

NEW MEXICO

TANF

Bills/Laws

Family Opportunity Accounts Act
HB 112

Administrative Rules

8.106.510 N.M.A.C.
State Funded Assistance Programs

Official Analysis

Fiscal Impact Report
HB 112

Media

*Governor Bill Richardson Signs
Legislation to Encourage Working New
Mexicans to Save Money,*
Press release from Office of the
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[*The Case for Family Opportunity
Accounts,*](#)
Think New Mexico

[*Thinking about IDAs,*](#)
Rio Grande Sun Editorial,
Think New Mexico

[*For Working Poor, A Creative Proposal,*](#)
Santa Fe New Mexican Editorial,
Think New Mexico

FOOD STAMPS

Administrative Rules

8.139.510 N.M.A.C.
Food Stamp Program

AN ACT

RELATING TO ASSET BUILDING FOR WORKING, LOW-INCOME FAMILIES;
AMENDING THE INDIVIDUAL DEVELOPMENT ACCOUNT ACT TO CHANGE THE
NAME OF THE ACT, CHANGE THE ELIGIBILITY REQUIREMENTS,
ESTABLISH CRITERIA FOR PROGRAM ADMINISTRATORS AND INCREASE
ACCOUNTABILITY; CREATING A FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-30-1 NMSA 1978 (being Laws 2003,
Chapter 362, Section 1) is amended to read:

"58-30-1. SHORT TITLE.--Chapter 58, Article 30 NMSA
1978 may be cited as the "Family Opportunity Accounts Act"."

Section 2. Section 58-30-2 NMSA 1978 (being Laws 2003,
Chapter 362, Section 2, as amended) is amended to read:

"58-30-2. DEFINITIONS.--As used in the Family
Opportunity Accounts Act:

A. "account owner" means the person in whose name
a family opportunity account is originally established;

B. "allowable use" means a use that complies with
the provisions of the Family Opportunity Accounts Act, or
rules adopted pursuant to that act;

C. "authorized financial institution" means a
financial institution authorized by the office to hold and
manage family opportunity accounts and reserve accounts;

D. "director" means the director of the office;

E. "earned income" means wages from employment, payment in lieu of wages, disability payments, tribal distributions or earnings from self-employment or acquired from the provision of services, goods or property, production of goods, management of property or supervision of services;

F. "eligible individual" means a person who meets the criteria for opening a family opportunity account;

G. "family opportunity account" means an account established and maintained in an authorized financial institution by an eligible individual participating in a family opportunity accounts program pursuant to the provisions of the Family Opportunity Accounts Act;

H. "family opportunity accounts program" means a program approved by the office to establish and administer family opportunity accounts and reserve accounts for eligible individuals and to provide financial training required by the office for account owners;

I. "financial institution" means a bank, bank and trust, savings bank, savings association or credit union authorized to be a trustee of individual retirement accounts as defined by federal law, the deposits of which are insured by the federal deposit insurance corporation or the national credit union administration;

J. "indigent" means an individual who, taking into account the present income and the liquid assets and the

requirement for other basic necessities of life for himself and his dependents, is unable to pay the costs of allowable uses as set forth in the Family Opportunity Accounts Act;

K. "matching funds" means money deposited in a reserve account to match the withdrawals for allowable uses from a family opportunity account according to a proportionate formula that complies with rules adopted by the director;

L. "nonprofit organization" means an instrumentality of the state or a local government or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation pursuant to Section 501(a) of that code;

M. "office" means the office of workforce training and development;

N. "program administrator" means a nonprofit organization or tribe that is selected pursuant to the Family Opportunity Accounts Act to offer a family opportunity accounts program pursuant to a contract with the director;

O. "reserve account" means an account established pursuant to the Family Opportunity Accounts Act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner; and

P. "tribe" means an Indian nation, tribe or pueblo

located in whole or in part within New Mexico."

Section 3. Section 58-30-3 NMSA 1978 (being Laws 2003, Chapter 362, Section 3) is amended to read:

"58-30-3. FAMILY OPPORTUNITY ACCOUNTS.--

A. A family opportunity account may be established for an eligible individual as part of a family opportunity accounts program if the written instrument creating the account sets forth the following:

(1) the account owner is an eligible individual according to program requirements at the time the account is established;

(2) the family opportunity account is established and maintained in an authorized financial institution;

(3) deposits to a family opportunity account shall be made in accordance with the rules adopted pursuant to the Family Opportunity Accounts Act;

(4) withdrawals from a family opportunity account shall only be made in accordance with the Family Opportunity Accounts Act and rules adopted pursuant to that act;

(5) the matching amount that will be deposited in the reserve account for each dollar deposited by the account owner in the family opportunity account; and

(6) the financial institution in which a

family opportunity account is held shall not be liable for withdrawals made for uses other than allowable uses.

B. For purposes of 42 USCA 604(h), a family opportunity account shall be deemed to be an individual development account."

Section 4. Section 58-30-4 NMSA 1978 (being Laws 2003, Chapter 362, Section 4) is amended to read:

"58-30-4. ELIGIBLE INDIVIDUALS.--

A. Except as set forth in Subsection B of this section, an eligible individual shall have earned income and shall be:

- (1) eighteen years of age or older;
- (2) a citizen or legal resident of the United States;
- (3) a resident of New Mexico; and
- (4) indigent.

B. A child in foster care is an eligible individual if the child:

- (1) is sixteen years of age or older;
- (2) is indigent;
- (3) is a citizen or legal resident of the United States; and
- (4) is a resident of New Mexico."

Section 5. Section 58-30-5 NMSA 1978 (being Laws 2003, Chapter 362, Section 5, as amended) is amended to read:

"58-30-5. RESPONSIBILITIES OF THE OFFICE.--

A. The office shall adopt rules implementing the provisions of the Family Opportunity Accounts Act.

B. The director shall make an annual report each November to the governor and to the legislative finance committee.

C. The office shall use no more than five percent of the money appropriated to fund the Family Opportunity Accounts Act to administer that act."

Section 6. Section 58-30-6 NMSA 1978 (being Laws 2003, Chapter 362, Section 6, as amended) is amended to read:

"58-30-6. FAMILY OPPORTUNITY ACCOUNTS COUNCIL.--

A. The "family opportunity accounts council" is created. The council shall:

(1) provide oversight of the administration of the Family Opportunity Accounts Act; and

(2) suggest possible changes that benefit account owners or improve the effectiveness of the family opportunity accounts programs throughout the state.

B. The family opportunity accounts council shall meet at least two times in a calendar year to perform its duties.

C. The family opportunity accounts council shall consist of the lieutenant governor or the lieutenant governor's designee and eight members appointed by the

governor to represent the state geographically. The director or the director's designee shall serve as an ex-officio member of the council.

D. Appointed members of the family opportunity accounts council shall receive per diem and mileage pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance for their participation on the council.

E. The office shall provide adequate staff support and administrative services for the family opportunity accounts council."

Section 7. Section 58-30-7 NMSA 1978 (being Laws 2003, Chapter 362, Section 7, as amended) is amended to read:

"58-30-7. ADMINISTRATION OF FAMILY OPPORTUNITY ACCOUNTS PROGRAMS.--

A. A family opportunity account may be established for an eligible individual; provided that the money deposited in the account is expended for allowable uses for the account owner or the account owner's spouse or dependents unless otherwise approved by the program administrator.

B. A family opportunity accounts program shall be approved and monitored by the director for compliance with applicable law, the Family Opportunity Accounts Act and rules adopted pursuant to that act.

C. The program administrator shall establish a

reserve account sufficient to meet the matching fund commitments made to all account owners participating in the family opportunity accounts program and shall report at least quarterly to each account owner the amount of money available in the reserve account for use by the program administrator to match withdrawals for allowable uses. Notwithstanding any matching commitment otherwise required, the amount of state funds deposited in a reserve account during a calendar year to match deposits from any single account owner shall not exceed the higher of:

- (1) two thousand dollars (\$2,000); or
- (2) an amount determined by rule of the

office.

D. The program administrator shall provide financial education and other necessary training pertinent to allowable uses by account owners, develop partnerships with financial institutions, develop matching funds and manage the operations of a family opportunity account that is established within the program.

E. An eligible individual may open a family opportunity account upon verification by the program administrator that the individual maintains no other family opportunity account.

F. More than one eligible individual per household may hold a family opportunity account.

G. An account owner shall complete a financial education program prior to the withdrawal of money from the account owner's family opportunity account unless written approval is obtained from the program administrator."

Section 8. Section 58-30-8 NMSA 1978 (being Laws 2003, Chapter 362, Section 8) is amended to read:

"58-30-8. ALLOWABLE USES--WITHDRAWALS FROM FAMILY OPPORTUNITY ACCOUNTS--FORFEITURE OF MATCHING FUNDS FROM RESERVE ACCOUNT--LOSS OF ELIGIBLE INDIVIDUAL STATUS.--

A. Allowable uses of the money withdrawn from a family opportunity account are limited to the following:

(1) expenses to attend an approved post-secondary or vocational educational institution, including payment for tuition, books, supplies and equipment required for courses;

(2) costs to acquire or construct a principal residence as defined in rules adopted pursuant to the Family Opportunity Accounts Act that is the first principal residence acquired or constructed by the account owner;

(3) costs of major home improvements or repairs on the home of the account owner;

(4) capitalization or costs to start or expand a business, including capital, plant, equipment, operational and inventory expenses, attorney and accountant

fees and other costs normally associated with starting or expanding a business;

(5) acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner; and

(6) in the case of a deceased account owner, amounts deposited by the account owner and held in a family opportunity account shall be distributed directly to the account owner's spouse, or if the spouse is deceased or there is no spouse, to a dependent or other named beneficiary of the deceased or if the recipient is eligible to maintain the account, the account and matching funds designated for that account from a reserve account may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

B. Except as provided in Subsection C of this section, if an account owner withdraws money from a family opportunity account for a use other than an allowable use, the account owner forfeits a proportionate amount of matching funds from the reserve account, as set forth in the agreement between the program administrator and the account owner.

C. The program administrator may approve a withdrawal by an account owner from a family opportunity account to be used for a purpose other than an allowable use only for serious emergencies as specified in the rules adopted

by the office. For such an approved withdrawal, the proportionate matching funds in the reserve account shall remain in the reserve account for twelve months following the withdrawal and, if an amount equal to the withdrawn money is redeposited in the family opportunity account within the twelve months, the matching funds shall again be available to match withdrawals for allowable uses.

D. At the request of the account owner and with the written approval of the program administrator, amounts may be withdrawn from the account owner's family opportunity account and deposited in another family opportunity account established for an eligible individual who is the account owner's spouse or dependent."

Section 9. Section 58-30-9 NMSA 1978 (being Laws 2003, Chapter 362, Section 9, as amended) is amended to read:

"58-30-9. APPROVAL OF FAMILY OPPORTUNITY ACCOUNTS PROGRAMS.--

A. The office shall issue a request for proposals from nonprofit organizations or tribes interested in establishing a family opportunity accounts program. A proposal submitted in response to the request shall:

(1) describe the geographic area to be served and the potential individuals who will be assisted by the program;

(2) state the amount, if any, of requested

distributions of state money from the family opportunity fund;

(3) describe the source and the amount of private or other public funds, if any, that will be used to supplement the requested distributions from the family opportunity fund;

(4) state the amount, not to be less than one dollar (\$1.00), that will be deposited in the reserve account for each dollar deposited in a family opportunity account;

(5) describe the expertise, experience and other qualifications of the proposer and its employees; and

(6) contain such other information as required in the request for proposals and rules of the director.

B. The director shall determine if an interested nonprofit organization or tribe is eligible to be a program administrator, determine the legal sufficiency of submitted proposals, evaluate the proposals and, after consulting with the family opportunity accounts council, select the program administrators.

C. In selecting program administrators, the director shall:

(1) ensure that geographically diverse populations throughout New Mexico will be served by family opportunity accounts programs; and

(2) ensure that a substantial number of family opportunity accounts will serve families in which one or more children are living with their biological or adoptive mother or father, or with their legal guardian.

