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New Mexico Register

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Notices of Rulemaking and Proposed Rules

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

NOTICE OF PUBLIC HEARING AND RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) hereby gives notice of the following proposed rulemaking. EMNRD proposes new administration for Clean Car Personal Income Tax Credit, Rule 3.3.36 NMAC, and Clean Car Corporate Income Tax Credit, Rule 3.4.23 NMAC

Purpose of Rules. In 2024, the Legislature passed new Clean Car Personal and Corporate Income Tax Credit. The new income tax credit incentive requires EMNRD to develop new rules that are compliant with the legislation.

Clean Car Personal Income Tax Credit Rule, Clean Car Corporate Income Tax Credit Rule is to incentive a New Mexico resident or New Mexico commercial business purchase of a clean energy vehicle from a New Mexico licensed clean car automotive dealership.

Legal Authority. EMNRD proposes the rules under the authority of the Income Tax Act, NMSA 1978, Section, 7-2-18.36 NMSA 1978 and 7-2A-19.01 NMSA 1978

The full text of the proposed rules is available from the EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, NM 87505; at https://www.emnrd.nm.gov/ecmd/ecmd-public-notices/ or by contacting Claudette Montoya at ClaudetteR.Montoya1@emnrd.nm.gov telephone (505) 372-8743.

Public Hearing and Comment. EMNRD will hold an in person and virtual public hearing on the proposed rules at 11:00 am on Wednesday, August 21, 2024. The public may attend in person in the EMNRD Wendell Chino Building, Pecos Hall on 1220 South St. Francis Drive, Santa Fe, NM 87505. The public may also join the hearing virtually through Microsoft Teams using one of the following:

Clean Car Personal Income Tax Credit Rule, and Clean Car Corporate Income Tax Credit Rule, 2024 Rule Hearing Event. Select link to join the meeting:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZmJiNjc2NTAtOTIwZC00NWNmLWFiYjgtYzY3YzE3MDliYzg0%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%227a2869ad-e8e9-4114-99d7-c4dafba0a50c%22%7d

Meeting ID: 227 286 776 843
Passcode: c6ivRU

Dial-in by telephone
+1 505-312-4308
Phone conference ID: 136 221 868#

Those wishing to comment on the proposed rules may make oral comments or submit written comments at the hearing, or may submit written comments by August 21, 2024, by 5:00 p.m. by mail or e-mail. Please mail written comments to Claudette Montoya, EMNRD, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail to ClaudetteR.Montoya1@emnrd.nm.gov.

If you are an individual with a disability who needs 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 Claudette Montoya at telephone (505) 372-8743 or the New Mexico Relay Network at 1-800-659-1779 at least two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Claudette Montoya by telephone at (505) 372-8743, if a summary or other type of accessible format is needed.

Technical Information. There is no technical information for the proposed rule amendments.

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

NOTICE OF PUBLIC HEARING AND RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) hereby gives notice of the following proposed rulemaking. EMNRD proposes new rules for Clean Car Charging Unit Personal Income Tax Credit 3.3.37 NMAC, and Clean Car Charging Unit Corporate Income Tax Credit 3.4.24 NMAC.

Purpose of Rules. In 2024, the Legislature passed new Clean Car Charging Unit Personal and Corporate Income Tax Credit. The new income tax credit incentive requires EMNRD to develop new rules that are compliant with the legislation.

Clean Car Charging Unit Personal Income Tax Credit Rule, and Clean Car Charging Unit Corporate Income Tax Credit Rule is to incentive residential homes, and commercial properties to install clean energy charging stations.

Legal Authority. EMNRD proposes the rules under the authority of the Income Tax Act, NMSA 1978,

Section, 7-2-18.37 NMSA 1978 and 7-2A-19.02 NMSA 1978

The full text of the proposed rules is available from the EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, NM 87505; at https://www.emnrd.nm.gov/ecmd/ecmd-public-notices/ or by contacting Claudette Montoya at ClaudetteR.Montoya1@emnrd.nm.gov telephone (505) 372-8743.

Public Hearing and Comment. EMNRD will hold an in person and virtual public hearing on the proposed rules at 9:00 am on Wednesday, August 21, 2024. The public may attend in person in the EMNRD Wendell Chino Building, Pecos Hall on 1220 South St. Francis Drive, Santa Fe, NM 87505. The public may also join the hearing virtually through Microsoft Teams using one of the following:

Clean Car Charging Unit Personal Income Tax Credit Rule, and, Clean Car Charging Unit Corporate Income Tax Credit Rule, 2024 Rule Hearing Event. Select link to join the meeting: https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzBjNWZjMTAtZTljMS00NmU3LWI4MTAtNzg5OGNmMDVhYWI5%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%227a2869ad-e8e9-4114-99d7-c4dafba0a50c%22%7d:

Meeting ID: 268 596 848 142
Passcode: g6oveT

Dial-in by telephone
+1 505-312-4308
Phone conference ID: 302 280 747#

Those wishing to comment on the proposed rules may make oral comments or submit written comments at the hearing, or may submit written comments by August 21, 2024, by 5:00 p.m. by mail or e-mail. Please mail written comments to Claudette Montoya, EMNRD, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail to ClaudetteR.Montoya1@emnrd.nm.gov.

If you are an individual with a disability who needs 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 Claudette Montoya at telephone (505) 372-8743 or the New Mexico Relay Network at 1-800-659-1779 at least two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Claudette Montoya by telephone at (505) 372-8743, if a summary or other type of accessible format is needed.

Technical Information. There is no technical information for the proposed rule amendments.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing

The New Mexico Public Education Department (PED) gives notice on Tuesday, July 16, 2024, that it will conduct a public hearing for the following proposed rulemaking on Tuesday, August 20, 2024, from 1:30 p.m. to 2:30 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501:

Repeal of 6.65.4 NMAC, Teacher Leader Development

Repeal and Replace of 6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Relating to Vocational Rehabilitation

The PED will give a verbal summary statement, on record, at the hearing. The purpose of the public hearing is to receive public input on the proposed rulemaking. Attendees who wish to provide public comment on record will be given three minutes to make a statement concerning the proposed rulemaking. To submit written comment, please see the Public Comment section of this notice.

Explanation of Purpose of Rulemaking, Summary of Text, and Statutory Authority

6.65.4 NMAC, Teacher Leader Development

Explanation: The department has determined that this rule may be repealed because the existing Teacher Leader Development program is described in guidance.
Summary: This proposed rulemaking repeals 6.65.4 NMAC, Teacher Leader Development.
Statutory Authority: Sections 9-24-8, 22-2-1, and 22-2-2 NMSA 1978.

6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Relating to Vocational Rehabilitation

Explanation: The purpose of the proposed rulemaking is to provide general policy for applicants for or recipients of vocational rehabilitation services who are dissatisfied with any determination made by the NMDVR that affects the provision of their vocational rehabilitation services.
Summary: The proposed repeal and replace of this rule establishes mediation and fair hearing processes for applicants for or recipients of vocational rehabilitation services who wish to appeal a determination made by the NMDVR.
Statutory Authority: The Rehabilitation Act of 1973, as amended, 34 CFR Part 361, Sections 9-24-8, 22-2-1, 22-2-2, 22-13-13, 22-14-8, and 22-14-12 NMSA 1978, and New Mexico Rules of Civil Procedure, District Court Rule 1-074. No technical information served as a basis for this proposed rule change.

Public Comment

Interested parties may provide comment at the public hearing or may submit written comments by mail or e-mail.

Mailing Address
Policy and Legislative Affairs Division
New Mexico Public Education Department
300 Don Gaspar Avenue, Room 121
Santa Fe, New Mexico 87501

E-Mail Address
Rule.Feedback@ped.nm.gov

Written comments must be received no later than 5 p.m. (MDT) on Tuesday, August 20, 2024. The PED encourages early submission of written comments.

Public Comment Period

The public comment period is from Tuesday, July 16, 2024, to Tuesday, August 20, 2024, at 5:00 p.m. (MDT). The PED will review all feedback received during the public comment period and issue communication regarding a final decision of the proposed rulemaking at a later date.

Copies of the proposed rule may be obtained from Denise Terrazas at (505) 470-5303 during regular business hours or may be accessed through the PED Policy and Legislative Affairs webpage titled, "Proposed Rules," at http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Terrazas at (505) 470-5303 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

REGULATION AND LICENSING DEPARTMENT

NUTRITION AND DIETETICS, BOARD OF

NOTICE OF PUBLIC RULE HEARING AND BOARD MEETING

The New Mexico Nutrition and Dietetics Practice Board will hold a rule hearing on Friday, August 16, 2024, at 10:00 a.m., immediately followed by a meeting of the board to consider any public comment and adoption of the proposed rule listed below.

Public participation is welcomed, and comments may be submitted in writing during the public comment period, or in person during the public rule hearing. The hearing and subsequent meeting will take place at the Regulation and Licensing Department, Sandia Conference Room, located at 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109.

The hearing and subsequent meeting may also be accessed virtually via Microsoft Teams.
Meeting Link: https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting
Meeting ID: 257 687 755 736
Passcode: NFjNjB
or
Join by Phone: +1-505-312-4308
Phone Access Code: 918 823 604#

The purpose of the rule hearing is to consider changes to the current rule: 16.14.3 NMAC – Requirements for Licensure.

Copies of the proposed rule may be obtained through the board website or contacting the Board Administrator through the information below:
https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/nutrition-and-dietetics/statutes-rules-and-rule-hearings/
Jen Rodgers, Sr. Board Administrator
(505) 476-4622 – Main Line for the Boards and Commissions Division
nutritiondieteticsbd@rld.nm.gov

Written comment will be accepted during the public comment period, up until Friday, August 16, 2024, and may be submitted either by email or by postal mail to the following addresses:
nutritiondieteticsbd@rld.nm.gov
Attn: New Mexico Nutrition and Dietetics Practice Board
P.O. Box 25101
Santa Fe, NM 87504

Written comments received during the public comment period prior to the public rule hearing will be posted to the board website page linked above. Public comment will also be accepted during the rule hearing and may be submitted in writing or presented orally by those attending both in-person and virtually. The board will not enter into substantive discussion of public comments during the rule hearing but will consider and deliberate any public comment during the board meeting immediately following the conclusion of the public rule hearing.

The agenda for the board meeting, which will begin immediately after the public rule hearing, will be available no less than 72 hours prior to the meeting, and available on the Board website linked above or by contacting the Board Administrator.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact the Board Administrator.

Statutory Authority:
The proposed rule changes are authorized by the Nutrition and Dietetics Practice Act, Sections 61-7A-1 through 61-7A-15 NMSA 1978, which provides explicit authority for the board to promulgate rules to protect public health and safety and carry out the provisions of the Act. The rulemaking and public rule

hearing is governed by the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978, and the Default Procedural Rule for Rulemaking promulgated by the New Mexico Department of Justice, Parts 1.24.25.1 through 1.24.25.16 NMAC.

Purpose of Proposed Rules:
The proposed rule change would change the requirements for the Nutritionist license, removing membership in professional organizations as an alternative to the education requirement of a master's degree in human nutrition, nutrition education, foods and nutrition, or public health nutrition, as such professional memberships used to require a master's degree plus further certifications, but now do not necessarily require a master's degree. More generally, the proposed rule changes are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board's statutory obligation to promote, preserve and protect the public health, safety and welfare.

Summary of Proposed Rule:
16.14.3.9 NMAC – Requirements for Licensure; Requirements for Nutritionist License:
For Nutritionists, removal of membership in professional organizations as an alternative pathway to the education requirement of a master's degree in human nutrition, nutrition education, foods and nutrition, or public health nutrition, as such professional memberships used to require a master's degree in addition to further certifications, but now do not necessarily require a master's degree.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Office of Superintendent of Insurance (OSI or Superintendent) will hold a public hearing in person, via video conference and telephone conference regarding 13.1.4 NMAC, Public Rule Hearings, and 13.21.3 NMAC, Procedural Rules for Public Rule Hearings (applicable to rulemaking related to the Patient Compensation Fund). **This hearing will commence on Friday, August 16, 2024 at 10:00 a.m.**

PURPOSE OF THE PROPOSED RULE: The purpose of this rulemaking is to amend 13.1.4 NMAC, Public Rule Hearings and 13.21.3 NMAC, Procedural Rules for Public Rule Hearings (applicable to rules related to the Patient's Compensation Fund, and the Superintendent's responsibilities pursuant to the Medical Malpractice Act, Sections 41-5-1 *et seq.* NMSA 1978). This rulemaking proposes to remove the requirement for a recommended decision in a rulemaking proceeding conducted by the Superintendent, to make certain amendments to the requirements for the written comment period, and to clarify references to the rulemaking record in 13.4.1 NMAC and 13.21.3 NMAC.

STATUTORY AUTHORITY:
Sections 14-4-1 *et seq*., NMSA 1978, State Rules Act and 59A-2-9 NMSA 1978.

TO ATTEND THE HEARING IN PERSON: Office of Superintendent of Insurance - 1120 Paseo de Peralta, (PERA Building), 4th Floor Hearing Room, Santa Fe, NM 87501
PLEASE NOTE: The entrance to the PERA Building is on the ground floor. All guests must sign in with the ground floor receptionist and then will be escorted to the 4th Floor Hearing Room. Please give yourself extra time to check in before 10:00 a.m.

TO ATTEND THE HEARING BY ELECTRONIC VIDEO CONFERENCE VIA MS TEAMS MEETING:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzhhZTI1N2UtZWQ3Ny00Y2M4LWI0NGQtZDJmYmVjYTk4MTkx%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%2292f8d9f0-87c0-44c3-9357-ba0eb6121f10%22%7d - Meeting ID: 284 439 745 953 Passcode: Konrc6
Meeting ID: 284 439 745 953
Passcode: Konrc6

TO ATTEND VIA TELEPHONE:
+1 505-312-4308 Phone Conference ID: 972 573 161#

PUBLIC COMMENT: The Superintendent designates Clifford Rees as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and other interested parties in-person or electronically. Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI eDocket (https://edocket.osi.state.nm.us/case-view/5966) or by requesting a copy by calling Jennifer Romero at: (505)795-1315. Any copies of the Notice of Proposed Rulemaking, proposed rules, and any updates concerning the hearing date, time, or location will be available by visiting the OSI website at: https://www.osi.state.nm.us/pages/bureaus/legal/resources/laws-rules or on the Sunshine Portal at: https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic (Select "Office of Superintendent of Insurance from the "Agency" drop down menu.)

Written comments will be accepted through 4:00 p.m. on Friday August 16, 2024. Responses to written comments or oral comments will be accepted through 4:00 p.m. on Friday, August 23, 2024. All comments shall be filed electronically through the OSI eDocket (https://edocket.osi.state.nm.us/case-view/5966) or sent via U. S. mail to:

OSI Records and Docketing
NM Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM 87504-1689

Written comments must be received by OSI and stamped as accepted between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent will consider all oral comments and will review and consider all timely submitted written comments and written responses. For help submitting a filing, please contact osi-docketfiling@state.nm.us. The below docket number and title must be indicated on all written comments submitted to the OSI:

Docket No. 2024-0054 (https://edocket.osi.state.nm.us/case-view/5966)
IN THE MATTER OF 13.1.4 NMAC, PUBLIC RULE HEARINGS and 13.21.3 NMAC, PROCEDURAL RULES FOR PUBLIC RULE HEARINGS

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Andrea Padilla, at (505) 531-7171 no later than ten (10) business days prior to the hearing.

End of Notices of Rulemaking and Proposed Rules

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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.

AUDITOR, OFFICE OF THE STATE

This is an amendment to 2.2.2 NMAC, Sections 2, 3, 6, 7 - 10, 12, 14 - 16 effective 7/16/2024.

2.2.2.2 SCOPE:
[~~Agencies~~] All agencies and local public bodies as defined by the Audit Act and designated independent public accountants, including auditors of the OSA, [~~interested in contracting to perform~~] performing professional services related to the examination of financial affairs and transactions of those agencies and local public bodies.
[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.3 STATUTORY AUTHORITY: Audit Act, [~~Sections 12-6-1 to 12-6-14~~] Section 12-6-12 NMSA 1978.
[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.6 OBJECTIVE:
The objective is to establish [~~policies, procedures, rules, and requirements~~] regulations for all agencies and local public bodies, as well as the New Mexico state auditor's designated independent public accountants, including auditors of the OSA, performing [~~contracting and conducting~~] financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements [~~of or~~] for the examination of the financial affairs of all governmental agencies and local public bodies of the state of New Mexico.
[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.7 DEFINITIONS:
[~~This section describes certain terms used in 2.2.2 NMAC. When terminology differs from that used at a particular organization or under particular standards, auditors should use professional judgment to determine if there is an equivalent term.~~] In addition to the definitions in the Audit Act, Section 12-6-2 NMSA 1978, the following definitions will apply to all financial examinations performed under this rule:

A. Definitions beginning with the letter "A":

(1) "AAG GAS" means AICPA Audit and Accounting Guide - Government auditing standards and Single Audits (latest edition).

(2) "AAG SLV" means AICPA Audit and Accounting Guide - State and Local Governments (latest edition).

(3) "Abuse" includes, but is not limited to, behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances but excludes fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements. Abuse also includes misuse of authority or position for personal interests or for the benefit of another or those of an immediate or close family member or business associate. [~~(GAGAS latest revision.) Abuse does not necessarily involve fraud or illegal acts. However, abuse may be an indication of potential fraud or illegal acts and may still impact the achievement of defined objectives. (GAO-14-704G federal internal control standards paragraph 8.03.)~~]

(4) "ACFR" means the state of New Mexico's annual comprehensive financial report.

(5) "[~~Attest~~] Attestation engagement" means an engagement to issue, or where an IPA issues, an examination, a review, AUP report, or report on subject matter, or an assertion about subject matter that is the responsibility of an agency or local public body, including engagements performed pursuant to AICPA and GAGAS attestation standards and all engagements pursuant to Subsection A of Section 12-6-3 NMSA 1978.

(6) "Audit" [~~may refer to or include annual financial and compliance audit, or attestation engagement, unless otherwise specified~~] means an examination of the financial affairs or performance of an agency or local public body pursuant to the authority of the Audit Act, 12-6-1, *et seq*., NMSA 1978.

(7) "Audit documentation" means the record of procedures performed, relevant evidence obtained, and conclusions reached (terms such as working papers or workpapers are also sometimes used).

(8) "Auditor" means designated independent public [~~accountant~~] accountants, including auditors of the OSA, performing audit or [~~attest~~] attestation work as defined in the Audit Act and the Public Accountancy Act.

(9) "AICPA" means American institute of certified public accountants.

(10) "AU-C" means U.S. auditing standards-AICPA (Clarified).

(11) "AUP" means agreed upon procedures.

B. Definitions beginning with the letter "B":
[**RESERVED**]

C. Definitions beginning with the letter "C":

(1) [~~"CPA"~~

~~means certified public accountant.~~]
"Component unit" means a legally separate entity required to be reported in the financial statements of an agency or LPB due to the entity's close financial relationship with the primary agency or LPB.

(2) "CPE" means continuing professional education.

[~~**(3) "CUSIP"** means committee for uniform securities identification procedures, the unique identification number assigned to all stocks and registered bonds in the United States and Canada by the committee on uniform securities identification procedures.~~

~~**(4) "CYFD"** means the New Mexico children youth and families department.~~]

D. Definitions beginning with the letter "D":

[~~**(1)**~~] **"DFA"** means the New Mexico department of finance and administration.

[~~**(2) "DOH"** means the New Mexico department of health.~~

~~**(3) "DOT"** means the New Mexico department of transportation.~~

~~**(4) "DWS"** means New Mexico Department of Workforce Solutions.~~]

E. Definitions beginning with the letter "E":

[~~**(1) "ECECD"** means the New Mexico early childhood education and care department.~~

~~**(2)]**~~ **"ERB"** means the New Mexico education retirement board.

F. Definitions beginning with the letter "F":

(1) "FCD" means financial control division of [~~the department of finance and administration~~] DFA.

(2) [~~**"FDIC"** means federal deposit insurance corporation.~~

~~**(3)**~~] **"FDS"** means financial data schedule.

[~~**(4)**~~] **(3) "Fraud"** means obtaining something of value through willful misrepresentations. This includes, but is not limited to, fraudulent financial reporting, misappropriation of assets, corruption, and use of public funds for activities prohibited by the constitution or laws of the state of New Mexico. Fraudulent financial reporting means intentional misstatements or omissions of amounts or disclosures in the financial statements to deceive financial statement users, which may include intentional alteration of accounting records, misrepresentation of transactions, or intentional misapplication of accounting principles. Misappropriation of assets means theft of an agency's or LPB's assets, including theft of property, embezzlement of receipts, or fraudulent payments. Corruption means bribery and other illegal acts. [~~(GAO-14-704G federal internal control standards paragraph 8.02).~~]

G. Definitions beginning with the letter "G":

(1) "GAAP" means generally accepted accounting principles [~~generally~~] that are accepted in the United States of America.

(2) "GAAS" means generally accepted auditing standards, which are systematic guidelines used by auditors when conducting audits of an entity's financial records in the United States of America.

[~~**(2)**~~] **(3) "GAGAS"** means generally accepted government auditing standards, or the most recent revision of [~~government auditing standards~~] the yellow book issued by the comptroller general of the United States [~~yellow book~~].

[~~**(3) "GAO"** means the government accountability office, a division of the OSA.~~]

(4) "GASB" means governmental accounting standards board.

[~~**(5) "GAAS"** means auditing standards generally accepted in the United States of America.~~]

[~~**(6)**~~] **(5) "GSD"** means the New Mexico general services department.

[~~**(7) "GRT"** means gross receipts tax.~~]

H. Definitions beginning with the letter "H":

(1) "HED" means the New Mexico higher education department.

(2) "HSD" means the New Mexico human services department.

(3) "HUD" means the United States [~~(US)~~] department of housing and urban development.

I. Definitions beginning with the letter "I":

(1) "Independence" means both:

(a) independence of mind: The state of mind that permits the conduct of an engagement without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism; and

(b) independence in appearance: The absence of circumstances that would cause a reasonable and informed third party to reasonably conclude that the integrity, objectivity, or professional skepticism of an audit organization or member of the engagement team had been compromised.

[~~**(1)**~~] **(2) "IPA"** means [~~the~~] an independent public accountant designated by the state auditor to perform [~~performing professional services~~] financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements for the examination of the financial affairs of [~~for~~] agencies and local public bodies.

[~~**(2) "IRC"** means internal revenue code.~~]

J. Definitions beginning with the letter "J":

[**RESERVED**]

K. Definitions beginning with the letter "K":

[**RESERVED**]

L. Definitions beginning with the letter "L":

(1) "LGD" means the local government division

of [~~the department of finance and administration (DFA)~~] DFA.

~~(2)~~ "LPB" means local public body as defined in the Audit Act, Section 12-6-2 NMSA 1978.

M. Definitions beginning with the letter "M": [**RESERVED**]

N. Definitions beginning with the letter "N":

[~~**(1) "NCUSIF"** means national credit union shares insurance fund.~~

~~**(2) "NMAC"** means New Mexico administrative code.~~

~~**(3) "NMCD"** means the New Mexico corrections department.~~

~~**(4) "NMSA"** means New Mexico statutes annotated.~~

~~**(5) "Non-attest engagement"** means any engagement that is not an attest engagement, including, but not limited to, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency-initiated or other engagements in which the IPA's role is to perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts.~~]

(1) "NMAC" means New Mexico administrative code.

(2) "NMSA" means New Mexico statutes annotated.

(3) "Non-attestation engagement" means any engagement that is not an attestation engagement, including, but not limited to, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency-initiated or other engagements in which the IPA's role is to perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts.

O. Definitions beginning with the letter "O":

[~~**(1)**~~] **"Office" or "OSA"** means the [~~New Mexico office of the state auditor~~] office of the state auditor of New Mexico.

[~~**(2) "OMB"** means the United States office of management and budget.~~]

P. Definitions beginning with the letter "P":

(1) "PED" means the New Mexico public education department.

(2) "PERA" means the New Mexico public employee retirement association.

(3) [~~**"PHA"** means public housing authority.~~] **"Primary government"** means the primary agency or primary local public body that a component unit is attached to due to their financial relationship.

Q. Definitions beginning with the letter "Q": [RESERVED]

R. Definitions beginning with the letter "R":

(1) [~~**"REAC"** means real estate assessment center.~~

~~**(2)**~~] **"REC"** means regional education cooperative.

[~~**(3)**~~] **(2) "Report"** means a document issued as a result of an annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic accounting engagement, or AUP engagement regardless of whether the document is on the contractor's letterhead or signed by the contractor.

[~~**(4)**~~] **(3) "RSI"** means required supplementary information.

S. Definitions beginning with the letter "S":

(1) [~~**"SAS"** means the AICPA's statement on auditing standards.~~

~~**(2)**~~] **"SHARE"** means statewide human resources accounting and management reporting system.

[~~**(3) "SI"** means supplementary information.~~

~~**(4) "SLO"** means the state land office.~~

~~**(5) "Special audit"** means a limited-scope examination of financial records and other information designed to investigate allegations of waste, fraud, abuse, theft, non-compliance, or misappropriation of funds, or to quantify the extent of such losses, including both attest engagements and non-attest engagements, performance audits, forensic accounting engagements, and any other engagement that is not part of the annual financial statement and compliance audit, depending on designation or scope.~~

~~**(6) "State auditor"** may refer to either the elected state auditor of the state of New Mexico, or personnel of the office designated by the state auditor.~~

~~**(7) "STO"** means state treasurer's office.~~]

(2) "SOC" means system organization controls, which is an audit review in connection with system-level controls of a service organization or entity-level controls of other organizations.

(3) "SOC-1" means an audit that provides an opinion regarding the controls as the service organization that are likely to be relevant to user entities' internal control over financial reporting.

(4) "SOC-2" means an audit that provides an opinion about controls at the service organization related to security, availability, processing integrity, confidentiality, or privacy to support users' evaluations of their own system of internal control.

(5) "SOC-3" means an audit to provide an opinion about the effectiveness of controls at the service organization relevant to security, availability, processing integrity, confidentiality, or privacy.

(6) "Special

audit" means a limited-scope audit of an agency's or local public body's financial affairs and transactions, in whole or in part, including both attest engagements and non-attest engagements, performance audits, forensic accounting engagements, and any other engagement that is not part of the annual financial statement and compliance audit, depending on designation or scope.

(7) "Special investigation" or **"special examination"** means a limited-scope investigation into or examination of an agency's or local public body's financial records and other information designed to investigate allegations of waste, fraud, abuse, theft, non-compliance, or misappropriation of funds, or to quantify the extent of such losses.

(8) "State auditor" may refer to either the elected state auditor of the state of New Mexico, or personnel of the office designated by the state auditor.

T. Definitions beginning with the letter "T":

[~~**(1)**~~] **"Tier"** is established based on the amount of each LPB's [~~local public body's~~] annual revenue, pursuant to Section 12-6-3 NMSA 1978. [~~and 2.2.2.16 NMAC.~~

~~**(2) "TRD"** means the New Mexico taxation and revenue department.~~]

U. Definitions beginning with the letter "U":

(1) [~~**"UFRS"** means uniform financial reporting standards.~~

~~**(2)**~~] **"Uniform guidance"** means Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

[~~**(3)**~~] **(2) "U.S. GAO"** means the United States government accountability office.

V. Definitions beginning with the letter "V": [**RESERVED**]

W. Definitions beginning with the letter "W":

"Waste" includes, but is not limited to, the act of using or expending resources carelessly, extravagantly, or to no purpose. Importantly, waste can include activities that do not include abuse. Rather waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight. Waste does not necessarily involve fraud or illegal acts. However, waste may be an indication of [~~potential~~] internal control weakness, non-compliance, fraud, or illegal acts [~~and may still impact the achievement of defined objectives. (GAO-14-704G federal internal control standards paragraph 8.03.)~~].

X. Definitions beginning with the letter "X": [**RESERVED**]

Y. Definitions beginning with the letter "Y": [**RESERVED**]

Z. Definitions beginning with the letter "Z": [**RESERVED**]

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. Firm profiles: For an IPA to be included on the state auditor's list of approved firms to perform audits, AUPs, and other attest engagements, an IPA shall submit a firm profile online annually on the fifth business day in January, in accordance with the guidelines set forth herein. The OSA shall review each firm profile for compliance with the requirements set forth in this rule. IPAs shall notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts for audit, AUPs, and other attest engagements only with IPAs who have submitted a complete and correct firm profile that has been approved by the OSA, and who have complied with all the requirements of this rule, including but not limited to:

(1) Subsection A of 2.2.2.14 NMAC, continuing professional education requirements for all staff that the firm will use on any New Mexico governmental engagements;

(2) for IPAs who have audited agencies under this rule in the past, they shall have previously complied with: 2.2.2.9 NMAC, report due dates, including notifying the state auditor regarding late audit reports and 2.2.2.13 NMAC, review of audit reports and audit documentation.

B. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts, AUPs, and other attest engagements with agencies. The state auditor's list of approved firms shall be reviewed and updated on an annual basis. An IPA on the list of approved firms is approved to perform government audits, AUPs, and other attest engagements for agencies and local public bodies until the list of approved firms is published for the following year; provided that the OSA may restrict firms at any time for failure to submit firm profile updates timely. An IPA that is included on the state auditor's list of approved firms for the first time may be subject to an OSA quality control review of the IPA's working papers for audits, AUPs and other attest engagements. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date, as posted on the OSA's audit reports website). The state auditor shall approve contracts for audits, AUPs and other attest engagements only with IPA firms that have submitted a complete and correct firm profile complying with all the requirements set forth in this rule and that has been approved by the OSA. The OSA shall inform all IPAs whose firm profiles were submitted by the due date whether they are on the list of approved firms for audits, AUPs and other attest engagements and shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency's

annual financial audit. Firms that only perform non-attest engagements, or otherwise do not meet applicable requirements, shall not be included on the list of approved firms.

C. Disqualified firms: An IPA firm [~~shall~~] may not be included on the list of approved firms for audits, AUPs, and other attest engagements if any of the following applies to that IPA:

(1) the firm received a peer review rating of "failed";

(2) the firm does not have a current New Mexico firm permit to practice, if applicable;

(3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of 2.2.2.14 NMAC, to perform GAGAS audits (however, firms seeking to contract only for agreed-upon-procedures engagements will not be disqualified if GAGAS CPE requirements have not been met);

(4) the IPA has been restricted in the past and has not demonstrated improvement (this includes submitting excessively deficient audit reports or having excessively deficient workpapers);

(5) the IPA made false statements in their firm profile or any other official communication with the OSA that were misleading enough to merit disqualification; or

(6) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

D. Restriction:

(1) IPAs may be placed on restriction based on the OSA's review of the firm profile and deficiency considerations as described below. Restriction may take the form of limiting either the type of engagements or the number of audit contracts, or both, that the IPA may hold. The OSA may impose a corrective action plan associated with the restriction. The restriction remains in place until the OSA notifies the IPA that the restriction has been modified or removed. The deficiency considerations include, but are not necessarily limited to:

(a) failure to submit reports in accordance with report due dates provided in Subsection A of 2.2.2.9 NMAC, or the terms of their individual agency contract(s);

(b) failure to submit late report notification letters in accordance with Subsection A of 2.2.2.9 NMAC;

(c) failure to comply with this rule;

(d) poor quality reports as determined by the OSA;

(e) poor quality working papers as determined by the OSA;

(f) a peer review rating of "pass with deficiencies" with the deficiencies being related to governmental audits;

(g) failure to contract through the OSA for New Mexico governmental audits or AUP engagements;

(h) failure to inform agency in prior years that the IPA is restricted;

(i) failure to comply with the confidentiality requirements of this rule;

(j) failure to invite the state auditor or the auditor's designee to engagement entrance conferences, progress meetings or exit conferences after receipt of related notification from the OSA;

(k) failure to comply with OSA referrals or requests in a timely manner;

(l) suspension or debarment by the U.S. general services administration;

(m) false statements in the IPA's firm profile or any other official communication with the OSA;

(n) failure to cooperate timely with requests from successor IPAs, such as reviewing workpapers;

(o) failure to have required contracts approved by the OSA; or

(p) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

(2) The OSA shall notify any IPA that it proposes to place under restriction. If the proposed restriction includes a limitation on the number of engagements that an IPA is eligible to hold, the IPA shall not submit proposals or bids to new agencies if the number of multi-year proposals the IPA possesses at the time of restriction is equal to or exceeds the limitation on the number of engagements for which the IPA is restricted.

(3) An IPA under restriction is responsible for informing the agency whether the restricted IPA is eligible to engage in a proposed contract.

(4) If an agency or local public body submits an unsigned contract to the OSA for an IPA that was ineligible to perform that contract due to its restriction, the OSA shall reject the unsigned contract.

E. Procedures for imposition of restrictions:

(1) The state auditor may place an IPA under restriction in accordance with Subsection D of 2.2.2.8 NMAC.

(a) The state auditor or the auditor's designee shall cause written notice of the restriction to be sent by email and certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction. The letter shall contain the following information:

(i) the nature of the restriction;

(ii) the conditions of the restriction;

(iii) the reasons for the restriction;

(iv) the action to place the IPA on restriction is brought pursuant to Subsection A of Section 12-6-3 NMSA 1978 and these regulations;

(v) the IPA may request, in writing, reconsideration of the proposed contract restriction which shall be received by the OSA within 15 calendar days from the date of the letter of restriction; and

(vi) the e-mail or street address where the IPA's written request for reconsideration shall be delivered, and the name of the person to whom the request shall be sent.

(b) The IPA's written request for reconsideration shall include sufficient facts to rebut on a point for point basis each deficiency noted in the OSA's letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide supplemental argument as to why the OSA's determination should be modified or withdrawn. The IPA may be represented by an attorney licensed to practice law in the state of New Mexico.

(c) The IPA shall have forfeited its opportunity to request reconsideration of the restriction(s) if the OSA does not receive a written request for reconsideration within 15 calendar days of the date of the letter of restriction. The state auditor may grant, for good cause shown, an extension of the time an IPA has to submit a request for reconsideration.

(2) The OSA shall review an IPA's request for reconsideration and shall make a determination on reconsideration within 15 calendar days of the IPA response letter unless the IPA has asked to present its request for reconsideration in person, in which case the OSA shall make a determination within 15 calendar days from the date of the personal meeting. The OSA may uphold, modify or withdraw its restriction pursuant to its review of the IPA's request for reconsideration, and shall notify the IPA of its final decision in writing which shall be sent to the IPA via email and certified mail, return receipt requested.

F. Procedures to obtain professional services from an IPA: Concurrent with publication of the list of approved firms, the OSA shall authorize agencies to select an IPA to perform their annual audit or AUP engagement. Agencies are prohibited from beginning the process of procuring IPA services for annual audits or AUPs pursuant to Section 12-6-3 NMSA 1978 until they receive the OSA authorization. Agencies that wish to begin the IPA procurement process for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 prior to receiving OSA authorization may request an exception, however any such exceptions granted by OSA are subject to changes in the final audit rule applicable to the annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 and changes in restrictions to, or disqualifications of, IPAs. The notification shall inform the agency that it shall consult its prospective IPA to determine whether the prospective IPA has been restricted by the OSA as to the type of engagement or number of contracts it is eligible to perform. Agencies that may be eligible for the tiered system shall complete the evaluation to determine the level of financial reporting described in Subsection B of 2.2.2.16 NMAC. Agencies that receive and expend federal awards shall follow the uniform guidance procurement requirements from 2 CFR 200.317 to 200.326 and 200.509, and shall also incorporate applicable guidance from the following requirements. Agencies shall comply with the following procedures to obtain professional services from an IPA for an audit or AUP engagement.

(1) Upon receipt of written authorization from the OSA to proceed, and at no time before then unless OSA has granted an exception, the agency shall identify all elements or services to be solicited pursuant to this rule and conduct a procurement that includes each applicable element of the annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic audit or AUP engagement.

(2) Quotations or proposals for annual financial audits shall contain each of the following elements:

(a) financial statement audit;

(b) federal single audit (if applicable);

(c) financial statement preparation so long as the IPA has considered any threat to independence and mitigated it;

(d) other non-audit services (if applicable and allowed by current government auditing standards); and

(e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(3) Auditor rotation rule: An IPA may not provide services to an agency or LPB consecutively for longer than eight years. After the eighth consecutive year, the agency or LPB must obtain a proposal for another IPA for at least two years before returning to the prior IPA.

[~~(3)~~] **(4)** The agency is encouraged to request multiple year proposals for audit and AUP services, however the term of the contract shall be for one year only. The parties shall enter a new audit contract each year. The agency is responsible for procuring IPA services in accordance with all applicable laws and regulations which may include, but are not limited to, the State Procurement Code (Chapter 13, Article 1 NMSA 1978) or equivalent home rule procurement provisions; GSD Rule 1.4.1 NMAC, Procurement Code Regulations, if applicable; DFA Rule, 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services; Uniform Guidance; and Section 13-1-191.1 NMSA 1978 relating to campaign contribution disclosure forms. In the event that either of the parties to the contract elects not to contract for all of the years contemplated by a multiple year proposal, or the state auditor

disapproves the contract, the agency shall use the procedures described above to procure services from a different IPA.

[~~(4)~~] **(5)** If the agency is a component unit of a primary government, the agency's procurement for audit services shall include the AU-C 600 (group audits) requirements for the IPA to communicate and cooperate with the group engagement partner and team, and the primary government. This requirement applies to agencies and universities that are part of the statewide ACFR, other component units of the statewide ACFR and other component units of any primary government that use a different audit firm from the primary government's audit firm. Costs for the IPA to cooperate with the group engagement partner and team, and the primary government, caused by the requirements of AU-C 600 (group audit) may not be charged in addition to the cost of the engagement, as the OSA views this in the same manner as compliance with any other applicable standard.

[~~(5)~~] **(6)** Agencies are encouraged to include representatives of the offices of separately elected officials such as county treasurers, and component units such as charter schools and housing authorities, in the IPA selection process. As part of their evaluation process, the OSA recommends that agencies consider the following when selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978:

(a) responsiveness to the request for proposal (the firm's integrity, record of past performance, financial and technical resources);

(b) relevant experience, availability of staff with professional qualifications and technical abilities;

(c) results of the firm's peer and external quality control reviews; and

(d) weighting the price criteria less than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee.

Upon the OSA's request, the agency shall make accessible to the OSA all of the IPA procurement and selection documentation.

[~~(6)~~] **(7)** After selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978, each agency shall enter the appropriate requested information online on the OSA-connect website (www.osa-app.org). In order to do this, the agency shall register on OSA-Connect and obtain a user-specified password. The agency's user shall then use OSA-Connect to enter information necessary for the contract and for the OSA's evaluation of the IPA selection. After the agency enters the information, the OSA-Connect system generates a draft contract containing the information entered. The agency shall submit to the OSA for approval a copy of the unsigned draft contract by following the instructions on OSA-Connect.

[~~(7)~~] **(8)** The OSA shall notify the agency as to the OSA's approval or rejection of the selected IPA and contract. The OSA's review of audit contracts does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies. After the agency receives notification of approval of the selected IPA and contract from the OSA, the agency is responsible for getting the contract signed and sent to any oversight agencies for approval (if applicable). The OSA shall not physically sign the contract. After the agency obtains all the required signatures and approvals of the contract, the agency shall, within three weeks of OSA's approval of the contract, submit a copy of the fully executed contract in an electronic portable document format (PDF) by uploading it in OSA-Connect.

[~~(8)~~] **(9)** The agency shall submit the unsigned contract generated by OSA-Connect to the OSA by the due date shown below; submission prior to the due date shown below is permissible. In the event that the due date falls on a weekend or holiday, the due date shall be the next business day. If the unsigned contract is not submitted to the state auditor by these due dates, the IPA may, according to professional judgment, include a finding of non-compliance with Subsection F of 2.2.2.8 NMAC in the audit report or AUP report.

(a) [~~Regional education cooperatives~~] RECs, cooperative educational services, independent housing authorities, hospitals and special hospital districts: April 15;

(b) school districts, counties, and higher education: May 1;

(c) incorporated counties (of which Los Alamos is the only one), local workforce investment boards and local public bodies with a June 30 year end that do not qualify for the tiered system: May 15;

(d) councils of governments, district courts, district attorneys, state agencies: June 1 and the state of New Mexico ACFR: July 31;

(e) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a June 30 fiscal year end: July 30;

(f) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a fiscal year end other than June 30 shall use a due date 30 days after the end of the fiscal year;

(g) agencies and local public bodies that do not qualify for the tiered system with a fiscal year end other than June 30 shall use a due date 30 days before the end of the fiscal year;

(h) component units that are being separately audited: on the primary government's due date;

(i) Charter schools that are chartered by

the PED and agencies that are subject to oversight by the HED have the additional requirement of submitting their audit contract to PED or HED for approval (Section 12-6-14 NMSA 1978); and

(j) In the event the agency's unsigned contract is submitted to the OSA, but is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a contract with a different IPA using OSA-Connect. This process shall continue until the state auditor approves an unsigned contract. During this process, whenever an unsigned contract is not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days after the date of the disapproval and shall include documentation in support of its IPA selection. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

[~~(9)~~] **(10)** The agency shall retain all procurement documentation, including completed evaluation forms, for five years and in accordance with applicable public records laws.

[~~(10)~~] **(11)** If the agency fails to submit an unsigned contract by the due date set forth in this rule, or, if no due date is applicable, within 60 days of notification from the state auditor to engage an IPA, the state auditor may conduct the audit or select the IPA for that agency. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA 1978.

[~~(11)~~] **(12)** In selecting an IPA for an agency pursuant to Subsection F of 2.2.2.8 NMAC the state auditor shall at a minimum consider the following factors, but may consider other factors in the state auditor's discretion that serve the best interest of the state of New Mexico and the agency:

(a) the IPA shall be drawn from the list of approved IPAs maintained by the state auditor;

(b) an IPA subject to restriction pursuant to Subsection D of 2.2.2.8 NMAC, is ineligible to be selected under this paragraph;

(c) whether the IPA has conducted one or more audits of similar government agencies;

(d) the physical proximity of the IPA to the government agency to be audited;

(e) whether the resources and expertise of the IPA are consistent with the audit requirements of the government agency to be audited;

(f) the IPA's cost profile, including examination of the IPA's fee schedule and blended rates;

(g) the state auditor shall not select an IPA in which a conflict of interest exists with the agency or that may be otherwise impaired, or that is not in the best interest of the state of New Mexico.

[~~(12)~~] **(13)** The state auditor shall consider, at a minimum, the following factors when considering which agencies shall be subject to the state auditor's selection of an IPA:

(a) whether the agency is demonstrating progress in its own efforts to select an IPA;

(b) whether the agency has funds to pay for the audit;

(c) whether the agency is on the state auditor's "at risk" list;

(d) whether the agency is complying with the requirements imposed on it by virtue of being on the state auditor's "at risk" list;

(e) whether the agency has failed to timely submit its e-mailed draft unsigned contract copy in accordance with the audit rule on one or more occasions;

(f) whether the agency has failed to timely submit its annual financial audit report in accordance with the audit rule due dates on one or more occasions.

[~~(13)~~] **(14)** The state auditor may appoint a committee of the state auditor's staff to make recommendations for the state auditor's final determination as to which IPAs shall be selected for each government agency subject to the discretion of the state auditor.

[~~(14)~~] **(15)** Upon selection of an IPA to audit a government agency subject to the discretion of the state auditor, the state auditor shall notify the agency in writing regarding the selection of an IPA to conduct its audit. The notification letter shall include, at a minimum, the following statements:

(a) the agency was notified by the state auditor to select an IPA to perform its audit or AUP engagement;

(b) 60 days or more have passed since such notification, or the applicable due date in this rule has passed, and the agency failed to deliver its draft contract in accordance with this subsection;

(c) pursuant to Subsection A of Section 12-6-14 NMSA 1978, the state auditor is selecting the IPA for the agency;

(d) delay in completion of the agency's audit is contrary to the best interest of the state and the agency, and threatens the functioning of government and the preservation or protection of property;

(e) in accordance with Section 12-6-4 NMSA 1978, the reasonable costs of such an audit shall be borne by the agency unless otherwise exempted; and

(f) selection of the IPA is final, and the agency shall immediately take

appropriate measures to procure the services of the selected IPA.

G. State auditor approval/rejection of unsigned contract: The state auditor shall use discretion and may reject unsigned contracts as follows:

(1) An unsigned audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP professional services contract under 2.2.2.16 NMAC that does not serve the best interests of the public or the agency or local public body because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) failure to meet the auditor rotation requirements as follows: the IPA is prohibited from conducting the agency audit for a period of two years because the IPA already conducted those services for that agency for a period of [~~eight~~] six consecutive years;

(c) lack of competence or staff availability;

(d) circumstances that may cause untimely delivery of the audit report or AUP report;

(e) unreasonably high or low cost to the agency or local public body;

(f) terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) lack of compliance with the procurement code, the audit act, or this rule;

(h) the agency giving too much consideration to the price of the IPA's response to the request for bids or request for proposals in relation to other evaluation criteria;

(i) newness of the IPA to the state auditor's list of approved firms;

(j) noncompliance with the requirements of Section 12-6-3 NMSA 1978 the audit act by the agency for previous fiscal years; or

(k) any other reason determined by the state auditor to be in the best interest of the state of New Mexico.

(2) An audit contract, special audit contract, attestation engagement contract, performance audit contract, or forensic accounting engagement contract or AUP contract of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit or AUP report on time;

(c) failed to comply with state laws or regulations of the state auditor;

(d) performed non-audit services (including services related to fraud) for an agency or local public body it is performing an audit, special audit, attestation engagement, performance audit, forensic accounting engagement or an AUP for, without prior approval of the state auditor;

(e) performed non-audit services under a separate contract for services that may be disallowed by GAGAS independence standards;

(f) failed to respond, in a timely and acceptable manner, to an OSA audit, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract, AUP report review or working paper review;

(g) impaired independence during an engagement;

(h) failed to cooperate in providing prior-year working papers to successor IPAs;

(i) not adhered to external quality control review standards as defined by GAGAS and 2.2.2.14 NMAC;

(j) has a history of excessive errors or omissions in reports or working papers;

(k) released the audit report or AUP report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the AUP report was received from the OSA;

(l) failed to submit a completed signed contingency subcontractor form, if required;

(m) failed to submit a completed firm profile as required by Subsection A of 2.2.2.8 NMAC or failed to include all staff in the firm profile who would be working on the firm's engagements;

(n) reached the limit of contracts to which the state auditor restricted the IPA;

(o) failed to respond to communications from the OSA or engagement clients within a reasonable amount of time; or

(p) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded a contract.

(3) An audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP contract for an IPA received by the OSA, which the state auditor decides to perform himself with or without the assistance of an IPA, and pursuant to Section 12-6-3 NMSA 1978, even if the agency or local public body was previously designated for audit or AUP to be performed by an IPA.

H. Audit contract requirements: The agency shall use OSA-Connect at www.osa-app.org to submit the appropriate audit or AUP engagement contract. The OSA may provide audit or AUP engagement contract forms to the agency via facsimile, e-mail, or U.S. mail if specifically requested by the agency. Only contract templates generated through OSA-Connect shall be accepted and shall:

(1) be completed and submitted in its unsigned form by the due date indicated at Subsection F of 2.2.2.8 NMAC;

(2) for all agencies whose contracts are approved through the DFA's contracts review bureau, have the IPA's combined reporting system [~~(CRS)~~] number verified by the New Mexico taxation and revenue department [~~(TRD)~~] after approval by the state auditor; and

(3) in the compensation section of the contract, include the dollar amount that applies to each element of the contracted procedures that shall be performed;

(4) in the "other" section of the contract additional services shall be related to the scope of work, but not included in previous categories in the compensation section. Such costs shall be fully detailed and sufficiently describe the required audit related work in the "other provisions" section of the contract.

I. Professional liability insurance: The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile. The amount maintained should be commensurate with the risk assumed. The IPA shall provide to the state auditor, prior to expiration, updated insurance information.

J. Breach of contract: A breach of any terms of the contract shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or AUP engagements of New Mexico governmental agencies.

K. Subcontractor requirements:

(1) Audit firms that have only one individual qualified to supervise a GAGAS audit and issue the related audit report pursuant to Section 61-28B-17 NMSA 1978, and GAGAS Paragraph 4.16 shall submit with the firm profile, a completed contingency subcontractor form that is dated to be effective until the date the next firm profile shall be submitted. The form shall indicate which IPA on the state auditor's current list of approved IPA's shall complete the IPA's audits in the event the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at www.osanm.org. The OSA shall not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on a specific audit, then the IPA shall [~~obtain the prior written approval of the state auditor to~~] submit a subcontract with the reason for subcontracting a portion of the audit work to the OSA for approval. The IPA may subcontract only with IPAs [~~who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of 2.2.2.8 NMAC~~] on the approved IPA list. Subcontractors are subject to an independence analysis, which may include the [~~IPA rotation~~] auditor rotation rule requirements of [~~Subsection G~~] Subsection F of 2.2.2.8 NMAC. [~~"Technical review contracts" are considered subcontracting and are subject to the requirements of this Section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.~~]

(3) "Technical review contracts" are considered subcontracting and are subject to the requirements of this section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.

L. IPA independence: IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of the current government auditing standards.

M. Progress Payments: The state auditor shall approve progress and final payments for the annual audit contract as follows:

(1) Subsection A of Section 12-6-14 NMSA 1978 (contract audits) provides that "payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section."

(2) Subsection B of Section 12-6-14 NMSA 1978 (contract audits) provides that the state auditor may authorize progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to seventy percent do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. If the report has been submitted, progress payments up to eighty-five percent do not require state auditor approval. The agency shall monitor audit progress and make progress payments only up to the percentage that the audit is completed. If requested by the state auditor, the agency or the IPA shall provide a copy of the approved invoices and progress billing(s). Progress payments between seventy percent and ninety-five percent if no report has been submitted, or eighty-five and ninety-five percent if a report has been submitted, require state auditor approval after being approved by the agency. When component unit audits are part of a primary government's audit contract, requests for progress payments on the component unit audit(s) shall be included within the primary government's request for progress

payment approval. In this situation, the OSA shall not process separate progress payment approvals submitted by the component unit.

(4) The state auditor may limit progress payments allowed to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A of 2.2.2.9 NMAC to only the first fifty percent of the total fee.

(5) Section 12-6-14 NMSA 1978 (contract audits) provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has determined, in writing, that the audit has been made in a competent manner in accordance with contract provisions and this rule. The state auditor's determination with respect to final payment shall be communicated as follows:

(a) stated in the letter accompanying the release of the report to the agency; or

(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency.

In no circumstance may the total billed by the IPA under the audit contract exceed the total contract amount, as amended if applicable. Further, as the compensation section of the contract shall include the dollar amount that applies to each element of the contracted procedures that shall be performed, if certain procedures, such as a single audit, are determined to be unnecessary and are not performed, the IPA may not bill the agency for these services. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 NMSA 1978 and this rule and shall be reported as an audit finding in the audit report of the agency. If this statute is violated, the IPA may be removed from the state auditor's list of approved auditors.

N. Contract amendment requirements:

(1) Contract amendments to contracts for audit services, AUP services, or non-attest services shall be submitted to the OSA regarding executed contracts. Contracts may not be amended after they expire. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. The agency shall use OSA-Connect at www.osa-app.org to submit the appropriate draft audit or AUP engagement contract amendment. The OSA's review of audit contracts and amendments does not include an evaluation of compliance with the state procurement code or other applicable requirements. Although the parties may amend the delivery dates in a contract, audit report regulatory due dates cannot be modified by amendment. The OSA's review of audit contract amendments does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations, or policies.

(2) Contract amendments submitted for state auditor approval shall include a detailed explanation of:

(a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment; and

(b) how the work to be performed relates to the scope of work outlined in the original contract.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee increases shall only be approved for extraordinary circumstances, reasons determined by the state auditor to be in the best interest of the state of New Mexico, or a significant change in the scope of an audit. For example, if an audit contract did not include a federal single audit, a contract amendment shall be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and the addition of special procedures required by this rule, a regulatory body or a local, state, or federal grantor. Contract amendments shall not be approved to perform additional procedures to achieve an unmodified opinion. The state auditor shall also consider the auditor independence requirements of Subsection L of 2.2.2.8 NMAC when reviewing contract amendments for approval. The OSA shall review amendment requests and respond to the agency and the IPA within 30 calendar days of receipt.

(4) If a proposed contract amendment is rejected for lack of adequate information, the IPA and agency may submit a corrected version for reconsideration.

O. Termination of audit contract requirements:

(1) The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed, or for any other reason, and perform the audit entirely or partially with IPAs contracted by the OSA (consistent with the October 6, 1993, stipulated order, *Vigil v. King*, No. SF 92-1487(C). The notice of termination of the contract shall be in writing.

(2) If the agency or IPA terminates the audit or AUP engagement contract pursuant to the termination paragraph of the contract, the OSA shall be notified of the termination immediately. The party sending out the termination notification letter shall simultaneously send a copy of the termination notification letter to the OSA with an appropriate cover letter, addressed to the state auditor.

(a) The agency is responsible for procuring the services of a new IPA in accordance with all applicable laws and regulations, and this rule.

(b) The unsigned contract for the newly procured IPA shall be submitted to the

OSA within 30 calendar days of the date of the termination notification letter.

(c) As indicated in Subsection A of 2.2.2.9 NMAC, the state auditor shall not grant extensions of time to the established regulatory due dates.

(d) If the IPA does not expect to deliver the engagement report by the regulatory due date, the IPA shall submit a written notification letter to the state auditor and oversight agency as required by Subsection A of 2.2.2.9 NMAC or Subsection G of 2.2.2.16 NMAC.

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.9 REPORT DUE DATES:

A. Report due dates: The IPA shall deliver the electronic draft annual financial audit report to the state auditor by [~~5:00~~] 11:59 p.m. on the date specified in the audit contract and send it electronically by the due date. IPAs and agencies are encouraged to perform interim work as necessary and appropriate to meet the following due dates.

(1) The audit report due dates are as follows:

(a) [~~regional education cooperatives~~] RECs, cooperative educational services and independent housing authorities: September 30;

(b) hospitals and special hospital districts: October 15;

(c) higher education, state agencies not specifically named elsewhere in this Subsection, district courts, district attorneys, the New Mexico finance authority, the New Mexico lottery authority, and other agencies with June 30 fiscal year-ends that are reported as component units in the state of New Mexico ACFR: November 1;

(d) school districts, [~~TRD~~] New Mexico taxation and revenue department, [~~CYFD~~] New Mexico children youth and families department, [~~DOH~~] New Mexico department of health, [~~DOT~~] New Mexico department of transportation, [~~DWS~~] New Mexico department of workforce solutions, HSD, GSD, [~~ECECD~~] New Mexico early childhood education and care department, SLO, and NMCD: November 15;

(e) [~~the~~] PED, New Mexico department of homeland security and emergency management, the state investment council, and the three post-employment benefit agencies (PERA, ERB, and the retiree health care authority): the Wednesday before Thanksgiving day;

(f) counties, incorporated counties (of which Los Alamos is the only one), workforce investment boards, councils of governments, and the New Mexico mortgage finance authority, and the state of New Mexico component appropriation funds (state general fund): December 1;

(g) local public bodies and municipalities: December 15;

(h) the state of New Mexico ACFR: December 31;

(i) the ERB, PERA and retiree health care authority schedules of employer allocations reports and related employer guides required by Subsections Z of 2.2.2.10 NMAC: June 15;

(j) agencies with a fiscal year-end other than June 30 shall submit the audit report no later than five months after the fiscal year-end;

(k) regarding component unit reports (e.g., housing authorities, charter schools, hospitals, foundations, etc.), all separate audit reports prepared by an auditor that is different from the primary government's auditor, are due fifteen days before the primary government's audit report is due, unless some other applicable due date requires the report to be submitted earlier;

(l) any agency that requires its report to be released by December 31st for any reason (bonding, GFOA, etc.): the earlier of its agency due date or December 1;

(m) any agency that requires its report to be released by any specific date (e.g., due to board meeting, federal reporting, etc.): the earlier of its agency due date or one month prior to the requested release date; and

(n) late audit or AUP reports of any agency (not performed in the current reporting period): not more than six months after the date the contract was executed.

(2) If an audit report is not delivered on time to the state auditor, the auditor shall include this instance of non-compliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If appropriate, the finding may also be reported as a significant deficiency or material weakness in the operation the agency's internal controls over financial reporting pursuant to AU-C 265.

(3) An electronic copy of the report shall be submitted for review by the OSA with the following: copy of the signed management representation letter and a copy of the completed state auditor report review guide (available at www.saonm.org). A report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. All separate reports prepared for component units shall also be submitted to the OSA for review, along with a copy of the management representation letter, and a completed report review guide for each separate audit report. A separate component unit report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. If a due date falls on a weekend or

holiday, or if the OSA is closed due to inclement weather, the audit report is due the following business day by [~~5:00~~] 11:59 p.m.

(4) AU-C 700.41 requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the financial statements have been prepared and the management representation letter has been signed. AU-C 580.20 requires the management representation letter to be dated the same date as the independent auditor's report.

(5) As soon as the auditor becomes aware that circumstances exist that will make an agency's audit report be submitted after the applicable due date provided in Subsection A of 2.2.2.9 NMAC, the auditor shall notify the state auditor in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. The late audit notification letter is subject to the confidentiality requirements detailed at Subsection M of 2.2.2.10 NMAC. This does not prevent the state auditor from notifying the legislative finance committee or applicable oversight agency pursuant to Subsections F and G of Section 12-6-3 NMSA 1978. There shall be a separate notification for each late audit report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by a duly authorized representative of the agency. If the IPA is going to miss the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the audit report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the due date, and then rejected by the OSA, making the report late when resubmitted. Reports resubmitted to the OSA with changes of the IPA's opinion after the report due date shall be considered late and a late audit finding shall be included in the audit report.

(6) The due date of any report not listed in Subsection A of 2.2.2.9 NMAC shall be the date specified in the contract.

B. Delivery and release of the audit report:

(1) The IPA shall deliver to the state auditor an editable electronic copy of the audit report for review by [~~5:00~~] 11:59 p.m. on the day the report is due. Unfinished or excessively deficient reports shall not satisfy this requirement; such reports shall be rejected and returned to the IPA and the OSA may take action in accordance with Subsection C of 2.2.2.13 NMAC. When the OSA rejects and returns a substandard audit report to the IPA, the OSA shall consider the audit report late if the corrected report is not resubmitted by the due date. The IPA shall also report a finding for the late audit report in the audit report. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year.

(2) Before initial submission, the IPA shall review the report using the appropriate report review guide available on the OSA's website. The report review guide shall reference applicable page numbers in the audit report. The audit manager or person responsible for the IPA's quality control system shall either complete the report review guide or sign off as having reviewed it. All questions in the guide shall be answered, and the reviewer shall sign and date the last page of the guide. If the review guide is not accurately completed or incomplete, the report shall not be accepted.

(3) [~~IPAs are encouraged to deliver completed audit reports before the due date.~~] All reports prepared by IPAs [~~, except for reports prepared by the OSA,~~] shall be addressed to the state auditor, the agency executive and governing body (if applicable). Reports prepared by the OSA [~~shall~~] will be addressed to the agency executive and governing body (if applicable). The OSA [~~shall~~] will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to Subsection A of 2.2.2.13 NMAC, [~~and any OSA comments have been addressed by the IPA, the OSA shall indicate to the IPA that the report is ready to print. After the OSA issues the "OK to print" communication for the audit report, the OSA shall authorize~~] the OSA will issue an "OSA review notes" communication that lists any comments, corrections, or issues that are required to be addressed by the IPA prior to final submission to the OSA. Within five days of receipt of the "OSA review notes" communication, the IPA [~~to~~] shall submit the corrected report with the following items to the OSA [~~within five business days;~~]: an electronic searchable version of the audit report labeled "final" in PDF format, a written response to any OSA comments, corrections, and issues, and an electronic excel version of the summary of findings report and any other required electronic schedule [~~(electronic schedules may not apply to engagements pursuant to 2.2.2.15 or 2.2.2.16 NMAC)~~] if applicable, and an electronic excel version of the schedule of asset management costs for investing agencies, if applicable (all available at [~~www.saonm.org~~] www.osa.nm.gov). The OSA [~~shall~~] will not release the report until all comments, corrections, and issues have been addressed and the searchable electronic PDF version of the report and all required electronic excel schedules [~~are~~] have been received [~~by the OSA~~]. The electronic file containing the final audit report shall:

(a) be created and saved as a PDF document in a single PDF file format (simply naming the file using a PDF extension

.pdf does not by itself create a PDF file);

(b) be version 5.0 or newer;

(c) not exceed 10 megabytes (MB) per file submitted (contact the OSA to request an exception if necessary);

(d) have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the OSA is not prevented from opening, viewing, or printing the file;

(e) not contain any embedded scripts or executables, including sound or movie (multimedia) objects;

(f) have a file name that ends with .pdf;

(g) be free of worms, viruses or other malicious content (a file with such content shall be deleted by the OSA);

(h) be "flattened" into a single layer file prior to submission;

(i) not contain any active hypertext links, or any internal/external links (although it is permissible for the file to textually reference a URL as a disabled link);

(j) be saved at 300 dots per inch (DPI) (lower DPI makes the file hard to read and higher DPI makes the file too large);

(k) have a name that starts with the OSA agency number, followed by the agency name, the fiscal year, and "final"; and

(l) be searchable.

(4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter."

(a) The audited agency may waive the five-day waiting period required by Section 12-6-5 NMSA 1978. To do so, the agency's governing authority or the governing authority's designee must provide written notification to the OSA of the waiver. The notification must be signed by the agency's governing authority or the governing authority's designee and be sent via letter, e-mail or fax to the attention of the state auditor. The OSA encourages agencies wishing to waive the five-day waiting period to provide the written notification *prior* to the submission of the final report to the OSA.

(b) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter". Release of the audit report to the agency or the public prior to it being officially released by the state auditor shall result in an audit finding.

(5) After the release of a report, the OSA shall provide DFA and the legislative finance committee with notification that the report is available on the OSA website.

(6) If an audit report is reissued pursuant to AU-C 560, subsequent events and subsequently discovered facts, or AAG GAS 13.29-.30 for uniform guidance compliance reports, the reissued audit report shall be submitted to the OSA with a cover letter addressed to the state auditor. The cover letter shall explain that:

(a) the attached report is a "reissued" report;

(b) the circumstances that caused the reissuance; and

(c) a summary of the changes that appear in the reissued report. The OSA shall subject the reissued report to the report review process and upon completion of that report review process, shall issue a "release letter." The contents of the reissued audit report are subject to the confidentiality requirements described in Subsection M of 2.2.2.10 NMAC. Agency management and the IPA are responsible for ensuring that the latest version of the report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

(7) If changes to a released audit report are submitted to the OSA, and the changes do not rise to the level of requiring a reissued report, the IPA shall submit a cover letter addressed to the agency, with a copy to the state auditor, which includes the following minimum elements:

(a) a statement that the changes did not rise to the level of requiring a reissued report;

(b) a description of the circumstances that caused the resubmitted updated report; and

(c) a summary of the changes that appear in the resubmitted updated report compared to the prior released report. Agency management and the IPA are responsible for ensuring that the latest version of the resubmitted report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

C. Required status reports: For an agency that has failed to submit audit [~~or agreed-upon procedures~~] reports as required by this rule, and has therefore been designated as [~~"at risk" due to~~] late [~~reports~~], the state auditor requires the agency to submit written status reports to the OSA on each March 15, June 15, September 15, and December 15 [~~that the agency is not in compliance with this rule. Status reports are not required for agencies that are included on the "at risk" list solely due to an adverse or disclaimed independent auditor's opinion~~] unless and until the late audit report has been submitted. [~~The status report~~] Status reports shall be signed by a member of the agency's governing authority, a designee of the governing authority or a member of the agency's top management. If the agency has a contract with

an IPA to conduct the audit [~~or perform the AUP engagement~~], the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit [~~or perform AUP engagements for~~] agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken into account during the IPA Firm Profile evaluation process. At a minimum, the quarterly written status report shall include:

(1) a detailed explanation of the agency's efforts to complete and submit its audit [~~or agreed-upon procedures~~];

(2) the current status of any ongoing audit [~~or agreed-upon procedures~~] work;

(3) any obstacles encountered by the agency in completing its audit [~~or agreed-upon procedures~~]; and

(4) a projected completion date for the financial audit [~~or agreed-upon procedures~~] report.

[2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.10 GENERAL CRITERIA:

A. Annual financial and compliance audits:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and the component units of the primary government, if any. For any financial and compliance audit the agency should produce all documents necessary to conduct the engagement.

(a) The primary government shall determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14, 39, 61, and 80 (as amended). The flowchart at GASBS 61.68 may be useful in making this determination. The primary government shall notify all other agencies determined to be component units by September 15 of the subsequent fiscal year. Failure to meet this due date results in a compliance finding. IPAs shall use GASB guidelines as found in relevant GASBS to determine the correct presentation of the component unit. All agencies that meet the criteria to be a component unit of the primary government shall be included with the audited financial statements of the primary government by discrete presentation or blended, as appropriate. Component units are reported using the government financial reporting format [~~if they have one or more of the characteristics described at AAG SLV 1.01~~]. Component units of component units are also subject to OSA review, and must be reported using the government financial reporting format. If a component unit does not qualify to be reported using the governmental format and is not statutorily required to be reported using the governmental format, that fact shall be explained in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If there was a change from the prior year's method of presenting a component unit or change in component units reported, the notes to the financial statements shall disclose the reason(s) for the change.

(b) If a primary government has no component units, that fact shall be disclosed in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If the primary government has component units that are not included in the financial statements due to materiality, that fact shall also be disclosed in the notes.

(c) The state auditor requires component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement, and the statewide ACFR). For clarification, housing departments of a local government or a regional housing authority are not exempt from this requirement. Requests for exemption from this requirement shall be submitted in writing by the primary government to the state auditor. If the request to use a different auditor for the component unit is approved in writing by the state auditor, the following requirements shall be met:

(i) the IPAs of the primary government and all component units shall consider and comply with the requirements of AU-C 600;

(ii) the group engagement partner shall agree that the group engagement team will be able to obtain sufficient appropriate audit evidence through the use of the group engagement team's work or use of the work of the component auditors (AU-C 600.15);

(iii) the component unit auditor selected shall appear on the OSA list of approved IPAs;

(iv) all bid and auditor selection processes shall comply with the requirements of this rule;

(v) the OSA standard contract template shall be used by both the primary government and the component unit;

(vi) the primary government, the primary engagement partner, management of the component unit, and the component unit auditor shall all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable due dates;

(vii) all component unit findings shall be disclosed in the primary government's audit report (except the statewide ACFR, which shall include only component unit findings that are significant to the state as a whole); and

(viii) any separately issued component unit financial statements and associated auditors' reports shall be submitted to the state auditor by the due date in Subsection A of 2.2.2.9 NMAC for the review process described in Subsection A of 2.2.2.13 NMAC.

(d) With the exception of the statewide ACFR, the following SI pertaining to component units for which separately issued financial statements are not available shall be audited and opined on as illustrated in AAG SLV 16.103 example A-15: financial statements for each of the component unit's major funds, combining and individual fund financial statements for all of the component unit's non-major funds, and budgetary comparison statements for the component unit's general fund and major special revenue funds that have legally adopted annual budgets (AAG SLV 3.22).

(2) Audits of agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:

(a) The level of planning materiality described at AAG SLV 4.72-4.73 and exhibit 4-1 shall be used. Planning materiality for component units is at the individual component unit level.

(b) The scope of the audit includes the following statements and disclosures which the auditor shall audit and give an opinion on. The basic financial statements (as defined by GASB and displayed in AAG SLV exhibit 4-1) consisting of:

(i) the governmental activities, the business-type activities, and the aggregate discretely presented component units;

(ii) each major fund and the aggregate remaining fund information;

(iii) budgetary comparison statements for the general fund and major special revenue funds that have legally adopted annual budgets (when budget information is available on the same fund structure basis as the GAAP fund structure, the state auditor requires that the budgetary comparison statements be included as part of the basic financial statements consistent with GASBS 34 fn. 53, as amended, and AAG SLV 11.12 and 11.13); and

(iv) the related notes to the financial statements.

(c) Budgetary comparison statements for the general fund and major special revenue funds presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds shall be presented as RSI pursuant to GASBS 41.

(d) The auditor shall apply procedures and report in the auditor's report on the following RSI (if applicable) pursuant to AU-C 730:

(i) management's discussion and analysis (GASBS 34.8-.11);

(ii) RSI data required by GASBS 67 and 68 for defined benefit pension plans;

(iii) RSI schedules required by GASBS 43 and 74 for postemployment benefit plans other than pension plans;

(iv) RSI schedules required by GASBS 45 and 75 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and

(v) infrastructure modified approach schedules derived from asset management systems (GASBS 34.132-133).

(e) The audit engagement and audit contract compensation include an AU-C 725 opinion on the SI schedules presented in the audit report. The auditor shall subject the information on the SI schedules to the procedures required by AU-C 725. The auditor shall report on the remaining SI in an other-matter paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725. With the exception of the statewide ACFR, the following SI schedules are required to be included in the AU-C 725 opinion if the schedules are applicable to the agency:

(i) primary government combining and individual fund financial statements for all non-major funds (GASBS 34.383);

(ii) the schedule of expenditures of federal awards required by uniform guidance;

(iii) the schedule of pledged collateral required by Subsection P of 2.2.2.10 NMAC;

(iv) the FDS of housing authorities pursuant to Subsection B of 2.2.2.12 NMAC;

(v) the school district schedule of cash reconciliation required by Subsection C of 2.2.2.12 NMAC. In addition, the school district schedule of cash reconciliation SI shall be subjected to audit procedures that ensure the cash per the schedule reconciles to the PED reports as required by Subsection C of 2.2.2.12 NMAC;

(vi) any other SI schedule required by this rule.

B. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

(1) the most recent revision of GAGAS issued by the United States government accountability office;

(2) U.S. auditing standards-AICPA (clarified);

(3) uniform administrative requirements, cost principles, and audit requirements for federal awards (uniform guidance);

(4) AICPA audit and accounting guide, government auditing standards and single audits, (AAG GAS) latest edition;

(5) AICPA audit and accounting guide, state and local governments (AAG SLV) latest edition; and

(6) 2.2.2 NMAC, requirements for contracting and conducting audits of agencies, latest edition.

C. Financial statements and notes to the financial statements: The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the government accounting standards board (GASB) codification, latest edition. IPAs shall follow interpretations, technical bulletins, and concept statements issued by GASB, other applicable pronouncements, and GASB illustrations and trends for financial statements. In addition to the revenue classifications required by NCGAS 1.110, the OSA requires that the statement of revenues, expenditures, and changes in fund balance - governmental funds include classifications for intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

D. Requirements for preparation of financial statements:

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts rounded to the nearest dollar.

(2) The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date imposed in Subsection A of 2.2.2.9 NMAC.

(3) If there are differences between the financial statements and the books, the IPA shall provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.

(4) If the IPA prepared the financial statements in their entirety from the client-provided trial balance or underlying accounting records the IPA should conclude significant threats to independence exist and shall document the threats and safeguards applied to mitigate the threats to an acceptable level. If the threats cannot be documented as mitigated the IPA may appropriately decide to decline to provide the service. IPAs should refer to the GAGAS conceptual framework to evaluate independence. The fact that the auditor prepared the financial statements from the client-provided trial balance or underlying records shall be disclosed on the exit conference page of the audit report.

E. Audit documentation requirements:

(1) The IPA's audit documentation shall be retained for a minimum of five-years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. Audit documentation, including working papers, are the property of the IPA or responsible certificate holder per Subsection A of Section 61-28B-25 NMSA 1978. Audit documentation includes all documents used to support any opinions or findings included in the report. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor by the due date indicated in the request. State auditor review of audit documentation does not transfer the ownership of the documents. Ownership of the audit documentation is maintained by the IPA or responsible certificate holder.

(3) The audit documentation of a predecessor IPA shall be made available to a successor IPA in accordance with AU-C 510.07 and 510.A3 to 510. A11, and the predecessor auditor's contract. Any photocopy costs incurred shall be borne by the requestor. If the successor IPA finds that the predecessor IPA's audit documentation does not comply with applicable auditing standards and this rule, or does not support the financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations, and this rule, any or all of the following actions may be taken:

(a) the state auditor may require the predecessor IPA firm to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) the state auditor may deny or limit the issuance of future audit contracts; or

(c) the state auditor may refer the predecessor IPA to the New Mexico public accountancy board for possible licensure action.

F. Auditor communication requirements:

(1) The IPA shall comply with the requirements for auditor communication with those charged with governance as set forth in AU-C 260 and GAGAS 6.06 and 6.07.

(2) After the agency and IPA have an approved audit contract in place, the IPA shall prepare a written and dated engagement letter during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a copy of the signed letter as part of the audit documentation. In addition to meeting the requirements of the AICPA professional standards and the GAGAS requirements, the engagement letter shall state that the engagement shall be performed in accordance with 2.2.2 NMAC.

(3) The audit engagement letter shall not include any fee contingencies. The engagement letter shall not be

interpreted as amending the contract. Nothing in the engagement letter can impact or change the amount of compensation for the audit services. Only a contract amendment submitted pursuant to Subsection N of 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

(4) A separate engagement letter and list of client prepared documents is required for each fiscal year audited. The IPA shall provide a copy of the engagement letter and list of client prepared documents immediately upon request from the state auditor.

(5) The IPA shall conduct an audit entrance conference with the agency with representatives of the agency's governing authority and top management, which may include representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference and any progress meetings. If such notification is received, the IPA and agency shall invite the state auditor or the auditor's designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(6) All communications with management and the agency's oversight officials during the audit, regarding any instances of non-compliance or internal control weaknesses, shall be made in writing. The auditor shall obtain and report the views of responsible officials of the audited agency concerning the audit findings, pursuant to GAGAS 6.57-6.60. Any violation of law or good accounting practice, including instances of non-compliance or internal control weaknesses, shall be reported as audit findings per Section 12-6-5 NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

G. Reverting or non-reverting funds: Legislation can designate a fund as reverting or non-reverting. The IPA shall review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation shall be reverted and to whom. The law may also indicate the due date for the required reversion. Appropriate audit procedures shall be performed to evaluate compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes shall fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements shall disclose the specific legislation that makes a fund or appropriation non-reverting and any minimum balance required. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements shall disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of 2.2.2.12 NMAC and the department of finance and administration (DFA) white papers "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis." The statewide ACFR is exempt from this requirement.

H. Referrals and risk advisories: The Audit Act (Section 12-6-1 *et seq*. NMSA 1978) states that "the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor." (Section 12-6-3 NMSA 1978). Further, audits of New Mexico governmental agencies "shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor." (Section 12-6-3 NMSA 1978).

(1) In an effort to ensure that the finances of state and local governments are thoroughly examined, OSA may provide IPAs with written communications to inform the IPA that OSA received information that may suggest elevated risk in specific areas relevant to a particular agency's annual financial and compliance audit. These communications shall be referred to as "referrals." Referrals are considered confidential audit documentation. Referrals may relate to any topic, including the scope of the annual financial and compliance audit. IPAs shall take the circumstances described in OSA referral communications into account in their risk assessment and perform such procedures as, in the IPA's professional judgment, are necessary to determine what further actions, if any, in the form of additional disclosures, findings, and recommendations are appropriate in connection with the annual audit of the agency. After the conclusion of fieldwork but at least 14 days prior to submitting the draft annual audit report to the OSA for review, IPAs shall provide written confirmation to the OSA that the IPA took appropriate action in response to the referral. This written confirmation shall be submitted separately from any draft report and addressed to the attention of the OSA's special investigations division. The written confirmation shall be submitted electronically to SIDreferrals@osa.state.nm.us and shall respond to all aspects of the referral and list any findings associated with the subject matter of the referral. IPAs shall retain adequate documentation in the audit workpapers to support the written confirmation to OSA that the IPA took appropriate action in response to the referral. As outlined in 2.2.2.13 NMAC the OSA may review IPA workpapers associated with the annual audit of any agency. OSA workpaper review procedures shall include examining the IPA documentation associated with referrals. Insufficient or inadequate documentation may result in deficiencies noted in the workpaper review letter and may negatively impact the IPA during the subsequent firm profile review process. In accordance with Subsection D of 2.2.2.8 NMAC, an IPA may be placed on restriction if

an IPA refuses to comply with OSA referrals in a timely manner.

(2) OSA may issue written communications to inform agencies and IPAs that OSA received information that suggests elevated risk in specific areas relevant to the annual financial and compliance audits of some agencies. These communications shall be referred to as "risk advisories." Risk advisories shall be posted on the OSA website in the following location: https://www.saonm.org/risk_advisories. Risk advisories may relate to any topic relevant to annual financial and compliance audits of New Mexico agencies. IPAs shall take the circumstances described in OSA risk advisories into account in their risk assessment and perform such procedures and testwork as, in the IPA's professional judgment, are necessary to determine what further action, if any, in the form of disclosure, findings and recommendations are appropriate in connection with the annual audit of the agency.

I. State auditor workpaper requirement: The state auditor requires that audit workpapers include a written audit program for fund balance and net position that includes tests for proper classification of fund balance
pursuant to GASBS 54 and proper classification of net position pursuant to GASBS 34.34-.37 (as amended) and GASBS 46.4-.5 (as amended).

J. State compliance audit requirements: An IPA shall identify significant state statutes, rules, and regulations applicable to the agency under audit and perform tests of compliance. In designing tests of compliance, IPAs may reference AU-C 250 relating to consideration of laws and regulations in an audit of financial statements and AU-C 620 relating to using the work of an auditor's specialist. As discussed in AU-C 250.A23, in situations where management or those charged with governance of the agency, or the agency's in-house or external legal counsel, do not provide sufficient information to satisfy the IPA that the agency is in compliance with an applicable requirement, the IPA may consider it appropriate to consult the IPA's own legal counsel. AU-C 620.06 and 620.A1 discuss the use of an auditor's specialist in situations where expertise in a field other than accounting or auditing is necessary to obtain sufficient, appropriate audit evidence, such as the interpretation of contracts, laws and regulations. In addition to the significant state statutes, rules and regulations identified by the IPA, compliance with the following shall be tested if applicable (with the exception of the statewide ACFR):

(1) Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency's chief procurement officer, pursuant to Section 13-1-95.2 NMSA 1978, and Procurement Code Regulations, 1.4.1 NMAC, or home rule equivalent. All agencies must retain support for procurement until the contract expires or the minimum time required for record retention is met, whichever is longer.

(2) Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, and Regulations Governing the Per Diem and Mileage Act, 2.42.2 NMAC.

(3) Public Money Act, Sections 6-10-1 to 6-10-63 NMSA 1978, including the requirements that county and municipal treasurers deposit money in their respective counties, and that the agency receive a joint safe keeping receipt for pledged collateral. (In instances when another statute provides for a different timeline applicable to the agency, that statute shall control.)

(4) Public School Finance Act, Sections 22-8-1 to 22-8-48 NMSA 1978.

(5) Investment of Public Money Act, Sections 6-8-1 to 6-8-25 NMSA 1978.

(6) Public Employees Retirement Act, Sections 10-11-1 to 10-11-142 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to PERA. The IPA shall evaluate and test internal controls regarding employee eligibility for PERA and other benefits. IPAs shall evaluate risk associated with employees excluded from PERA and test that employees are properly excluded.

(7) Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to ERA. The IPA shall evaluate and test internal controls regarding employee eligibility for ERA and other benefits. IPAs shall evaluate risk associated with employees excluded from ERA and test that employees are properly excluded.

(8) Sale of Public Property Act, Sections 13-6-1 to 13-6-8 NMSA 1978.

(9) Anti-Donation Clause, Article IX, Section 14, New Mexico Constitution.

(10) Special, deficiency, and supplemental appropriations (appropriation laws applicable for the year under audit).

(11) State agency budget compliance with Sections 6-3-1 to 6-3-25 NMSA 1978, and local government compliance with Sections 6-6-1 to 6-6-19 NMSA 1978.

(12) Lease purchase agreements, Article IX, Sections 8 and 11, New Mexico Constitution; Sections 6-6-11 to 6-6-12 NMSA 1978; *Montano v. Gabaldon*, 108 NM 94, 766 P.2d 1328 (1989).

(13) Accounting and control of fixed assets of state government, 2.20.1.1 to 2.20.1.18 NMAC, (updated for GASBS 34 as applicable).

(14) Requirements for contracting and conducting audits of agencies, 2.2.2 NMAC.

(15) Article IX of the state constitution limits on indebtedness.

(16) Any law, regulation, directive or policy relating to an agency's use of gasoline

credit cards, telephone credit cards, procurement cards, and other agency-issued credit cards.

(17) Retiree Health Care Act, Sections 10-7C-1 to 10-7C-19 NMSA 1978. IPAs shall test to ensure eligible contributions are reported to NMRHCA. NMRHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978. The IPA shall evaluate and test internal controls regarding employee eligibility for NMRHCA and other benefits. IPAs shall evaluate risk associated with employees excluded from NMRHCA and test that employees are properly excluded.

(18) Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978.

(19) School Personnel Act, Sections 22-10A-1 to 22-10A-39 NMSA 1978.

(20) School Athletics Equity Act, Sections 22-31-1 to 22-31-6 NMSA 1978. IPAs shall test whether the district has submitted the required school-district-level reports, but no auditing of the reports or the data therein is required.

(21) The New Mexico opioid allocation agreement.

K. Federal requirements: IPAs shall conduct their audits in accordance with the requirements of the following government pronouncements and shall test federal compliance audit requirements as applicable:

(1) generally accepted government auditing standards (GAGAS) issued by the United States government accountability office, most recent revision;

(2) uniform administrative requirements, cost principles, and audit requirements for federal awards;

(3) compliance supplement, latest edition; and

(4) internal revenue service **(**IRS) employee income tax requirements. IRS Publication 15-B, employer's tax guide to fringe benefits, available online, provides detailed information regarding the taxability of fringe benefits.

L. Audit finding requirements:

(1) Communicating findings: IPAs shall communicate findings in accordance with generally accepted auditing standards and the requirements of GAGAS 6.17-6.30. All finding reference numbers shall follow a standard format with the four-digit audit year, a hyphen, and a three-digit sequence number (e.g. 20XX-001, 20XX-002 … 20XX-999). All prior year findings shall include the finding numbers used when the finding was first reported under historical numbering systems in brackets, following the current year finding reference number (e.g., 2021-001 (2020-003)) to enable the report user to see what year the finding originated and how it was identified in previous years. Finding reference numbers for single audit findings reported on the data collection form shall match those reported in the schedule of findings and questioned costs and the applicable auditor's report. Depending on the IPA's classification of the finding, the finding reference number shall be followed by one of the following descriptions: "material weakness"; "significant deficiency"; "material non-compliance"; "other non-compliance"; or "other matters."

(a) IPAs shall evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses in accordance with AU-C 260.

(b) Findings that meet the requirements described in AAG GAS 4.12 shall be included in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards. AAG GAS 13.35 table 13-2 provides guidance on whether a finding shall be included in the schedule of findings and questioned costs.

(c) Section 12-6-5 NMSA 1978 requires that "each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination."

(i) When auditors detect violations of law or good accounting practices that shall be reported per Section 12-6-5 NMSA 1978, but that do not rise to the level of significant deficiencies or material weaknesses, such findings are considered to warrant the attention of those charged with governance due to the statutory reporting requirement. The auditor shall communicate such violations in the "compliance and other matters" paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards.

(ii) Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings labeled "Section 12-6-5 NMSA 1978 findings". This schedule shall be placed in the back of the audit report following the financial statement audit and federal award findings. Per AAG GAS 13.49 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.

(d) Each audit finding (including current year and unresolved prior-year findings) shall specifically state and describe the following:

(i) condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified, and for repeat findings, management's progress or lack of progress towards implementing the prior year planned corrective actions);

(ii) criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(iii) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(iv) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(v) recommendation addressing each condition and cause; and

(vi) agency response (the agency's comments about the finding, including specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

(e) Uniform guidance regarding single audit findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The corrective action plan and summary schedule of prior audit findings shall include findings relating to the financial statements which shall be reported in accordance with GAGAS. The summary schedule of prior year findings and the corrective action plan shall be included in the reporting package submitted to the federal audit clearinghouse (AAG GAS 13.49 fn 38). In addition to being included in the agency response to each audit finding, the corrective action plan shall be provided on the audited agency's letterhead in a document separate from the auditor's findings. (COFAR frequently asked questions on the office of management and budget's uniform administrative requirements, cost principles, and audit requirements for federal awards at 2 CFR 200, Section 511-1).

(f) All audit reports shall include a summary of audit results preceding the presentation of audit findings (if any). The summary of audit results shall include the type of auditor report issued and whether the following categories of findings for internal control over financial reporting were identified: material weakness, significant deficiency, and material noncompliance. AUP reports completed pursuant to 2.2.2.16 NMAC are not required to include a summary of audit results.

(2) Prior year findings:

(a) IPAs shall comply with the requirements of the most recent version of GAGAS relating to findings and recommendations from previous audits and attestation engagements. In addition, IPAs shall report the status of *all* prior-year findings and *all* findings from special audits performed under the oversight of the state auditor in the current year audit report in a summary schedule of prior year audit findings. The summary schedule of prior year audit findings shall include the prior year finding number, the title, and whether the finding was resolved, repeated, or repeated and modified in the current year. No other information shall be included in the summary schedule of prior year audit findings. All findings from special audits performed under the oversight of the state auditor shall be included in the findings of the annual financial and compliance audits of the related fiscal year. IPAs shall consider including findings from special audits in annual audit reports.

(b) Uniform guidance regarding single audit prior year findings (uniform guidance 200.511): The auditor shall follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the uniform guidance, and report, as a current-year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding (AAG GAS 13.53).

(3) Current-year audit findings: Written audit findings shall be prepared and submitted to management of the agency as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. The agency shall prepare "planned corrective actions" as required by GAGAS 6.57 and 6.58. The agency shall respond, in writing, to the IPA's audit findings within 10 business days. Lack of agency responses within the 10 business days does not warrant a delay of the audit report. The agency's responses to the audit findings and the "planned corrective actions" shall be included in the finding after the recommendation. If the IPA disagrees with the management's comments in response to a finding, they may explain in the report their reasons for disagreement, after the agency's response (GAGAS 6.59). Pursuant to GAGAS 6.60, "if the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited agency. In such cases, the auditors should indicate in the report that the audited agency did not provide comments."

(4) If appropriate in the auditor's professional judgment, failure to submit the completed audit contract to the OSA by the due date at Subsection F of 2.2.2.8 NMAC may be reported as a current year compliance finding.

(5) If an agency has entered into any professional services contract with an IPA with a scope of work that relates to fraud, waste, or abuse, and the contract was not approved by the state auditor, the IPA shall report a finding of non-compliance with Paragraph (2) of Subsection C of 2.2.215 NMAC.

(6) If an agency subject to the procurement code failed to meet the requirement to have a certified chief procurement officer during the fiscal year, the IPA shall report a finding of non-compliance with 1.4.1.94 NMAC.

(7) Component unit audit findings shall be reported in the primary government's financial audit report. This is not required for the statewide ACFR unless a finding of a legally separate component unit is significant to the state as a whole.

(8) Except as discussed in Subsections A and E of 2.2.2.12 NMAC, release of any portion of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation of Section 12-6-5 NMSA 1978 and requires a compliance finding in the audit report.

(9) In the event that an agency response to a finding indicates in any way that the OSA is the cause of the finding, the OSA may require that a written response from the OSA be included in the report, below the other responses to that finding.

M. Exit conference and related confidentiality issues:

(1) The IPA shall hold an exit conference with representatives of the agency's governing authority and top management, which may include representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences. If component unit representatives cannot attend the combined exit conference, a separate exit conference shall be held with the component unit's governing authority and top management. The exit conference and presentation to governance shall occur in the forum agreed to by the agency and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person exit conference and presentation to the board. The date of the exit conference(s) and the names and titles of personnel attending shall be stated in the last page of the audit report.

(2) The IPA, with the agency's cooperation, shall provide to the agency for review a draft of the audit report (stamped "draft"), a list of the "passed audit adjustments," and a copy of all the adjusting journal entries at or before the exit conference. The draft audit report shall include, at minimum, the following elements: independent auditor's report, basic financial statements, audit findings, summary schedule of prior year audit findings, and the reports on internal control and compliance required by government auditing standards and uniform guidance.

(3) Agency personnel and the agency's IPA shall not release information to the public relating to the audit until the audit report is released by the OSA, and has become a public record. This does not preclude an agency from submitting financial statements and notes to the financial statements, clearly marked as "draft" or "unaudited" to federal or state oversight agencies or bond rating agencies. Any draft financial statements provided to federal or state oversight agencies or to bond rating agencies shall exclude draft auditor opinions and findings, and any pages including references to auditor opinions or findings.

(4) Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing as described in Subparagraph (a) of Paragraph (4) of Subsection B of 2.2.2.9 NMAC, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

(5) At all times during the audit and after the audit report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the audit. Applicable standards include but are not limited to the AICPA Code of Conduct ET Section 1.700.001 and related interpretations and guidance, and GAGAS 6.53-6.55 and GAGAS 6.63-6.65. The OSA and the IPA shall not disclose audit documentation if such disclosure would undermine the effectiveness or integrity of the audit process. AU-C 230.A29.

