

## Armijo, Alicia, HED

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**Sent:** Thursday, June 6, 2024 3:41 PM  
**To:** Info, HigherEd, HED  
**Cc:** Scot Sauder  
**Subject:** [EXTERNAL] Comments re Rule 5.7.20, NMAC, Legislative Lottery Scholarship Program  
**Attachments:** Comments to Notice of Proposed Rulemaking - Lottery 2024-0606.pdf

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Thank you for promulgating these rules following the amendment of the Legislative Lottery Tuition Scholarship Act. The University of New Mexico appreciates the opportunity to comment on the proposed regulations.

On behalf of UNM, at the request of Interim General Counsel, Scot Sauder, attached are UNM's comments to the proposed rulemaking concerning NMAC 5.7.20, Legislative Lottery Scholarship Program.

Thank you for your consideration of our comments.

Best regards,

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TO: New Mexico Higher Education Department

VIA: [HigherEd.Info@hed.nm.gov](mailto:HigherEd.Info@hed.nm.gov)

FROM: The University of New Mexico

DATE: June 6, 2024

RE: Comments to Notice of Proposed Rulemaking re  
NMAC 5.7.20, Legislative Lottery Scholarship Program

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The comments below focus on UNM's concern that the proposed rule creates some confusion regarding initial and continuing eligibility for the Lottery Scholarship due to the addition of the summer semester. Additional defined terms are essential to the application of the proposed regulations. For example, the definition of an Academic Year (a term relied on for credit calculation and qualifying semester) needs to identify when it starts because the term is critical for institutions and students in determining continuing eligibility. Clarification is also needed with respect to continuing eligibility in that the minimum credits for eligibility as stated in the proposed regulation could lead one to believe that a student need only take 12 credits each Fall and Spring semester and 3 credits in the Summer semester (based on the minimums cited), but in reality, students need to *earn* 30 credits during an academic year to remain eligible for the Lottery Scholarship. Finally, institutions need clarity as to whether the Lottery Scholarship is accessible to students in an accelerated program (e.g., Nursing) that requires a summer semester of more than nine (9) credit hours.

UNM's specific comments are as follows:

**1. Proposed Rule:** Section 5.7.20.7 Definitions

**Recommendation:** In general, and if possible, UNM recommends that all definitions be capitalized in the definitions section and when used throughout the regulations so the reader is aware that a specific word or phrase is a defined term in Section 5.7.20.7 of the regulations.

**2. Proposed Rule:** 5.7.20.7(G) "Full-time" means 30 credit hours completed each regular academic year at a research institution, comprehensive institution or tribal institution or 24 credit hours completed per academic year at a community College. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student's home institution.

**Recommendation:** Consistent with the recommendation above, UNM recommends the definition of "full time" in the regulation be revised as follows because the word "regular" seems unnecessary and clarity is needed as to the Academic Year used to measure a student's completion of credits. Depending on when a student enrolls, the Academic Year may start in January or August with a summer semester included as the second or third

semester of the Academic Year. UNM recommends the use of the term “successfully completed” as used throughout the Opportunity Scholarship regulations.

*“Full-time” means thirty (30) credit hours successfully completed each ~~regular~~ Academic ~~Year~~ at a research institution, comprehensive institution or tribal institution or 24 credit hours successfully completed per ~~Academic~~ Year at a community College. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student’s home institution.*

**3. Proposed Regulation: 5.7.20.7(N) “Qualified student”**

**Recommendation:** There are three terms used in the definition of Qualified Student that are not defined in the proposed regulations:

“qualifying post-secondary institution”

“qualifying semester” and

“secondary educational program”

UNM recommends that these terms be defined in the regulations because they are used throughout the proposed regulation.

UNM recommends “qualifying post-secondary institution” be defined and address the type of institutions within or outside of New Mexico that are considered qualifying.

UNM does not recommend that the summer semester be considered a “qualifying semester” for new students that graduated high school or completed a secondary educational program in December or May preceding Fall enrollment, or for transferring students under Section 5.7.20.7(N)(3). This exclusion, if adopted, would need to be clarified in the regulation.

**4. Proposed Regulation: 5.7.20.7(Q) “Summer semester” means a semester equal to fall or spring semester in duration and intensity.**

**Recommendation:** S.B.239 did not add a definition for summer semester. Because a summer semester at a four-year institution may be unequal to a fall or spring semester, especially with respect to classes offered and credits covered by the Lottery Scholarship, UNM recommends the definition be aligned with the one used in the Opportunity Scholarship regulations and be revised as follows:

*“Summer ~~s~~Semester” means a semester ~~equal~~ similar to fall or spring semester in duration ~~and or~~ intensity.*

**5. Proposed Regulation: 5.7.20.7(S) “Tuition scholarship” means the scholarship that provides tuition assistance per semester for qualified students.**

**Recommendation:** Because UNM administers and/or provides several scholarships that provide tuition assistance each semester to its students, including during the first semester



of enrollment in the form of a lottery bridge scholarship, UNM recommends the definition in this regulation be revised as follows:

5.7.20.7(S) "Tuition ~~s~~Scholarship" as used herein means the scholarship authorized by NMSA 21-21N-1, et seq., that provides tuition assistance per semester for qualified students, commonly referred to as the "Lottery Scholarship".