D. The director shall enter into contracts with the selected program administrators.

E. The director shall approve a family opportunity accounts program submitted by a program administrator before the program establishes family opportunity accounts or reserve accounts or provides services required by the Family Opportunity Accounts Act to eligible individuals.

F. A family opportunity account and a reserve account may be established only in an authorized financial institution.

G. The director shall monitor all family opportunity accounts programs to ensure that family opportunity accounts and reserve accounts are being operated according to the contract provisions, federal law, the provisions of the Family Opportunity Accounts Act and rules adopted pursuant to that act."

Section 10. Section 58-30-10 NMSA 1978 (being Laws 2003, Chapter 362, Section 10, as amended) is amended to read:

"58-30-10. TERMINATION OF FAMILY OPPORTUNITY ACCOUNTS PROGRAMS.--

A. A family opportunity accounts program shall be

terminated if the:

(1) office determines that the program is not being operated pursuant to the provisions of the contract between the program administrator and the director, the Family Opportunity Accounts Act or rules adopted pursuant to that act;

(2) provider of the program no longer retains its status as a program administrator; or

(3) program administrator chooses to cease providing a family opportunity accounts program.

B. Upon termination of a family opportunity accounts program, the director shall administer the program until a qualified program administrator is selected to administer the program. If, after a reasonable period, the director is unable to identify and certify a program administrator to assume the authority to continue to operate a terminated family opportunity accounts program, money in a reserve account shall be deposited into the family opportunity accounts of the account owners for whom the proportionate share of the reserve account was established as of the first day of termination of the program."

Section 11. Section 58-30-11 NMSA 1978 (being Laws 2003, Chapter 362, Section 11, as amended) is amended to read:

"58-30-11. REPORTING.--A program administrator operating a family opportunity accounts program pursuant to

the Family Opportunity Accounts Act shall report at least annually to the director, as set forth in the rules of the office. Individual account owners shall not be identified in the report. The report shall include:

- A. the number of eligible individuals making contributions to family opportunity accounts;
- B. the total money contributed to each family opportunity account and deposited into each reserve account;
- C. the total money in the aggregate deposited in family opportunity accounts and reserve accounts administered by the family opportunity accounts program;
- D. the amounts withdrawn from family opportunity accounts for either allowable uses or for uses other than allowable uses and the amounts withdrawn from reserve accounts;
- E. the balances remaining in family opportunity accounts and reserve accounts; and
- F. other information requested by the director to monitor the costs and outcomes of the family opportunity accounts program."

Section 12. Section 58-30-12 NMSA 1978 (being Laws 2003, Chapter 362, Section 12) is amended to read:

"58-30-12. ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN MEANS-TESTED PROGRAMS.--

- A. Money deposited into a family opportunity

account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account owners shall be disregarded for the purposes of determining eligibility for benefits and for determining benefit amounts pursuant to the New Mexico Works Act.

B. When determining eligibility for benefits and determining benefit amounts due under the food stamp program and medicaid, the human services department shall, pursuant to the authority granted by 7 USCA 2014 (d) and (g), disregard money deposited into a family opportunity account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account owners.

C. Money withdrawn from a family opportunity account for a purpose other than an allowable use shall be counted as a resource for purposes of the New Mexico Works Act or medicaid unless the withdrawal is approved by the program administrator and an amount equal to the amount withdrawn is replaced within the twelve-month allowable time period pursuant to Subsection C of Section 58-30-8 NMSA 1978."

Section 13. A new section of the Family Opportunity Accounts Act is enacted to read:

"FUND CREATED.--The "family opportunity fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to

the fund. Income from the fund shall be credited to the fund, and money in the fund shall not be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the office of workforce training and development for the purposes of carrying out the provisions of the Family Opportunity Accounts Act. Expenditures shall be made on warrant of the secretary of finance and administration on vouchers signed by the director of the office of workforce training and development."

Section 14. Section 27-2B-7 NMSA 1978 (being Laws 1998, Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as amended) is amended to read:

"27-2B-7. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of federal and state funds and based upon appropriations by the legislature of the available federal temporary assistance for needy families grant made pursuant to the federal act in the following categories:

- (1) cash assistance;
- (2) child care services;
- (3) other services; and
- (4) administrative costs.

The legislature shall determine the actual percentage of each category to be used annually of the federal temporary

assistance for needy families grant made pursuant to the federal act.

B. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

- (1) medicaid;
- (2) food stamps;
- (3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;
- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational institution;
- (8) government-subsidized child care;
- (9) earned income that belongs to a person seventeen years of age or younger who is not the head of household;
- (10) fifty dollars (\$50.00) of collected child support passed through to the participant by the department's child support enforcement program;
- (11) earned income deposited in a family opportunity account by a member of the benefit group or money

received as matching funds for allowable uses by the owner of the family opportunity account pursuant to the Family Opportunity Accounts Act; and

(12) other income sources as determined by the department.

C. The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

D. For a benefit group to be eligible to participate:

(1) gross countable income that belongs to the benefit group must not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and

(2) net countable income that belongs to the benefit group must not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs (1) through (4) of Subsection E of this section.

E. Subject to the availability of state and federal funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned income and then subtracting that amount from the benefit group's financial standard of need:

(1) for the first two years of receiving

cash assistance or services, if a participant works over the work requirement rate set by the department pursuant to the New Mexico Works Act, one hundred percent of the income earned by the participant beyond that rate;

(2) for the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over thirty-five hours per week and the other works over twenty-four hours per week, one hundred percent of income earned by each participant beyond the work requirement rate set by the department;

(3) one hundred twenty-five dollars (\$125) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred twenty-five dollars (\$225) of monthly earned income and one-half of the remainder for each parent;

(4) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and at a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

(5) costs of self-employment income; and

(6) business expenses.

F. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group."

Section 15. Section 27-2B-8 NMSA 1978 (being Laws 1998, Chapter 8, Section 8 and Laws 1998, Chapter 9, Section 8, as amended by Laws 2003, Chapter 311, Section 4 and Laws 2003, Chapter 432, Section 4) is amended to read:

"27-2B-8. RESOURCES.--

A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

- (1) two thousand dollars (\$2,000) in nonliquid resources;
- (2) one thousand five hundred dollars (\$1,500) in liquid resources;
- (3) the value of the principal residence of the participant;
- (4) the value of burial plots and funeral contracts for family members;
- (5) family opportunity accounts; and
- (6) the value of work-related equipment up to one thousand dollars (\$1,000).

C. Vehicles owned by the benefit group shall not be considered in the determination of resources attributed to the benefit group."

Section 16. Section 27-2B-10 NMSA 1978 (being Laws

1998, Chapter 8, Section 10 and Laws 1998, Chapter 9, Section 10, as amended) is amended to read:

"27-2B-10. FAMILY OPPORTUNITY ACCOUNTS.--A participant may establish a family opportunity account pursuant to the Family Opportunity Accounts Act."

Section 17. Section 27-2D-6 NMSA 1978 (being Laws 2003, Chapter 317, Section 6) is amended to read:

"27-2D-6. RESOURCES.--

A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

- (1) two thousand dollars (\$2,000) in nonliquid resources;
- (2) one thousand five hundred dollars (\$1,500) in liquid resources;
- (3) the value of the principal residence of the recipient;
- (4) the value of burial plots and funeral contracts for family members;
- (5) family opportunity accounts; and
- (6) the value of work-related equipment up to one thousand dollars (\$1,000).

C. Vehicles owned by the benefit group shall not

be considered in the determination of resources attributed to the benefit group."

Section 18. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006._____

FORTY-SEVENTH LEGISLATURE
SECOND SESSION

February 2, 2006

HOUSE FLOOR AMENDMENT number 1 to HOUSE BILL 112, as amended

Amendment sponsored by Representative

1. Strike House Government and Urban Affairs Committee Amendments 4 and 5.

2. On page 3, line 24, after "who" insert a comma and strike the remainder of the line, strike line 25 and on page 4, strike line 1 through the comma.

3. On page 4, line 2, after "other" insert "basic".

4. On page 15, line 22, after the paragraph designation "(2)" strike the remainder of the line, strike lines 23 through 25 and on page 16, strike line 1, strike line 2 through "benefit" and insert in lieu thereof "ensure that a substantial number of family opportunity accounts will serve".

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

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HOUSE BILL 112

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO ASSET BUILDING FOR WORKING, LOW-INCOME FAMILIES;
AMENDING THE INDIVIDUAL DEVELOPMENT ACCOUNT ACT TO CHANGE THE
NAME OF THE ACT, CHANGE THE ELIGIBILITY REQUIREMENTS, ESTABLISH
CRITERIA FOR PROGRAM ADMINISTRATORS AND INCREASE
ACCOUNTABILITY; CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-30-1 NMSA 1978 (being Laws 2003,
Chapter 362, Section 1) is amended to read:

"58-30-1. SHORT TITLE.--~~[Sections 1 through 12 of this
act]~~ Chapter 58, Article 30 NMSA 1978 may be cited as the
~~["Individual Development Account Act"]~~ "Family Opportunity
Accounts Act"."

Section 2. Section 58-30-2 NMSA 1978 (being Laws 2003,
Chapter 362, Section 2, as amended) is amended to read:

underscoring material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 "58-30-2. DEFINITIONS.--As used in the [~~Individual~~
2 ~~Development Account Act~~] Family Opportunity Accounts Act:

3 A. "account owner" means the person in whose name
4 [~~an individual development~~] a family opportunity account is
5 originally established;

6 B. "allowable use" means a use that complies with
7 the provisions of the [~~Individual Development Account Act~~]
8 Family Opportunity Accounts Act, or rules adopted pursuant to
9 that act;

10 C. "authorized financial institution" means a
11 financial institution authorized by the office [~~of workforce~~
12 ~~training and development~~] to hold and manage [~~individual~~
13 ~~development~~] family opportunity accounts and reserve accounts;

14 D. "director" means the director of the office;

15 E. "earned income" means wages from employment,
16 payment in lieu of wages, disability payments, tribal
17 distributions or earnings from self-employment or acquired from
18 the provision of services, goods or property, production of
19 goods, management of property or supervision of services;

20 F. "eligible individual" means a person who meets
21 the criteria for opening [~~an individual development~~] a family
22 opportunity account;

23 G. "family opportunity account" means an account
24 established and maintained in an authorized financial
25 institution by an eligible individual participating in a family

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underscored material = new
[bracketed material] = delete

1 opportunity accounts program pursuant to the provisions of the
2 Family Opportunity Accounts Act;

3 H. "family opportunity accounts program" means a
4 program approved by the office to establish and administer
5 family opportunity accounts and reserve accounts for eligible
6 individuals and to provide financial training required by the
7 office for account owners;

8 [~~G.~~] I. "financial institution" means a bank, bank
9 and trust, savings bank, savings association or credit union
10 authorized to be a trustee of individual retirement accounts as
11 defined by federal law, the deposits of which are insured by
12 the federal deposit insurance corporation or the national
13 credit union administration;

14 [~~H.~~] ~~"individual development account" means an~~
15 ~~account established and maintained in an authorized financial~~
16 ~~institution by an eligible individual participating in an~~
17 ~~individual development account program pursuant to the~~
18 ~~provisions of the Individual Development Account Act;~~

19 [~~I.~~] ~~"individual development account program" means a~~
20 ~~program approved by the office to establish and administer~~
21 ~~individual development accounts and reserve accounts for~~
22 ~~eligible individuals and to provide financial training required~~
23 ~~by the office for account owners;]~~

24 J. "indigent" means an individual who can normally
25 support himself and his dependents on present income and liquid

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underscored material = new
[bracketed material] = delete

1 assets available to him but, taking into account the present
2 income and the liquid assets and the requirement for other
3 necessities of life for himself and his dependents, is unable
4 to pay the costs of allowable uses as set forth in the Family
5 Opportunity Accounts Act;

6 [J-] K. "matching funds" means money deposited in a
7 reserve account to match the withdrawals for allowable uses
8 from ~~[an individual development]~~ a family opportunity account
9 according to a proportionate formula that complies with rules
10 adopted by the director;

11 [K-] L. "nonprofit organization" means an
12 instrumentality of the state or an organization described in
13 Section 501(c)(3) of the Internal Revenue Code of 1986 and
14 exempt from taxation pursuant to Section 501(a) of that code;

15 [L-] M. "office" means the office of workforce
16 training and development;

17 [M-] N. "program administrator" means a nonprofit
18 organization or tribe that is ~~[determined by the director to be~~
19 ~~eligible to offer an individual development account program]~~
20 selected pursuant to the Family Opportunity Accounts Act to
21 offer a family opportunity accounts program pursuant to a
22 contract with the director;

23 [N-] O. "reserve account" means an account
24 established pursuant to the ~~[Individual Development Account]~~
25 Family Opportunity Accounts Act in an authorized financial

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underscored material = new
[bracketed material] = delete

1 institution in which matching funds are maintained and
2 available for payment for a predetermined allowable use
3 following completion of all program requirements by the account
4 owner; and

5 [D.] P. "tribe" means an Indian nation, tribe or
6 pueblo located in whole or in part within New Mexico."

