

Comment 1

EXHIBIT A
5.5.2 rulemaking

Dr. Noonan,

Again, thank you for meeting with the New Mexico Council of Graduate Deans to discuss the NMAC proposal. Our discussion yield four (4) suggested changes to the NMAC proposal:

1. Advisory committee meet twice a year in a regular schedule.
2. Change the 90 days rule to 30 days.
3. Consistent use of either substantial or significance language throughout NMAC
4. Under, board of fiancé in D and E, use significant or substantial change.

Let me know if you need clarification or additional information. Staying connected.

Loui-Vicente Reyes
Chair
New Mexico Council of Deans

Comment 2

To Whom It May Concern,

I strongly disagree with the proposed RULEMAKING TO REPEAL AND REPLACE 5.5.2 NMAC, 5.5.6 NMAC, 5.55.6 NMAC, GENERAL EDUCATION CURRICULUM, rule 5.5.6 NMAC APPROVAL OF NEW UNDERGRADUATE PROGRAMS AND 5.55.7 NMAC, META-MAJORS AND TRANSFER MODULES.

These changes take major decision making authority out of the hands of regional Board of Regents and puts the power into the hands of a political appointee, the Cabinet Secretary. This seems like a power grab to me. Our state constitution provides for a University Board of Regents system. The transfer of power to a political appointee is totally unacceptable. The region should be allowed to decide what educational programs they want at their regional universities. We send money to the state. The state is dependent on us. We should have a say in how our funds are spent. We do not want to have a cabinet secretary who has never lived in this region and has no ties to the University making decisions for us on what programs we can and cannot offer. We have a long history of fiscal responsibility. If some Universities do not, then they should suffer the consequences. Punishing all is an authoritarian strategy with historically poor results. I urge you to reconsider the path these changes take the state along before we all have to pay for the mistakes made by some. The results are never what you expect and the unintended consequences will not be to anyone's benefit, except the few how hold state power.

Lynnette Roller

Comment 3

In response to a request for public comment, I would like to communicate my candid misgivings regarding proposed changes to NMAC rules 5.5.2 and 5.5.6. To provide context, this feedback is based on decades of experience as an educator and administrator at a regional university in New Mexico, and a strong record of national and international leadership in higher education. Above all, it is informed by my genuine interest as a tax-paying citizen and parent, and my consistent civic engagement and dedication to this region and to the state of New Mexico. I have no doubt that the proposed changes are well-intentioned and that they have been drafted with a sincere desire to benefit our state and its residents, but I have deep concerns about the unintended consequences of these measures –repercussions which may not have been duly considered-- and their serious potential for negative impact in our state.

Since there is already a requirement in place for state-level approval of new programs at the graduate level, the proposed changes to graduate program approval are more limited than those related to undergraduate program approval. Nonetheless, the proposal (5.5.2) eliminates some critical areas of institutional authority and responsibility by expanding the scope of decisions which would be subject to external review and governed under the sole approval authority of a single individual –the cabinet secretary. The proposed revisions to NMAC 5.5.6, however, are significantly more far-reaching. They establish completely new external approval requirements for a broad range of curricular decisions heretofore determined at the institutional level, either through well-established review practices compliant with both internal governance policies and external accreditation requirements, or –for more significant changes—by a combination of rigorous institutional review and board approval. My observations regarding the sweeping changes that have been proposed fall under several categories of concern:

1. Obstruction of the ability of colleges and universities to respond with agility to the needs of New Mexico stakeholders in their respective regions:

- Regional institutions of higher education have a responsibility to their service region to respond effectively and promptly to economic, knowledge- and skills-based, social, cultural, and civic needs in their corresponding service areas.
- Rigorous internal review processes already impose inevitable constraints on the ability to act in a timely manner to meet needs as they arise in a rapidly-changing society and economy.
- The addition of extra layers of review and approval will significantly decrease effective response rates, unnecessarily extend timelines for implementation, and place our state’s stakeholders at a serious risk of constantly being at the trailing edge of change and innovation.
- This will also impact our ability to stay appropriately competitive in a regional, national, or global environment.
- The inclusion of new emphases or concentrations, program deletions, and vaguely-defined “substantial” changes (as well as potentially arbitrary interpretations of the notion of “duplication” within the context of regional need and demand) as actions subject to these extra levels of scrutiny would create substantial roadblocks to vital curricular refinements intended to remedy gaps or shortcomings that an institution discovers through program review, data collection, stakeholder and employer feedback, and emerging shifts in the field.

