

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 13 EMPLOYMENT PROGRAMS FOR OLDER WORKERS

9.2.13.1 ISSUING AGENCY: New Mexico Aging and Long-Term Services Department.
[9.2.13.1 NMAC - Rp, SAA Rule No. 95-13, 02/12/2010]

9.2.13.2 SCOPE: These rules apply to members of the public and organizations that apply to participate in one or more of the programs created in this part.
[9.2.13.2 NMAC - N, 02/12/2010]

9.2.13.3 STATUTORY AUTHORITY: NMSA 1978, Sections 9-23-1 et seq. and 28-4-1 et seq.
[9.2.13.3 NMAC - Rp, SAA Rule No. 95-13.1, 02/12/2010]

9.2.13.4 DURATION: Permanent.
[9.2.13.4 NMAC - N, 02/12/2010]

9.2.13.5 EFFECTIVE DATE: 02/12/2010, unless a later date is cited in the history note at the end of a section.
[9.2.13.5 NMAC - N, 02/12/2010]

9.2.13.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the federal and state funded programs administered by the employment programs bureau of the aging network division of the aging and long-term services department and to comply with Older Americans Act Sections 501 through 518, (codified as amended at 42 U.S.C. Section 3056); and implementing regulations, 20 CFR Part 641 (as amended).
[9.2.13.6 NMAC - N, 02/12/2010]

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

A. "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.

B. "Applicant" means a member of the public who completes an application to become a participant in one of the programs created in this part.

C. "Community service" means social, health, welfare and educational services; legal and other counseling services and assistance; library, recreational services, conservation, maintenance or restoration of natural resources, community betterment or beautification, pollution control or environmental quality efforts, economic development or other types of service, which the department approves, excluding building and construction, except that which is normally performed by the department, or work which primarily benefits private profit-making organizations.

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

E. "Equitable distribution plan" means the process of allocating positions based on age and income census data as required pursuant to 20 CFR Sections 641.140, 641.360, 641.365 and 641.879 (Older Americans Act regulations as amended).

F. "Golden opportunities for life-long development (GOLD) mentor program" means a program administered by the department to provide civic engagement through community service and training opportunities for participants.

G. "Gold mentors" are participants in the gold mentor program; they provide life skills and employment assistance to clients working to overcome barriers.

H. "Host agency" is an agency or organization selected by the department where an eligible employment program participant is placed in a subsidized position for work experience and training.

I. "New Mexico senior employment program" means the state funded employment and training program designed to provide community service employment opportunities for older adults that enable them to remain actively engaged in their communities.

J. "Older Americans Act of 1965" (Older Americans Act) means Sections 501 through 518, title V, "The Older American Community Service Employment Act", Pub. L. 89-73, as amended by Pub. L. 109-363, enacted Oct. 16, 2006, (codified as amended at 42 U.S.C. Section 3056), and implementing regulations, 20 CFR Part 641 (as amended).

K. "Participants" are applicants who:

(1) have been deemed eligible for training under the programs set forth in this part and have been placed in subsidized on-the-job training; or

(2) have been hired and placed in community service and training opportunities.

L. "Pay period" means the two-week period as established and published by the New Mexico department of finance and administration.

M. "Position" is an on-the-job training or community service opportunity created by one of the programs set forth in this part.

N. "Poverty level" is the level established and periodically updated by the United States department of health and human services.

O. "Program year" is the period of July 1 through June 30.

P. "Senior community service employment program" (SCSEP) means the federal employment and training program funded pursuant to the provisions of Title V of the Older Americans Act, sections 501 through 518.

Q. "Subsidized on-the-job training" is participation in the programs set forth in this part that fund wages for hours worked using federal or state monies.

R. "Supervisor" is the individual designated by the host agency or the department to oversee the work of a participant.

S. "Transition" is the movement of a participant from on-the-job training to unsubsidized employment.

T. "Unsubsidized employment" is work in the public or private sector not funded from one of the programs set forth in this part.

[9.2.13.7 NMAC - Rp, SAA Rule No. 95-13.2, 02/12/2010]

9.2.13.8 SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM (SCSEP):

A. Position allocation.

(1) The department will follow an equitable distribution plan pursuant to Section 507 of the Older Americans Act and 20 CFR Sections 641.140, 641.360, 641.365 and 641.879 (as amended) and endeavor to allocate positions to each county in New Mexico based on the projected percentage of individuals meeting the eligibility requirements of this section.

