



Date: June 19, 2018

Prepared By: Marit Rogne

Notice of Proposed Rulemaking (NPRM): 5.7.20 NMAC,
Legislative Lottery Scholarship Program

Proposed Rule Abstract

1. **Agency:** Higher Education Department
2. **Rule Citation:** 5.7.20 NMAC
3. **Rulemaking Action:** Amend
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 29, Issue 10, May 29, 2018
5. **Effective Date:** When the adopted rule is published in the New Mexico Register.
6. **Citation to Specific Legal Authority:** Sections 6-24-1 et seq. and 21-21N-1 et seq. NMSA 1978
7. **Short Explanation of the Rule's Purpose:** The purpose of the proposed rule is to restructure the Legislative Lottery Scholarship Program tuition scholarship amounts to implement requirements of Section 21-21N-4 NMSA 1978, Tuition scholarship amount; fund.
8. **Link to Full Text of the Rule:**
http://www.hed.state.nm.us/uploads/files/5_7_20_lottery%20scholarship_draft%20rule.pdf
9. **How Information on the Rule Can Be Obtained:** <http://www.hed.state.nm.us/> under the "Recent Postings" section, or fin.aid@state.nm.us or 1-800-279-9777.
10. **Comment Period and Deadlines:** May 29 to June 29, 2018 at 5:00 p.m. Written comments may be submitted to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505, or fin.aid@state.nm.us.
11. **Rule Hearing:** June 29, 2018 from 10:00 a.m. to 11:00 a.m., 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505
12. **Link to Permanent Agency Rulemaking Record:** http://statenm.force.com/public/SSP_RuleHearingSearchPublic

Summary of Proposed Rule

The May 29 issue of the *New Mexico Register* contained the Higher Education Department's (HED) proposed amendments to 5.7.20 NMAC, "Legislative Lottery Scholarship Program," that would restructure tuition scholarship amounts pursuant to the Legislative Lottery Scholarship Program to implement requirements of Laws 2018, Chapter 70. **See Attachment 1, 5.7.20 NMAC, Legislative Lottery Scholarship Program.**

Analysis

The legislative lottery tuition scholarship is intended to increase access to postsecondary education, reduce financial burden on students, and increase educational attainment in New Mexico. The lottery scholarship is funded by 30 percent of lottery ticket sales. Since 2009, the cost of tuition scholarships has outpaced revenues from ticket sales; consequently, the balance of the lottery tuition fund has declined significantly in recent years.

Lottery Scholarship Eligibility

To be eligible for the lottery scholarship, students must attend a postsecondary institution full-time up to (1) 16 months after high school graduation or receiving a high school equivalency credential; or (2) 16 months after military service, which began within four months of high school graduation or receiving a high school equivalency credential. Qualified students must be residents of New Mexico. Statute defines full-time attendance as 15 or more credit hours per semester for students attending four-year postsecondary institutions, and 12 credit hours for students attending two-year institutions. Pursuant to current statute and rules set forth in 5.7.20 NMAC, students do not receive the lottery scholarship in their first semester of enrollment but instead have an initial qualifying semester supported by other institutional funds (the “bridge scholarship”). Students must complete their first semester with a grade point average (GPA) of 2.5 or better, and maintain at least a 2.5 GPA to receive the lottery scholarship.

Laws 2018, Chapter 70 removed language in Section 21-21N-1 NMSA 1978 of the Legislative Lottery Tuition Scholarship Act that required scholarships to be calculated based on sector average tuition rates, effectively decoupling award amounts from tuition. By decoupling lottery scholarship award amounts from tuition, awards are now based solely on enrollment and revenues. The proposed rule would modify HED’s administration of the legislative lottery scholarship pursuant to these statutory changes.

Outline of the Proposed New Rule Requirements

The proposed rule would amend legislative lottery scholarship amounts pursuant to Laws 2018, Chapter 70 by removing language that directs HED to calculate scholarships based on sector average semester rates, instead setting flat award amounts by sector. Qualified students will receive per-semester awards of \$1,500 for research institutions, \$1,020 for comprehensive institutions, and \$380 for community colleges. HED would be allowed to raise or lower scholarship amounts based on enrollment and available funding while holding the sector awards proportional to the amounts outlined above.