2. Jeopardization of accreditation status:

- Many accrediting bodies, particularly those in some of our most seriously under-staffed professions (like health and human services disciplines), require evidence of program and institutional authority and autonomy over curricular issues.
- Taking final authority out of the institution’s hands and concentrating it in the cabinet secretary would jeopardize our ability to meet external accreditation standards for some of the state’s most critical programs.
- Extended timelines for approval could prevent accredited programs from timely implementation of changes that are required to maintain accreditation status.
- Without accreditation, we would lose these programs and our graduates would not be licensed or certified to practice in their respective fields. This would seriously impact our ability to keep abreast of the state’s need for qualified practitioners.

3. Concentration of sole authority for approval in a single position:

- No matter how highly qualified or well-intentioned the cabinet secretary might be, it is extremely unlikely that any single individual would have sufficient expertise and qualifications to ensure familiarity with and first-hand experience in the wide range of institutional contexts that constitute New Mexico Higher Education. There is a substantive difference in the mission and practice of junior and community colleges, regional comprehensive, research-intensive, and technical/engineering institutions. Likewise, the geographical and demographic demands, as well as the service missions of rural and urban campuses, and other regionally-determined priorities of our institutions vary greatly. Concentration of

such broad authority under a single person, particularly with the only avenue of appeal being to that same person, does not ensure the appropriate breadth of expertise or informed participation for effective decision-making, with serious detrimental consequences for our state, its citizens, and –most importantly–its students.

- There will inevitably be a perceived or even an actual conflict of interest when the sole authority for decision-making rests in a single person who has more experience or affiliation with a specific type of institution or a particular region within the state. This will be exacerbated if that person’s first-hand expertise related to the given programs or disciplines under review is limited or null.
- The perceived or real micro-management of any enterprise –in this case, institutional curriculum in higher education—is counter-productive to administrative efficiency and agility. It also unnecessarily creates an atmosphere of distrust and demoralization. This is especially so when authority is shifted from a defined internal process that complies with principles of shared governance to the external authority of single individual who lacks extensive first-hand knowledge of the institutional context. Should a problem be identified with the rigor of the internal review process that has been approved and implemented by a specific college or university’s governance and administration, its governing board and its accrediting bodies, then an effort should be made to strengthen and improve that process rather than circumventing it by moving decision-making for approval to a sole external authority. There are more effective ways to ensure responsible oversight and stewardship of academic programs and the resources that we dedicate to them.

For all of these reasons, I believe that the proposed revisions outlined in 5.5.2 and 5.5.6 are both unwise and over-reaching. The concentration of absolute authority in a single individual is sometimes contemplated as a hypothetically convenient solution to perceived problems; however, it is rarely the ideal solution, except as an extraordinary measure (with compelling justification in the most extreme circumstances), not as common practice.

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on May 16, 2018. The hearing will begin at 10:30 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed repeal and replace of 5.5.2 NMAC, **APPROVAL OF NEW GRADUATE PROGRAMS.**

Purpose:

Whereas by statute, Section 21-2-5 NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-1-24 NMSA 1978, the New Mexico Higher Education Department has the authority to adopt rules and regulations for oversight of all new state-funded graduate degree programs, the department proposes repeal and replace of 5.5.2 NMAC, **APPROVAL OF NEW GRADUATE PROGRAMS.**

Summary of proposed rule:

The department proposes repeal and replace to update the process for approval and maintenance of all graduate degree programs proposed by all higher education institutions defined in Article XII, Section 11 of the New Mexico Constitution. The proposed rule establishes the following related to graduate degree programs: a process by which the department reviews proposed new graduate degree programs or proposed changes to graduate degree programs; the advisory review committee; factors by which new graduate degree programs or changes to graduate degree programs will be evaluated; how institutions are to request classification of instruction programs codes; a process by which initiations obtain New Mexico State Board of Finance approval; and reporting requirements for institutions.

Details for Obtaining a Copy, Public Hearing and Comments: The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the "Recent Posting" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact core.competencies@state.nm.us or 505-476-8407.

A public hearing will be held from 10:30 a.m. until 11:30 a.m. at NMHED on May 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or core.competencies@state.nm.us. Written comments must be received no later than 5:00 p.m. on May 11, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-8, Section 21-2-5, Section 21-1-26 NMSA 1978, and Section 21-1-24 NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact 505-476-8407 or email core.competencies@state.nm.us ten (10) business days prior to the hearing.

