

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]