7 Section 3. Section 58-30-3 NMSA 1978 (being Laws 2003,
8 Chapter 362, Section 3) is amended to read:

9 "58-30-3. [~~INDIVIDUAL DEVELOPMENT ACCOUNTS.--An~~
10 ~~individual development~~] FAMILY OPPORTUNITY ACCOUNTS.--

11 A. A family opportunity account may be established
12 for an eligible individual as part of [~~an individual~~
13 ~~development account~~] a family opportunity accounts program if
14 the written instrument creating the account sets forth the
15 following:

16 [A.] (1) the account owner is an eligible
17 individual according to program requirements at the time the
18 account is established;

19 [B.] (2) the [~~individual development~~] family
20 opportunity account is established and maintained in an
21 authorized financial institution;

22 [C.] (3) deposits to [~~an individual~~
23 ~~development~~] a family opportunity account shall be made in
24 accordance with the rules adopted pursuant to the [~~Individual~~
25 ~~Development Account~~] Family Opportunity Accounts Act;

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underscored material = new
[bracketed material] = delete

1 ~~[D.]~~ (4) withdrawals from [an individual
2 development] a family opportunity account [may be only for
3 allowable uses, unless approved by the program administrator as
4 set forth in the rules adopted pursuant to the Individual
5 Development Account Act; and] shall only be made in accordance
6 with the Family Opportunity Accounts Act and rules adopted
7 pursuant to that act;

8 (5) the matching amount that will be deposited
9 in the reserve account for each dollar deposited by the account
10 owner in the family opportunity account; and

11 ~~[E.]~~ (6) the financial institution in which
12 [an individual development] a family opportunity account is
13 held shall not be liable for withdrawals made for uses other
14 than allowable uses.

15 B. For purposes of 42 USCA 604(h), a family
16 opportunity account shall be deemed to be an individual
17 development account."

18 Section 4. Section 58-30-4 NMSA 1978 (being Laws 2003,
19 Chapter 362, Section 4) is amended to read:

20 "58-30-4. ELIGIBLE INDIVIDUALS.--

21 A. Except as set forth in Subsection B of this
22 section, an eligible individual shall have earned income and
23 shall be:

24 (1) eighteen years of age or older;

25 (2) a citizen or legal resident of the United

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1 States;

2 (3) a resident of New Mexico; and

3 (4) ~~[a member of a household with earned~~
4 ~~income that is no more than two hundred percent of the federal~~
5 ~~poverty guidelines for the size of the household]~~ indigent.

6 B. A child in foster care is an eligible individual
7 if ~~[he]~~ the child:

8 (1) is sixteen years of age or older;

9 (2) ~~[has earned income that is no more than~~
10 ~~two hundred percent of the federal poverty guidelines for a~~
11 ~~family of one, when the child's income is evaluated separately~~
12 ~~from the income of his foster household]~~ is indigent;

13 (3) is a citizen or legal resident of the
14 United States; and

15 (4) is a resident of New Mexico."

16 Section 5. Section 58-30-5 NMSA 1978 (being Laws 2003,
17 Chapter 362, Section 5, as amended) is amended to read:

18 "58-30-5. RESPONSIBILITIES OF THE OFFICE.--

19 A. ~~[By December 31 following the effective date of~~
20 ~~the Individual Development Account Act]~~ The ~~[director]~~ office
21 shall adopt rules implementing the provisions of ~~[that act]~~ the
22 Family Opportunity Accounts Act.

23 B. The director shall make an annual report each
24 November to the governor and to ~~[an appropriate interim~~
25 ~~committee of the legislature]~~ the legislative finance

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1 committee.

2 C. The office shall use no more than ~~[ten]~~ five
3 percent of the money appropriated to fund the ~~[Individual~~
4 ~~Development Account Act]~~ Family Opportunity Accounts Act to
5 administer that act."

6 Section 6. Section 58-30-6 NMSA 1978 (being Laws 2003,
7 Chapter 362, Section 6, as amended) is amended to read:

8 "58-30-6. ~~[ADVISORY COMMITTEE]~~ FAMILY OPPORTUNITY
9 ACCOUNTS COUNCIL.--

10 A. ~~[An advisory committee shall be created to]~~ The
11 "family opportunity accounts council" is created. The council
12 shall:

13 (1) provide oversight of the administration of
14 ~~[individual development account programs]~~ the Family
15 Opportunity Accounts Act; and [to]

16 (2) suggest possible changes that benefit
17 account owners or improve the effectiveness of the ~~[individual~~
18 ~~development account]~~ family opportunity accounts programs
19 throughout the state.

20 B. The ~~[advisory committee]~~ family opportunity
21 accounts council shall meet at least two times in a calendar
22 year to ~~[review the implementation of the Individual~~
23 ~~Development Account Act]~~ perform its duties.

24 C. The ~~[advisory committee]~~ family opportunity
25 accounts council shall consist of the lieutenant governor or

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1 the lieutenant governor's designee and eight members appointed
2 by the governor to represent the state geographically. The
3 director or the director's designee shall serve as an ex-
4 officio member of the [~~advisory committee~~] council.

5 D. [~~Members of the advisory committee who are~~
6 ~~account owners~~] Appointed members of the family opportunity
7 accounts council shall receive per diem and mileage pursuant to
8 the Per Diem and Mileage Act and shall receive no other
9 compensation, perquisite or allowance for their participation
10 on the [~~advisory committee~~] council.

11 E. The office shall provide adequate staff support
12 and administrative services for the [~~advisory committee~~] family
13 opportunity accounts council."

14 Section 7. Section 58-30-7 NMSA 1978 (being Laws 2003,
15 Chapter 362, Section 7, as amended) is amended to read:

16 "58-30-7. ADMINISTRATION OF [~~INDIVIDUAL DEVELOPMENT~~
17 ~~ACCOUNT~~] FAMILY OPPORTUNITY ACCOUNTS PROGRAMS.--

18 A. [~~An individual development~~] A family opportunity
19 account may be established for an eligible individual; provided
20 that the money deposited in the account is expended for
21 allowable uses for the account owner or the account owner's
22 spouse or dependents unless otherwise approved by the program
23 administrator.

24 B. [~~An individual development account~~] A family
25 opportunity accounts program shall be approved and monitored by

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1 the director for compliance with applicable law, the
2 [~~Individual Development Account~~] Family Opportunity Accounts
3 Act and rules adopted pursuant to that act.

4 C. [~~An individual development account program~~] The
5 program administrator shall establish a reserve account
6 sufficient to meet the matching fund commitments made to all
7 account owners participating in the [~~individual development~~
8 ~~account~~] family opportunity accounts program and shall report
9 at least quarterly to each account owner the amount of money
10 available in the reserve account for use by the program
11 administrator to match withdrawals for allowable uses.
12 Notwithstanding any matching commitment otherwise required, the
13 amount of state funds deposited in a reserve account during a
14 calendar year to match deposits from any single account owner
15 shall not exceed the higher of:

16 (1) two thousand dollars (\$2,000); or

17 (2) an amount determined by rule of the
18 office.

19 D. [~~An individual development account program~~] The
20 program administrator shall provide financial education and
21 other necessary training pertinent to allowable uses by account
22 owners, develop partnerships with financial institutions,
23 develop matching funds and manage the operations of [~~an~~
24 ~~individual development~~] a family opportunity account that is
25 established within the program.

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1 ~~[E. The office shall adopt rules necessary to~~
2 ~~implement the Individual Development Account Act.~~

3 F.] E. An eligible individual may open [~~an~~
4 ~~individual development~~] a family opportunity account upon
5 verification by the program administrator that the individual
6 maintains no other [~~individual development~~] family opportunity
7 account.

8 ~~[G.] F.~~ More than one eligible individual per
9 household may hold [~~an individual development~~] a family
10 opportunity account.

11 ~~[H.] G.~~ An account owner shall complete a financial
12 education program prior to the withdrawal of money from the
13 account owner's [~~individual development~~] family opportunity
14 account unless written approval is obtained from the program
15 administrator."

16 Section 8. Section 58-30-8 NMSA 1978 (being Laws 2003,
17 Chapter 362, Section 8) is amended to read:

18 "58-30-8. ALLOWABLE USES--WITHDRAWALS FROM [~~INDIVIDUAL~~
19 ~~DEVELOPMENT~~] FAMILY OPPORTUNITY ACCOUNTS--FORFEITURE OF
20 MATCHING FUNDS FROM RESERVE ACCOUNT--LOSS OF ELIGIBLE
21 INDIVIDUAL STATUS.--

22 A. Allowable uses of the money withdrawn from [~~an~~
23 ~~individual development~~] a family opportunity account are
24 limited to the following:

25 (1) expenses to attend an approved post-

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1 secondary or vocational educational institution, including
2 payment for tuition, books, supplies and equipment required for
3 courses;

4 (2) costs to acquire or construct a principal
5 residence as defined in rules adopted pursuant to the
6 ~~[Individual Development Account]~~ Family Opportunity Accounts
7 Act that is the first principal residence acquired or
8 constructed by the account owner;

9 (3) costs of major home improvements or
10 repairs on the home of the account owner;

11 (4) capitalization or costs to start or expand
12 a business, including capital, plant, equipment, operational
13 and inventory expenses, attorney and accountant fees and other
14 costs normally associated with starting or expanding a
15 business;

16 (5) acquisition of a vehicle necessary to
17 obtain or maintain employment by an account owner or the spouse
18 of an account owner; and

19 (6) in the case of a deceased account owner,
20 amounts deposited by the account owner and held in [~~an~~
21 ~~individual development~~] a family opportunity account shall be
22 distributed directly to the account owner's spouse, or if the
23 spouse is deceased or there is no spouse, to a dependent or
24 other named beneficiary of the deceased or if the recipient is
25 eligible to maintain the account, the account and matching

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1 funds designated for that account from a reserve [~~fund~~] account
2 may be transferred and maintained in the name of the surviving
3 spouse, dependent or beneficiary.

4 B. Except as provided in Subsection C of this
5 section, if an account owner withdraws money from [~~his~~
6 ~~individual development~~] a family opportunity account for a use
7 other than an allowable use, [~~he~~] the account owner forfeits a
8 proportionate amount of matching funds from the reserve
9 account, as set forth in the agreement between the program
10 administrator and the account owner [~~unless an amount equal to~~
11 ~~the withdrawn money is redeposited to his individual~~
12 ~~development account within the twelve months following the~~
13 ~~withdrawal~~].

14 C. The program administrator may approve a
15 withdrawal by an account owner from [~~his individual~~
16 ~~development~~] a family opportunity account to be used for a
17 purpose other than an allowable use only for serious
18 emergencies as specified in the rules adopted by the [~~director~~]
19 office. For such an approved withdrawal, the proportionate
20 matching funds in the reserve account shall remain in the
21 reserve account for twelve months following the withdrawal and,
22 if an amount equal to the withdrawn money is redeposited in the
23 family opportunity account within the twelve months, the
24 matching funds shall again be available to match withdrawals
25 for allowable uses.

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1 D. At the request of the account owner and with the
2 written approval of the program administrator, amounts may be
3 withdrawn from the account owner's [~~individual development~~]
4 family opportunity account and deposited in another [~~individual~~
5 ~~development~~] family opportunity account established for an
6 eligible individual who is the account owner's spouse or
7 dependent."

