

TITLE 2 PUBLIC FINANCE
CHAPTER 79 INDIVIDUAL DEVELOPMENT ACCOUNTS
PART 1 GENERAL PROVISIONS

2.79.1.1 ISSUING AGENCY: New Mexico Department of Finance and Administration, Local Government Division.
[2.79.1.1 NMAC - N, 04/29/2005]

2.79.1.2 SCOPE: All individual development account program administrators funded pursuant to the Act, state agencies and other stakeholders affected by the rule. The scope of these rules includes, but is not limited to:
A. policies concerning the eligible uses for and establishment of individual development accounts;
B. selection criteria and requirements for participating individual development account program administrators; and
C. eligibility criteria for individual account owners.
[2.79.1.2 NMAC - N, 04/29/2005]

2.79.1.3 STATUTORY AUTHORITY: The Individual Development Account Act, Section 58-30-5, NMSA 1978 and Section 9-6-5 Subsection E, NMSA 1978.
[2.79.1.3 NMAC - N, 04/29/2005]

2.79.1.4 DURATION: Permanent.
[2.79.1.4 NMAC - N, 04/29/2005]

2.79.1.5 EFFECTIVE DATE: 04/29/2005 unless a later date is cited at the end of a section.
[2.79.1.5 NMAC - N, 04/29/2005]

2.79.1.6 OBJECTIVE: The Individual Development Account Act (Sections 58-30-1 through 58-30-12 NMSA 1978; being Laws 2003, Chapter 362) established a structure to provide oversight to individual development account programs in New Mexico funded through the act. These rules are designed to:
A. identify and promote quality individual development account initiatives throughout the state while encouraging innovation and diversity;
B. ensure accountability of account owners, account programs, program administrators as well as other stakeholders; and
C. provide standards of eligibility and program administration for individual development account programs in New Mexico.
[2.79.1.6 NMAC - N, 04/29/2005]

2.79.1.7 DEFINITIONS:
A. "**Account owner**" means the person in whose name an individual development account is originally established.
B. "**Act**" means the Individual Development Account Act, Sections 58-30-1 through 58-30-12 NMSA 1978.
C. "**Allowable use**" means monies expended from an individual development account for the account owner or the account owner's spouse or dependents for a use listed below:
(1) expenses to attend an approved post-secondary or vocational educational institution, including, but not limited to, payment for tuition, books, supplies and equipment required for courses;
(2) costs to acquire or construct a principal residence that is the first principal residence acquired or constructed by the account owner;
(3) costs of major home improvements or repairs on the principal residence of the account owner;
(4) capitalization or costs to start or expand a business including equipment, tangible personal property, operational and inventory expenses, legal and accounting fees and other costs normally associated with starting or expanding a business;
(5) acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner, and
(6) in the case of a deceased account owner, amounts deposited by the account owner and held in an individual development account shall be distributed to a beneficiary if not in conflict with the New Mexico Uniform

Probate Code Sections 45-1-101 through 45-1-404, NMSA 1978. If the beneficiary is eligible to maintain the account, according to the provisions of the act and these rules, then the account as well as matching funds designated for that account from the program reserve fund of the program administrator may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

D. "Authorized financial institution" means a financial institution authorized by the division to hold and manage individual development accounts and reserve accounts.

E. "Business" means a sole proprietorship, business venture or corporate structure in which the account owner will be an owner of greater than 50 percent.

F. "Director" means the director of the division.

G. "Division" means the local government division of the New Mexico department of finance and administration.

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

I. "Education" means a job training or related educational program approved by the program administrator and the division.

J. "Eligible individual" means a person who meets the criteria for opening an individual development account.

K. "Emergency withdrawal" means a withdrawal by an account owner that:

(1) is a withdrawal of only those funds, or a portion of those funds, deposited by the account owner in the individual development account of the account owner;

(2) is permitted by a program administrator on a case-by-case basis; and

(3) is made due to a personal crisis, including but not limited to illness, eviction, potential foreclosure, job loss or urgent family reasons and approved in writing by a program administrator.

