouse to all or part of the refund from which a transfer will be made at the request of the department; and

(6) a statement that failure of the spouse to apply for a hearing within 30 days may be deemed a waiver of any claim of the spouse with respect to the refund.

**C. Judgments against debtor and spouse jointly:** In the event the department is asserting a claim for tax refund offset based on a judgment entered jointly against the debtor and spouse, the department shall send notice under Subsection A of 5.7.33.9 NMAC to both persons and no notice under Subsection B of 5.7.33.9 NMAC will be sent.

[5.7.33.9 NMAC, N, 10/31/2017]

#### **5.7.33.10 PROCESSING OF ADMINISTRATIVE HEARING REQUESTS:**

**A. Written request:** All requests for administrative review must be made in writing.

**B. Submittal deadline:**All requests for administrative review must be received by the department within 30 days of the date of the applicable notice.Failure to submit a request within the prescribed time will be deemed a waiver of the opportunity to contest the offset and to a hearing.

**C. Grounds for administrative review:**The grounds for administrative review shall be limited to the following:

(1) no judgment has been filed against the appellant or the appellant's spouse for an educational loan;

(2) the judgment has been paid in full;

(3) the judgment creditor has agreed to accept other arrangements for payment of the judgment and the arrangements have been fully complied with;

(4) the amount of the intercepted refund exceeds the unpaid balance of the judgment; or

(5) the appellant is entitled to receive all or part of the refund regardless of the claimed judgment debt against the appellant's spouse based upon New Mexico's community property laws.

**D. Filing of requests for administrative review:**The department representative responsible for the debtor's account will receive the request for administrative review submitted by the appellant and shall file the request in the debtor's loan file.

**E. Acknowledgement of receipt of request for administrative review:**The department will, upon receipt of the appellant's request for administrative review, send the appellant an acknowledgment of receipt of the request and will file a copy of the acknowledgment in the debtor's loan file.The acknowledgment may be combined with a notice of rejection of the request under Subsection F of 5.7.33.10 NMAC, a notice of informal resolution under Subsection G of 5.7.33.10 NMAC, or notice of submission of the request to the administrative hearing officer under Subsection H of 5.7.33.10 NMAC.

**F. Rejection of request for administrative review:**The department shall review the appellant's request for administrative review to determine if the request specifies an allowable ground for review as provided in Subsection C of 5.7.33.10 NMAC.If the appellant has failed to specify an allowable ground for review, the department will prepare and send to the appellant a notice that the request has been rejected for such failure.The department will file a copy of this notice in the debtor's loan file.A request for administrative review which has been rejected shall be treated as if no request had been submitted.

**G. Informal resolution by the department:** If the request for administrative review specifies an allowable ground for review, the department shall check for possible error and attempt to resolve the request prior to formal hearing, as follows:

**(1) Resolution prior to transfer of the refund to the department:**

**(a) Certified judgment balance incorrect, no judgment, or other arrangements to pay judgment:** If, prior to transfer of the refund to the department, the department determines that the debtor owes nothing, that there is no judgment against debtor, or that the debtor has made other arrangements for payment of the judgment and is not in default, the department shall cause the debtor's name to be removed from the tax refund intercept list.

**(b) Community property claim by spouse:** If prior to transfer of the refund to the department, the department determines that the debtor's spouse is entitled to all or part of the refund, the department must take steps to correct the amount.

**(2) Resolution after transfer of the refund to the department:**

**(a) Improper offset against debtor's refund:** If the department determines that an amount which has already been offset is improper because there is no judgment against the debtor, the judgment is paid in full, or the debtor has made other arrangements for payment of the judgment and is not in default, the department must take steps to refund the amount to the debtor promptly. In cases of joint tax returns, the refund check should be made payable to both the debtor and spouse.

**(b) Excess offset against debtor's refund:** If the department determines that an amount which has been offset exceeds the amount of the debtor's unpaid judgement balance, the department must take steps to refund the excess amount to the debtor promptly. In cases of joint tax returns, the refund check should be made payable to both the debtor and spouse.

**(c) Resolution of error-community property claim by spouse:** If the department determines that the debtor's spouse is entitled to a share of the refund, the department must take steps to refund the proper share to the spouse. The refund check should be made payable solely to the spouse.

**(3) Notice to appellant of informal resolution:** In the event that the department determines that an error exists, the department shall send the appellant a notice acknowledging the determination of error and resolution. If the department's action fully resolves the request for administrative review in favor of the appellant, the notice shall state that the informal resolution shall be a final resolution of the request unless the appellant requests further review within 15 days of the date of this notice.

**(4) No determination of error or determination of error does not fully resolve appeal:** If the department determines that no error has been made, or a determination of

error does not fully resolve the appeal, the department must provide the appellant with information concerning the administrative review process. If any dispute remains between the department and the appellant at this point, the appellant must be advised that the dispute will be resolved by the administrative hearing officer.

**H. Submission of hearing request to administrative hearing officer:** When the appellant has specified an allowable ground for administrative review and the department makes a determination of no error, or a determination of error does not fully resolve the appeal and a dispute remains, the department shall transmit the appellant's hearing request to the administrative hearing officer together with such information as may be requested by the hearing officer.

[5.7.33.10 NMAC, N, 10/31/2017]

### **5.7.33.11 ADMINISTRATIVE HEARINGS:**

**A. Purpose:** The purpose of an administrative hearing is to provide the appellant with a fair and equal opportunity to be heard so that the administrative hearing officer may be completely informed in the matter and enabled to render a proper determination based on all the facts and applicable laws and rules. The burden of proof shall be on the appellant to prove by a preponderance of the evidence that the appellant is entitled to all or a portion of the tax refund.

**B. Preliminary conference:** Upon receipt of a request for an administrative hearing, the administrative hearing officer may schedule a preliminary conference, which may be conducted by telephone, at which the parties may:

- (1) identify all of the issues;
- (2) secure stipulation on those matters not in dispute;
- (3) identify witnesses to be called and the general subject matter of their testimony;
- (4) agree on procedures for exchange of information; and
- (5) set a date for the hearing.

**C. Procedure:**

(1) **Conduct of hearings:** The administrative hearing officer may conduct the hearing by telephone or may require the parties to appear at the department's business office. If a hearing is to be conducted by telephone, the administrative hearing officer will inform the parties of the required manner of identification and submission of exhibits. If the appellant or the appellant's authorized representative, without sufficient cause, fails to appear at a hearing, such failure may be treated as a withdrawal of the request for

review and the administrative hearing officer may dismiss the request for review. If the department representative, without sufficient cause, fails to appear at the hearing, such failure may be treated as a default to the appellant. The administrative hearing officer in either case may adjourn the hearing to a future date or take such action as may be just and proper. All hearings will be conducted in as informal a manner as possible, provided that good order is maintained. The technical rules of evidence shall not apply. The administrative hearing officer may clear the room of witnesses not under examination and of any person who is disruptive. The administrative hearing officer shall consider all evidence, including affidavits, having reasonable probative value, but shall exclude immaterial, irrelevant or unduly cumulative testimony.

**(2)** Consolidation: When two or more requests for hearing are received involving a common question of law or fact arising out of the same or similar circumstances, the administrative hearing officer may consolidate them into one hearing.

**(3)** Waiver: In all cases the appellant's request for hearing must be postmarked or received within 30 days of the date of the notice informing the debtor or spouse of the right to hearing. Failure of the debtor or spouse to request a hearing within the time required shall constitute a waiver of the right of hearing.

**(4)** Hearing date: Hearings should be held within 60 days of the date the administrative hearing officer receives the request for hearing unless the administrative hearing officer determines there is good cause for a delay. The administrative hearing officer shall be responsible for providing timely notice of the hearing to the appellant and the department.

**(5)** Notice of time for decision: At the conclusion of the hearing, the administrative hearing officer must inform the parties that a decision will be made in thirty days.

**D. Decision:** The administrative hearing officer's determination of the validity and the amount of the offset asserted on the department's application for offset to a refund to which a debtor or spouse asserts entitlement in whole or in part shall be final. The administrative hearing officer should send or deliver a written decision to the parties within thirty days of the hearing date.

[5.7.33.11 NMAC, N, 10/31/2017]

#### **5.7.33.12 FINAL DETERMINATION AND NOTICE OF OFFSET:**

**A. Final determination:** A final determination occurs:

**(1)** when the administrative hearing officer makes his decision; or

(2) if no request for hearing has been properly and timely submitted, thirty days following the date of the notice provided in accordance with 5.7.33.9 NMAC; or

(3) upon informal resolution of any dispute as provided in Subsection G of 5.7.33.10 NMAC.

**B. Refunds:** Upon final determination of the entitlement of an appellant to any or all of that portion of a refund which has been transferred to the department, the department shall remit to the appellant from the suspense fund the amount determined to be due together with all such interest as is required by law to be paid and an appropriate accounting. A copy of the accounting shall be sent to TRD.

**C. Remittances to the department:** Upon final determination the department shall remit to itself from the suspense account that amount determined to be due the department, as applicable and shall credit that amount against the debt. Upon such remittance the department shall notify the debtor in writing of the final determination of the offset. A copy of the notice shall be sent to TRD. The notice shall include:

(1) a final accounting of the refund against which the debt was offset, including the amount of the refund to which the debtor was entitled prior to offset;

(2) the final determination of the amount of the debt that has been satisfied and the amount of the debt, if any, still due and owing; and

(3) the amount of the refund in excess of the debt finally determined to be due and owing and the amount of any interest due.

[5.7.33.12 NMAC, N, 10/31/2017]

#### **5.7.33.13 CONFIDENTIALITY:**

The information obtained by the department from the TRD under the Tax Refund Intercept Program Act shall be confidential and shall be used by the department only in pursuit of the collection of a judgment debt on an educational loan under the act.

[5.7.33.13 NMAC, N, 10/31/2017]

#### **5.7.33.14 EXHIBIT A:**

Because there is an outstanding educational loan judgment balance which has not been paid, your name has been referred to the New Mexico Taxation and Revenue Department for the collection of this obligation. Any tax refund to which you may be entitled may be retained in full or partial satisfaction of this obligation. This action involving the Taxation and Revenue Department is authorized by the Tax Refund Intercept Program Act, Sections 7-2C-1 through 7-2C-13 NMSA 1978.

Our records shows \$ \_\_\_\_\_ total unpaid judgment balance, including principal, accrued interest, costs and attorney's fees as of \_\_\_\_\_, 20\_\_\_\_.

Case Number:

Judgment Creditor: \_\_\_\_\_

Social Security No: \_\_\_\_\_ Date of the Notice

Refund Amount:

Applied to Judgment Balance:

### HEARING REQUEST

If you disagree with this notice, you have the right to a hearing. In order for you to request a hearing, you must return this portion of the notice within 30 days from the date indicated on the notice, and you must indicate to the office below that you are requesting a hearing based on one or more of the following grounds: (1) [---] no judgment has been filed against me for an educational loan in the referenced case; (2) [---] the judgment filed against me in the referenced case has paid in full; (3) [---] the amount of the intercepted refund exceeds the unpaid balance of the judgment filed against me in the referenced case; (4) [---] the judgment creditor has agreed to accept other arrangements for payment of the judgment and I am not in default thereon. FAILURE TO APPLY FOR A HEARING WITHIN 30 DAYS OF THIS NOTICE SHALL BE DEEMED A WAIVER OF ANY CLAIM WITH RESPECT TO THE REFUND.

Telephone Number: \_\_\_\_\_ Best Time to Call  
\_\_\_\_\_

Send request for hearing to:

New Mexico Higher Education Department

[Address]

[5.7.33.14 NMAC, N, 10/31/2017]

#### **5.7.33.15 EXHIBIT B:**

Because a judgment for an educational loan debt has been filed against your spouse, your name has been referred to the New Mexico state taxation and revenue department for collection of this obligation. Any tax refund to which you may be entitled may be

retained in full or partial satisfaction of this obligation. This action applies because you filed jointly for an income tax refund with a spouse who owes the obligation. No debt is claimed against you, however, and you may be entitled to receive all or part of the refund regardless of the claimed judgment balance against your spouse. This action involving the taxation and revenue department is authorized by the Tax Refund Intercept Program Act, Sections 7-2C-1 through 7-2C-13 NMSA 1978.

Our records show \$\_\_\_\_\_ total unpaid judgment balance, including principal, accrued interest, costs and attorney's fees as of \_\_\_\_\_, 20\_\_\_\_.

Case Number:

Judgment Creditor:

Social Security No. \_\_\_\_\_

Refund Amount:

Date of this Notice

Amount of refund to be applied to Judgment Balance:

#### HEARING REQUEST

If you disagree with this notice, you have a right to request a hearing. In order for you to request a hearing, you must return this portion of the notice within 30 days from the date indicated on the notice to the office below, and you must indicate that you are requesting a hearing based on the ground that:

[---] I am entitled to receive all or part of the refund regardless of the claimed judgment debt against my spouse based upon New Mexico Community Property Laws.

FAILURE TO APPLY FOR A HEARING WITHIN 30 DAYS SHALL BE DEEMED A WAIVER OF ANY CLAIM WITH RESPECT TO THE REFUND.

Social Security No:

Telephone Number:

Best Time to Call:

Send request for hearing to: New Mexico Higher Education Department

[Address]

[5.7.33.15 NMAC, N, 10/31/2017]



## **PART 34: TEACHER PREPARATION AFFORDABILITY SCHOLARSHIP PROGRAM**

### **5.7.34.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.7.34.1 NMAC - N, 7/30/2019]

### **5.7.34.2 SCOPE:**

Provisions of 5.7.34 NMAC apply to all public post-secondary institutions or tribal colleges in the state of New Mexico.

[5.7.34.2 NMAC - N, 7/30/2019]

### **5.7.34.3 STATUTORY AUTHORITY:**

Section 9-25-1 et seq. NMSA 1978 and Chapter 193, Laws of 2019.

[5.7.34.3 NMAC - N, 7/30/2019]

### **5.7.34.4 DURATION:**

Permanent.

[5.7.34.4 NMAC - N, 7/30/2019]

### **5.7.34.5 EFFECTIVE DATE:**

July 30, 2019, unless a later date is cited at the end of a section.

[5.7.34.5 NMAC - N, 7/30/2019]

### **5.7.34.6 OBJECTIVE:**

The objective of 5.7.34 NMAC is to provide a guideline for implementing the Teacher Preparation Affordability Act (the Act). The purpose of the Act is to encourage eligible New Mexico students to attend and complete an accredited public education department approved teacher preparation program at a New Mexico public post-secondary educational institution or a tribal college by providing a scholarship opportunity. The Act also provides a scholarship opportunity for licensed teachers enrolled in a graduate program in education or a degree related to their teaching specialty. The scholarship is intended to help defray the educational expenses charged by the public postsecondary institution or tribal college including tuition, fees, books and course supplies and living expenses.

[5.7.34.6 NMAC - N, 7/30/2019; A, 8/15/2023]

#### **5.7.34.7 DEFINITIONS:**

**A. "Academic year"** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

**B. "Award recipient"** means a student awarded a scholarship.

**C. "Department"** means the New Mexico higher education department.

**D. "FAFSA"** means the free application for federal student aid.

**E. "Institution"** means a New Mexico public post-secondary educational institution or tribal college.

**F. "Public post-secondary educational institution"** means a research or comprehensive institution, as defined in Article XII, Section 11 of the New Mexico constitution, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14 and 16 NMSA 1978.

**G. "Returning adult"** means a student enrolling in an institution at any time later than the first semester following high school graduation or the award of a high-school equivalency credential recognized by the State of New Mexico.

**H. "Satisfactory academic progress"** means maintaining the required academic progress toward program completion as determined by the institution.

**I. "Scholarship"** means a teacher preparation affordability program award.

**J. "Tribal college"** means a tribally, federally or congressionally chartered post-secondary educational institution with a physical campus in New Mexico that is accredited by the higher learning commission.

[5.7.34.7 NMAC - N, 7/30/2019; A, 8/15/2023]

#### **5.7.34.8 STUDENT ELIGIBILITY AND SELECTION OF AWARD RECIPIENTS:**

**A.** A scholarship may be granted to a student who:

(1) is a resident of New Mexico as defined in 5.7.18.9 NMAC or is eligible for the nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC;

(2) has demonstrated financial need as determined by the institution;

(3) is enrolled or enrolling at an eligible institution; and

(4) is:

(a) a licensed teacher enrolled or enrolling at an eligible institution in a graduate program in education or a degree related to their teaching specialty; or

(b) an individual who has not earned appropriate educational credentials to be licensed as a teacher by the public education department and enrolled in a teacher preparation program that leads to an appropriate educational credential to be licensed as a teacher by the public education department, including to an education major or alternative licensure certification program, at any time later than 120 days following high school graduation or the award of a high school equivalency credential recognized by the state of New Mexico.

**B.** Institutions shall make awards first to students who meet the provisions of Subsection A of 5.7.34.8 NMAC and who:

(1) are English language learners whose first or heritage language was not English;

(2) are historically underrepresented minorities in New Mexico's teaching profession; or

(3) have declared intent to teach in a high-need teacher position as defined by the public education department.

**C.** After scholarships have been awarded to eligible students pursuant to Subsection B of 5.7.34.8 NMAC, institutions shall make awards to students who meet the provisions of Subsection A of 5.7.34.8 NMAC

[5.7.34.8 NMAC - N, 7/30/2019; A, 7/12/2022; A, 8/15/2023; A, 2/27/2024]

#### **5.7.34.9 AMOUNT OF SCHOLARSHIP AND DURATION:**

**A.** Institutions shall make awards to qualifying eligible students based on financial need. The following provisions shall also apply to the scholarship:

(1) each scholarship award is for a period of one semester;

(2) the scholarship may apply to educational expenses including tuition, fees, books and course supplies and living expenses; and

(3) awards shall not exceed six thousand dollars (\$6,000) per academic year.

**B.** A student may not receive more than five academic years of the scholarship. A scholarship may be renewed as long as the student continues to meet the conditions of

eligibility in Subsection A of 5.7.34.8 NMAC and maintains satisfactory academic progress or until the student graduates from an eligible institution.

[5.7.34.9 NMAC - N, 7/30/2019]

#### **5.7.34.10 ADMINISTRATION OF THE PROGRAM:**

**A. Institutions shall:**

(1) determine initial and continuing student eligibility for the scholarship based on the provisions in Section 8 and Section 9 of 5.7.34 NMAC;

(2) distribute awards to qualifying eligible students; and

(3) provide information to the department on an annual basis to be used by the department for calculation of the allocation to the institution. Required information shall include:

(a) income reported on the FAFSA;

(b) the number of students enrolled in a public education department approved teacher preparation program at the institution; and

(c) the percentage of the teacher preparation program students classified as returning adults who are otherwise ineligible for state financial aid.

**B. The department shall allocate money to institutions based on a student need formula calculated according to:**

(1) income reported on the FAFSA;

(2) the number of students enrolled in a public education department approved teacher preparation program at the public post-secondary institution or tribal college; and

(3) the percentage of the institution's teacher preparation program students classified as returning adults who are otherwise ineligible for state financial aid.

[5.7.34.10 NMAC - N, 7/30/2019]

#### **5.7.34.11 TERMINATION OF SCHOLARSHIP:**

A scholarship is terminated upon occurrence of one or more of the following by the award recipient:

**A. withdrawal from the institution or from the teacher preparation program;**

**B.** failure to maintain enrollment;

**C.** failure to achieve satisfactory academic progress; or

**D.** substantial noncompliance with the Teacher Preparation Affordability Act or the provisions of 5.7.34 NMAC.

[5.7.34.11 NMAC - 7/30/2019; A, 8/15/2023]

## **PART 35: GROW YOUR OWN TEACHER SCHOLARSHIP PROGRAM**

### **5.7.35.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.7.35.1 NMAC - N, 8/13/2019]

### **5.7.35.2 SCOPE:**

Provisions of 5.7.35 NMAC apply to all public schools, public post-secondary institutions and tribal colleges in the state of New Mexico.

[5.7.35.2 NMAC - N, 8/13/2019]

### **5.7.35.3 STATUTORY AUTHORITY:**

Section 9-25-1 et seq. NMSA 1978 and Chapter 230, Laws of 2019.

[5.7.35.3 NMAC - N, 8/13/2019]

### **5.7.35.4 DURATION:**

Permanent.

[5.7.35.4 NMAC - N, 8/13/2019]

### **5.7.35.5 EFFECTIVE DATE:**

August 13, 2019, unless a later date is cited at the end of a section.

[5.7.35.5 NMAC - N, 8/13/2019]

### **5.7.35.6 OBJECTIVE:**

The objective of 5.7.35 NMAC is to provide a guideline for implementing the grow your own teachers program created by the Grow Your Own Teachers Act (the Act). The

purpose of the program is to encourage school employees at public schools in New Mexico to complete a public education department approved teacher preparation program at a New Mexico public post-secondary educational institution or a tribal college. The program provides for professional leave and scholarship awards to qualified school employees. The scholarship is intended to help defray the educational expenses charged by the institution including tuition, fees, books and course supplies.

[5.7.35.6 NMAC - N, 8/13/2019; A, 8/10/2021]

#### **5.7.35.7 DEFINITIONS:**

**A. "Academic year"** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

**B. "Award recipient"** means a school employee awarded a scholarship.

**C. "Department"** means the New Mexico higher education department.

**D. "FAFSA"** means the free application for federal student aid.

**E. "Half-time"** means a student is meeting the institution's criteria of half-time enrollment in its teacher preparation program. The institution's determination may take into account the student's average enrollment for the academic year and the completion of the public education department's licensure requirements.

**F. "Institution"** means a regionally accredited New Mexico public post-secondary institution or regionally accredited tribal college.

**G. "Public post-secondary educational institution"** means a research or comprehensive institution, as defined in Article XII, Section 11 of the Constitution of the State of New Mexico, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14 and 16 NMSA 1978.

**H. "Public school"** means a school operating under Article XII of the Constitution of the State of New Mexico and includes constitutional special schools, state institutions and state, federal, or tribal agencies that educate children.

**I. "Satisfactory academic progress"** means maintaining the required academic progress toward program completion as determined by the institution.

**J. "Scholarship"** means a grow your own teachers program award.

**K. "School employee"** means a resident of New Mexico who is authorized to work in the United States and who has been employed by a public school in a position that works directly with students for at least two years and is in good standing with the school district and who is enrolled in or accepted by an undergraduate teacher

preparation program at a regionally accredited public post-secondary educational institution in New Mexico.

**L. "Teacher preparation program"** means a program that has been formally approved as meeting the requirements of the public education department and that leads to level one teacher licensure, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.

**M. "Tribal college"** means a tribally, federally or congressionally chartered post-secondary educational institution with a physical campus in New Mexico that is accredited by the higher learning commission.

[5.7.35.7 NMAC - N, 8/13/2019; A, 8/10/2021]

#### **5.7.35.8 STUDENT ELIGIBILITY AND AWARD PROCESS:**

**A.** A scholarship may be granted to a school employee who:

(1) is authorized to work in the United States and resident of New Mexico as defined in 5.7.18.9 NMAC;

(2) is accepted into an accredited public education department approved teacher preparation program at an eligible institution;

(3) has not earned appropriate educational credentials to be licensed as a teacher by the public education department;

(4) has demonstrated financial need as determined by the institution or the student's FAFSA; and

(5) is in good standing with the public school.

**B.** The teacher preparation program at the institution shall make awards to students who meet the provisions of Subsection A of 5.7.35.8 NMAC, based on the recommendations of a committee appointed for that purpose. The committee shall prioritize awards to school employees that:

(1) are closest to overall completion of the teacher preparation program;

(2) serve in a bilingual education setting;

(3) serve in an early childhood education setting;

(4) serve in a special education setting; or

(5) serve in a high-need teacher position as defined by the public education department.

C. Award recipients shall petition the public school in which they are employed to grant paid professional leave for college classes, examinations and practice teaching as needed. The form to petition paid professional leave shall be promulgated by the department and made available at the institution. It is the award recipient's responsibility to ensure the petition form is submitted and approved by the public school.

[5.7.35.8 NMAC - N, 8/13/2019; A, 8/10/2021]

#### **5.7.35.9 AMOUNT OF SCHOLARSHIP AND DURATION:**

A. Institutions shall make awards to qualifying school employees based on financial need. The following provisions shall also apply to the scholarship:

- (1) each scholarship award is for a period of one semester;
- (2) the scholarship may apply to educational expenses including tuition, fees, books and course supplies; and
- (3) awards shall not exceed six thousand dollars (\$6,000) per academic year.

B. An award recipient may not receive more than five academic years of the scholarship. A scholarship may be renewed as long as the student continues to meet the conditions of eligibility in Subsection A of 5.7.35.8 NMAC and maintains satisfactory academic progress or until the student graduates from an eligible institution.

[5.7.35.9 NMAC - N, 8/13/2019; A, 8/10/2021]

#### **5.7.35.10 ADMINISTRATION OF THE PROGRAM:**

A. Institutions shall:

- (1) determine initial and continuing student eligibility for the scholarship based on the provisions in Section 8 and Section 9 of 5.7.35 NMAC;
- (2) distribute awards to qualifying eligible students; and
- (3) provide information to the department on an annual basis to be used by the department for calculation of the allocation to the institution. Required information shall include:
  - (a) income reported on the FAFSA; and



(b) the number of students enrolled in a public education department approved teacher preparation program at the public post-secondary institution or tribal college.

(4) annually report the number of students awarded a scholarship who meet the provisions of Subsection B of 5.7.35.8 NMAC.

**B.** The department shall allocate money to public post-secondary educational institutions or tribal colleges based on a student need formula calculated according to:

(1) income reported on the FAFSA; and

(2) the number of students enrolled in a public education department approved teacher preparation program at the institution.

**C.** The public school shall:

(1) grant paid professional leave if the school employee is a recipient of a scholarship pursuant to the Act and the professional leave minimizes disruption to the school day. The public school may require school employees to make up hours in exchange for hours missed during the school day; and

(2) allow the school employee to use the distance education resources of the school district to take classes if an educational assistant who is accepted into or enrolled in a teacher preparation program offered by an eligible institution does not live within a reasonable distance of the institution's campus.

[5.7.35.10 NMAC - N, 8/13/2019; A, 8/10/2021]

#### **5.7.35.11 TERMINATION OF SCHOLARSHIP:**

A scholarship is terminated upon occurrence of one or more of the following by the award recipient:

**A.** withdrawal from the institution or from the teacher preparation program;

**B.** failure to maintain at least half-time enrollment;

**C.** failure to achieve satisfactory academic progress; or

**D.** substantial noncompliance with the Act or the provisions of 5.7.35 NMAC.

[5.7.35.11 NMAC - N, 8/13/2019]

### **PART 36: COMMUNITY GOVERNANCE ATTORNEY PROGRAM**

**5.7.36.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.36.1 NMAC - N, 6/25/2024]

**5.7.36.2 SCOPE:**

Provisions of 5.7.36 NMAC apply to all participants of the tuition and legal services loan program described in this rule.

[5.7.36.2 NMAC - N, 6/25/2024]

**5.7.36.3 STATUTORY AUTHORITY:**

Section 21-21Q-1 et seq. NMSA 1978.

[5.7.36.3 NMAC - N, 6/25/2024]

**5.7.36.4 DURATION:**

Permanent.

[5.7.36.4 NMAC - N, 6/25/2024]

**5.7.36.5 EFFECTIVE DATE:**

June 25, 2024, unless a later date is cited at the end of a section.

[5.7.36.5 NMAC - N, 6/25/2024]

**5.7.36.6 OBJECTIVE:**

The objective and purpose of 5.7.36 NMAC is to increase the number of community governance attorneys through the use of loans. The loans are available to law students commencing their final year of law school who commit to employment as a community governance attorney with a qualifying employer for two years. Upon completion of those two years of employment, the loan shall be forgiven. In the event the participant does not complete two years of employment as a community governance attorney repayment shall be required.

[5.7.36.6 NMAC - N, 6/25/2024]

**5.7.36.7 DEFINITIONS:**

A. "**Commission**" means the community governance attorney commission.

**B. "Community governance attorney"** means an attorney with a legal practice that is focused on the requirements and challenges faced by small political subdivisions and unincorporated communities, including the promulgation of land and water use ordinances, contracting and the collection or payment of taxes and fees.

**C. "Community Governance Attorney Act"** means Sections 21-21Q-1 through 21-21Q-5, NMSA 1978.

**D. "Course of study"** means a law student's legal education, including clinical and internship programs and preparation courses for the state bar examination.

**E. "Department"** means the New Mexico higher education department.

**F. "Extenuating circumstances"** means circumstances not within the control of the recipient.

**G. "Loan"** means a grant of funds to cover law school tuition and fees and a reasonable living stipend prior to employment as a community governance attorney and up to half the salary of a full-time community governance attorney for two years that is under a contract between the department and a student, requiring repayment with services or repayment of principal and interest and any fees.

**H. "Participant"** means an individual who has applied to participate in, has been accepted into and has signed a contract agreeing to the terms of the program.

**I. "Program"** means the loan for service program to provide legal services for land grants-mercedes, acequias and colonias.

**J. "Qualifying employer"** means:

- (1) the university of New Mexico;
- (2) a nonprofit organization whose mission is to provide a range of free legal services to low-income New Mexicans; or
- (3) a service provider approved by the commission and the department.

[5.7.36.7 NMAC - N, 6/25/2024]

#### **5.7.36.8 COMMUNITY GOVERNANCE ATTORNEY COMMISSION:**

The commission is created to advise the department on matters relating to the administration of the Community Governance Attorney Act.

**A.** The commission shall be appointed and shall be composed of:

- (1) The secretary of the department or secretary's designee;
- (2) The dean of the university of New Mexico or the dean's designee;
- (3) Three members appointed by the governor:
  - (a) one member shall be a member of an acequia;
  - (b) one member shall be a current or past member of the land grant council;and
  - (c) one member shall be a current or past member of the colonias infrastructure board and a resident of a colonia.

**B.** The responsibilities of the commission shall include:

- (1) making recommendations to the department on applicants for the program;
- (2) advising the department on the adoption of rules to implement the provisions of the Community Governance Attorney Act.
- (3) soliciting proposals and entering into contracts for the expenditure of the community governance attorney and loan program; and
- (4) adopting such rules as are necessary to carry out the provisions of Section 21-21Q-4, NMSA, 1978.

[5.7.36.8 NMAC - N, 6/25/2024]

**5.7.36.9 APPLICANT ELIGIBILITY:**

To be eligible for this program, an applicant shall:

- A.** have completed the first two years of law school and be in good academic standing at the university of New Mexico school of law as determined by the school;
- B.** be a resident of New Mexico; and
- C.** declare an intent to serve as a community governance attorney in New Mexico.

[5.7.36.9 NMAC - N, 6/25/2024]

**5.7.36.10 SELECTION OF LOAN RECIPIENTS:**

The department shall award loan recipients recommended by the commission based on the following considerations and preferences:

- A.** the ability, character and qualifications of each applicant through the review of the applicant's letters of recommendation and references;
- B.** the demonstrated interest of the applicant in serving as a community governance attorney; and
- C.** any other criteria as determined by the commission.

[5.7.36.10 NMAC - N, 6/25/2024]

#### **5.7.36.11 RESPONSIBILITIES OF THE DEPARTMENT:**

The department shall:

- A.** adopt rules as are necessary to carry out the provisions of the program; and
- B.** administer the program, including:
  - (1) consultation with the university of New Mexico school of law and the commission, to publicize the program to law students and prospective law students;
  - (2) coordination of a standard application process including preparation of application forms and facilitation of the application review by the commission;
  - (3) disbursement of funds;
  - (4) record keeping on participants including:
    - (a) participant's academic standing status;
    - (b) progress toward completion of final year of law school;
    - (c) loan contracts including contracts between the participant and the department and contracts between the commission and qualifying employers; and
    - (d) location and time employed as a community governance attorney;
    - (e) verification of qualification for forgiveness for service; and
  - (5) preparing annually a report that includes the following information:
    - (a) number of the participants employed as a community governance attorneys;

(b) number of participants who have not completed their course of study;

(c) names and addresses of participants; and

(d) names and locations of practice of participants employed as community governance attorneys.

[5.7.36.11 NMAC - N, 6/25/2024]

#### **5.7.36.12 LOAN AWARDS:**

The department may award a loan to one or two applicants each year who will be entering their final year of law school under the following conditions and limitations.

**A.** The department shall set the amount of the portion of the loan that will pay for an applicant's law school tuition, fees and a reasonable living stipend after consulting with the university of New Mexico school of law regarding tuition and average living stipend and considering the availability of funds.

**B.** Upon selection of an applicant to receive a loan, a contract shall be drawn between the applicant and the department. The signed contract indicates the applicant's acceptance into the program.

**C.** In its annual determination of the number of loan awards, the department shall consider funding availability for loans for current participants.

[5.7.36.12 NMAC - N, 6/25/2024]

#### **5.7.36.13 LOAN REPAYMENT AND FORGIVENESS:**

All loans shall be forgiven or repaid to the state together with interest according to the following provisions:

**A.** The department shall forgive one hundred percent of the principal plus accrued interest for participants who after completion of their course of study, are employed for two consecutive years as a community governance attorney by a qualified employer.

**B.** The department shall forgive fifty percent of the principal plus accrued interest for participants who, after completion of their course of study, are employed for one year as a community governance attorney by a qualified employer.

**C.** Participants shall complete a full year of employment to receive credit for that year.

**D.** A participant who fails to carry out their employment obligations, in whole or in part, is subject to the following provisions:

(1) If a participant completes the participant's law school education and does not serve as a community governance attorney for a period of at least one year, the department shall assess a penalty of the principal due, plus eighteen percent interest, unless the department finds acceptable extenuating circumstances that prevent the participant's compliance with the employment obligations as provided in 5.7.36 NMAC.

(2) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorated basis reasonably reached based upon the degree of control which the recipient has over the failure to carry out their employment obligation. The recipient shall have the burden of proof.

(3) If the department does not find acceptable extenuating circumstances for the participant's failure to carry out their employment obligations, the department shall require immediate repayment of the unpaid principal amount of the waiver plus accrued interest owed the state plus the amount of any penalty assessed pursuant to 5.7.36 NMAC.

(4) In all other cases, loans shall bear interest at seven percent per year.

**E.** The maximum period of repayment shall be ten years, commencing six months from the date the participant completes or discontinues the course of study. Subject to applicable statutory limitations, the department may extend or modify the repayment period for good cause.

