

AN ACT

RELATING TO ASSET BUILDING; ESTABLISHING A PROGRAM THAT ADMINISTERS
INDIVIDUAL DEVELOPMENT ACCOUNTS; ENACTING THE INDIVIDUAL
DEVELOPMENT ACCOUNT ACT; AMENDING AND ENACTING SECTIONS OF THE
NMSA 1978.

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

Section 1. SHORT TITLE.--Sections 1 through 12 of this act may be cited as the "Individual Development Account Act".

Section 2. DEFINITIONS.--As used in the Individual Development Account Act:

- A. "account owner" means the person in whose name an individual development account is originally established;
- B. "allowable use" means a use that complies with the provisions of the Individual Development Account Act, or rules adopted pursuant to that act;
- C. "authorized financial institution" means a financial institution authorized by the division to hold and manage individual development accounts and reserve accounts;
- D. "director" means the director of the division;
- E. "division" means the local government division of the department of finance and administration;
- F. "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;

G. "eligible individual" means a person who meets the criteria for opening an individual development account;

H. "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;

I. "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 provisions of the Individual Development Account Act;

J. "individual development account program" means a program 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;

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

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

M. "program administrator" means a nonprofit organization or tribe that is determined by the director to be eligible to offer an individual development account program;

N. "reserve account" means an account established pursuant to the

Individual Development Account Act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner; and

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O. "tribe" means an Indian nation, tribe or pueblo located in whole or in part within New Mexico.

Section 3. INDIVIDUAL DEVELOPMENT ACCOUNTS.--An individual development account may be established for an eligible individual as part of an individual development account program if the written instrument creating the account sets forth the following:

- A. the account owner is an eligible individual according to program requirements at the time the account is established;
- B. the individual development account is established and maintained in an authorized financial institution;
- C. deposits to an individual development account shall be made in accordance with the rules adopted pursuant to the Individual Development Account Act;
- D. withdrawals from an individual development account may be only for allowable uses, unless approved by the program administrator as set forth in the rules adopted pursuant to the Individual Development Account Act; and
- E. the financial institution in which an individual development account is held shall not be liable for withdrawals made for uses other than allowable uses.

Section 4. ELIGIBLE INDIVIDUALS.--

- A. Except as set forth in Subsection B of this section, an eligible

individual shall have earned income and shall be:

- (1) eighteen years of age or older;
- (2) a citizen or legal resident of the United States;
- (3) a resident of New Mexico; and
- (4) a member of a household with earned income that is no

more than two hundred percent of the federal poverty guidelines for the size of the household.

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 two hundred

percent of the federal poverty guidelines for a family of one, 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.

Section 5. RESPONSIBILITIES OF THE DIVISION.--

A. By December 31 following the effective date of the Individual Development Account Act, the director shall adopt rules implementing the provisions of that act.

B. The director shall make an annual report each November to the governor and to an appropriate interim committee of the legislature.

C. The division shall use no more than five percent of the money appropriated to fund the Individual Development Account Act to administer that act.

Section 6. ADVISORY COMMITTEE.--

A. An advisory committee shall be created to provide oversight of the

administration of individual development account programs and to suggest possible changes that benefit account owners or improve the effectiveness of the individual development account programs throughout the state.

B. The advisory committee shall meet at least two times in a calendar year to review the implementation of the Individual Development Account Act.

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

D. Members of the advisory committee who are account owners shall receive per diem and mileage pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance for their participation on the advisory committee.

E. The division shall provide adequate staff support and administrative services for the advisory committee.

Section 7. ADMINISTRATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

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

B. An individual development account program shall be approved and monitored by the director for compliance with applicable law, the Individual Development Account Act and rules adopted pursuant to that act.

C. An individual development account program shall establish a

reserve account sufficient to meet the matching fund commitments made to all account owners participating in the individual development account program and shall report at least quarterly to each account owner the amount of money available in the reserve account for use by the program administrator to match withdrawals for allowable uses.

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D. An individual development account program shall provide financial education and other necessary training pertinent to allowable uses by account owners, develop partnerships with financial institutions, develop matching funds and manage the operations of an individual development account that is established within the program.

