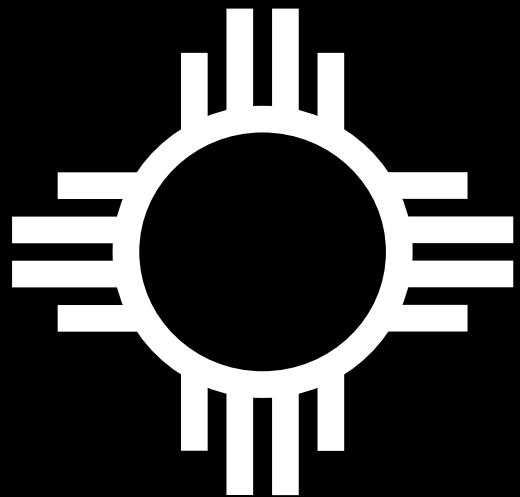


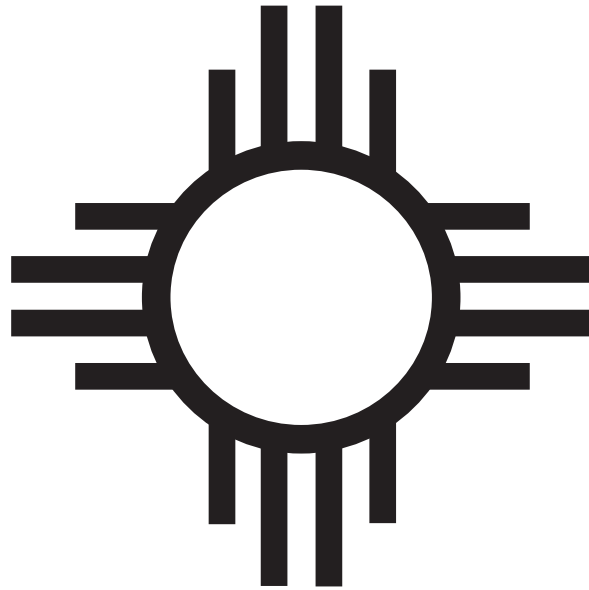
**NEW
MEXICO
REGISTER**



Volume XXVI
Issue Number 12
June 30, 2015

New Mexico Register

**Volume XXVI, Issue 12
June 30, 2015**



The official publication for all notices of rulemaking
and filing of proposed, adopted and emergency rules in
New Mexico

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Administrative Law Division
Santa Fe, New Mexico
2015

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New Mexico Register

Volume XXVI, Issue 12

June 30, 2015

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The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE

Notice of Meeting and Public Hearing on Amended Rules

Tuesday July 21, 2015, 11:00 AM,
Criminalistics Conference Room,
Metropolitan Forensic Science Center,
5350 2nd Street NW, Albuquerque, NM
87107.

To comment on, or for additional
information including a copy of the
agenda and proposed amendments
to 10.14.200 NMAC, or if you have
a disability and you require special
assistance to participate in this meeting
contact John Krebsbach, Chairperson at
(505) 823-4210 by Wednesday July 15,
2015.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ENERGY CONSERVATION AND MANAGEMENT DIVISION

Notice Of Public Hearing And Rulemaking

The New Mexico Energy, Minerals and
Natural Resources Department (EMNRD),
Energy Conservation and Management
Division will hold a public hearing on
proposed rules for the New Sustainable
Building Tax Credit Program at 9:15 a.m.
on Tuesday, July 28, 2015 in Porter Hall,
Wendell Chino Building, 1220 South Saint
Francis Drive, Santa Fe, New Mexico.

EMNRD is proposing the following rules:
3.4.21 NMAC, New Sustainable Building
Tax Credit for Residential Buildings,
Corporate Income Taxes; 3.4.22 NMAC,
New Sustainable Building Tax Credit for
Commercial Buildings, Corporate Income
Taxes; 3.3.34 NMAC, New Sustainable
Building Tax Credit for Residential
Buildings, Personal Income Taxes; and
3.3.35 NMAC, New Sustainable Building
Tax Credit for Commercial Buildings,
Personal Income Taxes. Proposals to
3.4.21 NMAC include definitions, water
conservation requirements, and the
setting of the annual cap and tax credits
for residential buildings. Proposals to

3.4.22 NMAC include the setting of the
annual cap for tax credits for commercial
buildings. Proposals to 3.3.34 NMAC
include definitions, water conservation
requirements, and the setting of the
annual cap and tax credits for residential
buildings. Proposals to 3.3.35 NMAC
include the setting of the annual cap for
commercial buildings.

Copies of the proposed rule changes
are available from EMNRD, Energy
Conservation and Management Division,
1220 S. Saint Francis Drive, Santa Fe,
NM 87505; at www.cleanenergynm.org;
or by contacting Ken Hughes at
khughes@state.nm.us; telephone (505)
476-3320.

All interested persons may participate
in the hearing, and will be given an
opportunity to submit relevant evidence,
data, views, and arguments, orally or in
writing.

Those wishing to submit written
statements in lieu of providing oral
testimony at the hearing, may submit
the written statements by July 21, 2015
by 5:00 p.m. by mail or e-mail. Please
mail written comments to Ken Hughes,
EMNRD, Energy Conservation and
Management Division, 1220 South Saint
Francis Drive, Santa Fe, New Mexico
87505 or submit them by e-mail to
khughes@state.nm.us. EMNRD will
accept no statements after the conclusion
of the hearing.

If you are an individual with a disability
who is in need of a reader, amplifier,
qualified sign language interpreter, or any
other form of auxiliary aid or service to
attend or participate in the hearing, please
contact Ken Hughes at least one week
prior to the hearing or as soon as possible.

GENERAL SERVICES DEPARTMENT

Notice of Proposed Rulemaking

The General Services Department (“GSD
or Department”) hereby gives notice that
the Department will conduct a public
hearing as indicated to obtain input on
amending the following rules:
1.5.3 NMAC Administration and Use of
State Vehicles.

A public hearing regarding the rules
will be held on July 7, 2015 in the TSD
Conference Room located at 2542
Cerrillos Rd., Building T-187, Santa Fe,
New Mexico. The time for the hearing on
the proposed rules is 10:00 AM MDT.

Interested individuals may testify at
the public hearing or submit written
comments regarding the proposed
rulemaking relating to the Administration
and Use of State Vehicles to Annette
Roybal, State Central Fleet Authority,
Bureau Chief, New Mexico General
Services Department, 2542 Cerrillos Rd.,
Santa Fe, New Mexico 87505 or Annette.roybal@state.nm.us, (505) 231-6299, fax
(505) 827-1967. Written comments must
be received no later than 5:00 PM on
July 6, 2015. The proposed rulemaking
actions specific to the Transportation
Services Division it may be accessed on
the Department’s website (<http://www.generalservices.state.nm.us/>) or obtained
from Annette Roybal at the contact above.

Individuals with disabilities who require
this information in an alternative format
or need any form of auxiliary aid to attend
or participate in this hearing are asked
to contact Annette Roybal as soon as
possible. The Department requests at least
seven days advanced notice to provide
requested special accommodations.

DEPARTMENT OF HEALTH

Notice of Public Hearing

The New Mexico Department of Health
will hold a public hearing on 7.5.4
NMAC- “Vaccine Purchasing Fund.” The
hearing will be held at 9:00 AM on July
31, 2015 in the Harold Runnels Building
Auditorium, located at 1190 St. Francis
Drive, Santa Fe, New Mexico 87502.

The public hearing will be conducted
to review proposed new regulations
regarding the Vaccine Purchasing Fund.

A copy of the proposed regulations can be
obtained from:

Margaret Campos
Public Health Division-Immunization
Program
New Mexico Department of Health
1190 St. Francis Drive, PO Box 26110

Santa Fe, NM 87502
505-827-2463
margaret.campos@state.nm.us

Please submit any written comments regarding the proposed regulations to the attention of Margaret Campos at the above address or e-mail prior to the hearing. If you are an individual with a disability who is need of special assistance or accommodations to attend or participate in the hearing, please contact Margaret Campos by telephone at 505-827-2463. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

Notice of Public Hearing

The New Mexico Human Services Department (HSD) will hold a public hearing to allow public comment on the proposed amendment of Low Income Home Energy Assistance Program (LIHEAP) regulations. The hearing will be held on Thursday July 30, 2015, at 1:00 pm to 3:00 pm at the Income Support Division (ISD) conference room, 2009 S. Pacheco Street, Santa Fe, New Mexico. The conference room is located in Room 120 on the lower level of Pollon Plaza.

New Mexico administers the Low Income Energy Assistance Program according to the federal LIHEAP statute. The Human Services Department is proposing language to the LIHEAP New Mexico Administrative Code (NMAC) to align the administration of LIHEAP with our Automated System Program and Eligibility Network (ASPEN).

The Department proposes to amend section 8.150.100 NMAC to include additional language to:

- define a life-threatening situation;
- clarify financial eligibility which must be at or below 150% of the Federal Poverty Limit;
- reference existing regulation regarding timely issuance of benefits;
- incorporate LIHEAP statute citation;
- define homeless applicants with energy costs;
- define crisis and life threatening crisis applications;
- clarify the time allowed for

processing a crisis application (48 hours, excluding weekends and holidays, for crisis and 18 hours, excluding weekends and holidays, for life threatening);

- correct wording to identify clients as applicants/recipients; and
- place emphasis on the application assistance, referral services, timely processing, and claim processing.

The Department proposes to amend section 8.150.110 NMAC to include additional language to:

- correct wording to identify clients as applicants/recipients;
- clarify assistance available for the applicants/recipients and to include our online application via the state's Web Application Portal;
- clarify the application process for LIHEAP benefits, and crisis processing for applicants;
- clarify the application period for benefits for the Federal Fiscal Year from October 1 ending September 30;
- clarify that if the household fails to provide the verification required for processing, ISD may deny the applications 30 days from the date received on the application;
- clarify notice language regarding approvals and denials; and
- clarify that there is not a second application period in any federal fiscal year and HSD may issue a supplemental benefit if deemed necessary.

The Department proposes to amend section 8.150.410 NMAC to include additional language to:

- clarify the proof necessary for a crisis or life threatening crisis intervention;
- clarify additional community referrals provided by the local ISD office;
- clarify that applicants who receive subsidized rent with utilities included, are not eligible unless they incur addition out-of-pocket heating or cooling costs;
- clarify eligibility for HSD administered LIHEAP for Native American-applicants, residing on a different tribes' land, that have not received LIHEAP benefits from their tribal government for the current LIHEAP season; and
- clarify the claims process for erroneously issued benefits.

The Department proposes to amend

section 8.150.500 NMAC to include additional language to:

- clarify that a separate LIHEAP interview is needed if the information provided is questionable, in the case of a crisis/ life threatening situation, and if the applicant/recipient has not been previously interviewed for any other ISD programs;
- clarify an additional request for enumeration information only if the number has not been issued by the social security administration or if the number is questionable;
- identify our new Automated System Program and Eligibility Network, which replaced the ISD2 system; and
- clarify additional verification requirements necessary to meet the federal requirements:
 1. proof of the household's main fuel expense for household's current residence, if the applicant is not requesting LIHEAP for the main heating or cooling fuel source;
 2. when the applicant is requesting assistance with propane, the applicant must provide two (2) consecutive purchase receipts for propane or a signed statement or billing from the utility vendor.

The Department proposes to amend section 8.150.520 NMAC to include additional language to:

- correct the title section from earned income to income and
- correct the crisis spelling.

The Department proposes to amend section 8.150.600 NMAC to include additional language to:

- clarify the methods of issuing LIHEAP benefits;
- clarify situations when a warrant may be issued to a recipient;
- clarify that ISD will provide the account name and customer account number to the vendor;
- clarify that vendors shall return all excess LIHEAP benefits from the account if closed to the central office LIHEAP;
- clarify that the recipient household which receives a direct payment is responsible for using the benefit for the purpose intended. A LIHEAP benefit is to be applied to their heating or cooling costs;
- clarify that utility vendors regulated by the Public Regulation

Commission shall not disconnect residential utility service for heating from November 15 through March 15 of the subsequent year; and

- clarify HSD generated approval notices for public assistance programs whose income guidelines are at or below 150% of the current federal poverty guidelines. The notice is proof of qualification for the winter moratorium on utility disconnection.

The Department proposes to amend section 8.150.620 NMAC to include additional language to:

- indicate additional points will be awarded if the household's energy burden is for the use of propane;
- clarify the Energy Standard Allowance (ESA) and energy burden points;
- clarify eligible applications received through September 30 will be considered eligible based on the availability of funds; and
- add propane point allocation language at the direction of the HSD Secretary as described in A of 8.150.620.10 NMAC.

The Human Services Register Vol. 38 No. 14 outlining the proposed regulations are available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7227.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the Assistant General Counsel/ American Disabilities Act Coordinator, at 505-827-7720 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 4:00 pm on the date of the hearing, Thursday July 30, 2015. Please send comments to:

Human Services Department
P.O. Box 2348, Pollon Plaza
Santa Fe, New Mexico 87504-2348

You may send comments electronically to:
HSD-isdrules@state.nm.us

**REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

Legal Notice; Public Rule Hearing

The New Mexico Financial Institutions Division will hold a Rule Hearing on Tuesday, July 28, 2015. The New Mexico Financial Institutions Division Rule Hearing will begin at 10:00 a.m. and adjourn no later than 3:00 p.m. The Rule Hearing will be held at the Regulation and Licensing Department, Toney Anaya Building, 2500 Cerrillos Road, Santa Fe, NM, 87505, in the Rio Grande Conference Room.

The purpose of the rule hearing is to consider repealing and replacing Escrow Company Act Regulations 12.25.2 NMAC.

You can contact the Division office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4885 or copies of the proposed rules are available on the Division's website: www.RLD.state.nm.us. In order for the Director to review the comments in the meeting packet prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Division office in writing no later than July 20, 2015. Persons wishing to present their comments at the hearing will need five (5) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4885 at least two weeks prior to the meeting or as soon as possible.

**End of Notices of Rulemaking
and Proposed Rules Section**

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Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

AGING AND LONG-TERM SERVICES DEPARTMENT

SAA Rule No. 95-1, General Provisions (filed 4/13/1995), is repealed and replaced by 9.2.1 NMAC, General Provisions, effective 6/30/2015.

SAA Rule No. 95-2, Federal and State Law (filed 4/13/1995), is repealed and replaced by 9.2.2 NMAC, Federal and State Law, effective 6/30/2015.

SAA Rule No. 95-3, Eligibility for State Agency on Aging Services (filed 4/13/1995), is repealed and replaced by 9.2.3 NMAC, Eligibility for Aging and Long-Term Services Department Services, effective 6/30/2015.

SAA Rule No. 95-4, Designation of Planning and Service Areas (filed 4/13/1995), is repealed and replaced by 9.2.4 NMAC, Designation of Planning and Services Areas, effective 6/30/2015.

SAA Rule No. 95-5, Area Agency Designation (filed 4/13/1995), is repealed and replaced by 9.2.5 NMAC, Area Agency on Aging Designation, effective 6/30/2015.

SAA Rule No. 95-6, Area Agency on Aging Requirements (filed 4/13/1995), is repealed and replaced by 9.2.6 NMAC, Area Agency on Aging Requirements, effective 6/30/2015.

SAA Rule No. 95-7, Withdrawal of Area Agency Designation (filed 4/13/1995), is repealed and replaced by 9.2.7 NMAC, De-Designation of Area Agencies on Aging, effective 6/30/2015.

SAA Rule No. 95-8, Adequate Proportion of Priority Services (filed 4/13/1995), is repealed and replaced by 9.2.8 NMAC, Adequate Proportion of Services, effective 6/30/2015.

SAA Rule No. 95-9, Direct Services (filed 4/13/1995), is repealed and replaced by 9.2.9 NMAC, Direct Services, effective 6/30/2015.

SAA Rule No. 95-10, Multipurpose Senior Centers Acquired, Constructed, Altered or Renovated with Older Americans Act Title III Funds (filed 4/13/1995), is repealed.

SAA Rule No. 95-11, Appeal/Hearing Procedures (filed 4/13/1995), is repealed and replaced by 9.2.11 NMAC, Appeal/Hearing Procedures, effective 6/30/2015.

SAA Rule No. 95-12, Corporate Eldercare (filed 4/13/1995), is repealed effective 6/30/2015.

SAA Rule No. 95-14, State Funded Foster Grandparent Program (filed 4/13/1995), is repealed and replaced by 9.2.14 NMAC, State-Funded Foster Grandparent Program, effective 6/30/2015.

SAA Rule No. 95-15, State Funded Senior Companion Program (filed 4/13/1995), is repealed and replaced by 9.2.15 NMAC, State-Funded Senior Companion Program, effective 6/30/2015.

SAA Rule No. 95-16, State Funded Retired and Senior Volunteer Program (filed 4/13/1995), is repealed and replaced by 9.2.16 NMAC, State-Funded Retired Senior Volunteer Program, effective 6/30/2015.

SAA Rule No. 95-17, Legal Assistance Services (filed 4/13/1995), is repealed and replaced by 9.2.17 NMAC, Legal Assistance Services, effective 6/30/2015.

9.2.18 NMAC, Nutrition Services Standards (filed 5/10/2001), is repealed and replaced by 9.2.18 NMAC, Nutrition Services, effective 6/30/2015.

9.2.20 NMAC, Indirect Costs to Tribal Entities (filed 5/31/2001), is repealed and replaced by 9.2.20 NMAC, Caps on Reimbursement for Indirect Costs to Indian Tribal Organizations in Intergovernmental Agreements, effective 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 1 GENERAL
PROVISIONS

9.2.1.1 ISSUING AGENCY:
New Mexico Aging & Long Term Services Department (NMA LTSD)
[9.2.1.1 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations.
[9.2.1.2 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.
[9.2.1.3 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.4 DURATION:
Permanent.
[9.2.1.4 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.5 EFFECTIVE DATE:
June 30, 2015, unless a later date is cited at the end of a section.
[9.2.1.5 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.6 OBJECTIVE:
The objective of this rule is to establish standards and procedures for the federal and state-funded programs administered by the aging and long-term services department.
[9.2.1.6 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.7 DEFINITIONS:
The following words and terms, when used in these rules, shall have the

following meanings unless the context clearly indicates otherwise or a different definition has been provided:

A. "Abuse" is the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm or pain or mental anguish or the deprivation by a person, including a caregiver, of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness.

B. The "administration on aging" is the federal agency, which is a part of the U.S. department of health and human services, charged with the responsibility of implementing the Older Americans Act.

C. "Advocacy" is defined as non-lobbying activities designed to create change in legislation and policies which benefit both individuals and groups of individuals.

D. "Aging and disability resource center" (ADRC) means an entity established as part of the state system of long-term care to provide comprehensive information on public and private long-term care programs, options, providers and resources; personal counseling to assist individuals in assessing existing or anticipated long-term care needs, and developing and implementing plans to meet their specific needs and circumstances; and access to the range of publicly-supported long-term care programs for which consumers may be eligible, by serving as a convenient point-of-entry for such programs.

E. "Aging network" means programs and services for older adults throughout New Mexico that receive federal or state funds under contract with the department or area agencies on aging. The aging network includes, but is not limited to, programs sponsored by tribal governments, local governments and private, non-profit organizations.

F. An "area agency on aging" (AAA) is an organization designated by the department to develop and administer a comprehensive and coordinated system of services for older persons within one or more planning and service areas.

G. "Area plan" is a document submitted by an area agency on aging to the department which provides for the provision of services and centers to meet the needs of older individuals in the planning and service area(s) administered.

H. "Assistant secretary" is the assistant secretary of aging of the administration on aging, U.S. department

of health and human services.

I. "Civic engagement" means an individual or collective action designed to address a public concern or an unmet human, educational, health care, environmental, or public safety need.

J. The "corporation for National and community service" (CNCS) is the federal agency that administers federal domestic volunteer programs.

K. "Department" means the New Mexico aging and long-term services department (ALTSD).

L. "Disability" means (except when such term is used in the phrases "severe disability," "developmental disability," and "physical disability") a mental or physical impairment or a combination of the two, resulting in a functional limitation in one or more of the following activities of daily living: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning and emotional adjustment. The term "severe disability" means a severe, chronic mental or physical impairment, or a combination of mental or physical impairments, that is likely to continue indefinitely and results in substantial functional limitation in three or more activities of daily living.

M. "Exploitation" is the illegal or improper act or process of an individual, including a caregiver or fiduciary, using the resources of another person for monetary or personal benefit, profit or gain.

N. A "focal point" means a facility established to encourage the maximum co-location and coordination of services for older individuals.

O. "Greatest economic need" is need resulting from an income level at or below the federal poverty level.

P. "Greatest social need" is need caused by noneconomic factors which include physical and mental disabilities; language barriers; and cultural, social or geographical isolation, including isolation caused by racial or ethnic status, that restricts an individual's ability to perform normal daily tasks or which threatens an individual's capacity to live independently.

Q. "In-home services" includes: homemaker and home health aides; visiting; telephone reassurance; chore maintenance; in-home respite care for families; adult day care as a respite service for families; minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other

programs; and personal care services and other services necessary to facilitate the ability of older individuals to remain at home, as may be defined in the State Plan or in an approved Area Plan.

R. "Indian tribal organization" is the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by the governing body.

S. "Indian tribe" means any tribe, band, nation or other organized group or community of Indians, which is either:

(1) Recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Located on, or in proximity to, a federal or state reservation.

T. "Long-term care" means any service, care, or item intended to assist individuals in coping with, or compensating for, a functional impairment in carrying out activities of daily living; furnished at home, in a community care setting, or in a long term care facility; and not furnished to prevent, diagnose, treat, or cure a medical disease or condition.

U. "Long-term care ombudsman" (LTCO) means an individual trained and certified to act as a representative of the office of the state long-term care ombudsman.

V. "Low income" is defined as having an annual family income at or below one hundred twenty five percent (125%) of the federal poverty level.

W. "Minorities" are individuals who are of Hispanic, Native American Indian (including Hawaiian and Eskimo), African-American or Asian heritage.

X. "Neglect" is the failure to provide for oneself the goods or services which are necessary to avoid physical harm, mental anguish or mental illness or the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an individual.

Y. "Older Americans Act" means the Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.

Z. "Older individual" means an individual who is at least fifty (50) years of age or older, unless otherwise specified in these rules.

AA. "Participants" are individuals who are eligible to receive

services or to participate in particular programs administered by the department or its designees.

BB. “Planning and service area” (PSA) is a portion or portions of the state designated by the department for purposes of planning, development, delivery and overall administration of services for older individuals.

CC. “Poverty level” is the official poverty level as defined by the United States office of management and budget, and adjusted by the secretary of the U.S. department of health and human services in accordance with the community services Block Grant Act, 42 U.S.C. Sections 9901 to 9926.

DD. “Provider” means an entity that is awarded a grant or contract from an area agency on aging or the department to provide services.

EE. “Reservation” means any federally or state recognized Indian tribe’s reservation or pueblo.

FF. “Right of first refusal” is a provision in the Older Americans Act which requires the department to give priority to public agencies or units of general purpose local government when designating area agencies on aging.

GG. “Self-directed care” means an approach to providing services intended to assist an individual with activities of daily living, in which services are planned, budgeted, and purchased under the direction and control of such individual; and such individual is provided with information and assistance as necessary and appropriate to enable him or her to make informed decisions about care options.

HH. “Senior center” is a community focal point where older adults come together for services and activities. A center may include multi-generational programs and serve as a resource for the entire community for information on aging, support for family caregivers, and training.

II. “State ombudsman” means an individual with expertise and experience in the fields of long-term care advocacy, designated by the department secretary to fulfill the duties defined in the Long-Term Care Ombudsman Act, Sections 28-17-1 to 28-17-19 NMSA 1978.

JJ. “State Plan on Aging” or “State Plan” is a document submitted by the state in order to receive grants from its allotments under the Older Americans Act.

KK. “Unit of general purpose local government” means a political subdivision of the state whose

authority is general and not limited to one function or combination of related functions, or an Indian tribal organization. [9.2.1.7 NMAC - Rp, SAA Rule No. 95-1.7, 06/30/2015]

9.2.1.8 BASIC REQUIREMENTS:

A. These rules apply to all functions and responsibilities required under the State plan on aging, in carrying out Older Americans Act programs.

B. The department, all area agencies on aging, grantees and subgrantees, contractors and subcontractors of funds administered by the department shall adhere to these rules. Additional terms and requirements not contained in these rules may be identified in contracts or grant awards.

C. Amendments to the Older Americans Act, any regulations promulgated thereunder, and state statutes may override these rules pending adoption of revised or new rules.

D. In the absence of department rules, federal laws, rules and regulations shall apply, as appropriate, to federal funds or to state funds used to match or supplement federal funds. In a like manner state statutes shall apply to state funds not governed by federal requirements.

E. The department, all area agencies on aging, grantees and subgrantees, contractors and subcontractors of funds administered by the department shall, where applicable, comply with the Civil Rights Act of 1964, 42 U.S.C. Section 2000e; the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 to 12103; Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services, 45 C.F.R. Section 80; and Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Section 84. [9.2.1.8 NMAC - Rp, SAA Rule No. 95-1.8, 06/30/2015]

HISTORY OF 9.2.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-1, General Provisions, filed 4/13/1995.

History of the Repealed Material:

SAA Rule No. 95-1, (filed 4/13/1995) - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 2 FEDERAL AND
STATE LAW**

9.2.2.1 ISSUING AGENCY: New Mexico Aging and Long Term Services Department (NMALTS) [9.2.2.1 NMAC - Rp, SAA Rule No. 95-2.1, 06/30/2015]

9.2.2.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico’s aging and disability populations. [9.2.2.2 NMAC - Rp, SAA Rule No. 95-2.2, 06/30/2015]

9.2.2.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations. [9.2.2.3 NMAC - Rp, SAA Rule No. 95-2.3, 06/30/2015]

9.2.2.4 DURATION: Permanent. [9.2.2.4 NMAC - Rp, SAA Rule No. 95-2.4, 06/30/2015]

9.2.2.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section. [9.2.2.5 NMAC - Rp, SAA Rule No. 95-2.5, 06/30/2015]

9.2.2.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the federal and state-funded programs administered by the aging and long term services department. [9.2.2.6 NMAC - Rp, SAA Rule No. 95-2.6, 06/30/2015]

9.2.2.7 DEFINITIONS: See 9.2.1.7 NMAC for definitions. [9.2.2.7 NMAC - Rp, SAA Rule No. 95-2.7, 06/30/2015]

9.2.2.8 LEGAL REFERENCES: [RESERVED] [9.2.2.8 NMAC - Rp, SAA Rule No. 95-2.8, 06/30/2015]

9.2.2.9 FEDERAL LAW: [RESERVED] [9.2.2.9 NMAC - Rp, SAA Rule No. 95-

2.9, 06/30/2015]

9.2.2.10 STATE LAW:
[RESERVED]
[9.2.2.10 NMAC - Rp, SAA Rule No. 95-2.10, 06/30/2015]

9.2.2.11 OLDER AMERICANS ACT: The department incorporates by reference the provisions of the Older Americans Act of 1965, as amended, and related implementing regulations for all programs funded by such act.
[9.2.2.11 NMAC - Rp, SAA Rule No. 95-2.11, 06/30/2015]

9.2.2.12 STATE PROVISIONS:

A. State funds used to match federal Older Americans Act funds must be administered in accordance with the related federal and state rules and regulations.

B. State funds used in conjunction with federal CNCS funds must be administered in accordance with the related federal and state rules and regulations.

C. State funds that exceed required match must address eligibility criteria in accordance with 9.2.3 NMAC, unless a waiver is granted by the department pursuant to 9.2.3 NMAC.
[9.2.2.12 NMAC - Rp, SAA Rule No. 95-2.12, 06/30/2015]

HISTORY OF 9.2.2 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State records center: SAA Rule No. 95-2, Federal and State Law, filed 4/13/1995.

History of the Repealed Material:
SAA Rule No. 95-2, filed 04/13/1995 - Repealed 06/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 3 ELIGIBILITY
FOR AGING AND LONG-TERM SERVICES DEPARTMENT SERVICES

9.2.3.1 ISSUING AGENCY:
New Mexico Aging and Long Term Services Department (NMA LTSD)
[9.2.3.1 NMAC - Rp, SAA Rule No. 95-3.1, 6/30/2015]

9.2.3.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations.
[9.2.3.2 NMAC - Rp, SAA Rule No. 95-3.2, 6/30/2015]

9.2.3.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.
[9.2.3.3 NMAC - Rp, SAA Rule No. 95-3.3, 6/30/2015]

9.2.3.4 DURATION:
Permanent.
[9.2.3.4 NMAC - Rp, SAA Rule No. 95-3.4, 6/30/2015]

9.2.3.5 EFFECTIVE DATE:
June 30, 2015, unless a later date is cited at the end of a section.
[9.2.3.5 NMAC - Rp, SAA Rule No. 95-3.5, 6/30/2015]

9.2.3.6 OBJECTIVE:
The objective of this rule is to establish standards and procedures for the federal and state-funded programs administered by the aging and long term services department.
[9.2.3.6 NMAC - Rp, SAA Rule No. 95-3.6, 6/30/2015]

9.2.3.7 DEFINITIONS: See 9.2.1.7 NMAC for definitions.
[9.2.3.7 NMAC - Rp, SAA Rule No. 95-3.7, 6/30/2015]

9.2.3.8 OLDER AMERICANS ACT SERVICES:
Except as otherwise provided, eligibility for federally-funded supportive services, nutrition services, caregiver services, legal services, long-term care ombudsman services, employment services, and other services funded by the Older Americans Act shall be pursuant to the Older Americans Act and Provisions Governing the Senior Community Service Employment Program, 20 C.F.R. Section 641, and is incorporated by reference into this part.

A. Criteria for employment services is set forth in 9.2.13 NMAC.

B. Criteria for legal services is set forth in 9.2.17 NMAC.

C. Criteria for nutrition

services is set forth in 9.2.18 NMAC.

D. Criteria for long-term care ombudsman services is set forth in 9.2.19 NMAC.
[9.2.3.8 NMAC - Rp, SAA Rule No. 95-3.8, 6/30/2015]

9.2.3.9 CORPORATION FOR NATIONAL SERVICE VOLUNTEER PROGRAMS: Except as otherwise provided, eligibility for federally-funded foster grandparent, senior companion, and retired senior volunteer programs shall be pursuant to Title II, Part B, of the Domestic Volunteer Service Act of 1973, 42 U.S.C. Sections 4950 to 5028; 45 C.F.R. Sections 2551 to 2553. The corporation for national and community service (CNCS) handbooks are incorporated by reference into this part.

A. Criteria for the foster grandparent program is further set forth in 9.2.14 NMAC.

B. Criteria for the senior companion program is further set forth in 9.2.15 NMAC.

C. Criteria for the retired senior volunteer program is further set forth in 9.2.16 NMAC.
[9.2.3.9 NMAC - Rp, SAA Rule No. 95-3.9, 6/30/2015]

9.2.3.10 STATE-FUNDED SERVICES: Eligibility for programs funded solely with state funds are as follows:

A. Except where otherwise noted, the following may be deemed eligible for state-funded services provided under contract with the department:

(1) Persons age fifty (50) or older;

(2) Spouses (of any age) of persons age fifty (50) or older;

(3) Persons with disabilities age eighteen (18) or older.

B. Criteria for adult protective services is set forth in 8.11.4 NMAC.

C. Area agencies on aging and other contract providers may elect to serve subsets of the populations specified in Subsection D of 9.2.3.10 NMAC, which shall be defined in their area plans and contract documents.

D. Area agencies on aging and other contract providers may request waivers from the department to serve additional populations other than those specified in Subsection A of 9.2.3.10 NMAC, based upon community need. Application for such a waiver shall include a description of:

(1) The population(s) to be served;

(2) The need for the proposed service(s) by the proposed population(s); and

(3) A budget for the proposed service(s).

Approval of any such waiver will be made by the department contingent upon documented need and availability of funding. Final or conditional written approval will be provided by the department.

[9.2.3.10 NMAC - Rp, SAA Rule No. 95-3.10, 6/30/2015]

9.2.3.11 VOLUNTARY CONTRIBUTIONS:

A. The Older Americans Act establishes requirements for voluntary contributions. Each older person who receives Older Americans Act-funded services shall be provided an opportunity to voluntarily contribute to the cost of services rendered.

B. Area agencies on aging and other programs are allowed to, and may solicit, voluntary contributions for all Older Americans Act-funded services, provided that the method of solicitation is non-coercive. Each service provider may develop a suggested contribution schedule for services provided with Older Americans Act funds. In developing such a schedule, the provider shall consider the income ranges of older persons in the provider's community, as well as the provider's other sources of income.

C. Area agencies on aging and providers shall not means test for any service for which contributions are accepted, or deny services to any individual who does not contribute.

D. Each area agency on aging shall consult with its relevant service providers and older individuals in its planning and service area(s) to determine the best method(s) for accepting voluntary contributions.

E. Area agencies on aging and programs shall:

- (1) Establish policies and procedures for soliciting, safeguarding, and accounting for contributions;
- (2) Protect the privacy of each person with respect to his/her contribution, or lack of contribution;
- (3) Clearly inform each person that there is no obligation to contribute, and that contribution is voluntary;
- (4) Fully describe the contribution policy in the area

plan or in a provider's program plan;

(5) Use any collected contributions to expand the service(s) for which the contributions were given; and

(6) Post information regarding any suggested contributions at the service premises in a location convenient to the participants.

[9.2.3.11 NMAC - Rp, SAA Rule No. 95-3.11, 6/30/2015]

9.2.3.12 COST SHARING AND SLIDING FEE SCALES:

A. In making application to apply cost sharing to services, area agencies on aging and providers must consider the intent of the Older Americans Act to serve targeted populations and must ensure that the application of cost sharing will not prevent the provision of services to low-income, minority, socially isolated, or rural populations. Cost sharing is a process which enables clients to contribute monetarily to the cost of the services they receive. Cost sharing may include the implementation of a sliding fee scale.

B. A fee is defined as a charge allowed by law for a service. A sliding fee scale is a graduated series of fees to be paid based on amount of income. If a sliding fee scale is implemented, area agencies on aging and providers must protect the privacy and confidentiality of older individuals. The individuals to be served must be informed that the service is provided on a fee-for-service basis and be notified of the sliding fee scale.

C. Area agencies on aging shall solicit the views of older individuals, providers, and other stakeholders prior to implementation of cost sharing in each respective service area of the state.

D. Area agencies on aging may contract to purchase services that charge a sliding fee based on income and the cost of delivering services. Such services may include, and, if Older Americans Act funds are used, are limited to:

- (1) Transportation/assisted transportation;
- (2) Shopping assistance;
- (3) Homemaker/housekeeping;
- (4) Adult day care/day health care;
- (5) Personal care;
- (6) Home health;
- (7) Respite

care;

(8) Home repair;

(9) Chores;

(10) Escort;

(11) Recreation;

(12) Physical fitness/exercise;

(13) Education/training;

(14) Home safety/accident prevention.

E. If Older Americans Act funds are used, such services may *not* include:

- (1) Information and assistance;
- (2) Outreach;
- (3) Benefits counseling;
- (4) Case management;
- (5) Ombudsman services;
- (6) Consumer protection services;
- (7) Congregate meals;
- (8) Home delivered meals;
- (9) Legal assistance;
- (10) Elder abuse prevention;
- (11) Any services delivered through tribal organizations.

F. With regard to any fees charged for Older Americans Act services, determination of a client's fee for a service shall be based on a client's confidential self-declaration of income, and spouse's income (if applicable), without verification. Older Americans Act services may not be denied due to the income of an individual or an individual's failure to make a cost sharing payment.

G. If a sliding fee scale is to be used, a description of the scale - its criteria, policies and payments must be written in language(s) reflecting the reading abilities of older individuals served and posted in high visibility areas. Such posting must include a statement that no services will be denied for failure to pay any fee. Assets, savings, or other property owned may not be considered in determining the fee for a service.

H. Revenues generated by a fee-for-service program must be spent on the same program that generates the funds in order to enhance the program.

I. Appropriate procedures to safeguard and account for cost sharing payments must be

established.

J. The basis for a sliding fee scale is to be the U.S. administration on aging’s annual issuance of “estimated poverty and near poverty thresholds.” “near poverty” is defined as one hundred twenty five percent (125%) of the poverty level. Individuals and families whose income is at or below the near poverty threshold shall not be charged for services.

K. Each and any specific sliding fee scale must be:

- (1) Reviewed and approved by the department;
- (2) Reviewed in a public hearing prior to implementation. The department may grant short-term approval prior to a public hearing to test the concept;

(3) Fully described by an area agency on aging in its area plan;

(4) Implemented based on established policies and procedures. These policies and procedures must address the circumstances that allow the provider to waive the fee-for-service and also address when an individual’s or family’s net income may be considered rather than gross income.

L. Fees:
(1) Are to be based on the actual cost of providing a service (as determined by a program, submitted to an area agency on aging and approved by the department).

(2) Cannot exceed the actual cost of providing a service.
[9.2.3.12 NMAC - Rp, SAA Rule No. 95-3.12, 6/30/2015]

HISTORY OF 9.2.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-3, Eligibility for State Agency on Aging Services, filed 4/13/95.

