

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 30 EDUCATION TRUST BOARD AND EDUCATION SAVINGS PROGRAM

5.7.30.1 ISSUING AGENCY: Education Trust Board, State of New Mexico.
[5.7.30.1 NMAC - Rp, 5.7.30.1 NMAC]

5.7.30.2 SCOPE: Provisions for 5.7.30 NMAC apply to the Education Trust Board and the education savings program
[5.7.30.2 NMAC - Rp, 5.7.30.2 NMAC]

5.7.30.3 STATUTORY AUTHORITY: Sections 21-21K-1 through 21-21K-7 NMSA 1978
[5.7.30.3 NMAC - Rp, 5.7.30.3 NMAC]

5.7.30.4 DURATION: Permanent
[5.7.30.4 NMAC - Rp, 5.7.30.4 NMAC,]

5.7.30.5 EFFECTIVE DATE: October 15, 2017
[5.7.30.5 NMAC - Rp, 5.7.30.5 NMAC,]

5.7.30.6 OBJECTIVE: The Education Trust Board is responsible for developing and administering a education savings program under the Education Trust Act in a manner that allows account owners and beneficiaries to obtain and maintain federal tax benefits or treatment provided by the Internal Revenue Code for qualified state tuition programs and exemptions under federal securities laws. The promulgation of these rules is intended to inform the public and provide an orderly procedure to accomplish the board's responsibilities as provided by law.
[5.7.30.6 NMAC - Rp, 5.7.30.6 NMAC, 10/31/2017]

5.7.30.7 DEFINITIONS: The following terms shall have the following meanings in this rule:

- A. "Act" means Section 21-21K-1 et seq. NMSA 1978.
- B. "Board" means the education trust board of the state of New Mexico.
- C. "Chair" means the chair of the board or any person acting under the delegated authority of the chair.
- D. "Education investment agreement" means an agreement between an account owner and the board providing for the establishment by the account owner of an account within the education trust fund and for the administration of such account for the benefit of the account owner and of the beneficiary.
- E. "Education savings program" means the education savings program administered by the board as described in and governed by the act and this rule, which may include one or more education savings plans.
- F. "Federal requirements" means the provisions of the internal revenue code, as amended from time to time, for qualified state tuition programs, and includes any promulgated regulations, proposed regulations and any administrative or judicial rulings, if such are applicable in the opinion of the chair or board counsel.
- G. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.
- H. "Members" means the members of the education trust board of the state of New Mexico.
- I. "Program procedures and guidelines" means such operating procedures and guidelines for administration of the education savings program, consistent with the act, this rule and federal requirements, as may be established by the board.

[5.7.30.7 NMAC - Rp, 5.7.30.7 NMAC,]

5.7.30.8 EXECUTIVE DIRECTOR AND ADMINISTRATION:

A. The board shall select and hire an executive director, based upon a demonstrated history of relevant skills and abilities, whose responsibility it shall be to perform such duties as may be delegated by the board, including but not necessarily limited to the direction and oversight of the day-to-day administration of the education trust fund.

B. The executive director shall have the authority to act in the areas delegated to the executive director by the board.

C. The executive director shall select and supervise staff and contractors or consultants appointed or retained by the board, and shall perform such other functions as may be necessary to supervise, direct, conduct and administer the day-to-day duties of the board as authorized by law or by rules and policies adopted by the board.
[5.7.30.8 NMAC - Rp, 5.7.30.8 NMAC,]

5.7.30.9 EDUCATION SAVINGS PROGRAM:

A. Account applications requirements:
(1) each applicant shall submit an application to the board or any agent or contractor designated by the board on such forms and with such attachments as the board may require;
(2) the application shall contain such information as the board may determine to be necessary or appropriate to evidence compliance with the federal requirements; and
(3) one person shall be designated as the beneficiary for each account.

B. Education investment agreements:
(1) the board will enter into an education investment agreement with each account owner;
(2) the education investment agreement may include such information as the board may determine to be necessary or appropriate to evidence compliance with the federal requirements; and
(3) applications and education investment agreements may be submitted, accepted and become binding contracts by means of digital or electronic communication, including internet-based submission platforms, digital or electronic signatures, and other methods of digital or electronic transmission, as prescribed in the program procedures and guidelines.

C. Participation in the education saving program is available to any individual or legal entity with a valid social security number or taxpayer identification number for the benefit of any individual with a valid social security number or tax identification number.

D. Investment of account assets; limitations on contributions:
(1) no account owner or beneficiary may directly or indirectly direct the investment of any contributions or of any other amounts held in an account except as permitted under the federal requirements; however, at the time an account owner opens an account, an account owner may choose among any investment options offered by the board;
(2) contributions may be made at any time subject to any minimum deposit requirements established by the board; and
(3) total contributions to all accounts established under the education savings program which have the same beneficiary may not exceed the maximum amount as determined by the board in accordance with program procedures and guidelines and federal requirements.

E. Ownership of contributions and earnings; withdrawals:
(1) the account owner shall retain ownership and control of all contributions made to an account under any education investment agreement and earnings on those contributions while held in such account;
(2) only the account owner for each account may close an account and receive or direct a withdrawal of amounts contributed (and earnings);
(3) upon receipt of documentation required in accordance with program procedures and guidelines, the board will make distributions from an account as expressly directed by the account owner; and
(4) although the board will report the earnings portion of all withdrawals from an account, it will solely be the responsibility of the account owner to calculate, report and pay any resulting tax liability.

F. Administrative fees:
(1) each education investment agreement may provide for payment to the board of an annual administrative fee based on amounts in the account accrued daily at an annualized rate or as otherwise calculated and at a level as determined by the board, and such fees may be used by the board only for costs permitted by the act; and
(2) customary and usual investment costs (including fees and expenses of any fund in which account assets are invested) and distribution costs approved by the board may be deducted from an account in connection with the investment thereof and are not included in the administrative fee, and any customary and usual account maintenance fees approved by the board may also be deducted from accounts.

G. Waiver of rule. The board may waive any requirements of this rule, except to the extent that the requirement is mandated by the act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the education savings program.

[5.7.30.9 NMAC - Rp, 5.7.30.9 NMAC,]

5.7.30.10 CONTACT ENTITY INQUIRIES REGARDING THIS ISSUANCE SHOULD BE

5.7.30 NMAC

ADDRESSED TO: Education Trust Board, State of New Mexico, attention: Executive Director.
[5.7.30.10 NMAC - Rp, 5.7.30.10 NMAC,]

5.7.30.11 EXHIBITS: [RESERVED]
[5.7.30.11 NMAC - Rp, 5.7.30.12 NMAC,]

HISTORY OF 5.7.30 NMAC:

HISTORY OF REPEALED MATERIAL: 5.7.30 NMAC, Procedures, Standards and Eligibility Requirements for Participation in the New Mexico Education Trust, filed 6/1/2001 - Repealed effective 10/31/2017. **5.7.30 NMAC, Education Trust Board and College Savings Program, filed 10/31/2017 – Repealed effective 2/4/2026.**

OTHER HISTORY: 5.7.30 NMAC, Procedures, Standards and Eligibility Requirements for Participation in the New Mexico Education Trust, filed 6/1/2001 was replaced by 5.7.30 NMAC, Education Trust Board and College Savings Program, effective 10/31/2017. **5.7.30 NMAC, Education Trust Board and College Savings Program, effective 10/31/2017 was replaced by 5.7.30 NMAC, Education Trust Board and Education Savings Program, effective 2/4/2026. The Education Trust was amended effective June 16, 2023 to include new definitions of qualified higher education expenses in conformity with IRC §529 and other relevant amendments.**