The proposed rule would also remove language that directs HED to determine a uniform percentage of the average in-state tuition costs by sector to calculate tuition scholarships, instead referring to the proposed flat award amounts determined by sector.

The Notice of Proposed Rulemaking does not propose an effective date, making the effective date of the adopted rule the date of publication in the *New Mexico Register*, pursuant to the State Rules Act.

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 20 LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM

5.7.20.1 ISSUING AGENCY: State of New Mexico Higher Education Department.
 [5.7.20.1 NMAC - Rp, 5.7.20.1 NMAC, 08/15/2014]

5.7.20.2 SCOPE: Provisions of 5.7.20 NMAC apply to all state public post-secondary institutions in the state of New Mexico.
 [5.7.20.2 NMAC - Rp, 5.7.20.2 NMAC, 08/15/2014]

5.7.20.3 STATUTORY AUTHORITY: Sections 6-24-1 et seq. NMSA 1978 and Sections 21-21N-1 et seq. NMSA 1978.
 [5.7.20.3 NMAC - Rp, 5.7.20.3 NMAC, 08/15/2014; A, 10/31/2017]

5.7.20.4 DURATION: Permanent.
 [5.7.20.4 NMAC - Rp, 5.7.20.4 NMAC, 08/15/2014]

5.7.20.5 EFFECTIVE DATE: August 15, 2014, unless a later date is cited at the end of a section.
 [5.7.20.5 NMAC - Rp, 5.7.20.5 NMAC, 08/15/2014]

5.7.20.6 OBJECTIVE:

A. The objective of 5.7.20 NMAC is to provide a level of financial support to qualified New Mexico students who are enrolled full-time at an eligible New Mexico public college or university. This level of financial support is intended to help defray the cost of tuition at the public post-secondary educational institution where the student is enrolled.

B. A further purpose of 5.7.20 NMAC is to encourage New Mexico high school students who pursue a post-secondary education in New Mexico to complete a first four-year degree within a maximum of eight semesters or two-year degree within a maximum of four semesters (the number of semesters is so determined as the initial award is not made until the second semester of college enrollment).

C. As it applies to students with disabilities who may require special accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution that serves students with disabilities, shall review both the definition of “full-time” and the maximum number of consecutive semesters of eligibility and adjust either or both as deemed reasonable and appropriate, based on the student’s disability needs. In no case shall “full-time” mean fewer than six credit hours per program semester and in no case shall eligibility extend beyond 14 consecutive program semesters at a four-year institution and seven consecutive program semesters at a two-year institution.

[5.7.20.6 NMAC - Rp, 5.7.20.6 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016]

5.7.20.7 DEFINITIONS:

A. “**Academic year**” means any consecutive period of two semesters (or three semesters for accelerated programs), three quarters or other comparable units commencing with the fall term each year.

B. “**Accelerated program**” means one in which a summer semester is a program requirement and not a student choice; a cohort that requires sequence of courses taken in summer semester.

C. “**Community college**” means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978, respectively.

D. “**Comprehensive institution**” means eastern New Mexico university, New Mexico Highlands university, northern New Mexico college or western New Mexico university.

E. “**Consortium**” means a written agreement between a home institution and one or more host institutions for consideration of combined enrollment for eligibility:

(1) home institution is the institution where the student is enrolled in a degree or certificate seeking program and is receiving lottery scholarship funds;

(2) host institution is the secondary institution where the student is taking part of their program requirements.

F. “**Department**” means the New Mexico higher education department (NMHED).

G. “**Full-time**” means 15 or more credit hours completed each program semester of the regular academic year at a research institution or comprehensive institution; or 12 or more credit hours completed for each program semester at community colleges; or through a consortium agreement between the home and host institutions. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student’s home institution.

H. “**GPA**” means grade point average.

I. “**Legislative lottery scholarship**” means a scholarship awarded from proceeds of the New Mexico lottery tuition fund, to defray all or part of the cost of tuition.

J. “**Non-enrollment**” means a student is not enrolled in a public post-secondary educational institution.

K. “**Probation**” means a period of time that a student fails to meet continuing eligibility for exceptional mitigating circumstances as determined by the lead financial aid officer at the institution; as described in Subsection C of 5.7.20.8 NMAC.