**F.** In the event it becomes necessary, the department may postpone loan repayments if the participant is willing, but financially unable to make payments under the repayment schedule, deferral of repayment obligation may be considered for the following reasons:

(1) the participant is serving up to a maximum of three years as an active-duty member of the armed forces of the United States;

(2) the participant is temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;

(3) the participant is seeking but unable to find full-time employment for a single period not to exceed twelve months;

(4) the participant is unable to secure employment for a period not to exceed 12 months;

(5) the participant is working in a judicial clerkship or fellowship;

(6) other extenuating circumstances as provided for under the federal Family and Medical Leave Act of 1993; or

(7) at the determination of the department.

**G. Authorized charges and fees:**

(1) Late charges: Participant may be charged five percent of the installment payment or five dollars, whichever is less, on any payment made later than 10 days after it is due.

(2) Attorney fees, other charges and costs: Participant shall agree to pay all reasonable attorney fees, and other costs and charges necessary for the collection of any waiver amount not paid when due.

**H.** Participants shall notify the department in advance of any change of address and of any action which necessitates reconsideration of a promissory note. A participant's failure to notify the department and to execute a promissory note on request shall cause the full amount of principal and accumulated interest to become due immediately.

[5.7.36.13 NMAC - N, 6/25/2024]

**5.7.36.14 CONTRACTS:**

A contract shall be drawn between each participant and the department on behalf of the state of New Mexico. The contract shall:

**A.** provide for the payment by the department of a specified sum as determined in 5.7.36.13 NMAC;

**B.** state that immediately upon completion or termination of the student's law school education, all interest then accrued shall be capitalized;

**C.** state the conditions of repayment or forgiveness as detailed in 5.7.36.13 NMAC;

**D.** state that the loan shall bear interest at the designated rate per annum from the date of disbursement until paid, make provision for conversion to a payout note as shown in 5.7.36 NMAC and state that interest will be charged on the unpaid balance of the principal;

**E.** state the legal responsibilities of the participant and that delinquent loans shall be referred to the department for appropriate action, which may include referral to the office of the attorney general;

**F.** state that the participant's obligations of the contract with the department shall be binding on participant's estate.

**G.** state that the department may cancel any contract after providing 30 days written notice to the participant for any reasonable and sufficient cause;



H. state that in the event a participant fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the department, become immediately due and payable; and

I. state that jurisdiction and venue shall be proper in Bernalillo County or Santa Fe County, New Mexico for purposes of any suit to enforce the contract.

[5.7.36.14 NMAC - N, 6/25/2024]

#### **5.7.36.15 FUND FOR LEGAL SERVICES:**

A. The commission shall solicit proposals from qualifying employers.

B. The commission shall enter into contracts with qualifying employers to provide community governance attorney services to acequias, land grants-mercedes and low-income residents of colonias on issues regarding the governance of colonias.

C. Each selected contractor shall demonstrate sufficient matching with non-state funding to provide a full-time community governance attorney position.

D. The contract shall provide no more than one-half of the funding for a full-time community governance attorney position. The maximum salary for such a position shall not exceed the salary provided in Section 21-21Q-3 NMSA 1978.

[5.7.36.15 NMAC - N, 6/25/2024]

#### **5.7.36.16 REPORTS:**

The department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics, and analysis of the progress of the Community Governance Attorney Act.

[5.7.36.16 NMAC - N, 6/25/2024]

### **PART 37: NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM**

#### **5.7.37.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department.

[5.7.37.1 NMAC – Rp., 5.7.37.1 NMAC, 6/25/2024]

#### **5.7.37.2 SCOPE:**

Provisions of 5.7.37 NMAC apply to all public post-secondary institutions and tribal colleges in the state of New Mexico.

[5.7.37.2 NMAC - Rp., 5.7.37.2 NMAC, 6/25/2024]

#### **5.7.37.3 STATUTORY AUTHORITY:**

Section 9-25-1 et seq. NMSA 1978 and Section 21-21R-1 et seq. NMSA 1978.

[5.7.37.3 NMAC - Rp., 5.7.37.3 NMAC, 6/25/2024]

#### **5.7.37.4 DURATION:**

Permanent.

[5.7.37.4 NMAC - Rp., 5.7.37.4 NMAC, 6/25/2024]]

#### **5.7.37.5 EFFECTIVE DATE:**

June, 25, 2024, unless a later date is cited at the end of a section.

[5.7.37.5 NMAC - Rp., 5.7.37.5 NMAC, 6/25/2024]

#### **5.7.37.6 OBJECTIVE:**

The objective of 5.7.37 NMAC is to provide a level of financial support to qualified students who are enrolled in a workforce certificate program, or an associate or bachelor's degree program at an eligible New Mexico public post-secondary educational institution or tribal college. This level of financial support is intended to help defray the cost of tuition and fees at the public post-secondary educational institution or tribal college where the student is enrolled pursuant to 5.7.37.12 NMAC. Provided sufficient funding exists in the Opportunity Scholarship Fund, the award may be used to supplement, but not supplant, the New Mexico legislative lottery tuition scholarship in an amount not to exceed the cost of tuition and fees for the qualifying semester and summer semesters, and fees for other semesters.

[5.7.37.6 NMAC - Rp., 5.7.37.6 NMAC, 6/25/2024]

#### **5.7.37.7 DEFINITIONS:**

**A. "Community college"** means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978.

**B. "Comprehensive institution"** means eastern New Mexico university, New Mexico highlands university, northern New Mexico college or western New Mexico university.

**C. "Cumulative grade point average"** includes grades received during fall, spring and summer semesters.

**D. "Department"** means the higher education department.

**E. "Eligible institution"** means a public post-secondary educational institution or a tribal college that has a current and valid memorandum of understanding as described in Subsection B of 5.7.37.13 NMAC.

**F. "Fee" or "Fees"** means:

(1) mandatory non-tuition charges levied to all students as a condition of enrollment;

(2) course-specific fees levied in an amount not to exceed fifty dollars (\$50) per credit hour or as otherwise approved by the department on a course-by-course basis; and

(3) shall not include charges levied for funding of capital projects or charges pledged for repayment of institutional bonds, loans or institutional debt of any type.

**G. "Independent student"** means a student with established financial need and no means of familial support as evidenced by their filing status on the free application for federal student aid or other means of income verification as determined by the institution.

**H. "Opportunity scholarship"** means an award to recent graduate learners and returning student learners.

**I. "Public post-secondary educational institution"** means a state educational institution or a community college.

**J. "Qualified student"** means a recent graduate learner or a returning student learner.

**K. "Recent graduate learner"** means a student who does not have a bachelor's, master's or doctoral degree and who graduated from a public or accredited private New Mexico high school or who before reaching 21 years of age received a high school equivalency credential while maintaining residency in New Mexico and who either:

(1) within 16 months of graduation or receipt of a high school equivalency credential enrolls in an eligible institution or

(2) within four months of graduation or receipt of a high school equivalency credential, began service in the United States armed forces and, within 16 months of completion of honorable service or medical discharge from the service, attended an eligible institution; and

(3) successfully completed the first semester at an eligible institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full-time enrollment and maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale at an eligible institution.

**L. "Research institution"** means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

**M. "Returning student learner"** means a student 18 years of age or older who does not otherwise meet the definition of a recent graduate learner, has a high school diploma or who has received a high school equivalency credential and who does not have a bachelor's, master's or doctoral degree, who has been a resident of New Mexico for the preceding 12 consecutive months and who maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale at an eligible institution.

**N. "Summer semester"** means a semester equal to fall and spring semester in duration or intensity.

**O. "Tribal college"** means a tribally, federally or congressionally chartered eligible institution located in New Mexico that is accredited by the higher learning commission.

**P. "Tuition"** means mandatory instructional costs paid by or for a qualified student to an eligible institution for coursework.

**Q. "Workforce certificate"** means a department-approved, credit-bearing certificate program of two years' duration or less where data indicates the certificate is in high demand as determined in consultation with the New Mexico department of workforce solutions.

[5.7.37.7 NMAC - Rp., 5.7.37.7 NMAC, 6/25/2024]

#### **5.7.37.8 STUDENT ELIGIBILITY:**

**A.** A scholarship may be awarded to a qualified student who:

(1) has not earned a bachelor's, master's degree or doctoral degree at the time the scholarship is awarded;

(2) is enrolled in at least six credit hours per spring or fall semester and no more than eighteen credit hours per fall or spring semester; except that the credit-hour minimums do not apply to a student in the last semester before graduation and if a

qualified student enrolls in more than eighteen credit hours any tuition charges which exceed tuition charged for the maximum of eighteen credit hours shall not be funded by the scholarship;

(3) is enrolled in at least three and no more than nine credit hours per summer semester; provided that a student is not required to attend a summer semester to maintain eligibility; and

(4) maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale;

(5) has established and maintained New Mexico residency as defined in 5.7.18.9 NMAC, is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC or is an active member of the New Mexico National Guard. All residency requirements for recent graduate learners must be met upon completion of high school, graduation or receipt of a high school equivalency credential recognized by the state of New Mexico;

(6) has been determined to be a qualified student; and

(7) has met requirements in Paragraphs (1) through (6) of Subsection A of 5.7.37.8 NMAC or students with exceptional mitigating circumstances as determined by the institution's lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (6) of Subsection A of 5.7.37.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the opportunity scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution's lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution's lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraphs (1) through (6) of Subsection A of 5.7.37.8 NMAC;

(b) if, in the professional judgment of the institution's lead financial aid officer, the student's exceptional mitigating circumstance is recognized as a valid reason for the student's inability to meet the requirements specified in Paragraphs (1) through (6) of Subsection A of 5.7.37.8 NMAC the student's initial or continuing eligibility for the opportunity scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraphs (1) through (6) Subsection A of 5.7.37.8 NMAC.

**B. Other provisions regarding eligibility.**

(1) Students with disabilities or their legal guardian who are requesting a reduction of the credit hour requirement shall obtain a referral from the student services division of the public post-secondary educational institution or tribal college where the student is enrolled that oversees students with special needs. Referrals and any sufficient documentation shall be received no later than 30 days after the student's enrollment begin date for their first semester or the semester for which they are seeking a change in credit hours. The documentation may be reused for the subsequent semesters unless the student is requesting to decrease their approved credit hours. In this case updated documentation shall be required prior to the start of the semester for which the student is enrolling.

(2) Students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for scholarship eligibility.

(3) If a recent graduate learner enrolls in no more than 12 credit hours during the 16 months following high school graduation or receipt of a high school equivalency credential the student may qualify for opportunity scholarship funding for tuition and fees. If a recent graduate learner enrolls in 12 or more credit hours beyond 16 months after graduation or receipt of a high school equivalency credential the student shall not receive the opportunity scholarship for tuition for a period of two years following the end of the semester when eligibility was lost. A recent graduate learner who loses eligibility for the opportunity scholarship or legislative lottery scholarship pursuant to 5.7.37.14 NMAC or 5.7.20.14 NMAC and has not been approved for a probationary semester may petition for reinstatement pursuant to 5.7.37.10 NMAC.

**C.** Upon satisfaction of the eligibility requirements, the scholarship shall be awarded to a returning student learner during the second continuous semester of enrollment. A student's continuing eligibility shall be determined on a semester basis. Recent graduate learners may receive awards within 16 months of graduation as provided in Paragraph 3 of Subsection B of 5.7.37.8 NMAC.

**D.** An opportunity scholarship award may be re-awarded to a student who:

(1) maintains a minimum of a 2.5 cumulative grade point average or higher on a 4.0 scale; a student has the right to request use of the student's cumulative grade point average earned at all New Mexico public post-secondary educational institutions and tribal colleges; and

(2) maintains continuous enrollment and meets the credit hour criteria as provided in Paragraphs (2) through (3) of Subsection A of 5.7.37.8 NMAC.

**E.** The following conditions apply for students transferring the scholarship:

(1) a transfer transcript is required;

(2) student transfers shall defer to the receiving institution to determine eligibility; and

(3) a qualified student who transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation.

**F.** Previously completed dual credit courses shall not count toward the credit hour cap.

**G.** In no case shall eligibility to receive the scholarship extend beyond 90 attempted credit hours for completion of an associate degree or 160 attempted credit hours for completion of a bachelor's degree.

[5.7.37.8 NMAC - Rp., 5.7.37.8 NMAC, 6/25/2024]

#### **5.7.37.9 PROBATION:**

Students who have been determined to be eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

**A.** the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

**B.** the lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Subsection A and Subsection C of 5.7.37.8 NMAC; and

**C.** a student may receive scholarship funding while on probationary status, however under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A through F of 5.7.37.11 NMAC.

[5.7.37.9 NMAC – N, 6/25/2024]

#### **5.7.37.10 PETITION FOR REINSTATEMENT:**

A recent graduate learner who loses eligibility for the opportunity scholarship or legislative lottery scholarship pursuant to 5.7.37.14 NMAC or 5.7.20.14 NMAC and has not been approved for a probationary semester may petition for reinstatement of eligibility for the opportunity scholarship as a returning student learner no sooner than two years following the end of the semester when eligibility was lost. A returning student learner who loses eligibility for the opportunity scholarship pursuant to 5.7.20.14 NMAC and has not been approved for a probationary semester may petition for reinstatement

of eligibility for the opportunity scholarship as a returning student learner no sooner than two years following the end of the semester when eligibility was lost.

[5.7.37.10 NMAC – N, 6/25/2024]

#### **5.7.37.11 DURATION OF SCHOLARSHIP:**

**A.** Upon qualification, the student's initial scholarship shall begin with enrollment at a public post-secondary educational institution or tribal college. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a per semester basis.

**B.** Scholarships may be provided to a qualified student seeking one or more credit-bearing workforce certificates. A scholarship for a credit-bearing workforce certificate may only be awarded where data indicates that the certificate is in high demand by New Mexico employers as determined by the department in consultation with the New Mexico workforce solutions department.

**C.** A scholarship may be awarded for one or more workforce certificates, only one associate degree and only one bachelor's degree per student.

**D.** Scholarships may continue for a qualified student for up to 90 attempted credit hours for the completion of one associate degree.

**E.** Scholarships may continue for a qualified student for up to 160 attempted credit hours for the completion of one bachelor's degree.

**F.** In no case shall the scholarship fund more than 160 attempted credit hours; provided that dual credit courses that a qualified student previously completed shall not count toward the credit-hour cap.

**G.** The student's institutional lead financial aid officer may approve a leave of absence for a period of up to one year if in the lead financial aid officer's professional judgment the student has provided sufficient documentation to justify the leave of absence. Subsequent requests for an additional leave of absence by a student may be considered by the institution's lead financial aid officer in increments not to exceed one year.

**H.** The lead financial aid officer shall, in turn, ensure that the student does not receive scholarship awards in excess of those prescribed in Subsections A through F of 5.7.37.11 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.

[5.7.37.11 NMAC - Rp., 5.7.37.9 NMAC, 6/25/2024]

#### **5.7.37.12 AMOUNT OF SCHOLARSHIP:**



**A.** To the extent that funds are made available from the fund, the board of regents or governing bodies of public post-secondary educational institutions and tribal colleges shall award tuition scholarships in department approved amounts as follows:

(1) for returning student learners an amount not to exceed the cost of tuition and fees for enrollment in at least six credit hours, but not more than 18 credit hours in the fall or spring semester and optional enrollment in no less than three credit hours, but not more than nine credit hours during a summer semester.

(2) A scholarship may be awarded to a qualified student for the summer semester enrolled in at least three and no more than nine credit hours; provided that the summer semester is not required to maintain eligibility; and further provided that during a summer semester the student may enroll in more than nine credit hours but the scholarship shall be capped at the tuition charged for nine credit hours; and

(3) for recent graduate learners an amount not to exceed the cost of tuition and fees during a qualifying semester after any available state and institutional aid has been awarded. Provided sufficient funding exists in the Opportunity Scholarship Fund the award may be used to supplement, but not supplant the New Mexico legislative lottery tuition scholarship in an amount not to exceed the cost of tuition and fees for the qualifying semester and summer semesters, and fees for other semesters.

**B.** If the fund does not cover full tuition scholarships the method the department will use for calculating the tuition scholarship is as follows:

(1) estimate the total amount available in the opportunity scholarship fund, based on transfers, current year balances and additional funds made available through legislation;

(2) estimate the number of scholarship recipients for each institution, based on department-endorsed institutional projections;

(3) calculate the tuition scholarship for each sector (research, comprehensive and community college) and tribal college in accordance with Section 21-21N-4 NMSA 1978;

(4) calculate the total amount needed to pay full tuition and fees to all estimated scholarship recipients;

(5) compute an award for each scholarship recipient; and

(6) notify institutions of the maximum award by June 1st annually.

**C.** In no case shall a student receive scholarship awards exceeding the total amount of tuition and fees charged after all other state aid has been applied.

**D.** Qualified students in their graduating semester shall receive a tuition scholarship proportional to the number of credit hours required to graduate. Students in their graduating semester may enroll in fewer than six credit hours and maintain eligibility.

**E.** For qualified students in their first semester, preference shall be given to independent students before other students to the extent funds are available.

**F.** Opportunity scholarships may supplement but shall not supplant institutional aid such as three percent or bridge scholarships in the first semester.

**G.** Opportunity scholarships may be awarded to qualified students after institutional aid such as three percent or bridge scholarships in the second semester and beyond.

[5.7.37.12 NMAC - Rp., 5.7.37.10 NMAC, 6/25/2024]

### **5.7.37.13 ADMINISTRATION OF THE OPPORTUNITY SCHOLARSHIP:**

**A.** Eligible public post-secondary educational institutions and tribal colleges shall:

(1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the opportunity scholarship at previous institutions;

(2) designate their institution's lead financial aid officer to be responsible for determining initial and continuing student eligibility for the opportunity scholarship under the terms of these rules and regulations;

(3) maintain a listing of each participating student to include, but not be limited to:

(a) social security number as appropriate;

(b) cumulative grade point average and completed enrollment hours in prior semesters;

(c) proof of initial and continuing enrollment;

(d) award semester; and

(e) other data fields deemed important by the department;

(4) draw-down files should be submitted to the department for qualified students as each semester; all fiscal year draw-downs shall be for qualified students enrolled during the same fiscal year;

(5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative grade point average requirement or successfully maintaining enrollment as defined in Paragraphs (2) through (3) of Subsection A of 5.7.37.8 NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their institution;

(7) publish the probation policy as defined in 5.7.37.9 NMAC;

(8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program; and

(9) each semester, ensure that all available merit-based aid packages, three percent scholarships, institutional award packages, and state aid other than the New Mexico opportunity scholarship and New Mexico legislative lottery scholarships are awarded first before granting the New Mexico opportunity scholarship for tuition and fee costs.

**B. The department shall:**

(1) Enter into a memorandum of understanding on or before June 1st with each eligible institution describing:

(a) the maximum amount of tuition and fees per student that may be paid by the opportunity scholarship fund each fiscal year;

(b) the total amount available to the eligible institution for opportunity scholarships each fiscal year;

(c) the reimbursement of any reimbursable costs that exceed tuition and fees; and

(d) eligible workforce certificate programs.

(2) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) scholarship program participation data aggregated for each public post-secondary education institution and tribal college to show:

- (i) the number of qualified students who received opportunity scholarships and in the prior 12-month period;
- (ii) the total number of qualified students enrolled in the prior 12-month period;
- (iii) the amount of tuition scholarships funded by semester and the amount of tuition costs that were not offset by the tuition scholarship by semester; and
- (iv) the number of qualified students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.

[5.7.37.13 NMAC - Rp., 5.7.37.11 NMAC, 6/25/2024]

#### **5.7.37.14 TERMINATION OF SCHOLARSHIPS:**

A scholarship is terminated upon noncompliance by the award recipient with the opportunity scholarship rules, regulations or procedures as promulgated by the department.

[5.7.37.14 NMAC - Rp., 5.7.37.12 NMAC, 6/25/2024]

## **CHAPTER 8: COOPERATIVE EDUCATION [RESERVED]**

## **CHAPTER 9 ADULT EDUCATION**

### **PART 2 WORKFORCE TRAINING ECONOMIC SUPPORT PILOT PROGRAM**

#### **5.9.2.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.9.2.1 NMAC - N, 2/11/2025]

#### **5.9.2.2 SCOPE:**

Provisions of 5.9.2 NMAC apply to all participants of the program described in this rule.

[5.9.2.2 NMAC - N, 2/11/2025]

### **5.9.2.3 STATUTORY AUTHORITY:**

Section 9-25-14 NMSA 1978.

[5.9.2.3 NMAC - N, 2/11/2025]

### **5.9.2.4 DURATION:**

Permanent.

[5.9.2.4 NMAC - N, 2/11/2025]

### **5.9.2.5 EFFECTIVE DATE:**

February 11, 2025, unless a later date is cited at the end of a section.

[5.9.2.5 NMAC - N, 2/11/2025]

### **5.9.2.6 OBJECTIVE:**

The objective of the pilot program is to provide fixed monthly stipends to students in adult education programs who are also participating in integrated education and training (IET) programs and other workforce training programs as approved by the department. The purpose of the stipends is to support completion of the workforce training programs by reducing financial barriers to completion and to assist in the transition to employment in the occupation or occupational cluster addressed by the workforce training program. The amount of the stipend is \$1,000 per month while the participant is enrolled in an adult education program and one of its workforce training programs, for a duration not to exceed 12 months.

[5.9.2.6 NMAC - N, 2/11/2025]

### **5.9.2.7 DEFINITIONS:**

**A. "Adult education program"** means an adult education program approved and funded by the department.

**B. "Contractor"** means an entity contracted with the department through a request for proposal process to deliver stipends to participants of the program.

**C. "Department"** means the New Mexico higher education department.

**D. "Integrated education and training program" or "IET program"** means a department-approved program that provides adult education activities concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement.

**E. "Participant"** means a New Mexico resident approved by the department to participate in the program.

**F. "Pilot program" or "program"** means the workforce training economic support pilot program which is a three-year study by the department to evaluate the expansion of workforce training programs.

**G. "Workforce training program"** means a department approved training or educational program or other work-based learning program that, upon successful completion, will lead the participant earning a certification, license or credential, or acquiring specialized qualifications or skills recognized within an industry or field as appropriate to obtain employment in that industry or field, and includes IET programs.

[5.9.2.7 NMAC - N, 2/11/2025]

#### **5.9.2.8 ADMINISTRATION:**

The department shall administer the program. The department may receive technical assistance from the health care authority department and may collaborate with other state agencies, members of the business community, worker organizations, including trade unions, nonprofit organizations, and community organizations. The department shall provide for distribution of stipends which:

**A.** facilitate persistence in and completion of workforce training programs among adult education program students; and

**B.** increase financial stability and reduce poverty by providing economic support to:

(1) cover the costs associated with basic living needs, including housing, food and transportation, and the costs associated with enrolling in and attending a workforce training program;

(2) prevent income, housing and food insecurity during the process of acquiring that training;

(3) enable and assist participants to simultaneously complete academic coursework; workforce and employability skills training, stackable credentials and industry certifications; and

(4) increase potential for ongoing career advancement and employment with living wages.

[5.9.2.8 NMAC - N, 2/11/2025]

#### **5.9.2.9 STUDENT ELIGIBILITY:**

**A.** To be considered for the program, a student shall meet the following criteria:

- (1) is 16 years of age or older by workforce training program start date;
- (2) resides in the state of New Mexico at the program start date and for the duration of the workforce training program;
- (3) is an active, enrolled participant of an adult education program;
- (4) qualifies as indigent, which can be shown by the student experiencing at least one barrier to employment which may include:
  - (a) low literacy;
  - (b) low level of English language proficiency;
  - (c) lack of a high school diploma or equivalent;
  - (d) ex-offender status;
  - (e) migrant/seasonal farmworker status;
  - (f) displaced homemaker status;
  - (g) being unhoused;
  - (h) long-term unemployment;
  - (i) disability;
  - (j) cultural or linguistic barriers; or
  - (k) individual income level below 400% of the federal poverty level for the current year;
- (5) is simultaneously an active, enrolled participant of a department-funded workforce training program;
- (6) has completed a department-created application;
- (7) voluntarily chooses to participate in the program, as evidenced by the participant's signature on a program agreement; and
- (8) has not participated in the program for more than 12 months in the participant's lifetime.

**B.** The participant shall execute an agreement before a stipend is provided.

**C.** Once qualified and participating, no income, including state government public assistance, other state government funding, federal government funding, financial aid, educational and academic scholarships, pay for employment, etc. shall be counted as program funding nor disqualify the participant from receipt of the stipend.

**D.** Eligibility for the program shall not be contingent upon immigration status.

[5.9.2.9 NMAC - N, 2/11/2025]

#### **5.9.2.10      SELECTION OF PROGRAMS:**

The department shall select workforce training programs to participate as pilot sites. Priority shall be given to workforce training programs in the following workforce training programs or fields:

**A.** health care, including behavioral health;

**B.** early childhood education or care;

**C.** natural resources management;

**D.** renewable energy;

**E.** broadband expansion;

**F.** first responder;

**G.** construction industries;

**H.** aerospace;

**I.** biosciences;

**J.** cybersecurity;

**K.** film and television;

**L.** outdoor recreation;

**M.** sustainable agriculture;

**N.** intelligent manufacturing; and

**O.** global trade.



[5.9.2.10 NMAC - N, 2/11/2025]

**5.9.2.11 AGREEMENT:**

An agreement shall be drawn between each participant and the department. The agreement shall provide for:

**A.** a monthly stipend of \$1,000 for up to 12 months while a participant is actively enrolled in the workforce training program and completing all stated program requirements to the satisfaction of the adult education program director overseeing the workforce training program;

**B.** notification that the agreement may be terminated by the department in the event the participant no longer meets eligibility; and

**C.** notification of a potential reduction of monthly stipends by the department.

[5.9.2.11 NMAC - N, 2/11/2025]

**5.9.2.12 CONTINUED ELIGIBILITY AND PROGRAM LIMITS:**

**A.** A month in which a participant has received the full program stipend shall be considered a month of receipt and counted towards the 12-month lifetime limit. This applies even if a participant stops attending the program and ceases to receive the stipend, and then later returns and again becomes a participant in good standing in the same workforce training program or a different workforce training program.

**B.** Previous participants may participate in this program subject to availability of funding, not to exceed the 12-month lifetime limit.

**C.** Notwithstanding provisions of Subsection A and B of this section, the stipend shall be extended for one additional month past the conclusion of the student's participation in the pilot program whether by completion, voluntary exit, or participant removal for failure to meet program requirements not to exceed 12 months in a participant's lifetime.

**D.** An agreement may be terminated at the participant's request or upon death of the participant.

[5.9.2.12 NMAC - N, 2/11/2025]

**5.9.2.13 NOTICE:**

A participant shall be issued notice by the adult education program director or the director's designee in the following cases:

- A. upon determination of eligibility;
- B. at the time the stipend is increased or decreased;
- C. upon loss of eligibility for the program; or
- D. if the program has been suspended pursuant to 5.9.2.14 NMAC.

[5.9.2.13 NMAC - N, 2/11/2025]

#### **5.9.2.14      SUSPENSION OF PROGRAM:**

The stipend payment for participants may be denied for a designated time based on limited funds or a disruptive event, such as fire, flood, or pandemic. There shall be no stipend payments to a participant during the designated suspension period and any right to payment is lost. During a designated suspension period, all new applications for the program shall be denied without consideration of eligibility.

[5.9.2.14 NMAC - N, 2/11/2025]

#### **5.9.2.15      REPORTS:**

On or before December 1, 2025, and on or before December 1 of each subsequent calendar year of the program, in consultation with the health care authority department and any other appropriate state agency, the department shall provide a report to the legislative finance committee assessing the impact and outcomes of the program and providing department recommendations.

[5.9.2.15 NMAC - N, 2/11/2025]

## **CHAPTER 10-54: [RESERVED]**

## **CHAPTER 55: PUBLIC POST-SECONDARY EDUCATION GENERAL PROVISIONS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: TRIBAL COLLEGE DUAL CREDIT PROGRAM**

#### **5.55.2.1      ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.55.2.1 NMAC - N, 11/13/2014]

#### **5.55.2.2 SCOPE:**

This rule applies to dual credit programs at Diné College, the Institute of American Indian Art, Navajo Technical University and Southwest Indian Polytechnic Institute.

[5.55.2.2 NMAC - N, 11/13/2014]

#### **5.55.2.3 STATUTORY AUTHORITY:**

Section 9-25-8; 21-1-1.2 NMSA 1978.

[5.55.2.3 NMAC - N, 11/13/2014]

#### **5.55.2.4 DURATION:**

Permanent.

[5.55.2.4 NMAC - N, 11/13/2014]

#### **5.55.2.5 EFFECTIVE DATE:**

November 13, 2014, unless a later date is cited at the end of a section.

[5.55.2.5 NMAC - N, 11/13/2014]

#### **5.55.2.6 OBJECTIVE:**

The purposes of the tribal college dual credit program are:

**A.** to provide high school students the opportunity to enroll in college-level academic or career-technical courses offered by the four tribal post-secondary institutions;

**B.** to permit those enrolled students to simultaneously earn credit toward high school graduation and a post-secondary degree or certificate; and

**C.** to provide for reimbursement of dual credit tuition and fees for the four tribal colleges.

[5.55.2.6 NMAC - N, 11/13/2014]

#### **5.55.2.7 DEFINITIONS:**

**A. "Appropriation"** means the legislative financial allocation granted to reimburse the tribal colleges for dual credit tuition and fees.

**B. "Classification of instructional program (CIP)"** is a coding system that contains titles and descriptions of instructional programs.

**C. "Dual Credit Council"** is an advisory group consisting of staff of the higher education department and the public education department that issues recommendations to the cabinet secretaries of the public education and higher education departments regarding dual credit issues.

**D. "Dual Credit Program"** means a program offered by the tribal colleges and secondary schools that permits high school students to enroll in college-level courses offered by the tribal colleges that may be academic or career-technical, but not remedial or developmental. Dual credit students will simultaneously earn credit toward high school graduation and a postsecondary degree or certificate.

**E. "Department"** means the New Mexico higher education department.

**F. "Inadequate Appropriation"** means a legislative financial allocation that does not fully compensate all of the tribal colleges for the dual credit tuition and fees.

**G. "Local Educational Agency (LEA)"** is a public school district, a state-chartered school or a bureau of Indian education-funded high school.

**H. "Tribal College"** means diné college, the institute of American Indian arts, the Navajo technical university, southwest Indian polytechnic institute and any other post-secondary educational institutions that are tribally, federally or congressionally chartered in the state of New Mexico and accredited by the north central association of colleges and schools.

[5.55.2.7 NMAC - N, 11/13/2014]

#### **5.55.2.8 REIMBURSEMENT OF TUITION AND FEES:**

**A.** If sufficient appropriations are received, the tribal colleges will be fully reimbursed for all dual credit tuition and fees. The date of reimbursements is dependent upon receiving accurate and timely data from each tribal college in order to accurately calculate the amount due to each college. If final and accurate data is received in a timely manner, the reimbursements for fall semester will be distributed on or about March 31 of each year. If final and accurate data is received in a timely manner, the reimbursements for the spring semester will be made on or about August 31 of each year.

**B.** If the legislative appropriation is inadequate to fully reimburse each of the tribal colleges for the full amount of the tuition and fees expended to provide dual credit, the department will offer the presidents of the tribal colleges or their designees the opportunity to select another method of reimbursement.

**C.** In the event of an inadequate appropriation, the department will honor a fair and equitable alternative method of distribution of the reimbursement only if the method is agreed upon by all the tribal colleges pursuant to a memorandum of agreement.

**D.** If the tribal colleges cannot agree unanimously upon a fair and equitable distribution of an inadequate appropriation for dual credit tuition and fees, the department will develop a formula that fairly distributes the appropriation. The department's formula will be distributed to the colleges for review and comment before any distribution is made. However, in the event of disagreement, the department's determination of a distribution method is the final determination.

[5.55.2.8 NMAC - N, 11/13/2014]

#### **5.55.2 9 ELIGIBLE COURSES:**

##### **A. Types of courses:**

**(1)** College courses that are academic or career-technical may simultaneously earn credit toward high school graduation and a postsecondary degree or certificate and shall be eligible for dual credit. Remedial, developmental and physical education activity courses are not eligible for dual credit.

**(2)** Courses taken for audit are not eligible for dual credit.

**(3)** Dual credit courses may be taken as electives or core courses (except physical education activity course) high school credits.

**(4)** Dual credit courses must meet the public education department standards and benchmarks.

**(5)** College courses eligible for dual credit shall meet the rigor for postsecondary institution credit and be congruent with the postsecondary institution's academic standards.

**(6)** Dual credit courses offered in high school settings shall conform to college academic standards.

**(7)** Course requirements for high school students enrolled in dual credit courses shall be equal to those of regular college students.

**(8)** Dual credit courses that are part of the general education common core for postsecondary institutions are eligible for transfer among New Mexico postsecondary institutions pursuant to Subsection D of 21-1B-3 NMSA 1978.

##### **B. Identifying courses:**

(1) The LEA in collaboration with the postsecondary institution shall determine a list of academic and career technical courses eligible for dual credit.

(2) The department shall inform and assist the tribal colleges in identifying the dual credit courses and the data needed to adequately assist the LEAs, the tribal colleges and the department in correctly assessing appropriate dual credit courses and credits.

### **C. Course delivery:**

(1) Dual credit courses may be offered at LEAs, postsecondary institutions, and off-campus centers as determined by the LEA in collaboration with the postsecondary institution offering the courses.

(2) Dual credit courses may be delivered during or outside of regular LEA hours.

(3) Postsecondary institutions may offer dual credit courses via distance learning (ITV, online, hybrid, correspondence) as this option becomes available and cost-effective. All dual credit course rules apply.

### **D. Semesters dual credit may be taken; caps for dual credit; nature of high school credit earned:**

(1) Eligible students may enroll in dual credit courses year-round.

(2) There is no state limit to the number of credits a student may earn through dual credit in an academic term; however, the student must meet eligibility requirements.

(3) Unless otherwise approved by the cabinet secretaries of the higher education and public education departments, successful completion of three credit hours of postsecondary instruction shall result in the awarding of one high school unit for said completed postsecondary course. If the LEA and postsecondary institution determine that a different ratio is warranted for a particular dual credit course comparable to LEA core courses in order to meet public education department standards and benchmarks, they may appeal to the council, which may recommend a different ratio to the cabinet secretaries of the public education and higher education departments. The joint decision of the public education and higher education department cabinet secretaries shall be final.

[5.55.2.9 NMAC - N, 11/13/2014]

## **PART 3: TRANSFER AND ARTICULATION [REPEALED]**

[This part was repealed on June 12, 2018.]