N. Possible violations of criminal statutes in connection with financial affairs:

(1) IPAs shall comply with the requirements of GAGAS 6.19-6.24 relating to fraud, noncompliance with provisions of laws, regulations, contracts and grant agreements, waste, and abuse. Relating to contracts and grant agreements, IPAs shall extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements. Concerning abuse, if an IPA becomes aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, the IPA shall apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives.

(2) Pursuant to Section 12-6-6 NMSA 1978 (criminal violations), an agency, LPB, or IPA shall notify the state auditor

immediately [~~, in writing,~~] upon discovery of any [~~alleged~~] apparent violation of a criminal statute in connection with financial affairs. If an agency or IPA has already made a report to law enforcement that fact shall be included in the notification. [~~The notification shall be sent by e-mail to reports@osa.state.nm.us, by facsimile, or by US mail. Notifications shall not be made through the fraud hotline.~~] If not immediately known, a follow-up [~~The~~] notification shall include an estimate of the dollar amount involved, if known or estimable, and a description of the [~~alleged~~] apparent violation, including names of persons involved and any action taken or planned. [~~The state auditor may cause the financial affairs and transactions of the agency to be audited in whole or in part pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.15 NMAC. If the state auditor does not designate an agency for audit, an agency shall follow the provisions of 2.2.2.15 NMAC when entering into a professional services contract for a special audit, performance audit, non-attest engagement, or attestation engagement regarding the financial affairs and transactions of the agency relating to financial fraud, waste and abuse.~~

~~**(3)** In accordance with Section 12-6-6 NMSA 1978, the state auditor, immediately upon discovery of any violation of a criminal statute in connection with financial affairs, shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in the auditor's possession relative to the violation.~~]

O. Special revenue funds authority: The authority for creation of special revenue funds and any minimum balance required shall be shown in the audit report (i.e., cite the statute number, code of federal regulation, executive order, resolution number, or other specific authority) on the divider page before the combining financial statements or in the notes to the financial statements. This requirement does not apply to the statewide ACFR.

P. Public monies:

(1) All monies coming into all agencies (i.e., vending machines, fees for photocopies, telephone charges, etc.) shall be considered public monies and be accounted for as such. For state agencies, all revenues generated shall be authorized by legislation (MAPS FIN 11.4).

(2) If the agency has investments in securities and derivative instruments, the IPA shall comply with the requirements of AU-C 501.04-.10. If the IPA elects to use the work of an auditor's specialist to meet the requirements of AU-C 501, the requirements of AU-C 620 shall also be met.

(3) Pursuant to Section 12-6-5 NMSA 1978, each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council, etc.);

(b) account name;

(c) type of deposit or investment account (also required in separate component unit audit reports):

(i) types of deposit accounts include non-interest bearing checking, interest bearing checking, savings, money market accounts, certificates of deposit, etc.; and

(ii) types of investment accounts include state treasurer general fund investment pool (SGFIP), state treasurer local government investment pool (LGIP), U.S. treasury bills, securities of U.S. agencies such as Fannie Mae (FNMA), Freddie Mac (FHLMC), government national mortgage association (GNMA), Sallie Mae, small business administration (SBA), federal housing administration (FHA), etc.

(d) account balance of deposits and investments as of the balance sheet date;

(e) reconciled balance of deposits and investments as of the balance sheet date as reported in the financial statements; and

(f) for state agencies only, statewide human resources accounting and management reporting system (SHARE) fund number. In auditing the balance of a state agency's investment in the SGFIP, the IPA shall review the individual state agency's cash reconciliation procedures and determine whether those procedures would reduce the agency's risk of misstatement in the investment in SGFIP, and whether the agency is actually performing those procedures. The IPA shall also take into consideration the complexity of the types of cash transactions that the state agency enters into and whether the agency processes its deposits and payments through SHARE. The IPA shall use professional judgment to determine each state agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA.

(4) Pledged collateral:

(a) All audit reports shall disclose applicable collateral requirements in the notes to the financial statements. In addition, there shall be a SI schedule or note to the financial statements that discloses the collateral pledged by each depository for public funds. The SI schedule or note shall disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, committee on uniform security identification procedures [~~(CUSIP)~~] number, fair market value and maturity date.

(b) Pursuant to Section 6-10-17 NMSA 1978, the pledged collateral for deposits in banks and savings and loan associations shall have an aggregate value equal to one-half of the amount of public money held by the depository. If this requirement is not met the audit report shall include a finding. No security is required

for the deposit of public money that is insured by the federal deposit insurance corporation (FDIC) or the national credit union administration (NCUA) in accordance with Section 6-10-16 NMSA 1978. Collateral requirements shall be calculated separately for each bank and disclosed in the notes.

(c) All applicable GASB 40 disclosure requirements relating to deposit and investment risk shall be met. In accordance with GASBS 40.8, relating to custodial credit risk, the notes to the financial statements shall disclose the dollar amount of deposits subject to custodial credit risk, and the type of risk the deposits are exposed to. To determine compliance with the fifty percent pledged collateral requirement of Section 6-10-17 NMSA 1978, the disclosure shall include the dollar amount of each of the following for each financial institution: fifty percent pledged collateral requirement per statute, total pledged collateral, uninsured and uncollateralized.

(d) Repurchase agreements shall be secured by pledged collateral having a market value of at least one hundred two percent of the contract per Subsection H of Section 6-10-10 NMSA 1978. To determine compliance with the one hundred two percent pledged collateral requirement of Section 6-10-10 NMSA 1978, the disclosure shall include the dollar amount of the following for each repurchase agreement: one hundred-two percent pledged collateral requirement per statute, and total pledged collateral.

(e) Per Subsection A of Section 6-10-16 NMSA 1978, "deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten by a member of the financial industry regulatory authority (known as FINRA), and are rated "BAA" or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank."

(f) Securities shall be accepted as security at market value pursuant to Subsection C of Section 6-10-16 NMSA 1978.

(g) State agency investments in the state treasurer's general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the notes to the financial statements shall refer the reader to the state treasurer's separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments.

(h) If an agency has other "authorized" bank accounts, pledged collateral information shall be obtained from the bank and disclosed in the notes to the financial statements. The state treasurer monitors pledged collateral related to most state agency bank accounts. State agencies should not request the pledged collateral information from the state treasurer. In the event pledged collateral information specific to the state agency is not available, the following note disclosure shall be made: detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, STO's collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(5) Agencies that have investments in the state treasurer's local government investment pool shall disclose the information required by GASBS 79 in the notes to their financial statements. Agencies with questions about the content of these required note disclosures may contact STO (http://www.nmsto.gov) for assistance.

Q. Budgetary presentation:

(1) Prior year balance included in budget:

(a) If the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of fund balance on the budgetary basis used to balance the budget.

(b) If the agency prepares its budget on the cash basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of prior-year cash balance used to balance the budget (or fund balance on the cash basis).

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures shall be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation shall be included on the statement itself or in the notes to the financial statements. If the required budgetary comparison is presented as RSI, the reconciliation to GAAP basis shall appear in either a separate schedule or in the notes to the RSI (AAG SLV 11.14). The notes to the financial statements shall disclose the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level of budgetary control. The legal level of budgetary control for local governments is at the fund level. The legal level of budgetary control for school districts is at the function level. The legal level of budgetary control for state agencies is explained at Subsection A of 2.2.2.12 NMAC. For additional information regarding the legal level of budgetary control the IPA may contact the applicable oversight agency (DFA, HED, or PED).

(3) Budgetary comparisons shall show the original and final appropriated budget (same as final budget approved by DFA, HED, or PED), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a) If the budget structure for the general fund and major special revenue funds is similar enough to the GAAP fund structure to provide the necessary information, the basic financial statements shall include budgetary comparison statements for those funds.

(b) Budgetary comparisons for the general fund and major special revenue funds shall be presented as RSI if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for the general fund and major special revenue funds. An example of this "perspective difference" would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data (GASBS 41.03 and .10).

R. Appropriations:

(1) Budget related findings:

(a) If actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact shall be reported in a finding and disclosed in the notes to the financial statements.

(b) If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables used to balance the budget), that fact shall be reported in a finding. This type of finding shall be confirmed with the agency's budget oversight entity (if applicable).

(2) Special, deficiency, specific, and capital outlay appropriations:

(a) Special, deficiency, specific, and capital outlay appropriations shall be disclosed in the notes to the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances, unencumbered balances, and amounts reverted shall be shown in a SI schedule or in a note to the financial statements. The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements. This is a special requirement of the state auditor, and it does not apply to the statewide ACFR audit.

(b) The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements regarding the special appropriations.

S. Consideration of internal control and risk assessment in a financial statement audit:

(1) Audits performed under this rule shall include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. IPAs and agencies are encouraged to reference the U.S. GAOs' S*tandards for Internal Control in the Federal Government*, known as the "*Green Book*", which may be adopted by state, local, and quasi-governmental Agencies as a framework for an internal control system.

(2) The department of information technology is to engage in an SOC-2 compliance audit of the SHARE system annually, starting in 2024.

(3) The OSA may select additional agencies' application systems of record for SOC Audit.

T. Required auditor's reports:

(1) The AICPA provides examples of independent auditor's reports in the appendix to chapter 4 of AAG GAS and appendix A to chapter 16 of AAG SLV. Guidance is provided in footnote 4 to appendix A to chapter 16 of AAG SLV regarding wording used when opining on budgetary statements on the GAAP basis. IPAs conducting audits under this rule shall follow the AICPA report examples. All independent auditor's reports shall include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America and with applicable government auditing standards per GAGAS 6.36. This statement shall be modified in accordance with GAGAS 2.17b if some GAGAS requirements were not followed. Reports for single audits of fiscal years beginning on or after December 26, 2014 shall have references to OMB Circular A-133 replaced with references to Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 200.110(b), AAG GAS 4.89, Example 4-1).

(2) The AICPA provides examples of the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards in the appendix to chapter 4 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(a) The state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be dated the same date as the independent auditor's report.

(b) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency shall be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Subsection F of 2.2.2.10 NMAC regarding this issue.

(3) The AICPA provides examples of the report on compliance for each major federal program and on internal control over

compliance required by the uniform guidance in the appendix to chapter 13 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(4) The state auditor requires the financial statements, RSI, SI, and other information required by this rule, and the following reports to be included under one report cover: the independent auditor's report; the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards; and the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance. If applicable, the independent auditor's report shall include the AU-C 725 opinion on SI, the schedule of expenditures of federal awards and the HUD FDS (required by HUD guidelines on reporting and attestation requirements of uniform financial reporting standards). The report shall also contain a table of contents and an official roster. The IPA may submit a written request for an exemption from the "one report cover" requirement, but shall receive prior written approval from the state auditor in order to present any of the above information under a separate cover.

U. Disposition of property: Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least 30 days prior to any disposition of property included on the agency inventory list, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action shall be sent to the state auditor. The disposition list shall include worn out, unusable or obsolete items, and may include trade-ins, and lost, stolen, or destroyed items, as applicable.

V. Joint powers agreements:

(1) Any joint powers agreement (JPA) shall be listed in a SI schedule in the audit report. The statewide ACFR schedule shall include JPAs that are significant to the state as a whole. The schedule shall include the following information for each JPA: participants; party responsible for operations; description; beginning and ending dates of the JPA; total estimated amount of project and portion applicable to the agency; amount the agency contributed in the current fiscal year; audit responsibility; fiscal agent if applicable; and name of the government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under a JPA, see the GASB Codification Section J50.113.

W. Inventory certification:

(1) All agencies shall comply with the requirements of Section 12-6-10 NMSA 1978 and also maintain a capitalization policy that complies with the law. All agencies shall maintain an inventory listing of chattels and equipment that cost over five thousand dollars ($5,000).

(2) Agencies shall conduct an annual physical inventory of chattels and equipment on the inventory list at the end of each fiscal year in accordance with the requirements of Section 12-6-10 NMSA 1978. The agency shall certify the correctness of the inventory after the physical inventory. This certification shall be provided to the agency's auditors. The IPA shall audit the inventory listing for correctness and compliance with the requirements of the Audit Act.

X. Tax increment development districts: Pursuant to Subsection C of Section 5-15-9 NMSA 1978, tax increment development districts (TIDDs) are political subdivisions of the state, and they are separate and apart from the municipality or county in which they are located. Section 5-15-10 NMSA 1978 states that the district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges. However, in the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors. Therefore, a TIDD and its audit firm shall apply the criteria of GASBS 14, 39, 61, and 80 to determine whether the TIDD is a component unit of the municipality or county that approved it, or whether the TIDD is a related organization of the municipality or county that approved it. If the TIDD is determined to be a related organization per the GAAP requirements, then the TIDD shall contract separately for an audit separate from the audit of the municipality or county that approved it.

Y. GASBS 68, accounting and financial reporting for pensions:

(1) PERA and ERB shall each prepare schedules of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(a) Prior to distribution of the schedule of employer allocations, PERA and ERB shall obtain audits of their respective schedules. These audits shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(b) Pursuant to AU-C 805.16, the PERA and ERB auditors shall each issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct

from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(c) PERA and ERB shall include note disclosures in their respective schedule of employer allocations reports that detail each component of allocable pension expense at the fund level, excluding employer-specific pension expense for changes in proportion. Each plan shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred and inflows outflows of resources (excluding employer specific amounts), by year of deferral.

(d) The AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(e) As soon as the AU-C 805 reports become public record, PERA and ERB shall make the information available to their participant employers.

(f) PERA and ERB shall each prepare an employer guide that illustrates [~~the correct use of their respective schedule of employer allocations report by their participant employers. The guides shall explicitly distinguish between the plan-level reporting and any employer-specific items~~] the use of their respective schedule of employer allocations report to create journal entries generally required by GASBS 68. The calculations [~~and record-keeping~~] necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guides shall be made available to the participant employers by June 30 of the subsequent fiscal year. Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide ACFR for the state's net pension liability and other pension-related information.

(2) Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide ACFR for the state's net pension liability and other pension-related information.

Z. GASBS 77, tax abatement agreements: Unaudited, but final, GASBS 77 disclosure information shall be provided to any agency whose tax revenues are affected by the reporting agency's tax abatement agreements no later than September 15 of the subsequent fiscal year. This due date does not apply if the reporting agency does not have any tax abatement agreements that reduce the tax revenues of another agency. All tax abatement agreements entered into by an agency's component unit(s) shall be disclosed in the same manner as the tax abatement agreements of the primary government. If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for the determination.

AA. GASBS 75, accounting and financial reporting for postemployment benefits other than pensions: The retiree health care authority (RHCA) shall prepare a schedule of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(1) Prior to distribution of the schedule of employer allocations, RHCA shall obtain an audit of the schedule. This audit shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(2) Pursuant to AU-C 805.16, the RHCA auditors shall issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(3) RHCA shall include note disclosures in the schedule of employer allocations report that detail each component of allocable OPEB expense at the fund level, excluding employer-specific OPEB expense for changes in proportion. RHCA shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred outflows and inflows of resources (excluding employer specific amounts), by year of deferral.

(4) The AU-C 805 audit and resulting separate report

on the RHCA schedule of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(5) As soon as the AU-C 805 reports become public record, RHCA shall make the information available to its participant employers.

(6) RHCA shall prepare an employer guide that illustrates the correct use of the schedule of employer allocations report by its participant employers. The guide shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guide shall be made available to the participant employers by June 30 of the subsequent fiscal year.

(7) Stand-alone state agency financial statements that exclude the proportionate share of the collective OPEB liability of the state of New Mexico, shall include note disclosure referring the reader to the statewide ACFR for the state's net OPEB liability and other OPEB-related information.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.12 SPECIFIC CRITERIA: The specific criteria described in this section shall be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, OSA recommends that IPAs review the NMSA and NMAC while planning governmental audits.

A. Pertaining to audits of state agencies:

(1) Due dates for agency audits: audit reports of agencies under the oversight of DFA FCD are due to OSA in accordance with the requirements of Subsection D of Section 12-6-3 NMSA 1978 and Subsection A of 2.2.2.9 NMAC.

(2) All the individual SHARE funds shall be reported in the financial statements, either within the basic financial statements or as SI.

(3) Accounts payable at year-end and reversion calculation: If goods and services were received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable shall be reported for the respective amount due in both the government-wide financial statements and the fund financial statements. The "actual" expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of the current year budget. They are paid out of the budget of the following fiscal year. An agency's reversions are calculated using the *budgetary basis expenditures* because the agency does not have the legal authority to obligate the state for liabilities once the appropriation period has lapsed. Thus, the agency cannot keep the cash related to accounts payable that were not paid timely. This results in a negative fund balance in the modified accrual basis financial statements of a reverting fund.

(4) Net position/fund balance:

(a) Pursuant to GASBS 63.8 the government-wide statement of net position and the proprietary fund statement of net position show net position as:

(i) net investment in capital assets as defined by GASBS 63.9;

(ii) restricted (distinguishing between major categories of restrictions) as defined by GASBS 63.10; and

(iii) unrestricted as defined by GASBS 63.11.

(b) Governmental fund financial statement fund balances shall be reported in accordance with GASBS 54.

(5) Book of record:

(a) The state maintains the centralized accounting system SHARE. The SHARE data and reports are the original book of record that the auditor is auditing. Each fiscal year, the agency shall record all audit adjusting journal entries in SHARE. The financial information in SHARE shall agree to the agency's audited financial statements, with the exception of accounts payable as explained in Subsection A of 2.2.2.12 NMAC. If the agency maintains a separate accounting system, it shall be reconciled with the SHARE system and all applicable adjustments shall be recorded in SHARE in the month in which the transactions occurred. DFA FCD provides guidance to agencies, which IPAs shall review, regarding policy and procedure requirements. These documents are available on the DFA FCD website and include:

(i) the manual of model accounting practices (MAPs);

(ii) various white papers, yearly closing instructions; and

(iii) various accounting guideline memos.

(b) The statement of revenues and expenditures in the audit report shall be presented in accordance with GAAP, by function or program classification and object code. However, the budgetary comparison statements shall be presented using the level of appropriation reflected in the final approved budget. The SHARE chart of accounts reflects the following appropriation unit levels:

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Appropriation unit code/appropriation unit description	
200	personal services & employee benefits
300	contractual services
400	other
500	other financing uses
600	non-budgeted

(c) Revenue categories of appropriations to state agencies are listed below. The budgetary comparison statements for state agencies shall be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency's final approved budget.

(i) state general fund;

(ii) other state funds;

(iii) internal service funds/inter-agency transfers; or

(iv) federal funds.

(d) For more detail about the SHARE chart of accounts see the DFA website.

(6) Reversions to state general fund:

(a) All reversions to the state general fund shall be identified in the financial statements or the notes to the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - FY 16). The gross amount of the appropriation and the gross amount of the reversion shall be shown separately.

(b) Subsection A of Section 6-5-10 NMSA 1978 states "all unreserved undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30 to the general fund. The division may adjust the reversion within 45 days of release of the audit report for that fiscal year." Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(7) Non-reciprocal (not payments for materials or services rendered) interfund (internal) activity includes:

(a) transfers; and

(b) reimbursements (GASBS 34.410):

(i) intra-agency transfers between funds within the agency shall offset (i.e. balance). Reasons for intra-agency transfers shall be fully explained in the notes to the financial statements. In the separate audit reports of state agencies, transfers between their internal funds are shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements;

(ii) inter-agency transfers (between an agency's internal funds and other funds of the state that are outside the agency such as state general fund appropriations, special appropriations, bond proceeds appropriations, reversions to the state general fund, and transfers to/from other state agencies) shall be segregated from intra-agency transfers and fully explained in the notes to the financial statements along with the agency number and SHARE fund number to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than in the notes, but agency and SHARE fund numbers shall be shown. The schedule shall be presented on the modified accrual basis. The IPA is responsible for performing audit procedures on all such inter-agency transfers.

(c) Regarding inter-agency transfers between legally separate component units and the primary government (the state of New Mexico):

(i) if the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit's separately issued financial statements report such activity between itself and the primary government as revenues and expenses. When the blended component unit is included in the primary government's financial statements, such inter-agency transfers are reclassified as transfers (GASBS 34.318);

(ii) all resource flows between a discretely presented component unit of the state and other funds of the state shall be reported as external transactions - revenues and expenses - in the primary government's financial statements and the component unit's separately issued financial statements (GASBS 34.318);

(d) All transfers to and from SHARE fund 853, the state general fund appropriation account, shall be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections;

(e) Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements are not reported as inter-fund activity in the financial statements.

(8) General services department capital projects: in general, GSD records the state of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost

of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency shall capitalize those assets based on actual amounts expended in accordance with GSD instructions issued in 2.20.1.10 NMAC.

(9) State-owned motor vehicle inventory: successful management of state-owned vehicles pursuant to the Transportation Services Act (Sections 15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(10) Independent auditor's report: The independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Sec. 11 shall include an emphasis of matter paragraph referencing the summary of significant accounting principles disclosure regarding the reporting agency. The emphasis of matter paragraph shall indicate that the financial statements are not intended to present the financial position and changes in financial position of the primary government, the state of New Mexico, but just the financial position and the changes in financial position of the department. The emphasis of matter paragraph shall follow the example provided in AAG SLV 16.103 ex. A-17.

(11) Budgetary basis for state agencies: the state budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get accrued by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely or accrued by the statutory deadline shall be paid out of the next year's budget. If an agency needs to recognize additional accounts payable amounts that were not accrued by the statutory deadline, then the budgetary statements and the fund financial statements require a reconciliation of expenditures, as discussed at Subsection Q of 2.2.2.10 NMAC. All transactions are recorded in the state's book of record, SHARE, under the modified accrual basis of accounting except for accounts payable not meeting the statutory deadline; therefore, the "actual" expenditures in the budgetary comparison schedules equal the expenditures as recorded in SHARE for the fund. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of 12 months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the related budgets also lapse and encumbrances can no longer be charged to those budgets. The legal level of budgetary control shall be disclosed in the notes to the financial statements. Per Subsection C of Section 9 of the General Appropriation Act of 2017, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other. Therefore, the legal level of budgetary control is the appropriation program level (A-Code, P-Code, and Z-Code). A-Codes pertain to capital outlay appropriations (general obligation/ severance tax or state general fund). P-Codes pertain to program/ operating funds. Z-Codes pertain to special appropriations. The IPA shall compare total expenditures for each program to the program's approved final budget to evaluate compliance.

(12) Budgetary comparisons of state agencies shall show the original and final appropriated budget (same as final budget approved by DFA), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts. If a state agency presents budgetary comparisons by fund, the appropriation program code(s) (A-Code, P-Code, and Z-Code) shall be reported on the budgetary comparison schedule.

(13) Accounting for special capital outlay appropriations financed by bond proceeds.

(14) Amounts "due from other state agencies" and "due to other state agencies": if a state agency reports amounts "due from" or "due to" other state agencies the notes shall disclose the amount "due to" or "due from" each agency, the name of each agency, the SHARE fund account numbers, and the purpose of the account balance.

(15) Investments in the state general fund investment pool (SGFIP): these balances are presented as cash and cash equivalents in the statements of net position and the balance sheets of the participant agencies, with the exception of the component appropriation funds (state general fund). The notes to the financial statements of the component appropriation funds shall contain GASBS 40 disclosures for the SGFIP. This disclosure may refer the reader to the separate audit report for STO for additional information regarding the SGFIP.

(16) Format for the statement of activities: state agencies that have more than one program or function shall use the financial statement format presented in GASBS 34, Illustrations B-1 through B-4. The simplified statement of activities (GASBS 34, Illustration B-5) may not be used for agencies that have multiple programs or functions. GASBS 34.41 requires governments to report direct expenses for each function.

B. Pertaining to audits of housing authorities:

(1) Housing authorities within the state of New Mexico consist of regional housing authorities, component units or departments of local governments, component units of housing authorities, and housing authorities

created by intergovernmental agreements between cities and counties that are authorized to exercise all powers under the Municipal Housing Law, Section 3-45-1 *et seq*., NMSA 1978.

(2) The financial statements of a housing authority that is a department, program or component unit of a primary government shall be included in the financial audit report of the primary government. IPAs shall use GASB guidelines as found in relevant GASBS to determine the correct presentation of the component unit.

(3) Audits of PHAs that are departments of a local government shall be conducted by the same IPA that performs the audit of the local government. Separate audit contracts shall not be approved.

(a) Local governments are encouraged to include representatives from PHAs that are departments of the local government in the IPA selection process.

(b) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold separate entrance and exit conferences with housing authority's management and a member of the governing board. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences no later than 72 hours before the proposed conference.

(4) The following information relates to housing authorities that are component units of a local government.

(a) The housing authority shall account for financial activity in proprietary funds.

(b) At the public housing authority's discretion, the agency may "be audited separately from the audit of its local primary government entity, other than a housing department of a local government or a regional housing authority. If a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity" (Subsection E of Section 12-6-3 NMSA 1978). Statute further stipulates in Subsection A of Section 12-6-4 NMSA 1978 that "a public housing authority other than a regional housing authority shall not bear the cost of an audit conducted solely at the request of its local primary government entity."

(c) Audit reports of separate audits of component unit housing authorities shall be released by the state auditor separately from the primary government's report under a separate release letter to the housing authority.

(5) Public housing authorities and their IPAs shall follow the requirements of *Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards* (UFRS), which is available on the U.S. department of housing and urban development's website under a search for UFRS. Additional administrative issues related to audits of public housing authorities follow.

(a) Housing authority audit contracts include the cost of the audit firm's AU-C 725 opinion on the FDS. The preparation and submission cost for this HUD requirement shall be included in the audit contract. The public housing authority shall electronically submit a final approved FDS based on the audited financial statements no later than nine months after the public housing authority's fiscal year end. The IPA shall:

(i) electronically report on the comparison of the electronic FDS submission in the [~~REAC~~] real estate assessment center staging database through the use of an identification (ID) and password;

(ii) include an electronic version of the FDS in the audit report;

(iii) render an AU-C 725 opinion on the FDS; and

(iv) explain in the notes any material differences between the FDS and the financial statements.

(b) The IPA shall consider whether any fee accountant used by the housing authority is a service organization and, if applicable, follow the requirements of AU-C 402 regarding service organizations.

(c) The IPA shall provide the housing authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the housing authority.

(6) Single audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority's schedule of expenditures of federal awards, the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation, the housing authority's federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards. See AAG GAS 6.15 for more information.

C. Pertaining to audits of school districts:

(1) In the event that a state-chartered charter school subject to oversight by PED is not subject to the requirement to use the same auditor as PED, that charter school is reminded that their audit contract shall be submitted to PED for approval. Charter schools shall ensure that sufficient time is allowed for PED review refer to Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) [~~Regional education cooperative (REC)~~] REC audits:

(a) A separate financial and compliance audit is required on activities of RECs. The IPA shall provide copies of the REC report to the participating school districts and PED once the report has been released by the state auditor.

(b) Audits of RECs shall include tests for compliance with 6.23.3 NMAC.

(c) Any 'on-behalf' payments for fringe benefits and salaries made by RECs for employees of school districts shall be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with GASB Cod. Sec. N50.131.

(d) The audit report of each REC shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule shall account for cash in the same categories used by the REC in its monthly cash reports to the PED. If there are differences in cash per the REC financial statements and cash per the REC accounting records, the IPA shall provide the adjusting entries to the REC to reconcile cash per the financial statements to cash per the REC accounting records. If cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report, the IPA shall issue a finding which explains that the PED reports do not reconcile to the REC accounting records.

(3) School district audits shall address the following issues:

(a) Audits of school districts shall include tests for compliance with 6.20.2 NMAC and PED's manual of procedures for public schools accounting and budgeting (PSAB), with specific emphasis on supplement 7, cash controls.

(b) The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule is also required for each charter school chartered by a school district and each charter school chartered by PED. This schedule shall account for cash in the same categories used by the district in its monthly cash reports to PED. Subsection D of 6.20.2.13 NMAC states that school districts shall use the "cash basis of accounting for budgeting and reporting". The financial statements are prepared on the accrual basis of accounting. Subsection E of 6.20.2.13 NMAC states that "if there are differences between the financial statements, school district records and department records, the IPA should provide the adjusting entries to the school district to reconcile the report to the school district records." If there are differences between the school district records and the PED report amounts, other than those explained by the adjusting entries, the IPA shall issue a finding which explains that the PED reports do not reconcile to the school district records.

(c) Any joint ventures or other Agencies created by a school district are agencies subject to the Audit Act.

(d) Student activity funds: Risk should be assessed and an appropriate sample tested regarding controls over student activity funds.

(e) Relating to capital expenditures by the New Mexico public school facilities authority (PSFA), school districts shall review capital expenditures made by PSFA for repairs and building construction projects of the school district. School districts shall also determine the amount of capital expenditures that shall be added to the capital assets of the school district and account for those additions properly. The IPA shall test the school district capital asset additions for proper inclusion of these expenditures.

(f) Sub-funds of the general fund: school district audit reports shall include individual fund financial statements for the following sub-funds of the general fund: operational, transportation, instructional materials and teacherage (if applicable).

(4) Pertaining to charter schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board or PED to operate as a charter school. A charter school is considered a public school, accredited by the state board of public education and accountable to the school district's local school board, or PED, for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b) Certain GASBS 14 criteria (as amended by GASBS 39, 61, and 80) shall be applied to determine whether a charter school is a component unit of the chartering entity (the district or PED). The chartering agency (primary government) shall make the determination whether the charter school is a component unit of the primary government.

(c) No charter school that has been determined to be a component unit may be omitted from the financial statements of the primary government based on materiality. All charter schools that are component units shall be included in the basic financial statements using one of the presentation methods described in GASBS 34.126, as amended.

D. Pertaining to audits of counties: Tax roll reconciliation county governments: Audit reports for counties shall include two SI schedules.

(1) The first one is a "tax roll reconciliation of changes in the county treasurer's property taxes receivable" showing the June 30 receivable balance and a breakout of the receivable for the

most recent fiscal year ended, and a total for the previous nine fiscal years. Per Subsection C of Section 7-38-81 NMSA 1978, property taxes that have been delinquent for more than 10 years, together with any penalties and interest, are presumed to have been paid.

(2)

The second schedule titled "county treasurer's property tax schedule" shall show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, the IPA shall issue a finding.

E. Pertaining to audits of educational institutions:

(1)

Educational institutions are reminded that audit contracts shall be submitted to HED for approval. Refer to Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Budgetary comparisons: the legal level of budgetary control per 5.3.4.10 NMAC shall be disclosed in the notes to the financial statements. The state auditor requires that every educational institution's audit report include budgetary comparisons as SI. The budgetary comparisons shall be audited and an auditor's opinion shall be rendered. An AU-C 725 opinion does not meet this requirement. The budgetary comparisons shall show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column. The IPA shall confirm the final adjusted and approved budget with HED. The IPA shall compare the financial statement budget comparison to the related September 15 budget submission to HED. The only differences that should exist between the HED budget submission and the financial statement budgetary comparisons are adjustments made by the institution after September 15 and audit adjustments. If the HED budget submission does not tie to the financial statement budgetary comparison, taking into account only those differences, then the IPA shall write a related finding. A reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements shall be disclosed at the bottom of the budgetary comparisons or in the notes to the financial statements. The reconciliation is required only at the "rolled up" level of "unrestricted and restricted - all operations" and shall include revenues and expenses. HED approved the following categories which shall be used for the budgetary comparisons.

(a)

Unrestricted and restricted – All operations (schedule 1): beginning fund balance/net position; unrestricted and restricted revenues; state general fund appropriations; federal revenue sources; tuition and fees; land and permanent fund; endowments and private gifts; other; total unrestricted & restricted revenues; unrestricted and restricted expenditures; instruction; academic support; student services; institutional support; operation and maintenance of plant; student social & cultural activities; research; public service; internal services; student aid, grants & stipends; auxiliary services; intercollegiate athletics; independent operations; capital outlay; renewal & replacement; retirement of indebtedness; total unrestricted & restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(b)

Unrestricted instruction & general (schedule 2): beginning fund balance/net position; unrestricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total unrestricted revenues; unrestricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total unrestricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(c)

Restricted instruction & general (schedule 3): beginning fund balance/net position; restricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total restricted revenues; restricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(3)

Educational institutions shall present their financial statements using the business type activities model.

(4)

Compensated absence liability is reported as follows: the statement of net position reflects the current portion of compensated absences under current liabilities and the long-term portion of compensated absences under noncurrent liabilities.

(5)

Component unit issues: educational institutions shall comply with the requirements of Subsection A of 2.2.2.10 NMAC. Additionally:

(a)

individual component unit budgetary comparisons are required if the

component unit has a "legally adopted budget." A component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law; and

(b) there is no level of materiality for reporting findings of component units that do not receive public funds. All component unit findings shall be disclosed in the primary government's audit report.

(6) Management discussion and analysis (MD&A): The MD&A of educational institutions shall include analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results. The analysis shall include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity.

(7) Educational institutions established by Section 11 of Article XII of the New Mexico state constitution shall provide the department of finance and administration's financial control division with a draft copy of their financial statements excluding opinions and findings, pursuant to Subsection A of 2.2.2.12 NMAC.

F. Pertaining to audits of investing agencies: Investing agencies, which are defined as STO, PERA, ERB, and the state investment council, shall prepare schedules of asset management costs which include management fee information by investment class.

(1) For all asset classes except private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a) relating to consultants: the name of the firm or individual, the location of the consultant (in-state or out-of-state), a brief description of investments subject to the agreement, and fees;

(b) relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): the name of the firm or individual, the location of the marketer (in-state or out-of-state), a brief description of investments subject to the agreement, and any fees, commissions or retainers;

(c) relating to traditional asset classes: name of the investment, asset class, value of the investment, and fees (including both "direct" and "embedded" costs).

(2) For private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a) relating to consultants: the aggregate fees by asset class and consultant location (in-state or out-of-state), and a brief description of investments included in each asset class;

(b) relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): aggregate fees, commissions and retainers by asset class and third-party marketer location (in-state or out-of-state), and a brief description of investments included in each asset class;

(c) relating to alternative asset classes: the total fees by asset class (including both "direct" and "embedded" costs), and a brief description of the investments included in each asset class.

(3) These schedules shall be included as unaudited other information in the audit report.

G. Pertaining to audits of local public bodies; budgetary comparisons: Auditors shall test local public body budgets for compliance with required reserves and disclose those reserves on the face of the financial statements and in notes financial statements (if applicable).

[2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing professional education: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall ensure that all members of their staff comply with the CPE requirements of the most recent revision of GAGAS.

B. Peer review requirements: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall comply with the requirements of the most recent revision of GAGAS relating to quality control and assurance and external peer review.

(1) [~~Per AICPA PRP Section 1000 standards for performing and reporting on peer reviews, a~~] An audit firm's due date for its initial peer review is 18 months from the date the firm enrolled in the peer review program or should have enrolled, whichever is earlier. A firm's subsequent peer review is due three years and six months from the previous peer review year end.

(2) The IPA firm profile submission to the state auditor shall include copies of the following peer review documentation:

(a) the peer review report for the auditor's firm;

(b) if applicable, detailed descriptions of the findings, conclusions and recommendations related to deficiencies or significant deficiencies required by GAGAS 5.91;

(c) if applicable, the auditor's response to deficiencies or significant deficiencies;

(d) the letter of acceptance from the peer review program in which the firm is enrolled; and

(e) a list of the governmental audits reviewed during the peer review.

(3) A peer review rating of "failed" on the

auditor's peer review shall disqualify the IPA from performing New Mexico governmental audits.

(4) During the procurement process IPAs shall provide a copy of their most recent external peer review report to the agency with their bid proposal or offer. Any subsequent peer review reports received during the period of the contract shall also be provided to the agency.

(5) The peer review shall meet the requirements of GAGAS 5.60 to 5.95.

(6) The peer reviewer shall be familiar with this rule. This is a requirement of the state auditor that can be achieved by attendance at audit rule training provided by the OSA.

C. State auditor quality control reviews: The state auditor performs its own quality control review of IPA audit reports and working papers. An IPA that is included on the state auditor's list of approved firms for the first time may be subject to an OSA quality control review of the IPA's working papers. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date). When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding peer review rating, the state auditor may no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor shall take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

D. SOC Audit qualifications: The OSA requires any firm or IPA contracting with an agency or LPB to conduct a SOC 1 or SOC 2 Audit engagement to have the following proof of qualifications: Firms must have a SOC engagement peer review rating of pass to qualify for a SOC engagement.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.15 SPECIAL AUDITS AND EXAMINATIONS:

A. Fraud, waste or abuse in government reported by agencies, IPAs or members of the public:

(1) Reports of fraud, waste & abuse: Pursuant to the authority set forth Subsection C of Section 12-6-3 NMSA 1978, the [~~state auditor~~] OSA may [~~conduct initial~~] initiate [~~fact-finding~~] special investigation or examination procedures in connection with reports of financial fraud, waste and abuse in government. [~~made by agencies, IPAs or members of the public. Reports may be made telephonically or in writing through the fraud hotline or website established by the state auditor for the confidential reporting of financial fraud, waste, and abuse in government. Reports may be made telephonically to the fraud hotline by calling 1-866-OSA-FRAUD (1-866-672-3728) or reported in writing through the state auditor's website at www.saonm.org.~~] Reports received or created by the [~~state auditor~~] OSA are confidential audit information and audit documentation in connection with the state auditor's statutory duty to examine and audit the financial affairs of every agency, or in connection with the state auditor's statutory discretion to audit the financial affairs and transactions of an agency in whole or in part.

(2) Confidentiality of sources: The identity of a person making a report to the OSA [~~and associated allegations made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, or through any other means,~~] alleging financial fraud, waste, or abuse in government is confidential audit information and may not be disclosed, except as required by Section 12-6-6 NMSA 1978.

(3) Confidentiality of files: A report alleging financial fraud, waste, or abuse in government that is made to the OSA [~~directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website,~~] and any resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement [~~and all records and files related thereto~~] files are confidential audit documentation and may not be disclosed by the OSA or the agency, except to an independent auditor, performance audit team or forensic accounting team in connection with a special audit, performance audit, attestation engagement, forensic accounting engagement, non-attest engagement, or other existing or potential engagement regarding the financial affairs or transactions of an agency. [~~Any information related to a report alleging financial fraud, waste, or abuse in government provided to an independent auditor, performance audit team or forensic accounting team, is considered to be confidential audit or engagement documentation and is subject to confidentiality requirements, including but not limited to requirements under Subsections E and M of 2.2.2.10 NMAC, the Public Accountancy Act, and the AICPA Code of Professional Conduct.~~]

(a) Any records that result in, or are part of, any subsequent or resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement will be audit workpapers and therefore confidential. Records that result from, or are part of OSA, special investigations that do not result in a subsequent special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement may be disclosed, with personal identifier information redacted, once the examination or investigation is closed.

(b) Any information related to a report alleging financial fraud, waste, or abuse in government provided to an

independent auditor, performance audit team or forensic accounting team, is considered to be confidential audit or engagement documentation and is subject to confidentiality requirements, including but not limited to requirements under Subsections E and M of 2.2.2.10 NMAC, the Public Accountancy Act, and the AICPA Code of Professional Conduct.

(4) [~~The~~] If the OSA [~~may make~~] makes inquiries of agencies as part of the [~~fact-finding~~] investigation process [~~performed by the OSA's special investigations division . Agencies~~], agencies shall respond to the OSA inquiries within 15 calendar days of receipt or as soon as practicable under the circumstances with written notice to the OSA stating the basis for any delay. IPAs shall test compliance with this requirement and report noncompliance as a finding in the annual financial and compliance audit report.

B. Special audit or examination process:

(1) Designation: Pursuant to Section 12-6-3 NMSA 1978, in addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. Accordingly, the state auditor may designate an agency for special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency or local public body based on information or a report received from an agency, IPA or member of the public. For purposes of this rule "special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement" includes, without limitation, AUP, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste, or abuse in government. It also includes non-attest engagements performed under the forensic services standards issued by the AICPA and engagements performed following the Code of Professional Standards issued by the Association of Certified Fraud Examiners (ACFE). The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the subject matter, the scope and any procedures required, the AICPA or other professional standards that apply, and for a performance audit, performance aspects to be included and the potential findings and reporting elements that the auditors expect to develop. Pursuant to Section 200.503 of Uniform Guidance, if a single audit was previously performed, the special audit, attestation engagement, performance audit or forensic accounting engagement shall be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors. The attestation and performance audit engagements may be conducted pursuant to government auditing standards if so specified by the OSA.

(2) Costs: All reasonable costs of special audits, attestation engagements, forensic accounting engagements, non-attest engagements, or single-entity performance audits conducted pursuant to this Section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. The state auditor, in its sole discretion, may apportion among the Agencies audited some or all of the reasonable costs of a multi-entity performance audit.

(3) Who performs the engagement: The state auditor may perform the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement alone or with other professionals selected by the state auditor. Alternatively, the state auditor may require the engagement to be performed by an IPA or a team that may be comprised of any of the following: independent public accountants; individuals with masters degrees or doctorates in a relevant field such as business, public administration, public policy, finance, or economics; individuals with their juris doctorate; CFE-certified fraud examiners; CFF-certified forensic auditors; CIA-certified internal auditors; or other specialists. If the state auditor designates an agency for an engagement to be conducted by an IPA or professional team, the agency shall:

(a) upon receipt of notification to proceed from the state auditor, identify all elements or services to be solicited, obtain the state auditor's written approval of the proposed scope of work, and request quotations or proposals for each applicable element of the engagement;

(b) follow all applicable procurement requirements which may include, but are not limited to, Uniform Guidance, Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978), or equivalent home rule procurement provisions when selecting an IPA or team to perform the engagement;

(c) submit the following information to the state auditor by the due date specified by the state auditor:

(i) a completed template for special audits, attestation engagements, performance audits or forensic accounting engagements, provided at www.osanm.org, which the agency shall print on agency letterhead; and

(ii) a completed contract form including the contract fee, start and completion date, and the specific scope of services to be performed in the format prescribed by the OSA, provided at www.osanm.org, with all required signatures on the contract.

(d) If the agency fails to select an IPA and submit the signed contract to OSA by the due date specified by the state auditor, or, if none within 60 days of notification of designation from the state auditor, the state auditor may conduct the engagement or select the IPA for that agency in

accordance with the process described at Subsection F of 2.2.2.8 NMAC.

(4) Errors: Contracts that are submitted to the OSA with errors or omissions shall be rejected by the state auditor. The state auditor shall return the rejected contract to the agency indicating the reason(s) for the rejection.

(5) Recommendation rejections: In the event the agency's recommendation is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for rejection, to the agency, at which time the agency shall promptly submit a different recommendation. This process shall continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(6) Contract amendments: Any proposed contract amendments shall be processed in accordance with Subsection N of 2.2.2.8 NMAC.

(7) Access to records and documents: For any special audit, attestation engagement, performance audit or forensic accounting engagement, or non-attest engagement, the state auditor and any engaged professionals shall have available to them all documents necessary to conduct the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement the state auditor may apply to the district court of Santa Fe County for issuance of a subpoena to compel the attendance of witnesses and the production of books and records.

(8) Entrance, progress and exit conferences: The IPA or other professional shall hold an entrance conference and an exit conference with the agency, unless the IPA or other professional has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption. The OSA has the authority to notify the agency or IPA or other professional that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA or other professional and the agency shall invite the state auditor or the auditor's designee to attend all such conferences no later than 72 hours before the proposed conference or meeting. The state auditor may also require the IPA or other professional to submit its audit plan to the state auditor for review and approval. The date of the exit conference(s) and the names and titles of personnel attending shall be stated on the last page of the special audit report.

(9) Required reporting: All reports for special audits, attestation engagements, performance audits, forensic accounting engagements, or non-attest engagements related to financial fraud, waste or abuse in government undertaken pursuant to 2.2.2.15 NMAC (regardless of whether they are conducted pursuant to AICPA standards for consulting services, forensic services or for attestation engagements, non-attest engagements, or other professional standards) shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, pursuant to Section 12-6-5 NMSA 1978. Each finding shall comply with the requirements of Subsection L of 2.2.2.10 NMAC for audit and attest engagements or Subsection D of 2.2.2.15 NMAC for non-attest engagements.

(10) Report review: As required by Section 12-6-14 NMSA 1978, the state auditor shall review reports of any special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement made pursuant to this section for compliance with the professional services contract and this rule. Upon completion of the report, the IPA or other professional shall deliver the electronic report to the state auditor with a copy of any signed management representation letter, if applicable. Unfinished or excessively deficient reports shall be rejected by the state auditor. If the report is rejected the firm shall submit an electronic version of the corrected rejected report for state auditor review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The IPA or other professional shall respond to all review comments as directed by the state auditor.

(11) Report release: After OSA's review of the report for compliance with the professional services contract and this rule, the state auditor shall authorize the IPA to print and submit the final report. An electronic version of the report, in the PDF format described at Subsection B of 2.2.2.9 NMAC, shall be delivered to the state auditor within five business days. The state auditor shall not release the report until all the required documents are received by the state auditor. The state auditor shall provide the agency with a letter authorizing the release of the report pursuant to Section 12-6-5 NMSA 1978. Agency and local public body personnel shall not release information to the public relating to the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement until the report is released and has become

a public record pursuant to Section 12-6-5 NMSA 1978. Except for the exception under Subsection B of 2.2.2.15 NMAC, at all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall not disclose to the public confidential information about the auditee or about the engagement. Confidential information is information that is not generally known to the public through common means of providing public information like the news media and internet.

(12) Disclosure by professionals: The IPA or other professional shall not disclose information identified as confidential information provided to them by the state auditor unless otherwise specified by the state auditor. Disclosure of confidential information by the IPA or other professional may result in legal action by the state auditor, or in the case of an IPA, restriction pursuant to Subsection D of 2.2.2.8 NMAC.

(13) Payment: Progress payments up to (but not including) ninety-five percent of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final payments over ninety-five percent may be made by the agency pursuant to either of the following:

(a) stated in the letter accompanying the release of the report to the agency, or

(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency.

C. Agency-initiated special audits or examinations:

(1) Applicability: With the exception of agencies that are authorized by statute to conduct performance audits and forensic accounting engagements, this section applies to all special audits and examinations in which an agency enters into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the engagement pursuant to [~~Subsection B of 2.2.2.15 NMAC~~] this rule. For purposes of this rule, "special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement" includes, without limitation, AUP, consulting, forensic services and contract close-out (results-based award) engagements that address financial fraud, waste or abuse in government.

(2) [~~Contracting: An agency, IPA or other professional shall not enter into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA or other professional, unless the agency or IPA or other professional applies to the state auditor for an exemption and the state auditor grants the exemption. When contracting with an IPA or other professional, the agency shall contract only with an IPA or other professional that has been approved by the state auditor to conduct such work. The state auditor may, in its sole discretion, require a non-IPA professional to submit proof of qualifications, a firm profile or equivalent documentation prior to approving the contract. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed, and shall follow any template that the state auditor may provide. See Subsection F of 2.2.2.10 NMAC for applicable restrictions on the engagement letter.~~] Any agency, local public body, IPA or other professional that enters into a professional services contract for a special audit or examination of the financial affairs and transactions of an agency or local public body that was not designated by the state auditor for the engagement must notify the OSA and provide a copy of any resulting report or any resulting findings of violations of law or good accounting practices to the OSA. Findings shall be reported as described in Subsection D of 2.2.2.15 NMAC. All findings relating to any violation of a criminal statute in connection with financial affairs must be reported immediately to the OSA pursuant to Section 12-6-6, NMSA 1978.

[~~**(3)** Applicability of other rules: The provisions outlined in Subsection B of 2.2.2.15 NMAC apply to agency-initiated special audits, attestation engagements, performance audits and forensic accounting engagements.~~]

D. Finding requirements for special audits or examinations: Communicating findings: All finding reference numbers shall follow a consistent format. Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings and placed at the end of the report.

(1) Section 12-6-5 NMSA 1978 requires that for every special audit and examination made "each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination."

(2) Each finding shall specifically state and describe the following:

(a) condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified);

(b) criteria (identifies the required or desired state or what is expected from the program or operation; cites the

specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(c) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(d) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(e) recommendation addressing each condition and cause; and

(f) agency response (the agency's response shall include specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 3/28/2023; A, 7/16/2024]

2.2.2.16 ANNUAL FINANCIAL PROCEDURES REQUIRED FOR LOCAL PUBLIC BODIES WITH ANNUAL REVENUES LESS THAN FIVE HUNDRED THOUSAND DOLLARS ($500,000) (TIERED SYSTEM):

A. Annual revenue and state funded capital outlay expenditures determine type of financial reporting: All local public bodies shall comply with the requirements of Section 6-6-3 NMSA 1978. Pursuant to Section 12-6-3 NMSA 1978, the annual revenue of a local public body determines the type of financial reporting a local public body shall submit to the OSA. Local public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts.

(1) The annual revenue of a local public body shall be calculated on a cash basis as follows:

(a) Revenue shall exclude capital outlay funds. OSA defines capital outlay funds as funds expended pursuant to the Property Control Act definition of a capital outlay project. Per section 15-3B-2 NMSA 1978 "Capital outlay project" means the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including land, buildings, machinery, furniture and equipment. A "capital outlay project" includes all proposed expenditures related to the entire undertaking.

(b) Revenue shall exclude federal or private grants. For the purpose of 2.2.2.16 NMAC "private grant" means funding provided by a non-governmental entity.

(2) For the purposes of 2.2.2.16 NMAC "state funded capital outlay expenditures" are expenditures made pursuant to any funding provided by the New Mexico legislature for a capital outlay project as defined in the Property Control Act, Section 15-3B-2 NMSA 1978, either received directly by the local public body or disbursed through an administering agency.

B. Determination of revenue and services: Annually, following the procedures described in Subsection F of 2.2.2.8 NMAC, the state auditor shall provide local public bodies written authorization to obtain services to conduct a financial audit or other procedures. Upon receipt of the authorization, a local public body shall determine its annual revenue in accordance with Subsection A of 2.2.2.16 NMAC. The following requirements for financial reporting apply to the following annual revenue amounts (tiers):

(1) if a local public body's annual revenue is less than ten thousand dollars ($10,000) and the local public body did not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC (tier one);

(2) if a local public body's annual revenue is ten thousand dollars ($10,000) or more but less than fifty thousand dollars ($50,000), then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC (tier two);

(3) if a local public body's annual revenue is less than fifty thousand dollars ($50,000), and the local public body expended at least fifty percent of, or more of, a single capital outlay award during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier three AUP engagement in accordance with the audit contract for a tier three AUP engagement;

(4) if a local public body's annual revenue is greater than fifty thousand dollars ($50,000) but less than two hundred-fifty thousand dollars ($250,000), then the local public body shall procure the services of an IPA for the performance of a tier four AUP engagement in accordance with the audit contract for a tier four AUP engagement;

(5) if a local public body's annual revenue is greater than fifty thousand dollars ($50,000) but less than two hundred-fifty thousand dollars ($250,000), and the local public body expended any capital outlay funds during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier five AUP engagement in accordance with the audit contract for a tier five AUP engagement;

(6) if a local public body's annual revenue is two hundred-fifty thousand dollars ($250,000) or greater, but less than five hundred thousand dollars ($500,000), the local public body shall procure services of an IPA for the performance of a tier six AUP

engagement in accordance with the audit contract for a tier six AUP engagement; the report shall include at a minimum, a compilation of financial statements and a financial report consistent with the agreed-upon procedures;

(7) if a local public body's annual revenue is five hundred thousand dollars ($500,000) or more, this section shall not apply and the local public body shall procure services of an IPA for the performance of a financial and compliance audit in accordance with other provisions of this rule;

(8) notwithstanding the annual revenue of a local public body, if the local public body expended seven hundred-fifty thousand dollars ($750,000) or more of federal funds subject to a federal single audit during the fiscal year then the local public body shall procure a single audit.

C. Exemption from financial reporting: A local public body that is exempt from financial reporting to the state auditor pursuant to Subsection B of 2.2.2.16 NMAC shall submit written certification to LGD and the state auditor. The certification shall be provided on the form made by the state auditor, available through OSA-Connect. The local public body shall certify, at a minimum:

(1) the local public body's annual revenue for the fiscal year; and

(2) that the local public body did not expend fifty percent of or the remainder of a single capital outlay award during the fiscal year.

(3) The OSA will not accept the certification of exemption from financial reporting for the current year until the prior year certifications or AUP reports (whichever is appropriate) have been submitted.

D. Procurement of IPA services: A local public body required to obtain an AUP engagement shall procure the services of an IPA in accordance with Subsection F of 2.2.2.8 NMAC.

E. Access to Records and Documents: For any AUP the agency should produce all documents necessary to conduct the engagement.

F. Requirements of the IPA selected to perform the AUP:

(1) The IPA shall provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. See Subsection F of 2.2.2.10 NMAC for applicable restrictions on the engagement letter.

(2) The IPA may not subcontract any portion of the services to be performed under the contract with the local public body except for the activation of a contingency subcontractor form in the event the IPA is unable to complete the engagement.

(3) The IPA shall hold an entrance conference and an exit conference with the local public body. The entrance and exit conference shall occur in the forum agreed to by the local public body and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person entrance or exit conference. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(4) The IPA shall submit the report to the OSA for review in accordance with the procedures described at Subsection B of 2.2.2.9 NMAC. Before submitting the report to OSA for review, the IPA shall review the report using the AUP report review guide available on the OSA's website at www.saonm.org. The report shall be submitted to the OSA for review with the completed AUP report review guide. Once the AUP report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the AUP report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

G. Progress payments:

(1) Progress payments up to ninety-five percent of the contract amount do not require state auditor approval and may be made by the local public body if the local public body ensures that progress payments made do not exceed the percentage of work completed by the IPA. If requested by the state auditor, the local public body shall provide the OSA a copy of the approved progress billing(s).

(2) Final payments from ninety-five percent to one hundred percent may be made by the local public body pursuant to either of the following:

(a) stated in the letter accompanying the release of the report to the agency, or

(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency. In this situation a letter releasing the report to the agency will be issued when it is appropriate to release the report.

H. Report due dates, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end that qualify for the tiered system, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 shall submit the AUP report or certification no later

than five months after the fiscal year-end. Late AUP reports (not the current reporting period) are due not more than six months after the date the contract was executed. An electronic copy of the report shall be submitted to the OSA. AUP reports submitted via fax or email shall not be accepted. A copy of the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the report is due the following business day by [~~5:00~~] 11:59 p.m. If the report is mailed to the state auditor, it shall be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report shall be postmarked by the following business day.

(2) As soon as the IPA becomes aware that circumstances exist that will make the local public body's AUP report be submitted after the applicable due date, the auditor shall notify the state auditor of the situation in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. The late AUP notification letter is subject to the confidentiality requirements detailed at Subsection M of 2.2.2.10 NMAC. This does not prevent the state auditor from notifying the legislative finance committee or applicable oversight agency pursuant to Subsections F and G of Section 12-6-3 NMSA 1978. There shall be a separate notification for each late AUP report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the local public body. If the IPA will not meet the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the AUP report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the deadline, and then rejected by the OSA, making the report late when resubmitted.

(3) Local public body personnel shall not release information to the public relating to the AUP engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At all times during the engagement and after the AUP report becomes a public record, the IPA shall follow applicable professional standards and 2.2.2 NMAC regarding the release of any information relating to the AUP engagement.

I. Findings: All AUP engagements shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings shall include the required content listed at Subparagraph (d) of Paragraph (1) of Subsection L of 2.2.2.10 NMAC.

J. Review of AUP reports and related workpapers: AUP shall be reviewed by the OSA for compliance with professional standards and the professional services contract. Noncompliant reports shall be rejected and not considered received. Such reports shall be returned to the firm and a copy of the rejection letter shall be sent to the local public body. If the OSA rejects and returns an AUP report to the IPA, the report shall be corrected and resubmitted to the OSA by the due date, or the IPA shall include a finding for non-compliance with the due date. The IPA shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The OSA encourages early submission of reports to avoid findings for late reports. After its review of the AUP report for compliance with professional standards and the professional services contract, the OSA shall authorize the IPA to print and submit the final report. An electronic version of the AUP report, in PDF format, as described at Subsection B of 2.2.2.9 NMAC, shall all be delivered to the OSA within five business days. The OSA shall not release the AUP report until the electronic version of the report is received by the OSA. The OSA shall provide the local public body with a letter authorizing the release of the report after the required five day waiting period. Released reports may be selected by the OSA for comprehensive report and workpaper reviews. After such a comprehensive report and workpaper review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond to all review comments as directed. If during the course of its review, the OSA finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

(1) the IPA may be required to correct the deficiencies in the report or audit documentation, and reissue the AUP report to the agency and any others receiving copies;

(2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of 2.2.2.8 NMAC;

(3) for future reports, for some or all contracts, the IPA may be required to submit working papers with the reports for review by the OSA prior to the release of the report; or

(4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

K. IPA independence: IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of the current government auditing

standards.
[2.2.2.16 NMAC - Rp, 2.2.2.16 NMAC, 3/28/2023; A, 7/16/2024]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an Emergency Amendment to 8.9.3 NMAC, Section 3 and 15 effective 07/01/2024.

8.9.3.3 STATUTORY AUTHORITY: Subsection E of Section 9-29-6 NMSA 1978; Section 7-9-121 NMSA 1978.
[8.9.3.3 NMAC - N, 11/01/2022; A/E, 07/01/2024]

8.9.3.15 PROVIDER REQUIREMENTS: Child care providers must abide by all department regulations. Child care provided for recreational or other purposes, or at times other than those outlined in the child care placement agreement, are paid for by the client.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands.

B. Signed child care placement agreements (including electronically signed child care placement agreements) must be returned by hand delivery, mail, email, fax, or electronic submission to the local child care office within 30 calendar days of issuance. Failure to comply may affect payment for services and the child care placement agreement will be closed. The department will provide reasonable accommodations to allow a client or provider to meet this requirement.

C. Child care providers collect required copayments from clients and provide child care according to the terms outlined in the child care placement agreement.

D. Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client. If a client notifies the provider of non-attendance beyond 14 consecutive calendar days, the department will continue to pay the provider for the period of non-attendance, not to exceed six weeks following the first date of nonattendance.

(1) If the provider notifies the department of the above, the provider will be paid through the period of nonattendance, not to exceed six weeks.

(2) If a provider does not notify the department of disenrollment or of non-use for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(3) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated compliant against the child care provider, payment to the former provider will be made through the last day that care was provided.

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.9.3.21 NMAC.

E. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the child care placement agreement. Failure to comply with this requirement may result in sanctions.

(1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.9.3 NMAC. The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.9.3 NMAC.

(2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(3) Child care providers are not allowed to charge child care assistance families the [~~applicable~~] gross receipts tax for the sum of the child care assistance benefit and copayment. Child care providers may claim the gross receipts tax deduction pursuant to Section 7-9-77.2 NMSA1978 as applicable.

F. Under emergency circumstances, when ECECD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. The child care resource and referral will assist clients with choosing another ECECD approved provider.

G. Owners and licensees may not receive child care subsidy payments to provide care for their own children.

H. Providers who are found to have engaged in fraud relating to any state or federal programs, or who have pending charges for or convictions of any criminal charge related to financial practices will not be eligible to participate in the subsidy program.

I. Providers must promote the equal access of services for all children and families by developing and implementing policies and procedures that prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40

or older).
[8.9.3.15 NMAC - N, 11/01/2022; A, 8/1/2023; A/E, 07/01/2024]

ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC Sections 6, 8, & 10 effective 07/16/2024

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. 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: Companies that increase the economic base of New Mexico are eligible to be considered for JTIP funds. They are broken out into two broad categories: manufacturers and companies that provide services that are non-retail in nature and export at least fifty percent of the services to a customer base outside New Mexico. The company must be creating new jobs as a result of expansion, startup, or relocation to the State of New Mexico. Companies are required to have a physical presence (real estate either purchased or leased) in 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.

B. Job eligibility: Jobs eligible for funding through JTIP must be newly created, 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 must directly support the primary mission of the business and include human resources and those directly related to the creation of the product or service provided by the company to its customers. Other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to twenty percent of the total number of jobs applied for in the proposal. Companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications within two years of the most recent board approval date. Jobs must also meet a wage requirement to be eligible for funding. The entry level wage requirements for JTIP eligibility are specified in the "Reimbursable Expenses" section of this policy manual. 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. In urban areas, companies with more than 20 employees must offer health insurance coverage to employees and their dependents and pay at least fifty percent 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 HSE (high-school equivalency). The one-year residency requirement may not apply to a trainee hired into an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company. Companies are reimbursed at a reduced, flat reimbursement rate for trainees that meet these criteria.

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 seventy-five percent 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.

(2) Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC.

(3) Companies that 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 five percent wage reimbursement above the standard rates.

(4) Companies that hire trainees who are U.S. veterans may be eligible for an additional five percent wage reimbursement above the standard rates.

(5) Companies that hire trainees who have graduated out of the NM foster care system may be eligible for an additional five percent reimbursement above the standard rates.

(6) Companies may combine the additional five percent 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 ten percent 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 one hundred percent.

(8) For companies that hire remote workers, the reimbursement percentage for the remote employee shall be linked to the location of the employee. Urban companies must also offer the remote workers that reside in a rural or frontier location a wage that is consistent with the urban location. Conversely, a rural or frontier company that hires a remote worker from an urban location, the reimbursement percentage will be linked to the urban location and must also meet the minimum entry wage requirement respective to the O*NET job zone for an urban location in order to qualify for the hours of training assigned to that job zone.

(a) Rural – sixty-five percent.

(b) Frontier, Tribal and Federally designated Colonias – seventy-five percent.

(9) JTIP approved employers that utilize business support services through the recognized New Mexico workforce connection offices across the state or through other independent human resource support service providers that help small businesses develop successful recruitment strategies to grow and retain their workforce may be eligible for an additional five percent wage reimbursement above the standard rates.

(10) For companies with a workforce of less than 50 and have a designated Human Resources representative that will be responsible for developing and implementing an internship program and utilize JTIP for internship training and subsequently transition an intern into a full-time position with the company will receive an additional $1,000 incentive.

E. Program management and administration: General management of the job training incentive program is the responsibility of the 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 may elect to implement measures to conserve funds when available funds become limited.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021, A 6/27/2023]

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 that manufacture a product in New Mexico and certain non-retail service providers. Manufacturing businesses are typically included in sectors 31-33 of the North American industry classification system (NAICS). 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 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). A company whose employees are compensated solely on piecework is not eligible. Other types of companies that may be eligible under the manufacturing category are listed below:

(a) Manufacturers that perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere. Start-ups and early-stage manufacturing companies. The company must be adequately capitalized to reach first production and be able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(b) Renewable power generators.

(c) Film post-production companies, and film digital production companies (such as animation and video game production companies).

(d) Non-traditional agricultural entities may be eligible under the manufacturing category provided that the operation is a year-round, value-added production facility in a controlled and enclosed environment. Such operations may have mechanized processes, require a specialized workforce or may be involved with research and development or technology transfer.

(e) Manufacturers that perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible.

(f) 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.

(2) Non-retail service businesses provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public. Eligible non-retail service businesses must demonstrate that at least fifty percent of their revenues come from a customer base outside New Mexico. Businesses that may be eligible as non-retail service providers may include:

(a) Companies that exist for the sole purpose of producing, installing, or integrating environmentally sustainable products (see definition of green industries in glossary). Companies that meet the green industry criteria are not required to generate out-of-state revenues.

(b) Service companies that provide a non-retail service to government agencies may be eligible provided at least fifty percent of revenue is from a customer base outside New Mexico. Revenue derived from contracts with national research laboratories or military bases located in New Mexico is not considered out-of-state. National research laboratories in New Mexico or companies that operate national research laboratories in New Mexico are not eligible.

(c) Logistics companies that provide inbound and outbound transportation management, fleet management, warehousing, materials handling, order fulfillment, logistics network design, inventory management, supply and demand planning, third-party logistics management, and other support services. Logistics services are involved at all levels in the planning and execution of the movement of goods and information from point of origin to point of consumption for the purpose of conforming to customer requirements. Distribution and transloading services are included within the logistics category.

(d) Aviation maintenance, repair and overhaul (MRO) operations may be eligible. MRO's provide airframe, engine and component services to the aviation industry, including aircraft such as planes, jets and helicopters in need of regular maintenance, repair and adjustments to keep in working order according to federal regulations. A contracted third-party or the owner of the aircraft may bring the aircraft to New Mexico for service.

(e) Start-ups and early-stage 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.

(f) Business operations that do not generate gross receipts within New Mexico may be eligible if at least fifty percent of the customer-base is outside New Mexico and service is provided to customers who are not physically present at the New Mexico facility. Companies in this category may be part of a multi-state entity or corporation that have a location in New Mexico and whose revenues flow to the New Mexico business operation, which in turn pay the wages of the New Mexico employees and contribute to the New Mexico tax base in the form of corporate and payroll taxes. Businesses that may be eligible under this category may include:

(i) eadquarters operations: The center of operations of a business where corporate staff employees are physically employed; centralized functions are performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including operating a call center; the function and purpose of which is to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; from which final authority over regional or sub-regional offices, operating facilities and any other offices of the business are issued; and including national and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters.

(ii) Shared services centers: The entity within a corporation responsible for the execution and the handling of specific operational tasks, such as accounting, human resources, payroll, IT, legal, compliance, purchasing, for a regional or national division.

(iii) Customer support centers. Customer support centers must service a customer who is not physically present at the facility. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions that 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 customer support centers must meet special requirements. Contract-based customer support centers are outsourcing vendors that provide information to customers of their clients on behalf of those clients. Contract-based customer support centers do not have a core expertise; rather they communicate information provided to them by their clients. Contract-based customer support centers must provide evidence of a minimum five-year lease or purchase of a facility in New Mexico; offer employees and their dependents health insurance coverage; and contribute at least fifty percent of the premium for healthcare insurance for those employees who choose to enroll. Eligibility as an expanding company is determined by peak employment over the four prior years. For first-time applicants, peak employment is based on

the employment average from four previous years or the present employment level, whichever is higher. The company must meet or exceed the average employment level for the past four years in order to be considered an expanding company and eligible for JTIP. Contract-based customer support centers that have been funded in the past four years must be expanding beyond the peak employment count achieved with previous JTIP funds.

(3) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. An expanding company is defined as an existing business that requires additional employees or workforce due to a market or product expansion. Eligibility as an expanding company is determined by peak employment over the two prior years. For first-time applicants, peak employment is based on the employment average from two previous years or the present employment level, whichever is higher. 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 that 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 and apprentices when calculating the two-year average headcount.

(4) If a company hires twenty or more trainees in a municipality with a population of more than 40,000 according to the most recent decennial census or in a class H 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.

(5) 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-ups and early-stage companies that do not have three years of financials are required to submit financials for the period for which they are available. Other documentation that may be requested may include but is not limited to tax returns, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, 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.

(6) 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.

(7) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within one year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) that 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.

(8) 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.

(9) 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.

(10) Businesses that are not eligible include but are not limited to retail, construction, traditional agriculture and farming, mining and extractive industries, 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 and eligibility.

(11) Companies must be in good standing with the Economic Development Department in order to be considered for participation in JTIP.

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 may be eligible for the high wage job tax credit. These levels are $60,000 in a municipality with a population of 40,000 or more as of the last decennial census and $40,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Las Cruces, Rio Rancho, 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 and include human resources. In addition, other newly created positions may be funded up to a maximum of twenty percent of the total number of jobs for which funding is requested, and may include non-executive, professional support positions. Rural companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications. 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 12 months from, a 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 within 90 days of completion of the internship and graduation from the training or education program, or within 90 days of completion of the internship by a recent graduate.

(6) Remote worker trainees may be eligible if all of the trainee qualifications and requirements as defined in policy under trainee eligibility.

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. JTIP staff determines eligibility of these positions and trainees on a case by case basis, and if deemed eligible, training hours may be reduced. The vacancy left by an existing employee moving in to a JTIP position must be filled by the end of the project period. Individuals who have been employed temporarily in a position classified as intern or apprentice 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. The one-year residency requirement may not apply to a trainee hired in to an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company. All trainees must currently be domiciled in New Mexico.

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

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

(5) Trainees who have participated in a previous JTIP [~~or industrial development training program~~] project [~~are not~~] may be eligible to participate again with the same company if the trainee is being promoted into a position that is uniquely different from the position currently occupied. or the trainee [~~unless the trainee has participated in the JTIP internship program~~] The vacancy left by the trainee must be filled by the end of the project period. Interns from a current or previous JTIP project transitioning into a full-time, permanent position with the same company may also be eligible to participate again.

(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 following the temporary agency's contract agreement that stipulates the number of consecutive work hours the assigned trainee must meet, not to exceed "520" hours.

(b) JTIP training hours will begin when the trainee has been converted to a regular/permanent full-time position of the JTIP company.

(c) The trainee must not have worked at the company in a temporary position through a staffing agency prior to the board approval date.

(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 Subsection K of 5.5.50.12 NMAC and in the JTIP project closeout guide.

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

(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.

(13) Remote worker trainees may be eligible if all of the trainee qualifications and requirements as defined in policy under trainee eligibility.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 6/26/2018; A, 7/7/2021; A, 6/27/2023]

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) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution with a cap of $6,000 per trainee. Reimbursement for classroom training is consistent with JTIP policy and ranges from fifty percent to seventy-five percent based on company location.

(3) A percentage of intern wages for up to [~~640~~] 1040 training hours.

B. Standard reimbursement rates for wages range up to seventy-five percent. Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be also eligible for an additional five percent wage reimbursement. Positions filled by trainees who meet any of the three following criteria may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(1) Trainee has graduated out of the New Mexico Foster Care System.

(2) Trainee has graduated within the past 12 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 five percent wage reimbursement for high-wage positions, for a total additional wage reimbursement not to exceed ten percent above the standard rates. If a company is participating in other job reimbursement training programs such as the Workforce Innovation and Opportunity Act (WIOA), the combined reimbursement to the company may not exceed one hundred percent.

C. JTIP approved employers that utilize business support services through the recognized New Mexico Workforce Connection offices across the state or through other independent human resource support service providers that help small businesses develop successful recruitment strategies to grow and retain their workforce may be eligible for an additional five percent reimbursement above the standard rates.

D. 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.

E. 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 seventy-five percent, depending on the business location.

(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://onetonline.org. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. For fiscal year [~~2024,~~] 2025, the JTIP board may maintain wage requirements effective in the first year of JTIP approval for the length of the job ramp within the project participation agreement (PPA) for companies that are also engaged in a LEDA agreement with the economic development department provided the

company meets job creation requirements within the period and wages do not fall below the statewide minimum wage.

The number of recommended hours for fiscal year [~~2024~~] 2025 are outlined in the table below.

General Guideline for Duration of Reimbursable Training Time/Wages for [~~FY2024 (July 1, 2023-June 30, 2024~~] FY2025 (July 1, 2024-June 30, 2025)							
Job Zone	**Definitions**	**SVP Range/ Conversions**	**Hours**	**Min. Wage @ Hiring - Urban**	**Min. Wage @ Hiring - Rural**	**Days**	**Weeks**
1	Little or no preparation needed	Below 4.0	320	15.50	13.18	40	8
2a	Some preparation needed	4.0 to < 6.0	480	17.00	13.68	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.50	14.18	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	20.00	15.68	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.50	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.50	17.68	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

(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 tables 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 as per criteria and procedures set forth by and at the discretion of the JTIP board, which may include consideration of the company benefits package. 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, frontier, economically distressed, and Native American land.

(a) Companies located in urban areas (cities with population above 60,000 in the most recent federal decennial census) and Class H counties (i.e., Los Alamos) are reimbursed at up to fifty percent for all eligible training hours. Urban communities are: Albuquerque 562,599, Las Cruces 112,914, Rio Rancho [~~105,834,~~] 111,803, and Santa Fe 88,193.

(b) Companies located in rural areas, outside those listed above are reimbursed at up to sixty-five percent 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 seventy-five percent for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to seventy-five percent reimbursement. To receive up to seventy-five percent 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.

(e) Companies located on Native American reservations are eligible for up to seventy-five percent reimbursement.

(f) Companies located in federally designated colonias in New Mexico are eligible for up to seventy-five percent reimbursement for all eligible training hours.

(6) JTIP eligible positions with starting wages eligible for the high wage job tax credit may be eligible for an additional five percent reimbursement. These requirements are a hiring salary of $60,000 or higher in an urban or class H county and a hiring salary of $40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements are still factors for JTIP eligibility. The percentage of wages reimbursed for high-wage positions filled by trainees who do not meet the one-year residency requirement is unique and not subject to any additional wage reimbursement above the standard rate. Companies located in urban areas and Class H counties are reimbursed up to thirty percent for all eligible training hours. Companies located in rural areas are reimbursed up to forty percent for all eligible training hours. Companies located in frontier areas are reimbursed up to fifty percent for all eligible training hours.

(7) JTIP eligible positions filled by trainees who have graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent reimbursement.

(8) JTIP eligible positions filled by U.S. veterans may be eligible for an additional five percent reimbursement.

(9) Trainee has graduated out of the NM Foster Care System may be eligible for an additional five percent reimbursement.

(10) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed 1,040 hours per trainee (six months) based on the company's scheduled workweek, not to exceed 40 hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, commission 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 WIOA, the combined reimbursement to the company may not exceed one hundred percent.

(f) Additional wage reimbursement may not exceed ten percent above the standard rates. Companies may combine the additional five percent wage reimbursement for high-wage jobs with one of the three following conditions for an additional five percent wage reimbursement provided the entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(i) the trainee has graduated out of the New Mexico foster care system;

(ii) the trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education;

(iii) the trainee is a U.S. veteran.

High-wage positions filled by trainees who do not meet the one-year residency requirement are not eligible for additional wage reimbursement above the standard rate.

F. 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 [~~$1,000~~] $6,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, 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.

[5.5.50.10 NMAC - Rp, 5.5.50.10 NMAC, 6/26/2018; A, 1/1/2020; A, 7/14/2020; A, 7/7/2021; A, 7/12/2022; A, 6/27/2023]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

ENERGY CONSERVATION AND MANAGEMENT DIVISION

At its July 02, 2024, hearing, the Energy, Minerals and Natural Resources Department-Energy Conservation and Management

Division has decided to repeal rule 3.3.14 NMAC – New Solar Market Development Income Tax Credit, filed 8/25/2020, and replace it with 3.3.14 NMAC – New Solar Market Development Income Tax Credit, effective 07/16/2024.

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

TITLE 3 TAXATION
CHAPTER 3 PERSONAL INCOME TAXES
PART 14 NEW SOLAR MARKET DEVELOPMENT INCOME TAX CREDIT

3.3.14.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division.
[3.3.14.1 NMAC – Rp, 3.3.14.1 NMAC, 7/16/2024]

3.3.14.2 SCOPE: 3.3.14 NMAC applies to the application and certification procedures for administration of the new solar market development income tax credit.
[3.3.14.2 NMAC - Rp, 3.3.14.2 NMAC, 7/16/2024]

3.3.14.3 STATUTORY AUTHORITY: 3.3.14 NMAC is established under the authority of Section 7-2-18-31 and Subsection 9-1-5 NMSA 1978.
[3.3.14.3 NMAC - Rp, 3.3.14.3 NMAC, 7/16/2024]

3.3.14.4 DURATION: Permanent.
[3.3.14.4 NMAC - Rp, 3.3.14.4 NMAC, 7/16/2024]

3.3.14.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[3.3.14.5 NMAC - Rp, 3.3.14.5 NMAC, 7/16/2024]

3.3.14.6 OBJECTIVE: 3.3.14 NMAC's objective is to establish procedures for administering the certification program for the new solar market development income tax credit.
[3.3.14.6 NMAC - Rp, 3.3.14.6 NMAC, 7/16/2024]

3.3.14.7 DEFINITIONS:

A. "Applicant" means a New Mexico taxpayer that has installed a solar energy system at a residence, business or agricultural enterprise that the taxpayer owns or a New Mexico taxpayer who has installed a solar energy system at a residence, business, or agricultural enterprise held in leasehold and located on a federally recognized Indian nation, tribe or pueblo that is located in whole or in part within New Mexico and who requests that the department certify the solar energy system pursuant to 3.3.14 NMAC so that the taxpayer may receive a state tax credit.

B. "Application package" means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. "Array" means the collectors of a solar thermal system or the modules of a photovoltaic system.

D. "Building code authority" means the New Mexico regulation and licensing department, construction industries department or the local government agency having jurisdiction for building, electrical and mechanical codes.

E. "Certified" or **"certification"** means department approval of a solar energy system, which makes the applicant owning the system eligible for a state tax credit.

F. "Collector" means the solar thermal system component that absorbs solar energy for conversion into heat or electricity.

G. "Collector aperture" means the area of a solar thermal collector that absorbs solar energy for conversion into usable heat.

H. "Component" means a solar energy system's equipment and materials.

I. "Department" means the energy, minerals and natural resources department.

J. "Division" means the department's energy conservation and management division.

K. "Energy system" means an engineered system that delivers solar energy to an end use by flow of fluid or electricity caused by energized components such as pumps, fans, inverters, or controllers.

L. "Installed", or **"installation"** means the direct work of placing a solar energy system into service to operate and produce energy at the expected level for a system of its size, which shall include completion of any required final inspections, unless the installation is on tribal or pueblo land in which case contractor certification of installation shall suffice for the system to meet this definition.

M. "Mobile" means not permanently connected to a residence, business or agricultural enterprise or connected to a mobile vehicle that is a part of a residence, business, or agricultural enterprise.

N. "Module" means the photovoltaic system component that absorbs sunlight for conversion into electricity.

O. "New" means the condition of being recently manufactured and not used previously in any installation.

P. "New solar market development income tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified pursuant to 3.3.14 NMAC.

Q. "Non-residential" means a business or agricultural enterprise.

R. "OG" means operating guidelines that the solar rating and certification corporation has or will establish including system performance or component characteristics as defined in the applicable SRCC directory.

Operating guidelines shall be from SRCC directory in effect on March 1, 2006, or any applicable successive revisions.

S. "Solar collector" means a solar thermal collector or photovoltaic module.

T. "Solar energy system" means a solar thermal system or photovoltaic system.

U. "Solar storage tank" means a tank provided as a component in a solar thermal system that is not heated by electricity or a heating fuel.

V. "SRCC" means the solar rating and certification corporation.

W. "Standard test conditions" means the environmental conditions under which a manufacturer tests a photovoltaic module for power output, which are a photovoltaic cell temperature of 25 degrees Celsius and solar insolation of 1000 watts per square meter on the photovoltaic cell surface.

X. "State tax credit" means the new solar market development income tax credit.

Y. "**Substantially Complete**" means a system that produces energy to the benefit of the residence, business or agricultural enterprise and has been inspected by the applicable authorities. A system that is substantially complete shall be eligible for the tax credit even if the original installation contractor is no longer in business.

Z. "**Supplemental state tax credit**" means the new solar market development income tax credit awarded for eligible solar energy systems installed in calendar years 2020-2023 when certification was not previously awarded due to exhaustion of credit certification limits.

[3.3.14.7 NMAC - Rp, 3.3.14.7 NMAC, 7/16/2024]

3.3.14.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years prior to January 1, 2032.

B. Only a New Mexico individual taxpayer, corporation or agricultural enterprise who has purchased and installed, on property that he, she, or the corporation owns, or, in the case of a federally recognized Indian nation, tribe or pueblo, holds in leasehold, an operating or substantially complete solar energy system that the department has certified pursuant to this part is eligible for a state tax credit for the tax year in which the system is installed, unless the system is eligible for a supplemental state tax credit.

C. An applicant must own the residence, business, or agriculture enterprise on which the solar energy system is located to qualify for the tax credit, unless the applicant has installed a solar energy system at a residence, business, or agricultural enterprise located on a federally recognized Indian nation, tribe or pueblo located in whole or in part within New Mexico, in which case the applicant must hold the property in leasehold from the applicable Indian nation, tribe or pueblo. The applicant may rent the residence, business, or agricultural enterprise that the applicant owns to another entity, however, the renter does not qualify for the tax credit.

D. Multiple different systems located at the same address are all eligible for the credit, provided the total amount awarded for all systems at the same address does not exceed the allocation limit in 3.3.14.15 NMAC; systems must meet eligibility requirements. The restriction in this paragraph applies even if the solar energy systems are separately metered.

E. A taxpayer who is not a dependent of another individual and who, on or after March 1, 2020, purchases and installs a solar thermal system or a photovoltaic system on a residence, business or agricultural enterprise in New Mexico owned by that taxpayer or on land held by a federally recognized Indian nation, tribe or pueblo and held in leasehold by that taxpayer, may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided by this section may be referred to as the "new solar market development income tax credit."

F. A taxpayer may apply for a new solar market development income tax credit certificate for the taxable year in which the taxpayer purchases and installs a solar thermal or photovoltaic system. To receive a new solar market development income tax credit certificate, a taxpayer shall apply to the department on forms and in the manner prescribed by the department within twelve months following the calendar year in which the system was installed.

G. The annual aggregate amount of credits that may be certified by the department as eligible is:

(1) in the calendar year 2024 and any subsequent year thereafter, thirty million dollars ($30,000,000); and

(2) For calendar years 2020 through 2023, where the calendar year limitation has previously been met in any one of those years, a total of twenty million dollars ($20,000,000). Such supplemental state tax credits shall be claimed in taxable year 2023 regardless of whether the system was purchased and installed in calendar years 2020 through 2023. Applications for supplemental state tax credits certificates must be submitted on or before 12/31/2025.

H. When the aggregate amount of certificates issued reaches the cap in the foregoing paragraph, the department will no longer certify systems for that year. Applications received after the aggregate limit is reached shall not be approved and will be returned to applicant. The department shall keep a record of the order of receipt of all application packages to ensure the annual aggregate amount is not exceeded in any given year.

I. In the event of a discrepancy between a requirement of 3.3.14 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation

and revenue department rule promulgated prior to 3.3.14 NMAC's adoption, the existing rule shall govern.
[3.3.14.8 NMAC - Rp, 3.3.14.8 NMAC, 7/16/2024]

3.3.14.9 APPLICATION:

A. To apply for a state tax credit an applicant shall submit an application for a certificate of eligibility to the division using either a department-developed application or an approved electronic application system as directed by the division director. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division. An applicant may obtain a state tax credit application form and system installation form from the division.

B. An application package shall include a completed state tax credit application form and written attachments for a solar thermal system or photovoltaic system. To be considered complete, an application must include the state tax credit application form and any required attachments; partial applications will not be accepted. An applicant shall submit one application package for each eligible solar energy system. After the department has certified a solar energy system, applicants may not amend the certified application package to seek additional credits for that system. If there are multiple owners of the property where the solar energy system is installed, a joint application must be submitted.

C. The application package shall meet the requirements of 3.3.14 NMAC. If an application package fails to meet a requirement, the department shall disapprove the application.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, e-mail address, telephone number and the last four digits of the applicant's social security number or employer identification number (EIN) provided by a business or agricultural enterprise;

(2) the address where the solar energy system is located, if located at a residence, business or agricultural enterprise, or a location description if located at an agricultural enterprise;

(3) the solar energy system's type and description;

(4) the date the solar energy system was installed;

(5) if a contractor installed the solar energy system, the contractor's name, address, telephone number, e-mail address, license category and license number;

(6) acknowledgement the applicant installed the solar energy system, if applicable;

(7) the separately itemized net cost of equipment, materials, and labor of installing the solar energy system, excluding the expenses and income listed in 3.3.14 NMAC; and

(8) a statement the applicant signed and dated, which signature may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge;

(b) applicant understands that there is annual aggregate cap on available state tax credits in place for solar energy systems and that they are eligible for a credit only in the year the system was installed, or, in the case of systems installed in 2020, 2021, 2022 and 2023, tax year 2023;

(c) applicant understands that the department must certify the solar energy system documented in the application package before becoming eligible for a state tax credit;

(d) applicant agrees to make any changes the department requires to the solar energy system for compliance with 3.3.14 NMAC; and

(e) to ensure compliance with 3.3.14 NMAC, applicant agrees to allow the department or its authorized representative to inspect the solar energy system described in the application package at any time after the date of submittal of the application package until three years after the department has certified the solar energy system, upon the department providing a minimum of five days' notice to the applicant.

E. An application package must contain the following information as attachments (the requirements in the subparagraph below depend on solar energy system location and whether application is seeking a state tax credit or a supplemental state tax credit):

(1) A completed application package for solar energy systems installed in years 2024 and after on private land shall remit the following attachments:

(a) A current property tax bill or other equivalent proof of ownership in the applicant's name for the residence, business, or agricultural enterprise where the solar energy system is installed. All names, partnerships and titles listed as property owners shall be listed on application;

(b) A Building Code Inspection report including the name of the building code authority, the permit number, and the date of successful inspection, either noted on a physical form, photo of inspection sticker, or a web-based report. The department prefers the permit for electrical inspection over the general building permit.

(c) An itemized invoice documenting the equipment, materials, and labor costs of the solar energy system, including but not limited to itemized accounting of permits, design, equipment, material, categorized fees, and installation labor of the solar energy system. For categorized fees please see Subsection C. of 3.3.14.14 NMAC; and

(d) The solar energy system's

design schematic and technical specifications.

(2) The application package remitted for solar energy systems installed in years 2024 and after on lands of a federally recognized Indian nation, tribe or pueblo and held in leasehold by that taxpayer shall consist of the following information provided as attachments:

(a) A leasehold agreement, trust, allotment of property or other equivalent proof that the property where the solar system is installed is held on behalf of the individuals applying. All names, partnerships and titles listed as leaseholders shall be listed on application;

(b) For projects in areas subject to a building code authority's inspection: the permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker, or a web-based report the applicable building code authority approves. For projects in areas not subject to a building code authority's inspection, a certification from a licensed New Mexico electrician that the solar energy system was properly integrated into the applicable structure's electrical system;

(c) An itemized invoice documenting the equipment, materials, and labor costs of the solar energy system, including but not limited to itemized accounting of permits, design, equipment, material, categorized fees, and installation labor of a solar energy system. For categorized fees please see Subsection C. of 3.3.14.14 NMAC; and

(d) The solar energy system's design schematic and technical specifications.

(3) The application package for a supplemental state tax credit for a project purchased and installed in years 2020 through 2023 shall consist of the following information provided as attachments:

(a) a current property tax bill or other equivalent proof of ownership in the applicant's name for the residence, business, or agricultural enterprise where the solar energy system is installed. All names, partnerships and titles listed as property owners shall be listed on application;

(b) for projects on tribal lands: a leasehold agreement, trust, allotment of property or other equivalent proof that the property where the solar system is installed is held on behalf of the individuals applying. All names, partnerships and titles listed as leaseholders shall be listed on application;

(c) the equipment, materials, and labor costs of a solar energy system the department certifies, documented in an itemized invoice. The invoice shall itemize the following costs including but not limited to permits, design, equipment, material, categorized fees, and installation labor of a solar energy system. The department may accept a purchase/installment agreement. For categorized fees please see Subsection C. of 3.3.14.14 NMAC. If an applicant cannot obtain an itemized invoice for a project installed in years 2020 through 2023, due to their contractor no longer being in business, the department may accept at its sole discretion evidence of project costs, such as evidence of total payments made and a certification that such payments did not include otherwise excluded costs under categorized fees please see Subsection C. of 3.3.14.14 NMAC; and

(d) for projects in areas subject to a building code authority's inspection: the permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker, or a web-based report the applicable building code authority approves; and

(e) for projects in areas not subject to a building code authority's inspection, a certification from a licensed New Mexico electrician that the solar energy system was properly integrated into the applicable structure's electrical system.

(f) the solar energy system's design schematic and technical specifications.

(4) In addition to the requirements in the preceding paragraphs, if the application is for a solar thermal system, a completed solar thermal list form that includes the:

(a) manufacturer or supplier of system components and their model numbers;

(b) number of collectors;

(c) collector aperture dimensions;

(d) orientation of collectors by providing the azimuth angle from true south and tilt angle from horizontal;

(e) SRCC solar collector certification identification number; and

(f) manufacturer's specifications for collectors if collectors are unglazed;

(5) In addition to the requirements in the preceding paragraphs, if the application is for a photovoltaic system, a completed solar photovoltaic list form that includes the:

(a) manufacturer or supplier of major system components and their model numbers;

(b) number of modules;

(c) module rated direct current power output in watts under manufacturer's standard test conditions;

(d) collectors' orientation by providing the azimuth angle from true south and tilt angle from horizontal;

(e) total inverter capacity in kilowatts if an inverter is a part of the system;

(f) battery storage size and capacity in kilowatts and kilowatt-hours, if battery storage is a part of the system; and

(g) the building code authority's permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker or a web-based report the applicable building code authority approves.

(6) Other information the department needs to evaluate the specific system type for certification.

[3.3.14.9 NMAC - Rp, 3.3.14.9 NMAC, 7/16/2024]

3.3.14.10 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received. If the department receives multiple applications on the same day that would cumulatively exceed the overall limit of state tax credit or supplemental state tax credit availability, the department shall certify the first application received for the last remaining tax credit.