History of Repealed Material:

SAA Rule No. 95-3, (filed 4/13/1995) - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 4 DESIGNATION OF
PLANNING AND SERVICE AREAS**

9.2.4.1 ISSUING AGENCY:

New Mexico Aging and Long Term Services Department (NMALTS) [9.2.4.1 NMAC - Rp, SAA Rule No. 95-4.1, 6/30/2015]

9.2.4.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico’s aging and disability populations.
[9.2.4.2 NMAC - Rp, SAA Rule No. 95-4.2, 6/30/2015]

9.2.4.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.
[9.2.4.3 NMAC - Rp, SAA Rule No. 95-4.3, 6/30/2015]

9.2.4.4 DURATION: Permanent.
[9.2.4.4 NMAC - Rp, SAA Rule No. 95-4.4 6/30/2015]

9.2.4.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section.
[9.2.4.5 NMAC - Rp, SAA Rule No. 95-4.5, 6/30/2015]

9.2.4.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the federal and state-funded programs administered by the aging and long-term services department.
[9.2.4.6 NMAC - Rp, SAA Rule No. 95-4.6, 6/30/2015]

9.2.4.7 DEFINITIONS: See 9.2.1.7 NMAC for definitions.
[9.2.4.7 NMAC - Rp, SAA Rule No. 95-4.7, 6/30/2015]

9.2.4.8 LEGAL REFERENCES: [RESERVED]
[9.2.4.8 NMAC - Rp, SAA Rule No. 95-4.8, 6/30/2015]

9.2.4.9 DESIGNATION OF PLANNING AND SERVICE AREAS (PSAs): Existing intrastate planning and service areas (PSAs) shall continue to be designated unless:

- A.** There is demonstrated evidence that designation of an existing PSA is inconsistent with the purpose of the rules and regulations issued pursuant to the Older Americans Act; or
- B.** The designation of another PSA is necessary for the assurance of the efficient and effective

administration of programs authorized by the Older Americans Act and operating in the state.
[9.2.4.9 NMAC - Rp, SAA Rule No. 95-4.9, 6/30/2015]

9.2.4.10 TYPE OF DESIGNATION: The department may designate “federally recognized” planning and service areas under the auspices of the Older Americans Act and may designate “non-federally recognized” planning and service areas under state authority. Non-federally recognized planning and service areas may duplicate or overlap with federally recognized planning and service areas and shall be established in order to address special service needs or target populations and to facilitate the distribution of state funds.
[9.2.4.10 NMAC - Rp, SAA Rule No. 95-4.10, 6/30/2015]

9.2.4.11 CRITERIA FOR PSA DESIGNATION: The department shall divide the state into distinct planning and service areas, considering the following criteria:

- A.** Geographical distribution of older individuals in the state;
- B.** Incidence of the need for supportive services, nutrition services, multipurpose senior centers, legal assistance, and other services;
- C.** Distribution of older individuals who have greatest economic need, particularly those with low-incomes;
- D.** Distribution of older individuals residing in rural areas;
- E.** Distribution of minority older individuals;
- F.** Distribution of older individuals with limited English proficiency;
- G.** Distribution of older individuals who have greatest social need;
- H.** Distribution of Native American Indian elders;
- I.** Distribution of resources available to provide services;
- J.** Boundaries of existing areas within the state which were drawn for the planning or administration of supportive services programs; and
- K.** Location of units of general purpose local government within the state.
[9.2.4.11 NMAC - Rp, SAA Rule No. 95-4.12, 6/30/2015]

9.2.4.12 PROCEDURE FOR PSA DESIGNATION:
A. Non-department initiated:

(1) Any unit of general purpose local government, region within a state recognized for area wide planning, metropolitan area, or Indian tribe may make application to the department to be designated as a planning and service area.

(2) The aging network division director, as the department secretary's designee, shall approve or disapprove any such application submitted under paragraph (1) of this section.

(3) Any applicant under paragraph (1) of this section whose application for designation as a planning and service area is denied by the department may appeal the denial in writing to the department secretary within thirty (30) days of such denial.

(4) If the department denies an applicant for designation as a planning and service area under paragraph (1) of this section, the department shall provide a hearing on the denial of the application, in accordance with 9.2.11 NMAC if requested by the applicant, as well as issue a written decision on the denial within sixty (60) days following the hearing.

B. Department initiated: The department may designate additional planning and service areas or redefine existing planning and service areas based upon changes in the criteria for PSA designation in accordance with 9.2.4.11 NMAC.

C. The department shall solicit public input with regard to any proposed changes or additions to PSA designation.

(1) At least one (1) public hearing shall be held in each county and Indian tribe proposed to be affected.

(2) Thirty (30) day notice of such hearing(s) shall be provided to all area agencies on aging, aging network providers, tribes, and units of general purpose government where each entity will be provided the opportunity to provide oral or written comment.

(3) Entities will also be provided with the opportunity to submit written comments to the aging network division director, if they are unable to attend a public hearing. [9.2.4.12 NMAC - Rp, SAA Rule No. 95-4.11, 6/30/2015]

9.2.4.13 APPLICATION DENIAL OR APPROVAL: The secretary of the aging and long-term services department shall approve or

disapprove any application. [9.2.4.13 NMAC - Rp, SAA Rule No. 95-4.13, 6/30/2015]

9.2.4.14 APPROVAL OF PSA DESIGNATION: All PSA designations for purposes of distribution of federal funds must be further approved by the U.S. administration on aging. [9.2.4.14 NMAC - Rp, SAA Rule No. 95-4.13, 6/30/2015]

9.2.4.15 APPEAL OF PSA DESIGNATION OR REVOCATION OF DESIGNATION:
A. An applicant for PSA designation whose application the department has denied or a PSA whose designation the department has decided to revoke may appeal pursuant to the procedures set forth in section 9.2.11 NMAC.

B. Any applicant for "federally recognized" PSA designation whose application the department denies and who has been provided an appeal hearing and written decision by the department may appeal to the assistant secretary of the United States health and human services department administration on aging in writing within thirty (30) days of receipt of the department's written decision, pursuant to 45 C.F.R Section 1321.31 (2015).

[9.2.4.15 NMAC - Rp, SAA Rule No. 95-4.14, 6/30/2015]

9.2.4.16 DESIGNATED PSAs:

A. The designated PSAs are posted to the department's website.

B. All designation approvals shall be maintained in the appropriate department records. [9.2.4.16 NMAC - Rp, SAA Rule No. 95-4.15, 6/30/2015]

HISTORY OF 9.2.4 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-4, Designation of Planning and Service Areas, filed 4/13/95.

History of Repealed Material:
 SAA Rule No. 95-4, filed 4/13/1995 - Repealed 6/30/2015

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
 CHAPTER 2 AGE
 PART 5 AREA AGENCY ON AGING DESIGNATION**

9.2.5.1 ISSUING AGENCY:
 New Mexico Aging & Long Term Services Department (NMA LTSD). [9.2.5.1 NMAC - Rp, SAA Rule No. 95-5.1, 6/30/2015]

9.2.5.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations. [9.2.5.2 NMAC - Rp, SAA Rule No. 95-5.2, 6/30/2015]

9.2.5.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations. [9.2.5.3 NMAC - Rp, SAA Rule No. 95-5.3, 6/30/2015]

9.2.5.4 DURATION:
 Permanent. [9.2.5.4 NMAC - Rp, SAA Rule No. 95-5.4, 6/30/2015]

9.2.5.5 EFFECTIVE DATE:
 June 30, 2015, unless a later date is cited at the end of a section. [9.2.5.5 NMAC - Rp, SAA Rule No. 95-5.5, 6/30/2015]

9.2.5.6 OBJECTIVE:
 The objective of this rule is to establish standards and procedures for the federal and state funded programs administered by the aging and long-term services department. [9.2.5.6 NMAC - Rp, SAA Rule No. 95-5.6, 6/30/2015]

9.2.5.7 DEFINITIONS: See 9.2.1.7 NMAC for definitions. [9.2.5.7 NMAC - Rp, SAA Rule No. 95-5.7, 6/30/2015]

9.2.5.8 LEGAL REFERENCES: [RESERVED] [9.2.5.8 NMAC - Rp, SAA Rule No. 95-5.8, 6/30/2015]

9.2.5.9 NEED FOR DESIGNATION: Applications for designation as an area agency on aging (AAA), under the Older Americans Act, must be solicited by the department when a new planning and service area (PSA) has been designated, or when an existing AAA has been de-designated, or when an existing AAA has voluntarily withdrawn its designation. [9.2.5.9 NMAC - Rp, SAA Rule No. 95-5.9, 6/30/2015]

9.2.5.10 TYPE OF

DESIGNATION: The department may designate federally recognized AAAs under the auspices of the Older Americans Act, or may designate non-federally recognized AAAs under state authority. Non-federally recognized AAAs shall be established and shall operate under the same rules as federally recognized AAAs unless otherwise negotiated with the designated organization.
[9.2.5.10 NMAC - Rp, SAA Rule No. 95-5.10, 6/30/2015]

9.2.5.11 ELIGIBILITY AND PREFERENCE FOR DESIGNATION:

A. An AAA may be any of the following:

(1) An established aging organization which operates in a PSA;

(2) Any office or agency designated by the chief elected officials of a unit of general purpose local government to function only as an AAA;

(3) Any office or agency designated by the chief elected officials of any combination of units of general purpose local government to act on behalf of the combination for such purpose; or

(4) Any public or private non-profit organization in a PSA, or any separate unit within such organization, which can and will engage in the functions of an AAA;

B. No regional or local office of state government may be designated as an AAA.
[9.2.5.11 NMAC - Rp, SAA Rule No. 95-5.11, 6/30/2015]

9.2.5.12 APPLICATION PROCESS AND PROCEDURE:

A. When it is necessary to solicit applications for area agency on aging designation pursuant to 9.2.5.9 NMAC, the department shall provide public notice of the need to solicit applications for designation and the process by which an entity can apply for such designation.

B. The department shall provide public notice as follows:

(1) In newspapers of general circulation in the planning and service area for which AAA applications are being solicited;

(2) On the department website;

(3) Via electronic dissemination to New Mexico's aging network; and

(4) In written notification to units of general purpose

local government in the planning and service area.
[9.2.5.12 NMAC - Rp, SAA Rule No. 95-5.14, 6/30/2015]

9.2.5.13 AREA AGENCY ON AGING REPLACEMENT

REQUIREMENTS: Any unsolicited application for AAA designation which, if approved, would result in the replacement of a formally designated area agency on aging or substantially impact the aging network within the PSA involved, must include:

A. Written indication of support, by resolution, of seventy-five percent (75%) of the governing bodies of municipalities and counties within the PSA boundaries;

B. Documentation that existing services can be substantially improved through the proposed change in designation; and

C. Assurance that no staff or board member of the applicant has served on the staff or board of the existing area agency on aging within the affected PSA, the department, or the U.S. administration on aging for a period of not less than two (2) years prior to the date of notification of application.

D. Other criteria deemed relevant by the department to the applicant's ability to carry out the duties of an AAA.

[9.2.5.13 NMAC - Rp, SAA Rule No. 95-5.12, 6/30/2015]

9.2.5.14 REVIEW AND

ASSESSMENT: The department shall review each application for completeness and ability to meet the necessary requirements of designation. The entity being considered for AAA designation shall provide an opportunity for on-site review and assessment by the department to ensure that said entity has the capacity to perform the functions of an AAA, including the requirements set forth in 9.2.6 NMAC.

[9.2.5.14 NMAC - Rp, SAA Rule No. 95-5.13, 6/30/2015]

9.2.5.15 DESIGNATION

REQUIREMENT: The department will designate an AAA to administer each PSA for which the department allocates funds under Title III of the Older Americans Act, supplemental state funds, or both. When designating a new AAA, the department shall give right of first refusal to unit(s) of general purpose local government if such unit can meet the requirements of 9.2.5.13 NMAC and the boundaries of the PSA are reasonably contiguous. If any

unit of general purpose local government chooses not to exercise right of first refusal, the department shall then give preference to an established AAA or aging organization which operates in the PSA, and shall take into consideration the historical experience applicants have had in coordination, planning, and delivery of services for older adults. The department secretary shall approve or disapprove any applications for designation in writing.
[9.2.5.15 NMAC - Rp, SAA Rule No. 95-5.15, 6/30/2015]

9.2.5.16 RIGHT TO

APPEAL: Applicants who have been denied designation may appeal as provided in 9.2.11 NMAC.

[9.2.5.16 NMAC - Rp, SAA Rule No. 95-5.18, 6/30/2015]

9.2.5.17 DESIGNATED**AAAs:**

A. The designated AAAs are posted to the department's web site.

B. All designation approvals shall be maintained in the appropriate department records.

[9.2.5.17 NMAC - Rp, SAA Rule No. 95-5.19, 6/30/2015]

HISTORY OF 9.2.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-5, Area Agency Designation, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-5, filed 4/13/1995 - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 6 AREA AGENCY ON AGING REQUIREMENTS

9.2.6.1 ISSUING AGENCY:

New Mexico Aging and Long Term Services Department (NMALTSB)

[9.2.6.1 NMAC - Rp, SAA Rule No. 95-6.1, 6/30/2015]

9.2.6.2 SCOPE:

These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations.

[9.2.6.2 NMAC - Rp, SAA Rule No. 95-6, 2 6/30/2015]

9.2.6.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations. [9.2.6.3 NMAC - Rp, SAA Rule No. 95-6.3, 6/30/2015]

9.2.6.4 DURATION: Permanent. [9.2.6.4 NMAC - Rp, SAA Rule No. 95-6.4, 6/30/2015]

9.2.6.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section. [9.2.6.5 NMAC - Rp, SAA Rule No. 95-6.5, 6/30/2015]

9.2.6.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the federal and state funded programs administered by the aging and long term services department. [9.2.6.6 NMAC - Rp, SAA Rule No. 95-6.6, 6/30/2015]

9.2.6.7 DEFINITIONS: See 9.2.1.7 NMAC for definitions. [9.2.6.7 NMAC - Rp, SAA Rule No. 95-6.7, 6/30/2015]

9.2.6.8 LEGAL REFERENCES: [RESERVED] [9.2.6.8 NMAC - Rp, SAA Rule No. 95-6.8, 6/30/2015]

9.2.6.9 AREA AGENCY ON AGING STRUCTURE: An area agency on aging must:

- A.** Administer Older Americans Act and state programs within one (1) or more designated planning and service area;
- B.** Have a full-time, qualified director and adequate qualified staff; and
- C.** Receive approval from the department regarding the selection of its director. [9.2.6.9 NMAC - Rp, SAA Rule No. 95-6.9, 6/30/2015]

9.2.6.10 AREA AGENCY ON AGING RESPONSIBILITIES: A designated area agency on aging shall:

- A.** Comply, as applicable, with all federal and state statutes, rules and policies.
- B.** Coordinate services for older persons in its planning and service area(s) and serve as an advocate and focal point for older individuals

within the area.

- C.** Plan and develop collaborative linkages; share information; monitor and evaluate services; and lead the development of comprehensive and coordinated community-based systems.
- D.** Conduct periodic public hearings on the effectiveness of services and the needs of older adults in the area.
- E.** Furnish appropriate training and technical assistance to providers of services in the area.
- F.** Develop and submit an area plan to the department, according to guidelines issued by the department, for the department's approval, covering each planning and service area administered.
- G.** Establish and support an advisory council.
 - (1)** The advisory council membership shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency on aging in developing community-based systems of services. The advisory committee shall be made up of:
 - (a)** persons sixty (60) years of age or older, including minority individuals and those with greatest economic or social needs, and clients of services funded by the area agency on aging (this group shall comprise more than fifty percent (50%) of the advisory council);
 - (b)** representatives of older persons;
 - (c)** representatives of health care provider organizations, including providers of veterans' health care (if appropriate);
 - (d)** representatives of supportive services provider organizations;
 - (e)** persons with leadership experience in the private and voluntary sectors;
 - (f)** local elected officials;
 - (g)** the general public; and
 - (h)** additional membership as determined by the area agency on aging.
 - (2)** The advisory council responsibilities shall include advising the area agency on aging relative to:
 - (a)** all matters relating to the development and administration of the area plan;
 - (b)** conducting public hearings;

- (c)** representing the interest of older persons;
- (d)** community policies, programs and actions affecting older persons with the intent of assuring maximum coordination and responsiveness to older persons;
- (e)** service provision and assisting in evaluation of such;
- (f)** policies, programs and actions representing the interests of older persons and encouraging the involvement of older persons.

(3) The advisory council shall develop, implement and make public bylaws governing at least the following:

- (a)** the role and functions of the advisory council;
- (b)** the number and characteristics of membership;
- (c)** the procedures for membership selection; and
- (d)** the procedures for the conduct of the advisory council's business and activities, including preventing conflicts of interest.

(4) The advisory council shall review and comment upon the area plan and amendments before transmittal to the department for approval.

- H.** Determine the extent of need for supportive services, nutrition services and multipurpose senior centers, evaluate the effectiveness of resources to meet such need and enter into agreements with providers of services to meet the need.
- I.** Collaborate with public and private entities, including adult protective services, involved in the prevention, identification and treatment of abuse, neglect and exploitation of older adults.
- J.** Comply with the requirements of its contract with the department.
- K.** Set objectives for providing services to older adults with the greatest economic or social needs, including minority adults with low-incomes, and older adults residing in rural and frontier areas.
- L.** Set objectives for providing services to caregivers of older adults and older adult caregivers.
- M.** Identify and reach populations in need and inform them of the availability of assistance.

N. If there is a population of older Native American Indians in the service area, conduct outreach activities to identify those individuals and inform them of the availability of assistance.

O. Establish a grievance procedure for persons who are dissatisfied with or denied services.

P. List the telephone number of the area agency on aging in each telephone directory published in its service area(s).

Q. Coordinate planning and delivery of transportation services (including the purchase of vehicles) to assist older adults in the service area(s).

R. Operate in an ethical and professional manner at all times, including in the development of policies and procedures.

S. Establish financial management systems in accordance with federal and state requirements.

T. Implement a budget and systematic contracting process.

U. Respond, within established deadlines, to requests by the department to implement specific corrective action as may be required; and.

V. Collaborate with the foster grandparent, senior companion, and retired senior volunteer programs; the State health insurance program (SHIP); long-term care ombudsmen; and the aging and disability resource center.

[9.2.6.10 NMAC - Rp, SAA Rule No. 95-6.10, 6/30/2015]

9.2.6.11 WITHDRAWAL OF AREA AGENCY ON AGING DESIGNATION:

If the department determines that an area agency on aging has not made progress to correct any identified deficiency(ies), the department may initiate the withdrawal of designation process, pursuant to 9.2.7 NMAC and 45 C.F.R. Section 1321.35.

[9.2.6.11 NMAC - Rp, SAA Rule No. 95-6.11, 6/30/2015]

HISTORY OF 9.2.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-6, Area Agency on Aging Requirements, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-6, (filed 4/13/1995) - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS CHAPTER 2 AGE PART 7 DE-DESIGNATION OF AREA AGENCIES ON AGING

9.2.7.1 ISSUING AGENCY: New Mexico Aging and Long Term Services Department (NMA LTSD) [9.2.7.1 NMAC - Rp, SAA Rule No. 95-7.1, 6/30/2015]

9.2.7.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations. [9.2.7.2 NMAC - Rp, SAA Rule No. 95-7.2, 6/30/2015]

9.2.7.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations. [9.2.7.3 NMAC - Rp, SAA Rule No. 95-7.3, 6/30/2015]

9.2.7.4 DURATION: Permanent. [9.2.7.4 NMAC - Rp, SAA Rule No. 95-7.4, 6/30/2015]

9.2.7.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section. [9.2.7.5 NMAC - Rp, SAA Rule No. 95-7.5, 6/30/2015]

9.2.7.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the federal and state funded programs administered by the aging and long term services department. [9.2.7.6 NMAC - Rp, SAA Rule No. 95-7.6, 6/30/2015]

9.2.7.7 DEFINITIONS: See 9.2.1.7 NMAC for definitions. [9.2.7.7 NMAC - Rp, SAA Rule No. 95-7.7, 6/30/2015]

9.2.7.8 LEGAL REFERENCES: [RESERVED] [9.2.7.8 NMAC - Rp, SAA Rule No. 95-7.8, 6/30/2015]

9.2.7.9 BACKGROUND: When an area agency on aging fails to comply with applicable federal or

state rules, statutes or codes, or terms of a contract, the department may take action as may be legally available and appropriate to the circumstance. [9.2.7.9 NMAC - Rp, SAA Rule No. 95-7.9, 6/30/2015]

9.2.7.10 DEPARTMENT RESPONSIBILITIES: Prior to any de-designation effort the department must provide the area agency on aging with the opportunity to correct any deficiency which may be cause for de-designation. [9.2.7.10 NMAC - Rp, SAA Rule No. 95-7.10, 6/30/2015]

9.2.7.11 DE-DESIGNATION: The department shall withdraw an area agency on aging designation whenever the department, for specific documented reasons and after reasonable notice and opportunity for a hearing, as provided in 9.2.11 NMAC, finds that:

A. The area agency on aging does not meet the requirements of federal or state regulations, as specified in 9.2.6 NMAC and 45 C.F.R. Section 1321; or

B. The area plan or area plan amendment is not approved in the current funding period; or

C. There is substantial failure to properly administer the approved area plan or to comply with any provision of the Older Americans Act, 45 C.F.R. Section 1321, or the department's rules or published policies and procedures; or

D. Activities of the area agency on aging are inconsistent with the statutory mission prescribed in the Older Americans Act or in conflict with the requirement of the Act that it function only as an area agency on aging; or

E. The area agency on aging does not perform its responsibilities as required by its contract with the department.

[9.2.7.11 NMAC - Rp, SAA Rule No. 95-7.11, 6/30/2015]

9.2.7.12 NOTIFICATION OF CONTEMPLATION OF WITHDRAWAL OF AREA AGENCY ON AGING DESIGNATION: If the department contemplates withdrawal of designation of an area agency on aging, the department will notify appropriate individuals and organizations in advance of the contemplated withdrawal and of the reasons which make it necessary. This notification shall be sent by certified mail, return receipt requested, to:

A. The governor of New Mexico;

B. The New Mexico congressional delegation;

C. State senators and representatives of the districts in which the area agency on aging provides services;

D. The department policy advisory committee;

E. County commission chairpersons and mayors of cities, towns and villages in the affected planning and service area(s);

F. Governors or presidents of Indian pueblos or tribes in the affected planning and service area(s);

G. The governing body of the area agency on aging;

H. Service providers that have current contracts with the area agency; and

I. The area agency on aging advisory council.
[9.2.7.12 NMAC - Rp, SAA Rule No. 95-7.12, 6/30/2015]

9.2.7.13 NOTIFICATION OF WITHDRAWAL OF AREA AGENCY ON AGING DESIGNATION:

An area agency on aging shall be notified, by certified mail, return receipt requested, at least ten (10) working days prior to the effective date of its de-designation as an area agency on aging. Such notification shall explain the right of the area agency on aging to appeal such decision as outlined in 9.2.11 NMAC.

A. If, in the department’s judgment, an egregious situation exists that seriously threatens the health and welfare of a significant segment of the older adult population within the affected planning and service area(s), the de-designation may be made effective immediately, and so stated in the letter of notification. Immediate de-designation does not preclude processing appeals under 9.2.11 NMAC.

B. If an area agency on aging is de-designated, the department may, if necessary to ensure continuity of services in a planning and service area, assume the role of the area agency on aging for a period of up to one hundred eighty (180) days following its final decision to withdraw designation of the area agency on aging; this period may be extended by the head of the U.S. administration on aging pursuant to 45 C.F.R. Section 1321.35.

C. If an area agency on aging is de-designated, the department may alternatively, if necessary to ensure continuity of services in a planning and service area, assign the responsibilities of the area agency on aging to another

agency in the planning and service area for a period of up to hundred eighty (180) days. This period may be extended by the head of the U.S. Administration on Aging pursuant to 45 C.F.R. Section 1321.35.
[9.2.7.13 NMAC - Rp, SAA Rule No. 95-7.13, 6/30/2015]

9.2.7.14 PROCEDURES FOLLOWING WITHDRAWAL OF DESIGNATION:

If the department de-designates an area agency on aging, the department shall take the following action:

A. The department will notify, by certified mail, return receipt requested, the head of the U.S. Administration on Aging and others as specified in 9.2.7.12 NMAC or as required by federal regulation;

B. The department will provide a plan for continuity of services in the affected planning and service area(s) and will:

(1) Discontinue reimbursement to the former area agency on aging except for outstanding obligations;

(2) Notify area agency on aging contractors regarding where to submit requests for reimbursement;

(3) Terminate any contracts with the former area agency on aging; and

(4) Designate an interim or new area agency on aging to administer the planning and service area(s) in a timely manner.

[9.2.7.14 NMAC - Rp, SAA Rule No. 95-7.14, 6/30/2015]

HISTORY OF 9.2.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State records center:

SAA Rule No. 95-7, Withdrawal of Area Agency Designation, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-7, filed 4/13/1995 - Repealed 6/30/2015

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 8 ADEQUATE
PROPORTION OF SERVICES**

9.2.8.1 ISSUING AGENCY:
New Mexico Aging and Long Term Services Department (NMALTSO)

[9.2.8.1 NMAC - Rp, SAA Rule No. 95-8.1, 6/30/2015]

9.2.8.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico’s aging and disability populations.
[9.2.8.2 NMAC - Rp, SAA Rule No. 95-8.2, 6/30/2015]

9.2.8.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.

[9.2.8.3 NMAC - Rp, SAA Rule No. 95-8.3, 6/30/2015]

9.2.8.4 DURATION:
Permanent.
[9.2.8.4 NMAC - Rp, SAA Rule No. 95-8.4, 6/30/2015]

9.2.8.5 EFFECTIVE DATE:
June 30, 2015, unless a later date is cited at the end of a section.
[9.2.8.5 NMAC - Rp, SAA Rule No. 95-8.5, 6/30/2015]

9.2.8.6 OBJECTIVE:
The objective of this rule is to establish standards and procedures for the federal and state-funded programs administered by the aging and long term services department.
[9.2.8.6 NMAC - Rp, SAA Rule No. 95-8.6, 6/30/2015]

9.2.8.7 DEFINITIONS: See 9.2.1.7 NMAC for definitions.
[9.2.8.7 NMAC - Rp, SAA Rule No. 95-8.7, 6/30/2015]

9.2.8.8 LEGAL REFERENCES: [RESERVED]
[9.2.8.8 NMAC - Rp, SAA Rule No. 95-8.8, 6/30/2015]

9.2.8.9 ADEQUATE PROPORTION SERVICES: The adequate proportion services authorized under Title III of the Older Americans Act consist of:

A. Services associated with access, including transportation, health/mental health services, outreach, case management, and information and assistance on the availability of services and how to receive public benefits;

B. In-home services, including supportive services for families of older individuals with alzheimer’s disease and related disorders

with neurological and organic brain dysfunction; and

C. Legal assistance.

[9.2.8.9 NMAC - Rp, SAA Rule No. 95-8.9, 6/30/2015]

9.2.8.10 ADEQUATE PROPORTION FUNDING

PERCENTAGES: Area agencies on aging that receive federal funding through the department are required to expend an adequate proportion of Older Americans Act Title III, Part B, allotments for each of three categories of services: access services, in-home services, and legal assistance.

[9.2.8.10 NMAC - Rp, SAA Rule No. 95-8.10, 6/30/2015]

9.2.8.11 WAIVER OF THE REQUIREMENT:

A. The department may waive the requirement if:

(1) An

approved plan is in place to ensure that access services, in-home services, and legal assistance are available throughout the planning and service area(s); or

(2) An area

agency on aging requests a waiver and documents that access services, in-home services, and legal assistance are being furnished and are sufficient to meet the need in the planning and service area(s) administered.

B. Waiver requests may be included as part of an area plan or area plan amendment. After the initial approval of a waiver, renewal requests must be submitted to the department as part of an area plan.

C. To support an initial request for a waiver, an area agency on aging must provide the following information and documentation for each category of service for which a waiver is desired:

(1) A

description of the needs assessment conducted by the area agency on aging to determine the service needs of older persons in the planning and service area(s), including a description of the identified needs;

(2) A list of

service providers in the planning and service area(s) that are providing the adequate proportion services for which a waiver is being requested, including the following:

(a)

service(s) being provided by each service provider;

(b)

eligibility criteria for each service;

(c)

level and sources of funding;

(d)

number of units of service and unduplicated number of older individuals receiving service for the current fiscal year; and

(e)

number of projected units of service and unduplicated number of older individuals projected to receive service during the fiscal year for which the waiver is being requested;

(3)

Documentation of public hearing(s) including, but not limited to the following:

(a)

public announcement of the public hearing(s);

(b)

specific notification sent to all interested parties;

(c)

list of the interested parties sent the notification;

(d)

record of the proceedings of the public hearing(s); and

(e)

attendance roster(s) from the public hearing(s).

D. The department will review all requests for waivers based on the following:

(1) The

submission of all the required information and documentation;

(2)

Documentation of needs assessment findings which resulted in the decision to request a waiver, to include the following:

(a)

needs assessment methodology;

(b)

source of data, including any secondary sources; and

(c)

summary of statistical data indicating needs, to include target populations;

(3)

Documentation of the adequacy of the service delivery system in the planning and service area, to include:

(a)

documented level of need for the service for which a waiver is being requested;

(b)

service level being provided by area agency on aging service providers, including units of service, unduplicated number of persons being served, and level of funding; and

(c)

any documented unmet need for the service.

[9.2.8.11 NMAC - Rp, SAA Rule No. 95-8.11, 6/30/2015]

HISTORY OF 9.2.8 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-8, Adequate Proportion of Priority Services, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-8, filed 4/13/1995 - Repealed 6/30/2015

AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9

HUMAN RIGHTS

CHAPTER 2

AGE

PART 9

DIRECT SERVICES

9.2.9.1

ISSUING AGENCY:

New Mexico Aging and Long Term Services Department (NMALTS) [9.2.9.1 NMAC - Rp, SAA Rule No. 95-9.1, 6/30/2015]

9.2.9.2

SCOPE: These

rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability population.

[9.2.9.2 NMAC - Rp, SAA Rule No. 95-9.2, 6/30/2015]

9.2.9.3

STATUTORY

AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.

[9.2.9.3 NMAC - Rp, SAA Rule No. 95-9.3, 6/30/2015]

9.2.9.4

DURATION:

Permanent.

[9.2.9.4 NMAC - Rp, SAA Rule No. 95-9.4, 6/30/2015]

9.2.9.5

EFFECTIVE DATE:

June 30, 2015, unless a later date is cited at the end of a section.

[9.2.9.5 NMAC - Rp, SAA Rule No. 95-9.5, 6/30/2015]

9.2.9.6

OBJECTIVE:

The objective of this rule is to establish standards and procedures for the federal and state funded programs administered by the aging and long term services department.

[9.2.9.6 NMAC - Rp, SAA Rule No. 95-9.6, 6/30/2015]

9.2.9.7 DEFINITIONS: See Section 9.2.1.7 NMAC for definitions. [9.2.9.7 NMAC - Rp, SAA Rule No. 95-9.7, 6/30/2015]

9.2.9.8 LEGAL REFERENCES: [RESERVED] [9.2.9.8 NMAC - Rp, SAA Rule No. 95-9.8, 6/30/2015]

9.2.9.9 GENERAL PROVISIONS: Area agencies on aging must develop a service delivery system by contracting with other organizations to provide services to older individuals. The role of an area agency on aging is to engage in area-wide planning and development and to purchase needed services. An area agency on aging shall not provide direct services to older individuals, except where, in the judgment of the department, the area agency on aging has demonstrated that:

A. The provision of such services by an area agency on aging is necessary to assure an adequate supply of such services; or

B. Such services are directly related to the area agency on aging's administrative function(s); or

C. Such services of comparable or higher quality can be provided more economically by the area agency on aging. [9.2.9.9 NMAC - Rp, SAA Rule No. 95-9.9, 6/30/2015]

9.2.9.10 TEST STANDARDS: The department shall determine whether an area agency on aging shall be granted a direct service waiver based on the ability of the area agency on aging to document or demonstrate that, at a minimum, one (1) of the following test standards has been met.

A. Adequate supply test standard: this test standard requires the area agency on aging to demonstrate that service(s) are either not offered or are only partially available in the planning and service area. The adequate supply test is met when the area agency on aging provides documentation that it has not received any proposals to deliver the service(s) after the area agency on aging has:

(1) advertised the availability of funds;

(2) Written to bona fide service providers, inviting them to submit proposals; and

(3) Documented that attempts have been made to develop and encourage the establishment of service providers.

B. Administrative function test standard: this test standard requires the area agency on aging to identify the current specific administrative function(s) that relate to the service(s). The administrative function test is met when the area agency on aging provides documentation that:

(1) The proposed service(s) can be integrated into its administrative function(s);

(2) Such service delivery will not compete with or eliminate local efforts to provide the same service(s) in the area; and

(3) There is no conflict of interest in the provision of direct services by the area agency on aging.

C. More economic test standard: This test standard requires an area agency on aging to demonstrate that a service of comparable or higher quality will be provided by the area agency on aging at a unit rate at least ten percent (10%) lower than the lowest responsive applicant's proposed unit rate, or the amount of area agency on aging resources invested would be diminished or removed should another provider be designated, resulting in a greater demand for federal or state funds to maintain the current level of services. The more economic test standard is met when the area agency on aging provides documentation that:

(1) It can deliver the service(s) at a unit rate at least ten percent (10%) lower than the lowest responsive applicant's proposed unit rate, or its significant matching resources will be diminished or removed;

(2) It has implemented a method for open competitive bidding for selecting a service provider; and

(3) It has the ability to deliver services in a manner comparable in quality to the lowest responsive applicant's proposal.

[9.2.9.10 NMAC - Rp, SAA Rule No. 95-9.10, 6/30/2015]

9.2.9.11 WAIVER REQUEST PROCESS: An area agency on aging shall submit a written request for a waiver as part of its area plan or area plan amendment or as a separate request. An area agency on aging may request a multi-year or a single year waiver. The initial request shall include:

A. Identification of the specific test under which the waiver is being requested;

B. Specific documentation required for the test;

C. Documentation of review and support by the area agency on aging advisory council and governing body;

D. A general description of the proposed administrative structure for administering the service; and

E. A description of the impact on the area agency on aging's role and staffing and its ability to accomplish the area agency on aging roles and responsibilities.

[9.2.9.11 NMAC - Rp, SAA Rule No. 95-9.11, 6/30/2015]

9.2.9.12 DEPARTMENT REVIEW AND DISPOSITION PROCESS:

A. Upon receipt of a request, the department shall review the request and obtain clarification or documentation from the area agency on aging if necessary.

B. The department secretary shall notify the applicant of the approval or disapproval of the waiver.

C. In cases where a request is submitted separate from an area plan or area plan amendment and approval is granted, the department shall notify the area agency on aging of documentation necessary to include the waiver in the current area plan.

[9.2.9.12 NMAC - Rp, SAA Rule No. 95-9.12, 6/30/2015]

9.2.9.13 EMERGENCY SITUATIONS:

If an area agency on aging service provider abruptly ceases services, the department may grant a temporary direct service waiver up to one hundred eighty (180) days to the area agency on aging, pending the implementation of a process to identify a new service provider. In such situations the area agency on aging shall immediately provide the following information to the department:

A. A description of the situation that has resulted in the direct service waiver request;

B. A plan for seeking a new service provider;

C. Documentation of review and support by the area agency on aging advisory council and governing body;

D. A general description of the proposed administrative structure contemplated by the area agency on aging for administering the service; and

E. A description of the impact on the area agency on aging's role and staffing.

[9.2.9.13 NMAC - Rp, SAA Rule No. 95-

9.13, 6/30/2015]

HISTORY OF 9.2.9 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-9, Direct Services, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-9, filed 4/13/1995 - Repealed 6/30/2015

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 11 APPEAL/HEARING
PROCEDURES**

9.2.11.1 ISSUING AGENCY:

New Mexico Aging and Long-Term Services Department (NMALTS) [9.2.11.1 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability population. [9.2.11.2 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations. [9.2.11.3 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.4 DURATION: Permanent. [9.2.11.4 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section. [9.2.11.5 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.6 OBJECTIVE: The objective of this rule is to establish appeal procedures for decisions made by the aging and long term services department. [9.2.11.6 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.7 DEFINITIONS: The

following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

- A.** "Hearing" is an administrative review of documentation and evidence and/or an opportunity for oral testimony at the discretion of a hearing officer.
- B.** "Hearing officer" means an impartial person selected by the department secretary to conduct a hearing and render a proposed final decision.
- C.** "Party" means any petitioner and all interested persons affected by the outcome of a decision under this rule.
- D.** "Petitioner" means any person or organization who has a right to a hearing under these rules and has filed a written request for a hearing.

[9.2.11.7 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.8 LEGAL REFERENCES: [RESERVED] [9.2.11.8 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.9 PERSONS OR ORGANIZATIONS ENTITLED TO APPEAL: The following persons or organizations ("petitioners") have a right to a hearing:

- A.** Any applicant for designation as a PSA, whose application is denied by the department, according to 9.2.4.15 NMAC;
- B.** Any affected party when the department initiates an action or a proceeding to designate an additional PSA, divide the state into different PSAs, or otherwise affect the boundaries of PSAs, according to 9.2.4.12(C) NMAC;
- C.** An area agency on aging when the department proposes to:
 - (1)** Disapprove an area plan or plan amendment, according to Section F of 9.2.6.10 NMAC; or
 - (2)** Withdraw an area agency on aging designation, according to 9.2.7.13 NMAC.
- D.** Any applicant for area agency on aging designation denied designation, according to 9.2.5.17 NMAC.

[9.2.11.9 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.10 HEARING PROCEDURES FOR PETITIONERS:

- A.** Request for a hearing:
 - (1)** A request for a hearing must be submitted in writing to the secretary of the department, within

ten (10) working days of the receipt of the notice of action, and must state with specificity the grounds upon which the proposed action is appealed or contested, and the grounds upon which the petitioner refutes the basis of the proposed action. The request must include;

- (a)** A copy of the department's action letter;
- (b)** The dates of all relevant actions;
- (c)** The names of individuals or organizations involved in the proposed action being appealed;
- (d)** A specific statement of any section of the Older Americans Act or state or federal rules or regulations believed to have been violated by the department; and
- (e)** For organizations, a copy of the minutes or resolution in which the petitioner's governing body requests a hearing, and which authorizes a person(s) to act on behalf of the organization; the minutes or resolution shall indicate adoption by a majority of the quorum of the governing body of the organization.

(2) The petitioner may submit written amendments to the request for hearing which must be received by the secretary of the department or designee not less than ten (10) working days prior to the date set for hearing;

(3) The secretary of the department or designee may require additional information at any time prior to the hearing. The secretary or designee will provide a reasonable amount of time for the petitioner to respond to any such request;

(4) Failure to submit all the information required in the request within the required time period will result in the forfeiture of the petitioner's right to a hearing.

B. Notice of hearing:

- (1)** Within twenty (20) calendar days of receipt of a request for a hearing, the secretary of the department or designee shall acknowledge in writing the receipt of the request for a hearing, and shall determine if the petitioner is entitled to a hearing. If so, the hearing date and notice of the hearing shall be provided to the petitioner(s). The hearing date shall not be later than one hundred twenty (120) calendar days from the receipt of the request for a hearing;

(2) The secretary of the department or designee shall provide written notice of any hearing to the petitioner, which shall include:

(a) A statement of the time, date, location, and nature of the hearing;

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held; and

(c) A reference to the particular section of statutes, regulations and rules involved.

(3) The secretary of the department or designee shall, after the initial notice, issue a written statement of the issues involved in the appeal. Thereafter a more definite and detailed statement may be furnished not less than ten (10) calendar days prior to the date set for the hearing.