## **PART 4: DUAL CREDIT [REPEALED]**

[This part was repealed on 5/14/2010. Full text of the Dual Credit rule may be accessed at PED rule, 6.30.7 NMAC, Dual Credit.]

## **PART 5: COMMON COURSE NUMBERING**

### **5.55.5.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505, (505) 476-8400.

[5.55.5.1 NMAC - N, 06/12/2018]

### **5.55.5.2 SCOPE:**

The provisions of 5.55.5 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico.

[5.55.5.2 NMAC - N, 06/12/2018]

### **5.55.5.3 STATUTORY AUTHORITY:**

Section 9-25-8 NMSA1978 and Section 21-1B-1 et seq. NMSA 1978.

[5.55.5.3 NMAC - N, 06/12/2018]

### **5.55.5.4 DURATION:**

Permanent.

[5.55.5.4 NMAC - N, 06/12/2018]

### **5.55.5.5 EFFECTIVE DATE:**

June 12, 2018, unless a later date is cited at the end of a section.

[5.55.5.5 NMAC - N, 06/12/2018]

### **5.55.5.6 OBJECTIVE:**

**A.** Establish and maintain a statewide common course numbering system for all lower division courses.

**B.** Establish a process by which courses are added, deleted, or reclassified within the common course numbering system.

C. Establish a process by which approved common course descriptions and student learning outcomes are revised.

[5.55.5.6 NMAC - N, 06/12/2018]

#### **5.55.5.7 DEFINITIONS:**

A. **"Crosswalk"** means a table or database that shows an inventory of equivalent courses offered at multiple institutions.

B. **"Department"** means the New Mexico higher education department.

C. **"Discipline"** or **"disciplines"** means areas of study that have been included within the common course numbering system.

D. **"Equivalent course"** means a set of lower division courses offered at multiple institutions that have been identified as sharing at least eighty percent of their student learning outcomes and the institutions offering those courses have agreed to adopt the same four letter and four number designation, course title, and course description.

E. **"Faculty"** means the current members of the faculty at the public higher education institutions operating within and receiving financial support from the state of New Mexico.

F. **"Institution"** means a public higher education institution operating within and receiving financial support from the state of New Mexico.

G. **"Institutional review"** means the process by which an institution conducts internal evaluation and approval of new courses, programs or any other matter related to curriculum. The required review process may differ between institutions and is set by each individual institution.

H. **"New Mexico common course numbering system"** or **"common course numbering system"** or **"NMCCNS"** means a statewide numbering system for all lower division college-level courses offered at public higher education institutions in New Mexico.

I. **"Unique course"** means a lower division course that does not meet the criteria of an equivalent course and is only offered at a single institution.

[5.55.5.7 NMAC - N, 06/12/2018]

#### **5.55.5.8 GENERAL REQUIREMENTS:**

A. All lower division academic courses offered by institutions shall be part of the New Mexico common course numbering system and shall be labeled as either



equivalent courses or unique courses. New disciplines, including career technical disciplines, may be added to the common course numbering system after convening of discipline specific faculty to review and identify equivalent courses.

**B.** The NMCCNS will be available to students as an online crosswalk and each institution shall have a link to the crosswalk on its website beginning August 30, 2018.

**C.** Beginning August 1, 2019, each lower division course shall adopt a NMCCNS four letter and four number designation. For each commonly numbered course offered by an institution, the common course designation, course description, and course student learning outcomes shall be implemented. Common courses shall be made available to students through course catalogs, student information systems, and websites by August 1, 2019.

**D.** Identified equivalent courses shall share the following:

- (1)** a four letter and four number designation;
- (2)** course title;
- (3)** course description; and
- (4)** agreed upon student learning outcomes.

**E.** The student learning outcomes agreed upon by the faculty committee shall make up at least eighty percent of the total student learning outcomes for each equivalent course. Each equivalent course may have up to twenty percent unique student learning outcomes.

**F.** A course that is only offered at a single institution shall be assigned a unique designation that is consistent with the NMCCNS that will be used only at the institution that offers the unique course.

**G.** New courses may be piloted for two semesters before applying for a New Mexico common course number. A pilot course will be assigned a New Mexico common course number that has been reserved for special topics courses.

**H.** The department shall maintain a database of all lower division college-level courses offered by all institutions. As part of the database, the department shall make available a list of all disciplines, courses, and the following information for each course:

- (1)** the course four letter and four number designation;
- (2)** course title;
- (3)** course description; and

- (4) student learning outcomes of the course.

I. Any tribal college or tribal university may participate within the common course numbering system upon execution of a memorandum of understanding with the department expressing its intent to implement the common course numbering system. If a tribal college or university has executed a memorandum of understanding with the department, the tribal college or tribal university shall be considered an institution for purposes of the Subsection F of 5.55.5.7 NMAC.

[5.55.5.8 NMAC - N, 06/12/2018]

#### **5.55.5.9 NEW MEXICO CURRICULUM AND ARTICULATION COMMITTEE:**

The department will convene and chair, as a non-voting member, a statewide committee of faculty to advise the department on issues related to articulation and curriculum, such as common course numbering, general education curriculum, meta-majors, transfer modules, or any other matters related to curriculum.

A. The New Mexico curriculum and articulation committee (NMCAC) shall consist of at least one representative from each institution. The representative should also be a member of the institution's curriculum committee.

(1) Each institution will have one vote on matters brought before the committee. In case of a tie vote, the committee chair shall cast the tie-breaking vote.

(2) The NMCAC may form subcommittees upon the request of any committee member. Subcommittees may seek subject matter experts to review or study a specific matter. Subcommittees shall report findings and make recommendations to the NMCAC membership.

B. The NMCAC will meet at least four times during the academic year.

[5.55.5.9 NMAC - N, 06/12/2018]

#### **5.55.5.10 CHANGES WITHIN THE NEW MEXICO COMMON COURSE NUMBERING SYSTEM:**

A. The department shall create and make available change forms to be used by institutions to request the following changes within the common course numbering system:

- (1) addition of a course;
- (2) removal of a course;
- (3) reclassification of a course;

- (4) change to course description; and
- (5) change to student learning outcomes.

**B.** The change forms shall be completed and submitted to the department by the institution's chief academic officer or designee only after receiving approval by the chief academic officer. It is the responsibility of the institution to complete all required institutional reviews.

**C.** If the change form is submitted on or before the deadline published by the department, consideration of the change form shall be placed on the next NMCAC meeting agenda. If the institution submits the change form after the published deadline, consideration of the change form will be postponed until the subsequent NMCAC meeting.

**D.** The department shall conduct an initial review of the change form to determine whether it has been correctly and fully completed. The department may request additional information from the institution for use in its initial review.

**E.** The department may determine that the change form does not need to go to the NMCAC. The following actions may be approved by the department and do not require approval by the NMCAC:

(1) an institution proposes the addition of a course and agrees to adopt the four letter and four number designation, course title, course description, and student learning outcomes of an existing equivalent course; or

(2) an institution proposes the addition of a unique course and the institution reports the course title, course description, and learning outcomes of the new unique course to the department.

**F.** If the department determines that the change form has met the initial review criteria and is required to be reviewed by the NMCAC, the department shall submit the change form and all supporting material to the NMCAC and require that the change form be considered by NMCAC.

**G.** If the department determines that a change form is not correctly and fully completed, the department shall return the change form to the institution with recommendations as to how deficiencies may be remedied. A change form shall not be presented to the NMCAC until the department has completed initial review and determines that the change form is correctly and fully completed.

**H.** In reviewing the change form and supporting materials, the NMCAC may request more information from the institution. If additional information is requested, the institution shall submit the additional information by the deadline set by the department. If the

additional information is not received by the deadline, consideration of the change form will be postponed to the subsequent NMCAC meeting.

**I.** The department shall have a representative present during the NMCAC meeting to present the change form. The department shall not make any recommendation to NMCAC regarding the change.

**J.** A representative from the applicant institution shall be present during the NMCAC meeting and shall be prepared to respond to questions presented by NMCAC members.

**K.** NMCAC shall consider the change form, any supporting materials, and information presented during its meeting. The chair shall conduct a roll call or written vote. Each institution shall cast a single vote. Based on the majority vote, NMCAC may approve, deny, table, or send the request to a subcommittee for further review. The vote shall be certified by the committee chair and the department shall issue official notice of the NMCAC decisions to all institutions within 10 business days of the meeting.

**L.** The department shall assign four letter and four number designations, in consultation with registrars from each of New Mexico's higher education sectors. If the department determines that a course is unique, the department shall assign a unique four letter and four number designation that is consistent with the New Mexico common course numbering system to the course without submission to the NMCAC. The department shall issue official notice of the new or reclassified course's designation to all institutions within 10 business days of assignment.

**M.** An institution must receive notice of the course's four letter and four number designation from the department before the institution publishes and makes new or reclassified courses available to students.

**N.** NMCAC approved changes to a course description or student learning outcomes shall be adopted and published in the next catalog printed by each institution.

**O.** Institutions shall notify the department if any approved commonly numbered course will no longer be offered at least 30 business days prior to the time the course will no longer be offered.

**P.** The department shall update the common course numbering system to reflect all changes.

[5.55.5.10 NMAC - N, 06/12/2018]

#### **5.55.5.11 MAINTENANCE OF THE COMMON COURSE NUMBERING SYSTEM:**

**A.** The department shall be responsible for regular updates to the common course numbering system. The department shall conduct regular maintenance and upkeep of

the common course numbering system to ensure the system accurately reflects course offerings.

**B.** The department shall convene committees of discipline specific faculty to review all of the lower division courses in the discipline on a rotating basis and based on a schedule set by the department, at least every five years. Each discipline committee shall review all of the lower division courses in the discipline and make recommendations to add new courses, remove old courses, reclassify existing courses, and revise the course descriptions and student learning outcomes.

**C.** Each discipline committee's recommendations will be sent to the NMCAC and chief academic officers with a request for comment from the appropriate faculty. Faculty comments will be forwarded to the committee to be considered. After the comments have been considered, revised discipline documents will be presented to the NMCAC for approval and sent to the chief academic officers for implementation.

**D.** Revised course descriptions and student learning outcomes shall be adopted by all institutions by the next publication of the institution's academic catalog.

[5.55.5.11 NMAC - N, 06/12/2018]

#### **5.55.5.12 TRANSFER OF COMMONLY NUMBERED COURSES BETWEEN HIGHER EDUCATION INSTITUTIONS IN NEW MEXICO:**

**A.** If a student completes a commonly numbered course at an institution and transfers to another institution, the receiving institution shall accept the course as equivalent to the course with the same number that is offered at the receiving institution.

**B.** Unique courses that have been assigned a number consistent with the NMCCNS are subject to the transfer policies of the receiving institution.

**C.** A commonly numbered course shall fulfill degree requirements when it is accepted as an equivalent course that is part of the degree requirements at the receiving institution. A student who has completed commonly numbered courses that are not part of their chosen degree requirements is not exempted from courses requirements for their chosen degree.

[5.55.5.12 NMAC - N, 06/12/2018]

#### **5.55.5.13 COMPLAINTS RELATED TO THE TRANSFER OF COMMONLY NUMBERED COURSES:**

**A.** Institutions shall establish appropriate policies and practices for receiving and resolving complaints from students or other complainants regarding the transfer of commonly numbered courses. Such policies shall include at least the following components:

**(1)** Complainants shall be required to first seek resolution of their complaint directly within the institution.

**(2)** A time frame within which the institution will investigate the complaint and respond to the complainant shall be specified.

**(3)** The institution shall assure that an impartial party will be involved in consideration of the complaint.

**(4)** The institution shall assure that no adverse action will be taken against the student or complainant as a result of registering the complaint.

**(5)** The institution shall identify the department as the agency to be contacted in cases where the complaint remains unresolved.

**B.** When a student or other complainant contacts the department with a complaint, the department will require that the complaint be submitted in writing. The complaint must include a summary of the process followed by the complainant in an attempt to resolve the complaint through the institution's internal procedures.

**C.** Following receipt of a written complaint, the department will contact the relevant institution to ascertain whether or not the complaint is bona fide, that is, whether or not the institution's internal complaint process has been followed sufficiently to warrant filing of the complaint with the department.

**D.** Upon determination that the complainant has not followed the institution's internal process to a sufficient extent, the department shall refer the complainant to the institution to follow the institution's complaint procedure.

**E.** Upon determination that the complaint is bona fide, the department will request a response to the complaint from the institution, summarizing its position and justification for its course of action. Such response shall be provided in writing to the department within 10 business days of receipt by the institution.

**F.** The department will conduct an analysis of the complaint, considering all information submitted by both parties, and may at its discretion solicit additional information relevant to the complaint. The analysis will be consistent with the general principles and other specifications of 5.55.5 NMAC.

**G.** The department will render its decision as to the appropriateness of the actions of the parties to each complaint. If a student's articulation complaint includes commonly numbered courses or courses contained in a meta-major or transfer module and is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution.

[5.55.5.13 NMAC - N, 06/12/2018]

**5.55.5.14 REPORTING:**

**A.** An institution shall report annually to the department by August 31.

**B.** An institution shall report on a form provided by the department.

**C.** The department shall use the information and data provided by the institutions to prepare its annual report to the legislative finance committee and the governor regarding the status of articulation and transfer, which includes common course numbering, general education, meta-majors, and transfer modules.

[5.55.5.14 NMAC - N, 06/12/2018]

**PART 6: GENERAL EDUCATION CURRICULUM**

**5.55.6.1 ISSUING AGENCY:**

New Mexico Higher Education Department (NMHED).

[5.55.6.1 NMAC - N, 06/12/2018]

**5.55.6.2 STATUTORY AUTHORITY:**

Section 9-25-8 NMSA1978 and Section 21-1B-1 et seq. NMSA 1978.

[5.55.6.2 NMAC - N, 06/12/2018]

**5.55.6.3 SCOPE:**

The provisions of 5.55.6 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico.

[5.55.6.3 NMAC - N, 06/12/2018]

**5.55.6.4 DURATION:**

Permanent.

[5.55.6.4 NMAC - N, 06/12/2018]

**5.55.6.5 EFFECTIVE DATE:**

June 12, 2018, unless a later date is cited at the end of a section.

[5.55.6.5 NMAC - N, 06/12/2018]

#### 5.55.6.6 OBJECTIVE:

**A.** Establish and maintain a statewide general education curriculum that includes a comprehensive array of lower-division college-level courses designed to provide a foundation for a well-rounded education.

**B.** Establish a process by which courses are submitted, reviewed and approved by the department to be included within the general education curriculum.

[5.55.6.6 NMAC - N, 06/12/2018]

#### 5.55.6.7 DEFINITIONS:

**A. "Department"** means the New Mexico higher education department.

**B. "Essential skills"** means the transferable skills set by the department, in consultation with faculty, that are essential to success in education and the workforce.

**C. "Faculty"** means the current members of the faculty at the public post-secondary institutions operating within and receiving financial support from the state of New Mexico.

**D. "Flexible nine"** means the nine credit hours set by each public post-secondary institution to be included within the institution's general education requirements for all bachelor's degrees and all associate's degrees, other than associate's of applied science.

**E. "Flexible three"** means the three credit hours set by each public post-secondary institution to be included within the institution's general education requirements for all associate's of applied science degrees.

**F. "General education course"** means a course that has been approved by the New Mexico curriculum and articulation committee as fulfilling the requirements of a content area that is part of the general education curriculum.

**G. "General education curriculum" or "general education"** means a program that imparts knowledge to students and develops essential skills necessary for success in education and the workforce.

**H. "Institution"** means a public higher education institution operating within and receiving financial support from the state of New Mexico.

**I. "New general education course"** means a course that differs from currently approved courses at the proposing institution.

[5.55.6.7 NMAC - N, 06/12/2018]



#### **5.55.6.8 GENERAL REQUIREMENTS:**

**A.** The department shall adopt a general education curriculum of at least 30 credit hours for all bachelor's degrees and all associate's degrees, other than associate's of applied science, that includes broad content areas of learning. The department shall adopt a general education curriculum of at least 15 credit hours for all associate's of applied science degrees that includes broad content areas of learning.

**B.** The department, in consultation with faculty, will develop and maintain the general education curriculum, which is designed to provide students with knowledge and the transferable essential skills that are essential to success.

**C.** The department shall maintain and publish a list of the courses approved to be part of the general education curriculum.

**D.** Each institution shall publish and make available to students the general education curriculum and approved courses it offers that fulfill the requirement of the general education curriculum.

**E.** Each institution shall have an assessment plan for its general education program on file with the department. The assessment plan shall outline the program's practices, intentions, and process for demonstrating institutional effectiveness.

**F.** A student shall only be required to fulfill the general education curriculum requirements specified in the catalog in effect at the time in which the student enrolls as a first-time freshman. If that catalog expires while the student is enrolled, the student shall follow institutional processes for selecting a new catalog. A student may elect to follow the requirements of any revisions to the general education curriculum that occur after the student enrolls as a first-time freshman.

**G.** Students should consult advisors at their institution regarding which specific courses fulfill the general education curriculum and degree requirements. The general education curriculum may fulfill requirements of meta-majors or transfer modules, as defined in 5.55.7 NMAC.

**H.** A single course may fulfill both general education curriculum and degree requirements.

**I.** A student who has completed the general education curriculum is not exempted from courses that are required for their chosen degree that are also general education courses.

**J.** When a student completes the credit hours of the general education curriculum, a notation shall be made on the student's transcript that shows that the student has completed the general education curriculum.

**K.** Any tribal college or tribal university may participate in the general education curriculum, upon execution of a memorandum of understanding with the department expressing its intent to implement the general education curriculum. If a tribal college or university has executed a memorandum of understanding with the department, the tribal college or tribal university shall be considered an institution for purposes of the Subsection H of 5.55.6.7 NMAC.

[5.55.6.8 NMAC - N, 06/12/2018]

#### **5.55.6.9 NEW MEXICO CURRICULUM AND ARTICULATION COMMITTEE:**

The department will convene and chair, as a non-voting member, a statewide committee of faculty to advise the department on issues related to articulation and curriculum, such as common course numbering, general education curriculum, meta-majors, transfer modules, or any other matters related to curriculum.

**A.** The New Mexico curriculum and articulation committee (NMCAC) shall consist of at least one representative from each institution. The representative should also be a member of the institution's curriculum committee.

**(1)** Each institution will have one vote on matters brought before the committee. In case of a tie vote, the committee chair shall cast the tie-breaking vote.

**(2)** The NMCAC may form subcommittees upon the request of any committee member. Subcommittees may seek subject matter experts to review or study a specific matter. Subcommittees shall report findings and make recommendations to the NMCAC membership.

**B.** The NMCAC will meet at least four times during the academic year.

[5.55.6.9 NMAC - N, 06/12/2018]

#### **5.55.6.10 GENERAL EDUCATION CURRICULUM:**

**A.** By August 1, 2019, each institution shall adopt the following 31 credit hour statewide general education curriculum for all bachelor's degrees and all associate's degrees, other than associate's of applied science:

**(1)** Fixed 22. At least 22 credit hours of courses in the following six content areas:

**(a)** communications;

**(b)** mathematics;

**(c)** science;

**(d)** social and behavioral science;

**(e)** humanities; and

**(f)** creative and fine arts.

**(2)** Flexible nine. Each institution shall develop a flexible nine which may be from:

**(a)** the content areas listed in Paragraph (1) of Subsection A of 5.55.6.10, NMAC; or

**(b)** other content areas such as foreign languages, interdisciplinary studies, business, engineering, information technology or any other content area that the institution deems appropriate.

**B.** By August 1, 2019, each institution shall adopt the following 15 credit hour statewide general education curriculum for all associate's of applied science degrees:

**(1)** Fixed 12. At least 12 credit hours from four of the following six content areas:

**(a)** communications;

**(b)** mathematics;

**(c)** science;

**(d)** social and behavioral science;

**(e)** humanities; and

**(f)** creative and fine arts.

**(2)** Flexible three. Each institution shall develop a flexible three which may be from:

**(a)** the content areas listed in Paragraph (1) of Subsection B of 5.55.6.10, NMAC; or

**(b)** other content areas such as foreign languages, interdisciplinary studies, business, engineering, information technology or any other content area that the institution deems appropriate.

**C.** The general education curriculum, including content areas, essential skills, and courses, shall be reviewed every five years by the NMCAC. The NMCAC shall make

recommendations to the department regarding any necessary revisions. The department shall make the final determination regarding any revisions to the general education curriculum.

[5.55.6.10 NMAC - N, 06/12/2018]

#### **5.55.6.11 CERTIFICATION OF GENERAL EDUCATION COURSES:**

**A.** The department shall create and make available a certification form to be used by institutions to request the certification of a new general education course.

**B.** Completed certification forms shall be submitted to the department by the institution's chief academic officer or designee only after receiving approval by the chief academic officer.

**C.** If the certification form is submitted on or before the deadline published by the department, consideration of the certification form shall be placed on the next NMCAC meeting agenda. If the institution submits the certification form after the published deadline, consideration of the certification form will be postponed until the subsequent NMCAC meeting.

**D.** The department shall conduct an initial review of the certification form to determine whether it has been correctly and fully completed. The department may request additional information from the institution for use in its initial review. If the department determines that the certification form has met the initial review criteria, the department shall submit the certification form and all supporting material to the NMCAC and require that the certification form be considered by NMCAC. If the department determines that a certification form is not correctly and fully completed, the department shall return the certification form to the institution with recommendations as to how deficiencies may be remedied. A certification form shall not be presented to the NMCAC until the department has completed initial review and determines that the certification form is correctly and fully completed.

**E.** In reviewing the certification form and supporting materials, the NMCAC may request more information from the institution. If additional information is requested, the institution shall submit the additional information by the deadline set by the department. If the additional information is not received by the deadline, consideration of the certification form will be postponed to the subsequent NMCAC meeting.

**F.** The department shall have a representative present during the advisory committee meeting to present the certification form. The department shall not make any recommendation to NMCAC regarding the certification.

**G.** A representative from the applicant institution shall be present during the NMCAC meeting and shall be prepared to respond to questions presented by NMCAC members.

**H.** NMCAC shall consider the certification form, any supporting materials, and information presented during its meeting. The chair shall conduct a roll call or written vote. Each institution shall cast a single vote. Based on the majority vote, NMCAC may approve, deny, table, or send the request to a subcommittee for further review. The vote shall be certified by the committee chair and the department shall issue official notice of the NMCAC decision to the institution within 10 business days after the NMCAC meeting.

**I.** An institution must receive notice of the NMCAC decision from the department before the institution publishes and makes available to students the courses it offers that fulfill the requirements of the general education curriculum. Courses that are approved to be part of the general education curriculum shall be designated as general education by a notation in the course description in the institution's course catalog.

**J.** Institutions will notify the department if any approved general education courses will no longer be offered at least 30 business days prior to the time the course will no longer be offered.

**K.** The department shall update the general education curriculum inventory to reflect all changes.

[5.55.6.11 NMAC - N, 06/12/2018]

#### **5.55.6.12 FACTORS CONSIDERED IN CERTIFICATION FORM REVIEW:**

**A.** Each institution shall have an assessment plan for its general education program on file with the department by August 1, 2019. The assessment plan must include the goals of the program, how the goals are addressed in the curriculum, student learning outcomes, and assessment methods.

**B.** Each institution shall articulate how the course integrates essential skills to achieve the student learning outcomes of the course.

**C.** Each course shall include at least three of the following essential skills:

- (1)** communication;
- (2)** critical thinking;
- (3)** information and digital literacy;
- (4)** quantitative reasoning; and
- (5)** personal and social responsibility.

**D.** The certification form will be evaluated based on criteria published by the department.

[5.55.6.12 NMAC - N, 06/12/2018]

#### **5.55.6.13      TRANSFER OF GENERAL EDUCATION COURSES:**

**A.** For each general education course approved by NMCAC, its credits shall transfer as fulfilling general education curriculum requirements at any institution to which they are transferred.

**B.** A student who has completed the 31 credit hours of the general education curriculum for an associate's or bachelor's degree and transfers to a different institution to continue an associate's or bachelor's degree shall have all previously completed general education courses accepted by the receiving institution as fulfilling the general education curriculum for an associate's or bachelor's degree.

**C.** A student who has completed the 15 credit hours of the general education curriculum for an associate's of applied science and transfers to a different institution to continue an associate's of applied science shall have all previously completed general education courses accepted by the receiving institution as fulfilling the general education curriculum for an associate's of applied science.

**D.** If a student transfers and has not completed the 31 credit hours of the general education curriculum for an associate's degree, other than an associate's of applied science, or bachelor's degree, the courses taken as part of the general education and the content areas fulfilled shall be noted on the transcript.

**(1)** Courses that have been taken within the fixed 22 credit hours will transfer as fulfilling the content area for which they are approved.

**(2)** Courses taken within the flexible nine shall transfer as meeting the receiving institution's flexible nine general education requirement.

**(3)** Transfer students who have not completed the flexible nine will be subject to the receiving institution's flexible nine policy for the remaining credits that must be completed to fulfill the flexible nine.

**E.** If a student transfers and has not completed the 15 credit hours of the general education curriculum for an associate's of applied science degree, the courses taken as part of the general education and the content areas fulfilled shall be noted on the transcript.

**(1)** Courses that have been taken within the fixed 12 credit hours will transfer as fulfilling the content area for which they are approved.

(2) Courses taken within the flexible three shall transfer as meeting the receiving institution's flexible three general education requirement.

(3) Transfer students who have not completed the flexible three will be subject to the receiving institution's flexible three policy.

F. When making decisions affecting transfer students, receiving institutions should assure that transfer students are treated equally to those students originating their post-secondary studies at the institution.

[5.55.6.13 NMAC - N, 06/12/2018]

#### **5.55.6.14 COMPLAINTS RELATED TO THE TRANSFER OF GENERAL EDUCATION CURRICULUM:**

A. Institutions shall establish appropriate policies and practices for receiving and resolving complaints from students or other complainants regarding the transfer of general education curriculum. Such policies shall include at least the following components:

(1) Complainants shall be required to first seek resolution of their complaint directly within the institution.

(2) A time frame within which the institution will investigate the complaint and respond to the complainant shall be specified.

(3) The institution shall assure that an impartial party will be involved in consideration of the complaint.

(4) The institution shall assure that no adverse action will be taken against the student or complainant as a result of registering the complaint.

(5) The institution shall identify the department as the agency to be contacted in cases where the complaint remains unresolved.

B. When a student or other complainant contacts the department with a complaint, the department will require that the complaint be submitted in writing. The complaint must include a summary of the process followed by the complainant in an attempt to resolve the complaint through the institution's internal procedures.

C. Following receipt of a written complaint, the department will contact the relevant institution to ascertain whether or not the complaint is bona fide, that is, whether or not the institution's internal complaint process has been followed sufficiently to warrant filing of the complaint with the department.

**D.** Upon determination that the complainant has not followed the institution's internal process to a sufficient extent, the department shall refer the complainant to the institution to follow the institution's complaint procedure.

**E.** Upon determination that the complaint is bona fide, the department will request a response to the complaint from the institution, summarizing its position and justification for its course of action. Such response shall be provided in writing to the department within 10 business days of receipt by the institution.

**F.** The department will conduct an analysis of the complaint, considering all information submitted by both parties, and may at its discretion solicit additional information relevant to the complaint. The analysis will be consistent with the general principles and other specifications of 5.55.6 NMAC.

**G.** The department will render its decision as to the appropriateness of the actions of the parties to each complaint. If a student's articulation complaint includes commonly numbered courses or courses contained in a meta-major or transfer module and is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution.

[5.55.6.14 NMAC - N, 06/12/2018]

#### **5.55.6.15 REPORTING:**

**A.** An institution shall report annually to the department by August 31.

**B.** An institution shall report on a form provided by the department.

**C.** The department shall use the information and data provided by the institutions to prepare its annual report to the legislative finance committee and the governor regarding the status of articulation and transfer, which includes common course numbering, general education, meta-majors, and transfer modules.

[5.55.6.15 NMAC - N, 06/12/2018]

### **PART 7: META-MAJORS AND TRANSFER MAJORS**

#### **5.55.7.1 ISSUING AGENCY:**

State of New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4,  
Santa Fe, New Mexico 87505, (505) 476-8400.

[5.55.7.1 NMAC - N, 06/12/2018]

#### **5.55.7.2 STATUTORY AUTHORITY:**



Section 9-25-8 NMSA1978 and Section 21-1B-1 et seq. NMSA 1978.

[5.55.7.2 NMAC - N, 06/12/2018]

**5.55.7.3 SCOPE:**

The provisions of 5.55.7 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico.

[5.55.7.3 NMAC - N, 06/12/2018]

**5.55.7.4 DURATION:**

Permanent.

[5.55.7.4 NMAC - N, 06/12/2018]

**5.55.7.5 EFFECTIVE DATE:**

June 12, 2018, unless a later date is cited at the end of a section.

[5.55.7.5 NMAC - N, 06/12/2018]

**5.55.7.6 OBJECTIVE:**

**A.** Establish a process to develop and approve statewide meta-majors and transfer modules.

**B.** Establish a process by which statewide meta-majors and transfer modules are maintained.

[5.55.7.6 NMAC - N, 06/12/2018]

**5.55.7.7 DEFINITIONS:**

**A. "Certificate"** means a program of study that is designed to develop or enhance a focused area of expertise, provide specific skill training and to enhance employability.

**B. "Degree map"** means the sequence of courses required to complete an undergraduate program of study.

**C. "Department"** means the New Mexico higher education department.

**D. "Faculty"** means the current members of the faculty at the public post-secondary institutions operating within and receiving financial support from the state of New Mexico.

**E. "Institution"** means a public higher education institution operating within and receiving financial support from the state of New Mexico.

**F. "Meta-major"** means 15 credit hours of lower-division courses that include general education and prerequisite courses that can articulate to multiple degree programs.

**G. "Transfer module"** means a list of lower-division courses that fulfill graduation requirements for a specific degree program.

**H. "Undergraduate program" or "program"** means any sequence of courses, activities or experiences which leads to the award of an associate's or bachelor's degree.

[5.55.7.7 NMAC - N, 06/12/2018]

#### **5.55.7.8 GENERAL REQUIREMENTS:**

**A.** The department shall develop and maintain a statewide system of meta-majors and transfer modules. The meta-majors and transfer modules will be based on the requirements of current, approved undergraduate programs and certificate programs offered at institutions in New Mexico. The department shall utilize degree maps submitted by each institution in formulating statewide meta-majors and transfer modules.

**B.** A degree map provides college students with a clear and direct path to on-time completion. Degree maps shall include specific required courses listed by term.

**C.** A meta-major consists of lower division courses that articulate to multiple undergraduate programs in related disciplines. A meta-major will fulfill the first term degree map requirements of multiple similar disciplines that share common lower-division course requirements and are transferable between institutions. A meta-major or transfer module may include courses from the general education curriculum, as defined in 5.55.6 NMAC.

**D.** A transfer module consists of lower division courses that articulate to a specific bachelor's degree program. A transfer module will fulfill the first four terms of degree map requirements of a bachelor's degree and be transferable between institutions. A transfer module may be an associate's degree or a certificate.

**E.** The department shall maintain and make available a listing of the statewide meta-majors, transfer modules, and certificate and degree programs offered by all institutions.

**F.** Each institution shall maintain and make available to students a listing of the meta-majors, transfer modules, and certificate and degree programs offered at the institution.

**G.** Any tribal college or tribal university may participate in the statewide meta-majors and transfer modules, upon execution of a memorandum of understanding with the department expressing its intent to implement statewide meta-majors and transfer modules. If a tribal college or university has executed a memorandum of understanding with the department, the tribal college or tribal university shall be considered an institution for purposes of the Subsection E of 5.55.7.7 NMAC.

**H.** The department may assess a fee for the actual cost of maintaining the degree mapping platform.

[5.55.7.8 NMAC - N, 06/12/2018]

#### **5.55.7.9 NEW MEXICO CURRICULUM AND ARTICULATION COMMITTEE:**

The department will convene and chair, as a non-voting member, a statewide committee of faculty to advise the department on issues related to articulation and curriculum, such as common course numbering, general education curriculum, meta-majors, transfer modules, or any other matters related to curriculum.

**A.** The New Mexico curriculum and articulation committee (NMCAC) shall consist of at least one representative from each institution. The representative should also be a member of the institution's curriculum committee.

**(1)** Each institution will have one vote on matters brought before the committee. In case of a tie vote, the committee chair shall cast the tie-breaking vote.

**(2)** The NMCAC may form subcommittees upon the request of any committee member. Subcommittees may seek subject matter experts to review or study a specific matter. Subcommittees shall report findings and make recommendations to the NMCAC membership.

**B.** The NMCAC will meet at least four times during the academic year.

[5.55.7.9 NMAC - N, 06/12/2018]

#### **5.55.7.10 DEVELOPMENT AND APPROVAL OF META-MAJORS AND TRANSFER MODULES:**

**A.** Each institution shall report the following information to the department, in the format requested by the department:

**(1)** every course offered by the institution;

- (2) institution structure; and
- (3) degree or certificate requirements.

**B.** The department shall analyze the information collected from the institutions to determine proposed degree maps. The department shall submit the proposed degree map to the institution's chief academic officer for review, comment, and revisions. The department shall collaborate with each institution to develop degree maps for all programs offered.

**C.** The department shall analyze the completed degree maps to develop proposed statewide meta-majors and transfer modules. A meta-major or transfer module shall not be presented to the NMCAC until the department has completed its analysis and holds a period for institution comment.

**D.** Proposed statewide meta-majors and transfer modules shall be sent to the NMCAC and the chief academic officers with a request for review and comment from the appropriate faculty prior to its next meeting and placed on the agenda.

**E.** Comments collected by NMCAC and the chief academic officers shall be submitted by the deadline set by the department. If the comments are not received by the deadline, the comments will not be considered by the NMCAC when voting to approve the statewide meta-major or transfer modules. Comments will be forwarded to the NMCAC prior to its meeting for consideration.

**F.** After the comments have been considered, statewide meta-majors and transfer modules will be presented to the NMCAC for approval. The department shall have a representative present during the NMCAC meeting to present the statewide meta-major or transfer module.

**G.** NMCAC shall consider the proposed statewide meta-majors and transfer modules and comments during its meeting. The chair shall conduct a roll call or written vote. Each institution shall cast a single vote. Based on the majority vote, NMCAC may approve, deny, table, or send the request to a subcommittee for further review. The vote shall be certified by the committee chair and the department shall issue official notice of the NMCAC decisions to all institutions within 10 business days.

**H.** Approved statewide meta-majors and transfer modules shall be adopted and published in the next catalog printed by each institution.

