

This rule was filed as NMEAF Rule No. 6.

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 26 EDUCATIONAL LOAN PURCHASE PROGRAM

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]

HISTORY OF 5.7.26 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. 6, Educational Loan Purchase Program Regulations, 9/24/93.

NMEAF Rule No. 6, Educational Loan Purchase Program Regulations, 11/29/93.

History of Repealed Material: [RESERVED]