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September 19, 2013

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force

RE: STAFF BRIEF: ADMINISTRATIVE RULEMAKING

Proposed Rules:

- **5.7.4 NMAC, Primary Care Physician Student-Loan-for-Service Program**
- **5.7.5 NMAC, Teacher Loan Repayment Program**
- **5.7.9 NMAC, New Mexico Scholars Program**
- **5.7.31 NMAC, Public Service Law Repayment Program**

In the August 30, 2013 issue of the *New Mexico Register*, the Higher Education Department (HED) published a Notice of Public Hearing, which proposed:

- amendments to:
 - the New Mexico Scholars Program; and
 - the Public Service Law Loan Repayment Program; and
- new rules for:
 - the Primary Care Physician Student-Loan-for-Service Program; and
 - the Teacher Loan Repayment Program.

The Notice solicited comments on the proposed rules and announced a public hearing on the proposal, to be held on October 1, 2013, at 2408 Galisteo Street, in Santa Fe (see Attachment 1, *NPRM 5.7 NMAC, Post-Secondary Education, Tuition and Financial Aid, 8/30/13*). As the Legislative Education Study Committee (LESC) only has statutory authority over primary and secondary education, and the colleges of education at state universities, this staff brief will focus on those rulemakings related to these areas:

- amendments to the New Mexico Scholars Program; and
- new rules for the Teacher Loan Repayment Program.

New Mexico Scholars Program

Proposed amendments to the New Mexico Scholars Program would raise the combined family income cap for qualification for the program from \$30,000 to \$60,000, thus opening the program to more students. This amendment arises directly from a corresponding statutory change in the *New Mexico Scholars Act*¹, enacted in the recent 2013 legislative session (see Attachment 2, *HED Proposed Rule, 5.7.9 NMAC, New Mexico Scholars Program, 8/30/13*).

Teacher Loan Repayment Program

Proposed New Rules regarding the Teacher Loan Repayment Program also arise out of legislation passed in the 2013 regular session, in this case the *Teacher Loan Repayment Act*² (see Attachment 3, *HED Proposed Rule, 5.7.5 NMAC, Teacher Loan Repayment Program, 8/30/13*). A brief section-by-section summary of the rule follows:

5.7.5.7 NMAC, Definitions. Newly created definitions for the rule include:

- **“Designated high-risk teacher positions,”** which means teacher positions in specific public schools that:
 - 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
 - are located in geographic areas with a high rate of poverty; and
- **“loan”** which 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.

¹ Laws 2013, Chapter 171, Section 4, *New Mexico Scholars Act*, amended eligibility requirements by raising the combined family income cap from \$30,000 to \$60,000. The combined family income eligibility maximum is to be adjusted at the beginning of each calendar year to reflect any change from the previous year’s consumer price index for all urban consumers, as published by the Bureau of Labor Statistics of the US Department of Labor. See: 21-21H-5. NMSA 1978.

² Laws 2013, Chapter 177, Section 1 promulgated the *Teacher Loan Repayment Act*, which purports to increase the number of teachers in designated high-risk teacher positions in public schools.

5.7.5.8 NMAC, Higher Education Department – Powers and Duties

The enumerated powers and duties of HED under the program include:

- the power to 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; and
- a requirement that HED and the Public Education Department (PED) 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.

5.7.5.9 NMAC, Teacher Eligibility

To be eligible for the program, applicants must:

- be licensed New Mexico teachers;
- be bona fide citizens and residents of the United States and New Mexico; and
- declare their intention to practice teaching in designated high-risk teacher positions in New Mexico.

5.7.5.10 NMAC, Loan Repayment Award Criteria; Contract Terms; Payment

Loan repayment award criteria provide that:

- loan amounts are dependent upon a specific public school's need for high-risk teacher positions as determined by PED, the teacher's total education indebtedness and available balances in the Teacher Loan Repayment Fund;
- preference is given to graduates of New Mexico public postsecondary educational institutions;
- awards shall be made to teachers who fill a designated high-risk teacher position;
- awards may be modified based on funding availability or other special circumstances; and
- the total award to any one teacher may not be more than that teacher's total indebtedness.

Certain loans are not eligible for repayment under the program, including:

- 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;
- scholarships that have a service component or obligation;
- loans from a commercial lender;
- personal loans from friends or relatives; and
- loans that exceed individual standard school expense levels.