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

M. "Financial literacy" means a basic understanding of budgets and savings accounts, credit and interest and how to use financial services including, but not limited to having a savings plan to reach the account owner's savings goal for an individual development account.

N. "First principal residence" means a principal residence to be acquired or constructed by an account owner who has no ownership interest in a principal residence during the three-year period ending on the date of acquisition of the principal residence.

O. "Individual development account" means an account established and maintained in an authorized financial institution by an eligible individual participating in an individual development account program pursuant to the act.

P. "Individual development account program" means a program established by a program administrator approved by the division to establish and administer individual development accounts and reserve accounts for eligible individuals and to provide financial training required by the division for account owners.

Q. "Major home improvement or repair" means a home improvement to a residential location that has been occupied continuously by the account owner for at least 12 months and is the principal residence of the account owner who is named as the mortgage holder. The home improvement must be one that increases the value of the residence or that will sustain the value of the home as approved by the program administrator. These improvements include, but are not limited to structural alterations and reconstruction, changes for improved functions and modernizations, elimination of health and safety hazards, and energy conservation improvements.

R. "Matching funds" means money deposited in a reserve account at a ratio of not less than one dollar (\$1.00) of program administrator funds to one dollar (\$1.00) of account owner deposits to match the withdrawals for allowable uses from an individual development account.

S. "Non-profit organization" means an instrumentality of the state or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. X 501(c)(3)) and exempt from taxation pursuant to Section 501(a) of that code.

T. "Post-secondary or vocational education" means a post-secondary university, community college, vocational-technical school, institution or specialized degree-granting college or school legally authorized to grant degrees or certificates.

U. "Program administrator" means only 501(c)(3) nonprofit organizations, tribes and instrumentalities of the state that are determined by the director to be eligible to offer an individual development account program.

V. "Reserve account" means an account established pursuant to the act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner.

W. "Savings plan" means a plan developed with an account owner and a program administrator defining savings goals and program requirements, including the allowable use of both the individual development account and the matching funds. The approved plan shall serve as the contract between the account owner and the program administrator.

X. "Tribe" means an Indian nation, tribe or pueblo located in whole or in part within New Mexico. [2.79.1.7 NMAC - N, 04/29/2005]

2.79.1.8 RESPONSIBILITIES OF THE DIVISION:

A. Annually, based on the availability of state funds including administrative costs of program administrators, the division shall solicit requests for proposals from non-profit organizations or tribes interested in establishing or further developing an individual development account program.

B. The director shall determine if the entity is eligible to be a program administrator under the act and these rules. Individual development account programs and program administrators are subject to review and approval by the director.

C. Prior to receiving funds pursuant to the act, an individual development account program and program administrator shall be approved the director.

D. The director shall monitor all individual development account programs and program administrators subject to the act and these rules and consult with the regional planning and development councils (COGs/EDDs) on program implementation as needed to ensure that account owners' accounts and the reserve fund accounts are being operated according to federal law, the provisions of the act and these rules.

E. Each November, the division shall provide a report of the activities under the act to the governor and to an appropriate interim committee of the legislature.

F. The division shall provide staff support and administrative services for the individual development account advisory committee in accordance with the act.

[2.79.1.8 NMAC - N, 04/29/2005]

2.79.1.9 RESPONSIBILITIES OF THE ADVISORY COMMITTEE: Pursuant to the act and these rules, the advisory committee shall provide oversight of the administration of individual development account programs operated by program administrators and subject to the act and these rules, suggest possible changes that benefit account owners or improve the effectiveness of the individual development account programs throughout the state.

A. The advisory committee shall meet at least two times in a calendar year to review the implementation of the act and these rules.

B. The advisory committee members are appointed by the governor and consist of the lieutenant governor and eight members to represent the state geographically. The director or his designee serves as an ex-officio member of the advisory committee.

[2.79.1.9 NMAC - N, 04/29/2005]

2.79.1.10 PARTICIPATION CRITERIA FOR PROGRAM ADMINISTRATORS:

A. In order to receive state funds and be approved by the director, a program administrator shall demonstrate, to the satisfaction of the division, that it meets the criteria below.