C. The secretary shall appoint an impartial hearing officer to preside at the hearing. The hearing officer may be an employee of the department. The hearing officer shall have authority to administer oaths, rule on the parties' motions, determine the admissibility of evidence, recess any hearing, and rule on such other procedural motions as may be presented by any of the parties.

D. Conduct of the hearing:

(1) Documentary evidence may be received by the hearing officer in the form of a copy or excerpt if the original is not readily available. On request, either party shall be given an opportunity to compare the copy with the original;

(2) Parties may submit documents to the hearing officer and other parties in written form prior to the hearing. Parties may also stipulate as to facts or circumstances;

(3) Either party may cross-examine witnesses to obtain a full and true disclosure of the facts;

(4) The hearing officer may take official notice of generally recognized facts within the area of the department's specialized knowledge. The hearing officer shall inform the parties of the facts officially noticed either before or during the hearing, and shall afford the parties an opportunity to contest the facts officially noticed. The special skills or knowledge of the department and its staff may be used in evaluating the evidence;

(5) The parties need not make formal exceptions to the hearing officer's rulings during a hearing. It shall be sufficient that the party informs the hearing officer of any objection to any ruling at the time it is made.

E. During the hearing, the petitioner shall present evidence first.

Other parties shall follow and present their evidence. The petitioner may thereafter present rebuttal evidence only. Rebuttal evidence must be confined to the issues raised in any other party's presentation of evidence. The petitioner shall be given the opportunity to offer a final argument without additional presentation of evidence. In addition, the other party may present a final argument without additional presentation of evidence;

F. The hearing shall be completed within one hundred twenty (120) days of the date the request for hearing was received by the department.

G. An oral hearing shall be electronically recorded. Upon request of any party to the hearing, a copy of this recording shall be made available to the requesting party at cost. In addition, any party may request that a court reporter record the hearing at the requestor's expense. Any transcript must be certified by the hearing officer.

H. Record: The record in a hearing under this section consists exclusively of:

- (1) A copy of the notice of proposed action that generated the appeal;
- (2) The request for hearing, including all amendments;
- (3) The notice of hearing;
- (4) Written information supporting the appeal, which was submitted to the department;
- (5) The department's written statement of the issues involved in the appeal;
- (6) All motions and rulings made before the hearing;
- (7) All evidence received or considered;
- (8) A statement of facts officially noticed;
- (9) Any decision, opinion or report by the hearing officer;
- (10) All staff memoranda or data submitted to and considered by the hearing officer;
- (11) The recording and transcription, if any, of the hearing;
- (12) The hearing officer's recommended decision; and
- (13) The final decision.

I. Final decision:
(1) The hearing officer shall base his/her recommended decision solely on the record;

(2) The hearing officer shall present to the secretary

a recommended decision, including proposed findings of fact and conclusions of law, within ten (10) working days after the close of the hearing. The recommendation must be in writing and signed by the hearing officer;

(3) The secretary shall issue a final decision, based on the hearing officer's recommendation, for the record, within five (5) working days of the receipt of the hearing officer's recommendation. The secretary shall affirm the action heard, unless it is unlawful, arbitrary or not reasonably supported by substantial evidence in the record;

(4) The secretary shall send a copy of the final decision to all parties by registered or certified mail, return receipt requested, within five (5) working days after it is rendered.

J. Appeal to the assistant secretary of the U.S. administration on aging: Only an applicant for designation as a federally recognized planning and service area whose application is denied by the department and whose appeal to the department has been denied may appeal the denial to the assistant secretary of the U.S. Administration on Aging under the procedures specified in the Older Americans Act, 42 U.S.C. Section 3025(b)(5)(C) and 45 C.F.R. Section 1321.31. In all other cases, the secretary's decision, based on the hearing officer's recommendation, shall be final. [9.2.11.10 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

HISTORY OF 9.2.11 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: AOA 85-1, State Agency on Aging Hearing Procedures, filed 1/15/1985. SAA Rule No. 95-11, Appeal/Hearing Procedures, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-11, filed 4/13/1995 - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 14 STATE-FUNDED
FOSTER GRANDPARENT
PROGRAM**

9.2.14.1 ISSUING AGENCY:

New Mexico Aging and Long Term Services Department (NMA LTSD)
[9.2.14.1 NMAC - Rp, SAA Rule No. 95-14.1, 6/30/2015]

9.2.14.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability population.
[9.2.14.2 NMAC - Rp, SAA Rule No. 95-14.2, 6/30/2015]

9.2.14.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.
[9.2.14.3 NMAC - Rp, SAA Rule No. 95-14.3, 6/30/2015]

9.2.14.4 DURATION: Permanent.
[9.2.14.4 NMAC - Rp, SAA Rule No. 95-14.4, 6/30/2015]

9.2.14.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section.
[9.2.14.5 NMAC - Rp, SAA Rule No. 95-14.5, 6/30/2015]

9.2.14.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the state-funded foster grandparent programs administered by the aging and long-term services department.
[9.2.14.6 NMAC - Rp, SAA Rule No. 95-14.6, 6/30/2015]

9.2.14.7 DEFINITIONS: The Foster Grandparent Program provides contracts to qualified organizations for the dual purposes of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs and of providing high-quality experiences that will enrich the lives of the volunteers. Foster grandparents provide supportive, person-to-person services to children who have exceptional needs, or who are in circumstances that limit their academic, social, or emotional development. State-funded foster grandparents may receive stipends to support their volunteer work.
[9.2.14.7 NMAC - Rp, SAA Rule No. 95-14.7, 6/30/15]

9.2.14.8 LEGAL REFERENCES: Domestic Volunteer Service Act of 1973, 42 U.S.C. Sections 4950 to 5085; 42 U.S.C. Section 12651;

Foster Grandparent Program, 45 C.F.R. Section 2552.
[9.2.14.8 NMAC - Rp, SAA Rule No. 95-14.8, 6/30/2015]

9.2.14.9 CORPORATION FOR NATIONAL AND COMMUNITY SERVICE HANDBOOK:

A. The department adopts the most current corporation for national and community service (CNCS) foster grandparent program handbook as the operating rules and procedures with which state-funded foster grandparent programs must comply.

B. Eligibility for state-funded foster grandparent programs is the same as for the CNCS program. However, the department secretary may waive any provisions of the CNCS handbook except those which will jeopardize a program's continued federal sponsorship.
[9.2.14.9 NMAC - Rp, SAA Rule No. 95-14.9, 6/30/2015]

9.2.14.10 DEPARTMENT RESPONSIBILITIES: The department shall:

A. Allocate funds appropriated by the state legislature:
(1) To current contractors to maintain or enhance levels of operation; and

(2) Expand services based on determined need;

B. Contract with new organizations to the extent that funds are available;

C. Conduct at least one assessment of each contractor every two years; and

D. Provide training and technical assistance to volunteers and employees of contract organizations.
[9.2.14.10 NMAC - Rp, SAA Rule No. 95-14.10, 6/30/2015]

9.2.14.11 CONTRACTOR RESPONSIBILITIES: Contractors shall:

A. Comply with federal and state regulations and policies, except to the extent that the department has granted a waiver of any federal policies;

B. Submit an annual budget proposal and work plan in the format established by the department;

C. Submit monthly financial expenditure reports and requests for reimbursement to the department, as requested;

D. Submit reports to the department in the form and manner required and specified by the department in the contract scope of work;

E. Submit an annual financial audit as requested by the department;

F. Coordinate with other aging network providers, particularly in the areas of transportation, outreach, and supportive services;

G. Attend required meetings and training sessions; and

H. Budget sufficient state funds to allow at least one (1) representative to attend the annual New Mexico conference on aging and one (1) state aging network training session.
[9.2.14.11 NMAC - Rp, SAA Rule No. 95-14.11, 6/30/2015]

HISTORY OF 9.2.14 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-14, State Funded Foster Grandparent Program, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-14, (filed 4/13/1995) - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 15 STATE-FUNDED
SENIOR COMPANION PROGRAM**

9.2.15.1 ISSUING AGENCY: New Mexico Aging and Long-Term Services Department (NMA LTSD)
[9.2.15.1 NMAC - Rp, SAA Rule No. 95-15.1, 6/30/2015]

9.2.15.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations.
[9.2.15.2 NMAC - Rp, SAA Rule No. 95-15.2, 6/30/2015]

9.2.15.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.
[9.2.15.3 NMAC - Rp, SAA Rule No. 95-15.3, 6/30/2015]

9.2.15.4 DURATION: Permanent.
[9.2.15.4 NMAC - Rp, SAA Rule No. 95-15.4, 6/30/2015]

9.2.15.5 EFFECTIVE DATE:
June 30, 2015, unless a later date is cited at the end of a section.
[9.2.15.5 NMAC - Rp, SAA Rule No. 95-15.5, 6/30/2015]

9.2.15.6 OBJECTIVE:
The objective of this rule is to establish standards and procedures for the state-funded senior companion programs administered by the aging and long term services department.
[9.2.15.6 NMAC - Rp, SAA Rule No. 95-15.6, 6/30/2015]

9.2.15.7 DEFINITIONS: The senior companion program (SCP) provides contracts to qualified organizations for the dual purposes of engaging persons fifty-five (55) and older, particularly those with limited incomes, in volunteer service to meet critical community needs and of providing high quality experiences that will enrich the lives of the volunteers. Senior companions provide supportive, individualized services to help older adults with special needs maintain their dignity and independence. State-funded senior companions may receive stipends to support their volunteer work.
[9.2.15.7 NMAC - Rp, SAA Rule No. 95-15.7, 6/30/2015]

9.2.15.8 LEGAL REFERENCES: Domestic Volunteer Service Act of 1973, 42 U.S.C. Sections 4950 to 5085; 42 U.S.C. Section 12651; Senior Companion Program, 45 C.F.R. Section 2551.
[9.2.15.8 NMAC - Rp, SAA Rule No. 95-15.8, 6/30/2015]

9.2.15.9 CORPORATION FOR NATIONAL AND COMMUNITY SERVICE HANDBOOK:

A. The department adopts the most current corporation for national and community service (CNCS) Senior Companion Program handbook as the operating rules and procedures with which state-funded senior companion programs must comply.

B. Eligibility for state-funded senior companion programs is the same as for the CNCS program. However, the department secretary may waive any provisions of the CNCS handbook except those which will jeopardize a program's continued federal sponsorship.
[9.2.15.9 NMAC - Rp, SAA Rule No. 95-15.9, 6/30/2015]

9.2.15.10 DEPARTMENT RESPONSIBILITIES: The department shall:

A. Allocate funds appropriated by the state legislature:
(1) To current contractors to maintain or enhance levels of operation; and

(2) To expand services based on determined need.

B. Contract with new organizations to the extent that funds are available;

C. Conduct at least one (1) assessment of each contractor every two (2) years; and

D. Provide training and technical assistance to volunteers and staff of contract organizations.

[9.2.15.10 NMAC - Rp, SAA Rule No. 95-15.10, 6/30/2015]

9.2.15.11 CONTRACTOR RESPONSIBILITIES: Contractors shall:

A. Comply with federal and state regulations and policies, except to the extent that the department has granted a waiver of any federal policies.

B. Submit an annual budget proposal and work plan in the format established by the department.

C. Submit monthly financial expenditure reports and requests for reimbursement to the department, as requested.

D. Submit reports to the department in the form and manner required and specified by the department in the contract scope of work.

E. Submit an annual financial audit as requested by the department.

F. Coordinate with other aging network providers, particularly in the areas of transportation, outreach, and supportive services.

G. Attend required meetings and training sessions; and

H. Budget sufficient state funds to allow at least one (1) representative to attend the annual New Mexico conference on aging and one (1) state aging network training session.

[9.2.15.11 NMAC - Rp, SAA Rule No. 95-15.11, 6/30/2015]

HISTORY OF 9.2.15 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-15, State Funded Senior Companion Program, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-1, (filed 4/13/1995) - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 16 STATE-FUNDED
RETIRED SENIOR VOLUNTEER
PROGRAM**

9.2.16.1 ISSUING AGENCY:
New Mexico Aging and Long Term Services Department (NMALTS)D
[9.2.16.1 NMAC - Rp, SAA Rule No. 95-16.1, 6/30/2015]

9.2.16.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations.
[9.2.16.2 NMAC - Rp, SAA Rule No. 95-16.2, 6/30/2015]

9.2.16.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.
[9.2.16.3 NMAC - Rp, SAA Rule No. 95-16.3, 6/30/2015]

9.2.16.4 DURATION:
Permanent.
[9.2.16.4 NMAC - Rp, SAA Rule No. 95-16.4, 6/30/2015]

9.2.16.5 EFFECTIVE DATE:
June 30, 2015, unless a later date is cited at the end of a section.
[9.2.16.5 NMAC - Rp, SAA Rule No. 95-16.5, 6/30/2015]

9.2.16.6 OBJECTIVE:
The objective of this rule is to establish standards and procedures for the state-funded retired senior volunteer programs administered by the aging and long term services department.
[9.2.16.6 NMAC - Rp, SAA Rule No. 95-16.6, 6/30/2015]

9.2.16.7 DEFINITIONS:
The retired senior volunteer program (RSVP) provides contracts to qualified organizations and local and tribal governments for the dual purposes of engaging older individuals in volunteer service to meet critical community needs and of providing high quality experiences that will enrich the lives of the volunteers. RSVP matches older individuals with community projects and organizations needing volunteer talent, abilities and skills.

[9.2.16.7 NMAC - Rp, SAA Rule No. 95-16.7, 6/30/2015]

9.2.16.8 LEGAL

REFERENCES: Domestic Volunteer Service Act of 1973, 42 U.S.C. Sections 4950 to 5085; 42 U.S.C. Section 12651; Retired Senior Volunteer Program, 45 C.F.R. Section 2553.

[9.2.16.8 NMAC - Rp, SAA Rule No. 95-16.8, 6/30/2015]

9.2.16.9 CORPORATION FOR NATIONAL AND COMMUNITY SERVICE HANDBOOK:

A. The department adopts the most current corporation for national and community service (CNCS) retired senior volunteer program handbook as the operating rules and procedures with which state-funded retired senior volunteer programs must comply.

B. Eligibility for state-funded retired senior volunteer programs is the same as for the CNCS program. However, the department secretary may waive any provisions of the CNCS handbook except those which will jeopardize a program's continued federal sponsorship.

[9.2.16.9 NMAC - Rp, SAA Rule No. 95-16.9, 6/30/2015]

9.2.16.10 DEPARTMENT RESPONSIBILITIES:

The department shall:

A. Allocate funds appropriated by the state legislature:
(1) To current contractors to maintain or enhance levels of operation; and

(2) To expand services based on determined need.

B. Contract with new organizations to the extent that funds are available;

C. Conduct at least one (1) assessment of each contractor every two (2) years; and

D. Provide training and technical assistance to volunteers and employees of contract organizations.

[9.2.16.10 NMAC - Rp, SAA Rule No. 95-16.10, 6/30/2015]

9.2.16.11 CONTRACTOR RESPONSIBILITIES:

Contractors shall:

A. Comply with federal and state regulations and policies, except to the extent that the department has granted a waiver of any federal policies;

B. Submit an annual budget proposal and work plan in the format established by the department;

C. Submit monthly financial expenditure reports and requests for reimbursement to the department as requested;

D. Submit reports to the department in the form and manner required and specified by the department in the contract scope of work;

E. Submit an annual financial audit as requested by the department;

F. Coordinate with other aging network providers, particularly in the areas of transportation, outreach and supportive services;

G. Attend required meetings and training sessions; and

H. Budget sufficient state funds to allow at least one representative to attend the annual New Mexico conference on aging and one (1) state aging network training session.

[9.2.16.11 NMAC - Rp, SAA Rule No. 95-16.11, 6/30/2015]

HISTORY OF 9.2.16 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-16, State Funded Retired and Senior Volunteer Program, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-1, filed 4/13/1995 - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
 CHAPTER 2 AGE
 PART 17 LEGAL
 ASSISTANCE SERVICES**

9.2.17.1 ISSUING AGENCY:

New Mexico Aging and Long Term Services Department (NMALTS) [9.2.17.1 NMAC - Rp, SAA Rule No. 95-17.1, 6/30/2015]

9.2.17.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations.

[9.2.17.2 NMAC - Rp, SAA Rule No. 95-17.2, 6/30/2015]

9.2.17.3 STATUTORY

AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans

Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations. [9.2.17.3 NMAC - Rp, SAA Rule No. 95-17.3, 6/30/2015]

9.2.17.4 DURATION:

Permanent.

[9.2.17.4 NMAC - Rp, SAA Rule No. 95-17.4, 6/30/2015]

9.2.17.5 EFFECTIVE DATE:

June 30, 2015, unless a later date is cited at the end of a section.

[9.2.17.5 NMAC - Rp, SAA Rule No. 95-17.5, 6/30/2015]

9.2.17.6 OBJECTIVE:

The objective of this rule is to establish standards and procedures for the federal and state-funded programs administered by the aging and long term services department.

[9.2.17.6 NMAC - Rp, SAA Rule No. 95-17.6, 6/30/2015]

9.2.17.7 DEFINITIONS:

A. A "fee generating case" includes any matter which, if undertaken by a private legal practitioner on behalf of a client, could reasonably be expected to result in an awarded legal fee directly payable out of the amount awarded the client from the opposing parties, or from public funds.

B. "Legal assistance" means legal advice, education and representation provided by an attorney to older individuals with economic or social needs; and includes, to the extent feasible, counseling or other appropriate assistance provided by a paralegal or law student under the direct supervision of a licensed attorney; and counseling and representation provided by a non-lawyer where permitted by law.

C. "Legal assistance providers" are those who, pursuant to the Older Americans Act, Title III B, provide services, legal assistance and other counseling services and assistance.

D. "Means test" is defined as the use of an older individual's income or resources to deny or limit that individual's receipt of services.

[9.2.17.7 NMAC - Rp, SAA Rule No. 95-17.7, 6/30/2015]

9.2.17.8 LEGAL

REFERENCES: [RESERVED]

[9.2.17.8 NMAC - Rp, SAA Rule No. 95-17.8, 6/30/2015]

9.2.17.9 ALLOWABLE

SERVICES:

A. Providers of legal

assistance, funded by the department, must provide such services to New Mexicans age sixty (60) or older and others as described in contracts supported by state funds. Allowable services include, but are not limited to:

- (1) Direct service delivery programs using staff attorneys, paralegals, law students and/or other non-lawyers under the direct supervision of an attorney;
- (2) Legal clinics which combine education addressing specific legal issues or topics of concern to older individuals, outreach and intake efforts that target those in greatest social and economic need, and the direct provision of legal advice, representation, and follow-up services to individuals in attendance;
- (3) Interactive workshops at which the individuals in attendance are counseled and provided with direct legal assistance with regard to legal and elder rights issues;
- (4) Referral programs enlisting the services of a panel of volunteer attorneys to provide direct *pro bono* legal assistance;
- (5) Impact case work, for example, lawsuits that benefit entire classes of clients, nursing home reform efforts, and Medicaid advocacy;
- (6) The production and provision of educational materials and other legal resources for the benefit of New Mexicans age sixty (60) or older and others as described in contracts supported by state funds; and
- (7) Any programs using any combinations of the activities described above.

B. Legal assistance services cannot include legal representation in any fee generating case, unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. [9.2.17.9 NMAC - Rp, SAA Rule No. 95-17.9, 6/30/2015]

9.2.17.10 SELECTION OF PROVIDERS: The department or an area agency on aging shall consider the following factors when awarding funds to legal assistance providers:

A. Staff with expertise in those specific areas of law affecting older individuals in greatest economic and greatest social need, such as income, public benefits, institutionalization and alternatives to institutionalization, defense of guardianships, protective services, age discrimination, health care, long-term care, nutrition, housing, utilities and abuse

and neglect.

B. The ability to develop and implement outreach efforts designed to identify and serve targeted populations.

C. The ability to provide administrative and judicial representation in the specific areas of law affecting older individuals in greatest economic and greatest social need.

D. The ability to provide legal services to institutionalized, isolated and homebound older individuals.

E. The ability to provide legal assistance in the principal language spoken by clients in those areas of the state where a significant number of clients do not speak English as their principal language.

F. The ability to provide support and advice to the long-term care ombudsman program.

G. The ability to provide support to aging network elder rights initiatives.

H. The ability to provide support to other advocacy efforts, adult protective services, and protection and advocacy and public guardianship programs; and.

I. A commitment to the statewide aging network, including participation in aging network training sessions; coordination with, and referrals to and from, other service providers; involvement in local and statewide publicity efforts to identify the availability of legal assistance services; and training local service providers, site managers, staff, and the like as to the availability and extent of legal assistance services. [9.2.17.10 NMAC - Rp, SAA Rule No. 95-17.10, 6/30/2015]

9.2.17.11 EVALUATING PROVIDERS: The department or area agencies on aging should evaluate providers at least annually using procedures and instruments developed by such groups as the National senior citizens law center, the center for social gerontology, or other similar groups with proven experience in the evaluation of Older Americans Act, Title III(B), legal assistance providers. If applicable, random tests of client services should be administered in the evaluation process. Copies of written evaluations conducted by area agencies on aging must be provided to the department when they are released to the providers. [9.2.17.11 NMAC - Rp, SAA Rule No. 95-17.11, 6/30/2015]

9.2.17.12 MEANS TEST AND TARGETING:

A. Legal assistance providers may not use a means test as a criterion for determining whether an individual is entitled to legal assistance services. Legal assistance providers may question an older individual about his/her financial circumstances as part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older individual may be eligible.

B. The Older Americans Act requires that providers target minority older individuals with low incomes, older individuals residing in rural areas, and older individuals with the greatest economic and social needs. [9.2.17.12 NMAC - Rp, SAA Rule No. 95-17.12, 6/30/2015]

9.2.17.13 CONFIDENTIALITY: Legal assistance providers shall not be required to reveal any information that is protected by the attorney-client privilege. The fiduciary relationship between lawyer and client and the proper functioning of the legal system require the lawyer to preserve client confidences and secrets. Legal assistance providers must comply with client confidentiality requirements, as defined in the Older Americans Act, and all federal and state financial management requirements, including the collection, documentation and use of program income. [9.2.17.13 NMAC - Rp, SAA Rule No. 95-17.13, 6/30/2015]

9.2.17.14 COORDINATION WITH LEGAL SERVICES CORPORATION AND OTHER SEPARATELY FUNDED LEGAL ASSISTANCE PROGRAMS: Legal assistance providers must coordinate with legal services corporation (LSC) providers and any other providers of legal assistance to older individuals to supplement current service levels. Area agencies on aging and providers must also attempt to involve the private bar on a reduced fee and *pro bono* basis. [9.2.17.14 NMAC - Rp, SAA Rule No. 95-17.14, 6/30/2015]

HISTORY OF 9.2.17 NMAC: Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-17, Legal Assistance Services, filed 4/13/1995.

History of Repealed Material: SAA Rule No. 95-17, (filed 4/13/1995) - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS CHAPTER 2 AGE PART 18 NUTRITION SERVICES

9.2.18.1 ISSUING AGENCY:

New Mexico Aging and Long-Term Services Department (NMALTSB)
[9.2.18.1 NMAC - Rp, 9.2.18.1 NMAC, 6/30/2015]

9.2.18.2 SCOPE:

These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations.
[9.2.18.2 NMAC - Rp, 9.2.18.2 NMAC, 6/30/2015]

9.2.18.3 STATUTORY

AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.
[9.2.18.3 NMAC - Rp, 9.2.18.3 NMAC, 6/30/2015]

9.2.18.4 DURATION:

Permanent.
[9.2.18.4 NMAC - Rp, 9.2.18.4 NMAC, 6/30/2015]

9.2.18.5 EFFECTIVE DATE:

June 30, 2015, unless a later date is cited at the end of a section.
[9.2.18.5 NMAC - Rp, 9.2.18.5 NMAC, 6/30/2015]

9.2.18.6 OBJECTIVE:

The objective of this rule is to establish standards and procedures for the federal and state-funded programs administered by the aging and long term services department.
[9.2.18.6 NMAC - Rp, 9.2.18.6 NMAC, 6/30/2015]

9.2.18.7 DEFINITIONS:

The following words and terms, when used in this part, shall have the following meanings:

A. "Congregate meals" are meals provided to eligible individuals in a group setting and which must meet recommended dietary allowance requirements and comply with dietary reference intake standards.

B. "Dessert" includes, but is not limited to, pudding, custard, plain or fruited gelatin, baked goods, ice

cream, ice milk, yogurt, sherbet, other frozen desserts and ethnic desserts. If gelatin or other desserts contain at least half (½) cup serving of fruit, they also meet the fruit requirement.

C. "Dietary Reference Intake Standards" are a set of guidelines for the daily intake of vitamins, minerals, protein, fats, fiber and other nutrients and food components that include recommended daily allowances, adequate daily intake values, and tolerable upper level values of daily intake.

D. "Guest" is an individual under the age of sixty (60) who is not eligible for meals funded by the Older Americans Act.

E. "Fats" include, but are not limited to, fortified margarine, gravy, mayonnaise, or salad dressing necessary to increase palatability and acceptability of a meal. Low fat or fat-free varieties are recommended.

F. "Homebound" means an individual who has difficulty leaving home without assistance because of a disabling physical, emotional or cognitive impairment.

G. "Home delivered meals" are meals delivered to the homes of eligible homebound individuals which must meet recommended dietary allowance requirements, and comply with dietary reference intake standards.

H. "Meat" includes, but is not limited to, poultry, fish, game, red or white meat; it shall not include cured or processed meat high in fat or sodium more than two (2) times per month.

I. "Meat alternates" includes, but is not limited to, eggs, cheese, soy and legumes (cooked dried beans and peas, lentils). One (1)-half cup cooked legumes is equivalent to one ounce of meat. Legumes may be counted as either a meat or a vegetable.

J. "Milk" includes, but is not limited to, skim milk, two percent (2%) milk, whole milk, low fat chocolate milk and buttermilk fortified with vitamins A and D.

K. "Nutrition professional" includes home economists, nutritionists and registered dietitians.

L. "Nutrition service provider" is a contractor selected by an area agency on aging to provide congregate or home-delivered meals in a specified geographical location(s).

M. "Recommended dietary allowance" or "RDA" is the average dietary intake level that is sufficient to meet the nutrient requirements of ninety eight percent

(98%) of healthy individuals in the U.S. The RDA as referenced in this section is for older adults.

N. "Staff" may include employees, volunteers, and others engaged in work related to the operation of nutrition programs.

O. "Standard breakfast meal pattern" (when served in combination with a lunch) includes two (2) servings of bread or cereal, one (1) half cup serving of fruit or fruit juice, and eight (8) ounces low fat milk; and may include one (1) teaspoon of fats. When served without a lunch, the breakfast shall include one (1) ounce of cooked edible portion of meat or meat alternates.

P. "Standard lunch meal pattern" includes three (3) ounces meat or meat alternates, two (2) half cup servings of vegetable(s), one (1) half cup serving of fruit (a minimum of three (3) times per week), one (1) or more serving(s) of whole grain or enriched bread, eight (8) ounces of low fat milk, one (1)-half cup of dessert (optional if fruit is served), and may include one (1) teaspoon of fats.

Q. "Therapeutic diet" is a diet prescribed by a physician or other primary care practitioner, as part of treatment for a disease, clinical condition or metabolic disorder, to eliminate, decrease or increase specific nutrients. Liquid formula meals are considered therapeutic diets and must meet therapeutic diet requirements. A "no sugar added" or "no sodium added" meal is not bound by therapeutic diet requirements.

R. "Variance" is the difference between the number of meals prepared and the number of meals served, expressed in a percent.

S. "Vegetables" include, but are not limited to, red or green chile. Rice or pasta may not be counted as a vegetable.

T. "Whole grain or enriched bread or bread alternate" means biscuits, muffins, rolls, sandwich buns, corn bread, tortillas, wheat breads and ethnic breads. The use of whole grain products is strongly encouraged. Alternates include, but are not limited to, rice, barley, bulgur, pasta, dumplings, pancakes, waffles, and high fiber/vitamin fortified cereals with no added sugar. Starchy vegetables such as potatoes, yams, sweet potatoes, green peas, corn or legumes may not be counted as bread.
[9.2.18.7 NMAC - Rp, 9.2.18.7 NMAC, 6/30/2015]

9.2.18.8 DEPARTMENT RESPONSIBILITIES: The department shall:

- A.** Review and approve area plans, which contain plans for providing nutrition services;
- B.** Monitor and assess area agencies on aging for compliance with these rules;
- C.** Provide technical assistance in the areas of nutrition, meal preparation, menu planning, and meal delivery;
- D.** Conduct or coordinate training;
- E.** Develop eligibility criteria for home-delivered meals; and
- F.** Review and grant or deny any waivers to this rule as requested by area agencies on aging. Such waivers shall not override applicable regulations issued by other state or local agencies that regulate food service and sanitation. [9.2.18.8 NMAC - Rp, 9.2.18.8 NMAC, 6/30/2015]

9.2.18.9 AREA AGENCY ON AGING RESPONSIBILITIES: Area agencies on aging shall:

- A.** Assess the need for nutrition services and further develop eligibility criteria in the planning and service area(s) administered;
- B.** Select nutrition service providers through a competitive bid process, which may include a multi-year request for proposals;
- C.** Monitor the performance of nutrition services, including conducting at least one annual assessment of each provider;
- D.** Approve the menu used each month for each provider which must be:
 - (1) Evaluated with a computer software program; or
 - (2) Evaluated and signed by a nutrition professional; or
 - (3) Approved by the department.
- E.** Provide monthly meal counts to the department by the deadline established;
- F.** Ensure that providers develop and maintain policies for cancellation of services due to inclement weather;
- G.** Implement criteria developed by the department and area agency on aging to be used by providers to determine eligibility for home-delivered meals;
- H.** Designate an individual with overall responsibility to plan, develop, coordinate and administer the nutrition program;
- I.** Ensure that service providers develop and maintain inventory

- control systems to account for food and supplies purchased and used. Evaluate meal cost and variance at least annually;
- J.** Ensure that service providers develop and coordinate nutrition education activities for participants at congregate meal sites and for those receiving home delivered meals;
- K.** Provide technical assistance and ongoing training to staff and service providers in the areas of nutrition, purchasing, sanitation, safety, inventory, portion control, meal preparation, meal planning, and other relevant topics;
- L.** Ensure that all participants receive nutritional screening upon entry into the program and at least annually thereafter. Those participants evaluated at high risk may be screened more frequently as circumstances dictate;
- M.** Develop, approve, and ensure compliance of service providers with regard to measuring, maintaining, and documenting adequate temperature controls for home delivered meals. If the method utilized relies on test meals, such tests shall be conducted no less than monthly and the test meal temperature recorded at the beginning and end of each home delivery route; and
- N.** Ensure that service providers solicit the advice of nutrition professionals, participants, and others knowledgeable about the needs of older individuals in planning nutrition services. [9.2.18.9 NMAC - Rp, 9.2.18.9 NMAC, 6/30/2015]

9.2.18.10 NUTRITION SERVICE PROVIDER RESPONSIBILITIES: Nutrition service providers shall:

- A.** Establish and administer nutrition program(s) with the advice of nutrition professionals, participants, and others knowledgeable about the needs of older individuals;
- B.** Provide eight (8) hours per year of food service training to nutrition staff;
- C.** Provide congregate, home-delivered meals, or both, on a regularly scheduled basis;
- D.** Assess the need for home-delivered meals based on established criteria;
- E.** Have a disaster plan in place to address the availability of meals in emergencies;
- F.** Maintain required food services licensure or certification;
- G.** Prepare, publicize, and adhere to a monthly menu that meets the dietary needs and ethnic and cultural

- preferences of participants;
 - H.** Conduct and document testing and temperature control procedures to ensure that meals are served or delivered at appropriate temperatures;
 - I.** Conduct outreach at least annually to ensure that the maximum number of eligible persons have the opportunity to participate in the program;
 - J.** Provide nutrition education for participants at each congregate meal site at least every three (3) months for fifteen (15) minutes or more and provide nutrition education for home-delivered meal recipients through materials sent to the home, home visits, or telephone contact at least twice annually;
 - K.** Report cases of suspected abuse, neglect, and exploitation to adult protective services; report to designated authorities any conditions or circumstances which place participants in imminent danger;
 - L.** Obtain prior written approval of the area agency on aging that funds the program prior to cancelling services, closing a site or reducing days of operation, except in the case of inclement weather per area agency on aging policy;
 - M.** Maintain, at a minimum, the following:
 - (1) Documentation identifying participants, guests, and staff;
 - (2) Monthly menus verified for nutritional requirements as specified in this rule;
 - (3) Documentation of nutrition education provided to participants;
 - (4) Documentation of food service training provided to nutrition program staff; and
 - (5) Daily temperature logs for freezers, refrigerators, and food.
 - N.** Persons under the age of eligibility may consume a meal when it will not deprive an eligible individual of a meal. These persons must pay the full cost of the meal. [9.2.17.10 NMAC - Rp, 9.2.18.10 NMAC, 6/30/2015]
- 9.2.18.11 MENU REQUIREMENTS:** All meals served must:
- A.** Meet recommended dietary allowance requirements, or dietary reference intake standards;
 - B.** Provide for no more than thirty percent (30%) of total calories from fat;
 - C.** Follow the U.S.

dietary guidelines; and

D. Comply with the standard breakfast meal and standard lunch meal patterns as defined in 9.2.18.7 NMAC.
[9.2.18.11 NMAC - Rp, 9.2.18.11 NMAC, 6/30/2015]

9.2.18.12 FOOD PREPARATION AND SERVICE REQUIREMENTS: Providers must:

- A.** Comply with all state and local health laws and ordinances governing procurement, preparation, handling and serving of food;
- B.** Keep a copy of current state and local food service regulations; and review these annually with staff;
- C.** Submit to inspections by state and local authorities and promptly correct any deficiencies;
- D.** Serve food within thirty (30) minutes after preparation or refrigerate food until ready for use or maintain food at an appropriate temperature as described in 9.2.18.16 NMAC;
- E.** Bring the internal temperature of food served hot to a temperature of at least one hundred sixty five (165) degrees Fahrenheit (F) during cooking or reheating;
- F.** Maintain hot foods at one hundred forty (140) degrees F or higher and maintain cold foods at forty (40) degrees F or lower, until served.
- G.** Not use steam tables or hot food tables to reheat prepared foods;
- H.** Provide meals that are reflective of participant choice, religion, ethnicity, and culture, and are attractive, palatable and appealing, and contain a variety of color and texture;
- I.** Minimize leftover food by developing accurate production forecasting. A maximum ten percent (10%) variance between the number of leftover meals and the number of meals served is the target. Leftover food may be served to participants within forty eight (48) hours of preparation if proper food handling and storage techniques have been implemented;
- J.** Exercise discretion as to whether to permit leftover food from a meal to be taken from the site by a participant; and
- K.** Obtain all commercial foods from vendors that comply with all laws relating to food and food labeling. Commercially packaged food must arrive in containers with labels, and, must have been stored at all times

at appropriate temperatures. Fresh or frozen meat, poultry or fish must be processed to comply with all safety requirements. Fresh produce must be in good condition, free from spoilage, filth or other contamination, and safe for human consumption. Use of home prepared or home canned food is prohibited.
[9.2.18.12 NMAC - Rp, 9.2.18.13 NMAC, 6/30/2015]

9.2.18.13 THERAPEUTIC DIETS: Therapeutic diets may be provided when:

- A.** A sufficient number of persons require therapeutic diets and the program determines it has the ability to prepare them;
- B.** The food and skills necessary to prepare therapeutic diets are available to the program, including the supervision of a registered dietitian; or the meals are purchased from a hospital or similar facility at which meal preparation is supervised by a registered dietitian;
- C.** A written diet order, signed by a physician, is on file; and
- D.** The need of each individual is reassessed as determined by the physician.
[9.2.18.13 NMAC - Rp, 9.2.18.14 NMAC, 6/30/2015]

9.2.18.14 CONGREGATE MEAL SITE REQUIREMENTS:

- A.** Meal sites shall be located as close as possible to the residences of the majority of eligible individuals with the greatest economic and social needs;
- B.** Meal sites must not restrict participation or illegally discriminate in any way;
- C.** Meal sites must comply with all applicable federal, state and local health, fire, safety, building, accessibility, zoning and sanitation laws, ordinances, or codes, and, at a minimum, each meal site must:
- (1) Conduct evacuation drills twice per year;
 - (2) Maintain a basic first aid kit on the premises at all times;
 - (3) Maintain a fire extinguisher on the premises at all times with a current inspection tag; and
 - (4) Meet Americans with Disabilities Act access guidelines;
- D.** Meal sites must post, in a conspicuous location, the following information:
- (1) The rights of eligible individuals to equal opportunity

- and access to services;
- (2) Policy for serving guests and staff;
 - (3) The full cost of the meal;
 - (4) The recommended amount for contributions from participants and how contributions are used;
 - (5) Menus for a minimum of one week in advance;
 - (6) Grievance procedures for participants; and
 - (7) An evacuation plan;
- E.** Meal sites shall conform to state and local no smoking ordinances, but at a minimum:
- (1) Smoking shall not be permitted in food preparation and food serving areas;
 - (2) Smoking in dining rooms shall not be permitted during meal times; and
 - (3) Signs shall be posted in all non-smoking areas;
- [9.2.18.14 NMAC - Rp, 9.2.18.15 NMAC, 6/30/2015]

9.2.18.15 HOME-DELIVERED MEAL SERVICE REQUIREMENTS:

- A.** Providers must implement procedures for determining participant eligibility and assessing the need for service. This includes, at a minimum:
- (1) An initial home visit to assess need within fifteen (15) working days of beginning service; and
 - (2) Six (6)-month reassessment of individuals whose eligibility is subject to change.
- B.** Providers must implement procedures for addressing other participant needs identified during assessment or in the process of serving participants;
- C.** Only trained nutrition program meal delivery staff may deliver meals;
- D.** Supplies, carriers and vehicles that maintain appropriate temperatures must be used to transport hot and cold foods; hot foods must be packaged and transported in separate carriers from cold foods;
- E.** Potentially hazardous foods (such as eggs or milk or foods prepared with eggs or milk) must be pre-chilled and kept at forty (40) degrees F or below;
- F.** Hot foods must be kept at one hundred forty (140) degrees

F or above, except during periods of preparation;

G. Meal carriers must be cleaned and sanitized daily or have a sanitized inner liner;

H. Meals must be packed and sealed to provide easy access for participants while minimizing food spillage and damage;

I. Dried foods or shelf-stable meals must be packaged and transported in covered containers and instructions for rehydration or heating provided with each meal;

J. Frozen or chilled meals may only be used if:

(1) The provider and the participant are able to provide safe conditions for storage, thawing and reheating;

(2) The frozen food is appropriately packaged and kept at thirty two (32) degrees F or below until it is thawed for use;

(3) Instructions for proper storage and heating are provided to each participant by methods determined by an area agency on aging to be effective; and

(4) Providers have developed procedures for delivering other supportive services to participants to prevent isolation.
[9.2.18.15 NMAC - Rp, 9.2.18.16 NMAC, 6/30/2015]

9.2.18.16 NUTRITION SERVICES INCENTIVE PROGRAM (NSIP):

A. The Older Americans Act, Section 311, rewards federally funded nutrition programs.

B. Any meal served by a provider to eligible individuals which meets RDA requirements, regardless of funding source, shall be reported for NSIP assistance. However, only programs funded with Title III federal funds are eligible to receive assistance.