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TITLES POST-SECONDARY EDUCATION
CHAPTERS POST-SECONDARY EDUCATIONAL PROGRAMS
PART 2 APPROVAL OF NEW GRADUATE PROGRAMS

5.5.2.1 ISSUING AGENCY: New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505, (505) 476-8400.
[5.5.2.1 NMAC - Rp, 5.5.2.1 NMAC, XX/XX/XX.XX]

5.5.2.2 STATUTORY AUTHORITY: Section 9-25-8 NMSA 1978, Section 21-2-5 NMSA 1978, Section 21-1-26 NMSA 1978, and Section 21-1-24 NMSA 1978.
[5.5.2.2 NMAC - Rp, 5.5.2.2 NMAC, XX/XX/XX.XX]

5.5.2.3 SCOPE: All graduate programs offered by a public research or comprehensive higher education institution, as defined in Article XII, Section 11 of the New Mexico constitution.
[5.5.2.3 NMAC - Rp, 5.5.2.3 NMAC, XX/XX/XXXX]

5.5.2.4 DURATION: Permanent.
[5.5.2.4 NMAC - Rp, 5.5.2.4 NMAC, XX/XX/XXXX]

5.5.2.5 EFFECTIVE DATE: June 12, 2019, unless a later date is cited at the end of a section.
[5.5.2.5 NMAC - Rp, 5.5.2.5 NMAC, XX/XX/XXXX]

5.5.2.6 OBJECTIVE: To provide a process for objective review of proposed graduate programs. Any public higher education institution operating within and receiving financial support from the state of New Mexico shall follow the procedures set out by the department before making any substantial change or creating a new graduate degree program.
[5.5.2.6 NMAC - Rp, 5.5.2.6 NMAC, XX/XX/XX.XX]

5.5.2.7 DEFINITIONS:

- A. "Area of Study" mean...
 - B. "Department" means the New Mexico higher education department.
 - C. "Dormant programs" means degree programs that have not admitted new students for a period of three consecutive years.
 - D. "Graduate program" or "program" means a sequence of courses, activities or experiences which leads to award of any degree beyond the baccalaureate degree, including a master's degree, doctoral degree, or professional degree in fields such as law, medicine or other professions.
 - E. "Institution" means a public research or comprehensive higher education institution, as defined in Article XII, Section 11 of the New Mexico constitution operating within and receiving financial support from the state of New Mexico.
 - F. "New graduate program" means one that differs from currently approved programs at the proposing institution, in terms of level of degree or area of study.
 - G. "Post-baccalaureate certificate" means a program of study that is designed to develop or enhance a focused area of expertise, provide specific skill training and to enhance employability.
 - H. "Substantial change" is a:
 - (1) ~~change to more than one-third of the program's curriculum;~~
 - (2) ~~change that adds a new area of study at the institution; or~~
 - (3) ~~new level of degree in a previously created area of study.~~
 - I.
- [5.5.2.7 NMAC - Rp, 5.5.2.7 NMAC, XX/XX/XX.XX]

5.5.2.8 GENERAL REQUIREMENTS:

- A. No graduate degree program established after the effective date of 5.5.2 NMAC, nor any student enrolled in that program, shall be eligible for inclusion in any of the department's funding recommendations unless the program has been approved by the department cabinet secretary and New Mexico state board of finance.
- B. The department will maintain an inventory of graduate degree programs that are offered at each institution. The department shall update the degree inventory and list of degree requirements to include changes reported to the department by the institutions.
- C. A program, option, concentration or specialization that has been prepared to meet a request of a

5.5.2 NMAC

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Comment [1]: "Area of Study" is used throughout, and is very vague. If this terminology is going to be used it should be defined here.

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Comment [2]: Define "1/3" – does this mean 1/3 of credit hours, 1/3 of required courses, etc.

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Comment [3]: Programs may opt to alter less than 1/3 of a degree program over consecutive years, and thereby change a 'substantial' portion of the program while circumventing this process. Who would measure/track this?

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particular employer and that will be financially supported by that employer is not subject to approval by the department or the New Mexico state board of finance. However, such programs are considered restricted and do not receive state funding. Students enrolled in such programs are not eligible for any state support until the program is approved pursuant to 5.5.2 NMAC and the program becomes unrestricted.