Each loan repayment award shall be evidenced by a contract between HED and the teacher, providing for:

- repayment of a set sum to the teacher’s federal government lender;
- the teacher’s obligations, such as the minimum two-year period of service in a high-risk teaching position and quarterly reporting; and
- for a teacher who fails to comply with the terms of the contract, a requirement that the teacher reimburse HED for any awards made under the program, plus reasonable interest, unless there are acceptable extenuating circumstances.

The Higher Education Department, after consulting with PED, shall adopt rules to implement the provisions of the *Teacher Loan Repayment Act*, which:

- shall provide for a procedure to determine the amount of a loan that will be repaid for each year of service in a high-risk position; and
- may provide for the disbursement of awards to a teacher’s federal government lender in annual or other installments.

5.7.5.11 NMAC, Contracts and Enforcement

The general form of a contract under the program shall be prepared and approved by the Attorney General, and shall be signed by the teacher and the designated HED representative. The department is vested with full authority to sue in its own name for any balance due from a teacher under their contract.

5.7.5.12 NMAC, Teacher Loan Repayment Fund Created and Method of Payment

The “Teacher Loan Repayment Fund” is created in the treasure:

- all money appropriated by the fund shall be credited to the fund;
- any repayments of awards or interest shall be credited to the fund; and
- balances in the fund shall not revert to any other fund.

5.7.5.13 NMAC, Cancellation

HED may cancel a contract between it and a teacher, under the program, for any reasonable cause deemed sufficient by the department.

5.7.5.14 NMAC, Reports

Before each regular legislative session, HED shall report to the governor and the Legislature the department’s activities related to the program, which shall include:

- the repayment awards granted;
- the names and teachers who received repayment awards;
- names and locations of positions filled by the teachers;
- the name of each teacher who received a loan repayment award and who is not serving in a high-risk position, the reason the teacher is not so serving, and the amount owed on the teacher’s loan and the amount paid on the loan by any awards.

ATTACHMENT 1**New Mexico Register / Volume XXIV, Number 16 / August 30, 2013****NEW MEXICO HIGHER EDUCATION DEPARTMENT**

The Higher Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at 2048 Galisteo Street, Santa Fe, NM 87505-2100, on October 1, 2013, from 10:00 a.m. to 12:00 p.m. The purpose of the public hearing will be to obtain input on the following rule(s):

Rule Number	Rule Name	Proposed Action
5.7.4 NMAC	PRIMARY CARE PHYSICIAN STUDENT LOAN-FOR-SERVICE PROGRAM	Adopt new rule
5.7.5 NMAC	TEACHER LOAN REPAYMENT PROGRAM	Adopt new rule
5.7.9 NMAC	NEW MEXICO SCHOLARS PROGRAM	Rule amendment
5.7.31 NMAC	PUBLIC SERVICE LAW LOAN REPAYMENT PROGRAM	Rule amendment

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Mr. David Mathews, Office of General Counsel, Higher Education Department, 2048 Galisteo Street, Santa Fe, New Mexico 87505-2100 (david.mathews@state.nm.us) (505) 476-8402) (telefax (505) 476-8454).

Written comments must be received no later than 5:00 pm on October 1, 2013. However, the submission of written comments as soon as possible is encouraged.

The proposed rulemaking action may be accessed on the Department’s website (<http://hed.state.nm.us/>) or obtained from David Mathews, Office of General Counsel, Higher Education Department, 2048 Galisteo Street, Santa Fe, New Mexico 87505-2100 (david.mathews@state.nm.us) (505) 476-8402)(telefax (505) 476-8454). The proposed rule will be made available at least thirty (30) days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact the Higher Education Department as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 9 NEW MEXICO SCHOLARS PROGRAM**

5.7.9.1 ISSUING AGENCY: State of New Mexico Higher Education Department.
[7/15/98; 5.7.9.1 NMAC - Rn & A, 5 NMAC 7.9.1, 8/30/2007]

5.7.9.2 SCOPE: Provisions of 5.7.9 NMAC apply to the higher education department and any public or private non-profit post-secondary institution in New Mexico.
[7/15/98; 5.7.9.2 NMAC - Rn & A, 5 NMAC 7.9.2, 8/30/2007]