E. The division shall adopt rules necessary to implement the Individual Development Account Act.

F. An eligible individual may open an individual development account upon verification by the program administrator that the individual maintains no other individual development account.

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

H. An account owner shall complete a financial education program prior to the withdrawal of money from his individual development account.

Section 8. ALLOWABLE USES--WITHDRAWALS FROM INDIVIDUAL DEVELOPMENT ACCOUNTS--FORFEITURE OF MATCHING FUNDS FROM RESERVE ACCOUNT--LOSS OF ELIGIBLE INDIVIDUAL STATUS.--

A. Allowable uses of the money withdrawn from an individual development account are limited to the following:

- (1) expenses to attend an approved post-secondary or

vocational educational institution, including payment for tuition, books, supplies and equipment required for courses;

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

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

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

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

(6) in the case of a deceased account owner, amounts deposited by the account owner and held in 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 or if the recipient is eligible to maintain the account, the account and matching funds designated for that account from a reserve fund may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

B. If an account owner withdraws money from his individual development account for a use other than an allowable use, he forfeits a proportionate amount of matching funds from the reserve account, as set forth in the agreement between the program administrator and the account owner, unless an amount equal to

the withdrawn money is redeposited to his individual development account within the twelve months following the withdrawal.

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

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

Section 9. APPROVAL OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

A. Annually the division shall solicit a request for proposals from nonprofit organizations or tribes interested in establishing an individual development account program.

B. The director shall determine if an interested nonprofit organization or tribe is eligible to be a program administrator.

C. Eligible program administrators shall develop individual development account programs that are subject to review and approval by the director.

D. The director shall approve an individual development account program submitted by a program administrator before the program establishes individual development accounts or reserve accounts or provides services required by the Individual Development Account Act to eligible individuals.

E. An individual development account and a reserve account may be established only in an authorized financial institution.

F. The director shall monitor all individual development account programs to ensure that individual development accounts and reserve accounts are being operated according to federal law, the provisions of the Individual Development Account Act and rules adopted pursuant to that act.

Section 10. TERMINATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

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

(1) division determines that the program is not being operated pursuant to the provisions of the Individual Development Account Act or rules adopted pursuant to that act;

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

(3) program administrator chooses to cease providing an individual development account program.

B. If the director is unable to identify and certify a program administrator to assume the authority to continue to operate a terminated individual development account program, money in a reserve account 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.

Section 11. REPORTING.--A program administrator operating an individual

development account program pursuant to the Individual Development Account Act shall report at least annually to the director, as set forth in the rules of the division. Individual account owners shall not be identified in the report. The report shall include:

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

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Section 12. ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN MEANS-TESTED PROGRAMS.--

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

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

C. Money withdrawn from an individual development account for a purpose other than an allowable use shall be counted as a resource for purposes of the New Mexico Works Act, medicaid unless replaced within the twelve-month allowable time period.

Section 13. Section 27-2B-7 NMSA 1978 (being Laws 1998, Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as amended by Laws 2001, Chapter 295, Section 4 and by Laws 2001, Chapter 326, Section 4) is amended to read:

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

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

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

The legislature shall determine the actual percentage of each category to be used annually of the federal temporary assistance for needy families grant made pursuant to

the federal act.

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

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- (1) medicaid;
- (2) food stamps;
- (3) government-subsidized foster care payments if the child for

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whom the payment is received is also excluded from the benefit group;

- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational

institution;

- (8) government-subsidized child care;
- (9) earned income that belongs to a person seventeen years of

age or younger who is not the head of household;

(10) fifty dollars (\$50.00) of collected child support passed through to the participant by the department's child support enforcement program;

[and]

(11) earned income deposited in an individual development account by a member of the benefit group or money received as matching funds for allowable uses by the owner of the individual development account pursuant to the Individual Development Account Act; and

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

C. The total countable gross earned and

unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

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

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

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

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

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

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

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

five dollars (\$225) of monthly earned income and one half of the remainder for each parent;

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

(5) costs of self-employment income; and

(6) business expenses.

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

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

"27-2B-10. INDIVIDUAL DEVELOPMENT ACCOUNTS.--A participant may establish an individual development account pursuant to the Individual Development Account Act.

Section 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

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