(1) It shall qualify as a tax-exempt, not-for-profit organization under Sections 501(a) and 501(c)(3) of the Internal Revenue Code of 1986, a tribe or an instrumentality of the state.

(2) It shall establish a reserve account with an authorized financial institution sufficient to meet the matching fund commitments made to all account owners participating in the program and shall report at least quarterly to each account owner the amount of money available in the reserve account to match the account owner's withdrawal for an allowable use following completion of all program requirements.

(3) It shall offer a comprehensive financial literacy program and other necessary training pertinent to the allowable uses agreed to by the account owner either with its own staff or through a plan of action utilizing qualified providers.

(4) It shall develop partnerships with financial institutions, develop account owner matching funds and manage the operations of an individual development account that is established by the program administrator with fiduciary care.

(5) It shall have access to facilities that are reasonably accessible to account owners and comply with state and federal building laws.

(6) It shall have human and material resources sufficient to implement an individual development account program and shall have a successful history of providing service to low-income persons and of success in raising funds for that purpose. If it is a new organization, it shall have staff and board members who have had such experience in other organizations.

(7) It shall present a workable plan for development, implementation, fiduciary care and management of an individual development account program. The plan shall include endorsement from at least one cooperating local financial institution. The plan shall indicate the length of time, in months and years, of the operation of the program by the organization, taking into account the resources that are or will be available.

(8) It shall provide a description of its contingency plan in the event the program administrator is no longer able to operate the program. Such contingency plan shall include, but not be limited to:

- (a) a requirement of immediate notice to all account owners and the division; and
- (b) all actions the program administrator shall take to ensure the orderly closing of the

program.

(9) It shall not possess any other deficit that may raise doubt as to its ability to administer an individual development account program, including but not limited to, conviction of a crime by any officer of the program administrator.

(10) It shall enter into a contract with the division delineating its responsibilities in a form prescribed by the division.

B. The division may conduct site reviews of any individual development account program administrator at any time for compliance with applicable regulations and contracts. The program administrator shall provide the division with full access to any program records upon request.

[2.79.1.10 NMAC - N, 04/29/2005]

2.79.1.11 ACCOUNT OWNER AGREEMENT: The program administrator operating an approved individual development account program shall be required to enter into an account owner agreement containing the following minimum requirements with an eligible individual:

A. a provision that the program administrator and account owner shall establish, in a timely manner, an individual development account in an authorized financial institution;

B. a deposit plan specifying the amount, form and schedule of deposits to be made by the account owner;

C. the rate at which the account owner's deposits will be matched;

D. the allowable use for which the account is maintained;

E. a provision that the program administrator shall provide financial literacy and asset-specific training approved by the division;

F. a provision that the account owner shall attend the financial literacy and asset-specific training;

G. an explanation of the withdrawal policies, including:

(1) the policies governing withdrawal of savings upon completion of the program,

(2) early withdrawal due to an account owner's decision to leave the program,

(3) termination of account due to non-compliance by the account owner, and

(4) emergency withdrawals including the provision that if an account owner withdraws money from his individual development account for a use other than an allowable use, he forfeits a proportionate amount from the reserve account unless an amount equal to the withdrawn money is deposited into his individual development account within the twelve months following the withdrawal;

H. a provision that the account owner may request an emergency withdrawal;

I. a provision allowing for the development of a contingency plan in the event the account owner exceeds or fails to meet the savings goals outlined in the savings agreement;

J. a provision that the program administrator shall implement the contingency plan on record with the division in the event the organization is no longer able to operate the program [Paragraph (8) of Subsection A of 2.79.1.10 NMAC];

K. a provision that any agreement for the investment of assets shall be at the direction of the account owner after consultation with the program administrator;

L. a provision that the program administrator shall not require an account owner to make any purchase or enter into any commercial transaction with a specific individual, business, financial institution, or other entity, other than the authorized financial institution in which the individual development account savings account is held;

M. a provision designating one or more beneficiaries of the funds, plus accrued interest, deposited by the account owner in the individual development account in the event of the account owner's death;

N. a verification that the eligible individual maintains no other individual development account; and

O. a provision that the agreement may be modified only with the written concurrence of the program administrator and the account owner.