B. The department shall review the application package to calculate the state tax credit or supplemental state tax credit; check the accuracy of the applicant's documentation; and determine whether the department shall certify the solar energy system. The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

C. If the department finds the application package meets 3.3.14 NMAC's requirements and a state tax credit or supplemental state tax credit is available, the department shall certify the applicant's solar energy system and document the applicant as eligible for a state tax credit or supplemental state tax credit, as appropriate. A certificate issue for a system shall include the applicant's contact information, the last four digits of their social security number or EIN, system certification and the state tax credit amount. If a state tax credit or supplemental state tax credit is not available in the calendar year when the application was submitted, the department will notify the applicant that the program has reached the applicable aggregate tax credit certification cap and their application is not certified. The department provides notification of credit unavailability through written notification to the applicant.

D. The department shall report to the taxation and revenue department the information required to verify, process, and distribute each state tax credit or supplemental state tax credit by providing a copy of the department's certification notification.

E. The applicant may submit a revised application package to the department; however, the division shall place the resubmitted application in the review schedule as if it were a new application unless the application is disapproved because the annual cap has been reached.

F. If applicable, the department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for a disapproved project, but it shall be reviewed as if it were a new application.

[3.3.14.10 NMAC - Rp, 3.3.14.10 NMAC, 7/16/2024]

3.3.14.11 SAFETY, CODES AND STANDARDS:

A. Solar energy systems that the department may certify shall meet the following requirements:

(1) compliance with the latest adopted version of all applicable federal, state, and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package.

B. Solar thermal systems that the department may certify shall meet the following requirements:

(1) design, permitting and installation in full compliance with all applicable provisions of the latest New Mexico Plumbing Code 14.8.2 NMAC, the New Mexico Mechanical Codes 14.9.2 NMAC, Solar Energy Code 14.9.6 NMAC, the New Mexico General Construction Building Codes, 14.7.2 to 14.7.7 NMAC and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under Sections 3-17-6 and 3-18-6 NMSA 1978.

C. Photovoltaic systems that the department may certify shall meet the following requirement for design, permitting and installation in full compliance with all applicable provisions of the latest New Mexico Electrical Code 14.10.4 NMAC and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under Sections 3-17-6 and 3-18-6 NMSA 1978.

[3.3.14.11 NMAC - Rp, 3.3.14.11 NMAC, 7/16/2024]

3.3.14.12 MINIMUM SYSTEM SIZES, SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Solar energy systems or their portions that the department may certify shall meet the following requirements:

(1) be primarily constituted by new equipment, components, and materials; except that the department may certify a system with recycled or reused components if the use of a used component would not adversely impact generation efficiency or overall system longevity and so long as it is not otherwise ineligible for certification;

(a) a system that is on a recreational vehicle, is mobile, does not serve a permanent end use energy load or is not permanently located in New Mexico;

(b) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(c) a system or portion of a system having one or more components not manufactured on a regular basis by a business enterprise; and

(d) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a state tax credit.

B. The department may disapprove a system type, solar thermal collector type, photovoltaic module type or a solar energy system component if not listed in 3.3.14 NMAC for certification.

C. Solar thermal systems that the department may certify include:

(1) the system applications of solar domestic hot water, solar space heating, solar air heating, solar process heating, solar space cooling or combinations of solar thermal system applications listed in 3.3.14 NMAC;

(2) the collector types of flat plate, parabolic trough, and evacuated tube; and

(3) the listed component categories of collectors, pumps, fans, solar storage tanks, expansion tanks, valves, controllers, and heat exchangers.

D. A solar thermal system component that the department may certify is a photovoltaic system providing power for a solar thermal system component's incidental electricity needs. The department shall not certify such a photovoltaic system as a separate solar energy system eligible for a separate state tax credit.

E. Solar thermal systems or their components that the department shall not certify are as follows:

(1) a heating system or heating system components necessary for a swimming pool or a hot tub;

(2) equipment sheds, wall preparation, cabinetry, site-built enclosures, distribution piping and associated installation costs;

(3) a building design element used for passive solar space heating, space cooling, daylighting, or other environmental comfort attribute;

(4) a water quality distillation or processing system;

(5) in a combined system, the portions of the system not allowed to receive a state tax credit or for which the department shall not certify the system;

(6) A system that does not comply with the latest version of the New Mexico Solar Code.

F. Solar thermal systems that the department may certify shall meet the following requirements:

(1) minimum system size of 15 square feet of solar collector aperture area;

(2) a collector that is listed as certified by the SRCC by OG-100 collector certification or OG-300 system certification processes; and

(3) all components approved by an agency accredited by the American national standards institute, if available for that specific component category.

G. Photovoltaic systems that the department may certify include:

(1) the system applications of direct power without battery storage, utility grid interconnected without battery storage, utility grid interconnected with without battery storage, stand-alone with battery storage, stand-alone with utility backup capability and water pumping;

(2) the flat plate module types of crystalline, poly-crystalline or thin-film amorphous silicon;

(3) the listed component categories of modules, inverters, batteries, manufactured battery enclosures, charge controllers, power point trackers, well pumps, racks, sun tracking mechanisms, performance monitoring equipment, communications, datalogging or lightning protection; and

(4) disconnect components, safety components, standard electrical materials, and standard electrical hardware necessary for the assembly of the listed component categories into a complete, safe, and fully operational system.

H. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) a minimum total array power output of 100 watts direct current at manufacturer's standard test conditions;

(2) all components listed and labeled by a nationally recognized testing laboratory, if such listing is available for that specific component category; and

(3) an agricultural enterprise photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system.

I. Photovoltaic systems or their portions that the department shall not certify are as follows:

(1) a commercial or industrial photovoltaic system that is not connected to an electric utility transmission or distribution system;

(2) power equipment sheds, wall preparation, cabinetry, site-built battery enclosures, distribution wiring and associated installation costs;

(3) the drilling, well casing, storage tanks, distribution piping, distribution controls and associated installation costs of a water pumping system; and

(4) a packaged product powered by photovoltaic cells that an applicant purchased directly from a retail business enterprise, is not custom designed, and does not require a permit from the building code authority for installation, including gate or door openers, watches, calculators, walkway lights, and toys.

[3.3.14.12 NMAC – Rp, 3.3.14.13 NMAC, 7/16/2024]

3.3.14.13 CERTIFICATION:

A. The purpose of the department's certification program is to evaluate certification of complete solar energy systems for state tax credit or supplemental state tax credit eligibility that are composed of components and materials that are tested, certified, approved or listed, as applicable, by other organizations identified or referenced in 3.3.14 NMAC.

B. If an applicant has received a state tax credit or a supplemental state tax credit for a solar energy system under this part, the solar energy system may not be used to meet the requirements for other tax credits available under state law:

(1) If the 2021 sustainable building tax credit application uses a solar energy system to achieve the energy reduction performance rating, and that solar energy system was previously certified for the state tax credit or the supplemental state tax credit, the department shall disapprove the application for that portion of a2021 sustainable building tax credit;

(2) if an onsite solar system is used to meet the 2021 sustainable building tax credit requirements of either the rating system certification level or the energy reduction requirement, the applicant may not claim a state tax credit or supplemental state tax credit under this part;

(3) a solar energy system may receive a state tax credit or supplemental state tax credit new installation certification only once; and

(4) in the case of an expansion to an existing solar energy system that previously received certification as a new installation, the department may approve a subsequent certification, but any credit issued shall cover only the costs of the expansion portion of the solar energy system.

C. If, after the department has issued a certification, any of these requirements are found to be insufficient, the department may rescind the certification.

[3.3.14.13 NMAC - Rp, 3.3.14.14 NMAC, 7/16/2024]

3.3.14.14 CALCULATING THE SOLAR ENERGY SYSTEM COST:

A. A state tax credit or supplemental state tax credit shall be based on the equipment, materials, labor, design fees, permitting inspection fees, design review stamp and interconnections costs of a solar energy system the department has certified. Self-installed systems shall be eligible for these costs, except that self-installers may not claim their own labor but may claim labor they hire.

B. The equipment, materials, and labor costs of a solar energy system the department certifies shall be documented in an itemized invoice. An invoice shall itemize the following costs which include but are not limited to: permits, design, equipment, material, categorized fees, and installation labor of a solar energy system.

C. The cost of a solar energy system the department certifies shall be the net cost of acquiring the system and shall not include the following:

(1) expenses, including but not limited to:

(a) unpaid labor or the applicant's labor;

(b) unpaid equipment or materials;

(c) land costs or property taxes;

(d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a solar energy system were not installed;

(e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) membership fees;

(i) financing costs or loan interest;

(j) marketing, promotional or advertising costs;

(k) repair, operating or maintenance costs;

(l) warranty or extended warranty costs;

(m) system resale costs;

(n) system visual barrier costs;

(o) adjacent structure modification costs for building structures such as portals, garages, or pergolas to hold solar panels, or costs for modification or roof repair to hold solar panels;

(p) vegetation maintenance costs including tree trimming;

(q) contractor or inspector travel, mileage, or overnight hotel stays;

(r) recreational vehicle or hot tub ports;

(s) trenching exceeding 50 feet;

(t) donations to food banks on the applicant's behalf;

(u) system critter guard;

(v) non-descriptive miscellaneous items; and

(w) excess battery storage that is not consistent with industry standards;

(2) income, including:

(a) payments the solar energy system contractor or other parties provide or receive that reduce the system cost, including rebates, discounts, grants and refunds, except for federal tax credits;

(b) services, benefits, or material goods the solar energy system contractor or other parties provide by the same or separate contract, whether written or verbal.

D. The department shall make the final determination of

the net cost of a solar energy system the department certifies pursuant to 3.3.14 NMAC.
[3.3.14.14 NMAC - Rp, 3.3.14.15 NMAC, 7/16/2024]

3.3.14.15 CALCULATING THE STATE TAX CREDIT OR SUPPLEMENTAL STATE TAX CREDIT:

A. A state tax credit or supplemental state tax credit to an applicant for a solar energy system the department has certified shall not exceed:

(1) up to ten percent of the purchase and installation costs of a solar thermal or photovoltaic system as provided in 3.3.14.14 NMAC; and

(2) six thousand dollars ($6,000) per taxpayer per taxable year.

B. The taxation and revenue department shall make the final determination of the amount of a state tax credit.
[3.3.14.15 NMAC – N, 7/16/2024]

3.3.14.16 CLAIMING THE STATE TAX CREDIT OR SUPPLEMENTAL STATE TAX CREDIT:

A. An applicant shall apply for the state tax credit or supplemental state tax credit with the taxation and revenue department and provide the department certification and any other information the taxation and revenue department requires within 12 months following the calendar year in which the system was installed.

B. An applicant claiming a state tax credit or supplemental state tax credit shall not claim a state tax credit pursuant to another law for costs related to the same solar energy system costs.
[3.3.14.16 NMAC – 7/16/2024]

3.3.14.17 INSPECTION OF SOLAR ENERGY SYSTEMS:

A. The only inspection required through this application process for certification of an applicant's solar energy system are an inspection by the applicable building code authority for building, electrical, or mechanical code compliance, as applicable to the solar energy system type, if applicable. An applicant should be aware that their electric utility company may require additional inspections for photovoltaic systems that are interconnected to the distribution grid of that electric utility company. The applicant is solely responsible for compliance with such requirements.

B. For purposes of monitoring compliance with 3.3.14 NMC, the department or its authorized representative shall have the authority to inspect a solar system owned by an applicant who has submitted an application for certification, upon the department providing five days' notice to the applicant."
[3.3.14.17 NMAC - Rp, 3.3.14.19 NMAC, 7/16/2024]

3.3.14.18 [RESERVED]
[3.3.14.18 NMAC - N, 8/25/2020; Repealed, 7/16/2024]

3.3.14.19 [RESERVED]
[3.3.14.19 NMAC - N, 8/25/2020; A, 12/13/2022; Repealed, 7/16/2024.]

HISTORY OF 3.3.14 NMAC:
Pre-NMAC History: None.

History of Repealed Material:
3.3.14 NMAC - New Solar Market Development Income Tax Credit, filed 8/25/2020 was repealed and replaced with 3.3.14 NMAC - New Solar Market Development Income Tax Credit, effective 7/16/2024.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
YOUTH CONSERVATION CORPS COMMISSION

At its 6/18/2024 meeting the Youth Conservation Corps Commission repealed its rule The Youth Conservation Corps (YCC) Program,11.171.2 NMAC, filed 9/15/2020, and replaced it with a new rule entitled The Youth Conservation Corps (YCC) Program, 11.2.171 NMAC, adopted 6/18/2024 and effective 7/16/2024.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
YOUTH CONSERVATION CORPS COMMISSION

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 2 JOB TRAINING
PART 171 THE YOUTH CONSERVATION CORPS (YCC) PROGRAM

11.2.171.1 ISSUING AGENCY: The New Mexico Youth Conservation Corps Commission.
[11.2.171.1 NMAC – Rp, 11.2.171.1 NMAC, 07/16/2024]

11.2.171.2 SCOPE: General Public.
[11.2.171.2 NMAC – Rp, 11.2.171.2 NMAC, 07/16/2024]

11.2.171.3 STATUTORY AUTHORITY: Section 9-5B-l et-seq. NMSA 1978.
[11.2.171.3 NMAC – Rp, 11.2.171.3 NMAC, 07/16/2024]

11.2.171.4 DURATION: Permanent.
[11.2.171.4 NMAC – Rp, 11.2.171.4 NMAC, 07/16/2024]

11.2.171.5 EFFECTIVE DATE: July 16, 2024 unless a later date is cited at the end of a section.
[11.2.171.5 NMAC – Rp, 11.2.171.5 NMAC, 07/16/2024]

11.2.171.6 OBJECTIVE: The objective of this rule is to establish procedures and standards for the administration of the Youth Conservation Corps (YCC) program.
[11.2.171.6 NMAC – Rp, 11.2.171.6 NMAC, 07/16/2024]

11.2.171.7 DEFINITIONS:

A. "In-kind

contribution" means a non-monetary donation of goods or services provided by the project sponsor for the purpose of carrying out a program.

B. "Permanent capital improvement" means a durable upgrade, adaptation, or enhancement of a property.

C. "Rural" means locations that lie outside the limits of any municipality or unincorporated city, town or village.

D. "Under-resourced" means lacking sufficient resources, including, but not limited to funds, opportunity, work force, knowledge base, support systems, physical aids, communication devices, and other physical assets that limit access to job training and outdoor recreation.

E. "Urban" means locations within incorporated municipalities.

[11.2.171.7 NMAC – Rp, 11.2.171.7 NMAC, 07/16/2024]

11.2.171.8 PROJECT PROPOSALS:

A. At least annually, the Commission will request proposals for YCC projects. The Commission's announcement will include where to obtain proposal information and the date by which proposals must be submitted.

B. The Commission may reach out directly to state agencies, and state agencies may reach out directly to the Commission to create cooperative multi-year agreements for funding YCC projects. The Commission shall prioritize funding state agencies with missions that involve conservation work on public land, do not have funding for youth projects and lack authority to hire seasonal employees designated as corps members.

[11.2.171.8 NMAC – Rp, 11.2.171.15 NMAC, 07/16/2024]

11.2.171.9 EVALUATION OF PROPOSALS

A. The Commission shall adopt a competitive evaluation process to guide the allocation of funds.

B. The Commission shall oversee the review and evaluation of all proposals to determine the proposal's conformance with the goals of the programs as described in the act and 11.2.171 NMAC, Sections 12, 13 14, and 15.

C. The Commission shall take appropriate measures to ensure the evaluation process is not influenced by donors to the youth conservation corps or conflicts of interest. This may include, but is not limited to, appointing an external review committee and concealing the identity of applicants during the review process.

D. The Commission will distribute funds equitably among qualified projects that variously engage indigenous, rural, urban and under-resourced populations.

[11.2.171.9 NMAC – Rp, 11.2.171.15 NMAC, 07/16/2024]

11.2.171.10 AWARD AGREEMENTS: Successful applicants shall enter into a formal agreement with the Commission for the expenditure of awarded funds.

[11.2.171.10 NMAC – Rp, 11.2.171.16, NMAC, 07/16/2024]

11.2.171.11 FUNDS:

A. The Commission may establish limitations on the availability and use of program funds. Any limitations shall be defined in the current application package.

B. The Commission may limit the amount of funding available for any element(s) of a program.

[11.2.171.11 NMAC – Rp, 11.2.171.17 NMAC, 07/16/2024]

11.2.171.12 YCC PROJECT ELIGIBILITY:

A. The YCC Commission will accept proposal applications from:

(1) A federally recognized sovereign tribal government within the state.

(2) A state agency.

(3) Local units of government include but are not limited to: counties, municipalities, villages, cities, towns, land grants, soil and water conservation districts (SWCDs), community acequia/ditch associations, school districts, public universities and colleges, and charter schools.

(4) A federal agency operating within the state.

(5) A non-profit organization with a 501(c) internal revenue service designation operating within the state.

(6) Any organization or agency with a 501(c) fiscal sponsor.

B. Projects must be consistent with the purposes of the YCC program and may include, but need not be limited to, projects that:

(1) protect, conserve, rehabilitate or increase resiliency of terrestrial and aquatic species, forests, refuges, rangelands and waters of the state;

(2) improve use and access to public parks, greenways, historic sites, libraries, museums, zoos, recreational areas and associated facilities;

(3) reinforce the "keep New Mexico true" campaign;

(4) provide emergency assistance, disaster relief or recovery; or

(5) improve disaster preparedness;

(6) increase energy efficiency.

(7) beautify, improve and restore urban areas;

(8) renovate community facilities, including those for the elderly or indigent.

[11.2.171.12 NMAC – Rp, 11.2.171.12 NMAC, 07/16/2024]

11.2.171.13 PROHIBITED ACTIVITIES: The following activities are prohibited in the conduct of any YCC project:

A. the displacement or substitution of an existing employee by a corps member or the replacement of a seasonal employee normally hired by the project sponsor;

B. the participation by corps members in the removal or

cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and

C. the assignment of corps members to general work activities such as, but not limited to, routine lawn mowing, routine litter control, janitorial duties and clerical tasks, except as necessary to contribute to or prepare a site for project activities; and

D. funding permanent capital improvements on privately owned property.

[11.2.171.13 NMAC – Rp, 11.2.171.10 NMAC, 07/16/2024]

11.2.171.14 YCC PROJECT REQUIREMENTS:

A. Projects shall employ and manage a minimum of five corps members. The project sponsor may, at their own discretion, designate Corps members in leadership or mentoring roles.

B. Wages, employer contributions to FICA/Medicare, unemployment insurance and workers' compensation insurance for corps members shall account for a minimum of seventy percent of the total funds requested.

C. Project sponsors shall ensure that all project sites and practices conform to applicable state and federal health and safety standards and requirements.

D. Project sponsors shall have worker's compensation and unemployment insurance in place for the duration of the project.

E. Project sponsors shall specify whether their project primarily engages indigenous, rural, urban or under-resourced populations.

F. Project sponsors must provide an education and training program to corps members for the duration of the project. The number of hours of training provided for each corps member shall be no less than ten percent of the total hours budgeted per corps member for the entirety of the project.

G. Project sponsors shall match a minimum of ten percent of total funds requested with in-kind or cash contributions.

H. Project sponsors shall provide proof they have obtained permission from all landowners or managers where the project shall take place.

I. Project sponsors shall provide proof of adequate insurance coverage for any liability arising out of program activities for the duration of the program.

J. Project sponsors shall provide proof of necessary environmental, cultural, and tribal permits and consultation.

[11.2.171.14 NMAC – Rp, 11.2.171.11 NMAC, 07/16/2024]

11.2.171.15 YCC PROJECT LOCATIONS: Projects may be undertaken on:

A. public lands, waters and structures within the state; or federally recognized tribal lands, waters and structures within the state that

(1) are under the jurisdiction, owned or administered by the project sponsor; or

(2) are accessible to the project sponsor in accordance with a written agreement between the project sponsor and the agency or entity that owns, administers or has jurisdiction ~~over~~ of the public or tribal property~~;~~ and

(3) there is a demonstrated community benefit of lasting value as a result of the project.

B. privately owned lands, waters or structures within the state that

(1) are owned or administered by a nonprofit organization; or

(2) are accessible to the project sponsor in accordance with a written agreement between the project sponsor and the nonprofit organization; and

(3) the project primarily benefits the public and provides only an incidental benefit to private individuals; and

(4) no funding for permanent capital improvements is requested for the project.

[11.2.171.15 NMAC – Rp, 11.2.171.12 NMAC, 07/16/2024]

11.2.171.16 YCC CORPS MEMBERS:

A. Recruitment, selection, compensation, supervision, development and dismissal of corps members will be the responsibility of the project sponsors.

B. Project sponsors shall, at their own expense, comply with all applicable laws, regulations, rules ordinances, and requirements of local, state, and federal authorities, including but not limited to those pertaining to equal opportunity employment, workers compensation benefits, fair labor standards, and child labor laws.

C. Sponsors shall verify corps members meet the following eligibility requirements at the time of enrollment and keep records of such:

(1) are unemployed at the time of hire;

(2) are New Mexico residents consistent with 18.19.5 NMAC;

(3) are between the ages of 14 and 25 at the time of hire;

(4) have a work permit if under the age of 16; and

(5) are not the children, siblings or spouse of the project sponsor's hiring officer or project supervisor.

D. Compensation:

(1) All corps members shall be compensated, at a minimum, as provided by law following the state or municipality established minimum wage.

(2) Project sponsors may request increased starting wages to adjust to local labor markets.

(3) Project sponsors may request wage increases for corps members based on promotion, performance or additional responsibilities; and if there are sufficient funds in the budget to complete the project as planned.

(4) The YCC will support the project sponsor's existing policy for holiday pay, compassionate pay, and sick pay.

(5) Project sponsors may not budget overtime pay into the budget proposal, however, YCC may compensate for occasional overtime related to travel or other unavoidable circumstances.

(6) The YCC will not reimburse the project sponsor for hazard pay.

E. Project sponsors shall follow their established personnel policies for dismissal of corps members. Sponsors are encouraged to provide opportunities for improvement prior to dismissal.

F. The length of a corps member's employment shall be determined by the duration of the work project in which the corps member is participating.

[11.2.171.16 NMAC – Rp, 11.2.171.13 NMAC, 07/16/2024]

11.2.171.17 YCC EDUCATIONAL TUITION VOUCHERS AND ADDITIONAL CASH COMPENSATION:

A. On completion of employment with the YCC, a corps member who has 12 full months (48 weeks) of employment as a corps member during a period not to exceed 48 months, and who has received satisfactory evaluations throughout their employment, may receive a one-time $500.00 additional cash compensation or a $1500.00 educational tuition voucher from the Commission.

B. A corps member who receives satisfactory employment evaluations and has completed a minimum of 32 weeks employment but less than 12 months (48 weeks) in a four-year period due to circumstances beyond the corps member's control as determined by the Commission may apply for or receive a pro-rated cash compensation or educational tuition voucher.

C. The YCC staff shall certify that the corps member was employed for the duration of the project.

D. The educational voucher is good for reimbursement of expenses at a New Mexico institution of higher education, including accredited universities, colleges, community colleges, vocational schools and on-line education associated with an accredited New Mexico institution of higher education.

(1) The educational tuition voucher is valid for two years and will be reimbursed upon presentation of receipts and proof of payment to YCC staff.

(a) Examples of reimbursable expenses include educational expenses such as tuition, software, computers, textbooks, room & board at the educational institution, and classroom and lab supplies.

(b) Examples of non-reimbursable expenses include personal expenses, transportation not required by course requirements, residential rent for off-campus housing, and food.

[11.2.171.17 NMAC –Rp, 11.2.171.14 NMAC, 07/16/2024]

HISTORY of 11.2.171 NMAC:
Pre-NMAC History:
The material in this Part was derived from that previously filed with the state records center & archives under; YCC Rule No. 92-1, Rules and Regulations Governing the New Mexico Youth Conservation Corps, filed November 20, 1992.

History of Repealed Material:
11.2.171 NMAC, The Youth Conservation Corps (YCC) Program, filed 4/30/2001, was repealed and replaced by 11.2.171 NMAC, The Youth Conservation Corps (YCC) Program and Outdoor Equity Grant (OEG) Program, effective 12/17/2019. 11.2.171 NMAC was renamed from 'The Youth Conservation Corps (YCC) And Outdoor Equity Grant (OEG) Programs' to 'The Youth Conservation Corps (YCC) Program' effective 9/15/2020.
11.2.171 NMAC, The Youth Conservation Corps (YCC) Program, filed 12/17/2019, was repealed and replaced by 11.2.171 NMAC, The Youth Conservation Corps (YCC) Program effective 07/16/2024

Other History: 11 NMAC 2.YCC, The Youth Conservation Corps (YCC) Program, filed 5/14/1997, was reformatted, renumbered, and amended to 11.2.171 NMAC effective 4/30/2001.

HUMAN SERVICES DEPARTMENT

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.119.520 NMAC - Eligibility Policy-Income (filed 3/2/2001) and replaced it with 8.119.520 NMAC - Eligibility Policy-Income (adopted on 6/10/2024), effective 7/16/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.139.100 NMAC - General Provisions For The Food Stamp Program (filed 10/12/2023) and replaced it with 8.139.100 NMAC - General Provisions For The Food Stamp Program (adopted on 6/10/2024), effective 7/16/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.139.110 NMAC - General Administration - Application Processing (filed 4/26/2001) and replaced it with 8.139.110 NMAC - General Administration - Application Processing (adopted on 6/10/2024), effective 7/16/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.139.120 NMAC - Case Administration - Case Management (filed 4/26/2001) and replaced it with 8.139.120 NMAC - Case Administration - Case Management (adopted on 6/10/2024), effective 7/16/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.139.400 NMAC - Recipient Policy - Who Can Be A Recipient (filed 4/26/2001) and replaced it with 8.139.400 NMAC - Recipient Policy - Who Can Be A Recipient (adopted on 6/10/2024), effective 7/16/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.139.420 NMAC - Recipient Requirements - Special Households (filed 4/26/2001) and replaced it with 8.139.420 NMAC - Recipient Requirements - Special Households (adopted on 6/10/2024), effective 7/16/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.139.500 NMAC - Financial Eligibility - Need Determination (filed 4/26/2001) and replaced it with 8.139.500 NMAC - Financial Eligibility - Need Determination (adopted on 6/10/2024), effective 7/16/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.139.510 NMAC - Eligibility Policy - Resources And Property (filed 4/26/2001) and replaced it with 8.139.510 NMAC - Eligibility Policy - Resources And Property (adopted on 6/10/2024), effective 7/16/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.139.610 NMAC - Program Benefits - Issuance And Receipt (filed 4/26/2001) and replaced it with 8.139.610 NMAC - Program Benefits - Issuance And Receipt (adopted on 6/10/2024), effective 7/16/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.139.647 NMAC - Food Stamp Program - Administrative Disqualification Procedures (filed 4/26/2001) and replaced it with 8.139.647 NMAC - Food Stamp Program - Administrative Disqualification Procedures (adopted on 6/10/2024), effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 119 REFUGEE RESETTLEMENT PROGRAM
PART 520 ELIGIBILITY POLICY-INCOME

8.119.520.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.119.520.1 NMAC - Rp 8.119.520.1 NMAC, 7/16/2024]

8.119.520.2 SCOPE: The rule applies to the general public.
[8.119.520.2 NMAC - Rp 8.119.520.2 NMAC, 7/16/2024]

8.119.520.3 STATUTORY AUTHORITY:

A. The refugee resettlement program (RRP) is authorized under Title IV of the Immigration and Nationality Act of 1980. The act designates the federal department of health and human services (DHHS) as the federal administering agency. RRP regulations are issued by DHHS in the code of federal regulations, Title 45, Part 400, which is supplemented by administrative and program instructions issued by DHHS from time to time.

B. In accordance with authority granted to the health care authority by Subsection J of Section 27-1-3 NMSA 1978, and pursuant to Executive Order No. 80-62, dated 10/01/1981, the governor of the state of New Mexico has designated the health care authority (HCA) as the single state agency responsible for administering the program in New Mexico.

C. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.119.520.3 NMAC - Rp 8.119.520.3 NMAC, 7/16/2024]

8.119.520.4 DURATION: Permanent.
[8.119.520.4 NMAC - Rp 8.119.520.4 NMAC, 7/16/2024]

8.119.520.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[8.119.520.5 NMAC - Rp 8.119.520.5 NMAC, 7/16/2024]

8.119.520.6 OBJECTIVE: The objective of the RRP is to assist refugees to become self-sufficient by providing a program of financial and medical assistance while supportive services are provided, to ensure the effective resettlement of refugees in the state of New Mexico through programs designed to assist with integration, promotion of economic self-sufficiency, and protecting refugees and communities from infectious diseases and other health related issues. HCA has agreed to administer this program subject to the receipt of federal funds. Under the RRP, sponsors(s) and VOLAGs work closely with the federal government to coordinate support services authorized under the program. The RRP includes the provision of refugee cash assistance (RCA), refugee medical assistance (RMA), refugee social services (RSS) and additional support services funded by the office of refugee resettlement (ORR).
[8.119.520.6 NMAC - Rp 8.119.520.6 NMAC, 7/16/2024]

8.119.520.7 DEFINITIONS: [**RESERVED**]
[8.119.520.7 NMAC - Rp 8.119.520.7 NMAC, 7/16/2024]

8.119.520.8 EARNED INCOME:

A. Standards: For RCA earned income is determined in accordance with 45 CFR Section 400.66 which requires that RCA

adhere to the need determination standards and provisions of the TANF program except as noted below.

B. Earned Income Deductions: The work related expenses described in 8.102.520.9 NMAC through 8.102.520.13 NMAC are applicable to RCA eligibility and benefit calculation determinations.
[8.119.520.8 NMAC - Rp 8.119.520.8 NMAC, 7/16/2024]

8.119.520.9 UNEARNED INCOME: Unearned income for RCA is determined in accordance with 45 CFR Section 400.66 which requires that RCA adhere to the unearned income determination standards and provisions of the TANF program, except as noted below:

A. Reception and placement grant: Any cash grant received by the refugee applicant under the DOS or DOJ reception and placement programs may not be counted as unearned income in determining income eligibility.

B. Refugee matching grants: Refugees who have been in the U.S. fewer than 180 days may be included under the matching grant program through a local resettlement agency.

(1) Cash payments, received by refugees, as part of the matching grant program are countable as unearned income in determining RCA eligibility.

(2) If a refugee who might be covered by a matching grant program applies to an ISD office for cash assistance, the ISD county office must verify with the refugee's resettlement agency whether the refugee is receiving such assistance and, if so, the amount.

(3) If cash assistance is being provided under a matching grant, the amount must be counted as unearned income.

(4) In-kind services or shelter payments provided to a refugee as part of the matching grant program are not counted in determining eligibility.

(5) Refugees are not eligible to receive both RCA and matching grant at the same time. A refugee client applying for RCA should be advised that approval for RCA will result in ineligibility for the matching grant program. If RCA is approved, the ISD office shall notify the resettlement agency of the approval.
[8.119.520.9 NMAC - Rp 8.119.520.9 NMAC, 7/16/2024]

History of 8.119.520 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
ISD-IPP 81-8, Limiting Assistance to 36 Months After Arrival into U.S. to Refugees (ISD Categories 19 and 49), 4/10/1981.
ISD-IPP 82-7, Limiting Refugee Assistance to 18 Months After Refugee's Arrival into U.S., 3/15/1982.
ISD 281.0000, Refugee Eligibility Conditions, 6/29/1982.
ISD FA 610, Refugee Resettlement Program, 2/11/1988.
ISD FA 610, Refugee Resettlement Program, 7/2/1990.

History of Repealed Material:
8 NMAC 3.RRP, Refugee Resettlement Program - Repealed, 7/1/1997.
8.119.520 NMAC - Eligibility Policy-Income (filed 3/2/2001) Repealed effective 7/16/2024.

Other: 8.119.520 NMAC - Eligibility Policy-Income (filed 3/2/2001) Replaced by 8.119.520 NMAC - Eligibility Policy-Income, effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 100 GENERAL PROVISIONS FOR THE FOOD STAMP PROGRAM

8.139.100.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.139.100.1 NMAC - Rp, 8.130.100.1 NMAC 7/16/2024]

8.139.100.2 SCOPE: General public.
[8.139.100.2 NMAC - Rp, 8.130.100.2 NMAC 7/16/2024]

8.139.100.3 STATUTORY AUTHORITY:

A. The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA 1978.

B. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.139.100.3 NMAC - Rp, 8.130.100.3 NMAC 7/16/2024]

8.139.100.4 DURATION: Permanent.
[8.139.100.4 NMAC - Rp, 8.130.100.4 NMAC 7/16/2024]

8.139.100.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[8.139.100.5 NMAC - Rp, 8.130.100.5 NMAC 7/16/2024]

8.139.100.6 OBJECTIVE: Issuance of the revised food stamp program policy manual is intended to be used in administration of the food stamp program in New Mexico. This revision incorporated the latest federal policy changes in the food stamp program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same

number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA. [8.139.100.6 NMAC - Rp, 8.130.100.6 NMAC 7/16/2024]

8.139.100.7 DEFINITIONS:

A. Definitions beginning with "A":

(1) Adequate notice: means a written notice sent by mail or electronically that includes a statement of the action HCA has taken or intends to take, reason for the action, household right to a fair hearing, name of the individual to contact for additional information, the availability of continued benefits liability of the household for any over-issuances received if hearing decision is adverse to the household. An adequate notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, participants have 13 days from the mailing or electronic distribution date of the notice to request that benefits be restored to their previous level pending the outcome of an administrative hearing.

(2) Adjusted net income: means the household's gross monthly income less the standard deduction, earned income deduction, dependent care deduction and the shelter deduction. (Medical expenses are allowed for certain eligible members as a deduction from their gross income.)

(3) Application: means a request, on the appropriate ISD form, submitted in a written or electronic format with the signature of the applicant or on the applicant's behalf by an authorized representative, for assistance.

(4) Attendant: means an individual needed in the home for medical, housekeeping, or child care reasons.

(5) Authorized representative: means an individual designated by a household or responsible member to act on its behalf in applying for SNAP benefits, obtaining SNAP benefits, or using SNAP benefits to purchase food for the household. This can include a public or private, nonprofit organization or institution providing assistance, such as a treatment or rehabilitation center or shelter which acts on behalf of the resident applicant.

B. Definitions beginning with "B":

(1) Benefit month: means the month for which SNAP benefits have been issued. This term is synonymous with issuance month defined below.

(2) Beginning month: means the first month for which a household is certified after a lapse in certification of at least one calendar month. Beginning month and initial month are used interchangeably. A household is budgeted prospectively in a beginning month.

(3) Boarder: means an individual to whom a household furnishes lodging and meals for reasonable compensation. Such a person is not considered a member of the household for determining the SNAP benefit amount.

(4) Boarding house: means a commercial establishment, which offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house is not used to establish if a boarding house is a commercial enterprise.

(5) Budget month: means the calendar month for which income and other circumstances of the household are determined in order to calculate the SNAP benefit amount. During the beginning month of application, prospective budgeting shall be used and therefore, the budget month and the issuance month are the same.

C. Definitions beginning with "C":

(1) Capital gains: means proceeds from the sale of capital goods or equipment.

(2) Categorical eligibility (CE): means a SNAP household that meets one of the following conditions:

(a) Financial CE: Any SNAP household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for SNAP benefits.

(b) Broad-based CE: Any SNAP household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below one hundred sixty-five percent FPG.

(3) Cash assistance (CA) households: (also referred to as financial assistance) means households composed entirely of persons who receive CA payments. Cash assistance (CA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to needy families (TANF); aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. CA households composed entirely of TANF, GA or SSI recipients are categorically eligible for SNAP.

(4) Certification: means the authorization of eligibility of a household and issuance of SNAP benefits.

(5) Certification period: means the period assigned for which a household is eligible to receive SNAP benefits. The certification period shall conform to calendar months and includes the requirement for the completion of an interim report form in accordance

with Subsection B of 8.139.120.9 NMAC.

(6) Collateral contact: means an individual or agency designated by the household to provide information concerning eligibility.

(7) Communal diner: means an individual 60 years of age or older who is not a resident of an institution or a boarding house, who is living alone or with a spouse, and elects to use SNAP benefits to purchase meals prepared for the elderly at a communal dining facility which has been authorized by USDA/FNS to accept SNAP benefits.

(8) Communal dining facility: means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for SSI recipients, and their spouses; a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate state or local agency to offer meals at concession prices to elderly persons or SSI recipients and their spouses. Such establishments include a facility such as a senior citizen's center, an apartment building occupied primarily by elderly persons, or any public or private nonprofit school (tax exempt) which prepares and serves meals for elderly persons.

(9) Conversion factor: means the calculation used to convert income that is received on a weekly or biweekly basis to an anticipated monthly amount.

D. Definitions beginning with "D":

(1) Date of application: means the date an application is received by the income support division offices during regular business hours. Applications that are dropped off or submitted electronically after regular business hours will be considered received as of the next business day.

(2) Date of admission: means the date established by the United States citizenship and immigration services as the date a non-citizen (or sponsored non-citizen) was admitted for permanent residence.

(3) Date of entry: means the date established by the United States citizenship and immigration services as the date a non-citizen (or sponsored non-citizen) was admitted for permanent residence.

(4) Disability: means the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

(5) Disabled member: see elderly or disabled member.

(6) Documentation: means a written statement entered in the paper or electronic case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(7) Drug addiction or alcoholic treatment and rehabilitation program: means any drug addiction treatment or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center under part B of title XIX of the Public Health Service Act (42 U.S.C. 3004 et seq.)

E. Definitions beginning with "E":

(1) Elderly or disabled member:

(a) Elderly: means an individual 60 years or older.

(b) Disabled: means a person who meets any of the following standards:

(i) receives supplemental security income (SSI) under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

(ii) receives federally or state administered supplemental benefits under Section 1616a of the Social Security Act, provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

(iii) receives federally or state administered supplemental benefits under Section 211(a) of Pub. L. 93-66, supplemental security income benefits for essential persons;

(iv) receives disability retirement benefits from a government agency (e.g. civil service, ERA, and PERA) because of a disability considered permanent under Section 221(i) of the Social Security Act;

(v) is a veteran with a service-connected or non-service connected disability rated by the veterans administration (VA) as total or paid as total by the VA under title 38 of the United States Code;

(vi) is a veteran considered by the VA to be in need of regular aid and attendance or permanently homebound under title 38 of the United States code;

(vii) is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently homebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States code;

(viii) is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for service-connected death or pension benefits for a non-service-connected death under title 38 of the United States code and has a disability considered permanent under Section 221(i) of the Social Security Act ("entitled" as used in this definition

refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated, or have been approved for such payments, but are not yet receiving them); or

(ix) receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive medicare by the railroad retirement board, or Section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act;

(x) is a recipient of interim assistance benefits pending the receipt of supplemental security income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based state general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the state agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

(2) Eligible foods: means:

(a) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot-food products prepared for immediate consumption;

(b) seeds and plants to grow foods for the personal consumption of eligible households;

(c) meals prepared and delivered by an authorized meal delivery service to households eligible to use SNAP benefits to purchase delivered meals, or meals served by an authorized communal dining facility for the elderly, for SSI households, or both, to households eligible to use SNAP benefits for communal dining;

(d) meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to eligible households;

(e) meals prepared and served by a group living arrangement facility to residents who are blind or disabled as found in the definition of "elderly or disabled member" contained in this section;

(f) meals prepared and served by a shelter for battered women and children to its eligible residents; and

(g) in the case of homeless SNAP households, meals prepared and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter) approved by HCA that feeds homeless persons.

(3) Encumbrance: means debt owed on property.

(4) Equity value: means the fair market value of property, less any encumbrances owed on the property.

(5) Excluded household members: means individuals residing within a household who are excluded when determining household size, the SNAP benefit amount or the appropriate maximum food stamp allotment (MFSA). These include ineligible non-citizens, individuals disqualified for failure to provide an SSN or to comply with the work requirements, and those disqualified for intentional program violation. The resources and income (counted in whole or in part) of these individuals shall be considered available to the remaining household members.

(6) Expedited services: means the process by which households reporting little or no income or resources shall be provided an opportunity to participate in the FSP, no later than the seventh calendar day following the date the application was filed.

(7) Expungement: means the permanent deletion of SNAP benefits from an EBT account that is stale.

F. Definitions beginning with "F":

(1) Fair hearing: an administrative procedure during which a claimant or the claimant's representative may present a grievance to show why they believe an action or proposed action by HCA is incorrect or inaccurate.

(2) Fair market value (FMV): means the amount an item can be expected to sell for on the open market.

(3) FNS: means the food and nutrition service of the United States department of agriculture (USDA).

(4) Food Stamp Act: the Food and Nutrition Act of 2008, and subsequent amendments.

(5) Fraud: intentionally making a misrepresentation of, or failing to disclose, a material fact: with the knowledge that such a fact is material (necessary to determine initial/ongoing eligibility or benefit entitlement); and with the knowledge that the information is false; and with the intent that the information be acted upon (deceive/cheat); with reasonable reliance on the person who hears the information to accept it as the truth.

(6) Full time employment: means working 30 hours or more per week, or earning income equivalent to the federal minimum wage multiplied by 30 hours.

G. Definitions beginning with "G":

(1) General assistance (GA) households: means a household in which all members receive cash assistance financed by state or local funds.

(2) Gross income: means the total amount of income that a household is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and

monies due and owing the household, but diverted by the provider. Gross income does not include specific income exclusions, such as, but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(3) Group living arrangements: means a residential setting that serves no more than sixteen residents that is certified by DOH under regulations issued under Section 1616(e) of the Social Security Act, or under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under Section 1616(e) of the Social Security Act. To be eligible for SNAP benefits, a resident shall be living in a public or private non-profit group living arrangement and must be blind or disabled as defined in the definition of "elderly or disabled member" set forth at Items (i) through (x) of Subparagraph (b) of Paragraph (25) of Subsection A of 8.139.100.7 NMAC.

(4) Guaranteed basic income: Guaranteed basic income provides an individual or household a one time or recuring cash payment or transfer funded from a public or private source intended to support the basic needs of individuals or households by reducing poverty, promoting economic mobility, or increasing the financial stability.

H. Definitions beginning with "H":

(1) Head of household: the household is the basic assistance unit for the SNAP program. The household has the right to select the head of household in accordance with CFR 273.1 (d).

(2) Homeless individual: means an individual who lacks a fixed and regular nighttime residence, or an individual whose primary nighttime residence is:

(a) a supervised shelter providing temporary accommodations (such as a welfare hotel or congregate shelter);

(b) a halfway house or similar institution providing temporary residence for individuals intended to be institutionalized;

(c) a temporary accommodation for no more than 90 days in the residence of another individual, beginning on the date the individual moves into the temporary residence; or

(d) a place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (e.g. a hallway, a bus station, a lobby or similar places).

(3) Homeless meal provider: means a public or private nonprofit establishment, (e.g., soup kitchen, temporary shelter), approved by an appropriate state agency, that feeds homeless persons.

I. Definitions beginning with "I":

(1) Immigrant: means a lawfully admitted non-citizen who entered the U.S. with the expressed intention of establishing permanent residence as defined in the federal act.

(2) Ineligible non-citizen: means an individual who does not meet the eligible non-citizen requirements or who is not admitted for permanent residence.

(3) Income: means all monies received by the household from any source, excluding only the items specified by law or regulation. Income is also defined as any monetary gain or benefit to the household.

(4) Income and eligibility verification system: means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of Section 1137 of the Social Security Act, referred to as IEVS.

(5) Initial month: means the first month for which a first-time household is certified for participation in SNAP. An initial month is also a month in which a household is certified following a break in participation of one calendar month or longer. For migrant or seasonal farm worker households, an initial month shall only be considered if there has been an interruption in certification of at least one calendar month.

(6) Inquiry: means a request for information about eligibility requirements for a cash, medical, or food assistance program that is not an application (although the inquiry may be followed by an application).

(7) Institution of higher education: means certain college-level institutions, such as vocational schools, trade schools, and career colleges that award academic degrees or professional certifications.

(8) Institution of post-secondary education: means any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or provides a program of training to prepare students for gainful employment.

(9) Irrevocable trust: means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(10) Issuance month: means the calendar month for which SNAP is issued. In prospective budgeting, the budget and issuance months are the same. In retrospective budgeting, the issuance month follows the budget month.

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L": Low-income household means a household whose annual income does not exceed one hundred and twenty-five percent of the office of management and budget poverty guideline.

M. Definitions beginning with "M":

(1) Maintenance of effort (MOE): means the amount of general funds the state agency must expend annually on the four purposes of temporary assistance for needy families (TANF) to meet a minimum expenditure requirement based on a state's historical assistance to families with dependent children (AFDC) expenditures.

(2) Maximum food stamp allotment (MFSA): means the cost of the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child six through eight, and a child nine through 11 years of age. The cost of such a diet shall be the basis for uniform SNAP benefit amounts for all households, regardless of their actual composition. In order to develop maximum SNAP benefit amounts, the USDA makes adjustments for household size taking into account the economies of scale and other adjustments as required by law. The MFSA is used to determine if a boarder is paying reasonable compensation for services. The maximum SNAP allotment (MFSA) was previously named the thrifty food plan (TFP).

(3) Meal delivery service: means a political subdivision, a private nonprofit organization, or a private establishment with which a state or local agency has contracted for the preparation and delivery of meals at concession prices to elderly persons, and their spouses, and to the physically or mentally handicapped, and to persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(4) Medicaid: medical assistance under title XIX of the Social Security Act, as amended.

(5) Migrant/ migrant household: means an individual who travels away from home on a regular basis with a group of laborers to seek employment in an agriculturally related activity. A migrant household is a group that travels for this purpose.

(6) Mixed households: means those households in which some but not all of the members receive cash assistance benefits.

N. Definitions beginning with "N":

(1) Net monthly income: means gross nonexempt income minus the allowable deductions. It is the income figure used to determine eligibility and SNAP benefit amount.

(2) Non-cash assistance (NCA) households: means any household, which does not meet the definition of a cash assistance household, including households composed of both cash assistance and NCA members (mixed household). Same applies to non-financial households (NFA).

(3) Non-cash TANF/MOE benefit or service: means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/ MOE-funded services.

(4) Non-financial assistance (NFA) households: means any household, which does not meet the definition of a financial assistance household, including households composed of both cash assistance and NFA members (mixed household). NFA has the same meaning as non-cash households (NCA).

(5) Non household members: means persons residing with a household who are specifically excluded by regulation from being included in the household certification, and whose income and resources are excluded. No household members include roomers, boarders, attendants, and ineligible students. Included in this classification are institutionalized household members such as children attending school away from home and members who are hospitalized or in a nursing home.

(6) Notice: means written correspondence that is generated by any method including handwritten, typed or electronic, delivered to the client or an authorized representative by hand, U.S. mail, professional delivery or by any electronic means. The term "written notice" and "notice" are used interchangeably.

(7) Notice of adverse action (NOAA): means a notice informing the household that an action is being taken by the HCA that adversely affects eligibility or the amount of benefits a household receives, including withholding, suspending, reducing or terminating benefits. The NOAA shall be issued to the household before taking the adverse action. Benefits will not be reduced until 13 days from the date on the adverse action. If the 13th day falls on a weekend or holiday, the next working day is counted as the last day of the 13-day adverse action period.

O. Definitions beginning with "O": Over-issuance means the amount by which SNAP benefits issued to a household exceed the amount the household was eligible to receive.

P. Definitions beginning with "P":

(1) Period of intended use: means the month in which the benefits are issued if issued before the 20th of the month. For benefits issued after the 20th of the month, the period of intended use is the rest of the month and the following month.

(2) Principal wage earner: means the household member with the greatest amount of earned income in the two months preceding a determination that a program rule has been violated. This applies only if the employment involves 20 hours or more a week or pays wages equivalent to the federal minimum wage multiplied by 20 hours. In making this evaluation, the entire household membership

shall be considered, even those who are excluded or disqualified but whose income must be counted for eligibility and benefit amount determination. For purposes of determining noncompliance with the SNAP work requirements, including employment and training components, voluntary quit, and work-fare, the head of household is the principal wage earner unless the household has selected an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the designated head of household as agreed upon by all adult members of the household. A person of any age shall not be considered the principal wage earner if the person is living with a parent or person fulfilling the role of parent or the parent or parent-substitute is:

(a) registered for employment;

(b) exempt because of Title IV compliance;

(c) in receipt of UCB or is registered as part of the UCB process; or

(d) employed or self-employed a minimum of 30 hours a week or receiving income at the federal minimum hourly rate multiplied by 30 hours.

(3) Prospective budgeting: means the computation of a household's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

Q. Definitions beginning with "Q": Quality control (QC) means the federal mandate, as part of the performance reporting system whereby each state agency is required to review a sample of active cases for eligibility and benefit issuance, and to review a sample of negative cases for correct application of policy. The objectives are to determine a state's compliance with the Food Stamp Act and CFR regulations, and to establish the basis for a state's error rate, corrective action to avoid future errors, and liability for errors in excess of national standards, or eligibility for enhanced federal funding if the error rate is below national standards.

R. Definitions beginning with "R":

(1) Real property: means land, buildings, and whatever is built on or affixed to the land.

(2) Recipient: means a person receiving SNAP benefits. Recipient is the same as participant.

(3) Refugee: means a lawfully admitted individual granted conditional entry into the U.S.

(4) Reasonable compensation: means a boarder payment amount that equals or exceeds the MFSA for the number of boarders.

(5) Retail food store: means:

(a) an establishment or recognized authority of an establishment, or a house-to-house trade route, whose eligible food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry, is more than fifty percent staple food items for home preparation and consumption;

(b) public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts or alcoholics;

(c) public or private nonprofit group living arrangements, or public or private nonprofit shelters for battered women and children, or public or private nonprofit establishments, approved by HCA, or a local agency, that feed homeless persons;

(d) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; a farmer's market.

(6) Retrospective budgeting: means the computation of a household's benefits for an issuance month based on actual income and circumstances that existed in the previous month, the 'budget" month.

S. Definitions beginning with "S":

(1) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income. Self-employed individuals are not eligible to draw UCB by virtue of their job efforts.

(2) Shelter for battered persons: means a public or private nonprofit residential facility that serves battered persons. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered persons.

(3) Simplified reporting: is the reporting requirement for households that receive SNAP benefits.

(4) Sponsor: means a person who executed an affidavit(s) of support or similar agreement on behalf of a non-citizen as a condition of the non-citizen's entry or admission to the United States as a permanent resident.

(5) Sponsored non-citizen: means a non-citizen lawfully admitted for permanent residence in the United States as an immigrant, as defined in Subsection 101(a)(15) and Subsection 101(a)(2) of the Immigration and Nationality Act.

(6) Spouse: means either of two individuals who:

(a) would be defined as married to each other under applicable state law; or

(b) are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

(7) Stale: means EBT accounts which have not

been accessed or had any withdrawal activity by the household for 90 days from the most recent date of withdrawal.

(8) Standard utility allowance (SUA): means an average utility amount used year round that includes the actual expense of heating and cooling fuel, electricity (apart from heating or cooling), the basic service fee for one telephone, water, sewerage, and garbage and trash collection. This amount is adjusted annually to reflect changes in expenses. A cooling expense is a verifiable utility expense relating to the operation of air conditioning.

(9) State wage information collection agency: means for New Mexico the department of workforce solutions, employment security division (ESD) which administers the state employment compensation law and provides a quarterly report of employment related income and eligibility data.

(10) Striker: means anyone involved in a strike or concerted work stoppage by employees (including stoppage due to the expiration of a collective bargaining agreement) and any concerted slow down or other concerted interruption of operations by employees.

(11) Student: means an individual attending at least half time, as defined by the institution any kindergarten, preschool, grade school, high school, vocational school, technical school, training program, college, or university.

(12) Supplemental nutrition assistance program (SNAP): The Food and Nutrition Act of 2008 changed the federal name of the food stamp program to the supplemental nutrition assistance program. SNAP is synonymous with the food stamp program.

(13) Supplemental nutrition assistance program trafficking: means:

(a) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via electronic benefit transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(b) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in Section 802 of title 21, United States Code, for SNAP benefits;

(c) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(d) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(e) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(14) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; or

(b) Section 1616(a) of the Social Security Act; or

(c) Section 212(a) of P.L. 93-66.

(15) SSI household: means a household in which all members are applicants or recipients of SSI. An SSI household may also apply for SNAP through a social security office. The application must be forwarded to the appropriate SNAP (ISD) office for processing. SSI households are categorically eligible.

(16) Supplementary unemployment benefits (SUB): part of the guaranteed annual wage provisions in the auto industry whereby the company supplements state UCB to insure that laid off workers receive a guaranteed amount of income during the layoff period.

T. Definitions beginning with "T":

(1) Thrifty food plan (TFP): see maximum SNAP allotment.

(2) Transitional food stamps: an extension of SNAP benefits up to five months to certain households whose cash assistance benefits have been terminated.

(3) Transitional housing: means housing for which the purpose is to facilitate the movement of homeless individuals and families to permanent housing within 24 months, or such longer period as is determined necessary. All types of housing meant to be transitional should be considered as such for the purpose of determining exclusion. The definition does not exclude specific types of housing and does not require the presence of cooking facilities in a dwelling.

U. Definitions beginning with "U":

(1) Unclear information: Unclear information is information that is not verified, or information that is verified but ISD needs additional information to act on the change.

(2) Universal basic income: Universal basic income is a government-guaranteed program that provides a modest cash income at regular intervals (e.g., each month or year) to every individual or household to meet the basic needs.

V. Definitions beginning with "V":

(1) Vehicles: means a mode of transportation for the conveyance of passengers to or

from employment, daily living, or for the transportation of goods. Boats, trailers and mobile homes shall not be considered vehicles, for purposes of SNAP.

(2) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application.

W. Definitions beginning with "W": [RESERVED]

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

[8.139.100.7 NMAC - Rp, 8.130.100.7 NMAC 7/16/2024]

8.139.100.8 ABBREVIATIONS & ACRONYMS:

A. Abbreviations and acronyms:

(1) ABAWD: able bodied adults without dependents

(2) AFDC: aid to families with dependent children (replaced by TANF effective July 1, 1997)

(3) BIA-GA: bureau of Indian affairs-general assistance

(4) CA: cash assistance (same as financial assistance)

(5) CE: categorical eligibility or categorically eligible

(6) CFR: code of federal regulations

(7) CPI-U: consumer price index for urban consumers

(8) CS: child support

(9) CSSD: (HCA) child support services division

(10) CYFD: (New Mexico) children youth & families department

(11) DOH: (New Mexico) department of health

(12) DOJ: (United States) department of justice

(13) DOL: (New Mexico) department of labor

(14) DOT: dictionary of occupational titles

(15) DRIPS: disqualified recipient information processing system

(16) E&T: employment and training

(17) EBT: electronic benefit transfer

(18) EC: employment counselor

(19) EI: earned income

(20) EW: eligibility worker (now FAA or caseworker)

(21) FA: financial assistance (same as cash assistance)

(22) FAA: family assistance analyst (caseworker)

(23) FCS: food and consumer services of the USDA, now FNS

(24) FFY: federal fiscal year

(25) FMV: fair market value

(26) FNS: food and nutrition service

(27) FSP: food stamp program

(28) GA: general assistance

(29) GBI: guaranteed basic income;

(30) GED: general equivalency degree;

(31) HHS: (U.S.) health and human services;

(32) HCA: (New Mexico) health care authority;

(33) HUD: (U.S.) housing and urban development;

(34) IEVS: income and eligibility verification system;

(35) IPV: intentional program violation;

(36) ISD: (HCA) income support division;

(37) ISD2: integrated services delivery for ISD;

(38) ISS: income support specialist (now FAA or caseworker);

(39) JOBS: jobs opportunities and basic skills (a work program under AFDC);

(40) JTPA: Job Training Partnership Act (now WIA);

(41) LIHEAP: low income home energy assistance program;

(42) LITAP: low income telephone assistance program;

(43) MFSA: maximum food stamp allotment (benefit amount);

(44) MRRB: monthly reporting and retrospective budgeting;

(45) MVD: (New Mexico) motor vehicle division;

(46) NADA: national automobile dealers association;

(47) NFA: nonfinancial assistance (same as non-cash assistance (NCA);

(48) NMW: New Mexico works;

(49) QC: quality control;

(50) RR: regular reporting or regular reporters;

(51) RSVP: retired seniors volunteer program;

(52) SAVE: systematic non-citizen verification for entitlements;

(53) SNAP: supplemental nutrition assistance program;

(54) SR: simplified reporting;

(55) SSA: social security administration;

(56) SSI: supplemental security income;

(57) SSN: social security number;

(58) SUA: standard utility allowance;

(59) SWICA: state wage information collection agency;

(60) TANF: temporary assistance to needy families (block grant program under Title IV-A of the Social Security Act);

(61) TAPP: tribal assistance project program (Navajo);

(62) TFP: thrifty food plan (now the maximum SNAP allotment);

(63) TFS: transitional food stamp (benefit amount);

(64) UBI: universal basic income;

(65) UCB: unemployment compensation benefits;

(66) USCIS: United States citizenship and immigration services;

(67) USDA: U. S. department of agriculture;

(68) VA: veterans administration;

(69) WIA: Workforce Investment Act (formally JTPA);

[8.139.100.8 NMAC - Rp, 8.130.100.8 NMAC 7/16/2024]

8.139.100.9 MISSION STATEMENT:

A. The purpose of the program is to provide for improved levels of nutrition among low-income households through a cooperative federal-state program of food assistance to be operated through normal channels of trade.

B. Section 2 of the Food Stamp Act of 1977 states, in part: Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power to all eligible households who apply for participation.

[8.139.100.9 NMAC - Rp, 8.130.100.9 NMAC 7/16/2024]

8.139.100.10 PROGRAM OVERVIEW:

A. Establishment of the food stamp program: Sec. 4 (2013) (a) of the act provides that subject to availability of funds appropriated under Section 18, the secretary is authorized to formulate and administer a food stamp program under which eligible households within a state be provided an opportunity to obtain a more nutritious diet through the issuance to the household of an allotment.

B. State participation: A state is prohibited from participating in the food stamp program if it is determined that state or local sales taxes are collected on purchases of food made with coupons issued under the act.

C. Retail stores: Food stamp benefits used by households shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program. Benefits issued and used as provided in the act shall be redeemable at face value by the secretary through the facilities of the treasury of the United States.

[8.139.100.10 NMAC - Rp, 8.130.100.10 NMAC 7/16/2024]

8.139.100.11 GENERAL PROGRAM DESCRIPTION:

A. Purpose: The supplemental nutrition assistance program (SNAP) is designed to promote the general welfare and to safeguard the health and well-being of the nation's population by raising the levels of nutrition among low-income households.

B. Household participation: Participation in SNAP shall be limited to those households whose income and other financial resources, held singly or in joint ownership, are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Eligibility for the program is determined by comparing the applicant group's income, resources, and non-financial eligibility information to the program's policies.

C. National standards: Uniform national standards for determining eligibility and participation are established each year and are effective every October. A household shall meet income and resource limits and other specific eligibility criteria before approval for participation in SNAP. The income test is based on one hundred and thirty percent of the federal poverty level. Resource eligibility limits are $2,250 for households whose members are under 60 years of age, and $3,250 for households containing one or more individuals 60 years of age or over. The federal government funds program benefits at one hundred percent and administrative costs at fifty percent.

[8.139.100.11 NMAC - Rp, 8.130.100.11 NMAC 7/16/2024]

8.139.100.12 ADMINISTRATION: The state agency of each participating state shall assume responsibility for the certification of applicant households and for the issuance of coupons (benefits). In New Mexico the agency responsible for administration of the food stamp program is the HCA, income support division. The HCA is responsible for control and accountability in the food stamp program. Records shall be kept to ascertain whether the program is being conducted in compliance with provisions of the Food Stamp Act of 1977. Such records shall be available for inspection and audit at any reasonable time and shall be preserved for not less than three years.

[8.139.100.12 NMAC - Rp, 8.130.100.12 NMAC 7/16/2024]

8.139.100.13 DIVISION RESPONSIBILITIES: The income support division of the HCA shall be responsible for general administration of the food stamp program.

A. Issuance of food stamp coupons to eligible low-income households is accomplished in Santa Fe via direct mail delivery.

B. Since September 1990, benefit delivery was accomplished via electronic benefit transfer in selected counties. The electronic benefit transfer delivery system has been approved statewide.

C. Policy changes and interpretation is forwarded to field staff and other interested parties as it is received from the food and nutrition service of the United States department of agriculture. Individual requests for policy clarifications are also disseminated.

D. The division is responsible for record keeping to satisfy provisions of the Food Stamp Act of 1977, including keeping numbers of participating households, amount of food stamp benefits issued monthly, benefits returned monthly, affidavits filed, and coupons destroyed.
[8.139.100.13 NMAC - Rp, 8.130.100.13 NMAC 7/16/2024]

HISTORY OF 8.139.100 NMAC: [**RESERVED**]

History of Repealed Material:
8.139.100 NMAC, Food Stamp Program - General Provisions For The Food Stamp Program filed 4/26/2001, Repealed effective 11/1/2023.
8.139.100 NMAC - General Provisions For The Food Stamp Program (filed 10/12/2023), Repealed effective 7/16/2024.

Other: 8.139.100 NMAC, Food Stamp Program - General Provisions For The Food Stamp Program filed 4/26/2001, Replaced by 8.139.100 NMAC, Food Stamp Program - General Provisions For The Food Stamp Program effective 11/1/2023.
8.139.100 NMAC - General Provisions For The Food Stamp Program (filed 10/12/2023) Replaced by 8.139.100 NMAC - General Provisions For The Food Stamp Program, effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 110 GENERAL ADMINISTRATION - APPLICATION PROCESSING

8.139.110.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.139.110.1 NMAC - Rp 8.139.110.1 NMAC, 7/16/2024]

8.139.110.2 SCOPE: General public
[8.139.110.2 NMAC - Rp 8.139.110.2 NMAC, 7/16/2024]

8.139.110.3 STATUTORY AUTHORITY: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.139.110.3 NMAC - Rp 8.139.110.3 NMAC, 7/16/2024]

8.139.110.4 DURATION: Permanent.
[8.139.110.4 NMAC - Rp 8.139.110.4 NMAC, 7/16/2024]

8.139.110.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[8.139.110.5 NMAC - Rp 8.139.110.5 NMAC, 7/16/2024]

8.139.110.6 OBJECTIVE: Issuance of the revised SNAP policy manual is intended to be used in administration of SNAP in New Mexico. This revision incorporated the latest federal policy changes in SNAP not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA.
[8.139.110.6 NMAC - Rp 8.139.110.6 NMAC, 7/16/2024]

8.139.110.7 DEFINITIONS: [RESERVED]

8.139.110.8 APPLICATION PROCESS: The application process includes completing an application form on paper or electronically, filing the completed application form, being interviewed, and having certain information verified. ISD will make paper application forms readily accessible in the ISD local office lobby to potentially eligible households and to anyone who requests the form. If HCA maintains a web page, the application will be available on the web page in each language for which the printed application is available. Information on how to submit an electronic application will be readily available to potentially eligible individuals as well as to local agencies and organizations that regularly have contact with potential applicants and recipients. The web page will provide the addresses and phone numbers of all ISD field offices and a statement that the household should return the application form to its nearest local office. Households may submit the application in person, or via mail, fax, electronic device, or through an authorized representative. Applications will be accessible to persons with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974.
[8.139.110.8 NMAC - Rp 8.139.110.8 NMAC, 7/16/2024]

8.139.110.9 RIGHT TO APPLY:

A. Each individual shall have the opportunity to apply for public assistance programs administered by the HCA or to have an authorized representative do so

on their behalf. Paper application forms must be readily accessible in the ISD local office lobby and provided to any person who requests the form. Applications are made in a format prescribed by the HCA to include paper forms or electronic submissions. ISD will post signs in local field offices which explain the application processing standards and the right to file an application on the day of initial contact.

B. An individual who requests information or assistance and who wishes to apply, shall be encouraged to complete an application the same day that contact is made with the office.

(1) An individual shall be informed that the date of application affects the benefit amount.

(2) An individual shall be informed that an incomplete application may be filed as long as the form has the applicant's name and address and is signed by a responsible household member or authorized representative.

(3) An interview shall not be required before filing an application.

(4) A household shall be informed, except for a SNAP requirement, that any disadvantages or requirements for applying for or receiving cash assistance do not apply to SNAP and that receiving SNAP shall have no bearing on any other program's time limits that may apply to the household.

(5) If an individual contacts the office by phone or mail and does not wish to come to the office to pick up an application the individual will be mailed an application the same day the office is contacted and offered the option of submitting an electronic application through the YES-New Mexico web portal.

C. SSI applicants:

(1) Whenever a household consists only of SSI applicants or recipients, the household has the right to apply for SNAP benefits and to transact all SNAP business at a social security administration (SSA) office, provided it has not applied for SNAP benefits in the preceding 30 days or does not have a SNAP application pending at a local ISD office.

(a) Such applications are considered filed for normal processing purposes when the signed application is received by SSA.

(b) SSA is required to forward every application to the appropriate ISD office within one working day of receipt.

(c) SSI clients are not required to see ISD or be otherwise subjected to a second interview, although additional information or verification may be requested.

(2) SSI/SNAP prerelease applications: A resident of a public institution who applies for SSI prior to release from the institution under the social security administration (SSA) prerelease program for the institutionalized shall be permitted to apply for SNAP benefits at the same time the individual applies for SSI. The SNAP application shall be processed at a local ISD office in accordance with Paragraph (1) of Subsection C of 8.139.110.9 NMAC above and with the following processing and timeliness standards for joint SSI/SNAP prerelease applications.

(a) Application date:

(i) When a resident of an institution files a joint application for SSI and SNAP benefits with SSA prior to release from the institution, the date of application for filing purposes at the local ISD office shall be the date of release.

(ii) An application shall be denied upon receipt if the applicant is not otherwise eligible, except for the resident of an institution provision as found at Subparagraph (a) of Paragraph (2) of Subsection C of 8.139.110.9 NMAC and Subsection A and B of 8.139.400.13 NMAC.

(b) Normal processing standard:

(i) An application shall be processed as soon as possible and the applicant afforded an opportunity to participate no later than 30 days from the date of release from the institution.

(ii) Benefits for the initial month of certification shall be prorated from the date of the month the applicant is released from the institution.

(c) Expedited service: An applicant who qualifies for expedited service shall receive benefits no later than the seventh calendar day following the applicant's release from the institution.

(d) Categorical eligibility: A potential categorically eligible applicant shall not be considered as such until the individual has been released from the institution and SSA has made a final SSI eligibility determination.

(e) Restored benefits: SSA must notify the local ISD office of the date of the applicant's release from the institution. If for any reason notification is not provided on a timely basis, ISD shall only restore SNAP benefits retroactively to the date of release.

D. Authorized representatives:

(1) Designation: The head of the household or the spouse or any other responsible member of the household may designate an individual who is a non-household member to act on its behalf in:

(a) applying for SNAP benefits; or

(b) obtaining SNAP benefits; or

(c) using the SNAP benefits.

(i) ISD shall obtain a copy of the household's written authorization for the authorized representative and maintain it in the household's case record. No limit shall be placed on the number of households

an authorized representative may represent; however, each household may only have one authorized representative at a time.

(ii) Even if the household member is able to make application and obtain benefits, the household should be encouraged to name an authorized representative to use the SNAP benefits in case illness or other circumstances prevent household members from using the benefits themselves.

(iii) The authorized representative's identity shall be verified and a copy of the document maintained in the household's case file.

(2) Liability of households: The head of the household or spouse should prepare or review the household's application whenever possible, even though another household member or the authorized representative will actually be interviewed. The household is liable for any over-issuances resulting from incorrect or untrue information given by the authorized representative.

(3) Application: When the head of the household or spouse cannot apply, another adult member may do so, or an adult who is not a member of the household may be designated as the authorized representative. Nonmember adults shall be designated as authorized representatives for certification purposes only if they are:

(a) designated in writing by the head of the household, or spouse, or another responsible member of the household; and

(b) sufficiently aware of relevant household circumstances to represent it.

(4) Changing authorized representative: An authorized representative may be designated at the time an application is completed; the authorized representative shall be named on the identification (ID) card. This does not preclude the right of the household to make a designation after it has made application to the program. If a household develops a need for a representative, or needs to change the authorized representative before, during, or after the certification process, a new authorized representative may be appointed and a new ID card shall be issued to the household. The authorized representative designated to apply for the household may be the same individual who obtains or uses the benefits for the household, or may be a different individual.

(5) Using SNAP benefits: The authorized representative may use the SNAP benefits to purchase food for the household's consumption with the household's full knowledge and consent, provided that the authorized representative has the household's ID card.

(6) Kinds of authorized representatives:

(a) Emergency authorized representatives:

(i) An emergency authorized representative is someone who obtains benefits for a particular month when the household is unable to obtain the benefits because of unforeseen circumstances.

(ii) A household may designate in writing, on a one-time basis, an emergency authorized representative.

(iii) The household member whose signature is on the household's ID card must sign a designation authorizing the emergency authorized representative to obtain the benefits.

(b) Non-household members: If the only adult living with a household is classified as an excluded household member or nonmember, that individual may be the authorized representative for the minor members who are eligible.

(c) Addiction treatment centers:

(i) Residents of public or private, nonprofit drug or alcohol treatment centers must apply and be certified for program participation through the use of an authorized representative who is an employee of, and designated by, the organization or institution administering the treatment and rehabilitation program.

(ii) The drug or alcohol treatment center, which acts as authorized representative for residents of the facility, must use SNAP benefits for food prepared by and served to the center residents, and is responsible for complying with requirements governing treatment centers.

(d) Group homes:

(i) A resident of a group living arrangement may apply for SNAP benefits and be certified through use of an authorized representative employed and designated by the group home; or on the resident's own behalf; or through an authorized representative of the applicant's choice.

(ii) A resident of a group home does not have to be certified through an authorized representative or individually in order for one or the other method to be used.

(iii) The facility is responsible for determining if any resident may apply for benefits on the resident's own behalf. The decision should be based on the resident's physical and mental ability to handle their own affairs. The facility is also encouraged to consult with any other agencies of the state providing other services to such a resident prior to this determination.

(iv) Applications shall be accepted for any individual applying as a one-person household, or for any grouping of residents applying as a household.

(v) If a resident applies through a facility's authorized representative, the resident's eligibility shall be determined as a one- person household.

(vi)
If a resident is certified on the resident's own behalf, the benefits may either be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents; used by eligible residents to purchase and prepare food for their own consumption; and used to purchase meals prepared and served by the facility.

(7)
Disqualification as authorized representative:

(a)
Any authorized representative who misrepresents a household's circumstances and knowingly provides false information pertaining to a household, or has made improper use of SNAP benefits, shall be disqualified from participating as an authorized representative for up to one year.

(b)
ISD shall be required to send written notification to the affected household(s) and the authorized representative 30 days prior to the date of disqualification. The notification must specify the final action; the reason for the final action; the right to request a fair hearing; the telephone number of the office; and, if possible, the name of the person to contact for additional information.

(c)
This provision is not applicable to drug or alcoholic treatment centers and to those group homes that act as authorized representatives for their residents.

(8)
Restrictions: HCA employees involved in the certification or issuance process, and retailers who are authorized to accept benefits, cannot act as authorized representatives without the specific written approval of the ISD county director, and then only if the county director determines that no one else is available to serve as an authorized representative. Individuals disqualified for fraud cannot act as authorized representatives during the period of disqualification, unless the disqualified individual is the only adult member of the household able to act on its behalf and only if the county director has determined that no one else is available to serve as an authorized representative. The county director shall decide separately whether such individuals are needed to apply on behalf of the household and use the benefits to purchase food. [8.139.110.9 NMAC - Rp 8.139.110.9 NMAC, 7/16/2024]

8.139.110.10 SUBMISSION OF FORMS

A. Joint cash assistance (CA)/SNAP applications:

(1) To facilitate participation in SNAP, households in which all members are applying for cash assistance (Title IV-A or GA) shall be allowed to apply for SNAP benefits at the same time they apply for other assistance. However, SNAP eligibility and benefit amounts shall be based solely on SNAP eligibility factors pending determination of cash assistance eligibility. All households shall be certified in accordance with the notice and procedural and timeliness requirements of SNAP regulations. (See Subsection B of 8.139.110.11 NMAC, combined CA/SNAP interviews, for further information.)

(2) A household shall be notified of the Privacy Act regarding application information and shall be provided the following information:

(a)
The collection of information, including the social security number of each household member, is authorized under the Food Stamp Act of 1977, as amended 7 U.S.C. 2011-2036.

(b)
The information shall be used to determine whether a household is eligible or continues to be eligible to participate in the SNAP program.

(c)
The information shall be verified through computer matching programs.

(d)
The information shall be used to monitor compliance with program regulations and for program management.

(e)
The information provided may be disclosed to other federal and state agencies for official examination, and to law enforcement officials for the purpose of apprehending persons fleeing from the law.

(f)
If a SNAP claim is filed against a household, the information on the application, including all SSNs, may be referred to federal and state agencies, as well as private claims collection agencies, for claims collection action.

(g)
That providing the requested information, including the SSN of each household member, is voluntary, but that failure to provide required information shall result in the denial of SNAP benefits to a household.

B. Items completed: SNAP regulations require only that an application contain the name, address and signature, or witnessed mark, of the applicant in order to be filed and registered.

C. Who completes the application: The application must be completed by a household member or designated authorized representative. If an authorized representative or adult member of the SNAP household completes the application form, the applicant should still review the completed form, since the applicant is liable for improper payments resulting from erroneous information given by an authorized representative. If an applicant needs help completing the form, ISD shall help the applicant complete the form.

D. Signature:

(1) The application must be signed by the applicant and the authorized representative, if one is designated. A signature means that the applicant is verifying the information provided by the household and has read and agrees with all of the statements on the application or other form requiring a signature.

(2) A signature is the depiction of the individual's

name(s) that is, handwritten, electronic or recorded telephonically. Electronic and telephonically recorded signatures are valid only if provided in a format or on a system approved by the HCA, which includes verification of the identity of the person providing the signature.

(3) If the applicant receives help completing the form, that person must also sign at the bottom of the form.

(4) A person who is unable to sign their own name may sign the application with a mark and have it witnessed. A mark that is not witnessed cannot be accepted as a valid signature. The witness shall be someone other than the interviewer.

E. Filing the application:

(1) An application can be filed in person, through an authorized representative, by mail or by fax or other electronic transmission, including on-line electronic transmission. An application submitted electronically or by fax and containing a handwritten or electronic signature shall be considered an acceptable application.

(2) An application shall be filed at the ISD field office serving the community or county where the applicant lives or through the YES-NM web portal. ISD shall provide households that complete an on-line electronic application in person at the ISD office the opportunity to review the information that has been recorded electronically and provide them with a copy of that information for their records, upon request.

F. Registration of the application: Applications submitted to ISD with at least the applicant's name, address and signature of the applicant, spouse, other adult household member or authorized representative shall be registered effective the date on which an application is received by ISD at the field office or electronically during regular business hours. Applications that are dropped off or submitted electronically after regular business hours will be considered received as of the next business day. Regular business hours are Monday through Friday from 8 a.m. to 4:30 p.m., excluding state holidays or other days/ times when the field office is officially closed. Processing deadlines shall be calculated based on the application date.

G. Incomplete applications: Applications that do not contain, at a minimum, the applicant's name, address, and signature, or witnessed mark, are incomplete and cannot be registered. Prompt action shall be taken to return the application form for completion of the minimum required entries. Other missing information does not constitute an incomplete application for purposes of registering the application.

H. Computer inquiries: Computer inquiries shall be completed prior to certification and, where feasible, prior to the interview in order to prevent dual participation and to reveal undetected income and resources. These inquiries include scans for wage and unemployment benefits, SSI benefits, and licensed vehicle ownership, as well as for other available information and appropriate IEVS data.

I. Action on discrepancies:

(1) If computer interfaces show a household member is currently participating in another household or receiving benefits from the food distribution on Indian reservations program (FDPIR), ISD shall discuss the situation with the applicant. The household can be certified only after the other project area has been informed of the situation and the case has been adjusted or transferred whichever is appropriate. If an inquiry shows that the case is on file in another project area, residence shall be established. The application shall be forwarded to the project area in which the applicant household has established residency.

(2) Available information: The household shall be given an opportunity to verify information from another source if information is contradictory to that already provided or is questionable. A decision on eligibility and benefit amount shall not be delayed beyond normal application processing standards if other sources of data are unavailable. The final decision to approve or deny shall be based on the available information.

[8.139.110.10 NMAC - Rp 8.139.110.10 NMAC, 7/16/2024]

8.139.110.11 INTERVIEWS

A. Purpose and scope of interview: The interview is an official and confidential discussion of household circumstances with the applicant. It is intended to provide the applicant with program information, and the worker with the facts needed to make a reasonable eligibility determination. The interview is not simply to review the information on the application, but also to explore and clarify any unclear and incomplete information. The scope of the interview shall not extend beyond examination of the applicant's circumstances that directly relate to determining eligibility and benefit amounts. The interview shall be held prior to disposition of the application.

B. Joint cash assistance/SNAP interview: At initial application for cash assistance (CA), a single interview shall be conducted concurrently for both cash assistance and SNAP benefits if the client wishes to apply for both programs. Federal SNAP regulations specifically provide that applicants for both programs shall not be required to see a different ISD worker or be otherwise subjected to two interviews in order to obtain the benefits of both programs. Following the single interview, the application may be processed by separate workers to determine eligibility for SNAP benefits and cash assistance. In an expedited SNAP certification situation, a second interview is permitted if an immediate interview for cash assistance cannot be arranged.

C. Individuals interviewed: Applicants, including those who submit applications by mail, shall be interviewed in person at the local ISD office. When

circumstances warrant, the household shall be interviewed by telephone, or at another place reasonably accessible and agreeable to both the applicant and ISD. The applicant may bring any person he chooses to the interview.

D. Out of office interviews:

(1) A SNAP applicant shall not be required to have an initial office interview if the applicant is unable to appoint an authorized representative and the household has no member(s) able to come to ISD because the member(s) is elderly or disabled, as defined.

(2) The initial office interview can also be waived if requested by any household that is unable to appoint an authorized representative who is willing and able to perform this function, and who lives in a location not served by a certification office.

(3) Hardship conditions: The office interview for SNAP households shall be waived when the applicant meets one of the following conditions:

(a) older than the age of 60;

(b) disabled;

(c) employed 20 or more hours per week;

(d) has a dependent child younger than the age of six;

(e) has transportation difficulties;

(f) illness;

(g) care of a household member;

(h) resides in a rural area;

(i) prolonged severe weather;

(j) other hardship identified as situations warrant; as authorized by the county director.

(4) A face-to-face interview must be granted to any recipient who requests one.

E. Face-to-face/ telephone interviews: A household must have a face-to-face interview at initial certification and at least once every 12 months thereafter.

(1) A household certified for longer than 12 months is excluded.

(2) At recertification, a household is considered to have met the face-to-face requirement when alternative recertification interviews are conducted by telephone.

(3) No household shall have the face-to-face interview waived for two consecutive recertifications.

(4) The requirement for a face-to-face interview may be waived on a case-by-case basis because of household hardship conditions.

F. Applicant information: During the application interview all reasonable steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy.

(1) All applicants shall be provided with the following information at initial certification and recertification:

(a) ISD's nondiscrimination policy and procedures;

(b) complaint and fair hearing procedures and clients' rights;

(c) program procedures, including the use of IEVS, SDX, BENDEX information, and CSSD and MVD interfaces;

(d) application processing standards, including time limits;

(e) procedures in cases of over-issuance or under-issuance;

(f) requirement for cooperation with quality control reviewers (QC), including penalties for non-cooperation;

(g) work requirements and penalties for non-cooperation, including voluntary quit and associated penalties;

(h) responsibility to contact the local ISD office to reschedule missed appointments; and

(i) exemption from gross receipts tax collection by the retailer on eligible food purchased with SNAP benefits.

(j) For households applying for cash assistance programs and SNAP, ISD must explain that limits and other requirements that apply to the receipt of cash benefits do not apply to the receipt of SNAP benefits.

(k) ISD has a responsibility to help applicants obtain verification if the applicant indicates that the verification may be difficult for the applicant to obtain and offer to assist with obtaining verification if it appears the household will not be able to obtain it.

(l) ISD will provide an explanation of information that still needs to be verified and how to verify in accordance with 8.100.130.9 NMAC and 8.100.130.10 NMAC.

(m) Review all information that ISD has on file and will not require further verification of eligibility factors already established that are not subject to change.

(n) ISD will review all household information received from data scans with the household during the interview and will not require further verification unless it is questionable or outdated.

(o) Simplified reporting requirements for those households assigned to simplified reporting including the following:

(i) a written and oral explanation of how simplified reporting works as defined at 8.139.120.9 NMAC; and

(ii) a written and oral explanation of the reporting requirements which includes: what needs to be reported and verified; when the report is due; how to obtain assistance;

and the consequences of failing to file a report. Simplified reporting requirements are found at 8.139.120.9 NMAC.

(2) Fair hearing information:

(a) Notification of right to request hearing: At the time of application each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or representative, such as a legal counsel, relative, friend or other individual.

(b) Periodic notification: At any time a household informs the local office that it disagrees with an HCA action, the household shall be reminded of the right to request a fair hearing.

(c) Forwarding hearing request: A request for a hearing made either orally or in writing by a household or representative shall be forwarded to the fair hearings bureau. If it is unclear from a request what action a household or representative wishes to appeal, a clarification may be requested by HCA. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(d) Providing a hearing: The fair hearing process shall be available to any household which feels an action taken by HCA is incorrect, and which affects participation of the household in the SNAP.

(e) Other representation: If there is an individual or organization available that provides free legal representation, the household shall be informed of the availability of that source.

(3) Agency conference information: A household shall be informed of the availability of an agency conference to resolve a dispute. HCA shall schedule an agency conference for a household when a dispute arises.

(a) Denial of expedited service: An agency conference shall be offered to a household which wishes to contest a denial of expedited service. An agency conference for such a household shall be scheduled within two working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(b) Adverse actions: ISD may also offer an agency conference to a household adversely affected by an ISD action.

(c) Use of agency conference: ISD shall inform a household that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process.

G. Scheduling interviews: ISD will schedule an interview to be held within 10 working days of the date the application was received that is, to the extent possible, convenient for both the applicant and ISD. The application received date is the first day the application is received within regular business hours. ISD will provide the applicant with a written appointment letter that will include: the date, time and place of the appointment, the name and telephone number of the local county office, the consequences of missing an appointment, how to reschedule an appointment, the possibility of a telephone interview, and that the spouse, any other responsible person in the household, or an authorized representative may attend the interview with the applicant or in the applicant's place.

H. Missed interviews: ISD shall notify a household that it missed its first interview appointment and that the household is responsible for rescheduling a missed interview. ISD shall send the household a notice of missed interview that may be combined with the notice of denial. If a household misses its scheduled interview and requests another interview, the ISD shall schedule a second interview. The household is responsible for rescheduling a missed interview. If the household requests a second interview ISD within the 30-day application-processing period, ISD shall schedule a second interview. When the applicant contacts the local ISD office, either orally or in writing, ISD shall reschedule the interview as soon as possible within the 30-day processing period, without requiring the applicant to provide good cause for failing to appear. If the household is determined eligible, benefits will be pro-rated from the date of application. If the applicant does not contact the office or does not appear for the rescheduled interview, the application shall be denied on the 30th day (or the next work day) after the application was filed (see Section 8.139.110.12 NMAC).

[8.139.110.11 NMAC - Rp 8.139.110.11 NMAC, 7/16/2024]

8.139.110.12 PROCESSING APPLICATIONS:

A. HCA is responsible for timely and accurate issuance of benefits to eligible households. All applications for assistance will be processed as soon as possible. Applicants who complete the application process will have their eligibility determined and be given an opportunity to participate within the time limits mandated for expedited or normal application processing. ISD will explain the time limits to the applicant and inform them of the date by which the application will be processed. With the exception of those manual provisions that specify "working days," time limits begin on the first calendar day following the action that triggered the time limit.

B. Household cooperation: To determine eligibility an application form must be completed and signed, a household or its authorized representative interviewed, and certain information on the application verified.

(1) At application: If a household refuses to cooperate in completing the process, the application will be denied at the time of refusal. For a determination of refusal to be made, a household must be able to cooperate, but clearly demonstrates that it will not take

action that it can take and that is required to complete the application process. If there is any question that a household has failed to cooperate as opposed to refused to cooperate, it will not be denied. Once denied for refusal to cooperate, a household may reapply but will not be determined eligible until it cooperates with ISD.

(2) Subsequent reviews: A household will be determined ineligible if it refuses to cooperate in a subsequent review of eligibility. Such reviews include those because of reported changes and at application for recertification. Once terminated for refusal to cooperate, a household may reapply, but will not be determined eligible until it cooperates with ISD.

(3) Outside sources: A household will not be determined ineligible when an individual outside the household fails to cooperate with a request for verification. Individuals identified as ineligible household members in 8.139.400.12 NMAC will not be considered as individuals outside the household.

(4) Cooperation with quality control (QC): A household will be determined ineligible if it fails or refuses to cooperate in a QC review of eligibility and benefit amount.

(a) Period of ineligibility:

(i) A household that refuses to cooperate with a state QC review will be determined ineligible effective the month following the month the adverse action notice time limit expires. Ineligibility will continue until 125 days from the end of the annual QC review period (February 4) during which non-cooperation is found. The annual QC review period begins October 1 and ends September 30.

(ii) A household that refuses to cooperate with a federal QC review will be ineligible effective the month following the month the adverse action notice time limit expires. Ineligibility will continue until nine months from the end of the annual review period (May 1) during which non-cooperation is found. The annual QC review period begins October 1 and ends September 30.

(b) Re-establishing eligibility:

(i) A household may reapply during the period of ineligibility but will not be determined eligible until it cooperates with the QC review and is otherwise eligible.

(ii) A household which reapplies at the end of the period of ineligibility will not be determined ineligible because of its failure or refusal to cooperate with a state or federal QC review. The household must provide verification necessary to determine eligibility at reapplication in accordance with Subsection H of 8.139.110.11 NMAC.

C. Verification standards: Verification is use of third-party information or documentation to establish the accuracy of statements on the application, or information provided by the applicant or recipient.

(1) Initial certification: Verification is mandatory for the following information prior to initial certification for both new and reopened cases.

(a) Financial information:

(i) gross nonexempt income, and

(ii) resources.

(b) Any of the following if the expense would result in a deduction:

(i) utility expenses;

(ii) continuing shelter expenses;

(iii) dependent care expenses;

(iv) deductible medical expenses including the amount of reimbursements;

(v) legally obligated child support expenses, and amount actually paid;

(vi) if any of the above expenses will not result in a deduction, verification shall not be required (for example, less than $35 in medical expenses, or shelter expenses that do not exceed fifty percent of income after all other deductions).

(c) Nonfinancial information:

(i) residence;

(ii) citizenship, if questionable, and non-citizen status of household members who are individually applying for benefits only;

(iii) identity of the applicant and authorized representative, if designated;

(iv) household size and composition;

(v) disability, if necessary;

(vi) social security numbers, except that eligibility or issuance of benefits shall not be delayed solely to verify the social security number of a household member, and

(vii) any questionable information that must be verified to determine eligibility.

(2) Verification subsequent to initial certification: Verification of the following is mandatory in accordance with the individual's reporting requirements found at 8.139.120.9 through 12 NMAC:

(a) a change in income if the source has changed or the amount has changed by more than $50;

(b) a change in utility expenses if the source has changed;

(c) previously unreported medical expenses, and total recurring medical expenses which have changed by more than $25;

(d) new social security numbers, for individuals who are applying for benefits, that shall be verified as detailed in 8.139.410.8 NMAC;

(e) any other information which has changed or is questionable;

(f) unchanged information shall not be re-verified unless it is incomplete, inaccurate, inconsistent, or outdated.

(g) satisfactory compliance with time limits for individuals subject to the time limit in accordance with 8.139.410.14 NMAC.

(3) Providing verification:

(a) If electronic verification is not available, the household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.

(b) ISD shall assist a household in obtaining verification, provided the household is cooperating in the application process.

(c) A household or their authorized representative may supply documentary evidence in person, by mail, fax, electronic device or through the YES NM web portal.

(d) A household shall not be required to supply verification in person at the ISD office or to schedule an appointment to provide such verification.

(e) ISD shall accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

(4) Documentation: A case file shall be documented to support eligibility, ineligibility, and benefit amount determination. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

[8.139.110.12 NMAC - Rp 8.139.110.12 NMAC, 7/16/2024]

8.139.110.13 TIME LIMITS:

A. Opportunity to participate: ISD shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but no later than 30 calendar days following the date the application was filed, except for residents of public institutions who apply jointly for SSI and SNAP benefits prior to release from the institution in accordance with Paragraph (2) of Subsection C of 8.139.110.9 NMAC. Residents of institutions who apply for SNAP benefits prior to their release from the institution will be provided the opportunity to participate as soon as possible but no later than 30 calendar days from the date of the applicant's release from the institution.