C. NSIP funding must only be used to purchase food which is grown or processed in the United States. Coffee, tea, cocoa, decaffeinated beverages, fruits, and vegetables grown outside of the U.S. are not reimbursable.
[9.2.18.16 NMAC - Rp, 9.2.18.17 NMAC, 6/30/2015]

HISTORY OF 9.2.18 NMAC:
Pre-NMAC History: SAA Rule 95-18, Nutrition Services Standards, filed 4/13/1995. 9.2.18 NMAC, Nutrition Services Standards, effective 5/31/2001-replaced SAA Rule 95-18, filed 4/13/1995.

History of Repealed Material:
9.2.18 NMAC, filed 5/10/2001 - Repealed 6/30/2015.

AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 20 CAPS ON
REIMBURSEMENT FOR
INDIRECT COSTS TO INDIAN
TRIBAL ORGANIZATIONS
IN INTERGOVERNMENTAL
AGREEMENTS**

9.2.20.1 ISSUING AGENCY:
New Mexico Aging and Long Term Services Department (NMAALTS) [9.2.20.1 NMAC - Rp, 9.2.20.1 NMAC, 6/30/2015]

9.2.20.2 SCOPE: This part applies only to intergovernmental agreements with Indian tribal organizations.
[9.2.20.2 NMAC -Rp, 9.2.20.2 NMAC, 6/30/2015]

9.2.20.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.
[9.2.20.3 NMAC -Rp, 9.2.20.3 NMAC, 6/30/2015]

9.2.20.4 DURATION:
Permanent.
[9.2.20.4 NMAC -Rp, 9.2.20.4 NMAC, 6/30/2015]

9.2.20.5 EFFECTIVE DATE:
June 30, 2015, unless a later date is cited at the end of a section.
[9.2.20.5 NMAC -Rp, 9.2.20.5 NMAC, 6/30/2015]

9.2.20.6 OBJECTIVE: The purpose of this rule is to establish the extent to which the department will reimburse Indian tribal organizations for indirect costs incurred in the performance of intergovernmental agreements.
[9.2.20.6 NMAC -Rp, 9.2.20.6 NMAC, 6/30/2015]

9.2.20.7 DEFINITIONS: As used in this part, "indirect cost" means a cost that has been incurred for common or joint purposes and benefits more than one (1) activity, such as an intergovernmental

agreement or grant. Indirect costs cannot be readily identified with a particular activity without effort disproportionate to the results achieved.
[9.2.20.7 NMAC -Rp, 9.2.20.7 NMAC, 6/30/2015]

9.2.20.8 INDIRECT COSTS: The department shall allow for indirect costs in intergovernmental agreements for services with any Indian tribal organization of up to ten percent (10%) of the total agreement amount, as requested and as determined on a specific basis, provided that the Indian tribal organization has a federally approved indirect cost rate. No indirect costs shall be allowed for capital projects.
[9.2.20.8 NMAC -Rp, 9.2.20.8 NMAC, 6/30/2015]

HISTORY OF 9.2.20 NMAC:
History of the Repealed Material:
9.2.20 NMAC, filed 5/10/2001 - Repealed 6/30/2015.

DEPARTMENT OF CULTURAL AFFAIRS LIBRARY DIVISION

**TITLE 4 CULTURAL RESOURCES
CHAPTER 5 STATE LIBRARY
PART 9 SPECIAL GRANTS TO PUBLIC LIBRARIES**

4.5.9.1 ISSUING AGENCY:
Department of Cultural Affairs, New Mexico State Library Division.
[4.5.9.1 NMAC - N, 7/1/2015]

4.5.9.2 SCOPE: Public libraries and developing public libraries.
[4.5.9.2 NMAC - N, 7/1/2015]

4.5.9.3 STATUTORY AUTHORITY: Section 18-2-4(I) NMSA 1978 directs the state librarian to make rules and regulations necessary to administer the division and as provided by law. Section 18-2-4(B) NMSA 1978 directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system.
[4.5.9.3 NMAC - N, 7/1/2015]

4.5.9.4 DURATION:
Permanent.
[4.5.9.4 NMAC - N, 7/1/2015]

4.5.9.5 EFFECTIVE DATE:

July 1, 2015, unless a later date is cited at the end of a section.

[4.5.9.5 NMAC - N, 7/1/2015]

4.5.9.6 OBJECTIVE: The objective of this rule is to describe the special grants program. The special grants program shall provide supplemental assistance to libraries for activities that are not funded by state grants in aid or are not fully funded by state grants in aid and encourage local library service and promote an effective statewide library system.

[4.5.9.6 NMAC - N, 7/1/2015]

4.5.9.7 DEFINITIONS:

A. "Developing library" has the same meaning as in 4.5.2 NMAC.

B. "Grant recipient" means a public library or developing library that the state librarian selects to receive a special grant.

C. "Public library" has the same meaning as in 4.5.2 NMAC.

D. "Special grants" means funds awarded by the state librarian for special library programs.

E. "Special library program" means an activity that is not funded by state grants-in-aid or is not fully funded by state grants-in aid and that encourages local library service and enhances the effectiveness of a statewide library system.

[4.5.9.7 NMAC - N, 7/1/2015]

4.5.9.8 SPECIAL GRANTS

INITIATION: The state library or a public library may propose a special library program.

[4.5.9.8 NMAC - N, 7/1/2015]

4.5.9.9 GRANT

AVAILABILITY: The state library shall offer special grants when the state librarian identifies the need for state-wide coordination of a special library program and determines that sufficient federal or state funds are available.

[4.5.9.9 NMAC - N, 7/1/2015]

4.5.9.10 FUNDING

SOURCE: Special grants may be funded with federal funds, state funds, and any other funds available to the state librarian and not otherwise restricted. Use of state funds for special grants shall not reduce state grants-in-aid. No more than twenty-five percent (25%) of federal funds received by the state library shall be used for special grants.

[4.5.9.10 NMAC - N, 7/1/2015]

4.5.9.11 ELIGIBILITY:

Public libraries and developing libraries that are eligible for state grants-in-aid in a given fiscal year are also eligible for special grants, unless the grant guidelines otherwise restrict the library's eligibility.

[4.5.9.11 NMAC - N, 7/1/2015]

4.5.9.12 GRANT

GUIDELINES: When the state librarian identifies the need for state-wide coordination of a special library program and determines that sufficient funding is available, the state librarian shall issue a special grant announcement to all developing libraries and public libraries with grant guidelines. The grant guidelines shall include the following components:

A. Description of the special library program;

B. Grant application;

C. Application timeline;

D. Special library

program's budget-planning worksheet;

E. Applicable rules and regulations; and

F. Selection criteria.

[4.5.9.12 NMAC - N, 7/1/2015]

4.5.9.13 SELECTION: A committee selected by the state librarian shall review special grant applications and award special grants based on the selection criteria specified in the grant guidelines.

[4.5.9.13 NMAC - N, 7/1/2015]

4.5.9.14 TRANSFER OF

FUNDS: Special grants shall only transfer to the grant recipient after the grant recipient signs a contract, agreeing to the terms applicable to the applicable special library program. The state library will reimburse grant recipients for expenses documented in their state-library approved budget for the special library program.

[4.5.9.14 NMAC - N, 7/1/2015]

4.5.9.15 ACCOUNTABILITY:

A. Grant recipients shall account for special grants separately from other funds.

B. If a special grant includes federal funds, federal requirements for procurement and record retention shall apply.

C. The state library shall monitor special library programs.

[4.5.9.15 NMAC - N, 7/1/2015]

4.5.9.16 MAINTAINANCE

OF EFFORT: A grant recipient's governing body shall not reduce the grant recipient's budget as a result of the grant recipient's receipt of a special grant.

Upon demonstrated evidence that such a

reduction has occurred, the grant recipient shall be ineligible to receive special grants or state grants-in-aid for one year after the reduction occurs.

[4.5.9.16 NMAC - N, 7/1/2015]

HISTORY OF 4.5.9 NMAC:

[RESERVED]

**ECONOMIC
DEVELOPMENT
DEPARTMENT**

**ECONOMIC DEVELOPMENT
DIVISION**

This is an amendment to 5.5.50 NMAC, Sections 6, and 8 through 15, effective 7-1-2015.

5.5.50.6 OBJECTIVE: The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program [~~also known as the industrial training development program or "in plant training,"~~²²] strengthens New Mexico's economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves.

A. Company eligibility:

Several categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators, film digital production, and post-production companies are eligible under the manufacturing category. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico unless the company is considered a green industry. To be considered for JTIP, non-retail service companies must export a service remotely rather than deliver service via face to face interaction. The third category -film production companies - are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total

employees as when they last expanded under JTIP. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP [participants] trainees.

B. Job eligibility: Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to 20% of the total number of jobs applied for in the proposal, and may include non-executive, professional support positions. Jobs must also meet a wage requirement to be eligible for funding. For contract-based call centers, the position must meet or exceed at least the local entry wage for the industry according to the most current occupational employment statistics wage data available through the NM department of workforce solutions economic research and analysis bureau. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit, and utilize the WorkKeys® program as part of the hiring process. An additional incentive may be offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

C. Trainee eligibility: To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a GED.

D. Reimbursable training costs: Training funded through JTIP can be custom classroom training

at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A portion of trainee wages up to 75% for up to six months of initial training.

(b) A portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses up to 75% with a cap of 5% of total funding for wages may be available.

(2) Positions which meet the JTIP requirements [~~and meet the criteria of the~~] with starting wages at levels eligible for the high wage job tax credit may be eligible for an additional 5% wage reimbursement above the standard rates.

(3) Companies which utilize the WorkKeys® program as part of their hiring process may be eligible for an additional 5% wage reimbursement above the standard rates.

(4) Companies which hire trainees who have graduated within the past twelve months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional 5% wage reimbursement above the standard rates.

(5) Companies which hire trainees who are U.S. veterans may be eligible for an additional 5% wage reimbursement above the standard rates.

(6) Companies may combine the additional 5% wage reimbursement for high-wage jobs with any one of the conditions described in paragraphs (3), (4) or (5) above, for a total additional wage reimbursement not to exceed 10% above the standard rates.

(7) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

E. Program management and administration: General management of the job training incentive program is the responsibility of the [job training incentive program] industrial training board as prescribed by governing legislation (Section 21-

19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the year. The board has the authority to make funding decisions based on the availability of funds, sufficient appropriations, and the board's determination of the qualifications of the business. The board has adopted rules to ensure the program supports the development of New Mexico's economy as intended by the governing legislation. Policies and procedures for the New Mexico enhanced skilled training program, STEP UP, are outlined in a separate document. The JTIP board meets the second Friday of every month to consider proposals for funding. The third Friday of the month serves as an alternate date when required. Administration of the job training incentive program is the responsibility of the JTIP staff in the New Mexico economic development department.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013; A, 06-30-2014; A, 07-01-2015]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

A. Company qualifications and requirements: The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds: companies which manufacture a product in New Mexico and certain non-retail service providers. The first category is companies which manufacture a product in New Mexico. Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and

able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). Manufacturing businesses are typically included in Sectors 31-33 of the North American industry classification system (NAICS). Renewable power generators, film digital production companies such as animation and video game production, and film post production companies are eligible under the manufacturing category. A company whose employees are compensated solely on piecework is [also] not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service remotely rather than provide the service directly to a customer via face to face interaction. Companies that derive their revenues from within New Mexico or via face-to-face customer interaction at the company site or customer site are only eligible if they exist for the sole purpose of producing, installing or integrating environmentally sustainable products. Corporate, international, national, regional and divisional headquarters located in New Mexico may qualify for JTIP provided at least 50% of the company's revenues are derived from operations outside New Mexico. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national or multi-state entities. Major United States research labs or companies which operate major United States research and development national laboratories are not eligible. JTIP will not consider contractors which rely on income that is already in the state of New Mexico through national laboratories already existing in New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales,

solicitation, collections or telemarketing are not eligible for JTIP funds, unless they are in response to inbound requests and existing clients or business to business. Contract-based call centers have special wage requirements. Contract-based call centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based call centers do not have a core expertise; rather they communicate information provided to them by their clients. For contract-based call centers, the positions must meet or exceed at least the local entry wage for the industry according to the most current occupational employment statistics wage data available through the NM department of workforce solutions economic research and analysis bureau. Contract-based customer support centers must provide evidence of a minimum 5-year lease or purchase of a facility in NM. Contract-based customer support centers must offer employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage. Another category of non-retail business service providers is shared services centers that solely serve regional or national divisions. Distribution is another category of non-retail business service providers. A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer, or customer. Distributors qualify for JTIP as service providers if at least 50% of the customer base is located outside of New Mexico. Aviation maintenance, repair and overhaul (MRO) operations with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico are eligible; a contracted third-party or the owner of the aircraft may bring the aircraft to New Mexico for service. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the North American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New

Mexico or relocation to the state of New Mexico. Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the two prior years. The company must meet or exceed the average employment level for the past two years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program within the past two years, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels. A company may be allowed to exclude JTIP intern positions when calculating the two-year average headcount.

(3) If a company hires twenty or more trainees in a municipality with a population of more than forty thousand according to the most recent decennial census or in a class A county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(4) Companies are required to submit three years of financial statements (profit and loss, balance sheets, statements of cash flow, and financing term sheets) as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials must submit financials for the period for which they are available, tax returns, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, [or] pro

forma financial statements and sales projections which would substantiate their business expansion. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

(6) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within 1 year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) which were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP reimbursement exceeds \$100,000. The board will require a refund of funds within 90 days of notification.

(7) Layoff is defined as a strategic and organized event of separation of employees from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(8) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for the remaining training hours.

B. Position

qualifications and requirements: The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/ week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer

wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies may be eligible for the high wage job tax credit. These levels are [~~\$40,000~~] \$60,000 in a municipality with a population of 40,000 or more as of the last decennial census and [~~\$28,000~~] \$40,000 in other locations. Communities defined as urban for JTIP include Albuquerque, [~~Farmington~~], Las Cruces, Rio Rancho, [~~Roswell~~], and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under JTIP must directly support the primary mission of the business. In addition, other newly created positions may be funded up to a maximum of 20% of the total number of jobs for which funding is requested, and may include non-executive, professional support positions. For headquarter facilities as described under Paragraph (1) of Subsection A above, eligible positions may only include professional support, non-executive positions.

(5) Intern positions may be eligible provided the trainee is enrolled in, or has graduated within the past twelve months from, a post-secondary training or academic program and meets JTIP eligibility requirements. Intern positions may be part-time (less than 32 hours per week). The intern position must be relevant to the post-secondary training or academic program in which the trainee is enrolled, or from which the trainee has graduated, but is not required to be production or service related. Companies will be reimbursed upon evidence of direct full-time employment offered [~~and accepted~~] within 90 days of completion of the internship and graduation from the post-secondary training or education program, or within 90 days of completion of the internship by a recent graduate.

C. Trainee

qualifications and requirements: The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees

must be new hires. No retraining of current company employees is allowed under the JTIP program. Individuals who have been previously employed by or have worked as contractors to the company are not eligible to be hired under JTIP in the same or similar position as the one previously occupied or contracted. Individuals who have been employed temporarily in a position classified as intern in order to gain practical training that connects an academic pathway into work based or relevant business experience may be eligible. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or industrial development training program are not eligible to participate again with the same company, unless the trainee has participated in the JTIP internship program.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications should remain fixed during the program. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a regular/permanent full-time employee before the end of the JTIP contract period.

(b) The trainee must receive the same wages and major medical benefits while working as a temporary employee that permanent employees of the company receive.

(c) The staffing agency must disclose wages paid to the temporary employee to the company.

(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(e) Companies are reimbursed for wages as each trainee completes the approved training hours and after s/he has been converted to a regular/permanent full-time employee of the JTIP contracted company.

(10) Employees hired by a company through a professional employer organization (PEO) may be eligible for funding provided the PEO agrees to comply with all JTIP requirements for the compliance and final auditor's reviews as outlined in subsections J and K of 5.5.50.10 NMAC and in the JTIP project closeout guide.

(H) (11) Companies are reimbursed for wages as each trainee completes the approved training hours.

(H) (12) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013; A, 06-30-2014; A, 07-01-2015]

5.5.50.9 ELIGIBLE TRAINING PROGRAMS:

A. The authorizing legislation establishes the following criteria for training.

(1) Training projects shall, to the extent possible, be customized to meet the company's specific needs.

(2) Training projects shall provide quick-response classroom and on the job training.

(3) Training shall provide New Mexico residents with improved economic status through employment.

(4) Training shall provide measurable growth to the economic base of New Mexico.

B. The types of training projects eligible under the job training incentive program are:

(1) structured on-the-job training (OJT) and "hands on" skill development at the company's facility;

(2) custom classroom training provided by a New Mexico post-secondary public educational institution;

(3) a combination of classroom and OJT as described above.

C. On-the-job training:

Training is conducted at the participating company's facility and generally involves structured on-the-job training (OJT) or "hands-on" skill development. Although certain modules may be conducted in a classroom setting at the company location, the training is still considered OJT. The training must be customized to develop essential skills particular to the company's needs.

(1) A comprehensive training plan is required as part of the proposal for funding. The training plan must include the company job description, O*NET job description, and training units. Each unit will include core content or objectives, methods and materials, methods of evaluation and requested hours. The training plan must cover the entire period for which reimbursement is requested. A more detailed description of the training plan requirements is included in the JTIP online application and proposal guide.

(2) The participating company is responsible for providing the necessary facilities, equipment, materials and training staff. Trainer's wages are not eligible for funding through JTIP.

(3) The executed contract will comply with governing legislation.

D. Custom training provided by a New Mexico post-secondary public educational institution:

Training is conducted by a New Mexico post-secondary public educational institution in a classroom setting either on campus or at the work site. This type of training is typically coordinated through the institution's workforce training center. At least three trainees must participate in classroom training, which should be customized to meet the specific needs of the company. Only JTIP participants trainees are eligible to attend the training at JTIP's expense. If appropriate training opportunities are not available through public institutions, private institutions may be considered. The educational institution must provide a separate proposal to the

JTIP board. The custom training outlined in this proposal must be integrated with the proposal submitted by the company for trainee wages.

(1) The contracted institution or the participating company will work with the economic development department to establish the contract, its content, scope, and training standards to ensure that the program meets or exceeds the company's requirements.

(2) The contracted custom training will be integrated into the training plans submitted by the company in the coordinating JTIP proposal.

(3) The contracted custom training will be conducted within the initial training period approved by the JTIP board.

(4) Payment for classroom training services shall be made only for a qualified and approved program. Reimbursement for classroom training will be at a maximum rate of \$35 per hour of training per trainee with a cap of \$1,000 per employee. Tuition reimbursement and industry certification programs are not eligible for JTIP funding.

(5) Facilities rental outside a public educational institution and equipment rental or purchase are not eligible for JTIP funds unless facilities are not available at the company or the educational institution.

(6) The executed contract shall comply with the governing legislation. [5.5.50.9 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2011; A, 06-30-2014; A, 07-01-2015]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses may be eligible for reimbursement through JTIP

(1) A percentage of trainee wages for up to six months of initial training.

(2) A percentage of travel expenses associated with training.

(3) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

(4) A percentage of intern wages for up to 640 training hours.

B. Standard reimbursement rates for wages and travel

range up to 75%. Positions which meet the JTIP requirements ~~[and meet the criteria of]~~ with starting wages at levels eligible for the high wage job tax credit may be also eligible for an additional 5% wage reimbursement. Positions filled by trainees who meet any of the three following criteria may be eligible for an additional 5% wage reimbursement above the standard rates:

(1) Trainee has taken the WorkKeys® assessments as part of the hiring/recruitment process.

(2) Trainee has graduated within the past twelve months from a post-secondary training or academic program at a New Mexico institution of higher education.

(3) Trainee is a U.S. veteran. Companies may combine any one of the three conditions above with the additional 5% wage reimbursement for high-wage positions, for a total additional wage reimbursement not to exceed 10% above the standard rates. If a company is participating in other job reimbursement training programs such as the [Workforce Investment Act (WIA)] Workforce Innovation and Opportunity Act (WIOA), the combined reimbursement to the company may not exceed 100%.

C. The job training incentive program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within

the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of standard reimbursement ranges up to 75%, depending on the business location. ~~[An additional 5% may be awarded for jobs which also qualify for the high wage job tax credit.]~~

(2) The number of hours eligible for reimbursement varies by position, up to 1,040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at [<http://onetcenter.org>] <http://onetonline.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours is included in the table below.

(3) The JTIP staff will ensure that the O*NET occupations match the company job

description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the table above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural,

| General Guideline for Duration of Reimbursable Training Time/Wages | | | | | | | |
|--|---------------------------------|------------------------|-------|----------------------------|----------------------------|------|-------|
| Job Zone | Definitions | SVP Range/ Conversions | Hours | Min. Wage @ Hiring - Urban | Min. Wage @ Hiring - Rural | Days | Weeks |
| 1a | Little or no preparation needed | Below 4.0 | 160 | 9.00 | 8.00 | 20 | 4 |
| 1[a] | Little or no preparation needed | Below 4.0 | 320 | 10.00 | 8.50 | 40 | 8 |
| 2a | Some preparation needed | 4.0 to < 6.0 | 480 | 11.50 | 9.00 | 60 | 12 |
| 2[a] | Some preparation needed | 4.0 to < 6.0 | 640 | 13.00 | 9.50 | 80 | 16 |
| 3a | Medium preparation needed | 6.0 to < 7.0 | 800 | 14.50 | 11.00 | 100 | 20 |
| 3[a] | Medium preparation needed | 6.0 to < 7.0 | 960 | 16.00 | 12.00 | 120 | 24 |
| 4 | Considerable preparation needed | 7.0 to < 8.0 | 1040 | 19.00 | 13.00 | 130 | 26 |
| | Align with HWJTC | Additional 5% | 1040 | [19.23] 28.85 | [13.46] 19.23 | 130 | 26 |

frontier, economically distressed, and Native American land.

(a) Businesses in urban locations (cities with population above ~~[40,000]~~ 60,000 in the most recent federal decennial census) and Class A counties (i.e., Los Alamos) are reimbursed at up to 50% for all eligible training hours. Urban communities are: Albuquerque (545,852), ~~[Farmington (45,877),]~~ Las Cruces (97,618), Rio Rancho (87,521), ~~[Roswell (48,366),]~~ and Santa Fe (67,947).

(b) Companies located in rural areas, outside those listed above are reimbursed at up to 65% for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to 75% for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to 75% reimbursement. To receive up to 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or downsizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for up to 75% reimbursement.

(f) Companies located in federally designated colonias in New Mexico are eligible for up to 75% reimbursement for all eligible training hours.

(6) JTIP eligible positions ~~[which meet the requirements of]~~ with starting wages eligible for the high wage job tax credit may be eligible for an additional 5% reimbursement.

These requirements are a hiring salary of ~~[\$40,000]~~ \$60,000 or higher in an urban or class A county and a hiring salary of ~~[\$28,000]~~ \$40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements ~~[(New Mexico residency for one year, new hire status, etc.)]~~ are still factors for JTIP eligibility.

(7) Companies that utilize the WorkKeys® program as part of their hiring process may be eligible for an additional 5% reimbursement.

(8) JTIP eligible positions filled by trainees who have graduated within the past twelve months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional 5% reimbursement.

(9) JTIP eligible positions filled by U.S. veterans may be eligible for an additional 5% reimbursement.

~~(8)~~ (10) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed one thousand and forty (1,040) hours per trainee (six months) based on the company's scheduled workweek, not to exceed forty (40) hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as ~~[WIA]~~ WIOA, the combined reimbursement to the company may not exceed 100%.

(f) Additional wage reimbursement may not exceed 10% above the standard rates.

Companies may combine the additional 5% wage reimbursement for high-wage jobs with one of the three following conditions for an additional 5% wage reimbursement: 1) the trainee took the WorkKeys® assessments as part of the hiring process; 2) the trainee graduated within the past twelve months from a New Mexico institution of higher education; 3) the trainee is a U.S. veteran.

E. Reimbursement for custom classroom training: Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries,

fringe benefits, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. No training equipment may be purchased or rented using JTIP funds.

F. Travel cost and reimbursement for trainees and trainers: Trainee travel may be included in the proposal when trainees are required to travel to a different location for training. Travel expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel deemed reasonable and necessary will be consistent with the rates as designated by location and are limited to transportation and lodging expenses. Total travel cost is not to exceed five (5%) of the amount requested for wages and may be adjusted accordingly if amendments to the wage budget occur.

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013; A, 06-30-2014; A, 07-01-2015]

5.5.50.11 REQUIREMENTS FOR FUNDING REQUEST:

A. A company must submit a written proposal to the JTIP staff one month before the board meeting to be considered for funding. The JTIP online application and supporting documentation are what make up the complete proposal. Information and documentation which must be included in the proposal is explained in detail in the JTIP online application and proposal guide, which describes the requirements for initial applications for funding and for companies which are submitting subsequent requests. The proposal is an important document not only in establishing the company's eligibility for JTIP funding, but also its viability as a business and the relationship of the newly created jobs to business expansion. A detailed training plan is required to ensure the success of the trainees, the training program, and ultimately the business.

B. The board considers a number of factors when evaluating proposals. These include:

(1) being a corporate or established industry leader;
 (2) quality of jobs with respect to wages and benefits; companies are encouraged to pay at levels which qualify may be eligible for the high wage job tax credit (~~[\$40,000]~~ \$60,000 in urban locations and ~~[\$28,000]~~ \$40,000 in other locations);

(3) return on investment, including impact on local and state economies; factors include number of jobs, impact on average wage and household earnings; increase in per capita income; annual local purchases impacting local/state sales taxes; dollar amount of new construction; environmental impact; and overall economic support to the community;

(4) the company's financial strength should indicate a capacity for long-term employment for JTIP [~~participants~~] trainees;

(5) charitable and community contributions;

(6) current on NM CRS-1 and UI reporting and payment obligations. [5.5.50.11 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 06-30-2011; A, 06-30-2014; A, 07-01-2015]

5.5.50.12 PROCEDURAL

OVERVIEW: The procedure for completing a funding proposal is explained in detail in the JTIP online application and proposal guide. The procedure for program participation once funding is approved is described in the JTIP orientation for program administration. This summary is intended to provide a general overview of the process. [~~Please refer to the appropriate guide when completing a proposal for funding and administering the program once it is funded.~~] JTIP staff is available for assistance with these processes.

A. Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding. Early submission is required to allow JTIP staff and board members to review the materials and request clarification or additional information if needed.

B. Board meetings are generally held on the second Friday of each month. The alternate date, which is used when a meeting on the second Friday is not viable (a quorum cannot be achieved, holiday, etc.) is the third Friday of the month.

C. The contract start date is the date of the board meeting at which funding was approved. The contract shall terminate upon notice by the economic development department to the company that the department has paid the final claim for reimbursement due under the contract and that the company has satisfied its obligations regarding contract

compliance. All claims for reimbursement must be submitted and the agreed upon procedure must be completed within 30 days of the completion of training.

D. The contractual agreement will be prepared and sent to the company within 15 working days after the board approval date. A sample contract is available within the online JTIP application. Companies are encouraged to review the contract before applying for funding, as the contract cannot be edited.

E. The company must return the signed contractual agreement to the economic development department within 15 business days from the issue date.

F. Eligible job openings must be registered with the New Mexico workforce connection. The company is also encouraged to advertise through the placement office at local post-secondary educational institutions. A list of all post-secondary, public and proprietary institutions is available from the New Mexico higher education department (<http://hed.state.nm.us>).

G. The company must hire trainees within six months of the contract start date. This timing ensures that trainees who are eligible for six months of training will complete the program within one year of the contract start date.

H. The company must submit an online hiring report at the end of the six month hiring period. When the company submits the list, the allocation of funds for their contract will be adjusted to reflect the number of people hired. The board will not entertain extensions to the contract.

I. Claims for reimbursement should be submitted as [~~participant's~~] trainees complete training.

J. Each project is subject to compliance reviews throughout the term of the contract. The compliance review includes program and fiscal surveys.

K. The company must arrange for an agreed upon procedure in accordance with generally accepted standards and the general requirements included in the statements on standards for attestation engagements, as issued by the American institute of certified public accountants upon completion of the training. The agreed upon procedure requirement does not apply to contracts for custom training at New Mexico higher educational institutions. These institutions must meet all other program requirements and are subject to a compliance review by JTIP staff. The

agreed upon procedure requirement may be waived at the discretion of the JTIP program manager for projects with total claims for reimbursement under \$10,000 or for one trainee. In these instances, the company must have been in good standing with the program throughout the contract period and completed a compliance review with no findings. In the event that the company submits more than one claim for reimbursement, a second and final compliance review must be completed with no findings.

L. The final claim for reimbursement should be submitted with the completed agreed upon procedures report. The final wage claim will be paid once the agreed upon procedures report has been received and approved favorably.

M. Yearly follow-ups may be conducted to show effectiveness of the program, including surveys to address company retention and wage rates of program [~~participants~~] trainees by the economic development department and the department of workforce solutions.

N. Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

[5.5.50.12 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2010; A, 06-30-2011; A, 06-28-2013; A, 06-30-2014; A, 07-01-2015]

5.5.50.13 AMENDMENTS:

A. Amendments to the contract may be allowed in special circumstances. Amendments may be required by administrative changes (such as job classification changes, company name change, etc.) and changes to the number of [~~participants~~] trainees funded. Companies must submit an online amendment request, along with supporting documentation to justify the amendment to the job training incentive program board. All amendment requests must include 1) a letter describing the change requested and the reason for the change, 2) a completed online amendment form application, and in some cases a current financial statement and UI report (ES-903A). [~~The amendment application is available in the JTIP online application.~~] Amendments to add new types of positions not already a part of the contract must be approved by the JTIP board before the [~~participants~~] trainees are hired. Amendments which [~~increase the number of participants in approved positions and~~] increase the budget by more than \$10,000 must also be approved by the board prior to [~~participants~~]

trainees being hired. Amendment requests which are administrative in nature and do not increase the original budget amount by more than \$10,000 may be executed by JTIP staff. Examples include job classification changes, company name change, and changes to wage ranges. Amendments to decrease the number of positions in the contract, including the release of funds for positions not filled within the hiring period, may also be executed by JTIP staff without board approval. The program manager [~~and division director or his/her designee~~] will approve all staff executed contract changes. Otherwise, the JTIP board must approve all contract amendments. If a company requests an amendment increasing the original contract by more than 50% or \$100,000, whichever is the lesser amount of the two, a new proposal must be submitted. However, if the company submits a new proposal within six months of the original proposal which is for an amount greater than would normally be allowed for amendment, the company may submit a shorter modified proposal.

B. All project amendment requests must be submitted in writing through the JTIP online application one month prior to the board meeting. The board meetings are held on the second Friday of every month, with the third Friday occasionally used as an alternate.
[5.5.50.13 NMAC - Rp, 5.5.50.11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2011; A, 06-30-2014; A, 07-01-2015]

5.5.50.14 CONTACTING

JTIP STAFF: JTIP staff can be contacted at the New Mexico economic development department in Santa Fe. The general phone numbers for the department are (505) 827-0300 or (800) 374-3061.

A. The mailing address for all JTIP correspondence is: Job Training Incentive Program, Program Administrator, New Mexico Economic Development Department, P.O. Box 20003, Santa Fe, NM 87504-5003.

B. The physical address to be used for courier services such as federal express, UPS or special handling packages is: Job Training Incentive Program, Program Administrator, New Mexico Economic Development Department, Joseph M. Montoya Bldg., Suite 1060, 1100 South St. Francis Drive, Santa Fe, NM 87505-4147.
[5.5.50.14 NMAC - Rp, 5.5.50.11 NMAC, 03-15-2006; A, 07-16-2009; A, 06-30-2014; A, 07-01-2015]

5.5.50.15 GLOSSARY:

A. Agriculture/mining/extractive industries: Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

B. Company: A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.

C. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for 75% reimbursement. To receive a 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

D. Expanding company: An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the two prior years. (Refer to "peak employment.")

E. Film and multimedia post production: Film digital production and post-production companies are considered manufacturing provided the company operates year round and is primarily engaged in any of the following: animation, editing, foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year round. Position must not require

trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

F. Frontier: A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

G. Green industries: Those that exist for the sole purpose of contributing directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

H. High wage job tax credit: The high wage job tax credit provides a tax credit of 10% of the wages and benefits paid for each new economic-based job created on or after July 1, 2004 and before July 1, 2015, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$28,000/year in a community with a population of less than ~~[40,000]~~ 60,000 and \$40,000/year in a community with a population of ~~[40,000]~~ 60,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee. For each new economic-based job created on or after July 1, 2015, qualified jobs must pay at least \$40,000/year in a community with a population of less than 60,000 and \$60,000/year in a community with a population of 60,000 or more.

I. Manufacturing: Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as

manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined at Section ~~7-4-10B~~ 7-4-10D NMSA 1978 as “combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons.”

J. NAICS: North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at www.census.gov/cgi-bin/sssd/naics/naicsrch.

K. Native American crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

L. New company: A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID and a New Mexico unemployment insurance ID when applying for JTIP funds.

M. Non-retail service sector business: To be considered for JTIP funding, the company must provide services which are not retail in nature and must export 50% of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies must export a service remotely rather than

[import a customer] deliver a service via face to face interaction at the company site or customer site.

N. O*NET: The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation’s primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at www.onetcenter.org <http://onetonline.org>.

O. Peak employment: First time JTIP applicants: Peak employment will be based on the employment average from two previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

P. Peak employment: Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last two years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

Q. Retail trade: Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise. Retailers operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers.

R. Renewable energy: is a source of power generated from resources which are naturally replenished, including but not limited to electricity or heat derived from solar, wind, tidal power, hydropower, biomass, geothermal resources and biofuels or hydrogen produced from renewable resources.

S. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

T. Urban communities: An urban community is defined as a municipality with a population of [forty]

sixty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (545,852), [Farmington (45,877);] Las Cruces (97,618), Rio Rancho (87,521), [Roswell (48,366);] and Santa Fe (67,947). Class A counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

U. Metropolitan statistical area: An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA’s are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA’s. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Torrance counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

V. Rural: Any area located outside communities defined as urban in the JTIP policy.

W. Veteran: A New Mexico resident who is registered with the New Mexico workforce connection, and who served in the active military, naval or air service and who was discharged or released under conditions other than dishonorable.

[5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-30-2014; A, 07-01-2015]

ECONOMIC DEVELOPMENT DEPARTMENT FILM DIVISION

This is an amendment to 5.5.51 NMAC, Sections 7, 8, 9, 10, 11 and 12 effective 6-30-2015.

5.5.51.7 DEFINITIONS: For use in this part, the following definitions apply.

A. “Above-the-line” is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions

that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

B. “Below-the-line” is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew that does not have direct creative or financial control of the project nor receive residuals.

C. “Company” means the company [for FCAP for physical production and is either] that either is or creates a temporary film or multimedia production company [that was created] to produce one (1) film or multimedia product, as it applies to FCAP for physical production or a company that is permanently based in New Mexico with full-time employees and creates film or multimedia products.

D. “Craft” means the specialized area or department in which a film technician works.

E. “Crew” means the employees hired by a company to complete a film or multimedia project(s).

F. “Deal memo” means the film industry contract that defines the exact terms of a crew member’s employment including but not limited to position title and pay rate.

G. “Emerging Media” refers to most digital technologies, interactive software, mobile applications, post-production, video games and new technology intended for commercial use and exploitation and is related to entertainment or entertainment-related industries, as approved by the New Mexico film division.

H. “FCAP” means film crew advancement program.

I. “Film or television credit” for this program means work on a film or television production for more than one week which was not a student film, internship, unpaid position, documentary, commercial, nor on a project where the budget was under five hundred thousand dollars (\$500,000.00) and the company did not participate in this program.

J. “Film technician” means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (LATSE) film union or guild.

K. “General safety certified” means a crew member has

completed a class or course that meets OSHA standards for general safety associated with working on a film and multimedia project.

L. “JTIP” means job training incentive program.

M. “Non-union” means the job position is not in the contractual jurisdiction of a film union or film guild.

N. “Mentor” means the go-to person for questions and direction or the supervisor of a program participant and has a stronger skill set in relation to the job position in which that participant was hired.

O. “NM” means New Mexican.

P. “Open hours” means a trainee that qualified for FCAP during a production did not use all one thousand and forty (1,040) hours available. Hours that remain are considered “open” and may be used for that job position on another production upon qualification.

Q. “On-the-job training” means gaining experience in a hired position increasing job opportunities for continual employment in the film and multimedia industry.

R. “Payroll report” means the report generated from a payroll company hired by the company to act as the crew’s payment agent for the film and multimedia project.

S. “Physical production” means companies that produce a project or series on location or at a temporary location.

T. “Principal photography” means the cameras have started filming and the majority of preparation for a film and multimedia project has been completed; call sheets are now issued to crew members and production reports are completed daily.

U. “Production” means the film or multimedia project preparation, principal photography and set break down periods while creating a film or television project.

V. “Reserve Component Members” refers to a New Mexico member who served in the army, naval, marine corps, air force and coast guard reserves and the national and air national guard of the United States.

W. “Resident” means an individual who is domiciled in New Mexico. This domicile is the individual’s permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new

location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

X. “Salaries” means wages or the hourly pay rate for hours physically worked by trainee during a production.

Y. “Trainee” means the crew member that shall be learning a new skill set or graduating to a higher job classification through the FCAP and is synonymous with the terms program participant or applicant.