[2.79.1.11 NMAC - N, 04/29/2005]

2.79.1.12 FINANCIAL INSTITUTIONS: A program administrator operating an approved state individual development account program shall be required to enter into a written governing instrument with an authorized financial institution. The written governing agreement shall provide for:

A. the establishment of individual development accounts in the form of trust or custodial accounts for the benefit of the account owners, which meet the requirements of Section 404(5) of the Assets for Independence Act, as amended, and into which accounts the account owners shall make deposits;

B. an assurance that the financial institution shall pay at least a market rate of interest on the individual development accounts;

C. an assurance that the financial institution shall not charge fees on the account;

D. an assurance that if an account owner appears on ChexSystems, the financial institution will open the account as long as it does not violate the internal administrative rules of the financial institution; refusal to open an account based upon this may occur only in extreme circumstances such as the account owner having a previous conviction of fraud or other crime;

E. an assurance that the financial institution shall provide monthly savings statements to both the account owner and the program administrator; and

F. an assurance that the financial institution shall not require an account owner to make any purchase or enter into any commercial transaction with a specific individual, business, financial institution or other entity.

[2.79.1.12 NMAC - N, 04/29/2005]

2.79.1.13 INDIVIDUAL DEVELOPMENT ACCOUNT SAVINGS ACCOUNTS:

A. A program administrator shall apply criteria for minimum and maximum levels of deposit and minimum number of months that may go by without a deposit into the account. These criteria may be determined based upon the circumstances of the population to be served.

B. A program administrator approved by the director shall maintain a separate trust or custodial account for each account owner in an authorized financial institution. The trust account shall be an interest-bearing savings instrument not less favorable to the depositor than the rates and fees of prevailing market rate accounts of each participating financial institution, applicable to like deposits by financial institutions in this state, bearing rates and fees at least as favorable to the depositor as the best terms available to other customers with similar accounts at each participating financial institution.

C. To the extent that available funding, including funding from both public and non-public sources may allow, the match rate shall be at least one dollar (\$1.00) for each one dollar (\$1.00) deposited by the account owner into his individual development account.

D. An eligible individual may open an individual development account upon verification by the program administrator that the individual maintains no other individual development account and fulfillment of all other requirements of the act and these rules.

E. An account owner shall complete a financial education program and all requirements made by the program administrator prior to the withdrawal of money from the account.

F. No withdrawal of funds from any individual development savings account may be permitted by a financial institution without signatures of both the account owner and an authorized representative of the program administrator. The financial institution in which an individual development account is held shall not be liable for withdrawals made for uses other than allowable uses. Prior to consenting to any withdrawal of funds, a representative of the program administrator shall discuss with the account owner the consequences of the intended withdrawal of funds. The program administrator may not unreasonably withhold its consent to the withdrawal.

G. The account owner may, upon the approval of the program administrator, withdraw moneys from the account owner's individual development account in the form of a joint check or transfer of funds made payable to the account owner and the payee of the approved withdrawal for any of the following allowable uses:

- (1) expenses to attend an approved post-secondary or vocational educational institution, including, but not limited to, payment for tuition, books, supplies and equipment required for courses;
- (2) costs to acquire or construct a principal residence that is the first principal residence acquired or constructed by the account owner;
- (3) costs of major home improvements or repairs on the principal residence of the account owner;
- (4) capitalization or costs to start or expand a business including equipment, tangible personal property, operational and inventory expenses, legal and accounting fees and other costs normally associated with starting or expanding a business; and
- (5) acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner.