(2) When allocating positions, the equitable distribution of all senior community service employment program resources available through federal contractors operating in New Mexico will be considered.

(3) When a participant exits subsidized on-the-job training and a vacancy occurs, the vacant position is removed from the host agency and will be placed in a statewide pool and reassigned as follows:

(a) any inequities in the equitable distribution plan will be noted and the most under-served counties will have priority to receive the position;

(b) applicants will be sought or taken from a waiting list, if one exists;

(c) federally-mandated priorities and preferences will be implemented in accordance with Section 518 of the OLDER AMERICANS ACT and 20 CFR Sections 641.515 through 641.530 (as amended);

(d) chosen applicants will be assessed for their employment goals;

(e) host agencies that provide training which matches applicant goals will be chosen;

(f) in the event of more than one host agency that matches applicant goals, priority will be given to the host agency that demonstrates ability to provide training resulting in the unsubsidized employment of participants.

B. Eligibility requirements are:

(1) an applicant shall be 55 years of age or older in order to be determined eligible, no applicant may be determined ineligible because of advanced age, and no upper age limitation may be used;

(2) an applicant's income shall meet the eligibility requirements specified in the Older Americans Act in order to be determined eligible;

(3) an applicant shall be a resident of New Mexico, unless a cross-border agreement with a neighboring state exists, in order to be determined eligible;

(4) any additional requirements of the Older Americans Act, such as that an applicant be unemployed, will be implemented; and

(5) after completing an application, an applicant may need to disclose additional information or submit to additional screening in order to qualify for a specific placement at the discretion of the department and the host agency, including, but not limited to: background checks or proof of applicable licensure; (for example, work with young children or vulnerable adults may require a criminal background check, large vehicle operation may require a special driver's license, operation of heavy equipment or lifting heavy loads may require additional medical disclosure) failure to fully disclose information relevant to meeting the qualifications for a position may result in termination, change, or lack of placement.

C. An eligible applicant who has been accepted as a participant shall be offered a physical examination at the time of enrollment and annually thereafter. The participant may waive this benefit and shall do so in writing.

D. Senior community service employment program trainee participants are excluded from membership in the public employees retirement association.

E. Eligible participants shall be placed in on-the-job training positions that provide community service. Participants may not engage in political activities pursuant to Older Americans Act Section 502 (b)(1)(P) implemented at 20 CFR Section 641.836 (as amended).

F. Wages shall be at least the prevailing federal, state or local minimum wage, whichever is higher.

G. In compliance with the Fair Labor Standards Act of 1938, 29 U.S.C. Chapter 8 Section 201 et seq. (as amended), participants are not allowed to donate extra volunteer hours at work sites unless the volunteer work is substantially different than that required by their subsidized positions.

H. The department may transfer a participant from one host agency to another.

I. The department shall determine whether an agency or organization is eligible to be designated a host agency, pursuant to Older Americans Act Section 502(b)(1)(D) implemented at 20 CFR Sections 641.140 and 641.844 (as amended). Before a position can be assigned to the host agency, a proper agreement shall be executed.

J. The department shall develop and maintain policy and procedure manuals. Such manuals will designate participant benefits and other policies and procedures to enable the smooth operation of the program.

K. Participants shall be reimbursed mileage, per diem and other expenses only in accordance with policies and procedures developed by the department.

L. No waivers of the eligibility requirement under the senior community service employment program may be granted by the department.

[9.2.13.8 NMAC - Rp, SAA Rule No. 95-13.3, 02/12/2010]

9.2.13.9 NEW MEXICO SENIOR EMPLOYMENT PROGRAM:

A. The department will work in collaboration with area agencies on aging and other aging network providers to allocate positions within each planning and service area.