Z. “Veterans” means a New Mexico resident who is registered with the New Mexico workforce connection, and who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

AA. “Wages” means the hourly pay rate for hours physically worked by trainee during production. It does not include film payments to trainees such as kit rental, holiday pay, travel time, mileage reimbursements, or any payment to employee due to penalties incurred by company during production of the project. [5.5.51.7 NMAC - Rp, 5.5.51.7 NMAC, 6-30-2014; A, 6-30-2015]

5.5.51.8 PROGRAM

OUTLINE:

A. The following is the program outline for all participating companies:

(1) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(2) Trainee’s pay rate shall be consistent with trainee’s job position per this crew member’s contract with company, and trainee’s pay rate shall be higher than the positions in the lower tier of positions under trainee[-or] per union contractual agreement where applicable.

(3) Any requests for a different job position or mentor to qualify for the program shall be considered by the New Mexico film division, and if approve noted in file.

B. The following is in addition to the program outline in Subsection “A” and shall apply to **FCAP for physical production.**

(1) Each trainee qualifies for a maximum of one thousand and forty (1,040) hours. As the trainee works on a film or television project, the

hours shall be deducted accordingly.

(2) Trainees shall work at least 80 hours in their hired position in order to qualify.

(3) Trainees may qualify for an additional one thousand and forty (1,040) hours if the training received through this program is used to progress from their current job to a higher job classification or to move laterally into a new skill set and the individual meets program qualifications.

(4) Qualifying participants may apply any unused hours to future on-the-job training work opportunities in the specified job position until the one thousand and forty (1,040) hours are exhausted.

(5) Unused training hours in a lower level position are forfeited once a trainee moves to a higher level within that skill set and that department.

(6) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for individual projects produced by [temporary] companies.

(7) The number of film and television production credits and the amount of experience required for a participant to qualify shall be determined by the New Mexico film division based on the total budget of the project and the extent to which the participant is adding to their skill set.

(8) The number of trainees allowed to participate in each craft department shall be determined by the New Mexico film division based on the total budget of the project, department crew size and the company location.

C. The following are in addition to the program outline in Subsection "A" and shall apply to **FCAP for qualifying permanent companies.**

(1) Trainees shall complete the one thousand and forty (1,040) hours to qualify.

(2) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(3) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for permanent companies creating products.

(4) Qualifying participants may only participate one time in the program as an employee of this company; however, where the trainee

has completed all one thousand and forty (1,040) hours in the original hired position, requests to participate again will be considered upon written documentation submitted by the employer and by the trainee that verifies the trainee will be advancing to a higher job classification.

D. The programs outlined in Subsections "A" and "C" shall apply to **FCAP for qualifying permanent emerging media companies.** The New Mexico film division of the New Mexico economic development department shall contract qualified companies to provide training opportunities, similar to internships, to [residents] students currently enrolled in a [New Mexico] higher education institution or a graduate who [have] has recently graduated within one (1) year from a [New Mexico] higher education institution that relates to digital or post-production technology (emerging media) for the multi-media and entertainment-related industries as approved by the New Mexico film division.

[5.5.51.8 NMAC - Rp, 5.5.51.8 NMAC, 6-30-2014; A, 6-30-2015]

5.5.51.9 TRAINEE ELIGIBILITY:

A. The following is the program outline for all participating companies:

(1) Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

~~(2) Trainee applicants shall be New Mexico residents.~~

~~(3)(2) Trainee applicants shall be at least eighteen (18) years of age.~~

~~(4)(3) Qualifying trainees shall not be permitted to participate in JTIP manufacturing.~~

B. The following is in addition to the program outline in Subsection "A" and shall apply to **FCAP for physical production.**

(1) [Trainee applicants shall raise their film or television position to a higher classification or add a completely new skill set.] Trainee applicants shall be New Mexico residents.

(2) [Applicants shall not have a film or television credit as defined by this program in a higher position in that department to qualify for a maximum one thousand and forty (1,040) training hours for that position. However, exceptions may be considered by the New Mexico film division if the participant's credits are from a

project's budget that did not exceed two million dollars (\$2,000,000.00) and the participant is applying to the program again on a qualifying production with a larger total budget and a higher degree of complexity.] Trainee applicants shall raise their film or television position to a higher classification or add a completely new skill set.

(3) [Trainee shall not be a mentor simultaneously on a production on projects produced by temporary companies.] Applicants shall not have a film or television credit as defined by this program in a higher position in that department to qualify for a maximum one thousand and forty (1,040) training hours for that position. However, exceptions may be considered by the New Mexico film division if the participant's credits are from a project's budget that did not exceed two million dollars (\$2,000,000.00) and the participant is applying to the program again on a qualifying production with a larger total budget and a higher degree of complexity.

(4) [Additional positions are available for veterans and or reserve component members.] Trainee shall not be a mentor simultaneously on a production on projects produced by temporary companies.

(5) Additional positions are available for veterans and or reserve component members.

C. The following [are] is in addition to the program outline in Subsection "A" and shall apply to **FCAP for qualifying permanent [emerging-media] companies.** [Company shall ensure all trainees have resided in the state of New Mexico for a minimum of one (1) continuous year at any time before beginning training or qualified for in-state tuition by their higher educational institution during at least two (2) of their most recent semesters in which they were enrolled in the emerging media-related program.]

~~(2) Qualifying trainees shall be approved as such by the New Mexico film division.] Trainee applicants shall be New Mexico residents.~~

D. The following is in addition to the program outline in Subsection "A" and shall apply to **FCAP for qualifying permanent emerging media companies.**

(1) Company shall ensure all trainees have resided in the state of New Mexico for a minimum of one (1) continuous year at any time before beginning training or qualified for in-state tuition by their higher educational

institution during at least two (2) of their most recent semesters in which they were enrolled in the emerging media-related program.

(2) Qualifying trainees shall be approved as such by the New Mexico film division.

[5.5.51.9 NMAC - Rp, 5.5.51.9 NMAC, 6-30-2014; A, 6-30-2015]

5.5.51.10 MENTOR ELIGIBILITY AND QUALIFICATIONS:

A. Mentors shall be certified as a film and multimedia mentor by the New Mexico film division.

~~B. [Any requests for mentors who are not NM residents shall be considered by the New Mexico film division and if approved, noted in file.~~

~~C.]~~ A mentor shall not be a trainee simultaneously during a production on projects produced by temporary companies.

~~D:]~~ C. Mentor shall work in the same or directly related department with the trainees that they supervise for this program.

[5.5.51.10 NMAC - Rp, 5.5.51.10 NMAC, 6-30-2014; A, 6-30-2015]

5.5.51.11 COMPANY ELIGIBILITY AND ADMINISTRATIVE REQUIREMENTS:

A. The following is the program outline for all participating companies:

(1) Company shall submit the JTIP for film & multimedia application part one for FCAP prior to when training begins.

(2) Company shall enter into a contract as outlined by the New Mexico film division of the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

(3) The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

(4) Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

(5) The company shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

(6) Company entering into a contractual agreement with the New Mexico film division of the New Mexico economic development department shall return the program contractual agreement and program application to the New Mexico film division. This contract will be requested by the New Mexico film division prior to principal photography.

(7) Completed FCAP trainee applications shall be submitted to the New Mexico film division by the company.

(8) Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

(9) Company reimbursement shall not exceed fifty percent (50%) of the trainees' rates for up to one thousand and forty (1,040) hours per participant.

(10) Company shall submit time records and reimbursement invoices as established by the New Mexico film division of the New Mexico economic development department, which is the payment agent.

(11) The participating company shall submit forms and reports as established by the New Mexico film division of the New Mexico economic development department which may include:

(a) JTIP for film & multimedia application part one for FCAP; and

(b) department of finance and administration (DFA) tax information form or federal tax information form; and

(c) JTIP for film & multimedia application part two for FCAP; and

(d) JTIP for film & multimedia agreement for FCAP; and

(e) industry top sheet of budget; and

(f) FCAP participants' applications; and

(g) production's final crew list or equivalent as determined by the New Mexico film division; and

(h) a minimum of one call sheet or production

report or equivalent as determined by the New Mexico film division; and

(i) payroll reports for each qualified trainee that verify hours worked and all rates per hours; and

(j) [a- notarized] an invoice.

(12) All paperwork and forms shall be submitted to the development training program administrator or manager of the New Mexico film division.

(13) Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

(14) The mailing address to submit paperwork including the invoice is to the development training program administrator or manager, New Mexico film division of the economic development department [; H00 St-Francis Drive, Suite 1213, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600].

B. Companies who meet one of the following requirements in addition to the program outline in Subsection "A" and shall apply to **FCAP for physical production.**

(1) Total project budget shall be equal to or greater than two-hundred thousand dollars (\$200,000.00) but shall not exceed two million dollars (\$2,000,000.00); or

(2) Where the total project budget exceeds two million dollars (\$2,000,000.00), companies shall employ eight (8) ~~[New Mexican]~~ New Mexico residents in standard first level or key job positions or higher level job positions in a minimum of six (6) different craft departments as determined by the New Mexico film division of the New Mexico economic development department.

C. The following are in addition to the program outline in Subsection "A" and shall apply to **FCAP for qualifying permanent companies.** Each trainee shall complete the one thousand and forty (1,040) hours to qualify.

D. The following are in addition to the program outline in Subsections "A" and "C" shall apply to **FCAP for qualifying permanent emerging media companies.**

(1) Qualifying companies must be creating new jobs as a result of expansion, startup or relocation to the state of New Mexico. The company

shall be financially stable to ensure training opportunities as determined by the New Mexico film division.

(2) An approved company may participate more than once in this program if the company is able to show expansion of employees or has hired a recent participating trainee.

(3) Company shall ensure that trainee's pay rate shall be consistent throughout training and meet ~~[New Mexico]~~ applicable minimum wage ordinances.

(4) Company shall qualify trainees based on additional criteria required by the company

(5) Number of trainees permissible;

(a) companies with fifteen (15) or fewer full-time employees or contractors at a given time, may train two (2) participants for a maximum of one thousand and forty (1,040) hours for up to sixteen (16) weeks or one (1) school semester;

(b) companies with fifteen (15) or more full-time employees or contractors at a given time, may train four (4) participants for a maximum of one thousand and forty (1,040) hours for up to for up to sixteen (16) weeks or one (1) school semester;

(6) Training of each participant shall not exceed one (1) semester or sixteen (16) weeks.

(7) Company shall only allow trainee to participate one (1) time in the program. A trainee who has participated in the program previously for any company shall not be approved unless the company and trainee can demonstrate to the satisfaction of the New Mexico film division of the New Mexico economic development division, which the training applies to a new skill set and a new job position.

(8) Companies approved for reimbursement though this program shall not be approved for any other JTIP for film and multimedia programs; however, they may apply to JTIP manufacturing if they meet that program's requirements.
[5.5.51.11 NMAC - Rp, 5.5.51.11 NMAC, 6-30-2014; A, 6-30-2015]

5.5.51.12 REIMBURSEMENT OF TRAINING COSTS:

A. Reimbursement shall be made to the participating company in accordance with the terms of JTIP for film & multimedia agreement for FCAP.

B. Failure to fully and accurately complete administrative

requirements may ~~[require sending the invoice back to company for correction and this process shall]~~ delay reimbursement payment.

C. The invoice or claim for reimbursement may be submitted during the contract period, when trainees complete the number of contracted hours.

D. Trainee wages shall be reimbursed upon completion of the training project, not to exceed one thousand and forty (1,040) hours, and the conclusion of the production in New Mexico.

E. Reimbursement from the state shall be based on the contractual agreement.

F. Reimbursements shall be based upon the number of trainees who have qualified for the training program.

G. Reimbursement shall not exceed fifty percent (50%) of the trainees' rates.

H. Training costs shall be reimbursed to the company based on the number of qualified ~~[employees]~~ participants, their wages from hours physically worked.

I. The contract amount established in the contract shall remain the same for the length of the agreement.

J. Trainee wages shall be reimbursed upon completion of training with the company which shall not exceed one thousand and forty (1,040) hours per approved trainee application at the conclusion of training in New Mexico and when company qualifications and requirements have been met.

K. The New Mexico film division shall make arrangements to have an audit at the end of the contract that may be facilitated by and completed at the New Mexico film division to verify program compliance by either an independent accountant or a representative of the New Mexico film division.

L. In the case where overpayment has been made by the state of New Mexico to the company, the company shall refund the department the difference of the correct reimbursement payment from the paid reimbursement amount.

M. The New Mexico film division of the New Mexico economic development department may not issue reimbursement payment until all obligations the company has incurred have been paid in New Mexico as related to the New Mexico film credit program.
[5.5.51.12 NMAC - Rp, 5.5.51.12 NMAC, 6-30-2014; A, 6-30-2015]

DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

2.110.2 NMAC, Small Cities Community Development Block Grant, (filed 8-16-2001) repealed and replaced by 2.110.2 NMAC, Small Cities Community Development Block Grant, effective 6-5-2015.

DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

**TITLE 2 PUBLIC FINANCE
CHAPTER 110 LOCAL GOVERNMENT GRANTS
PART 2 SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT**

2.110.2.1 ISSUING AGENCY: Department of Finance and Administration Local Government Division.
[2.110.2.1 NMAC - Rp, 2 110.2.1 NMAC, 06-05-15]

2.110.2.2 SCOPE: All counties and incorporated municipalities, except the cities of Albuquerque, Farmington, Las Cruces, Santa Fe and Rio Rancho.
[2.110.2.2 NMAC - Rp, 2 110.2.2 NMAC, 06-05-15]

2.110.2.3 STATUTORY AUTHORITY: Title 1 of the Housing and Community Development Act of 1974, as amended.
[2.110.2.3 NMAC - Rp, 2 110.2.3 NMAC, 06-05-15]

2.110.2.4 DURATION: Permanent.
[2.110.2.4 NMAC - Rp, 2 110.2.4 NMAC, 06-05-15]

2.110.2.5 EFFECTIVE DATE: June 5, 2015, unless a later date is cited at the end of a section.
[2.110.2.5 NMAC - Rp, 2 110.2.5 NMAC, 06-05-15]

2.110.2.6 OBJECTIVE: The objective of Part 2 of Chapter 110 is to establish procedures to be used by counties and incorporated municipalities when applying for a Small Cities Community Development Block Grant.

[2.110.2.6 NMAC - Rp, 2 110.2.6 NMAC, 06-05-15]

2.110.2.7 DEFINITIONS:

A. "Asset management" means a systematic process of maintaining, upgrading, and operating physical assets cost-effectively. It combines engineering principles with sound business practices and economic theory, and it provides tools to facilitate a more organized, logical approach to decision making. It is a planning process that ensures the most value from each asset with a plan to rehabilitate and replace them when necessary. An accurate and up-to-date asset management plan will help communities comply with the Government Accounting Standards Board's Statement #34 (GASB 34), an accounting standard for publicly owned systems.

B. "Blighted area" means, pursuant to the Metropolitan Redevelopment Act, Section 3-60A-4 NMSA 1978 (as amended), "an area within the area of operation other than a slum area that, because of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or lack of adequate housing facilities in the area or obsolete or impractical planning and platting or an area where a significant number of commercial or mercantile businesses have closed or significantly reduced their operations due to the economic losses or loss of profit due to operating in the area, low levels of commercial or industrial activity or redevelopment or any combination of such factors, substantially impairs or arrests the sound growth and economic health and well-being of a municipality or locale within a municipality or an area that retards the provisions of housing accommodations or constitutes an economic or social burden and is a menace to the public health, safety, morals or welfare in its present condition and use."

C. "CDBG" means the small cities community development block grant program.

D. "Council" means the New Mexico community development council.

E. "Councils of governments" means a regional association of municipalities, counties and special districts formed to provide planning and other services to its member organization.

F. "Department" means the department of finance and administration.

G. "Division" means the local government division.

H. "ICIP" means an infrastructure capital improvement plan. An ICIP is a planning document developed by a unit of local government, water association, or land grant/merced that includes capital improvement priorities over a five (5)-year period and is developed and updated annually. An ICIP includes policy direction, funding time frames, estimated costs, justifications, and details of each specific infrastructure capital improvement project proposed, by year, over the five (5) year period.

I. "Land grant/merced" means a political subdivision of the state organized under Section 49-1-1 through 49-1-23, NMSA 1978, Land Grants General Provisions.

J. "Low and moderate income person" means a member of a household whose income would qualify as "very low income" under the Section 8 housing assistance payments program. Section 8 limits are based on fifty (50) percent of the county median income. Similarly, CDBG moderate income is based on Section 8 "lower income" limits, which are generally tied to eighty (80) percent of the county median income.

K. "Non-rural" means a county or an incorporated municipality that does not meet the definition of rural.

L. "Program income" means amounts earned by a unit of general local government or its sub recipient that were generated from the use of CDBG funds.

M. "Rural" means a county with a population of less than twenty five thousand (25,000) and an incorporated municipality with a population of less than three thousand (3,000).

N. "Set-aside" means a portion of all CDBG funding received by the CDBG program that is annually allocated by the CDBG program and the council to be used only for certain set-aside categories that are chosen by the CDBG program and the council.

O. "Slum area" means, pursuant to the Metropolitan Redevelopment Act, Section 3-60A-4 NMSA 1978 (as amended), "an area

within the area of operation in which numerous buildings, improvements and structures, whether residential or nonresidential, which, by reason of its dilapidation, deterioration, age, obsolescence or inadequate provision for ventilation, light, air, sanitation or open spaces, high density of population, overcrowding or the existence of conditions that endanger life or property by fire or other causes, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and is detrimental to the public health, safety, morals or welfare."

P. "Units of local government" means an incorporated municipality or county.

Q. "Water association" means political subdivisions of the state organized under Section 3-29-1 through Section 3-29-20, NMSA 1978, the "Sanitary Projects Act" or Section 73-21-1 through Section 73-21-55, NMSA 1978, the "Water and Sanitation District Act". [2.110.2.7 NMAC - Rp, 2 110.2.7 NMAC, 06-05-15]

2.110.2.8 INTRODUCTION:

A. The council is responsible for allocating grants under the Small Cities Community Development Block Grant (CDBG) program to assist local communities with basic infrastructure and community development needs.

B. These application regulations will govern the CDBG appropriation from the U.S. department of housing and urban development.

C. As part of their administrative responsibility, the council and the division will continue to provide technical assistance to prospective applicants and grantees. The nature of these programs requires a thorough outreach effort to ensure that units of local government are aware of program requirements.

D. The council and the division assure local entities and citizens of the state of New Mexico that public comment will be solicited should the council choose to make any substantial changes to these application regulations. [2.110.2.8 NMAC - Rp, 2 110.2.8 NMAC, 06-05-15]

2.110.2.9 PROGRAM OBJECTIVES:

A. The Small Cities CDBG program was established under Title I of the Housing and Community Development Act of 1974, as amended, in order to assist communities in providing

essential community facilities, providing decent housing for residents, promoting economic development, and maintaining a suitable living environment.

B. State and national objectives of the CDBG program require that assistance be made available for activities that address at least one (1) of the following:

- (1) benefit principally low and moderate income families;
- (2) aid in the prevention or elimination of slums or blight;
- (3) meet other community development needs of recent origin having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community where other financial resources are not available to meet such needs.

C. The state encourages successful applicants to award a fair share of contracts and subcontracts to small, minority, and women's businesses and to commit itself to hire locally for any employment opportunities that will be created as a result of project funding. [2.110.2.9 NMAC - Rp, 2 110.2.9 NMAC, 06-05-15]

2.110.2.10 ELIGIBLE APPLICANTS:

A. All counties, incorporated municipalities, and New Mexico mortgage finance authority (MFA) are eligible to apply except: the city of Albuquerque, the city of Farmington, the city of Las Cruces, the city of Santa Fe and the city of Rio Rancho who cannot apply since they receive funding directly from the department of housing and urban development (Title I, Section 106) as entitlement cities.

B. Other entities such as water associations, sanitation districts, land grants, public nonprofit groups, council of governments, mutual domestic water consumer associates, etc., cannot apply directly for assistance, other than planning grants.

C. However, these entities may be involved in the execution of an approved CDBG project if the eligible applicant chooses to operate the program through such an entity under a contractual agreement.

D. Indian pueblos and tribes receive funding directly from the department of housing and urban development (Title I, Section 107). Native American tribes are encouraged to submit applications to the Albuquerque HUD

Office of Native American Programs, 201 3rd St., N.W., Suite 1830, Albuquerque, New Mexico 87102-3368, (505) 346-6923. [2.110.2.10 NMAC - Rp 2 110.2.10 NMAC, 06-05-15]

2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES:

A. Applicants may apply for funding assistance under the following categories:

- (1) community infrastructure;
- (2) housing;
- (3) public facility;
- (4) economic development;
- (5) emergency;
- (6) colonias;
- (7) planning.

B. Eligible activities under each of the categories are listed below.

- C. Community infrastructure:** Eligible activities may include, but are not limited to, the following:
- (1) real property acquisition
 - (2) construction or rehabilitation of the following:
 - (a) water systems;
 - (b) sewer systems;
 - (c) municipal utilities;
 - (d) roads;
 - (e) streets;
 - (f) highways;
 - (g) curbs;
 - (h) gutters;
 - (i) sidewalks;
 - (j) storm sewers;
 - (k) street lighting;
 - (l) traffic control devices;
 - (m) parking facilities;
 - (n) solid waste disposal facilities.

D. Housing: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;
- (3) clearance;

- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;
- (5) provision of public facilities to increase housing opportunities;
- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;
- (7) certain types of housing modernization;
- (8) temporary relocation assistance;
- (9) code enforcement;
- (10) historic preservation activities;
- (11) not to exceed sixty five thousand dollars (\$65,000) in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public facility capital outlay: Eligible activities may include, but are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.

F. Economic development: The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

G. Emergency: The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

(1) Applications under this category will be accepted throughout the year.

(2) Application shall include written verification and adequate documentation by a state agency and with the applicant's assessment of the life threatening situation and shall be submitted no later than eighteen (18) months from the certification by the applicant and documentation of the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

H. Planning: In

addition to municipalities and counties, water associations, including water and sanitation districts, and land grants as defined in Section 2.110.2.7, Subsections M and N; are eligible to apply directly for planning grants only. Planning grant assistance from the CDBG program, which is available only to a municipality or county, must be used for a comprehensive plan if the applicant does not have a current comprehensive plan (not older than five years from the date of application). A comprehensive plan must be focused on a community's physical development, over the next (15-20 years), related to the goals and policies of the community, developed with input from all segments of the community, be adopted by resolution or ordinance, and it must include as a minimum the following elements:

(1) elements:
(a)

land use; including:

(i)

an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category;

(ii)

a projection of the distribution, location and extent of future land uses by land use category over a twenty (20)-year period;

(iii)

goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing when the plan is adopted or amended; and

(iv)

specific actions and incentives that the contracting agency may use to promote planned development, reduction in greenhouse gas emissions, or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged;

(b)

housing; including:

(i)

an analysis of existing housing supply and demand, and forecasted housing needs;

(ii)

goals, objectives and policies for the improvement of housing quality, variety and affordability, for reduction of greenhouse gas emissions, and for

provision of adequate sites for housing and housing opportunities for all segments of the community;

(iii)

a description of the actions that may be taken to implement housing goals, objectives and policies; and

(iv)

must comply with the affordable housing act.

(c)

transportation; including:

(i)

description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets, mass transit or other modes of transportation as may be appropriate;

(ii)

goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including mass transit and facilities for bicyclists and pedestrians, for reduction of greenhouse gas emissions, and potential funding mechanisms; and

(iii)

a description and assessment of proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;

(d)

infrastructure; including:

(i)

a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities;

(ii)

goals, objectives and policies for promoting the efficient provision of infrastructure, and

(iii)

a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;

(e)

economic development; including:

(i)

a description of existing job composition and trends by industry and location characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the contracting agency;

(ii)

goals, objectives and policies for

promoting economic development; and

(iii)

a description of the actions that the contracting agency will take to implement economic development goals, objectives and policies;

(f)

water; including:

(i)

description and assessment of the sources of water supply;

(ii)

the existing demand for water by residential, commercial, institutional, industrial and recreational sectors;

(iii)

assessment of the unaccounted for water losses due to leaks, theft or other reasons;

(iv)

goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and

(v)

an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, water reuse or a plan to obtain additional water supplies or increase water use efficiencies;

(g)

hazards; including:

(i)

an analysis of the risks of hazards such as wildfire, floods, extreme weather conditions, accidents, and terrorism;

(ii)

goals, objectives and policies for hazard mitigation; and

(iii)

a description of the actions that will be taken to mitigate hazards;

(h)

implementation; a compilation of the plan's goals, objectives, policies, standards or guidelines, along with specific actions to be completed in a stated sequence, which start with adoption of the comprehensive plan by ordinance;

(2)

development of additional elements of a comprehensive plan may include, but are not limited to:

(a)

drainage;

(b)

parks, recreation and open space;

(c)

tourism;

(d)

growth management;

(e)

fiscal impact analysis;

(f) intergovernmental cooperation;

(g) social services;

(h) historic preservation;

(i) asset management plan;

(3) if the entity has a current comprehensive plan (not older than five (5) years from the date of application), it may apply for funding assistance for any of the following:

(a) data gathering analysis and special studies;

(b) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

(c) improvement of infrastructure capital improvement plans and individual project plans;

(d) development of codes and ordinances, that further refine the implementation of the comprehensive plan;

(e) climate change mitigation and adaptation plan;

(f) preliminary engineering report (according to USDA/RUS guidelines);

(g) related citizen participation or strategic planning process; or

(h) other functional or comprehensive planning activities;

(i) asset management plan;

(j) regionalization of infrastructure and service delivery;

(4) applicants may apply for funding assistance throughout the year as long as funds are available;

(5) Estimates of both full and phased project costs must be provided to local government division at time of application.

I. Colonias:

(1) The colonias category is established in the amount of ten percent (10%) of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three (3) conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias set aside are

municipalities and counties located within one hundred fifty (150) miles of the U.S. - Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

(a) lack of potable water supply; or

(b) lack of adequate sewage systems; or

(c) lack of decent, safe and sanitary housing; and

(d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.
[2.110.2.11 NMAC - Rp, 2 110.2.11 NMAC, 06-05-15]

2.110.2.12 OTHER ELIGIBLE ACTIVITIES:

A. Administrative costs associated with implementing a program such as preparing environmental reviews, and other costs for services are eligible activities.

B. Although the costs of conducting program audits are considered an eligible activity, it is recommended that they be paid by the applicant in order to expedite grant closeout.

C. Applicants may use fifteen percent (15%) of a CDBG funding request and subsequent grant for public facility program activities including those concerned with:

(1) employment;

(2) crime

(3) child care;

(4) drug abuse

(5) education;

(6) energy

(7) welfare and recreation.

D. The council may pledge future CDBG allocations to guarantee repayment of loans to nonentitlement cities and counties for CDBG eligible projects in accordance with Section 108 of the Housing and Community Development Act of 1974, as amended.
[2.110.2.12 NMAC - Rp, 2 110.2.12 NMAC, 06-05-15]

2.110.2.13 INELIGIBLE ACTIVITIES: The following are among the activities that are not eligible for CDBG funding assistance:

A. construction or rehabilitation of buildings used for the general conduct of government, such as city halls or county courthouses; compliance with Americans with Disabilities Act is an eligible activity;

B. general operation and maintenance expenses associated with public facilities or services;

C. income maintenance;

D. housing allowance payments and mortgage subsidies;

(1) expenditures for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration, voter transportation or other political activities;

(2) costs involved in the preparation of applications and securing of funding.
[2.110.2.13 NMAC - Rp, 2 110.2.13 NMAC, 06-05-15]

2.110.2.14 RURAL ALLOCATION:

A. A minimum of fifteen percent (15%) of the CDBG allocation will be awarded to counties with a population of less than twenty five thousand (25,000) and municipalities with a population of less than three thousand (3,000).

B. Rural applicants will compete among themselves for assistance in the community infrastructure, housing, and public facility categories.

C. Rural and nonrural applicants will compete for funding from the economic development, emergency, planning and colonias categories on an equal basis.

D. For the purposes of determining population under Subsection A of 2.110.2.14 NMAC, a unit of local government, water association, or land grant/merced must use Section B of Attachment I.
[2.110.2.14 NMAC - Rp, 2 110.2.14 NMAC, 06-05-15]

2.110.2.15 PROGRAM REQUIREMENTS SECTION A: Public participation requirements - Applicants must provide opportunities for public participation in the development of community development goals, objectives, and applications for funding assistance by undertaking the following activities:

A. provide for and encourage citizen participation within

their areas of jurisdiction with particular emphasis on participation by persons of low and moderate income;

B. provide citizens with reasonable and timely access to local meetings, information, and records relating to proposed and actual use of funds;

C. provide for technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals;

D. {special note}: the level and type of assistance is to be determined by the applicant; and

E. provide for public hearings to obtain citizen participation and respond to proposals and questions at all stages;

F. prior to selecting a project and submitting an application for CDBG funding assistance, eligible applicants must conduct at least one (1) public hearing for the following purposes:

(1) to advise citizens of the amount of CDBG funds expected to be made available for the current fiscal year;

(2) to advise citizens of the range of activities that may be undertaken with the CDBG funds;

(3) to advise citizens of the estimated amount of CDBG funds proposed to be used for activities that will meet the national objective to benefit to low and moderate income persons;

(4) to advise citizens of the proposed CDBG activities likely to result in displacement, and the unit of general local government's anti-displacement and relocation plans;

(5) to obtain recommendations from citizens regarding the community development and housing needs of the community:

(a) After considering all recommendations and input provided at the public hearing(s), the county commission or city/town/village council must select one (1) project for which to submit an application for funding assistance at an official public meeting.

(b) The applicant must conduct a second public hearing to review program performance, past use of funds and make available to the public its community development and housing needs including the needs of low and moderate income families and the activities to be undertaken to meet such needs.

(c) The second public hearing shall occur prior to the submission of the application for funding assistance.

(d) Public hearing notices must be published in the non-legal section of newspapers, or posted in a minimum of three (3) prominent public places within the project area, with public access. Notice of any public hearing must be published or posted at least ten (10) days in advance of the hearing date. Emergency hearings may be called upon twenty-four hours (24) notice, unless threat of personal injury or property damage requires less notice. Emergency hearings may be called only under unforeseen circumstances, which demand immediate action to protect the health, safety and property of citizens or to protect the applicant from substantial financial loss. All applicants must be in compliance with all other provisions of the Open Meetings Act (NMSA 1978, Section 10-15-1 et. seq).

(e) Evidence of compliance with these regulations must be provided with each application, i.e., hearing notice, minutes of public meetings, list of needs and activities to be undertaken, etc.

(f) Amendments to goals, objectives, and applications are also subject to public participation.

(6) provide for timely written answers to written complaints and grievances within fifteen (15) working days where practicable;

(7) identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate.

[2.110.2.15 NMAC - Rp 2 110.2.15 NMAC, 06-05-15]

2.110.2.16 PROGRAM REQUIREMENTS SECTION B: Each CDBG application must meet at least one (1) of the three (3) national objectives, low and moderate income benefit, prevention or elimination of slums or blight or urgent need, which are herein described.

A. Low and moderate income benefit - An activity identified as principally benefiting fifty one percent (51%) persons of low and moderate income will be considered eligible only if it meets one (1) of the criteria below:

(1) the activity must be carried out in a neighborhood or area consisting predominantly of persons

of low and moderate income and provide services to such persons;

(2) the activity must involve facilities designed for use by a specific group of people or clientele predominantly of low and moderate income; or

(3) the activity must add or improve permanent residential structures which will be occupied by low and moderate income households upon completion; or

(4) the activity must involve creating or retaining jobs, the majority of which must be for persons of low and moderate income;

(5) for purposes of Paragraphs (1) - (4) of Subsection A of 2.110.2.16 NMAC, low and moderate income can be substantiated with data from:

(a) the most recent low and moderate income data derived in accordance with Sections B and C of Attachment I; or

(b) a special survey conducted using HUD approved methodology; see Attachment (A) and (C).

B. Prevention or elimination of slums or blight - An activity identified as aiding in the prevention or elimination of a slum or blighted area must meet all of the following five (5) criteria.

(1) The area must be designated by the applicant and must meet a definition of a slum, blighted, deteriorated or deteriorating area under state or local law (see definitions Section of 2.110.2 NMAC).

(2) The area must exhibit at least one (1) of the following physical signs of blight or decay.

(a) The area shall possess a substantial number of deteriorated or deteriorating buildings throughout; meaning at least one (1) quarter of all the buildings in the area must be in a state of deterioration.

(b) The area shall possess public improvements throughout the area which must be in a general state of deterioration. For example, it would be insufficient for only one (1) type of public improvement, such as the sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.

(3) Documentation must be maintained by the applicant on the boundaries of the area and the condition which qualified the area

at the time of its designation.

(4) The activity must address one (1) or more of the conditions which contributed to the deterioration of the area.

(5) To comply with this objective on a spot basis outside of a slum or blighted area the proposed activity must be designated to eliminate, specific conditions of blight or physical decay.

(a) acquisition and clearance of blighted properties;

(b) renovation and reuse of abandoned, historic properties;

(c) commercial revitalization through façade improvements;

(d) removal of environmental contamination on property to enable it to be redeveloped.

C. Urgent need - An activity identified as meeting community development needs having a particular urgency will be considered only if the applicant certifies the following:

(1) that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health and welfare of the community;

(2) that the condition(s) to be alleviated is of recent origin, i.e., it developed or became critical within eighteen (18) months preceding the certification by the applicant;

(3) that the applicant is unable to finance the activity on its own and other sources of funding are not available;

(4) in addition, verification of the urgency of the need must be provided with written documentation by the appropriate state agency;

(5) planning grants are not allowed under urgent need. [2.110.2.16 NMAC - Rp, 2 110.2.16 NMAC, 06-05-15]

2.110.2.17 APPLICATION REQUIREMENTS:

A. Number of applications - All eligible applicants may submit one (1) application for CDBG funding assistance in the infrastructure, or public facility categories, which includes colonias funding.

(1) Planning applicants may submit at any time an additional application for funding that shall not exceed fifty thousand dollars (\$50,000), subject to funding availability.

(2) Applications for the economic development, or emergency categories may be submitted at any time and shall not exceed five hundred thousand dollars (\$500,000), subject to funding availability.

(3) Counties may submit multiple applications for planning grants on behalf of eligible applicants.

(4) Planning, economic development, and emergency applications may be submitted even if the applicant has not completed previously awarded CDBG projects.

B. Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government.

C. Joint applications - Joint applications will be allowed when two (2) or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(2) One (1) community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(3) Other parties to the joint application may submit another application.

D. The following minimum requirements apply to all applications for CDBG funding:

(1) Applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended;

(2) Projects shall be completed within twenty-four (24) months of an executed grant agreement signed by both parties;

(3) Applications shall not exceed five hundred thousand (\$500,000);

(4) Application must be complete, with all documentation provided as listed on the submission and attachment checklist included in the application, otherwise application will be deemed ineligible; application will be returned to the applicant and will not be considered for funding;

(5) application must include a determination of rural or non-rural status.

E. Threshold requirements - A project must be completed by the deadline for threshold compliance.

(1) Any open CDBG project must be completed at the time of application. (certificate of occupancy or certification of operation must be in place).

(2) Any previous CDBG project’s monitoring findings and concerns must be resolved.

(3) The current fiscal operating budget for any local public body as defined in Section 6-6-1 NMSA 1978 (as amended) applying for CDBG funds must be certified by the division.

(4) The applicant’s quarterly/monthly financial reports to the division must be current.

(5) An applicant must have submitted to the New Mexico state auditor its most current audit(s) that were required to be conducted and submitted for review per the New Mexico state auditor’s required report due dates for the previous fiscal year(s) and an applicant must be in compliance with the budget certification rule, 2.2.3 NMAC.

(6) The set aside categories; planning, economic development and emergency, are exempt from threshold requirements set forth in Subsections E 1 and E2 of this section (2.110.2.17 NMAC).

F. Matching requirements - In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a five percent (5%) cash match during the project period from local, state or other public resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a ten percent (10%) cash match during the project period from local, state or other public resources. This cannot include local work force or local equipment.

(3) Consistent with 2.110.2 NMAC, an application in the economic development category must provide at least one (1) private dollar in match for each dollar of CDBG funds requested.

(4) Local funds expended by an eligible applicant for engineering, architectural design or environmental review prior to project

approval can be applied towards the required match.

(5) Applicant may request a waiver of the matching requirement from the division if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed five percent (5%) of the applicant's general fund budget;

(b) the required match must equal or exceed the available balance of funds in the applicant's overall budget.

G. Other funding commitments - If other funding is necessary to make a proposed project feasible, funding commitments must be in place and letters of commitment or grant agreement from the funding agency must be submitted with the application.

H. Asset management - Communities that implement an asset management program and use that approach as the basis for their rate analysis will be credited in the application process for their achievement. In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required to be submitted at the time of application.

The model for the asset management program is the international infrastructure asset management model. This approach includes five (5) core components, which are as follows:

(1) current state of the assets; an asset inventory that includes at a minimum: asset name, asset location, asset condition, useful life, and an estimate of replacement value;

(2) level of service; a description of type and level of service provided;

(3) criticality; an evaluation of which assets are critical to sustaining the operation;

(4) life cycle costing; at a minimum, a capital improvement plan that describes the replacement of assets and some consideration of operation and maintenance of the assets;

(5) financing plan; a description of the funding sources that will be used to pay for capital and operational needs.

[2.110.2.17 NMAC - Rp, 2 110.2.17 NMAC, 06-05-15]

2.110.2.18 APPLICATION PROCEDURES AND CONTENT:

The application packet provided by the division will be used for infrastructure, housing, public facility, emergency, economic development and planning categories. It is only necessary to answer the questions on the application that pertain to the relevant single project category.

A. An applicant must submit an original (hard copy) and two separate electronic copies of each application to the department of finance and administration, local government division,ataan memorial building, suite 202, Santa Fe, New Mexico 87501, and one electronic copy to the appropriate council of governments.

B. Applications must be date stamped by the division on or before 5:00 p.m. of the designated application deadline. Applications received after that time will be returned to the applicant unprocessed.

[2.110.2.18 NMAC - Rp, 2 110.2.18 NMAC, 06-05-15]

2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS:

A. Upon receipt of an application, division staff will review for eligibility, completeness, feasibility, and compliance and ensure that all other funding necessary to make the project functional is in place. Applications not meeting the criteria will be returned to the applicant and will not be considered for funding.