8 Section 9. Section 58-30-9 NMSA 1978 (being Laws 2003,
9 Chapter 362, Section 9, as amended) is amended to read:

10 "58-30-9. APPROVAL OF [~~INDIVIDUAL DEVELOPMENT ACCOUNT~~]
11 FAMILY OPPORTUNITY ACCOUNTS PROGRAMS.--

12 A. [~~Annually~~] The office shall [~~solicit~~] issue a
13 request for proposals from nonprofit organizations or tribes
14 interested in establishing [~~an individual development account~~
15 ~~program~~] a family opportunity accounts program. A proposal
16 submitted in response to the request shall:

17 (1) describe the geographic area to be served
18 and the potential individuals who will be assisted by the
19 program;

20 (2) state the amount, if any, of requested
21 distributions of state money from the family opportunity fund;

22 (3) describe the source and the amount of
23 private or federal funds, if any, that will be used to
24 supplement the requested distributions from the family
25 opportunity fund;

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1 (4) state the amount, not to be less than one
2 dollar (\$1.00), that will be deposited in the reserve account
3 for each dollar deposited in a family opportunity account;

4 (5) describe the expertise, experience and
5 other qualifications of the proposer and its employees; and

6 (6) contain such other information as required
7 in the request for proposals and rules of the director.

8 B. The director shall determine if an interested
9 nonprofit organization or tribe is eligible to be a program
10 administrator, determine the legal sufficiency of submitted
11 proposals, evaluate the proposals and, after consulting with
12 the family opportunity accounts council, select the program
13 administrators.

14 ~~[C. Eligible program administrators shall develop~~
15 ~~individual development account programs that are subject to~~
16 ~~review and approval by the director.]~~

17 C. In selecting program administrators, the
18 director shall:

19 (1) ensure that geographically diverse
20 populations throughout New Mexico will be served by family
21 opportunity accounts programs; and

22 (2) give priority to those proposals that:
23 (a) have a source of federal or private
24 funds that will ensure the highest possible match to reserve
25 accounts for each dollar deposited in a family opportunity

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1 account; or

2 (b) will benefit families in which one
3 or more children are living with their biological or adoptive
4 mother or father, or with their legal guardian.

5 D. The director shall enter into contracts with the
6 selected program administrators.

7 ~~[D.] E.~~ The director shall approve ~~[an individual~~
8 ~~development account]~~ a family opportunity accounts program
9 submitted by a program administrator before the program
10 establishes ~~[individual development]~~ family opportunity
11 accounts or reserve accounts or provides services required by
12 the ~~[Individual Development Account]~~ Family Opportunity
13 Accounts Act to eligible individuals.

14 ~~[E. An individual development]~~

15 F. A family opportunity account and a reserve
16 account may be established only in an authorized financial
17 institution.

18 ~~[F.] G.~~ The director shall monitor all ~~[individual~~
19 ~~development account]~~ family opportunity accounts programs to
20 ensure that ~~[individual development]~~ family opportunity
21 accounts and reserve accounts are being operated according to
22 the contract provisions, federal law, the provisions of the
23 ~~[Individual Development Account Act]~~ Family Opportunity
24 Accounts Act and rules adopted pursuant to that act."

25 Section 10. Section 58-30-10 NMSA 1978 (being Laws 2003,
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1 Chapter 362, Section 10, as amended) is amended to read:

2 "58-30-10. TERMINATION OF [~~INDIVIDUAL DEVELOPMENT~~
3 ~~ACCOUNT~~] FAMILY OPPORTUNITY ACCOUNTS PROGRAMS.--

4 A. [~~An individual development account~~] A family
5 opportunity accounts program shall be terminated if the:

6 (1) office determines that the program is not
7 being operated pursuant to the provisions of the [~~Individual~~
8 ~~Development Account Act~~] contract between the program
9 administrator and the director, the Family Opportunity Accounts
10 Act or rules adopted pursuant to that act;

11 (2) provider of the program no longer retains
12 its status as a program administrator; or

13 (3) program administrator chooses to cease
14 providing [~~an individual development account~~] a family
15 opportunity accounts program.

16 B. [~~If~~] Upon termination of a family opportunity
17 accounts program, the director shall administer the program
18 until a qualified program administrator is selected to
19 administer the program. If, after a reasonable period, the
20 director is unable to identify and certify a program
21 administrator to assume the authority to continue to operate a
22 terminated [~~individual development account~~] family opportunity
23 accounts program, money in a reserve account shall be deposited
24 into the [~~individual development~~] family opportunity accounts
25 of the account owners for whom the proportionate share of the

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1 reserve account was established as of the first day of
2 termination of the program."

3 Section 11. Section 58-30-11 NMSA 1978 (being Laws 2003,
4 Chapter 362, Section 11, as amended) is amended to read:

5 "58-30-11. REPORTING.--A program administrator operating
6 [~~an individual development account~~] a family opportunity
7 accounts program pursuant to the [~~Individual Development~~
8 ~~Account~~] Family Opportunity Accounts Act shall report at least
9 annually to the director, as set forth in the rules of the
10 office. Individual account owners shall not be identified in
11 the report. The report shall include:

12 A. the number of eligible individuals making
13 contributions to [~~individual development~~] family opportunity
14 accounts;

15 B. the total money contributed to each [~~individual~~
16 ~~development~~] family opportunity account and deposited into each
17 reserve account;

18 C. the total money in the aggregate deposited in
19 [~~individual development~~] family opportunity accounts and
20 reserve accounts administered by the [~~individual development~~
21 ~~account~~] family opportunity accounts program;

22 D. the amounts withdrawn from [~~individual~~
23 ~~development~~] family opportunity accounts for either allowable
24 uses or for uses other than allowable uses and the amounts
25 withdrawn from reserve accounts;

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1 E. the balances remaining in [~~individual~~
2 ~~development account~~] family opportunity accounts and reserve
3 accounts; and

4 F. other information requested by the director to
5 monitor the costs and outcomes of the [~~individual development~~
6 ~~account~~] family opportunity accounts program."

7 Section 12. Section 58-30-12 NMSA 1978 (being Laws 2003,
8 Chapter 362, Section 12) is amended to read:

9 "58-30-12. ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF
10 CERTAIN MEANS-TESTED PROGRAMS.--

11 A. Money deposited into [~~an individual development~~]
12 a family opportunity account, interest earned on that account
13 and interest and matching funds deposited in a reserve account
14 for the benefit of the account owners shall be disregarded for
15 the purposes of determining eligibility for benefits and for
16 determining benefit amounts pursuant to the New Mexico Works
17 Act.

18 B. When determining eligibility for benefits and
19 determining benefit amounts due under the food stamp program
20 and medicaid, the human services department shall, pursuant to
21 the authority granted by 7 USCA 2014 (d) and (g), disregard
22 money deposited into [~~an individual development~~] a family
23 opportunity account, interest earned on that account and
24 interest and matching funds deposited in a reserve account for
25 the benefit of the account owners.

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1 C. Money withdrawn from [~~an individual development~~]
2 a family opportunity account for a purpose other than an
3 allowable use shall be counted as a resource for purposes of
4 the New Mexico Works Act or medicaid unless the withdrawal is
5 approved by the program administrator and an amount equal to
6 the amount withdrawn is replaced within the twelve-month
7 allowable time period pursuant to Subsection C of Section
8 58-30-8 NMSA 1978."

9 Section 13. A new section of the Family Opportunity
10 Accounts Act is enacted to read:

11 "[NEW MATERIAL] FUND CREATED.--The "family opportunity
12 fund" is created in the state treasury. The fund shall consist
13 of appropriations, gifts, grants, donations and bequests made
14 to the fund. Income from the fund shall be credited to the
15 fund, and money in the fund shall not be transferred to any
16 other fund at the end of a fiscal year. Money in the fund is
17 appropriated to the office of workforce training and
18 development for the purposes of carrying out the provisions of
19 the Family Opportunity Accounts Act. Expenditures shall be
20 made on warrant of the secretary of finance and administration
21 on vouchers signed by the director of the office of workforce
22 training and development."

23 Section 14. Section 27-2B-7 NMSA 1978 (being Laws 1998,
24 Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as
25 amended) is amended to read:

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1 "27-2B-7. FINANCIAL STANDARD OF NEED.--

2 A. The secretary shall adopt a financial standard
3 of need based upon the availability of federal and state funds
4 and based upon appropriations by the legislature of the
5 available federal temporary assistance for needy families grant
6 made pursuant to the federal act in the following categories:

- 7 (1) cash assistance;
- 8 (2) child care services;
- 9 (3) other services; and
- 10 (4) administrative costs.

11 The legislature shall determine the actual percentage of
12 each category to be used annually of the federal temporary
13 assistance for needy families grant made pursuant to the
14 federal act.

15 B. The following income sources are exempt from the
16 gross income test, the net income test and the cash payment
17 calculation:

- 18 (1) medicaid;
- 19 (2) food stamps;
- 20 (3) government-subsidized foster care payments
21 if the child for whom the payment is received is also excluded
22 from the benefit group;
- 23 (4) supplemental security income;
- 24 (5) government-subsidized housing or housing
25 payments;

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- 1 (6) federally excluded income;
- 2 (7) educational payments made directly to an
3 educational institution;
- 4 (8) government-subsidized child care;
- 5 (9) earned income that belongs to a person
6 seventeen years of age or younger who is not the head of
7 household;
- 8 (10) fifty dollars (\$50.00) of collected child
9 support passed through to the participant by the department's
10 child support enforcement program; ~~and~~
- 11 (11) earned income deposited in ~~[an individual~~
12 ~~development]~~ a family opportunity account by a member of the
13 benefit group or money received as matching funds for allowable
14 uses by the owner of the ~~[individual development]~~ family
15 opportunity account pursuant to the ~~[Individual Development~~
16 ~~Account]~~ Family Opportunity Accounts Act; and
- 17 (12) other income sources as determined by the
18 department.

19 C. The total countable gross earned and unearned
20 income of the benefit group cannot exceed eighty-five percent
21 of the federal poverty guidelines for the size of the benefit
22 group.

23 D. For a benefit group to be eligible to
24 participate:

- 25 (1) gross countable income that belongs to the

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1 benefit group must not exceed eighty-five percent of the
2 federal poverty guidelines for the size of the benefit group;
3 and

4 (2) net countable income that belongs to the
5 benefit group must not equal or exceed the financial standard
6 of need after applying the disregards set out in Paragraphs (1)
7 through (4) of Subsection E of this section.

8 E. Subject to the availability of state and federal
9 funds, the department shall determine the cash payment of the
10 benefit group by applying the following disregards to the
11 benefit group's earned [~~gross~~] income and then subtracting that
12 amount from the benefit group's financial standard of need:

13 (1) for the first two years of receiving cash
14 assistance or services, if a participant works over the work
15 requirement rate set by the department pursuant to the New
16 Mexico Works Act, one hundred percent of the income earned by
17 the participant beyond that rate;

18 (2) for the first two years of receiving cash
19 assistance or services, for a two-parent benefit group in which
20 one parent works over thirty-five hours per week and the other
21 works over twenty-four hours per week, one hundred percent of
22 income earned by each participant beyond the work requirement
23 rate set by the department;

24 (3) one hundred twenty-five dollars (\$125) of
25 monthly earned income and one-half of the remainder, or for a

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1 two-parent family, two hundred twenty-five dollars (\$225) of
2 monthly earned income and one-half of the remainder for each
3 parent;

4 (4) monthly payments made for child care at a
5 maximum of two hundred dollars (\$200) for a child under two
6 years of age and at a maximum of one hundred seventy-five
7 dollars (\$175) for a child two years of age or older;

8 (5) costs of self-employment income; and

9 (6) business expenses.

10 F. The department may recover overpayments of cash
11 assistance on a monthly basis not to exceed fifteen percent of
12 the financial standard of need applicable to the benefit
13 group."