B. Eligibility requirements are:

(1) an applicant shall be 55 years of age or older in order to be determined eligible, no applicant may be determined ineligible because of advanced age, and no upper age limitation may be used; and

(2) an applicant's income shall meet the income eligibility requirements specified in the Older Americans Act Section 518 Paragraphs (3) and (4) as implemented at 20 CFR Part 641 (as amended) in order to be determined eligible; and

(3) an applicant shall be a resident of New Mexico in order to be determined eligible;

(4) after completing an application, an applicant may need to disclose additional information or submit to additional screening in order to qualify for a specific placement at the discretion of the department and the host agency, including, but not limited to: background checks or proof of applicable licensure; (for example, work with young children or vulnerable adults may require a criminal background check, large vehicle operation may require a special driver's license, operation of heavy equipment or lifting heavy loads may require additional medical disclosure) failure to fully disclose information relevant to meeting the qualifications for a position may result in termination, change, or lack of placement.

C. An eligible applicant who has been accepted as a participant shall be offered a physical examination at the time of enrollment and annually thereafter. The participant may waive this benefit and shall do so in writing.

D. New Mexico senior employment program trainee participants are excluded from membership in the public employees retirement association.

E. Eligible participants shall not be placed in on-the-job training positions in which they engage in political or religious activities.

F. Wages shall be at least the prevailing federal, state or local minimum wage, -- whichever is higher.

G. In compliance with the Fair Labor Standards Act of 1938, 29 U.S.C. Chapter 8 Section 201 et seq. (as amended), participants are not allowed to donate extra volunteer hours at work sites unless the volunteer work is substantially different than that required by their subsidized positions.

H. The department may transfer a participant from one host agency to another.

I. The department shall determine whether an agency or organization is eligible to be designated a host agency. Before a position can be assigned to the host agency, a proper agreement shall be executed.

J. The department shall develop and maintain policy and procedure manuals. Such manuals will designate participant benefits and other policies and procedures to enable the smooth operation of the program.

K. Participants shall be reimbursed mileage, per diem and other expenses only in accordance with policies and procedures developed by the department.

L. Waivers of age and income eligibility requirements may be granted by the department on a case-by-case basis.

[9.2.13.9 NMAC - Rp, SAA Rule No. 95-13.4, 02/12/2010]

9.2.13.10 GOLD MENTOR PROGRAM:

A. GOLD mentor positions are created as funding is available. Allocation of positions under this program is developed in consultation with funding entities. Considerations for allocation of positions may include the number of clients available for mentors to serve in a particular region and the availability of suitable office space.

B. Eligibility requirements are:

(1) GOLD mentors shall be 50 years of age or older in order to be deemed eligible;

(2) mentors shall be residents of New Mexico to be deemed eligible;

(3) there are no income eligibility criteria;

(4) after completing an application, an applicant may need to disclose additional information or submit to additional screening in order to qualify for a specific placement at the discretion of the department and the host agency, including, but not limited to: background checks or proof of applicable licensure; (for example, work with young children or vulnerable adults may require a criminal background check, large vehicle operation may require a special driver's license, operation of heavy equipment or lifting heavy loads may require additional medical disclosure) failure to fully disclose information relevant to meeting the qualifications for a position may result in termination, change, or lack of placement.

C. GOLD mentor trainee participants are excluded from membership in the public employees retirement association.

D. The department shall develop and maintain policy and procedure manuals. Such manuals will designate mentor benefits and other policies and procedures to enable the smooth operation of the program.

E. The GOLD mentors shall be reimbursed mileage, per diem and other expenses only in accordance with policies and procedures developed by the department.

F. Waivers of age eligibility requirements may be granted by the department on a case-by-case basis.
[9.2.13.10 NMAC - N, 02/12/2010]

9.2.13.11 GRIEVANCE PROCEDURE:

A. An applicant who has been determined ineligible for enrollment or placement in the programs created under this part may:

(1) request a reconsideration regarding ineligibility from the employment programs bureau chief, either in person, by telephone, or in writing, within five calendar days of receipt of the notice of ineligibility determination;

(2) the bureau chief shall have ten calendar days from receipt of the request for reconsideration to review the documentation and make a second determination of eligibility;

(3) if the applicant still believes that the determination is incorrect, the applicant's next step is to contact the aging network division director in writing within ten calendar days of receipt of the bureau chief's ineligibility determination, challenging the reasons given for ineligibility, and providing accompanying documentation;

(4) after reviewing the challenge and accompanying documentation, the division director shall make a determination affirming or reversing the determination of eligibility by the bureau chief within ten calendar days of receiving the challenge; the division director's determination shall be final.