**I.** The department shall update the inventory of statewide meta-majors and transfer modules to reflect all changes.

[5.55.7.10 NMAC - N, 06/12/2018]

#### **5.55.7.11 MAINTENANCE OF META-MAJORS AND TRANSFER MODULES:**

**A.** Any change to the items previously reported to the department under Subsection A of 5.55.7.10 NMAC shall be reported to the department within 30 business days. The department will analyze the curricular change to determine if it affects one or more meta-majors or transfer modules.

**B.** If the change affects one or more meta-majors or transfer modules, the department shall notify the institution and any other institution that offers the meta-majors or transfer modules. Upon notification, the department will meet with representatives of the affected institutions to determine how to preserve the articulation of the affected meta-majors or transfer modules.

**C.** Proposed changes to the affected statewide meta-majors, and statewide transfer modules shall be approved through the process in Subsection D through Subsection H of 5.55.7.10 NMAC.

[5.55.7.11 NMAC - N, 06/12/2018]

#### **5.55.7.12 TRANSFER OF META-MAJORS AND TRANSFER MODULES:**

If an institution offers a degree program to which a meta-major or transfer module articulates, that institution shall accept transfer courses taken as part of the meta-major or transfer module as fulfilling the degree requirements for that program.

[5.55.7.12 NMAC - N, 06/12/2018]

#### **5.55.7.13 COMPLAINTS RELATED TO THE TRANSFER OF META-MAJORS AND TRANSFER MODULES:**

**A.** Institutions shall establish appropriate policies and practices for receiving and resolving complaints from students or other complainants regarding the transfer of meta-majors and transfer modules. Such policies shall include at least the following components:

**(1)** Complainants shall be required to first seek resolution of their complaint directly within the institution.

**(2)** A time frame within which the institution will investigate the complaint and respond to the complainant shall be specified.

**(3)** The institution shall assure that an impartial party will be involved in consideration of the complaint.

**(4)** The institution shall assure that no adverse action will be taken against the student or complainant as a result of registering the complaint.

**(5)** The institution shall identify the department as the agency to be contacted in cases where the complaint remains unresolved.

**B.** When a student or other complainant contacts the department with a complaint, the department will require that the complaint be submitted in writing. The complaint must include a summary of the process followed by the complainant in an attempt to resolve the complaint through the institution's internal procedures.

**C.** Following receipt of a written complaint, the department will contact the relevant institution to ascertain whether or not the complaint is bona fide, that is, whether or not the institution's internal complaint process has been followed sufficiently to warrant filing of the complaint with the department.

**D.** Upon determination that the complainant has not followed the institution's internal process to a sufficient extent, the department shall refer the complainant to the institution to follow the institution's complaint procedure.

**E.** Upon determination that the complaint is bona fide, the department will request a response to the complaint from the institution, summarizing its position and justification for its course of action. Such response shall be provided in writing to the department within 10 business days of receipt by the institution.

**F.** The department will conduct an analysis of the complaint, considering all information submitted by both parties, and may at its discretion solicit additional information relevant to the complaint. The analysis will be consistent with the general principles and other specifications of 5.55.7 NMAC.

**G.** The department will render its decision as to the appropriateness of the actions of the parties to each complaint. If a student's articulation complaint includes commonly numbered courses or courses contained in a meta-major or transfer module and is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution.

[5.55.7.13 NMAC - N, 06/12/2018]

#### **5.55.7.14 REPORTING:**

**A.** An institution shall report annually to the department by August 31.

**B.** An institution shall report on a form provided by the department.

**C.** The department shall use the information and data provided by the institutions to prepare its annual report to the legislative finance committee and the governor regarding the status of articulation and transfer, which includes common course numbering, general education, meta-majors, and transfer modules.

[5.55.7.14 NMAC - N, 06/12/2018]

## **PART 8: STATEWIDE ADVANCED PLACEMENT POLICY**

### **5.55.8.1 ISSUING AGENCY:**

New Mexico Higher Education Department (NMHED).

[5.55.8.1 NMAC - N, 10/25/2022]

### **5.55.8.2 STATUTORY AUTHORITY:**

Section 21-2-5 NMSA 1978 and Section 21-1-47 NMSA 1978.

[5.55.8.2 NMAC - N, 10/25/2022]

### **5.55.8.3 SCOPE:**

The provisions of 5.55.8 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico.

[5.55.8.3 NMAC - N, 10/25/2022]

### **5.55.8.4 DURATION:**

Permanent.

[5.55.8.4 NMAC - N, 10/25/2022]

### **5.55.8.5 EFFECTIVE DATE:**

October 25, 2022, unless a later date is cited at the end of a section.

[5.55.8.5 NMAC - N, 10/25/2022]

### **5.55.8.6 OBJECTIVE:**

**A.** Establish and maintain a statewide advanced placement exam policy that includes a comprehensive list of lower-division college-level courses for which a student shall receive credit when the student earns a score of three or above on an advanced placement exam.

**B.** When the college-level course is also designated as a general education course, ensure that the student receives general education credit in the associated content area for that course.

C. Establish a process by which advanced placement exam equivalencies are reviewed and approved by the department to be included within the statewide advanced placement exam policy.

[5.55.8.6 NMAC - N, 10/25/2022]

#### **5.55.8.7 DEFINITIONS:**

A. "**Committee**" means the New Mexico curriculum and articulation committee as provided in 5.55.6.9 NMAC.

B. "**Department**" means the New Mexico higher education department.

C. "**Elective credit**" means course credit that does not meet general education, degree, or other university requirements.

D. "**General education**" means a program that imparts knowledge to students and develops essential skills necessary for success in education and the workforce.

E. "**General education course**" means a course that has been approved by the New Mexico curriculum and articulation committee as fulfilling the requirements of a content area that is part of the general education curriculum.

F. "**Institution**" means a New Mexico public post-secondary institution or accredited tribal college.

[5.55.8.7 NMAC - N, 10/25/2022]

#### **5.55.8.8 GENERAL REQUIREMENTS:**

A. The department, in consultation with faculty, shall develop the statewide advanced placement exam policy that includes a comprehensive list of lower-division college-level courses for which a student shall receive credit when the student earns a score of three or above on an advanced placement exam.

B. The department shall adopt a statewide advanced placement exam policy that includes a comprehensive list of lower-division college-level courses for which a student shall receive credit when the student earns a score of three or above on an advanced placement exam.

C. The department shall maintain and publish a list of the courses approved that are also general education courses and the content area associated with that course so that general education credit can be awarded by the institution.

D. Each institution shall publish and make available to students the statewide advanced placement exam policy, including the course credits that fulfill general



education requirements. The institution may meet the requirement by providing a link to the published policy on the department's website.

**E.** Students should consult with advisors at their institution to ensure that their advanced placement credits are recognized as listed in the policy.

**F.** If an institution does not offer the course approved for a specific advanced placement exam score, the institution shall bring in the advanced placement course as if it was a transfer course, and ensure it meets general education credit if listed as general education in the policy.

**G.** A single advanced placement exam score may fulfill both general education and degree requirements.

**H.** Prior to participating in the statewide advanced placement exam policy, an accredited tribal college shall execute a memorandum of understanding with the department expressing its intent to implement the statewide advanced placement exam policy.

[5.55.8.8 NMAC - N, 10/25/2022]

#### **5.55.8.9 MAINTENANCE OF STATEWIDE ADVANCED PLACEMENT EXAM POLICY:**

**A.** The department shall create and make available a form to be used by institutions to request changes to the statewide advanced placement exam policy.

**B.** Completed forms shall be submitted to the department by the institution's chief academic officer or designee only after receiving approval by the chief academic officer.

**C.** If the form is submitted on or before the deadline published by the department, consideration of the form shall be placed on the next committee meeting agenda. If the institution submits the form after the published deadline, consideration of the form shall be postponed until the subsequent committee meeting.

**D.** The department shall conduct an initial review of the form to determine whether it has been correctly and fully completed. The department may request additional information from the institution for use in its initial review. If the department determines that the form has met the initial review criteria, the department shall submit the form and all supporting material to the committee and require that the form be considered by the committee. If the department determines that a form is not correctly and fully completed, the department shall return the form to the institution with recommendations as to how deficiencies may be remedied. A form shall not be presented to the committee until the department has completed initial review and determines that the form is correctly and fully completed.

**E.** In reviewing the form and supporting materials, the committee may request more information from the institution. If additional information is requested, the institution shall submit the additional information by the deadline set by the department. If the additional information is not received by the deadline, consideration of the form shall be postponed to the subsequent committee meeting.

**F.** The department shall have a representative present during the advisory committee meeting to present the form. The department shall not make any recommendation to committee regarding the advanced placement exam policy.

**G.** A representative from the applicant institution shall be present during the committee meeting and shall be prepared to respond to questions presented by committee members.

**H.** The committee shall consider the form, any supporting materials, and information presented during its meeting. The chair shall conduct a vote. Each institution shall cast a single vote. Based on the majority vote, the committee may approve, deny, table, or send the request to a subcommittee for further review. The vote shall be certified by the committee chair and the department shall issue official notice of the committee decision to the institution.

**I.** An institution shall not publish and makes available to students the courses it offers that fulfill the statewide advanced placement exam policy prior the institution's receipt of notice of the committee decision from the department.

**J.** Institutions shall notify the department if any courses that are part of the statewide advanced placement exam policy will no longer be offered at least 90 days prior to the time the course will no longer be offered.

**K.** The department shall update the statewide advanced placement exam policy to reflect all changes to institution's curriculum.

[5.55.8.9 NMAC - N, 10/25/2022]

#### **5.55.8.10 COMPLAINTS RELATED TO THE STATEWIDE ADVANCED PLACEMENT EXAM POLICY:**

**A.** Institutions shall establish appropriate policies and practices for receiving and resolving complaints from students or other complainants regarding the transfer of general education curriculum. Such policies shall include at least the following components:

(1) Complainants shall be required to first seek resolution of their complaint directly within the institution.

(2) A time frame within which the institution shall investigate the complaint and respond to the complainant shall be specified.

(3) The institution shall assure that an impartial party is involved in consideration of the complaint.

(4) The institution shall assure that no adverse action shall be taken against the student or complainant as a result of registering the complaint.

(5) The institution shall identify the department as the agency to be contacted in cases where the complaint remains unresolved.

**B.** When a student or other complainant contacts the department with a complaint, the department shall require that the complaint be submitted in writing. The complaint shall include a summary of the process followed by the complainant to resolve the complaint through the institution's internal procedures.

**C.** Following receipt of a written complaint, the department shall contact the relevant institution to ascertain whether the complaint is bona fide, that is, whether the institution's internal complaint process has been followed sufficiently to warrant filing of the complaint with the department.

**D.** Upon determination that the complainant has not followed the institution's internal process to a sufficient extent, the department shall refer the complainant to the institution to follow the institution's complaint procedure.

**E.** Upon determination that the complaint is bona fide, the department shall request a response to the complaint from the institution, summarizing its position and justification for its course of action. Such response shall be provided in writing to the department within 10 days of receipt by the institution.

**F.** The department shall conduct an analysis of the complaint, considering all information submitted by both parties, and may at its discretion solicit additional information relevant to the complaint. The analysis shall be consistent with the general principles and other specifications of 5.55.8 NMAC.

**G.** The department shall render its decision as to the appropriateness of the actions of the parties to each complaint. If a student's articulation complaint includes commonly numbered courses or courses contained in a meta-major or transfer module and is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution.

[5.55.8.10 NMAC - N, 10/25/2022]

#### **5.55.8.11 REPORTING:**

A. Upon a request by the department, an institution shall report to the department on its advanced placement policy in a timely manner. The report shall be on a form provided by the department.

B. The department shall use the information and data provided by the institutions to prepare its annual report to the legislative finance committee and the governor.

[5.55.8.11 NMAC - N, 10/25/2022]

## **CHAPTER 56: EASTERN NEW MEXICO UNIVERSITY [RESERVED]**

## **CHAPTER 57: NEW MEXICO HIGHLANDS UNIVERSITY [RESERVED]**

## **CHAPTER 58: NEW MEXICO STATE UNIVERSITY [RESERVED]**

## **CHAPTER 59: NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY [RESERVED]**

## **CHAPTER 60: UNIVERSITY OF NEW MEXICO**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2-6: [RESERVED]**

### **PART 7: CAMPUS VIOLENCE [REPEALED]**

[This rule was repealed effective 1/31/2007.]

## **CHAPTER 61: WESTERN NEW MEXICO UNIVERSITY [RESERVED]**

## **CHAPTER 62: NAVAJO COMMUNITY COLLEGE [RESERVED]**

## **CHAPTER 63: NEW MEXICO JUNIOR COLLEGE [RESERVED]**

## **CHAPTER 64: NORTHERN NEW MEXICO COMMUNITY COLLEGE**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: REQUIREMENTS FOR GOVERNING BOARDING STUDENTS**

#### **5.64.2.1 ISSUING AGENCY:**

Office of the Superintendent Northern New Mexico State School El Rito, New Mexico.

[11/17/67; Recompiled 10/31/01]

#### **5.64.2.2 SCOPE:**

[RESERVED.]

[11/17/67; Recompiled 10/31/01]

#### **5.64.2.3 STATUTORY AUTHORITY:**

[RESERVED.]

[11/17/67; Recompiled 10/31/01]

#### **5.64.2.4 DURATION:**

Permanent.

[11/17/67; Recompiled 10/31/01]

#### **5.64.2.5 EFFECTIVE DATE:**

[Upon filing on November 17, 1967, unless a later date is cited at the end of a section.]

[11/17/67; Recompiled 10/31/01]

#### **5.64.2.6 OBJECTIVE:**

[RESERVED.]

[11/17/67; Recompiled 10/31/01]

**5.64.2.7      DEFINITIONS:**

[RESERVED.]

[11/17/67; Recompiled 10/31/01]

**5.64.2.8      DORMITORIES REGULATIONS GOVERNING BOARDING STUDENTS  
1967-68:**

A. Every boarding student is expected to have his room clean and ready for dorm advisor's inspection before the fifteen minute warning bell for academic classes each morning.

B. Rooms should be kept neat and orderly throughout the day. School property and equipment must be respected at all times.

C. The use of alcoholic beverages in the dorms or on campus is strictly prohibited. Violation of this regulation is ground for expulsion.

D. The use of profanity or unbecoming language by any student will not be tolerated in the dorms, classrooms, or on campus.

E. High school boarding students wishing to go home on a weekend pass must maintain good grades and meet all behavior requirements.

F. High school boarding students must have written permission from parents or guardians in the advisor's office not later than Thursday of the week they wish to go home for the weekend. This is important so that they can be cleared by the advisor.

G. Students may not leave for weekend passes until all classes are officially dismissed.

H. Study hall hours for boarding high school girls will be from 6:30 p.m. to 7:30 p.m. and for boarding high school boys from 8:00 p.m. to 9:00 p.m. Junior and senior boys will be allowed to study in their individual rooms, as long as it is done in a quiet, disciplined manner. **Violation of this privilege will mean revocation of this rule.** Vocational students must be quiet during these hours.

I. Study hall will be held Sunday through Thursday nights. Friday and Saturday nights are open for school activities and recreation.

J. No running or screaming will be allowed in the hallways.

K. The telephone **may not** be used after 9:30 p.m. unless an emergency arises.

L. The dorm advisors have the authority to campus boarding students in cases of minor infractions of rules and regulations.

M. When boarding students are allowed to keep a car on campus, the car keys must be left with the dorm advisor on Monday morning and may be picked up when leaving on Friday or Saturday.

N. Every boarding student is advised to report for three meals daily. Specific bell times will be in force for reporting for meals, work assignments, and academic classes, etc. **They must be closely observed and followed.**

O. Every boarding student is counseled to attend the church of his choice on Sundays. Information as to the time of masses and services will be posted on the dorm bulletin board.

P. Lights should be out at the time determined by the advisors and they shall stay out until the morning hour that they determine. A bed check will be made nightly by advisors.

Q. Boarding high school girls may remain outdoors on campus until 7:30 p.m. while daylight saving time is on and after this they must be in by 6:30 p.m. Boarding high school boys may stay out until their study period begins at 8:00 p.m. Vocational students may stay out until 9:30 p.m.

R. When boarding high school students wish to go to the local stores for personal reasons, permission must be obtained from dorm advisors.

S. Students may have visitors on Sundays from 10:00 a.m. until 4:30 p.m. High school students may not leave the campus unless permission is obtained from dorm advisors and they may leave only with parents, brothers or sisters.

T. **Boys Recreation Hall.** The social visitation hour will be from 4:15 p.m. until 5:15 p.m. on Sundays through Thursdays. On Friday and Saturday evenings the visitation time will be from 6:00 p.m. until 8:00 p.m.

U. High school students will not be permitted to smoke in the dorms or on campus. If the parents or guardians approve of their smoking, written permission must be filed with the dorm advisors. The advisors will determine areas where smoking will be permitted.

V. A guidance and counseling office and library is maintained by the counselor. Help will be given students to secure answers to their personal, social and occupational problems.

W. Report all serious illnesses to the dorm advisors so the school nurse may be notified. When the school nurse is away, the dorm advisors will assume responsibility regarding illness of students.

X. Sick call hours during the school week are as follows:

- (1) 8:30 a.m. to 9:00 a.m.--High School Building
- (2) 12:30 p.m. to 1:00 p.m.
- (3) 4:00 p.m. to 8:00 p.m.--Nurse's Apartment
- (4) **Emergencies any time day or night one man with courage makes a majority.**

[11/17/67; Recompiled 10/31/01]

**CHAPTER 65: SAN JUAN COLLEGE [RESERVED]**

**CHAPTER 66: SANTA FE COMMUNITY COLLEGE [RESERVED]**

**CHAPTER 67: ALBUQUERQUE TECHNICAL-VOCATIONAL INSTITUTE [RESERVED]**

**CHAPTER 68: CROWNPOINT INSTITUTE OF TECHNOLOGY [RESERVED]**

**CHAPTER 69: LUNA VOCATIONAL-TECHNICAL INSTITUTE [RESERVED]**

**CHAPTER 70: SOUTHWEST INDIAN POLYTECHNIC INSTITUTE [RESERVED]**

**CHAPTER 71: TUCUMCARI AREA VOCATIONAL INSTITUTE [RESERVED]**

**CHAPTER 72-98: [RESERVED]**



# **CHAPTER 99: DISTANCE EDUCATION**

## **PART 1: PUBLIC AND PRIVATE POSTSECONDARY INSTITUTIONS OPERATING UNDER THE INTERSTATE DISTANCE EDUCATION ACT**

### **5.99.1.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.99.1.1 NMAC - Rp. 5.99.1.1 NMAC, 12/11/2018]

### **5.99.1.2 SCOPE:**

Provisions of 5.99.1 NMAC apply to public post-secondary institutions and private post-secondary institutions offering distance education to any student within New Mexico and the provision of distance education by participating New Mexico post-secondary educational institutions to students in other states.

[5.99.1.2 NMAC - Rp. 5.99.1.2 NMAC, 12/11/2018]

### **5.99.1.3 STATUTORY AUTHORITY:**

Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23B-1 et seq. NMSA 1978. The Interstate Distance Education Act ("the act"), Sections 21-23B-1 through 21-23B-6 NMSA 1978 authorizes the New Mexico higher education department to adopt rules and regulations for the receipt of distance education by students in New Mexico and the provision of distance education by New Mexico participating post-secondary educational institutions to students located outside New Mexico.

[5.99.1.3 NMAC - Rp. 5.99.1.3 NMAC, 12/11/2018]

### **5.99.1.4 DURATION:**

Permanent.

[5.99.1.4 NMAC - Rp. 5.99.1.4 NMAC, 12/11/2018]

### **5.99.1.5 EFFECTIVE DATE:**

December 11, 2018, unless a later date is cited at the end of a section.

[5.99.1.5 NMAC - Rp. 5.99.1.5 NMAC, 12/11/2018]

### **5.99.1.6 OBJECTIVE:**

**A.** Unless expressly exempt pursuant to 5.99.1.10 NMAC, an institution shall obtain distance education authorization from the department if the institution either:

**(1)** has a physical presence in New Mexico and engages in distance education with students located outside New Mexico; or

**(2)** engages in distance education from a location originating outside New Mexico with a student located in New Mexico.

**B.** Institutions with a physical presence in New Mexico engaging in distance education may be subject to:

**(1)** distance education authorization pursuant to the Interstate Distance Education Act and 5.99.1 NMAC, unless exempted pursuant to 5.99.1.10 NMAC;

**(2)** state authorization for private institutions pursuant to the Post-secondary Educational Institution Act and 5.100.6 NMAC or 5.100.7 NMAC, unless expressly exempted by law and 5.100.5 NMAC; and

**(3)** authorization required by laws and regulations of any other state or territory in which a student is located and engaging in distance education with the institution.

**C.** Post-secondary educational institutions must be accredited in order to apply for distance education authorization under the act.

**D.** Distance education authorization does not serve as an endorsement of a particular institution, but certifies that an institution has met the minimum criteria set by the department to operate in New Mexico under the Interstate Distance Education Act. An institution authorized by the department may not use terms such as "accredited," "endorsed," or "recommended" when referring to authorization by the department.

**E.** Post-secondary educational institutions that do not have distance education authorization or do not meet the criteria for exemption, and are offering distance education from New Mexico or to students in New Mexico, shall be notified by certified mail that they shall cease immediately to offer such education until obtaining distance education authorization or are found to be exempted by the department; the department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of the act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

[5.99.1.6 NMAC - Rp. 5.99.1.6 NMAC, 12/11/2018]

## **5.99.1.7 DEFINITIONS:**

**A. "Accreditation"** means a verified accreditation status with an accrediting agency recognized by the United States department of education.

**B. "Department"** means the New Mexico higher education department.

**C. "Distance education"** means instruction offered online or through correspondence or interactive video or other means enabling a student to receive instruction from a higher education provider. Instruction may be either synchronous (instruction in which a group of students engage in learning at the same time), asynchronous (instruction that does not occur in the same place or at the same time), or experiential learning activity.

**D. "Distance education authorization" or "DEA"** means a post-secondary institution that has been deemed by the department to satisfactorily meet criteria, as set by the department, to provide distance education, under the Interstate Distance Education Act.

**E. "Educational activity"** means distance education which is synchronous (instruction in which a group of students engage in learning at the same time) or asynchronous (instruction that does not occur in the same place or at the same time).

**F. "Exempt" or "exemption"** means an institution that meets criteria in 5.99.1.10 NMAC to be exempt from obtaining distance education authorization and has completed all documentation required by the department.

**G. "Experiential learning activity"** means application of previously studied skills through practica, student teaching, clinical placements, research, internships, or other similar placements by a student receiving supervised field experience at an experiential learning site.

**H. "Experiential learning site"** means a clinical, practicum, internship, student teaching or other similar site location where a student participates in a supervised field experience.

**I. "Higher education"** means education or training beyond secondary education.

**J. "Home state"** means a state or territory where the institution holds its legal domicile and accreditation. To operate under the act an institution must have a single home state.

**K. "Non-New Mexico home state SARA institutions"** means an institution which holds its legal domicile and accreditation in a state or territory in the United States and outside of New Mexico and is an approved member institution of SARA.

**L. "Physical presence"** means the ongoing occupation of a physical location in the state, the ongoing maintenance of an administrative office to support the provision of

higher education instruction, or engaging in one or more of the activities detailed in 5.99.1.8 NMAC.

**M. "Post-secondary educational institution" or "institution"** means public post-secondary educational institutions and private post-secondary educational institutions.

**N. "Portal entity"** means the state agency or other state body designated by each SARA member state to serve as the interstate point of contact for SARA questions, complaints and other communications. In New Mexico, the portal entity is the department.

**O. "Private post-secondary educational institution"** means a post-secondary educational institution not primarily funded by public funds.

**P. "Public post-secondary educational institution"** means a post-secondary educational institution primarily funded by public funds.

**Q. "SARA Manual"** means a manual which codifies existing SARA policy and includes procedures for use by states and institutions to regulate SARA. A current version of the manual will be maintained on the NC-SARA website.

**R. "State authorization reciprocity agreement" or "SARA"** means an agreement, developed by the national council for state authorization reciprocity agreements (NC-SARA) that provides uniform standards and parameters for the interstate provision of post-secondary distance education courses and programs.

**S. "State portal agent"** means the portal entity employee responsible for SARA duties.

**T. "Student location" or "students located"** means the physical location in which the student engages in distance education. The student's legal state of residence will not be a criterion for determining the student's physical location for purposes of the act.

**U. "Supervised field experience"** means a form of distance education which enables instruction from an experiential learning site, through an agreement with an institution pursuant to 5.99.1.11 NMAC. To be considered supervised field experience, the student location must be in a different state or territory than that of the institution.

[5.99.1.7 NMAC - Rp. 5.99.1.7 NMAC, 12/11/2018; A, 12/29/2020]

#### **5.99.1.8 PHYSICAL PRESENCE IN NEW MEXICO:**

Engaging in one or more of the following activities constitutes a physical presence in New Mexico:

**A.** ongoing occupation of a physical location in the state;

- B.** maintenance of an administrative office to support the provision of higher education instruction;
- C.** establishing a physical location for students to engage in educational activity;
- D.** requiring students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;
- E.** establishing an administrative office;
- F.** providing student support services to enrolled students, from a physical site operated by or on behalf of the institution in the state;
- G.** obtaining office space for instructional or non-instructional staff;
- H.** maintaining a mailing address or phone exchange in New Mexico;
- I.** holding proctored exams on behalf of the institution in New Mexico more than twice per full-term (quarter or semester); or
- J.** facilitating student participation in off-campus field trips in New Mexico for academic purposes in excess of 20 classroom hours in one six-month period or in which the institution establishes a residential or instructional facility in New Mexico.

[5.99.1.8 NMAC - Rp. 5.99.1.8 NMAC, 12/11/2018]

#### **5.99.1.9      ACTIVITY THAT DOES NOT ESTABLISH A PHYSICAL PRESENCE:**

The following is a non-exhaustive list of activities, which if conducted by the institution, will not trigger a physical presence in New Mexico:

- A.** advertising to students whether through print, billboard, direct mail, internet, radio, television or other medium;
- B.** maintaining a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in the state);
- C.** having faculty, adjunct faculty, mentors, tutors, recruiters or other academic personnel residing in New Mexico and working from their homes or another private, non-institutional site, provided that such staff is not engaged in activities that would otherwise constitute physical presence;
- D.** using recruiters in New Mexico if the recruiter has registered as an agent pursuant to Section 21-24-1 through Section 21-21-9 NMSA 1978;

**E.** independent off-campus study or research by students including, independent fieldwork for a thesis or dissertation, by individual students not engaged in a supervised field experience as defined in 5.99.1.11 NMAC and with no supervision or control by the student's institution; or

**F.** facilitating student participation in off-campus field trips in New Mexico for academic purposes, so long as the field trip does not exceed more than 20 classroom hours in one six-month period, or the establishment of a residential or instructional facility by the institution in New Mexico.

[5.99.1.9 NMAC - Rp. 5.99.1.9 NMAC, 12/11/2018]

#### **5.99.1.10 INSTITUTIONS EXEMPT FROM DISTANCE EDUCATION AUTHORIZATION:**

An institution may be granted an exemption from obtaining distance education authorization, if the institution meets the criteria for exemption, set by the department. An institution seeking an exemption shall complete a DEA exemption form, published by the department. An institution shall meet one or more of the following criteria to be eligible for DEA exemption:

- A.** the institution is authorized to operate as a member institution under SARA;
- B.** the institution has a physical presence in New Mexico exclusively offering distance education to students located only in New Mexico;
- C.** the department has entered into a reciprocal agreement pursuant to Subsection B of Section 21-23B-3 NMSA 1978.
- D.** the institution offers distance education courses on a military base or vessel, if enrollment in such courses is limited to active and reserve military personnel and their spouse or dependents;
- E.** the institution has contractual arrangements in New Mexico for course offerings through consortium agreements (for example an agreement between two or more institutions to partner and provide program offerings) and has previously notified the department of the agreement;
- F.** the institution is only offering distance education courses as a means of continuing education units and the units meet the criteria set out by the professional organization or authority requiring the continuing education; or
- G.** the institution is offering supervised field experience pursuant to the parameters established in 5.99.1.11 NMAC.

**H.** the institution is a chartered, nonprofit religious institution whose sole purpose is to train students in non-degree or degree granting religious or non-secular courses to prepare them to assume a vocational objective relating primarily to religion.

[5.99.1.10 NMAC - Rp. 5.99.1.10 NMAC, 12/11/2018; A, 12/29/2020]

#### **5.99.1.11 SUPERVISED FIELD EXPERIENCE:**

Supervised field experience is a form of distance education which enables instruction from an experiential learning site. The experiential learning site will facilitate student participation in experiential learning activity which requires application of previously studied skills through practica, student teaching, clinical placements, research, internships, or other similar placements. The institution and the experiential learning site must enter into an agreement to facilitate experiential learning activity for students through use of supervisors, mentors, faculty members or other qualified professionals employed by the experiential learning site.

**A.** A student may participate in a supervised field experience, without the institution obtaining DEA if the institution certifies the following:

**(1)** the supervised field experience is part of a program of study offered by the enrolling institution;

**(2)** the experiential learning site has entered into an agreement with the institution which specifies:

**(a)** the student will receive oversight by a supervisor, mentor, faculty member or other qualified professional, located at the experiential learning site; and

**(b)** the supervisor, mentor, faculty member or other qualified professional has a direct or indirect reporting responsibility to the institution where the student is enrolled;

**(3)** no greater than 10 students from an individual academic program will be placed simultaneously at an experiential learning site during a full-term (quarter or semester);

**(4)** approval requirements have been satisfied by the applicable professional licensing agency or board, if the supervised field experience requires licensure or certification for practice; and

**(5)** support services and complaint resolution procedures will be made available to the student, while the student participates in the supervised field experience.

**B.** The department may allow an institution to maintain an exemption from DEA and increase maximum student placements beyond those in Paragraph (3) of Subsection A

of 5.99.1.11 NMAC if the experiential learning site contains more than one division, department, or unit, and the institution seeks to place students within different divisions, departments, or units. If an institution seeks to place more than 10 students at an experiential learning site that contains more than one division, department, or unit, and maintain eligibility for DEA exemption, the institution shall file a request with the department detailing the basis of the increase in maximum student placements. For the department to consider an increase in maximum student placements beyond those in Paragraph (3) of Subsection A of 5.99.1.11 NMAC, it will evaluate the demonstrated ability of the institution and the experiential learning site to provide adequate learning opportunity and resources to the student. In making its determination, factors considered by the department shall include, but are not limited to, the following:

- (1) the size of the facility or location of the experiential learning site;
- (2) the number of distinct divisions, departments, or units to which students will be placed within the experiential learning site;
- (3) whether the divisions, departments, or units engage in distinct specializations or disciplines;
- (4) whether the number of supervisors, mentors, faculty member or other qualified professionals available is adequate to provide oversight and fulfill the terms of the agreement between the institution and the experiential learning site, entered into pursuant to Paragraph (2) of Subsection A of 5.99.1.11 NMAC; and
- (5) overall demand for student placements by all institutions seeking to establish agreements with the experiential learning site.

**C.** An institution that seeks to place more students at an experiential learning site than permitted pursuant to Paragraph (3) of Subsection A of 5.99.1.11 NMAC and does not obtain express approval by the department pursuant to Section B of 5.99.1.11 NMAC must obtain DEA pursuant to 5.99.1.12 NMAC.

[5.99.1.11 NMAC - Rp. 5.99.1.11 NMAC, 12/11/2018]

#### **5.99.1.12 DISTANCE EDUCATION AUTHORIZATION APPLICATION REQUIREMENTS:**

Institutions operating under the act shall apply for distance education authorization unless exempt pursuant to 5.99.1.10 NMAC. The department shall promulgate forms and require the institution to meet criteria as applicable to each of the following sectors:

**A.** Public post-secondary educational institutions must submit to department:

- (1) a complete distance education authorization application set out by the department;



(2) certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;

(3) certification of compliance with the western interstate commission for higher education principles outlined in 5.99.1.20 NMAC;

(4) a surety bond or alternate form of surety in the amount of twenty percent of the gross New Mexico distance education tuition and fees revenue;

(5) current accreditation;

(6) proof that the public post-secondary educational institution has adopted a complaint procedure that complies with the department's requirements in 5.99.1.15 NMAC;

(7) certification that the public post-secondary educational institution has adopted a plan for records maintenance and retention that complies with the department's requirements in 5.99.1.21 NMAC; and

(8) a fully executed participation agreement with the department.

**B.** Private post-secondary educational institutions must submit to the department:

(1) a complete distance education authorization application set out by the department;

(2) certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;

(3) certification of compliance with the western interstate commission for higher education principles outlined in 5.99.1.20 NMAC;

(4) a surety bond or alternate form of surety in the amount of twenty percent of the gross New Mexico distance education tuition and fees revenue, in no case shall the bond be less than five thousand dollars (\$5,000);

(5) current accreditation;

(6) financial responsibility composite score of 1.5 or above as assigned by the United States department of education in the private post-secondary educational institution's most recent fiscal report;

(7) proof that the private post-secondary educational institution has adopted a complaint procedure that complies with the department's requirements in 5.99.1.15 NMAC;

(8) certification that the private post-secondary educational institution has adopted a plan for records maintenance and retention that complies with the department's requirements in 5.99.1.21 NMAC;

(9) a fully executed participation agreement with the department; and

(10) for profit institutions with anticipated New Mexico student gross tuition revenues of one hundred thousand dollars (\$100,000) or more shall submit a letter of good standing from the office of the secretary of state of New Mexico and proof of registration with the New Mexico taxation and revenue department.

[5.99.1.12 NMAC - Rp. 5.99.1.12 NMAC, 12/11/2018; A, 12/29/2020]

#### **5.99.1.13 REPORTING FOR DISTANCE EDUCATION AUTHORIZED INSTITUTIONS:**

**A.** Institutions granted DEA shall comply with department reporting procedures and submit institutional information and data on an annual basis using standard forms. Institutions granted DEA must comply with all reporting deadlines to be eligible for renewal or to remain in good standing.

**B.** The department shall promulgate a standard form for annual reporting to include curriculum, enrollment, demographic, or other institutional information and data.

[5.99.1.13 NMAC - Rp. 5.99.1.13 NMAC, 12/11/2018]

#### **5.99.1.14 APPLICABLE DISTANCE EDUCATION AUTHORIZATION FEES AND SURETY BOND:**

**A.** The department may assess application, administrative, or reporting fees and publish a fee schedule.

**B.** The department shall assess fees for providing services associated with application review and making determinations of eligibility for DEA.