14 Section 15. Section 27-2B-8 NMSA 1978 (being Laws 1998,
15 Chapter 8, Section 8 and Laws 1998, Chapter 9, Section 8, as
16 amended by Laws 2003, Chapter 311, Section 4 and Laws 2003,
17 Chapter 432, Section 4) is amended to read:

18 "27-2B-8. RESOURCES.--

19 A. Liquid and nonliquid resources owned by the
20 benefit group shall be counted in the eligibility
21 determination.

22 B. A benefit group may at a maximum own the
23 following resources:

24 (1) two thousand dollars (\$2,000) in nonliquid
25 resources;

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1 (2) one thousand five hundred dollars (\$1,500)
2 in liquid resources;

3 (3) the value of the principal residence of
4 the participant;

5 (4) the value of burial plots and funeral
6 contracts for family members;

7 (5) [~~individual development~~] family
8 opportunity accounts; and

9 (6) the value of work-related equipment up to
10 one thousand dollars (\$1,000).

11 C. Vehicles owned by the benefit group shall not be
12 considered in the determination of resources attributed to the
13 benefit group."

14 Section 16. Section 27-2B-10 NMSA 1978 (being Laws 1998,
15 Chapter 8, Section 10 and Laws 1998, Chapter 9, Section 10, as
16 amended) is amended to read:

17 "27-2B-10. [~~INDIVIDUAL DEVELOPMENT~~] FAMILY OPPORTUNITY
18 ACCOUNTS--A participant may establish [~~an individual~~
19 ~~development~~] a family opportunity account pursuant to the
20 [~~Individual Development Account~~] Family Opportunity Accounts
21 Act."

22 Section 17. Section 27-2D-6 NMSA 1978 (being Laws 2003,
23 Chapter 317, Section 6) is amended to read:

24 "27-2D-6. RESOURCES.--

25 A. Liquid and nonliquid resources owned by the

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1 benefit group shall be counted in the eligibility
2 determination.

3 B. A benefit group may at a maximum own the
4 following resources:

5 (1) two thousand dollars (\$2,000) in nonliquid
6 resources;

7 (2) one thousand five hundred dollars (\$1,500)
8 in liquid resources;

9 (3) the value of the principal residence of
10 the recipient;

11 (4) the value of burial plots and funeral
12 contracts for family members;

13 (5) [~~individual development~~] family
14 opportunity accounts; and

15 (6) the value of work-related equipment up to
16 one thousand dollars (\$1,000).

17 C. Vehicles owned by the benefit group shall not be
18 considered in the determination of resources attributed to the
19 benefit group."

20 Section 18. APPROPRIATION.--Two million dollars
21 (\$2,000,000) is appropriated from the general fund to the
22 family opportunity fund for expenditure in fiscal year 2007 and
23 subsequent fiscal years for the purposes of carrying out the
24 provisions of the Family Opportunity Accounts Act. Any
25 unexpended or unencumbered balance remaining at the end of a

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1 fiscal year shall not revert.

2 Section 19. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2006.

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TITLE 8 SOCIAL SERVICES
CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS
PART 510 ELIGIBILITY POLICY - RESOURCES/PROPERTY

8.106.510.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.106.510.1 NMAC - N, 07/01/2004]

8.106.510.2 SCOPE: The rule applies to the general public.
[8.106.510.2 NMAC - N, 07/01/2004]

8.106.510.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.
[8.106.510.3 NMAC - N, 07/01/2004]

8.106.510.4 DURATION: Permanent.
[8.106.510.4 NMAC - N, 07/01/2004]

8.106.510.5 EFFECTIVE DATE: July 1, 2004, unless a later date is cited at the end of a section.
[8.106.510.5 NMAC - N, 07/01/2004]

8.106.510.6 OBJECTIVE:

A. The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).

B. The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.

C. The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low-income individual at the time of death.
[8.106.510.6 NMAC - N, 07/01/2004]

8.106.510.7 DEFINITIONS: [Reserved]
[8.106.510.7 NMAC - N, 07/01/2004]

8.106.510.8 RESOURCE STANDARDS: To be eligible, the value of all countable personal and real property, belonging to or considered as belonging to or considered available to the benefit group, shall not exceed the liquid or non-liquid resource limits. Total resources that exceed the liquid or non-liquid resource limit result in benefit group ineligibility unless the nature of the property or an express condition of its ownership prohibits its transfer. Resources are evaluated based upon their equity value.

A. Liquid resources: The value of countable liquid resources shall not exceed \$1,500.

B. Non-liquid resources: The value of countable non-liquid resources shall not exceed \$2,000.
[8.106.510.8 NMAC - N, 07/01/2004]

8.106.510.9 COUNTABLE RESOURCES:

A. Non-liquid real property: means land and the structures (including mobile homes) and improvements affixed to it.

(1) The value of countable real property owned by or considered available to the benefit group, shall be considered in determining whether non-liquid resources exceed \$2,000.

(2) Grazing permits are considered to be real property.

B. Personal property (liquid or non-liquid): means all property, other than real property, and includes such possessions as bank accounts, cash (other than the current month's income), motor vehicles, livestock, tools, equipment and rights to receive money, such as stocks, bonds, contract rights, insurance policies, etc. The types of personal property that must be counted in determining whether the benefit group's resources exceed the resource limits include, but are not limited to:

- (1) **Life insurance:**
 - (a) Life insurance policies owned by a member of the benefit group shall be considered as a resource that may be converted into cash. The cash value of the life insurance policy shall be counted toward the liquid resource limit.
 - (b) Information about lapsed insurance shall be obtained , since many lapsed policies have a cash value.
- (2) **Cash, bank accounts and other readily negotiable assets:**
 - (a) Readily available cash, such as cash on hand or money in a bank account and other readily negotiable assets, shall be considered as a liquid resource and shall be counted toward the liquid resource limit.
 - (b) "Other readily negotiable assets" include stocks, bonds, negotiable notes, purchase contracts and other similar assets. For purposes of cash assistance eligibility, the value of such assets is their current market value.
- (3) **Motor vehicles, equipment and tools:**
 - (a) The equity value of all motor vehicles, equipment and tools is countable, unless specifically excluded.
 - (b) The value of motor vehicles, equipment and tools, except as set forth in Paragraph 1 of Subsection B of 8.106.510.10 NMAC below, is subject to the non-liquid resource test.
- (4) **Asset conversion:**
 - (a) Money received from one-time-only or sporadic sales of real or personal property, such as crops, rugs, jewelry, etc., shall be considered an asset, rather than income, provided that the property is not sold or transferred in connection with a business or self-employment activity.
 - (b) Assets converted into money are subject to the \$1,500 liquid assets limitation, regardless of whether they were fully or partially exempt prior to conversion.
- (5) **Lump sum payments:** Payments of a one-time nature, such as retroactive monthly payments, payments in the nature of a windfall, personal injury and worker's compensation awards, gambling winnings, etc., shall be considered a resource subject to the liquid resource limit.
[8.106.510.9 NMAC - N, 07/01/2004]

8.106.510.10 RESOURCE EXCLUSIONS:

A. Real property:

- (1) **The home:** The value of the benefit group's home is not considered in determining eligibility. The "home" is the dwelling place occupied by the benefit group. The home is considered to be occupied by the benefit group during a temporary absence, when there is a definite plan to return to the home and no one else is occupying it.
- (2) "Home" includes, in addition to the residence building and the land upon which it is constructed, the following:
 - (a) a reasonable amount of land within reasonable proximity to the residence building, if that land is currently used by and useful to the client;
 - (b) outbuildings within reasonable proximity to the residence building, such as barn, garage and well, if the well is a principal source of water;
 - (c) buildings used for rental purposes, if located on land contiguous to the land upon which the residence building is constructed, and if these buildings cannot be divided from the residence land and sold separately;
 - (d) grazing permits currently being used to graze livestock owned by the client; and
 - (e) furniture, equipment and household goods necessary for the operation and maintenance of the home.

(3) **Other real property - burial plots:** One burial plot for each person included in the benefit group shall be excluded; a burial plot shall consist of the space needed to bury a member of the immediate family.

B. Exempt personal property: The value of the following items of personal property shall not be considered in determining eligibility for GA cash assistance:

- (1) **Vehicles:** all vehicles used by the benefit group for transporting individuals to or from employment, for daily living activities, or for the transportation of goods shall be excluded from consideration as a resource subject to the non-liquid resource limit; recreational vehicles, such as boats or motor homes, shall not be excluded;
- (2) **Specially-equipped vehicles:** a vehicle owned by the benefit group that is specially equipped for

the handicapped shall not be considered in the determination of the liquid or non-liquid resource limit.

C. Exempt income: Any income that is exempt under income provisions is also exempt from consideration as a resource. To maintain its exempt status, exempt income that is accumulated must be kept separate from non-exempt savings.

D. Individual development account (IDA): Subject to the limitations set forth below, funds in an IDA are exempt from consideration as resources in determining benefit group eligibility. To be exempt from consideration, the IDA must be designated for a qualified purpose.

(1) Post-secondary education of a dependent child included in the benefit group: In order to be considered used for a qualified purpose, the post-secondary education funds must be paid from an IDA directly to an eligible education institution. For purposes of this regulation, post-secondary education expenses include:

(a) tuition and fees required for the enrollment or attendance of a student at an eligible education institution. An eligible institution is an institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 USC 1088(a)(1) or 1141(a)); an area vocational education school (as defined in section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) located in any state; or

(b) books, fees, supplies and equipment required for courses of instruction at an eligible educational institution.

(2) Purchase of a principal residence for a first-time home buyer: The purpose of the IDA is to assist a qualified first-time home buyer to accumulate part of the cash necessary to initiate purchase of the individual's first home.

(a) Only IDA's established by qualified first-time home buyers shall be disregarded; a qualified first-time home buyer is one who has never had an ownership interest in a principal residence.

(b) The IDA may be used only for the purchase of a qualified principal residence; a qualified principal residence is one which qualifies as the principal home under subsection 1034 the federal internal revenue code, if the costs for which do not exceed 100% of the average area purchase price applicable to such residence, determined in accordance with paragraphs (2) and (3) of subsection 143(e) of the internal revenue code.

(c) No more than \$1,500 may be accumulated in an IDA for first-time home purchase. Any amount in excess of \$1,500 is considered in determining whether the benefit group meets the cash resource limit.

(3) Business capitalization: In order to be considered used for a qualified purpose, the funds have to be paid directly from the IDA to a business capitalization account established in a federally insured financial institution that is restricted to use solely for qualified business capitalization expenses. A qualified business means any business that does not contravene any law or public policy. Qualified business capitalization expenses include capital, plant, equipment, working capital and inventory expenses. To be a qualified business, there must be a business plan which:

(a) is approved by a financial institution or a nonprofit loan fund having demonstrated fiduciary integrity;

(b) includes a description of services or goods to be sold, a marketing plan and projected financial statements; and

(c) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(4) To be disregarded, the IDA must meet the following requirements:

(a) the benefit group member must first establish and maintain a savings account with a balance of \$1,500;

(b) the benefit group member must establish the IDA for one of the three purposes described above.

(c) in order for such accounts to be excludable, the IDA must be a trust created or organized in the United States, with trust language restricting use of account funds to the purposes as designated in this section; and

(d) the IDA must be funded exclusively with income earned by a benefit group member or by contributions made by a non-benefit group member.

(5) Funds withdrawn from the account and used for any purpose other than those specified under this section will cause the account to lose its status as an excluded resource, starting with the month in which the funds are withdrawn from the IDA account.

E. Funeral agreements: The equity value of funeral agreements owned by a benefit group member shall be excluded from consideration as a resource. Funeral agreements include any arrangement under which

prepaid funeral services are provided or cash benefits that are intended to pay for funeral services are paid upon the individual's death. Such agreements include contracts with funeral homes, life or burial insurance, and trust or escrow accounts in financial institutions or banks, provided that the trust or escrow accounts contain provisions making the funds payable only upon the death of a named individual. There is no limit on the amount of the funeral agreement that can be disregarded.

F. Contingent or unliquidated claims: A "contingent or unliquidated claim" is an undetermined right of an individual to receive, at some future time, a resource such as an interest in an unprobated estate or damages or compensation resulting from an accident or injury. Such a claim is not considered a resource if the individual (either applicant or recipient) can demonstrate that an attorney has been consulted, or that under the circumstances, it is reasonable not to have consulted an attorney, and that the individual is making every reasonable effort to prosecute the claim or to proceed with the probate. If the individual can demonstrate that his or her share in an unprobated estate would be less than the expense of the proceedings to probate the estate, the value is not considered a resource.

