

**HIGHER EDUCATION**

**EDUCATIONAL OPPORTUNITY FUND**

**EOF Authority, Mission and Scope, and Undergraduate EOF Academic and Financial Eligibility**

**Proposed Amendments: N.J.A.C. 9A:11-1.2, 1.4, and 2.2**

Authorized By: Educational Opportunity Fund Board of Directors, Glenn B. Lang, EOF Executive Director.

Authority: N.J.S.A. 18A:71-28 et seq. and 18A:71-33 through 36; and Reorganization Plan 005-2011.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-009.

Submit written comments by March 23, 2013 to:

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The agency proposal follows:

**Summary**

The Educational Opportunity Fund (EOF) program provides students from educationally disadvantaged backgrounds with financial aid and other support services while attending participating New Jersey colleges and universities. The program is a collaborative effort. Under the general supervision of the New Jersey Higher Education, the EOF Board of Directors (EOF Board) administers the program and the participating institutions directly serve students.

Working with participating institutions, the EOF Board maintains a Statewide system to identify and recruit potential college students from backgrounds of historical poverty; develops eligibility criteria for EOF financial assistance based on students' income and their potential for success in college; establishes procedures to determine the amount of the academic year grants according to the total financial need of each student; and advises on the development, organization, and coordination of a wide range of educational support and enrichment activities.

The definition of "ability to benefit" is proposed for deletion at N.J.A.C. 9A:11-1.2 and the phrase is also proposed for deletion at N.J.A.C. 9A:11-2.2(d)1 because the recent passage of the Federal Consolidated Appropriations Act of 2012 no longer permits students to gain eligibility for Federal Title IV student assistance funds by passing an "ability to benefit" test. N.J.A.C. 9A:11-1.4(b) is proposed to be restructured in a paragraph form with the substance of existing subsection (b) proposed for recodification as paragraph (b)1. New N.J.A.C. 9A:11-1.4(b)2 is proposed, which states "Meet N.J.A.C. 9A:9-2.1(d)2, the New Jersey Higher Education Student Assistance Authority's rule governing the provision of documentation that an institution is authorized to participate in Title IV Federal student aid programs under the Higher Education Act of 1965, as amended and its implementing regulations."

As the EOF Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

## **Social Impact**

EOF students come from every county in New Jersey. They have generally lived and attended high school in neighborhoods characterized by depressed economic conditions, substandard educational services, and unequal opportunities. Approximately 60 percent of total EOF enrollment comes from the State's most distressed municipalities (communities that have been designated "labor surplus areas" by the New Jersey Department of Labor and Workforce Development and the U.S. Bureau of Labor Statistics). Fifty percent of the enrollment comes from school districts designated by the New Jersey Department of Education as district factor group "A" or "B" school districts. The vast majority of EOF students spend their elementary and secondary school years in public school districts that by all objective measures fail to provide the level of educational preparation required for success in the more demanding curricula and challenging majors of our colleges and universities. The elimination of the Federal "ability to benefit" provision will have no impact on EOF student enrollment because all of the participating campus programs require students to have a high school diploma or a GED. The proposed amendments will ensure that eligible students are receiving student financial aid from all the State and Federal programs that they are eligible for.

## **Economic Impact**

Funds for EOF student grants are derived from State appropriations, while the State and participating institutions share the costs of EOF program support services. The total Fiscal Year 2013 State appropriation for EOF (for student grants, program support services, and the King Scholarship) is \$38,974,000. Since State appropriations provide funds for EOF student grants, program enrollment is limited by the size of the annual appropriation. During the 2011-12 academic year, the EOF program had more than 13,300 students (unduplicated headcount) in 52

programs at 42 New Jersey colleges and universities. Approximately \$16.7 million of the annual \$38.9 million dollar appropriation is used for EOF Article III academic year student financial aid grants. The proposed amendments aim to ensure that the EOF program continues to serve individuals who have been burdened by long-term economic deprivation and a lack of access to high-quality educational preparation. Fifty percent of EOF enrollment comes from school districts characterized by both low student achievement and concentrated poverty (A and B school districts). The median annual family income of EOF students for a family of four in fall 2009 was approximately \$28,000 compared to State median household income of \$67,681. Almost all EOF students are first-generation college students and 40 percent come from single-female-headed households.

The proposed amendments will provide a seamless process for institutions to continue to award students EOF Article III student grants, as well as tuition aid grants (TAG) to offset their total cost of education. The proposed amendments will have no direct impact on the total number of students awarded grants or the total cost of the program.

### **Federal Standards Statement**

The proposed amendments do not require a Federal standards analysis under Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 et seq. because EOF was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

### **Jobs Impact**

The proposed amendments will not result in the generation or loss of any jobs.

### **Agriculture Industry Impact**

The proposed amendments have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments do not impose requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments to the rules pertain strictly to public and publicly funded independent colleges and universities in New Jersey, none of which qualify as a small business.

### **Housing Affordability Impact Analysis**

The proposed amendments do not require a housing affordability analysis because the rules govern a request to eliminate the definition of “ability to benefit” and remove it as an admission criterion. The proposed amendments also seek the inclusion of language to require institutions that award Article III student grants to be in compliance with the New Jersey Higher Education Student Assistance Authority rules governing institutional participation in the Tuition Aid Grant (TAG) program at N.J.A.C. 9A:9-2(d)2, and there is an extreme unlikelihood that the amendments will evoke a change in the average costs associated with housing.

### **Smart Growth Development Impact Analysis**

The Office of the Secretary of Higher Education staff believes there is an extreme unlikelihood that the proposed amendments to the rules would evoke a change in housing

production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules govern a request to eliminate the definition of “ability to benefit” and remove it as an admission criterion. The proposed amendments also seek the inclusion of language to require institutions that award Article III student grants to be in compliance with the New Jersey Higher Education Student Assistance Authority rules governing institutional participation in the Tuition Aid Grant (TAG) program at N.J.A.C. 9A:9-2(d)2.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. AUTHORITY, MISSION, AND SCOPE

### 9A:11-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

[“Ability to benefit” means the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive Federal Title IV, Higher Education Assistance funds and the procedures and conditions under which the Federal Secretary of Education determines that a state or institutional process demonstrates that students pursuing that course of action will benefit from the education and training being offered them.]

...

### 9A:11-1.4 Scope

(a) (No change.)

(b) Institutions that participate in the EOF program shall [not]:

**1. Not discriminate** in their recruitment and admissions practices based on race, age, creed, religion, marital status, national origin, color, gender, sexual orientation, or disability[.];

**and**

**2. Meet N.J.A.C. 9A:9-2.1(d)2, the New Jersey Higher Education Student Assistance Authority’s rule governing the provision of documentation that it is authorized to participate in Title IV Federal student aid programs under the Higher Education Act of 1965, as amended and its implementing regulations.**

## SUBCHAPTER 2. UNDERGRADUATE EOF ACADEMIC AND FINANCIAL ELIGIBILITY

### 9A:11-2.2 Student eligibility

(a) – (c) (No change.)

(d) To be initially eligible for an EOF undergraduate Article III grant, a student must demonstrate that he or she:

1. Has a high school diploma or GED [or demonstrates an “ability to benefit”];

2. – 5. ( No change.)

(e) - (h) (No change.)