L. “**Program semesters**” means those semesters for which a qualified student may receive a tuition scholarship and excludes the first semester of attendance at a public post-secondary educational institution.

M. “**Public post-secondary educational institution**” means a research or comprehensive institution, as defined in Article XII, Section 11 of the New Mexico constitution, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14 and 16 NMSA 1978.

N. “**Research institution**” means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

O. “**Qualified student**” means a full-time student who completed high school at a public or accredited private New Mexico high school, graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico and who either:

(1) within 16 months of graduation or receipt of a high school equivalency credential, was accepted for entrance to and attended a public post-secondary educational institution without having previously enrolled at a non-qualifying postsecondary institution; or

(2) within four months of graduation or receipt of a high school equivalency credential, began service in the United States armed forces and within 16 months of completion of honorable service or medical discharge from the service, attended a public post-secondary educational institution without having previously enrolled at a non-qualifying postsecondary institution; and

(3) successfully completed the first semester at a public post-secondary educational institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full time enrollment.

[R]P. “**Summer semester**” means a semester equal to fall and spring semester in duration and intensity that is required as part of an accelerated program.

[S]Q. “**Tuition scholarship**” means the scholarship that provides tuition assistance per semester for qualified students.

[5.7.20.7 NMAC - Rp, 5.7.20.7 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 10/31/2017; **A, 7/24/2018**]

5.7.20.8 STUDENT ELIGIBILITY:

A. A scholarship may be awarded to a student in their second semester who has met first semester eligibility requirements as follows:

(1) has established and maintained New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC. All residency requirements must be met upon completion of high school, graduation, or receipt of a high school equivalency credential.

(2) has been determined to be a qualified student pursuant to Subsection O of 5.7.20.7 NMAC;

(3) has met the requirements in Subsection G of 5.7.20.7 NMAC;

(4) has met requirements in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC or students with exceptional mitigating circumstances as determined by the institution’s lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the legislative lottery scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution’s lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution’s lead financial aid officer shall exercise

professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC;

(b) if, in the professional judgment of the institution's lead financial aid officer, the student's exceptional mitigating circumstance is recognized as a valid reason for the student's inability to meet the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC the student's initial eligibility for the legislative lottery scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraph (4) of Subsection A of 5.7.20.8 NMAC;

(5) has not been awarded a New Mexico scholars' scholarship or other state scholarships which are designated for one hundred percent tuition; and

(6) students with disabilities shall obtain a referral from the student services division of the post-secondary educational institution where the student is enrolled that oversees students with special needs' requests to reduce the credit hours to be considered full-time for scholarship eligibility; referrals and any sufficient documentation shall be received within 30 days of the start of the student's first semester;

(7) students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for lottery scholarship eligibility.

B. Continuing eligibility. Upon satisfaction of the qualifying semester eligibility requirements, the scholarship will be awarded to the student beginning with their second semester of enrollment. A student's continuing eligibility shall be determined on a semester basis.

(1) A legislative lottery scholarship award may be re-awarded to a student who:

(a) maintains a minimum of a 2.5 cumulative GPA; a student has the right to request use of the student's cumulative GPA earned at all New Mexico institutions; and

(b) maintains full time enrollment as provided in Subsection G of 5.7.20.7 NMAC; when a qualified student transfers after completion of the first semester from a two year institution to a four year institution for enrollment during the second or subsequent program semester, a student will have met eligibility requirements, but said student must enroll in 15 credit hours upon transfer to maintain eligibility;

(i) receipt of a transfer transcript for sufficient documentation for eligibility;

(ii) student transfers shall defer to the receiving institution to determine eligibility.

(2) Students with disabilities may be re-awarded the legislative scholarship under the following conditions:

(a) a referral is obtained for each semester in which a reduction in credit hours is requested;

(b) maintains a minimum of a 2.5 cumulative GPA; and

(c) in no case shall eligibility extend beyond 14 consecutive semesters at a four year institution and seven consecutive semesters at a two year institution.

(3) An eligible student that transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation.

