

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 3 POST-SECONDARY EDUCATION INSTITUTION FINANCES
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]

HISTORY OF 5.3.11 NMAC: [RESERVED]