EXHIBIT A
5.5.2 rulemaking

5.5.2 NMAC

[5.5.2.8 NMAC - Rp, 5.5.2.8 NMAC, XX/XX/XXXX]

5.5.2.9 SUBJECT TO APPROVAL: The following actions require the approval of the department cabinet secretary and the New Mexico state board of finance:

- A. Addition of a new graduate program.
- ~~B. Addition of a doctoral degree in an area of study in which a master's degree is already awarded.~~
- ~~C. Addition of a master's degree in an area of study in which a doctoral degree is already awarded.~~
- ~~D. Addition or deletion of a program option, concentration or specialization that will result in a new degree level or area of study.~~
- E. Any substantial change in an existing graduate degree program.
- F.
- G.
- H.
- I. Addition of a post-baccalaureate certificate that requires additional funding, faculty or facilities.

[5.5.2.9 NMAC - Rp, 5.5.2.9 NMAC, XX/XX/XXXX]

5.5.2.10 ADVISORY REVIEW COMMITTEE:

- A. The department shall convene an advisory review committee, chaired by the department cabinet secretary or designee, to evaluate applications submitted by institutions seeking approval of a new graduate program or a significant change to an existing graduate program. The advisory committee shall make a recommendation to the department cabinet secretary. The authority to determine whether a program is submitted to the New Mexico state board of finance rests solely with the department cabinet secretary.
- B. The advisory review committee shall be convened in early June and early December each year, and may be convened for additional meetings at the request of the department.
- C. The advisory review committee shall consist of:
 - (1) the cabinet secretary or designee of the New Mexico higher education department;
 - (2) the cabinet secretary or designee of the New Mexico department of workforce solutions;
 - (3) the cabinet secretary or designee of the New Mexico department of finance and administration;
 - (4) the cabinet secretary or designee of the New Mexico department of economic development; and
 - (5) the director or designee of the New Mexico legislative finance committee.

[5.5.2.10 NMAC - Rp, 5.5.2.10 NMAC, XX/XX/XXXX]

5.5.2.11 APPROVAL BY THE DEPARTMENT:

- A. Advance notice of the intent to submit an application for a new graduate program shall be submitted to the department, on the form provided by the department, at least 30 days prior to submission of the application.
- B. Before submitting an application to create a new graduate program, an institution must have completed all internal reviews required by the institution, including approval by the board of regents.
- C. An institution must submit a completed application to the department, on a form provided by the department, at least 6 months prior to the anticipated date of program implementation.
- D. A completed application shall include approval by the New Mexico council of graduate deans. It is the sole responsibility of the institution to comply with all requirements of the council of graduate deans and seek approval within a timeframe that allows the institution to comply with all necessary deadlines set by the department.
- E. The department shall conduct initial review of an application. The department may request additional information from the institution for use in its initial review. The department shall determine whether the application is correctly and fully completed. If the department determines that an application is not correctly and fully completed, the department shall return the application to the institution with recommendations as to how deficiencies may be remedied. An application shall not be presented to the advisory review committee until the department has completed initial review and determines that the application is correctly and fully completed.
- F. If the application is submitted on or before the deadline published by the department, consideration of the application shall be placed on the next advisory committee meeting agenda. If the institution submits the form after the published deadline, consideration of the application will be postponed until the subsequent advisory committee meeting.

5.5.2 NMAC

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Comment [4]: Define "area of study" in the definition section, or delete - e.g. does this mean a new CIP code? (2 digit, 4 digit, or complete 6 digit CIP change)?

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Comment [5]: Given the definition of 'substantial change' (moved to definition section above) this is redundant with B, C, and D above. I.e. delete B, C and D

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Moved up [1]: A substantial change is a:
- change to more than one-third of the program's curriculum;
- change that adds a new area of study at the institution; or
- new level of degree in a previously created area of study.

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G. The department shall have a representative present during the advisory committee meeting to present the application. The department representative shall not be an advisory committee member.

H. A representative from the applicant institution shall be present during the advisory committee meeting and shall be prepared to respond to questions presented by the advisory committee. The institutional representative shall not be considered a member of the advisory committee and may not cast a vote on any matters before the committee.

I. The advisory committee may recommend to approve, disapprove, or return a proposal to the sponsoring institution, for modification.

J. After receiving a recommendation from the advisory committee, the department cabinet secretary shall make the final determination as to whether the new program or change shall be presented to the New Mexico state board of finance.

