

Proposed Rule Abstract

1. **Agency:** Higher Education Department
2. **Rule Citation:** 5.7.5 NMAC, Teacher Loan Repayment Program
3. **Rulemaking Action:** Amendment
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 30, Issue 10, May 28, 2019
5. **Effective Date:** July 30, 2019
6. **Citation to Specific Legal Authority:** Sections 9-25-8, 21-1-26, and 21-22H-1 through 21-22H-9 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** To modify applicant eligibility criteria and contract provisions for participants in the teacher loan repayment program based on recently enacted legislation.
8. **Link to Full Text of the Rule:**
http://www.hed.state.nm.us/uploads/CalendarV2/a7356d4addee44719d8d9730b6bf223d/5.7.5_NMAC_DRAFT_5_28.pdf#CalendarContent
9. **How Information on the Rule Can Be Obtained:** http://www.hed.state.nm.us/Upcoming_Events.aspx or from the New Mexico Higher Education Department at (505) 476-8411.
10. **Comment Period and Deadlines:** May 28, 2019 to June 28, 2019 at 4:00 p.m. Written comments may be submitted to the New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us.
11. **Rule Hearing:** July 8, 2019 from 9:00 a.m. to 10:00 a.m. at New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505.
12. **Link to Permanent Agency Rulemaking Record:**
http://statenm.force.com/public/SSP_RuleHearingSearchPublic

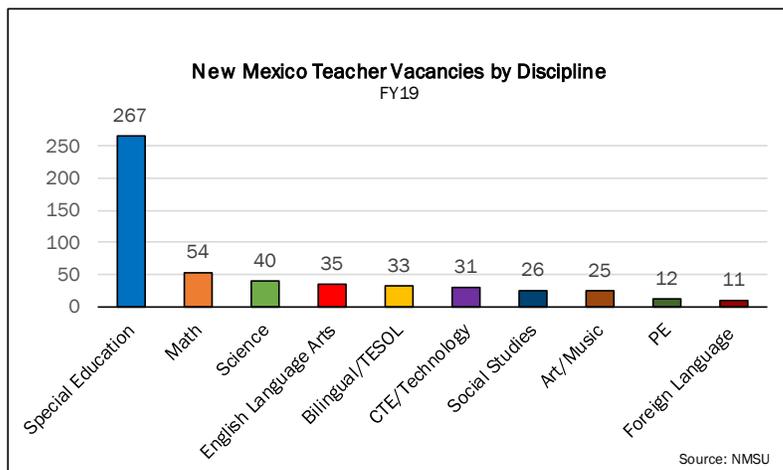
Summary of Proposed Rule

The May 28, 2019 issue of the *New Mexico Register* contained a notice of proposed rulemaking to amend Part 5 of 5.7 NMAC, which would update applicant eligibility criteria and contract provisions for approved participants in the teacher loan repayment program administered by the Higher Education Department (HED) to implement the provisions set forth in Laws 2019, Chapter 193 (House Bill 275). See **Attachment, Proposed Amendments to 5.7.5 NMAC, Teacher Loan Repayment Program**.

Analysis

A growing teacher shortage and declining enrollment in teacher preparation programs led the 2019 Legislature to prioritize teacher recruitment and retention with a particular focus on teacher diversity. Seventy-five percent of students in New

Mexico classrooms are students of color; however, only 36 percent of teachers in New Mexico are teachers of color. Research shows students improve academic outcomes when their teacher looks like them. Sections 21-22H-1 through 21-22H-9 NMSA 1978 were amended by Chapter 193 to build a more diverse teacher workforce. The proposed amendments to Part 5 of 5.7 NMAC align the rule to the changes made in Chapter 193 to the existing teacher loan repayment program.



Definitions. In current rule, “designated high-risk teacher position” is defined as a teaching position in a public school with a high percentage of students who are not meeting acceptable academic proficiency levels and are located in areas with a high poverty rate. The proposed amendment strikes “designated high-risk teacher position” and replaces the term with “designated high-need teacher position”, which is defined as teachers in a public school that is low-performing or serves a high percentage of economically disadvantaged students and who are endorsed and teach bilingual education, early childhood education, special education,

science, technology, engineering, mathematics, or career technical education courses.

Teaching Experience Requirement. Current rule does not establish a minimum number of years of experience required to qualify for the teacher loan repayment program. The proposed amendment to Section 5.7.5.9 NMAC requires teacher loan repayment candidates to have taught at least three school years in New Mexico to be eligible for the program. This is consistent with the changes to Sections 21-22H-1 through 21-22H-9 NMSA 1978 outlined in Chapter 193. Fifty percent of teachers in New Mexico leave the profession in the first five years. Requiring teachers to have taught for three years, then repaying their loans over subsequent years may lead teachers to stay in the teaching profession for a longer period of time.