G. Work-related equipment exclusion: Work-related equipment, such as the tools of a trades person or the machinery of a farmer, which are essential to the employment or self-employment of a benefit group member, are excluded, in an amount not to exceed \$1,000 per individual, and remain excludable if the trades person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

H. Livestock: The value of livestock is an excluded non-liquid resource.

I. Federally excluded resources: Certain resources are excluded pursuant to federal law. For a listing of federally-excluded resources, see 8.139.527 NMAC.
[8.106.510.10 NMAC - N, 07/01/2004]

8.106.510.11 RESOURCE AVAILABILITY:

A. Availability: Resources that are actually available or that are considered to be available to the benefit group are considered in determining eligibility for assistance.

(1) The resource amount used for determination of eligibility for an applicant benefit group shall be based upon the status of the resources on the date of the application interview.

(2) The resource amount used for determination of eligibility for an active case shall be made based on the amount available in the month following the month of expiration of a notice of adverse action.

B. Potentially available resources: The benefit group is required to take all appropriate steps to make available to itself any liquid or non-liquid resource to which the group may be entitled but whose value is not currently considered available, e.g., an inheritance from an unprobated estate. The fact that specific property is not readily marketable on the client's terms is not a condition prohibiting transfer. The current value of property, which must be partitioned in order to be accessible, is not considered available if the net value (after estimated costs of partition and other closing costs) is less than the resource limit. If the amount likely to be derived from the applicant's/recipient's share of the property exceeds the resource limit, the applicant/recipient will be required to initiate attempts to obtain the applicant's/recipient's share of the estate.

C. Resources of benefit group members: A countable liquid or non-liquid resource that belongs to any member of the benefit group is considered available to the entire benefit group.

D. SSI recipients and other non-members: The property of individuals receiving SSI or that of other non-members shall not be considered available, regardless of relationship to benefit group members, except as indicated in Subsection F below.

E. Alien sponsor: The gross income and resources belonging to an individual who is the sponsor of an alien included in the cash assistance benefit group, and the income belonging to the sponsor's spouse, shall be counted in its entirety to determine the eligibility and payment amount if the sponsor has executed an affidavit of support pursuant to subsection 213-A of the Immigration and Nationality Act. The income and resources of the alien sponsor and spouse shall be counted until the sponsored alien achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

F. Resources belonging to the unrelated caretaker: The liquid resources owned by an unrelated caretaker of a minor dependent child living in the home shall not be considered available to the child, unless the unrelated caretaker chooses to be included in the GA benefit group.

G. Jointly-owned resources: Resources owned jointly by the benefit group and any individual who is not a mandatory benefit group member shall be considered available in their entirety to the benefit group, unless it can be demonstrated by an applicant or recipient that such resources are inaccessible. The benefit group must verify that:

- (1) it does not have the use of the resource;
- (2) it did not make the purchase or down payment associated with the resource;
- (3) it does not make the continuing loan payments; and
- (4) the title is transferred to, or retained by, the other joint owner;
- (5) if a benefit group can demonstrate that it has access to only a part of the resource, the value of that part is counted toward the benefit group's resource level; a resource will be considered totally inaccessible, if it cannot be practically subdivided and the benefit group's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply; for purposes of this provision, ineligible aliens or disqualified individuals residing with a benefit group are considered benefit group members.

H. Joint bank accounts: If a bank account is owned jointly by a benefit group member and any other individual, the funds in the account are considered available to the benefit group to the extent that it has contributed to the account. If the participating benefit group has not contributed to the account, the funds are considered available only if there is clear and convincing evidence that the other joint owner of the account intends for the participating benefit group to have access to the funds.
[8.106.510.11 NMAC - N, 07/01/2004]

8.106.510.12 ELIGIBILITY DETERMINATION:

A. Determination: If, after determining what property is available to the benefit group and determining the value of that resource, the net value of the countable real and personal property exceeds resource limits, the benefit group shall be ineligible for assistance on the basis of need. The benefit group shall remain ineligible on the basis of need for as long as the value of the property exceeds the resource standards.

B. Receipt of resources: Resources acquired by a benefit group member after approval of an assistance grant shall be evaluated for purposes of financial assistance eligibility at the time of the change. Reporting requirements as indicated in Subsection D of 8.102.630.8 NMAC apply. If the benefit group becomes ineligible due to ownership or availability of resources, assistance is terminated effective the month following the month in which the notice of adverse action expires.
[8.106.510.12 NMAC - N, 07/01/2004]

8.106.510.13 NON-TRANSFER OF REAL PROPERTY:

A. Requirement:

(1) In order to include an individual in the benefit group, the individual must not have transferred real property for the purpose of becoming eligible for cash assistance within the two-year period preceding the date of application.

(2) A transfer is considered to be for the purpose of becoming eligible for cash assistance if:

- (a) the transfer was made without a reasonable return; and
- (b) the individual had no reasonable plan for support at the time of the transfer other than assistance from the department.

B. Transfer:

(1) For the purpose of this provision, transfer includes the sale, conveyance by deed, or any other method of transferring the title to the property involved, including transfer by gift. The transfer may be for either the title to the real property or other interests or rights in the property, such as mineral or water rights.

(2) A child under the age of 18 cannot transfer property, except through a legal guardian. Normally, a child will not own property in the child's own right, but if facts indicate the existence of a trust, inheritance or prior gifts to the child, it must be determined whether a transfer has taken place within the two-year period.

C. Reasonable return: A reasonable return on the transfer of property is considered to have been received when the person who made the transfer received compensation in cash or in kind equal to the value of the property at the time of transfer. The determination as to whether a reasonable return was received is based on the individual's equity interest in the property at the time of the transfer.

(1) **Equity less than \$2,000:** If the value of the equity interest, plus all other countable resources, was less than \$2,000, the transfer is not considered to be for the purpose of becoming eligible for cash assistance.

(2) **Reasonable value not received:** If it is determined that the property was transferred for the purpose of becoming eligible, but the client has subsequently made efforts to obtain a reasonable return or to regain title, and is willing to continue such efforts, eligibility on this condition exists. If the client is not willing to pursue a reasonable return, or to attempt to regain title to the property, the benefit group shall not be eligible for six months from the month ISD makes the determination that the transfer was made.

[8.106.510.13 NMAC - N, 07/01/2004]

History of 8.106.510 NMAC: [RESERVED]

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

	ORIGINAL DATE	1-26-06		
SPONSOR	<u>Lujan, B.</u>	LAST UPDATED	<u>2-10-06</u>	HB <u>112/aHGUAC/aHAFC/aHFL#1</u>
SHORT TITLE	<u>Family Opportunity Accounts</u>		SB	<u></u>
		ANALYST	<u>Lucero</u>	

Duplicates SB279, Relates to SB067, Conflicts with, Companion to

Relates to Appropriation in the General Appropriation Act – Special Appropriations – Executive recommends \$2,000.0, LFC recommends \$500.0, HAFC recommends \$1,000.0, SFC recommends \$1,500.0

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of Workforce Training and Development (OWTD)

Children, Youth and Families Department (CYFD)

Human Services Department (HSD)

SUMMARY

Synopsis of HB 112/a HFL#1

This House Floor Amendment #1 contains four items:

1. Item numbered 1, reverses the House Government and Urban Affairs Committee (HGUAC) amendment 4 and 5 which deleted certain language and inserted new language to make all public funds, not just federal, available for matching. This item is inconsequential because item number four below, deletes this whole paragraph.
2. Item numbered 2, deletes certain language. The revision attempts to improve the definition of “indigent”. The revised definition is more inclusive than exclusive.
3. Item numbered 3, on page 4 line 2, deletes the word “other” and inserts the word “basic”. This language restores some of the eligibility limitation; however, the language remains somewhat vague.
4. Item numbered 4, deletes paragraph 2 on page 15 line 22. This removes the language which was giving preference to family opportunity account programs which had the ability to match state funds with other funds. The removal of this paragraph opens the opportunity to more vendors/providers in more areas of the state, especially rural areas.

Although the language concerning the definition of “indigent” has improved, there still remains some question concerning who is eligible to participate. The original change in eligibility criteria is due to a narrow interpretation of the “anti-donation clause” by attorneys at DFA. Questions pertaining to the “anti-donation” clause may need to be investigated further, perhaps by the Attorney General. This bill has not been reviewed by the Judiciary committee; therefore, the

DFA attorney's anti-donation interpretation hasn't been reviewed by another legal authority.

The administrative allocation which was changed from ten percent to five percent is not sufficient to adequately administer the program. Currently, HAFC substitute for HB2 contains a non-recurring appropriation of \$500.0, which will allow for \$25.0 for administering the program.

Synopsis of HB 112/a HAFC

This House Appropriations and Finance Committee amendment removes the \$2,000.0 appropriation in the bill. The amendment strikes the word "Making an Appropriation" and Section 18 which was the appropriation amount and language.

Synopsis of HB 112/a HGUAC

This House Government and Urban Affairs Committee amendment allows other local governmental entities to provide the matching funds, not just the federal or state government. This will allow local municipalities and counties to provide matching funds. The amendment also makes one technical correction for an item which was marked as new material incorrectly.

SB379 which is the duplicate of this bill, must include the same amendment if it is continue to be the companion bill.

If this amendment is not passed – only state funds or federal funds will be able to be used for matching portions of the accounts – this amendment allows other sources of matching funds to be utilized – such as HUD monies from the county and municipalities.

Synopsis of original bill

House Bill 112 appropriates \$2,000.0 from the GENERAL FUND to the family opportunity fund for the purpose of carrying out the provisions of the Family Opportunity Accounts Act
The bill amends the Individual Development Account Act to be entitled the Family Opportunity Accounts Act, changes the eligibility requirements removing the earned income requirement being less than 200% of federal poverty and replaces it with a newly defined requirement of indigence, establishes criteria for program administrators, creates the Family Opportunity Accounts Council charged with the oversight administration of the Act, and adds language for approval of the Family Opportunity Accounts Programs.

The bill creates the family opportunity fund in the state treasury. The provisions of the Individual Development Account Act currently are administered by the Office of Workforce Training and Development, which would continue to administer the provisions of this bill.

FISCAL IMPLICATIONS

The appropriation of \$2,000.0 contained in this bill is a RECURRING expense to the family opportunity fund. The family opportunity fund is non-reverting.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

Funds used for allowable purposes do not impact Medicaid income eligibility.

The state matching funds have been capped at \$2,000 per year per individual.

SIGNIFICANT ISSUES

The eligibility criterion is being changed significantly. The current statute uses an income standard of 200% of the federal poverty level (FPL). This proposes to change the eligibility requirement to a definition of “indigent” mostly derived from a New Mexico Supreme Court ruling in Humana of New Mexico, Inc vs. Board of County Commissioners of the County of Lea, New Mexico.

1. FPL is a cut and dry eligibility standard which works well for almost all social programs
 2. The definition of indigent is vague and may allow individuals with income levels higher than 200% participate. An individual who earns an adequate living but is in debt and unable to pay the costs to purchase a home, car, or start a business may qualify.
 3. The change in eligibility criteria is due to a narrow interpretation of the “anti-donation clause” by DFA.
 4. Questions pertaining to the “anti-donation” clause may need to be investigated further.
- Reduces the amount available for administration from 10% to 5%. Depending on the size of the appropriation, this may be a significant issue for OWTD. OWTD needs a sufficient amount of administrative budget to administer and monitor these accounts, as well as provide for the financial training programming. The statute requires a nine member advisory council which meets twice a year with per diem and mileage reimbursement.
 - The responsibility to provide the financial training has been passed to the program administrator. It is unclear if the program administrator will also take an additional administrative allocation for providing the training or if it is a component of the 10% or 5% OWTD allocation.
 - The financial training curriculum has not been addressed. There should be a minimum amount of class or course hours required taught by a degreed instructor.
 - Clarifies the RFP process for selecting program administrators.
 - The bill adds language to guide the selection of program administrators to ensure geographically diverse populations are served. This may limit the ability of some non-profits to respond to the RFP if their population is concentrated such as Native Americans living on tribal lands or densely populated Hispanic locations.
 - Another program administrator preference is given to those which can ensure the highest possible match. This may limit rural area non-profits who do not have the expertise to obtain federal funds to match with state funds.
 - Another program administrator preference is given to one which will benefit families with children. Foster children who may be eligible to participate beginning at age 16, may be limited from participating in the program.
 - Counting money as a resource one year after withdrawal, if not approved by the program ad-

ministrator, is problematic for eligibility determination.