C. Probation. Students who have been determined eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

(1) the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

(2) the lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraph (4) of Subsection A of 5.7.20.8 NMAC;

(3) the student shall maintain enrollment at the public post-secondary educational institution where eligibility was lost, if applicable;

(4) under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC less the regular semester(s) of probation.

[5.7.20.8 NMAC -Rp, 5.7.20.8 NMAC, 08/15/2014; A/E, 8/15/2014; A, 9/30/2014; A, 11/15/2016; A, 10/31/2017]

5.7.20.9 DURATION OF SCHOLARSHIP:

A. Upon qualification, the student's initial scholarship shall begin with the second semester of enrollment at a post-secondary educational institution. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a semester basis until the award recipient has received three program semesters of awards at a community college or seven semesters at a research and comprehensive institution of scholarship awards, or until the student graduates with a bachelor's degree from an eligible institution, whichever is sooner.

B. An award recipient may use the award at an eligible two-year post-secondary educational institution until the student receives three program semesters of scholarship awards or an associate's degree and can continue to use the award at an eligible New Mexico four-year post-secondary educational institution if the student transfers to a four-year post-secondary educational institution without a break in attendance or the semester following receipt of the associate's degree. In no case shall a student receive more than seven program semesters of the award with the exception of students with disabilities.

C. A student may transfer from a four-year post-secondary educational institution to a two-year post-secondary educational institution, but in no case shall a student receive more than three program semesters of awards at the two-year institution (including those awarded at the prior post-secondary educational institution) or until the student graduates with an associate's degree, whichever is sooner.

D. A student who has been previously eligible may request a leave of absence for cooperative education, military obligations, participation in a study abroad program through the home institution, or other exceptional mitigating circumstances.

E. The student's institutional lead financial aid officer may approve a leave of absence for a period of up to one year if in the lead financial aid officer's professional judgment the student has provided sufficient documentation to justify the leave of absence. Subsequent requests for an additional leave of absence by a student may be considered by the institution's lead financial aid officer in increments not to exceed one year.

F. The lead financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.

G. A student completing a department approved public service program may reduce their course load for the semester of their service or training and maintain eligibility for the scholarship. These students will not be eligible for scholarship benefits for the semester in which they are enrolled part time and will need to maintain all other eligibility criteria in subsequent semesters. The part-time semester will not count against their total number of semesters in which the student may receive the scholarship.

H. If a student becomes ineligible for a different state scholarship that is designated for one hundred percent tuition, but satisfies the first semester eligibility requirements and thereafter is eligible for the legislative lottery scholarship, the student may begin receiving the legislative lottery scholarship for the remaining number of semesters of enrollment, not to exceed those prescribed in Subsections A and B of 5.7.20.9 NMAC. [5.7.20.9 NMAC - Rp, 5.7.20.9 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 10/31/2017]

5.7.20.10 AMOUNT OF SCHOLARSHIP:

A. To the extent that funds are made available from the fund, the board of regents or governing bodies of public postsecondary educational institutions shall award tuition scholarship in department approved amounts to qualified students.

B. The method the department will use for calculating the tuition scholarship is as follows:

(1) estimate the total amount available in the lottery tuition fund, based on past lottery fund transfers, current year balances, and additional funds made available through legislation;

(2) estimate the number of lottery scholarship recipients for each institution, based on department endorsed institutional projections;

(3) calculate the ~~[un-weighted average]~~ tuition scholarship for each sector (research, comprehensive, and community college) in accordance with ~~[2016 Bill Text NM S.B. 280]~~ 2018 Bill Text NM S.B. 140;

(4) calculate the total amount needed to pay full average tuition to all estimated recipients;

(5) compute ~~[the uniform percentage of the sector average tuition rates that can be paid that keeps the fund solvent and ensures that the fund will not be overspent]~~ an award for each scholarship recipient distributed in amounts as follows:

(a) one thousand five hundred dollars (\$1,500) per scholarship per program semester for a student enrolled at a research institution;

(b) one thousand twenty dollars (\$1,020) per scholarship per program semester for a student enrolled at a comprehensive institution; and

(c) three hundred eighty dollars (\$380) per scholarship per program semester for a student enrolled at a community college;

(6) [determine the maximum award per recipient for each institution (uniform percentage times average sector tuition for the sector of each institution)]; If the total amount available pursuant to Paragraph (3) of Subsection B of 5.7.20.10 NMAC is less than the amount calculated in Paragraph (5) of Subsection B of 5.7.20.10 NMAC, the department shall decrease the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.20.10 NMAC. If the total amount available pursuant to Paragraph (3) of Subsection B of 5.7.20.10 NMAC is more than the amount calculated in Paragraph (5) of Subsection B of 5.7.20.10 NMAC, the department shall increase the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.20.10 NMAC.