**C.** The department shall assess a fee upon determination that the institution has satisfactorily met all conditions for DEA.

**D.** The department shall assess an administrative fee for filing annual reporting; any costs associated with specialized review, program changes, and institution or administrative changes shall be assessed to the institution.

**E.** Each institution holding DEA shall maintain in force a surety bond or alternate form of surety accepted by the department.

**(1)** The surety bond shall:

**(a)** be payable to the department;

**(b)** be in an amount set at twenty percent of the institution's projected or actual gross annual New Mexico distance education tuition and fee revenue;

**(c)** include the name, office address and phone number of the issuing company representative; and

**(d)** allow for the department to draw in order to indemnify any student damaged as a result of fraud or misrepresentation, as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted, or to pay costs associated with preservation of student records.

**(2)** Alternate forms of surety: An institution may request a waiver from the bond requirement by providing a request to utilize an alternate form of surety. The request must detail the reasons the institution is seeking approval to utilize an alternate form of surety and provide detail regarding the type of surety. The department may accept or reject a request for alternate surety. The alternate form of surety shall:

**(a)** be payable to the department;

**(b)** be in an amount set at twenty percent of the institution's projected or actual gross annual New Mexico distance education tuition and fee revenue;

**(c)** be in the form of a cash deposit escrow account, irrevocable letter or credit, or similar alternate form of surety;

**(d)** include the name, office address and phone number of the issuing surety representative; and

**(e)** allow for the department to draw in order to indemnify any student damaged as a result of fraud or misrepresentation, as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted, or to pay costs associated with preservation of student records.

**F.** If an institution seeks to cancel a surety bond or an alternate form of surety, written notice must be delivered to the department. The institution may not cancel the surety bond or alternate form of surety until it has been provided with written release from the department. If the institution seeks to maintain or renew DEA, it shall provide the department with a like surety or acceptable alternative.

**5.99.1.15 COMPLAINTS UNDER DEA:**

**A.** An institution shall adopt student complaint procedures which allow students to seek resolution to complaints or grievances. Institutions shall retain records that make available the student complaint received and record of processing the complaint (that comports with the institution's policies and procedures for handling grievances or complaints) for a minimum of three years. The institution shall have and make available to all students, the adopted complaint procedure that describes in detail, how students may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

- (1)** requirement that students with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;
- (2)** a timeframe within which the institution will investigate and respond to the complainant;
- (3)** assurance that the representative of the institution investigating or addressing the complaint will serve as an impartial representative and is not directly involved in the subject matter to which the complaint is related;
- (4)** assurance that no adverse action will be taken against the complainant for registering the complaint; and
- (5)** identification of the higher education department as the agency to be contacted in cases where a complaint cannot be resolved and include the mailing address, website, and phone number for the department.

**B.** The initial responsibility for the investigation and resolution of complaints resides with the institution. A student not satisfied with the outcome of a complaint or the institution's handling of the complaint process, may submit the complaint to the department. The department shall not engage in any complaint resolution procedures unless a student has exhausted all complaint procedures set by the institution or can demonstrate the institution's refusal to utilize its complaint resolution procedures. If the student can demonstrate all complaint procedures of the institution have been exhausted and the student is not satisfied with the outcome, the department may help facilitate resolution where possible, if the complaint contains a question of fact or potentially involves a violation of or a deviation from policy, regulation, or law.

**C.** Complaints regarding student grades or student conduct violations shall be governed entirely by institutional policy and shall not be reviewed by the department. Complaints containing allegations of fraud, abuse, or consumer protection violations, rising to the level of violation of state or federal law, as demonstrated through

substantial evidence (evidence of such weight and quality that it is sufficient to persuade a reasonable person to support the allegation asserted), shall be reported to law enforcement, the United States department of education, the institution's accreditor, or any other applicable oversight entities.

**D.** Upon receipt of a student complaint, the department, shall determine whether the complaint meets initial criteria, to permit use of the department's complaint procedure. The following initial complaint criteria must be satisfied:

**(1)** A student must file a complaint with the department within two years of their last date of enrollment or incident about which the complaint is made, whichever is latest in time.

**(2)** The complaint must be made to the department in writing utilizing the designated complaint form published by the department. The student may include supporting documentation or evidence related to the complaint. The department may request additional documentation from the student, as needed, to conduct an initial assessment.

**(3)** The complaint must detail and provide evidence that the student has exhausted all complaint procedures at the institution.

**(4)** The complaint must contain a question of fact or question regarding potential violation of or deviation from policy, regulation, or law.

**E.** If the department determines the complaint meets the initial complaint criteria, it shall serve as an intermediary in attempting to facilitate a resolution or to obtain information from the institution to eliminate questions of fact or possible violations or deviations from policy, regulation or law raised by the complaint. Satisfaction of initial complaint criteria, in no way means the department has assigned greater weight to the student's allegations. If the department finds that the subject matter of the complaint falls within the investigatory purview of another entity, it may forward the complaint and cease further review (for example the office for civil rights).

**(1)** Acting as an intermediary, the department shall request a response from the institution addressing the student's complaint. The complaint and any documentation provided by the student shall be sent to the institution with a request for a written response. The institution shall have 10 days to forward its response to the department. The institution may request additional response time, if inquiry into the complaint requires greater than 10 days. The institution may provide any supporting documentation or evidence to address questions or concerns raised by the complaint with its response.

**(2)** After considering the institution's response and any documentation or evidence supplied by the institution, the department may conduct further inquiry of the parties or may continue to serve as an intermediary for possible compromise between

the parties. The department may seek additional clarifying information or supporting documentation from either party and may request additional response from either party.

**(3)** If the institution accepts the desired outcome proposed by the student in the complaint, the department shall inform the student. If the institution proposes an alternate desired outcome, the department shall convey such information to the student and the student shall indicate acceptance or denial of the alternate proposed outcome, or create a different proposed outcome, to allow for compromise. If at any point, the student and the institution reach an agreed upon outcome, the department may help facilitate fulfillment of the outcome, as necessary.

**(4)** If the parties are unable to reach a mutually agreeable outcome, the department may, but is not obligated to, convene a meeting between the parties. Such meetings, if held, shall be informal and for the purpose of clarifying the facts surrounding the complaint and to facilitate the parties reaching a resolution or compromise, if possible. If a meeting is convened, the department shall give written notice to the institution and to the student, regarding the time, date, and place of the meeting.

**F.** The department may help facilitate a compromised resolution between the parties. However, if the parties cannot reach a compromised agreement, the department shall impose an outcome by weighing the assertions of the parties after careful consideration of all documents and evidence. The department may sanction a DEA institution pursuant to 5.99.1.22 NMAC if the department determines the institution:

**(1)** failed to resolve a complaint or comply with the department's efforts to facilitate resolution or conduct inquiry; or

**(2)** violated provisions of the DEA participation agreement.

**G.** If the department, through its inquiry, has received evidence to support potential violation of or a deviation from policy, regulation, or law the department may refer the complaint to either law enforcement, the United States department of education, the institution's accreditor, or any other applicable oversight entities for further investigation, as applicable to the type of potential violation or deviation. If the department determines, at any time, that questions raised by the complaint are alleviated or the complaint relates to grades or student conduct violations, it shall cease further inquiry into the complaint and inform the student that the complaint will be closed with no further action by the department.

[5.99.1.15 NMAC - Rp. 5.99.1.15 NMAC, 12/11/2018]

#### **5.99.1.16 SARA INSTITUTIONS:**

**A.** Non-New Mexico SARA member institutions providing distance education to students located in New Mexico shall be governed by rules set forth by the national

council for state authorization reciprocity agreements, the SARA manual, and the applicable regional compact.

**B.** If a non-New Mexico SARA member institution seeks to place students at experiential learning sites in New Mexico to complete supervised learning experience, the institution must comply with SARA manual regarding maximum placements for an individual academic program at one clinical or practicum site. If the institution seeks to exceed placement limitations in the SARA manual for an individual academic program at one clinical or practicum site, the institution must notify and seek permission from the department. Non-New Mexico SARA member institutions that place students in supervised learning experiences within New Mexico and exceed the maximum number of placements without department approval or do not adhere to rules for placements set out pursuant to the SARA manual, placements may be subject to objection by the department. The department will follow procedures for objection pursuant to the SARA manual. If a non-New Mexico SARA member institution seeks to place students from an individual academic program simultaneously at one clinical or practicum site within New Mexico in excess of the amount permitted pursuant to the SARA rules, the department will consider the demonstrated ability of the non-New Mexico SARA member institutions and the clinical or practicum site to provide adequate learning opportunity and resources to the student. In making its determination, factors the department may consider include, but are not limited to:

- (1) the size of the facility or location of the experiential learning site;
- (2) the number of distinct divisions, departments, or units to which students will be placed within the experiential learning site;
- (3) whether the divisions, departments, or units engage in distinct specializations or disciplines;
- (4) whether the number of supervisors, mentors, faculty member or other qualified professionals available to provide oversight to fulfill the terms of any agreement between the institution and the clinical or practicum site;
- (5) overall demand for student placements by all institutions seeking to establish agreements with the clinical or practicum site.

**C.** New Mexico home state SARA member institutions providing distance education from New Mexico shall be governed by rules set forth by the national council for state authorization reciprocity agreements, the SARA manual, and the western interstate commission on higher education compact. Application fees for New Mexico home state SARA member institutions shall be assessed by the department pursuant to Section 5.99.1.18 NMAC.

[5.99.1.16 NMAC - Rp. 5.99.1.16 NMAC, 12/11/2018; A, 12/29/2020]

#### **5.99.1.17 REPORTING FOR SARA INSTITUTIONS:**

SARA member institutions shall comply with the reporting requirements set out by the national council for state authorization reciprocity agreement.

[5.99.1.17 NMAC - Rp. 5.99.1.17 NMAC, 12/11/2018]

#### **5.99.1.18 APPLICABLE SARA FEES, SURETY BOND AND INITIAL APPLICATION APPEAL PROCESS:**

Acting in the capacity of the state portal entity, the department will assess a non-refundable application fee for SARA home state applicants and publish a fee schedule. New Mexico home state institutions shall pay the state application fee prior to application or renewal application review by the portal entity. The designated New Mexico state portal agent will conduct the review of initial and renewal applications. If the state portal agent determines an initial or renewal application should not be approved, the state portal agent shall review the determination with the portal entity's general counsel prior to providing the applicant institution a written reason for denial. A denial shall not be issued unless the general counsel concurs with the determination. If the applicant institution believes an eligibility provision has been misinterpreted or misapplied the institution may appeal the denial of its initial application within 30 calendar days to the portal entity's cabinet secretary. The appeal must be submitted in writing. The cabinet secretary's determination will be final and will be communicated in writing to the applicant institution within 30 days of receipt of appeal. If an institution is approved by the portal entity to become a SARA member institution, the institution shall pay fees set out by the national council for state authorization reciprocity agreements. The department may require institutions to obtain a surety bond in the amount of twenty percent of the gross or projected distance education tuition and fees revenue from students enrolled pursuant to SARA as a condition of SARA membership approval.

[5.99.1.18 NMAC - Rp. 5.99.1.18 NMAC, 12/11/2018; A, 12/29/2020]

#### **5.99.1.19 COMPLAINTS UNDER SARA:**

**A.** SARA member institutions offering distance education to a student enrolled under SARA, shall be subject to the complaint procedures set out in 5.99.1.19 NMAC and the SARA manual. New Mexico home state SARA member institutions shall adopt complaint procedures for SARA students to allow SARA students to seek resolution to complaints or grievances. The SARA member institution shall have and make available to all enrolled SARA students, the adopted complaint procedure that describes in detail, how SARA students may register a complaint or grievance, how the SARA member institution will investigate the complaint, and how the SARA member institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:



- (1) requirement that students with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;
- (2) a timeframe within which the institution will investigate and respond to the complainant, pursuant to the SARA manual;
- (3) assurance that the representative of the institution investigating or addressing the complaint will serve as an impartial representative and is not directly involved in the subject matter to which the complaint is related;
- (4) assurance that no adverse action will be taken against the complainant for registering the complaint; and
- (5) identification of department as the New Mexico portal entity to be contacted in cases related to complaints resulting from distance education courses or activities offered by New Mexico home state SARA member institutions to students in other SARA states or territories and include the mailing address, website, and phone number for the department and the same contact information for other SARA portal entities.

**B.** New Mexico home state SARA member institutions shall retain records that make available the student complaint received and record of processing the complaint (that comports with the institution's policies and procedures for handling grievances or complaints) for a minimum of three years.

**C.** The initial responsibility for the investigation and resolution of complaints resides with the SARA member institution. A student not satisfied with the outcome of a complaint or the institution's handling of the complaint process, may submit the complaint to the department for review. The department shall not engage in any complaint resolution procedures unless a student has exhausted all complaint procedures set by the SARA member institution or can demonstrate the SARA member institution's refusal to utilize its complaint resolution procedures. If the student can demonstrate all complaint procedures of the SARA member institution have been exhausted and the student is not satisfied with the outcome, the department shall administer complaint procedures set out in the SARA manual.

**D.** Complaints regarding student grades or student conduct violations shall be governed entirely by institutional policy and shall not be reviewed by the department. Complaints containing allegations of fraud, abuse, or consumer protection violations, rising to the level of violation of state or federal law, as demonstrated through substantial evidence (evidence of such weight and quality that it is sufficient to persuade a reasonable person to support the allegation asserted), shall be reported to law enforcement, the United States department of education, the institution's accreditor, or any other applicable oversight entities.

**E.** Upon receipt of a student complaint, the department shall determine whether the complaint meets initial criteria to permit use of the department's and SARA's complaint procedures. The following initial complaint criteria must be satisfied:

**(1)** A student must file a complaint with the department within the timeframe set in the SARA manual.

**(2)** The complaint must be made to the department in writing utilizing the designated complaint form published by the department. The student may include supporting documentation or evidence related to the complaint. The department may request additional documentation from the student, as needed, to conduct an initial assessment.

**(3)** The complaint must detail and provide evidence that the student has exhausted all complaint procedures at the institution.

**(4)** The complaint must raise an issue that can be addressed pursuant to the SARA manual.

**(5)** The department is the appropriate portal entity to handle the complaint pursuant to SARA guidelines.

**F.** If the department determines the complaint meets the initial complaint criteria, it shall administer the SARA complaint procedures set out in 5.99.1.19 NMAC and the SARA manual. Satisfaction of initial complaint criteria, in no way means the department has assigned greater weight to the student's allegations. If the department finds that the subject matter of the complaint falls within the investigatory purview of another entity, it may forward the complaint and cease further review (for example the office for civil rights).

**G.** In conducting investigation of the complaint, the department may request a response from the SARA member institution addressing the student's complaint. The complaint and any documentation provided by the student shall be sent to the SARA member institution with a request for a written response. The SARA member institution shall respond to any inquiry issued by the department. The SARA member institution may provide any supporting documentation or evidence to address questions or concerns raised by the complaint with its response. After considering the SARA member institution's response and any documentation or evidence supplied by the institution, the department may conduct further inquiry or may continue to serve as an intermediary for possible compromise between the parties. The department may seek additional clarifying information or supporting documentation from either party and may request additional responses from either party. If at any point, the student and the institution reach an agreed upon outcome, the department may help facilitate fulfillment of the outcome, as necessary.

**H.** If the department has received evidence to support potential violation of or a deviation from policy, regulation, or law through its inquiry, the department may refer the complaint to law enforcement, the United States department of education, the institution's accreditor, or any other applicable oversight entities for further investigation, as applicable to the type of potential violation or deviation. If the department determines, at any time, that questions raised by the complaint are alleviated or the complaint relates to grades or student conduct violations, it shall cease further inquiry into the complaint and inform the student that the complaint will be closed with no further action by the department.

[5.99.1.19 NMAC - Rp. 5.99.1.19 NMAC, 12/11/2018]

#### **5.99.1.20 WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION PRINCIPLES:**

Principles of good practice for quality distance education is an essential component of the department's agenda for higher education in New Mexico. The department endorses the principles of good practice established by the western interstate commission for higher education (WICHE). It is expected that all distance education courses and programs meet the following principles:

- A.** each program of study results in learning outcomes appropriate to the rigor and breadth of the degree or certificate awarded;
- B.** an electronically offered degree or certificate program is coherent and complete;
- C.** the program provides for appropriate real-time or delayed interaction between faculty and students and among students;
- D.** qualified faculty provide appropriate oversight of the program electronically offered;
- E.** the program is consistent with the institution's role and mission;
- F.** review and approval processes ensure the appropriateness of the technology being used to meet the program's objectives;
- G.** the program provides faculty support services specifically related to teaching via an electronic system;
- H.** the program provides training for faculty who teach via the use of technology;
- I.** the program ensures that appropriate learning resources are available to students;

**J.** the program provides students with clear, complete, and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technological competence and skills, technical equipment requirements, availability of academic support services and financial aid resources, and costs and payment policies;

**K.** enrolled students have reasonable and adequate access to the range of student services appropriate to support their learning;

**L.** accepted students have the background, knowledge and technical skills needed to undertake the program;

**M.** advertising, recruiting, and admissions materials clearly and accurately represent the program and the services available;

**N.** policies for faculty evaluation include appropriate consideration of teaching and scholarly activities related to electronically offered programs;

**O.** the institution demonstrates a commitment to ongoing support, both financial and technical, and to continuation of the program for a period sufficient to enable students to complete a degree or certificate;

**P.** the institution evaluates the program's educational effectiveness, including assessments of student learning outcomes, student retention, and student and faculty satisfaction; students have access to such program evaluation data; and

**Q.** the institution provides for assessment and documentation of student achievement in each course and at completion of the program.

[5.99.1.20 NMAC - Rp. 5.99.1.20 NMAC, 12/11/2018]

#### **5.99.1.21 STUDENT RECORDS:**

**A.** An institution providing distance education under DEA or that is offering distance education pursuant to 5.99.1.10 NMAC shall maintain a plan for records maintenance and retention which may be inspected by the department. The plan shall consist of a records maintenance and disposal schedule that is in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, regulations of any other authorizing agency, or laws, regulations, and rules of any other authorizing jurisdiction or territory, whichever is longest in time. If another authorizing agency of the institution requires a longer period of retention than that of 1.21.2 NMAC, the longest retention period shall prevail. The plan must include a description of how records will be maintained in the event of closure, including, but is not limited to, designation of a custodian of records, digitization, and a process for obtaining transcripts from the custodian of records.

**B.** The institution must maintain at a minimum, the student's enrollment agreement, student transcript, or record indicating program completion (either certificate, diploma, degree, or other like proof of completion), and student financial aid records.

[5.99.1.21 NMAC - N, 12/11/2018]

#### **5.99.1.22 MONITORING, SANCTIONS, AND CLOSURE:**

**A.** Any institution operating pursuant to the act shall be subject to Section 21-23B-5 NMSA 1978.

**B.** An institution found in violation of the act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

**C.** An institution that does not submit an application for renewal within deadlines set by the department may have a lapse in DEA.

**D.** The department shall provide notification for public viewing on the department's website if a distance education authorized institution has been sanctioned or penalized by their accreditor or the U.S. department of education or has a lapse in DEA.

**E.** An institution engaging in distance education with students located in New Mexico or post-secondary educational institution located in New Mexico engaging in distance education with a student located outside of New Mexico, shall not cease provision of distance education, close, or make a substantial change to location (a relocation of the institution's physical site which impacts the institution's ability to offer distance education or affects the institution's ability to continue to meet the criteria for distance education authorization) without providing notice to the department and complying with the provisions set out in 5.99.2 NMAC.

[5.99.1.22 NMAC - N, 12/11/2018]

## **PART 2: CLOSURE OF A DISTANCE EDUCATION INSTITUTION**

### **TITLE 5 POST-SECONDARY EDUCATION**

#### **CHAPTER 99 DISTANCE EDUCATION**

##### **5.99.2.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.99.2.1 NMAC - N, 12/11/2018]

##### **5.99.2.2 SCOPE:**

Provisions of 5.99.2 NMAC apply to public and private post-secondary institutions offering distance education to any student within New Mexico and the provision of distance education by New Mexico post-secondary educational institutions to students in other states.

[5.99.2.2 NMAC - N, 12/11/2018]

#### **5.99.2.3      STATUTORY AUTHORITY:**

Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23B-1 et seq. NMSA 1978. The Interstate Distance Education Act, Sections 21-23B-1 through 21-23B-6 NMSA 1978 authorizes the New Mexico higher education department to adopt rules and regulations for the receipt of distance education by students in New Mexico and the provision of distance education by New Mexico participating post-secondary educational institutions to students located outside New Mexico.

[5.99.2.3 NMAC - N, 12/11/2018]

#### **5.99.2.4      DURATION:**

Permanent

[5.99.2.4 NMAC - N, 12/11/2018]

#### **5.99.2.5      EFFECTIVE DATE:**

December 11, 2018 unless a later date is cited at the end of a section.

[5.99.2.5 NMAC - N, 12/11/2018]

#### **5.99.2.6      OBJECTIVE:**

No post-secondary educational institution engaging in distance education with students located in New Mexico or post-secondary educational institutions located in New Mexico engaging in distance education with a student located outside of New Mexico operating pursuant to 5.99.1 NMAC, shall cease provision of distance education, close, or make a substantial change to location without providing notice to the department and complying with the provisions set out in 5.99.2 NMAC.

[5.99.2.6 NMAC - N, 12/11/2018]

#### **5.99.2.7      DEFINITIONS:**

**A. "Accrediting body"** means an accreditor or accrediting agency that has issued an accreditation status to the institution.

**B. "Custodian of records"** means an entity with which the institution has arranged for the perpetual care, maintenance and accessibility of all records and transcripts for all students receiving credit from the institution during the period of its existence. The entity must be in compliance with the Family Educational Rights and Privacy Act (FERPA) and be capable of servicing student record requests. Documentation evidencing such compliance shall be submitted to the department.

**C. "Department"** means the New Mexico higher education department or its designated employee.

**D. "Distance education"** means instruction offered online or through correspondence or interactive video or other means enabling a student to receive instruction from a higher education provider. Instruction may be either synchronous (instruction in which a group of students engage in learning at the same time), asynchronous (instruction that does not occur in the same place or at the same time), or experiential learning activity, as defined in 5.99.1 NMAC.

**E. "Manager"** means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of an institution.

**F. "Post-secondary educational institution" or "institution"** means public post-secondary educational institutions and private post-secondary educational institutions operating pursuant to 5.99.1 NMAC.

**G. "Program"** means any certificate or degree program or for purposes of closure, a college, school or department within an institution.

**H. "Substantial change to location"** means a relocation of the institution's physical site which impacts the institution's ability to offer distance education or affects the institution's ability to continue to meet the criteria for distance education authorization.

[5.99.2.7 NMAC - N, 12/11/2018]

#### **5.99.2.8 NOTICE:**

**A.** An institution shall provide formal written notice of closure to the department immediately upon gaining actual knowledge of the institution's intent to close, but no less than 90 days prior to closure.

**B.** An institution shall provide formal written notice of substantial change to location to the department immediately upon gaining actual knowledge of the institution's intent to change location, but no less than 90 days prior to moving operations.

**C.** An institution operating pursuant to 5.99.1 NMAC has a mandatory obligation to report a closure of any other branch, satellite, main campus or parent company or organization associated with the institution's accreditation immediately upon gaining actual knowledge of the institution's intent to close, but no less than 90 days prior to closure.

**D.** An institution shall provide formal written notice of intent to cease distance education program offerings that contain enrolled students, to the enrolled students and the department immediately upon gaining actual knowledge of the institution's intent to cease the program offerings, but no less than 90 days prior to ceasing offerings.

[5.99.2.8 NMAC - N, 12/11/2018]

#### **5.99.2.9 PLAN:**

**A.** An institution operating pursuant to 5.99.1 NMAC that intends to cease provision of distance education, close, or make a substantial change to location must present a plan to the department.

**B.** An institution that is required to seek approval of such a plan by an accrediting body, must submit a copy of the approved plan to the department within seven days of receiving approval by the accrediting body.

**C.** An institution that is not required to seek approval of a plan by an accrediting body must submit a plan to the department as soon as practical, but no less than 90 days prior to closure, cessation of distance education program offerings, or substantial change to location.

**D.** The plan must include provisions for teach-out agreements, completion of programs by enrolled students, perpetual care and maintenance of student records, and identification and location of a responsible agent for the institution for a period of at least one year following closure.

[5.99.2.9 NMAC - N, 12/11/2018]

#### **5.99.2.10 TEACH-OUT AGREEMENT OR PLAN:**

**A.** An institution operating pursuant to 5.99.1 NMAC that has served notice of closure, substantial change to location, or intent to cease program offerings that contain enrolled students shall provide to the department a teach-out agreement or plan.

**B.** An institution that is closing, has a substantial change to location, or intends to cease program offerings that contain enrolled students shall enter into a teach-out agreement with another institution offering similar programs, for provision of the remaining program requirements of enrolled students, or provide a teach-out plan that



allows students to complete their program of study at the closing institution within a timeframe accepted by the department.

**C.** Enrolled students impacted by teach-out agreements or plans must be notified of the agreement or plan when it is finalized. Teach-out agreements or plans shall be made available and arranged at no additional cost to the students beyond that originally agreed to by the student.

**D.** The department may determine that a teach-out agreement or plan is not feasible after consideration of evidence submitted to the department. The department may find that teach-out arrangements are not feasible for students in one or more programs offered by the institution, in which case the institution shall refund all tuition and fees paid by the students in question for the current period of enrollment and shall provide appropriate transcripts and evaluations to assist students in transferring their work to another institution.

**E.** An institution that seeks to relocate may be exempt from entering into a teach-out agreement or plan if the institution can demonstrate to the department that students will not be substantially burdened by the change in location. The institution will be required to complete a form published by the department demonstrating possible impact to students.

[5.99.2.10 NMAC - N, 12/11/2018]

#### **5.99.2.11 RECORDS MAINTENANCE:**

**A.** Prior to closure, an institution must ensure that records are in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, regulations of any other authorizing agency, or laws, regulations, and rules of any other authorizing jurisdiction or territory, whichever is longest in time. If another authorizing agency of the institution requires a longer period of retention than that of 1.21.2 NMAC, the longest retention period shall prevail.

**B.** If an institution discontinues its operation, the manager shall file with the designated custodian of records, the original or legible true copies of all educational records required to be maintained pursuant to 5.99.1 NMAC. For institutions authorized pursuant to or exempt from 5.99.1 NMAC the manager must file to the designated custodian of records the original or legible true copies of student records to include, at a minimum, the student's enrollment agreement, student transcript, record indicating program completion (either certificate, diploma, degree, or other like proof of completion) and student financial aid records. Any institution that closes and has not operated lawfully pursuant to 5.99.1 NMAC, must file to a designated custodian of records, the original or legible true copies of student records to include, at a minimum, the student's enrollment agreement, student transcript, record indicating program completion (either certificate, diploma, degree, or other like proof of completion), and student financial aid records and may be subject to penalty for operating without state

authorization or exemption. A written detailed description for how records will be maintained following the closure shall be provided to the department in a plan for the perpetual care and maintenance of records. The written plan must include, but is not limited to the following:

(1) certification that the post-secondary institution is in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, records retention requirements of any other authorizing agency, or laws, regulations, and rules of any other authorizing jurisdiction or territory related to records retention, whichever is longest in time;

(2) designation of a custodian of records;

(3) physical address of hard copy files;

(4) physical address of digital files; and

(5) process for obtaining transcripts or other records from the custodian of record.

**C.** The department must be notified of any update related to the custodian of records or upon any change to the custodian of records.

**D.** The department must be provided a copy of any contractual arrangements made for the perpetual care, maintenance and accessibility of all records. The department may request any additional records or information to help students gain access to transcripts in perpetuity.

**E.** In the event that the post-secondary institution does not comply with the records maintenance provisions cited above, the department may seek a court order to protect and if necessary take possession of the records. The institution's surety bond may be drawn on to cover costs associated with the department's efforts in securing records.

**F.** Students must be made aware of the process to request student records from the custodian of records. The process must be provided in writing to the student and made available on the institution's website.

[5.99.2.11 NMAC - N, 12/11/2018]

#### **5.99.2.12 FINAL EXECUTION REPORT:**

Before any post-secondary institution terminates its services or sells, transfers or disposes of substantially all of its assets, it shall submit to the department a summary of all actions taken pursuant to the requirements set forth in all applicable Sections of 5.99.2 NMAC. The institution must also submit certification that it has met all rules of the

department pertaining to the termination of operations by post-secondary educational institutions.

[5.99.2.12 NMAC - N, 12/11/2018]

## **PART 3-5: [RESERVED]**

# **CHAPTER 100: PRIVATE INSTITUTIONS OF HIGHER LEARNING**

## **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2: PRIVATE POSTSECONDARY INSTITUTIONS OPERATING UNDER THE POSTSECONDARY EDUCATIONAL INSTITUTION ACT [REPEALED]**

[This part was repealed on December 26, 2017.]

[New part numbers and names for the regulation of private postsecondary institutions operating are contained within new rules 5.100.5 NMAC, 5.100.6 NMAC, 5.100.7 NMAC and 5.100.8 NMAC]

## **PART 3: PRIVATE POSTSECONDARY INSTITUTIONS OPERATING UNDER THE OUT-OF-STATE PROPRIETARY SCHOOL ACT [REPEALED]**

[This part was repealed on December 26, 2017.]

[New part numbers and names for the regulation of private postsecondary institutions operating are contained within new rules 5.99.1 NMAC, 5.100.5 NMAC, 5.100.6 NMAC, 5.100.7 NMAC and 5.100.8 NMAC]

## **PART 4: ADVISORY COMMITTEE FOR PRIVATE POST-SECONDARY EDUCATION [REPEALED]**

[This part was repealed on December 26, 2017.]

[New part numbers and names for the regulation of private postsecondary institutions operating are contained within new rules 5.99.1 NMAC, 5.100.5 NMAC, 5.100.6 NMAC, 5.100.7 NMAC and 5.100.8 NMAC]

## **PART 5: EXEMPTION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT**

## **TITLE 5 POST-SECONDARY EDUCATION**

## **CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION**

### **5.100.5.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.100.5.1 NMAC - N, 12/26/2017]

### **5.100.5.2 SCOPE:**

Provisions of 5.100.5 NMAC apply to all post-secondary institutions that meet the standards set by the department to obtain exempt status from the post-secondary educational institution act within the state of New Mexico.

[5.100.5.2 NMAC - N, 12/26/2017]

### **5.100.5.3 STATUTORY AUTHORITY:**

Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978. The Post-Secondary Educational Institution Act, Section 21-23-1 et seq. NMSA 1978 authorizes the New Mexico higher education department ("department") to establish standards to exempt post-secondary educational institutions from the act while operating in New Mexico.

[5.100.5.3 NMAC - N, 12/26/2017; A, 12/11/2018]

### **5.100.5.4 DURATION:**

Permanent

[5.100.5.4 NMAC - N, 12/26/2017]

### **5.100.5.5 EFFECTIVE DATE:**

December 26, 2017 unless a later date is cited at the end of a section.

[5.100.5.5 NMAC - N, 12/26/2017]

### **5.100.5.6 OBJECTIVE:**

**A.** Each private post-secondary institution with a physical presence in New Mexico shall be classified by the department as either subject to or exempt from provisions of the Post-Secondary Educational Institution Act ("the act").

(1) Engaging in one or more of the following activities constitutes a physical presence in New Mexico:

- (a) ongoing occupation of a physical location in the state;
- (b) maintenance of an administrative office to support the provision of higher education instruction;
- (c) establishing a physical location for instruction which is synchronous (instruction in which a group of students engage in learning at the same time) or asynchronous (instruction that does not occur in the same place or at the same time);
- (d) requiring students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;
- (e) establishing an administrative office;
- (f) providing student support services to enrolled students, from a physical site operated by or on behalf of the institution in the state;
- (g) obtaining office space for instructional or non-instructional staff;
- (h) maintaining a mailing address or phone exchange in New Mexico;
- (i) holding proctored exams on behalf of the institution in New Mexico more than twice per full-term (quarter or semester); or
- (j) facilitating student participation in off-campus field trips in New Mexico for academic purposes in excess of 20 classroom hours in one six-month period or in which the institution establishes a residential or instructional facility in New Mexico.

(2) The following is a non-exhaustive list of activities, which if conducted by the institution, will not trigger a physical presence in New Mexico:

- (a) advertising to students whether through print, billboard, direct mail, internet, radio, television or other medium;
- (b) maintaining a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in the state);
- (c) having faculty, adjunct faculty, mentors, tutors, recruiters or other academic personnel residing in New Mexico and working from their homes or another private, non-institutional site, provided that such staff is not engaged in activities that would otherwise constitute physical presence;

(d) using recruiters in New Mexico if the recruiter has registered as an agent pursuant to Section 21-24-1 through Section 21-21-9 NMSA 1978;

(e) independent off-campus study or research by students including, independent fieldwork for a thesis or dissertation, by individual students not engaged in a supervised field experience under 5.99.1 NMAC and with no supervision or control by the student's institution; or

(f) facilitating student participation in off-campus field trips in New Mexico for academic purposes, so long as the field trip does not exceed more than 20 classroom hours in one six-month period, or the establishment of a residential or instructional facility by the institution in New Mexico.

(g) operating on a military base in New Mexico and offering educational programs to active military personnel, military reserve personnel, military veterans, and civilians employed full-time on the military base and the spouses and dependents of active military personnel, military reserve personnel, military veterans, and civilians employed full-time on the military base.

(3) The Post-Secondary Educational Institution Act does not apply to or affect:

(a) a post-secondary educational institution that is established by name as an educational institution by the state through a charter, constitutional provision or other action and is supported in whole or in part by state or local taxation;

(b) an occupational, trade or professional school operating pursuant to any New Mexico occupational licensing law;

(c) a course of instruction provided by an employer to its own employees for training purposes;

(d) institutions that exclusively offer education that is solely avocational or recreational in nature;

(e) a course of instruction or study sponsored by a recognized fraternal, trade, business or professional organization or labor union for the instruction of its members;

(f) chartered, nonprofit religious non-degree and degree granting institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion;

(g) institutions that exclusively offer instruction at any level from preschool through the twelfth grade;

(h) an institution funded in full or in part by an Indian tribe or pueblo in the state of New Mexico; or

(i) an organization that provides only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be a program of training in employment.

**B.** A post-secondary educational institution is subject to the act unless expressly exempted by the department. Post-secondary educational institutions or programs shall apply to the department to receive formal exemption status. Exempt institutions may use the term "exempt" but may not refer to their status with the department using terms such as "authorized," "accredited," "licensed," "approved," or "endorsed."