Award Criteria. The proposed amendments to 5.7.5 NMAC would prioritize loan repayment awards for teachers who are historically underrepresented minorities in the New Mexico teaching field, teachers working in a designated high-need position, and teachers who have graduated from a New Mexico public postsecondary institution; however, there is a contradiction between the proposed amendments to the teacher eligibility section and the proposed amendments to the loan repayment award criteria section. Pursuant to Paragraph B of 5.7.5.9 NMAC, “applicants shall declare their intent to practice as a teacher in a high-need teacher position” to be eligible for a loan repayment award; although, Paragraph A (2) of 5.7.5.10 NMAC states “award amounts for other teachers shall be based on the need for a teacher position that can be filled by the applicant.” This provision indicates individuals other than those declaring their intent or teaching in a “designated high-need teacher position” would be eligible for a loan repayment award. Pursuant to Chapter 193, repayment awards will be prioritized for designated high-need teacher positions; however, working in a designated high-need teacher position is not a requirement for eligibility.

HED may want to change the teacher eligibility section of 5.7.5 NMAC to align with Chapter 193 indicating the department will prioritize loan repayment awards for individuals declaring their intent to practice in a designated high-need teacher position.

Payment and Contract Terms. Currently teachers can have their loans repaid by teaching in a designated high-risk position for a minimum of two school years. Although the per-year-payment amount is not set in rule, nor was it set in statute prior to enactment of Chapter 193, HED awards \$6 thousand per year, or a maximum of \$12 thousand per two-year contract. Chapter 193 denotes award amounts will not exceed \$6 thousand per completed school year and this is reflected in the proposed amendments to Part 5 of 5.7 NMAC. Once qualified, teachers would enter into a two-year contract to have their loans repaid over the subsequent years. Pursuant to the proposed amendments, HED would make annual payments to the teacher's lender not to exceed \$6 thousand per completed school year. Teachers would be able to enter into a maximum of four two-year contracts for a potential total maximum repayment award of \$48 thousand consistent with the changes enacted by Chapter 193.

The General Appropriation Act (GAA) of 2019 included a \$10 million general fund revenue transfer to the teacher loan repayment fund. It does not appear the funds can be spent in FY20 because the fund is subject to legislative appropriation and the funds were not appropriated for expenditure. The GAA of 2019 did not include an appropriation from the fund to HED. It only included the transfer of general fund revenue into the fund.

Currently, rule requires teachers who do not comply with their contracts to reimburse the department for all loan payments made on that teacher's behalf plus reasonable interest as determined by the department. This stipulation was also in statute prior to the 2019 legislative session. To align with Chapter 193, the proposed amendments to 5.7.5 NMAC denote teachers who do not complete a full year of teaching will forfeit the right to that year's payment under the contract but will not be required to reimburse the department for past loan payments made on the teacher's behalf.

Reporting. Currently HED is required to provide a report to the governor and the Legislature prior to each regular session of the legislature. The report must include information such as loan repayment awards granted; names and addresses of award recipients; positions filled by those teachers; and the amount owed on each individual teacher's loan. To align with Chapter 193, the proposed amendments to 5.7.5 NMAC additionally require the report to include the number of teachers who did not complete a full year of teaching — essentially, those that forfeit the right to loan repayment and void their contract.

Technical Issues

Pursuant to 5.7.5.6 NMAC “The objective and purpose of 5.7.5 NMAC is to increase the number of teachers in designated high-need teacher positions in public schools through an education loan repayment program.” Chapter 193 requires loan repayment awards to be prioritized for high-need teacher positions, though the

program is not solely for these individuals. HED may want to consider changing their objective statement accordingly.

The proposed amendment to 5.7.5 NMAC includes a definition for “designated high-need teacher positions” as “a teaching position **is** a public school that is low-performing” whereas it should read “a teaching position **in** a public school that is low-performing.” Additionally, the definition does not mention that the position is “for teachers who are minorities” as is stated in Chapter 193. Although teachers who are racial or ethnic minorities are included in the rule, they are not included in the definition to align with the definition established in statute. Pursuant to the State Rules Act, Sections 14-4-5.7 NMSA 1978, a word or phrase that is defined in applicable statute should not be defined in rule.

Section 5.7.5.9 (A) NMAC reads, “To be considered for the program an applicant must” a coma should be inserted after program.

