

TITLE 5: POST SECONDARY EDUCATION
CHAPTER 5: POST SECONDARY EDUCATIONAL PROGRAMS
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).
[2-28-98; 5.5.20.6 NMAC - Rn, 5 NMAC 5.20.6, 10-13-00]

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]