- HSD will need to amend state rules to mirror the new terminology, e.g., “family opportunity accounts” instead of IDA, indigent, etc.

After an account has been established, an account holder may be eligible to keep the account even after his/her income has increased.

This bill refers to childcare as a support category available for temporary assistance and a monthly maximum amount allowable.

Page 7 line 9 – 12 deletes language providing eligibility for a child in foster care at 200% of the federal poverty level and replaces it with “indigent” eligibility. The use of the definition of “indigent” in relation to a child in foster care may eliminate many foster children. Few children in foster care would qualify as being indigent as they do not typically have liabilities in excess of income.

PERFORMANCE IMPLICATIONS

State general fund dollars used in matching family Opportunity Accounts might be credited toward the TANF Maintenance of Effort (MOE) requirement; however, under the federal Budget Reconciliation Bill for TANF reauthorization which is likely to pass this spring and become effective on October 1, 2006, families must be meeting the federal work participation rates. This might be difficult to track the credit for MOE for participants under the Family Opportunity Accounts Act. HSD may opt to exclude some or all of these general fund dollars from the MOE requirement.

ADMINISTRATIVE IMPLICATIONS

OWTD will need an employee responsible for RFP, monitoring and assessing the success of this program.

OWTD will be required to fund the financial training aspect of the IDA concept out of the administrative allocation.

A nine member advisory council which meets twice a year is entitled to per diem and mileage and the administrative support of OWTD staff. The proposed administrative allocation change to 5% may not be sufficient.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to an appropriation in the General Appropriation Act – Special Appropriations – Executive recommends \$2,000.0, LFC recommends \$500.0,

This bill relates to SB067 which appropriates \$1,000.0 from the general fund for expenditure in 2007 – 2010 with no more than \$250.0 expended per year for the purpose of implementing the individual development account program. At the end of 2010, any unexpended or unencumbered balance shall revert to the general fund. SB067 does not change the current IDA statutes, it provides for phased-in funding.

TECHNICAL ISSUES

The bill creates a family opportunity fund to carry out the provisions of the Family Opportunity Accounts Act. The language in this section states “... and money in the fund shall not be transferred to any other fund at the end of a fiscal year”. The Section 58-30-5 of the current statute allows 10% of the money appropriated for the Individual Development Account Act to be used to administer the act. Limiting the ability to transfer the 10% administrative allocation to the Office of Workforce Training and Development to one fiscal year reduces the Department’s ability to properly use the funds.

OTHER SUBSTANTIVE ISSUES

HSD has identified a number of legal issues:

1. Section 58-30-2(J): The definition of “indigent” is vague and ambiguous and open to different interpretations that are or may be inconsistent with existing statutes and regulations governing the Department’s public assistance programs.
2. HB 112 allows the account holder to establish sub-accounts that, without more specific guidelines, could open the door to abuse of the program.
3. HB 112 would essentially require a retroactive determination of eligibility. If an improper withdrawal of account funds is not repaid within a given 12-month period, the withdrawn amount would then be countable as a resource. There is no retroactive denial in Medicaid, and ISD would have no way of retroactively determining eligibility in such a situation. (e. g., See Section 58-30-12.)
4. In Sections 58-30-(A) and (B), the financial eligibility standards have been removed without identifying what constitutes an eligible individual.
5. In Section 58-30-5(B), it is not clear whether the director may report orally to the governor or is required to submit a written annual report, which would be preferable.
6. Section 58-30-6 has been improperly amended. Language that appears in the original statute should be restated and lined out to indicate deletion. That step has been omitted.
7. The “family opportunity accounts council” should be defined in the Definitions Section (58-30-2).
8. Section 58-30-7(C) allows the office of workforce training and development to establish a matching amount exceeding the maximum two thousands dollars, without any stating any legal justification or program criteria.
9. In Section 58-30-8(A)(6), the use of the term “recipient” is ambiguous and confusing.
10. Section 58-30-10(B) allows money in a reserve account to be deposited into a family opportunity account, without proper safeguarding and tracking, in the event the director is unable to obtain and certify a new program administrator

ALTERNATIVES

Fund the IDA program as it currently exists in statute in a phased-in process. Additional legal council can be sought to determine if a conflict exists with the anti-donation clause, as well as, the best eligibility criteria to use.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not passed – the original act (IDA’s) will continue to be an unfunded Act/Program. Federal money is continuing to be held unused because the Act requires matching funds for federal money to be spent. Also, if the changes in the original Act are not passed, but an appropriation alone is passed, the original bill may violate the anti-donation clause –which DFA has warned about.

DL/yr.nt:mt



State of New Mexico

Office of the Governor

For Immediate Release
March 8, 2006

Contacts: Gilbert Gallegos
505.476.2217

Governor Bill Richardson Signs Legislation to Encourage Working New Mexicans to Save Money

SANTA FE- Governor Bill Richardson today signed an important bill that encourages low-income New Mexico families to save money to pursue higher education, start a micro-enterprise or buy a home.

House Bill 112, sponsored by Speaker Ben Lujan, creates Family Opportunity Accounts, known as Individual Development Accounts. These interest bearing savings accounts target working, low-income families.

Currently, there are about 200 active IDAs in New Mexico, which are funded with private and federal dollars. This bill contributes \$1.5 million in state funding to create Family Opportunity Accounts to reach more New Mexicans.

“I support this initiative that encourages working New Mexicans to save money - in an effort to boost home ownership and educational opportunities,” Governor Richardson said. “The idea is for the state to contribute to Family Opportunity Accounts, which will benefit working, low-income families who open a bank account, place regular savings into an account and successfully complete a financial literacy course.”

To create incentives to save, IDA accounts are matched, up to \$2,000 annually, by public or private sources on two conditions. One, accounts are primarily restricted to placing a down payment on a home, starting or expanding a micro-enterprise or paying for college or vocational school tuition. Two, in order to receive the match, the account owner must successfully complete a financial literacy course. The course is designed to teach the basics of how to reduce debt, budget, manage a checking account, save, invest and avoid financial pitfalls like predatory lending. IDA owners also receive training targeted to their specific asset goals, such as a class for first-time homebuyers.

HB 112 gives priority to households with children because children usually realize the greatest benefits from asset building

“I am honored to have co-sponsored this legislation. This builds upon the previous hard work of Representative Patty Lundstrum and Representative Mary Helen Garcia. This is one of the most significant pieces of legislation that will have a profound and lasting impact on working families to capture some of the most fundamental aspects of a quality of life; making the dream of owning a home a reality, establishing a small business and fulfilling the ‘American Dream,’ or having your son or daughter become the first college graduate in your family. Asset building strategies for low-income people will now become a reality,” Speaker Ben Lujan said. “I want to thank Governor Bill Richardson in his leadership and vision and his continued challenge to us; let us find and create meaningful approaches and lasting opportunities for those who work the hardest but often never realize their dreams. This is one of his fulfilling promises to the working people of New Mexico. This is how you break the vicious cycle of poverty, by helping people help themselves.”

“Owning assets gives working, low-income New Mexicans a bigger stake in New Mexico’s future and a better shot at realizing the American Dream,” said Fred Nathan Executive Director of Think New Mexico, a non-profit organization committed to finding comprehensive solutions to problems facing New Mexican. “Any New Mexican willing to work hard, commit to saving and learn the basics of financial literacy, deserves access to a college education, the opportunity to start a business, and the security of owning a home.”

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 510 ELIGIBILITY POLICY – RESOURCES AND PROPERTY

8.139.510.1 ISSUING AGENCY: New Mexico Human Services Department
[02/01//95; 8.139.510.1 NMAC - Rn, 8 NMAC 3.FSP.000.1, 05/15/2001]

8.139.510.2 SCOPE: General Public
[02/01//95; 8.139.510.2 NMAC - Rn, 8 NMAC 3.FSP.000.2, 05/15/2001]

8.139.510.3 STATUTORY AUTHORITY: The Food Stamp Program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the Act are contained in 7 CFR Parts 270-282. State authority for administering the Food Stamp Program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).
[02/01//95; 8.139.510.3 NMAC - Rn, 8 NMAC 3.FSP.000.3, 05/15/2001]

8.139.510.4 DURATION: Permanent
[02/01//95; 8.139.510.4 NMAC - Rn, 8 NMAC 3.FSP.000.4, 05/15/2001]

8.139.510.5 EFFECTIVE DATE: February 1, 1995
[02/01//95; 8.139.510.5 NMAC - Rn, 8 NMAC 3.FSP.000.5, 05/15/2001]

8.139.510.6 OBJECTIVE: Issuance of the revised Food Stamp Program policy manual is intended to be used in administration of the Food Stamp Program in New Mexico. This revision incorporated the latest federal policy changes in the Food Stamp Program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all Income Support Division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the Human Services Department.
[02/01//95; 8.139.510.6 NMAC - Rn, 8 NMAC 3.FSP.000.6, 05/15/2001]

8.139.510.7 DEFINITIONS: [RESERVED]

8.139.510.8 RESOURCE ELIGIBILITY STANDARDS

A. The maximum allowable resources, including both liquid and non-liquid assets, of all members of a household cannot exceed:

- (1) \$2,000; or
- (2) \$3,000 for households consisting of or including a member who is elderly or disabled as defined at paragraph 23 of Subsection A of 8.139.100.7 NMAC.

B. The value of a nonexempt resource is its equity value. Equity value is the fair market value less encumbrances. The value of stocks and bonds, such as U.S. savings bonds, is their cash value, not their face value.

C. It is a household's responsibility to report all resources held at the time of application and any anticipated to be received, or that are later received during the certification period, that might place the household's resources above the maximum allowed.

D. Categorically Eligible Households: Households in which all members receive Title IV-A, GA, or SSI benefits are categorically eligible and do not need to meet the resource limits or provisions of this section.

E. Sponsored Aliens: For households containing sponsored aliens, a prorated amount of the countable resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) are deemed to be those of the sponsored alien, in accordance with sponsored alien provisions in 8.139.420.9 NMAC.

F. Non-household Members: The resources of non-household members, defined in 8.139.400.10 NMAC shall not be considered available to the household.