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 5 TEACHER LOAN REPAYMENT PROGRAM

5.7.5.1 ISSUING AGENCY: State of New Mexico Higher Education Department
 [5.7.5.1 NMAC - N, 10/31/2013]

5.7.5.2 SCOPE: Provisions for 5.7.5 NMAC apply to certain education professionals teachers that are selected to participate in the loan repayment program described in this rule.
 [5.7.5.2 NMAC - N, 10/31/2013; A, 7/30/2019]

5.7.5.3 STATUTORY AUTHORITY: Sections 9-25-8, 21-1-26 and 21-22H-1 through 21-22H-9, NMSA 1978.
 [5.7.5.3 NMAC - N, 10/31/2013]

5.7.5.4 DURATION: Permanent.
 [5.7.5.4 NMAC - N, 10/31/2013]

5.7.5.5 EFFECTIVE DATE: October 31, 2013, unless a later date is cited at the end of a section.
 [5.7.5.5 NMAC - N, 10/31/2013]

5.7.5.6 OBJECTIVE: The objective and purpose of 5.7.5 NMAC is to increase the number of teachers in designated high-risk high-need teacher positions in public schools through an educational loan repayment program. The program provides for repayment of the principal and reasonable interest accrued on loans obtained from the federal government for teacher education purposes.
 [5.7.5.6 NMAC - N, 10/31/2013; A, 7/30/2019]

5.7.5.7 DEFINITIONS:

A. “**Department**” means the New Mexico higher education department.

B. [~~“**Designated high-risk teacher positions**” means teacher positions in specific public schools that;~~ **“Designated high-need teacher position”** means a teaching position in a public school that is low-performing or serves a high percentage of economically disadvantaged students and is for:

(1) [have been designated by the public education department as schools with a high percentage of students who are not meeting acceptable academic proficiency levels; and] a teacher who is endorsed and teaches bilingual education;

(2) [are located in geographic areas with a high rate of poverty;] a teacher who is endorsed and teaches early childhood education or special education; or

(3) a teacher who is endorsed and teaches science, technology, engineering, mathematics or career technical education courses.

C. “**Loan**” means a grant of funds to defray the educational expenses incidental to a teacher education, under a contract between the federal government and a teacher, requiring repayment of principal and interest.

[5.7.5.7 NMAC - N, 10/31/2013; A, 7/30/2019]

5.7.5.8 HIGHER EDUCATION DEPARTMENT - POWERS AND DUTIES:

A. The department may grant a loan repayment award to repay loans obtained for the teacher educational expenses of a teacher upon such terms and conditions as may be imposed by rules of the department.

B. The department and the public education department shall jointly make a full and careful investigation of the ability and qualifications of each applicant and determine the fitness of a teacher to participate in the teacher loan repayment program.

[5.7.5.8 NMAC - N, 10/31/2013]

5.7.5.9 TEACHER ELIGIBILITY:

A. [Applicants shall be] To be considered for the program an applicant must:

(1) be a licensed New Mexico [teachers and shall be bona fide citizens; and] teacher;

(2) ~~[shall be bona fide citizens and residents]~~ be a bona fide citizen and resident of the United States and New Mexico; and

(3) have taught at least three school-years in New Mexico.

B. ~~[Applicants]~~ The applicant shall declare their intent to practice as ~~[teachers]~~ a teacher in a designated ~~[high-risk] high-need~~ teacher ~~[positions]~~ position in the state.
[5.7.5.9 NMAC - N, 10/31/2013; A, 7/30/2019]

5.7.5.10 LOAN REPAYMENT AWARD CRITERIA; CONTRACT TERMS; PAYMENT:

A. Loan repayment award criteria shall provide that:

(1) for ~~high-priority applicants,~~ award amounts shall be dependent upon a specific public school's need for the designated ~~[high-risk] high-need~~ teacher position, as determined by the public education department, the teacher's total teacher education indebtedness and available balances in the teacher loan repayment fund;

(2) award amounts for other teachers shall be based on the need for a teacher position that can be filled by the applicant, as determined by the public education department, the teacher's total teacher education indebtedness and available balances in the teacher loan repayment fund;

~~(2)~~ (3) preference in making awards shall be to teachers ~~who are historically underrepresented minorities in New Mexico's teaching profession or teachers~~ who have graduated from a New Mexico public postsecondary educational institution;

~~(3)~~ awards shall be made to eligible teachers who fill a designated high risk teacher position;

(4) award amounts shall not exceed six thousand dollars (\$6,000) per year and may be modified based upon funding availability or other special circumstances; and

(5) the total amount of awards made to any one teacher shall not exceed the total teacher education indebtedness ~~[of] remaining for~~ that teacher.

B. The following teacher education debts are not eligible for repayment pursuant to the Teacher Loan Repayment Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) loans from a commercial lender;

(4) personal loans from friends or relatives; and

(5) loans that exceed individual standard school expense levels.