5.7.9.3 STATUTORY AUTHORITY: Section 21-21-H-1, NMSA 1978.
[7/15/98; 5.7.9.3 NMAC - Rn & A, 5 NMAC 7.9.3, 8/30/2007]

5.7.9.4 DURATION: Permanent.
[7/15/98; 5.7.9.4 NMAC - Rn, 5 NMAC 7.9.4, 8/30/2007]

5.7.9.5 EFFECTIVE DATE: July 15, 1998.
[7/15/98; 5.7.9.5 NMAC - Rn, 5 NMAC 7.9.5, 8/30/2007]

5.7.9.6 OBJECTIVE: The objective and purpose of 5.7.9 NMAC is to encourage New Mexico students to attend college in New Mexico, thereby making it possible for them to pursue their studies and develop their talents at both public school and higher education levels to the greater benefit of the state.
[7/15/98; 5.7.9.6 NMAC - Rn, 5 NMAC 7.9.6, 8/30/2007]

5.7.9.7 DEFINITIONS:

- A. "Academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.
 - B. "Award recipient" means a student awarded a New Mexico Scholars Act scholarship.
 - C. "Combined family income" means the adjusted gross income for the student's family as taken from the federal income tax form(s) filed in compliance with internal revenue service (IRS) regulations and guidelines.
 - D. "Department" means the higher education department.
 - E. "Eligible institution" means any public or private non-profit post-secondary institution in New Mexico.
 - F. "Satisfactory academic progress" means completion of at least twenty-four semester credit hours per year (or the equivalent in quarter hours) and maintenance of a cumulative grade point average of a minimum of 3.0 or higher on a scale of 4.0.
 - G. "Scholarship" means a scholarship awarded pursuant to the New Mexico Scholars Act.
 - H. "Top five percent" means total headcount of the student's New Mexico high school graduating class times .05 rounded upward to the next whole number regardless of the fraction.
 - I. "Tuition" means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit.
 - J. "Required fees" means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. Excluded are specific services or fines (transcript copy fees, graduation fees, library fines, etc.).
 - K. "Books" is the amount used by the financial aid office for books in the calculation of cost of attendance for campus based programs.
- [7/15/98; 5.7.9.7 NMAC - Rn & A, 5 NMAC 7.9.7, 8/30/2007]

5.7.9.8 STUDENT ELIGIBILITY:

- A. First year eligibility. A scholarship may be awarded to a New Mexico high school graduate who:

(1) is a citizen of the United States or an eligible non-citizen and resident of New Mexico as defined in 5.7.18.9 NMAC;

(2) will graduate or has graduated from a New Mexico high school and who enrolls in an eligible institution by the end of his twenty-first year provided that the graduate meets the resident requirements defined in 5.7.18.9 NMAC;

(3) has met the admission requirements and is accepted for enrollment as a full-time undergraduate student at an eligible institution;

(4) has maintained a level of performance in high school reflected by a junior or senior score or placement level of:

(a) a composite score of at least twenty-five on the American college test (ACT) or a total of at least one thousand one hundred and forty on the scholastic aptitude test (SAT); or

(b) top five percent of the student's high school graduating class in either the student's junior or senior year;

(5) has a total combined family income of no more than ~~[thirty thousand dollars (\$30,000)]~~ sixty thousand dollars (\$60,000) per year in either of the calendar years ending within the student's junior or senior years in high school; in the case of a student whose immediate family has more than one family member enrolled full-time in an eligible institution of post-secondary education, the total combined family income shall be an amount as determined by the department as of August 19, 1991; and

(6) has complied with all the rules and regulations adopted by the department for award of the scholarship and the provisions regarding the administration of scholarships adopted pursuant to the New Mexico Scholars Act.

B. Continuing eligibility. A New Mexico scholars award may be re-awarded to a student who:

(1) maintains satisfactory academic progress as defined in these rules and regulations;

(2) stays enrolled for consecutive academic years.

[7/15/98; 5.7.9.8 NMAC - Rn & A, 5 NMAC 7.9.8, 8/30/2007; A, X/X/2013]

5.7.9.9 DURATION OF SCHOLARSHIP: Each scholarship is for a period of one academic year. The scholarship may be renewed annually until the award recipient has received four annual scholarship awards or until the student graduates from a four-year institution, whichever is earlier. An award recipient may use the award at a two-year institution until he or she receives two annual scholarship awards. In no case shall a student receive more than four annual awards.

[7/15/98; 5.7.9.9 NMAC - Rn, 5 NMAC 7.9.9, 8/30/2007]

5.7.9.10 AMOUNT OF SCHOLARSHIP:

A. State institutions shall make awards in amounts sufficient to pay for tuition, required student fees and books for an academic year.

B. Non-state institutions shall make awards in amounts equal to the highest state institution tuition plus required fees and books for an academic year.