B. Any participant who believes that he or she has been subject to unfair treatment, discrimination, or harassment by a supervisor, manager, co-worker or a host agency may proceed as follows.

(1) Step 1: The participant may discuss a problem or grievance with the participant's supervisor, either in person, by telephone, or in writing, within five calendar days of the occurrence of the problem. The supervisor shall then work with the participant to provide a solution or an explanation within ten additional calendar days. If more time is required for the supervisor to provide a meaningful response, the participant will be notified of this fact and advised of the anticipated response date. In no event shall the supervisor extend the response date by more than 30 days from receipt of first notice. However, if the participant finds it difficult to discuss the problem with the supervisor, the participant may proceed directly to step 2.

(2) Step 2: If the problem or grievance remains unresolved to the participant's satisfaction after following Step 1, or if the participant found it difficult to discuss the problem with the supervisor, the participant may proceed to the host agency's next level of authority. The participant may discuss the problem with this level of authority, either in person, by telephone, or in writing, within five calendar days of the event giving rise to the grievance or the response of the supervisor in step 1. This level of authority shall then work with the participant to provide a solution and/or explanation within ten additional calendar days. If the participant feels that the problem continues to remain unresolved, the participant may proceed to step 3.

(3) Step 3: If the participant is unable to receive a satisfactory answer or resolution to the problem from the host agency in step 2, the participant may then submit a written grievance to the employment programs bureau chief within five days after the participant receives the response from the host agency in step 2. This written grievance shall include the following: the nature of the grievance, relevant facts and specific actions, and the requested relief or course of action. The bureau chief shall contact the participant within ten calendar days after receiving the written grievance, to obtain additional information relevant to the grievance. The bureau chief may investigate the grievance and shall provide a written determination. This shall be mailed to the participant within 20 calendar days after the bureau chief's receipt of the grievance unless additional time is required for investigation. If additional time is required, the participant will be notified of that fact and advised of the response date. In no event shall the bureau chief extend the response date by more than 30 days from receipt of first notice.

(4) If the problem or grievance remains unresolved to the participant's satisfaction following step 3, the participant may follow the appeal procedure outlined 9.2.13.12 NMAC.
[9.2.13.11 NMAC - N, 02/12/2010]

9.2.13.12 RIGHT OF APPEAL OF PARTICIPANTS:

A. Participants in programs created under this part have a right of appeal in the following circumstances:

(1) when participation has been involuntarily terminated by written notification from the department;
or

(2) when deemed ineligible for continued enrollment by written notification from the department; or

(3) when, after following the grievance procedure outlined in Subsection B of 9.2.13.11 NMAC, the problem or grievance remains unresolved.

B. Appeal procedures for program participants who meet the criteria set forth in Subsection A of this section:

(1) an appeal, pursuant to Subsection A of this section, shall be submitted in writing to the director of the aging network division within five working days following receipt of the notice of action;

(2) the aging network division director shall contact the participant within ten calendar days after receiving the written appeal to confirm receipt of the appeal and provide an opportunity to obtain additional information relevant to the appeal;

(3) after affording the applicant the opportunity to produce additional relevant information, the aging network division director shall provide a written decision in response to the appeal within 25 calendar days following contact with the participant;

(4) the aging network division director's decision shall be final and binding;

(5) complaints of violations of federal law that cannot be resolved within 60 days as a result of this appeal procedure may be filed with the employment and training administration of the United States department of labor or other appropriate entities.

[9.2.13.12 NMAC - N, 02/12/2010]

HISTORY OF 9.2.13 NMAC:

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

SAA Rule No. 95-13, Employment Programs for the Elderly, filed 4/13/95.

History of Repealed Material: SAA Rule No. 95-13, Employment Programs for the Elderly (filed 4/13/95) repealed 02/12/2010.

Other History:

SAA Rule No. 95-13, Employment Programs for the Elderly (filed 4/13/95) was renumbered, reformatted and replaced by 9.2.13 NMAC, Employment Programs for Older Workers, effective 02/12/2010.