**C.** Post-secondary educational institutions that do not have state authorization or have not been granted express exemption by the department, and meet the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to offer instruction until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if post-secondary educational institutions fail to comply; whoever violates any provision of Sections 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

**D.** An exemption status shall in no way constitute state authorization. Therefore, references to the department shall not be used in any advertisements, brochures, etc. without written consent of the department.

**E.** Non-accredited private post-secondary educational institutions that offer a degree program shall not be granted exemption unless they meet the criteria for exemption pursuant to Section 21-23-4 NMSA 1978.

[5.100.5.6 NMAC - N, 12/26/2017; A, 12/11/2018; A, 8/10/2021; A, 10/24/2023]

#### **5.100.5.7 DEFINITIONS:**

**A. "Accreditation"** means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits institutions, as a means of assuring quality instruction.

**B. "Avocation or recreation"** means an activity taken up in addition to one's regular work or profession, usually for enjoyment; a hobby.

**C. "Career school"** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree, or comparable confirmation of completion of the curriculum.

**D. "Charter"** means a formal document by which a sovereign authority or a government grants rights, powers, and privileges to a person, business, or the people.

**E. "College" or "University"** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral degree or comparable confirmation of completion of the curriculum.

**F. "Continuing education"** means only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be considered a program of training for employment. Typically, a student only enrolls for one course rather than a sequence of courses. The continuing education units must meet the criteria set out by the professional organization or authority requiring the continuing education.

**G. "Department"** means the New Mexico higher education department or its designated employee.

**H. "Degree"** means any title, designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents, which are generally taken to signify satisfactory completion of the requirements of a program of study designed to be comparable to those provided by institutions accredited by agencies recognized by the United States department of education.

**I. "Degree-granting"** means a post-secondary educational institution that offers instruction resulting in a credential as defined by "degree."

**J. "Exemption" or "exempt"** means a written acknowledgment by the department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the department to provide educational services in New Mexico, and is not subject to the post-secondary educational institution act.

**K. "Instruction provided by employer"** means only a brief course of instruction designed to teach specific skills that may be applicable in a work setting or as professional development but are not sufficient in themselves to result in a credential.

**L. "License", "Licensed" or "Licensure"** means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department to offer a formal educational curriculum within New Mexico;

**M. "Physical presence"** means the ongoing occupation of a physical location in the state, the ongoing maintenance of an administrative office to support, the provision of higher education instruction, or engaging in one or more of the activities detailed in Paragraph 1 of Subsection A of 5.100.5.6 NMAC.



**N. "Post-secondary educational institution" or "Institution" or "post-secondary institution"** means an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education.

**O. "Registration" or "Registered"** means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate and offer a formal educational curriculum within New Mexico.

**P. "State Authorization"** means a private post-secondary educational institution has been deemed by the department to satisfactorily meet criteria, as determined by the department, for registration or licensure under the Post-Secondary Educational Institution Act. All degree-granting institutions seeking state authorization shall be accredited or be seeking appropriate external accreditation. State authorization does not serve as an endorsement of a particular institution, but confirms that an institution has met the minimum criteria set by the department to operate in New Mexico.

[5.100.5.7 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.5.8 GENERAL STANDARD FOR OBTAINING EXEMPTION STATUS BY THE DEPARTMENT:**

**A.** The department shall provide an application form and assess an administrative fee to provide a formal exemption status. The department has the sole discretion to determine whether an institution meets the criteria for exemption status pursuant to Section 21-23-4 NMSA 1978 and 5.100.5 NMAC. If the department determines that an institution does not meet the criteria for exemption, the department may require the institution to apply for state authorization.

**B.** The exemption status will be valid for a term of five years from the date that the department makes the final determination.

**C.** As a condition of exemption, all post-secondary educational institutions shall agree to comply with Section 21-23-15 NMSA 1978 and 5.100.8 NMAC in the event of institutional closure.

**D.** An exempt institution shall provide the department with immediate written notification of any changes or events that may trigger the whole or part of the claim for exemption application to be untrue. In no case shall a change be made without an acknowledgement from the department. An institution shall provide the department with notification in no less than 90 days prior to the proposed changes going in effect.

[5.100.5.8 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.5.9 PENALTY:**

A post-secondary institution that does not have state authorization or has not been granted express exemption by the department, and meets the definition of physical presence in New Mexico, shall be notified by certified mail that it shall cease immediately to operate until it obtains state authorization or exemption from the department; the department shall initiate appropriate legal action if an institution fails to comply; whoever violates any provision of Sections 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

[5.100.5.9 NMAC - N, 12/26/2017]

## **PART 6: REGISTRATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT**

### **5.100.6.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.100.6.1 NMAC - N, 12/26/2017]

### **5.100.6.2 SCOPE:**

Provisions of 5.100.6 NMAC apply to all private post-secondary institutions that meet the standards set by the department to obtain state authorization under the registration status of the post-secondary educational institution act within the state of New Mexico.

[5.100.6.2 NMAC - N, 12/26/2017]

### **5.100.6.3 STATUTORY AUTHORITY:**

Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978. The Post-Secondary Educational Institution Act, Sections 21-23-1 et seq. NMSA 1978 authorizes the New Mexico higher education department ("department") to establish standards and oversight for registered private post-secondary institutions under the act while operating in New Mexico.

[5.100.6.3 NMAC - N, 12/26/2017; A, 12/11/2018]

### **5.100.6.4 DURATION:**

Permanent

[5.100.6.4 NMAC - N, 12/26/2017]

### **5.100.6.5 EFFECTIVE DATE:**

December 26, 2017 unless a later date is cited at the end of a section.

[5.100.6.5 NMAC - N, 12/26/2017]

**5.100.6.6 OBJECTIVE:**

**A.** Each private post-secondary institution operating with a physical presence in New Mexico shall be subject to provisions of the Post-Secondary Educational Institution Act ("the act") unless expressly exempt by the department.

**(1)** Engaging in one or more of the following activities constitutes a physical presence in New Mexico:

**(a)** ongoing occupation of a physical location in the state;

**(b)** maintenance of an administrative office to support the provision of higher education instruction;

**(c)** establishing a physical location for instruction which is synchronous (instruction in which a group of students engage in learning at the same time) or asynchronous (instruction that does not occur in the same place or at the same time);

**(d)** requiring students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;

**(e)** establishing an administrative office;

**(f)** providing student support services to enrolled students, from a physical site operated by or on behalf of the institution in the state;

**(g)** obtaining office space for instructional or non-instructional staff;

**(h)** maintaining a mailing address or phone exchange in New Mexico;

**(i)** holding proctored exams on behalf of the institution in New Mexico more than twice per full-term (quarter or semester); or

**(j)** facilitating student participation in off-campus field trips in New Mexico for academic purposes in excess of 20 classroom hours in one six-month period or in which the institution establishes a residential or instructional facility in New Mexico.

**(2)** The following is a non-exhaustive list of activities, which if conducted by the institution, will not trigger a physical presence in New Mexico:

**(a)** advertising to students whether through print, billboard, direct mail, internet, radio, television or other medium;

**(b)** maintaining a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in the state);

**(c)** having faculty, adjunct faculty, mentors, tutors, recruiters or other academic personnel residing in New Mexico and working from their homes or another private, non-institutional site, provided that such staff is not engaged in activities that would otherwise constitute physical presence;

**(d)** using recruiters in New Mexico if the recruiter has registered as an agent pursuant to Section 21-24-1 through Section 21-21-9 NMSA 1978;

**(e)** independent off-campus study or research by students including, independent fieldwork for a thesis or dissertation, by individual students not engaged in a supervised field experience under 5.99.1 NMAC and with no supervision or control by the student's institution; or

**(f)** facilitating student participation in off-campus field trips in New Mexico for academic purposes, so long as the field trip does not exceed more than 20 classroom hours in one six-month period, or the establishment of a residential or instructional facility by the institution in New Mexico.

**B.** Every private college or university operating with a physical presence in New Mexico that is regionally accredited or seeking regional accreditation by an accrediting agency shall register with the department.

**C.** A private college or university that is regionally accredited or seeking regional accreditation with a physical presence in the state, deemed by the department to satisfactorily meet criteria, as determined by the department, will be registered with the state. A college or university that has successfully registered with the department shall be considered to hold state authorization.

**D.** An institution shall provide the department with immediate written notification of any changes or events that may trigger the whole or part of the application or the certifications to be untrue. In no case shall a change be made without an acknowledgement from the department. An institution shall provide the department with notification in no less than 90 days prior to the proposed changes going in effect.

**E.** The department is statutorily charged with evaluating each individual institution in order to determine the institution's compliance with the standards outlined in this regulation. This evaluation may take the form of a physical visit to the institution or administrative office or may be a desk audit if a physical visit is not feasible. It is the

responsibility of the institution to maintain full compliance with the Post-Secondary Educational Institution Act, Sections 21-23-1 through 21-23-15 NMSA 1978 and all applicable rules at all times. The following three types of site visits may be conducted by the department as means to determine the institution's compliance with the standards outlined in the regulation:

**(1)** Regular site visit: The department shall determine an appropriate schedule on which to re-evaluate each individual registered institution and the specific programs offered by that institution in order to determine continued compliance with this rule. Department staff will give prior notification of at least two weeks of the date and time of the visit. A short exit interview will be held at the conclusion of the visit. This exit interview may include a discussion of findings and a final written site visit report will be sent to the institution for review and comment. The outcome of the regular site visit may be continued registration.

**(2)** Required special site visit: The department may request a required special site visit as a requirement for initial registration, or for registration renewal. At the conclusion of a required special site visit, the exit interview may include a discussion of any findings.

**(3)** Triggered site visit: any occurrence listed below trigger a site visit to the institution in order to evaluate compliance with standard within this regulation. The exit interview may include a discussion of any findings. The outcome of a triggered site visit may include a recommendation for a penalty, as outlined in 5.100.6.21 NMAC:

**(a)** an institution involuntarily loses its accreditation status;

**(b)** the department is notified of an institution's non-compliance with federal financial aid program regulations or the outcome of an audit from another state agency;

**(c)** the institution fails to renew its surety bond, or appropriate alternative in a timely manner;

**(d)** an institution is experiencing financial difficulties sufficient to threaten program quality;

**(e)** an institution has significant staff turnover;

**(f)** an institution fails to immediately notify the department of a change in ownership/management; or

**(g)** the department becomes aware of any other factor that could alter basis for registration.

**F.** Regionally accredited private colleges or universities that do not have state authorization or have not been granted express exemption by the department, and meet

the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to offer instruction until they obtain state authorization or exemption from the department; the department shall initiate appropriate legal action if an institution fails to comply; whoever violates any provision of Sections 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

**G.** As a condition of registration, all institutions shall agree to comply with Section 21-23-15 NMSA 1978 and 5.100.8 NMAC in the event of institutional closure.

**H.** Registered institutions concurrently offering distance education pursuant to 5.99.1 NMAC as a SARA institution, through distance education authorization, or through any other method detailed in Section 5.99.1.10 NMAC:

**(1)** shall be subject to complaint procedures detailed in 5.99.1 NMAC, as related only to students enrolled exclusively as distance education students; and

**(2)** shall be subject to 5.99.2 NMAC, if the institution seeks to close, cease program offerings that contain enrolled students, or substantially relocate as defined in 5.99.2 NMAC, as related only to students enrolled exclusively as distance education students.

[5.100.6.6 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.6.7 DEFINITIONS:**

**A. "Accreditation"** means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions, as a means of assuring quality instruction.

**B. "Career school"** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree or comparable confirmation of completion of the curriculum.

**C. "College" or "university"** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral degree or comparable confirmation of completion of the curriculum.

**D. "Department"** means the New Mexico higher education department or its designated employee.

**E. "Enrollment agreement"** means an agreement, instrument or note executed before a person begins coursework that creates a binding obligation between the person and the post-secondary educational institution.

**F. "Exemption", or "Exempt"** means a written acknowledgment by the department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the department to provide educational services in New Mexico, and is not subject to the Post-Secondary Educational Institution Act.

**G. "Institution"** means a regionally accredited college or university.

**H. "License", "Licensed", or "Licensure"** means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department to offer a formal educational curriculum within New Mexico.

**I. "Manager" or "Managers"** means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of a New Mexico private post-secondary educational institution.

**J. "Management plan of action"** means a plan that has been developed, reviewed and implemented by managers of the institution which details specific steps the institution will commit to taking in order to remediate an identified weakness, shortcoming or insufficiency.

**K. "Physical presence"** means the ongoing occupation of a physical location in the state, the ongoing maintenance of an administrative office to support the provision of higher education instruction, or engaging in one or more of the activities detailed in Paragraph 1 of Subsection A of 5.100.6.6 NMAC.

**L. "Post-secondary educational institution" or "post-secondary institution"** includes an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education from a physical site in New Mexico, through distance education, correspondence or in person.

**M. "Private post-secondary educational institution"** means a non-publicly funded post-secondary educational institution that offers post-secondary education for a fee to members of the general public.

**N. "Prospective student"** means a person who demonstrates interest in signing an enrollment agreement with a post-secondary educational institution.

**O. "Regional accreditation"** means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions operating in a designated geographic region.

**P. "Registration" or "Registered"** means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate and offer a formal educational curriculum within New Mexico.

**Q. "State Authorization"** means a private post-secondary educational institution has been deemed by the department to satisfactorily meet criteria, as determined by the department, for registration or licensure under the Post-Secondary Educational Institution Act. All degree-granting institutions seeking state authorization through application for registration or licensure shall be accredited or be seeking appropriate external accreditation. State authorization does not serve as an endorsement of a particular institution, but confirms that an institution has met the minimum criteria set by the department to operate in New Mexico.

[5.100.6.7 NMAC - N, 12/26/2017; A, 12/11/2018; A, 12/29/2020]

#### **5.100.6.8 GENERAL STANDARDS FOR REGISTRATION:**

**A.** A regionally accredited college or university seeking state authorization through registration must submit a complete application and all supporting documentation, as requested by the department.

**B.** A branch campus that operates under the regional accreditation of a primary New Mexico campus is not considered a separate institution for purposes of state authorization. To be considered a branch campus the institution shall meet the following criteria:

(1) it has the same ownership, financial management or control as that of the primary New Mexico campus;

(2) it operates under the regional accreditation of the primary New Mexico campus;

(3) it is not considered a separate institution for the purpose of accreditation;

(4) the primary New Mexico campus has previously operated as a state authorized and accredited institution in New Mexico; and

(5) it is a secondary physical presence by the same institution in New Mexico.

**C.** A regionally accredited college or university that has been granted state authorization through registration must submit an annual report, as requested by the



department. The department shall promulgate a standard reporting form for registration to include: curriculum and enrolment information, financial information, and all publication material requested by the department.

**D.** A regionally accredited college or university registering with the department shall adopt the student complaint procedure, as defined by the department, for the resolution of student complaints. State authorization through registration granted by the department is valid for the same period as its grant of regional accreditation from its accrediting agency, not to exceed 10 years.

[5.100.6.8 NMAC - N, 12/26/2017]

#### **5.100.6.9 APPLICATION FOR REGISTRATION:**

**A.** The department shall create an application form for registration.

**B.** The application criteria, all of which are defined in Sections 10 through 17 of 5.100.6 NMAC, shall include the following:

- (1)** curriculum requirements;
- (2)** enrollment agreement;
- (3)** proof of financial stability;
- (4)** materials and information;
- (5)** student complaint procedure;
- (6)** cooperation;
- (7)** records maintenance and retention policy;
- (8)** surety bond.

[5.100.6.9 NMAC - N, 12/26/2017]

#### **5.100.6.10 CURRICULUM REQUIREMENTS:**

Regionally accredited institutions shall be governed by their accrediting agencies in establishing curriculum standards. Accredited institution shall submit formal documentation from the accreditor listing all approved campuses, credentials and programs; and written notification of any changes related to accreditation.

**A.** The institution shall submit a complete catalog that includes all programs of study, course descriptions, methods of delivery for each course, and number of credit

hours for each course. When applicable, the institution shall identify specialized programmatic accreditation in the catalog.

**B.** The institution shall submit the organizational profile from the regional accreditor that lists all programs offered by the institution.

**C.** Institutions proposing to change or add programs must formally notify the department. If the change or addition of the program requires the accreditor's approval, the institution must provide written proof of the approval. If the change or addition does not require approval by the accreditor, the institution shall provide proof that the accreditor was notified of the change or addition. Upon receipt of the approval or proof of notification to the accreditor, the department will provide a formal acknowledgment of the change or added program. The institution may begin to advertise the program based on the department's letter of acknowledgement.

**D.** Accreditation for new degree-granting institutions: New degree-granting institutions who have applied for regional accreditation must submit a written accreditation plan. If the institution fails to comply with the plan as provided to the department, the department may require the institution to seek state authorization under licensure as a non-accredited institution. The written accreditation plan shall include at minimum:

(1) a complete catalog that includes all programs of study, course descriptions, methods of delivery for each course, and number of credit hours for each course. When applicable, the institution shall identify specialized programmatic accreditation in the catalog;

(2) the name and contact information of the U.S. department of education recognized accrediting agency;

(3) the planned timeline for application with and approval by the U.S. department of education recognized accrediting agency;

(4) any contracts already made with the U.S. department of education recognized accrediting agency, including supporting documents;

(5) certification that the institution will complete the accreditation process with in the planned timeline provided to the department. Any modification to the timeline must be approved by the accreditor and communicated to the department; and

(6) any additional information which the department may request.

[5.100.6.10 NMAC - N, 12/26/2017]

#### **5.100.6.11 ENROLLMENT AGREEMENT:**

Before a student begins coursework at an institution, the institution shall execute an enrollment agreement with the student. An enrollment agreement will be binding only when it has been fully completed, signed, and dated by the student and authorized institution representative prior to the beginning of instruction. The institution shall retain the original enrollment agreement and a copy shall be delivered to the student at the time of execution or by mail when the enrollment is solicited by mail. A copy of the blank agreement or contract shall be submitted to the department. Each enrollment contract or agreement shall include at least the following:

- A.** information that will clearly and completely define the terms of the agreement between the student and the school;
- B.** names and addresses of the school and the student;
- C.** the program or course title in which the student is enrolling and the applicable catalog date or version reference;
- D.** program start date and estimated end date;
- E.** the number of hours or units of instruction;
- F.** the school's cancellation and refund policies;
- G.** an itemization of all charges, fees and required purchases being incurred by the student or their sponsor in order to complete the training, e.g., tuition, books, supplies and all other items of expense required by the school;
- H.** the method of payment and payment schedule being established; and
- I.** when applicable, a statement detailing the institution's academic placement policy.

[5.100.6.11 NMAC - N, 12/26/2017]

#### **5.100.6.12 PROOF OF FINANCIAL STABILITY:**

Standards for reviewing and analyzing financial stability are a critical component of the institution's overall assessment. The institution's financial stability will be reviewed by the department to assess the institutions ability to meet financial obligations including, but not limited to, obligations to enrolled students. In determining financial stability of the institution the department shall review the following requirements:

- A. Insurance:** Institutions registered by the department shall maintain valid standard, commercial liability insurance, worker's compensation insurance, and property insurance sufficient to protect students, employees, and other citizens from hazards in

the institution's facilities. Where applicable institutions shall have liability insurance covering students involved in internships at sites and locations other than the institution.

**B. Financial statement analysis:** The department shall consider an institution's financial history when reviewing an application for registration. In the case where an institution submits an audit report and management letter provided by a certified public accountant, the department shall normally accept the report as accurate and rely on the auditor's professional responsibility to evaluate and to make known their professional opinion.

**C. New institutions not previously operating in any capacity in any state or jurisdiction** shall demonstrate liquid assets sufficient to operate the institution for a period of one year exclusive of anticipated revenue from tuition and fees. These assets shall be sufficient to pay all projected salary and benefits of employees and the rent, utilities, insurance and other costs of operating the institution's facilities for a period of one year. If an institution has audited financials available for the year prior to that of the application, such audited financials shall be submitted for review. Any new institution shall submit the following:

(1) bank statements, investor agreements, any other financial donations or gifts used to develop the institution;

(2) the institution's projected income statement certified as accurate by the institution. The income statement must include details of projected salaries and benefits of employees, rent, utilities, insurance, any financial obligations made by the institution, and any other operating costs; and

(3) any additional information which the department may request.

**D. Existing Institutions:** If an institution has previously operated in any capacity in any jurisdiction, it must submit documents based on the following thresholds:

(1) An institution with seven hundred fifty thousand dollars (\$750,000) or more in gross annual tuition revenue and all federal Title IV financial aid institutions shall submit, on a schedule set by the department, an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Sections 61-28B-1 et seq. NMSA 1978. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

**(2)** An institution with gross annual tuition revenue of two hundred fifty thousand dollars (\$250,000) or more but less than seven hundred forty nine thousand nine hundred ninety-nine dollars (\$749,999) shall submit, on a schedule set by the department, either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Sections 61-28B-1 et seq. NMSA 1978 or a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

**(3)** An institution with gross annual tuition revenue of less than two hundred forty nine thousand nine hundred ninety-nine dollars (\$249,999) shall submit on a schedule set by the department either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Sections 61-28B-1 et seq. NMSA 1978, a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, or an income statement and balance sheet certified as accurate by the institution. In addition to the audit report and management letter, the review of financial statements, or the income statement and balance sheet as described in this paragraph, the institution shall submit copies of business tax returns and bank statements for the most current year. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

**E.** Failure to satisfactorily meet financial requirements: If considerable concern is established as to the institution's ability to maintain its operation, department staff may contact the school to request additional information that may influence the institution's financial picture. If concerns are not addressed through the additional information provided to the department, a department financial analyst may conduct a second financial review. If after the second review, substantial doubt remains about the institution's ability to continue, the department may contract for further independent review of the records. All costs associated with contracting a third party independent reviewer will be charged to the institution. Following review and based on the determination of the department:

**(1)** the institution may be authorized for operation; or

(2) the institution may be placed on probationary status and required to submit a management plan of action; and

(3) the department may report the failure to satisfactorily meet financial requirements to the U.S. department of education and the institution's accreditor. If the issue is not resolved, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny registration.

[5.100.6.12 NMAC - N, 12/26/2017]

### **5.100.6.13 MATERIALS AND INFORMATION:**

The department shall regulate the use of deceptive and misleading materials and information. An institution shall not disseminate material or information that is deceptive, misleading or untrue. The institution shall certify compliance with all laws and regulations related to materials and information. The department may request copies of publications, advertisements, agreements, marketing collateral, or contracts in order to regulate the use of deceptive and misleading information. All materials and information shall comply with the following requirements:

#### **A. Representation of accreditation and state authorization status:**

(1) An institution may not make claims to or advertise an accreditation status if the accrediting agency is not recognized by the U.S. department of education.

(2) An institution not accredited by a U.S. department of education recognized accreditor shall clearly state that the institution is not accredited.

(3) An institution registered by the department may not use terms such as "accredited," "endorsed," or "recommended" in reference to its approval by the department.

**B. Information provided to students:** Information shall be provided to students prior to their signing an enrollment agreement and the institution shall make reasonable effort to assure and verify that each student understands their academic and financial obligations prior to enrolling in the institution and maintain records of the institution's effort for at least five years after the students enroll at the institution. An institution shall publish and make available to all students a catalog or other materials that clearly describe:

(1) admission policies and procedures that provide criteria and methods used to assess and admit or deny admission;

(2) admission methods and criteria used to assess student ability to complete program requirement;

(3) programs offered, the program completion requirements of each program offered, and descriptions of all courses offered;

(4) requirements and costs for those occupations that require professional or trade licensure and for which the institution is offering preparation;

(5) tuition, fees, books and supplies, including cost for rental or purchase of equipment or materials required of all students;

(6) room, board and transportation expenses incurred by a student;

(7) reasonable costs associated with a program of study abroad approved for credit by a student's home institution, if applicable;

(8) expenses related to a student's disability, including special services, personal assistance, transportation, equipment and supplies;

(9) refund policies, consistent with the requirements in Subsection C of 5.100.7.10 NMAC;

(10) types of financial aid available to students and the procedure for applying for such aid;

(11) the institution's policy regarding program or course cancellations;

(12) rules and regulations pertaining to academic progress;

(13) rules and regulations pertaining to student conduct;

(14) the procedure to be followed in the instance that a student decides to withdraw from the institution prior to completing a program;

(15) the institution's policy regarding student complaints and the resources available to students for resolving differences with the institution. The institution must adopt the student complaint process established by the department and published by the department; and

(16) the institution's policy regarding release of transcripts.

**C.** Advertising, marketing, promotional materials and recruitment: All advertisements and promotional literature must be truthful regarding the content of an institution's educational program(s), the duration of the program(s), student attributes and skills needed for successful completion of the program(s), and costs of the program(s). An institution shall use no advertisements or promotional materials that are false, deceptive, inaccurate, or misleading. Materials must comply with all of the following regulations:

**(1)** Advertisements and promotional literature shall not contain promises of job placement or employment, either explicitly or implicitly, but may refer to an institution's services to assist students in obtaining employment.

**(2)** Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training and may not either explicitly or implicitly suggest that the institution is offering employment.

**(3)** An institution advertising salary ranges or averages for its graduates must have on file and available to inspection by students, the department, or their representatives current and accurate data that includes New Mexico employers and that validates such claims.

**(4)** An institution shall not advertise the transferability of its courses or programs to another institution unless it has signed transfer or articulation agreements with that institution.

**(5)** An institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve predominantly as sites of instruction or related activities provided by the institution, either in New Mexico or in other states. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.

**(6)** No person shall for a fee solicit enrollment at an institution who is not employed by and under supervision of the institution. The institution shall be responsible for the representations of its employees.

**(7)** Prospective students shall not be solicited by any representative of an institution on the sites of any government agency such as motor vehicle registration offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be made available at such sites.

**(8)** Prospective students shall not be solicited by any representative of an institution on the site of any public school, except at the invitation of school personnel. No institution shall offer or provide financial inducement to any public school in return for permission to solicit students.

**(9)** No institution shall solicit the enrollment of any student who is currently attending another institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.

**(10)** On all materials, an institution shall use the full name in which it is registered and list any other names in which the institution holds other government registrations. Permutations of its name, e.g., initials, or shortened name or nicknames, cannot be employed without prior written permission of the department.



**(11)** On all materials, the name of an institution shall not be misleading.

[5.100.6.13 NMAC - N, 12/26/2017; A, 12/29/2020]

#### **5.100.6.14 STUDENT COMPLAINT PROCEDURE:**

An institution shall provide proof of an adopted complaint procedure that complies with the minimum requirements set by the department. Institutions shall retain records that make available the student complaint received and record of the institution's processing the complaint (that comports with the institution's policies and procedures for handling grievances or complaints) as required by law. The institution shall have and make available to all students, the adopted complaint procedure that describes, in detail, how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

**A.** requirement that students or other parties with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;

**B.** a time frame within which the institution will investigate the complaint and respond to the complainant;

**C.** assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;

**D.** assurance that no adverse action will be taken against the complainant for registering the complaint; and

**E.** identification of the department as the agency to be contacted in cases where a complaint cannot be resolved and include the mailing address, website and phone number for the department.

[5.100.6.14 NMAC - N, 12/26/2017; A, 2/11/2025]

#### **5.100.6.15 COOPERATION:**

The institution shall provide copies of valid certificates from other federal, state and municipal agencies, and any other higher education authorities as proof of compliance with applicable bodies. At minimum the application submission must include:

**A.** a copy of the notification of good standing and ability to do business in New Mexico issued by the New Mexico secretary of state's office;

**B.** a copy of the New Mexico taxation and revenue department registration;

**C.** as applicable, a copy of the national council of state authorization reciprocity agreements (NC-SARA) welcome letter;

**D.** as applicable, a list and copy of authorizations granted by other jurisdictions; and

**E.** as applicable, a list and copy of authorizations granted by other New Mexico boards, commission or agencies.

[5.100.6.15 NMAC - N, 12/26/2017]

#### **5.100.6.16 RECORD MAINTENANCE AND RETENTION POLICY:**

**A.** Each regionally accredited college or university registered by the department shall provide a records maintenance and retention plan. The plan shall consist of a records maintenance and disposal schedule that is in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, regulations of any other authorizing agency, or laws, regulations, and rules of any other authorizing jurisdiction or territory, whichever is longest in time. If another authorizing agency of the institution requires a longer period of retention than that of 1.21.2 NMAC, the longest retention period shall prevail.

**B.** Each institution shall submit a certification of compliance with all applicable laws, rules and regulations that govern records management for closed institutions.

**C.** Each institution shall report the percentage of all student transcripts since inception of the institution that are not digitalized at the time of application. If there are non-digitalized transcripts, the institution shall submit a plan to the department which describes how the institution will digitalize all student transcripts within a twelve-month period.

**D.** Each institution shall provide information regarding the custodian of records and the process for obtaining transcript records through the custodian at the time of application.

**E.** If the department determines the plan for processing transcripts is not satisfactory, the institution shall:

(1) hire a professional digital credential firm to manage its student transcripts;  
or

(2) submit all of the student transcripts within a twelve-month period to the department in a specified format and agree the department shall become custodian of record upon receipt of the transcripts.

**F.** If the department becomes the custodian of record for an institution, it will be at no cost to the institution.

**G.** If the department becomes the custodian of record for an institution that is in operation, the institution shall periodically submit updated transcripts to the department in a specified format. The submission schedule shall be based on end dates of programs offered by the institution.

**H.** The department may contract with a professional digital credential firm to service the transcripts.

[5.100.6.16 NMAC - N, 12/26/2017; A, 12/11/2018; A, 10/24/2023]

#### **5.100.6.17 SURETY BOND:**

**A.** Each institution registered by the department shall maintain in force a surety bond or alternative surety accepted by the department, in an amount set by the department, and payable to the department. The institution must have and adhere to the following requirements:

**(1)** the amount of the bond or alternative surety shall be sufficient to indemnify any student damaged as a result of fraud or misrepresentation by a registered institution or as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted. If a registered institution closes, the department may draw upon the bond to pay costs associated with preservation of student records;

**(2)** the bond required for each institution shall be twenty percent of the institution's projected or actual gross annual tuition and fees revenue in New Mexico, which takes into consideration the size, number of students and total income and assets of an institution. In no case shall the bond be less than \$5,000;

**(3)** bonds provided by institutions must be accompanied by the name, office address and phone number of the issuing company representative; and

**(4)** if an institution seeks to cancel a surety bond, written notice must be delivered to the department. The institution may not cancel the surety bond until provided with written release by the department. The institution shall provide the department with a like surety or acceptable alternative in order to maintain registration status.

**B.** Alternative forms of surety. An institution may request a waiver from the bond requirement and provide to the department an explanation of the alternative form for which they are seeking approval. The department has the authority to accept or reject any request. Such alternative may be a cash deposit escrow account, irrevocable letter of credit, or similar alternative payable to the department in the amount equal to the bond requirement.

[5.100.6.17 NMAC - N, 12/26/2017]

#### **5.100.6.18 COMPLAINT TO THE DEPARTMENT:**

**A.** Upon receipt of a student complaint, the department shall determine whether the complaint meets initial criteria to permit use of the department's complaint procedure. The following initial complaint criteria must be satisfied:

(1) A student must file a complaint with the department within three years of the student's last date of enrollment.

(2) The complaint must be made to the department in writing utilizing the designated complaint form published by the department. The student may include supporting documentation or evidence related to the complaint. The department may request additional documentation from the student, as needed, to conduct an initial assessment.

(3) The complaint must detail and provide evidence that the student has exhausted all complaint procedures at the institution.

(4) The complaint must contain a question of fact or question regarding potential violation of or deviation from policy, regulation, or law.

**B.** If the department determines the complaint meets the initial complaint criteria, it shall serve as an intermediary in attempting to facilitate a resolution or to obtain information from the institution to eliminate questions of fact or possible violations or deviations from policy, regulation or law raised by the complaint. Satisfaction of initial complaint criteria, in no way means the department has assigned greater weight to the student's allegations. If the department finds that the subject matter of the complaint falls within the investigatory purview of another entity, it may forward the complaint and cease further review (for example the office for civil rights).

(1) Acting as an intermediary, the department shall request a response from the institution addressing the student's complaint. The complaint and any documentation provided by the student shall be sent to the institution with a request for a written response. The institution shall have 10 days to forward its response to the department. The institution may request additional response time, if inquiry into the complaint requires greater than 10 days. The institution may provide any supporting documentation or evidence to address questions or concerns raised by the complaint with the response.

(2) After considering the institution's response and any documentation or evidence supplied by the institution, the department may conduct further inquiry of the parties or may continue to serve as an intermediary for possible compromise between the parties. The department may seek additional clarifying information or supporting documentation from either party and may request additional response from either party.

(3) If the institution accepts the desired outcome proposed by the student in the complaint, the department shall inform the student. If the institution proposes an alternate desired outcome, the department shall convey such information to the student and the student shall indicate acceptance or denial of the alternate proposed outcome, or create a different proposed outcome, to allow for compromise. If at any point, the student and the institution reach an agreed upon outcome, the department may help facilitate fulfillment of the outcome, as necessary.

(4) If the parties are unable to reach a mutually agreeable outcome, the department may, but is not obligated to, convene a meeting between the parties. Such meetings, if held, shall be informal and for the purpose of clarifying the facts surrounding the complaint and to facilitate the parties reaching a resolution or compromise, if possible. If a meeting is convened, the department shall give written notice to the institution and to the student, regarding the time, date, and place of the meeting.

**C.** The department may help facilitate a compromised resolution between the parties. However, the department shall not impose an outcome and shall not act as an adjudicatory entity. If the department has received evidence to support potential violation of or a deviation from policy, regulation, or law through the department's inquiry, the department may refer the complaint to either law enforcement, the United States department of education, the institution's accreditor, or any other applicable oversight entities for further investigation, as applicable to the type of potential violation or deviation. If the department determines, at any time, that questions raised by the complaint are alleviated or the complaint relates to grades or student conduct violations, it shall cease further inquiry into the complaint and inform the student that the complaint will be closed with no further action by the department.

[5.100.6.18 NMAC - N, 12/26/2017; A, 2/11/2025]

#### **5.100.6.19 APPLICABLE FEES:**

**A.** The department shall assess application and administrative fees for registration, pursuant to Section 21-23-6.3 NMSA 1978, and publish a fee schedule.

**B.** The department shall assess an administrative fee for providing the services associated with application review and determination of eligibility for registration.

**C.** The department shall assess an application fee upon determination that the institution has satisfactorily met all conditions for registration.