K. At any point during the review process, the institution may withdraw its application.

L. If the department cabinet secretary determines the application for a new graduate program or a change to an existing graduate program will not be presented to the New Mexico state board of finance, the institution may file an appeal to the department within 10 days of issuance of the decision by the department cabinet secretary. The appeal must contain the institution's arguments for reversal of the decision, clearly labeled accordingly. The appeal must be mailed to the department cabinet secretary via certified mail. The department cabinet secretary will evaluate the merits of the appeal and consider the arguments of the institution. Upon review by the department cabinet secretary, a final written determination will be sent to the institution within 20 days of receipt of the appeal. While an appeal is pending, the institution and the department are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. The institution may withdraw an appeal at any time before the secretary reaches a final decision. [5.5.2.11 NMAC - N, XX/XX/XXXX]

5.5.2.12 APPROVAL BY THE NEW MEXICO STATE BOARD OF FINANCE

A. If the department cabinet secretary determines the program or change shall be presented to the New Mexico state board of finance, the department shall notify the institution of the date when the New Mexico state board of finance has scheduled its consideration of the proposal.

B. The department will submit a summary of the proposed program along with the recommendation of the department cabinet secretary to New Mexico state board of finance. A representative of the applicant institution shall be present to answer questions, present information or provide justification of the proposal to the New Mexico state board of finance.

C. If the New Mexico state board of finance denies the request for a new program or a change to an existing program, the department will not reconsider the application. The institution must initiate a new application process addressing the concerns of the New Mexico state board of finance.

D. No new graduate program or change to an existing graduate program shall be effective unless approved by the New Mexico state board of finance.

E. New graduate programs or changes to existing graduate programs shall not be included in institutional catalogs until the institution receives the approval of the New Mexico state board of finance. [5.5.2.12 NMAC - N, XX/XX/XXXX]

5.5.2.13 **FACTORS CONSIDERED IN APPLICATION REVIEW:** The department and advisory committee will consider factors from both an institutional and statewide perspective when reviewing an application for a new graduate degree program or substantial change to an existing graduate degree program. The department and advisory committee reserve the right to consider additional factors and to weigh factors differentially when reaching decisions that best meet the interests of the state of New Mexico. Factors that may be considered include, but are not limited to the following:

- A. purpose that is consistent with the mission of the proposing institution;
- B. curriculum;
- C. state and regional needs met by the program;
- D. duplication of existing programs and cooperative arrangements with other institutions;
- E. enrollment and credit hour projections for the first five years;
- F. the extent to which the institution is ready to initiate the program, citing the remaining needs and recognizing each of those needs in the cost analysis developed pursuant to Subsection H of 5.5.2.13 NMAC;
- G. assessment for program effectiveness, including criteria and timeline; and

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H. projected cost of the program and the sources of funding that will support it, completed in collaboration with the institution's financial office.
[5.5.2.13 NMAC - N, XX/XX/XX.XX]

5.5.2.14 **REQUESTING A CLASSIFICATION INSTRUCTIONAL PROGRAMS CODE:**

A. When a new graduate program is approved, the institution must submit a classification of instructional programs (CIP) code request form and documentation of approval by the New Mexico state board of finance to the planning and research division of the department.

B. The planning and research division of the department will assign and approve the use of a new CIP code.
[5.5.2.14 NMAC - N, XX/XX/XX.XX]

5.5.2.15 **REPORTING:**

~~A.~~ Institutions shall report to the department ~~the following at least 30 days prior to the implementation:~~

- (1) Implementation of new graduate programs;
- (2) Implementation of new post-baccalaureate certificate programs;

B. Institutions shall report to the department the following at least 30 days prior:

- 1) discontinued graduate programs; and
- 2) any change that does not reach the level of significant change

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Comment [12]: This should be incorporated into the approval process, rather than a standalone, additional process.

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Comment [13]: How/to whom will changes be submitted?

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Comment [14]: Separate these since the new programs already had to be approved, this will not cause further delay in implementing the program (e.g. 30 [or 90] additional days after HLC approval could prevent a program from being offered in a given semester, or fro

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D. Any items reported to the department in Subsection A of 5.5.2.15 NMAC shall include CIP code, curriculum, campus location, and program requirements.

E. Institutions shall annually report dormant programs to the department on a date set by the department.
[5.5.2.15 NMAC - N, XX/XX/XX.XX]

HISTORY OF 5.5.2 NMAC:

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

BEF Rule 210, Graduate Programs - Approval of New, 2/26/1985.

CHE Rule 210, Graduate Programs - Approval of New, 5/4/1990.

History of Repealed Material:

5.5.2 NMAC - Approval of New Graduate Programs, filed 2/28/2007 was Repealed and Replaced by 5.5.2 NMAC - Approval of New Graduate Programs, effective XX/XX/XX.XX

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EXHIBIT A

5.5.2 rulemaking