B. Move during eligibility determination: When an office that is processing an application for assistance learns that the applicant has moved to another county, that office will immediately transfer the case in pending status. The application will be processed by the new office using the original registration date from the first office.

C. Withdrawing the application: An applicant may voluntarily withdraw their application at any time prior to the determination of eligibility. A notice will be sent advising the household of the action taken. An applicant will be advised that withdrawal of their application has no effect on their right to apply for assistance in the future. The agency will document the reason for withdrawal, if any was given.

D. Delayed eligibility determinations:

(1) Establishing cause for delay: When an application for SNAP is not processed by the end of the 30 day time limit, a determination as to whether the delay is the fault of the applicant or ISD will be made.

(2) Applicant delays: A delay is the fault of the applicant if they have failed to complete the application process. ISD will send the household a delay notice on the 30th day in accordance with 7 CFR 273.2(h), after the application is filed when the interview has not been held by the 30th day and the appointment has been rescheduled beyond the 30th day. The notice will inform the applicant that all changes in circumstances since the application was filed must be reported. ISD must have taken the following actions, as appropriate, before the delay can be considered the fault of the household:

(a) For applicants who have failed to complete the application form, ISD must have offered, or attempted to offer, assistance in its completion.

(b) For applicants who have failed to provide complete verification, ISD must have provided the household with a statement of required verification, offered assistance as required, and allowed the household sufficient time to provide the missing verification. Sufficient time is at least 10 days from the date of ISD's initial request for the particular verification that is missing.

(c) For applicants who have failed to appear for an interview ISD must notify the applicant that it missed the scheduled interview and that the applicant is responsible for rescheduling a missed interview. If the applicant contacts ISD by the 30th day following the date of application, ISD must schedule a second interview. If the applicant fails to schedule a second interview or the subsequent interview is postponed at the applicant's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date the application was filed, the applicant must appear for the interview, bring verification, and register household members for work by the 30th day following date of application. Otherwise, the delay is the fault of the applicant.

(d) If the applicant has failed to appear for the first interview, fails to schedule a second interview, or the subsequent interview is postponed at the applicant's request until after the 30th day following the date the application is filed, the delay shall be the fault

of the applicant. If the applicant has missed both scheduled interviews and requests another interview, any delay shall be the fault of the applicant.

(e) If one or more members of the household have failed to register for work in accordance with 7 CFR 273.7, ISD must have informed the household of the need to register for work, determined if the household members are exempt from work registration, and given the household at least 10 days from the date of notification to register these members.

(3) Denial of the household application: Applicants that are found to be ineligible shall be sent a denial notice as soon as possible but not later than 30 days following the date the application was filed. If the applicant has failed to appear for a scheduled interview and has made no subsequent contact with ISD, ISD shall send a denial notice on the 30th day following the date of application. The applicant must file a new application if they wish to participate in the program. In cases where ISD was able to conduct an interview and request all the necessary verification on the same day the application was filed, and no subsequent requests for verification were made, ISD may also deny the application on the 30th day, if ISD provided assistance to the applicant in obtaining verification, but the applicant failed to provide the requested verification.

(4) ISD delays: Delays that are the fault of ISD include, but are not limited to, cases where ISD fails to provide the required assistance, fails to observe time limits, fails to schedule timely interviews, or fails to provide other proper procedural help to the applicant. ISD is at fault when the applicant has met their obligations in a timely manner, but ISD fails to complete the application process in a timely manner.

(a) Action on ISD delays: If the delay in the initial 30-day period is caused by ISD, ISD will take immediate corrective action and the application will not be denied. The applicant will be notified that the application is pending and informed of any action to take to complete the application process, including reporting any changed circumstances since the application was filed. ISD will send the applicant a notice of delay in accordance with 7 CFR 273.2(h).

(b) Retroactive benefit rights: If the applicant is found to be eligible during the second 30-day period, the household is entitled to benefits retroactive to the date of application.

(c) Denial of an application: If the household is determined ineligible, the application will be denied and a notice sent no later than the 60th day after the application was filed, or the following work day if the 60th day falls on a weekend or holiday.

(5) ISD action on applicant delays:

(a) If by the 30th day ISD cannot take any further action on the application due to the fault of the applicant, the applicant shall lose its entitlement to benefits for the month of application and a denial notice will be sent.

(b) ISD shall give the applicant an additional 30 days to take the required action. If the applicant takes the required action within 60 days following the date the application was filed, ISD shall reopen the case without requiring a new application.

(c) If the applicant fails to provide requested verification by the 60th day, no further action is required by ISD.

(d) If the applicant was at fault for the delay in the first 30 day period, but is found to be eligible during the second 30 day period, benefits shall be provided only from the month following the month of application.

(6) Delays beyond 60 days:

(a) ISD delays:

(i) If ISD is at fault for not completing the application process by the end of the second 30-day period, and the record is otherwise complete, the application process will be continued until an eligibility determination is accomplished.

(ii) If the household is determined eligible, and ISD was at fault for the delay in the initial 30 days, the household shall receive SNAP benefits retroactive to the date of original application, but only for those months that it is determined eligible.

(iii) If ISD is at fault for not completing the application process by the end of the second 30-day period, but the case record is not complete enough to reach an eligibility determination, the application will be denied and the household advised to file a new application. The household shall be advised of possible entitlement to lost benefits caused by an ISD delay.

(iv) If ISD was at fault for the delay in the initial 30-day period, the amount of lost benefits will be calculated from the date of application.

(b) Household delays:

(i) If the household is at fault for not completing the application process by the end of the second 30-day period, the application will be denied and the household will be required to file a new application, if it still wishes to participate in the program. The household shall not be entitled to any lost benefits even if the delay in the initial 30 days was the fault of ISD.

(ii) If the initial delay was the household's fault, the household will receive SNAP benefits retroactive only to the month following the month of application.

[8.139.110.13 NMAC - Rp 8.139.110.13 NMAC, 7/16/2024]

8.139.110.14 DISPOSITION OF APPLICATION/NOTICES:

A. Approval of SNAP: Notification of the final eligibility determination will be mailed via US postal service and or through approved electronic methods to the

applicant in time to be received not later than the last day of the time limit that is, mailed by the 28th day after the date of application to be received by the 30th day.

B. Contents of the notice: The notice of approval provides the household with written notice, sent by mail or electronically, of the amount of the benefits and the beginning and ending dates of the certification period. If the initial benefit amount is prorated or contains benefit amounts for both the month of application and the current month, the notice will explain that the initial month's SNAP benefit amount differs from the benefit amount for the remainder of the certification period. The notice also states that if households that have applied jointly for financial assistance and SNAP begin to receive a financial assistance check, their SNAP benefit amount will be reduced or terminated without advance notice. The notice will contain a telephone number for the customer service call center which will accept calls throughout working hours.

C. Denial of SNAP: If the application is denied, a written or electronic notice will be sent to the applicant explaining the basis for the denial, the right to request a fair hearing, and the telephone number of the ISD office where the household can get information concerning an individual or organization that provides legal representation. Households determined to be ineligible will be sent a denial notice as soon as possible, but not later than 30 days following the date the application was filed. The household must file a new application if it wishes to have eligibility re-determined, subsequent to the initial denial.
[8.139.110.14 NMAC - Rp 8.139.110.14 NMAC, 7/16/2024]

8.139.110.15 DESIGNATING THE HEAD OF HOUSEHOLD: A household has the right to select its head of household at each certification action or whenever there is a change in household composition reported in accordance with change reporting requirements.

A. No special requirements: The head of household designation will not be used to impose special requirements on the household, such as requiring the head of household, rather than another responsible member, to appear at the certification office to apply for benefits.

B. Households with children:

(1) When designating the head of household, the household is allowed to select:

(a) an adult parent of children (of any age) living in the household; or

(b) an adult with parental control over children (under age 18) living in the household.

(2) All the adult household members must agree to the selection.

(3) A household with children which fails to select an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the head of household loses the right to this designation option. In such a case, the household member with the most income will be the principal wage earner and will be treated as the head of household.

(4) If all adult household members cannot agree to the selection of, or decline to select, an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the head of household, ISD will permit the household to make another selection, or ISD will designate the head of household.

(5) No person of any age living with a parent or person fulfilling the role of a parent who is:

(a) registered for work; or

(b) exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in any work requirement under Title IV of the Social Security Act; or

(c) in receipt of unemployment compensation (or has registered for work as part of the application for or receipt of unemployment compensation); or

(d) is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the federal minimum wage multiplied by 30 hours; will be considered the head of household unless the person is an adult parent of children (of any age) and the household elects to designate the adult parent as its head of household.

C. Denial of benefits, delay of certification prohibited: In no event will a denial of benefits or delay of certification action result if an otherwise eligible household fails to select an adult parent of children (of any age) or an adult with parental control over children (under age 18) as its head of household.

D. Households with no adult parent or adult with parental control: If a household does not have an adult parent of children (of any age) or an adult with parental control over children (under age 18) living in the household, the household may designate another member as the head of household or ISD will do so.

E. Designation of head of household by ISD: ISD can designate the head of household only if:

(1) all the adult household members have not agreed to a selection; or

(2) the household declines to select an adult parent or adult with parental control as the head of household and declines to make another selection.
[8.139.110.15 NMAC - Rp 8.139.110.15 NMAC, 7/16/2024]

8.139.110.16 EXPEDITED SNAP SERVICE:

A. Identifying eligible households: Households meeting the federal requirements of income and resources may be entitled to receive SNAP benefits within seven days after an application is received by ISD,

in accordance with 7 C.F.R 273.2(i). Applications will be screened to identify eligible households at the time the household requests assistance.

(1) Entitlement to expedited service: The following households will be expedited, provided that they are otherwise SNAP eligible:

(a) households with less than $150 in gross monthly income, and with liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, lump sum payments, and the like) not exceeding $100;

(b) households with combined gross monthly income and liquid resources less than the household's monthly rent, or mortgage, and utilities. The mandatory SUA may be used in making this determination, provided that the household qualifies for the SUA; or

(c) migrant or seasonal farm worker households with one hundred dollars ($100) or less in liquid resources and determined to be destitute as defined by the special income calculations in 8.139.400.14 NMAC, migrant and seasonal farm workers.

(2) Verification requirements: All households entitled to expedited service must verify identity through readily available documentation or through a collateral contact. All other eligibility factors may be postponed. Reasonable efforts must be made by ISD to verify residence, income, liquid resources, and all other eligibility factors. Benefits will not be delayed because of an inability to verify such factors or any questionable information but for identity.

(3) SSNs and work registration: Applicant households are specifically permitted to receive their first expedited SNAP benefit amount before providing social security numbers (SSN) or applying for them. Such households are required to do so before their next benefit issuance but will remain eligible for participation as long as good cause exists. Unless exempt, the household's work registration status will be established at the time of certification for expedited service. If an individual's work registration exemption status is in question, benefits will not be delayed solely to verify the exemption.

B. Time limits:

(1) Expedited time limits: All households entitled to expedited service will receive their benefits no later than the seventh calendar day after the date the application is received by ISD.

(2) Out-of-office interview: If a household is entitled to expedited service and waiver of the office interview, the interview will be conducted and the eligibility determination completed within the expedited service time limits, unless the household cannot be reached. The first day of this count is the first calendar day after the application is filed. If a telephone interview is conducted and the application must be mailed to the household for signature, the mailing time involved will not be calculated in the expedited service time limits.

(3) Late identification: If screening fails to identify a household as being entitled to expedited service and it is subsequently determined that the household was so entitled, the household's application will be processed immediately; the time limits in such instances are calculated from the date that it is discovered that the household was entitled to expedited service.

(4) Certification periods: Households entitled to expedited service which provide all necessary verification prior to certification may be assigned a certification period in accordance with 8.139.120.9 NMAC. Households whose verification requirements are outstanding due to an inability to verify via electronic means and the household not providing necessary documentation, will be certified for the month of application, and the following month, or for households whose circumstances warrant, an assigned certification period in accordance with 8.139.120.9 NMAC. When a certification period of more than one month is assigned, the written notification to the household will state that no further benefits will be issued until the verification requirement is completed. The notice also advises that if verification results in changes in eligibility or SNAP benefit amount, ISD will act on these changes without advance notice of adverse action.

(5) Continuation of benefits: Households providing verification by the 30th day after the application date will have their benefits continued. The second month's benefits will be issued within five working days from the date verification is received, or the first day of the second month, whichever is later.

(6) Termination of benefits: Except for migrant farm workers needing out-of-state verification, when the verification requirement is not completed within 30 days of the date of application, the household's participation in the program will be terminated and no further benefits issued.

(7) Denial of expedited service: Households determined ineligible for expedited service will have their applications processed according to normal standards. A household wishing to contest a denial of expedited service will be offered an agency conference to discuss the denial. The conference will be scheduled within two working days of the request for a conference, unless the household requests a later date or states that it no longer wishes to have an agency conference.

C. Number of expedited issuances:

(1) Limits: There is no limit to the number of times a household can be certified under expedited procedures, as long as prior to each expedited certification the household either has completed the verification requirements outstanding from the last expedited certification or has been certified

under normal processing standards since the last expedited certification.

(2) At every application: Expedited services will be available at initial application based on the circumstances existing in the month of application. If a participating household applies for recertification before the end of its current certification period, the expedited service provision will not be applied.

[8.139.110.16 NMAC - Rp 8.139.110.16 NMAC, 7/16/2024]

HISTORY OF 8.139.110 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD 411.0000, General Terms and Conditions, 7/21/1980.

ISD-Rule 411.0000, Food Assistance - Time Limits for Processing Applications, 11/4/1982.

ISD 421.0000, Application Processing, 7/31/1980.

ISD-Rule 410.0000, Food Assistance - Application Processing, 11/4/1982.

ISD-Rule 412.0000, Food Assistance - Filing an Application, 11/4/1982.

ISD-Rule 412.0000, Food Assistance - Filing an Application, 9/8/1983.

ISD 413.0000, Operating Guidelines, 7/21/1980.

ISD-Rule 413.0000, Food Assistance - Handling Applications, 11/4/1982.

ISD-Rule 413.0000, Food Assistance - Handling Applications, 9/8/1983.

ISD-Rule 413.0000, Food Assistance - Handling Applications, 1/12/1984.

ISD-Rule 414.0000, Food Assistance - Interviews, 11/4/1982.

ISD-Rule 414.0000, Food Assistance - Interviews, 9/8/1983.

ISD-Rule 414.0000, Food Assistance - Interviews, 4/24/1984.

ISD-Rule 416.0000, Food Assistance - Handling Applications for FA, GA, and SSI Households, 11/4/1982.

ISD Rule 416.0000, Food Assistance - Handling Applications for AFDC, SSI, and GA Households, 3/2/1987.

ISD-Rule 438.0000, Food Assistance - Actions Due to Delayed Eligibility Determinations, 11/4/1982.

ISD-Rule 452.0000, Food Assistance - SSI Households/Joint Processing, 11/5/1982.

ISD-Rule 452.0000, SSI Households/ Joint Processing, 10/13/1983.

ISD-Rule 452.0000, SSI Households/ Joint Processing, 4/24/1984.

ISD FS 210, Food Stamp Application Process, 6/2/1989.

ISD-Rule 417.0000, Food Assistance - Expedited Service Provisions, 11/4/1982.

ISD-Rule 417.0000, Food Assistance - Expedited Service Provisions, 2/9/1983.

ISD-Rule 417.0000, Food Assistance - Expedited Service Provisions5/18/1983.

ISD FS 220, Expedited Food Stamp Service, 2/29/1988.

History of Repealed Material: 8.139.110 NMAC - General Administration - Application Processing (filed 4/26/2001) Repealed 7/16/2024.

Other: 8.139.110 NMAC - General Administration - Application Processing (filed 4/26/2001) Replaced by 8.139.110 NMAC - General Administration - Application Processing effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 120 CASE ADMINISTRATION - CASE MANAGEMENT

8.139.120.1 ISSUING AGENCY: New Mexico Health Care Authority.

[8.139.120.1 NMAC - Rp 8.139.120.1 NMAC, 7/16/2024]

8.139.120.2 SCOPE: General public.

[8.139.120.2 NMAC - Rp 8.139.120.2 NMAC, 7/16/2024]

8.139.120.3 STATUTORY AUTHORITY: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.

[8.139.120.3 NMAC - Rp 8.139.120.3 NMAC, 7/16/2024]

8.139.120.4 DURATION: Permanent.

[8.139.120.4 NMAC - Rp 8.139.120.4 NMAC, 7/16/2024]

8.139.120.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.

[8.139.120.5 NMAC - Rp 8.139.120.5 NMAC, 7/16/2024]

8.139.120.6 OBJECTIVE: Issuance of the revised supplemental nutrition assistance program (SNAP) policy manual is intended to be used in administration of SNAP in New Mexico. This revision incorporated the latest federal policy changes in SNAP not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA.

[8.139.120.6 NMAC - Rp 8.139.120.6 NMAC, 7/16/2024]

8.139.120.7 DEFINITIONS: [RESERVED]

8.139.120.8 RECERTIFICATION: When

a household's certification period expires, its eligibility to participate in SNAP ends. SNAP benefits will not be continued beyond the certification period. Timely applications for recertification will be approved or denied before the end of the current certification period. ISD must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods.

A. Notice and time standards: ISD shall provide households certified for one month or certified in the second month of a two-month certification period a notice of expiration (NOE) at the time of certification. ISD shall provide other households the NOE before the first day of the last month of the certification period, but not before the first day of the next-to-the-last month. Jointly processed Public Assistance ("PA") (as defined at 7 C.F.R. 271.2), and General Assistance ("GA") (as defined at 7 C.F.R. 271.2) households need not receive a separate SNAP notice if they are recertified for SNAP at the same time as their PA or GA redetermination. Every household will be provided with a notice of expiration, as follows:

(1) For a household certified for one or two months, the notice of expiration will be provided at the time of certification. The household will have 15 days from the date the notice is received to submit a timely application for recertification. The household will be approved and provided an opportunity to participate, if eligible, or be denied, within 30 days after obtaining its last SNAP benefit amount.

(2) For all other households, a notice of expiration will be sent by HCA prior to the start of the last month of the household's certification period. A household has reapplied timely if the application for recertification is filed by the 15th day of the last month of the household's certification period.

(3) ISD will complete the application process if the household meets all requirements and finishes the necessary processing steps; ISD will approve or deny timely applications before the end of the household's current certification period.

B. Failure to submit timely application:

(1) A household that does not submit an application for recertification by the 15th day of the expiration month loses its right to uninterrupted benefits.

(2) SNAP benefits will be prorated from the date of application if a household's application is received in the month after its certification period has expired or participation has been terminated for any reason.

(3) ISD will ensure that any eligible household that does not submit a timely application for recertification be provided the opportunity to participate, if eligible, within 30 calendar days after the date the application is filed.

C. ISD caused delayed processing: If an eligible household files an application before the end of the certification period but the recertification process cannot be completed within 30 days after the date of application because of ISD fault, ISD must continue to process the case and provide a full month's allotment for the first month of the new certification period, and will send a delay notice in accordance with Subsection D of 8.139.110.13 NMAC. If the household fails to take required action, ISD may deny the case at the time of application, at the end of the certification period, or at the end of 30 days. ISD shall determine cause for any delay in processing a recertification application in accordance with the provisions of 7 C.F.R. 273.2(h)(1).

D. Scheduling interviews: ISD shall schedule interviews so that the household has at least 10 days after the interview in which to provide verification before the certification period expires. A household will not be required to appear for an interview, or to file an application for recertification, in the month before the last month of its current certification period. An interview may be scheduled in the month before the last month of certification, or prior to the date the application is timely filed, provided the household is not denied for failing or refusing to appear for the interview. If an interview was scheduled, or if household member or authorized representative failed to attend an interview which was scheduled prior to the date a household files a timely application, ISD will schedule an interview on or after the date an application is timely filed.

E. Failure to appear: If a household member or authorized representative fails to appear for a recertification interview scheduled on or after a timely application is filed, the household loses the right to uninterrupted participation. ISD shall send the household a notice of missed interview that may be combined with the notice of denial. If a household misses its scheduled interview and requests another interview, the ISD shall schedule a second interview. The household is responsible for rescheduling a missed interview.

F. Prospective eligibility determination: A household's eligibility and SNAP benefit amount at recertification will be determined prospectively based on circumstances anticipated for the certification period, beginning with the month following the expiration of the current certification period.

G. Eligibility and benefits: Eligibility will be determined at recertification according to the standards described below.

(1) Timely reapplication: Applications filed before the 15th of the expiration month will be considered timely. A household member or authorized representative that attends an interview and provides all necessary verification by the end of the household's current certification period, will have the opportunity to participate by the household's normal

issuance cycle in the month following the end of the current certification period, if all eligibility factors have been met.

(2) Reapplication after the 15th: If an application for recertification is submitted after the 15th but before the end of a household's certification period and the household is determined eligible for the first month following the end of the certification period, that month is not considered an initial month and benefits are not prorated.

(3) First month ineligibility: If an application for recertification is submitted before the end of a household's certification period, but the household is determined ineligible for the first month following the end of the certification period, the first month of any subsequent certification period will be considered an initial month and SNAP benefits will be prorated.

(4) Late applications:

(a) Recertification verification standards, in accordance with Paragraph (2) of Subsection C of 8.139.110.12 NMAC, will be used when an application is received within 30 days after the certification period expires. Initial month verification standards, in accordance with Paragraph (1) of Subsection C of 8.139.110.12 NMAC, will be used if the application is received more than one calendar month after the certification period expires or the case has been closed for any reason.

(b) Initial month certification provisions and proration of benefits for migrant and seasonal farmworker households will apply when more than 30 days have passed since the household was certified for participation. (See 8.139.400.14 NMAC for more information on migrant and seasonal farmworker households).

(5) Pending verification: A household member or authorized representative that has reapplied timely, attended an interview, and is required to provide verification, will be given 10 days to provide the verification, or until the certification period expires, whichever is longer. If the certification period expires before the 10-day deadline for submitting the required verification, the household will have the opportunity to participate, if eligible, within five working days after verification is submitted. The household is entitled to a full month's benefits.

[8.139.120.8 NMAC - Rp 8.139.120.8 NMAC, 7/16/2024]

8.139.120.9 SIMPLIFIED REPORTING: All households will be assigned to simplified reporting (SR). Households must submit an interim report once every six or twelve months, depending on their certification period. Households assigned to a 12-month certification period have an interim report form due at six months. Households assigned to a 24-month certification period have an interim report form due at 12 months.

A. Household Certification Periods: A household that is approved for SNAP benefits shall be assigned the longest certification period possible in accordance with the household's circumstances. Households wherein all adult members are elderly or disabled, with no earned income, will be assigned a 24-month certification period. All other households will be assigned a 12-month certification period.

B. Household responsibility to turn in interim report form:

(1) A household assigned to a 12-month certification period shall be required to file an interim report form no later than the 10th day of the sixth month of the certification period in order to receive uninterrupted benefits.

(2) A household assigned to a 24-month certification period shall be required to file an interim report form no later than the 10th day of the 12-month of the certification period in order to receive uninterrupted benefits.

C. Information that ISD is responsible to provide to households regarding simplified reporting: At the initial certification and at recertification, ISD shall provide the household with the following:

(1) a written and oral explanation of how simplified reporting works;

(2) a written and oral explanation of the reporting requirements including:

(a) what needs to be reported and verified;

(b) when the interim report form is due;

(c) how to obtain assistance; and

(d) the consequences of failing to file an interim report form.

(3) special assistance in completing and filing interim reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and

(4) a toll-free number which the household may call to ask questions or to obtain help in completing the interim report.

D. Information requirements for the interim report form: The interim report form will be written in clear, simple language, include information on the availability of a bilingual version of the document described in 7 CFR 272.4(b), and shall specify:

(1) the deadline date to submit the form to ISD to ensure uninterrupted benefits if the household is determined eligible;

(2) the consequences of submitting a late or incomplete form including whether ISD shall delay benefits if the form is not received by the due date;

(3) verification the household must submit with the form;

(4) a statement to be signed by a member

of the household indicating their understanding that the information provided may result in a reduction or termination of benefits;

(5) where to call for help in completing the form;

(6) a statement explaining that ISD will not change certain deductions until the household's next recertification and identify those deductions if ISD has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of section 7 CFR 273.12;

(7) a brief explanation of fraud penalties; and

(8) how the agency may use social security numbers.

E. The following information, along with required verification, must be returned to ISD with the interim report form:

(1) a change of more than $125 in the amount of unearned income, except changes relating to public assistance (PA) or general assistance (GA) programs when jointly processed with SNAP cases;

(2) a change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;

(3) changes in either:

(a) the wage rate or salary or a change in full-time or part-time employment status as defined in Subsection C of 8.102.461.11 NMAC, provided the household is certified for no more than six months; or

(b) a change in the amount earned of more than one hundred twenty-five dollars ($125) a month from the amount last used to calculate the household's allotment, provided the household is certified for no more than six months.

(4) all changes in household composition, such as the addition or loss of a household member;

(5) changes in residence and the resulting shelter costs;

(6) the acquisition of a licensed vehicle, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC or the vehicle is not fully excludable under 8.139.527 NMAC;

(7) when cash on hand, stocks, bonds and money in a bank account or savings institution reach or exceed the resource limit set at 8.139.510.8 NMAC, unless the household is categorically eligible as defined at 8.139.420.8 and 8.139.420.9 NMAC;

(8) changes in the legal obligation to pay child support;

(9) for able-bodied adults subject to the time limit of 7 CFR 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly, as defined in 7 CFR 273.24(a)(1)(i); and

(10) In accordance with 7 CFR 273.12(a)(2), SNAP households must report substantial lottery and gambling winnings;

(a) if the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported;

(b) if the winning is less than the elderly and disabled resource standard it does not need to be reported;

F. ISD's responsibility with interim report forms:

(1) Interim report form is not received: If a household fails to file a report by the specific filing date, defined in Subsection B of 8.139.120.9 NMAC, ISD will send a notice to the household advising of the missing report no later than 10 calendar days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated.

(2) Incomplete interim report form is received:

(a) An interim report form that is not signed shall be returned to the household for a signature. The household:

(i) shall be notified that the form is incomplete;

(ii) what needs to be completed to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the signed interim report form to be reviewed for completeness.

(b) An interim report form that is incomplete because required verification is not provided shall not be returned to the household. The household:

(i) shall be notified that the form is incomplete;

(ii) what information must be provided to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the verification to process the interim report form.

(3) Complete interim report form is received:

(a) A form that is complete and all verifications are provided, shall be processed within 10 calendar days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall be processed, unless the verification is otherwise questionable, in accordance with 8.100.130.12 NMAC. The household:

(i) shall be notified that verification is questionable; and

(ii) shall be given 10 calendar days to provide the verification to process the allowable deduction.

(c) A deduction that is verified within the month the interim report form is due shall be processed as part of the interim report form.

(d) A deduction that is verified in the month after the interim report form is due shall be processed as a change reported by the household.

(e) If the household files a timely and complete report resulting in reduction or termination of benefits, ISD shall send a notice of case action. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, ISD will not terminate the household, but will instead determine the household's benefits excluding the deduction from the benefit calculation.

G. Changes that must be reported at any time during certification period: Households must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household has at least 10 calendar days within which to report the change. If there are not 10 days remaining in the month, the household must report within 10 days from the date the work hours fall below 20 hours per week, averaged monthly or when income exceeding the gross federal poverty limit as mentioned below is first received. The interim report form is the sole reporting requirement for any information that is required to be reported on the form, except that a household must report at any time during the certification period:

(1) the household must report when its monthly gross income exceeds one hundred thirty percent of poverty level. A categorically eligible household defined in accordance with 8.139.420.8 NMAC, must report when its monthly gross income exceeds one hundred sixty-five percent of poverty level. The household shall use the monthly gross income limit for the household size that existed at the time of certification or recertification regardless of any subsequent changes to its household size; and

(2) able-bodied adults subject to the time limit in accordance with 7 CFR 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(3) in accordance with 7 CFR 273.12(a)(2), SNAP households must report substantial lottery and gambling winnings within 10 days of the end of the month in which the household received the winnings.

(a) if the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported.

(b) if the winning is less than the elderly and disabled resource standard it does not need to be reported.

H. Action on changes reported outside of the interim report form: In addition to changes that must be reported in accordance with Subsection G of 8.139.120.9 NMAC, ISD must act on changes in between interim report forms, if it would increase the household's benefits. ISD shall not act on changes that would result in a decrease in the household's benefits unless:

(1) The household has voluntarily requested that its case be closed.

(2) ISD has information about the household's circumstances considered verified upon receipt. Verified upon receipt is defined:

(a) information is not questionable; and

(b) the provider of the information is the primary source of information; or

(c) the recipient's attestation exactly matches the information received from a third party.

(3) A household member has been identified as a fleeing felon or probation violator in accordance with 7 CFR 273.11(n);

(4) There has been a change in the household's cash grant, or where cash and SNAP cases are jointly processed in accordance with 7 CFR 273.2(j)(2).

I. Responsibilities on reported changes outside of the interim report form: When a household reports a change, ISD shall take action to determine the household's eligibility or SNAP benefit amount within 10 working days of the date the change is reported.

(1) During the certification period, action shall not be taken on changes to medical expenses of households eligible for the medical expense deduction which ISD learns of from a source other than the household and which, in order to take action, requires ISD to contact the household for verification. ISD shall act only on those changes in medical expenses that it learns about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) Decreased or termination of benefits: For reported and verified changes that result in a decrease or termination of household benefits, ISD shall act on the change as follows:

(a) Issue a notice of adverse action within 10 calendar days of the date the change was reported and verified unless one of the exemptions to the notice of adverse action in 7 CFR 273.13 (a)(3) or (b) applies.

(b) When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.

(c) When a notice of adverse action is not used due to one of the exemptions in 7 CFR 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by 7 CFR 273.2(f) must be obtained prior to recertification.

(3) Increased benefits: For reported and verified changes that result in an increase of household benefits, ISD shall act on the change as follows:

(a) For changes which result in an increase in a household's benefits, other than changes described in Paragraph (b) of this section, ISD shall make the change effective no later than the first allotment issued 10 calendar days after the date the change was reported to ISD.

(b) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50 or more in the household's gross monthly income, ISD shall make the change effective not later than the first allotment issued 10 calendar days after the date the change was reported.

(i) In no event shall these changes take effect any later than the month following the month in which the change is reported.

(ii) If the change is reported after the last day to make changes and it is too late for ISD to adjust the following month's allotment, ISD shall issue a supplement or otherwise provide an opportunity for the household to obtain the increase in benefits by the 10th day of the following month, or the household's normal issuance cycle in that month, whichever is later.

(4) No change in SNAP benefit amount: When a reported change has no effect on the SNAP benefit amount, ISD shall document the change in the case file and notify the household of the receipt of the report.

(5) Providing verification: The household shall be allowed 10 calendar days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide necessary verification, its' SNAP benefit amount shall revert to the original benefit amount.

J. Resolving unclear information:

(1) During the certification period, ISD may obtain information about changes in a household's circumstances from which ISD cannot readily determine the effect of the change on the household's benefit amount. The information may be received from a third party or from the household itself. ISD must pursue clarification and verification of household circumstances using the following procedure if unclear information received outside the periodic report is:

(a) information fewer than 60 days old relative to the current month of participation; and,

(b) if accurate, would have been required to be reported under simplified reporting rules, in accordance with 8.139.120.9 NMAC.

(c) ISD must pursue clarification and verification of household circumstances in accordance with the process outlined in Subsection B of 8.100.130.12 NMAC, for any unclear information that appears to present significantly conflicting information from that used by ISD, at the time of certification.

(2) Unclear information resulting from certain data matches:

(a) if the HCA receives match information from a trusted data source as described in 7 CFR 272.13 or 7 CFR 272.14, ISD shall send a notice in accordance with Subsection B of 8.100.130.12 NMAC in accordance with 7 CFR 272.13(b)(4) and 7 CFR 272.14 (c)(4). The notices must clearly explain what information is needed from the household and the consequences of failing to respond to the notice.

(b) if the household fails to respond to the notice or does respond but refuses to provide sufficient information to clarify its circumstances, ISD shall remove the individual and the individual's income from the household and adjust benefits accordingly. As appropriate, ISD shall issue a notice of adverse action.

K. Failure to report changes: If ISD discovers that the household failed to report a change as required, ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled or if the household is entitled to an increased benefit amount.

(1) Decreased benefit amount: After verifying the change, ISD shall initiate a claim against the household for any month in which the household was over issued SNAP benefits. The first month of the over issuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Subsection G of 8.139.120.9 NMAC above.

(2) Increased benefit amount: When a household fails to make a timely report of a change which will result in an increased SNAP benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 calendar days after the date the change was reported.

[8.139.120.9 NMAC - Rp 8.139.120.9 NMAC, 7/16/2024]

8.139.120.10 [RESERVED]
[8.139.120.10 NMAC - Rp 8.139.120.10 NMAC, 7/16/2024]

8.139.120.11 [RESERVED]
[8.139.120.11 NMAC - Rp 8.139.120.11 NMAC, 7/16/2024]

8.139.120.12 [RESERVED]
[8.139.120.12 NMAC - Rp 8.139.120.12 NMAC, 7/16/2024]

8.139.120.13 REQUIREMENTS FOR MASS CHANGES:

A. Mass changes: Certain changes initiated by the state or federal government may affect the entire caseload or significant portions of it.

(1) Mass changes include, but are not limited to, increases in excluded or deducted items or amounts.

(2) Mass changes affecting income include annual adjustments to social security, SSI, and other federal benefit programs, and any other changes in eligibility criteria based on legislative or regulatory actions.

(3) Information concerning mass change notice and hearing requirements are set forth in 8.100.180.15 NMAC.

(4) Notice of mass changes: Adverse action notices are not required for mass changes resulting from federal adjustments to eligibility standards, the maximum SNAP allotment, standard deduction, shelter deduction, and state adjustments to the mandatory utility standard. Announcement of anticipated mass changes may be made through the media, posters in ISD offices, and other likely places frequented by households, or through a general notice mailed to a participating household. When HCA makes a mass change in food stamp eligibility or benefit amount affecting the entire caseload or a part of it, affected households shall be mailed a notice of any change, reduction or termination of benefits. HCA shall issue a notice to affected households as far in advance of the household's next scheduled issuance date as is reasonably possible, but by no later than the date the affected benefit is issued.

B. Federal changes: Authorized adjustments which may affect SNAP benefit amount for participating households include the maximum SNAP allotment, standard deduction, excess shelter and dependent care deductions, and income eligibility standards. These changes go into effect for all households annually on October 1. Adjustments to federal standards are made prospectively.

C. Cost of living adjustments: Cost of living increases and any other mass changes in federal benefits, such as social security and SSI benefits, shall be treated as mass changes for SNAP purposes. ISD is responsible for automatically adjusting a household's SNAP benefit amount to reflect such a change. Households shall not be responsible for reporting these changes.

D. Mass changes in public assistance: When overall adjustments to cash assistance payments are made, corresponding adjustments in SNAP benefits shall be handled as a mass change. Households shall be given advance notice of any adjustment in the SNAP benefit amount. If a household requests a fair hearing, benefits shall continue at the former amount only if the issue being appealed is that eligibility or SNAP benefit amount was determined incorrectly.

E. Utility standard: Authorized adjustments shall be effective for all October SNAP issuances. Households whose certification periods overlap annual adjustments in the state's mandatory utility allowance shall be informed at the time of certification that the adjustment shall be effective in October 1; the household shall be informed of the adjusted benefit amount, if known at the time of certification. Adjustments in the state's mandatory utility allowance are made prospectively.
[8.139.120.13 NMAC - Rp 8.139.120.13 NMAC, 7/16/2024]

8.139.120.14 OTHER CHANGES AFFECTING SNAP HOUSEHOLDS:

A. Failure to report changes:

(1) If ISD discovers that the household failed to report a change as required, ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled.

(2) After verifying the change, ISD shall initiate a claim against the household for any month in which the household was over issued SNAP benefits. The first month of the over issuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change.

(3) If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced.

(4) No claim shall be established because of a change in circumstances that a household is not required to report.

B. Noncompliance with program requirements or fraud:

(1) Intentional failure to comply or fraud: No household shall receive an increase in SNAP benefits when benefits from another program have been decreased (reduced, suspended or terminated) for intentional failure to comply with the other program eligibility requirements or for an act of fraud. This provision applies in cases where the other program is a means-tested, federal, state or local welfare or public assistance program, which is governed by welfare or public assistance laws or regulations and which distributes public funds.

(2) Failure to comply shall be determined as provided in Paragraph (3) of Subsection I of 8.139.520.9 NMAC.

(3) Verification of recoupment: Agencies administering means-tested, publicly funded assistance programs provide recipients with written advance notice of proposed changes in benefit

amounts. Such notices provide information which shall determine if the reduction in cash assistance is because of a properly reported change in circumstances. In most cases, the notice shall document whether the reduction is because of a recoupment of overpaid benefits resulting from intentional failure to report changes. If the notice is not detailed enough to make a determination, the agency which initiated recoupment shall be contacted to obtain the necessary information. SNAP benefits shall not be delayed beyond normal processing standards pending the outcome of this determination.

(4) Calculating benefits: When a recipient's assistance benefits are decreased to recoup an overpayment, that portion of the decrease that is the recoupment shall first be identified. The recoupment is the amount of decrease attributed to the repayment of benefits over issued. If a Title IV-A recipient intentionally underreports income, the Title IV-A grant is first reduced to reflect the corrected income, then reduced further by the recoupment amount. In such a case, the SNAP calculation would reflect the Title IV-A amount reduced because of income, but not the second reduction caused by recoupment.

[8.139.120.14 NMAC - Rp 8.139.120.14 NMAC, 7/16/2024]

8.139.120.15 CHANGE NOTICES:

A. Agency responsibilities:

(1) ISD shall take action on any change reported by a household, and on any change which becomes known through other sources.

(2) The household shall be issued a change notice.

(a) If there is a reduction or termination of benefits, the household shall be issued an adverse action notice, unless the change has been reported by the household in writing.

(b) If the household reports the change in writing, advance notice of the change in benefit amount is required before the household's next issuance.

(c) If there is no change in the benefit amount, the household shall be notified that the change resulted in no change in benefit amount.

(3) If a household receiving cash assistance reports a change, it shall be considered to have also reported the change for SNAP purposes. A notice shall be sent to the household acknowledging the reported change, even if there is no change in benefits. A notice of adverse action shall be sent if there is a reduction or termination in the SNAP benefit amount and the change was not reported in writing.

B. Notice of adverse action:

(1) Prior to any action to reduce or terminate a household's SNAP benefits within the certification period, the household shall be provided with a timely and adequate advance notice before the adverse action is taken, unless the change was reported by the household in writing. A written change report submitted by the household is subject to the adequate notice requirements in Subsection C of 8.139.120.15 NMAC.

(2) At a minimum, the adverse action notice shall include the following information:

(a) proposed action and reason for the action;

(b) month in which the change takes effect;

(c) adjusted benefit amount;

(d) household's right to request a fair hearing, circumstances under which the household can continue benefits at the greater amount, and deadline dates for requesting a hearing;

(e) household's liability for any benefits over issued if the decision of the fair hearing is that the HCA took the correct action;

(f) general information on whom to contact for additional information, including the right to representation by legal services.

(3) Individual notices of adverse action shall not be provided when:

(a) there is a mass change;

(b) ISD determines on the basis of reliable information that the household has moved from the project area;

(c) ISD determines on the basis of reliable information that all members of a household have died;

(d) the household has received an increased benefit amount to restore lost benefits, the restoration is complete, and the household has been notified in writing of the date the increased benefit amount would terminate;

(e) the household's benefit amount varies from month to month within the certification period to take into account changes anticipated at the time of certification, and the household was notified of such variations at the time of certification;

(f) the household applied for cash assistance and SNAP benefits at the same time, has been receiving SNAP benefits pending approval of cash assistance, and the household was notified at the time of certification that SNAP benefits would be reduced upon approval of the cash assistance grant;

(g) a household member is disqualified for intentional program violation, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of the household member.

(h) the household was certified on an expedited basis, is assigned a certification period longer than one month, and verification has been postponed; the household must

have received written notice that receipt of benefits beyond the month of application is contingent on the household providing the postponed verification;

(i) the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement is terminated because the treatment center or group living arrangement loses either its certification or its status as authorized representative;

(j) the household voluntarily requests, in writing or in the presence of ISD, that its participation be terminated.

C. Adequate notice: If a change was reported in writing that will result in a reduction or termination in SNAP benefits, the household shall be provided with adequate advance written notice confirming the change. Adequate notice does not preclude the household's right to request a fair hearing. The household shall be notified that its benefits are being reduced or terminated no later than the date the household will receive, or would have received, its SNAP benefits. Adequate notice shall be provided when changes reported in writing meet the following conditions:

(1) the household reports the information which results in the reduction or termination;

(2) the reported information is in writing and signed by a member of the household;

(3) ISD can determine the household's reduced benefit amount or ineligibility based solely on the information provided by the household in the written report;

(4) the household retains its right to a fair hearing;

(5) the household retains its right to continued benefits if the fair hearing is requested within the advance notice time limit;

(6) ISD continues the household's previous benefit amount if required, within five working days of the household's request for a fair hearing.

[8.139.120.15 NMAC - Rp 8.139.120.15 NMAC, 7/16/2024]

8.139.120.16 TRANSFER OF HOUSEHOLDS: When a household transfers from one project area to another, the household's case record and computer file shall be transferred accordingly. Procedures for handling households which transfer between project areas within the state and between offices within a single project area are described below.

A. Transfer of inactive cases: Inactive cases are those that have been certified and are subsequently closed. ISD in the new project area is responsible for requesting that the case record be transferred. The former project area is responsible for transferring case records and making sure they are complete.

B. Transfer of active cases: Active cases are those presently certified.

(1) Timely reporting: Transfers within the state shall be considered like any other reported change in circumstances. The household must timely report a move and verify its new address and shelter expenses, as well as any change in household composition and income, before benefits may continue or be issued (see Subsection A of 8.139.120.12 NMAC). The former project area shall update the household's address on its computer file and transfer the case in active status to the new project area. The new project area shall verify the household's new circumstances, including but not limited to, address, shelter expenses, income, and household composition (see Paragraph (1) of Subsection B of 8.139.120.12 NMAC).

(2) Not reported: If a project area becomes aware that a household has moved but has not been informed of a new in-state address, either by the household or its designee or by another project area, participation shall be terminated immediately based on unverified residence. If the household wishes to continue participation, it must file a new application.

C. Procedures for nonreceipt of benefits: If a household which has moved to a different project area has not received its current month's SNAP benefits, action required by ISD shall depend on circumstances described below:

(1) If the SNAP benefits are returned to the central mail issuance unit, reissuance is authorized by the new project area to the household's address in the new project area.

(2) If the SNAP benefits are not returned to the central mail issuance unit, an affidavit shall be submitted by the new project area, as described in Subsection G of 8.139.610.14 NMAC, replacement of benefits lost in the mail, even though the original issuance was from the former project area. The new project area shall make sure that the household's residence and mailing address are changed prior to submitting the affidavit.

[8.139.120.16 NMAC - Rp 8.139.120.16 NMAC, 7/16/2024]

8.139.120.17 COOPERATION WITH LAW ENFORCEMENT AGENCIES:

A. Notwithstanding any other provision of law, upon written request, HCA shall make available to any federal, state, or local law enforcement officer the address, social security number, and photograph (if available) of any household member, if the officer furnishes HCA with the name of the individual and notifies HCA that:

(1) the individual is fleeing to avoid prosecution, or custody or confinement after conviction for a crime, or attempt to commit a crime, that under the law of the place the member is fleeing is a felony, or in New Jersey is a high misdemeanor; or

(2) the individual is violating a condition of probation or parole imposed under federal or state law.

B. Information shall be provided if it is needed for the

officer to conduct an official duty related to Paragraphs (1) or (2) of Subsection A of 8.139.120.17 NMAC above; locating or apprehending the individual as an official duty; and the request is being made in the proper exercise of an official duty.

C. Providing information to law enforcement shall not interfere with the HCA's responsibility to immediately report to the immigration and naturalization service (INS) the ineligibility of any individual who is present in the United States in violation of the Immigration and Nationality Act.
[8.139.120.17 NMAC - Rp 8.139.120.17 NMAC, 7/16/2024]

HISTORY OF 8.139.120 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
ISD-Rule 439.0000, Monthly Reporting/Retrospective Budgeting (MRRB), 10/13/1983.
ISD-Rule 439.0000, Monthly Reporting/Retrospective Budgeting (MRRB), 4/24/1984.
ISD-Rule 439.0000, Monthly Reporting/Retrospective Budgeting (MRRB), 8/3/1984.
ISD-Rule 441.0000, Food Assistance - Actions Subsequent to Determine Eligibility, 11/5/1982.
ISD-Rule 440.0000, Actions Subsequent to Determine Eligibility, 2/9/1983.
ISD-Rule 440.0000, Actions Subsequent to Determine Eligibility, 9/8/1983.
ISD-Rule 440.0000, Actions Subsequent to Determine Eligibility, 10/13/1983.
ISD-Rule 440.0000, Actions Subsequent to Determine Eligibility, 4/24/1984.
ISD-Rule 442.0000, Food Assistance - Transfer of Households, 11/14/1982.
ISD-Rule 442.0000, Food Assistance - Transfer of Households, 9/8/1983.
ISD 424.0000, Recertification, 7/28/1980.
ISD-443.0000, Food Assistance - Recertification, 11/4/1982.
ISD-443.0000, Food Assistance - Recertification, 9/8/1983.
ISD-443.0000, Food Assistance - Recertification, 10/13/1983.
ISD-443.0000, Food Assistance - Recertification, 1/12/1984.
ISD FS 510, Food Stamp Reporting and Recertification, 3/2/1988.
ISD FS 510, Food Stamp Reporting and Recertification, 4/30/1992.

History of Repealed Material:
8.139.120 NMAC - Case Administration - Case Management (filed 4/26/2001) Repealed effective 7/16/2024.

Other: 8.139.120 NMAC - Case Administration - Case Management (filed 4/26/2001) Replaced by 8.139.120 NMAC - Case Administration - Case Management effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 400 RECIPIENT POLICY - WHO CAN BE A RECIPIENT

8.139.400.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.139.400.1 NMAC - Rp 8.139.400.1 NMAC, 7/16/2024]

8.139.400.2 SCOPE: General public
[8.139.400.2 NMAC - Rp 8.139.400.2 NMAC, 7/16/2024]

8.139.400.3 STATUTORY AUTHORITY: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation
[8.139.400.3 NMAC - Rp 8.139.400.3 NMAC, 7/16/2024]

8.139.400.4 DURATION: Permanent.
[8.139.400.4 NMAC - Rp 8.139.400.4 NMAC, 7/16/2024]

8.139.400.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[8.139.400.5 NMAC - Rp 8.139.400.5 NMAC, 7/16/2024]

8.139.400.6 OBJECTIVE: Issuance of the revised food stamp program policy manual is intended to be used in administration of the food stamp program in New Mexico. This revision incorporated the latest federal policy changes in the food stamp program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA.
[8.139.400.6 NMAC - Rp 8.139.400.6 NMAC, 7/16/2024]

8.139.400.7 DEFINITIONS: [**RESERVED**]

8.139.400.8 BASIS FOR DEFINING GROUP (HOUSEHOLD COMPOSITION):

A. Households: The basic assistance unit of the food stamp program is the household. A household is composed of an individual or a group of individuals who customarily purchase and prepare meals together for home consumption. There can be more than one household living in one place.

B. Verification of information:

(1) Identity: It is mandatory that the applicant's identity be verified. Identity may be established through readily available documentary evidence, or, if this is not possible, through a collateral contact or home visit. Acceptable documentary evidence includes, but is not limited to, driver's license; work or school ID; school records; ID for health benefits or for another assistance or social services program; voter registration card; wage stubs or marriage certificate. Any document that reasonably establishes the applicant's identity must be accepted. No requirement for a specific type of document, such as a birth certificate, may be imposed.

(2) Household composition: Information regarding household composition must be verified before certification, recertification, or when a change is reported. If household size or composition becomes questionable, the income support specialist (ISS) must request verification. Findings must be documented in the case file.

C. Household composition: A food stamp household may be composed of any of the following:

(1) an individual living alone;

(2) an individual living with others who customarily purchases food and prepares meals for home consumption separate and apart from the others;

(3) a group of individuals who live together and who customarily purchase food and prepare meals together for home consumption;

(4) an individual 60 years of age or older (and the spouse of such individual) who lives with others and cannot purchase and prepare food because they suffer from a disability considered permanent under the Social Security Act or suffers from a non disease-related, severe, permanent disability; the income of the others with whom such an individual resides (excluding the income of the individual and spouse) cannot exceed one hundred sixty-five percent of the poverty line (Subsection E of 8.139.500.8 NMAC);

(5) separate status may be granted on a case-by-case basis to other individuals or groups of individuals who have customarily purchased and prepared food apart from the individual(s) with whom they are now living.

[8.139.400.8 NMAC - Rp 8.139.400.8 NMAC, 7/16/2024]

8.139.400.9 MANDATORY MEMBERS:

A. Separate household status: For purposes of participation in the food stamp program, there can be more than one household living in a single dwelling. To be considered separate, an individual or group of individuals must purchase food and prepare meals separately from the other individual(s) living in the dwelling. It is not necessary to store food separately or use a different stove or refrigerator. Individuals who wish to be certified separately from those with whom they live are responsible for verifying their separate status.

B. Spouses and able-bodied parents under age 60 who are away from home all or most of the time with traveling jobs, such as truckers or salespersons, will be considered members of the household, provided they have not established residence away from home.

C. Spouses and parents who are employed away from home, such as construction workers, do not lose or relinquish residence with the household even though a majority of their meals are eaten away from home, provided that they will be in the home at least part of every month. Dual participation will not be permitted.

D. Elderly/disabled: Individuals who are elderly and disabled, and unable to prepare their own meals, but who wish to be considered separate from the others with whom they live, are responsible for obtaining the cooperation of the others in providing necessary income information, and for providing the ISS verification that such individuals meet the Social Security Administration's permanent disability standards. Any household member claiming a permanent disability under the definition of elderly/disabled, who has a disability that is questionable or not apparent to the ISS must provide a statement from a physician, or licensed or certified psychologist, to help the ISS make a disability determination.

E. Ineligible for separate status: The following individuals living with others or groups of individuals living together will be considered as customarily purchasing food and preparing meals together even if they do not do so:

(1) Spouse: Spouses who live together, as defined in Section 8.139.650 NMAC, definitions.

(2) Children: Children (excluding foster children) under 18 years of age who live with and are under the parental control of a household member other than their parent. Children are considered to be under parental control if the children are financially or otherwise dependent on a member of the household.

(3) Parents and children living together: Parents living with their natural, adopted, or stepchildren 21 years of age or younger, or such children living with such parents.

[8.139.400.9 NMAC - Rp 8.139.400.9 NMAC, 7/16/2024]

8.139.400.10 NONHOUSEHOLD MEMBERS - INDIVIDUALS RESIDING WITH THE HOUSEHOLD:

Individuals, described below, residing with a household will not be considered members for the purpose of determining household size, eligibility, or food stamp benefit amount:

A. Roomers: Individuals to whom a household furnishes lodging, but not meals, for compensation.

B. Boarders: Individuals who are furnished lodging and meals for compensation (see Paragraph (1) of Subsection C of 8.139.400.11 NMAC).

C. Live-in attendants: Individuals who live with a household to provide medical care, housekeeping, child care, or similar personal services.

D. Foster care children: Children in foster care will be included as household members only if the household chooses to include them. Income received for care of foster children is counted only if the household chooses to include the foster child.

E. Extended absence: Household members who do not return home at least part of the month, for example, children who attend school away from home and return only for vacation, and spouses who have established residence elsewhere, such as military personnel assigned overseas, are nonmembers.

F. Others: Unrelated individuals who share living quarters with the household and customarily purchase food or prepare meals separately from the household are not household members.

[8.139.400.10 NMAC - Rp 8.139.400.10 NMAC, 7/16/2024]

8.139.400.11 SPECIAL MEMBERS:

A. Students:

(1) Eligibility: An individual who is enrolled at least half-time in an institution of higher education will be ineligible to participate in SNAP unless the individual qualifies for one of the exemptions contained in Paragraph (3) of Subsection A of 8.139.400.11 NMAC. Half-time enrollment status is determined by the definition of the institution in which the individual is enrolled or attending.

(2) Enrollment:

(a) Students enrolled in an institution of higher education less than half time are not considered students for purposes of SNAP eligibility, and do not have to meet an exemption at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP.

(b) Students who are enrolled at least half-time in an institution of higher education in a program that normally requires a high school diploma or equivalency certificate for enrollment in a "regular curriculum," are students and have to meet an exemption at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP. The following programs are not in the "regular curriculum," and if enrolled in one of these programs, the student would not be considered a student for purposes of SNAP eligibility:

(i) Career or technical certificate programs. Career and technical certificate programs are programs which offer a sequence of courses that provide individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions; provide technical skill proficiency, an industry- recognized credential, a certificate, or an associate degree; and may include prerequisite courses that meet the requirements of this subparagraph; and include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual.

(ii) English as a second language;

(iii) adult basic education;

(iv) literacy; or

(v) community education courses

(c) Students who are enrolled at least half-time in a "regular curriculum," at a college or university that offers degree programs regardless of whether a high school diploma is required are considered students for purposes of SNAP eligibility, and have to meet an exemption found at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP.

(d) The enrollment status of a student shall begin on the first day of the school term. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and semester breaks. Enrollment status shall terminate when the student graduates, is expelled, does not re-enroll or is suspended for a period in excess of 30 calendar days

(e) Students who reside on campus as defined at 34 CFR 668.46(a) and who have opted to or are required to purchase a meal plan which provides fifty percent or more of their meals are ineligible for SNAP in accordance with 7 CFR 273.1(b)(7)(vi).

(3) Student exemptions: To be eligible, a student must meet at least one of the following exemptions:

(a) Age: Be age 17 or younger or age 50 or older.

(b) Physical or mental unfitness: For exemption purposes, physical or mental unfitness per Paragraph (3) of Subsection A of 8.139.400.11 NMAC and 7 CFR 273.5(b)(2) is defined as follows: An individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be obvious to the HCA and documented in the case file; or not obvious to the HCA, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and

certifying that the person is unfit for employment.

(i)

If an individual claims to be physically or mentally unfit for purposes of the student exemption, and the unfitness is not evident to ISD, verification may be required.

(ii)

Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or of a statement from a physician or licensed or certified psychologist.

(c)

Education/training program: Assigned to or placed in an institution of higher education through or in compliance with the requirements of:

(i)

a program under the Job Training Partnership Act of 1974 (JTPA);

(ii)

an employment and training program under 7 CFR 273.7;

(iii)

a program under Section 236 of the Trade Act of 1974 [19 U.S.C. 2296]; or

(iv)

an employment and training program for low-income households that is operated by a state or local government where one or more of the components of such program is at least the equivalent to an acceptable SNAP employment and training program component.

(d)

Employment: Employed a minimum of 20 hours per week and paid for such employment, or, if self-employed, working a minimum of 20 hours per week, and receiving weekly earnings at least equal to the federal minimum wage multiplied by 20 hours. Students whose employment hours fluctuate week to week will be considered to have met the minimum work hour requirement, as long as they maintain an average of 20 hours per week or 80 hours per month.

(e)

Work study: Be participating in a state or federally financed work study program during the regular school year.

(i)

The student must be approved for work study at the time of application for SNAP benefits, the work study must be approved for the school term, and the student must anticipate actually working during that time.

(ii)

The exemption will begin with the month in which the school term begins or the month work study is approved, whichever is later.

(iii)

Once begun, the exemption will continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(iv)

The exemption will not continue between terms when there is a break of a full month or longer, unless the student is participating in work study during the break.

(f)

Children: Responsible for a dependent household member who:

(i)

is under age six; or

(ii)

has reached the age of six but is under age 12 when ISD has determined that adequate child care is not available to enable the student to attend class and comply with the 20-hour work requirement in (d) or the work study requirement in (e) above.

(g)

Single parents: Enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i)

This provision applies when only one natural, adoptive or stepparent (single, widow/ widower, separated, divorced) is in the same SNAP household as the child.

(ii)

If there is no natural, adoptive or stepparent in the same SNAP household as the child, another full-time student in the same SNAP household as the child, may qualify for eligible student status under this provision if they have parental control over the child and are not living with their spouse.

(h)

Title IV-A: Receiving Title IV-A cash assistance.

(i)

Work incentive program: Participation in the job opportunities and basic skills program under Title IV of the Social Security Act or its successor programs.

(j)

On-the-job training: Be participating in an on-the-job training program. An individual is considered to be participating in an on-the-job training program only during the period of time the individual is being trained by the employer.

B. Strikers: Households with members on strike are ineligible to participate in the SNAP, unless the household was eligible for benefits the day before the strike began and is otherwise eligible at the time of application. A striker is anyone involved in a strike or concerted stoppage of work by employees, including a stoppage because of the expiration of a collective bargaining agreement, and any concerted slowdown or other concerted interruption of operations by employees. Employees participating in a sympathy strike will be considered strikers. The household will not receive an increased SNAP benefit amount as a result of the decrease in income of the striking member(s) of the household.

(1)

Nonstrikers: The following individuals are not considered strikers and are eligible for program participation:

(a)

any employee affected by a lockout;

(b)

an individual who goes on strike who is exempt from work registration (Subsection B of 8.139.410.12 NMAC) the day before the strike, except those who were exempt because of employment;

(c)

employees whose workplace is closed by an employer in order to resist demands of employees (i.e., a lockout);

(d) employees unable to work as a result of other striking employees (e.g., truck drivers who are not working because striking newspaper pressmen prevent newspapers from being printed;

(e) employees who are not part of the bargaining unit on strike but who do not want to cross a picket line for fear of personal injury or death;

(f) employees who are fired or laid off, or who are permanently replaced or officially resign; and

(g) employees who will not be permitted to return to their old jobs but are offered different ones.

(2) Striker eligibility:

(a) Striker eligibility is determined by considering the day before the strike as the day of application and assuming the strike did not occur.

(b) Eligibility at the time of application is determined by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two to the current income of the nonstriking household members during the month of application.

(c) To determine benefits (and eligibility for households subject to the net income eligibility standard), deductions will be calculated for the month of application as for any other household. Whether the striker's prestrike earnings are used or the current income is used, the earnings deduction is allowed if appropriate.

(d) Strikers whose households are eligible to participate in the SNAP will be required to register for work unless otherwise exempt.

C. Boarders: Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to those others for lodging and meals. An individual furnished both lodging and meals by a household, but paying less than reasonable compensation to the household for such services, will be considered a household member. Foster care children placed in the home of relatives or other individuals or families will be considered boarders. Foster care payments made to the household will not be counted as income, unless the household chooses to include the foster child. Payment to a household for lodging and meals will be treated as self-employment income to the household.

(1) Reasonable compensation: To determine if an individual is paying reasonable compensation for meals and lodging in making a determination of boarder status, only the amount paid for meals will be used, provided that the amount paid for meals can be distinguished from the amount paid for lodging. A reasonable monthly payment will be either of the following:

(a) A boarder whose board arrangement is for more than two meals a day must pay an amount which equals or exceeds the maximum SNAP benefit amount for the appropriate size of the boarder household.

(b) A boarder whose board arrangement is for two meals or less per day must pay an amount which equals or exceeds two-thirds of the maximum SNAP benefit amount for the appropriate size of the boarder household.

(2) Included boarders: A household which provides boarding services may request that the boarder be included as a member of the household. Boarders are not eligible to participate in the SNAP separately from the household providing the board. All the income and resources of included boarders will be counted in determining the eligibility and SNAP benefit amount of the household.

(3) Excluded boarders: The income and resources of boarders who are not included as household members will not be considered available to the household.

[8.139.400.11 NMAC - Rp 8.139.400.11 NMAC, 7/16/2024]

8.139.400.12 INELIGIBLE HOUSEHOLD MEMBERS: The following individuals shall be included as household members for the purpose of defining a household, but shall not be included as eligible members when determining the household's size, comparing the household's monthly income with the income eligibility standard, or assigning a benefit amount by household size.

A. Excluded household members:

(1) Ineligible non-citizens: Individuals who do not meet citizenship or eligible non-citizen status requirements, or eligible sponsored non-citizen requirements. The income and resources of such individuals shall be counted in determining the household's eligibility and benefit amount in accordance with the requirements in Subsection C of 8.139.520.10 NMAC.

(2) Ineligible students: Individuals enrolled in an institution of higher education who are ineligible because they do not meet the student eligibility requirements in Subsection A of 8.139.400.11 NMAC. Ineligible students are considered as non-household members in determining the household's eligibility and benefit amount. Income and resources are considered in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

B. Disqualified household members:

(1) SSN disqualified: Individuals who are disqualified for refusal or failure to provide a social security number.

(2) Work noncompliance: Individuals who have been disqualified for failure or refusal to comply with work requirements.

(3) IPV: Individuals disqualified for an intentional program violation.

C. Disqualification for fleeing felons and probation/ parole violators: No member of an otherwise eligible household shall be eligible to participate in the FSP as a

member of the household during any period in which the individual is:

(1) fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime or attempt to commit a crime, that is a felony, or in New Jersey a high misdemeanor, under the law of the place from which the individual is fleeing; or

(2) violating a condition of probation or parole imposed under a federal or state law.

(3) Treatment of income and resources: The income and resources of an individual described in Paragraphs (1) and (2) of Subsection C of 8.139.400.12 NMAC shall be attributed in their entirety to the household while the individual is in the home.

D. Disqualification for certain convicted felon: The disqualification contained in Subsection D of 8.139.400 NMAC shall not apply to a conviction if the conviction is for conduct occurring on or before February 7, 2014. An individual shall not be eligible for SNAP benefits if the individual is convicted as an adult of:

(1) aggravated sexual abuse under section 2241 of title 18, United States Code;

(2) murder under section 1111 of title 18, United States Code;

(3) an offense under chapter 110 of title 18, United States Code;

(4) a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or

(5) an offense under state law determined by the attorney general to be substantially similar to an offense described in Paragraph (1), (2), or (3) of Subsection D of 8.139.400.12 NMAC; and

(6) The individual is not in compliance with the terms of the sentence of the individual or the restrictions under Subsection C of 8.139.400.12 NMAC.

[8.139.400.12 NMAC - Rp 8.139.400.12 NMAC, 7/16/2024]

8.139.400.13 SPECIAL HOUSEHOLDS:

A. Institutions: An individual shall be considered a resident of an institution if the institution provides two or more meals daily, and the institution has not been authorized to accept food stamp benefits.

B. Eligibility: Residents of institutions shall not be eligible to participate in the food stamp program, with the following exceptions:

(1) Federally subsidized housing: Residents of federally subsidized housing for the elderly, built under Section 202 of the Housing Act of 1959 (even if residents are not elderly), provided that they otherwise qualify for participation.

(2) Drug/alcoholic treatment centers: Drug addicts or alcoholics who, for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, live in a public or private nonprofit facility or treatment center.

(3) Disabled/blind group living arrangement: Disabled or blind individuals as defined in (i) through (x) of Subparagraph (b) of Paragraph (23) of Subsection A of 8.139.100.7 NMAC who are residents in a group living arrangement.

(4) Battered women/children: Women, or women with their children, temporarily residing in a shelter for battered women and children. Such persons temporarily residing in shelters for battered women and children shall be considered individual households for the purposes of applying for and participating in the food stamp program.

(5) Homeless: Residents of public or private nonprofit shelters for the homeless.

C. Residents of drug/alcohol treatment centers: A drug addict or alcoholic who regularly participates in a drug or alcoholic treatment or rehabilitation program as a resident of the center may voluntarily apply for food stamp benefits. Children living with their eligible parent(s) in a drug or alcohol treatment center shall be considered household members when determining eligibility and benefit amount. A caseworker shall certify residents of addict/alcoholic treatment centers, and their children, by using the same provisions applied to all other applicant households, except that certification must be accomplished through an authorized representative employed by the institution. (For further information, Subsection D of 8.139.110.9 NMAC)

(1) Processing:

(a) Expedited services: Residents of treatment centers or rehabilitation centers for drug addiction or alcohol treatment, and their children, may qualify for expedited service in the same way as any other household. Food stamp benefits shall be received no later than the seventh calendar day following the date of application, and verification may be postponed. Verification requirements shall be completed before the second month's benefits are issued. (See 8.139.110.16 NMAC for more information on expedited service and continuation of benefits).

(b) Normal processing: If normal processing standards apply, the caseworker shall complete the verification and documentation requirements before making an eligibility determination for the initial application (see 8.139.110.12 NMAC and 8.139.110.13 NMAC).

(c) Changes and recertifications: Changes and recertifications shall be processed for resident households using the same standards outlined at 8.139.120.10 NMAC. Households shall be extended the same rights to notices of adverse actions, to fair hearings, and to entitlement to lost benefits as are all other food stamp households (see 8.139.120.8 NMAC and 8.139.120.10 NMAC).

(2) Treatment centers eligibility status:

(a) Food and nutrition service authorization: Before certifying any resident for food stamp benefits, a caseworker shall verify that the treatment center is authorized by FNS as a retailer if the center wishes to accept food stamp benefits. If the center is not authorized by FNS, the treatment center's status under Part B of Title XIX of the Public Health Service Act (42 USC, 300 et seq.) shall be verified.

(b) List of residents: Each treatment and rehabilitation center must provide the appropriate county office a list of currently participating residents. The list must include a statement signed by a responsible center official attesting to the list's validity. The list is required on a monthly basis.

(c) On-site visits: The county director or designee shall conduct periodic, random, on-site visits to the center to ensure the accuracy of the list and that the appropriate county office records are consistent and up-to-date.

(d) Change notification: The treatment center must notify the caseworker of changes in a household's income or other circumstances and when an addict or alcoholic leaves the treatment center. The treatment center must return the household's food stamp benefits to the county office if the household has left the center without its share.

(3) When household leaves center: When a household leaves the center, the center must give the resident household its ID card and any unused food stamp benefits. The household, not the center, shall be allowed to participate during any months remaining in the certification period.

(a) A household shall receive the full food stamp benefit amount if no benefits were spent on its behalf. This is applicable at any time during the month.

(b) If food stamp benefits have already been issued and any amount has been spent on behalf of a household, and the household leaves the program before the 16th day of the month, the treatment center must return to the household one-half of the monthly food stamp benefit amount. If a household leaves after the 16th of the month, and the food stamp benefits have already been issued and used, no food stamp benefits shall be returned to the household.

(c) The treatment center must, if possible, give the household a change report form to report the household's new address and other circumstances after leaving the center, and must advise the household to return the form to the appropriate county office within ten days.

(d) When the household leaves the treatment center, the center is no longer allowed to act as the household's authorized representative.

(4) Organization/institution responsibilities:

(a) The organization or institution is responsible for:

(i) Program rules: An organization or institution is legally responsible for any misrepresentation or intentional program violation which it knowingly commits in the certification of center residents.

(ii) Awareness of household circumstances: As an authorized representative, the organization or institution must be aware of the household's circumstances and should carefully review those circumstances with any resident before applying on their own behalf.

(iii) Proper use of food stamp benefits: The organization or institution shall be strictly liable for any loss or misuse of food stamp benefits held on behalf of resident households, and for all over issuances that occur while the households are residents of the treatment center. The organization or institution may be penalized or disqualified if it is determined administratively or judicially that food stamp benefits were misappropriated or used for purchases that did not contribute to a certified household's meals.

(b) The county office shall notify the food assistance bureau when it has reason to believe that an organization or institution is misusing food stamp benefits in its possession. The food assistance bureau shall notify FNS. HCA shall take no action before FNS action against the organization or institution.

(c) HCA shall establish a claim for over issuance of food stamp benefits held on behalf of resident clients if any over issuance is discovered during an investigation or hearing procedure for redemption violations.

(d) If FNS disqualifies an organization or institution for any period of time, HCA shall suspend its authorized representative status for the same period.

D. Residents in group living arrangements: A disabled or blind resident of a public or private non-profit group living arrangement may choose to apply for food stamp benefits on their own, or through an authorized representative of the resident's own choosing, or through the facility's authorized representative. The group living arrangement facility must determine if the resident may apply on the resident's own behalf based on the resident's physical and mental ability to handle their own affairs. If a resident applies through the facility's authorized representative, eligibility shall be determined as a one-person household. If a household applies on its own behalf, the household size shall be determined according to the rules at Subsection C of 8.139.400.8 NMAC. Such residents shall be certified using the same provisions applied to all other households. HCA shall determine that the group living arrangement facility is a non-profit

organization as established by its articles of incorporation with the New Mexico public regulation commission, and the group living arrangement facility must provide verification that it is authorized by FNS or certified by the New Mexico department of health as a group living arrangement, before any of the residents are certified for food stamps.

(1) Resident's rights/responsibilities:

(a) The rights and responsibilities listed in Paragraph (1) of Subsection C of 8.139.400.13 NMAC, for residents of treatment centers also apply to blind or disabled residents of group living arrangements when the facility acts as the resident's authorized representative.

(b) If a household has made application on its own behalf, the household is responsible for reporting changes to the county office within 10 days of the date the change becomes known to the household.

(c) If a resident, or a group of residents, receives food stamp benefits on the resident's or group's own behalf and retain use of the resident's or group's food stamp benefits, the resident or group is entitled to keep the food stamp benefits when the resident or group leaves. If a group of residents has received food stamp benefits as one household, a pro rata share of the remaining food stamp benefits shall be provided to any departing member.

(d) Residents of group living arrangements receiving food stamp benefits on their own behalf are responsible for over issuances, as would any other household (see Subparagraph (d) of Paragraph (2) of Subsection C of 8.139.400.13 NMAC).

(2) Group home responsibilities:

(a) The same responsibilities apply to authorized representatives of a group living arrangement as to treatment centers (Paragraph (4) of Subsection C of 8.139.400.13 NMAC). These provisions are not applicable if a resident has applied on the resident's own behalf. (For further information see Subsection B of 8.139.110.9 NMAC, authorized representatives).

(b) A group living facility shall give the appropriate county office a list of currently participating residents. This list shall include a statement by a responsible center official attesting to the validity of the list. The list is required on a monthly basis.

(c) The county director or designee shall conduct periodic, random on-site visits to ensure the accuracy of the list and make sure that the appropriate county office records are consistent and up-to-date.

(d) If a group living facility acts in the capacity of authorized representative, it must notify the caseworker of changes in a household's income or other household circumstances, and when an individual leaves the group living arrangement.

(e) When a household leaves a group living facility, the facility, if it either acted as authorized representative or retained use of food stamp benefits on behalf of residents, gives the departing household its ID card and any unused benefits. The household, not the group living facility, shall be allowed to sign for and receive any remaining food stamp benefits.

(f) A departing household must receive the full food stamp benefit amount, if issued, and if no food stamp benefits have been spent on behalf of that household. These procedures are applicable at any time during the month.

(g) If the food stamp benefits have been issued and any portion spent on behalf of the household, and the household leaves the group living arrangement before the 16th day of the month, the group living facility must return the ID card and one-half of the monthly food stamp benefit amount to the departing household. If the household leaves on or after the 16th of the month and the food stamp benefits have already been issued and used, the household shall not receive any food stamp benefits.

(h) If a group of residents is certified as one household and gives the food stamp benefits to the group living facility to use, departing residents must be given a pro rata share of one-half of the household's monthly food stamp benefit amount if the group leaves prior to the 16th day of the month. When a household leaves, the group living facility may no longer act as the household's authorized representative.

(i) The group living facility shall, if possible, give the household a change report form to report the household's new address and other circumstances after leaving the facility, and shall instruct the household to return the form to the appropriate county office within ten days.

(3) Use of benefits:

(a) A group living facility may purchase and prepare food for eligible residents on a group basis if residents normally get their meals at a central location as part of the group living arrangement services, or if meals are prepared at a central location for delivery to the individual residents.

(b) If residents purchase or prepare food for home consumption, as opposed to communal dining, the group living facility must make sure that each resident's food stamps are used for meals intended for that resident.

(c) If residents retain use of their own food stamp benefits, they may either use the food stamp benefits to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.

E. Battered women's shelters:

(1) Before certifying residents of a battered women's shelter, a caseworker shall make sure that the shelter is a public or private nonprofit residential facility serving battered women and their children.

(2) If a facility serves other individuals as well as battered women and their children, a caseworker shall make sure that a part of the facility is set aside on a long term basis to serve only battered women and their children.

(3) Shelters with FNS authorization to redeem food stamps at wholesalers shall be considered to be meeting the definition and the caseworker is not required to make any further determination. The caseworker shall document the basis of this determination.

(4) Local ISD offices are required to maintain and update a current list of shelters meeting the battered women's shelter definition to facilitate prompt certification of eligible residents.

(5) Special certification procedures:

(a) Many shelter residents have recently left a household containing the person who abused them. The former household may be certified for participation in the food stamp program, and its certification may be based on a household size that includes the woman and children who have just left. Shelter residents included in such a certified household may nevertheless apply for and (if otherwise eligible) participate in the program as a separate household, and concurrently, if the household that included them is the household containing the person who abused them. Shelter residents included in such a household may receive additional food stamp benefits as a separate household only once in a month.

(b) Shelter residents who apply as separate households shall be certified solely on the basis of their own income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and expenses of their former household. Jointly held resources shall be considered inaccessible.

(c) Room payments from the residents to the shelter shall be counted as shelter expenses. Any shelter residents eligible for expedited service shall be handled in accordance with the provisions in 8.139.110.16 NMAC.

(6) Handling the former household: The caseworker shall take prompt action to make sure that the former household's eligibility or food stamp benefit amount reflects the change in household size and composition.

[8.139.400.13 NMAC - Rp 8.139.400.13 NMAC, 7/16/2024]

8.139.400.14 MIGRANT AND SEASONAL FARMWORKER HOUSEHOLDS:

A. Migrant or seasonal farmworker households are entitled to special handling of their application as described below. Only migrant or seasonal farmworker households will be classified as destitute and receive the special income considerations outlined in this section. For migrant or seasonal farmworker households only, the initial month is defined as the first month for which the household will be certified for participation in the food stamp program following any period of more than 30 days during which the household was not certified for participation. More than 30 days must pass before the application month is considered an initial month and benefits are prorated from the date of application. If 30 days have not passed, the household is entitled to a full month's benefits.

B. Destitute households: Migrant or seasonal farmworker households may have little or no income at the time of application and may be in need of immediate food assistance, even though a household may have received income at some time during the month of application. The following procedures will be used to determine whether migrant or seasonal farmworker households may be considered destitute and therefore entitled to expedited service and special income calculation procedures, except that migrant or seasonal farmworker households with resources of $100 or more will not be entitled to expedited service.

(1) Terminated income source:

(a) Expedited service: Migrant or seasonal farmworkers whose only income for the month of application was received before the date of application, and was from a terminated source, will be considered destitute and entitled to expedited service.

(b) Monthly or more frequent income: If income is received on a monthly or more frequent basis, it will be considered as coming from a terminated source if it will not be received again from the same source during the balance of the month of application or during the following month.

(c) Less often than monthly income: If income is normally received less often than monthly, the nonreceipt of income from the same source in the balance of the month of application or in the following month is inappropriate to determine whether or not the income is terminated. Therefore, for households normally receiving income less often than monthly, the income will be considered as coming from a terminated source if it will not be received in the month in which the next payment would normally be received.

(2) New income source:

(a) Households whose only income for the month of application is from a new source will be considered destitute and entitled to expedited service if income of more than $25 from the new source will not be received by the 10th calendar day after the date of application.

(b) Income normally received on a monthly or more frequent basis will be considered to be from a new source if income of more than $25 has

not been received from that source within 30 days before the date the application was filed.

(c) If income is normally received less often than monthly, it will be considered to be from a new source if income of more than $25 was not received within the last normal interval between payments.

(3) Income from terminated and new source:

(a) Households may receive income from both a terminated source before the date of application and from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and if income of more than $25 from the new source will not be received by the 10th day after the date of application.

(b) A household member who changes jobs but continues to work for the same employer will be considered as still receiving income from the same source. A migrant farmworker's source of income is considered to be the grower/employer for whom the migrant is working at a particular point in time, and not the crew chief. A migrant who travels with the same crew chief but moves from one grower/employer to another will be considered to have moved from a terminated income source to a new source.

(4) Travel advances: Some employers provide travel advances to cover the costs of new employees who must travel to the location of their new employment. To the extent that these payments are excluded as a reimbursement, receipt of travel advances will not affect the determination of when a household is destitute. If a travel advance is, by written contract, an advance of wages to be subtracted from wages later earned by the employee rather than a reimbursement, the wage advance will be counted as income. Receipt of a wage advance for travel costs of a new employee will not affect the determination of whether subsequent payments from the employer are from a new source of income, or whether a household will be considered destitute.

C. Special income calculation: The eligibility and food stamp benefit amount of destitute households will be calculated for the month of application by considering only income which is received between the first of the month and the date of application. Any income from a new source that the household anticipates receiving after the date of application will be disregarded. Destitute household eligibility will be determined using the special income calculations in Subsection B of 8.139.400.14 NMAC, and by comparing as appropriate the household's gross or net income to the income eligibility standards in Subsection E of 8.139.500.8 NMAC. The procedures described in Subsection B of 8.139.400.14 NMAC above apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source will be disregarded in the first month of the new certification period if income of more than $25 will not be received from the new source by the 10th calendar day after the date of the household's normal issuance cycle.

D. Prospective budgeting: Migrant or seasonal households will be entitled to a prospective determination of eligibility and food stamp benefit amount during the time they are in the migrant stream.

(1) Anticipating income:

(a) Income received during the past 30 days will be used as an indicator of the income that is and will be available to the household during the certification period.

(b) An ISS will not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated.

(c) If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the ISS and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income.

(2) Handling anticipated income:

(a) Income anticipated during the certification period will be counted as income only in the month it is expected to be received, unless the household chooses to have its income averaged.

(b) At recertification, income from a new source will be disregarded in the first month of the new certification period, if more than twenty - five dollars ($25) income will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

(3) Continuous employment:

(a) In cases where the head of a migrant or seasonal household is steadily employed, income from the previous month is usually a good indicator of the amount of income that can be anticipated in the month of application and following months.

(b) If the information supplied by a household or a collateral contact (8.139.650.7 NMAC) indicates that future income will differ from the previous month's income, the ISS will use such information to make a reasonable estimate of anticipated income.

(c) The method used to determine income must be fully documented in the case record.

(4) Hourly and piecework wages:

(a) When income is received on an hourly or piecework basis, it may

fluctuate if a wage earner works less than eight hours some days or is required to work overtime on others. The ISS will discuss with the household to determine the "normal" amount of the income to be expected as a result of one week's work and whether the income can be reasonably expected to be available during the certification period. The amount which is reasonably expected will be used to determine monthly income.

(b) The option of averaging income should be discussed with the household.

(5) Withheld wages:

(a) Wages held at the request of an employee will be counted as income to the household in the month the wages would otherwise have been paid by the employer.

(b) Wages held by the employer as a regular practice, even if in violation of law, will not be counted as income, unless the household anticipated asking for and receiving an advance, or receiving income from wages that were previously held by the employer as a regular practice, and that were, therefore, not previously counted as income.

(c) Wage advances will count as income in the month received only if reasonably anticipated.

(6) Varied eligibility: Because of anticipated changes, a household may be eligible for the month of application but ineligible in a later month. The household will be entitled to food stamp benefits for the month of application even if the processing of its application results in the food stamp benefits being issued in a subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month because of anticipated changes in circumstances. Even though benefits are denied for the month of application, the household does not need to reapply in the following month. The same application will be used for the denial of the month of application and the determination of eligibility for subsequent months.

(7) Varied benefit amount: As a result of anticipating changes, a migrant or seasonal household's food stamp benefit amount for the month of application may differ from its food stamp benefit amount for subsequent months. The ISS must establish a certification period for the longest possible period over which changes in circumstances can be reasonably anticipated. The food stamp benefit amount will vary from month to month within the certification period, unless the household chooses to have its income averaged.

E. Income averaging: Destitute migrant or seasonal farmworker households may choose to have income averaged. Income will not be averaged for destitute households, unless the household so chooses, because averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current needs. If the income averaging option is chosen, it cannot be changed during the certification period.

F. Deductible expenses: For migrant or seasonal households in the job stream, deductible expenses are determined prospectively in accordance with the following procedures (see 8.139.500.11 NMAC for more information).

(1) Anticipating expenses: A household's expenses will be calculated based on the expenses for which the household expects to be billed during the certification period. Anticipation of these expenses will be based on the most recent month's bills, unless it is reasonably certain a change will occur. The ISS will not average past expenses, such as utility bills, for the last several months, as a method of anticipating utility costs for the certification period. When the household's actual costs for utilities, including a heating or cooling cost, are anticipated to be less than the state's standard utility allowance (SUA), the SUA is applied. Similarly, when more than one household shares utility expenses, and a household's share of the billing for heating or cooling costs is less than its prorated share of the SUA, the household will be given its prorated share of the SUA.

(2) Averaging expenses: Migrant households may choose to average anticipated expenses as follows.

(a) Households may choose to have fluctuating expenses averaged.

(b) Households may choose to have one-time only expenses averaged over the certification period in which they are billed.

(c) Households may choose to have expenses that are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover.

G. Certification periods:

(1) A household will be assigned the longest certification period possible based on the predictability of the household's circumstances. Because of the uncertainty of income and the likelihood of frequent and significant change in income or household circumstances, migrant or seasonal households usually are certified for one month. A two- or three- month certification period may be assigned if income and circumstances are stable and the household chooses to average income and expenses.

(2) Expedited migrant households: A migrant or seasonal household eligible for expedited service and assigned a certification period of longer than one month, will receive the first month's benefits. If verification is postponed, the household will be notified in writing that postponed verification from sources within and out-of-state must be provided before food stamp benefits for the second

month are issued. Migrants will be entitled to postpone out-of-state verification only once each season. If a migrant or seasonal household requesting expedited service has already received this consideration during the current season, the ISS will grant a postponement of out-of-state verification only for the initial month's issuance and not for the second month's issuance. The notice to the household will state that if the verification results in a change in the household's eligibility or food stamp benefit amount, the ISS will act on the change without advance notice of adverse action.

[8.139.400.14 NMAC - Rp 8.139.400.14 NMAC, 7/16/2024]

8.139.400.15 DISASTER VICTIMS:

A. Authority:

(1) Section 409 of the Disaster Relief Act of 1974 authorizes the president to distribute emergency food stamp benefits through USDA to low-income households which are unable to purchase adequate amounts of nutritious food as a result of a major disaster.

(2) The Food Stamp Act of 1977 also provides for development of disaster relief provisions. During a major disaster declared by the president or by USDA/FNS, disaster relief provisions will be implemented in those areas declared in need of disaster relief.

B. Determination of need:

(1) FNS will establish temporary eligibility standards for the duration of an emergency for households that are disaster victims as defined in this section. In addition, FNS will provide for emergency food stamp benefits to eligible households to replace food destroyed in a disaster. The emergency food stamp benefits will be equal to the value of the food destroyed, but not greater than the applicable maximum food stamp benefit amount for the household size.

(2) HCA is authorized to distribute emergency food stamp benefits to households residing in those areas determined to be adversely affected by a major disaster, but only upon the determination by USDA/FNS that such households have food assistance needs that cannot be met by the existing program in the project area(s), and only to those households that meet the eligibility criteria.

(3) The HCA food assistance bureau, after contact with USDA/FNS, will provide direction for implementation of disaster provisions.

(4) Under no circumstances may an ISD county office implement the emergency disaster provisions without specific direction and approval from the income support division, food assistance bureau.

C. Eligibility criteria-conditions: To be eligible for emergency food stamp benefits during a disaster, a household must meet all the following standards:

(1) At the time the disaster struck, the household must have been residing within the geographical area which is considered a disaster area. Such a household may be certified for disaster food stamp benefits even though the household at present is occupying temporary accommodations outside the disaster area. (A household representative must go to the certification site to be certified for disaster food stamp benefits).

(2) The household will purchase food and prepare meals during the disaster benefit period. A household residing in a temporary shelter that is providing all the household's meals is not eligible.

(3) The household must have experienced at least one of the following adverse effects of the disaster:

(a) The household's income becomes inaccessible or there is a termination of income or a significant delay in receipt of income, for example, if a disaster has caused a place of employment to close or reduce its work days, or if paychecks or other payments are lost or destroyed, or if there is a significant delay issuing paychecks or other payments. The household's income can become inaccessible if the work location is inaccessible because of the disaster.

(b) The household's liquid resources become inaccessible. Inaccessibility of liquid resources includes situations in which the financial institution(s) holding the household's resources is expected to be closed because of the disaster for most of the disaster benefit period, or if the household is otherwise unable, and is not expected to be able, to reach its cash resources for most of the disaster benefit period.

(4) Expenses paid during the disaster period:

(a) A household must have paid, or expect to pay for, expenses during the disaster benefit period to be eligible for a shelter expense deduction. The expense is not deductible if the household will not pay for it until after the disaster benefit period is over.

(b) If a household has received, or is reasonably certain to receive, a reimbursement for all or part of the expense during the disaster benefit period, only the net expense after reimbursement is allowed as a shelter expense deduction. If a reimbursement is expected, but it is not reasonably certain that it will be provided during the disaster benefit period, the full amount of the expense is deductible. The following household expenses are deductible:

(i) repairing damage to home or property essential to the employment or self-employment of a household member;

(ii) temporary shelter if a home is uninhabitable or the household cannot reach its home;

(iii) moving out of an area evacuated because of a disaster;

(iv) protecting property from disaster damage;

(v) medical expenses for disaster-related injury to a person who was a household member at the time of the disaster (including funeral and burial expenses in the event of death).

(vi) any other expenses may not be considered.

(5) Disaster income calculation: Disaster income is calculated by adding the household's take-home pay to the household's available cash resources and then deducting the household's disaster-related expenses. The result must be less than or equal to the food stamp maximum disaster income limit for the household size.

(6) Maximum disaster income limit: The maximum disaster income limit is calculated by adding the food stamp net income limit for the appropriate household size, the standard deduction, and the maximum shelter deduction. Medical deductions for the elderly and disabled, the earned income deduction, the uncapped shelter deduction for the elderly and disabled and the dependent care deduction will not be used to calculate the maximum disaster income limit.

(7) Countable income: Income counted to determine eligibility includes:

(a) wages a household actually receives after taxes and other payroll deductions are taken out;

(b) assistance payments or other unearned income a household receives; and

(c) net self-employment income earned after personal income and social security taxes as well as expenses of producing the self-employment income are subtracted;

(d) income is only counted if it has already been received in the benefit period or if the household is reasonably certain the income will be received during the disaster benefit period;

(e) all cash resources (cash on hand and all funds in savings and checking accounts) will be counted as income unless the ISS determines that such funds will be inaccessible for most of the disaster benefit period; the resource standards do not apply under disaster certification rules.

(8) Certification periods: Certification periods must coincide with the disaster benefit period.

(a) If the disaster benefit period is for one month, income over this full month period will be counted; disaster-related expenses paid or expected to be paid over the full month period will be deducted to determine the net income.

(b) If the disaster benefit period will be for one- half month, estimated income over the half-month period will be counted, disaster-related expenses paid or expected to be paid over this period will be deducted, and the income limit will be only one-half of the monthly food stamp maximum disaster income limit.

(9) Household estimates: Applicant households must provide estimates of total take-home pay, cash resources, and allowable disaster-related expenses. Verification is not required, nor is an ISS required to request itemization of individual expenses or of different sources of income or resources.

(10) Variable criteria: FNS may, in certain disaster situations where circumstances warrant, establish eligibility standards that differ from those set forth above.

D. FSP operations:

(1) Regular FS program: The regular food stamp program will continue to operate and to process applications and make eligibility determinations in its normal manner during a disaster benefit period. If an applicant household does not meet the eligibility requirements for the disaster program, the household will be informed of the potential availability of food stamp benefits under the regular program, including provisions to consider costs of home repair caused by a natural disaster as an allowable shelter expense.

(2) Personnel: HCA may use volunteers and other agency personnel to help the certification staff make eligibility determinations during a disaster. A disaster relief agency designated by HCA and approved by FNS may also determine the eligibility of applicant households. HCA may set up alternate certification and issuing points that are accessible to the affected population.

(3) General standards: To apply for food stamp benefits under the disaster assistance program, a household must complete and submit a short form application, be interviewed, and provide limited verification, as specified below. HCA may use group sessions to screen applicants, explain rights and responsibilities, and explain how to complete an application.

(4) Verification: Except for identity and residence, all other verification requirements are waived for disaster emergency assistance. Since verification documents may have been lost or destroyed in the disaster, interviewers may use collateral sources to provide verification and to expedite certification. The household will not be denied for lack of verification of residence in unusual situations, such as if a household has recently moved to the area, has no documentary evidence of residence, and is not known to others in the disaster area.

(5) Period for processing: No emergency food stamp benefits will be authorized after the end of the disaster period. If the period is extended by FNS, HCA may be authorized to permit households already certified for emergency food stamp benefits to apply for recertification, if the households continue to meet the disaster eligibility requirements. A household applying for recertification must submit a new application and be interviewed. Identity and residence need not be reverified unless they are questionable. If an extension

is granted, HCA will issue a press release notifying those concerned that the disaster authorization period has been extended, and where and when they may reapply for extended food stamp benefits.

