

This rule was filed as NMEAF Rule No. 95-1.

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

**HISTORY OF 5.7.27 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. 95-1, New Mexico Educational Assistance Foundation Alternative Loan Fund Program Regulations, 10/4/95.

History of Repealed Material: [RESERVED]