(7) notify institutions.

C. In no case shall a student receive scholarship awards exceeding the total amount of tuition charged.

[5.7.20.10 NMAC - Rp, 5.7.20.10 NMAC, 08/15/2014; A, 11/15/2016; A, 10/31/2017; **A, 7/24/2018**]

5.7.20.11 ADMINISTRATION OF THE LEGISLATIVE LOTTERY SCHOLARSHIP:

A. Eligible post-secondary educational institutions shall:

- (1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the legislative lottery scholarship at previous institutions;
- (2) designate their institution's lead financial aid officer to be responsible for determining initial and continuing student eligibility for the legislative lottery scholarship under the terms of these rules and regulations;
- (3) maintain a listing of each participating student to include, but not be limited to:
 - (a) social security number as appropriate;
 - (b) cumulative GPA and completed enrollment hours in prior semesters;
 - (c) proof of initial and continuing enrollment;
 - (d) award semester; and
 - (e) other data fields deemed important by the department;
- (4) draw-down files should be submitted to the department for eligible students as defined in 5.7.20.10 NMAC per semester; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;
- (5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative GPA requirement or successfully maintain full time enrollment as defined in Subsection E of 5.7.20.7 NMAC;
- (6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their appropriate institution as follows: comprehensive, research institution in their second through eighth program semester including qualified students in their fifth through eighth program semesters who transferred from a community college; projected enrollment at each community college at each community college in their second through fourth program semesters;
- (7) publish the probation policy as defined in Subsection C of 5.7.20.8 NMAC;
- (8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program;
- (9) ensure that all available state scholarships including merit based three percent scholarship and New Mexico scholars are awarded before granting legislative lottery scholarships; the intent of this provision is that tuition costs shall be paid first for those students eligible for merit-based aid packages funded by three percent scholarships; in those instances when tuition is not fully covered by the merit-based aid package, said student is eligible for the tuition cost differential to be funded by the legislative lottery scholarship program; nothing in this section requires a public postsecondary educational institution to award a scholarship inconsistent with the criteria established or such scholarship; refer to Subsection G of 5.7.20.9 NMAC for additional provisions;

B. The department shall:

(1) determine ~~[a uniform percentage of the average of in-state tuition costs by sector by which to calculate tuition scholarships]~~ the scholarship award pursuant to the provisions of 5.7.20.10 NMAC; all eligible institutions will be notified prior to June 1 annually;

(2) conduct audits to ascertain compliance with rules and regulations, if, during the audit process, evidence indicates that a student should not have received a legislative lottery scholarship, the department will provide guidance to the institutions for appropriate action;

(3) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) tuition scholarship program participation data aggregated for each public postsecondary education institution to show:

(i) the number of qualified students who received tuition scholarships and in the prior 12 month period;

(ii) the total number of qualified students enrolled in the prior 12-month period;

(iii) the amount of tuition scholarships funded by semester and the amount of tuition costs that were not offset by the tuition scholarship by semester; and

(iv) the number of qualified students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.

[5.7.20.11 NMAC - Rp, 5.7.20.11 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 10/31/2017; A, 7/24/2018]

5.7.20.12 TERMINATION OF SCHOLARSHIPS: A scholarship is terminated upon noncompliance by the award recipient with the legislative lottery scholarship rules, regulations or procedures as promulgated by the department.

[5.7.20.12 NMAC -Rp, 5.7.20.12 NMAC, 08/15/2014]

HISTORY OF 5.7.20 NMAC:

History of Repealed Material:

5.7.20 NMAC, Legislative Lottery Scholarship Program, filed 8/1/2000, Repealed 08/15/2014.