(6) Benefit calculation: Households meeting the eligibility requirements will receive the maximum food stamp benefit amount for their household size as listed in Subsection E of 8.139.500.8 NMAC, if the disaster benefit period is a full month. If the disaster benefit period is for a half month, the household will receive half the maximum food stamp benefit amount.

(7) Certification notices: In certifying disaster benefit applicants, written notification requirements will be waived. The notification that interviewers are required to give applicants may be given orally.

(8) ID cards: Participants in a disaster emergency program will be issued an identification card (ID) marked with the word "disaster" or some similar designation for disaster food stamp issuance. The ID card will serve to identify the household at an issuing point or in retail food stores as a legitimate food stamp participant.

(9) Transition to FSP: Households issued emergency food stamp benefits which are later determined eligible to participate in the ongoing food stamp program will have their emergency food stamp benefits deducted from their regular program food stamp benefits if the disaster certification period and the ongoing certification period overlap. The ISS will calculate food stamp benefits to be issued under the regular program as follows:

(a) the number of days overlapping the disaster certification period and the certification period for ongoing food stamp benefits will be determined;

(b) disaster food stamp benefits will be prorated over the number of days in the disaster period to determine the disaster food stamp benefit amount issued on a daily basis; and

(c) the food stamp benefit amount to be issued under the regular program will be offset against the amount of overlapping disaster benefits determined in Subparagraph (b) of Paragraph (9) of Subsection D of 8.139.400.15 NMAC above.

(d) Interviewers must act promptly on all applications. HCA will give eligible households an opportunity to get disaster food stamp benefits the day of application, unless restrictions such as curfews make it impossible to meet this standard; in such a situation, a household must be given an opportunity to get benefits no later than the day following the date the application is filed.

(10) Controls: HCA will establish a system to detect duplicate applications for disaster food stamp benefits. The system will include an exchange of case index cards or lists of certified disaster households between the appropriate certification and issuance sites used in the disaster operation. HCA will also use computer checks, address checks, and telephone calls to keep households from receiving duplicate disaster benefits.

E. Application process:

(1) Forms:

(a) The short application form for temporary emergency assistance (ISD459) will be used to gather the minimum amount of information needed to establish eligibility and the food stamp benefit amount. It also serves as an issuance document.

(b) To determine eligibility, an application must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified.

(c) The short disaster application form will provide warnings of the civil and criminal provisions and penalties for violations of the Food Stamp Act, and of the fact that the household may be subject to a post-disaster review.

(2) Filing: To file an application for emergency food stamp assistance, a household must submit a completed form, in person or through an authorized representative, at a certification site. To be processed under disaster procedures, the application must be filed during the disaster period. Households applying outside this period will be processed according to regular food stamp program procedures.

(3) Household cooperation: If a household refuses to cooperate with an interviewer in completing the application process, the application will be denied at the time of refusal.

(4) Interviews: All applicants for emergency disaster assistance must be interviewed. HCA will screen applicants before the interview to identify those who do not meet eligibility requirements.

(a) The interview will be conducted as an official discussion of household circumstances. It is designed to process the application quickly and not hinder disaster operations.

(b) Interviews will be conducted by ISSs as well as by volunteers and other non-HCA personnel, such as representatives of an authorized disaster relief agency designated by HCA.

(c) The interviewer will review the information that appears on an application and resolve unclear or incomplete information.

(d) At the interview, a household will be advised orally of the disposition of its application, its rights and responsibilities, when its certification period for emergency assistance ends, and of the ongoing food stamp program.

(e) If a household wishes to file an application for the ongoing program, the interviewer will advise the household of the address and telephone number of the appropriate office.

(f) The interviewer will inform each certified household of the proper use of food stamp benefits.

F. Treatment of current FSP household:

(1) Eligibility: Households currently certified for the ongoing food stamp program may also be eligible for temporary emergency food stamp assistance during disasters. Such households will be allowed to apply for disaster food stamp assistance, and their eligibility will be determined in the same manner as for any other disaster victim. The ISS must, however, reduce the disaster food stamp benefit amount by the amount of regular food stamp benefits issued to the household under the ongoing program for any part of the disaster benefit period. If the household's food has been damaged by the disaster, and it must replace the food, the disaster food stamp benefit amount will not be reduced by the amount of food stamp benefits issued under the ongoing program. If it is not practical to determine, verify, or otherwise take into account ongoing program benefits, HCA will issue full disaster food stamp benefits to those households, with FNS approval.

(2) Replacements: A household requesting a replacement of food stamp benefits it had received under the ongoing program that were destroyed in the disaster, or of food destroyed in a disaster that was purchased with food stamp benefits issued under the ongoing program, will be handled by the ongoing program. A household will not be given a replacement if it has received, or will receive, disaster food stamp assistance for the same period.

(3) Reporting changes: Households certified under the ongoing program who report required changes during the application process for emergency assistance, will be referred to the ongoing program. The household is responsible for reporting the required information directly to the office that handles its regular case.

G. Issuance of emergency food stamps: Emergency food stamp benefits will be issued by normal procedures in effect in a project area if the opportunity to participate standards can be met. Such issuance arrangements may not be practical because of the effects of the disaster. HCA, with FNS approval, will make temporary arrangements during an emergency period to facilitate the issuance of benefits to disaster victims.

H. Fair hearings: Households denied disaster food stamp benefits may request a fair hearing. Households requesting a fair hearing must be offered an immediate supervisory review of their circumstances because of the time that is likely to pass before a fair hearing decision can be made. The supervisory review is not a replacement for a fair hearing, but may be held in addition to the fair hearing.

[8.139.400.15 NMAC - Rp 8.139.400.15 NMAC, 7/16/2024]

HISTORY OF 8.139.400 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
ISD 430.0000, Certification of Eligible Households, 8/8/1980.
ISD 460.0000, Action on Households with Special Circumstances, 8/15/1980.
ISD-Rule 421.0000, Food Assistance - Eligibility Standards, 11/5/1982.
ISD-Rule 420.0000, Eligibility Standards, 2/21/1983.
ISD-Rule 427.0000, Food Assistance - Students, 11/4/1982.
ISD-Rule 427.0000, Students, 2/9/1983.
ISD-Rule 427.0000, Students, 5/3/1984.
ISD-Rule 451.0000, Food Assistance - Action on Households with Special Circumstances, 11/5/1982.
ISD-Rule 450.0000, Action on Households with Special Circumstances, 10/13/1983.
ISD-Rule 450.0000, Food Assistance - Action on Households with Special Circumstances, 4/24/1984.
ISD-Rule 457.0000, Food Assistance - Residents of Drug/Alcoholic Treatment and Rehabilitation Programs, 11/5/1982.
ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 11/5/1982.
ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 2/23/1983.
ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 10/13/1983.
ISD FS 230, Food Stamp Households, 2/29/1988.
ISD FS 240, Special Food Stamp Households, 2/29/1988.

History of Repealed Material:
8.139.400 NMAC - Recipient Policy - Who Can Be A Recipient (filed 4/26/2001) Repealed effective 7/16/2024.

Other: 8.139.400 NMAC - Recipient Policy - Who Can Be A Recipient (filed 4/26/2001) Replaced by 8.139.400 NMAC - Recipient Policy - Who Can Be A Recipient, effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 420 RECIPIENT REQUIREMENTS - SPECIAL HOUSEHOLDS

8.139.420.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.139.420.1 NMAC - Rp 8.138.420.1 NMAC, 7/16/2024]

8.139.420.2 SCOPE: General public.
[8.139.420.2 NMAC - Rp 8.138.420.2 NMAC, 7/16/2024]

8.139.420.3 STATUTORY AUTHORITY: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7

U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.139.420.3 NMAC - Rp 8.138.420.3 NMAC, 7/16/2024]

8.139.420.4 DURATION: Permanent.
[8.139.420.4 NMAC - Rp 8.138.420.4 NMAC, 7/1/62024]

8.139.420.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited below a section.
[8.139.420.5 NMAC - Rp 8.138.420.5 NMAC, 7/16/2024]

8.139.420.6 OBJECTIVE: Issuance of the revised food stamp program policy manual is intended to be used in administration of the food stamp program in New Mexico. This revision incorporated the latest federal policy changes in the food stamp program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA.
[8.139.420.6 NMAC - Rp 8.138.420.6 NMAC, 7/16/2024]

8.139.420.7 DEFINITIONS: [**RESERVED**]

8.139.420.8 CATEGORICAL ELIGIBILITY (CE): All members of a food stamp household must maintain CE status for the household to be considered CE. Categorically eligible one and two person households are entitled to the minimum food stamp benefit amount, except in an initial month if the prorated benefit is less than ten dollars ($10).

A. Determining CE: Households may be CE by receiving financial assistance or by receiving a non-cash TANF/MOE funded benefit or service, known as broad-based CE.

(1) Financial assistance/SSI CE: A food stamp household is considered CE for the entire month when all of its members receive or has been determined eligible to receive any combination of the benefits or services from the following:

(a) financial assistance;

(b) financial, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort;

(c) SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)).

(2) Broad-based CE due to receiving a non-cash TANF/MOE funded benefit or service: A food stamp household is considered to be a broad-based CE household for the month of application and the entire certification period when the household's gross income is less than one hundred sixty-five percent FPG and the household has received a non-cash TANF/MOE funded benefit or service.

(3) Households not entitled to CE: A household shall not be considered CE if:

(a) any member is disqualified for an IPV;

(b) any member is disqualified for failure to comply with work registration or E&T requirements, including voluntarily quitting a job or reducing employment hours without good cause;

(c) any member is disqualified because of fleeing felon status or parole/probation violations;

(d) the household is institutionalized; or

(e) the household refuses to cooperate in providing information that is necessary to determine eligibility;

(f) households that lose eligibility because an individual member received substantial lottery or gambling winnings will remain ineligible until they meet the income and resource limits detailed in 7 CFR 273.8 and 273.9. The next time such a household reapplies and is certified for SNAP after losing eligibility under this rule, the household would not be considered categorically eligible. This requirement is not permanent; it applies only to the first time a household is certified under regular SNAP rules following the loss of eligibility for substantial lottery and gambling winnings.

(4) Households may be CE if they contain non-household members such as ineligible students, ineligible non-citizens, ABAWDs who are ineligible due to time limits.

B. Eligibility factors for CE households: All CE households are subject to food stamp eligibility requirements, including, but not limited to, verification of household composition, if questionable; benefit determination (income and deductions); disqualification for any reason; claims recovery and restored benefits; notices and fair hearings; and all reporting requirements.

(1) Financial assistance/SSI households: Households entitled to CE because of receipt of financial assistance or SSI do not have to provide verification of the following eligibility factors:

(a) resources;

(b) social security number;

(c) sponsored non-citizen information; and

(d) residency.

(2) Broad-based households: Households entitled to CE because they received a non-cash TANF/MOE funded benefit or service do not have to verify resources.

C. Case management for all CE households:

(1) Applicant households: Caseworkers shall postpone denying a potentially CE household until the 30th day to allow financial assistance or SSI benefit approval. If within 30 days following the denial date, the caseworker becomes aware of, approval which makes the household CE benefits shall be paid using the original application and any other information which has become available since that time.

(2) Responsibility to report changes: CE households subject to simplified or regular reporting must report changes in accordance with 8.139.120 NMAC.

(3) Action on changes to CE status: When a household reports a change or the HCA becomes aware of a change, the caseworker shall take action to determine if the household is still entitled to continue CE.

(a) Financial assistance: When the household reports a loss or the HCA becomes aware of a loss of SSI or financial assistance, the household should be evaluated for broad-based CE.

(b) Broad-based CE: The caseworker shall take action to determine if the household still meets the criteria for broad-based CE status per Paragraph (2) of Subsection A above. Should the reported change result in a loss of broad-based CE the household will be notified in writing. Any household no longer entitled to broad-based CE status may still participate in the food stamp program and are subject to all eligibility requirements including resource and reduced income limits. [8.139.420.8 NMAC - Rp 8.138.420.8 NMAC, 7/16/2024]

8.139.420.9 SPONSORED NON-CITIZENS:

A. Definition of a sponsored non-citizen: A non-citizen lawfully admitted for permanent resident status into the United States, for which an individual has executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act. Not all lawful non-citizens are sponsored. Only in the event that the sponsored non-citizen is eligible in accordance with of 8.139.410.9 NMAC shall the HCA consider available to the household the income and resources of the sponsor and spouse.

B. Date of entry or date of admission: The date established by the immigration and naturalization service (INS) as the date the sponsored non-citizen was admitted for permanent residence.

C. Sponsor: An individual who has executed an affidavit of support or similar agreement on behalf of a non-citizen, as a condition of the non-citizen's entry or admission into the United States as a permanent resident.

D. Exempt non-citizens: The provisions of this section do not apply to the following:

(1) a non-citizen participating in the food stamp program as a member of the sponsor's food stamp household;

(2) a non-citizen sponsored by an organization or group rather than an individual;

(3) a non-citizen who is not required to have a sponsor under the Immigration and Nationality Act; or

(4) a non-citizen that ISD has determined is indigent.

(a) For purposes of this paragraph, the term indigent means that the sum of the eligible sponsored non-citizen's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed one hundred thirty percent of the poverty income guidelines for the household's size.

(b) The caseworker shall determine the amount of income and other assistance provided in the month of application.

(c) If the non-citizen is indigent, the amount that the HCA shall count shall be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. Each indigence determination is renewed for additional 12-month periods.

(5) A battered non-citizen spouse, non-citizen parent of a battered child, or child of a battered non-citizen, for 12 months after the HCA determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After 12 months, the HCA shall not deem the batterer's income and resources if the battery is recognized by a court or the INS and has substantial connection to the need for benefits, and the non-citizen does not live with the batterer.

E. Sponsored non-citizen's responsibility: The HCA shall attribute the entire amount of income and resources to the applicant eligible sponsored non-citizen until the non-citizen provides the information specified below. The sponsored non-citizen is responsible for:

(1) obtaining the cooperation of the non-citizen's sponsor(s) to provide the caseworker, at the time of application or recertification, with the information or documentation necessary to determine the income and resources of a sponsor and a sponsor's spouse;

(2) providing the names and other identifying factors of other non-citizens for whom the non-citizen's sponsor has signed an affidavit of support;

(3) reporting the require information about the sponsor and sponsor's spouse should the non-citizen obtain a different sponsor during the certification period;

(4) reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or die during the certification period.

F. Information required: The following information shall be obtained from the non-citizen at the time of initial application and at recertification:

(1) the full amount of the income and resources of a non-citizen's sponsor;

(2) the full amount of the income and resources of a sponsor's spouse, if the spouse is living with the sponsor;

(3) provision of the Immigration and Nationality Act under which the non-citizen was admitted;

(4) date of the non-citizen's entry or admission as a lawful permanent resident as established by INS;

(5) the non-citizen's date of birth, place of birth, and non-citizen registration number;

(6) number of dependents claimed or who could be claimed as dependents by the sponsor and the sponsor's spouse for federal income tax purposes;

(7) name, address and phone number of the non-citizen's sponsor;

(8) the above information shall be verified at initial application and at recertification.

G. Deemed income:

(1) The monthly income of the income of a sponsor and the sponsor's spouse (if living with the sponsor) shall be considered the unearned income of the sponsored non-citizen, until the non-citizen achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the social security administration. If the sponsored non-citizen can demonstrate that the non-citizen's sponsor is the sponsor of other non-citizens, the HCA shall divide the income by the number of such sponsored non-citizens. The spouse's income shall be counted even if the sponsor and spouse were married after the sponsoring agreement was signed. The monthly income attributed to the sponsored non-citizen is the total gross earned and unearned income (less exclusions) of the sponsor and sponsor's spouse (if living with the sponsor) at the time the household containing the sponsored non-citizen member applies or is recertified for participation in the FSP, reduced by:

(a) a twenty percent earned income amount for the portion of the income determined as earned income of the sponsor and the sponsor's spouse; and

(b) an amount equal to the FSP's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes.

(2) TANF-sponsored non-citizen income: If a non-citizen has already reported gross income information about the non-citizen's sponsor according to TANF sponsored non-citizen rules, that income amount shall be used for food stamp deeming purposes.

(3) Sponsor-paid money: Actual money paid to the non-citizen by the sponsor or the sponsor's spouse shall not be counted as income to the non-citizen unless the amount paid exceeds the amount deemed to the non-citizen. The amount paid that actually exceeds the amount deemed shall be counted as income to the non-citizen, in addition to the deemed amount.

H. Deemed resources:

(1) The full amount of the resources reduced by $1,500 of a sponsor and the sponsor's spouse (if living with the sponsor) shall be deemed to be the resources of the sponsored non-citizen until the non-citizen achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the social security administration. The spouse's resources shall be counted even if the sponsor and spouse were married after the sponsoring agreement was signed. If the sponsored non-citizen can demonstrate that the non-citizen's sponsor is the sponsor of other non-citizens, the HCA shall divide the resources by the number of such sponsored non-citizens. Resources available to the sponsor shall be determined in accordance with the provisions found in 8.139.510 NMAC.

(2) TANF sponsored non-citizen resources: If a non-citizen has already reported all resource information on the non-citizen's sponsor according to TANF sponsored non-citizen rules, that resource amount shall be used for food stamp deeming purposes as the amount to be attributed to the non-citizen.

I. Determining eligibility and benefit amount: The amount of income and resources deemed to be that of the sponsored non-citizen is considered in determining the eligibility and benefit amount of the household of which the non-citizen is a member.

J. Sponsors:

(1) Sponsoring more than one non-citizen: If the sponsored non-citizen can demonstrate that the non-citizen's sponsor is the sponsor of other non-citizens, the HCA shall divide the income and resources by the number of such sponsored non-citizens.

(2) Non-citizen switches sponsors: If the non-citizen reports that they have changed sponsors during the certification period, deemed income and resources shall be recalculated based on information and verification about the new sponsor and the sponsor's spouse. The change shall be handled in accordance with change- reporting requirements, time frames and procedures, as appropriate.

(3) Loss of sponsorship: If a non-citizen loses their sponsor, and does not get another, the full amount of the income and resources of the previous sponsor continues to be attributed to the non-citizen until the non-citizen achieves US citizenship through naturalization

or has worked 40 qualifying quarters of coverage as defined by the social security administration. If the non-citizen sponsor dies, the income and resources shall no longer be attributed to the non-citizen.

K. Awaiting verification: Until the non-citizen provides information or verification necessary to determine eligibility, the sponsored non-citizen is ineligible. The caseworker shall determine the eligibility of any remaining household members. The caseworker shall consider available to the remaining household members the income and resources of the ineligible non-citizen in determining the eligibility and benefit level of the remaining household members. If the sponsored non-citizen refuses to cooperate in providing information or verification, other adult members of the non-citizen's household are responsible for providing the information or verification required. If the caseworker subsequently receives information or verification, the caseworker shall act on the information as a reported change in household membership in accordance to timeliness standards. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the household provides the needed sponsor information or verification. The caseworker shall assist the non-citizen in obtaining verification.

L. Over-issuance: A non-citizen's sponsor and the non-citizen shall be jointly liable for repayment of any over-issuance of food stamp benefits resulting from incorrect information provided by the sponsor. The sponsor of a non-citizen or the non-citizen shall also be independently responsible for the obligation to repay any over-issuance of food stamp benefits resulting from incorrect information provided by the sponsor.

(1) Good cause/sponsor: If a non-citizen's sponsor has good cause or is without fault for supplying the incorrect information, the non-citizen's household is solely liable for repayment of the over-issuance. The caseworker shall determine whether good cause exists in such situations, and shall consider the facts and circumstances, including information submitted by the non-citizen and by the sponsor. Good cause includes, but is not limited to, a misunderstanding by a sponsor of the responsibility to report information about the sponsor's resources and income or a lack of information provided at the time a sponsor executed the affidavit of support or similar agreement on behalf of the non-citizen. Problems caused by the inability of a sponsor or non-citizen to speak, read, or write English may constitute good cause.

(2) Establishing the claim: If a sponsor does not have good cause, the caseworker shall determine whether to establish a claim for the over-issuance against the sponsor or the non-citizen's household, or both. The HCA may choose to establish claims against both parties at the same time or to establish a claim against the party considered most likely to repay first. If a claim is established against the non-citizen's sponsor first, the caseworker shall ensure that a claim is established against the non-citizen's household if the sponsor fails to respond to a demand letter within 30 days of receipt. The HCA shall return to the non-citizen's sponsor or the non-citizen's household any amounts repaid in excess of the total amount of the claim.

(3) Claims collection against sponsor:

(a) The restitution bureau initiates a collection action by sending a non-citizen's sponsor a written demand letter which informs the sponsor of the amount owed, the reason for the claim, and how the sponsor may pay the claim. The sponsor shall be informed that they shall not be held responsible for repayment of the claim if the sponsor can demonstrate good cause or absence of personal fault for the incorrect information having been supplied to the HCA. In addition, the restitution bureau shall follow up the written demand letter with personal contact, if possible. The HCA may pursue other collection actions as appropriate to obtain payment of a claim against any sponsor who fails to respond to a written demand letter. The restitution bureau shall end a collection action against a sponsor at any time if it has documentation that the sponsor cannot be located, or if the cost of further collection efforts is likely to exceed the amount that can be recovered. If a non-citizen's sponsor responds to a written demand letter and is financially able to pay the claim at one time, the restitution bureau shall collect a lump sum cash payment. The restitution bureau shall negotiate a payment schedule with the sponsor for repayment of the claim, as long as payments are made in regular installments. For more information on handling claims, see 8.139.640.11 NMAC.

(b) Exception: A sponsor who is participating in the food stamp program as a household shall be excluded from any demand for repayment of the value of food stamp benefits issued to a sponsored non-citizen.

(4) Fair hearing: A sponsor is entitled to a fair hearing either to contest a determination that the sponsor was at fault for giving incorrect information, or to contest the amount of the claim.

(5) Claims collection against non-citizen households: Before initiating collection against a sponsored non-citizen's household for repayment of an over issuance caused by incorrect information having been supplied concerning the sponsor or sponsor's spouse, a caseworker shall determine whether the incorrect information supplied was due to an inadvertent household error or an intentional program violation (IPV) on the part of the non-citizen. Claims collection against a household shall be pursued regardless of the current eligibility status of sponsored non-citizen or non-citizen households.

(a) Intentional misrepresentation: If sufficient documentary evidence

exists to substantiate that incorrect information was provided by an act of IPV on the part of the non-citizen, the case shall be referred as a request for IPV disqualification, in accordance with the procedures in 8.139.647.8 NMAC. A claim against an non-citizen's household shall be handled as an inadvertent error claim until there is a determination of an IPV by an administrative disqualification hearing official or a court of appropriate jurisdiction.

(b) Misunderstanding/unintended error. If it is determined that incorrect information was supplied because of a misunderstanding or unintended error on the part of the sponsored non-citizen, the claim shall be handled as an inadvertent household error claim.

M. Memorandum of agreement: An agreement has been entered into by the secretary of the United States department of agriculture (USDA), the U.S. secretary of state, and the U.S. attorney general regarding sponsored non-citizen and their sponsors. A sponsor and non-citizen, at the time the sponsor executes an affidavit of support or similar agreement on behalf of the non-citizen, will be informed of the requirements of Sec. 1308 of P.L. 97-98. Under the agreement, the bureau of consular affairs of the state department and local INS offices provide information to the HCA that is needed to carry out the provisions of the agreement. The agreement lists the specific information that must be released by all parties to facilitate identification of the non-citizen and sponsor and enable the HCA to verify required information supplied by the non-citizen which is essential for eligibility determinations.
[8.139.420.9 NMAC - Rp 8.138.420.9 NMAC, 7/1/2024]

8.139.420.10 HOMELESS HOUSEHOLDS: Homeless households residing in public or private nonprofit shelters for homeless individuals will be exempt from the residents of an institution eligibility requirements (Subsection A of 8.139.400.13 NMAC). Such households may not be denied benefits for lack of a conventional or fixed residence, or be required to have a street address or post office box for mailing purposes. Homeless households may use their food stamp benefits to purchase meals from homeless meal providers that have been authorized by FCS to accept coupons for meal payments.

A. Homeless shelter standard: The HCA will use a standard estimate of shelter expenses for households in which all members are homeless and are not receiving free shelter throughout the calendar month. All homeless households that incur, or reasonably expect to incur, shelter expenses during a month will be eligible for the homeless shelter standard unless higher shelter expenses are verified. The homeless shelter standard, which includes both shelter and utility expenses, is adjusted annually, and is effective every October (Paragraph (3) of Subsection F of 8.139.500.8 NMAC).

B. Restrictions:

(1) Households: No special restrictions will be imposed on homeless households living in shelters.

(2) Homeless meal providers: Homeless meal providers may not act as authorized representatives for homeless households. If a homeless shelter is authorized by FNS as a homeless meal provider, the shelter may not require a homeless household to surrender its food stamp benefits to the shelter. The shelter can only request voluntary use of food stamp benefits from homeless food stamp recipients.

(3) Cost of food: A shelter for the homeless may not require households using food stamp benefits to pay more than the average cost of the food purchased by the homeless meal provider. For purposes of this section, "average cost" will be calculated by averaging food costs over a period of up to one calendar month. The value of donated foods from any source will not be used to calculate the average cost, nor to determine the amount requested from food stamp recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the food used in meals, will also be excluded. Homeless meal providers may only use uncancelled, unmarked $1 food stamp benefit amounts in making change for meal purchases by homeless households. Change in the form of cash or credit slips is prohibited. In addition, if other shelter residents have the option of eating free or making a monetary donation, food stamp recipients in the shelter must be given the option of eating free or making a voluntary donation in money or food stamp benefits.

C. Shelter authorization procedures:

(1) To be authorized to accept food stamp benefits from homeless recipients, a homeless meal provider must file an application with FNS and be determined eligible as a homeless meal provider. The conditions that a homeless meal provider must meet are:

(a) the homeless meal provider must be a public organization or a private, nonprofit organization defined by the IRS (I.R.C. 501(c)(3));

(b) the homeless meal provider must serve meals that include food purchased by the organization (providers serving meals consisting entirely of donated food are not authorized); and

(c) the homeless meal provider must obtain written approval from the HCA that the organization does in fact serve meals to homeless persons.

(2) FNS may limit the participation of any homeless meal provider in order to preserve the integrity of the food stamp program.
[8.139.420.10 NMAC - Rp 8.138.420.10 NMAC, 7/16/2024]

HISTORY OF 8.139.420 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State

Records Center and Archives:
ISD 460.0000, Action on Households with Special Circumstances, 8/15/1980.
ISD-Rule 451.0000, Food Assistance - Action on Households with Special Circumstances, 11/5/1982.
ISD-Rule 450.0000, Action on Households with Special Circumstances, 10/13/1983.
ISD-Rule 450.0000, Food Assistance - Action on Households with Special Circumstances, 4/24/1984.
ISD-Rule 457.0000, Food Assistance - Residents of Drug/Alcoholic Treatment and Rehabilitation Programs, 11/5/1982.
ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 11/5/1982.
ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 2/23/1983.
ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 10/13/1983.
ISD FS 240, Special Food Stamp Households, 2/2/1988.

History of Repealed Material:
8.139.420 NMAC - Recipient Requirements - Special Households (filed 4/26/2001) Repealed effective, 7/16/2024.

Other: 8.139.420 NMAC - Recipient Requirements - Special Households (filed 4/26/2001) Replaced by 8.139.420 NMAC - Recipient Requirements - Special Households, effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 500 FINANCIAL ELIGIBILITY - NEED DETERMINATION

8.139.500.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.139.500.1 NMAC - Rp 8.139.500.1 NMAC, 7/16/2024]

8.139.500.2 SCOPE: General public.
[8.139.500.2 NMAC - Rp 8.139.500.2 NMAC, 7/16/2024]

8.139.500.3 STATUTORY AUTHORITY: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the health care authority, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.139.500.3 NMAC - Rp 8.139.500.3 NMAC, 7/16/2024]

8.139.500.4 DURATION: Permanent.
[8.139.500.4 NMAC - Rp 8.139.500.4 NMAC, 7/16/2024]

8.139.500.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[8.139.500.5 NMAC - Rp 8.139.500.5 NMAC, 7/16/2024]

8.139.500.6 OBJECTIVE: Issuance of the revised food stamp program policy manual is intended to be used in administration of the food stamp program in New Mexico. This revision incorporated the latest federal policy changes in the food stamp program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA.
[8.139.500.6 NMAC - Rp 8.139.500.6 NMAC, 7/16/2024]

8.139.500.7 DEFINITIONS: [**RESERVED**]

8.139.500.8 BASIS OF ISSUANCE:

A. Income standards: Determination of need in SNAP is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act 42 USC 9902(2).

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands is one hundred thirty percent of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by one hundred thirty percent, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded

upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 contiguous states and the District of Columbia and can be found at https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information.

E. Deductions and standards:

(1) Determination: Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) Yearly adjustment: The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st, and can be found at https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information and http://www.HCA.state.nm.us/LookingForInformation/Federal_Poverty_Level_Guidelines.aspx

[8.139.500.8 NMAC - Rp 8.139.500.8 NMAC, 7/16/2024]

8.139.500.9 PROSPECTIVE BUDGETING:

A. Initial month procedures: "Initial month" means the first month for which a household is certified for participation in the food stamp program following any period during which the household was not certified for participation. Eligibility and food stamp benefit amount for households submitting an initial application will be based on circumstances for the entire calendar month in which a household files its application.

(1) Changing eligibility:

(a) Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the next month. The household is entitled to benefits for the month of application, even if the application is processed and benefits issued in the subsequent month.

(b) A household may be ineligible for the month of application but eligible in the next month because of anticipated changes in circumstances.

(c) Even if denied for the month of application, a household does not need to reapply in the next month. The same application is used for the denial of the month of application and the determination of eligibility in subsequent months.

(2) Prorating initial month's food stamp benefit amount: A household's food stamp benefit amount for the initial month is based on the day of the month the household applies.

B. Varied benefit amount: As a result of anticipating changes, a household's food stamp benefit amount for the month of application may differ from the amount in later months.

(1) The income support specialist (ISS) will establish a certification period for the longest period over which changes in the household's circumstances can reasonably be anticipated.

(2) For changes discussed at the application interview, a household's food stamp benefit amount may vary from month to month during the certification period to reflect changes anticipated at the time of certification.

(3) Adverse action notices will not be required for any subsequent month in which the food stamp benefit amount decreases. Adequate notice will be required for each month in which the food stamp benefit amount changes.

C. Retroactive benefits: For households that have completed the application process by the 30th day after application, and have been determined eligible, the food stamp benefit amount will be provided retroactively to the date of application.

D. Recertification procedures: Eligibility and food stamp benefit amount for recertification will be determined prospectively based on circumstances anticipated for the certification period beginning the month following the expiration of the current certification period.

E. Mass change procedures: Adjustments to the maximum food stamp benefit amount, income standards, shelter and dependent care deduction limits, state utility standard adjustments, and overall adjustments to financial assistance payments and mass changes in federal benefits, such as social security and SSI benefits, are made by a mass change. The adjustment is made in the month before the change is effective to allow for adequate notice to affected households.

F. Determining resources: Available resources at the time the household is interviewed will be used to determine the household's eligibility.

(1) Nonrecurring lump sum payments are counted as resources in the month received and are not counted as income.

(2) Resources received or available in the month of application but expended before the day of the interview are not used to determine the household's eligibility, unless the resource was transferred for the purpose of qualifying for food stamp benefits.

[8.139.500.9 NMAC - Rp 8.139.500.9 NMAC, 7/16/2024]

8.139.500.10 DETERMINING INCOME:

A. Anticipating income: In determining a household's eligibility and SNAP benefit amount ISD shall use income already received by the household during the certification period and any income the household and ISD are reasonably

certain shall be received during the remainder of the certification period.

(1) If the amount of income or date of receipt is uncertain, that portion of the household's income that is uncertain shall not be counted.

(2) If the exact amount of the income is not known, that portion of the income which can be anticipated with reasonable certainty shall be considered income.

(3) In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, a household may choose to average its income.

B. Income received during any past 30-day consecutive period that includes 30 days prior to the date of application through the date of timely disposition shall be used as an indicator of the income that is and shall be available to the household during the certification period.

(1) Past income is not used as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated during the certification period.

(2) If income fluctuates to the extent that a single four-week period does not provide an accurate indication of anticipated income, a longer period of past time can be used if it gives a more accurate indication of anticipated fluctuations in income.

(3) Income already received is not used and verification is obtained from the income source, if the household and ISD decide that income already received by the household is not indicative of income expected to be received in future months.

C. Simplified reporting: A household filing an interim report form is subject to the income methodology specified at 8.139.500.9 NMAC.

D. Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

E. Use of conversion factors: Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is averaged and multiplied by four;

(2) income received on a biweekly basis is averaged and multiplied by two;

(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in $0.50 or more are rounded up; amounts resulting in $0.49 or lower are rounded down.

F. Held wages:

(1) Wages withheld at the request of an employee shall be considered income to a household in the month the wages would otherwise have been paid by the employer.

(2) Wages withheld by the employer as a general practice, even in violation of the law, shall not be counted as income to a household, unless the household anticipates that it will ask for and receive an advance.

(3) If a household anticipates asking for and receiving income from wages that were previously withheld by the employer as a general practice, the income shall be counted to determine eligibility.

G. Earned income:

(1) Earned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and ISD are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification period; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and ISD determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and ISD are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

H. Unearned income:

(1) Unearned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and ISD are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and ISD determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and ISD are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

(4) Households receiving state or federal assistance payments, such as Title IV-A, GA, SSI or social security payments on a recurring monthly basis are not considered to have varied monthly income from these sources simply because mailing

cycles may cause two payments to be received in one month.

I. Income received more frequently than weekly: The amount of monthly gross income paid more frequently than weekly (i.e., daily) is determined by adding all the income received during the past four weeks. The gross income amount is used to anticipate income in the application month and the remainder of the certification period. Conversion factors shall not be applied to this income.

J. Income received less frequently than monthly: The amount of monthly gross income paid less frequently than monthly is determined by dividing the total income by the number of months it is intended to cover. ISD shall carefully explain to the household how the monthly income was computed and what changes might result in a reportable change. Documentation shall be filed in the case record to establish clearly how the anticipated income was computed.

K. Use of conversion factors: Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is averaged and multiplied by four;

(2) income received on a biweekly basis is averaged and multiplied by two;

(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in $0.50 or more are rounded up; amounts resulting in $0.49 or lower are rounded down.

L. Known changes in income for future months at application:

(1) At application or recertification, it shall be determined if any factors affecting income will change in future months. Such factors include a new income source, termination of income, or increases or decreases in income.

(2) Income is considered only when the amount of the income and the date it will be received are reasonably certain.

(3) In the event that a change is known for future months, benefits are computed by taking into account the change in income.

M. Averaging income over the certification period:

(1) All households may choose to have their income averaged. Income is usually not averaged for destitute households because averaging would result in assigning to the month of application income from future periods which is not available for its current food needs.

(2) To average income, ISD uses a household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period.

(3) Contract income: Households which, by contract, derive their annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis.

(a) Contract income includes income for school employees, farmers, self-employed households, and individuals who receive annual payments from the sale of real estate.

(b) These procedures do not include migrant or seasonal farm worker households.

(4) Educational monies: Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it is provided. All months which the income is intended to cover shall be used to average income, even if the income is received during the certification period. If the period has elapsed completely, the educational monies shall not be considered income.

N. Using exact income: Exact income, rather than averaged income, shall be used if:

(1) the household has chosen not to average income;

(2) income is from a source terminated in the application month;

(3) employment has just begun in the application month and the income represents only a partial month;

(4) in the month of application, the household qualifies for expedited service or is considered a destitute, migrant or seasonal farm worker household; or

(5) income is received more frequently than weekly, (i.e., daily).

[8.139.500.10 NMAC - Rp 8.139.500.10 NMAC, 7/16/2024]

8.139.500.11 DETERMINING DEDUCTIBLE EXPENSES: Household expenses which can be deducted from income include only certain costs of dependent care, child support, medical and shelter expenses.

A. Expenses not allowed as deductions:

(1) Vendor payments and reimbursements: An expense covered by an excluded reimbursement or vendor payment is not deductible. Vendor payments are those paid directly to a household's creditors by a non-household member, while reimbursements are paid to a household after it has paid creditors.

(2) Reimbursable medical expenses: That portion of an allowable medical expense which is reimbursable will not be included as a household's medical expense when calculating the medical expense deduction.

(3) Service provided by household member: Expenses will be deductible only for a service provided by someone outside a participating household, and for which the household makes a money payment. Only money received from an outside source is considered

income to a household; money paid to a provider outside the household is counted as a deductible expense.

(4) Child care expenses: Child care expenses which are reimbursed or paid for by the Jobs Opportunities and Basic Skills Training Program (JOBS) under Title IV-F of the Social Security Act 42 USC 681 or the transitional child care (TCC) program will not be deductible when calculating the dependent care deduction allowed for a household.

(5) Child support expenses: A child support deduction will not be allowed if the household does not report or verify its monthly child support payment or a change in its legal obligation.

B. Billed expenses:

(1) Allowing a deduction: A deduction is allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay it.

(2) Arrears: Amounts carried forward from past billing periods (arrears) are not deductible, even if included in the most recent billing and actually paid by the household, unless these expenses are billed less often than monthly and are averaged. A particular expense may be deducted only once. Rent, mortgage payments or property taxes that are in arrears are not allowed, even if they were not previously allowed in any certification period.

(3) Expense not allowed: If a household receives a bill during the certification period but does not report it until it is past due, the expense may not be allowed as a deduction. Similarly, late charges assessed to a household on a past due bill are not allowed as a deductible expense.

(4) Billed medical expenses: If a household claims a deduction for billed medical expenses but does not know or cannot verify the portion of billed expenses that will be reimbursed, the expense is allowed after the reimbursement is received or can otherwise be verified, rather than in the month the bill is received. Only the unreimbursed amount of the bill is deductible. A deduction will be allowed when the household verifies that a billed medical expense will not be paid directly to the provider by a third party or will not be reimbursed to the household by an insurance company or government program.

(5) Child support deduction:

(a) Child support is not an allowable deduction when billed. Verification of payment must be received prior to allowance of the deduction.

(b) The child support deduction will include amounts paid toward arrearages, provided that the household has at least a three month record of payments.

C. Anticipating expenses: A household's expenses will be calculated based on the expenses the household expects to be billed during the certification period.

(1) Anticipation of expenses is based on the most recent month's bills, unless the household is reasonably certain a change will occur.

(2) If actual costs for a household's heating/cooling or other utility expenses are anticipated to be less than the appropriate mandatory utility standard, the appropriate mandatory utility standard shall be allowed.

(3) Income conversion procedures will apply to anticipated expenses billed on a weekly or biweekly basis.

(4) Child support will be anticipated based on actual payments during past months and reasonably certain changes expected in the future.

D. Averaging expenses: A household may choose to have fluctuating expenses averaged.

E. One-time expenses: A household may choose to have a one-time only expense averaged over the entire certification period, or allowed in the month the expense is billed or becomes due.

(1) If a household chooses the one-time expense deduction, the caseworker will document the expense in the case file. Such expenses include annual property taxes and insurance.

(2) A one-time expense may be averaged over the period the billing is intended to cover.

(3) A household may choose to have a one-time only expense reported at certification deducted in a lump sum or averaged over the certification period.

(4) A household reporting a one-time only medical expense during its certification period may choose to have a one-time expense deduction or to have the expense averaged over the remaining months of the certification period.

(a) If a household incurs a one-time only medical expense and makes arrangements with the provider to pay in monthly installments (beyond the current certification period), the expense may be allowed each month as arranged.

(b) A household reporting a one-time only medical expense during the certification period may choose to have a one-time deduction or to have the expense averaged over the remaining months of the certification period. Averaging would begin the month the change becomes effective.

(c) If a household is billed for and reports an expense during the last month of the certification period, the deduction may not be allowed unless it will be paid in installments during the following certification period. The deduction will be allowed during the appropriate number of months in the following certification period.

F. Expenses billed less often than monthly: Households may choose to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings or, if there is no scheduled interval, averaged forward over the period the expense is

intended to cover. Averaging may be used even if the bill is received before the certification period. Averaging is governed by the scheduling of the bill or the period the expense is intended to cover.

G. Fluctuating medical expenses: Fluctuating medical expenses will be allowed as deductions if regularly recurring, reasonably anticipated, and verified. Medical expenses will not be calculated by averaging past months' medical expenses. Past expenses are used only as an indicator of what can reasonably be anticipated.

H. Dependent care: Dependent care expenses paid on a weekly or biweekly basis will be averaged if a household has chosen to average income. Conversion procedures will be used if a household is billed on a weekly or biweekly basis.

[8.139.500.11 NMAC - Rp 8.139.500.11 NMAC, 7/16/2024]

8.139.500.12 ESTABLISHING CERTIFICATION PERIODS:

A. The caseworker shall establish a definite period of time within which a household is eligible to receive benefits.

B. Entitlement to SNAP benefits ends at the expiration of the household's certification period. Continued eligibility is determined only when an application has been filed, an interview held, and all verification provided.

C. Under no circumstances shall benefits be continued beyond the end of a certification period without a redetermination of eligibility.

D. A household shall be provided with an expiration notice before or at the beginning of the last month of a certification period.

E. If a household is determined eligible for the initial month but ineligible the following month, it shall be certified for one month only. Conversely, a household may be ineligible for the month of application but eligible for the following month(s). If the household is denied for the month of application, it does not need to file a new application for the following month.

F. Conformity with calendar month: Certification periods shall conform to calendar months. At the initial application, the first month in the certification period is the month of application, even if the household's eligibility is not determined until a later month.

G. Length of certification period: All households will be assigned to simplified reporting and shall be assigned a certification period in accordance with Subsection A of 8.139.120.9 NMAC. Households shall be assigned the longest certification period possible based on the stability of the household's circumstances. A certification period cannot exceed 12 months, except for households in which all adult members in the household are elderly or disabled. Households in which all members are elderly or disabled will be assigned a 24-month certification period. At least one contact with each certified household shall be made every 12 months.

H. Shortening the certification period:

(1) The caseworker may not end a household's certification period earlier than its assigned termination date, unless the caseworker receives information that the household has become ineligible, or the household has not taken action to clarify or provide verification of a change in household circumstances for which the caseworker has requested verification.

(2) Loss of cash assistance or a change in employment status is not sufficient to meet the criteria necessary for shortening a certification period.

I. Lengthening the certification period: The caseworker may lengthen a household's current certification period once it is established, as long as the total months of the certification period do not exceed 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. If the caseworker extends the household's certification period, the caseworker shall issue written notice advising the household of the new certification end date.

[8.139.500.12 NMAC - Rp 8.139.500.12 NMAC, 7/16/2024]

HISTORY OF 8.139.500 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD 421.0000, Application Processing, 7/31/1980.
ISD-Rule 439.0000, Monthly Reporting/Retrospective Budgeting (MRRB), 10/13/1983.
ISD-Rule 439.0000, Monthly Reporting/Retrospective Budgeting (MRRB), 4/24/1984.
ISD-Rule 439.0000, Monthly Reporting/Retrospective Budgeting (MRRB), 8/3/1984.
ISD-Rule 441.0000, Food Assistance - Actions Subsequent to Determine Eligibility, 11/5/1982.
ISD-Rule 440.0000, Actions Subsequent to Determine Eligibility, 2/9/1983.
ISD-Rule 440.0000, Actions Subsequent to Determine Eligibility, 9/8/1983.
ISD-Rule 440.0000, Actions Subsequent to Determine Eligibility, 10/13/1983.
ISD-Rule 440.0000, Actions Subsequent to Determine Eligibility, 4/24/1984.
ISD-Rule 442.0000, Food Assistance - Transfer of Households, 11/4/1982.
ISD-Rule 442.0000, Food Assistance - Transfer of Households, 9/8/1983.
ISD 424.0000, Recertification, 7/28/1980.
ISD-443.0000, Food Assistance - Recertification, 11/4/1982.
ISD-443.0000, Food Assistance - Recertification, 9/8/1983.
ISD-443.0000, Food Assistance - Recertification, 10/13/1983.
ISD-443.0000, Food Assistance - Recertification, 1/12/1984.
ISD FS 510, Food Stamp Reporting and Recertification, 3/2/1988.

History of Repealed Material:

8.139.500 NMAC - Financial

Eligibility - Need Determination (filed 4/26/2001), Repealed effective 7/16/2024.

Other: 8.139.500 NMAC - Financial Eligibility - Need Determination (filed 4/26/2001), Replaced by 8.139.500 NMAC - Financial Eligibility - Need Determination, effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 510 ELIGIBILITY POLICY - RESOURCES AND PROPERTY

8.139.510.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.139.510.1 NMAC Rp 8.139.510.1 NMAC, 7/16/2024]

8.139.510.2 SCOPE: General public.
[8.139.510.2 NMAC - Rp 8.139.510.2 NMAC, 7/16/2024]

8.139.510.3 STATUTORY AUTHORITY: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA 1978. Administration of the health care authority (HCA), including its authority to promulgate regulations, is governed by Chapter 9, Article 8 NMSA 1978 (Repl. 1983). Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.139.510.3 NMAC - Rp 8.139.510.3 NMAC, 7/16/2024]

8.139.510.4 DURATION: Permanent.
[8.139.510.4 NMAC - Rp 8.139.510.4 NMAC, 7/16/2024]

8.139.510.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.139.510.5 NMAC - Rp 8.139.510.5 NMAC, 7/16/2024]

8.139.510.6 OBJECTIVE: Issuance of the revised food stamp program policy manual is intended to be used in administration of the food stamp program in New Mexico. This revision incorporated the latest federal policy changes in the food stamp program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA.
[8.139.510.6 NMAC - Rp 8.139.510.6 NMAC, 7/16/2024]

8.139.510.7 DEFINITIONS: [RESERVED]

8.139.510.8 RESOURCE ELIGIBILITY STANDARDS:

A. The maximum allowable resources for a household, including both liquid and non-liquid assets are revised and adjusted each year in October and can be found at https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information.

B. The value of a nonexempt resource is its equity value. Equity value is the fair market value less encumbrances. The value of stocks and bonds, such as U.S. savings bonds, is their cash value, not their face value.

C. It is a household's responsibility to report all resources held at the time of application and any anticipated to be received, or that are later received during the certification period, that might place the household's resources above the maximum allowed.

D. Categorically eligible households: Households that are categorically eligible do not need to meet the resource limits or provisions of this section.

E. Sponsored non-citizens: For households containing sponsored non-citizens, a prorated amount of the countable resources of a non-citizen's sponsor and sponsor's spouse (if living with the sponsor) are deemed to be those of the sponsored non-citizen, in accordance with sponsored non-citizen provisions in 8.139.420.9 NMAC.

F. Non-household members: The resources of non-household members, defined in 8.139.400.10 NMAC shall not be considered available to the household.

G. Resources of ineligible or disqualified household members: The resources of ineligible or disqualified household members shall be counted as available to the household in their entirety. If a resource exclusion applies to a household member, the exclusion shall also apply to the resources of an ineligible or disqualified person whose resources are counted as available to the household.
[8.139.510.8 NMAC - Rp 8.139.510.8 NMAC, 7/16/2024]

8.139.510.9 STANDARDS:

A. Liquid resources: Liquid resources are readily negotiable resources such as, but not limited to:

(1) cash on hand;

(2) money in checking and saving accounts;

(3) savings certificates, stocks and bonds (even if they are producing income consistent with their fair market value), credit union shares, promissory notes, U.S. savings bonds (after they become accessible six months from the date of purchase);

(4) loans, including loans from private individuals as well as from commercial institutions, are considered in the month received.

B. Lump-sum payments: Money received in the form of a nonrecurring lump sum payment is counted as a resource in the month received, unless specifically excluded by other federal laws.

(1) Lump sum payments include, but are not limited to:

(a) income tax refunds, rebates, or credits, including earned income tax credit payments after two months;

(b) retroactive lump sum social security, SSI, cash assistance, railroad retirement benefits or similar payments;

(c) lump sum insurance settlements;

(d) refunds of security deposits on rental property or utilities;

(e) substantial lottery or gambling winnings.

(2) Lump sum payments are delayed payments owed to a household for past periods.

C. Other liquid resources: Liquid resources also include:

(1) funds held in individual retirement accounts (IRAs), and

(2) funds held in Keogh plans that do not involve a household member in a contractual relationship with individuals who are not household members; in determining the availability of IRAs or Keogh plans, the caseworker shall count the total cash value minus the amount of the penalty (if any) for early withdrawal of the entire amount.

D. Non-liquid resources: Non-liquid resources include personal property, boats, buildings, land, recreational property, and any other property, provided that the resource is not specifically excluded. Non-liquid resources shall be documented in sufficient detail to permit verification if the resource becomes questionable.

E. Vehicles: The entire value of any licensed or unlicensed vehicle shall be excluded in determining eligibility and benefit amount in the food stamp program. [8.139.510.9 NMAC - Rp 8.139.510.9 NMAC, 7/16/2024]

8.139.510.10 EXCLUSIONS:

A. In determining the resources of a household, the following shall be excluded:

(1) home and surrounding property (Subsection C of 8.139.510.10 NMAC);

(2) household and personal goods (Subsection D of 8.139.510.10 NMAC);

(3) life insurance, deferred compensation and joint pension funds (Subsection D of 8.139.510.10 NMAC);

(4) all retirement accounts with federal tax-preferred status from the food stamp asset test as well as any tax-preferred retirement accounts that congress creates in the future;

(5) all tax-preferred education accounts, such as 529s;

(6) income-producing property (Subsection E of 8.139.510.10 NMAC);

(7) work-related equipment (Subsection F of 8.139.510.10 NMAC);

(8) inaccessible resources (Subsection G of 8.139.510.10 NMAC);

(9) resources excluded by federal law (8.139.527 NMAC);

(10) resources of non-household members (Subsection F of 8.139.510.8 NMAC);

(11) other exempt resources, such as those of an SSI or Title IV-A recipient;

(12) excluded monies kept in a separate account and not commingled with non-excluded funds; when commingled, the excluded monies retain their exclusion for a period of six months from the date they are commingled.

(13) vehicles: the entire value of a vehicle owned by a household member shall be excluded as a countable resource as set forth at Subsection E of 8.139.510.9 NMAC.

B. Exceptions:

(1) Educational loans and grants of students, commingled with non-excluded funds, retain the exemption for the period over which they are intended to be used.

(2) Operating funds of a self-employment enterprise commingled with non-excluded funds retain the exemption for the period over which they have been prorated as income.

C. Home and surrounding property: A household's home, and surrounding property which is not separated from the home by intervening property owned by others, shall be excluded. Public rights of way, such as roads that run through the surrounding property and separate it from the home, do not affect the exemption of the property. The home and surrounding property remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. No specific time limit is imposed in determining that the absence is temporary. A household that currently does not own a home but owns or is purchasing a lot on which it intends to build, or is building a permanent home, receives an exclusion for the value of the lot, and, if partially completed, for the home.

If part of the land surrounding a home is rented, the land retains this exclusion and the income-producing test in Subsection E of 8.139.510.10 NMAC does not apply. Any income received from renting part of the surrounding property shall be counted in determining income eligibility and food stamp benefit amount.

D. Personal effects:

(1) Households goods, livestock, and personal effects, including one burial plot per household member, and the cash value of life insurance policies shall be excluded. Any amount that can be withdrawn from a prepaid burial plan shall be counted as a resource and cannot be excluded under this provision.

(2) The cash value of pension plans or pension funds shall be excluded.

(3) IRAs and Keogh plans involving no contractual relationship with individuals who are not household members are not excluded.

E. Income-producing property:

(1) Exclusions: The following income-producing property shall be excluded:

(a) Property which annually produces income consistent with its fair market value, even if used on a seasonal basis. Such property includes rental and vacation homes. If the property cannot produce income consistent with its fair market value because of circumstances beyond the household's control, the exclusion remains in effect.

(b) Property, such as farm land, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming continues to be excluded for one year from the date that the household member ends self-employment farming.

(c) An installment contract for the sale of land or a building that is producing income consistent with its fair market value. The value of the property sold under an installment contract or held as security in exchange for the purchase price consistent with the fair market value of that property is also excluded. The value of personal property sold on installment contracts such as boats, automobiles, etc. is also treated in this manner as long as the property sold on contract is not part of a self-employment enterprise.

(2) Determining fair market value: The following guidelines shall be used to determine fair market value:

(a) If it is questionable that property is producing income consistent with its fair market value, the caseworker shall contact local realtors, tax assessors, the small business administration, farmer's home administration or other similar sources to determine the prevailing rate of return. If it is determined that property is not producing income consistent with its fair market value, such property is counted as a resource. If property is leased for a return that is comparable to that on other property in the area leased for similar purposes, it is considered income producing consistent with its fair market value and is not counted as a resource.

(b) Property exempt as essential to employment need not be producing income consistent with its fair market value. For example, the land of a farmer is essential to the farmer's employment; therefore, a good or bad crop year does not affect the exemption of such property as a resource.

F. Work-related equipment exclusion: Work-related equipment, such as the tools of a trades-person or the machinery of a farmer, which are essential to the employment or self-employment of a household member are excluded. The tools of a trades-person are excluded, and remain exempt, if the trades-person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

G. Inaccessible resources: Resources shall be excluded if their cash value is not accessible to the household, such as, but not limited to:

(1) security deposits on rental property or utilities;

(2) property in probate: when a decision is rendered by the court explaining how the property is to be divided, the property is no longer in probate, whether or not the household signs papers;

(3) real property that the household is making a good faith effort to sell at a reasonable price and which has not been sold; and

(4) irrevocable trust funds: any funds in a trust, or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, is considered inaccessible to the household if:

(a) the trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(b) the trustee administering the funds is:

(i) a court;

(ii) an institution, corporation, or organization not under the direction or ownership of any household member;

(iii) an individual appointed by the court with court-imposed limitations placed on the use of the funds;

(c) the trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(d) the funds held in an irrevocable trust are either:

(i) established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust, or to pay the educational or medical expenses of any person named by the household creating the trust; or

(ii) established from non-household funds by a non-household-member.

(5) Insignificant return: Any resource, that as a practical matter, the

household is unable to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great.

(a) A resource shall be so identified if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household.

(b) This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments, nor to vehicles.

(c) The caseworker may require verification of the value of a resource to be considered inaccessible if the information provided by the household is questionable.

(d) The following definitions shall be used in determining whether a resource may be excluded under this provision:

(i) "significant return" is any return, after estimated costs of sale or disposition, and taking into account the ownership interest of the household, that is estimated to be one half or more of the applicable resource limit for the household;

(ii) "any significant amount of funds" are funds amounting to one-half or more of the applicable resource limit for the household.

H. Joint property:

(1) Joint resources: Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by an applicant household that such resources are inaccessible to it. The household must verify that:

(a) it does not have the use of the resource;

(b) it did not make the purchase or down payment;

(c) it does not make the continuing loan payments, and

(d) the title is transferred to or retained by the other household;

(e) if a household can demonstrate that it has access to only a part of the resource, the value of that part is counted toward the household's resource level; a resource shall be considered totally inaccessible, if it cannot be practically subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply; for purposes of this provision, ineligible non-citizens or disqualified individuals residing with a household are considered household members.

(2) Joint bank accounts: If signatories to a joint bank account are separate households, the funds in the account are considered available to each household to the extent that it has contributed to the account. If the participating household has not contributed to the account, the funds are considered available only if there is clear and convincing evidence that the other household intends that the participating household actually own the funds.

I. Residents of shelters for battered women and children: Resources shall be considered inaccessible to individuals residing in shelters for battered women and children if:

(1) resources are jointly owned by shelter residents and members of their former household, and

(2) shelter resident's access to the value of the resource(s) is dependent on the agreement of a joint owner residing in the former household.

J. Other exempt resources:

(1) Earmarked resources: Government payments designated for the restoration of a home damaged in a disaster shall be excluded, if the household is subject to a legal sanction if the funds are not used as intended. However government payments designed to bring homes "up to code" are not exempt and are counted as a resource.

(2) Prorated income: Resources, such as those of students or self-employed individuals which have been prorated as income, shall be excluded.

(3) Indian lands: Indian land held jointly by a participating household and the tribe, or land that can be sold only with the approval of the department of interior's bureau of Indian affairs, shall be excluded.

(4) Business loan collateral: Non liquid assets against which a lien has been placed as a result of taking out a business loan, when the household is prohibited by the security or loan agreement with the lien holder (creditor) from selling the assets, shall be excluded.

(5) Property for vehicle maintenance and use: Property, real or personal, is excluded to the extent that it is directly related to the maintenance or use of a vehicle excluded under Paragraph (1) of Subsection E of 8.139.510.9 NMAC. Only that part of real property determined necessary for actual maintenance or use is excludable under this provision.

(6) Title IV-A/ SSI recipients: The resource of any household member who receives:

(a) supplemental security income (SSI) benefits under Title XVI of the Social Security Act; or

(b) aid to the aged, blind, or disabled under Titles I, X, XIV, or XVI of the Social Security Act; or

(c) benefits under part A of Title IV of the Social Security Act shall be considered exempt for food stamp purposes provided resources are also considered exempt under the applicable titles or parts of the Social Security Act.

[8.139.510.10 NMAC - Rp 8.139.510.10 NMAC, 7/16/2024]

8.139.510.11 RESOURCE TRANSFERS:

A. Anyone whose resources are considered available, and who knowingly transfers resources, will be disqualified from participating in the program if the transfer meets all of the following criteria:

(1) the transfer was made within the three-month period immediately preceding the date of application or the household knowingly transferred the resource after approval;

(2) the resources transferred will affect eligibility; if the resources will not affect eligibility, such as furniture, the transfer will not disqualify the household;

(3) the resources were transferred for less than fair market value; if the compensation received in cash, property, services, or other reasonable form of payment is at or near fair market value, the transfer does not disqualify the household;

(4) the transfer was not between members of the same household or persons whose resources are considered available (disqualified members); and

(5) the transfer was made for the purpose of qualifying or attempting to qualify for benefits; if the resources were transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, such as a parent placing funds into an educational trust fund, the transfer does not disqualify the household.

B. Disqualification:

(1) If it is determined that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the household will be disqualified from participating in the food stamp program for up to one year from the date of the discovery of the transfer.

(2) If the household is applying, the period of disqualification begins with and includes the month of application.

(3) If the household is participating at the time the transfer is discovered, an adverse action notice explaining the reason for and the length of the disqualification will be sent. The period of disqualification will begin the month following the month the notice of adverse action time limit expires, unless the household appeals the action and requests continued benefits.

(4) The fact that a household was certified, but did not receive any food stamp benefits, does not preclude the penalty for transferring resources.

C. Time period for disqualification:

(1) The length of the disqualification period is based on the amount by which the nonexempt transferred resource, when added to other countable resources, exceeds the allowable resource limit.

(2) The following chart will be used to determine the period of disqualification:

Amount in Excess the Resource Unit	Period of Disqualification
$0 to $249.99	1 month
$250 to $999.99	3 months
$1,000 to $2,999.99	6 months
$3,000 to $4,999.99	9 months
$5,000 or more	12 months

[8.139.510.11 NMAC - Rp 8.139.510.11 NMAC, 7/16/2024]

HISTORY OF 8.139.510 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
ISD 440.0000, Eligibility Criteria - Financial, 8/15/1980.
ISD 440.0000, Eligibility Criteria - Financial, 10/24/1980.
ISD-Rule 428.0000, Food Assistance - Resources, 11/4/1982.
ISD-Rule 428.0000, Food Assistance - Resources, 2/14/1983.
ISD-Rule 428.0000, Food Assistance - Resources, 1/12/1984.
ISD-Rule 428.0000, Food Assistance - Resources, 5/1/1986.
ISD FS 410, Food Stamp Resources, 3/1/1988.

History of Repealed Material: 8.139.510 NMAC - Eligibility Policy - Resources And Property (filed 4/26/2001) Repealed effective 7/16/2024.

Other: 8.139.510 NMAC - Eligibility Policy - Resources And Property (filed 4/26/2001) Replaced by 8.139.510 NMAC - Eligibility Policy - Resources And Property, effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 610 PROGRAM BENEFITS - ISSUANCE AND RECEIPT

8.139.610.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.139.610.1 NMAC - Rp 8.139.610.1 NMAC, 7/16/2024]

8.139.610.2 SCOPE: General public
[8.139.610.2 NMAC - Rp 8.139.610.2 NMAC, 7/16/2024]

8.139.610.3 STATUTORY AUTHORITY: The supplemental nutrition assistance program (SNAP) is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering SNAP is contained in Chapter 27 NMSA, 1978. Administration of the health care authority (HCA), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA)

as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.139.610.3 NMAC - Rp 8.139.610.3 NMAC, 7/16/2024]

8.139.610.4 DURATION: Permanent.
[8.139.610.4 NMAC - Rp 8.139.610.4 NMAC, 7/16/2024]

8.139.610.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[8.139.610.5 NMAC - Rp 8.139.610.5 NMAC, 7/16/2024]

8.139.610.6 OBJECTIVE: Issuance of the revised SNAP policy manual is intended to be used in administration of the SNAP in New Mexico. This revision incorporated the latest federal policy changes in SNAP not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA.
[8.139.610.6 NMAC - Rp 8.139.610.6 NMAC, 7/16/2024]

8.139.610.7 DEFINITIONS: [RESERVED]
[8.139.610.7 NMAC - Rp 8.139.610.7 NMAC, 7/16/2024]

8.139.610.8 [RESERVED]
[8.139.610.8 NMAC - Rp 8.139.610.8 NMAC, 7/16/2024]

8.139.610.9 [RESERVED]
[8.139.610.9 NMAC - Rp 8.139.610.9 NMAC, 7/16/2024]

8.139.610.10 ISSUANCE DATE:

A. The HCA is responsible for timely and accurate benefit issuance to certified eligible households. A participating household has a definite issuance date so that SNAP benefits are received on or about the same time each month. The issuance date is based on the last two digits of the social security number of the individual to whom the SNAP benefits are issued. A household must have the opportunity to participate before the end of each issuance month.

B. Opportunity to participate: Opportunity to participate means a household is provided with SNAP benefits no later than 30 calendar days after the date an application is filed.

(1) Newly certified household: All newly certified households must be given an opportunity to participate no later than 30 calendar days following the date the application was filed. In EBT issuance situations, benefits must be authorized by the 29th day to be available to the household on the 30th day.

(a) Combined issuance: Households with an application date after the 15th of the month and are eligible for expedited assistance are eligible for combined issuance.

(i) SNAP benefits for the initial month and the second month will be issued the day after approval of expedited service.

(ii) SNAP benefits for the third month will be issued the first day of the third month after approval.

(iii) SNAP benefits for the fourth month will be issued during the first 10 days of the month based on a 10 day compressed staggered issuance schedule. The issuance schedule uses the last two digits of the head of households SSN to determine the day of the month benefits are issued.

(iv) SNAP benefits for the fifth and ongoing months will be issued on the 20 day staggered issuance schedule. The issuance schedule uses the last two digits of the head of household's SSN to determine the day of the month the benefits are issued.

(b) Households not entitled to combined issuance: The following households will not be entitled to combined issuance of the SNAP benefits:

(i) a household certified for one month only;

(ii) a household determined ineligible for the month of application, but eligible for the second month;

(iii) a household entitled to expedited service who must provide postponed verification to obtain the second month's SNAP benefits; or

(iv) a household that has been recertified.

(c) Standard Issuance: Households with an application date before the 15th of the month and approved in the month of application will have their prorated amount for initial month of benefits issued the day after the case is approved.

(i) SNAP benefits for the second month will be issued the first day of the month in the second month of approval.

(ii) SNAP benefits for the third month during the first 10 days of month based on a 10 day compressed staggered issuance schedule. The issuance schedule uses the last two digits of the head of households SSN to determine the day of the month benefits are issued.

(iii) SNAP benefits for the fourth and ongoing months will be issued on the 20 day staggered issuance schedule. The issuance schedule uses the last two digits of the head of household's SSN to determine the day of the month the benefits are issued.

(d) Expedited households: Households eligible for expedited service will receive SNAP benefits in the initial month within the expedited time limit.

Benefits for the following month will be received on the household's designated issuance date if all postponed verification is provided before the end of the initial month.
[8.139.610.10 NMAC - Rp 8.139.610.10 NMAC, 7/16/2024]

8.139.610.11 USE OF SNAP BENEFITS: Pursuant to Subsection D of Section 15 of the Food Stamp Act, SNAP benefits are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of Title 18 of the United States Code, "crimes and criminal procedures," relative to counterfeiting, misuse, or alteration of obligations of the U.S., are applicable to SNAP benefits. Any unauthorized issuance, redemption, use, transfer, acquisition, alteration, or possession of SNAP benefits may subject an individual, partnership, corporation, or other legal entity to prosecution under Subsections B and C of Section 15 of the Food Stamp Act or other applicable federal, state, or local law, regulation, or ordinance.

A. General uses: SNAP benefits are used by participants to purchase eligible foods, including seeds and plants, for home consumption. A household may designate other individuals to use SNAP benefits to purchase food for them. A household is not required to have cooking facilities or access to cooking facilities to participate in the program.

B. Special uses: Although SNAP benefits were originally intended to be used by eligible households to purchase food for home consumption, certain households are authorized to use SNAP benefits to obtain prepared meals or to facilitate their obtaining food. Authorized special uses for SNAP include:

(1) Communal dining: Eligible household members 60 years of age or over or SSI recipients and their spouses may use SNAP benefits to purchase meals prepared at communal dining facilities authorized by FNS. Communal dining facilities include senior citizen centers, apartment buildings occupied primarily by elderly persons or SSI households, public or private nonprofit establishments (eating or otherwise) that feed elderly persons or SSI recipients, and federally subsidized housing for the elderly at which meals are prepared and served to the residents. They also include private establishments under contract with an appropriate state or local agency to offer meals at concessional prices to elderly persons or SSI recipients.

(2) Meals-on-wheels: Eligible household members 60 years of age or over or members who are homebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and the spouses of such members, may use their SNAP benefits to purchase meals prepared and delivered to them by a nonprofit meal delivery service authorized by FNS. A meal delivery service is a political subdivision, a private nonprofit organization, or a private establishment with which a state or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly individuals and their spouses, and to the physically or mentally handicapped and individuals otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(3) Addicts and alcoholics in treatment programs: Members of eligible households who are narcotics addicts or alcoholics who regularly participate in a drug or alcoholic treatment and rehabilitation program may use their SNAP benefits to purchase meals prepared for them during the course of such programs by a nonprofit organization or institution or a publicly operated community mental health center which is authorized by FNS to redeem SNAP benefits.

(4) Residents in group living arrangements: Eligible residents of a group living arrangement may use their SNAP benefits to purchase meals prepared especially for them at a group living arrangement authorized by FNS to redeem SNAP benefits.

(5) Residents of shelters for battered persons: Residents of shelters for battered persons may use their SNAP benefits to purchase meals prepared specifically for them at a shelter authorized by FNS to redeem SNAP benefits.

(6) Residents of shelters for the homeless: Homeless households may use their SNAP benefits to purchase prepared meals from homeless meal providers authorized by FNS.

C. SNAP benefits as income: SNAP benefits provided to an eligible household will not to be considered income or resources for any purpose under federal, state, or local laws, including but not limited to, laws on taxation, welfare, and public assistance programs. No participating state or political subdivision may decrease any other assistance provided to an individual or individuals because such individuals receive SNAP benefits.
[8.139.610.11 NMAC - Rp 8.139.610.11 NMAC, 7/16/2024]

8.139.610.12 GENERAL (BENEFIT AMOUNT)

A. The SNAP benefit amount to be issued depends on the number of eligible members in the household and the net monthly income used to determine eligibility.

(1) The HCA uses a 30-day calendar month to determine a household's SNAP benefit amount. A household applying on the 31st of the month will be treated as if it applied on the 30th.

(2) When a household is determined eligible, the SNAP benefit amount is calculated, issuance authorization is processed that night, and SNAP benefits are issued the following work day.

B. Maximum SNAP allotments:

(1) The maximum SNAP allotment shall be based on the thrifty food plan (TFP). TFP means the diet required to feed a family of four persons

consisting of a man and a woman 20 through 50, a child six through eight, and a child nine through 11 years of age, determined in accordance with USDA calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum SNAP allotments, USDA shall make household size and other adjustments in the thrifty food plan taking into account economies of scale and other adjustments as required by law. The TFP amounts and maximum allotments are adjusted annually.

(2) Except when SNAP benefits are prorated and when reductions are made at the national level, a household's monthly SNAP benefit amount is equal to the maximum SNAP allotment for the household's size reduced by thirty percent of its net monthly income.

(3) The maximum SNAP allotment can be calculated by multiplying a household's net income by thirty percent, rounding the result up to the next whole dollar, and subtracting that amount from the TFP for the appropriate household size (https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information).

C. Initial month: A household's SNAP benefit amount for the initial month of certification will be based on the day of the month the household applies for SNAP benefits. The household receives SNAP benefits from the date of application to the end of the month, unless the applicant household consists of residents of a public institution.

(1) Applying from institutions: For households applying for SSI and SNAP benefits before release from an institution, the SNAP benefit amount for the initial month of certification will be based on the date of the month the household is released from the institution. The household will receive SNAP benefits from the date of the household's release from the institution to the end of the month.

(2) Benefits less than ten dollars ($10): If the initial month's calculations yield a SNAP benefit amount of less than ten dollars ($10), then no issuance will be made for the initial month. For households entitled to no SNAP benefits in the initial month, but eligible in subsequent months, ISD shall certify a household beginning with the month of application.

D. Minimum benefit amount:

(1) Except during an initial month, all eligible one- and two-person households, including categorically eligible households, will receive a minimum monthly SNAP benefit amount.

(2) Determination: Minimum amounts are determined by federal guidelines and may be adjusted each year. All eligible one and two person households, including categorically eligible households, will receive the minimum monthly SNAP benefit amount, which can be found at https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information.

(3) All eligible households with three or more members which are entitled to no benefits (except because of the proration requirements and the provision precluding issuances of less than ten dollars ($10) in an initial month as per Paragraph (2) of Subsection C of 8.139.610.12 NMAC), ISD shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued. [8.139.610.12 NMAC - Rp 8.139.610.12 NMAC, 7/16/2024]

8.139.610.13 CALCULATING THE BENEFIT AMOUNT: A household's net income is used to determine its SNAP benefit amount. The net income is the gross amount less allowable deductions. To determine the household's net income:

A. The gross monthly income earned by all household members is added to the total monthly unearned income of all household members, less income exclusions, to determine the household's total gross income. The household must qualify at the gross income calculation.

B. The total gross monthly earned income is multiplied by twenty percent; the result is subtracted from the total gross earned income; add the result to the total monthly unearned income; or multiply the total gross monthly earned income by eighty percent and add the result to the total monthly unearned income.

C. Subtract the standard deduction.

D. If the household is entitled to an excess medical deduction, determine if total medical expenses exceed $35. If so, subtract the amount which exceeds thirty five dollars ($35).

E. Subtract the child support deduction as determined by Paragraph (2) of Subsection G of 8.139.520.11 NMAC.

F. Subtract allowable monthly dependent care expenses, if any, up to the maximum amount per dependent; if the household has no shelter expenses, the net income has been determined at this point; go to step J.

G. If the household has shelter expenses, divide the result in Subsection F by two.

H. Determine if the household is entitled to an excess shelter expense deduction as follows:

(1) For households not entitled to uncapped shelter:

(a) total the allowable shelter expenses;

(b) subtract from the total shelter expenses fifty percent of the household's monthly income after all other deductions have been subtracted, i.e., the result in Subsection G;

(c) the remaining amount is the excess shelter expense; compare this amount to the current excess shelter deduction limit as found at https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information;

(d) subtract the current excess shelter deduction amount or the result in

Subparagraph (c), whichever is less, from the household's monthly income determined in Subsection F; the household's net income has been determined; go to step I.

(2) For households entitled to uncapped shelter: Households containing an elderly or disabled member are entitled to an uncapped shelter expense deduction. Such households have the full amount of the shelter expense exceeding fifty percent of the households net income subtracted. To determine the net income for a household entitled to an uncapped shelter expense deduction, complete steps A through G as described above, and then:

(a) total the allowable shelter expenses;

(b) subtract from the total shelter expenses fifty percent of the household's monthly income after all other deductions have been have been subtracted (the result in Subsection G); the remaining amount is the excess shelter expense;

(c) subtract the amount in Subparagraph (b) from the monthly income amount determined in Subsection F; the household's net income has been determined; go to step I.

I. Round each income calculation to the nearest dollar ($0.01 through $0.49 round down; $0.50 through $0.99 round up).

J. Multiply the household's net income by thirty percent; round the cents up to the nearest dollar, and subtract that amount from the maximum SNAP benefit amount for the household's size. The SNAP benefit amount for the household is determined.

[8.139.610.13 NMAC - Rp 8.139.610.13 NMAC, 7/16/2024]

8.139.610.14 REPLACEMENT OF BENEFITS:

A. Conditions for replacement: Subject to certain restrictions, households may be authorized a replacement issuance when the household reports the food purchased with SNAP benefits was destroyed in a household misfortune or natural disaster. The loss must be reported within ten calendar days of the day the food purchased with SNAP benefits was destroyed. The loss is ineligible for replacement if the loss is not reported timely.

(1) Replacing benefits: Subject to certain restrictions, households may be authorized a replacement issuance of SNAP benefits when the household reports that food purchased with the SNAP benefits was destroyed in a household misfortune or natural disaster.

(2) Reporting the loss: The loss of food purchased with SNAP benefits must be reported in a timely manner by the household. The report will be considered timely if the loss is reported within 10 days of the date the food purchased with SNAP benefits is destroyed in household misfortune or natural disaster.

(3) Ineligible for replacement: Food purchased with SNAP benefits will not be replaced if:

(a) the household reports that the food purchased with SNAP benefits was destroyed after receipt in an event other than a household misfortune or natural disaster; or

(b) the loss was not timely reported by the household.

(4) Household responsibilities: To qualify for a replacement, the household must:

(a) report the loss in a timely manner, either orally or in writing; and

(b) sign an affidavit or statement attesting to the loss of the household's food purchased with SNAP benefits.

(5) HCA responsibilities: HCA shall issue the replacement SNAP benefit amount if warranted, within 10 days after the report of loss, or within two working days of the date that HCA receives the signed affidavit or statement, whichever is later. Replacement of SNAP benefits will be delayed until a determination of the value of the benefits can be made.

(6) Affidavits: If a signed affidavit is not received by ISD within 10 days of the date the loss is reported, there will be no replacement. If the 10th day falls on a weekend or holiday, the deadline is the day after the weekend or holiday. The affidavit is retained in the client electronic case record. It attests to the destruction of food purchased with the original issuance and specifies the reason for the replacement. It shall also state that the household is aware of the penalties for intentional misrepresentation of the facts, including but not limited to, a charge of perjury for a false claim.

(7) Authorization: There will be no limit on the number of replacements a household may be authorized for food purchased with SNAP benefits which was destroyed in a household misfortune or natural disaster.

(8) Verification of conditions for replacement: Before replacing destroyed food purchased with SNAP benefits, ISD shall determine that the destruction occurred in a household misfortune or natural disaster, such as a fire, as well as in natural disasters affecting more than one household. This is verified through one of the following:

(a) collateral contacts; or

(b) documentation from a community agency such as but not limited to, the fire department or the red cross; or

(c) a home visit; or

(d) FNS has issued a disaster declaration and a household is eligible for emergency SNAP benefits; a household cannot receive both the disaster SNAP benefit and a replacement benefit for a household misfortune or natural disaster.

B. Calculation of replacement: A replacement of the actual value of the loss not to exceed one month's SNAP benefit amount may be issued if food purchased

with SNAP benefits is destroyed in a household misfortune or natural disaster affecting a participating household. HCA will provide a replacement issuance within 10 days of a reported loss.

C. Fair hearings: A household must be informed of its right to a fair hearing to contest denial of a replacement issuance. Replacements will not be authorized during the appeal process. A replacement is authorized if the appeal is decided in favor of the household.

[8.139.610.14 NMAC - Rp 8.139.610.14 NMAC, 7/16/2024]

8.139.610.15 NATIONAL REDUCTION OR SUSPENSION: If funding for SNAP is depleted, Section 18 of the Food Stamp Act of 1977, as amended, provides for reduction, suspension or cancellation of SNAP benefits for one or more months, or a combination of these three actions.

A. Reduction:

(1) If a reduction in SNAP allotments is deemed necessary, the maximum SNAP allotments amounts for all household sizes is reduced by a percentage specified by FNS. The maximum SNAP allotments amounts for each household size are reduced by the same percentage. This results in all households of a given size having their benefits reduced by the same dollar amount. The dollar reduction is smallest for a one-person household and greatest for the largest households. Since the dollar amount is the same for all households of the same size, the rate of reduction is lowest for zero net income households and greatest for the highest net income households.

(2) All one- and two-person households affected by a reduction action are guaranteed a minimum monthly SNAP benefit, unless the action is a cancellation of SNAP benefits, suspension of SNAP benefits, or reduction in SNAP benefits of ninety percent or more of the total amount of benefits projected to be issued in the affected month. The benefit reduction notice issued by USDA specifies whether the minimum SNAP benefit amount will be provided.

(3) SNAP benefits shall also be able to be adjusted to provide for the rounding of benefit levels of one dollar ($1.00), three dollars ($3.00) and five dollars ($5.00) to two dollars ($2.00), four dollars ($4.00) and six dollars ($6.00), respectively.

B. Suspension or cancellation:

(1) If a decision is made to suspend or cancel the distribution of SNAP benefits in a given month, FNS shall notify HCA of the date the suspension or cancellation will take effect. If SNAP benefits are suspended or cancelled, the minimum benefit provision for one- and two-person households is disregarded and all households will have their benefits suspended or cancelled.

(2) Resumption of benefits: Upon notification by FNS that a benefit suspension has ended, HCA shall act immediately to resume benefit issuance to certified households.

C. Notices: SNAP benefit reductions, suspensions, and cancellations are considered a federal adjustment to SNAP benefits. HCA shall notify all households of benefit reductions, suspensions, or cancellations in accordance with adequate notice provisions in Subsection A of 8.139.120.13 NMAC. HCA shall not provide an adverse action notice to a household affected by a benefit reduction, suspension, or cancellation.

D. Effect of reduction on certification:

(1) Normal processing: Eligibility determination for applicant households under normal (non-expedited) processing will not be affected by a benefit reduction, suspension, or cancellation. HCA shall accept and process applications during a month(s) in which a reduction, suspension, or cancellation is in effect in accordance with 8.139.110.12 NMAC, application processing. The determination of eligibility will also be made according to these provisions. If an applicant household is determined eligible for SNAP benefits and a reduction is in effect, the benefit amount is calculated by reducing the maximum SNAP allotments amount by the appropriate percentage for the applicant's household size and then deducting thirty percent of the household's net SNAP income from the reduced maximum SNAP allotments amount. If an applicant household is determined eligible for SNAP benefits while a suspension or cancellation is in effect, no benefits will be issued to the household until issuance is again authorized by FNS.

(2) Expedited service: Expedited processing continues during the months in which reductions, suspensions or cancellations are in effect.

(a) Reductions: Households receiving expedited service in months in which reductions are in effect and that are determined eligible will be issued reduced benefits. The reduced SNAP benefit amount will be made available within the time frame specified for expedited issuance.

(b) Suspension: Households receiving expedited service in months in which a suspension is in effect and that are determined eligible will have a benefit determination made within the time frames for expedited issuance. If a suspension remains in effect at the time issuance is authorized, the issuance will be suspended until FNS lifts the suspension.

(c) Cancellations: Households eligible for expedited processing which apply for SNAP benefits during months in which cancellations are in effect will receive expedited service. The deadline for completing the processing is five calendar days or the end of the month of application, whichever date is later. All other rules for providing expedited service are applicable.

(3) Certification periods: The reduction,

suspension, or cancellation of SNAP benefits in a given month will have no effect on the certification period assigned to a household. Those households with certification period expiring during a month in which SNAP benefits have been reduced, suspended or cancelled will be recertified and have a new certification period assigned.

E. Fair hearings: Any household that has its SNAP benefit amount reduced, suspended or cancelled as a result of an order issued by FNS may request a fair hearing if the household disagrees with the action. The fair hearing process is subject to the following conditions:

(1) Basis for fair hearings: HCA is not required to hold fair hearings unless the request is based on a household's belief that the SNAP benefit amount was computed incorrectly under suspension, reduction, or cancellation rules or that such rules were applied or interpreted incorrectly. HCA shall deny a fair hearing to a household that is merely disputing the fact that a reduction, suspension, or cancellation was ordered.

(2) Continuation of benefits pending fair hearing: Since the reduction, suspension, or cancellation is necessary to avoid an expenditure of funds beyond those appropriated by congress, households do not have a right to continuation of SNAP benefits pending a fair hearing.

(3) Retroactive benefits: A household will receive retroactive SNAP benefits in an appropriate amount if it is found that its SNAP benefits were reduced by more than the amount by which HCA was directed to reduce SNAP benefits.

F. Restoration of benefits:

(1) HCA shall have issuance services available to serve households receiving restored or retroactive SNAP benefits for a previous, unaffected month if benefit reduction, suspension or cancellation has been ordered.

(2) Households whose SNAP benefits are reduced, suspended or cancelled as a result of these procedures will not be entitled to restoration of lost benefits at a future date. However, if there is a surplus of funds as a result of the reduction or cancellation, FNS will direct HCA to restore benefits to affected households, unless the secretary of agriculture determines that the amount of surplus funds is too small for this to be practical.

(3) HCA shall design procedures to implement the restoration of SNAP benefits promptly if FNS directs the restoration of benefits.

[8.139.610.15 NMAC - Rp 8.139.610.15 NMAC, 7/16/2024]

HISTORY OF 8.139.610 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
ISD 450.0000, Determining Household Eligibility and Benefit Levels, 8/15/1980.
ISD 470.0000, Issuance and Use of Coupons, 8/15/1980.
ISD 404.0000, State Agency Administration, 7/15/1980.
ISD 404.0000, Food Assistance - Coupons as Obligations of the United States, 2/10/1981.
ISD-Rule 404.0000, Food Assistance - Coupons as Obligations of the United States, 11/4/1982.
ISD-Rule 436.0000, Food Assistance - Establishing Certification Periods, 11/4/1982.
ISD-Rule 436.0000, Food Assistance - Establishing Certification Periods, 1/20/1984.
ISD-Rule 436.0000, Food Assistance - Establishing Certification Periods, 5/111984.
ISD-Rule 446.0000, Food Assistance - Replacement Allotments, 11/5/1982.
ISD-Rule 447.0000, Food Assistance - Replacement of Coupons Lost in the Mail, 11/5/1982.
ISD-Rule 448.0000, Food Assistance - Allotment Reduction Procedures, 11/5/1982.
ISD FS 450, Issuance and Use of Food Stamps, 3/1/1988.
ISD FS 450, Issuance and Use of Food Stamps, 4/30/1992.

History of Repealed Material: 8.139.610 NMAC - Program Benefits - Issuance And Receipt (filed 4/26/2001), Repealed effective 7/16/2024.

Other: 8.139.610 NMAC - Program Benefits - Issuance And Receipt (filed 4/26/2001), Replaced by 8.139.610 NMAC - Program Benefits - Issuance And Receipt (Replaced by effective 7/16/2024.

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 647 FOOD STAMP PROGRAM - ADMINISTRATIVE DISQUALIFICATION PROCEDURES

8.139.647.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.139.647.1 NMAC - Rp 8.139.647.1 NMAC, 7/16/2024]

8.139.647.2 SCOPE: General public
[8.139.647.2 NMAC - Rp 8.139.647.2 NMAC, 7/16/2024]

8.139.647.3 STATUTORY AUTHORITY: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the health care authority (HCA), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care

purchasing and regulation.
[8.139.647.3 NMAC - Rp 8.139.647.3 NMAC, 7/16/2024]

8.139.647.4 DURATION: Permanent.
[8.139.647.4 NMAC - Rp 8.139.647.4 NMAC, 7/16/2024]

8.139.647.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited for a section.
[8.139.647.5 NMAC - Rp 8.139.647.5 NMAC, 7/16/2024]

8.139.647.6 OBJECTIVE: Issuance of the revised food stamp program policy manual is intended to be used in administration of the food stamp program in New Mexico. This revision incorporated the latest federal policy changes in the food stamp program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the HCA.
[8.139.647.6 NMAC - Rp 8.139.647.6 NMAC, 7/16/2024]

8.139.647.7 DEFINITIONS: [**RESERVED**]

8.139.647.8 ADMINISTRATIVE DISQUALIFICATION PROCEDURES

A. Administrative responsibility: The HCA will be responsible for investigating any case of alleged intentional program violation (IPV), and ensuring that appropriate cases are acted upon either through administrative disqualification hearings (ADH) or referral to a court of appropriate jurisdiction. Administrative disqualification procedures or referrals for prosecution should be initiated by the HCA in cases in which the HCA has sufficient documentary evidence to substantiate that an individual has committed one or more acts of intentional program violation. A recommendation to pursue administrative disqualification of an individual is made by the office of the inspector general (OIG) upon review of documentary evidence submitted by the county office. If the HCA does not initiate administrative disqualification procedures or refer for prosecution a case involving an over-issuance caused by a suspected act of IPV, the HCA will take action to collect the over-issuance by establishing an inadvertent household error claim against a household in accordance with the procedures in Subsection B of 8.139.640.9 NMAC and Subsection A of 8.139.640.10 NMAC.

(1) Initiating hearings: The HCA should conduct administrative disqualification hearings in the following situations:

(a) in cases in which the HCA believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system;

(b) in cases previously referred for prosecution that were declined by the appropriate legal authority, and

(c) in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the HCA.

(2) When a hearing is not initiated: The HCA will not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related circumstances.

(3) Household eligibility: The HCA may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of an individual.

(4) Determination of administrative disqualification:

(a) The HCA will base administrative disqualifications for IPV on the determinations of hearing authorities arrived at through administrative disqualification hearings, or on determinations reached by courts of appropriate jurisdiction.

(b) The HCA has the option of allowing accused individuals either to waive their rights to administrative disqualification hearings or to sign disqualification consent agreements for cases of deferred adjudication. If the HCA chooses either of these options, the administrative disqualification for IPV may be based on the waived right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

B. Disqualification penalties:

(1) Individuals found to have committed an intentional program violation (IPV) either through an administrative disqualification hearing or by a federal, state, or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, will be ineligible to participate in the food stamp program as follows:

(a) for a period of six months for the first IPV; or for a period of one year for the first IPV if the offense occurred after August 22, 1996;

(b) for a period of one year for the second IPV; or for a period of two years for the second IPV if the offense occurred after August 22, 1996;

(c) permanently for the third finding of an IPV.

(d) one or more intentional program violations which occurred prior to the implementation of the disqualification

periods specified above will be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(2) Sale of controlled substances: Individuals found by a federal, state or local court to have used or received food stamp benefits in a transaction involving the sale of a controlled substance (as defined in Sec. 102 of the Controlled Substances Act [21 USC 802]) will be ineligible to participate in the food stamp program:

(a) for a period of one year upon the first occasion of such violation; or for two years upon the first occasion of such violation if the offense occurred after August 22, 1996; and

(b) permanently upon the second occasion of such violation.

(3) Permanent disqualification from participation in FSP:

(a) Individuals found by a federal, state or local court to have used or received food stamp benefits in a transaction involving the sale of firearms, ammunition, or explosives will be permanently ineligible to participate in the FSP upon the first occasion of such violation.

(b) Individuals convicted in federal or state court of trafficking food stamp benefits with a value of $500 or more, for an offense which occurred after August 22, 1996.

(c) The penalties above will also apply in cases of deferred adjudication described in Subsection D of 8.139.647.11 NMAC, where the court makes a finding that the individual engaged in the conduct described above. Regardless of when an action taken by an individual which caused an IPV occurred, the disqualification periods above will apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(4) Dual participation in the FSP: An individual will be ineligible to participate in the FSP as a member of any household for a period of 10 years upon a finding of IPV, or conviction in federal or state court, for having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple benefits simultaneously in the FSP. The provision applies only to an offense which occurred after August 22, 1996.

(5) Court failure to impose disqualification: If a court fails to impose a disqualification period for the IPV, HCA will impose the disqualification penalties specified above, unless it is contrary to the court order.

(6) Disqualifying the individual: HCA will disqualify only the individual found to have committed intentional program violation, or who has signed the waiver of right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

(7) Restitution by remaining household members: The remaining household members must agree to make restitution within 30 days of the date the HCA's written demand letter is mailed, or the household's monthly food stamp benefit amount will be reduced.

(a) If the remaining household members agree to make restitution but fail to do so, the HCA will impose a benefit reduction on the household's monthly benefit amount.

(b) The remaining household members, if any, will begin restitution during the period of disqualification imposed by the HCA or a court of law.

(c) All restitutions will be made in accordance with established procedures for cash repayment, benefit reduction, or coupons for repayment. See 8.139.640.11 NMAC for procedures on claims collection.

C. Notification to applicant households: The HCA will inform a household in writing of the disqualification penalties for intentional program violation each time a household applies for Program benefits.