6. **Proposed Regulation:** 5.7.20.8(A) Initial Eligibility. (3) has enrolled in no fewer than twelve credit hours in the fall and spring semesters and between three and nine credit hours for summer semesters; provided that the student is not required to attend summer semesters to maintain eligibility unless required as part of an accelerated program; and further provided that during a summer semester the student may enroll in more than nine credit hours but the scholarship will be capped at the tuition charged for nine credit hours; and

**Recommendation:** By adding the language regarding summer enrollment, there arises a potential conflict with the gap year part-time enrollment and could be interpreted as allowing the summer semester as a qualifying semester for initial eligibility. The new language is also potentially misleading in that a student may need to attend summer session in order to maintain eligibility if the student is short on credits needed to maintain eligibility. Finally, the proposed regulation does not permit a student in an accelerated program to be covered for more than 9 credit hours of tuition during their required summer semester. UNM recommends section A and subsection (3) be revised as follows:

- A. A Tuition sScholarship may be awarded to a student in their Spring or Summer second sSemester who has met first semester eligibility requirement as follows:

(3) has successfully completed~~enrolled in~~ no fewer than twelve credit hours in the immediately preceding fall and spring semesters~~and between three and nine credit hours for summer semesters~~; provided that the student is not required to attend summer semesters to maintain eligibility for the Tuition Scholarship ~~unless required as part of an accelerated program necessary to complete the minimum credits required within the Academic Year to maintain eligibility for the Tuition Scholarship~~; and further provided that during a summer semester the student may enroll in more than nine credit hours but the Tuition sScholarship will be not cover more than capped at the tuition charged for nine credit hours of tuition unless the student is in a required accelerated program; and

7. **Proposed Regulation:** 5.7.20.9 Continuing eligibility.

**Recommendation:** Similar to the comments above regarding initial eligibility, UNM is also concerned that subsection (B)(1) and (C)(1) will be misinterpreted in that it states that "a student is not required to attend summer semesters to maintain eligibility unless required as part of an accelerated program." If a student only completes the minimum of 12 credit hours in the Fall and Spring semesters referenced in Section (B), the student *will* be required to attend a summer semester and complete at least 6 hours of

credit to maintain eligibility. UNM recommends the language be revised to take this situation into account.

UNM recommends that Section 5.7.20.9(B) and (C) state that a student must “successfully complete” the required credit hours.

**8. Proposed Regulation:** 5.7.20.9 Continuing eligibility

**Recommendation:** Due to the administrative burden caused by a new transfer student beginning their enrollment in the summer semester, UNM recommends that Section 5.7.20.9(C)(2) be revised as follows:

*(2) upon transferring from a two-year public post-secondary educational institution to a four-year public post-secondary educational institution or a tribal college at the start of the Fall or Spring Semester ~~the student has started a new academic year.~~*

**9. Proposed Regulation:** 5.7.20.11 Duration of scholarship.

**Recommendation/Comment:** UNM recommends that the subsection A of this proposed regulation clarify that the summer semester cannot be used as the qualifying semester for scholarship eligibility (i.e., “second semester” cannot be the Fall semester).

UNM also notes that while consistent with the amended Act, the maximum scholarship duration no longer makes sense when calculated in terms of calendar years (i.e., “three and one-half years”). Because the calculation of three and one-half years will vary depending on the start of the student’s Academic Year, UNM recommends the phrase “no more than three and one-half years” be deleted from Section 5.7.20.11(A).

Because the Lottery Scholarship now covers summer semester tuition, UNM seeks clarification regarding Section 5.7.20.11(B) because the current language seems to *require* a student transferring from a two-year institution or tribal college after receiving an Associate’s degree to enroll in the four-year institution’s summer semester because summer may be “the semester following receipt of the associate’s degree.”

**10. Proposed Regulation:** 5.7.20.13(A)(9) Administration of scholarship, merit aid.

**Recommendation/Comment:** UNM recommends that the term “institutional award” and “qualifying semester” be defined in the regulations. Many merit-based and institutional award packages are not intended to be tuition and/or fee specific and may have been intended by the grantors to apply to any component of a student’s cost of attendance. By requiring that these forms of aid be applied before the Lottery or Opportunity Scholarship is considered contrary to the intent of the merit awards. The proposed order of application possibly disincentives students to strive for these merit awards when they realize that they gain no direct benefit or ability to use the funds for incidentals or other costs of attendance.

In addition, the final sentence in Section 5.7.20.13(A)(9) seems to indicate that if a student does not qualify for any merit based aid during their first semester of enrollment, they may use the Opportunity Scholarship to cover their first semester tuition *and* fees. This language is inconsistent and detrimental to the students that qualified for merit based aid during the first semester because the proposed regulation indicates that they may not use the Opportunity Scholarship for anything beyond tuition. This may leave students that received merit or institutional aid responsible for their student fees whereas students that received no merit or institutional aid are covered completely for tuition and fees.