[7/15/98; 5.7.9.10 NMAC - Rn, 5 NMAC 7.9.10, 8/30/2007]

5.7.9.11 ADMINISTRATION OF SCHOLARS PROGRAM:

A. Institution of higher education shall designate an officer responsible for the scholars program. The officer designated by the institution shall be responsible for determining initial and continuing student eligibility for the scholars program under the terms of these rules and regulations and shall:

(1) maintain a listing of each participating student to include but not be limited to:

(a) social security number;

(b) ACT composite or SAT total;

(c) high school graduating class ranking (e.g., 2 of 140);

(d) total family adjusted gross income;

(e) cumulative GPA (for continuing students);

(f) proof of initial or continuing enrollment;

(2) send to the department or its authorized agent a request for payment of tuition, required fees and book stipend for each consecutive period of enrollment; the request for payment shall include a listing of participants by name, social security number, tuition, required fees and book stipend; and

(3) adjust the cost of attendance, expected family contribution or other factors to make the program responsive to a student's special financial circumstances, within the parameters authorized for this program when a financial aid officer may exercise professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant and adjustment.

B. Higher education department shall:

(1) develop a standard request for payment; this request for payment shall be used by all participating institutions;

(2) convene an annual meeting with the responsible officers; the responsible officers shall meet at least annually to review the scholars program; and

(3) conduct audits to ascertain compliance with rules and regulations; at least a random audit of each participating institution's records shall take place on an annual basis by members of the department staff.

[7/15/98; 5.7.9.11 NMAC - Rn & A, 5 NMAC 7.9.11, 8/30/2007]

5.7.9.12 TERMINATION OF SCHOLARSHIPS: A scholarship is terminated upon substantial noncompliance by the award recipient with the New Mexico Scholars Act or the rules, regulations or procedures promulgated by the department pursuant to that act.

[7/15/98; 5.7.9.12 NMAC - Rn & A, 5 NMAC 7.9.12, 8/30/2007]

HISTORY OF 5.7.9 NMAC:

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

CHE Rule 845, New Mexico Scholars Program - Administrative Regulations, 3/8/90.

CHE Rule 845, New Mexico Scholars Program - Administrative Regulations, 8/15/91.

History of Repealed Material: [RESERVED]

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
[X/X/13, 5.7.5.1 NMAC]

5.7.5.2 SCOPE: Provisions for 5.7.5 NMAC apply to certain education professionals that are selected to participate in the loan repayment program described in this rule.
[X/X/13, 5.7.5.2 NMAC]

5.7.5.3 STATUTORY AUTHORITY: Sections 21-1-26 and 21-22H, NMSA 1978.
[X/X/13, 5.7.5.3 NMAC]

5.7.5.4 DURATION: Permanent.
[X/X/13, 5.7.5.4 NMAC]

5.7.5.5 EFFECTIVE DATE: X X, 2013, unless a later date is cited at the end of a section.
[X/X/13, 5.7.5.5 NMAC]

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 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.

5.7.5.7 DEFINITIONS:

- A. **“Department”** means the New Mexico higher education department.
 - B. **“Designated high-risk teacher positions”** means teacher positions in specific public schools that:
 - (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
 - (2) are located in geographic areas with a high rate of poverty; and
 - 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.
- [X/X/13, 5.7.5.7 NMAC]

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.
- [X/X/13, 5.7.5.8 NMAC]

5.7.5.9 TEACHER ELIGIBILITY

- A. Applicants shall be:
 - (1) licensed New Mexico teachers and shall be bona fide citizens; and
 - (2) shall be bona fide citizens and residents of the United States and New Mexico.
 - B. Applicants shall declare their intent to practice as teachers in designated high-risk teacher positions in the state.
- [X/X/13, 5.7.5.9 NMAC]

5.7.5.10 LOAN REPAYMENT AWARD CRITERIA; CONTRACT TERMS; PAYMENT

- A. Loan repayment award criteria shall provide that:
 - (1) award amounts shall be dependent upon a specific public school's need for the designated high-risk 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) preference in making awards shall be to 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 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 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 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 teacher position, quarterly 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.

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.

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."

[X/X/13, 5.7.5.10 NMAC

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.

[X/X/13, 5.7.5.11 NMAC

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 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.

[X/X/13, 5.7.5.12 NMAC

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.

[X/X/13, 5.7.5.13 NMAC

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 teacher position, the reason the teacher is not serving in a designated high-risk teacher position, the amount owed on the teacher's loan and the amount paid on the teacher's loan by any loan repayment awards.

[X/X/13, 5.7.5.14 NMAC