D. Definition of IPV: For purposes of determining through administrative disqualification hearings whether or not an individual has committed an intentional program violation, an IPV will consist of having intentionally:

(1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or

(2) committed any act that constitutes a violation of the Food Stamp Act, food stamp program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp benefits.

[8.139.647.8 NMAC - Rp 8.139.647.8 NMAC, 7/16/2024]

8.139.647.9 DISQUALIFICATION HEARINGS: The HCA will publish clearly written rules of procedure for disqualification hearings, and will make these procedures available to any interested party.

A. HCA conducted hearings: When the HCA has sufficient documentary evidence indicating that an individual may have committed an intentional program violation (IPV), action will be taken to conduct an administrative disqualification hearing.

(1) Consolidation of ADH with fair hearing: An administrative disqualification hearing and a fair hearing may be combined into a single hearing if the factual issues arise out of the same or related, circumstances and the household receives prior notice that the hearing will be combined.

(a) Time frames: If a disqualification hearing and fair hearing are combined, the HCA will follow the time frames for conducting disqualification hearings.

(b) **Claims and IPV determination:** If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional program violation has occurred, the household will lose its right to a subsequent fair hearing on the amount of the claim.

(c) **Waiving the 30-day advance notice:** The HCA will allow, upon household request, a household to waive the required 30-day advance notice of hearing when the disqualification hearing and fair hearing are combined.

(2) **Administrative disqualification hearing procedures:**

(a) **Hearing officers:** The HCA may use the same hearing official for disqualification hearings and fair hearings or may designate hearing officials to conduct only disqualification hearings.

(b) **Advising household or representative:** At the disqualification hearing the hearing official will advise the household member or representative that they may refuse to answer questions during the hearing.

(c) **Time limits for decision:** Within 90 days of the date the household member is notified in writing that the hearing has been scheduled the HCA will conduct the hearing, arrive at a decision, and notify the household member and local agency of the decision.

(d) **Postponing the scheduled hearing:** The household member or representative is entitled to a postponement of the scheduled hearing provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The hearing will not be postponed for more than a total of 30 days and the HCA may limit the number of postponements to one. If the hearing is postponed the time limits above may be extended for as many days as the hearing is postponed.

(3) **Advance notice of hearing:** The HCA will provide written notice to a household member suspected of intentional program violation at least 30 days in advance of the date a disqualification hearing which is initiated by HCA has been scheduled.

(a) If mailed, the notice will be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If no proof of receipt is obtained, a showing of non-receipt by the household member will be considered good cause for not appearing at the hearing.

(b) The notice will contain, at a minimum:

(i) the date, time and place of the hearing;

(ii) the charge(s) against the household member;

(iii) a summary of the evidence, and how and where the evidence can be examined;

(iv) a warning that the decision will be based solely on information provided by the county office if the household member fails to appear at the hearing;

(v) a statement that the household member or representative will have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(vi) a warning that a determination of IPV will result in disqualification periods as determined by 8.139.647.8 NMAC; and a statement of which penalty HCA believes is applicable to the case scheduled for a hearing;

(vii) a listing of the household's member's rights;

(viii) a statement that the hearing does not preclude the state or federal government from prosecuting the household member for IPV in civil or criminal court action, or from collecting the over-issuance;

(ix) the name of an individual or organization, if any, that provides free legal representation;

(x) the date that the signed waiver must be received by the hearing official to avoid holding the hearing;

(xi) a statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;

(xii) the telephone number and, if possible, the name of the person to contact for additional information; and

(xiii) the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(4) **Scheduling the hearing:** The time and place of the hearing will be arranged so that the hearing is accessible to the household member suspected of IPV.

(5) **Failure to appear:** If the household member or representative cannot be located or fails to appear at a hearing initiated by the HCA without good cause, the hearing will be conducted without the household member being represented. Even if the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional program violation was committed based on clear and convincing evidence. If the household member is found to have committed intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the HCA will conduct an new hearing. The household member has 10 days from

the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. The good cause decision will be documented into the case record.

(6) Participation while awaiting a hearing: A pending disqualification hearing will not affect the individual's or household's right to be certified and participate the food stamp program. Since a household member cannot be disqualified for IPV until a hearing official finds that individual has committed IPV, the HCA will determine eligibility and benefit amount of the household in the same manner it would be determined for any other household. Household benefits will be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The household benefits will be reduced or terminated if the HCA has documentation which substantiates that the household is ineligible or eligible for fewer benefits, even if these facts led to the suspicion of intentional program violation and resulting disqualification hearing, and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the HCA may have documentation which substantiates that a household failed to report a change in circumstances even though the HCA has not yet demonstrated that the failure to report involved an act of intentional program violation.

(7) Criteria for determining IPV: The hearing officer will base the determination of IPV on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in Subsection D of 8.139.647.8 NMAC.

(8) Imposition of disqualification penalties:

(a) Beginning the disqualification: The period of disqualification will begin with the first month which follows the date the household member receives written notification of the disqualification. If the act of IPV which led to the disqualification occurred prior to the disqualification periods specified in Subsection B of 8.139.647.8 NMAC, the household member will be disqualified in accordance with the disqualification periods in effect at the time of the offense.

(b) No further appeal: No further administrative appeal procedure exists after an ADH conducted by the HCA. The determination of IPV made by a hearing officer cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(c) Ineligibility at disqualification: If the individual is not certified to participate in the food stamp program at the time the disqualification period is to begin, the disqualification penalty will be imposed immediately upon a determination of IPV, as though the individual was a participant in the FSP.

(d) Disqualification period continues: Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification will continue uninterrupted until completed, regardless of the eligibility of the disqualified member's household. The disqualified member's household will continue to be responsible for repayment of the over-issuance which resulted from the disqualified member's intentional program violation, regardless of the household's eligibility for food stamp benefits.

(9) Notification of disqualification: If the hearing officer finds that the household member committed IPV, HCA will provide written notice to a household member prior to disqualification.

(a) The notice will inform the household member of the decision; the reason for the decision; and the date the disqualification penalty begins and ends.

(b) Written notice will also be provided to any remaining household members of the benefit amount they will receive during the period of disqualification or that they must reapply because the certification period has expired. A written demand letter for restitution will also be provided.

B. Waived hearings: The HCA will provide written notification to the household member suspected of intentional program violation that the member can waive their right to an administrative disqualification hearing. Prior to providing written notification to the household member, the evidence must be reviewed by the office of inspector general (OIG). OIG must have made a determination that such evidence warrants scheduling a disqualification hearing.

(1) Contents of written notice: The written notification provided to the household member will include, at a minimum:

(a) The date that the signed waiver must be received by the HCA to avoid the holding of a hearing and a signature block for the accused individual along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

(b) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;

(c) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the HCA;

(d) An opportunity for the accused individual to specify whether or not they admit to the facts as presented by the HCA. This opportunity will consist of the following statements:

(i) "I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver;" and

(ii) "I do not admit that the facts as presented are correct; however, I have chosen to sign this waiver and understand that a disqualification penalty will result."

(e) The telephone number and if possible the name of the individual to contact for additional information;

(f) The fact that the remaining household members if any will be held responsible for repayment of the resulting claim.

(2) Imposition of disqualification penalties: If the household member suspected of IPV signs the waiver of right to an ADH and the signed waiver is received within the time frames specified by the HCA, the household member will be disqualified in accordance with the disqualification periods in Subsection B of 8.139.647.8 NMAC above.

(a) Beginning the disqualification: The period of disqualification will begin with the first month following the date the household member receives written notification of the disqualification. If the act of IPV which led to the disqualification occurred prior to the written notification of the disqualifications specified in Subsection B of 8.139.647.8 NMAC, the household member will be disqualified in accordance with the disqualification period in effect at the time of the offense. The same act of IPV repeated over a period of time will not be separated so that separate penalties can be imposed.

(b) No further appeal: No further administrative appeal procedure exists after an individual waives their right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(c) Ineligibility at disqualification: If the individual is not certified to participate in the program at the time the disqualification period is to begin, the disqualification penalty will be imposed immediately upon a determination of an IPV, as though the individual was a participant in the FSP.

(d) Disqualification continues: Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification will continue uninterrupted until completed regardless of the eligibility of the disqualified members household. The disqualified member's household will continue to be responsible for repayment of the over-issuance which resulted from the disqualified member's IPV regardless of the household's eligibility for program benefits.

(3) Written notification: Written notice will be provided to the household member prior to disqualification. Written notice will also be provided to any remaining household members of the allotment they will receive during the period of disqualification or that the household must reapply because the certification period has expired. A written demand letter for restitution, will also be provided.

C. Court referrals: The HCA will refer cases of alleged IPV for prosecution in accordance with an agreement with prosecutors or state law. The agreement will include the understanding that prosecution will be pursued in cases where appropriate. The agreement will also include information on how and under what circumstances cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution. The HCA is encouraged to refer for prosecution under state or local statutes those individuals suspected of committing IPV, particularly if large amounts of food stamp benefits are suspected of having been obtained by IPV, or the individual is suspected of committing more than one act of IPV.

(1) Imposition of disqualification penalties: The HCA will disqualify an individual found guilty of IPV for the length of time specified by the court. If the court fails to impose a disqualification period, the HCA will impose a disqualification period in accordance with the provisions in Subsection B of 8.139.647.8 NMAC, unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, the HCA will initiate the disqualification period for currently eligible individuals within 45 days of the date the disqualification was ordered. Any other court-imposed disqualification will begin within 45 days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

(2) Beginning the disqualification: If the individual is not certified to participate in the program at the time the disqualification period is to begin, the disqualification penalty will be imposed immediately upon a determination of IPV, as though the individual was a participant in the FSP.

(3) Disqualification continues: Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification will continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. The disqualified member's household will continue to

be responsible for repayment of the over-issuance which resulted from the disqualified members IPV regardless of the household's eligibility for program benefits.

(4) **Notification of disqualification:** If the court finds that the household member committed IPV the HCA will provide written notice to the household member. The notice will be provided prior to disqualification, whenever possible. The notice will inform the household member of the disqualification and the date the disqualification will take effect. The HCA will provide written notice to the remaining household members, if any, of the benefit amount they will receive during the period of disqualification or that they must reapply because the certification period has expired. The HCA will provide a written demand letter for restitution.

D. Deferred adjudication: The HCA may allow individuals to sign disqualification consent agreements in cases referred for prosecution. The HCA may use this option for those cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor.

(1) Advance notification:

(a) The HCA will enter into an agreement with the state's attorney general's office or where necessary, with county prosecutors which provides for advance written notification to the household member of the consequences of consenting to disqualification in cases of deferred adjudication.

(b) The written notification provided to the household member which informs him/her of the consequences of consenting to disqualification as a part of deferred adjudication will include, at a minimum:

(i) a statement for the accused individual to sign that the accused understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block;

(ii) a statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud;

(iii) a warning that the disqualification periods for IPV under the food stamp program are as specified in Subsection B of 8.139.647.8 NMAC, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification;

(iv) a statement of the fact that the remaining household members, if any will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(2) Imposition of disqualification penalties: If the household member suspected of IPV signs the disqualification consent agreement, the household member will be disqualified in accordance with the disqualification periods specified in Subsection B of 8.139.647.8 NMAC, unless contrary to the court order. The disqualification period will begin within 45 days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the HCA will disqualify the household member in accordance with the court order.

(3) **Beginning the disqualification:** If the individual is not certified to participate in the program at the time the disqualification period is to begin, the disqualification penalty will be imposed immediately upon a determination of IPV, as if the individual was a participant in the FSP.

(4) **Disqualification continues:** Once a disqualification penalty has been imposed against a currently participating household member, the disqualification period will continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. The disqualified member's household will continue to be responsible for repayment of the over-issuance which resulted from the disqualified member IPV regardless of the household's eligibility for program benefits.

(5) **Notification of disqualification:** If the household member suspected of IPV signs the disqualification consent agreement, the HCA will provide written notice to the household member. The notice will be provided prior to disqualification whenever, possible. The notice will inform the household member of the disqualification and the date the disqualification will take effect. The HCA will also provide written notice to the remaining household members, if any, of the benefit amount the household will receive during the disqualification period or that the household must reapply because the certification period has expired. The HCA will provide a written demand letter for restitution.

E. Reporting requirements:

(1) The HCA will report to food and consumer services (FCS) information concerning individuals disqualified for IPV based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction, and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases referred for prosecution. The information must be submitted so that it is received by FCS no later than

30 days after the effective date of the disqualification.
The HCA will submit required information on each individual disqualified for IPV through a reporting system in accordance with procedures specified by FCS. The following information concerning the individual will be reported to FSC:

(a)
social security number, date of birth, full name;

(b)
the type and number of the disqualification (1st, 2nd, 3rd);

(c)
the state and county in which the disqualification took place;

(d)
the date on which the disqualification took effect;

(e)
the length of the disqualification period imposed.

(2)
Availability to all state agencies: All data submitted will be available for use by any state welfare agency. The data will be used, at a minimum, for the following:

(a)
to determine eligibility of individual program applicants prior to certification in cases where there is reason to believe a household member is subject to disqualification in another political jurisdiction and

(b)
to ascertain the appropriate penalty to impose, based on past disqualifications in a case under consideration.

(c)
Other uses: The HCA may also use the data in other ways, such as the following:

(i)
to screen all program applicants prior to certification, and

(ii)
to periodically match the entire list of disqualified individuals against their current caseloads.

(3)
Disqualification valid in all political jurisdictions: The disqualification of an individual for IPV in one political jurisdiction will be valid in another. However, one or more intentional program violations which occurred prior to the implementation of the disqualification periods specified in Paragraph 1 of Subsection B of 8.139.647.8 NMAC will be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. The HCA is required to identify any individuals disqualified for fraud prior to implementation of this rule and to submit the information required by this section on such individuals.

(4) Court reversal of the disqualification: In cases where the disqualification for IPV is reversed by a court of appropriate jurisdiction, the HCA will submit a report to purge the file of the information relating to the disqualification which was reversed. In cases where the determination of IPV is reversed by a court of appropriate jurisdiction, the HCA will reinstate the individual in the program if the household is eligible. Food stamp benefits that were lost as a result of the disqualification will be restored.
[8.139.647.9 NMAC - Rp 8.139.647.9 NMAC, 7/16/2024]

HISTORY OF 8.139.647 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
ISD 426.0000, Fraud Disqualifications, 8/1/1980.
ISD-Rule 462.0000, Food Assistance - Fraud Disqualifications, 11/5/1982.
ISD-Rule 462.0000, Disqualification for Intentional Program Violation, 5/31/1983.
ISD-Rule 462.0000, Disqualification for Intentional Program Violation, 9/13/1983.
ISD FS 530, Food Stamp Administrative Disqualification, 3/2/1988.
ISD FS 540, Trafficking of Food Assistance Benefits, 8/31/1994.

History of Repealed Material:
8.139.647 NMAC - Food Stamp Program - Administrative Disqualification Procedures (filed 4/26/2001), Repealed effective 7/16/2024.

Other: 8.139.647 NMAC - Food Stamp Program - Administrative Disqualification Procedures (filed 4/26/2001), Replaced by 8.139.647 NMAC - Food Stamp Program - Administrative Disqualification Procedures effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

The New Mexico Livestock Board, approved the repeal of 21.30.2 NMAC- Animals and Animal Industry General Provisions filed (2/15/2010) and replaced it with 21.30.2 NMAC - Animals and Animal Industry General Provisions adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21 NMAC 30.3 - Bovine Brucellosis filed (1/28/1999) and replaced it with 21.30.3 NMAC - Bovine Brucellosis adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21.30.4 NMAC - Exotic Pests and Foreign Animal diseases filed (4/30/2001) and replaced it with 21.30.4 NMAC - Exotic Pests and Foreign Animal diseases adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21.30.7 NMAC - Equine Viral Arteritis (EVA) filed (11/17/2006) and replaced it with 21.30.7 NMAC - Equine Viral Arteritis (EVA) adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21 32.2 NMAC - Branding of Livestock filed (1/28/1999) and replaced it with 21 32.2 NMAC - Branding of Livestock

adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21.32.3 NMAC - Transportation Of Livestock (filed 5/14/2004) and replaced it with 21.32.3 NMAC - Transportation Of Livestock adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21.32.4 NMAC - Import Requirements (Transportation of Livestock into New Mexico) filed (12/14/2007) and replaced it with 21.32.4 NMAC - Import Requirements (Transportation of Livestock into New Mexico) adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21.32.10 NMAC - Livestock Board Fees filed (1/28/1999) and replaced it with 21.32.10 NMAC - Livestock Board Fees adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21 NMAC 34.20 - New Mexico Pullorum-Typhoid Control Program filed (1/28/1999) and replaced it with 21.34.20 NMAC - New Mexico Pullorum-Typhoid Control Program adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21 NMAC 35.3 - Humane Handling of Livestock by Livestock Markets and Facilities filed (10/16/2008) and replaced it with 21.35.3 NMAC - Humane Handling of Livestock by Livestock Markets and Facilities adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21.35.4 NMAC - Livestock Markets and Facilities (filed 10/16/2008) and replaced it with 21.35.4 NMAC - Livestock Markets and Facilities adopted on 6/21/2024 and effective 7/16/2024.

The New Mexico Livestock Board, approved the repeal of 21.35.5 NMAC - Cattle and Sheep Rest Stations (filed 11/14/2001) and replaced it with 21.35.5 NMAC - Cattle and Sheep Rest Stations adopted on 6/21/2024 and effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 30 ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS
PART 2 NEW MEXICO LIVESTOCK BOARD GENERAL PROVISIONS

21.30.2.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.30.2.1 NMAC - Rp, 21.30.2.1 NMAC 7/16/2024]

21.30.2.2 SCOPE: All owners, transporters, or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21.32, 21.33 and 21.35 NMAC.
[21.30.2.2 NMAC - Rp, 21.30.2.2 NMAC 7/16/2024]

21.30.2.3 STATUTORY AUTHORITY: Section 77-2-7 NMSA 1978.
[21.30.2.3 NMAC - Rp, 21.30.2.3 NMAC 7/16/2024]

21.30.2.4 DURATION: Permanent.
[21.30.2.4 NMAC - Rp, 21.30.2.4 NMAC 7/16/2024]

21.30.2.5 EFFECTIVE DATE: July 16, 2024 unless a later date is cited at the end of a section.
[21.30.2.5 NMAC - Rp, 21.30.2.5 NMAC 7/16/2024]

21.30.2.6 OBJECTIVE: To establish rules governing the general operation of the New Mexico livestock board.
[21.30.2.6 NMAC - Rp, 21.30.2.6 NMAC 7/16/2024]

21.30.2.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Director" means the executive director of the New Mexico livestock board.

C. "Inspector" means any duly authorized or commissioned officer of the livestock board.

D. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

E. "New Mexico livestock" means any livestock raised or pastured or fed within the state of New Mexico.

F. "Person" means an individual, partnership, association or operation.
[21.30.2.7 NMAC - Rp, 21.30.2.7 NMAC 7/16/2024]

21.30.2.8 REMOVING ANIMALS FROM THE CUSTODY OF THE BOARD:

A. No one shall be allowed to remove any animal, animals or carcasses thereof, from the custody of any livestock inspector, or any person designated by the board, who has taken up, seized or impounded the said animal, animals, or carcasses, for the purpose of determining ownership, preventing theft, trespass or the spread of disease or for any reason covered by the existing laws of the state of New Mexico or rules and regulations of the board.

B. The provisions of Subsection A of 21.30.2.8 NMAC above shall also apply to any livestock being held by the board, under federal regulations, to prevent the spread of dangerous disease.

C. The penalty for removing an animal, animals or carcasses from the custody of the board shall be that which is set by

statute for violating a rule of the board.
[21.30.2.8 NMAC - Rp, 21.30.2.8 NMAC 7/16/2024]

21.30.2.9 OFFICE OF THE NEW MEXICO LIVESTOCK BOARD:

A. The main office of the board shall be open for business eight and one-half hours each day that state offices are open, unless otherwise determined by the executive director, the appointed board or the governor.

B. The office will be open from 8:00 am until 4:30 pm and will remain open through the noon hour, unless the hours are otherwise announced by the executive director for some special situation.
[21.30.2.9 NMAC - Rp, 21.30.2.9 NMAC 7/16/2024]

21.30.2.10 MEETING BY TELEPHONE: Pursuant to Subsection C of Section 10-15-1 NMSA 1978, any number of board members may participate in a meeting of the board by means of a conference telephone or other communications equipment under the following conditions:

A. meeting by telephone will not be considered the normal accepted form of board business, and is intended only as an alternative to the normal board meeting when conditions warrant;

B. meetings by telephone can only be authorized at the discretion of the chairman of the board;

C. this part shall only apply when it is otherwise impossible, difficult or impractical for the member or members to attend the meeting in person;

D. such meetings will be advertised and facilitated in the same manner as a normal board meeting under the public notice requirements;

E. each member participating by conference telephone must be identified when speaking;

F. all participants must be able to hear each other at the same time; members of the public attending the meeting must be able to hear any board member who speaks during the meeting.
[21.30.2.10 NMAC - Rp, 21.30.2.10 NMAC 7/16/2024]

HISTORY OF 21.30.2 NMAC:
Pre-NMAC History: The material filed in this part was derived from that previously filed with the state records center and archives under:
NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/3/1967;
NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970;
NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 5/6/71976;
NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12/10/1969;
NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10/17/1979;
NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/4/1981;
NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985.

History of Repealed Material:
21 NMAC 30.3 - New Mexico Livestock Board - General Provisions (filed 1/28/1999) repealed effective 2/15/2010.
21.30.2 NMAC - New Mexico Livestock Board - General Provisions (filed 2/15/2010) repealed effective 7/16/2024.

Other History:
Only that applicable portion of NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations (filed 1/30/1985) was renumbered, reformatted, amended and replaced by 21 NMAC 30.2, New Mexico Livestock Board - General Provisions, effective 3/1/1999.
21 NMAC 30.2, New Mexico Livestock Board - General Provisions (filed 1/28/1999) was renumbered, reformatted, amended and replaced by 21.30.2 NMAC, New Mexico Livestock Board - General Provisions, effective 2/26/2010.
21.30.2 NMAC - New Mexico Livestock Board - General Provisions (filed 2/15/2010) Replaced by 21.30.2 NMAC - New Mexico Livestock Board - General Provisions effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 30 ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS
PART 3 BOVINE BRUCELLOSIS

21.30.3.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.30.3.1 NMAC - Rp, 21 NMAC 30.3.1, 7/16/2024]

21.30.3.2 SCOPE: All owners, transporters or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21.33 and 21.35 NMAC. Additional requirements for brucellosis testing and transporting livestock can be found in 21.32.4 NMAC.
[21.30.3.2 NMAC - Rp, 21 NMAC 30.3.2, 7/16/2024]

21.30.3.3 STATUTORY AUTHORITY: Section 77-2-7, 77-3, 77-4, 77-5, 77-8 and 77-9, NMSA 1978.
[21.30.3.3 NMAC - Rp, 21 NMAC 30.3.3, 7/16/2024]

21.30.3.4 DURATION: Permanent.
[21.30.3.4 NMAC - Rp, 21 NMAC 30.3.4, 7/16/2024]

21.30.3.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of the section or paragraph.
[21.30.3.5 NMAC - Rp, 21 NMAC 30.3.5, 7/16/2024]

21.30.3.6 OBJECTIVE: To establish rules governing transportation and handling of livestock in New Mexico that have been infected with or exposed to bovine brucellosis.
[21.30.3.6 NMAC - Rp, 21 NMAC 30.3.6, 7/16/2024]

21.30.3.7 DEFINITIONS:

A. **"Board"** means the New Mexico livestock board.

B. **"Director"** means the executive director of the New Mexico livestock board.

C. **"Holstein cross"** means bovines that have some percentage of holstein or other dairy breed in their genetic lineage.

D. **"Inspector"** means any duly authorized or commissioned officer of the livestock board.

E. **"Livestock"** means cattle, sheep, swine, goats, horses, mules and asses. This includes privately owned buffalo (bison).

F. **"New Mexico livestock"** means any livestock raised or pastured or fed within the state of New Mexico.

G. **"Person"** means an individual, partnership, association or operation.

H. **"Quarantine"** or "quarantined area" means any area within the state of New Mexico whose physical boundaries have been established by order of the board or a duly authorized agent of the board for the purpose of controlling the movement of livestock to prevent the spread of disease.

I. **"Quarantined livestock"** means any livestock found by the board or its duly authorized agent to be exposed or affected by a contagious or infectious disease and the order of restricted movement is imposed.

J. **"Sealed vehicle"** means a vehicle for transporting livestock that has its gates or doors closed and which gates or doors have an attached strip of metal, which is numbered for identification. The metal strip is attached to the gates or doors in a manner that would break the "seal" if the vehicle were to opened.
[21.30.3.7 NMAC - Rp, 21 NMAC 30.3.7, 7/16/2024]

21.30.3.8 BRUCELLOSIS INFECTED AND EXPOSED CATTLE:

A. All cattle known to be infected with brucellosis, or cattle that have been exposed to infected cattle, shall be tested for brucellosis within 45 days of a notice in writing directed to the owner of the cattle by the board.

B. The board of its duly authorized representative shall, upon issuance of a written notice as provided in in Subsection A of 21.30.8 NMAC above, strictly quarantine the cattle in a designated area.

C. No cattle shall be allowed to be moved or transported from said quarantine area without prior approval of the board or its authorized representative.

D. In the event the owner of the cattle does not proceed to have cattle under his ownership, possession, or contract tested for brucellosis within the given 45 day period, the quarantine shall continue in full force and effect.

E. Should any cattle prove to be positive or suspect to the brucellosis test, subsequent tests shall be given until such time as the board certifies that none of the cattle in the quarantine area are carriers of the disease or a menace the other herds.

F. All cattle that are positive to the brucellosis test shall immediately be branded with a "B" on the left jaw or tailhead and disposed of in a manner prescribed by the board.

G. All tests shall be administered under the supervision of the board at the owners expense, unless the board waives such expense.

H. The owner shall make available all cattle at a place designated by the board or its authorized agent and furnish adequate physical facilities to conduct such tests.

I. In all areas, an additional blood test of all non-neutered cattle over six months of age in the herd is required either not less than six months or more than twelve months after release of an affected herd from quarantine or not less than 10 months or more than 16 months after removal of the last reactor.

J. Adjacent herds, or herds sharing common pasture or having other contact with the affected herd, and herds containing previous purchases from or exchanges with the affected herd shall have an adjacent herd plan within 30 days of disclosure of the affected herd. If a disagreement occurs, consultation between the herd owner, state veterinarian, the epidemiologist and the owners veterinarian, may be requested and held to resolve the situation, with the final approval of the plan resting with the director.
[21.30.3.8 NMAC - Rp, 21 NMAC 30.3.8, 7/16/2024]

21.30.3.9 MOVEMENTS OF BRUCELLOSIS EXPOSED CATTLE:

A. Cattle classified as exposed may move with approval of the board or its authorized agent, from a livestock market to:

(1) quarantined feedlot or approved slaughtering establishment after having been identified with an approved metal eartag, be hot-iron branded with the letter "S" on the left jaw or on the tail head and accompanied by a completed VS form 127 or similar permit; or

(2) herd of origin premises without "S" branding, provided that the exposed animals and the premises shall be under quarantine pending further testing.

B. Cattle classified as "exposed" may move with the approval of the board or its authorized representative, from the herd of origin premises:

(1) to a quarantined feedlot or approved slaughtering establishment after having been identified with an approved metal eartag, be hot-iron branded with the letter "S" on the left jaw or the tail head and accompanied by a completed VS form 127 or similar permit, except that in extraordinary circumstances the director may waive the "S" branding requirement for intrastate movements; or

(2) directly to one livestock auction market and sell for movement directly to a quarantined feedlot or approved slaughtering establishment.

[21.30.3.9 NMAC - Rp, 21 NMAC 30.3.9, 7/16/2024]

21.30.3.10 BRUCELLOSIS REACTOR HERDS:

A. All classes of cattle in a brucellosis reactor herd shall be placed under quarantine by the New Mexico livestock board or its authorized representative. Such animals under quarantine shall not be removed from the quarantine, unless granted permission by the board, or its authorized representative.

B. Whenever it is officially determined by the livestock board that a market cattle identification (MCI) reactor is directly from a New Mexico origin herd, the New Mexico livestock board or its authorized representative, shall quarantine the herd of origin.

C. Any subsequent movement of an animal, or animals, from the quarantined herd, must be by special permit of the board, or its authorized agent, until the herd is declared negative and the quarantine lifted.

[21.30.3.10 NMAC - Rp, 21 NMAC 30.3.10, 7/16/2024]

21.30.3.11 DISPOSITION OF REACTORS AND INFECTED HERDS; INDEMNITY PAYMENTS:

A. All cattle testing positive to the brucellosis test shall go directly to slaughter and be slaughtered within three business days.

B. The balance of the cattle may, with the proper permit and an S brand, go to slaughter or to an approved feedlot, or they may be returned to the ranch of origin under quarantine.

C. All New Mexico cattle positive to the brucellosis test will be eligible for indemnity payments from the federal government, as stated in Part 51, Title 9 of the Code of Federal Regulations, as amended.

[21.30.3.11 NMAC - Rp, 21 NMAC 30.3.11, 7/16/2024]

HISTORY OF 21.20.3 NMAC:

Pre-NMAC History: The material filed in this part was derived from that previously filed with the State Records Center and Archives under:
NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/3/1967;
NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970;
NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 5/6/1976;
NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12/10/1969;
NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72- 4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10/17/1979;
NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/4/1981;
NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985.

History of Repealed Material: 21 NMAC 30.3 - Bovine Brucellosis filed (1/28/1999) repealed effective 7/16/2024.

Other History: 21 NMAC 30.3 - Bovine Brucellosis filed (1/28/1999) replaced by 21.30.3 NMAC - Bovine Brucellosis effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 30 ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS
PART 4 EXOTIC PESTS AND FOREIGN ANIMAL DISEASES

21.30.4.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.30.4.1 NMAC - Rp, 21.30.4.1 NMAC, 7/16/2024]

21.30.4.2 SCOPE: All owners, transporters, or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21.32, 21.33 and 21.35 NMAC.
[21.30.4.2 NMAC - Rp, 21.30.4.2 NMAC, 7/16/2024]

21.30.4.3 STATUTORY AUTHORITY: Section 77-2-7, 77-3-1, 77-3-13 and 77-3 NMSA 1978.
[21.30.4.3 NMAC - Rp, 21.30.4.3 NMAC, 7/16/2024]

21.30.4.4 DURATION: Permanent.
[21.30.4.4 NMAC - Rp, 21.30.4.4 NMAC, 7/16/2024]

21.30.4.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section or paragraph.
[21.30.4.5 NMAC - Rp, 21.30.4.5 NMAC, 7/16/2024]

21.30.4.6 OBJECTIVE: To declare certain diseases and parasites to be exotic and of significant economic impact to the livestock industry, pursuant to Section 77-3-1, NMSA 1978 and provide rules for their control and extirpation.
[21.30.4.6 NMAC - Rp, 21.30.4.6 NMAC, 7/16/2024]

21.30.4.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Director" means the executive director of the New Mexico livestock board.

C. "Inspector" means any duly authorized or commissioned officer of the livestock board.

D. "Livestock" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.

E. "Hold order" means a directive by the New Mexico livestock board by or through the state veterinarian to stop movement of certain livestock because of the possibility those livestock are diseased or exposed to a contagious disease, but the disease has not been confirmed in those livestock.

F. "Premises" means a place where livestock is held for personal or commercial purposes.

G. "Restricted zone" a defined geographic portion of the state.

[21.30.4.7 NMAC - Rp, 21.30.4.7 NMAC, 7/16/2024]

21.30.4.8 EXOTIC PESTS OF SIGNIFICANT ECONOMIC IMPACT: Any disease of significant economic impact to the livestock industry or public health.

[21.30.4.8 NMAC - Rp, 21.30.4.8 NMAC, 7/16/2024]

21.30.4.9 NEW MEXICO REPORTABLE DISEASE LIST: In addition to the diseases listed in 21.30.4.8 NMAC above, the following diseases and conditions are considered to be of significant economic impact and when discovered or diagnosed are to be immediately reported to the New Mexico livestock board's state veterinarian:

A. Reportable conditions:

(1) any disease of unusual morbidity or mortality that does not fit a normally expected clinical picture;

(2) any condition suspected of being a foreign or emerging animal disease, or possible bioterrorism;

(3) any disease condition in livestock exhibiting vesicular lesions;

(4) undiagnosed neurologic, mucosal, and hemorrhagic conditions;

(5) contamination by toxic substances, including unexplained increase in aflatoxin, botulism, or T2 toxin;

(6) abortion storms of unknown etiology;

(7) highly infectious conditions of any etiology;

(8) any disease or condition of public health significance.

B. Reportable diseases: Any disease listed as notifiable by the USDA or OIE, including but not limited to: diseases of significance to public health and zoonoses such as:

(1) anthrax*;

(2) avian influenza;

(3) botulism;

(4) brucellosis*;

(5) dermatophilosis (club lamb disease) and other fungal diseases of livestock with zoonotic potential;

(6) plague (*yersinia pestis*)*;

(7) q fever (*coxiella burnetii*)*;

(8) rabies*;

(9) swine influenza;

(10) tuberculosis;

(11) tularemia*;

(12) west Nile virus and other arboviral diseases*.

C. Diseases of concern to livestock such as (but not limited to):

(1) anthrax;

(2) bluetongue and epizootic hemorrhagic disease in deer, elk or cattle;

(3) botulism;

(4) brucellosis*;

(5) classical swine fever (hog cholera);

(6) contagious bovine or caprine pleuropneumonia;

(7) foot and mouth disease;

(8) fungal diseases of livestock with zoonotic potential such as dermatophilosis;

(9) heartwater;

(10) malignant catarrhal fever;

(11) plague*;

(12) pseudorabies;

(13) q fever (*coxiella burnetii*)*;

(14) rabies*;

(15) scabies in livestock;

(16) screwworm;

(17) swine influenza;

(18) Texas cattle fever (b*oophilus* ticks); and

(19) trichomoniasis;

(20) all transmissible spongiform encephalopathies (TSEs), including but not limited to:

(a) bovinespongiform encephalopathy (BSE); chronic wasting disease (CWD); scrapie;

(b) tuberculosis*;

(c) vesicular stomatitis or any other vesicular disease of livestock.

D. Diseases of concern to equines such as (but not limited to):

(1) african horse sickness;

(2) anthrax;

(3) contagious equine metritis (CEM);

(4) equine encephalopathies such as: eastern equine encephalitis (EEE);

(5) western equine encephalitis (WEE);

(6) venezuelan equine encephalitis (VEE);

(7) west Nile virus (WNV);

(8) equine herpesvirus (neurologic form) (EHV-1, EHV-4);

(9) equine infectious anemia (EIA);

(10) equine piroplasmosis;

(11) glanders;

(12) rabies*;

(13) screwworm;

(14) strangles (*streptococcus equi*);

(15) vesicular stomatitis or any other vesicular disease in equines.

E. Diseases of concern to poultry such as (but not limited to):

(1) avian influenza;

(2) newcastle disease;

(3) psittacosis*. *Must be reported to New Mexico department of health; if occurring in livestock also notify New Mexico livestock board.

[21.30.4.9 NMAC - Rp, 21.30.4.9 NMAC, 7/16/2024]

21.30.4.10 NEW MEXICO FOOT AND MOUTH PREVENTION & RESPONSE PROTOCOL:

A. Preventive procedures:

(1) Cloven-hoofed animals from a known foot and mouth (FMD) country or region shall not be allowed to enter New Mexico until the office of international des epizooties (OIE) and the United States department of agriculture, animal and plant health inspection service, veterinary services (USDA, APHIS, VS) have declared the country or region FMD-free.

(2) Horses from a known FMD country or region may be allowed to enter New Mexico if they have not originated from or been on a known FMD premises and if they meet other requirements for an entry permit issued by the board. A person who wants to bring a horse into New Mexico pursuant to this paragraph shall apply for an entry permit in person at the board's office at 300 San Mateo NE, Suite 1000, Albuquerque, New Mexico or by calling 505-841-6161, 8:00 a.m. to 4:30 p.m., Mountain Time, Monday through Friday. The applicant shall provide the following information with his application for an entry permit:

(a) A copy of the USDA health certification for importation of horses into the United States from the European Union and countries affected with FMD, a copy of the USDA certification of disinfection for tack trunks and containers, and any other certifications required by the state veterinarian;

(b) Evidence satisfactory to the state veterinarian that the horse has been held in quarantine outside the state for a minimum of seven days; and

(c) The state veterinarian may specify other restrictions consistent with the board's duty to protect the health and integrity of the livestock industry in New Mexico, including limiting any destinations of the horse.

(3) Animals other than livestock from a known FMD country or region that originate from rural areas or that have had contact with cloven-hoofed animals from a known FMD country or region and that would be destined for a New Mexico rural location or competition involving cloven-hoofed animals shall not be allowed into New Mexico either by direct or indirect shipment. Those animals other than livestock that originate from an urban area of an FMD country and are destined to a New Mexico urban area may be granted an exception at the discretion of the state veterinarian and allowed to enter the state. An entry permit issued by the board is required on such animals.

(4) Immediately upon arrival at its destination in New Mexico, an animal that has been allowed to enter the state under the exception provided in Paragraph (3) of this subsection shall be treated with a sponge application or heavy misting with a one-to-one vinegar and water solution to the entire body of the animal and then thoroughly bathed. The animal shall be quarantined at the destination premises for a minimum of ten days with no contact with any cloven-hoofed animal during the quarantine period. A follow-up contact shall be made by the board or USDA, APHIS, VS to ensure that the quarantine is maintained.

(5) Livestock and other animals originating from a European Union (EU) country shall not be allowed into New Mexico until the country's FMD status is determined to the satisfaction of the board. EU countries are: the Republic of Ireland, the United Kingdom (Northern Ireland, England, Scotland, Wales and the Isle of Mann), Sweden, Finland, Austria, Denmark, Germany, The Netherlands, Belgium, France, Spain, Portugal, Italy, Luxembourg, and Greece.

(6) Livestock or other animals originating from another state of the United States that has an FMD outbreak shall not be allowed into New Mexico until the state has been declared FMD-free by USDA, APHIS, VS. The board may ban or restrict the entry into New Mexico of livestock or other animals originating from a state other than an FMD state until that state's FMD status has been determined to the satisfaction of the board. The state Veterinarian may issue an entry permit to allow animals other than livestock to enter New Mexico from a state whose FMD status has not been determined under the following conditions:

(a) The animal has been quarantined for a minimum of seven days immediately preceding application for an entry permit;

(b) The decontamination procedures provided in Paragraph (7) of this sub-section have been followed.

(7) Decontamination procedures required to obtain an entry permit pursuant to Paragraph (6) of this subsection are:

(a) The animal shall be groomed to remove dirt and debris and then wiped, sprayed, or sponged down with vinegar or a solution of six and one-half ounces of concentrated glacial acetic acid in one gallon of water and its hooves or feet shall be cleaned and disinfected with a four percent sodium carbonate solution in such a manner as to ensure that the hooves are free of dirt, manure, and debris;

(b) Prior to loading the animal for transport into New Mexico, the crate and transportation vehicle shall be cleaned and disinfected with an approved disinfectant. Any equipment, including leashes, blankets, and sheets, that will accompany the animal into New Mexico must be laundered or cleaned to remove dirt and debris and then disinfected with acetic acid, sodium carbonate, or vikron; and

(c) Prior to entry into New Mexico, personnel accompanying the animal must launder or dry clean their clothing and outerwear; footwear must be cleaned of all dirt and debris and then disinfected as required by the state veterinarian.

(8) If FMD is found in a state of the United States or in Canada or Mexico, the director shall convene the board's emergency response plan state primary core decision group to consider actions to be taken to protect New Mexico's livestock industry from FMD, including the need to request that the governor declare a state of emergency.

B. Vesicular disease response

(1) Vesicular diseases in cloven-hoofed animals shall be handled as FMD unless vesicular stomatitis (VS) has been recently diagnosed in horses during the current season for VS. The New Mexico VS protocol shall be followed in these cases unless the board directs otherwise.

(2) A cloven-hoofed animal suspected of a vesicular disease shall be given the highest priority for examination. A foreign animal disease diagnostician (FADD) shall collect appropriate specimens. The FADD or other designated courier shall personally escort the specimens to Plum Island, NY.

(3) If the disease is not FMD, the case shall be handled as appropriate for the diagnosis.

C. Foot and mouth disease response

(1) If a vesicular disease is present and the VS protocol does not apply, the premises, and all animals on the premises shall be quarantined. A five-mile "high risk zone" shall be established around the suspect premises, and a fifteen-mile "buffer zone" shall be established around the high risk zone. Animals in the high risk zone shall not be moved until the suspect case has been diagnosed and movement is allowed by the board. Animals in the buffer zone shall be under a hold order and shall be moved by permit only. Livestock operators and other animal owners within the high risk, and buffer zones shall be advised immediately about the suspect case and the rules governing quarantine, and movement of animals.

(2) The board shall provide biosecurity information to the operators and owners whose premises and animals have been quarantined within the high risk, and buffer zones.

(3) All area slaughter facilities and livestock markets shall be closed until the board releases the quarantine. If FMD is confirmed, the slaughter facilities and livestock markets shall remain closed to control the movement of livestock. The board shall determine when it is safe to re-open slaughter facilities, and livestock markets and any limitations that may apply.

(4) The board shall notify veterinarians, cooperative extension agents, livestock owners, and operators, and other interested persons about the quarantine, the establishment of quarantine zones, and any hold orders on animals.

(5) An FMD diagnosis shall result in the continued quarantine of the high risk zone. The animals within the buffer zone shall be on a hold order and vaccinated with appropriate FMD strain vaccine, if it is available.

(6) Upon notification of an FMD diagnosis, the board shall initiate an immediate epidemiological investigation. The epidemiological efforts shall be in concert with USDA, APHIS, VS.

(7) The board may request that USDA, APHIS, VS, regional emergency animal disease eradication organization (READEO) be in charge of all FMD operations and procedures with state animal health officials assisting READEO in its efforts.

(8) The director of the board shall immediately advise the director of the New Mexico department of agriculture of the FMD diagnosis. The director of the board shall contact the governor for an emergency declaration. National guard personnel, New Mexico state police, and appropriate county sheriffs shall be requested to aid in enforcement of the quarantine, and zone integrity to stop movement of animals and to minimize human movement into or out of the FMD zone.

(9) FMD vaccination is the preferred action over destruction of livestock. In the case of destruction, incineration sites shall be selected by the board.

(10) Indemnity for destroyed livestock shall be sought from the United States secretary of agriculture. Records of destroyed livestock shall include the owner's name, address and phone number, and the number of destroyed livestock, and their species, class, sex, age, and brands.

D. The following agencies and people shall be notified of the New Mexico FMD prevention and response protocol, and shall be provided with updates on a periodic basis when a foreign or national FMD outbreak presents a real or potential risk to New Mexico livestock:

(1) USDA, APHIS, vs emergency programs, and import/export staff in Riverdale, MD;

(2) New Mexico veterinarians:

(3) New Mexico board of veterinary medicine;

(4) New Mexico veterinary medical association;

(5) New Mexico livestock industry organizations;

(6) local and national plant protection quarantine (PPQ) staff;

(7) airline companies with flights originating from an FMD country or region;

(8) New Mexico public livestock markets; and

(9) New Mexico state university, department of agriculture and cooperative extension service.

[21.30.4.10 NMAC - Rp, 21.30.4.10 NMAC, 7/16/2024]

21.30.4.11 TUBERCULOSIS ERADICATION:

A. The New Mexico livestock board will adhere to the Code of Federal Regulations and the Uniform Methods and Rules for Bovine Tuberculosis Eradication.

B. Restricted zone livestock movement protocol.

(1) All livestock movement must be approved by the New Mexico livestock board (NMLB) state veterinarian or by a NMLB approved agent. All livestock movement requires an official certificate of livestock inspection.

(2) Livestock check points are deliberate obstructions of traffic by physical means on a roadway for the specific purpose of livestock movement control.

(3) Livestock check points will be established by executive order based on location, authorization and safety.

(4) Livestock check points will be operated by a NMLB livestock inspector or by a NMLB approved agent.

(5) All livestock, in transition, upon approaching a livestock check point, will be stopped for transportation validation.

(6) All livestock, in transition near the geographical location of the restricted zone, will be stopped for transportation validation, at the discretion of the livestock inspector.

(7) All road stops will be initiated by a livestock inspector that has been certified as law enforcement peace officer or by any certified peace officer of the state.

[21.30.4.11 NMAC - Rp, 21.30.4 NMAC.11, 7/16/2024]

21.30.4.12 VESICULAR STOMATITIS; RESTRICTIONS AND SAFEGUARDS DEEMED PROPER TO PROTECT LIVESTOCK IN NEW MEXICO:

A. Livestock cannot be removed from a VS-quarantined premise. Any livestock introduced onto VS-quarantined premises will be subject to the quarantine restrictions and remain on the premises until the quarantine has been lifted.

B. Transporters hauling any New Mexico origin livestock in New Mexico must have in possession a current brand inspection (form 1) or a permanent equine hauling card (form 1-H).

C. Participants in public events in which all livestock attending originate from New Mexico must:

(1) present and have verified by event officials a certificate of veterinary inspection (CVI), commonly known as a *health certificate,* for each animal brought by that participant and that has been issued within five days prior to arrival at the event, or

(2) have the livestock examined upon arrival at the event by designated officials as specified and provided by the event organizers; the designated official should be a veterinarian whose background and experience with livestock would allow them to recognize abnormalities in tissues that could be consistent with vesicular stomatitis.

(3) The state veterinarian may specify other restrictions consistent with the board's duty to protect the health and integrity of the livestock industry in New Mexico, including limiting any destinations of the horse.

D. Participants with livestock that originate in New Mexico attending public events in New Mexico where livestock from states other than New Mexico will be present must:

(1) present and have verified by event officials a certificate of veterinary inspection (CVI), commonly known as a *health certificate,* for each animal brought by that participant and that has been issued within five days prior to arrival at the event, and

(2) have the livestock examined upon arrival at the event by a NM accredited veterinarian.

E. All livestock entering New Mexico public auctions facilities must receive a health examination prior to sale by a NM accredited veterinarian.

F. Out of state livestock entering New Mexico from any other state or territory must meet all current New Mexico entry requirements. Owners of livestock temporarily entering New Mexico are urged to contact their state animal health officials for requirements and restrictions to return to their home state from New Mexico.

[21.30.4.12 NMAC - Rp, 21.30.4 NMAC.12, 7/16/2024]

History of 21.30.4 NMAC:

PRE-NMAC HISTORY: The material filed in this part was derived from that previously filed with the State Records Center and Archives under:

NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/3/1967;

NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970;

NMLB 76-1, New Mexico Livestock

Board Rules and Regulations, filed 5/6/1976;
NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12/10/1969;
NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10/17/1979;
NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/4/1981;
NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985.

History of Repealed Material: 21 NMA 30.4 - Animals And Animal Industry General Provisions - Exotic Pests (filed 1/28/1999) Repealed effective 5/15/2001.
21.30.4 NMAC - Exotic Pests and Foreign Animal diseases filed (4/30/2001) Repealed effective 7/16/2024

Other History: Only that applicable portion of NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985 renumbered, reformatted, and amended to 21.30.4 NMAC, Exotic Pests, filed 1/28/1999.
21.30.4 NMAC, Exotic Pests, filed 1/28/1999 renumbered, reformatted, and amended to 21.30.4 NMAC, Exotic Pests, effective 5/15/2001.
21.30.4 NMAC - Exotic Pests and Foreign Animal diseases filed (4/30/2001) replaced by21.30.4 NMAC - Exotic Pests and Foreign Animal diseases effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 30 ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS

PART 7 EQUINE VIRAL ARTERITIS (EVA)

21.30.7.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.30.7.1 NMAC - Rp, 21.30.7.1 NMAC, 7/16/2024]

21.30.7.2 SCOPE: All owners, transporters or handlers of equine or equine semen in the state of New Mexico and those that apply to bring equine or equine semen into the state for any reason. All accredited veterinarians handling EVA vaccine.
[21.30.7.2 NMAC - Rp, 21.30.7.2 NMAC, 7/16/2024]

21.30.7.3 STATUTORY AUTHORITY: Section 77-2-7, NMSA 1978.
[21.30.7.3 NMAC - Rp, 21.30.7.3 NMAC, 7/16/2024]

21.30.7.4 DURATION: Permanent.
[21.30.7.4 NMAC - Rp, 21.30.7.4 NMAC, 7/16/2024]

21.30.7.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[21.30.7.5 NMAC - Rp, 21.30.7.5 NMAC, 7/16/2024]

21.30.7.6 OBJECTIVE: To establish restrictions to protect the equine industry of the state of New Mexico. Clinical disease due to EVA infection is a reportable disease to the New Mexico state veterinarian. Equine viral arteritis (EVA) is an infectious contagious disease of horses caused by the equine arteritis virus (EAV). EVA is of special economic concern because it can result in abortion in pregnant mares, illness and death in young foals and the establishment of the carrier state in stallions. Further, to prevent the introduction of EAV and control subsequent spread of EAV within New Mexico.
[21.30.7.6 NMAC - Rp, 21.30.7.6 NMAC, 7/16/2024]

21.30.7.7 DEFINITIONS:

A. Definitions beginning with "A":

(1) "Accredited veterinarian" means a veterinarian approved by the deputy administrator of USDA-APHIS-VS in accordance with provisions of Part 161, Title 9, Code of Federal Regulations (CFR). An accredited veterinarian is pre-approved to perform certain functions of federal and cooperative state/federal programs.

(2) "Animal and plant health inspection service (APHIS)" means the agency providing leadership in ensuring the health and care of animals and plants. The agency improves agricultural productivity and competitiveness and contributes to the national economy and public health.

(3) "Approved laboratory" means a state, federal or private diagnostic laboratory that must be approved for EVA testing by the UDSA-AHPIS-VS.

(4) "Approved laboratory tests" means laboratory tests for the diagnosis of EVA infection that are approved by the office of the state veterinarian and UDSA-AHPIS-VS.

(5) "Area veterinarian in charge (AVIC)" means the veterinary official of USDA-APHIS-VS, who is assigned by the deputy administrator of VS to supervise and perform the official animal health work of APHIS in the states or states concerned.

B. Definitions beginning with "B":

(1) "Board" means the New Mexico livestock board.

(2) "Book or booking" means the contracting or scheduling of a mare to breed to a stallion by natural service.

C. Definitions beginning with "C":

(1) "Carrier" means a clinically normal stallion that sheds EAV continuously in its semen.

(2) **"Certificate"** means an official document issued by the chief livestock health official or a VS representative or accredited veterinarian at the point of shipment of equine. It includes all of the following:

(a) the description, including age, breed, color, sex, distinctive markings or unique and permanent forms of identification, when present (e.g. brands, tattoos, EID, scars or blemishes), of each of the restricted equine to be moved;

(b) the number of restricted equine covered by the document;

(c) the purpose for which the equine are to be moved;

(d) the points of origin and destination;

(e) the consignor; and

(f) the consignee.

(3) **"Certificate of veterinary inspection (CVI)"** means the form issued by the state of origin that records the consignor, consignee, identity, origin, destination and health status of animals, issued by an accredited veterinarian of that state. It is commonly known as a health certificate.

(4) "Chief livestock health official" means the state veterinarian of New Mexico.

(5) **"Commercial stallion"** means a stallion that is utilized for breeding mares which are owned by someone other than the owner of the stallion.

(6) "Cover" means the act of breeding a stallion to a mare.

D. Definitions beginning with "D": "Director" means the executive director of the New Mexico livestock board.

E. Definitions beginning with "E":

(1) **"Electronic identification device (EID)"** means an electronic implant with a transponder, inserted into the nuchal ligament of an equid. The transponder contains an approved 15 digit number that uniquely corresponds to a specific equine

(2) "Equine arteritis virus (EAV)" means the organism which causes the disease equine viral arteritis.

(3) "Equine" means any animal in the family equidae, including horses, asses, mules, ponies and zebras.

(4) "Equine viral arteritis (EVA)" means an infectious communicable disease in equine.

(5) "Exposed animals" means animals in the family equidae that have been exposed to EAV by reason of associating or commingling with equine known to be infected with the virus.

F. Definitions beginning with "F": [RESERVED]

G. Definitions beginning with "G": [RESERVED]

H. Definitions beginning with "H":

(1) "Herd" means all animals of the family equidae, such as horses, asses or zebras: under common ownership or supervision that are:

(a) grouped on more than one or more parts of any single premises (lot, farm or ranch);or

(b) on two or more premises that are geographically separated but between which equine have been interchanged or had contact with equine from the other premises; it will be assumed that contact between animals of the family equidae on the different premises has occurred unless the owner can establish otherwise and the results of the epidemiologic investigation are consistent with the lack of contact between the premises; or

(c) on common premises, such as community pastures or grazing association units, but owned by different persons; other groups of equine owned by the persons involved that are located on the other premises are considered to be part of a herd unless epidemiologic investigation establishes that the equine from an affected herd have not had the opportunity for direct or indirect contact with equine from that specific premises.

(2) "Herd of origin" means a farm or ranch or other premises where equine were born or where they have been kept for 30 days or more before the date of shipping. For the purpose of this rule, herd of origin has the same meaning as place of origin, premise of origin, farm of origin and ranch of origin.

I. Definitions beginning with "I": "Identification" means any modality that provides a unique and permanent identification of an individual equine.

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L": [RESERVED]

M. Definitions beginning with "M": "Mare" means the intact female of the equine species.

N. Definitions beginning with "N": "Nurse mare" means a mare that has lost her foal and has adequate milk for supplementing an orphaned foal.

O. Definitions beginning with "O":

(1) "Official seal" means a serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end that forms a loop when the ends are engaged. An official seal is tamperproof and cannot be reused if opened. It is applies to the doors of a transport vehicle by a representative of APHIS AVIC or the chief livestock health official. A serially numbered, self-locking button that cannot be reused may be substituted for the metal or plastic strip type of seal.

(2) "Official test" means the virus neutralization test and virus isolation test (in cell culture) are the official laboratory

procedures currently employed for the diagnosis of EVA infection.

(3) "Owner" means any person with the legal right of possession or having legal control over any equidae and shall include but not limited to agents, caretakers and other persons acting on behalf of that person.

P. Definitions beginning with "P":

(1) "Permit" means on official document (VS form 1-27 or comparable state form) issued by the chief livestock health official, federal representative or by an accredited veterinarian. The permit must accompany all EAV carrier stallions and those EVA exposed equine being moved under official seal to a specified destination.

(2) "Polymerase chain reaction test (PCR)" means a test to detect EAV in samples.

Q. Definitions beginning with "Q":

(1) "Quarantine" means the act of placing exposed or infected animals into isolation from other animals to prevent the transmission of an infection.

(2) "Quarantined area" means a confined area under the direct supervision and control of chief livestock health official or federal animal health official who establishes procedures for the monitoring and recording of all animals entering or leaving the area. All equine under EVA quarantine are considered to have been exposed to EAV.

R. Definitions beginning with "R":

(1) "Reactor" means any horse, ass, mule, pony or zebra that has been subjected to an officially approved laboratory test that is confirmed positive for antibodies to EAV.

(2) "Reference laboratory" means the national reference laboratory for the serological testing of EAV infection is the diagnostic virology laboratory in Ames, Iowa, a part of USDA-APHIS-VS' National veterinary services laboratories (NVSL).

S. Definitions beginning with "S":

(1) "Semen" means secretion or ejaculate from the reproductive organs of a stallion containing spermatozoa and seminal fluid from the accessory sex glands.

(2) "Sero-conversion" means the development of neutralizing antibodies to EAV in response to natural infection with EAV or to the administration of EVA vaccine.

(3) "Sero-negative" means a horse that has a serum neutralizing antibody titer of 1:4 to EAV using the virus neutralization test.

(4) "Sero-positive" means a horse that has a serum neutralizing antibody titer of 1:4 or greater to EAV using the virus neutralization test.

(5) "Shedder or shedding" means an equine has been determined to have EAV in its body. Specifically a term used to refer to a carrier stallion that has been determined to have EAV present in his semen and is capable of transmitting the infection to other equine through the act of breeding either by natural service or the use of artificial insemination.

(6) "Standard insemination volume" means 10 ml of semen.

T. Definitions beginning with "T": "Teaser stallion" means the intact male equid utilized in equine reproduction to aid in determination of estrus in a mare.

U. Definitions beginning with "U": "United States department of agriculture (USDA)" means, a federal agency charged with protecting American agriculture.

V. Definitions beginning with "V":

(1) "Vaccinated or vaccination" means an equine has been vaccinated with an approved EVA modified virus vaccine and for which the vaccination status has been kept current in accordance with the manufacturer's recommendation.

(2) "Vaccinated sero-positive stallion" means a stallion that was sero-negative prior to receiving a vaccine for EVA that demonstrates a sero-positive titer post vaccination.

(3) "Veterinary services (VS)" means the animal health arm of APHIS, VS protects and improves the health, quality and marketability of our nations animals, animal products and veterinary biologicals by preventing, controlling or eliminating animal disease and monitoring and promoting animal health and productivity.

(4) "VS form 1-27" means an official restriction of livestock movement. This form is issued by a regulatory veterinarian and specifies the owner, owner's address, owner's telephone, premises affected, number, breed, age, sex, positive unique individual identification and destination of animals included.

(5) "Virus isolation test" means a test to isolate EAV. This test shall be conducted by an approved laboratory.

(6) "Virus neutralization test (VN)" means an assay for determining serum neutralizing antibodies to a particular virus, in this case EAV. This test shall be conducted by an approved laboratory. **Q. W. Definitions beginning with "W": [RESERVED]**

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

[21.30.7.7 NMAC - Rp, 21.30.7.7 NMAC, 7/16/2024]

21.30.7.8 INCORPORATION BY REFERENCE OF FEDERAL UNIFORM METHODS AND RULES: The USDA Uniform Methods and Rules, APHIS 91-55-75 is incorporated by reference as presently in effect and subsequent revisions.

[21.30.7.8 NMAC - Rp, 21.30.7.8 NMAC, 7/16/2024]

21.30.7.9 GENERAL EVA INFORMATION:

A. All laboratory samples, pertaining to this rule, shall be submitted by an accredited veterinarian to an approved laboratory.

B. All commercial breeding stallions shall be tested for EAV prior to use as a breeding stallion or collection for artificial insemination.

C. All semen (fresh or frozen, imported semen or semen for export) from uncertified stallions shall test negative by virus isolation or PCR prior to being used for artificial insemination.

D. All commercial breeding stallions shall be tested within 180 days prior to the breeding season or sooner, if indicated.
[21.30.7.9 NMAC - Rp, 21.30.7.9 NMAC, 7/16/2024]

21.30.7.10 COMMERCIAL BREEDING STALLIONS: All commercial breeding stallions shall be registered annually with the New Mexico livestock board, where the current EAV status shall be recorded. It is recommended that all commercial breeding stallions be permanently identified either by brands, EID, tattoos or photographs.
[21.30.7.10 NMAC - Rp, 21.30.7.10 NMAC, 7/16/2024]

21.30.7.11 IMPORTATION OF STALLIONS:

A. No commercial breeding stallion shall be imported into New Mexico for breeding purposes unless found serologically negative to an EVA test (serum neutralization) within 30 days prior to importation or serologically negative prior to vaccination and subsequently proven not a shedder of the disease. The results of these tests must be attached to the interstate CVI.

B. Stallions 36 months of age and older will be required to have a negative EVA test drawn by a licensed and accredited veterinarian. The test is to be conducted by an approved diagnostic laboratory. Age will be determined based on a January 1 birth date on all stallions.

C. Positive EAV stallions may be imported into New Mexico or moved within the state on a permit issued by the office of the state veterinarian and may be subject to quarantine. Official laboratory serum and semen culture results shall accompany the interstate CVI. In addition, the consignee shall be advised of the stallion's EAV status and consents to shipment. Imported stallions shall be registered annually with the New Mexico livestock board.
[21.30.7.11 NMAC - Rp, 21.30.7.11 NMAC, 7/16/2024]

21.30.7.12 EXPORTATION OF EAV CARRIER STALLIONS: Commercial stallions to be exported outside of New Mexico must have consent of the state of final destination and consent of the farm owner receiving the stallion
[21.30.7.12 NMAC - Rp, 21.30.7.12 NMAC, 7/16/2024]

21.30.7.13 SEMEN AND EMBRYO IMPORT AND EXPORT:

A. Fresh, cooled or frozen semen shall be culture negative for EVA within 180 days or sooner of import. An official semen import certificate completed by an accredited veterinarian accompanied by the official laboratory culture test shall be sent to the office of the state veterinarian seven days prior to the first importation of semen for the current breeding season. Fresh, cooled or frozen semen or embryos from a shedding stallion shall only be used on vaccinated or sero-positive mares. These mares shall be isolated for 21 days following insemination or implantation.

B. EVA positive semen shall only be allowed by state permit through the office of the state veterinarian. In addition, release documentation of informed consent is required from the farm owner stating they will accept EVA positive semen.
[21.30.7.13 NMAC - Rp, 21.30.7.13 NMAC, 7/16/2024]

21.30.7.14 EVA SHEDDING STALLIONS:

A. A stallion is considered to be a shedder if any of the following apply:

(1) the virus can be cultured from his semen; or

(2) if the virus can be detected in his semen by PCR test; or

(3) if sero-negative mares seroconvert to sero-positive status following breeding or insemination.

B. A stallion known to be shedding EAV shall not be permitted to breed or be collected for artificial insemination until the state veterinarian determines that the stallion does not pose a risk of transmitting EVA. In making this determination, the state veterinarian shall consider whether the requirements of Paragraphs (2) and (3) of this subsection will be complied with by the premises on which the shedding stallion is located. The following restrictions shall apply to a shedding stallion that is permitted to breed or be collected for artificial insemination:

(1) the owner or agent of an EAV shedding stallion shall notify in writing, the owner or agent of a mare booked or seeking to book a mare to that stallion which has been classified as an EAV shedder; a written copy of the booking confirmation shall be sent to the state veterinarian;

(2) a shedding stallion shall be housed, handled and bred or collected for artificial insemination in a facility isolated from non-shedding stallions;

(3) a shedding stallion shall be bred to a mare(s) that:

(a) have been vaccinated against EVA at least 21 days prior to being bred; or

(b) demonstrate an existing EVA titer from vaccination or natural exposure to EAV, if the serological EVA test was performed at least 28 days prior to date of breeding;

(c) a mare shall be isolated for 21 days

after being covered by a shedding stallion.
[21.30.7.14 NMAC - Rp, 21.30.7.14 NMAC, 7/16/2024]

21.30.7.15 SERO-POSITIVE NONSHEDDING STALLIONS:

A. A stallion may be considered to be a vaccinated sero-positive stallion if a blood sample collected within 10 days prior to administration of an approved vaccine was negative for antibodies against EAV. See 21.30.7.19 NMAC for recommended vaccination protocols.

B. It is required that a sero-positive vaccinated stallion that did not have an EVA negative test prior to vaccination comply with one of the following testing procedures to ensure that the stallion is not at risk of transmitting the virus:

(1) a standard insemination volume (10ml) of semen should be collected and either cultured for EAV or evaluated using a PCR test; or

(2) the stallion should be bred to two mares negative for EAV antibodies; the two mares shall be isolated from other equine for 28 days and have blood collected for an EVA test 28 days after breeding or artificially inseminated from two ejaculates, separately collected;

(3) the sero-positive stallion would be considered a non-shedder if the semen culture, semen PCR or test breeding results are negative.

C. A stallion may be considered a non-vaccinated sero-positive stallion, if the stallion has sero-converted following a natural exposure to the virus. It is recommended that a non-vaccinated sero-positive stallion be tested as outlined below prior to breeding to ensure that he is not at risk of transmitting the virus:

(1) semen should be collected and either cultured for EAV or evaluated using a PCR test; or

(2) the stallion should be bred to two mares negative for EAV antibodies; the two mares shall have blood collected for an EVA test 28 days after breeding or artificially inseminated; the two mares shall remain isolated from other equine for 28 days following breeding;

(3) the sero-positive stallion would be considered a non-shedder if the semen culture, semen PCR or test breeding results are negative.

D. A stallion previously classified as a shedding stallion may be reclassified as a non-shedding stallion if the following criteria are met:

(1) during the first breeding season following the stallion's classification as a non-shedder, the first five sero-negative mares bred or artificially inseminated using semen collected from separate ejaculates from this stallion shall be test negative to a blood sample collected for an EVA test 28 days after breeding or artificial insemination;

(2) during the second breeding season, the stallion shall be bred to two mares negative for EAV antibodies that will be tested 28 days after breeding or have its semen collected and cultured negative for EAV or have the semen tested negative by PCR for EAV; if the semen culture report or PCR test and blood samples are negative for EAV, there shall not be restrictions placed on a future breeding season.

E. The final determination that a stallion is not an EAV shedder shall be made based on scientific procedures described in this section and approved by the state veterinarian. Until this determination is made, the stallion shall be considered an EAV shedder.
[21.30.7.15 NMAC - Rp, 21.30.7.15 NMAC, 7/16/2024]

21.30.7.16 REQUIREMENTS FOR BREEDING MARES TO A SHEDDING STALLION: The following guidelines are required when breeding mares to a stallion shedding EAV.

A. If a sero-negative mare is to be bred to a shedding stallion for the first time:

(1) it is required that the mare be vaccinated a minimum of 21 days prior to the first breeding or artificial insemination by a EAV shedding stallion and subsequently isolated a minimum of 21 days after the breeding or artificial insemination;

(2) during isolation, the mare shall be physically separated from other equine in a separate isolation area approved by the state veterinarian or designated personnel;

(3) after the isolation period, the mare may move without restriction.

B. Mares that have been vaccinated against EAV or have been bred to an EAV shedding stallion within the previous two years may be re-bred to a shedding stallion, but should be isolated for a minimum of 21 days after breeding, as noted in Subsection A above.

C. When a mare bred to a shedding stallion is returned to the premises of origin within 21 days of breeding, it shall be in a transport vehicle or trailer by herself or with other sero-positive horses. Upon returning to the premises of origin, the transport vehicle or trailer and equipment used to move the mare must be immediately cleaned and disinfected according to procedures approved by the state veterinarian.
[21.30.7.16 NMAC - Rp, 21.30.7.16 NMAC, 7/16/2024]

21.30.7.17 ACTIONS FOR NEWLY DIAGNOSED SERO-POSITIVE STALLIONS: A stallion infected with EAV during the breeding season shall immediately cease breeding or immediately cease having semen collected for artificial insemination or semen collected and stored for future use. Since EVA is a reportable disease in the state of New Mexico, the state veterinarian must be immediately notified in the event of clinical EVA disease demonstrated by a positive laboratory test of serum or semen. An owner or agent with a mare booked or bred to a stallion that became infected with EAV during the breeding season shall be immediately notified in writing by the stallion's

owner or agent, that the stallion is an EAV shedder. A copy of the written notification shall be sent to the state veterinarian. A stallion infected with EAV during the breeding season shall be classified as an EAV shedder and shall be handled according to the requirements of this rule. Following the stallions classification as a shedder, the state veterinarian may reclassify the stallion as a non-shedder in accordance with this rule.
[21.30.7.17 NMAC - Rp, 21.30.7.17 NMAC, 7/16/2024]

21.30.7.18 EAV EXPOSED MARES: Veterinarians, owners, agents, handlers and transporters of equine shall refer to USDA APHIS 91-55-75, Equine Viral Arteritis, Uniform Methods and Rules and subsequent revisions.
[21.30.7.18 NMAC - Rp, 21.30.7.18 NMAC, 7/16/2024]

21.30.7.19 EQUINE VACCINATED AGAINST EVA: Veterinarians, owners, agents, handlers and transporters of equine shall refer to USDA APHIS 91-55-75, Equine Viral Arteritis, Uniform Methods and Rules and subsequent revisions. Additionally, the following are the requirements for mares or stallions to be vaccinated with EVA vaccine in New Mexico.

A. EVA vaccine will be issued to federally accredited New Mexico licensed veterinarians by written request through the state veterinarian.

B. Testing of stallions for antibodies in blood or evidence of EAV in semen shall be submitted to an approved veterinary laboratory.

C. Stallions vaccinated for the first time against EVA shall be test negative to a blood sample collected by an accredited veterinarian prior to vaccination.

D. Stallions vaccinated for the first time against EVA shall have the EVA vaccine administered by an accredited veterinarian within 10 days after the sample collection date.

E. An official certificate documenting that the stallion has been vaccinated by an accredited veterinarian shall be sent to the state veterinarian within 7 days of the vaccination date. The original laboratory EVA test results shall accompany the certificate.

F. The EVA vaccination certificate for stallions shall be on a form prescribed by the state veterinarian.

G. All equids vaccinated for the first time against EVA shall not have direct exposure to an EVA affected animal or pregnant mare for 28 days after vaccination.

H. A vaccinated stallion shall not be used for breeding or artificial insemination within 28 days after vaccination. A vaccinated mare shall not be bred within 21 days of vaccination.

I. A sero-negative EVA test is required prior to vaccination of intact colts between six and 12 months of age.
[21.30.7.19 NMAC - Rp, 21.30.7.19 NMAC, 7/16/2024]

21.30.7.20 NURSE MARES: A nurse mare shall be:

A. sero-negative;

B. officially vaccinated against EVA in accordance with 21.30.7.19 NMAC.
[21.30.7.20 NMAC - Rp, 21.30.7.20 NMAC, 7/16/2024]

21.30.7.21 TEASER STALLIONS: A teaser shall be officially vaccinated against EVA in accordance with 21.30.7.19 NMAC.
[21.30.7.21 NMAC - Rp, 21.30.7.21 NMAC, 7/16/2024]

HISTORY OF 21.30.7 NMAC:
[**RESERVED**]

History of Repealed Material: 21.30.7 NMAC - Equine Viral Arteritis (EVA) filed (11/17/2006) repealed effective 7/16/2024.
Other History: 21.30.7 NMAC - Equine Viral Arteritis (EVA) filed (11/17/2006) Replaced by 21.30.7 NMAC - Equine Viral Arteritis (EVA) effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 32 BRANDS, OWNERSHIP, AND TRANSPORTATION OF ANIMALS
PART 2 BRANDING OF LIVESTOCK

21.32.2.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.32.2.1 NMAC - Rp, 21.32.2.1 NMAC, 7/16/2024]

21.32.2.2 SCOPE: All owners, transporters, or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21.30, 21.33, and 21.35 NMAC.
[21.32.2.2 NMAC - Rp, 21.32.2.2 NMAC, 7/16/2024]

21.32.2.3 STATUTORY AUTHORITY: Section 77-2-7 NMSA 1978.
[21.32.2.3 NMAC - Rp, 21.32.2.3 NMAC, 7/16/2024]

21.32.2.4 DURATION: Permanent.
[21.32.2.4 NMAC - Rp, 21.32.2.4 NMAC, 7/16/2024]

21.32.2.5 EFFECTIVE DATE: July 16, 2024 unless a later date is cited at the end of a section.
[21.32.2.5 NMAC - Rp, 21.32.2.5 NMAC, 7/16/2024]

21.32.2.6 OBJECTIVE: To establish rules governing branding of livestock in New Mexico.
[21.32.2.6 NMAC - Rp, 21.32.2.6 NMAC, 7/16/2024]

21.32.2.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Confined feeding" shall include a dairy calf

or dairy heifer growing facility, in which the owner must have a general permit for concentrated animal feeding operations under the national pollution discharge and elimination system (NPDES) of the United States environmental protection agency.

C. "Dairy" means a cattle facility in New Mexico where the primary business is milking cows and the owner has been issued a milk permit number by the New Mexico department of agriculture (NMDA) and includes any confined feeding facilities, which are part of the dairy or the dairy owner's operation under the NMDA permit number.

D. "Dairy cattle" means cattle of one of the dairy breeds developed chiefly for milk production.

E. "Director" means the executive director of the New Mexico livestock board.

F. "EID" means official electronic identification, to include radio frequency identification tag.

G. "Feedlot" means a confined feeding facility in New Mexico where the primary business is that of feeding cattle for slaughter. For the purposes of 21.32.2.10 NMAC below, the owner must have, for the feedlot, a general permit for concentrated animal feeding operations under the national pollution discharge and elimination system (NPDES) of the United States environmental protection agency.

H. "Inspector" means any duly authorized or commissioned officer of the livestock board.

I. "Livestock or animal" means horses, asses, mules, cattle, bison, sheep, or goats.

J. "New Mexico Livestock" means any livestock raised or pastured or fed within the state of New Mexico.

K. "Person" means an individual, partnership, association, or operation.

[21.32.2.7 NMAC - Rp, 21.32.2.7 NMAC, 7/16/2024]

21.32.2.8 BRANDING OF LIVESTOCK:

A. Branding of cattle: All cattle in the state of New Mexico shall be required to be branded with a recorded New Mexico brand, excepting calves with branded mother, registered animals, which are identified by a proper registration mark and whose owner has been issued a certificate of brand exemption for the registered herd, and dairy cattle, which are identified in accordance with the provisions of 21.32.2.9 NMAC, and cattle in a feedlot, which are identified in accordance with the provisions of 21.32.2.10 NMAC.

B. Identification of equines: All equines shall be required to be branded with a New Mexico recorded brand, or identified by a horse identification card (Form 1-H or 1HA) showing individual markings, scars, etc.

C. Branding of sheep and goats: All owners of sheep and goats in the state of New Mexico shall be required to have a wool/hair brand registered in the office of the New Mexico livestock board and such brand is to be the sole property of the recorded owner. The brand may be applied by means of paint, chalk, hot iron, tattoo, or eartags. Additionally, earmarks may be used as a means of identification and, if used as a means of identification, the earmark must be recorded in conjunction with the recorded brand. The board, at its discretion, may immediately halt the use of earmarks as a means of identification and require branding, tattooing, or eartagging of all sheep and goats.

D. All sheep and goats being moved, transported, driven, or otherwise transferred from one premises to another or all of those presented for or requiring inspection, shall be required to bear a recorded means of identification. All such sexually intact sheep and goats, regardless of age and wethers of either species 18 months of age and older must also be identified with a permanent official identification device or a permanent method approved by USDA for use in the scrapie program unless the animals are under 18 months of age and are moving directly or through a slaughter only sale to slaughter or to a terminal feedlot or are animals of any age moving for management purposes to another premises also rented or owned by the flock owner without a change of ownership.

E. Sheep and goats destined for show or exhibition shall be exempt from paint, chalk, or fire brand regulations, provided such sheep and goats are identified with a permanent official identification device or permanent method approved by USDA for use in the scrapie program. Exhibition livestock, to include sheep, goats, cattle, and swine may be identified with an official EID tag and will be an accepted means of identification. Cattle will still be required to have a New Mexico registered brand. Exhibition cattle with an official EID tag may be inspected for ownership and transportation on a Form 1 inspection that may be used for the entire shown season for that calendar year. A ny transfer of ownership of livestock on those forms will require the issuance of a new Form 1.

F. Nothing herein shall exempt any owner of livestock from possessing necessary bills of sale or proof of ownership for their livestock and presenting proof of ownership upon request.

[21.32.2.8 NMAC - Rp, 21.32.2.8 NMAC, 7/16/2024]

21.32.2.9 ALTERNATIVE TO BRANDING CATTLE IN A NEW MEXICO DAIRY

A. In accordance with Subsection F of 77-9-3, NMSA 1978, of the Livestock Code of New Mexico, the alternate means of identification for dairy cattle shall be the use of plastic eartags that meet the following specifications and contained information:

(1) The tag must not be smaller than a medium sized tag that measures two and one-half inches by three inches (2 1/2" x 3"); and

(2) Has lettering not smaller than one-fourth of an inch (1/4"); and

(3) Is solid color with contrasting color for lettering; and

(4) Is factory engraved with the brand owner's name, a correct facsimile of the owner's New Mexico registered brand, or the New Mexico department of agriculture milk permit number.

B. Owners of dairy cattle may elect to use the alternative method of identifying cattle in their dairy, or other confined feeding operation in which ownership has not changed, after having received permission from the board to do so. The owner must first request permission to use the alternative and the board may grant that permission after confirming the owner understands the minimum requirements for the alternate form and its proper use.

C. The board shall record the owner's permission and keep record of those owner's that have requested and been granted permission to use the alternative form of identification allowed by law and this section. For registering the alternative, the board shall charge a fee equal, and in addition, to the fee for recording the New Mexico registered brand of the owner of the cattle. The registered brand and the alternative shall be re-recorded separately at the time of the re-recording.

D. The owner of the dairy must ensure that the eartags used throughout their dairy are consistent as to lettering, information, and layout. Within a dairy, variations in color, size, and individual animal number placed upon the tag are acceptable, provided that the tags meet the minimum requirements of 21.32.2.9.A NMAC.

E. The appointed board has the right to revoke an owner's permission to use the alternate method of identification after a hearing and upon presentation of evidence finds just cause to do so.

F. Cattle that are removed from the dairy for pasturing in New Mexico shall be branded in accordance with Section 77-9-3, NMSA 1978, prior to removal.

G. Nothing herein shall exempt any owner of livestock from possessing necessary bills of sale or proof of ownership for their livestock and presenting proof of ownership to an inspector, or agent of the board, upon request.

H. An EID tag will also be accepted as an alternate means of identification for cattle in New Mexico dairy.

[21.32.2.9 NMAC - Rp, 21.32.2.9 NMAC, 7/16/2024]

21.32.2.10 ALTERNATIVE TO BRANDING CATTLE IN A NEW MEXICO FEEDLOT:

A. In accordance with Subsection F of 77-9-3, NMSA 1978, of the Livestock Code of New Mexico, the alternate means of identification for cattle in a feedlot shall be the use of plastic eartags that meet the following specifications and contained information:

(1) The tag must not be smaller than a medium sized tag that measures two and one-half inches by three inches (2 1/2" x 3"); and

(2) Has lettering not smaller than one-forth of an inch (1/4"); and

(3) Is solid color with contrasting color for lettering; and

(4) Is factory engraved with the brand owner's name or a correct facsimile of the owner's New Mexico registered brand.

B. In order to qualify for use of the alternative to branding, the feedlot where the alternative is to be used must have a general permit for concentrated animal feeding operations under the national pollution discharge and elimination system of the U.S. environmental protection agency.

C. Owners of cattle in a feedlot may elect to use the alternative method of identifying their cattle after having received permission from the board to do so. The owner must first request permission to use the alternative and the board may grant that permission after confirming the owner understands the minimum requirements for the alternate form and its proper use.

D. The board shall record the feedlot owner's permission and keep record of those owner's that have requested and been granted permission to use the alternative form of identification allowed by law and this section. For registering the alternative, the board shall charge a fee equal, and in addition, to the fee for recording the New Mexico registered brand of the owner of the cattle. The registered brand and the alternative shall be re-recorded separately at the time of the re-recording.

E. The owner of the feedlot must ensure that the eartags used throughout their feedlot are consistent as to size, lettering, information, and layout. Variations in color and individual animal number placed upon the tag are acceptable.

F. The appointed board has the right to revoke an owner's permission to use the alternate method of identification after a hearing and upon presentation of evidence finds just cause to do so.

G. Cattle that are removed from the feedlot for pasturing in New Mexico shall be branded in accordance with Section 77-9-3, NMSA 1978, prior to removal.

H. Nothing herein shall exempt any owner of livestock, or feedlot operator who has cattle branded with the alternative in their facility, from possessing necessary bills of sale or proof of ownership for their livestock, or the livestock which they have in their possession under authority of the owner, and presenting proof of ownership to an inspector, or agent of the board, upon request.

I. An EID tag will also be accepted as an alternate means of identification for cattle in New Mexico feedlot.

[21.32.2.10 NMAC - Rp, 21.32.2.10 NMAC, 7/16/2024]

21.32.2.11 ADDITIONAL PROVISIONS FOR ALTERNATIVE BRANDED CATTLE:

A. Cattle identified by the alternative to branding allowed by Subsection A of 21.32.2.8. NMAC, 21.32.2.9 NMAC, and 21.32.2.10 NMAC shall not be allowed to travel out of district to an auction market by use of a telephone permit under the provisions of Subsection C of 21.32.3.9 NMAC. Cattle branded with the alternative must be visually inspected by an authorized agent of the Livestock Board and a certificate of inspection issued prior to being transported across a livestock inspection district line.

B. After the sale of cattle branded with the alternative, the subsequent owner has thirty days within which to remove the tags of the previous owner and brand with their brand, or apply the new owner's alternative to branding in accordance with Section 77-9-3 NMSA 1978 and this rule.

C. For cattle identified by the alternative at the time of sale, the authority to use the alternative to branding shall not be transferred in any way, including by written permission on the bill of sale, to the subsequent owner.

D. All cattle identified by the alternative to branding and sold must be inspected at the time of sale by an inspector, or an agent, of the livestock board. This inspection is required regardless of the intention to move the cattle across a district line or out of state. The inspector, or agent, shall document the inspection on the proper certificate and the charge the fees for such inspection.

E. A person shall not sell, buy or receive any cattle in New Mexico unless the cattle are branded or has other means of identification acceptable to the board, except cattle imported from another state.

F. The inspector shall hold any livestock presented for inspection that are not properly identified and the owner does not have proper documents establishing ownership, until the owner presents to the inspector documents or evidence of ownership. If the owner does not establish ownership to the satisfaction of the inspector, the inspector shall estray the livestock in question in accordance with the Livestock Code in Chapter 77, Article 13, NMSA 1978.

G. If the inspector conducting any inspection in accordance with 21.32.2.9, 21.32.2.10, 21.32.2.11 NMAC has cause for concern about the health status of cattle being inspected the inspector may quarantine the cattle, or require the owner of the dairy or feedlot to hold the cattle as if they were quarantined, until the state veterinarian, or his designee, makes a determination of the health status of the cattle in question.

H. If the appointed members of the livestock board have reason to believe that any area or region contains a health risk from dangerous and contagious diseases that could affect livestock the board may designate that area or region as one from which movement of livestock to New Mexico or within New Mexico is prohibited. For the purpose of immediate control and protection of the state's livestock, that determination may be made by the director in consultation with the state veterinarian and then ratified at the next meeting of the appointed board.
[21.32.2.11 NMAC - Rp, 21.32.2.11 NMAC, 7/16/2024]

HISTORY OF 21.32.2 NMAC:
Pre-NMAC History: The material filed in this part was derived from that previously filed with the State Records Center and Archives under:
NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/3/1967.
NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970.
NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 5/6/1976.
NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12/10/1969.
NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972.
NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972.
NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972.
NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10/17/1979.
NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/4/1981.
NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985.

History of Repealed Material: 21 NMAC 32.2, Branding of Livestock (filed 1/28/1999) Repealed effective 7/31/2000.
21.32.2 NMAC, Branding of Livestock filed (7/17/2000) Repealed, effective 7/16/2024.

Other History:
21 NMAC 32.2, Branding of Livestock (filed 1/28/1999) Replaced by 21.32.2 NMAC, Branding of Livestock effective 7/31/2000.
21 32.2 NMAC - Branding of Livestock filed (7/17/2000) Replaced by 21 NMAC 30.3 - Branding of Livestock, effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 32 BRANDS, OWNERSHIP, AND TRANSPORTATION OF ANIMALS
PART 3 TRANSPORTATION OF LIVESTOCK

21.32.3.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.32.3.1 NMAC - Rp, 21.32.3.1 NMAC, 7/16/2024]

21.32.3.2 SCOPE: All owners, transporters, or handlers of livestock in the state of New Mexico and those that apply to bring

livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21.30, 21.33 and 21.35 NMAC.
[21.32.3.2 NMAC - Rp, 21.32.3.2 NMAC, 7/16/2024]

21.32.3.3 STATUTORY AUTHORITY: Section 77-2-7, 77-3-1, 77-9-28, 77-9-30, 77-9-31 NMSA 1978.
[21.32.3.3 NMAC - Rp, 21.32.3.3 NMAC, 7/16/2024]

21.32.3.4 DURATION: Permanent.
[21.32.3.4 NMAC - Rp, 21.32.3.4 NMAC, 7/16/2024]

21.32.3.5 EFFECTIVE DATE: July 16, 2024 unless a later date is cited at the end of a section.
[21.32.3.5 NMAC - Rp, 21.32.3.5 NMAC, 7/16/2024]

21.32.3.6 OBJECTIVE: To establish ownership and health rules governing transportation of livestock within, into, and out of New Mexico.
[21.32.3.6 NMAC - Rp, 21.32.3.6 NMAC, 7/16/2024]

21.32.3.7 DEFINITIONS:

A. "Approved eartag" shall be any tag that has received the approval of the livestock board prior to application. The tag must clearly and conspicuously show the owner of the calf prior to sale. The owner may be shown by use of the actual name to which the brand is recorded, brand image or brand master number.

B. "Baby calf" means a bovine animal less than 30 days of age.

C. "Board" means the New Mexico livestock board.

D. "Calf-raising facility and or feed yard" means an established entity in the state of New Mexico for the primary purpose of raising baby calves that are not part of a cow-calf pair that have multiple herds of origin.

E. "Cow-calf pair" means a cow and its suckling progeny; a cow nursing an adopted calf does not qualify as a "cow-calf pair."

F. "Dairy" means an established entity in the state of New Mexico in business for the primary purpose of fluid milk production and which has been assigned a dairy I.D. number by the New Mexico department of agriculture.

G. "Director" means the executive director of the New Mexico livestock board.

H. "EID" means official electronic identification, to include radio frequency identification tag.

I. "Feedlot" means an established entity in the state of New Mexico for the primary purpose of feeding cattle.

J. "Inspector" means any duly authorized or commissioned officer of the livestock board.

K. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.

L. "New Mexico livestock" means any livestock raised or pastured or fed within the state of New Mexico.

M. "Person" means an individual, partnership, association, or operation.

N. "Quarantine" or "quarantined area" means any area within the state of New Mexico whose physical boundaries have been established by order of the board or a duly authorized agent of the board for the purpose of controlling the movement of livestock to prevent the spread of disease.

O. "Quarantined livestock" means any livestock found by the board or its duly authorized agent to be exposed or affected by a contagious or infectious disease and the order of restricted movement is imposed.

P. "Telephone permit" means the authorization to transport livestock to an approved New Mexico auction without prior inspection, by use of a confidential number issued to the owner or owner's agent, which identifies the specific animals and shipment to a specific auction.

Q. "Transient livestock" means livestock transported through the state of New Mexico from another state or country whose destination is not within the state of New Mexico.

R. "Transient livestock with New Mexico destination" means livestock imported in the state of New Mexico from another state or country, or being transported within the state and not having reached the final destination for feed or pasture purpose.
[21.32.3.7 NMAC - Rp, 21.32.3.7 NMAC, 7/16/2024]

21.32.3.8 CREATING DISTRICTS:

A. The board shall, as it deems necessary, create such districts within the state for the purpose of controlling the movement of livestock.

B. The districts shall be known as "livestock inspection districts" and will coincide with the boundaries of the districts shown on the "livestock inspection districts map" dated June 21, 1997 and available at the office of the New Mexico livestock board.

C. Upon approval of the livestock inspector in charge, livestock may move within the designated district without inspection. All livestock intended for shipment from one district to another must be inspected prior to leaving the district, unless the inspector in charge shall designate another location outside the district of origin where the livestock will be subsequently inspected.

D. "International livestock inspection zone within districts" are created, to include the exterior boundaries within the United States of facilities comprising international import receiving facilities and any board-designated holding facility that directly receives livestock that have been transported directly to an international import receiving facility and that have been inspected for health by the United States department of agriculture. As to those USDA-

inspected livestock, which have been received by the international import receiving facility and any nearby private holding facility, no prior permit from the board is required in order to enter those facilities. The board's inspection and health requirements apply in order to permit livestock movement from within the boundaries of the international livestock inspection zone to beyond said zone. The board's inspection and health requirements apply in order to permit livestock movement from outside the boundaries of the international livestock inspection zone to within said zone. Evidence of compliance with all inspection and health requirements necessary to enter New Mexico must also accompany all livestock that move from the international inspection zone into New Mexico.

[21.32.3.8 NMAC - Rp, 21.32.3.8 NMAC, 7/16/2024]

21.32.3.9 DESIGNATED PLACE OF INSPECTION:

A. Any person desiring to move or transport livestock from one district to another, or beyond the limits of this state, except as provided in Section 77-9-42, NMSA 1978, and in 21.32.3.11 NMAC, must first notify the inspector in his district of his intention of move within a reasonable period of time. The inspector or his deputy shall set a time and location for inspection of such livestock and, upon inspection, shall issue the necessary certificate for livestock movement.

B. Fees for inspection of livestock shall be due and payable at the time the certificate for livestock movement is issued. Any unpaid fee shall constitute a lien on all such livestock in accordance with Section 77-9-38, NMSA 1978, until such fees are paid.