C. Every loan repayment award shall be evidenced by a contract between the teacher and the department acting on behalf of the state. The contract shall provide for the ~~annual~~ payment by the state of a stated sum to the teacher's federal government lender and shall state the obligations of the teacher under the program, including a minimum two-school year period of service in a designated ~~[high-risk] high-need~~ teacher position, quarterly ~~employment~~ reporting requirements and other obligations established by the department.

D. ~~[Teachers who serve a complete school year in a designated high risk teacher position shall receive credit for one year for the purpose of calculating any loan repayment award amounts. The minimum loan repayment award amount to be paid for each school year completed shall be established by the department.]~~ Execution of the contracts shall occur prior to the start of a school year and the two school year period of service starts at the execution of the contract. Each contract shall be for an initial two school year period. Following completion of the contract a teacher may reapply for consideration of an additional contract. Teachers may receive a maximum of three additional two-year contracts. Contracts between a teacher and the department shall not provide for more than a total of eight years of repayment.

E. ~~[The contract between a teacher and the department shall provide that, if the teacher does not comply with the terms of the contract, the teacher shall reimburse the department for all loan payments made on the teacher's behalf, plus reasonable interest at a rate to be determined by the department, unless the department finds acceptable extenuating circumstances for why the teacher cannot serve or comply with the terms of the contract.]~~ The department shall make an annual payment pursuant to the contract only after the teacher provides verification of satisfactory completion of a full year of teaching as certified by the public education department. If a teacher does not complete the first full year of teaching, the teacher shall forfeit any right to that year's payment under the contract.

F. Loan repayment awards shall be in the form of payments from the teacher loan repayment fund directly to the federal government lender of a teacher who has received the award and shall be considered a payment

on behalf of the teacher pursuant to the contract between the department and the teacher. A loan repayment award shall not obligate the state or the department to the teacher's federal government lender for any other payment and shall not be considered to create any privity of contract between the state or the department and the lender.

[G.] The department, after consulting with the public education department, shall adopt rules to implement the provisions of the Teacher Loan Repayment Act. The rules:

(1) shall provide a procedure for determining the amount of a loan that will be repaid for each year of service in a designated high risk teacher position; and

(2) may provide for the disbursement of loan repayment awards to a teacher's federal government lender in annual or other periodic installments.]

[5.7.5.10 NMAC - N, 10/31/2013; A, 7/30/2019]

5.7.5.11 CONTRACTS [AND ENFORCEMENT]

[A.] The general form of a contract required pursuant to the Teacher Loan Repayment Act shall be prepared and approved by the attorney general, and each contract shall be signed by the teacher and the designated representative of the department on behalf of the state.

[B.] The department is vested with full and complete authority and power to sue in its own name for any balance due the state from a teacher under any such contract.]

[5.7.5.11 NMAC - N, 10/31/2013; A, 7/30/2019]

5.7.5.12 TEACHER LOAN REPAYMENT FUND CREATED AND METHOD OF PAYMENT

A. The "teacher loan repayment fund" is created in the state treasury. All money appropriated for the teacher loan repayment program shall be credited to the fund ~~[-, and any repayment of awards and interest received by the department shall be credited to the fund].~~ Income from the fund shall be credited to the fund, and balances in the fund shall not revert to any other fund. Money in the fund is ~~[appropriated]~~ **subject to appropriation by the legislature** to the department for making loan repayment awards pursuant to the Teacher Loan Repayment Act.

B. All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the department and upon a warrant issued by the secretary of finance and administration.

[5.7.5.12 NMAC - N, 10/31/2013; A, 7/30/2019]

5.7.5.13 CANCELLATION: The department may cancel any contract made between it and a teacher pursuant to the Teacher Loan Repayment Act for any reasonable cause deemed sufficient by the department.

[5.7.5.13 NMAC - N, 10/31/2013]

5.7.5.14 REPORTS: Prior to each regular session of the legislature, the department shall make annual reports to the governor and the legislature of the department's activities pertaining to the Teacher Loan Repayment Act; the loan repayment awards granted; the names and addresses of teachers who received loan repayment awards; the names and locations of the positions filled by those teachers; ~~[and] the name of each teacher who received a loan repayment award who is not serving in a designated [high-risk] high-need teacher position~~ ~~[-, the reason the teacher is not serving in a designated high-risk teacher position,];~~ the amount owed on ~~[the] each~~ teacher's loan and the amount paid on ~~[the] each~~ teacher's loan by ~~[any]~~ loan repayment awards; **and the number of teachers who did not complete a full year of teaching.**

[5.7.5.14 NMAC - N, 10/31/2013; A, 7/30/2019]

HISTORY OF 5.7.5 NMAC: [RESERVED]