B. Applications will be forwarded to appropriate state agencies for technical review and comment. Review agencies may include, but are not limited to, the environment department, department of transportation, department of health, state engineer's office, agency on aging and long term services, economic development department, state fire marshal and governor's commission on disability.

C. An eligible applicant will be allowed to make a presentation to the council and division staff at the official hearing. Testimony related to the application will be presented by an official or designee of the applicant who may be assisted by technical staff.

D. Rating criteria - The council and division have developed the following rating criteria for evaluation of a CDBG application submitted for funding in the following categories: infrastructure, housing, and public facility. For infrastructure, housing, and public facility

applications, the following nine (9) criteria are used to score the application. In addition, for designated colonias, the applicant needs to fulfill the requirement in Subsection F of 2.110.2.19 NMAC.

(1) **Description and need** - (10 points) extent to which the project is needed. The more severe the need as documented in the application, the higher the score.

(2) **Benefit to low and moderate income beneficiaries and appropriateness** - (20 points) extent to which the CDBG application:

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or

(b) addresses the prevention or removal of slum or blighting conditions; or

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

(3) **Leveraging** - (10 points) extent to which state, local and other public resources, in addition to the required match, will be used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.

(4) **Citizen participation** - (10 points) extent to which the applicant:

(a) (3 points) has provided opportunities for public participation in the identification of community development needs;

(b) (4 points) pledges opportunities for active citizen participation during the development and implementation of the project;

(c) (3 points) pledges opportunities for active citizen participation at the close out of the project.

(5) **Planning** - (10 points) extent to which the applicant:

(a) (3 points) has adopted a local ICIP, which has qualified for publication in the most recent state published prior to the CDBG application deadline. Evidence of the adopted ICIP for the current year must be provided as part of the application;

(b) (3 points) project has qualified for publication in the most recent state ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources. Evidence of such publication identifying the project

and selecting CDBG funds as a possible funding source must be provided with application;

(c) (1 point) project shows consistency with applicant's comprehensive plan;

(d) (1 point) has adopted a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use;

(e) (1 point) has adopted a water conservation ordinance, setting in place various methods for conserving potable water;

(f) (1 point) has implemented a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

(6) **Feasibility/readiness** - (20 points) extent to which the project is technically and economically feasible and ready to be implemented -

(a) (5 points) necessary real property or easements acquired;

(b) (5 points) professional services contract executed;

(c) (5 points) completed plans, specifications, bid documents, or preliminary engineering reports;

(d) (5 points) completed environmental review process.

(7) **Cost benefit** - (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The greater the number of beneficiaries compared to the amount of funds requested leading to a low cost to benefit ratio, the higher the score.

(8) **Asset management plan** - (maximum of 10 points).

(a) (1 point) attendance within the last three (3) years at an asset management training that includes the five core components as described in the international infrastructure asset management model;

(b) (2 points) development of an asset management plan that includes some, but not all, of the five (5) core components;

(c) (10 points) development of a complete asset management plan with all five (5) core components.

(9) **Council application scoring** - (10 points) Each member of the council shall be allowed to award up to ten (10) points in the

application rating process, per application, with one (1) point for a low priority, five (5) points for a medium priority and ten (10) points for a high priority project based on the criteria used for rating. The points will be averaged by totaling the individual member scores and dividing by the number of members who scored the project.

E. Planning grant criteria:

(1) **Description and need** - (20 points) extent to which the project is needed. Describe the intent of the project in detail. Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

(2) **Benefit to low and moderate income beneficiaries and appropriateness** - (20 points) extent to which the CDBG application:

(a) documents the number and percentage of low and moderate income beneficiaries, including race and gender; or

(b) addresses the prevention or removal of slum or blighting conditions.

(3) **Leveraging** - (15 points) extent to which federal, state, and local resources in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.

(4) **Citizen participation** - (10 points) extent to which the applicant:

(a) (3 points) has provided opportunities for public participation in the identification of community development needs;

(b) (3 points) pledges opportunities for active citizen participation during the project, where applicable;

(c) (3 points) pledges opportunities for active citizen participation in the implementation of the project where applicable; and

(d) (1 point) notice of any public hearing has been posted at least ten (10) days in advance of the hearing date.

(5) **Planning** - (20 points) extent to which:

(a) (5 points): applicant has adopted a local ICIP, which has qualified for publication in the most recent state ICIP published

prior to the CDBG application; (b) (5 points): the proposed project has qualified for publication in the most recent state ICIP prior to the CDBG application and applicant has selected CDBG as one of its possible funding sources;

(c) (2.5 points): applicant's proposed project shows consistency with applicant's comprehensive plan;

(d) (2.5 points): applicant adopts a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use;

(e) (2.5 points): applicant adopts a water conservation ordinance, setting in place various methods for conserving potable water;

(f) (2.5 points): implements a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

(6) **Cost benefit** - (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The greater the number of beneficiaries compared to the amount of funds requested, the higher the score.

(7) **Comprehensive plan** - (5 points) the community has an updated comprehensive plan that is not more than five (5) years old.

F. Colonias criteria category - When submitting a colonias application, the applicant shall provide documentation of the colonias designation and documentation that the project shall address one (1) of the following conditions:

(1) lack of potable water; or

(2) lack of an adequate sewage system; or

(3) lack of safe, sanitary housing.

G. Economic development rating criteria is included in Section 2.110.2.26.

H. Site visits will be conducted as needed to verify or review information presented.

I. Emergency, economic development and planning projects are received throughout the year and will be evaluated if all other federal and state requirements are met, and there is available funding.

J. The council delegates to the division director the authority to award, in the division director's

discretion, funding for applications for emergency, economic development, and planning projects in compliance with applicable rules and regulations. The division will provide the council with an update on all such awards at each council meeting.

[2.110.2.19 NMAC - Rp, 2 110.2.19 NMAC, 06-05-15]

2.110.2.20 SELECTION OF CDBG GRANTEES BY CDC:

A. Division staff will present its recommendation to the council at least seven (7) days prior to the allocation meeting.

(1) Staff recommendation will present projects in high, medium and low groupings.

(2) Staff recommendation will include specific funding allocation amount to each project, within total available funds.

B. The council will review staff recommendation and funding allocation and make funding decisions in an open public meeting.

C. The council, in making its final recommendation, will consider the past performance of the applicant in administering CDBG projects.

D. The council may adjust the scope and dollar amount to stay within available funding or for purposes of consistency.

E. The council may deviate from staff recommendation and funding allocation, if the council by majority vote determines and substantiates that any of the following conditions apply:

(1) IN ORDER NOT TO FUND A PROJECT RECOMMENDED BY STAFF - other funding sources for the project are available or other applications were deemed to be a priority or circumstances have changed since the application was submitted.

(2) IN ORDER TO FUND A PROJECT NOT RECOMMENDED BY STAFF -

(a) the health and safety of area residents is at stake;

(b) funding committed to the project from other sources may be jeopardized;

(c) significant economic benefits will be realized if the project is implemented;

(d) the need for the project is critical.

F. The council will make funding determinations by a majority vote.

G. The council may

waive or adjust any division imposed CDBG application requirement as long as the waiver will not result in violation of state or federal statutes, regulations, rules, or penalize other applicants.

H. If the council sets aside funding for emergency, economic development or planning; the council may at any time during the calendar year, transfer funds between categories if there is limited demand in the funded categories. The transferred funds may be used to fund projects which were previously submitted for funding.

[2.110.2.20 NMAC - Rp, 2 110.2.20 NMAC, 06-05-15]

2.110.2.21 REVERSIONS, SUPPLEMENTAL FUNDING AND UNDERRUNS:

A. The purpose of this section is to provide guidance to the council, division staff, applicants, and grantees in terms of the referenced situations.

B. Decision of the division to impose special conditions or fiscal agent requirements - If a CDBG award is provided to a grantee that has deficiencies identified in the audit(s) approved by the state auditor's office, the division reserves the right to impose special conditions or fiscal agent requirements dependent upon the specific findings or opinions as described in the audit(s).

C. Decision by the council to revert funds - If, within twelve (12) months of a CDBG award for a project by the council, the CDBG award has not resulted in a signed grant agreement between the division and the applicant or the applicant has not made adequate progress on the project or the council determines there was fraud or misrepresentation regarding the project by the applicant, the division may recommend to the council to revert all or part of the award and the council may vote to revert all or part of the award. The applicant shall receive written notice from the division of the council's decision to revert all or part of award by certified mail. The applicant may appeal, in writing, the council's decision to revert all or part of the award within thirty (30) days of receipt of the written notice of the council's decision. The appeal of the council's decision by the applicant shall be held at a council meeting no later than ninety (90) days from the council's receipt of the written appeal. The council's decision on the appeal of the reversion shall be final. The council may grant the applicant a reasonable period of time to

cure the particular default that was the basis of the reversion. At the end of the cure period, a quorum of the council shall vote again on the issue of the reversion, by telephonic conference call with the applicant, and this decision is final.

D. Reversions and supplemental funding - When funds are reverted from a previously approved project grant or additional funds are made available for any other reason, the council may decide that the funds will:

(1) be added to the emergency fund; or

(2) be returned to the category of the program from which it was awarded; or

(3) go into any other category; or

(4) take other action as deemed appropriate.

E. Underruns - On occasion, upon completion of the approved activities, a balance of funds remains after all payments have been made. This balance of funds referred to as an underrun shall be handled as follows: if the grantee has not accomplished all work called for in the original application submitted for funding consideration, the grantee may request division staff to approve the expenditure of underrun funds for a portion or all of the remaining work.

(1) if appropriate justification and sufficient funding exist, division staff may approve the request for use of underrun funds and amend the grant agreement accordingly;

(2) a negative decision may be appealed to the council.

F. If the grantee proposes to undertake activities not included in the approved application, the grantee may request council approval to expend underrun funds for other eligible activities. The council may approve the request if appropriate justification and sufficient funding exist.

G. If the council disapproves a request for use of an underrun, associated funds shall revert to the council for disposition.

H. The processes described above for handling underruns are intended to encourage the grantee to use the most cost efficient means possible to construct projects funded by the council. Grantees shall not take advantage of this process by inflating initial funding requests.

[2.110.2.21 NMAC - Rp; 2 110.2.21 NMAC, 06-05-15]

2.110.2.22 PROGRAM INCOME:

A. The council will require that grantees pay CDBG program income to the state, except that grantees will be permitted to retain program income only if they always use the income for CDBG eligible activities upon approval of a program income utilization plan.

B. Program income received by the state will be placed in the economic development category.

C. Program income retained by grantees shall be used to fund CDBG eligible activities and must meet CDBG requirements.

[2.110.2.22 NMAC - Rp, 2 110.2.22 NMAC, 06-05-15]

2.110.2.23 CITIZEN ACCESS TO RECORDS: Citizens and units of general local government will be provided with reasonable access to records regarding the past use of CDBG funds. [2.110.2.23 NMAC - Rp, 2 110.2.23 NMAC, 06-05-15]

2.110.2.24 NM COMMUNITY ASSISTANCE FUNDS: The council will allocate and administer New Mexico community assistance underrun funds in accordance with the provisions of the Community Assistance Act. [2.110.2.24 NMAC - Rp, 2 110.2.24 NMAC, 06-05-15]

2.110.2.25 MEETING PROCEDURES:

A. Special meetings. Special meetings of the council may be called by a majority of the council members or the chairman of the council, and will be held at the time and place fixed by the division.

B. Notice. Written notice stating the time, place and, if a special meeting, the purpose, will be delivered either personally, by mail, or email by the division, to each council member at least seventy two (72) hours before the scheduled date of the meeting. The council may establish dates and times for regularly scheduled meetings.

C. Quorum. A majority of the current members of the council in attendance either in person or by telephone will constitute a quorum at council meetings.

D. Record of meetings. The meeting shall be tape recorded and the division shall have the minutes made into a written record. The original of this record shall be retained by the division and a copy shall be forwarded to the council members. Copies shall be available upon request.

E. Participation methods. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting. [2.110.2.25 NMAC - Rp, 2 110.2.25 NMAC, 06-05-15]

2.110.2.26 ECONOMIC DEVELOPMENT PROGRAM GUIDELINES: Within the context of the CDBG program and for purposes of meeting its goals and objectives, economic development can typically be defined as improving a community's economic base by using private and public investments that provide expanded business activity, jobs, personal income and increased local revenues in a defined geographic area.

A. Goals and objectives: The state's CDBG economic development goals and objectives include:

- (1) creating or retaining jobs for low - and moderate-income persons;
- (2) preventing or eliminating slums and blight;
- (3) meeting urgent needs;
- (4) creating or retaining businesses owned by community residents;
- (5) assisting businesses that provide goods or services needed by, and affordable to low - and moderate-income residents;
- (6) providing technical assistance to promote any of the activities under Subsection A, Paragraphs (1) through (5) above.

B. Eligible activities: CDBG eligible activities authorized under Sections 570.200, 570.201, 570.202, 570.203, 570.204, 570.482 and 570.483 of 24 CFR Part 570 of the federal rules and regulations governing the community development block grant program and directly affecting the creation or retention of employment opportunities, the majority of which are made available to low and moderate income persons, may include activities which are carried out by public, private nonprofit, or private for-profit entities when such activities are

appropriate.

(1) To meet the needs and objectives of the community economic development plan, a project may include; acquisition of real property, construction, reconstruction rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements and planning.

(2) Grantees and nonprofit subrecipients may carry out for the purpose of economic development, a wide range of activities such as those listed in Section 570.203.

(3) The for-profit businesses, however, may carry out only the activities listed in that section and rehabilitation activities listed in Section 570.202.

C. Financing policies and techniques: The New Mexico CDBG program, as a development tool, can provide flexibility and take greater risks in its lending policies and financing techniques. For example, the program may:

- (1) offer a negotiated period for repayment of principal and interest;
- (2) take greater risk than banks are traditionally prepared to take, provided substantial economic development benefits will result if the loan is granted;
- (3) leverage capital by reducing risk for commercial lenders and by taking a subordinate;
- (4) security/collateral position;
- (5) provide more favorable rates and terms than are generally available through conventional sources.

D. Project requirements: Project requirements for eligible CDBG economic development assistance include, but are not limited to:

- (1) specific employment commitments for low and moderate income residents, generally with no more than fifty thousand (\$50,000) in CDBG funds being used for each job created or retained;
- (2) at least fifty one percent (51%) of the jobs created/retained must be held or made available to persons of low to moderate income persons;
- (3) within six (6) months of completion of the project, the grantee is required to report to LGD, documentation to reflect the total number

of jobs created;

(4) a firm commitment for private financial participation in carrying out the proposed project, contingent on award of CDBG funding only, must be included with the application;

(5) a minimum leveraging ratio of one (1) new private investment dollars to one (1) CDBG dollar is required, {additional leveraging will enhance a project's competitiveness};

(6) an "appropriate" determination that there is a well-documented need for CDBG assistance to make the project financing feasible and that the level of assistance requested is commensurate with the public benefits expected to be derived from the economic development project;

(7) evidence of project feasibility including a business plan which contains financial statements, project pro forma (cash flow projections) and specific source and intended use of all funds or assets used in the project;

(8) generally, projects that directly assist in the relocation of a business or industry from one (1) community to another, intrastate or interstate, will be disqualified;

(9) prior to submission of an application, applicants should thoroughly review the credit worthiness of the proposed borrower and should obtain appropriate credit reports, audited financial statements, tax returns and verify collateral.

E. Program income:

The council has adopted a policy of strongly encouraging and, when possible, requiring applicants in the economic development category to return program income to the state for use in fostering critical economic development opportunities that occur throughout the state. By pooling program income at the state level more of an impact can be made on the overall economic conditions of the state. The Housing and Urban Rural Recovery Act which amended the Housing and Community Development Act of 1974, provides, relative to economic development, specifically the following:

(1) states may require program income to be returned to the state but local governments must be allowed to keep program income when used for the same activity which generated the income (104(i)2);

(2) if the applicant intends to retain program income, a program income utilization plan must be submitted with the application for approval.

F. Application cycle:

Applications for economic development can be made at any time, and the division staff has thirty (30) days to review them.

G. Pre-application

conference: It is recommended that a preapplication conference be held prior to the submission of the final application to insure that all elements are adequately addressed. The preapplication conference will also provide an opportunity to review any new federal guidelines that may be issued which relate to economic development activities. Contact the division, economic development representative for information. More detailed and extensive financial and project data may be required depending on the specific project. In addition, meeting the national objective to benefit low and moderate income requires documentation certifying that the majority of the jobs go to low and moderate income persons or the majority of jobs are considered available to them. Please contact the division for a copy of the HUD guidelines.

H. APPLICATION

REQUIREMENTS: (These must be included along with the regular CDBG application, and should be submitted in lieu of question #2 in the regular application).

(1) Economic

development plan: The applicant must submit as an attachment to the application a short (5 page maximum) description of its plan for encouraging local economic development. The plan, incorporating references to the proposed project, should include a discussion of the following elements

(a)

Need - What are the community's underlying economic problems? Need might include recent major industry shutdowns or extended layoffs, substantial increases in population without a corresponding increase in job opportunities, substantial population decreases due to lack of available or appropriate job opportunities, a lack of industrial diversification, the existence of large numbers of workers in the area with obsolete skills or skills for which there is no current demand, or other problems unique to the applicant's community.

(b)

Goals - What is the community attempting to accomplish through its overall economic development program (not just that activity for which CDBG funding is sought)? Goals might include trying to preserve existing businesses or industries, attempting to encourage community growth, attempting to foster

industrial diversification, revitalizing the central business district, or creating complementary industries which would provide jobs in the off-season for workers now only seasonally employed.

(c)

Resources - What public and private resources, both financial and technical, does the community have available to it to help carry out its economic development program? Resources may be of a wide variety. For example, does the community have a local development corporation or similar body? Has any agency organization assigned staff member(s) to work on economic development activities for a major portion of their time? Has the financial community demonstrated its willingness to participate in development activities? Is there an adequate available labor force to meet the demands of new or expanding businesses and industries? Does the community have some unique development advantages, e.g., location, transportation facilities, industrial park or other plant sites, available raw materials, abundant power supplies, employee training capabilities, a locally-administered revolving loan fund to assist growing businesses or industries, technical assistance programs to help business people deal with marketing, management, or financial planning problems?

(d)

Strategy - What strategy is the community using to pursue its economic development goals? Strategy might include a description of the specific activities that have been identified as components of the community's strategy for encouraging local economic development. For example, which has been assigned first, second, and third priority? How much will each cost? What funding sources have been identified for each? What can or will the local government do to support those activities?

(e)

Results - What actions has the community already undertaken to implement its economic development plan? What sources of funding were used? What were the results? Results might include a discussion of actions the community has taken to encourage development. For example, has it offered property tax reductions to new or expanding industries? Has it formed a local development corporation or prepared industrial or tourism promotion packages? What results have been achieved? How many new jobs have been created or existing jobs retained? How many new firms have begun operations in the community? How many existing firms

have undertaken expansion activities?

(2) Hiring and training plan:

(a)

Applicants must establish procedures for the project to ensure preferential recruitment, hiring, and training of local workers, particularly those of low and moderate income.

(b)

In the event of a grant award, the applicant's commitment to the hiring plan will be considered binding and will be incorporated by reference in the grant agreement between the local governing body and the division.

(3) Private sector commitments:

(a)

Applicants must provide evidence of firm commitments of financial resources from the private sector.

(b)

Such commitments should be binding, contingent only upon receipt of CDBG funds.

(c)

Investments made or costs incurred prior to the grant application are not eligible for use as matching funds or leverage but should be referenced as related to the total project, if applicable.

(4) Public sector commitments:

(a) If

public sector resources are to be involved in the proposed economic development project, applicants must demonstrate evidence of a firm commitment of public funds or other resources.

(b)

Such commitments should be binding, contingent only upon receipt of CDBG funds to the project.

(c)

Evidence may include resolutions or ordinances passed by the local governing body and other appropriate local groups.

(5) Use of CDBG funds for economic development loans (if applicable):

(a)

Any project that includes a loan should provide an explanation of the proposed interest rate, terms and rationale for the proposed financing structure.

(b)

Any loan made by a local governing body with CDBG funds as a part of an approved CDBG economic development project must be adequately secured.

(c)

Subordinated loans may be made when justifiable and appropriate.

(d)

The applicant must include a detailed description of the proposed use of program income. (principal and interest). Applicants are encouraged to designate program income to be returned to the state for future economic development set-aside eligible activities.

(6) Viability of assisted enterprises:

Any for-profit entity to be assisted with CDBG funds must document that without participation of CDBG funds the proposed activity would not be feasible and that after receipt of CDBG assistance the enterprise will be viable and self-sustaining. All applicants proposing an economic development activity shall submit the following for any entity to be assisted with CDBG funds.

(a)

a business plan which consists of at least a description of the history of the firm, background, and experience of the principals, organizational structure, a description of its major products or services, market area and market share, goals, and planned expansions or changes in operations; the plan should also describe the impact the CDBG project, if funded, would have on the firm's activities;

(b)

a three (3)-year to five (5)-year operating plan forecast (profit and loss projection); applicants may use U.S. small business administration (SBA) forms or equivalent;

(c)

a monthly cash flow analysis, SBA forms or equivalent.

(d)

for any existing business, the two most recent year-end financial statements, including an income statement and balance sheet.

I. RATING CRITERIA:

The selection criteria in the rating and ranking system will give priority to projects which firmly demonstrate the following: need, appropriateness, impact, and benefit to low and moderate income persons. These factors are discussed below and are intended to provide additional information. Since each application will be a unique response to particular community-specific needs, there are no "right" or "wrong" activities or solutions. The ranking of "appropriateness" (and later, of "impact") will necessarily be in part subjective, with the division taking into account not only how well each applicant addresses the problems it has defined, but also how its problems and responses compare with those of other applicants. Responses may vary considerably depending upon the size and

location of the community and the type of project proposed.

(1) NEED -

(200 points) - In analyzing an applicant's need for a project, the division will use statistical information provided by the New Mexico department of labor and the U.S. bureau of the census which is uniformly available for all thirty-three (33) counties. Since similar data is not accumulated at the municipal level, cities and towns will be scored with the figures for the county in which they are located. The three (3) factors which will be considered are: the average number of unemployed persons in the county during the last calendar year; the percent of unemployment (average) in the county during the last calendar year; long-term unemployment (measured by average unemployment rates in the county for the last five (5) calendar years).

(a)

The data will be calculated and each applicant assigned a relative score.

(b)

The division will consider assigning a different score in exceptional cases, where an applicant can conclusively demonstrate that the first two (2) factors used to measure economic need are not reflective of local economic conditions (such as major recent plant closings) and the situation is substantiated by the New Mexico department of labor. A request for consideration of local economic data must be submitted with the CDBG application. The applicant should identify sources of data and define methodologies.

(2)

APPROPRIATENESS - (200 points) - Two (2) major factors will be weighted in this ranking category: the soundness of the applicant's economic development plan and the related project for which CDBG funding is sought; the strength of the applicant's hiring and training plan for ensuring that local residents, particularly those of low and moderate income, will be hired to fill the stated number of jobs created or retained as a result of CDBG-funded activities. These two factors will be ranked as follows:

(a)

Plan and program - (140 points) - Some factors which might contribute to the achievement of an "outstanding" score are:

(i)

that the applicant has developed a complete, well-reasoned, appropriate, and achievable plan for dealing with its total economic development needs, taking into consideration all available public and private resources and local capacity;

(ii) that the local governing body has officially adopted the economic development plan as a matter of public policy;

(iii) that the proposed project for which CDBG funding is sought is an integral part of that plan; (it need not be the first priority item identified in the overall plan if other, more appropriate, resources are available and already being used to meet higher priority items);

(iv) that the applicant has made substantial local efforts to deal with its economic development problems;

(v) that the proposed CDBG project is realistic and workable, and the job savings or creation expected to result from its implementation will occur within a reasonable time following the date of grant award;

(vi) that if income is to be generated by CDBG-funded activities, and retained locally, a plan for the use of that money has been developed and submitted with the application; this plan must include mechanisms established for administration of the funds, (if a revolving loan fund is to be established with program income, procedures must be outlined covering local application processing, time frames, approval, negotiation, pricing, packaging, servicing, etc.);

(vii) that there has been active citizen participation in the development of the economic development plan and in the selection of the CDBG project.

(b) **Hiring and training plan** - (60 points) - Since a primary goal of CDBG-funded economic development grants is to increase job opportunities for local residents, particularly persons of low and moderate income, it is essential that applicants take every measure to bring about that result. Each applicant must include in its application an employment and training plan to be used in filling jobs created or saved as a result of CDBG activities. Factors which would most likely contribute to the achievement of a high score are:

(i) that the applicant's employment and training plan provides clear, complete procedures for outreach, recruitment, screening, selection, training, and placement of workers which will ensure maximum access of local residents, particularly persons of low and moderate income, to jobs created or saved by the project;

(ii) that attention has been given to necessary supportive services for trainees needing them;

(iii) that a complete training curriculum has been developed and all training resources identified;

(iv) that responsibility has been assigned for all phases of the training program;

(v) that a written agreement to follow the plan has been obtained from each firm expected to benefit directly from the program.

(3) **IMPACT** - (200 points) - In weighing the anticipated impact of the applicant's proposed CDBG grant activities on the community's identified problems, the following four factors will be considered and evaluated:

(a) **Leverage** - (50 points) - In preparing its proposed project budget, the applicant is required to identify all sources of funds to be used and the amounts to be contributed by each. To be eligible for consideration, an applicant must provide at least one private non-CDBG dollars for each dollar of CDBG funds requested (a 1:1 ratio). The non-CDBG funds may come from a variety of private sources, such as new investment by a firm to be assisted, bank loans, or local development corporation loans and debentures. Applicants will be ranked against each other. If, for instance, community A has the highest leverage ratio (\$3 of non-CDBG funds for each one dollar (\$1) of CDBG funds, a 3:1 ratio) and community B has a 1:1 leverage, community A would receive the maximum score and community B and all other applicants would be relatively scored against community A.

(b) **CDBG dollars per job** - (50 points) - The applicant is required to specify the number of permanent full-time jobs to be created or retained as a result of the requested CDBG program. In determining an applicant's score in this category, the total CDBG funds to be used (exclusive of administrative funds) will be divided by the total number of full-time jobs expected to result. NOTE: In evaluating an applicant's job creation projections, the local government division will consider the historical relationships of sales, space, and machines to jobs. It will also look at typical ratios for the industry of which the firm to be assisted is a part. Applicants should be prepared to justify job creation claims which substantially exceed industry norms or fifty thousand (\$50,000)

per job created or retained.

(c) **Type of jobs** - (50 points) - Although all new or retained jobs provide some measure of economic benefit to the community, full-time, skilled or semi-skilled positions are more desirable for most workers than part-time jobs or those requiring unskilled labor. One objective of CDBG economic development activities is to foster the creation and retention of permanent, full-time employment with growth potential for persons of low and moderate income, which offers those workers an opportunity for advancement in a firm or industry. Applicants are required to indicate the percentage of jobs to be created or retained which are full-time or part-time, skilled, semi-skilled, or unskilled.

(d) **Overall economic impact** - (50 points) - The applicant must discuss both the direct and indirect effects the CDBG program is expected to have on the community's economy. Some of the factors which will be considered in evaluating impact are:

(i) the size of the additional payroll expected to be generated for the jobs created or retained by the program;

(ii) the total number of jobs to be created or retained;

(iii) whether the firm to be assisted is a primary industry (producing goods or services mainly to be sold outside the area or state, thereby importing dollars into the community and state);

(iv) whether local property tax revenues will be significantly increased as a result of the proposed business start-up, expansion, retention, etc.;

(v) the applicant demonstrating the greatest positive impact will be scored highest; all other applicants will be ranked correspondingly;

(vi) when applications have been scored in all four (4) categories (leverage, dollars per job, types of jobs, and overall economic impact), those scores will be totaled.

(4) **BENEFIT TO LOW AND MODERATE INCOME PERSONS** - (200 points)

(a) This ranking criterion assesses the extent to which persons of low and moderate income will directly benefit from the expenditure of CDBG grant funds. To determine this score, the number of jobs to be created or retained and made available

to low and moderate income persons will be divided by the total number of jobs to be created or retained as a result of the CDBG program.

(b)

The highest score will receive up to a maximum of two hundred (200) points and all other applicants will be scored accordingly.

(c)

To be eligible for consideration a project must demonstrate that it will benefit principally persons of low and moderate income.

[2.110.2.26 NMAC - Rp, 2 110.2.26, 06-05-15]

Attachment I

(Referenced by: 2.110.2.14 NMAC, 2.110.2.16 NMAC, and 2.110.2.17 NMAC)

CDBG projects are designed to meet one (1) of three (3) national objectives: low and moderate income, slum and blight, or emergency. For those projects that are designed to meet the low and moderate income national objective, applicants may choose between two different processes to determine low and moderate income eligibility: 1) conduct a special survey using the HUD approved methodology in accordance with Section A "Survey Methodology" and Section C "HUD Section 8 Income Limits" below; or 2) use the most recent low and moderate income data from section B "American Community Survey" and Section C "HUD Section 8 Income Limits" below.

A. Survey Methodology

The division recommends using the following HUD approved methodology:

This survey methodology was designed by HUD to assist States and entitlement cities in determining whether most of the individuals in a proposed target area are of low and moderate income.

Upon requesting permission to conduct a sample survey, an applicant should indicate the justification for the sample survey. Applicants must provide to the division a map of the project service area, a brief description of the proposed project, and a description of how the six (6) steps described in the suggested methodology will be implemented.

If the applicant conducts a sample survey, such applicant must be prepared to document all efforts. There must be

a master list (with telephone numbers, where possible) to match the surveys. The master list must be coded to the individual surveys.

Such documentation must include a separate survey for each household, for unreachable that could not be replaced from the universe, and for "nonhouseholds" in the survey area, such as empty lots, business and government property. The sixth (6th) step of the methodology provides a complete listing of the information that an applicant must maintain in its files and submit to the division.

The six steps of the survey methodology are located at: http://nmdfa.state.nm.us/cdbg_information_1.aspx.

B. American Community Survey (ACS)

The U.S. Census Bureau provides a fact finder source for population, housing, economic, and geographic information. This source may be used by applicants to determine eligibility for low to moderate income persons. This source is located at the following website: <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

C. HUD Section 8 Income Limits

HUD Section 8 income limits must be used in conjunction with either the survey methodology or ACS data to determine low and moderate income eligibility. These income limits are located at the following website: <http://www.huduser.org/portal/datasets/il/il12/index.html>

HISTORY OF 2.110.2 NMAC:

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

DFA Rule 85-3, State of New Mexico Regulations Governing the 1986 Small Cities Community Development Block Grant Program and 1985 New Mexico Community Assistance Program, 10-4-85.
DFA Rule 87-3, State of New Mexico 1988 Small Cities Community Development Block Grant Program New Mexico Community Assistance Program Application Regulations, 12-4-87.
DFA Rule 89-3, 1989 Small Cities Community Development Block Grant Program New Mexico Community Assistance Program Applications Regulations, 3-22-89.
DFA Rule 90-1, 1990 Small Cities

Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 12-28-89.

DFA #91-1, 1991-1992 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 1-14-92.

DFA #93-1, 1993 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 7-9-93.

DFA-LGD No. 93-1, 1994 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 6-13-94.

DFA-LGD Rule No. 95-1, 1995 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 5-31-95.

DFA-LGD Rule No. 95-2, 1996 Small Cities Community Development Block Grant Application Regulations.

History of Repealed Material:

2 110.2 NMAC, Small Cities Community Development Block Grant - Repealed, 08-30-01.

2.110.2 NMAC, Small Cities Community Development Block Grant - Repealed, 06-05-15.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

8.320.6 NMAC, School-Based Services for MAP Eligible Recipients Under Twenty One Years of Age, (filed 12/17/2013) is being repealed and replaced by 8.320.6 NMAC, School-Based Services for MAP Eligible Recipients Under Twenty One Years of Age, effective 07/01/2015.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 320 EARLY
AND PERIODIC SCREENING,
DIAGNOSIS AND TREATMENT
(EPSDT) SERVICES
PART 6 SCHOOL-BASED
SERVICES FOR MAP ELIGIBLE
RECIPIENTS UNDER TWENTY-
ONE YEARS OF AGE**

8.320.6.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD).
[8.320.6.1 NMAC - Rp, 8.320.6.1 NMAC, 07-01-15]

8.320.6.2 SCOPE: The rule applies to the general public.
[8.320.6.2 NMAC - Rp, 8.320.6.2 NMAC, 07-01-15]

8.320.6.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq NMSA 1978.
[8.320.6.3 NMAC - Rp, 8.320.6.3 NMAC, 07-01-15]

8.320.6.4 DURATION:
Permanent.
[8.320.6.4 NMAC - Rp, 8.320.6.4 NMAC, 07-01-15]

8.320.6.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.
[8.320.6.5 NMAC - Rp, 8.320.6.5 NMAC, 07-01-15]

8.320.6.6 OBJECTIVE: The objective of these rules is to provide instruction for the service portion of the New Mexico medical assistance division's (MAD) medical assistance programs (MAP).
[8.320.6.6 NMAC - Rp, 8.320.6.6 NMAC, 07-01-15]

8.320.6.7 DEFINITIONS:
[RESERVED]

8.320.6.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.320.6.8 NMAC - Rp, 8.320.6.8 NMAC, 7-01-15]

8.320.6.9 SCHOOL-BASED SERVICES FOR RECIPIENTS UNDER TWENTY-ONE YEARS OF AGE: MAD pays for medically necessary services for a MAP eligible recipient under twenty-one years of age when the services are part of the MAP eligible recipient's (eligible recipient's) individualized education program (IEP) or an individualized

family service plan (IFSP) for treatment (correction, amelioration, or prevention of deterioration) of an identified medical condition.
[8.320.6.9 NMAC - Rp, 8.320.6.9 NMAC, 07-01-15]

8.320.6.10 GENERAL PROVIDER INSTRUCTIONS: Health care to New Mexico MAP eligible recipients is furnished by a variety of providers and provider groups. The reimbursement for these services is administered by MAD. Upon approval of a provider participation agreement (PPA) by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing MAD covered services to MAP eligible recipients. A provider must be approved before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD/MAD or its authorized agents, including program rules, billing instructions, utilization review (UR) instructions, and other pertinent materials. When approved, a provider receives instruction on how to access these documents, it is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD PPA and all applicable statutes, regulations, rules, and executive orders. MAD or its selected claims processing contractor issues payment to a provider using the electronic funds transfer (EFT) only. Providers must supply necessary information in order for payment to be made. Services must be provided within the scope of the practice and licensure for each agency, each rendering provider within that agency and each individual provider. Services must be in compliance with the statutes, rules and regulations of his or her practitioner's applicable practice board and act. Providers must be eligible for reimbursement as described in 8.310.3 NMAC.
[8.320.6.10 NMAC - Rp, 8.320.6.10 NMAC, 07-01-15]

8.320.6.11 ELIGIBLE PROVIDERS:

A. Upon approval of a New Mexico MAD PPA by MAD or its designee, local education agencies (LEAs), regional educational cooperatives (RECs), and other state-funded educational agencies (SFEAs) that meet specified requirements are eligible to be reimbursed for furnishing services to an eligible recipient. The LEA, REC, or other SFEA must enter into a governmental services agreement (GSA) with HSD and abide by the terms and conditions of it.

B. The following individual service providers must be employed by, or under contract to, the LEA, REC, or other SFEA when furnishing treatment and meet other specified qualification criteria:

- (1) physical therapists (PT);
- (2) physical therapy assistants working under the supervision of a MAD enrolled PT;
- (3) occupational therapists (OT);
- (4) occupational therapy assistants working under the supervision of a MAD enrolled licensed occupational therapist;
- (5) speech and language pathologists (SLP) and clinical fellows;
- (6) apprentices in speech-language (ASL) working under the supervision of a MAD enrolled licensed speech therapist; supervision for those providers listed in Paragraphs (1) - (6) above must adhere to the requirements of the practitioner's applicable licensing board;
- (7) audiologists;
- (8) licensed nutritionists or registered dieticians;
- (9) case managers meeting one of the following requirements:
 - (a) bachelor's degree in social work, counseling, psychology, nursing or a related health or social services field from an accredited institution;
 - (b) one year experience serving medically-at-risk children or adolescents; or
 - (c) a licensed registered (RN).
- (10) psychologists meeting one of the following requirements:
 - (a) psychologists (Ph.D., Psy.D., or Ed.D.); or
 - (b) master's level practitioners licensed by the New Mexico psychologist examiners

board as psychologist associates or licensed by PED as school psychologists and working under the supervision of a MAD enrolled licensed psychiatrist or a licensed psychologist (Ph.D., Psy.D., or Ed.D.) or a PED level 3 independent school psychologist, as applicable;

(c) supervision of psychologist associates and school psychologists must adhere to the requirements of the practitioner's applicable licensing board.

(11) social work practitioners meeting one of the following requirements:

(a) licensed independent social worker (LISW); or

(b) licensed master social worker (LMSW) or licensed baccalaureate social worker (LBSW) and working under the supervision of a MAD enrolled licensed independent social worker (LISW) or licensed psychologist (Ph.D., Psy.D., Ed.D.);

(i) services provided by licensed master social workers (LMSW) and licensed baccalaureate social workers (LBSW) must be within the scope of their practice respectively and supervised and periodically evaluated;

(ii) an eligible recipient receiving services from an LMSW or LBSW must be diagnosed by the practitioner's supervisor; the diagnosis must be documented in the MAP eligible recipient's record with the signature of the supervisor.

(12) licensed counselors or therapists meeting one of the following requirements:

(a) licensed professional clinical mental health counselor (LPCC); or

(b) licensed marriage and family therapist (LMFT); or

(c) licensed mental health counselor (LMHC) or licensed professional mental health counselor (LPC) and working under the supervision of a MAD enrolled licensed psychiatrist, a licensed psychologist (Ph.D., Psy.D., or Ed.D.), licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), or licensed independent social worker (LISW);

(i) supervision of licensed mental health counselors (LMHC) and licensed professional mental health counselors (LPC) must adhere to the requirements

of the practitioner's applicable licensing board;

(ii) an eligible recipient receiving services from a LMHC or LPC must be diagnosed by the practitioner's supervisor; the diagnosis must be documented in the eligible recipient's record with the signature of the supervisor.

(13) licensed psychiatric clinical nurse specialist (CNS);

(14) physicians and psychiatrists licensed by the board of medical examiners.