C. Not withstanding the provisions of Subsections A and B of 21.32.3.9 NMAC above and Subsection E of 21.32.3.10 NMAC below, any person desiring to move or transport cattle, sheep, or horses, from one district to another within the limits of this state may move such livestock without prior inspection, provided that:

(1) for the purposes of this paragraph "livestock" shall be horses, cattle, or sheep; and

(2) the livestock are to be moved to a licensed livestock auction market within the state to be sold; and

(3) the cattle or sheep are legally branded or in the case of horses they are branded or identified by another means in accordance New Mexico statutes or board rules; and

(4) such person first notifies the inspector or proper authority at such licensed livestock auction market prior to such intended movement and, provides that person with the brand, number, description of such livestock, the name of the person owning said livestock; and

(5) provided further the inspector, his deputy, or proper authority shall confirm the information with the person intending to transport such livestock to be sold and shall issue a non-transferable permit number to the person stating the date the livestock auction will be held and said permit will be void on this date; and

(6) upon request by any livestock inspector, the person transporting livestock under a non-transferable permit number, shall reveal such number, the name of the inspector issuing the number, and such other information as is necessary to verify the legality of the livestock movement; and

(7) upon receiving any livestock moved or transported under a telephone authorization number the person receiving such livestock to be sold shall maintain them separately and shall notify the livestock inspector that such livestock are available for inspection; such livestock shall remain separate from any other livestock until such time as an inspector or his deputy has completed an actual inspection as provided in Sections 77-9-41 and 77-10-5, NMSA 1978, and a certificate of inspection has been issued to the owner or his agent; and

(8) should any person receiving a telephone authorization to transport livestock to be sold transport any livestock not in his ownership, said person will be responsible to the rightful owner and will transport those livestock back to the point of origin to the rightful owner, under the direction and supervision of the New Mexico livestock board; and

(9) all fees and expenses incurred in returning livestock to the rightful owner will be the responsibility of the shipper or persons who caused the animals to be shipped in error.

D. Not withstanding the provisions of Subsections A and B of 21.32.3.9 NMAC above, any person desiring to move or transport cattle, sheep, bison, and/ or horses, from one district to another for the purpose of slaughter within the limits of this state may move such livestock without prior inspection, provided that:

(1) the livestock are to be moved to a licensed slaughter facility within the state to be slaughtered; and

(2) the slaughter facility has requested and been approved by the board to permit movement of livestock to their plant in accordance with this rule; and

(3) the cattle or sheep are legally branded or in the case of horses they are branded or identified by another means in accordance New Mexico statutes or board rules; and

(4) such person first notifies the inspector or proper authority at such slaughter facility prior to such intended movement and, provides that person with the brand, number, description of such livestock, the name of the person owning said livestock; and

(5) provided further the inspector, his deputy, or proper authority shall confirm the information with the person intending to transport such livestock to be

slaughtered and shall record that information on a form approved by the board and issue a non-transferable permit number to the person stating the date the livestock will be slaughtered and said permit shall be void after that date; and

(6) upon request by any livestock inspector, the person transporting livestock under a non-transferable permit number, shall reveal such number, the name of the proper authority or inspector issuing the number, and such other information as is necessary to verify the legality of the livestock movement; and

(7) upon receiving any livestock moved or transported under a telephone authorization number the person receiving such livestock to be slaughtered shall maintain them separately and shall notify the livestock inspector that such livestock are available for inspection; such livestock shall remain separate from any other livestock and shall not be slaughtered until such time as an inspector or his deputy has completed an actual inspection as provided in Sections 77-9-41 and 77-10-5, NMSA 1978, and a certificate of inspection has been issued to the owner or his agent; and

(8) should any person receiving a telephone authorization to transport livestock to be slaughtered transport any livestock not in his ownership, said person will be responsible to the rightful owner and will transport livestock back to the point of origin to the rightful owner, under the direction and supervision of the New Mexico livestock board; and

(9) all fees and expenses incurred in returning livestock to the rightful owner will be the responsibility of the shipper or persons who caused the animals to be shipped in error.

E. Fees for inspection of any livestock transported or moved pursuant to a confidential authorization number shall be due and payable at the time of the actual inspection and issuance of inspection certificate. Any unpaid fees shall constitute a lien on all such livestock in accordance with Section 77-9-38, NMSA 1978, until such fees are paid.

F. Consignments of livestock grossing under $150.00 at auction markets are exempt from service charges.

[21.32.3.9 NMAC - Rp, 21.32.3.9 NMAC, 7/16/2024]

21.32.3.10 EXPORTATION OF SHEEP AND GOATS:

A. All sheep and goats being moved out of the state of New Mexico shall be inspected for brands and marks by an inspector of the New Mexico livestock board.

B. The transportation of New Mexico sheep or goats to points in other states without proper release and inspection provided by law and these regulations may result in the shipper or owner, becoming subject to prosecution and fined upon conviction as provided by law.

C. For the exportation of sheep or goats to other states, inspectors are required to check with the shipper to ascertain his familiarity with import requirements of the state of destination.

D. An inspection fee will be charged to the shipper on all sheep and goats leaving New Mexico, except sheep or goats which are leaving this state directly from a licensed auction market and upon which the inspection fees have been collected as required for the inspection of sheep and goats passing through such markets.

E. A brand and health certificate issued by the New Mexico livestock board inspector is required for all movements of sheep and goats from the livestock inspection district of origin, except as provided by Subsection C of 21.32.3.9 NMAC above.

[21.32.3.10 NMAC - Rp, 21.32.3.10 NMAC, 7/16/2024]

21.32.3.11 INSPECTION AND TRANSPORTATION OF BABY CALVES:

A. Not withstanding the provisions of 21.32.3.9 NMAC, any owner of a dairy or feedlot may sell calves born to his or her cows and commit the calves to transportation without prior inspection by a duly authorized livestock inspector of the New Mexico livestock board, provided the conditions of this section (21.32.3.11 NMAC) are met.

B. All calves that are to be sold and moved under the provisions of this section shall be eartagged with an approved eartag, which shall clearly and conspicuously show the owner of the calf prior to sale. The owner may be shown by use of the actual name to which the brand is recorded, brand image or brand master number.

C. All calves that are to be sold and moved under the provisions of this section shall be eartagged and accounted for by eartag number on the approved bill of sale distributed by the New Mexico livestock board for dairy and feedlot calves. The bill of sale shall contain the information required by Section 77-9-22, NMSA 1978, and shall include the eartag number, description of the individual calf by sex, age, and breed (color). The bill of sale shall list the destination to which the calves are to be shipped, the fees charged for the New Mexico livestock board and the beef checkoff, a statement that the calf inspection/bill of sale form is not valid for shipment out of New Mexico, and the form will be serial numbered for accountability. An individual form showing the sale of calves shall be used for no more than one destination. Separate destinations shall not be mixed on one form.

D. The bills of sale used to document the sale of baby calves in accordance with this section, shall be obtained from the New Mexico livestock board inspector.

E. The eartagging of calves in accordance with this section shall occur prior to the calf's departure from the dairy or feedlot of origin.

F. The bill of sale required by this section shall be completed upon change of ownership and in no case after change of

possession.

G. The approved eartags used to identify the dairy or feedlot of origin and the individual calf may be procured from any source provided the eartag meets the minimum requirements of information in Subsection B of 21.32.3.11 NMAC above.

H. The dairy or feedlot owner is responsible for maintaining the serial numbered forms and all monies collected for the month. The New Mexico livestock board inspector will meet with the dairy owner monthly to reconcile the month's activities, update the form inventory, and collect all monies accumulated for the preceding month.

I. The New Mexico livestock board inspector shall record the totals to their monthly report to the main office of the board and deposit, to the main office in the normal manner, all monies collected.

J. The New Mexico livestock board inspector is responsible for maintaining inventory accountability and ensuring the forms issued to the dairy or feedlot owner are listed by serial number sequence on an issue document signed by that dairy or feedlot owner and the inspector issuing the forms. The original of that issue document will be held by the inspector and a copy supplied to the dairy or feedlot owner.

K. A fee set by the New Mexico livestock board shall be charged for each calf tagged and forms inspected. The fees are payable at the time the inspector inspects the forms and accomplishes the monthly reconciliation with the dairy or feedlot owner.

L. The beef checkoff shall be collected in accordance with state and federal laws and regulations. The amount collected will be the amount set by federal mandate through the Beef Promotion and Research Act and order.

M. An EID tag will also be accepted as an alternate means of identification for cattle in New Mexico dairy and feed lot.

[21.32.3.11 NMAC - Rp, 21.32.3.11 NMAC, 7/16/2024]

21.32.3.12 RE-SALE OF BABY CALVES:

A. All baby calves identified under the provisions of 21.32.3.11 NMAC, and which are re-sold, must have the original eartag intact and readable. Buyer must maintain a record keeping system approved by the livestock board. This record keeping system must be capable of identifying premise of origin and other owners, (if any), and any corresponding bill of sales in less than 24 hours. The seller must furnish the buyer a copy of the baby calf bill of sale from the original owner, which identifies the calf by eartag number. All subsequent buyers of the calf will maintain the eartag and a copy of the corresponding original bill of sale, provided by the seller. An EID tag will also be accepted as an alternate means of identification for cattle in New Mexico dairy and feed lot.

B. Any sale of calves after being branded and the brands being peeled and healed, will be accomplished in the same manner as described in Section 77-9-21 through 77-9-23, NMSA 1978, and a tag leading to a premise of origin must be retained in the calf's ear.

C. All baby calves that are not part of a cow-calf pair imported into New Mexico from outside the state must be ear tagged from the premise of origin.

[21.32.3.12 NMAC - Rp, 21.32.3.12 NMAC, 7/16/2024]

21.32.3.13 TRANSPORTATION PERMITS FOR HORSES: Pursuant to Section 77-9-42 NMSA, 1978 all horses, mules or asses must be accompanied by a brand certificate. Exceptions to the brand certificate may be permitted as follows:

A. form 1-H (permanent hauling permit): an owner's transportation permit issued in lieu of a brand certificate that is valid as long as the horse, mule or ass described in the certificate remains under the ownership of the person to whom the permit was issued;

B. form 1-HA (annual hauling permit): an owner's transportation permit issued in lieu of a brand certificate that is renewable annually and is transferable with the change of ownership subject to issuance of a transfer number issued by the NMLB; the 1-HA will not be valid without a current transfer number, which constitutes a permit when issued by and on file with the NMLB.

[21.32.3.13 NMAC- Rp, 21.32.3.13 NMAC, 7/16/2024]

HISTORY OF 21.32.3 NMAC:

Pre-NMAC History: The material filed in this part was derived from that previously filed with the State Records Center and Archives under:
NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/3/1967;
NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970;
NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 5/6/1976;
NMLB 69-2, Notice-All NM Sheepmen rebranding, filed 12/10/1969;
NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10/17/1979;
NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/4/1981;
NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985.

History of Repealed Material:
21 NMAC 32.3, Transportation of Livestock filed (3/1/1999), repealed effective 5/28/2004.
21.32.3 NMAC - Transportation Of Livestock (filed 5/14/2004) Repealed, effective 7/16/2024.

Other History: Only that applicable portion of NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985

renumbered, reformatted, and amended to 21 NMAC 32.3, Transportation of Livestock, filed 3/1/1999.
21 NMAC 32.3, Transportation of Livestock, filed 3/1/1999 renumbered, reformatted, and replaced by 21.32.3 NMAC, Transportation of Livestock, effective 05/28/2004.
21.32.3 NMAC - Transportation Of Livestock (filed 5/14/2004) Replaced by 21.32.3 NMAC - Transportation Of Livestock, effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 32 BRANDS, OWNERSHIP, AND TRANSPORTATION OF ANIMALS
PART 4 IMPORT REQUIREMENTS (TRANSPORTATION OF LIVESTOCK INTO NEW MEXICO)

21.32.4.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.32.4.1 NMAC - Rp, 21.32.4.1, 7/16/2024]

21.32.4.2 SCOPE: All owners, transporters or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21.30, 21.33, and 21.35 NMAC.
[21.32.4.2 NMAC - Rp, 21.32.4.2, 7/16/2024]

21.32.4.3 STATUTORY AUTHORITY: Section 77-2-7, 77-3-1, 77-9-28 NMSA 1978
[21.32.4.3 NMAC - Rp, 21.32.4.3, 7/16/2024]

21.32.4.4 DURATION: Permanent.
[21.32.4.4 NMAC - Rp, 21.32.4.4, 7/16/2024]

21.32.4.5 EFFECTIVE DATE: July 16, 2024 unless a later date is cited at the end of the section.
[21.32.4.5 NMAC - Rp, 21.32.4.5, 7/16/2024]

21.32.4.6 OBJECTIVE: To establish ownership and health rules governing transportation of livestock within and into New Mexico.
[21.32.4.6 NMAC - Rp, 21.32.4.6, 7/16/2024]

21.32.4.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Director" means the executive director of the New Mexico livestock board.

C. "Holstein cross" means bovines that have some percentage of holstein or other dairy breed in their genetic lineage.

D. "Inspector" means any duly authorized or commissioned officer of the livestock board.

E. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

F. "New Mexico Livestock" means any livestock raised or pastured or fed within the state of New Mexico.

G. "Person" means an individual, partnership, association or operation.

H. "Quarantine" or "quarantined area" means any area within the state of New Mexico whose physical boundaries have been established by order of the board or a duly authorized agent of the board for the purpose of controlling the movement of livestock to prevent the spread of disease.

I. "Quarantined livestock" means any livestock found by the board or its duly authorized agent to be exposed or affected by a contagious or infectious disease and the order of restricted movement is imposed.

J. "Sealed vehicle" means a vehicle for transporting livestock that has its gates or doors closed and which gates or doors have an attached strip of metal, which is numbered for identification. The metal strip is attached to the gates or doors in a manner that would break the "seal" if the vehicle were to be opened.

K. "Telephone permit" means the authorization to transport livestock to an approved New Mexico auction without prior inspection, by use of a confidential number issued to the owner or owner's agent, which identifies the specific animals and shipment to a specific auction.

L. "Transient livestock" means livestock transported through the state of New Mexico from another state or country whose destination is not within the state of New Mexico.

M. "Transient livestock with New Mexico destination" means livestock imported in the state of New Mexico from another state or country or being transported within the state and not having reached the final destination for feed or pasture purpose.

N. "Universal swine earnotch (1-3-9) system" means the system of cutting notches in the ears of swine, at specific locations on the ear, which correspond to number values. The notches' values added together provide identification numbers for the pig. The right ear's value shall be the litter number. The left ear shall be the individual pig number in that litter.
[21.32.4.7 NMAC - Rp, 21.32.4.7, 7/16/2024]

21.32.4.8 IMPORT REQUIREMENTS FOR CATTLE, INCLUDING BISON:

A. A health certificate or other approved New Mexico livestock board document from the state of origin and a New Mexico entry permit are required on all shipments of cattle entering New Mexico.

B. Upon arrival at destination, the owner or agent must notify the New Mexico livestock board inspector in order to make the

arrangements for inspection of the shipments prior to commingling with other cattle or release to pasture.

C. The inspection will be for the purpose of determining that the shipment has met all applicable import requirements including but not necessarily limited to: scabies dipping, brucellosis testing, tuberculosis testing, brand regulations and inspection to confirm the shipment does conform to the description of the animals as stated on the required permit and health certificate.

D. The test charts and dipping certificates, when applicable, shall remain with the shipment upon arrival; otherwise the shipment will be quarantined until evidence has been presented.

E. There will be an import inspection charge to be paid at completion of the inspection, except when there is a waiver of import inspection and/or fees for import cattle moving in accordance with a commuter agreement as described in Subsection F of 21.32.3.8 NMAC, below.

F. Import inspections and/or fees will be waived upon request of the owner of bona fide and approved Colorado or Arizona and New Mexico commuter cattle when that owner brings commuter cattle to New Mexico as part of their normal commuter cattle operation and when the following conditions are met:

(1) the owner notifies the appropriate New Mexico livestock board inspector prior to movement and furnishes the appropriate New Mexico livestock board inspector with a valid copy of the Colorado or Arizona export inspection within 48 hours (two days) after arrival in New Mexico; and

(2) the owner understands that the New Mexico livestock board inspector may conduct a spot check inspection of arriving cattle for which no fee will be charged; and

(3) Colorado and Arizona maintain at least "A" status in the brucellosis eradication program; and

(4) the Colorado board of stock inspection or the Arizona livestock board has conducted a visual and complete inspection of the commuter herd owner's cattle departing Colorado or Arizona; and

(5) all of the cattle arriving from Colorado or Arizona are owned by the commuter herd operator and are those cattle and their offspring, which were originally shipped from New Mexico to Colorado or Arizona and are now returning to New Mexico; none of the cattle arriving are cattle which were introduced into the herd in Colorado or Arizona from sources other than the owner's bona fide and approved commuter herd; and

(6) all health requirements for commuter herd operations are met, to include necessary health certificates and permits.

[21.32.4.8 NMAC - Rp, 21.32.4.8, 7/16/2024]

21.32.4.9 BRUCELLOSIS TEST REQUIREMENTS FOR CATTLE AND BISON:

A. For all states, regardless of brucellosis class, cattle originating from any "brucellosis certified free" herd may enter New Mexico without an entry test, provided the following information is recorded on the official health certificate:

(1) individual identification of each animal; and

(2) herd certificate number; and

(3) date of the last herd test.

B. There is no brucellosis test required for spayed heifers and steers.

C. Brucellosis free states: All cattle must meet federal interstate regulation requirements for "class free" states, in addition to New Mexico requirements.

D. Class A states: All females and bulls over 18 months of age must be tested and negative within 30 days prior to entry into New Mexico, except heifers that are officially vaccinated for brucellosis and under 24 months of age if beef and under 20 months of age if dairy. All cattle must meet federal interstate requirements for "class A" states, in addition to New Mexico requirements.

E. Class B states: All females and breeding bulls over 8 months of age must be tested and negative within 30 days prior to entry into New Mexico, except heifers that are officially vaccinated for brucellosis and under 24 months of age if beef, and under 20 months of age if dairy. All cattle must meet federal interstate requirements for "class B" states, in addition to New Mexico requirements. Test eligible animals over 8 months of age will be quarantined at destination for a retest for brucellosis at the owner's expense, unless waived by the board, between 60 and 90 days after the entry test date. Untested test eligible animals may go direct to slaughter or direct to a quarantined feedlot provided they are "S" branded and move on an "S brand" permit or they move direct to slaughter in a "sealed" vehicle. No heifer calves can move from infected herds, unless they are "S" branded or spayed. "S" branded heifers from infected herds can go only to slaughter or quarantined feedlot. Spayed heifers will be treated like steers. Special permits may be granted by the state veterinarian to spay heifers on arrival.

F. Testing or vaccination requirements for class A and class B states are not required when going directly from the farm or ranch of origin to a federally approved slaughter plant for slaughter or to a New Mexico quarantined feedlot or when going to an approved market where the qualification for brucellosis will be handled at the market.

G. Class C states: No sexually intact cattle, regardless of age, will be allowed to be moved into New Mexico, except "S" branded animals going to slaughter or quarantined feedlots. The restrictions will not affect spayed heifers or steers. The only cattle exempt from these

requirements are cattle from "certified brucellosis free herds," which must have a negative test within 30 days prior to entry. Special permits may be granted by the state veterinarian to spay heifers on arrival.

H. All tests shall be at the owners expense.

[21.32.4.9 NMAC - Rp, 21.32.4.9, 7/16/2024]

21.32.4.10 TUBERCULOSIS TEST REQUIREMENTS FOR CATTLE AND BISON: All sexually intact import dairy cattle four months of age or older *must* have a negative tuberculin test within 30 days prior to entry *regardless* of the status of the state of origin or TB free herd. Exception: May be consigned to a licensed New Mexico auction, where they will be "N" branded, sold for slaughter only and sent directly to slaughter or a licensed New Mexico feedlot.

[21.32.4.10 NMAC - Rp, 21.32.4.10, 7/16/2024]

21.32.4.11 TUBERCULOSIS REQUIREMENTS FOR INTERNATIONAL IMPORTS:

A. All sexually intact cattle, from any foreign country or part thereof, with no recognized comparable tuberculosis status that are to be held for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot, shall be under quarantine on the first premises of destination in New Mexico pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival and that test shall be performed at the owner's expense.

B. All sexually intact cattle, from any foreign country or part thereof, with no recognized comparable tuberculosis status that are destined for immediate slaughter or feeding for slaughter in a quarantined feedlot, shall be tested at the port-of-entry into New Mexico under the supervision of the port veterinarian and these cattle shall be moved to the slaughter facility or quarantined feedlot only in sealed trucks with a permit issued by the New Mexico livestock board or USDA personnel and, if destined to a quarantined feedlot, shall be "S" branded upon arrival at the feedlot.

C. Steers and spayed heifers from Mexico may enter from Mexican states that have been determined by the New Mexico livestock board, acting on the recommendation of the joint United States and Mexico (bi-national) tuberculosis committee, to have fully implemented the "control/ preparatory" phase of the Mexican tuberculosis eradication program by September 1, 1995, after having been tested negative for tuberculosis in accordance with the *Norma Official Mexicana (NOM)* within 60 days prior to entry into the United States and may then move without further restriction within New Mexico.

D. Steers and spayed heifers may not be imported into New Mexico from Mexican states that have not implemented the "control/ preparatory" phase of the Mexican tuberculosis eradication program by September 1, 1995.

E. Steers and spayed heifers from Mexico may enter from Mexican states that have been determined by the New Mexico livestock board, acting on the recommendation of the joint United States and Mexico (bi-national) tuberculosis committee, to have fully implemented the "eradication" phase of the Mexican tuberculosis eradication program by March 1, 1997, after having been tested negative for tuberculosis in accordance with the *Norma Official Mexicana (NOM)* within 60 days prior to entry into the United States or that originate from herds within those states that are equal to United States accredited TB-free herds and that are moved directly from the herd of origin across the border as a single group and not co-mingled with other cattle prior to arriving at the border and then may move within New Mexico without further restriction.

F. Steers and spayed heifers from Mexico may enter from Mexican states that have been determined by the New Mexico livestock board, acting on the recommendation of the joint United States and Mexico (bi-national) tuberculosis committee, to have achieved accredited TB-free status and move directly into New Mexico without further testing or restriction provided they are moved as single group and not co-mingled with other cattle prior to arriving at the border.

G. Holstein and Holstein cross steers and Holstein and Holstein cross spayed heifers from Mexico are prohibited from entering New Mexico, regardless of test history.

H. Cattle entering from Mexico for the purpose of feeding and return to Mexico or slaughter, under the federal (United States) in-bond program, are exempt from the requirements above in Subsections A through G of 21.32.4.11 NMAC.

I. Rodeo stock from Mexico shall be tested for tuberculosis by a United States accredited veterinarian or under the supervision of a USDA-APHIS port veterinarian, within 12 months prior to their utilization as rodeo or roping stock and retested for tuberculosis every 12 months thereafter.

J. The provisions of this section are intended solely for cattle born and raised in Mexico or within the United States or Canada and which were exported to Mexico, in accordance with appropriate rules and regulations.

[21.32.4.11 NMAC - Rp, 21.32.4.11, 7/16/2024]

21.32.4.12 IMPORT REQUIREMENTS FOR SHEEPAND GOATS:

A. All sheep and goats entering the state of New Mexico must be accompanied by a permit previously procured by letter, telegraph, telephone or verbally requested from the office of the New Mexico livestock board in Albuquerque or from an officer of the board specifically authorized to issue entrance permits.

B. Sheep and goats entering the state of New Mexico must be accompanied by an official

health certificate issued by a state inspector of the state of origin, an inspector of the United States department of agriculture or by a recognized and accredited veterinarian attesting the animals in the shipment are apparently free from symptoms of infectious or contagious disease. Additionally, all health certificates for sheep shall contain a statement by the certifying official that the sheep are free of scabies, contagious ovine ecthyma (sore mouth) and foot rot. The health certificate shall also certify that the sheep have not been exposed to blue tongue within 30 days of movement and all breeding rams shall be certified as individually examined and free of gross lesions of ram epididymitis.

C. Shippers and owners of sheep or goats imported into the state of New Mexico must notify the livestock inspector at destination upon arrival in order that the shipment can be inspected for health as required by law.

[21.32.4.12 NMAC - Rp, 21.32.4.12, 7/16/2024]

21.32.4.13 IMPORT REQUIREMENTS FOR EQUIDAE:

A. All equidae, which includes horses, mules and asses, entering New Mexico must be accompanied by an official health certificate attesting the equidae in the shipment are free from symptoms of infectious or contagious disease.

B. All equidae entering the state of New Mexico must be tested and negative, within 12 months prior to entry, for equine infectious anemia (EIA) using the agar gel immunodiffusion (AGID) test, also known as the "Coggins" test or the competitive enzyme-linked immunosorbent assay (CELISA) test or other USDA licensed test approved by the board. The date of the test, the laboratory and the results must be shown on the required health certificate. Individual identification and/or description of the animal(s) must also be provided on the health certificate.

C. Foals, nursing and accompanied in shipment by a negative (EIA) tested dam and equidae consigned directly to slaughter in New Mexico are not required to be tested for EIA. If the dam does not accompany the foal in shipment, the foal must be tested negative prior to entry.

D. All testing for EIA must be performed at laboratories approved by USDA for such testing. All samples must be collected by an accredited veterinarian or full-time state or federal regulatory personnel.

E. The state veterinarian may grant a special permit to enter the state of New Mexico for equidae that have a test pending. This permit must be requested and granted prior to entry.

[21.32.4.13 NMAC - Rp, 21.32.4.13, 7/16/2024]

21.32.4.14 IMPORT REQUIREMENTS FOR SWINE:

A. All swine entering New Mexico must be accompanied by an approved certificate of veterinary inspection showing individual identification and must originate from a herd or area not under quarantine. All swine must have a prior entry permit from the New Mexico livestock board. All certificates must certify that the swine have not been fed raw garbage.

B. All swine, regardless of age, must prove negative to a brucellosis test conducted within 30 days or originate from a brucellosis "validated herd" and have the date of the last herd test and the herd certificate number indicated on the approved certificate of veterinary inspection.

C. All swine, regardless of age, must prove negative to an official pseudorabies test conducted within 30 days or originate from a "qualified pseudorabies free herd" and have the date of the last herd test and the herd certificate number indicated on the approved certificate of veterinary inspection.

D. All swine must be identified with an official ear notch (1-3-9-27-81 system), metal or plastic tag. These are the only acceptable means of identification. Swine consigned directly to specifically approved feedyards (quarantined feeding facilities) or recognized slaughtering establishments are not required to meet the individual identification requirements.

[21.32.4.14 NMAC - Rp, 21.32.4.14, 7/16/2024]

21.32.4.15 SCABIES REGULATIONS FOR IMPORT CATTLE:

A. All cattle, except those defined in Subsection B of 21.32.4.15 NMAC below, imported into the state of New Mexico from areas defined as high risk scabies infected areas shall be officially treated with a USDA approved pesticide for scabies. This treatment may be accomplished at origin, en route or at destination.

B. Cattle not required to be treated if entering New Mexico from high risk scabies areas include the following:

(1) cattle consigned for immediate slaughter and will be slaughtered within seven days after entering New Mexico; or

(2) dairy cattle used for milk production (these cattle will be inspected only); or

(3) calves under three weeks of age (these calves will be inspected only); or

(4) cattle consigned directly to a New Mexico livestock auction market for sale and immediate delivery to slaughter; or

(5) commuter cattle with a completed and approved "Colorado-New Mexico commuter cattle agreement."

C. The "high risk scabies infected areas" are to be determined by the director and the state veterinarian of the New Mexico livestock board.

D. Scabies treatment of New Mexico cattle moving in commerce will not be initiated by the board until, or unless the incidence of the disease within the state of New Mexico warrants such action, as determined by the appointed members of the New Mexico livestock board.

[21.32.4.15 NMAC - Rp, 21.32.4.15, 7/16/2024]

21.32.4.16 INTERNATIONAL IMPORTS OF LIVESTOCK:
All livestock entering New Mexico from any foreign country and not originating from that country must have met all of the entry requirements that are in effect for each country through which the livestock have passed en route to the United States and have met the requirements for import as required by the United States department of agriculture that would be imposed upon those livestock had they been imported directly from the country of origin, unless specifically determined otherwise by the appointed members of the livestock board.
[21.32.4.16 NMAC - Rp, 21.32.4.16, 7/16/2024]

21.32.4.17 SCRAPIE REGULATIONS FOR IMPORT SHEEP:

A. The requirements of this section are in addition to the requirements set forth in 21.32.4.12 NMAC bove and are intended to prevent the spreading of scrapie to New Mexico.

B. In addition to the information required by 21.32.4.12 NMAC, all breeding sheep (fine wool, medium wool or crossbreeds) entering New Mexico must have the following statement entered on the health certificate:

(1) "The sheep on this certificate originate from a flock in which scrapie has not been diagnosed in the last five years and has not been identified as a trace or source flock and there is no evidence of exposure to scrapie".

(2) The owner or owner's operator or agent shall print and sign his name under this statement attesting to the truthfulness of the statement.

C. Medium wool and crossbred sheep must be individually identified with an ear tag or tattoo (paint and chalk brands are not acceptable) and that ID shall be placed on the health certificate.

D. Commuter sheep imported into New Mexico from a contiguous state, without change of ownership and as part of the normal commuting operation, may enter without meeting the additional scrapie requirements of Subsections A through C of 21.32.4.17 NMAC above, provided the owner has a prior approved commuter herd permit from the state veterinarian of New Mexico.

E. Sheep entering New Mexico for grazing or feedlot must have a health certificate that includes the following statement:

(1) "The sheep on this certificate originate from a flock in which scrapie has not been diagnosed in the last five years and has not been identified as a trace or source flock and there is no evidence of exposure to scrapie".

(2) The owner or owner's operator or agent shall print and sign his name under this statement attesting to the truthfulness of the statement.

F. Slaughter sheep, consigned directly to slaughter, must only meet the requirements of 21.32.4.12 NMAC and are not required to meet the additional scrapie requirements of this section.
[21.32.4.17 NMAC - Rp, 21.32.4.17, 7/16/2024]

HISTORY OF 21.32.4 NMAC:
Pre-NMAC History: The material filed in this part was derived from that previously filed with the State Records Center and Archives under:
NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/3/1967;
NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970;
NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 5/6/1976;
NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12/10/1969;
NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10/17/1979;
NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/4/1981;
NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985.

History of Repealed Material: 21 NMAC 32.4 - Import Requirements (Transportation of Livestock into New Mexico) filed (03/01/1999) repealed effective 12/31/2007.
21.32.4 NMAC - Import Requirements (Transportation of Livestock into New Mexico) filed (12/14/2007) Repealed, effective 7/16/2024.

Other History:
That applicable portion of NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations (filed 1/30/1985) was renumbered, reformatted, amended and replaced by 21 NMAC 32.4, Import Requirements (Transportation of Livestock Into New Mexico), effective 03/01/1999.
21 NMAC 32.4, Import Requirements (Transportation of Livestock Into New Mexico) (filed 01/28/1999) renumbered, reformatted, amended, and replaced by 21.32.4 NMAC, Import Requirements (Transportation of Livestock Into New Mexico), effective 12/31/2007.
21.32.4 NMAC - Import Requirements (Transportation of Livestock into New Mexico) filed (12/14/2007) Replaced by 21.32.4 NMAC - Import Requirements (Transportation of Livestock into New Mexico) effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 32 BRANDS, OWNERSHIP, AND TRANSPORTATION OF ANIMALS
PART 10 LIVESTOCK BOARD FEES

21.32.10.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.32.10.1 NMAC - Rp, 21.32.10.1, 7/16/2024]

21.32.10.2 SCOPE: All owners, transporters, or handlers of livestock in the State of New Mexico and those that apply to bring livestock into the state for any reason that receive inspection and other services of the New Mexico livestock board.
[21.32.10.2 NMAC - Rp, 21.32.10.2, 7/16/2024]

21.32.10.3 STATUTORY AUTHORITY: Section 77-2-7, 77-2-29, 77-8-3, 77-8-7, 77-9-10, 77-9-16, 77-9-29, 77-9-38, 77-9-42, 77-10-4, NMSA 1978.
[21.32.10.3 NMAC - Rp, 21.32.10.3, 7/16/2024]

21.32.10.4 DURATION: Permanent.
[21.32.10.4 NMAC - Rp, 21.32.10.4, 7/16/2024]

21.32.10.5 EFFECTIVE DATE: July 16, 2024 unless a later date is cited at the end of the section.
[21.32.10.5 NMAC - Rp, 21.32.10.5, 7/16/2024]

21.32.10.6 OBJECTIVE: To establish fees for the services provided by the New Mexico livestock board.
[21.32.10.6 NMAC - Rp, 21.32.10.6, 7/16/2024]

21.32.10.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Estray" means livestock of unknown ownership pursuant to Section 77-13-1 through 77-13-10, NMSA 1978.

C. "Holding brand" means a brand issued pursuant to Section 77-9-16, NMSA 1978, usually for transient livestock in the state of New Mexico.

D. "Inspector" means any duly authorized or commissioned officer of the livestock board.

E. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.
[21.32.10.7 NMAC - Rp, 21.32.10.7, 7/16/2024]

21.32.10.8 LIVESTOCK INSPECTION FEES: Effective September 15, 2010, the following are the inspection charges for services of the New Mexico livestock board, pursuant to Sections 77-2-29 and 77-2-7, NMSA 1978:

A. Cattle and bison inspection fee $ 0.50 per head.

B. Horse inspection fee $ 0.50 per head.

C. Hide inspection fee $ 0.50 per hide.

D. Sheep and goat inspection fee $ 0.16 per head.

E. Pelt inspection fee $ 0.12 per pelt.

F. Swine inspection fee $ 1.00 per head.

G. Service charge for field inspection $ 10.00 per inspection.

H. Youth exhibition animals congregated at a pre-arraigned site $5.00 per inspection.

I. Service charge at livestock market $ 0.

J. The payment, in lieu of fees, on the receipt of livestock at an auction market, pursuant to Sections 77-10-4 and 77-2-29, NMSA 1978, shall be the same as the amounts listed in this section.

K. Impoundment fee $10.00 per head per day, pursuant to Section 7-14-36 and Sub-section J of Section 77-2-29 NMSA 1978.

L. Transportation fee not to exceed $1.75 per loaded mile for the hauling of impounded trespass livestock to a livestock auction market facility or receiving station pursuant to Section 77-14-36 NMSA 1978. In the event a semi-tractor-trailer must be hired to haul livestock, a reasonable fee charged by the company shall be paid. Payment for the transportation fee shall have prior approval of the inspector from the originating district of the impounded livestock.
[21.32.10.8 NMAC - Rp, 21.32.10.8, 7/16/2024]

21.32.10.9 TRANSPORTATION PERMITS FOR HORSES: The charge for issuance of a transportation permit (form 1-H), pursuant to Section 77-9-42, NMSA 1978, is twenty-five dollars ($25.00). The charge for issuance of an annual transportation permit (form 1-HA) will be fifteen dollars ($15.00), provided however, that no fee is charged for issuance of a transfer number to a subsequent owner, which is valid for the unexpired portion of the year for which an annual fee has been paid when a transfer of ownership occurs during the year for which an annual fee has already been paid. There will be a service charge in the amount set by Subsection A of 21.32.10.8 NMAC, for a field inspection, for each form 1-H or form 1-HA issued, regardless of where the inspection occurs. The fee for 1-H reproduction is ten dollars ($10.00). The 1-HA cannot be reproduced.
[21.32.10.9 NMAC - Rp, 21.32.10.9, 7/16/2024]

21.32.10.10 ESTRAY CHARGES:

A. There will be an administrative charge of ten dollars ($10.00) for office handling of each estray report.

B. Charges for advertising estrays pursuant to Section 77-13-4, NMSA 1978 will be computed by dividing the total cost of the advertisement by the individual reports within that advertisement and that resulting amount shall be charged to the proceeds being held for a particular estray.
[21.32.10.10 NMAC - Rp, 21.32.10.10, 7/16/2024]

21.32.10.11 BRAND RECORDING FEES:

A. The fee for recording, a New Mexico livestock brand, pursuant to Sections 77-2-7.4 and 77-2-29, NMSA 1978, is one

hundred dollars ($100.00).

B. The fee for re-recording a New Mexico livestock brand, pursuant to Sections 77-2-7.12 and 77-2-29, NMSA 1978, is one hundred dollars ($100.00).

C. The fee for transferring ownership of a recorded brand, pursuant to Sections 77-2-7.1 and 77-2-29, NMSA 1978, is one hundred dollars ($100.00).

D. The fee for recording, or re-recording, a holding brand, pursuant to Sections 77-2-7.9 and 77-9-29, NMSA 1978, is one hundred dollars ($100.00).

E. For the purpose of affording convenience and ease to brand owners and to lessen the administrative burden and expense to the board, and recognizing that the board causes brand re-recordings to occur every three years as permitted by Section 77-2-7.12, NMSA 1978, an option is offered to brand owners to re-record in optional periods of three years, six years, nine years or 12 years, according to the following fee schedule:

(1) The fee to re-record for a three-year period is one hundred dollars ($100.00), payable at the commencement of that re-recording period.

(2) If re-record is desired for a six-year period, the fee is two hundred dollars ($200.00), payable at the commencement of that re-recording period.

(3) If re-record is desired for a nine-year period, the fee is three hundred dollars ($300.00), payable at the commencement of that re-recording period.

(4) If re-record is desired for a 12-year period, the fee is four hundred dollars ($400.00), payable at the commencement of that re-recording period.

F. Brand owners are responsible for updating their current address with the board in order to receive timely communication regarding their re-recording opportunities and obligations.

G. In accordance with Sections 77-2-7.9 and 77-2-29 NMSA 1978, owners of holding brands who desire to extend the duration of a holding brand beyond one year must re-apply annually and must pay the annual renewal fee of one hundred dollars ($100.00).

H. When owners of dairy cattle and owners of feedlots re-record their brand or register the alternative to branding as permitted by 21.32.2.9 and 21.32.2.10 NMAC they must utilize the same re-recording period chosen for brand re-recording. As provided by those rules, the fee for registering the alternative is the same as, and is in addition to, the fee for brand re-recording.

[21.32.10.11 NMAC - Rp, 21.32.10.11, 7/16/2024]

21.32.10.12 COPY SERVICES

A. The fee for making copies of any documents using the agency's copiers, shall be fifty ($0.50) cents per page, either 8 ½ by 11 or 8 ½ by 14 plus postage.

B. No documents of the livestock board will be surrendered to anyone, other than employees of the board, for the purpose of removing the documents from the office of the board in order to have copies made.

C. The fee for making certified copies shall be three dollars ($3.00) for certification and fifty cents ($0.50) per page plus postage.

D. The fee for re-producing 3x5 inch or 4x6 inch photographs shall be ten dollars ($10.00) for each copy, and larger sizes will be the cost of re-producing plus a ten dollar ($10.00) office fee per request plus postage.

E. The fee for providing an electronic copy on compact disk of brand owners names and address shall be one hundred dollars ($100.00) per copy plus postage.

[21.32.10.12 NMAC - Rp, 21.32.10.12, 7/16/2024]

21.32.10.13 ABATTOIRS, MEAT DEALERS AND STORAGE PLANTS:

A. Annual license fee for meat dealers, abattoirs and storage plants - one hundred dollars ($100.00).

B. Annual licenses are valid from January 1st through December 31st.

C. License fees renewals are due thirty days before the expiration date of the current license.

D. Operating without a current license is prohibited.

[21.32.10.13 NMAC - Rp, 21.32.10.13, 7/16/2024]

21.32.10.14 DEPOSITS:

A. New Mexico livestock board inspectors shall deposit all fees to designated banks no later than 10 days from the date of collection.

B. Designated banks may be proposed by the executive director and confirmed by majority vote of the board.

C. In the event of force majeure, the executive director may direct the use of alternative financial institutions until the next meeting of the board.

[21.32.10.14 NMAC - Rp, 21.32.10.14, 7/16/2024]

History of 21.32.10 NMAC:

Pre-NMAC History: The material filed in this Part was derived from that previously filed with the State Records Center and Archives under:

NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/3/1967;

NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970;

NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 5/6/1976;

NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12/10/1969;

NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;

NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;

NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;

NMLB -1, New Mexico Livestock Board Rules and Regulations, filed

10/17/1979;
NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/04/1981;
NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985;
NMLB Rule No. 4, Livestock Inspection Fees, filed 8/5/1993.

History of Repealed Material: 21 NMAC 32.10 - Livestock Board Fees filed (03/01/1999) repealed effective 7/31/2000..
21.32.10 NMAC - Livestock Board Fees filed (1/28/1999) Repealed, effective 7/16/2024.

Other History: Only that applicable portion of NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations (filed 1/30/1985) and NMLB Rule No. 4, Livestock Inspection Fees (filed 8/5/1993) renumbered, reformatted, and amended to 21 NMAC 32.10, Livestock Board Fees, effective 3/1/19999.
21 NMAC 32.10, Livestock Board Fees (filed 1/28/1999) renumbered, reformatted, and amended to 21.32.10 NMAC, Livestock Board Fees, effective 7/31/2000.
21.32.10 NMAC - Livestock Board Fees filed (1/28/1999) Replaced by 21.32.10 NMAC - Livestock Board Fees effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 34 DAIRY AND EGG PRODUCERS
PART 20 NEW MEXICO PULLORUM-TYPHOID CONTROL PROGRAM

21.34.20.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.34.20.1 NMAC - Rp 21 NMAC 34.20.1, 7/16/2024]

21.34.20.2 SCOPE: All owners, raisers and handlers of poultry in the state of New Mexico and those that apply to bring poultry into the state for any reason.
[21.34.20.2 NMAC - Rp 21 NMAC 34.20.2, 7/16/2024]

21.34.20.3 STATUTORY AUTHORITY: Section 77-2-7, 77-3-1, NMSA 1978.
[21.34.20.3 NMAC - Rp 21 NMAC 34.20.3, 7/16/2024]

21.34.20.4 DURATION: Permanent
[21.34.20.4 NMAC - Rp 21 NMAC 34.20.4, 7/16/2024]

21.34.20.5 EFFECTIVE DATE: July 16, 2024 unless a later date is cited at the end of a section or paragraph.
[21.34.20.5 NMAC - Rp 21 NMAC 34.20.5, 7/16/2024]

21.34.20.6 OBJECTIVE: To establish rules governing poultry industry in New Mexico concerning control of pullorum-typhoid.
[21.34.20.6 NMAC - Rp 21 NMAC 34.20.6, 7/16/2024]

21.34.20.7 DEFINITIONS:

A. "Authorized field testing agent" means any person who has received appropriate training and has been certified as an official state pullorum-typhoid testing agent by the official agency of the national poultry improvement plan (NPIP).

B. "National poultry improvement plan (NPIP) " means the cooperative state-federal program through which new technology can be effectively applied to the improvement of poultry breeding stock and hatchery products through the control of certain hatchery disseminated diseases.

C. "Official state agency" means the New Mexico livestock board. In New Mexico, the New Mexico livestock board is the "official state agency" of the NPIP and, by memorandum of understanding with the board, the New Mexico cooperative extension service.

D. "Poultry" means domesticated fowl, including chickens, turkeys, waterfowl, game birds, guinea fowl and other species which are bred for the purpose of producing eggs or meat, except doves, pigeons and ratites.

E. "Pullorum" means a disease of poultry caused by *salmonella pullorum*.

F. "Typhoid" means a disease of poultry caused by *salmonella gallinarum.*

G. "VS form 9-2" means the flock selecting and testing report provided by the NPIP. Forms are available from the official state agency.

H. "VS form 9-3" means the report of sales of hatching eggs, chicks and pullets provided by the NPIP. Forms are available from the official state agency.

I. "VS form 17-6" means the certificate for poultry or hatching eggs for export. The forms are available from USDA-APHIS-VS or the official state agency.
[21.34.20.7 NMAC - Rp 21 NMAC 34.20.7, 7/16/2024]

21.34.20.8 GENERAL:

A. Persons authorized to perform pullorum-typhoid tests in New Mexico include authorized field testing agents approved by the official state agency and veterinarians licensed to practice veterinary medicine in the state.

B. All persons performing poultry disease diagnostic services or field tests within the state are required to report to either the official state agency of NPIP or the state veterinarian within 48 hours the source of all poultry specimens from which *S. gallinarum* is isolated or from which positive field tests are obtained.
[21.34.20.8 NMAC - Rp 21 NMAC 34.20.8, 7/16/2024]

21.34.20.9 INTERSTATE MOVEMENT:

A. Poultry shipped into the state of New Mexico shall be accompanied by either an official health certificate issued by an accredited veterinarian within ten

(10) days of shipment, or a VS form 9-2, indicating the flock of origin is actively enrolled in the state NPIP program and is negative or clean for pullorum-typhoid.

B. The required health certificate shall state the poultry have been inspected and are free of evidence of infectious or contagious disease and have tested negative for pullorum-typhoid within 90 days prior to shipment, or they originated from flocks or hatcheries which have met the pullorum-typhoid requirements of the NPIP.

C. Poultry under four months of age and hatching eggs will be exempt from this section if from a NPIP, or equivalent, hatchery and accompanied by a VS form 9-3 or USDA-APHIS-VS form 17-6.
[21.34.20.9 NMAC - Rp 21 NMAC 34.20.9, 7/16/2024]

21.34.20.10 EXHIBITION POULTRY:

A. Poultry entered in shows that are determined to be intrastate are exempt from Subsection B through F of 21.34.16.10 NMAC below if the number of poultry in the show is less than 50 total birds. Shows with 50, or more, total birds will be required to follow Subsecrion B through F of 21.34.16.10 NMAC below in the succeeding year. All poultry imported from out of state for exhibiting purposes must comply with rules Subsections B through F of 21.34.20.10 NMAC below regardless of the size of the show entered.

B. All poultry being exhibited in New Mexico shall be free of visible evidence of disease.

C. All exhibition poultry shall have tested negative for pullorum-typhoid within 90 days prior to exhibition and have the results recorded on VS form 9-2, or official form from the state of origin certifying that the testing was done by an authorized agent of that state.

D. The testing required in Subsection C of 21.34.20.10 NMAC above is not necessary if, the poultry have originated from flocks which have met the pullorum-typhoid requirements of the NPIP and have originated from flocks not known to be infected with or have any evidence of infectious or contagious diseases.

E. Poultry qualifying under Subsections C or D of 21.34.20.10 NMAC above may be imported for exhibition purposes without an official health certificate if accompanied by an approved state form or NPIP form 9-2.
[21.34.20.10 NMAC - Rp 21 NMAC 34.20.10, 7/16/2024]

HISTORY OF 21.34.20 NMAC:

History of Repealed Material:
21 NMAC 34.20 - New Mexico Pullorum-Typhoid Control Program filed (1/28/1999) repealed effective 7/16/2024.

Other History: 21 NMAC 34.20 - New Mexico Pullorum-Typhoid Control Program filed (1/28/1999) replaced by 21.34.20 NMAC - New Mexico Pullorum-Typhoid Control Program effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 35 LIVESTOCK MARKETING
PART 3 HUMANE HANDLING OF LIVESTOCK BY LIVESTOCK MARKETS AND FACILITIES

21.35.3.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.35.3.1 NMAC - Rp, 21.35.3.1, 7/16/2024]

21.35.3.2 SCOPE: All owners and operators of livestock markets, stockyards, market agencies, dealers, rest stations and rendering plants.
[21.35.3.2 NMAC - Rp, 21.35.3.2, 7/16/2024]

21.35.3.3 STATUTORY AUTHORITY: Section 77-2-7, 77-2-22, 77-9-3, 77-9-4, 77-10-2, 77-10-3, 77-10-8, 77-10-10, NMSA 1978 and such other regulatory authority as provided in Chapter 77 NMSA 1978.
[21.35.3.3 NMAC - Rp, 21.35.3.3, 7/16/2024]

21.35.3.4 DURATION: Permanent.
[21.35.3.4 NMAC - Rp, 21.35.3.4, 7/16/2024]

21.35.3.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[21.35.3.5 NMAC - Rp, 21.35.3.5, 7/16/2024]

21.35.3.6 OBJECTIVE: To establish rules governing the humane handling of livestock.
[21.35.3.6 NMAC - Rp, 21.35.3.6, 7/16/2024]

21.35.3.7 DEFINITIONS:

A. "Animal" means livestock including cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

B. "Board" means the New Mexico livestock board.

C. "Facilities" means livestock markets, stockyards, market agencies, dealers, rest stations and rendering plants.

D. "Humanely euthanized" means to kill by mechanical method (gunshot or captive bolt) or chemical method that rapidly and effectively renders the animal insensitive to pain.

E. "Livestock market" means any facility in the state of New Mexico, which is used for the purpose of holding consignment sales of livestock.

F. "Non-ambulatory animal" means an animal that is unable to stand and walk without assistance.

G. "Operator" means a person in control of the management or operation of a livestock auction market, including a licensee under Article 10 of Chapter 77.
[21.35.3.7 NMAC - Rp, 21.35.3.7, 7/16/2024]

21.35.3.8 REQUIRED CONDUCT BY LIVESTOCK AUCTION MARKET:

A. An operator shall not buy, sell or receive a non-ambulatory animal.

B. An operator shall not process, butcher or sell meat or products of non-ambulatory animals.

C. An operator shall not hold a non-ambulatory animal without taking immediate action to humanely euthanize the animal or to provide immediate veterinary treatment.

D. An operator shall not, at any time, either while the animal is on the premises or in transit, drag or push with equipment a non-ambulatory animal. Such animal must be moved with a sling, a stoneboat or other sled-like or wheeled conveyance, a soft-lay rope, a padded cable or chain or a web type belt (no bare chains). Once a vehicle has entered the official premises of the establishment, it is considered to be within the operator's premises.

E. An operator shall not consign, ship or accept any non-ambulatory animal for transporting or delivering.

F. An operator is responsible for the wrongful acts or omissions of agents and employees.

G. An operator must adequately train and supervise agents and employees to assure that such agents and employees do not engage in wrongful conduct.

H. Any violation of this rule or any other rule of the board will subject the licensee to criminal penalties and license revocation.
[21.35.3.8 NMAC - Rp, 21.35.3.8, 7/16/2024]

21.35.3.9 REQUIRED CONDUCT BY FACILITIES:

A. Livestock markets, stockyards, market agencies, dealers, rest stations and rendering plants are subject to the requirements of 21.35.3.8 NMAC and must adhere to those requirements; provided, however, that rendering plants may process, butcher and sell meat or products of non-ambulatory animals so long as they do not engage in those activities for purpose of human consumption.

B. Any violation of this rule or any rules of the board or of the Chapter 77 NMSA 1978 will subject the offender to criminal penalties as provided in Chapter 77 NMSA 1978.
[21.35.3.9 NMAC - Rp, 21.35.3.9, 7/16/2024]

HISTORY OF 21.35.3 NMAC:

History of Repealed Material: 21 NMAC 35.3 - Humane Handling of Livestock by Livestock Markets and Facilities filed (10/16/2008) repealed effective 7/16/2024.

Other History: 21 NMAC 35.3 - Humane Handling of Livestock by Livestock Markets and Facilities filed (10/16/2008) replaced by 21.35.3 NMAC - Humane Handling of Livestock by Livestock Markets and Facilities effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 35 LIVESTOCK MARKETING
PART 4 LIVESTOCK MARKETS AND FACILITIES

21.35.4.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.35.4.1 NMAC - Rp, 21.35.4.1, 7/16/2024]

21.35.4.2 SCOPE: All owners and operators of livestock markets in New Mexico and all owners, transporters or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for the purpose of selling or buying livestock at any New Mexico livestock market. Additional requirements for livestock owners governing livestock business activities can be found in 21.30, 21.32, 21. 33, and 21. 34 NMAC.
[21.35.4.2 NMAC - Rp, 21.35.4.2, 7/16/2024]

21.35.4.3 STATUTORY AUTHORITY: Section 77-2-7, 77-13 NMSA 1978.
[21.35.4.3 NMAC - Rp, 21.35.4.3, 7/16/2024]

21.35.4.4 DURATION: Permanent.
[21.35.4.4 NMAC - Rp, 21.35.4.4, 7/16/2024]

21.35.4.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[21.35.4.5 NMAC - Rp, 21.35.4.5, 7/16/2024]

21.35.4.6 OBJECTIVE: To establish rules governing licensing, inspection services, testing and handling of livestock at livestock auction markets in New Mexico.
[21.35.4.6 NMAC - Rp, 21.35.4.6, 7/16/2024]

21.35.4.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Director" means the executive director of the New Mexico livestock board.

C. "Inspector" means any duly authorized or commissioned officer of the livestock board.

D. "Livestock" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

E. "Livestock market owner" means any person, persons, corporation or organization operating for business or charity a facility for the purpose of consignment sales of livestock.

F. "Livestock market" means any facility in the state of New Mexico, which is used for the purpose of holding consignment sales of livestock.

G. "New Mexico livestock" means any livestock raised or pastured or fed within the state of New Mexico.

H. "Official

Identification" means an electronic or visual ear tag with a 15-digit number beginning with "840", a USDA silver metal identification tag, a USDA orange metal calfhood brucellosis vaccination tag, a breed registry tattoo with proof of registration, or other identification as approved by the New Mexico state veterinarian.

I. "Person" means an individual, partnership, association or operation.

[21.35.4.7 NMAC - Rp, 21.35.4.7, 7/16/2024]

21.35.4.8 LIVESTOCK MARKET LICENSE AND LICENSEE:

A. Any person desiring to operate a livestock market in New Mexico shall file an application for a license with the director on such form or forms as the director shall prescribe, which application shall be signed by the applicant.

B. Every license issued by the director to a livestock market operator shall expire one year from the date of issuance. Renewal of such license shall be made on renewal forms as prescribed by the board.

C. The director may extend licenses for a portion of a calendar year, in order to synchronize the periods of all licenses, so that the one year period of issue coincides with the calendar year.

D. The license issued by the director to any livestock market owner for the operation of a livestock market, shall specify the day or days of the week on which the sale or sales will be conducted at that market.

E. The board will cooperate with the United States department of agriculture, packers and stockyards administration, to insure that the livestock market owner has met the requirements for bonding and approval under the federal codes, prior to issuing the license.

F. Special sales may be held on days or dates not specified in said license upon written application being submitted to the director, at least fifteen days prior to the scheduled date of the special sale.

G. The market owner shall display the license in a prominent place visible to the public.

H. Violation of any rule or statute on livestock market property by owner, agent, operator or employee may result in suspension or revocation of license.

[21.35.4.8 NMAC - Rp, 21.35.4.8, 7/16/2024]

21.35.4.9 INSPECTION AND TESTS AT LIVESTOCK MARKETS:

A. All livestock received at a livestock market may be inspected for health by a veterinarian of the board, or its authorized agent.

B. In conducting such inspections of any livestock in the possession of the livestock market operator, such board veterinarian, or its agent, is authorized to make such tests and to require the administration of such preventative or curative treatment, as the veterinarian shall deem necessary to prevent the spread of livestock disease.

C. The tests and treatments which are required as part of this section shall be accomplished at the owner's expense.

[21.35.4.9 NMAC - Rp, 21.35.4.9, 7/16/2024]

21.35.4.10 TRANSPORTING LIVESTOCK EXPOSED OR AFFECTED BY CONTAGIOUS AND INFECTIOUS DISEASE:

A. Any livestock exposed or affected by a contagious and infectious disease and so certified by the veterinarian of the board, or its authorized agent, shall be immediately quarantined.

B. It shall be unlawful for anyone to move or transport any livestock from the livestock market or quarantined area.

C. The veterinarian of the board, or its authorized agent, shall notify the operator of the market in writing that no movement or transporting of the quarantined livestock is permitted.

[21.35.4.10 NMAC - Rp, 21.35.4.10, 7/16/2024]

21.35.4.11 BRUCELLOSIS TESTS OF CATTLE AT LIVESTOCK MARKETS:

A. Test eligible cattle originating from any zone, area, county or state determined by the USDA or the New Mexico state veterinarian to be high-risk for bovine brucellosis and entering New Mexico through specifically approved livestock markets may be required to be tested for brucellosis.

B. Reactors to the presumptive brucellosis test shall be quarantined at the market pending completion of confirmatory testing and final determination of brucellosis status.

C. Reactors as determined by confirmatory testing, shall either be B branded, or sealed by metal seal in the truck transporting them to slaughter and documented correctly on a USDA veterinary services form 127.

D. After the reactors are removed, the remaining cattle in the shipment may be returned to premises of origin under quarantine, or be S branded and sent directly to an approved feedlot or slaughter.

[21.35.4.11 NMAC - Rp, 21.35.4.11, 7/16/2024]

21.35.4.12 INSPECTION OF CATTLE AND TAGGING AT LIVESTOCK MARKETS:

A. All livestock entering a livestock market shall be inspected by a livestock inspector or authorized agent of the board, for brands and ownership and that inspection shall be documented upon the certificate prescribed by the board.

B. The livestock board shall provide tags of identification to be applied as directed by the New Mexico livestock board. The tag shall be placed on the upper section of the shoulder area of all cattle tagged at such markets. The tag number and the brand identification data for animals shall be properly entered on the certificate prescribed by the board. All sexually intact dairy cattle four months of age or older, sexually intact beef cattle 18 months of age or older

and all Mexican-origin (M-branded) cattle shall be individually identified by official identification, with such identification recorded on the certificate.

C. For the inspections conducted at markets, the board shall charge the fees prescribed by law and board rules for inspection of livestock.

[21.35.4.12 NMAC - Rp, 21.35.4.12, 7/16/2024]

HISTORY OF 21.35.4 NMAC:

Pre-NMAC History: The material filed in this part was derived from that previously filed with the State Records Center and Archives under:

NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/3/1967;

NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970;

NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 5/6/1976;

NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12/10/1969;

NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;

NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;

NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;

NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10/17/1979;

NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/4/1981;

NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985.

History of Repealed Material: 21 NMAC 35.4 Livestock Markets and Facilities filed (1/28/1999) Repealed effective 10/30/2008.

21.35.4 NMAC - Livestock Markets and Facilities (filed 10/16/2008) Repealed, effective 7/16/2024.

Other History:

Only those applicable portions of NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations (filed 1/30/1985) was renumbered, reformatted, amended and replaced by 21 NMAC 35.4, Livestock Markets, effective 3/1/1999.

21 NMAC 35.4, Livestock Markets (filed 1/28/1999) was renumbered, reformatted, amended and replaced by 21.35.4 NMAC, Livestock Markets and Facilities, effective 10/30/2008.

21.35.4 NMAC, Livestock Markets and Facilities (filed 10/16/2008) Replaced by 21.35.4 NMAC, Livestock Markets and Facilities effective 7/16/2024.

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 35 LIVESTOCK MARKETING
PART 5 CATTLE AND SHEEP REST STATIONS

21.35.5.1 ISSUING AGENCY: New Mexico Livestock Board.

[21.35.5.1 NMAC - Rp, 21.35.5.1, 7/16/2024]

21.35.5.2 SCOPE: All owners and operators of livestock rest stations and facilities used as rest stations and all owners, transporters, or handlers of livestock in the state of New Mexico and those that bring livestock into the state for any reason and utilize the services provided by rest stations. Additional requirements for livestock owners governing livestock business activities can be found in Title 21, Chapters 30, 32, 33, & 34 of the NMAC.

[21.35.5.2 NMAC - Rp, 21.35.5.2, 7/16/2024]

21.35.5.3 STATUTORY AUTHORITY: Section 77-2-7, 77-3 and 77-9A-1 through 77-9A-5 NMSA 1978.

[21.35.5.3 NMAC - Rp, 21.35.5.3, 7/16/2024]

21.35.5.4 DURATION: Permanent.

[21.35.5.4 NMAC - Rp, 21.35.5.4, 7/16/2024]

21.35.5.5 EFFECTIVE DATE: July 16, 2024 unless a later date is cited at the end of a section.

[21.35.5.5 NMAC - Rp, 21.35.5.5, 7/16/2024]

21.35.5.6 OBJECTIVE: To establish rules governing the operation, inspection services, and licensing of cattle and sheep rest stations in New Mexico.

[21.35.5.6 NMAC - Rp, 21.35.5.6, 7/16/2024]

21.35.5.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Bond" means cash or an insurance agreement from a New Mexico licensed surety or insurance corporation pledging surety for financial loss caused to another, including certificate of deposit, irrevocable letter of credit or other surety as may be approved by the United States department of agriculture, packers and stockyards administration or the board.

C. "Cattle or sheep rest station owner" means any person, persons, corporation, or organization operating a cattle rest station.

D. "Cattle rest station" means any facility in the state of New Mexico, which is used for the purpose of receiving and holding for rest, feeding, watering cattle, which are in transit within or through New Mexico.

E. "Director" means the executive director of the New Mexico livestock board.

F. "Inspector" means any duly authorized or commissioned officer of the livestock board.

G. "Livestock" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.

H. "New Mexico livestock" means any livestock raised or pastured or fed within the state of New Mexico.

I. "Person" means an individual, partnership, association, or operation.

J. "Sheep rest

station" means any facility in the state of New Mexico, which is used for the purpose of receiving and holding for rest, feeding, or watering sheep or goats, which are in transit within or through New Mexico.
[21.35.5.7 NMAC - Rp, 21.35.5.7, 7/16/2024]

21.35.5.8 LICENSING OF REST STATIONS:

A. Cattle and sheep rest stations shall be licensed and bonded in accordance with Section 77-9A-2, NMSA 1978. The licensed shall renewed annually. The bond shall be in an amount of $10,000.00.

B. The NM livestock board or it's inspector shall be notified upon arrival of all shipments entering a cattle or sheep rest station. An inspection of the cattle, sheep or goats may be conducted by a livestock inspector, or his authorized agent.

C. All cattle, sheep or goats entering a cattle or sheep rest station on direct shipment from outside the continental United States, must be accompanied by an official form issued by a federal official of the U.S.D.A. showing the current health status of the shipment, indicating the type of inspection and treatment administered prior to entry, and indicating the destination of the shipment. If the cattle, sheep or goats crossed at Santa Teresa or Columbas, they must also be accompanied by the New Mexico livestock board inspection certificate issued at the port of entry.

D. All cattle, sheep or goats entering a cattle or sheep rest station from a state within the continental United States shall be accompanied by an official certificate issued by an accredited veterinarian, state, or federal official of the that state of origin, which certificate shall indicate the current health status, the place of origin, and the destination of the shipment.

E. The owner or operator of the cattle or sheep rest station shall provide a book to be used expressly by him of his agent for the purpose of recording the following information for each consignment of cattle or sheep entering the rest station:

(1) date and time of arrival;

(2) origin of the shipment;

(3) name and address of the importer, consignor, or shipper;

(4) name of the carrier upon arrival and departure;

(5) number and class of livestock;

(6) livestock identification (brands, eartags, etc);

(7) name and address of consignee;

(8) place of destination (city and state); and date and time of departure from the cattle or sheep rest station.

F. The record book shall be available at any time, day or night, to a representative of the New Mexico livestock board.

G. Cattle, sheep or goat shipments entering a New Mexico cattle or sheep rest station, with a predetermined destination within, or out of the state of New Mexico, may depart without inspection, provided the shipment is not altered, sorted, reconfigured, or diverted from the destination indicated on the accompanying certificate.

H. Cattle, sheep or goat shipments entering without a predetermined destination, or shipments diverted from the predetermined destination, shall be subject to inspection at the prescribed fee, by a representative of the New Mexico livestock board.

I. Cattle, sheep or goats remaining in a cattle or sheep rest station for a period of more than twelve hours, are subject to inspection at the prescribed fee, at the discretion of the New Mexico livestock board.

J. No cattle, sheep or goats may be allowed to enter a cattle or sheep rest station without the required official certificate prescribed in 8.3 or 8.4 above until prior permission is obtained from the livestock inspector, or other official of the New Mexico livestock board.

K. The penalty for violating any of the regulations of this section shall be as provided by Section 77-9A-4, NMSA 1978, and, at the discretion of the appointed board, may result in revocation of the rest station license and forfeiture of the bond.
[21.35.5.8 NMAC - Rp, 21.35.5.8, 7/16/2024]

HISTORY OF 21.35.5 NMAC:
PRE-NMAC HISTORY: The material filed in this part was derived from that previously filed with the State Records Center and Archives under:
NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/30/1967;
NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970;
NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 5/6/1976;
NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12/10/1969;
NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972;
NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10/17/1979;
NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/4/1981;
NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985.

History of Repealed material:
21 NMAC 35.5, Cattle Rest Stations, (filed 1/28/1999) repealed effective 11/30/2001.
21.35.5 NMAC - Cattle and Sheep Rest Stations (filed 11/14/2001) repealed effective 7/16/2024.

Other History: 21 NMAC 35.5 - Cattle and Sheep Rest Stations (filed 1/28/1999) Replaced 21.35.5 NMAC - Cattle and Sheep Rest Stations

effective 11/30/2001.
21.35.5 NMAC - Cattle and Sheep Rest Stations (filed 11/14/2001) Replaced by 21.35.5 NMAC - Cattle and Sheep Rest Stations, effective 7/16/2024.

SUPERINTENDENT OF INSURANCE, OFFICE OF

TITLE 13 INSURANCE
CHAPTER 8 INSURANCE POLICIES AND RATES
PART 7 NOTIFICATION REQUIREMENT OF DISCONTINUATION OF INSURANCE PRODUCT

13.8.7.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance (OSI).
[13.8.7.1 NMAC – N, 7/16/2024]

13.8.7.2 SCOPE: This rule applies to all property and casualty insurers who discontinue an insurance product.
[13.8.7.2 NMAC – N, 7/16/2024]

13.8.7.3 STATUTORY AUTHORITY: Sections 59A-2-8, 59A-2-9, and 59A-18-29 NMSA 1978.
[13.8.7.3 NMAC – N, 7/16/2024]

13.8.7.4 DURATION: Permanent.
[13.8.7.4 NMAC – N, 7/16/2024]

13.8.7.5 EFFECTIVE DATE: July 16, 2024, unless a later date is cited at the end of a section.
[13.8.7.5 NMAC – N, 7/16/2024]

13.8.7.6 OBJECTIVE: The purpose of this rule is to alert existing and prospective insureds of a property and casualty insurer's discontinuation of an insurance product.
[13.8.7.6 NMAC – N, 7/16/2024]

13.8.7.7 DEFINITIONS: As used in this part, the following terms are defined:

A. "bureau" means the property and casualty bureau of the OSI.

B. "delivering" means sending via electronic mail to the bureau chief listed on the OSI website or sending via U. S. mail addressed to the bureau chief listed on the OSI website.

C. "discontinue or discontinuation" means any of the following:

(1) an insurer's unilateral decision to terminate an insurance product during a policy term or to not renew an insurance product after the end of a policy term;

(2) such termination of an insurance product by an insurer when a replacement insurance product is offered by an affiliate or by the insurer; or

(3) an insurer's unilateral decision to no longer offer an insurance product.

D. "insurance product" means the coverage or subline that is the subject of a policy, contract, or certificate of insurance, including any application, endorsement or related form that is attached to and made a part of the policy or contract.
[13.8.7.7 NMAC – N, 7/16/2024]

13.8.7.8 NOTIFICATION REQUIREMENT: All property or casualty insurance insurers that discontinue any insurance product shall provide at least 30 days' notice to the bureau prior to the effective date of the discontinuation of the first insurance product, by delivering a written letter to the bureau chief identifying the insurance product, including:

A. the effective date that the first insurance product will be discontinued; and

B. the total number of insured that will be affected.
[13.8.7.8 NMAC – N, 7/16/2024]

History of 13.8.7 NMAC:
13.8.7 NMAC - Notification Requirement of Discontinuation of Insurance Product, was filed 1/16/2024 as an emergency rule, effective 2/1/2024.

Other History: 13.8.7 NMAC - Notification Requirement of Discontinuation of Insurance Product, filed 1/16/2024 as an emergency rule, effective 2/1/2024, has been permanently replaced by 13.8.7 NMAC, Notification Requirement of Discontinuation of Insurance Product, effective 7/16/2024.

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an amendment to 13.14.5 NMAC, Section 10 effective 7/16/2024.

13.14.5.10 STANDARD EXCEPTIONS IN SCHEDULE B:

A. All commitments shall contain each of the following exceptions in the order stated herein.

(1) Rights or claims of parties in possession not shown by the public records.

(2) Easements, or claims of easements, not shown by the public records.

(3) Encroachments, overlaps, conflicts in boundary lines, or other matter which would be disclosed by an accurate survey and inspection of the premises.

(4) Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.

(5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).

(6) Water rights, claims or title to water.

(7) Taxes for the year _____, and thereafter. (See 13.14.5.12 NMAC)

(8) Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this

commitment.

B. Additionally, each commitment may contain the following statement when said commitment is issued to commit for both an owner's policy and a loan policy or a loan policy only: "Exceptions _____ will not appear in the loan policy but will appear in the owner's policy, if any."

C. If the commitment is for a loan policy containing a two-year claims made limitation, the following statement must be added: "The loan policy containing a two-year claims made limitation will contain an exception limiting its coverage to two years duration."

D. Each commitment shall contain the following statement: "Standard exceptions 1, 2, 3, and or 4, may be deleted from a policy upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion.

E. Standard exception 5 may be deleted from the policy if the named insured in the case of an owner's policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee."

[13.14.5.10 NMAC – Rp, 13.14.5.9 NMAC, 1/1/2021; A/E, 1/24/2024, N, 07/16/2024]

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an amendment to 13.14.7 NMAC, Section 8 effective 7/16/2024.

13.14.7.8 LOAN POLICIES:

A. A loan policy shall be issued for the face amount of the loan or loans insured. When the land covered in the policy represents only part of the security of the loan(s), the policy shall be written in the amount of the value of such land or the amount of the loan(s) insured, whichever is less. When requested by an insured, a loan policy may be issued in an amount equal to the original principal amount of the indebtedness plus interest (capitalized or otherwise) not to exceed twenty percent of the principal amount.

B. A loan policy may insure liens on multiple tracts in the same manner as an owner's policy.

C. A title insurer or title insurance agency issuing a loan policy shall deliver the new owner's(s) NM form 9, containing all of the required information available at that time and shall ask the owner's(s) to indicate whether an owner's policy is declined. The title insurer or title insurance agency shall retain a copy of the completed NM form 9 with a copy of the loan policy for at least two years whenever an owner's policy is declined.

D. Unless otherwise provided in these rules, a loan policy with a leasehold loan endorsement shall contain the same standard exceptions, be subject to the same premium and be subject to deletion of the same standard exceptions as a standard loan policy. A leasehold loan endorsement shall be attached to a loan policy to create a loan policy insuring a leasehold estate.

[13.14.7.8 NMAC – Rp, 13.14.7.8 NMAC, 1/1/2021; A/E, 1/24/2024; N, 07/16/2024.]

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SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an amendment to 13.14.17 NMAC, Section 15 effective 7/16/2024.

13.14.17.15 FORM 6 - DIRECT CASE BASIS RESERVES:

NEW MEXICO TITLE INSURER STATISTICAL REPORT
FORM 6 - DIRECT CASE BASIS RESERVES
For the Calendar Year Ending December 31, 20___
NEW MEXICO EXPERIENCE ONLY

Insurance Company											
Years in which policies were issued	**Direct Written Premium ($000s)**	**Amount of insurance written in millions**	**CASE BASIS LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSE RESERVES AT YEAR END (000 OMITTED)**									
			Latest PY-9	Latest PY-8	Latest PY-7	Latest PY-6	Latest PY-5	Latest PY-4	Latest PY-3	Latest PY-2	Latest PY-1	Latest PY
Prior												
Latest PY-19												
Latest PY-18												
Latest PY-17												
Latest PY-16												
Latest PY-15												
Latest PY-14												
Latest PY-13												
Latest PY-12												
Latest PY-11												
Latest PY-10												
Latest PY-9												
Latest PY-8												
Latest PY-7												
Latest PY-6												
Latest PY-5												

Latest PY-4												
Latest PY-3												
Latest PY-2												
Latest PY-1												
Latest PY												

Note: Use the same reporting instructions as for schedule P, part 2B of the NAIC annual statement, except that loss and ALAE should be **direct of reinsurance** and should be **New Mexico** claims only.

	Latest PY-1	Latest PY
Total	0	0
Increase in reserves during Latest PY		0
Total payments during Latest PY		0
Case incurred loss during Latest PY		0
New Mexico direct losses incurred as shown on NAIC Annual Statement Schedule T		
	Difference	0

Explanation for Difference (if any)

[13.14.17.15 NMAC – Rp, 13.14.17.15 NMAC, 1/1/2021; A/E, 1/24/2024; N, 07/16/2024]

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SUPERINTENDENT OF INSURANCE, OFFICE OF

13.14.18 NMAC - FORMS
APPENDIX

NM FORM 1: OWNER'S POLICY OF TITLE INSURANCE
Issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.
Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Condition 17.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, **[**Blank Title Insurance Company**]**, a **[**Blank**]** corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.

2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 includes, but is not limited to, insurance against loss from:

a. a defect in the Title caused by:
i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
ii. the failure of a person or Entity to have authorized a transfer or conveyance;
iii. a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
iv. a failure to perform those acts necessary to create a document by electronic means authorized by law;
v. a document executed under a falsified, expired, or otherwise invalid power of attorney;

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

vi. a document not properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;

vii. a defective judicial or administrative proceeding; or

viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.

b. the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

c. the effect on the Title of an encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment would have been disclosed by an accurate and complete land title survey of the Land.

3. Unmarketable Title.

4. No right of access to and from the Land.

5. A violation or enforcement of a law, ordinance, permit, or governmental regulation (including those relating to building and zoning), but only to the extent of the violation or enforcement described by the enforcing governmental authority in an Enforcement Notice that identifies a restriction, regulation, or prohibition relating to:

a. the occupancy, use, or enjoyment of the Land;
b. the character, dimensions, or location of an improvement on the Land;
c. the subdivision of the Land; or
d. environmental remediation or protection on the Land.

6. An enforcement of a governmental forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described by the enforcing governmental authority in an Enforcement Notice.

7. An exercise of the power of eminent domain, but only to the extent:

a. of the exercise described in an Enforcement Notice; or
b. the taking occurred and is binding on a purchaser for value without Knowledge.

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

8. An enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice.

9. The Title being vested other than as stated in Schedule A, the Title being defective, or the effect of a court order providing an alternative remedy:

a. resulting from the avoidance, in whole or in part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction vesting the Title because that prior transfer constituted a:

i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or

ii. voidable transfer under the Uniform Voidable Transactions Act; or

b. because the instrument vesting the Title constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law by reason of the failure:

i. to timely record the instrument vesting the Title in the Public Records after execution and delivery of the instrument to the Insured; or

ii. of the recording of the instrument vesting the Title in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to the Date of Policy and prior to the recording of the deed or other instrument vesting the Title in the Public Records.

DEFENSE OF COVERED CLAIMS

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

[Witness clause**]**

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:

i. the occupancy, use, or enjoyment of the Land;
ii. the character, dimensions, or location of any improvement on the Land;
iii. the subdivision of land; or
iv. environmental remediation or protection.

b. any governmental forfeiture, police, regulatory, or national security power.

c. the effect of a violation or enforcement of any matter excluded under Exclusion1.a. or 1.b.

Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.

3. Any defect, lien, encumbrance, adverse claim, or other matter:

a. created, suffered, assumed, or agreed to by the Insured Claimant;

b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

c. resulting in no loss or damage to the Insured Claimant;

d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or

e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:

a. fraudulent conveyance or fraudulent transfer;
b. voidable transfer under the Uniform Voidable Transactions Act; or
c. preferential transfer:
i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
ii. for any other reason not stated in Covered Risk 9.b.

5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.

6. Any lien on the Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.

7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land which would be disclosed by an accurate survey and inspection of the Land or any improvement to the Land.

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.d.:
Issuing Agent:
Issuing Office:
Issuing Office's ALTA® Registry ID:
Issuing Office File Number:
Property Address:**]**

SCHEDULE A

Name and Address of Title Insurance Company:
Policy Number:
Amount of Insurance: $ **[**Premium: $ **]**
Date of Policy: **[**at a.m./p.m.**]**

1. The Insured is:

2. The estate or interest in the Land insured by this policy is:

3. The Title is vested in:

4. The Land is described as follows:

[5. This policy incorporates by reference the endorsements designated below, adopted by the **[**New Mexico Superintendent of Insurance**][**_____**]** as of the Date of Policy:**]**

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

SCHEDULE B

Policy Number:

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

(Insert Schedule B exceptions here)

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

CONDITIONS

1. DEFINITION OF TERMS

In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:

a. "Affiliate": An Entity:

i. that is wholly owned by the Insured;
ii. that wholly owns the Insured; or
iii. if that Entity and the Insured are both wholly owned by the same person or entity.

b. "Amount of Insurance": The Amount of Insurance stated in Schedule A, as may be increased by Condition 8.d. or decreased by Condition 10 or 11; or increased or decreased by endorsements to this policy.

c. "Date of Policy": The Date of Policy stated in Schedule A.

d. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.

e. "Enforcement Notice": A document recorded in the Public Records that describes any part of the Land and:

i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation;
ii. is issued by a holder of the power of eminent domain or a governmental
agency that identifies the exercise of a governmental power; or
iii. asserts a right to enforce a PACA-PSA Trust.

f. "Entity": A corporation, partnership, trust, limited liability company, or other entity authorized by law to own title to real property in the State where the Land is located.

g. "Insured":
i. (a). The Insured named in Item 1 of Schedule A;

(b). the successor to the Title of an Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(c). the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;

(d). the successor to the Title of an Insured resulting from its conversion to another kind of Entity; or

(e). the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is:

(1). an Affiliate;

(2). a trustee or beneficiary of a trust created by a written instrument established for estate planning purposes by an Insured;

(3). a spouse who receives the Title because of a dissolution of marriage;

(4). a transferee by a transfer effective on the death of an Insured as authorized by law; or

(5). another Insured named in Item 1 of Schedule A.

ii. The Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.

h. "Insured Claimant": An Insured claiming loss or damage arising under this policy.

i. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.

j. "Land": The land described in Item 4 of Schedule A and improvements located on that land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road,avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

k. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means

authorized by law.

l. "PACA-PSA Trust": A trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar State or federal law.

m. "Public Records": The recording or filing system established under Section 14-9-1 NMSA 1978, as amended to the Date of Policy, under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge.

n. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

o. "Title": The estate or interest in the Land identified in Item 2 of Schedule A.

p. "Unmarketable Title": The Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or a lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF COVERAGE

This policy continues as of the Date of Policy in favor of an Insured, so long as the Insured:

a. retains an estate or interest in the Land;

b. owns an obligation secured by a purchase money Mortgage given by a purchaser from the Insured; or

c. has liability for warranties given by the Insured in any transfer or conveyance of the Insured's Title.

Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy does not continue in force or effect in favor of any person or entity that is not the Insured and acquires the Title or an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured must notify the Company promptly in writing if the Insured has Knowledge of:

a. any litigation or other matter for which the Company may be liable under this

policy; or

b. any rejection of the Title as Unmarketable Title.

If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under this policy is reduced to the extent of the prejudice.

4. PROOF OF LOSS

The Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and must state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

a. Upon written request by the Insured and subject to the options contained in Condition 7, the Company, at its own cost and without unreasonable delay, will provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company has the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those covered causes of action. The Company is not liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of any cause of action that alleges matters not insured against by this policy.

b. The Company has the right, in addition to the options contained in Condition 7, at its own cost, to institute and prosecute any action or proceeding or to do any other act that, in its opinion, may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it is liable to the Insured. The Company's exercise of these rights is not an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under Condition 5.b., it must do so diligently.

c. When the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court having jurisdiction. The Company reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

a. When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured will secure to the Company the right to prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose.
When requested by the Company, the Insured, at the Company's expense, must give the Company all reasonable aid in:

i. securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and

ii. any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter, as insured.

If the Company is prejudiced by any failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation, regarding the matter requiring such cooperation.

b. The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after the Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant must grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all the records in the custody or control of a third party that reasonably pertain to the loss or damage. No information designated in writing as confidential by the Insured Claimant provided to the Company pursuant to Condition 6 will be later disclosed to others unless, in the reasonable judgment of the Company, disclosure is necessary in the administration of the claim or required by law. Any failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in Condition 6.b., unless prohibited by law, terminates any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company has the following additional options:

a. *To Pay or Tender Payment of the Amount of Insurance*
To pay or tender payment of the Amount of Insurance under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.

b. To Pay or Otherwise Settle with Parties other than the Insured or with the Insured Claimant

i. To pay or otherwise settle with parties other than the Insured for or in the name of the Insured Claimant. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

ii. To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either option provided for in Condition 7.b., the Company's liability and obligations to the Insured under this policy for the claimed loss or damage terminate, including any obligation to defend, prosecute, or continue any litigation.

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY
This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy.

a. The extent of liability of the Company for loss or damage under this policy doesnot exceed the lesser of:

i. the Amount of Insurance; or

ii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy.

b. Except as provided in Condition 8.c. or 8.d., the fair market value of the Title in Condition 8.a.ii. is calculated using the date the Insured discovers the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.

c. f, at the Date of Policy, the Title to all of the Land is void by reason of a matter insured against by this policy, then the Insured Claimant may, by written notice given to the Company, elect to use the Date of Policy as the date for calculating the fair market value of the Title in Condition 8.a.ii.

d. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title, as insured:

i. the Amount of Insurance will be increased by 15%; and

ii. the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b. or, if it applies, 8.c., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.ii.

e. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.d., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

9. LIMITATION OF LIABILITY

a. The Company fully performs its obligations and is not liable for any loss or damage caused to the Insured if the Company accomplishes any of the following in a reasonable manner:

i. removes the alleged defect, lien, encumbrance, adverse claim, or other matter;

ii. cures the lack of a right of access to and from the Land; or

iii. cures the claim of Unmarketable Title,

all as insured. The Company may do so by any method, including litigation and

the completion of any appeals.

b. The Company is not liable for loss or damage arising out of any litigation, including litigation by the Company or with the Company's consent, until a State or federal court having jurisdiction makes a final, non-appealable determination adverse to the Title.

c. The Company is not liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

d. The Company is not liable for the content of the Transaction Identification Data, if any.

10. REDUCTION OR TERMINATION OF INSURANCE

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance will be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after the Date of Policy and which is a charge or lien on the Title, and the amount so paid will be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage are determined in accordance with the Conditions, the Company will pay the loss or damage within 30 days.

13. COMPANY'S RECOVERY AND SUBROGATION RIGHTS UPON SETTLEMENT AND PAYMENT

a. If the Company settles and pays a claim under this policy, it is subrogated and entitled to the rights and remedies of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person, entity, or property to the fullest extent permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant must execute documents to transfer these rights and remedies to the Company. The Insured Claimant permits the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

b. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company defers the exercise of its subrogation right until after the Insured Claimant fully recovers its loss.

c. The Company's subrogation right includes the Insured's rights to indemnity, guaranty, warranty, insurance policy, or bond, despite any provision in those instruments that addresses recovery or subrogation rights.

14. POLICY ENTIRE CONTRACT

a. This policy together with all endorsements, if any, issued by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy will be construed as a whole. This policy and any endorsement to this policy may be evidenced by electronic means authorized by law.

b. Any amendment of this policy must be by a written endorsement issued by the
Company. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this policy, the term or provision of the endorsement controls. Unless the endorsement expressly states, it does not:

i. modify any prior endorsement,
ii. extend the Date of Policy,
iii. insure against loss or damage exceeding the Amount of Insurance, or
iv. increase the Amount of Insurance.

15. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, this policy will be deemed not to include that provision or the part held to be invalid, but all other provisions will remain in full force and effect.

16. CHOICE OF LAW AND CHOICE OF FORUM

a. *Choice of Law*

The Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the State where the Land is located. The State law of the State where the Land is located, or to the extent it controls,

federal law, will determine the validity of claims against the Title and the interpretation and enforcement of the terms of this policy, without regard to conflicts of law principles to determine the applicable law.

b. *Choice of Forum*

Any litigation or other proceeding brought by the Insured against the Company must be filed only in a State or federal court having jurisdiction.

17. NOTICES
Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at: _*(fill in)* .

*NOTE: Bracketed **[ ]** material optional*

Modeled on, but not necessarily identical to, ALTA Owner's Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 2: LOAN POLICY OF TITLE INSURANCE
Issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Condition 16.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, **[**Blank Title Insurance Company**]**, a **[**Blank**]** corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.

2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 includes, but is not limited
to, insurance against loss from:

a. a defect in the Title caused by:

i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

ii. the failure of a person or Entity to have authorized a transfer or conveyance;

iii. a document affecting the Title not properly authorized, created, executed,
witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;

iv. a failure to perform those acts necessary to create a document by electronic means authorized by law;

v. a document executed under a falsified, expired, or otherwise invalid power of attorney;

vi. a document not properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;

vii. a defective judicial or administrative proceeding; or

viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.

b. the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

c. the effect on the Title of an encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment would have been disclosed by an accurate and complete land title survey of the Land.

3. Unmarketable Title.

4. No right of access to and from the Land.

5. A violation or enforcement of a law, ordinance, permit, or governmental regulation (including those relating to building and zoning), but only to the extent of the violation or enforcement described by the enforcing governmental authority in an Enforcement Notice that identifies a restriction, regulation, or prohibition relating to:

a. the occupancy, use, or enjoyment of the Land;

b. the character, dimensions, or location of an improvement on the Land;

c. the subdivision of the Land; or

d. environmental remediation or protection on the Land.

6. An enforcement of a governmental forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described by the enforcing governmental authority in an Enforcement Notice.

7. An exercise of the power of eminent domain, but only to the extent:

a. of the exercise described in an Enforcement Notice; or

b. the taking occurred and is binding on a purchaser for value without Knowledge.

8. An enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice.

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. Covered Risk 9 includes, but is not limited to, insurance against loss caused by:

a. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

b. the failure of a person or Entity to have authorized a transfer or conveyance;

c. the Insured Mortgage not being properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;

d. a failure to perform those acts necessary to create an Insured Mortgage by electronic means authorized by law;

e. a document having been executed under a falsified, expired, or otherwise invalid power of attorney;

f. the Insured Mortgage not having been properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;

g. a defective judicial or administrative proceeding; or

h. invalidity or unenforceability of the lien of the Insured Mortgage as a result of the repudiation of an electronic signature by a person that executed the Insured Mortgage because the electronic signature on the Insured Mortgage was not valid under applicable electronic transactions law.

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance on the Title as security for the following components of the Indebtedness:

a. the amount of the principal disbursed as of the Date of Policy;

b. the interest on the obligation secured by the Insured Mortgage;

c. the reasonable expense of foreclosure;

d. amounts advanced for insurance premiums by the Insured before the acquisition of the estate or interest in the Title; and

e. the following amounts advanced by the Insured before the acquisition of the estate or interest in the Title to protect the priority of the lien of the Insured Mortgage:

i. real estate taxes and assessments imposed by a governmental taxing authority; and

ii. regular, periodic assessments by a property owners' association.

11. The lack of priority of the lien of the Insured Mortgage upon the Title:

a. as security for each advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for service, labor, material, or equipment arising from construction of an improvement or work related to the Land when the improvement or work is:

i. contracted for or commenced on or before the Date of Policy; or

ii. contracted for, commenced, or continued after the Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on the Date of Policy to advance; and

b. over the lien of any assessments for street improvements under construction or completed at the Date of Policy.

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title, or the effect of a court order providing an alternative remedy:

a. resulting from the avoidance, in whole or in part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a:

i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or

ii. voidable transfer under the Uniform Voidable Transactions Act; or

b. because the Insured Mortgage constitutes a preferential transfer under federal
bankruptcy, state insolvency, or similar state or federal creditors' rights law by reason of the failure:

i. to timely record the Insured Mortgage in the Public Records after execution and delivery of the Insured Mortgage to the Insured; or

ii. of the recording of the Insured Mortgage in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks
1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to the Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

DEFENSE OF COVERED CLAIMS

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

[Witness clause**]**

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Loan Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will notpay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:

i. the occupancy, use, or enjoyment of the Land;

ii. the character, dimensions, or location of any improvement on the Land;

iii. the subdivision of land; or

iv. environmental remediation or protection.

b. any governmental forfeiture, police, regulatory, or national security power.

c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or

1.b.

Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.

3. Any defect, lien, encumbrance, adverse claim, or other matter:

a. created, suffered, assumed, or agreed to by the Insured Claimant;

b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

c. resulting in no loss or damage to the Insured Claimant;

d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or

e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser or encumbrancer had been given for the Insured Mortgage at the Date of Policy.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business law.

5. Invalidity or unenforceability of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury law or Consumer Protection Law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction creating the lien of the Insured Mortgage is a:

a. fraudulent conveyance or fraudulent transfer;

b. voidable transfer under the Uniform Voidable Transactions Act; or

c. preferential transfer:

i. to the extent the Insured Mortgage is not a transfer made as a contemporaneous exchange for new value; or

ii. for any other reason not stated in Covered Risk 13.b.

7. Any claim of a PACA-PSA Trust. Exclusion 7 does not modify or limit the coverage provided under Covered Risk 8.

8. Any lien on the Title for real estate taxes or assessments imposed by a governmental authority and created or attaching between the Date of Policy and the date of recording of the Insured Mortgage in the Public Records. Exclusion 8 does not modify or limit the coverage provided under Covered Risk 2.b. or 11.b.

9. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land which would be disclosed by an accurate survey and inspection of the Land or any improvement to the Land.