H. In the case of a deceased account owner, amounts deposited by the account owner and held in an individual development account shall be distributed directly to the account owner's spouse, or if the spouse is deceased or there is no spouse, to a dependent or other named beneficiary of the deceased if not in conflict with the New Mexico Uniform Probate Code, Sections 45-1-101 through 45-1-404 NMSA 1978. If the spouse, dependent or beneficiary is eligible to maintain the account, according to the provisions of Section 58-30-4, NMSA 1978 and 2.79.1.14 NMAC, then the account as well as matching funds designated for that account from the program reserve fund of the program administrator may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

I. In the event that an account owner withdraws any money from an individual development account for a purpose other than an allowable use, there shall be a proportional reduction in the amount of money held by the program administrator in the reserve account maintained for that account owner. However, if within twelve months following the withdrawal of funds the account owner deposits an amount equal to the withdrawn money, the proportional amount held by the program administrator shall be maintained.

J. More than one eligible individual per household may hold an individual development account.

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

[2.79.1.13 NMAC - N, 04/29/2005]

2.79.1.14 ELIGIBLE ACCOUNT OWNERS:

A. To participate as an account owner in an individual development account program approved by the director an individual, at the time of application, shall be a member of a household located in New Mexico whose adjusted gross income is not in excess of 200 percent of the federal poverty guidelines and shall:

- (1) have earned income;
- (2) be eighteen years of age or older; and
- (3) be a citizen or legal resident of the United States.

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

- (1) is sixteen years of age or older;
- (2) has earned income that is no more than 200 percent of the federal poverty guidelines when the child's income is evaluated separately from the income of his foster household;
- (3) is a citizen or legal resident of the United States; and
- (4) is a resident of New Mexico.

[2.79.1.14 NMAC - N, 04/29/2005]

2.79.1.15 REPORTING REQUIREMENTS OF PROGRAM ADMINISTRATORS: A program administrator whose individual development account program is approved by the director shall report to the division no later than November 1st of each year. The report shall not identify individual account owners and shall include, but not be limited to:

- A.** the number of individual development accounts established, by savings objective, and their status;
- B.** verification that deposits are being made by the account owners pursuant to the approved savings plans;
- C.** the balance and sources of funding in the program administrator's local reserve fund;

D. the total money in the aggregate deposited in individual development accounts and reserve accounts administered by the program administrator;

E. the amounts withdrawn from individual development accounts for either allowable uses or for uses other than allowable uses;

F. the projected balance of savings to be deposited by account owners, by quarter, in order to complete their savings goal;

G. levels of participation in financial literacy education courses differentiating between individual development account participants and the general public; and

H. other information requested by the director to monitor the costs and outcomes of the individual development account program.

[2.79.1.15 NMAC - N, 04/29/2005]

**2.79.1.16 TERMINATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS
APPROVED UNDER THE ACT:**

A. An individual development account program shall be terminated if:

(1) the division determines that the individual development account program or program administrator is not operating pursuant to the provisions of the Individual Development Account Act or these rules;

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

(3) the program administrator ceases to provide an individual development account program; or

(4) the division provides written notice to the program administrator.

B. If a program is terminated the division shall seek to transfer management of the terminated program to another qualified entity awarded a contract under previous RFP processes.

C. If the division is unable to identify and approve a program administrator to assume the authority to continue to operate a terminated individual development account program, money held in the terminated program administrator's reserve fund shall be deposited into the individual development accounts of the account owners for whom the proportionate share of the reserve account was established as of the first day of termination of the program.

D. If a program with active individual development accounts is terminated, the division shall assume the responsibilities of the program administrator until such time as a new program administrator is assigned to manage the individual development accounts of the account holders of a terminated program.

[2.79.1.16 NMAC - N, 04/29/2005]

2.79.1.17 NON-DISCRIMINATION:

A. No eligible individual, as defined by the act and these rules, shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any activity or program funded in whole or in part with division funds on the grounds of the race, religion, color, national origin, sex, sexual preference, age, or handicap of any person.

B. If an individual believes that he has been unfairly denied access to an approved state individual development account program or otherwise treated inequitably as an account owner, the individual may file a complaint with the division no later than thirty days after the alleged injury. The division shall investigate the complaint and shall attempt to informally resolve it. Where applicable, the division may refer the individual to the appropriate state or federal agency for potential relief.

[2.79.1.17 NMAC - N, 04/29/2005]

HISTORY OF 2.79.1 NMAC: [Reserved].