

This rule was filed as NMEAF Rule No. 2.

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
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]

HISTORY OF 5.7.24 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives:

NMEAF Rule No. 2 New Mexico Student Loan Purchase Program Guidelines 2/3/82

NMEAF Rule No. 2 Educational Loan Purchase Program Guidelines 10/5/82

NMEAF Rule No. 2 Educational Loan Purchase Program Guidelines 3/23/83

NMEAF Rule No. 2 Educational Loan Purchase Program Regulations 8/19/85

NMEAF Rule No. 2 Educational Loan Purchase Program Regulations 4/28/87

NMEAF Rule No. 2 Educational Loan Purchase Program Regulations 8/12/88

NMEAF Rule No. 2 Educational Loan Purchase Program Regulations 1/26/90

NMEAF Rule No. 2 Educational Loan Purchase Program Regulations 12/11/92.

History of Repealed Material: [RESERVED]