**D.** The department shall assess an administrative fee for annual reporting.

[5.100.6.19 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.6.20 REPORTING REQUIREMENTS:**

**A.** Registered colleges or universities shall annually submit a standard reporting form on a deadline set by the department and make available to the prospective student.

**B.** The department shall promulgate a standard form for annual reporting including but not limited to:

- (1) curriculum and enrollment information;
- (2) financial information;
- (3) completion rates for both full-time and part-time students;
- (4) withdrawal rates of students;
- (5) satisfaction of students and employers;
- (6) median combined loan debt for federal loans, institutional loans and private loans certified by the institution, for all students who completed the most recently completed award year;
- (7) placement rates;
- (8) median earnings at ten years after entering the institution of former students of the institution who received federal financial aid, if available;
- (9) all publication material requested by the department; and
- (10) certification of compliance with current New Mexico Administrative Code or statutes applicable to post-secondary educational institutions.

**C.** An institution renewing application with the department must submit required reporting and maintain records of the institution's efforts to provide the information of this section to prospective student for at least five years after the student enrolls at the institution.

[5.100.6.20 NMAC - N, 12/26/2017; A, 12/29/2020]

#### **5.100.6.21 PENALTY:**

**A.** A post-secondary institution that does not have state authorization or have not been granted express exemption by the department, and meets the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to offer such until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of Sections 21-23-1 et seq. NMSA 1978 of the

Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

**B.** A post-secondary institution that does not submit an application for renewal within deadlines set by the department and has a lapse in state authorization for one or more years will be required to complete a provisional period of two years.

**C.** The department shall provide notification for public viewing on the department's website if a registered private post-secondary institution has been sanctioned or penalized by their accreditor or the U.S. department of education.

**D.** The department may report any failures to comply with provisions of 5.100.6 NMAC to the U.S. department of education and the institution's accreditor. If the institution does not comply, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny registration.

[5.100.6.21 NMAC - N, 12/26/2017]

#### **5.100.6.22 REVOCATION OF REGISTRATION:**

**A.** The department may revoke an institution's registration to operate or approval to offer a specific degree program(s) at any time, upon finding that

(1) any statement made in the institution's application for registration is untrue;

(2) the institution has failed to maintain the faculty, facilities, equipment, or other necessary support for its program(s) of study on the basis of which the registration or approval was granted; and

(3) the institution has failed to advise the department about significant factors which serve as a basis for registration, such as:

(a) financial difficulties sufficient to threaten program quality;

(b) significant staff changes in a short period of time;

(c) change of ownership and management;

(d) outcomes of audits by other state agencies;

(e) loss or lowering of accreditation status;

(f) any other factor that could alter basis for registration;

(g) the institution has failed to renew registration in a timely manner; or

(h) the institution has failed to comply with one or more standards of registration established by the department or with applicable law.

**B.** Prior to revoking registration, the department, or its designee, shall give the institution notice of ten work days and shall provide an opportunity for the institution to demonstrate why the registration should not be revoked.

**C.** At its discretion, the department, or its designee, may institute a probationary period of continued registration for the institution during which time the institution must demonstrate resolution of deficiencies to the satisfaction of the department. Under no circumstance shall this probationary period exceed one year.

**D.** If the institution fails to sufficiently demonstrate that registration should not be revoked, as provided by Subsection B of 5.100.6.22 NMAC, the department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978.

[5.100.7.17 NMAC - N, 12/26/2017]

#### **5.100.6.23 DENIAL OF REGISTRATION:**

An applicant that fails to satisfactorily meet the requirements in Sections 10 through 17 of 5.100.6 NMAC or fails to adequately address the specific criteria set forth in Sections 10 through 17 of 5.100.6 NMAC shall be subject to denial of registration. If the department contemplates denial of registration to any applicant, the department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978.

[5.100.7.18 NMAC - N, 12/26/2017]

### **PART 7: LICENSURE UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT**

#### **5.100.7.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.100.7.1 NMAC - N, 12/26/2017]

#### **5.100.7.2 SCOPE:**

Provisions of 5.100.7 NMAC apply to all private post-secondary institutions that meet the standards set by the department to obtain state authorization under the licensure status of the post-secondary educational institution act within the state of New Mexico.



[5.100.7.2 NMAC - N, 12/26/2017]

**5.100.7.3 STATUTORY AUTHORITY:**

Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978. The Post-Secondary Educational Institution Act, Sections 21-23-1 et seq. NMSA 1978 authorizes the New Mexico higher education department ("Department") to establish standards and oversight for licensed private post-secondary institutions under the act while operating in New Mexico.

[5.100.7.3 NMAC - N, 12/26/2017; A, 12/11/2018]

**5.100.7.4 DURATION:**

Permanent

[5.100.7.4 NMAC - N, 12/26/2017]

**5.100.7.5 EFFECTIVE DATE:**

December 26, 2017 unless a later date is cited at the end of a section.

[5.100.7.5 NMAC - N, 12/26/2017]

**5.100.7.6 OBJECTIVE:**

**A.** Each private post-secondary institution operating with a physical presence in New Mexico shall be subject to provisions of the ("the act") unless expressly exempted by the department.

**(1)** Engaging in one or more of the following activities constitutes a physical presence in New Mexico:

**(a)** ongoing occupation of a physical location in the state;

**(b)** maintenance of an administrative office to support the provision of higher education instruction;

**(c)** establishing a physical location for instruction which is synchronous (instruction in which a group of students engage in learning at the same time) or asynchronous (instruction that does not occur in the same place or at the same time);

**(d)** requiring students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;

- (e)** establishing an administrative office;
- (f)** providing student support services to enrolled students, from a physical site operated by or on behalf of the institution in the state;
- (g)** obtaining office space for instructional or non-instructional staff;
- (h)** maintaining a mailing address or phone exchange in New Mexico;
- (i)** holding proctored exams on behalf of the institution in New Mexico more than twice per full-term (quarter or semester); or
- (j)** facilitating student participation in off-campus field trips in New Mexico for academic purposes in excess of 20 classroom hours in one six-month period or in which the institution establishes a residential or instructional facility in New Mexico.

**(2)** The following is a non-exhaustive list of activities, which if conducted by the institution, will not trigger a physical presence in New Mexico:

- (a)** advertising to students whether through print, billboard, direct mail, internet, radio, television or other medium;
- (b)** maintaining a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in that state);
- (c)** having faculty, adjunct faculty, mentors, tutors, recruiters or other academic personnel residing in New Mexico and working from their homes or another private, non-institutional site, provided that such staff is not engaged in activities that would otherwise constitute physical presence;
- (d)** using recruiters in New Mexico if the recruiter has registered as an agent pursuant to Section 21-24-1 through Section 21-21-9 NMSA 1978;
- (e)** independent off-campus study or research by students including, independent fieldwork for a thesis or dissertation, by individual students not engaged in a supervised field experience under 5.99.1 NMAC and with no supervision or control by the student's institution; or
- (f)** facilitating student participation in off-campus field trips in New Mexico for academic purposes, so long as the field trip does not exceed more than 20 classroom hours in one six-month period, or the establishment of a residential or instructional facility by the institution in New Mexico.

**B.** Every private career school or nonregionally accredited college or university operating with a physical presence in New Mexico shall annually license with the department.

**C.** A private career school or nonregionally accredited college or university with a physical presence in the state deemed by the department to satisfactorily meet criteria, as determined by the department, will be licensed with the state. A career school or nonregionally accredited college or university that has successfully licensed with the department shall be considered to hold state authorization.

**D.** An institution shall provide the department with immediate written notification of any changes or events that may trigger the whole or part of the application or the certifications to be untrue. In no case shall a change be made without an acknowledgement from the department. An institution shall provide the department with notification in no less than 90 days prior to the proposed changes going in effect.

**E.** The department is statutorily charged with evaluating each individual institution in order to determine the institution's compliance with the standards outlined in this regulation. This evaluation may take the form of a physical visit to the institution or administrative office or may be a desk audit if a physical visit is not feasible. It is the responsibility of the institution to maintain full compliance with the Post-Secondary Educational Institution Act, Sections 21-23-1 through 21-23-15 NMSA 1978 and all applicable rules at all times. The following four types of site visits may be conducted by the department as means to determine the institution's compliance with the standards outlined in the regulation:

**(1)** Initial site visit: In making a determination regarding issuance of a new license, a site review may be conducted during the initial start-up phase to determine the adequacy of items included on the application for licensure. This visit is for information gathering purposes only.

**(2)** Regular site visit: The department shall determine an appropriate schedule (typically on a bi-annual basis) on which to re-evaluate each individual licensed institution and the specific programs offered by that institution in order to determine continued compliance with this rule. Department staff will give prior notification of at least two weeks of the date and time of the visit. A short exit interview will be held at the conclusion of the visit. This exit interview may include a discussion of findings and a final written site visit report will be sent to the school for review and comment. The outcome of the regular site visit may be continued licensure.

**(3)** Required special site visit: The department may request a required special site visit as a requirement for initial licensure, probation, or for licensure renewal. At the conclusion of a required special site visit, the exit interview may include a discussion of any findings.

**(4)** Triggered site visit: any occurrence listed below trigger a site visit to the institution in order to evaluate compliance with standard within this regulation. The exit interview may include a discussion of any findings. The outcome of a triggered site visit may be a recommendation for a provisional license or revocation of a license:

**(a)** an institution involuntarily loses its accreditation status;

**(b)** the department is notified of an institution's non-compliance with federal financial aid program regulations or the outcome of an audit from another state agency;

**(c)** the institution fails to renew its surety bond, or appropriate alternative in a timely manner;

**(d)** an institution is experiencing financial difficulties sufficient to threaten program quality;

**(e)** an institution has significant staff turnover;

**(f)** an institution fails to immediately notify the department of a change in ownership/management; or

**(g)** the department becomes aware of any other factor that could alter basis for licensure.

**F.** A career school or nonregionally accredited college or university that does not have state authorization or has not been granted express exemption by the department, and meets the definition of physical presence in New Mexico, shall be notified by certified mail that it shall cease immediately offering instruction or enrolling new students until it obtains state authorization or exemption from the department; the department shall initiate appropriate legal action if an institution fails to comply; whoever violates any provision of Section 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

**G.** No person other than an employee of an institution licensed pursuant to this rule shall, for a salary or fee, solicit attendance at that institution.

**H.** Licensed institutions concurrently offering distance education pursuant to 5.99.1 NMAC as a SARA institution, through distance education authorization, or through any other method detailed in Section 5.99.1.10 NMAC:

**(1)** shall be subject to complaint procedures detailed in 5.99.1 NMAC, as related only to students enrolled exclusively as distance education students; and

**(2)** shall be subject to 5.99.2 NMAC, if the institution seeks to close, cease program offerings that contain enrolled students, or substantially relocate as defined in

5.99.2 NMAC, as related only to students enrolled exclusively as distance education students.

[5.100.7.6 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.7.7 DEFINITIONS:**

**A. "Accreditation"** means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits institutions, as a means of assuring quality instruction.

**B. "Career school"** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree, or comparable confirmation of completion of the curriculum.

**C. "College" or "university"** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral degree or comparable confirmation of completion of the curriculum.

**D. "Continuing education"** means only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be considered a program of training for employment. Typically, a student only enrolls for one course rather than a sequence of courses. The continuing education units must meet the criteria set out by the professional organization or authority requiring the continuing education.

**E. "Cooling off period"** means at least three work days from the date of agreement or payment or from the date that the student first visits the institution, whichever is later.

**F. "Credit hour"** means an institution's count of the amount of work represented in the intended learning outcomes and verified by evidence of student achievement, proof of commonly-accepted industry practices or consistent with the federal definition of the credit hour.

**G. "Degree"** means any title, designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents, which are generally taken to signify satisfactory completion of the requirements of a program of study designed to be comparable to those provided by institutions accredited by agencies recognized by the United States department of education.

**H. "Department"** means the New Mexico higher education department or its designated employee.

**I. "Enrollment Agreement"** means any agreement, instrument or note executed before a student begins course work which creates a binding obligation between the student and the institution.

**J. "Exemption", or "Exempt"** means a written acknowledgment by the department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the department to provide educational services in New Mexico, and is not subject to the Post-Secondary Educational Institution Act.

**K. "Institution"** means a career school or nonregionally accredited college or university.

**L. "License", "Licensed", or "Licensure"** means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department to offer a formal educational curriculum within New Mexico.

**M. "Manager" or "Managers"** means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of a New Mexico private post-secondary educational institution.

**N. "Management plan of action"** means a plan that has been developed, reviewed and implemented by managers of the institution which details specific steps the institution will commit to taking in order to remediate an identified weakness, shortcoming or insufficiency.

**O. "Owner" or "Ownership"** means all individuals or entities that have any ownership interest in the institution.

**P. "Physical presence"** means the ongoing occupation of a physical location in the state, the ongoing maintenance of an administrative office to support the provision of higher education instruction, or engaging in one or more of the activities detailed in Paragraph (1) of Subsection A of 5.100.7.6 NMAC.

**Q. "Post-secondary educational institution" or "post-secondary institution"** means an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education from a physical site in New Mexico, through distance education, correspondence or in person.

**R. "Private post-secondary educational institution"** means a non-publicly funded post-secondary educational institution that offers post-secondary education for a fee to a member of the general public.

**S. "Prospective student"** means a person who demonstrates interest in signing an enrollment agreement with a post-secondary educational institution.

**T. "Regional accreditation"** means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions operating in a designated geographic region.

**U. "Registration" or "Registered"** means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate and offer a formal educational curriculum within New Mexico.

**V. "Review Committee"** means a committee established by the department pursuant to 5.100.7.11 NMAC.

**W. "State Authorization"** means a private post-secondary educational institution has been deemed by the department to satisfactorily meet criteria, as determined by the department, for registration or licensure under the Post-Secondary Educational Institution Act. All degree-granting institutions seeking state authorization shall be accredited or be seeking appropriate external accreditation. State authorization does not serve as an endorsement of a particular institution, but confirms that an institution has met the minimum criteria set by the department to operate in New Mexico.

**X. "Work day"** means a week day, Monday through Friday that is not recognized as a federal holiday.

[5.100.7.7 NMAC - N, 12/26/2017; A, 12/11/2018; A, 12/29/2020]

#### **5.100.7.8 GENERAL STANDARDS FOR LICENSURE:**

**A.** An institution seeking state authorization through licensure must submit a complete application and all supporting documentation as described in 5.100.7.10 NMAC. The department shall create application forms for institutions to apply for licensure.

**B.** A branch campus that operates under the accreditation of a primary New Mexico campus is not considered a separate institution for purposes of state authorization. To be considered a branch campus the institution shall meet the following criteria:

**(1)** it has the same ownership, financial management or control as that of the primary New Mexico campus;

- (2) it operates under the accreditation of the primary New Mexico campus;
- (3) it is not considered a separate institution for the purpose of accreditation;
- (4) the primary New Mexico campus has previously operated as a state authorized and accredited institution in New Mexico; and
- (5) it is a secondary physical presence by the same institution in New Mexico.

**C.** An institution licensed by the department shall adopt the student complaint procedure, as defined in Subsection Q of 5.100.7.10 NMAC, for the resolution of student complaints.

**D.** As a condition of licensure, all institutions shall agree to comply with surety bond requirements as defined in Subsection O of 5.100.7.10 NMAC.

**E.** As a condition of licensure, all institutions shall agree to comply with Section 21-23-15 NMSA 1978 and 5.100.8 NMAC and applicable rules and regulations in the event of institutional closure.

**F.** An institution that has been granted state authorization through licensure must submit an annual report, as requested by the department. The department may require separate annual reporting submissions for each branch or location of an institution authorized under a single license. The department shall promulgate a standard reporting form for licensure to include: enrollment, program completion by students, and employment and other educational placements of students.

[5.100.7.8 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.7.9 TYPES OF LICENSURE:**

The department will determine the type of license an institution is eligible to receive based on standards set by the department. An institution with a provisional license or license holds state authorization to operate in New Mexico:

**A.** Provisional License: An institution that has never applied for licensure or a degree granting institution seeking accreditation status is required to submit an annual application for a provisional license to the department. The department will review the annual application to ensure the institution satisfactorily meets the application requirements in 5.100.7.10 NMAC. An institution may be required to keep the provisional license status if the institution fails to meet the requirements for full licensure or receives unsatisfactory audits by the department within the first full academic year. The outcome of a triggered site visit of any licensed institution as stated in Subsection E of 5.100.7.6 NMAC may be a recommendation for a provisional license.



**B. License:** After successful completion of the provisional license period, an institution is required to submit an application for a license to the department. The department will review the application to ensure the institution satisfactorily meets the application requirements in 5.100.7.10 NMAC. A renewal application must be submitted annually to the department on forms created by the department within deadlines set by the department.

[5.100.7.9 NMAC - N, 12/26/2017; A, 12/29/2020]

#### **5.100.7.10 APPLICATION REQUIREMENTS:**

The institution must provide complete and accurate information to the department. The department may request additional supporting documentation. Upon request of the department, the applicant must supply any missing or requested information to the department. An applicant must respond to the department within deadlines set by the department. The department application will require institutions to supply information described in Subsections A through W of 5.100.7.10 NMAC:

**A. Evaluation plan:** The plan shall include measures of institutional success. The institution shall provide a plan for evaluation of the following:

(1) the satisfaction of its graduates and shall make available to the department all reports of these satisfaction assessments prepared during the past five years;

(2) a written plan for keeping courses current;

(3) a written plan for faculty improvement in terms of content knowledge and relevant instructional techniques and the use of new and applicable technologies to support instruction; and

(4) if the institution is subject to the Student-Right-to-Know Act, it shall provide the department with copies of all reports submitted to the federal agency.

**B. Tuition policy:** Tuition and fee charges shall be the same for all students admitted to a given program for a given term of instruction. An institution may not discount its tuition and fees charged to individual students as an incentive for quick enrollment or early payment. An institution may negotiate special rates with business, industrial, governmental, or similar groups for group training programs and may establish special rates for students who transfer between programs. An institution may charge a reasonable carrying fee associated with deferred payments or payment plans. All tuition and fees must be comprehensively listed in the institution's catalog as required in Subsection G of 5.100.7.10 NMAC.

**C. Tuition refund policy:** An institution licensed by the department shall adhere to the following tuition refund policy:

(1) an institution accredited by agencies recognized by the United States department of education shall adhere to the tuition refund schedule established by the institution's accrediting body or the United States department of education. If an institution is required to adopt such refund schedule, it is required to provide proof of adoption and a copy of the refund schedule policy from either the accreditor or the United States department of education;

(2) if an institution is not required to adopt a refund schedule policy by an accreditor or the United States department of education, the following refund schedule policy set out by the department shall be adopted:

Date of student withdrawal as a % of the enrollment period for which the student was obligated	Portion of tuition and fees obligated and paid that are eligible to be retained by the institution
On 1st class day	0%
After 1st day; within 10%	10%
After 10%; within 25%	50%
After 25%; within 50%	75%
50% or thereafter	100%

(3) any student signing an enrollment agreement or making an initial deposit or payment toward tuition and fees of the institution shall be entitled to a cooling off period as defined in 5.100.7.7 NMAC. During the cooling off period the agreement can be withdrawn and all payments shall be refunded. Evidence of personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means shall be deemed as meeting the terms of the cooling off period;

(4) following the cooling off period, but prior to the beginning of instruction, a student may withdraw from enrollment, effective upon personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or five percent in tuition or fees, whichever is less, as the institution's registration charges;

(5) in the case of students enrolling for non-traditional instruction, a student may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or five percent in tuition or fees, whichever is less, as the institution's registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment;

(6) upon request by a student or by the department, the institution shall provide an accounting for such amounts retained under this standard within five work days;

**D. Record maintenance and retention policy:** Each private career school or non-regionally accredited college or university licensed by the department shall provide a records maintenance and retention plan.

(1) The plan shall consist of a records maintenance and disposal schedule that is in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, regulations of any other authorizing agency, or laws, regulations, and rules of any other authorizing jurisdiction or territory, whichever is longest in time. If another authorizing agency of the institution requires a longer period of retention than that of 1.21.2 NMAC, the longest retention period shall prevail.

(2) Each institution shall submit a certification of compliance with all applicable laws, rules and regulations that govern records management for closed institutions.

(3) Each institution shall report the percentage of all student transcripts since inception of the institution that are not digitalized at the time of application. If there are non-digitalized transcripts, the institution shall submit a plan to the department which describes how the institution will digitalize all student transcripts within a 12-month period.

(4) Each institution shall provide information regarding the custodian of records and the process for obtaining transcript records through the custodian at the time of application.

(5) If the department determines the plan for processing transcripts is not satisfactory, the institution shall:

(a) hire a professional digital credential firm to manage its student transcripts;  
or

(b) submit all of the student transcripts within a 12-month period to the department in a specified format and agree the department shall become custodian of record upon receipt of the transcripts.

(6) If the department becomes the custodian of record for an institution, it will be at no cost to the institution.

(7) If the department becomes the custodian of record for an institution that is in operation, the institution shall periodically submit updated transcripts to the department in a specified format. The submission schedule shall be based on end dates of programs offered by the institution.

(8) The department may contract with a professional digital credential firm to service the transcripts.

**E. Materials and information:** The department shall regulate the use of deceptive and misleading materials and information. An institution shall not disseminate material or information that is deceptive, misleading or untrue. The institution shall certify compliance with all laws and regulations related to materials and information. The department may request copies of publications, advertisements, agreements, marketing collateral, or contracts in order to regulate the use of deceptive and misleading information. All materials and information shall comply with the following requirements:

(1) Representation of accreditation and state authorization status:

(a) an institution may not make claims to or advertise an accreditation status if the accrediting agency is not recognized by the United States department of education;

(b) an institution not accredited by a United States department of education recognized accreditor shall clearly state that the institution is not accredited;

(c) an institution licensed by the department may not use terms such as "accredited," "endorsed," or "recommended" in reference to its approval by the department.

(2) Enrollment agreement: Before a student begins coursework at an institution, the institution shall execute an enrollment agreement with the student. An enrollment agreement will be binding only when it has been fully completed, signed, and dated by the student and authorized institution representative prior to the beginning of instruction. The institution shall retain the original enrollment agreement and a copy shall be delivered to the student at the time of execution or by mail when the enrollment is solicited by mail. A copy of the blank agreement or contract shall be submitted to the department. Each enrollment contract or agreement shall include at least the following:

(a) information that will clearly and completely define the terms of the agreement between the student and the school;

(b) names and addresses of the school and the student;

(c) the program or course title in which the student is enrolling and the applicable catalog date or version reference;

(d) the program start date and estimated end date;

(e) the number of hours or units of instruction;

(f) the school's cancellation and refund policies;

(g) an itemization of all charges, fees and required purchases being incurred by the student or their sponsor in order to complete the training, e.g., tuition, books, supplies and all other items of expense required by the school;

(h) the method of payment and payment schedule being established; and

(i) when applicable, a statement detailing the institution's academic placement policy.

(3) Advertising, marketing, promotional materials and recruitment: All advertisements and promotional literature must be truthful regarding the content of an institution's educational program(s), the duration of the program(s), student attributes and skills needed for successful completion of the program(s), and costs of the program(s). An institution shall use no advertisements or promotional materials that are false, deceptive, inaccurate, or misleading. Materials must comply with all of the following requirements:

(a) Advertisements and promotional literature shall not contain promises of job placement or employment, either explicitly or implicitly, but may refer to an institution's services to assist students in obtaining employment.

(b) Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training and may not either explicitly or implicitly suggest that the institution is offering employment.

(c) An institution advertising salary ranges or averages for its graduates must have on file and available to inspection by students, the department, or their representatives current and accurate data that includes New Mexico employers and that validates such claims.

(d) An institution shall not advertise the transferability of its courses or programs to another institution unless it has signed transfer or articulation agreements with that institution.

(e) An institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve predominantly as sites of instruction or related activities provided by the institution, either in New Mexico or in other states. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.

(f) No person shall for a fee solicit enrollment at an institution who is not employed by and under supervision of the institution. The institution shall be responsible for the representations of its employees.

(g) Prospective students shall not be solicited by any representative of an institution on the sites of any government agency such as motor vehicle division offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be made available at such sites.

(h) Prospective students shall not be solicited by any representative of an institution on the site of any public school, except at the invitation of school personnel. No institution shall offer or provide financial inducement to any public school in return for permission to solicit students.

(i) No institution shall solicit the enrollment of any student who is currently attending another institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.

(j) On all materials, an institution shall use the full name in which it is licensed and list any other names in which the institution holds other government approvals. Permutations of its name, e.g., initials, or shortened name or nicknames, cannot be employed without prior written permission of the department.

(k) On all materials, the name of an institution shall not be misleading.

**F. Name of the institution:** The department reserves the right to deny licensure to an institution proposing to operate under a name that the department determines to be misleading or so similar to that of another institution operating within the state that it may result in substantial confusion. Institution names must comply with each of the following regulations:

(1) institutions including the term "college" in their name must offer at least an associate degree and enroll a substantial portion of their students in such degree programs; and

(2) institutions including the term "university" in their name must offer graduate degree programs and must enroll a preponderance of their students in baccalaureate and graduate degree programs.

**G. Information provided to students:** Information shall be provided to students prior to their signing an enrollment agreement and the institution shall make reasonable effort to assure and verify that each student understands their academic and financial obligations prior to enrolling in the institution and maintain records of the institution's effort for at least five years after the students enroll at the institution. An institution shall publish and make available to all students a catalog or other materials that clearly describe:

(1) accurate representation of accreditation and state authorization status as described in Paragraph (1) of Subsection E of 5.100.7.10 NMAC;

(2) admission policies and procedures that provide criteria and methods used to assess and admit or deny admission;

(3) admission methods and criteria used to assess student ability to complete program requirement;

(4) programs offered, the program completion requirements of each program offered, and descriptions of all courses offered;

(5) requirements and costs for those occupations that require professional or trade licensure and for which the institution is offering preparation;

(6) tuition, fees and books and supplies, including cost for rental or purchase of equipment or materials required of all students;

(7) room, board and transportation expenses incurred by a student;

(8) reasonable costs associated with a program of study abroad approved for credit by a student's home institution, if applicable;

(9) expenses related to a student's disability, including special services, personal assistance, transportation, equipment and supplies;

(10) refund policies, consistent with the requirements in Subsection C of 5.100.7.10 NMAC;

(11) types of financial aid available to students and the procedure for applying for such aid;

(12) the institution's policy regarding program or course cancellations;

(13) rules and regulations pertaining to academic progress;

(14) rules and regulations pertaining to student conduct;

(15) the procedure to be followed in the instance that a student decides to withdraw from the institution prior to completing a program;

(16) the institution's policy regarding student complaints and the resources available to students for resolving differences with the institution. The institution must adopt the student complaint process established by the department and published by the department; and

(17) the institution's policy regarding release of transcripts.

**H. Financial aid:** Prior to a student signing a financial aid agreement, each student must be informed in writing regarding his or her obligations associated with receipt of financial aid and the institution must take reasonable steps to assure that the student understands that obligation. The institution shall provide financial aid resources to students.

**I. Proof of teach-out agreement:** Each institution shall submit a teach-out plan or agreement.

(1) An institution must submit proof of a teach-out agreement with at least one other private or public institution operating in the state or provide a teach-out plan that allows students to complete their program of study at the institution within a timeframe accepted by the department. Proof of such teach-out agreement(s) with another institution must be submitted to the department. The teach-out plan or agreement must address the ability of students to complete programs within a reasonable proximity to the physical location of the institution and shall be arranged at no additional cost to the students beyond that originally agreed to by the students.

(2) The department may determine that a teach-out plan or agreement is not feasible after consideration of evidence submitted to the department. The department may find that teach-out arrangements are not feasible for students in one or more programs offered by the institution, in which case the institution shall plan to refund all tuition and fees paid by the students in question for the current period of enrollment and shall plan to provide appropriate transcripts and evaluations to assist students in transferring their work to another institution.

(3) A teach-out plan or agreement shall be evaluated and updated by the institution annually upon submitting a license renewal application. If an institution closes or has a substantial change in location, the institution is subject to 5.100.8 NMAC. If the teach-out plan or agreement presented to the department during application for licensure becomes impossible or is no longer feasible due to institutional changes, the plan must be updated and submitted to the department within 90 days of the change.

**J. Adoption of degree standards:** Institutions accredited by a recognized United States department of education accreditor shall adopt degree standards governed by their accrediting body. Any non-accredited degree granting institution shall adopt the following degree standards for each credential as listed below:

(1) Associate degree program:

(a) associate degree programs must include both technical or vocational and general education instruction. Associate degree programs shall consist of 60 credit hours of study or the equivalent;

(b) associate of applied science degrees, associate of occupational studies degrees or comparable appellations must be based upon the institution's certification that the recipient is prepared for immediate employment in a specified career field and must be comprised primarily of technical or vocational study; and

(c) associate of arts or associate of science degrees must be based upon the institution's certification that the recipient is prepared both for immediate employment in a specified career field and transfer to another institution for more advanced study;



associate of arts and associate of science degree programs will normally consist of approximately equal numbers of technical or vocational and general education courses.

(2) Baccalaureate degree programs:

(a) baccalaureate degree programs must be comparable in quality to those offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs; award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited; and

(b) at a minimum, issuance of a baccalaureate degree shall require 120 credit hours or the equivalent; the degree program must include 30 credit hours of general education core requirements.

(3) Master's degree programs:

(a) master's degree programs must be comparable in quality to those offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs; award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited; and

(b) at a minimum, issuance of a master's degree shall require 30 credit hours of academic credit or the equivalent beyond a baccalaureate degree.

(4) Doctoral degree programs:

(a) at a minimum, issuance of a doctoral degree shall require 90 credit hours of academic credit or the equivalent beyond a baccalaureate degree or 60 credit hours or the equivalent beyond the master's degree and shall require successful completion and defense of a major independent project, involving original research or application of knowledge. The research component shall provide no more than thirty percent of the degree credit requirement;

(b) research or project committees composed of no fewer than three qualified readers shall review the project at various stages of development; documentation shall be provided to support this requirement. The final version of the research or project shall be accompanied by the original signature of each committee member; and

(c) the institution shall maintain a copy of the final report of the research or project and make it available upon request.

(5) Honorary degree or certificate: Licensed, private degree-granting institutions may issue honorary degrees or certificates. An honorary degree or certificate shall identify in its title or name that it is an honorary degree or certificate and shall bear such on its face.

(6) Credit for life experience: If an institution offers academic credit for life experience or employment related experience, the institution must have and adhere to the following requirements:

(a) applicable life experience shall be limited to work experience, military experience or a combination of the two;

(b) no more than thirty percent of the credit in a student's degree program may be awarded for life or work experience;

(c) the institution shall utilize the methodologies outlined by the council for adult and experiential learning (CAEL) for evaluating life experience or shall have in place a comparable plan which describes procedures and requirements for the assessment of experiential learning;

(d) the institution shall maintain documentation for at least three years of all materials used to assess and award credit for experiential learning;

(e) the institution shall clearly indicate on the student degree plan the course(s) for which the experiential learning is being substituted;

(f) the institution shall evaluate extra-institutional learning only in subject areas in which it has or can arrange for faculty expertise or where it can rely on nationally validated examinations or other procedures for establishing credit equivalencies; and

(g) no life experience credit shall be awarded toward the doctorate degree beyond master's level study.

**K. Accreditation:**

(1) Accredited institutions shall be governed by their accrediting agencies in establishing degree and program standards. Accredited institutions shall submit:

(a) formal documentation from the accreditor listing all approved campuses, degrees and programs; and

(b) written notification of any changes related to accreditation.

(2) Institutions proposing to change or add programs must formally notify the department. If the change or addition of the program requires the accreditor's approval,

the institution must provide written proof of the approval. If the change or addition does not require approval by the accreditor, the institution shall provide proof that the accreditor was notified of the change or addition. The department shall review proposed changes. The department may review proposed changes on a set schedule defined by the department and charge an administrative fee for the processing of such requests. Upon final review, the department will provide a formal acknowledgment of the approved new degrees and programs. The institution may begin to advertise the program based on the department's letter of acknowledgement. The complete list of programs offered by an institution will be listed on the license issued to the institution.

**L. Accreditation for new degree-granting institutions or degree-granting institution seeking accreditation:** New degree-granting institutions making application with the department will be required to obtain accreditation with an accrediting agency recognized by the United States department of education within three years of submitting the initial application. Non-accredited degree-granting institutions must submit a written accreditation plan, which shall include:

- (1) the United States department of education recognized accrediting agency with which the applicant intends to apply for institutional accreditation;
- (2) the planned timeline for application with and approval by the United States department of education recognized accrediting agency;
- (3) any contracts already made with the United States department of education recognized accrediting agency, including supporting documents;
- (4) certification that the institution will complete the accreditation process within the planned timeline provided to the department;
- (5) submit all documents as required for non-accredited non-degree granting institutions; and
- (6) any additional information which the department may request.

**M. Non-accredited non-degree granting institutions:** Applications for non-accredited non-degree granting institutions shall be evaluated by a department review committee described in 5.100.7.11 NMAC. A new non-accredited non-degree granting institution applying for licensure will be approved to offer no more than six degree programs during the first two years of operation. Non-accredited non-degree granting institutions shall submit the following for review:

- (1) Institution curriculum requirements: For each program and course of instruction offered by an institution, the institution shall submit:
  - (a) program outline, syllabus and curriculum materials that accurately describe the objectives, content, and methods of the program or course;

(b) objectives, content, and methods of each program and course of instruction which demonstrate curriculum quality;

(c) details of equipment and facilities utilized by a program which shall be sufficient for the number of students using them, and shall be applicable to the objectives set for the program; and

(d) a report that demonstrates that each program is designed to provide training for an occupation that is recognized in New Mexico and that the training provided is sufficient in length and quality to prepare students for immediate employment in the occupation(s) or prepare students to complete licensing assessments.

(2) Faculty qualifications: The institution must demonstrate the following:

(a) each member of the teaching faculty has an educational background, including licensure or occupational or credential, and experience applicable to teaching assignments;

(b) faculty degrees, licensure, certification, and credentials are in the applicable field of instruction unless the institution demonstrates to the satisfaction of the department and review committee, on an individual basis, that alternative qualifications are sufficient;

(c) for degree-granting institutions faculty must hold degrees in the field of instruction from an accredited institution at a minimum of one degree level higher than the level of instruction, and in no case less than a baccalaureate unless the institution demonstrates to the satisfaction of the department that alternative qualifications are sufficient;

(d) for degree-granting institutions no more than twenty percent of the faculty of an institution may be employed under alternative qualifications;

(e) for each proposed credential offering, the institution employs at least one faculty member with the applicable training who shall have the responsibility for providing oversight of the instructional program; and

(f) faculty are sufficient in number to provide instruction and attention to the work of students of the institution.