C. For a LEA, REC, or other SFEA that employs a RN or a licensed practical nurse (LPN) not as a case worker, each is under the oversight of the department of health's (DOH) district health officer, as provided by state statute (Section 24-1-4 NMSA 1978). A LPN must work under the supervision of a RN who is a PED licensed school nurse.

D. As applicable, each provider must be licensed by the public education department (PED) when such licensure exists.

E. As applicable, each provider must be licensed by its specific regulation and licensing division (RLD)'s board of practice or by PED.

[8.320.6.11 NMAC - Rp. 8.320.6.11 NMAC, 07-01-15]

8.320.6.12 PROVIDER RESPONSIBILITIES:

A. General responsibilities:

(1) A provider who furnishes services to an eligible recipient must comply with all terms and conditions of his or her MAD PPA and the MAD New Mexico administrative code (NMAC) rules.

(2) A provider must verify that an individual is an eligible recipient at the time services are billed.

(3) A provider must appoint a program liaison and backup alternate for each LEA, REC or other SFEA, who will be responsible for receiving and disbursing all communication, information and guidelines from HSD regarding the MAD school-based services program, including information on, but not limited to, direct services and administrative claiming.

B. Documentation requirements:

(1) A provider must maintain all records necessary to fully disclose the nature, quality, amount and medical necessity of services billed to a MAP eligible recipient who is

currently receiving MAD services or has received MAD school-based services in the past that are or were part of the eligible recipient's IEP or IFSP. Payment for services billed to MAD that are not substantiated in the eligible recipient's records are subject to recoupment.

Documentation must be retained for at least six years from the date of payment or until ongoing audit issues are resolved, whichever is longer; see 8.302.2 NMAC.

(2) For services covered under this rule, complete copies of the eligible recipient's IEP or IFSP with the individualized treatment plan (ITP) portions of the IEP or IFSP must be maintained as part of the required records. Those records must clearly indicate that the MAD school-based service is a part of the eligible recipient's IEP or IFSP.

(3) Documents in the MAP eligible recipient's file must include:

(a) the IEP with the ITP or the IFSP with the ITP;

(b) evaluation performed by the provider or the annual and current present level of performance;

(c) annual PCP notification or documentation of a good faith effort;

(d) treatment notes that relate directly to the IEP or IFSP goals and objectives specific to each MAP eligible recipient; and

(e) billing information recorded in units of time; see 8.302.2 NMAC.

C. Record availability:

The provider must upon request promptly furnish to HSD, the secretary of the federal department of health and human services, or the state medicaid fraud control unit any information required in this rule, including the eligible recipient and employee records, and any information regarding payments claimed by the provider furnishing services. Failure to provide records on request may result in a denial of claims.

[8.320.6.12 NMAC - Rp. 8.320.6.12 NMAC, 07-01-15]

8.320.6.13 COVERED SERVICES: MAD covers the following services when medically necessary and rendered as part of an eligible recipient's IEP or IFSP by specified providers in school settings.

A. For services in Subsections A - E of 8.320.6.13 NMAC, a provider must first develop and then update the eligible recipient's present

level of performance for each of his or her IEP or IFSP cycles. MAD requires the following elements be included in the provider's treatment notes:

- (1) the specific activity provided to the MAP eligible recipient for each date of service billed;
- (2) a description of the level of engagement and the ability of the eligible recipient for each date of service billed; and
- (3) the outcomes of session on the impact on the eligible recipient's exceptionality for each date of service billed.

B. To be reimbursed for a MAD school-based service, all of the requirements in this subsection must be met.

(1) Services must be medically necessary and must meet the needs specified in his or her IEP or IFSP. The services must be necessary for the treatment of the eligible recipient's specific identified condition.

(2) The ITP portion of the IEP or IFSP must be developed in conjunction with the appropriate qualified PT, OT, SLP, audiologist, RN, or behavioral health provider listed in 8.320.6.11 NMAC.

(3) The LEA, REC or other SFEA must complete a MAD specified good faith effort to notify the eligible recipient's PCP of the services to be provided.

(4) Frequency and duration of services billed may not exceed those specified in the eligible recipient's IEP or IFSP.

(5) Reimbursement is made directly to the LEA, REC, or other SFEA when therapy, licensed nutritionists or registered dietitians, transportation, case manager, or nurse providers furnish services under contract to the LEA, REC, or other SFEA.

C. Therapy services: MAD covers physical, occupational, audiological and speech evaluations, and therapy required for treatment of an identified medical condition that is part of an eligible recipient's ITP.

D. Nutritional assessment and counseling: MAD covers nutritional assessment and counseling when rendered by a licensed nutritionist or dietician for an eligible recipient who has been referred for a nutritional need when part of his or her ITP. A nutritional assessment consists of an evaluation of the nutritional needs of the eligible recipient based upon appropriate biochemical, anthropometric, physical, and dietary data, including

a recommendation for appropriate nutritional intake.

E. Transportation services: MAD covers transportation services for an eligible recipient who must travel from his or her school to receive a covered service from a MAD provider when the service is unavailable in the school setting and when the service is medically necessary and are part of the eligible recipient's IEP or IFSP; see 8.324.7 NMAC. MAD covers transportation to and from the school on the date a medically necessary MAD school-based service is rendered in the school setting for an eligible recipient who has a disability.

(1) MAD school-based services are billed on the specific day on which transportation is rendered and are part of the ITP portion of his or her IEP or IFSP.

(2) The eligible recipient requires transportation in a vehicle adapted to serve his or her needs that are part of the ITP portion of his or her IEP or IFSP.

(3) Transportation occurs in a modified school bus for disabled students.

F. Case management: MAD covers school-based case management services rendered in school settings to an eligible recipient who is medically at risk when these services are part of the eligible recipient's ITP of his or her IEP or IFSP. Medically at risk refers to an eligible recipient who has a diagnosed physical condition which has high probability of impairing cognitive, emotional, neurological, social, or physical development.

(1) The service is developed in conjunction with a qualified case manager.

(2) MAD covers the following school-based case management services.

(a) The assessment of the eligible recipient's medical, social and functional abilities at least every six months, unless more frequent reassessment is indicated by the eligible recipient's condition.

(b) The development and implementation of a comprehensive case management plan of care that helps the eligible recipient retain or achieve the maximum degree of independence.

(c) The mobilization of the use of natural helping networks, such as family members, church members, community organizations, support groups, friends, and

the school, if the eligible recipient is able to attend.

(d) Coordination and monitoring of the delivery of services, evaluation of the effectiveness and quality of the services, and revision of the case management plan of care as necessary.

(e) All services must be delivered to be eligible for MAD reimbursement.

(3) An eligible recipient has the freedom to choose a case management service provider. MAD will pay for only *one* case management provider to furnish services to an eligible recipient at any given time period. If an eligible recipient has a case manager or chooses to use a case manager who is not employed or under contract to the LEA, REC or other SFEA, the LEA, REC or other SFEA must coordinate with the case manager in the development of the eligible recipient's ITP.

G. Nursing: MAD covers certain nursing services required for treatment of a diagnosed medical condition that qualifies an eligible recipient for an IEP or IFSP when provided by a licensed RN or LPN. Nursing services require professional nursing expertise and are provided by a licensed RN or a LPN and must be provided in accordance with the New Mexico Nursing Practice Act and must be a covered MAD service.

H. Telemedicine services: MAD covers school-based services provided via telemedicine; see 8.310.2 NMAC.

I. Administrative activities: MAD covers the cost of certain administrative activities that directly support efforts to provide health-related services to a MAP eligible recipient with special education and health care needs. These administrative activities include, but are not limited to, providing information about MAD services and how to access them; facilitating the eligibility determination process; assisting in obtaining transportation and translation services when necessary to receive health care services; making referrals for MAD reimbursable services; and coordinating and monitoring MAD covered medical services.

(1) Payment for an allowable administrative activity is contingent upon the following:

(a) the LEA, REC or other SFEA must complete a MAD PPA to become an approved school-based health services provider;

(b) the LEA, REC or other SFEA must enter into a GSA with HSD and agree to abide by the terms and conditions of the GSA;

(c) the LEA, REC or other SFEA must submit claims for allowable administrative activities in accordance with federal and state regulations, rules and guidelines.

(2) A provider or contractor coordination with the school or contractor or in consultation with principals, school counselors, or teachers are not billable as a service by the provider. The provider must consult with the school to determine if the school will include such activities in its contract with the provider or contractor. The school may not bill MAD separately for these services but can include the costs as administrative costs.

(3) Administrative claiming is subject to compliance reviews and audits conducted by HSD, the state medicaid fraud control unit and the Centers for Medicare and Medicaid Services (CMS). By signing the MAD PPA, the LEA, REC or other SFEA agrees to cooperate fully with HSD, the state medicaid fraud control unit and CMS in the performance of all reviews and audits and further agrees to comply with all review and audit requirements. [8.320.6.13 NMAC - Rp, 8.320.6.13 NMAC, 07-01-15]

8.320.6.14 INDIVIDUALIZED TREATMENT PLAN:

A. The ITP must specify:
(1) the eligible recipient's objectives and goals; and
(2) the duration, the frequency of the service for the eligible recipient.

B. The plan is developed by the LEA, REC or other SFEA in conjunction with the eligible recipient, his or her family, and applicable service providers.

C. The ITP is a plan of care agreed upon by the eligible recipient, his or her parents or legal guardians, the evaluating therapists, the IEP or IFSP committee, and the eligible recipient's teacher, all of whom are included in the IEP or IFSP. The ITP utilizes the eligible recipient's health history, medical and educational evaluations and recommendations by the PCP and other medical providers, as applicable. If medical needs are identified in the IEP or IFSP, the medical portion of the IEP or IFSP is the eligible recipient's ITP. The ITP must be incorporated into the IEP or IFSP.

[8.320.6.14 NMAC - Rp, 8.320.6.14 NMAC, 07-01-15]

8.320.6.15 NON-COVERED SERVICES: MAD school-based services billed in school settings are subject to the limitations and coverage restrictions that exist for other MAD services; see 8.301.3 NMAC. MAD does not cover the following services.

- A. Services classified as educational.
- B. Services to non-MAP eligible individuals.
- C. Services billed by a practitioner outside his or her area of expertise.
- D. Vocational training that is related solely to specific employment opportunities, work skills or work settings.
- E. Services that duplicate services billed outside the school setting unless determined to be medically necessary and MAD or its designee gave prior authorization for the service.
- F. Services not identified in the eligible recipient's IEP or IFSP.
- G. Transportation services listed below:

(1) transportation that a MAP eligible recipient would otherwise receive in the course of attending school;

(2) transportation for the eligible recipient with special education needs under the Individuals with Disabilities Education Act (IDEA) who rides the regular school bus to and from school with non-disabled children; and

(3) transportation of a minor aged child, such as a sibling of the eligible recipient who is simply accompanying the eligible recipient to a MAD service.

[8.320.6.15 NMAC - Rp, 8.320.6.16 NMAC, 07-01-15]

8.320.6.16 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: Certain procedures or services identified in the UR instructions may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to UR at any point in the payment process. All services are subject to UR for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. When services are billed to and paid by a coordinated services contractor

authorized by HSD, the provider must follow that contractor's instructions for authorization of services. A specific service may have additional prior authorization requirements listed in the service's prior authorization section. The prior authorization of a service does not guarantee that an individual is eligible for a MAD service. A provider must verify that an individual is eligible for a specific MAD service at the time the service is furnished and must determine if the eligible recipient has other health insurance. A provider who disagrees with the denial of a prior authorization request or other review decision can request a reconsideration.

[8.320.6.16 NMAC - Rp, 8.320.6.17 NMAC, 07-01-15]

8.320.6.17 REIMBURSEMENT:

Reimbursement to the LEA, REC, or SFEA is not contingent upon billing a third party payer first when the eligible recipient has other insurance. MAD is generally the payer of last resort. However, if medical services are included in the eligible recipient's IEP or IFSP, and an exception is created under 42 USE 1396b(c), 20 USC 1412(a)(12) and 34 CFR 300.142., and the services are otherwise covered by MAD, then MAD is authorized to pay for such services. The LEA, REC, or other SFEA must submit claims for reimbursement on the 837P electronic format or its successor unless it received written permission from MAD to bill on paper.

A. Interim payment to the LEA, REC or other SFEA for covered services are made at the MAD fee schedule for the specific service.

B. The LEA, REC or other SFEA will complete an annual cost report utilized to reconcile interim payments with actual costs in accordance with CMS approved methodology. The LEA, REC or other SFEA must participate in the CMS approved quarterly random moment time study (RMTS).

C. A MAD school-based service that is in the eligible recipient's IEP or IFSP must only be billed by the school. When the school utilizes a contractor to render the service, the school must submit the claim, not the contractor. It is the responsibility of the school to reimburse the contractor.

[8.320.6.17 NMAC - Rp, 8.320.6.18 NMAC, 07-01-15]

HISTORY OF 8.320.6 NMAC:

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

MAD-747, School Based Services for Recipients Under Twenty-one Years of Age, filed 12-16-94.

History of Repealed Material:

8.320.6 NMAC, School Based Services for Recipients Under Twenty-One Years of Age, filed 10-16-2002 - Repealed 1-1-2014.

8.320.6 NMAC, School Based Services for Recipients Under Twenty-One Years of Age, filed 12-17-2013 - Repealed 7-1-2015.

OIL CONSERVATION COMMISSION

This is an amendment to 19.15.8 NMAC, amending Sections 8 - 11 and adding Sections 15 and 16, effective 06/30/2015.

19.15.8.8 GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE:

A. The operator shall file financial assurance documents with the division's Santa Fe office and obtain approvals and releases of financial assurance from that office.

B. Financial assurance documents shall be on forms prescribed by or otherwise acceptable to the division.

C. The division may require proof that the individual signing for an entity on a financial assurance document or an amendment to a financial assurance document has the authority to obligate that entity.

D. Any time an operator changes the corporate surety, financial institution or amount of financial assurance, the operator shall file updated financial assurance documents on forms prescribed by the division. Notwithstanding the foregoing, if an operator makes other changes to its financial assurance documents, the division may require the operator to file updated financial assurance documents on forms prescribed by the division.
[19.15.8.8 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08; A, 6/30/15]

19.15.8.9 FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. A person [~~firm~~, corporation or association] who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well on privately-owned or state-owned lands within this state shall furnish a financial assurance acceptable to

the division in the form of an irrevocable letter of credit, plugging insurance policy, or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with division rules.

B. A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

C. The division accepts [~~two~~] three forms of financial assurance: a one-well financial assurance that covers a single well, [~~and~~] a blanket financial assurance that covers multiple wells, and a blanket plugging financial assurance for wells in temporarily abandoned status. The operator shall cover a well that has been in temporary abandonment for more than two years by either a one-well financial assurance or a blanket plugging financial assurance for wells in temporarily abandoned status, except that the division may waive the requirement of a one-well financial assurance for a well that is shut-in because of the lack of a pipeline connection. The division may release the one-well financial assurance upon the operator's or surety's written request after the well is returned to production if a blanket financial assurance covers the well. The division may release a blanket plugging financial assurance for wells in temporarily abandoned status upon the operator's or surety's written request after the wells are plugged and abandoned in accordance with 19.15.25 NMAC or are returned to production if a blanket financial assurance covers the wells or if the operator files a one-well financial assurance for each well of the operator's wells in temporarily abandoned status; upon the operator's or surety's written request, the amount of the operator's blanket financial assurance for wells held in temporarily abandoned status may be reduced in accordance with the number of wells the operator elects to cover by said financial assurance.

D. Amounts.

(1) A blanket financial assurance shall be in the amount of \$50,000 covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond.

(2) A one-well financial assurance shall be in the amounts stated below in accordance with the well's depth and location.

(a)

Chaves, Eddy, Lea, McKinley, Rio

Arriba, Roosevelt, Sandoval and San Juan counties, New Mexico: \$5000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

(b)

All other counties in the state: \$10,000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

(3) The

appropriate division district office may approve revised plans for an actively drilling well for drilling as much as 500 feet deeper than the depth stated on the well's financial assurance. A well to be drilled more than 500 feet deeper than the depth stated on the well's financial assurance shall be covered by a new financial assurance in the amount prescribed for the new projected depth.

(4) The amount

of the one-well financial assurance required for an intentionally deviated well shall be determined by the well's measured depth, and not its true vertical depth.

(5) If an

operator elects to cover wells held, or which may be held, in temporary abandonment by a blanket plugging financial assurance for wells in temporarily abandoned status, the operator shall do so in the amounts stated below in accordance with the number of wells covered by the blanket plugging financial assurance for wells in temporarily abandoned status.

(a)

A blanket financial assurance for the first five wells shall be in the amount of \$150,000.

(b)

A blanket financial assurance for the six to 10 wells shall be in the amount of \$300,000.

(c)

A blanket financial assurance for the 11 to 25 wells shall be in the amount of \$500,000.

(d)

A blanket financial assurance for more than 25 wells shall be in the amount of \$1,000,000.

E. Operators who have on file with the division a blanket financial assurance that does not cover additional wells shall file additional single well bond financial assurance for any wells not covered by the existing blanket bond or, in the alternative, may file a replacement blanket bond.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08; A, 6/30/15]

19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:

A. Surety bonds shall be issued by a reputable corporate surety authorized by the office of the superintendent of insurance to do business in the state.

B. The operator shall deposit cash representing the full amount of the bond in an account in a federally-insured financial institution located within the state, such account to be held in trust for the division. Authorized representatives of the operator and the depository institution shall execute a document evidencing the cash bond's terms and conditions. The operator shall file the document with the division prior to the bond's effective date. If the operator's financial status or reliability is unknown to the director, the director may require the filing of a financial statement or such other information as may be necessary to evaluate the operator's ability to fulfill the bond's conditions. From time to time, any accrued interest over and above the bond's face amount may be paid to the operator. [19.15.8.10 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08; A, 6/30/15]

19.15.8.11 ADDITIONAL REQUIREMENTS FOR LETTERS OF CREDIT:

A. The division may accept irrevocable letters of credit issued by national or state-chartered banking associations.

B. Letters of credit shall be irrevocable for a term of not less than five years, unless the applicant shows good cause for a shorter time period.

C. Letters of credit shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 30 days prior to expiration.

D. The division may forfeit and collect a letter of credit if not replaced by an approved financial assurance at least 30 days before the expiration date.

E. Authorized representatives of the operator and the depository institution shall execute a document evidencing the letter of credit's terms and conditions. [19.15.8.11 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08; A, 6/30/15]

19.15.8.15 ADDITIONAL REQUIREMENTS FOR PLUGGING INSURANCE POLICIES:

A. The plugging

insurance policy must be issued by a company authorized by the office of the superintendent of insurance to do business in New Mexico.

B. The policy shall name a specific well and name the state of New Mexico as the owner of the policy and contingent beneficiary.

C. The policy shall name a primary beneficiary who agrees to plug the specified wellbore.

D. The policy shall be fully prepaid and cannot be canceled or surrendered.

E. The policy shall continue in effect until the specified wellbore has been plugged.

F. The policy shall provide that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with division rules in effect at the time of plugging.

G. The policy shall provide benefits that are not less than an amount equal to the one-well financial assurance required by division rules. If, subsequent to an operator obtaining an insurance policy, the one-well financial assurance requirement applicable to the operator's well covered by said policy increases, either because the well is deepened or the division's rules are amended, the operator will meet the additional financial assurance requirement by complying with one of the requirements below.

(1) The operator's existing policy benefit equals or exceeds the revised requirement.

(2) The operator obtains and files with the division within 30 days an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement.

(3) The operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit and files said financial assurance with the division within 30 days.

[19.15.8.15 NMAC - N, 6/30/15]

19.15.8.16 DUTY TO REPORT:

Any operator who filed for bankruptcy shall provide notice to the division, in writing, through the processes provided for under the rules of the United States bankruptcy court.

[19.15.8.16 NMAC - N, 6/30/15]

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

Judicial Retirement - Membership, 2.83.300 NMAC, (filed 12/14/2001) is being repealed and replaced by Judicial Retirement - Membership, 2.83.300 NMAC, effective 7/1/2015.

Judicial Retirement - Service Credit, 2.83.400 NMAC, (filed 12/28/2000) is being repealed and replaced by Judicial Retirement - Service Credit, 2.83.400 NMAC, effective 7/1/2015.

Judicial Retirement - Interception or Division of Payments, 2.83.600 NMAC, (filed 12/14/2001) is being repealed and replaced by Judicial Retirement - Interception or Division of Payments, 2.83.600 NMAC, effective 7/1/2015.

Judicial Retirement - Retired Members, 2.83.1100 NMAC, (filed 12/28/2000) is being repealed and replaced by Judicial Retirement - Retired Members, 2.83.1100 NMAC, effective 7/1/2015.

Magistrate Retirement - Membership, 2.84.300 NMAC, (filed 12/14/2001) is being repealed and replaced by Magistrate Retirement - Membership, 2.84.300 NMAC, effective 7/1/2015.

Magistrate Retirement - Service Credit, 2.84.400 NMAC, (filed 12/28/2000) is being repealed and replaced by Magistrate Retirement - Service Credit, 2.84.400 NMAC, effective 7/1/2015.

Magistrate Retirement - Interception or Division of Payments, 2.84.600 NMAC, (filed 12/14/2001) is being repealed and replaced by Magistrate Retirement - Interception or Division of Payments, 2.84.600 NMAC, effective 7/1/2015.

Magistrate Retirement - Retired Members, 2.84.1100 NMAC, (filed 12/28/2000) is being repealed and replaced by Magistrate Retirement - Retired Members, 2.84.1100 NMAC, effective 7/1/2015.

Volunteer Firefighters - General Provisions, 2.87.100 NMAC, (filed 12/14/2001) is being repealed and replaced by Volunteer Firefighters - General Provisions, 2.87.100 NMAC, effective 7/1/2015.

**PUBLIC EMPLOYEES
RETIREMENT
ASSOCIATION**

**TITLE 2 PUBLIC FINANCE
CHAPTER 83 JUDICIAL
RETIREMENT
PART 300 MEMBERSHIP**

2.83.300.1 ISSUING AGENCY: Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123.
[2.83.300.1 NMAC - Rp, 2.83.300.1 NMAC, 7/1/15]

2.83.300.2 SCOPE: This rule affects judges or justices in office on or after July 1, 1992, judicial agencies and the association under the Judicial Retirement Act.
[2.83.300.2 NMAC - Rp, 2.83.300.2 NMAC, 7/1/15]

2.83.300.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-12B-3 and 10-12B-4 NMSA, 1978, as amended.
[2.83.300.3 NMAC - Rp, 2.83.300.3 NMAC, 7/1/15]

2.83.300.4 DURATION: Permanent.
[2.83.300.4 NMAC - Rp, 2.83.300.4 NMAC, 7/1/15]

2.83.300.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[2.83.300.5 NMAC - Rp, 2.83.300.5 NMAC, 7/1/15]

2.83.300.6 OBJECTIVE: The objective of this rule is to establish procedures for obtaining membership applications and applications for exemption from membership under the Judicial Retirement Act.
[2.83.300.6 NMAC - Rp, 2.83.300.6 NMAC, 7/1/15]

2.83.300.7 DEFINITIONS: [Reserved]

2.83.300.8 - 2.83.300.9 [Reserved]

2.83.300.10 MEMBERSHIP APPLICATIONS: Judges or justices in office on or after July 1, 1992 shall be members.

A. Each judicial agency must provide to PERA a membership application, in the form prescribed by

PERA, completed by each member within 30 days after the member takes office.

B. The member is responsible for providing to the association any change of the member's address.
[2.83.300.10 NMAC - Rp, 2.83.300.10 NMAC, 7/1/15]

HISTORY OF 2.83.300 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
JRA Rule 300, Membership, filed on 7-1-92.

History of Repealed Material: 2.83.300 NMAC, Judicial Retirement - Membership, filed 12/14/2001, repealed 7/1/2015.

**PUBLIC EMPLOYEES
RETIREMENT
ASSOCIATION**

**TITLE 2 PUBLIC FINANCE
CHAPTER 83 JUDICIAL
RETIREMENT
PART 400 SERVICE CREDIT**

2.83.400.1 ISSUING AGENCY: Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123.
[2.83.400.1 NMAC - Rp, 2.83.400.1 NMAC, 7/1/15]

2.83.400.2 SCOPE: This rule affects the members, former members, judicial agencies, the administrative office of the courts, retirement board and the association under the Judicial Retirement Act.
[2.83.400.2 NMAC - Rp, 2.83.400.2 NMAC, 7/1/15]

2.83.400.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-12B-3 and 10-12B-5 NMSA 1978, as amended.
[2.83.400.3 NMAC - Rp, 2.83.400.3 NMAC, 7/1/15]

2.83.400.4 DURATION: Permanent.
[2.83.400.4 NMAC - Rp, 2.83.400.4 NMAC, 7/1/15]

2.83.400.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[2.83.400.5 NMAC - Rp, 2.83.400.5 NMAC, 7/1/15]

2.83.400.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for awarding and reinstating service credit under the Judicial Retirement Act.
[2.83.400.6 NMAC - Rp, 2.83.400.6 NMAC, 7/1/15]

2.83.400.7 DEFINITIONS: [Reserved]
[2.83.400.7 NMAC - Rp, 2.83.400.7 NMAC, 7/1/15]

2.83.400.8 GENERAL PROVISIONS:
A. Members may receive one month of service credit for any calendar month in which the member becomes a member on or before the sixteenth day of that month, or for any calendar month in which the member leaves office on or after the fifteenth day of the month, provided that all other requirements for awarding service credit are met.

B. Service credit that was forfeited when a member left office and withdrew his or her accumulated member contributions may be reinstated by repayment of withdrawn member contributions, together with interest from the date of withdrawal to the date of repayment at the rate or rates set by the board under the following conditions.

(1) Service credit may be reinstated in one-year increments, beginning with the most recently forfeited service credit. A one-year increment is 12 consecutive, but not necessarily continuous, months of service credit. For the purpose of eligibility to retire only, less than one year of service credit may be purchased. After reinstatement of all 12-month "years" as defined herein, any remaining service credit that totals less than 12 months may be reinstated by payment in one lump sum as provided herein.

(2) All forfeited service credit may also be reinstated by repayment of the total amount of all member contributions withdrawn from each period of service together with interest from the date of withdrawal to the date of repayment at the rate set by the board.

(3) The rate or rates of interest for the purchase or reinstatement of service credit shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1.

(4) A former member who is employed by an employer covered under the Educational

Retirement Act must provide evidence of current contributing membership in the educational retirement association; such evidence shall be either certification by the employer, in the form prescribed by the association, or certification by the educational retirement association (ERA).

(5) Payment for reinstated service credit must be received by the association prior to the member's effective date of retirement.

(6) Interest received to reinstate forfeited service credit under this subsection shall not be refunded to the member. The purchase cost received to reinstate forfeited service credit, which is determined to be unnecessary to provide the maximum pension applicable to the member and which is purchased in reliance on information provided by PERA shall be refunded to the member.

C. Service credit that a member would have earned if the member had not elected to be excluded from membership prior to July 1, 2014 may be purchased under the following conditions:

(1) the member first reinstates all previously withdrawn JRA service credit;

(2) the member may purchase service credit in increments of not less than one year except where the total excluded service credit is less than one year;

(3) the member pays the full cost as determined under Section 10-12B-5(F) NMSA 1978, within 60 days of the notification of that amount.

D. Military service credit is free in some cases and may be purchased in other cases as provided by statute.

(1) Where a member wishes to claim service credit pursuant to Section 10-12B-5 NMSA 1978, the association shall, upon the member's request, furnish that member a form of affidavit for completion and certification of such service. The affidavit shall be accompanied by documentary evidence of the member's entry and discharge from service in a uniformed service of the United States.

(2) The administrative office of the courts shall certify in writing the date the member left office to enter a uniformed service of the United States. This requirement may be waived if PERA records contain sufficient documentation of the date of termination.

(3) The administrative office of the courts shall certify in writing to the association the member's date of return to office

within 30 days of reemployment. This requirement may be waived if PERA records contain sufficient documentation of the date of return, to office. Members who do not return, to office within 90 days following termination of the period of intervening service but who nevertheless claim reemployment rights under federal law shall provide to the association written certification from the administrative office of the courts that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

(4) The affidavit, employer certifications, and documentary evidence of uniformed service shall be presented to the association for approval.

(5) Service credit for periods of intervening service in the uniformed services following voluntary enlistment, reenlistment or appointment shall be awarded only upon compliance by the member and the administrative office of the courts with the provisions of Section 10-12B-5 NMSA 1978, as amended, and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, including but not limited to the payment to the association of contributions required from the member and the employer.

(6) JRA members who are also members of the military service reserve components who are activated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency may receive free credit service subject to the conditions of this section. The member must provide a form DD 214 and other documentation as required by PERA to support an award of free service credit.

(7) Payment for military service credit must be received by the association prior to the member's effective date of retirement.

E. No installment payment contracts may be used for the purchase of any service credit. A member may purchase a total of five years of permissive service credit as allowed under the Judicial Retirement Act in one lump-sum or in one-year increments.

F. A member may rollover funds from an Internal Revenue Code Section 457, 403(b), 401(k), IRA or another 401(a) qualified account to pay for forfeited or permissive service credit allowed by the Judicial Retirement Act. The rollover of funds must be made by a trustee-to-trustee transfer and the account from which the funds come must be in the name of the member requesting the

transfer.

[2.83.400.8 NMAC - Rp, 2.83.400.8 NMAC, 7/1/15]

HISTORY OF 2.83.400 NMAC:

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

JRA Rule 400, Service Credit, filed on 7-1-92.

History of Repealed Material:

2.83.400 NMAC, Judicial Retirement - Service Credit, filed 12/28/2000, repealed 7/1/2015.

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

**TITLE 2 PUBLIC FINANCE
CHAPTER 83 JUDICIAL
RETIREMENT
PART 600 INTERCEPTION
OR DIVISION OF PAYMENTS**

2.83.600.1 ISSUING AGENCY: Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123

[2.83.600.1 NMAC - Rp, 2.83.600.1 NMAC, 7/1/15]

2.83.600.2 SCOPE: This rule affects members, former members, retirees, beneficiaries, and the association under the Judicial Retirement Act. This rule also affects the spouses and ex-spouses of members, former members and retirees under the act.

[2.83.600.2 NMAC - Rp, 2.83.600.2 NMAC, 7/1/15]

2.83.600.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-12B-3 and 10-12B-7 NMSA 1978, as amended.

[2.83.600.3 NMAC - Rp, 2.83.600.3 NMAC, 7/1/15]

2.83.600.4 DURATION: Permanent.

[2.83.600.4 NMAC - Rp, 2.83.600.4 NMAC, 7/1/15]

2.83.600.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.

[2.83.600.5 NMAC - Rp, 2.83.600.5 NMAC, 7/1/15]

2.83.600.6 OBJECTIVE:

The objective of this rule is to establish standards and procedures for dividing the community interest in retirement pensions or contributions and for withholding from retirement pensions/contributions the amounts due pursuant to a child support enforcement order.

[2.83.600.6 NMAC - Rp, 2.83.600.6 NMAC, 7/1/15]

2.83.600.7 DEFINITIONS:
[Reserved]

2.83.600.8 - 2.83.600.9 [Reserved]

2.83.600.10 DIVORCE DECREE OR ORDER:

A. The following information must be contained in a divorce decree or order which divides the community interest in Judicial Retirement Act (JRA) retirement pensions or contributions:

(1) specific information identifying the parties, i.e., full names, addresses, social security numbers, retirement numbers if any;

(2) a declaration that there is a community interest in a member's pension or member contributions;

(3) the percentage or dollar amount of each party's interest in the gross pension as calculated at the time of retirement;

(4) the percentage or dollar amount of each party's interest in member contributions;

(5) a direct order to PERA restraining refund of member contributions except according to the provisions of the decree or order, if such a restraint is desired;

(6) liability for and payment of federal and state income taxes;

(7) a direct order to PERA to issue separate warrants to each party.

B. A separate account may not be created for a member's former spouse who has a court-determined interest in a member's account.

C. A model order or decree containing provisions for the determination and division of the community interest in a JRA member's account shall be available on request from PERA's office of general counsel.

D. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Judicial Retirement Act. PERA shall not be obligated to

administer pension benefits in accordance with such orders until the first of the month following written approval by the office of general counsel.

E. Member files must contain current names and addresses for persons having a court-determined interest in member retirement accounts. Any person with such an interest must provide PERA with a written statement of change of name or address. If a warrant is returned as undeliverable because of incorrect name or address, the money due the person will accumulate in the fund until PERA is furnished with the correct information. No interest shall be paid on any monies so accumulated.

F. Each party must submit a completed W-4 to PERA when applying for a retirement pension.

G. A court order requiring an election of a particular form of payment at retirement or the designation of one or more beneficiaries shall be addressed to the member, and the member shall be responsible for executing the proper PERA forms and providing the documentation necessary to effectuate the election or designation(s). A member who violates such an order may be in contempt of court.

[2.83.600.10 NMAC - Rp, 2.83.600.10 NMAC, 7/1/15]

2.83.600.11 - 2.83.600.19 [Reserved]

2.83.600.20 CHILD SUPPORT OBLIGATION ENFORCEMENT ORDER:

A. The following information must be contained in an order to withhold amounts due in satisfaction of current or delinquent child support obligations.

(1) specific information identifying the member or retired member, i.e., full name, address, social security number, retirement number, if any;

(2) specific information identifying the third party payee, i.e., full name, address, social security number, if any, or account code for child support enforcement bureau;

(3) dollar amount to be withheld from the monthly pension payment or a refund of member contributions;

(4) a direct order to PERA to issue separate warrants to each party.

B. A model order or decree containing provisions for the withholding of retirement pensions or contributions pursuant to a child support

obligation enforcement order shall be available on request from PERA's office of general counsel.

C. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the JRA.

D. Member files must contain current names and addresses for persons having a court-determined interest in member retirement accounts. Any person with such an interest must provide PERA with a written statement of any change of name or address. If a warrant is returned as undeliverable because of incorrect name or address, the money due the person will accumulate in the fund until PERA is furnished with the correct information. No interest shall be paid on any monies so accumulated.

[2.83.600.20 NMAC - Rp, 2.83.600.20 NMAC, 7/1/15]

2.83.600.21 - 2.83.600.29 [Reserved]

2.83.600.30 FEDERAL PREEMPTIVE ORDERS: Pursuant to Section 10-12B-7 NMSA 1978, JRA retirement accounts are not subject to legal process under other state laws, except for division of a community interest in such accounts or in enforcement of child support obligations, both as provided in Section 10-12B-7 NMSA 1978. In the following instances, however, federal laws pre-empt the provisions of Section 10-12B-7 NMSA 1978.

A. IRS notices of levy for unpaid taxes will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the levy is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

B. Orders issued by a U.S. bankruptcy court will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the order is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

C. Orders of garnishment for fines or restitution by a federal court in a criminal case will be honored if the account is in pay status, i.e. if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the order is applied against a refund of member contributions, non-tax deferred contributions shall be paid before

tax-deferred contributions.
[2.83.600.30 NMAC - Rp, 2.83.600.30 NMAC, 7/1/15]

HISTORY OF 2.83.600 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
JRA Rule 600, Interception or Division of Payments, filed on 7-1-92;
JRA Rule 600, Interception or Division of Payments, filed on 11-1-94;
JRA Rule 600, Interception or Division of Payments, filed on 12-1-95.

History of Repealed Material:
2.83.600 NMAC, Judicial Retirement - Interception or Division of Payments, filed 12/14/2001, repealed 7/1/2015.

**PUBLIC EMPLOYEES
RETIREMENT
ASSOCIATION**

**TITLE 2 PUBLIC FINANCE
CHAPTER 83 JUDICIAL
RETIREMENT
PART 1100 RETIRED
MEMBERS**

2.83.1100.1 ISSUING AGENCY:
Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[2.83.1100.1 NMAC - 2.83.1100.1 NMAC, 7/1/15]

2.83.1100.2 SCOPE: This rule affects members, retirees, beneficiaries, public employers, retirement board and the association under the Judicial Retirement Act.
[2.83.1100.2 NMAC - 2.83.1100.2 NMAC, 7/1/15]

2.83.1100.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-12B-3 and 10-12B-17 NMSA 1978, as amended.
[2.83.1100.3 NMAC - 2.83.1100.3 NMAC, 7/1/15]

2.83.1100.4 DURATION:
Permanent.
[2.83.1100.4 NMAC - 2.83.1100.4 NMAC, 7/1/15]

2.83.1100.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.
[2.83.1100.5 NMAC - 2.83.1100.5 NMAC, 7/1/15]

2.83.1100.6 OBJECTIVE:
The objective of this rule is to establish standards and procedures for the payment, suspension, and reinstatement of pensions of retired members; to establish notification and reporting requirements for post-retirement employment; and to establish conditions for retired members who work for affiliated public employers as independent contractors.
[2.83.1100.6 NMAC - 2.83.1100.6 NMAC, 7/1/15]

2.83.1100.7 DEFINITIONS:
[Reserved]
[2.83.1100.7 NMAC - 2.83.1100.7 NMAC, 7/1/15]

2.83.1100.8 - 2.83.1100.9
[Reserved]

2.83.1100.10 PAYMENT OF PENSION: Pension payments will be processed or mailed monthly, not later than the last day of the month for which they are paid.

A. A retired member may have the pension warrant mailed directly to any location specified in writing by the retired member; provided, however, that after December 31, 1998, the provisions of Paragraph (4) of Subsection B of 2.83.700.10 NMAC shall apply. Arrangements providing for electronic transfer of pension payments to the retiree's banking institution are permitted so long as the retired member's right to receipt of the funds is not altered except as ordered by a court of competent jurisdiction.

B. In the event a retired member is incapacitated or unable to sign his or her pension warrant, proof that a guardian has been appointed for the retired member, or proof of appointment of a conservator for the estate, or a copy of a durable power of attorney for a third party shall be filed with PERA.
[2.83.1100.10 NMAC - 2.83.1100.10 NMAC, 7/1/15]

2.83.1100.11 - 2.83.1100.19 [Reserved]

2.83.1100.20 POST-RETIREMENT EMPLOYMENT:
A. A member who retires must remain unemployed by an employer covered by any state system or the educational retirement system. This section does not apply to a retired member who:

(1) performs work for an employer covered by any state system or the educational retirement

system as an independent contractor under a contract approved by PERA; or
(2) is appointed to serve as a judge pro tempore.

B. When a retired member is subsequently employed by an affiliated public employer or an employer covered by the educational retirement system, the retired member shall notify PERA immediately of the hire date, position and salary of the subsequently employed retired member.