G. Resources of Ineligible or Disqualified Household Members: The resources of ineligible or disqualified household members shall be counted as available to the household in their entirety. If a resource

exclusion applies to a household member, the exclusion shall also apply to the resources of an ineligible or disqualified person whose resources are counted as available to the household.
[02/01/95, 07/01/97, 07/01/98, 06/01/99; 8.139.510.8 NMAC - Rn, 8 NMAC 3.FSP510, 05/15/2001; A, 02/01/2002; A, 10/01/2002]

8.139.510.9 STANDARDS

- A. Liquid Resources:** Liquid resources are readily negotiable resources such as, but not limited to:
- (1) Cash on hand;
 - (2) Money in checking and saving accounts;
 - (3) Savings certificates, stocks and bonds (even if they are producing income consistent with their fair market value), credit union shares, promissory notes, U.S. savings bonds (after they become accessible six months from the date of purchase);
 - (4) Loans, including loans from private individuals as well as from commercial institutions, are considered in the month received.
- B. Lump-Sum Payments:** Money received in the form of a nonrecurring lump sum payment is counted as a resource in the month received, unless specifically excluded by other federal laws.
- (1) Lump sum payments include, but are not limited to:
 - (a) Income tax refunds, rebates, or credits, including Earned Income Tax Credit payments after 2 months;
 - (b) Retroactive lump sum social security, SSI, Cash Assistance, railroad retirement benefits or similar payments;
 - (c) Lump sum insurance settlements;
 - (d) Refunds of security deposits on rental property or utilities.
 - (2) Lump sum payments are delayed payments owed to a household for past periods.
- C. Other Liquid Resources:** Liquid resources also include:
- (1) Funds held in individual retirement accounts (IRAs), and
 - (2) Funds held in Keogh plans that do not involve a household member in a contractual relationship with individuals who are not household members. In determining the availability of IRAs or Keogh plans, the caseworker shall count the total cash value minus the amount of the penalty (if any) for early withdrawal of the entire amount.
- D. Non-liquid Resources:** Non-liquid resources include personal property, boats, buildings, land, recreational property, and any other property, provided that the resource is not specifically excluded. Non-liquid resources shall be documented in sufficient detail to permit verification if the resource becomes questionable.
- E. Vehicles:** The entire value of any licensed or unlicensed vehicle shall be excluded in determining eligibility and benefit amount in the Food Stamp program.
[02/01/95, 10/01/95, 10/01/96; 8.139.510.9 NMAC - Rn, 8 NMAC 3.FSP511, 05/15/2001; A, 02/01/2002]

8.139.510.10 EXCLUSIONS

- A.** In determining the resources of a household, the following shall be excluded:
- (1) Home and surrounding property (Subsection C of 8.139.510.10 NMAC);
 - (2) Household and personal goods (Subsection D of 8.139.510.10 NMAC);
 - (3) Life insurance, deferred compensation and joint pension funds (Subsection D of 8.139.510.10 NMAC);
 - (4) Income-producing property (Subsection E of 8.139.510.10 NMAC);
 - (5) Work-related equipment (Subsection F of 8.139.510.10 NMAC);
 - (6) Inaccessible resources (Subsection G of 8.139.510.10 NMAC);
 - (7) Resources excluded by federal law (8.139.527 NMAC);
 - (8) Resources of non-household members (Subsection F of 8.139.510.8 NMAC);
 - (9) Other exempt resources, such as those of an SSI or Title IV-A recipient;
 - (10) Excluded monies kept in a separate account and not commingled with non-excluded funds.
When commingled, the excluded monies retain their exclusion for a period of six months from the date they are commingled.
 - (11) **Vehicles:** The entire value of a vehicle owned by a household member shall be excluded as a countable resource as set forth at Subsection E of 8.139.510.9 NMAC

B. Exceptions:

(1) Educational loans and grants of students, commingled with non-excluded funds, retain the exemption for the period over which they are intended to be used.

(2) Operating funds of a self-employment enterprise commingled with non-excluded funds retain the exemption for the period over which they have been prorated as income.

C. Home and Surrounding Property: A household's home, and surrounding property which is not separated from the home by intervening property owned by others, shall be excluded. Public rights of way, such as roads that run through the surrounding property and separate it from the home, do not affect the exemption of the property. The home and surrounding property remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. No specific time limit is imposed in determining that the absence is temporary. A household that currently does not own a home, but owns or is purchasing a lot on which it intends to build, or is building a permanent home, receives an exclusion for the value of the lot, and, if partially completed, for the home. If part of the land surrounding a home is rented, the land retains this exclusion and the income-producing test in Subsection E of 8.139.510.10 NMAC does not apply. Any income received from renting part of the surrounding property shall be counted in determining income eligibility and food stamp benefit amount.

D. Personal Effects:

(1) Households goods, livestock, and personal effects, including one burial plot per household member, and the cash value of life insurance policies shall be excluded. Any amount that can be withdrawn from a prepaid burial plan shall be counted as a resource and cannot be excluded under this provision.

(2) The cash value of pension plans or pension funds shall be excluded.

(3) IRAs and Keogh plans involving no contractual relationship with individuals who are not household members are not excluded.

E. Income-Producing Property:

(1) **Exclusions:** The following income-producing property shall be excluded:

(a) Property which annually produces income consistent with its fair market value, even if used on a seasonal basis. Such property includes rental and vacation homes. If the property cannot produce income consistent with its fair market value because of circumstances beyond the household's control, the exclusion remains in effect.

(b) Property, such as farm land, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming continues to be excluded for one year from the date that the household member ends self-employment farming.

(c) An installment contract for the sale of land or a building that is producing income consistent with its fair market value. The value of the property sold under an installment contract or held as security in exchange for the purchase price consistent with the fair market value of that property is also excluded. The value of personal property sold on installment contracts such as boats, automobiles, etc. is also treated in this manner as long as the property sold on contract is not part of a self-employment enterprise.

(2) **Determining Fair Market Value:** The following guidelines shall be used to determine fair market value:

(a) If it is questionable that property is producing income consistent with its fair market value, the caseworker shall contact local realtors, tax assessors, the Small Business Administration, Farmer's Home Administration or other similar sources to determine the prevailing rate of return. If it is determined that property is not producing income consistent with its fair market value, such property is counted as a resource. If property is leased for a return that is comparable to that on other property in the area leased for similar purposes, it is considered income producing consistent with its fair market value and is not counted as a resource.

(b) Property exempt as essential to employment need not be producing income consistent with its fair market value. For example, the land of a farmer is essential to the farmer's employment; therefore, a good or bad crop year does not affect the exemption of such property as a resource.

F. Work-Related Equipment Exclusion: Work-related equipment, such as the tools of a trades-person or the machinery of a farmer, which are essential to the employment or self-employment of a household member are excluded. The tools of a trades-person are excluded, and remain exempt, if the trades-person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

G. Inaccessible Resources: Resources shall be excluded if their cash value is not accessible to the household, such as, but not limited to:

(1) Security deposits on rental property or utilities;

(2) **Property in Probate:** When a decision is rendered by the court explaining how the property is to

be divided, the property is no longer in probate, whether or not the household signs papers;

(3) Real property that the household is making a good faith effort to sell at a reasonable price and which has not been sold; and

(4) **Irrevocable Trust Funds:** Any funds in a trust, or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, is considered inaccessible to the household if:

(a) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(b) The trustee administering the funds is:

(i) A court;

(ii) an institution, corporation, or organization not under the direction or ownership of any household member;

(iii) an individual appointed by the court with court-imposed limitations placed on the use of the funds.

(c) The trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(d) The funds held in an irrevocable trust are either:

(i) established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust, or to pay the educational or medical expenses of any person named by the household creating the trust; or

(ii) established from non-household funds by a non-household-member.

(5) **Insignificant Return:** Any resource, that as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great.

(a) A resource shall be so identified if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household.

(b) This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments, nor to vehicles.

(c) The caseworker may require verification of the value of a resource to be considered inaccessible if the information provided by the household is questionable.

(d) The following definitions shall be used in determining whether a resource may be excluded under this provision:

(i) "significant return" is any return, after estimated costs of sale or disposition, and taking into account the ownership interest of the household, that is estimated to be one half or more of the applicable resource limit for the household;

(ii) "any significant amount of funds" are funds amounting to one-half or more of the applicable resource limit for the household.

H. Joint Property:

(1) **Joint Resources:** Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by an applicant household that such resources are inaccessible to it. The household must verify that:

(a) It does not have the use of the resource;

(b) It did not make the purchase or down payment;

(c) It does not make the continuing loan payments, and

(d) The title is transferred to or retained by the other household.

(e) If a household can demonstrate that it has access to only a part of the resource, the value of that part is counted toward the household's resource level. A resource shall be considered totally inaccessible, if it cannot be practically subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. For purposes of this provision, ineligible aliens or disqualified individuals residing with a household are considered household members.

(2) **Joint Bank Accounts:** If signatories to a joint bank account are separate households, the funds in the account are considered available to each household to the extent that it has contributed to the account. If the participating household has not contributed to the account, the funds are considered available only if there is clear and convincing evidence that the other household intends that the participating household actually own the funds.

I. Residents of Shelters for Battered Women and Children: Resources shall be considered

inaccessible to individuals residing in shelters for battered women and children if:

- (1) Resources are jointly owned by shelter residents and members of their former household, and
- (2) Shelter resident's access to the value of the resource(s) is dependent on the agreement of a joint owner residing in the former household.

J. Other Exempt Resources:

(1) **Earmarked Resources:** Government payments designated for the restoration of a home damaged in a disaster shall be excluded, if the household is subject to a legal sanction if the funds are not used as intended. However government payments designed to bring homes "up to code" are not exempt and are counted as a resource.

(2) **Prorated Income:** Resources, such as those of students or self-employed individuals which have been prorated as income, shall be excluded.

(3) **Indian Lands:** Indian land held jointly by a participating household and the tribe, or land that can be sold only with the approval of the Department of Interior's Bureau of Indian Affairs, shall be excluded.

(4) **Business Loan Collateral:** Non liquid assets against which a lien has been placed as a result of taking out a business loan, when the household is prohibited by the security or loan agreement with the lien holder (creditor) from selling the assets, shall be excluded.

(5) **Property for Vehicle Maintenance and Use:** Property, real or personal, is excluded to the extent that it is directly related to the maintenance or use of a vehicle excluded under Paragraph 1 of Subsection E of 8.139.510.9 NMAC. Only that part of real property determined necessary for actual maintenance or use is excludable under this provision.

(6) **Title IV-A/SSI Recipients:** The resource of any household member who receives:

- (a) Supplemental security income (SSI) benefits under Title XVI of the Social Security Act; or
- (b) Aid to the aged, blind, or disabled under Titles I, X, XIV, or XVI of the Social Security

Act; or

(c) Benefits under part A of Title IV of the Social Security Act shall be considered exempt for food stamp purposes provided resources are also considered exempt under the applicable titles or parts of the Social Security Act.

[02/01/95, 10/01/95, 02/01/96, 10/01/96, 07/01/97, 06/01/99; 8.139.510.10 NMAC - Rn, 8 NMAC 3.FSP513, 05/15/2001; A, 02/01/2002]

8.139.510.11 RESOURCE TRANSFERS

A. Anyone whose resources are considered available, and who knowingly transfers resources, will be disqualified from participating in the program if the transfer meets all of the following criteria:

- (1) The transfer was made within the three-month period immediately preceding the date of application or the household knowingly transferred the resource after approval;
- (2) The resources transferred will affect eligibility. If the resources will not affect eligibility, such as furniture, the transfer will not disqualify the household;
- (3) The resources were transferred for less than fair market value. If the compensation received in cash, property, services, or other reasonable form of payment is at or near fair market value, the transfer does not disqualify the household;
- (4) The transfer was not between members of the same household or persons whose resources are considered available (disqualified members); and
- (5) The transfer was made for the purpose of qualifying or attempting to qualify for benefits. If the resources were transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, such as a parent placing funds into an educational trust fund, the transfer does not disqualify the household.

B. Disqualification:

(1) If it is determined that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the household will be disqualified from participating in the Food Stamp Program for up to one year from the date of the discovery of the transfer.

(2) If the household is applying, the period of disqualification begins with and includes the month of application.

(3) If the household is participating at the time the transfer is discovered, an adverse action notice explaining the reason for and the length of the disqualification will be sent. The period of disqualification will begin the month following the month the notice of adverse action time limit expires, unless the household appeals the action and requests continued benefits.

(4) The fact that a household was certified, but did not receive any food stamp benefits, does not

preclude the penalty for transferring resources.

C. Time Period for Disqualification:

(1) The length of the disqualification period is based on the amount by which the nonexempt transferred resource, when added to other countable resources, exceeds the allowable resource limit.

(2) The following chart will be used to determine the period of disqualification:

Amount in Excess the Resource Unit	Period of Disqualification
\$0 to \$249.99	1 month
\$250 to \$999.99	3 months
\$1,000 to \$2,999.99	6 months
\$3,000 to \$4,999.99	9 months
\$5,000 or more	12 months

[02/01/95; 8.139.510.11 NMAC – Rn, 8 NMAC 3.FSP.515, 05/15/2001]

History of 8.139.510 NMAC:

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

- ISD 440.0000, Eligibility Criteria - Financial, 8-15-80.
- ISD 440.0000, Eligibility Criteria - Financial, 10-24-80.
- ISD-Rule 428.0000, Food Assistance - Resources, 11-4-82.
- ISD-Rule 428.0000, Food Assistance - Resources, 2-14-83.
- ISD-Rule 428.0000, Food Assistance - Resources, 1-12-84.
- ISD-Rule 428.0000, Food Assistance - Resources, 5-1-86.
- ISD FS 410, Food Stamp Resources, 3-1-88.

History of Repealed Material: [Reserved]