(3) Student outcomes: New institutions submitting first time application shall provide a plan for tracking program completion rates, withdrawal rates and satisfaction of students, and employers. Institutions renewing application with the department must submit required reporting for program completion rates, withdrawal rates, and satisfaction of students and employers.

(4) Non-accredited non-degree institutions proposing to change existing programs or add new degree programs to their curriculum shall submit application on a form acceptable to the department, for review committee approval prior to marketing the program and enrolling students in the proposed program.

**N. Maintenance of records certification:** Each institution must submit a certification of compliance with all applicable laws, rules and regulations that govern records management for closed institutions.

**O. Surety bond:** Each institution licensed by the department shall maintain in force a surety bond or alternative surety accepted by the department, in an amount set by the department, and payable to the department. The institution must have and adhere to the following requirements:

(1) the amount of the bond or alternative surety shall be sufficient to indemnify any student damaged as a result of fraud or misrepresentation by a licensed institution or as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted. If a licensed institution closes, the department may draw upon the bond to pay costs associated with preservation of student records. The bond must also meet the following criteria:

(a) the bond required for each institution shall be twenty percent of the institution's projected or actual gross annual tuition and fee revenue in New Mexico, which takes into consideration the size, number of students and total income and assets of an institution. In no case shall the bond be less than \$5,000; and

(b) bonds provided by institutions must be accompanied by the name, office address and phone number of the issuing company representative.

(2) If an institution seeks to cancel a surety bond, written notice must be delivered to the department. The institution may not cancel the surety bond until provided with written release by the department. The institution shall provide the department with a like surety or acceptable alternative in order to maintain licensure.

(3) Alternative forms of surety: An institution may request a waiver from the bond requirement and provide to the department an explanation of the alternative form for which they are seeking approval. The department has the authority to accept or reject any request. Such alternative may be a cash deposit escrow account, irrevocable letter or credit, or similar alternative payable to the department in the amount equal to the bond requirement.

**P. Proof of financial stability:** Standards for reviewing and analyzing financial stability are a critical component of the institution's overall assessment. The institution's financial stability will be reviewed by the department to assess the institution's ability to meet financial obligations including, but not limited to, obligations to enrolled students.

In determining financial stability of the institution the department shall review the following requirements:

(1) Insurance: Institutions licensed by the department shall maintain valid standard, commercial liability insurance, worker's compensation insurance, and property insurance sufficient to protect students, employees, and other citizens from hazards in the institution's facilities. Where applicable, institutions shall have liability insurance covering students involved in internships at sites and locations other than the institution.

(2) Financial statement analysis: The department shall consider an institution's financial history when reviewing an application for licensure. In the case where an institution submits an audit report and management letter provided by a certified public accountant, the department shall normally accept the report as accurate and rely on the auditor's professional responsibility to evaluate and to make known their professional opinion.

(3) New institutions not previously operating in any capacity in any state or jurisdiction shall demonstrate liquid assets sufficient to operate the institution for a period of one year exclusive of anticipated revenue from tuition and fees. These assets shall be sufficient to pay all projected salary and benefits of employees and the rent, utilities, insurance and other costs of operating the institution's facilities for a period of one year. If an institution has audited financials available for the year prior to that of the application, such audited financials shall be submitted for review. Any new institution shall submit the following:

(a) bank statements, investor agreements, any other financial donations or gifts used to develop the institution;

(b) the institution's projected income statement certified as accurate by the institution. The income statement must include details of projected salaries and benefits of employees, rent, utilities, insurance, any financial obligations made by the institution, and any other operating costs; and

(c) any additional information which the department may request.

(4) Existing institutions: If an institution has previously operated in any capacity in any jurisdiction, it must submit documents based on the following thresholds:

(a) An institution with seven hundred fifty thousand dollars (\$750,000) or more in gross annual tuition revenue and all federal Title IV financial aid institutions shall submit, on a schedule set by the department, an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Section 61-28B-1 et seq. NMSA 1978 as amended. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility

composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(b) An institution with gross annual tuition revenue of two hundred fifty thousand dollars (\$250,000) or more but less than seven hundred forty nine thousand nine hundred ninety-nine dollars (\$749,999) shall submit, on a schedule set by the department, either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Section 61-28B-1 et seq. NMSA 1978 as amended or a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(c) An institution with gross annual tuition revenue of less than two hundred forty nine thousand nine hundred ninety-nine dollars (\$249,999) shall submit on a schedule set by the department either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, 61-28B-1 et seq. NMSA 1978 as amended, a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, or an income statement and balance sheet certified as accurate by the institution. In addition to the audit report and management letter, the review of financial statements, or the income statement and balance sheet as described in this paragraph, the institution shall submit copies of business tax returns and bank statements for the most current year. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(5) Failure to satisfactorily meet financial requirements: If considerable concern is established as to the institution's ability to maintain its operation, department staff may contact the school to request additional information regarding the institution's financial picture. If concerns are not addressed through the additional information provided to the department, a department financial analyst may conduct a second financial review. If after the second review, substantial doubt remains about the

institution's ability to continue, the department may contract for further independent review of the records. All costs associated with contracting a third party independent reviewer will be charged to the institution. Following review and based on the determination of the department

(a) the institution may be authorized for operation; or

(b) the institution may be placed on probationary status and required to submit a management plan of action; and

(c) the department may report the failure to satisfactorily meet financial requirements to the United States department of education and the institution's accreditor. If the issue is not resolved, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny licensure.

**Q.** Procedure for resolution of student complaints: An institution shall provide proof of an adopted complaint procedure that complies with the minimum requirements set by the department. Institutions shall retain records that make available the student complaint received and record of the institution's processing the complaint (that comports with the institution's policies and procedures for handling grievances or complaints) as required by law. The institution shall have and make available to all students, the adopted complaint procedure that describes, in detail, how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

(1) requirement that students or other parties with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;

(2) a time frame within which the institution will investigate the complaint and respond to the complainant;

(3) assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;

(4) assurance that no adverse action will be taken against the complainant for registering the complaint; and

(5) identification of the department as the agency to be contacted in cases where a complaint cannot be resolved and include the mailing address, website and phone number for the department.

**R.** Student Services: The institution shall certify that it will provide the following:



(1) Financial aid counseling: Institutions offering financial aid to students shall provide adequate personnel qualified to administer the financial aid programs according to the regulations of all applicable agencies;

(2) Academic counseling and progress: Institutions shall provide adequate counseling for students regarding their academic progress. An institution shall have a clear policy and procedure for assessing the progress of students toward their program objectives and to inform student of progress. Students shall receive warning when their academic status is at risk and shall be given clear information about their academic status and whatever actions are needed to maintain satisfactory progress. The institution shall have a policy for terminating enrollment in manner that minimizes the financial cost to the student, when the student fails to meet the standards for academic progress. Records of the institution, including individual student records, shall reflect consistent application of such policy and procedure. The institution's catalog and other publications shall clearly inform students about the institution's standards for academic progress and any academic counseling and support services available to students.

(3) Employment counseling and placement: Institutions shall provide services that assist students in locating and qualifying for employment opportunities. Employment counseling and placement services must be provided at no additional charge to students. No institution shall be expected to provide employment counseling and placement services beyond providing academic and financial aid transcripts for more than one year following a student's receipt of a diploma, certificate, or degree, except by such policy of the institution. An institution offering placement services for its students and graduates shall maintain records listing, for each student who has been assisted, each placement conference held with the student and each placement contact made in behalf of the student.

#### **S. Records standards and access:**

(1) Transcript standards: An institution shall prepare for students a transcript of record. A sample transcript shall be submitted and include at minimum the following:

(a) designation of the program(s) of study for which the student has been enrolled;

(b) each course completed by the student and the grade or other indication of performance assigned; and

(c) a dated statement of completion of the program and award of any certificate, diploma, or degree earned by the student.

(2) The method by which students and graduates may obtain transcripts and financial aid documents and applicable fees shall be described clearly in the institution's catalog or in other documents provided to students. All documents with reference to the

method for obtaining transcripts and financial aid documents and fees must be submitted to the department for review.

(3) The institution shall certify that an official student file will be kept for each student and include at a minimum the following:

- (a) admission application and enrollment agreement;
- (b) official transcripts indicating qualification for admission;
- (c) when applicable actual test and scores from an ability-to-benefit assessment;
- (d) grades received (up-dated transcript);
- (e) all obligations incurred and all funds paid by the student to the institution;
- (f) student attendance information;
- (g) academic counseling and employment counseling records; and
- (h) financial aid records.

**T. Academic support resources:** The institution shall provide or otherwise assist students in gaining access to learning resources needed for completion of their programs, including library materials, laboratories, facilities, equipment and materials, and relevant experiences needed to meet program requirements. No institution shall absolve itself from this requirement solely by referring students to the resources of other private or public institutions or facilities, except by written agreement with such institutions or facilities. The institution will certify that:

- (1) students have access to learning resources;
- (2) resources are adequate to support the programs;
- (3) students are adequately informed about learning resources available to them and how to access such resources and services;
- (4) training is made available for accessing learning resources;
- (5) resources are delivered within a reasonable period of time;
- (6) the facilities have satisfactorily met all applicable health and fire inspections; and

(7) compliance with regulations pursuant to the American with Disabilities Act (ADA).

**U. Admission policy:** Each institution shall adopt an admission policy that includes the following standards:

(1) No student shall begin a certificate or diploma program who has not received a high school diploma or the equivalent or who has not demonstrated ability to benefit from the program through a process of assessment that meets standards of the United States department of education or the department or who is participating in a concurrent enrollment program with a secondary school.

(2) Institutions enrolling students who are of compulsory school age or who are concurrently attending an elementary or secondary school shall have in their possession a signature or other written acknowledgement by elementary or secondary officials and by the student's parent or guardian.

(3) Institutions using an ability-to-benefit admission option shall provide the department with a clear and detailed statement describing their ability-to-benefit assessment programs (including cut off scores and validity data for any test used) and shall be able to demonstrate that ability-to-benefit assessment is performed in a consistent and valid manner.

(4) No student shall be admitted to an associate degree or baccalaureate degree program who has not received a high school diploma or the equivalent.

(5) No student shall be admitted to a graduate degree program who has not received a baccalaureate degree from an institution accredited by an agency recognized by the United States department of education, or received a baccalaureate degree from a non-accredited institution licensed by the department or by the cognizant state agency in another state, or qualified in an alternative manner approved by the department.

**V. Cooperation:** The institution shall provide copies of valid certificates from other federal, state and municipal agencies, and any other higher education authorities as proof of compliance with applicable bodies. At minimum the application submission must include:

(1) a copy of the notification of good standing and ability to do business in New Mexico issued by the New Mexico secretary of state's office;

(2) a copy of the New Mexico taxation and revenue department registration;

(3) as applicable, a copy of the national council of state authorization reciprocity agreements (NC-SARA) welcome letter;

(4) as applicable, a list and copy of authorizations granted by other jurisdictions;

(5) as applicable, a list and copy of authorizations granted by other New Mexico boards, commission or agencies.

**W. Ownership and administration:** The institution shall provide the department with information about ownership, owners, and managers. An institution shall notify the department in writing within 10 working days whenever the institution changes ownership, whenever there is a change in control of the institution, or whenever changes are made to managers. No institution will be licensed in the state of New Mexico without completion certifications required by the department. Any changes or events that may trigger any certification to be untrue, must be immediately reported to the department, and shall be reported in no less than 10 working days.

(1) The institution shall provide a list of principal owners and provide a list of managers.

(2) The institution shall certify that no owner of the institution has:

(a) been convicted of or has pled no contest or guilty to a crime involving abuse of public funds;

(b) been convicted of or has pled no contest or guilty to a crime of dishonesty or felony within the last five years;

(c) controlled or managed an institution that has ceased operation during the past five years without providing for the completion of programs by its students; or

(d) filed bankruptcy associated with the operation of an educational institution during the past five years.

(3) The institution shall certify that no manager of the institution has:

(a) been convicted of or has pled no contest or guilty to a crime involving abuse of public funds;

(b) been convicted of or has pled no contest or guilty to a crime of dishonesty or felony within the last five years;

(c) controlled or managed an institution that has ceased operation during the past five years without providing for the completion of programs by its students; or

(d) filed bankruptcy associated with the operation of an educational institution during the past five years.

(4) The institution shall certify it:

(a) has not filed bankruptcy during the past five years;

(b) is not under the ownership of any person who has filed bankruptcy associated with the operation of an educational institution during the past five years;

(c) is not managed by any person who has filed bankruptcy associated with the operation of an educational institution during the past five years;

(d) has not been found to be operating illegally in another state for a least five years.

[5.100.7.10 NMAC - N, 12/26/2017; A, 12/11/2018; A, 12/29/2020; A, 10/24/2023; A, 2/11/2025]

#### **5.100.7.11 REVIEW COMMITTEE:**

**A.** The purpose of the review committee is to assist the department in assuring that non-accredited institutions maintain high quality programs and operations. The committee will review applications of licensure for non-accredited institutions seeking state authorization. The committee shall also conduct programmatic review and approval for non-accredited institutions. The committee will make a final recommendation to the department for state authorization or program approval. The review committee will evaluate the following criteria:

(1) adequacy of the administration of the institution;

(2) adequacy of the curriculum and program requirements of the institution and of its programs;

(3) adequacy of qualifications and performance of the teaching faculty of the institution; and

(4) the institution's effectiveness as reflected in student outcomes such as program completion rates, withdrawal rates, and satisfaction of students and employers.

**B.** The review committee membership shall:

(1) be composed of an odd number of members appointed by the department and serving at the pleasure of the department;

(2) be representatives of education providers and consumers, including owners and operators of career schools and nonregionally accredited colleges and universities. Private post-secondary institutions shall be consulted in selection of their representatives; however, appointment and service shall be at the discretion of the

department; (3) have no less than two members representing the public interest. The public interest representatives shall be representative of the general public with particular interest in post-secondary education. Appointment and service shall be at the discretion of the department;

(4) have committee members who serve two year staggered terms or until their successors are appointed. A member may be reappointed for successive terms;

(5) not have more than one representative from any one institution among the members of the committee; and

(6) not allow a representative of an institution that is designated in another state as an institution offering fraudulent or substandard education.

**C.** Operation and work of the review committee shall be coordinated by staff of the department. The review committee:

(1) shall organize itself as it deems appropriate, at a minimum designating a chairperson to collaborate with department staff in arranging meetings, other operations, and reports of the committee;

(2) shall assist in reviewing applications, upon the request of the department. When assisting staff of the department in reviewing private post-secondary institutions, members of the committee must recuse themselves in actions in which they have a conflict of interest with their own institution or a direct competitor or that would otherwise have the appearance of impropriety. For example, a member representing a private post-secondary institution shall avoid participation in a review of or visit to an institution that is a direct competitor for students, defined as an institution offering a similar program of instruction within the same community;

(3) shall convene at minimum once a year to conduct review;

(4) shall report to the department at least once each year regarding the status of private post-secondary education in the state of New Mexico and any recommendations for improving the quality and operation of private post-secondary institutions;

(5) shall be reimbursed for travel expenses associated with convening and conducting review; and

(6) may form ad hoc work groups composed of any persons it deems appropriate, to help fulfill its responsibilities.

[5.100.7.11 NMAC - N, 12/26/2017; A, 12/29/2020]

#### **5.100.7.12 COMPLAINT TO THE DEPARTMENT:**

**A.** Upon receipt of a student complaint, the department shall determine whether the complaint meets initial criteria to permit use of the department's complaint procedure. The following initial complaint criteria must be satisfied:

(1) A student must file a complaint with the department within three years of the student's last date of enrollment.

(2) The complaint must be made to the department in writing utilizing the designated complaint form published by the department. The student may include supporting documentation or evidence related to the complaint. The department may request additional documentation from the student, as needed, to conduct an initial assessment.

(3) The complaint must detail and provide evidence that the student has exhausted all complaint procedures at the institution.

(4) The complaint must contain a question of fact or question regarding potential violation of or deviation from policy, regulation, or law.

**B.** If the department determines the complaint meets the initial complaint criteria, it shall serve as an intermediary in attempting to facilitate a resolution or to obtain information from the institution to eliminate questions of fact or possible violations or deviations from policy, regulation or law raised by the complaint. Satisfaction of initial complaint criteria, in no way means the department has assigned greater weight to the student's allegations. If the department finds that the subject matter of the complaint falls within the investigatory purview of another entity, it may forward the complaint and cease further review (for example the office for civil rights).

(1) Acting as an intermediary, the department shall request a response from the institution addressing the student's complaint. The complaint and any documentation provided by the student shall be sent to the institution with a request for a written response. The institution shall have 10 days to forward its response to the department. The institution may request additional response time, if inquiry into the complaint requires greater than 10 days. The institution may provide any supporting documentation or evidence to address questions or concerns raised by the complaint with the response.

(2) After considering the institution's response and any documentation or evidence supplied by the institution, the department may conduct further inquiry of the parties or may continue to serve as an intermediary for possible compromise between the parties. The department may seek additional clarifying information or supporting documentation from either party and may request additional response from either party.

(3) If the institution accepts the desired outcome proposed by the student in the complaint, the department shall inform the student. If the institution proposes an alternate desired outcome, the department shall convey such information to the student

and the student shall indicate acceptance or denial of the alternate proposed outcome, or create a different proposed outcome, to allow for compromise. If at any point, the student and the institution reach an agreed upon outcome, the department may help facilitate fulfillment of the outcome, as necessary.

(4) If the parties are unable to reach a mutually agreeable outcome, the department may, but is not obligated to, convene a meeting between the parties. Such meetings, if held, shall be informal and for the purpose of clarifying the facts surrounding the complaint and to facilitate the parties reaching a resolution or compromise, if possible. If a meeting is convened, the department shall give written notice to the institution and to the student, regarding the time, date, and place of the meeting.

**C.** The department may help facilitate a compromised resolution between the parties. However, the department shall not impose an outcome and shall not act as an adjudicatory entity. If the department has received evidence to support potential violation of or a deviation from policy, regulation, or law through the department's inquiry, the department may refer the complaint to either law enforcement, the United States department of education, the institution's accreditor, or any other applicable oversight entities for further investigation, as applicable to the type of potential violation or deviation. If the department determines, at any time, that questions raised by the complaint are alleviated or the complaint relates to grades or student conduct violations, it shall cease further inquiry into the complaint and inform the student that the complaint will be closed with no further action by the department.

[5.100.7.12 NMAC - N, 12/26/2017; A, 2/11/2025]

#### **5.100.7.13 APPLICABLE FEES:**

**A.** The department shall assess application, administrative, and licensing fees, pursuant to Section 21-23-6.3 NMSA 1978, and publish a fee schedule.

**B.** The department shall assess an administrative fee for providing the services associated with application review and determination of eligibility for licensure.

**C.** The department shall assess a licensing fee upon determination that the institution has satisfactorily met all conditions for licensure.

**D.** The department shall assess an administrative fee for filing annual reporting; any costs associated with review committee evaluation and determination; any costs associated with specialized review, program changes, and institution or administrative changes.

[5.100.7.13 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.7.14 REPORTING:**



**A.** Licensed institutions shall annually submit a standard reporting form on a deadline set by the department and make available to the prospective student.

**B.** The department shall promulgate a standard form for annual reporting including, but not limited to:

- (1) curriculum and enrollment information;
- (2) financial information;
- (3) completion rates for both full-time and part-time students;
- (4) withdrawal rates of students;
- (5) satisfaction of students and employers;
- (6) median combined loan debt for federal loans, institutional loans and private loans certified by the institution, for all students who completed the most recently completed award year;
- (7) placement rates;
- (8) median earnings at ten years after entering the institution of former students of the institution who received federal financial aid, if available;
- (9) all publication material requested by the department; and
- (10) certification of compliance with current New Mexico administrative code or statutes applicable to post-secondary educational institutions.

**C.** An institution must comply with reporting requirements in order to be eligible for annual license renewal.

**D.** An institution renewing application with the department must submit required reporting and maintain records of the institution's efforts to provide the information of this section to prospective student for at least five years after the student enrolls at the institution.

[5.100.7.14 NMAC - N, 12/26/2017; A, 12/29/2020]

#### **5.100.7.15 SITE VISITS AND RECORDS INSPECTION:**

The department may conduct a site visit at any time to evaluate institutional compliance with all applicable laws and regulations. The department may request documents or access to files to evaluate compliance. The department may request inspection of the institution's records, which must follow the records management plan set out by the

institution as required in Subsection D of 5.100.7.10 NMAC. Records that must be maintained and available for inspection are as follows:

- A.** official student transcripts;
- B.** records related to development of courses including, but not limited to, outlines and syllabi; and
- C.** records related to student enrollment, original version of enrollment agreements, student class registration and withdrawals,
- D.** list of current students;
- E.** list of dropped or withdrawn students;
- F.** list of students that have graduated;
- G.** catalogs of the institution plus any additional documentation that defines student policies. The institution shall maintain an archive of catalog versions for the period of time applicable to enrollment agreements for current students;
- H.** records related to marketing and recruitment, including but not limited to, samples of advertising including online pages;
- I.** records related to examination and testing including, but not limited to, grade results;
- J.** records related to academic programs, including, but not limited to, analyses of academic program completion rates, student transfer rates, or employment rates for graduates of the institution and membership and minutes for academic committees;
- K.** records related to higher education programs;
- L.** documentation of accrediting reports and self-study reports submitted to accrediting bodies for institutions accredited or seeking accreditation;
- M.** records related to faculty and staff qualifications, including, but not limited to, the results of periodic student and peer or supervisor assessment of teaching, original official transcripts of record sent directly to the hiring institution from institutions issuing the faculty member a degree and applicable license or certification demonstrating the educational qualifications of the faculty member, documentation of applicable experience for faculty members with alternative qualifications, and a separate file available for review containing documentation regarding all complaints lodged against the faculty member;
- N.** records related to student evaluations, discipline, assessments and attendance;

**O.** student complaint files;

**P.** evidence of the institution's valid insurance policies and surety bond or alternative surety;

**Q.** records related to scholarships, loans, grants and other financial aid; and

**R.** records related to financial stability.

[5.100.7.15 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.7.16 PENALTY:**

**A.** Institutions that do not have state authorization or have not been granted express exemption by the department, and meet the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately offering instruction or enrolling new students until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of Section 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

**B.** A private post-secondary institution that does not submit an application for renewal within deadlines set by the department and has a lapse in state authorization for one or more years will be required to complete a provisional period of one full academic year.

**C.** The department shall provide notification for public viewing on the department's website if a licensed private post-secondary institution has been sanctioned or penalized by their accreditor or the United States department of education.

**D.** The department may report any failures to comply with provisions of 5.100.7 NMAC to the United States department of education and the institution's accreditor. If the institution does not comply, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny licensure.

[5.100.7.16 NMAC - N, 12/26/2017; A, 12/29/2020]

#### **5.100.7.17 REVOCATION OF A LICENSE:**

**A.** The department may revoke an institution's license to operate or approval to offer a specific degree program(s) at any time, upon finding that

(1) any statement made in the institution's application for licensure is untrue;

(2) the institution has failed to maintain the faculty, facilities, equipment, or other necessary support for its program(s) of study on the basis of which the license or approval was granted; and

(3) the institution has failed to advise the department about significant factors which serve as a basis for licensure, such as:

(a) financial difficulties sufficient to threaten program quality;

(b) significant staff changes in a short period of time;

(c) change of ownership and management;

(d) outcomes of audits by other state agencies;

(e) loss or lowering of accreditation status;

(f) any other factor that could alter basis for licensure;

(g) the institution has failed to renew annual license in a timely manner; or

(h) the institution has failed to comply with one or more standards of licensure established by the department or with applicable law.

**B.** Prior to revoking a license, the department, or its designee, shall give the institution notice of ten work days and shall provide an opportunity for the institution to demonstrate why the license should not be revoked.

**C.** At its discretion, the department, or its designee, may institute a probationary period of continued licensure for the institution during which time the institution must demonstrate resolution of deficiencies to the satisfaction of the department. Under no circumstance shall this probationary period exceed one year.

**D.** If the institution fails to sufficiently demonstrate that licensure should not be revoked, as provided by Subsection B of 5.100.7.17 NMAC, the department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978.

[5.100.7.17 NMAC - N, 12/26/2017]

#### **5.100.7.18 DENIAL OF A LICENSE:**

An applicant that fails to satisfactorily meet the requirements of Section 5.100.7.10 NMAC or fails to adequately address the specific criteria set forth in Section 5.100.7.10 NMAC shall be subject to denial of licensure. If the department contemplates denial of licensure to any applicant, the department shall commence proceedings pursuant to

and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978.

[5.100.7.18 NMAC - N, 12/26/2017]

## **PART 8: CLOSURE OR SUBSTANTIAL CHANGE TO LOCATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT**

### **TITLE 5 POST-SECONDARY EDUCATION**

#### **CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION**

##### **5.100.8.1 ISSUING AGENCY:**

New Mexico Higher Education Department.

[5.100.8.1 NMAC - N, 12/26/2017]

##### **5.100.8.2 SCOPE:**

Provisions of 5.100.8 NMAC apply to all private post-secondary institutions operating within the state of New Mexico.

[5.100.8.2 NMAC - N, 12/26/2017; A, 12/11/2018]

##### **5.100.8.3 STATUTORY AUTHORITY:**

Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978. The Post-Secondary Educational Institution Act, Sections 21-23-1 et seq. NMSA 1978 authorizes the New Mexico higher education department ("department") to establish standards for closures of private post-secondary educational institutions operating in New Mexico.

[5.100.8.3 NMAC - N, 12/26/2017; A, 12/11/2018]

##### **5.100.8.4 DURATION:**

Permanent

[5.100.8.4 NMAC - N, 12/26/2017]

##### **5.100.8.5 EFFECTIVE DATE:**

December 26, 2017 unless a later date is cited at the end of a section.

[5.100.8.5 NMAC - N, 12/26/2017]

#### **5.100.8.6 OBJECTIVE:**

No private post-secondary institution shall cease operation within New Mexico or make a substantial change to location without providing notice to the department and complying with the provisions set out in this rule. Institutions operating with a physical presence in New Mexico and concurrently offering distance education pursuant to 5.99.1 NMAC as a SARA institution, through distance education authorization, or through any other method detailed in Section 5.99.1.10 NMAC, shall be subject to 5.99.2 NMAC, if the institution seeks to close, cease program offerings that contain enrolled students, or substantially relocate as defined in 5.99.2 NMAC, as related only to students enrolled exclusively as distance education students.

[5.100.8.6 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.8.7 DEFINITIONS:**

**A. "Accrediting body"** means an accreditor or accrediting agency that has issued an accreditation status to the institution.

**B. "Custodian of Records"** means an entity with which the institution has arranged for the perpetual care, maintenance and accessibility of all records and transcripts for all students receiving credit from the institution during the period of its existence. The entity must be in compliance with the Family Educational Rights and Privacy Act (FERPA) and be capable of servicing student record requests. Documentation evidencing such compliance shall be submitted to the department.

**C. "Department"** means the New Mexico higher education department or its designated employee.

**D. "Manager"** means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of an institution's New Mexico facility.

**E. "Physical presence"** means the ongoing occupation of a physical location in the state, the ongoing maintenance of an administrative office to support the provision of higher education instruction, or engaging in one or more of the activities detailed in Paragraph (1) of Subsection A of 5.100.5.6 NMAC, Paragraph (1) of Subsection A of 5.100.6.6 NMAC, or Paragraph (1) of Subsection A of 5.100.7.6 NMAC.

**F. "Post-secondary educational institution" or "institution" or "post-secondary institution"** means a private academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education.

**G. "Program"** means any certificate or degree program or for purposes of closure, a college, school or department within an institution.

**H. "Substantial change to location"** means a relocation of the institution's physical site that is beyond the proximity a student is normally required to travel for educational offerings.

[5.100.8.7 NMAC - N, 12/26/2017; A, 12/11/2018]

**5.100.8.8 NOTICE:**

**A.** A post-secondary institution operating with a physical presence in the state of New Mexico shall provide formal written notice of closure to the department immediately upon gaining actual knowledge of the institution's intent to close but in no case less than 90 days prior to closure.

**B.** A post-secondary institution operating with a physical presence in the state of New Mexico shall provide formal written notice of substantial change to location to the department immediately upon gaining actual knowledge of the institution's intent to change location but in no case less than 90 days prior to moving operations.

**C.** A post-secondary institution operating with a physical presence in the state of New Mexico has a mandatory obligation to report a closure of any other branch, satellite, or main campus associated with the institution immediately upon gaining actual knowledge of the institution's intent to close but in no case less than 90 days prior to closure.

**D.** A post-secondary institution has a mandatory obligation to report the closure of any other subsidiary institution or campus associated through the same parent company or organization immediately upon gaining actual knowledge of the institution's intent to close but in no case less than 90 days prior to closure.

[5.100.8.8 NMAC - N, 12/26/2017]

**5.100.8.9 PLAN:**

**A.** A post-secondary institution operating with a physical presence in New Mexico that intends to cease operations, cease program offerings that contain enrolled students, or make a substantial change to location must present a plan to the department.

**B.** Post-secondary institutions that are required to seek approval of such a plan by an accrediting body must submit the plan to the department within seven days of receiving approval by the accrediting body.

**C.** Post-secondary institutions that are not required to seek approval of a plan by an accrediting body must submit a plan to the department as soon as practical but in no case less than 90 days prior to closure, ceasing a program offering that contains enrolled students, or making substantial change to location.

**D.** The plan must include provisions for teach-out agreements, completion of programs by enrolled students, perpetual care and maintenance of student records, and identification and location of a responsible agent for the institution for a period of at least one year following closure.

[5.100.8.9 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.8.10 TEACH-OUT AGREEMENT OR PLAN:**

**A.** A post-secondary institution operating with a physical presence in the state of New Mexico that has served notice of closure, intent to cease program offerings that contain enrolled students or intent to make a substantial change to location shall provide to the department a teach-out plan or agreement.

**B.** A post-secondary institution that is closing, ceasing a program offering that contains enrolled students, or has a substantial change to location shall enter into a teach-out agreement with at least one other provider of post-secondary education offering similar programs, for provision of the remaining program requirements of enrolled students, or provide a teach-out plan that allows students to complete their program of study at the closing institution within a timeframe accepted by the department.

**C.** A post-secondary institution that has a substantial change to location may be required to present evidence that the institution has made efforts to enter into a teach-out agreement with an institution within a reasonable proximity.

**D.** Enrolled students impacted by teach-out agreements or plans must be notified of the agreement or plan when it is finalized. Teach-out plans or agreements shall be arranged at no additional cost to the students beyond that originally agreed to by the student.

**E.** Licensed post-secondary institution operating under 5.100.7 NMAC must comply with the teach-out plan or agreement provided to the department in its application for licensure unless a change in the teach-out plan or agreement has occurred. If the teach-out agreement submitted to the department in the licensure application has changed, the institution shall seek additional teach-out agreements with at least one institution operating in the state of New Mexico or provide a teach-out plan that allows students to complete their program of study at the institution within a timeframe accepted by the department.

**F.** The department may determine that a teach-out plan or agreement is not feasible after consideration of evidence submitted to the department. The department may find that teach-out arrangements are not feasible for students in one or more programs offered by the institution, in which case the institution shall refund all tuition and fees paid by the students in question for the current period of enrollment and shall provide



appropriate transcripts and evaluations to assist students in transferring their work to another institution.

**G.** An institution that seeks to relocate may be exempt from entering into a teach-out agreement or plan if the institution can demonstrate to the department that students will not be substantially burdened by the change in location. The institution will be required to complete a form published by the department demonstrating possible impact to students.

[5.100.8.10 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.8.11 RECORDS MAINTENANCE:**

**A.** A post-secondary institution operating with a physical presence in the state of New Mexico upon submitting intent to close must ensure that records are in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, regulations of any other authorizing agency, or laws, regulations and rules of any other authorizing jurisdiction or territory, whichever is longest in time. If another authorizing agency of the institution requires a longer period of retention than that of 1.21.2 NMAC, the longest retention period shall prevail.

**B.** If a post-secondary institution discontinues its operation, the manager shall file with the designated custodian of records, the original or legible true copies of all educational records required to be maintained as a condition of state authorization pursuant to 5.100.6 NMAC or 5.100.7 NMAC. For institutions granted express exemption by the department pursuant to Section 21-23-4 NMSA 1978 and 5.100.5 NMAC, the manager must file to the designated custodian of records the original or legible true copies of student records. The institution must maintain at a minimum, the student's enrollment agreement, student transcript, record indicating program completion (either certificate, diploma, degree, or other like proof of completion) and student financial aid records. Any institution that closes and has not operated lawfully pursuant to the Post-Secondary Educational Institution Act, must file to a designated custodian of records, the original or legible true copies of student records to include, The institution must maintain at a minimum, the student's enrollment agreement, student transcript, record indicating program completion (either certificate, diploma, degree, or other like proof of completion), and student financial aid records. A written detailed description for how records will be maintained following the closure shall be provided to the department in a plan for the perpetual care and maintenance of records. The written plan must include, but is not limited to the following:

**(1)** certification that the post-secondary institution is in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, and any other authorizing agencies laws, regulations and rules, whichever is longest in time;

- (2) designation of a custodian of records;
- (3) physical address of hard copy files;
- (4) physical address of digital files; and
- (5) process for obtaining transcripts or other records from the custodian of record.

**C.** The department must be notified of any update related to the custodian of records or upon any change to the custodian of record.

**D.** The department must be provided a copy of any contractual arrangements made for the perpetual care, maintenance and accessibility of all records. The department may request any additional records or information to help students gain access to transcripts in perpetuity.

**E.** In the event that the post-secondary institution does not comply with the records maintenance provisions cited above, the department may seek a court order to protect and if necessary take possession of the records. The institution's surety bond may be drawn on to cover costs associated with the department's efforts in securing records.

**F.** Students must be made aware of the process to request student records from the custodian of records. The process must be provided in writing to the student and made available on the institution's website.

[5.100.8.11 NMAC - N, 12/26/2017; A, 12/11/2018]

#### **5.100.8.12 FINAL EXECUTION REPORT:**

Before any post-secondary institution terminates its services or sells, transfers or disposes of substantially all of its assets, it shall submit to the department a summary of all actions taken pursuant to the requirements set forth in all applicable Sections of 5.100.8 NMAC. The post-secondary institution must also submit certification that it has met all rules of the department pertaining to the termination of operations by post-secondary educational institutions.

[5.100.8.12 NMAC - N, 12/26/2017]