C. The retired member's pension shall be suspended effective the first of the month following the month in which the subsequent employment begins.

D. If a retired member fails to report earnings from subsequent employment with an affiliated public employer or an employer covered by the educational retirement system, and consequently continues to receive pension payments after such payments should have been suspended pursuant to the requirements of Section 10-12B-17 NMSA 1978 and rules promulgated thereunder, the retired member will be required to repay to PERA any amounts erroneously received, plus interest at the rate set by the board for overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated and the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.

[2.83.1100.20 NMAC - 2.83.1100.20 NMAC, 7/1/15]

2.83.1100.21 - 2.83.1100.29 [Reserved]

2.83.1100.30 REINSTATEMENT OF PENSION: When a retired member is subsequently employed by an affiliated public employer, causing suspension of pension and resulting in re-establishment of PERA membership, that person will be eligible to reinstate his or her pension at the termination of the subsequent employment period under the following conditions:

A. the retired member's subsequent employer shall provide PERA with a certificate, in the form prescribed by PERA, of the date of termination of employment;

B. the pension shall be reinstated effective the first day of the month following the month of

termination;

C. unless the Public Employees Retirement Reciprocity Act applies, the amount of the reinstated pension shall be the same amount as the suspended pension.

[2.83.1100.30 NMAC - 2.83.1100.30 NMAC, 7/1/15]

2.83.1100.31 - 2.83.1100.39 [Reserved]

2.83.1100.40 INDEPENDENT CONTRACTORS: If a retired member contracts to perform work for any public employer, the following conditions shall apply:

A. Post-retirement employment contracts with public employers must be submitted to PERA at least 15 working days prior to the effective date of the contract. PERA shall evaluate the contract to determine whether, under the terms of the contract, the retired member is an "employee" or an "independent contractor". In making this determination, PERA shall refer to the common-law control test guidelines as expressed in the Social Security Handbook published by the U.S. Department of Health and Human Services, as revised and amended. If PERA determines the retired member is actually an "employee" rather than an "independent contractor" under the terms of the contract, the retired member's pension will be suspended immediately. If the retired member disagrees with PERA's determination, the retired member may appeal PERA's decision pursuant to 2.83.1000 NMAC.

B. Renewals, amendments or modifications of previously approved post-retirement contracts shall also be submitted to PERA for evaluation 15 working days prior to their effective date. The provisions of this section will apply to such renewals, amendments or modifications.
[2.83.1100.40 NMAC - 2.83.1100.40 NMAC, 7/1/15]

HISTORY OF 2.83.1100 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
JRA Rule 1100, Retired Members, filed on 11-1-94;
JRA Rule 1100, Retired Members, filed on 12-1-95.

History of Repealed Material:

2.83.1100 NMAC, Judicial Retirement - Retired Members, filed 12/28/2000, repealed 7/1/2015.

**PUBLIC EMPLOYEES
RETIREMENT
ASSOCIATION**

**TITLE 2 PUBLIC FINANCE
CHAPTER 84 MAGISTRATE
RETIREMENT
PART 300 MEMBERSHIP**

2.84.300.1 ISSUING AGENCY:
Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123.

[2.84.300.1 NMAC - Rp, 2.84.300.1 NMAC, 7/1/15]

2.84.300.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.
[2.84.300.2 NMAC - Rp, 2.84.300.2 NMAC, 7/1/15]

2.84.300.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-12C-3 and 10-12C-4 NMSA 1978, as amended.

[2.84.300.3 NMAC - Rp, 2.84.300.3 NMAC, 7/1/15]

2.84.300.4 DURATION:
Permanent.

[2.84.300.4 NMAC - Rp, 2.84.300.4 NMAC, 7/1/15]

2.84.300.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.

[2.84.300.5 NMAC - Rp, 2.84.300.5 NMAC, 7/1/15]

2.84.300.6 OBJECTIVE:
The objective of this rule is to establish procedures for obtaining membership applications and application for exemption from membership under the Magistrate Retirement Act.

[2.84.300.6 NMAC - Rp, 2.84.300.6 NMAC, 7/1/15]

2.84.300.7 DEFINITIONS:
[Reserved]

2.84.300.8 [Reserved]

2.84.300.9 MEMBERS:
Magistrates in office on or after July 1, 1992, shall be members unless they have previously excluded themselves from membership under the provisions of prior law.

[2.84.300.9 NMAC - Rp, 2.84.300.9 NMAC, 7/1/15]

2.84.300.10 MEMBERSHIP APPLICATIONS:

A. Each judicial agency must provide to PERA a membership application, in the form prescribed by PERA, completed by each member within 30 days after the member takes office.

B. The member is responsible for providing to the association any change of the member's address.

[2.84.300.10 NMAC - Rp, 2.84.300.10 NMAC, 7/1/15]

HISTORY OF 2.84.300 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
MRA Rule 200.00, Membership, filed on 12-29-89;
MRA Rule 300, Membership, filed on 7-1-92.

History of Repealed Material:

2.84.300 NMAC, Magistrate Retirement - Membership, filed 12/14/2001, repealed 7/1/2015.

**PUBLIC EMPLOYEES
RETIREMENT
ASSOCIATION**

**TITLE 2 PUBLIC FINANCE
CHAPTER 84 MAGISTRATE
RETIREMENT
PART 400 SERVICE CREDIT**

2.84.400.1 ISSUING AGENCY:
Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123.

[2.84.400.1 NMAC - Rp, 2.84.400.1 NMAC, 7/1/15]

2.84.400.2 SCOPE: This rule affects the members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act (MRA).

[2.84.400.2 NMAC - Rp, 2.84.400.2 NMAC, 7/1/15]

2.84.400.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-12C-3 and 10-12C-5 NMSA 1978.

[2.84.400.3 NMAC - Rp, 2.84.400.3 NMAC, 7/1/15]

2.84.400.4 DURATION:
Permanent.

[2.84.400.4 NMAC - Rp, 2.84.400.4

NMAC, 7/1/15]

2.84.400.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.
[2.84.400.5 NMAC - Rp, 2.84.400.5 NMAC, 7/1/15]

2.84.400.6 OBJECTIVE:
The objective of this rule is to establish standards and procedures for awarding and reinstating service credit under the Magistrate Retirement Act.
[2.84.400.6 NMAC - Rp, 2.84.400.6 NMAC, 7/1/15]

2.84.400.7 DEFINITIONS:
[Reserved]

2.84.400.8 GENERAL PROVISIONS:

A. Members may receive one month of service credit for any calendar month in which the member becomes a member on or before the sixteenth day of that month, or for any calendar month in which the member leaves office on or after the fifteenth day of the month, provided that all other requirements for awarding service credit are met.

B. Service credit that was forfeited when a member left office and withdrew his or her accumulated member contributions may be reinstated by repayment of withdrawn member contributions, together with interest from the date of withdrawal to the date of repayment at the rate or rates set by the board under the following conditions:

(1) Service credit may be reinstated in one-year increments, beginning with the most recently forfeited service credit. A one-year increment is 12 consecutive, but not necessarily continuous, months of service credit. For the purpose of eligibility to retire only, less than one year of service credit may be purchased. After reinstatement of all 12-month "years" as defined herein, any remaining service credit that totals less than 12 months may be reinstated by payment in one lump sum as provided herein.

(2) All forfeited service credit may also be reinstated by repayment of the total amount of all member contributions withdrawn from each period of service together with interest from the date of withdrawal to the date of repayment at the rate set by the board.

(3) The rate or rates of interest for the purchase or reinstatement of service credit shall be set

annually by the board at a July meeting and shall be effective beginning the next succeeding January 1.

(4) A former member who is employed by an employer covered under the Educational Retirement Act must provide evidence of current contributing membership in the educational retirement association; such evidence shall be either certification by the employer, in the form prescribed by the association, or certification by the educational retirement association (ERA).

(5) Payment for reinstated service credit must be received by the association prior to the member's effective date of retirement.

(6) Interest received to reinstate forfeited service credit under this subsection shall not be refunded to the member. The purchase cost received to reinstate forfeited service credit, which is determined to be unnecessary to provide the maximum pension applicable to the member and which is purchased in reliance on information provided by PERA shall be refunded to the member.

C. Service credit that a member would have earned if the member had not elected to be excluded from membership prior to July 1, 2014 may be purchased under the following conditions:

(1) the member first reinstates all previously withdrawn MRA service credit;

(2) the member may purchase service credit in increments of not less than one year except where the total excluded service credit is less than one year;

(3) the member pays the full cost as determined under Section 10-12C-5(F) NMSA 1978 within 60 days of the notification of that amount.

D. Military service credit is free in some cases and may be purchased in other cases as provided by statute.

(1) Where a member wishes to claim service credit pursuant to Section 10-12C-5 NMSA 1978 the association shall, upon the member's request, furnish that member a form of affidavit for completion and certification of such service. The affidavit shall be accompanied by documentary evidence of the member's entry and discharge from service in a uniformed service of the United States.

(2) The judicial agency shall certify in writing the date the member left office to enter a uniformed service of the United States. This requirement may be waived if PERA

records contain sufficient documentation of the date of termination.

(3) The judicial agency shall certify in writing to the association the member's date of return to office within 30 days of reemployment. This requirement may be waived if PERA records contain sufficient documentation of the date of return, to office. Members who do not return, to office within 90 days following termination of the period of intervening service but who nevertheless claim reemployment rights under federal law shall provide to the association written certification from the judicial agency that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

(4) The affidavit, employer certifications, and documentary evidence of uniformed service shall be presented to the association for approval.

(5) Service credit for periods of intervening service in the uniformed services following voluntary enlistment, reenlistment or appointment, shall be awarded only upon compliance by the member and the judicial agency with the provisions of Section 10-12C-5 NMSA 1978, as amended, and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, including but not limited to the payment to the association of contributions required from the member and the employer.

(6) MRA members who are also members of the military service reserve components who reactivated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency may receive free credit service subject to the conditions of this section. The member must provide a form DD 214 and other documentation as required by PERA to support an award of free service credit.

(7) Payment for military service credit must be received by the association prior to the member's effective date of retirement.

E. No installment payment contracts may be used for the purchase of any service credit. A member may purchase a total of five years of permissive service credit as allowed by the Magistrate Retirement Act in one lump-sum or in one-year increments.

F. A member may rollover funds from an Internal Revenue Code Section 457, 403(b), 401(k), IRA or another 401(a) qualified account to pay for forfeited or permissive service credit

allowed by the Magistrate Retirement Act. The rollover of funds must be made by a trustee-to-trustee transfer and the account from which the funds come must be in the name of the member requesting the transfer.

[2.84.400.8 NMAC - Rp, 2.84.400.8 NMAC, 7/1/15]

HISTORY OF 2.84.400 NMAC:

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

MRA Rule 300.00, Credited Service, filed on 12-29-89;

MRA Rule 400, Service Credit, filed on 7-1-92.

History of Repealed Material:

2.84.400 NMAC, Magistrate Retirement - Service Credit, filed 12/28/2000, repealed 7/1/2015.

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

TITLE 2 PUBLIC FINANCE CHAPTER 84 MAGISTRATE RETIREMENT PART 600 INTERCEPTION OR DIVISION OF PAYMENTS

2.84.600.1 ISSUING AGENCY:
Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123.
[2.84.600.1 NMAC - Rp, 2.84.600.1 NMAC, 7/1/15]

2.84.600.2 SCOPE: This rule affects members, former members, retirees, beneficiaries, and the association under the Magistrate Retirement Act (MRA). This rule also affects the spouses and ex-spouses of members, former members and retirees under the act.
[2.84.600.2 NMAC - Rp, 2.84.600.2 NMAC, 7/1/15]

**2.84.600.3 STATUTORY
AUTHORITY:** This rule is authorized by Sections 10-12C-3 and 10-12C-7 NMSA 1978, as amended.
[2.84.600.3 NMAC - Rp, 2.84.600.3 NMAC, 7/1/15]

2.84.600.4 DURATION:
Permanent.
[2.84.600.4 NMAC - Rp, 2.84.600.4 NMAC, 7/1/15]

2.84.600.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.
[2.84.600.5 NMAC - Rp, 2.84.600.5 NMAC, 7/1/15]

2.84.600.6 OBJECTIVE:
The objective of this rule is to establish standards and procedures for dividing the community interest in retirement pensions or contributions and for withholding from retirement pensions/contributions the amounts due pursuant to a child support enforcement order.
[2.84.600.6 NMAC - Rp, 2.84.600.6 NMAC, 7/1/15]

2.84.600.7 DEFINITIONS:
[Reserved]

2.84.600.8 - 2.84.600.9 [Reserved]

2.84.600.10 DIVORCE DECREE OR ORDER:

A. The following information must be contained in a divorce decree or order which divides the community interest in MRA retirement pensions or contributions:

(1) specific information identifying the parties, i.e., full names, addresses, social security numbers, retirement numbers if any;

(2) a declaration that there is a community interest in a member's pension or member contributions;

(3) the percentage or dollar amount of each party's interest in the gross pension as calculated at the time of retirement;

(4) the percentage or dollar amount of each party's interest in member contributions;

(5) a direct order to PERA restraining refund of member contributions except according to the provisions of the decree or order, if such a restraint is desired;

(6) liability for and payment of federal and state income taxes;

(7) a direct order to PERA to issue separate warrants to each party.

B. A separate account may not be created for a member's former spouse who has a court-determined interest in a member's account.

C. A model order or decree containing provisions for the determination and division of the community interest in a MRA member's account shall be available on request from PERA's office of general counsel.

D. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Magistrate Retirement Act. PERA shall not be obligated to administer pension benefits in accordance with such orders until the first of the month following written approval by the office of general counsel.

E. Member files must contain current names and addresses for persons having a court-determined interest in member retirement accounts. Any person with such an interest must provide PERA with a written statement of change of name or address. If a warrant is returned as undeliverable because of incorrect name or address, the money due the person will accumulate in the fund until PERA is furnished with the correct information. No interest shall be paid on any monies so accumulated.

F. Each party must submit a completed W-4 to PERA when applying for a retirement pension.

G. A court order requiring an election of a particular form of payment at retirement or the designation of one or more beneficiaries shall be addressed to the member, and the member shall be responsible for executing the proper PERA forms and providing the documentation necessary to effectuate the election or designation(s). A member who violates such an order may be in contempt of court.

[2.84.600.10 NMAC - Rp, 2.84.600.10 NMAC, 7/1/15]

2.84.600.11 - 2.84.600.19 [Reserved]

2.84.600.20 CHILD SUPPORT OBLIGATION ENFORCEMENT ORDER:

A. The following information must be contained in an order to withhold amounts due in satisfaction of current or delinquent child support obligations.

(1) specific information identifying the member or retired member, i.e., full name, address, social security number, retirement number, if any;

(2) specific information identifying the third party payee, i.e., full name, address, social security number, if any, or account code for child support enforcement bureau;

(3) dollar amount to be withheld from the monthly pension payment or a refund of member contributions;

(4) a direct

order to PERA to issue separate warrants to each party.

B. A model order or decree containing provisions for the withholding of retirement pensions or contributions pursuant to a child support obligation enforcement order shall be available on request from PERA's office of general counsel.

C. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Magistrate Retirement Act.

D. Member files must contain current names and addresses for persons having a court-determined interest in member retirement accounts. Any person with such an interest must provide PERA with a written statement of any change of name or address. If a warrant is returned as undeliverable because of incorrect name or address, the money due the person will accumulate in the fund until PERA is furnished with the correct information. No interest shall be paid on any monies so accumulated.
[2.84.600.20 NMAC - Rp, 2.84.600.20 NMAC, 7/1/15]

2.84.600.21 - 2.84.600.29 [Reserved]

2.84.600.30 FEDERAL PRE-EMPTIVE ORDERS: Pursuant to Section 10-12C-7 NMSA 1978, MRA retirement accounts are not subject to legal process under other state laws, except for division of a community interest in such accounts or in enforcement of child support obligations, both as provided in Section 10-12C-7 NMSA 1978. In the following instances, however, federal laws pre-empt the provisions of Section 10-12C-7 NMSA 1978.

A. IRS notices of levy for unpaid taxes will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the levy is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

B. Orders issued by a U.S. bankruptcy court will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the order is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

C. Orders of garnishment for fines or restitution by a federal court

in a criminal case will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the order is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

[2.84.600.30 NMAC - Rp, 2.84.600.30 NMAC, 7/1/15]

HISTORY OF 2.84.600 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
MRA Rule 600, Interception or Division of Payments, filed on 7-1-92;
MRA Rule 600, Interception or Division of Payments, filed on 11-1-94;
MRA Rule 600, Interception or Division of Payments, filed on 12-1-95.

History of Repealed Material:
2.84.600 NMAC, Magistrate Retirement - Interception or Division of Payments, filed 12/14/2001, repealed 7/1/2015.

**PUBLIC EMPLOYEES
RETIREMENT
ASSOCIATION**

**TITLE 2 PUBLIC FINANCE
CHAPTER 84 MAGISTRATE
RETIREMENT
PART 1100 RETIRED
MEMBERS**

2.84.1100.1 ISSUING AGENCY: Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123.
[2.84.1100.1 NMAC - Rp, 2.84.1100.1 NMAC, 7/1/15]

2.84.1100.2 SCOPE: This rule affects the members, retirees, beneficiaries, public employers, retirement board and the association under the Magistrate Retirement Act (MRA).
[2.84.1100.2 NMAC - Rp, 2.84.1100.2 NMAC, 7/1/15]

2.84.1100.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-12C-3 and 10-12C-17 NMSA 1978, as amended.
[2.84.1100.3 NMAC - Rp, 2.84.1100.3 NMAC, 7/1/15]

2.84.1100.4 DURATION: Permanent.
[2.84.1100.4 NMAC - Rp, 2.84.1100.4

NMAC, 7/1/15]

2.84.1100.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[2.84.1100.5 NMAC - Rp, 2.84.1100.5 NMAC, 7/1/15]

2.84.1100.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the payment, suspension, and reinstatement of pensions of retired members; to establish notification and reporting requirements for post-retirement employment; and to establish conditions for retired members who work for affiliated public employers as independent contractors.
[2.84.1100.6 NMAC - Rp, 2.84.1100.6 NMAC, 7/1/15]

2.84.1100.7 DEFINITIONS: [Reserved]
[2.84.1100.7 NMAC - Rp, 2.84.1100.7 NMAC, 7/1/15]

2.84.1100.8 - 2.84.1100.9 [Reserved]

2.84.1100.10 PAYMENT OF PENSION: Pension payments will be processed or mailed monthly, not later than the last day of the month for which they are paid.

A. A retired member may have the pension warrant mailed directly to any location specified in writing by the retired member; provided however, that after December 31, 1998, the provisions of Paragraph (4) of Subsection B of 2.84.700.10 NMAC shall apply. Arrangements providing for electronic transfer of pension payments to the retiree's banking institution are permitted so long as the retired member's right to receipt of the funds is not altered except as ordered by a court of competent jurisdiction.

B. In the event a retired member is incapacitated or unable to sign his or her pension warrant, proof that a guardian has been appointed for the retired member, or proof of appointment of a conservator for the estate, or a copy of a durable power of attorney for a third party shall be filed with PERA.
[2.84.1100.10 NMAC - Rp, 2.84.1100.10 NMAC, 7/1/15]

2.84.1100.11 - 2.84.1100.19 [Reserved]

2.84.1100.20 POST-RETIREMENT EMPLOYMENT:
A. A member who retires must remain unemployed by an employer covered by any state system or

the educational retirement system. This section does not apply to a retired member who:

(1) performs work for an employer covered by any state system or the educational retirement system as an independent contractor under a contract approved by PERA;

(2) is elected to serve a term as an elected official and filed an irrevocable exemption from membership in any state system with PERA within 30 days of taking office; or

(3) is appointed to serve as a magistrate judge pro tempore.

B. When a retired member is subsequently employed by an affiliated public employer or an employer covered by the educational retirement system, the retired member shall notify PERA immediately of the hire date, position and salary of the subsequently employed retired member.

C. The retired member's pension shall be suspended effective the first of the month following the month in which the subsequent employment begins.

D. If a retired member fails to report earnings from subsequent employment with an affiliated public employer or an employer covered by the educational retirement system, and consequently continues to receive pension payments after such payments should have been suspended pursuant to the requirements of Section 10-12C-16 NMSA 1978 and rules promulgated thereunder, the retired member will be required to repay to PERA any amounts erroneously received, plus interest at the rate set by the board for overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated or the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.

[2.84.1100.20 NMAC - Rp, 2.84.1100.20 NMAC, 7/1/15]

2.84.1100.21 - 2.84.1100.29 [Reserved]

2.84.1100.30 REINSTATEMENT OF PENSION: When a retired member is subsequently employed by an affiliated public employer, causing suspension of pension and resulting in re-establishment of PERA membership, that person will

be eligible to reinstate his or her pension at the termination of the subsequent employment period under the following conditions:

A. the retired member's subsequent employer shall provide PERA with a certificate, in the form prescribed by PERA, of the date of termination of employment;

B. the pension shall be reinstated effective the first day of the month following the month of termination;

C. unless the Public Employees Retirement Reciprocity Act applies, the amount of the reinstated pension shall be the same amount as the suspended pension.

[2.84.1100.30 NMAC - Rp, 2.84.1100.30 NMAC, 7/1/15]

2.84.1100.31 - 2.84.1100.39 [Reserved]

2.84.1100.40 INDEPENDENT CONTRACTORS: If a retired member contracts to perform work for any public employer, the following conditions shall apply:

A. Post-retirement employment contracts with public employers must be submitted to PERA at least 15 working days prior to the effective date of the contract. PERA shall evaluate the contract to determine whether, under the terms of the contract, the retired member is an "employee" or an "independent contractor". In making this determination, PERA shall refer to the common-law control test guidelines as expressed in the social security handbook published by the U.S. department of health and human services, as revised and amended. If PERA determines the retired member is actually an "employee" rather than an "independent contractor" under the terms of the contract, the retired member's pension will be suspended immediately. If the retired member disagrees with PERA's determination, the retired member may appeal PERA's decision pursuant to 2.84.1000 NMAC.

B. Renewals, amendments or modifications of previously approved post-retirement contracts shall also be submitted to PERA for evaluation 15 working days prior to their effective date. The provisions of this section will apply to such renewals, amendments or modifications.

[2.84.1100.40 NMAC - Rp, 2.84.1100.40 NMAC, 7/1/15]

HISTORY OF 2.84.1100 NMAC:

Pre-NMAC History: The material in this part was derived from that previously

filed with the State Records Center and Archives under:

MRA Rule 1100, Retired Members, filed on 11-1-94;

MRA Rule 1100, Retired Members, filed on 12-1-95.

History of Repealed Material:

2.84.1100 NMAC, Magistrate Retirement - Retired Members, filed 12/28/2000, repealed 7/1/2015.

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

**TITLE 2 PUBLIC FINANCE
CHAPTER 87 VOLUNTEER
FIREFIGHTERS
PART 100 GENERAL
PROVISIONS**

2.87.100.1 ISSUING AGENCY: Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[2.87.100.1 NMAC - Rp, 2.87.100.1 NMAC, 7/1/15]

2.87.100.2 SCOPE: This rule affects members, affiliated public employers, the retirement board and the association.
[2.87.100.2 NMAC - Rp, 2.87.100.2 NMAC, 7/1/15]

2.87.100.3 STATUTORY AUTHORITY: This rule is authorized by Section 10-11A-6 NMSA 1978, as amended.
[2.87.100.3 NMAC - Rp, 2.87.100.3 NMAC, 7/1/15]

2.87.100.4 DURATION: Permanent.
[2.87.100.4 NMAC - Rp, 2.87.100.4 NMAC, 7/1/15]

2.87.100.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[2.87.100.5 NMAC - Rp, 2.87.100.5 NMAC, 7/1/15]

2.87.100.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for awarding and reinstating service credit under the Volunteer Firefighters Retirement Act.
[2.87.100.6 NMAC - Rp, 2.87.100.6 NMAC, 7/1/15]

2.87.100.7 DEFINITIONS:
[Reserved]

2.87.100.8 - 2.87.100.9 [Reserved]

2.87.100.10 GENERAL PROVISIONS:

A. The chief of each fire department shall file an executed member enrollment form for each new volunteer firefighter member within 30 days after the firefighter joins the department.

B. Service shall be credited by calendar year.

C. In order to post service credit for any member, the chief of each fire department shall electronically report those members who met and those who did not meet the minimum qualifications for service credit through the PERA website, and shall submit an annual reporting form, as prescribed by the association, which acknowledges the truth of the reporting under oath before a notary public no later than March 31 of the year following the year for which service credit is to be credited.

D. The failure to timely provide these records to PERA shall result in the loss of the member's service credit for the preceding calendar year.

[2.87.100.1 NMAC - Rp, 2.87.100.1 NMAC, 7/1/15]

2.87.100.11 APPEAL OF DENIAL OF CLAIM OF BENEFITS:

The denial of any claim for volunteer firefighters retirement benefits may be appealed by a claimant. Appeals shall follow the procedures set forth in 2.80.1500 NMAC.

[2.87.100.11 NMAC - Rp, 2.87.100.11 NMAC, 7/1/15]

2.87.100.12 - 2.87.100.19 [Reserved]

2.87.100.20 SERVICE CREDIT FOR PRIOR CALENDAR YEARS:

A. Service shall be credited by calendar year.

B. In order to post or adjust service credit for any member for not more than the two preceding calendar years the member must file with the association the following completed records:

(1) membership enrollment form;

(2) "corrected qualification record" or "adjusted qualification record" as prescribed by the association;

(3) adjusted qualification record executed under oath before a notary public.

[2.87.100.20 NMAC - Rp, 2.87.100.20 NMAC, 7/1/15]

2.87.100.21 - 2.87.100.29 [Reserved]

2.87.100.30 ADDRESS

UPDATE: The member is responsible for providing to the association any change of the member's address.

[2.87.100.30 NMAC - Rp, 2.87.100.30 NMAC, 7/1/15]

HISTORY OF 2.87.100 NMAC:

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

VFRA Rule 100, Service Credit Under Volunteer Firefighters Retirement Act, filed on 4-5-95;

VFRA Rule 100, Service Credit Under Volunteer Firefighters Retirement Act, filed on 6-5-95.

History of Repealed Material:

2.87.100 NMAC, Volunteer Firefighters - General Provisions, filed 12/14/2001, repealed 7/1/2015.

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.83.500 NMAC, Section 8, effective 07/01/15.

2.83.500.8 GENERAL PROVISIONS:

A. A member who leaves office for reasons other than retirement may request a refund of his or her total accumulated member contributions.

Refunds shall include interest as provided in Subsection D of this section.

B. No partial refund of a member's contributions is permitted.

C. Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate.

If the deceased member has no living beneficiary, then the personal representative of the estate must provide

PERA with a copy of the letters of administration or order of appointment of personal representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) The member's judicial agency must certify that the member has left office before a refund may be made.

(4) If the member has been divorced, the member shall provide the association with complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a judge or justice. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered pursuant to NMSA 1978, Section 10-12B-7, as amended, the member's former spouse may request, on a form prescribed by the association that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code, as specified under Subsection H of 2.83.500.8 NMAC.

(5) After tax employee contributions that are not includible in gross income may be directly refunded to the member.

D. Interest on member contributions shall be posted annually effective June 30 at the rate of [~~5.25%~~ two percent (2%)].

E. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by the association. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is

furnished with the correct information.

F. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any judge would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

G. The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

H. For distributions made on or after January 1, 1993, notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the PERA, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) A non-spouse beneficiary may only rollover the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited individual retirement account or annuity.

(2) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred, and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

[10-15-97; 11-15-97; 2.83.500.8 NMAC - Rn & A, 2 NMAC 83.500.8, 12-28-00; A, 12-28-01; A, 9-30-03; A, 12-15-09; A, 07-01-15]

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

**This is an amendment to 2.83.700
NMAC, Section 10, effective 07/01/15.**

2.83.700.10 PROCEDURE FOR RETIREMENT:

A. Application.
(1) The member shall request an application for retirement from PERA. To insure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in Subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable within a reasonable time of receipt of the properly completed application and required documents.

(3) When the application is filed, PERA shall furnish the member's last judicial agency with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the judicial agency.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the survivor beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form.

(6) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service credit and age; and c) the member's leaving office. An application will be deemed to be "filed" when received by PERA as evidenced by

a writing on the application indicating the date of receipt by PERA.

(7) The retirement of the judge shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. Documentation:
The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries. Acceptable documents are a birth certificate, a baptismal certificate, or religious record of birth established before age 5 years, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life insurance policy;
- (b) certified copy of voter registration issued over ten years prior;
- (c) tribal census record;
- (d) childhood immunization record made prior to age eighteen (18) years;
- (e) military record;
- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) passport;
- (i) immigration record;
- (j) naturalization record.

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated survivor beneficiary to be identified as a spouse.

(3) Complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a judge or justice. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.

(4) Any

member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free or any other service credit may be made after the first pension payment.

D. Under the provisions of NMSA 1978, Section 10-12B-12, the Public Employees Retirement Reciprocity Act applies to members covered under the Judicial Retirement Act early retirement.

E. In addition to any other vesting provided by state law, a judge's normal retirement benefit is non-forfeitable when the judge reaches normal retirement age, which is age ~~sixty-four (64)]~~ sixty-five (65), with five (5) or more years of credited service, whichever is later for an individual who initially became a judge prior to July 1, 2014 and age sixty-five (65) with eight (8) or more years of credited service whichever is later for an individual who initially became a judge on or after July 1, 2014. A judge is also vested in his or her accrued benefits when the judge reaches such lesser age and specified years of credited service as provided under the plan. If there is a termination of the judicial retirement system, or if employer contributions to the judicial retirement plan are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable. [10-15-97; 11-15-97; 2.83.700.10 NMAC - Rn & A, 2 NMAC 83.700.10, 12-28-00, A, 12-28-01; A, 12-30-13; A, 07-01-15]

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.500 NMAC, Section 8, effective 07/01/15.

2.84.500.8 GENERAL PROVISIONS:

A. A member who leaves office for reasons other than retirement may request a refund of his or her total accumulated member contributions. Refunds shall include interest as provided in Subsection (D) of this section.

B. No partial refund of a member's contributions is permitted.

C. Requests for refunds of member contributions shall be made on

forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the letters of administration or order of appointment of personal representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) The member's judicial agency must certify that the member has left office before a refund may be made.

(4) If the member has been divorced, the member shall provide the association with complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documentation shall include the final decrees and marital property settlements for all marriages during the member's employment as a magistrate. If the member's only divorce was prior to becoming a member, then the final divorce decree is required but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered pursuant to NMSA 1978, Section 10-12C-7, as amended, the member's former spouse may request, on a form prescribed by the association, that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code as specified under Subsection H of 2.84.500.8 NMAC.

(5) After tax employee contributions that are not includible in gross income may be directly refunded to the member.

D. Interest on member contributions shall be posted annually effective June 30 at the rate of ~~[5-25%]~~ two percent (2%).

E. Members may designate only one refund beneficiary.

Such designation shall be in writing in the form prescribed by the association. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

F. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any magistrate would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

G. The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

H. For distributions made on or after January 1, 1993, notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the PERA, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) A non-spouse beneficiary may only rollover the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited individual retirement account or annuity.

(2) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code

Section 403(b), that agrees to separately account for amounts so transferred, and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

[10-15-97; 11-15-97; 2.84.500.8 NMAC - Rn & A, 2 NMAC 84.500.8, 12-28-00; A, 12-28-01; A, 9-30-03; A, 12-15-09; A, 07-01-15]

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.700 NMAC, Section 10, effective 07/01/15.

2.84.700.10 PROCEDURE FOR RETIREMENT:

A. Application.

(1) The member shall request an application for retirement from PERA. To insure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable within a reasonable time of receipt of the properly completed application and required documents.

(3) When the application is filed, PERA shall furnish the member's last judicial agency with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the judicial agency.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the survivor beneficiary elected by the member or an affidavit that the member is not married.

An affidavit naming all former spouses must also accompany the final application form.

(6) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service credit and age; and c) the member's leaving office. An application will be deemed to be "filed" when received by PERA as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. Documentation:

The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries. Acceptable documents are a birth certificate, a baptismal certificate, or religious record of birth established before age 5 years, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life insurance policy;
- (b) certified copy of voter registration issued over ten years prior;
- (c) tribal census record;
- (d) childhood immunization record made prior to age eighteen (18) years;
- (e) military record;
- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) passport;
- (i) immigration record;
- (j) naturalization record.

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated survivor beneficiary to be identified as a spouse.

(3) Complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member

is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a magistrate. If the member's only divorce was prior to becoming a member, then the final decree is required, but no marital property settlement is required. If the member was divorced more than once prior to becoming a member, then only the most recent final decree is required.

(4) Any member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. In addition to any other vesting provided by state law, a magistrate's normal retirement benefit is non-forfeitable when the magistrate reaches normal retirement age, which is age ~~[sixty-four (64)]~~ sixty-five (65), with five (5) or more years of credited service, whichever is later for an individual who was a member on June 30, 2014 and age sixty-five (65) with eight (8) or more years of credited service, whichever is later for an individual who initially became a member on or after July 1, 2014. A magistrate is also vested in his or her accrued benefits when the magistrate reaches such lesser age and specified years of credited service as provided under the plan. If there is a termination of the magistrate retirement system, or if employer contributions to the magistrate retirement plan are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

[10-15-97; 11-15-97; 2.84.700.10 NMAC - Rn & A, 2 NMAC 84.700.10, 12-28-00; A, 12-28-01; A, 12-30-13; A, 07-01-15]

WATER QUALITY CONTROL COMMISSION

Explanatory paragraph: This is an amendment to 20.6.6 NMAC, Sections 10 & 21, effective June 30, 2015. In 20.6.6.10 NMAC, Subsections A through G and I through J and in 20.6.6.21 NMAC, Subsections A through K and M through N were not published as there were no changes.

20.6.6.10 GENERAL APPLICATION REQUIREMENTS FOR ALL DAIRY FACILITIES: This section specifies the general requirements for discharge permit applications for all types of dairy facilities.

H. An applicant may propose alternate methods and innovative technologies such as new or advanced storage, treatment or disposal methods not directly addressed by this rule or different from those specified in 20.6.6.17, 20 and 21 NMAC. At its discretion, the department may approve an alternate method provided all of the following conditions are met:

(1) A pre-application meeting is held prior to application submittal. The meeting may be held at an appropriate demonstration site to show the suitability/applicability of the proposed method.

(2) A demonstration is made to the department's satisfaction that the proposed alternate method or technology, including its engineering design, equipment, process, operation and maintenance, will not result in an [exceedence] exceedance of the water quality standards of 20.6.2.3103 NMAC.

(3) Plans and [specification] specifications are submitted that meet the requirements of Subsections A and B of 20.6.6.17 NMAC.

(4) A plan to monitor ground water that may be affected by the alternate method or technology shall be submitted that is consistent with requirements of 20.6.6.23 NMAC.

[20.6.6.10 NMAC - N, 01/31/2011; A, 06/16/2015; A, 06/30/2015]

20.6.6.21 ADDITIONAL OPERATIONAL REQUIREMENTS FOR DAIRY FACILITIES WITH A LAND APPLICATION AREA:

L. Backflow prevention. A permittee shall protect all water wells used within the land application distribution system from contamination by wastewater or stormwater backflow by installing and maintaining backflow prevention methods or devices. Backflow prevention shall be achieved by a total disconnect (physical air gap separation

of at least two times the pipe diameter or complete piping separation when wastewater is being pumped) or by the installation of, at a minimum an air/vacuum relief valve and a low pressure drain valve located immediately upstream of a check valve between the discharge head of the well pump and wastewater and stormwater delivery systems.

(1) A permittee for a new dairy facility shall install backflow prevention methods or devices and submit written confirmation of installation to the department before discharging at the dairy facility.

(2) A permittee for an existing dairy facility that lacks backflow protection as required by this subsection shall install backflow prevention methods or devices within 90 days of the effective date of the discharge permit. The permittee shall submit written confirmation of installation to the department within 180 days of the effective date of the discharge permit. [20.6.6.21 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015; A, 06/30/2015]

End of Adopted Rules Section

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Other Material Related To Administrative Law

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

Notice Of Public Hearing

The Human Service Department is required by the Federal Community Opportunity Accountability Training and Education Services (COATES) Reauthorization Act of 1998 to submit a State Plan to the U.S. Department of Health and Human Services, Office of Community Services in order to receive a grant or allotment for the Community Services Block Grant (CSBG) program. The Department is required to offer a 30-day comment period for the CSBG State Plan prior to submittal.

The proposed CSBG State Plan is available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. If you do not have Internet access, a copy of the proposed State Plan may be requested by contacting the Income Support Division's Work and Family Support Bureau (WFSB) at 505-827-7251. The Department proposes to implement the plan effective October 1, 2015.

A public hearing will be held at 11:00 am on July 30, 2015. The hearing will be held at the Income Support Division Conference Room, 2009 S. Pacheco St., Santa Fe, NM, 87505. Parking accessible for persons with physical impairments is available.

Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-827-7251.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-7701 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written or

recorded comments to:

Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: HSD-isdrules@state.nm.us

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

Notice Of Public Hearing

The Human Service Department is required by Federal Law to file a State Plan that describes how the Department will administer the State's Low Income Home Energy Assistance Program (LIHEAP). The State Plan must be submitted every year to the United States Department of Health and Human Services (DHHS), Administration for Children and Families (ACF). The Department is required to offer a 30-day comment period for the LIHEAP State Plan that includes Weatherization prior to submittal.

A public hearing to receive testimony on this proposed regulation will be held on July 30, 2015, at 10:00 AM. The hearing will be held in the Income Support Division Conference room, located on the first floor of Pollon Plaza at 2009 S. Pacheco St., Santa Fe, NM 87505. Parking accessible for persons with physical impairments is available.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-7701 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

The Department proposes the New Mexico LIHEAP State Plan covering the period of October 1, 2015 to September 30, 2016. All comments received will be considered for the New Mexico LIHEAP State Plan.

A copy of the proposed LIHEAP State Plan is available in written format upon request. Please call the Income Support Division at 1-888-523-0051 or 1-505-827-7227 to request a copy. You may also send a request to:

Human Services Department
Income Support Division
Attn: Work and Family Support Bureau/
LIHEAP
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

The proposed State Plan is available on and can be printed from the Department's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>.

Interested persons may address written or recorded comments to:

Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

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End Of Other Material Related To Administrative Law

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| Issue 2 | January 16 | January 30 |
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| Issue 5 | March 2 | March 16 |
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For further information, call 505-476-7942