[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.e.:
Issuing Agent:
Issuing Office:
Issuing Office's ALTA® Registry ID:
Loan ID Number:
Issuing Office File Number:
Property Address:**]**

SCHEDULE A

Name and Address of Title Insurance Company:
Policy Number:
Amount of Insurance: $ **[**Premium: $ **]**
Date of Policy: **[**at a.m./p.m.**]**

1. The Insured is:

2. The estate or interest in the Land encumbered by the Insured Mortgage is:

3. The Title encumbered by the Insured Mortgage is vested in:

4. The Insured Mortgage and its assignments, if any, are described as follows:

5. The Land is described as follows:

[6. This policy incorporates by reference the endorsements designated below, adopted by the **[**New Mexico Superintendent of Insurance**][**_____**]** as of the Date of Policy:**]**

SCHEDULE B

Policy Number:

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

[This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

*(Insert Schedule B exceptions here)***]**

[This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

PART I

(Insert Schedule B exceptions here)

PART II

Covered Risk 10 insures against loss or damage sustained by the Insured by reason of the lackof priority of the lien of the Insured Mortgage over the matters listed in Part II, subject to theterms and conditions of any subordination provision in a matter listed in Part II:**]**

Modeled on, but not necessarily identical to, ALTA Loan Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

CONDITIONS

1. DEFINITION OF TERMS

In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:

a. "Affiliate": An Entity:

i. that is wholly owned by the Insured;

ii. that wholly owns the Insured; or

iii. if that Entity and the Insured are both wholly owned by the same person or entity.

b. "Amount of Insurance": The Amount of Insurance stated in Schedule A, as may be increased by Condition 8.c.; decreased by Condition 10; or increased or decreased by endorsements to this policy.

c. "Consumer Protection Law": Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other law relating to truth-in-lending, predatory lending, or a borrower's ability to repay a loan.

d. "Date of Policy": The Date of Policy stated in Schedule A.

e. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.

f. "Enforcement Notice": A document recorded in the Public Records that describes any part of the Land and:

i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation;

ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or

iii. asserts a right to enforce a PACA-PSA Trust.

g. "Entity": A corporation, partnership, trust, limited liability company, or other entity authorized by law to own title to real property in the State where the Land is located.

h. "Government Mortgage Agency or Instrumentality": Any government agency or instrumentality that is the owner of the Indebtedness, an insurer, or a guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness, or any part of it, whether named as an Insured or not.

i. "Indebtedness": Any obligation secured by the Insured Mortgage, including an obligation evidenced by electronic means authorized by law. If that obligation is the payment of a debt, the Indebtedness is:

i. the sum of:

(a). principal disbursed as of the Date of Policy;

(b). principal disbursed subsequent to the Date of Policy;

(c). the construction loan advances made subsequent to the Date of Policy for the purpose of financing, in whole or in part, the construction of an improvement to the Land or related to the Land that the Insured was and continues to be obligated to advance at the Date of Policy and at the date of the advance;

(d). interest on the loan;

(e). prepayment premiums, exit fees, and other similar fees or penalties allowed by law;

(f). expenses of foreclosure and any other costs of enforcement;

(g). advances for insurance premiums;

(h). advances to assure compliance with law or to protect the validity, enforceability, or priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title; including, but not limited to:

(1). real estate taxes and assessments imposed by a governmental taxing authority, and

(2). regular, periodic assessments by a property owners' association; and

(i). advances to prevent deterioration of improvements before the Insured's acquisition of the Title, but

ii. reduced by the sum of all payments and any amounts forgiven by an Insured.

j. "Insured":

i. (a). The Insured named in Item 1 of Schedule A or future owner of the Indebtedness other than an Obligor, if the named Insured or future owner of the Indebtedness owns the Indebtedness, the Title, or an estate or interest in the Land as provided in Condition 2, but only to the extent the named Insured or the future owner either:

(1). owns the Indebtedness for its own account or as a trustee or other fiduciary, or

(2). owns the Title after acquiring the Indebtedness;

(b). the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as defined by applicable electronic transactions law;

(c). the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;

(d). the successor to the Title of an Insured resulting from its conversion to another kind of Entity;

(e). the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is an Affiliate;

(f). an Affiliate that acquires the Title through foreclosure or deed-in-lieu of foreclosure of the Insured Mortgage; or

(g). any Government Mortgage Agency or Instrumentality.

ii. With regard to Conditions 1.j.i.(a). and 1.j.i.(b)., the Company reserves all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.

iii. With regard to Conditions 1.j.i.(c)., 1.j.i.(d)., 1.j.i.(e)., and 1.j.i.(f)., the Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.

k. "Insured Claimant": An Insured claiming loss or damage arising under this policy.

l. "Insured Mortgage": The Mortgage described in Item 4 of Schedule A.

m. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.

Modeled on, but not necessarily identical to, ALTA Loan Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

n. "Land": The land described in Item 5 of Schedule A and improvements located on that land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-ofway, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

o. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.

p. "Obligor": A person or entity that is or becomes a maker, borrower, or guarantor as to all or part of the Indebtedness or other obligation secured by the Insured Mortgage. A Government Mortgage Agency or Instrumentality is not an Obligor.

q. "PACA-PSA Trust": A trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar State or federal law.

r. "Public Records": The recording or filing system established under Section 14-9-1 NMSA 1978, as amended to the Date of Policy, under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge.

s. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

t. "Title": The estate or interest in the Land identified in Item 2 of Schedule A.

u. "Unmarketable Title": The Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title, a lender on the Title, or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF COVERAGE

This policy continues as of the Date of Policy in favor of an Insured:

a. after the Insured's acquisition of the Title, so long as the Insured retains an estate or interest in the Land; and

b. after the Insured's conveyance of the Title, so long as the Insured:

i. retains an estate or interest in the Land;

ii. owns an obligation secured by a purchase money Mortgage given by a purchaser from the Insured; or

iii. has liability for warranties given by the Insured in any transfer or conveyance of the Insured's Title.

Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy does not continue in force or effect in favor of any person or entity that is not the Insured and acquires the Title or an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured must notify the Company promptly in writing if the Insured has Knowledge of:

a. any litigation or other matter for which the Company may be liable under this policy; or

b. any rejection of the Title or the lien of the Insured Mortgage as Unmarketable Title.

If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under this policy is reduced to the extent of the prejudice.

4. PROOF OF LOSS

The Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and must state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

a. Upon written request by the Insured and subject to the options contained in Condition 7, the Company, at its own cost and without unreasonable delay, will provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company has the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those covered causes of action. The Company is not liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of any cause of action that alleges matters not insured against by this policy.

b. The Company has the right, in addition to the options contained in Condition 7, at its own cost, to institute and prosecute any action or proceeding or to do any other act that, in its opinion, may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it is liable to the Insured. The Company's exercise of these rights is not an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under Condition 5.b., it must do so diligently.

c. When the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court having jurisdiction. The Company reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

a. When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured will secure to the Company the right to prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. When requested by the Company, the Insured, at the Company's expense, must give the Company all reasonable aid in:

i. securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and

ii. any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter, as insured. If the Company is prejudiced by any failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation, regarding the matter requiring such cooperation.

b. The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after the Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant must grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all the records in the custody or control of a third party that reasonably pertain to the loss or damage. No information designated in writing as confidential by the Insured Claimant provided to the Company pursuant to Condition 6 will be later disclosed to others unless, in the reasonable judgment of the Company, disclosure is necessary in the administration of the claim or required by law. Any failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in Condition 6.b., unless prohibited by law, terminates any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY
In case of a claim under this policy, the Company has the following additional options:

a. *To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness*

i. To pay or tender payment of the Amount of Insurance under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

ii. To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay. If the Company purchases the Indebtedness, the Insured must transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.

b. *To Pay or Otherwise Settle with Parties other than the Insured or with the Insured Claimant*

i. To pay or otherwise settle with parties other than the Insured for or in the name of the Insured Claimant. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

ii. To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay. Upon the exercise by the Company of either option provided for in Condition 7.b., the Company's liability and obligations to the Insured under this policy for the claimed loss or damage terminate, including any obligation to defend, prosecute, or continue any litigation.

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY
This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy.

a. The extent of liability of the Company for loss or damage under this policy does not exceed the least of:

i. the Amount of Insurance;

ii. the Indebtedness;

iii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or

iv. if a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Insured Mortgage.

b. Fair market value of the Title in Condition 8.a.iii. is calculated using either:

i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Insured Mortgage; or

ii. the date the lien of the Insured Mortgage or any assignment set forth in Item 4 of Schedule A is extinguished or rendered unenforceable by reason of a matter insured against by this policy.

c. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured:

i. the Amount of Insurance will be increased by 15%; and

ii. the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by

the Company as the date for calculating the fair market value of the Title in Condition 8.a.iii.

d. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.c., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

9. LIMITATION OF LIABILITY

a. The Company fully performs its obligations and is not liable for any loss or damage caused to the Insured if the Company accomplishes any of the following in a reasonable manner:

i. removes the alleged defect, lien, encumbrance, adverse claim, or other matter;

ii. cures the lack of a right of access to and from the Land;

iii. cures the claim of Unmarketable Title; or

iv. establishes the lien of the Insured Mortgage,

all as insured. The Company may do so by any method, including litigation and the completion of any appeals.

b. The Company is not liable for loss or damage arising out of any litigation, including litigation by the Company or with the Company's consent, until a State or federal court having jurisdiction makes a final, non-appealable determination adverse to the Title or to the lien of the Insured Mortgage.

c. The Company is not liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

d. An Insured Claimant must own the Indebtedness or have acquired the Title at the time that a claim under this policy is paid.

e. The Company is not liable for the content of the Transaction Identification Data, if any.

10. REDUCTION OR TERMINATION OF INSURANCE

a. All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Amount of Insurance by the amount of the payment. However, any payment made by the Company prior to the acquisition of the Title as provided in Condition 2 does not reduce the Amount of Insurance afforded under this policy, except to the extent that the payment reduces the Indebtedness.

b. When the Title is acquired by the Insured as a result of foreclosure or deed in lieu of foreclosure, the amount credited against the Indebtedness does not reduce the Amount of Insurance.

c. The voluntary satisfaction or release of the Insured Mortgage terminates all liability of the Company, except as provided in Condition 2.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage are determined in accordance with the Conditions, the Company will pay the loss or damage within 30 days.

12. COMPANY'S RECOVERY AND SUBROGATION RIGHTS UPON SETTLEMENT AND PAYMENT

a. *Company's Right to Recover*

i. If the Company settles and pays a claim under this policy, it is subrogated and entitled to the rights and remedies of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person, entity, or property to the fullest extent permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant must execute documents to transfer these rights and remedies to the Company. The Insured Claimant permits the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

ii. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company defers the exercise of its subrogation right until after the Insured Claimant fully recovers its loss.

b. *Company's Subrogation Rights against Obligors*

The Company's subrogation right includes the Insured's rights against Obligors including the Insured's rights to repayment under a note, indemnity, guaranty, warranty, insurance policy, or bond, despite any provision in those instruments that addresses recovery or subrogation rights. An Obligor cannot avoid the Company's subrogation right by acquiring the Indebtedness as a result of an indemnity, guaranty, warranty, insurance policy, or bond, or in any other manner. The Obligor is not an Insured under this policy. The Company may not exercise its rights under Condition 12.b. against a Government Mortgage Agency or Instrumentality.

c. *Insured's Rights and Limitations*

i. The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if the action does not affect the enforceability or priority of the lien of the Insured Mortgage.

ii. If the Insured exercises a right provided in Condition 12.c.i. but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company is required to pay only that part of the loss insured against by this policy that exceeds the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's subrogation right.

13. POLICY ENTIRE CONTRACT

a. This policy together with all endorsements, if any, issued by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy will be construed as a whole. This policy and any endorsement to this policy may be evidenced by electronic means authorized by law.

b. Any amendment of this policy must be by a written endorsement issued by the Company. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this policy, the term or provision of the endorsement controls.

Unless the endorsement expressly states, it does not:

i. modify any prior endorsement,

ii. extend the Date of Policy,

iii. insure against loss or damage exceeding the Amount of Insurance, or
iv. increase the Amount of Insurance.

14. SEVERABILITY
In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, this policy will be deemed not to include that provision or the part held to be invalid, but all other provisions will remain in full force and effect.

15. CHOICE OF LAW AND CHOICE OF FORUM
a. *Choice of Law*
The Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the State where the Land is located.
The State law of the State where the Land is located, or to the extent it controls, federal law, will determine the validity of claims against the Title or the lien of the Insured Mortgage and the interpretation and enforcement of the terms of this policy, without regard to conflicts of law principles to determine the applicable law.
b. *Choice of Forum*
Any litigation or other proceeding brought by the Insured against the Company must be filed only in a State or federal court having jurisdiction.

16. NOTICES
Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at: *(fill in)* .

*NOTE: Bracketed **[ ]** material optional*

NM FORM 6: COMMITMENT FOR TITLE INSURANCE
Issued by
BLANK TITLE INSURANCE COMPANY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, **[**Blank Title Insurance Company**]**, a **[**Blank**]** (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured. If all of the Schedule B, Part I—Requirements have not been met within _____ *(Insert the time period)* after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

COMMITMENT CONDITIONS

*This page is only a part of a NM Form 6 Commitment for Title Insurance. **[** issued by _____**]**. This Commitment is not valid without the Notice;*
*the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements;**[** and**]** Schedule B, Part II—*
*Exceptions**[**; and a counter-signature by the Company or its issuing agent that may be in electronic form**]**.*

Modeled on, but not necessarily identical to, ALTA Commitment for Title Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

1. DEFINITIONS

a. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.

b. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.

c. "Land": The land described in Item 5 of Schedule A and improvements located on that land that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.

d. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.

e. "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.

f. "Proposed Amount of Insurance": Each dollar amount specified in Schedule A as the Proposed Amount of Insurance of each Policy to be issued pursuant to this Commitment.

g. "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.

h. "Public Records": The recording or filing system established under Section 14-9-1 NMSA 1978, as amended to the Date of Policy, under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge.

i. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

j. "Title": The estate or interest in the Land identified in Item 3 of Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

a. the Notice;

b. the Commitment to Issue Policy;

c. the Commitment Conditions;

This page is only a part of a NM Form 6 Commitment for Title Insurance. ***[*** *issued by _____****]****. This Commitment is not valid without the Notice;*
*the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements;****[*** *and****]*** *Schedule B, Part II—*
*Exceptions****[****; and a counter-signature by the Company or its issuing agent that may be in electronic form****]****.*

Modeled on, but not necessarily identical to, ALTA Commitment for Title Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

d. Schedule A;
e. Schedule B, Part I—Requirements; **[**and**]**
f. Schedule B, Part II—Exceptions **[**; and
g. a counter-signature by the Company or its issuing agent that may be in electronic form**]**.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

a. The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:

i. comply with the Schedule B, Part I—Requirements;

ii. eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or

iii. acquire the Title or create the Mortgage covered by this Commitment.

b. The Company is not liable under Commitment Condition 5.a. if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.

c. The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.

d. The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5.a. or the Proposed Amount of Insurance.

e. The Company is not liable for the content of the Transaction Identification Data, if any.

f. The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.

g. The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT; CHOICE OF LAW AND CHOICE OF FORUM

a. Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.

*This page is only a part of a NM Form 6 Commitment for Title Insurance. **[** issued by _____**]**. This Commitment is not valid without the Notice;*
*the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements;**[** and**]** Schedule B, Part II—*
*Exceptions**[**; and a counter-signature by the Company or its issuing agent that may be in electronic form**]**.*

Modeled on, but not necessarily identical to, ALTA Commitment for Title Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

b. Any claim must be based in contract under the State law of the State where the Land is located and is restricted to the terms and provisions of this Commitment. Any litigation or other proceeding brought by the Proposed Insured against the Company must be filed only in a State or federal court having jurisdiction.

c. This Commitment, as last revised, is the exclusive and entire agreement between the
parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.

d. The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.

e. Any amendment or endorsement to this Commitment must be in writing **[**and authenticated by a person authorized by the Company**]**.

f. When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for closing, settlement, escrow, or any other purpose.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. CLAIMS PROCEDURES

This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.

This page is only a part of a NM Form 6 Commitment for Title Insurance. ***[*** *issued by _____****]****. This Commitment is not valid without the Notice;*
*the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements;****[*** *and****]*** *Schedule B, Part II—*
*Exceptions****[****; and a counter-signature by the Company or its issuing agent that may be in electronic form****]****.*

Modeled on, but not necessarily identical to, ALTA Commitment for Title Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

[Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:
Issuing Agent:
Issuing Office:
Issuing Office's ALTA® Registry ID:
Loan ID Number:
Commitment Number:
Issuing Office File Number:
Property Address:**]**
[Revision Number:**]**

SCHEDULE A

1. Commitment Date:

2. Policy to be issued:
a. **[**NM FORM 1 Owner's Policy**][**NM FORM 2 Loan Policy**][**_____ NM _____ Policy**]**
Proposed Insured: _____
Proposed Amount of Insurance: $_____
The estate or interest to be insured: _____
[b. **[**NM FORM 1 Owner's Policy**][**NM FORM 2 Loan Policy**][**_____ NM _____ Policy**]**
Proposed Insured: _____
Proposed Amount of Insurance: $_____
The estate or interest to be insured: _____**]**
[c. **[**NM FORM 1 Owner's Policy**][**NM FORM 2 Loan Policy**][**_____ NM _____ Policy**]**
Proposed Insured: _____
Proposed Amount of Insurance: $_____
The estate or interest to be insured: _____**]**

3. The estate or interest in the Land at the Commitment Date is: *(Identify each estate or interest covered, i.e., fee, leasehold, etc.)*

4. The Title is, at the Commitment Date, vested in**[:]** *(Identify vesting for each estate or interest identified in Item 3 above)***[** and, as disclosed in the Public Records, has been since *(Date)***]**

5. The Land is described as follows:

BLANK TITLE INSURANCE COMPANY

By:_____
[Authorized Signatory]

This page is only a part of a NM Form 6 Commitment for Title Insurance. ***[*** *issued by _____****]****. This Commitment is not valid without the Notice;*
*the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements;****[*** *and****]*** *Schedule B, Part II—*
*Exceptions****[****; and a counter-signature by the Company or its issuing agent that may be in electronic form****]****.*

Modeled on, but not necessarily identical to, ALTA Commitment for Title Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

SCHEDULE B, PART I—Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

2. Pay the agreed amount for the estate or interest to be insured.

3. Pay the premiums, fees, and charges for the Policy to the Company.

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
(Documents to be listed here)
(Additional Requirements may be listed here by number)

SCHEDULE B, PART II—Exceptions

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

[1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.**]**

(Additional Exceptions may be listed here by number)

*This page is only a part of a NM Form 6 Commitment for Title Insurance. **[** issued by _____**]**. This Commitment is not valid without the Notice;*
*the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements;**[** and**]** Schedule B, Part II—*
*Exceptions**[**; and a counter-signature by the Company or its issuing agent that may be in electronic form**]**.*

Modeled on, but not necessarily identical to, ALTA Commitment for Title Policy Form, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 9: NOTICE OF AVAILABILITY OF OWNER'S TITLE INSURANCE

Buying property identified as:

_____

A Mortgagee's Policy of title insurance insuring the title to the property you are buying or presently own is being issued to your mortgage lender, but that policy does not provide title insurance coverage to you.

You may obtain an Owner's Policy of title insurance that provides title insurance coverage to you. The additional cost to you for an Owner's Policy of title insurance in the amount of $_____ is $_____ , if you request it at this time.

If you are uncertain as to whether you should obtain an Owner's Policy of title insurance, you are urged to seek independent advice.

(Name of entity providing notice)_____

☐ I/We do request an Owner's Policy of title insurance.

☐ I/We do not request an Owner's Policy of title insurance.

Date:_____

Buyer_____

Buyer_____

NM FORM 11: MULTIPURPOSE ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

This endorsement is made a part of the policy, binder or commitment and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy, binder or commitment and prior endorsements, if any, nor does it extend the effective date of the policy, binder or commitment and prior endorsements or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 12: CONDOMINIUM — ASSESSMENTS PRIORITY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the State in which the unit and its common elements are located.

2. The failure of the documents required by the State condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.

3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in Section 3, the words “restrictive covenants” do not refer to or include any covenant, condition, or restriction:

a. relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or

b. pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at the Date of Policy and is not excepted in Schedule B.

4. The priority of any lien for charges and assessments provided for in the State condominium statutes and condominium documents at the Date of Policy over the lien of any Insured Mortgage identified in Schedule A.

5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.

6. Any obligation to remove any improvements that exist at the Date of Policy because of any present encroachments or because of any future unintentional encroachments of the common elements upon any unit or of any unit upon the common elements or another unit.

Modeled on, but not necessarily identical to, ALTA Form 4, 2021 v. 01.00 (adopted 07-01-2021).

7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements that was exercised or could have been exercised at the Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not

(i) modify any of the terms and provisions of the policy,

(ii) modify any prior endorsements,

(iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 4, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 13: PLANNED UNIT DEVELOPMENT – ASSESSMENTS PRIORITY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

2. The priority of any lien for charges and assessments in favor of any association of owners that are provided for in any document at Date of Policy and referred to in Schedule B over the lien of any Insured Mortgage identified in Schedule A.

3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 5-06 (adopted 06-17-2006, revised 10-16-2008, 02-03-
2010, technical correction 12-01-2016, 12-01-2017).

NM FORM 13.1: PLANNED UNIT DEVELOPMENT — CURRENT ASSESSMENTS ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

2. Any charges or assessments in favor of any association of owners, that are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.

3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA 5.1-06 (adopted 06-17-2006, revised 10-16-2008, technical correction 12-01-2016, 12-01-2017).

NM FORM 14: VARIABLE RATE MORTGAGE ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, "Changes in the Rate of Interest" mean those adjustments in the rate of interest calculated pursuant to the formula provided in the Insured Mortgage or the loan documents secured by the Insured Mortgage at the Date of Policy.

2. The Company insures against loss or damage sustained by the Insured by reason of:

a. the invalidity or unenforceability of the lien of the Insured Mortgage resulting from
Changes in the Rate of Interest.

b. the loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage or the loan documents secured by the Insured Mortgage, which loss of priority results from Changes in the Rate of Interest.

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, based upon usury law or Consumer Protection Law. This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 6, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 15: VARIABLE RATE MORTGAGE — NEGATIVE AMORTIZATION ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, "Changes in the Rate of Interest" mean those adjustments in the rate of interest calculated pursuant to the formula provided in the Insured Mortgage or the loan documents secured by the Insured Mortgage at the Date of Policy.

2. The Company insures against loss or damage sustained by the Insured by reason of:

a. the invalidity or unenforceability of the lien of the Insured Mortgage resulting from:
   i. Changes in the Rate of Interest;
   ii. interest on interest; or
   iii. the addition of unpaid interest to the principal balance of the loan.

b. the loss of priority of the lien of the Insured Mortgage as security for the principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage or the loan documents secured by the Insured Mortgage, interest on interest, or any unpaid interest which was added to the principal balance in accordance with the provisions of the Insured Mortgage, which loss of priority results from:
   i. Changes in the Rate of Interest;
   ii. interest on interest; or
   iii. the addition of unpaid interest to the principal balance of the loan.

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, based upon usury law or Consumer Protection Law.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 6.2, 2021 v. 01.00 (adopted 07-01-2021) .

NM FORM 16: MANUFACTURED HOUSING UNIT ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The term "Land" includes the manufactured housing unit located on the land described in Schedule A at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA form 7-06 (adopted 6-17-06).

NM FORM 16.1: MANUFACTURED HOUSING — CONVERSION — LOAN POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The term "Land" includes the manufactured housing unit located on the land described in Schedule A at the Date of Policy.

2. Unless excepted in Schedule B, the Company insures against loss or damage sustained by the Insured if, at the Date of Policy:

a. A manufactured housing unit is not located on the land described in Schedule A.

b. The manufactured housing unit located on the land is not real property under the law of the State where the land described in Schedule A is located.

c. The owner of the land described in Schedule A is not the owner of the manufactured housing unit.

d. Any lien is attached to the manufactured housing unit as personal property, including:

i. a federal, State, or other governmental tax lien;

ii. UCC security interest;

iii. a motor vehicular lien; or

iv. other personal property lien.

e. The lien of the Insured Mortgage is not enforceable against the Title.

f. The lien of the Insured Mortgage is not enforceable in a single foreclosure procedure.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 7.1, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 16.2: MANUFACTURED HOUSING — CONVERSION — OWNER'S POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The term "Land" includes the manufactured housing unit located on the land described in Schedule A at the Date of Policy.

2. Unless excepted in Schedule B, the Company insures against loss or damage sustained by the Insured if, at the Date of Policy:

a. A manufactured housing unit is not located on the land described in Schedule A.

b. The manufactured housing unit located on the land is not real property under the law of the State where the land described in Schedule A is located.

c. The Insured is not the owner of the manufactured housing unit.

d. Any lien is attached to the manufactured housing unit as personal property, including:

i. a federal, State, or other governmental tax lien;
ii. UCC security interest;
iii. a motor vehicular lien; or
iv. other personal property lien.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 7.2, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 17: REVOLVING CREDIT ENDORSEMENT
This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

Notwithstanding anything to the contrary contained in this policy, the following terms and provisions shall control and apply:

1. This policy insures only to, and liability hereunder is thereby limited to, the extent of the amount of proceeds of the loan secured by the insured mortgage set forth under Schedule A hereof actually disbursed as of the date of this policy, but increases as each subsequent advance or disbursement of loan proceeds is made and decreases as payment of all or a portion of the amount of loan proceeds disbursed is made from time to time, so that any loss payable hereunder shall be limited to the aggregate amount of loan proceeds actually disbursed less the aggregate of all repayments thereof existing at the time a loss occurs hereunder; provided however, that each disbursement of loan proceeds is made in good faith and without knowledge of any defects in, or objections to, title; and provided that the vestee is the owner of the estate or interest covered by this policy at the date any such advances or disbursements are made, and further provided that in no event shall the liability of the Company hereunder exceed the face amount of this policy.

2. The Company hereby assures the insured that any disbursements of such loan proceeds made subsequent to the date of this policy shall be deemed to have been made as of the date of this policy and shall have the same priority as any advances made as of the date of this policy, except as to federal tax liens, liens, encumbrances or other matters, the existence of which are actually known to the insured prior to the date of such disbursement or advance, bankruptcies affecting the estate of the vestee prior to the date of any such advance or disbursement and real estate taxes and assessments arising subsequent to the date of the policy and this endorsement.

This endorsement when countersigned below by an authorized countersignature is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein except as modified by the provisions hereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 20: LEASEHOLD — OWNER'S ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, the following terms shall mean:

a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

b. "Lease": the lease described in Schedule A.

c. "Leasehold Estate": the right of possession granted in the Lease for the Lease Term.

d. "Lease Term": the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. "Personal Property": property, in which and to the extent the Insured has rights, located on or affixed to the Land on or after Date of Policy that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.

f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted.

g. "Tenant Leasehold Improvements": Those improvements, in which and to the extent the Insured has rights, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured:

If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction of the Insured, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements affected by a defect insured

Modeled on, but not necessarily identical to, ALTA Form 13-06 (Revised 04-02-12).

against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(ii) of the Conditions:

a. The reasonable cost of (i) removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, (ii) transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, (iii) repairing the Personal Property damaged by reason of the removal and relocation, and (iv) restoring the Land to the extent damaged as a result of the removal and relocation of the Personal Property and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits,

architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.

4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 13-06 (Revised 04-02-12).

NM FORM 21: LEASEHOLD — LOAN ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, the following terms shall mean:

a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of
possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

b. "Lease": the lease described in Schedule A.

c. "Leasehold Estate": the right of possession granted in the Lease for the Lease
Term.

d. "Lease Term": the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. "Personal Property": property, in which and to the extent the Insured has rights, located on or affixed to the Land on or after Date of Policy that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.

f. "Remaining Lease Term": the portion of the Lease Term remaining after the Tenant has been Evicted.

g. "Tenant": the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

h. "Tenant Leasehold Improvements": Those improvements, in which and to the extent the Insured has rights, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Tenant's expense or in which the Tenant has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured:

Modeled on, but not necessarily identical to, ALTA Form 13.1-06 (Revised 04-02-12).

If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction of the Tenant, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(iii) of the Conditions:

a. The reasonable cost of (i) removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, (ii) transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, (iii) repairing the Personal Property damaged by reason of the removal and relocation, and (iv) restoring the Land to the extent damaged as a result of the removal and relocation of the Personal Property and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

Modeled on, but not necessarily identical to, ALTA Form 13.1-06 (Revised 04-02-12).

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.

4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 13.1-06 (Revised 04-02-12).

NM FORM 22: PENDING DISBURSEMENT DOWN DATE ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

Disbursement in the amount of $_____ having been made on account of the proceeds of the loan; liability under said policy is hereby recognized to be the amount of $_____

The following matters appear of record since (Date of policy or previous endorsement)

Nothing herein contained shall be construed as extending or changing the effective date of said policy, unless otherwise expressly stated.

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to the Exclusions from Coverage, schedules, conditions and stipulations therein, except as modified by the provisions hereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 23: PENDING IMPROVEMENTS ENDORSEMENT

This endorsement is issued as part of Policy Number_____ Issued by BLANK TITLE INSURANCE COMPANY

Liability hereunder at date hereof is limited to $_____, (insert either "the purchase price paid by the insured for the land and existing improvements" or "the value of the land and existing improvements"). Liability hereunder shall increase to the amount of insurance set forth on Schedule A as contemplated improvements are made, so that any loss payable hereunder shall be limited to said sum, plus the amount expanded by or on behalf of the insured for additional improvements located upon the land at the time the loss occurs. Any such expenditures made for such additional improvements subsequent to the date of this policy shall be deemed made as of the date of this policy.

This endorsement is made a part of the policy or commitment and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements; or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 24: ASSIGNMENT ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The name of the Insured at the Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read: _____.

2. The Company insures against loss or damage sustained by the Assignee by reason of:

a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee: _____;

b. Any modification, partial or full reconveyance, release, or discharge of the lien of the Insured Mortgage recorded on or prior to the Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____.

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the assignment being a:

a. fraudulent conveyance or fraudulent transfer;

b. voidable transfer under the Uniform Voidable Transactions Act; or

c. preferential transfer.

4. This endorsement shall be effective provided that, at the Date of Endorsement:

a. the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee; or

b. if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transactions laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 10, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 24.1: ASSIGNMENT AND DATE DOWN ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The name of the Insured at the Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read: _____.

2. The Company insures against loss or damage sustained by the Assignee by reason of:

a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee: _____;

b. Any liens for taxes or assessments affecting the Title that are due and payable on the Date of Endorsement, except: _____;

c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except: _____;

d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to the Date of Policy in the Public Records and on or prior to the Date of Endorsement, except: _____;

e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____.

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the assignment being a:

a. fraudulent conveyance or fraudulent transfer;

b. voidable transfer under the Uniform Voidable Transactions Act; or

c preferential transfer.

4. This endorsement shall be effective provided that, at the Date of Endorsement:

a. the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee; or

b. if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transaction laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of

Modeled on, but not necessarily identical to, ALTA Form 10.1, 2021 v.01.00 (adopted 07-01-2021).

the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause**]**

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 10.1, 2021 v.01.00 (adopted 07-01-2021).

NM FORM 25: ADDITIONAL ADVANCE ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The provisions of said policy are hereby modified and amended as of the date hereof as to the following matters and none other:

(1) That, except as otherwise expressly provided herein, there are no liens, encumbrances or other matters shown by the public records, affecting said estate or interest, other than those shown in said policy, except: (Insert word “None” or list liens and encumbrances, showing as subordinate where appropriate).

(2) That there are no subsisting tax or assessment liens which are prior to the mortgage referred to in Schedule A, other than those shown in said policy, except: (Insert word “None” or list tax or assessment items).

(3) That, as shown by the public records, the title to said estate or interest is vested in the vestee shown in Schedule A.

(4) That the advance hereinafter referred to is secured by the mortgage referred to in Schedule A; that, as shown by the public records, said mortgage as to such advance is prior to any liens, encumbrances and other matters affecting the said estate or interest other than those shown in Schedule B as prior to said mortgage and in paragraph (2) herein, except: (Insert word “None” or list liens, etc.).

(5) The advance referred to in this endorsement is: Insert a description of the advance made or being made, and if appropriate, a reference to the document(s) under which the advance is made or being made.

(6) The amount of insurance set out on Schedule A is amended to be: $_____ .

The Company hereby insures against loss or damage which the Insured shall sustain in the event that the assurances of the Company herein shall prove to be incorrect.

This endorsement is made a part of the policy or commitment and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 26: PARTIAL COVERAGE ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

Even though the mortgage herein insured is for a greater amount, this policy having been issued for the value of the land and improvements rather than the amount of the mortgage as the insured has advised the Company there is other collateral securing the loan, liability hereunder is limited to $____.

This endorsement is made a part of the policy or commitment and is subject to all the terms and provisions thereof and of any prior endorsement thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 28: NON-IMPUTATION — FULL EQUITY TRANSFER ENDORSEMENT:

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE COMPANY

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify existing or contributing partner(s) of the insured partnership entity, member(s), or manager(s) of the insured limited liability company entity, or officer(s) and/or director(s) of the insured corporate entity]

whether or not imputed to the Insured by operation of law, provided

[identify the "incoming" partners, members, or shareholders]
acquired the Insured as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 15-06 (adopted 06-17-2006).

NM FORM 28.1: NON-IMPUTATION — ADDITIONAL INTEREST ENDORSEMENT

This Endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE COMPANY

For purposes of the coverage provided in this endorsement

[identify the "incoming" partner, member, or shareholder]

("Additional Insured") is added as an Insured under the policy. By execution below, the Insured named in Schedule A acknowledges that any payment made under this endorsement shall reduce the Amount of Insurance as provided in Section 10 of the Conditions.

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify, as applicable, the existing and/or exiting partner(s) of the insured partnership entity, member(s), or manager(s) of the insured limited liability company entity, or officer(s) and/or director(s) of the insured corporate entity]

whether or not imputed to the Additional Insured by operation of law, to the extent of the percentage interest in the Insured acquired by Additional Insured as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

AGREED AND CONSENTED TO:

_____
INSURED

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 15.1-06 (adopted 06-17-2006).

NM FORM 28.2: NON-IMPUTATION — PARTIAL EQUITY TRANSFER ENDORSEMENT

This endorsement is issued as part of
Policy Number
Issued by
BLANK TITLE COMPANY

[Incoming partner, member, or shareholder, as the named insured in its own policy, where thevestee of insured estate or interest identified in Schedule A is a partnership, limited liabilitycompany, or corporation]

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or(e) to deny liability for loss or damage otherwise insured against under the terms of the policysolely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify, as applicable, the existing and/or exiting partner(s) of the vestee partnership entity, member(s) or manager(s) of the vestee limited liability company entity, or officer(s) and/or director(s) of the vestee corporate entity]

whether or not imputed to the entity identified in paragraph 3 of Schedule A or to the Insured by operation of law, but only to the extent that the Insured acquired the Insured's interest in entity as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 15.2-06 (adopted 06-17-2006).

NM FORM 29: ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance afforded by this endorsement is only effective if the Land is used or is to be used primarily for residential purposes.

2. The Company insures against loss or damage sustained by the Insured by reason of lack of priority of the lien of the Insured Mortgage over:

a. any environmental protection lien that, at the Date of Policy, is recorded in those records established under State statutes at the Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge, or is filed in the records of the clerk of the United States district court for the district in which the Land is located, except as set forth in Schedule B; or

b. any environmental protection lien provided by any State statute in effect at the Date of Policy, except environmental protection liens provided by the following State statutes:

[*Drafting Instruction: List the relevant State statutes, if any; if none, specify "none".***]**

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not identical to, ALTA Form 8.1, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 30: CONDOMINIUM — CURRENT ASSESSMENTS ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the State in which the unit and its common elements are located.

2. The failure of the documents required by the State condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.

3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in Section 3, the words “restrictive covenants” do not refer to or include any covenant, condition, or restriction:

a. relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or

b. pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances,

except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at the Date of Policy and is not excepted in Schedule B.

4. Any charges or assessments provided for in the State condominium statutes and condominium documents due and unpaid at the Date of Policy.

5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.

6. Any obligation to remove any improvements that exist at the Date of Policy because of any present encroachments or because of any future unintentional encroachments of the common elements upon any unit or of any unit upon the common elements or another unit.

7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements that was exercised or could have been exercised at the Date of Policy.

Modeled on, but not necessarily identical to, ALTA FORM 4.1, 2021 v. 01.00 (adopted 07-01-2021).

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA FORM 4.1, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 31: OWNER'S LEASEHOLD CONVERSION ENDORSEMENT
This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

Effective on and after____, the Conditions and Stipulations of said policy are hereby amended in the following particulars:

Section 1 of the Conditions and Stipulations is hereby amended by deleting therefrom subparagraph (h).

Section 7 subparagraph (b) is amended to read as follows:

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80
percent of the value of the insured estate of interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the amount of insurance stated in Schedule A, then this policy is subject to the following:

(i) where no subsequent improvement has been made, as to any particular loss, the Company
shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A."

Section 14, Valuation of Estate or Interest Insured, And Section 15, Miscellaneous Items of Loss, are hereby deleted and Sections 16, 17, 18 and 19 are hereby renumbered 14, 15, 16 and 17 respectively.

This endorsement when countersigned below by a validating signatory, is hereby made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 33: CHANGE OF NAME ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

Wherever in the said policy the name (Old Name) is used, the name (Blank Title Insurance Company)is hereby substituted.

In Witness Whereof, the (Blank Title Insurance Company) has, by its President, executed this Change of Name
Endorsement as of the _____ day of _____.

Dated: _____

BLANK TITLE INSURANCE COMPANY

Address_____

By: _____, President

By: _____, Authorized Signatory

By: _____, Secretary

Note: This endorsement shall not be used after the 60th day from the first date the new name is used. Thereafter, all forms shall incorporate the new name.

NM FORM 34: UNITED STATES OF AMERICA POLICY OF TITLE INSURANCE
Issued by
BLANK TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE
INSURANCE COMPANY, a Blank corporation herein called the Company insures as of date of policy shown in Schedule A against loss or damage not exceeding the amount of insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. title to the estate or interest described in Schedule A being vested other than as stated therein;

2. any defect in or lien or encumbrance on the title;

3. unmarketability of the title;

4. lack of a right of access to and from the land;

5. in instances where the insured acquires title to the land by condemnation, failure of the commitment for title insurance, as updated to the date of the filing of the lis pendens notice or the declaration of taking, to disclose the parties having an interest in the land as disclosed by the public records;

6. title to the estate or interest described in Schedule A being vested other than as stated therein or being defective:

a) as a result of the avoidance in whole or in part, or from a court order providing
an alternative remedy, of a transfer of all or any part of the title to or any interest in the land occurring prior to the transaction vesting title as shown in Schedule A, because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency or similar creditors' rights laws; or

b) because the instrument of transfer vesting title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the public records:

i. to be timely, or
ii. to impart notice of its existence to a purchaser for value _____ or to a judgment or_____ lien _____ creditor.

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

[Witness clause]

BLANK TITLE INSURANCE COMPANY

BY: _____PRESIDENT

BY: _____SECRETARY

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to: (i) the occupancy, use or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;

(b) any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;

2. rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge;

3. defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under the policy;

(c) resulting in no loss or damage to the insured claimant; or

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under insuring provision 6);

4. this policy does not insure against the invalidity or insufficiency of any condemnation proceeding instituted by the United States of America, except to the extent set forth in insuring provision 5;

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

5. any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the title as shown in Schedule A is:

(a) a fraudulent conveyance or fraudulent transfer; or
(b) preferential transfer for any reason not stated in insuring provision 6.

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

U.S Policy
NM FORM 34

SCHEDULE A

Name and address of Title Insurance Company:

[File No.]

Policy No.

Amount of Insurance $

[Premium $]

Date of Policy [at_____a.m./p.m.]

1. Name of insured:

2. The estate or interest in the land which is covered by this policy is:

3. Title to the estate or interest in the land is vested in:

4. The land referred to in this policy is described as follows:

If paragraph 4 is omitted, a Schedule C captioned the same as paragraph 4 must be used.

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

U.S Policy
NM FORM 34

SCHEDULE B

[File No.]

Policy No.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

[POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO DESIRED BY ISSUING

COMPANY] [VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Rs, ETC.]

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS:

The following terms when used in this policy mean:

a. "Insured" means the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

b. "Insured claimant" means an insured claiming loss or damage.

c. "Knowledge" or "known" means actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

d. "Land" means the land described or referred to in Schedule [A] [C], and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule [A] [C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

e. "Mortgage" means mortgage, deed of trust, trust deed or other security instrument.

f. " Public records" means records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the exclusions from coverage, "public records" shall also include environmental protection liens filed in the records of the Clerk of the United States District Court for the district in which the land is located."Unmarketability of the title" means an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE:

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from

the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either: (i) an estate or interest in the land; or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT:
The insured shall notify the Company promptly in writing: (i) in case of any litigation as set forth in Section 4(a) below; (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy; or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE:

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and

expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) I n all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding and all appeals therein and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid: (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(e) Notwithstanding Conditions and Stipulations of Section 4(a-d), the Attorney General of the United States shall have the sole right to authorize or to undertake the defense of any matter which would constitute a claim under the policy, and the Company may not represent the insured without authorization. If the Attorney General elects to defend at the government's expense, the Company shall, upon request, cooperate and render all reasonable assistance in the prosecution or defense of the proceeding and in prosecuting any related appeals. If the Attorney General shall fail to authorize and permit the Company to defend, all liability of the Company with respect to that claim shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest defenses and actions as it shall recommend should be taken, and the Attorney General shall present the defenses and take the actions of which the Company shall advise the Attorney General in writing, the liability of the Company shall continue and, in any event, the Company shall cooperate and render all reasonable assistance in the prosecution or defense of the claim and any related appeals.

5. PROOF OF LOSS OR DAMAGE:

(a) In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced

by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

(b) In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Unless prohibited by law or governmental regulation, failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY:

In case of a claim under this policy, the Company shall have the following additional options:

(a) To pay or tender payment of the amount of insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation; and To pay or otherwise settle with parties other than the insured or with the insured claimant:

(i) subject to the prior written approval of the Attorney General, to pay or otherwise settle with other parties for or in the name of an insured claimant any claim

insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or
(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.
Upon the exercise by the Company of either of the options provided for in paragraphs 6(b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.
Failure of the Attorney General to give the approval called for in 6(b)(i) shall not prejudice the rights of the insured unless the Company is prejudiced thereby, and then only to the extent of the prejudice.

7. DETERMINATION AND EXTENT OF LIABILITY:

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:
(i) the amount of insurance stated in Schedule A; or
(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT:

If the land described in Schedule [A][C] consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

9. LIMITATION OF LIABILITY:

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY:

All payments under this policy, except payments made for costs, attorneys' fees and expenses shall reduce the amount of the insurance *pro tanto*.

11. LIABILITY NONCUMULATIVE:

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS:

(a) No payment shall be made without producing this policy or an accurate facsimile for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

13. SUBROGATION UPON PAYMENT OR SETTLEMENT:

(a) The Company's Right of Subrogation

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

(c) No Subrogation to the Rights of the United States

Notwithstanding the provisions of Conditions and Stipulations Section 13(a) and (b), whenever the Company shall have settled and paid a claim under this policy, the Company shall not be subrogated to the rights of the United States. The Attorney General may elect to pursue any additional remedies which may exist, and the Company may be consulted. If the Company agrees in writing to reimburse the United States for all costs, attorneys' fees and expenses, to the extent that funds are recovered, they shall be applied first to reimbursing the Company for the amount paid to satisfy the claim, and then to the United States

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

14. ARBITRATION ONLY BY AGREEMENT:

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters shall be arbitrated only when agreed to by both the Company and the insured.

The law of the United States, or if there be no applicable federal law, the law of the situs of the land shall apply to an arbitration under the title insurance arbitration rules. A copy of the rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT:

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the president, a vice president, the secretary, an assistant secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY:

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [ ] material optional

Modeled on, but not necessarily identical to, ALTA U.S. Policy Form (adopted 09-28-1991, revised 12-03-2012).

NM FORM 35: NOTICE TO PURCHASER INSURED

READ THIS NOTICE TO FAMILIARIZE YOURSELF
WITH ADDITIONAL COVERAGES AVAILABLE

The New Mexico Office of the Superintendent of Insurance requires that this Notice be given in connection with all commitments/binders issued for title insurance owner's policies on one to four residential family properties.

THIS NOTICE SHOULD BE RETURNED TO THE COMPANY AT THE EARLIEST POSSIBLE TIME. IT MUST BE SIGNED NOT LATER THAN CLOSING. FAILURE TO ACT IMMEDIATELY COULD DELAY CLOSING SINCE NO TITLE POLICY CAN BE ISSUED UNTIL THIS DOCUMENT IS SIGNED AND RETURNED TO THE COMPANY.

Standard title insurance policies do not cover certain risks. These risks include the standard exceptions shown on your commitment/binder schedule "B", which will also be part of your policy. Standard exceptions 1, 2, 3, 4, and 5 (like all the exceptions) limit the coverage under your title policy. However, some of this coverage can be reinstated as described below.

Standard Exception 1 (Parties in Possession) excludes coverage for certain claims of tenants, squatters or other persons who may claim possession of the property. Standard Exception 1 may be deleted and the coverage reinstated if you meet certain requirements. There is no extra premium charge for this coverage, but there may be a charge for inspection of the property.

Do you want this coverage? Yes____ No____

Standard Exception 2 (Unrecorded Easements) excludes coverage for easements not shown in the public records. Standard exception 2 may be deleted and the coverage reinstated if you meet certain requirements. There is no extra premium charge for this coverage, but a survey meeting the insurer's requirements is required and there may be a charge for an inspection.

Do you want this coverage? Yes____ No____

Standard Exception 3 (Survey Protection) excludes coverage for encroachments, overlaps, conflicts in boundary lines, , or other matters which would be disclosed by an accurate survey and inspection of the premises. Standard exception 3 may be deleted and the coverage reinstated if you meet certain requirements. The charge for this coverage is 15% of the full basic rate, and you must provide a survey meeting the insurer's requirements for insurability.

Do you want this coverage? Yes ____No____

Standard Exception 4 (Lien Coverage) excludes coverage for certain liens (i.e. claims filed forpayment for services and materials provided in connection with the property) not

filed in the public records on the policy date. Standard exception 4 may be deleted and the coverage reinstated if you satisfy certain requirements. The charge for this coverage is $50 if the statutory time limit for filing a lien has expired. If the time limit has not expired, the charge is $3.00 for each $1,000 of insurance. In either case, you will have to provide information that the company requires, and the Buyer or Seller will be responsible for any cost of providing such information.

Do you want this coverage? Yes ____No____

PLEASE ACKNOWLEDGE YOU HAVE BEEN MADE AWARE THAT YOU MAY INCREASE YOUR TITLE POLICY AMOUNT IF YOU ADD IMPROVEMENTS, OR IF THE VALUE OF YOUR PROPERTY INCREASES OVER TIME, BY REQUESTING AN INCREASE IN COVERAGE AND PAYING THE APPLICABLE PREMIUMS. THIS WILL NOT CHANGE THE TERMS OF THE POLICY OTHER THAN THE AMOUNT.
_____initial here

Upon the company's receipt of this signed notice, it may require that certain information and documents be produced. For example, a survey, inspection, lien waivers, affidavits, financial statements, etc. may be requested. The information requested will vary depending upon what additional coverage you have requested, the insurer's guidelines for issuing such coverage and the particular transaction involved. Providing this information and examining it may extend the length of time needed to close and to prepare your title policy. TO AVOID DELAYS YOU ARE REQUESTED TO FILL OUT, SIGN AND RETURN THIS NOTICE TO THE COMPANY AS SOON AS POSSIBLE, ESPECIALLY IF YOU WANT ANY OF THE ADDITIONAL COVERAGES.

If you need further information concerning cost or requirements for obtaining the coverages only, you should call the Company at the telephone number given at the beginning of this Notice. IF YOU DO NOT UNDERSTAND THE ADDITIONAL COVERAGES, OR WANT TO KNOW IF YOU NEED THESE COVERAGES, YOU ARE ENCOURAGED TO SEEK AN ATTORNEY'S ADVICE. THE CLOSING OFFICER AND THE COMPANY'S PERSONNEL ARE NOT REQUIRED AND MAY NOT BE QUALIFIED TO ANSWER SUCH QUESTIONS.

Purchaser(s) _____Date _____

NM FORM 41: LIMITED PRE-FORECLOSURE POLICY

LIMITED PRE-FORECLOSURE POLICY
Issued by
BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 15 of the Conditions.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured and is not an abstract of title or a report of a condition of title.

COVERED
RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company"), insures as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of any of the following matters, if not identified in Schedule B:

1. An instrument purporting to change or evidencing a change in the ownership of the Title and recorded in the public records subsequent to the recording of the Insured's Mortgage.

2. An instrument purporting to create a right or interest affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

3. A Mortgage, notice of Mechanic's Lien, Judgment Lien, federal tax lien, or other lien affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

4. A Judgment Lien or federal tax lien affecting the Title and recorded in the Public Records against the names of the mortgagors of the Insured's Mortgage prior to the recording of the Insured's Mortgage

Modeled on, but not necessarily identical to, ALTA Limited Pre-Foreclosure Policy (adopted 12-03-12).

5. A Notice of a Judicial Proceeding affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

6. A Notice of Bankruptcy specified in 11 U.S.C. Section 549 (c), affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

8. Ad valorem real estate taxes and assessments imposed by a governmental authority due and payable at Date of Policy.

BLANK TITLE INSURANCE COMPANY

By:_____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Limited Pre-Foreclosure Policy (adopted 12-03-12).

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
(i) the occupancy, use, or enjoyment of the Land;
(ii) the character, dimensions, or location of any improvement erected on the Land;
(iii) the subdivision of Land; or
(iv) environmental protection;
or the effect of any violation of these laws, ordinances, or governmental regulations;
(b) Any governmental police power;

2. Rights of eminent domain. This exclusion does not modify or limit the coverage provided under Covered Risk 7.

3. Defects, liens, encumbrances, adverse claims, transfers of the Title or other matters:
(a) created, suffered, assumed, or agreed to by the Insured;
(b) known to the Insured whether or not disclosed in the Public Records;
(c) resulting in no loss or damage to the Insured;
(d) attaching or created subsequent to Date of Policy;
(e) not recorded in the Public Records at Date of Policy; or
(f) resulting in loss or damage that would not have been sustained if the Insured had paid value for the Insured's Mortgage;

4. Invalidity, unenforceability, or lack of priority of the Insured's Mortgage, or any assignment of it.

5. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws. This exclusion does not modify or limit the coverage provided under Covered Risk 6.

6. Any claim that Title to the Land is an Unmarketable Title.

Modeled on, but not necessarily identical to, ALTA Limited Pre-Foreclosure Policy (adopted 12-03-12).

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance" is the amount stated in Schedule A as it may be decreased by Section 9 of these conditions.

(b) "Curative Action" is an act, payment or proceeding to eliminate a matter included within the Covered Risks but not excluded by the Exclusions from Coverage or identified in Schedule B.

(c) "Date of Policy" is the date designated as "Date of Policy" in Schedule A.

(d) "Indebtedness" is the obligation secured by the Insured's Mortgage including one evidenced by electronic means authorized by law and, if that obligation is the payment of a debt, the Indebtedness is the sum of:

(i) the amount of the principal disbursed as of Date of Policy;
(ii) i nterest on the loan;
(iii) the expenses of foreclosure and any other costs of enforcement;
(iv) the amounts to pay taxes and insurance; and
(v) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured's Mortgage" is the Mortgage described in paragraph 3 of Schedule A.

(f) "Insured" is the Insured named in Schedule A.

(g) "Judgment Lien" is a judgment, abstract of judgment, tax lien (other than a lienfor ad valorem real estate taxes or assessments), or support lien recorded in the Public Records, and having the effect of a judgment for the payment of money.

(h) "Knowledge" or "Known" is actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) "Land" is the Land described in Schedule A, and affixed improvements that by

law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways.

(j) "Mechanic's Lien" is a private, statutory lien or claim of lien, affecting the Title that arises from services provided, labor performed, or materials or equipment

furnished for the construction of an improvement or work on the Land.

(k) "Mortgage" means mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(l) "Notice of Bankruptcy" is a document specified in 11 U.S.C. Section 549 (c) setting forth the nature and venue of and debtor in a bankruptcy proceeding.

(m) "Notice of a Judicial Proceeding" is a notice of *lis pendens* or other document required or permitted under state statutes to provide constructive notice of a judicial proceeding affecting the Title and setting forth the nature and venue of and parties to the proceeding and describing any part of the Land.

(n) "Public Records" means Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.

(o) "Title" is the estate or interest described in Schedule A.

(p) "Unmarketable Title" means title affected by an alleged or apparent matter that

would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured's Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. NOTICE OF CLAIM TO BE GIVEN BY INSURED

The Insured shall notify the Company promptly in writing in case Knowledge shall come to the Insured of a matter that might cause loss or damage for which the Company may be liable by virtue of this policy. If the Company is prejudiced by the failure of the Insured to provide prompt notice, the Company's liability to the Insured under the policy shall be reduced to the extent of the prejudice.

3. NO DUTY TO DEFEND OR PROSECUTE

Modeled on, but not necessarily identical to, ALTA Limited Pre-Foreclosure Policy (adopted 12-03-12).

The Company shall have no duty to defend or prosecute any action or proceeding to which the Insured is a party, notwithstanding the nature of any allegation in such action or proceeding. However, the Company has the rights listed in Section 4 of these Conditions.

4. COMPANY'S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF INSURED TO COOPERATE

(a) In addition to the options contained in Section 6 of these Conditions and whether or not the Company shall be liable to the Insured, the Company shall have the right, but not the obligation, at its own cost, to undertake any Curative Action that in its opinion may prevent or reduce loss or damage to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(b) If the Company brings an action or asserts a defense permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

(c) In all cases where this policy permits the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at the Company's option, the name of the Insured for this purpose.

(d) If requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid: (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and (ii) in any other lawful act that, in the opinion of the Company, may be necessary or desirable to avoid or mitigate a loss under this policy. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

(a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured furnish a signed proof of loss. The proof of loss must describe the matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

(b) The Company may reasonably require the Insured to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the

Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the amount of insurance under this policy. In addition, if the Company exercises its rights under Section 4 of these conditions it will pay any costs, attorneys' fees, and expenses authorized by the Company and incurred by the Insured; or

(ii) To purchase the indebtedness for the amount of the indebtedness on the date of purchase. When the Company purchases the indebtedness, the Insured shall transfer, assign, and convey to the Company the indebtedness and the Insured's Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a) (i) or (ii), all liability and obligations of the Company to the Insured under this policy for the claimed loss or damage, other than to make the payments required in those subsections, shall terminate.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured.

(i) To pay or otherwise settle with other parties for or in the name of an Insured any claim insured against under this policy. In addition, if the Company exercises its rights under Section 4 of

these conditions it will pay any costs, attorneys' fees, and expenses authorized by the Company and incurred by the Insured; or

(ii) To pay or otherwise settle with the Insured the loss or damage provided for under this policy. In addition, if the Company exercises its rights under Section 4 of these Conditions it will pay any costs, attorneys' fees, and expenses authorized by the Company and incurred by the Insured.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), all liability and obligations of the Company to the Insured under this policy for the claimed loss or damage, other than the payments required in those subsections, shall terminate.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured who has suffered loss or damage by reason of matters insured against by this policy.

The extent of liability of the Company for loss or damage under this policy shall not exceed the least of:

(a) the Amount of Insurance;

(b) the Indebtedness;

(c) costs, attorneys' fees, and expenses incurred or authorized in writing by the Company in completing any Curative Action; or

(d) the difference between the value of the Title without the matter insured against and the value of the Title subject to the matter insured against by this policy.

8. LIMITATION OF LIABILITY

(a) I f the Company cures any matter insured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals.

(c) The Company shall have no liability for loss or damage to the Insured,

resulting from any delay in the enforcement of the Insured Mortgage, including lost interest, reduction in the value of the security or collateral, taxes, assessments, insurance or maintenance.

(d) The Company shall not be liable for loss or damage to, or attorneys' fees, expenses or liability incurred by, the Insured in conducting a Curative Action or settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses under Section 4 of these conditions, shall reduce the Amount of Insurance by the amount of the payments.

(b) The voluntary satisfaction or release of the Insured's Mortgage, other than foreclosure of the Insured's Mortgage or the acceptance of delivery of a deed of lieu of foreclosure of the Insured's Mortgage, shall terminate all liability of the Company.

10. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these conditions, the payment shall be made within 30 days.

11. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company's Right to Recover.

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured in the Title or Insured's Mortgage and to all other rights and remedies in respect to the claim that the Insured has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured shall permit the Company to sue, compromise, or settle in the name of the Insured and to use the name of the Insured in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured, the Company shall defer the exercise of its right to recover until after the Insured shall have recovered its loss.

(b) The Company's Rights Against Noninsured Obligors.

The Company's right of subrogation includes the Insured's rights against non

insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.
The Company's right of subrogation shall not be avoided by acquisition of the Insured's Mortgage by an obligor who acquires the Insured's Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

12. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of a matter insured against by this policy or by any action asserting such matter shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it shall not: (i) modify any of the terms and provisions of the policy; (ii) modify any prior endorsement; (iii) extend the Date of Policy; or (iv) increase the Amount of Insurance.

13. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

14. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

(b) The law of the jurisdiction where the Land is located shall apply to determine the validity of matters insured against under this policy and to interpret and

enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

Modeled on, but not necessarily identical to, ALTA Limited Pre-Foreclosure Policy (adopted 12-03-12).

Schedule A

Name and Address of Title Insurance Company:

[File No.:] Policy No.:

[Address Reference:]

Amount of Insurance: $ [Premium: $]

Date of Policy: [at _____a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is the subject of coverage in this policy is:

3. The Insured's Mortgage is described as follows:

4. The Land referred to in this policy is described as follows:

Modeled on, but not necessarily identical to, ALTA Limited Pre-Foreclosure Policy (adopted 12-03-12).

Schedule B

This policy does not insure against loss or damage by reason of:

(List matters identified in accordance with the Covered Risks.)

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Limited Pre-Foreclosure Policy (adopted 12-03-12).

NM FORM 42: LIMITED PRE-FORECLOSURE DATE-DOWN ENDORSEMENT

This endorsement is issued as part of
Policy Number____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The Date of Policy is changed to:

2. Schedule A is also amended as follows:

3. Schedule B is amended to add the following matters:

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Limited Pre-Foreclosure Date-Down (adopted 12-03-12).

NM FORM 43: INSURING AROUND ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the insured against loss or damage covered or to be covered under the Policy Insuring Agreements which the insured shall sustain in connection with Item____, Schedule B.

This endorsement is made a part of the commitment or policy. It is subject to all the terms of the commitment or policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amounts of the commitment or policy and prior endorsements are not changed.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 44: REVOLVING CREDIT — INCREASED CREDIT LIMIT ENDORSEMENT
This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The provisions of said Policy are hereby modified and amended as of the date hereof as to the following matters and none other:

The insurance afforded by this endorsement is only effective if the land is used or is to be used primarily for one to four family residential purposes.

A. Upon the representation and assurance by the Insured, that the Insured has increased the borrower's credit limit under the ____ ("Agreement") in the sum of $____, and that this sum is secured by the mortgage referred to in Schedule A, the Company hereby insures the Insured against
loss which the Insured shall sustain by reason of:

(1) Title to the estate or interest being vested at date of this endorsement, in other than the vestee(s)
shown in Paragraph 3 of Schedule A, except as affected by the following matters: ____

(2) Priority over the mortgage, insofar as the same secures the increased credit limit, of any lien or
encumbrance existing at the date of this endorsement which is not shown or referred to in Schedule B as prior to the mortgage nor excluded from coverage in the Conditions and Stipulations or Schedule of Exclusion from Coverage, except as affected by the following matters: ____

(3) Any release, full or partial, or modification or subordination of the mortgage shown by the public records at the date of this endorsement, except for the following instruments: _____

B. The assurances, terms and exceptions contained in the previously issued revolving credit endorsement attached to the policy shall apply to subsequent advances made under the increased credit limit above, except that no coverage is afforded as to matters referred to in Paragraph A above.

The total liability of the Company under said Policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said Policy, plus the amount of the increased credit limit (which together now constitute the new "face amount" of the policy) and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the Policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy or commitment and prior endorsements, if any, nor does it extend the effective date of the Policy or commitment and prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 45: RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY

Issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Condition 16.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN THE SCHEDULE, AND THE CONDITIONS, and provided that the Land is improved with an existing one-to-four family residence or residential condominium unit, **[**Blank Title Insurance Company**]**, a **[**Blank**]** corporation (the "Company"), insures as of the Date of Policy against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Grantee not being the named grantee on the last document, recorded in the Public
Records as of the Date of Policy, purporting to vest the Title.

2. The description of the Land in the Schedule not being the same as that contained in the
last document, recorded in the Public Records as of the Date of Policy, purporting to vest the Title.

3. A Monetary Lien recorded in the Public Records as of the Date of Policy.

4. Any ad valorem taxes or assessments of any governmental taxing authority that constitute a lien on the Title and that, as of the Date of Policy, appear in the official ad valorem tax records where the Land is located.

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Junior Loan Policy, 2021 v. 01.00 (adopted 04-02-2022).

DEFENSE OF COVERED CLAIMS

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Junior Loan Policy, 2021 v. 01.00 (adopted 04-02-2022).

EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. Any invalidity, unenforceability, or ineffectiveness of the Identified Mortgage.

2. Any lien on the Title for real estate taxes or assessments imposed or collected by governmental authority that becomes due and payable after the Date of Policy. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 4.

3. Defects, liens, encumbrances, adverse claims or other matters:

a. created, suffered, assumed or agreed to by the Insured Claimant;

b. Known to the Insured Claimant, whether or not disclosed in the Public Records;

c. resulting in no loss or damage to the Insured Claimant; or

d. recorded or filed in the Public Records subsequent to the Date of Policy.

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Junior Loan Policy, 2021 v. 01.00 (adopted 04-02-2022).

[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.e.:
Issuing Agent:
Issuing Office:
Issuing Office's ALTA® Registry ID:
Loan ID Number:
Issuing Office File Number:
Property Address:**]**

SCHEDULE

Name and Address of Title Insurance Company:
Policy Number:
Amount of Insurance: $ **[**Premium: $ **]**
Date of Policy: **[**at _____a.m./p.m.**]**

1. The Insured is:

2. Grantee:

3. The Land referred to in this policy is described as follows:

EXCEPTIONS

Some historical land records contain discriminatory covenants that are illegal and unenforceable by law. If a document identified as an Exception or otherwise referred to in this policy contains a provision that, under applicable law, illegally discriminates against a class of individuals based upon personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or any other legally protected class, then that illegal provision is repudiated and not published or republished.

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) resulting from the following matters:

[1. Insert tax exception(s)**]**

[Insert signature block for issuing office**]**

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Junior Loan Policy, 2021 v. 01.00 (adopted 04-02-2022).

CONDITIONS

1. DEFINITIONS OF TERMS
In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:

a. "Affiliate": An Entity:
i. that is wholly owned by the Insured;
ii. that wholly owns the Insured; or
iii. if that Entity and the Insured are both wholly owned by the same person or Entity.

b. "Amount of Insurance": The Amount of Insurance stated in the Schedule, as may be decreased by Condition 10; or increased or decreased by endorsements to this policy.

c. "Consumer Protection Law": Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other
law relating to truth-in-lending, predatory lending, or a borrower's ability to repay a loan.

d. " Date of Policy": The Date of Policy stated in the Schedule.

e. " Entity": A corporation, partnership, trust, limited liability company, or other entity authorized by law to own title to real property in the State where the Land is located.

f. "Government Mortgage Agency or Instrumentality": Any government agency or instrumentality that is the owner of the Indebtedness, an insurer, or a guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness, or any part of it, whether named as an Insured or not.

g. " Grantee: The Grantee identified in the Schedule.

h. "Indebtedness": Any obligation secured by the Identified Mortgage, including an obligation evidenced by electronic means authorized by law. If that obligation is the payment of a debt, the Indebtedness is:

i. the sum of:
(a). principal disbursed as of the Date of Policy;
(b). provided that an NM FORM 47- Endorsement to this Policy is issued, principal disbursed subsequent to the Date of Policy, but only to the extent of the coverage in the NM FORM 47 - Endorsement;

(c). interest on the loan;
(d). expenses of foreclosure and any other costs of enforcement;
(e). advances for insurance premiums;
(f). advances to assure compliance with law or to protect the validity, enforceability, or priority of the lien of the Identified Mortgage before the acquisition of the estate or interest in the Title; including, but not limited to:
(1). real estate taxes and assessments imposed by a governmental taxing authority, and
(2). regular, periodic assessments by a property owners' association; and
(g). advances to prevent deterioration of improvements before the Insured's acquisition of the Title, but

ii. reduced by the sum of all payments and any amounts forgiven by an Insured.

i. "Insured":

i. (a). The Insured named in Item 1 of the Schedule or future owner of the Indebtedness other than an Obligor, if the named Insured or future owner of the Indebtedness owns the Indebtedness, the Title, or an estate or interest in the Land as provided in Condition 2, but only to the extent the named Insured or the future owner either:
(1). owns the Indebtedness for its own account or as a trustee or other fiduciary, or
(2). owns the Title after acquiring the Indebtedness;
(b). the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as defined by applicable electronic transactions law;
(c). the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;
(d). the successor to the Title of an Insured resulting from its conversion to another kind of Entity;
(e). the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is an Affiliate;

(f). an Affiliate that acquires the Title through foreclosure or deed in lieu of foreclosure of the Identified Mortgage; or

(g). any Government Mortgage Agency or Instrumentality.

ii. With regard to Conditions 1.i.i.(a). and 1.i.i.(b)., the Company reserves all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.

iii. With regard to Conditions 1.i.i.(c)., 1.i.i.(d)., 1.i.i.(e)., and 1.i.i.(f)., the Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.

j. “Insured Claimant”: An Insured claiming loss or damage arising under this policy.

k. “Identified Mortgage”: The Mortgage identified in the NM FORM 46 - Endorsement to this policy.

l. “Knowledge” or “Known”: Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.

m. “Land”: The land described in Item 3 of the Schedule and improvements located on that land at the Date of Policy that by State law constitute real property. The term
“Land” does not include any property beyond that described in the Schedule, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway.

n. “Mortgage”: A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.

o. “Monetary Lien”: Any Mortgage, deed of trust, judgment lien or other lien affecting the Title securing the obligation to pay money, but not including any lien created in any easement, covenant, condition, restriction, or declaration of condominium or planned unit development, except to the extent that a separate notice of enforcement of a specific delinquent charge or assessment affecting the Title has been recorded in the Public Records.

p. “Obligor”: A person or Entity that is or becomes a maker, borrower, or guarantor as to all or part of the Indebtedness or other obligation secured by the Identified Mortgage. A Government Mortgage Agency or Instrumentality is not an Obligor.

q. “Public Records”: The recording or filing system established under Section 14-9-1
NMSA 1978, as amended to the Date of Policy, under which a document must be

recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge.

r. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

s. "Title": The estate or interest in the Land purported to be vested in the Grantee.

2. CONTINUATION OF COVERAGE

This policy continues as of the Date of Policy in favor of an Insured after the Insured's acquisition of the Title either through foreclosure or deed in lieu of foreclosure of the lien of the Identified Mortgage. Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy does not continue in force or effect in favor of any person or Entity that is not the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured must notify the Company promptly in writing if the Insured has Knowledge of any litigation or other matter for which the Company may be liable under this policy. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under this policy is reduced to the extent of the prejudice.

4. PROOF OF LOSS

The Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and must state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

a. Upon written request by the Insured and subject to the options contained in Condition 7, the Company, at its own cost and without unreasonable delay, will provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company has the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those covered causes of action. The Company is not liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of any cause of action that alleges matters not insured against by this policy.

b. The Company has the right, in addition to the options contained in Condition 7, at its own cost, to institute and prosecute any action or proceeding or to do any other act that, in its opinion, may be necessary or desirable to prevent or reduce loss or damage

to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it is liable to the Insured. The Company's exercise of these rights is not an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under Condition 5.b., it must do so diligently.

c. When the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court having jurisdiction. The Company reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

a. When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured will secure to the Company the right to prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. When requested by the Company, the Insured, at the Company's expense, must give the Company all reasonable aid in:

i. securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and

ii. any other lawful act that in the opinion of the Company may be necessary or desirable to establish the lien of the Identified Mortgage, as insured.

If the Company is prejudiced by any failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation, regarding the matter requiring such cooperation.

b. The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after the Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant must grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all the records in the custody or control of a third party that reasonably pertain to the loss or damage. No information designated in writing as confidential by the Insured Claimant provided to the Company pursuant to Condition 6 will be later disclosed to others unless, in the reasonable judgment of the Company, disclosure is necessary in the administration of the claim or required by law. Any failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant

permission to secure reasonably necessary information from third parties as required in Condition 6.b., unless prohibited by law, terminates any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company has the following additional options:

a. *To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness*

i. To pay or tender payment of the Amount of Insurance under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

ii. To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay. If the Company purchases the Indebtedness, the Insured must transfer, assign, and convey to the Company the Indebtedness and the Identified Mortgage, together with any collateral security.

Upon the exercise by the Company of either option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.

b. *To Pay or Otherwise Settle with Parties other than the Insured or with the Insured Claimant*

i. To pay or otherwise settle with parties other than the Insured for or in the name of the Insured Claimant. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

ii. To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay. Upon the exercise by the Company of either option provided for in Condition 7.b., the Company's liability and obligations to the Insured under this policy for the claimed

loss or damage terminate, including any obligation to defend, prosecute, or continue any litigation.

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy.

a. The extent of liability of the Company for loss or damage under this policy does not exceed the least of:

i. the Amount of Insurance;

ii. the Indebtedness;

iii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or

iv. if a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Identified Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Identified Mortgage.

b. Fair market value of the Title in Condition 8.a.iii. is calculated using either:

i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Identified Mortgage; or

ii. the date the lien of the Identified Mortgage is finally determined to be subject to a matter insured against by this policy.

c. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.c., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

9. LIMITATION OF LIABILITY

a. The Company fully performs its obligations and is not liable for any loss or damage caused to the Insured if the Company removes the alleged matter insured against by a Covered Risk in this policy. The Company may do so by any method, including litigation and the completion of any appeals.

b. The Company is not liable for loss or damage arising out of any litigation, including litigation by the Company or with the Company's consent, until a State or federal court having jurisdiction makes a final, non-appealable determination adverse to the lien of the Identified Mortgage resulting from a matter insured against by this policy.

c. The Company is not liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

d. An Insured Claimant must own the Indebtedness or have acquired the Title at the time that a claim under this policy is paid.

e. The Company is not liable for the content of the Transaction Identification Data, if any.

10. REDUCTION OR TERMINATION OF INSURANCE

a. All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Amount of Insurance by the amount of the payment.

b. The voluntary satisfaction or release of the Identified Mortgage terminates all liability of the Company, except as provided in Condition 2.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage are determined in accordance with the Conditions, the Company will pay the loss or damage within 30 days.

12. COMPANY'S RECOVERY AND SUBROGATION RIGHTS UPON SETTLEMENT AND
PAYMENT

a. *Company's Right to Recover*

i. If the Company settles and pays a claim under this policy, it is subrogated and entitled to the rights and remedies of the Insured Claimant in the Title or Identified Mortgage and all other rights and remedies of the Insured Claimant in respect to the claim that the Insured Claimant has against any person, entity, or property to the fullest extent permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant must execute documents to transfer these rights and remedies to the Company. The Insured Claimant permits the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Junior Loan Policy, 2021 v. 01.00 (adopted 04-02-2022).

ii. If a payment on account of a claim does not fully cover the loss of the Insured
Claimant, the Company defers the exercise of its subrogation right until after the Insured Claimant fully recovers its loss.

b. *Company's Subrogation Rights against Obligors*

The Company's subrogation right includes the Insured's rights against Obligors including the Insured's rights to repayment under a note, indemnity, guaranty, warranty, insurance policy, or bond, despite any provision in those instruments that addresses recovery or subrogation rights. An Obligor cannot avoid the Company's subrogation right by acquiring the Indebtedness as a result of an indemnity, guaranty, warranty, insurance policy, or bond, or in any other manner. The Obligor is not an Insured under this policy. The Company may not exercise its rights under Condition 12.b. against a Government Mortgage Agency or Instrumentality.

c. *Insured's Rights and Limitations*

i. The owner of the Indebtedness may release or substitute the personal liabilityof any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Identified Mortgage, or release any collateral security for the Indebtedness, if the action does not affect the enforceability or priority of the lien of the Identified Mortgage.

ii. If the Insured exercises a right provided in Condition 12.c.i. but has Knowledge of any matter insured against by this policy, the Company is required to pay only that part of the loss insured against by this policy that exceeds the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's subrogation right.

13. POLICY ENTIRE CONTRACT

a. This policy together with all endorsements, if any, issued by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy will be construed as a whole. This policy and any endorsement to this policy may be evidenced by electronic means authorized by law.

b. Any amendment of this policy must be by a written endorsement issued by theCompany. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this policy, the term or provision of the endorsement controls. Unless the endorsement expressly states, it does not:

i. modify any prior endorsement,

ii. extend the Date of Policy,

iii. insure against loss or damage exceeding the Amount of Insurance, or

iv. increase the Amount of Insurance.

14. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, this policy will be deemed not to include that provision or the part held to be invalid, but all other provisions will remain in full force and effect.

15. CHOICE OF LAW AND CHOICE OF FORUM

a. *Choice of Law*

The Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the State where the Land is located.
The State law of the State where the Land is located, or to the extent it controls, federal law, will determine the validity of claims adverse to the lien of the Identified Mortgage and the interpretation and enforcement of the terms of this policy, without regard to conflicts of law principles to determine the applicable law.

b. *Choice of Forum*

Any litigation or other proceeding brought by the Insured against the Company must be filed only in a State or federal court having jurisdiction.

16. NOTICES

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at:_____ *(fill in)*_____ .

*NOTE: Bracketed **[ ]** material optional*

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Junior Loan Policy, 2021 v. 01.00 (adopted 04-02-2022).

NM FORM 46: JR 1 ENDORSEMENT
This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. This endorsement is subject to the Exclusions from Coverage, the Exceptions contained in the Schedule and the Conditions in the policy.

2. Date of Endorsement**:** _____ [or the date of recording of the Identified Mortgage, whichever is later].

3. The Identified Mortgage means: (*describe the Identified Mortgage*).

4. The Company insures against loss or damage sustained by the Insured by reason of:

a. Any document purporting to vest the Title recorded in the Public Records subsequent to the Date of Policy and on or prior to the Date of Endorsement, except:

[i.
ii..
iii.]

b. Any Monetary Lien other than the Identified Mortgage, recorded in the Public Records subsequent to the Date of Policy and on or prior to the Date of Endorsement except:

[i.
ii..
iii.]

5. If the box is checked, this policy incorporates the NM FORM 47 JR 2 Endorsement: ☐

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause**]**

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA JR 1 Endorsement, 2021 v. 01.00 (adopted 04-02-2022).

NM FORM 47: JR 2 ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. This endorsement is subject to the Exclusions from Coverage, the Exceptions contained in the Schedule and the Conditions in the policy.

2. This endorsement applies if:

a. The Identified Mortgage creates a valid and enforceable lien on the Title;

b. The borrower named in the Identified Mortgage ("Borrower") is the owner of the Title at the date an advance is made pursuant to the note or agreement secured by the Identified Mortgage;

c. The Identified Mortgage secures repayment of future advances; and

d. The policy has been endorsed with an NM FORM 46 JR 1.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. A future advance secured by the Identified Mortgage not having the same priority over a Monetary Lien as the Identified Mortgage, except for the following matters:

i. Ad valorem taxes or assessments;
ii. Federal tax liens;
iii. Environmental protection liens;
iv. Monetary Liens or claims of lien Known to the Insured prior to the date of an advance; or
v. Monetary Liens or claims of lien for services, labor, materials or equipment.

b. The invalidity or unenforceability of the lien of the Identified Mortgage resulting from the provisions of the Identified Mortgage which provide for changes in the rate of interest.

c. Loss of priority of the lien of the Identified Mortgage resulting from changes in the rate of interest calculated in accordance with the formula provided in the Identified Mortgage at the date it is recorded in the Public Records.

4. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, resulting from:

a. The failure of:

Modeled on, but not necessarily identical to, ALTA JR 2 Endorsement Form, 2021 v. 01.00 (adopted 04-02-2022).

i. the Borrower to own the Title;
ii. the Identified Mortgage to create a valid and enforceable lien on the Title;
iii. the Identified Mortgage to have priority, except to the extent expressly provided in Section 3 of this endorsement; or

b. The application of:
i. usury law,
ii. Consumer Protection Law, or
iii. federal bankruptcy, state insolvency, or similar creditors' rights law.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA JR 2 Endorsement Form, 2021 v. 01.00 (adopted 04-02-2022).

NM FORM 49: NOTICE OF AVAILABILITY OF FUTURE INCREASE IN COVERAGE AND POTENTIAL PREMIUM DISCOUNT FOR FUTURE POLICIES

NOTICE OF AVAILABILITY OF FUTURE INCREASE IN COVERAGE AND POTENTIAL PREMIUM DISCOUNTS FOR FUTURE POLICIES

(To be attached to all policies issued on one to four family residential properties)

(Name, Address, and Telephone Number of Agency/Insurer)

A. Notice of Availability of Future Increase in Coverage.

READ THIS NOTICE TO FAMILIARIZE YOURSELF WITH IMPORTANT INFORMATION REGARDING YOUR TITLE INSURANCE COVERAGE

An Owner's Policy may be endorsed to reflect the current value of the estate insured (upon payment of the current basic premium according to the schedule less the amount previously paid for said policy) if the insurer's underwriting standards are met; provided, however, that the effective date of the policy shall remain unchanged and no affirmative coverages or down dates shall be added to the policy.

PLEASE KEEP THIS TITLE INSURANCE POLICY. IT IS AN IMPORTANT LEGAL DOCUMENT. AS YOU REVIEW IT FROM TIME TO TIME, BE AWARE THAT YOU MAY INCREASE YOUR TITLE POLICY AMOUNT IF YOU ADD IMPROVEMENTS, OR IF THE VALUE OF YOUR PROPERTY INCREASES OVER TIME, BY REQUESTING AN INCREASE IN COVERAGE AND PAYING THE APPLICABLE PREMIUMS. THIS WILL NOT CHANGE THE TERMS OF THE POLICY OTHER THAN THE AMOUNT.

B. Notice of Potential Premium Discounts for Future Policies.

YOUR TITLE POLICY IS AN IMPORTANT LEGAL DOCUMENT AND SHOULD BE STORED IN A SAFE, SECURE PLACE. YOUR TITLE POLICY MAY ENTITLE YOU TO VALUABLE DISCOUNTS IN THE FUTURE.

New Mexico title insurance premium rates are set every other year or approved by the New Mexico Superintendent of Insurance. These are the rates that must be charged for title insurance policies, title binders, and title policy endorsements by title insurance companies doing business in New Mexico. The Superintendent of Insurance does not regulate other title company charges.

Subject to limited exception, all premiums for title insurance policies are based on the amount of insurance coverage. Larger policies cost more than smaller policies.

In the future, there may be certain discounts from the standard owner's policy rates available to you, if your transaction meets the requirements for any particular discount. These current discounts are summarized below:

Owner Policy Discounts:

Reissue Discount. If you have an existing owner's policy of title insurance on the property
when you sell your property, then a discount may apply based upon the age of the prior policy and the amount of the prior policy pursuant to 13.4.6.18 NMAC.

Subdivider/Builder Rate. Subject to certain conditions, if you are the seller of multiple lots within the same subdivision, you may be entitled to a 25% discount off the standard owner's policy rate, pursuant to 13.14.6.20 NMAC and 13.14.9.23 NMAC.

Quick Resale Rate. If you purchase an owner's policy within 30 days of the issuance of a prior policy on the same property, the cost of the new policy is 30% of the standard owner's policy rate, pursuant to 13.14.9.32 NMAC.

Loan Policy Discounts:

General Lender Policy Rate. Loan policies are generally 90% of the cost of the full basic rate of the owner's policy, unless one of the discounts available for loan policies applies, pursuant to 13.14.9.22 NMAC.

Simultaneous Issue Rate. If a lender title policy is issued simultaneously with the issuance of an owner's policy, the cost of the lender policy (up to the face amount of the owner's policy) is $100.00, pursuant to 13.14.9.30 NMAC.

Refinance Transactions. If you are refinancing an existing mortgage loan, a discount may apply on the new loan policy, pursuant to 13.14.9.39 NMAC and 59A-30-6.1 NMSA.

Second or Subsequent Mortgages. If you produce an owner's policy of title insurance, you may be entitled to a discount called the "subsequent issue" rate, on future transactions involving second or subsequent mortgages pursuant to 13.14.9.36 NMAC.

ON YOUR NEXT TRANSACTION, ASK YOUR ESCROW OFFICER TO CONFIRM THAT YOU HAVE RECEIVED ANY AND ALL DISCOUNTS TO WHICH YOU ARE ENTITLED UNDER NEW MEXICO'S TITLE INSURANCE LAW AND REGULATIONS.

NM 50: RESTRICTIONS, ENCROACHMENTS, MINERALS — LOAN POLICY ENDORSEMENT

The endorsement is issued as part of
Policy Number_____
Issued by
Blank Title Insurance Company

The Company insures the owner of the Indebtedness secured by the Insured Mortgage against loss or damage sustained by reason of:

1. The existence, at Date of Policy, of any of the following:
   a. Covenants, conditions, or restrictions under which the lien of the Insured Mortgage can be
divested, subordinated, or extinguished, or its validity, priority, or enforceability impaired.
   b. Unless expressly excepted in Schedule B
      i. Present violations on the Land of any enforceable covenants, conditions, or restrictions, and any existing improvements on the land described in Schedule A that violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
      ii. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (A) establishes an easement on the Land, (B) provides a lien for liquidated damages, (C) provides for a private charge or assessment, (D) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant.
      iii. Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.
      iv. Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
      v. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Any future violation on the Land of any existing covenants, conditions, or restrictions occurring prior to the acquisition of title to the estate or interest in the Land by the Insured, provided the violation results in:
   a. the invalidity, loss of priority, or unenforceability of the lien of the Insured Mortgage; or
   b. the loss of Title if the Insured shall acquire Title in satisfaction of the Indebtedness secured by the Insured Mortgage.

3. Damage to existing improvements, including lawns, shrubbery, or trees:

Modeled on, but not necessarily identical to, ALTA Form 9-06 (adopted 06-17-2006).

a. that are located on or encroach upon that portion of the Land subject to any easement excepted
in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;

b. resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvements on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.b.i. and 5, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 9-06 (adopted 06-17-2006).

NM 50.1: RESTRICTIONS, ENCROACHMENTS, MINERALS — LOAN POLICY ENDORSEMENT
This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures the owner of the Indebtedness secured by the Insured Mortgage against loss or damage sustained by reason of:

1. The existence at Date of Policy of any of the following:
   a. Covenants, conditions, or restrictions under which the lien of the Insured Mortgage can be divested, subordinated, or extinguished or its validity, priority, or enforceability impaired.
   b. Unless expressly excepted in Schedule B,
      (i) Present violations on the Land of any enforceable covenants, conditions, or restrictions, or existing improvements on the Land which violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
      (ii) Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (A) establishes an easement on the Land; (B) provides a lien for liquidated damages; (C) provides for a private charge or assessment; (D) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant.
      (iii) Any encroachment of existing improvements located on the Land onto adjoining land or any encroachment onto the Land of existing improvements located on adjoining land.
      (iv) Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
      (v) Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Any future violation on the Land of any existing covenants, conditions, or restrictions occurring prior to the acquisition of Title by the Insured, provided the violation results in
   a. invalidity, loss of priority, or unenforceability of the lien of the Insured Mortgage; or
   b. loss of Title if the Insured shall acquire Title in satisfaction of the Indebtedness.

3. Damage to existing improvements, including lawns, shrubbery, or trees, located or encroaching on that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved..

Modeled on, but not necessarily identical to, ALTA Form 9.3-06 (adopted 06-17-2006).

4. Damage to improvements, including lawns, shrubbery, or trees, located on the Land on or after Date of Policy resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

5. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.

6. Any final court order or judgment denying the right to maintain any existing improvements on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they do not include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.b(i) and 6, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 9.3-06 (adopted 06-17-2006).

NM FORM 51: LAND ABUTS STREET ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land to abut upon a physically open street known as (insert name of street).

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 52: LOCATION ENDORSEMENT

**This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the insured by reason of failure of a (description of improvement), known as (street address), to be located on land at date of policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, the endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 22-06 (adopted 06-17-2006).

NM FORM 54: CONTIGUITY — SINGLE PARCEL ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. the failure of the Land to be contiguous to **[describe the land that is contiguous to the Land by its legal description or by reference to a recorded instrument - e.g. ". . . that certain parcel of real property legally described in the deed recorded as Instrument No. , records of County, State of]** along the _____ boundary line[s]; or

2. the presence of any gaps, strips, or gores separating the contiguous boundary lines described above. This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 19.1-06 (adopted 06-17-2006).

NM FORM 55: NAMED INSURED ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

Paragraph 1(a) of Conditions and Stipulations is deleted and the following paragraph is substituted in its place:

"insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate, partnership or fiduciary successors, and specifically, without limitation, the following:

(i) the successors in interest to a corporation, limited liability company, or limited liability partnership named as an insured in Schedule A resulting from merger, consolidation, conversion, or distribution of the assets of the corporation, limited liability company, or limited liability partnership upon partial or complete liquidation;

(ii) the successors in interest to a general or limited partnership, limited liability company or limited liability partnership named as an insured in Schedule A which dissolves but does not terminate.

(iii) the successors in interest to a general or limited partnership named as an insured in Schedule A resulting from distribution of the assets of the general or limited partnership upon partial or complete liquidation;

(iv) the successors in interest to a joint venture named as an insured in Schedule A resulting from distribution of the assets of the joint venture upon partial or complete liquidation;

(v) the trustee or successor trustee of a written trust instrument established by the insured named in Schedule A for estate planning purposes to whom title is transferred after the policy date;

(vi) the successor or substitute trustee of a trustee named in a written trust instrument established by the insured named in Schedule A for estate planning purposes; or

(vii) the successor in interest to a trustee or trust resulting from distribution to the beneficiaries of the trust of all or part of the assets of the trust established by the insured named in Schedule A for estate planning purposes.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsement, if any, nor does it extend the effective date of the policy and prior endorsements or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 56: RESTRICTIONS, ENCROACHMENTS, MINERALS — OWNER'S POLICY (UNIMPROVED LAND) ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:

a. Present violations on the Land of any enforceable covenants, conditions, or restrictions.

b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.

c. Any encroachment onto the Land of existing improvements located on adjoining land.

d. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Damage to buildings constructed on the Land after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B. Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease. As used in paragraph 1.a., the words "covenants, conditions, or restrictions" do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY
By: _____
[Authorized Signatory]
Modeled on, but not necessarily identical to, ALTA Form 9.1-06 (adopted 06-17-2006).

NM FORM 56.1: RESTRICTIONS, ENCROACHMENTS, MINERALS (OWNER'S POLICY — UNIMPROVED LAND) ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:

a. Present violations on the Land of any enforceable covenants, conditions, or restrictions,

b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.

c. Any encroachment onto the Land of existing improvements located on adjoining land.

d. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Damage to improvements (excluding lawn, shrubbery, or trees) constructed on the Land after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Landor excepted in Schedule B.

Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they do not include the terms, covenants, conditions, or limitations contained in an instrument creating a lease. As used in paragraphs 1.a., the words "covenants, conditions, or restrictions" do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls.

Modeled on, but not necessarily identical to, ALTA Form 9.4-06 (adopted 06-17-2006).

Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 9.4-06 (adopted 06-17-2006).

NM FORM 57: RESTRICTIONS, ENCROACHMENTS, MINERALS — OWNER'S POLICY (IMPROVED LAND) ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:

a. Present violations on the Land of any enforceable covenants, conditions, or restrictions, or any existing improvements on the Land which violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.

c. Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.

d. Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.

e. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Damage to existing buildings

a. That are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;

b. Resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

3. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment, other than fences, landscaping, or driveways, excepted in Schedule B.

4. Any final court order or judgment denying the right to maintain any existing building on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Modeled on, but not necessarily identical to, ALTA Form 9.2-06 (adopted 06-17-2006).

Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.a. and 4, the words "covenants, conditions, or restrictions" do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory

Modeled on, but not necessarily identical to, ALTA Form 9.2-06 (adopted 06-17-2006).

NM FORM 57.1: RESTRICTIONS, ENCROACHMENTS, MINERALS (OWNER'S POLICY — IMPROVED LAND) ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:

a. Present violations on the Land of any enforceable covenants, conditions, or restrictions, or any existing improvements on the Land that violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.

c. Any encroachment of existing improvements located on the Land onto adjoining land or any encroachment onto the Land of existing improvements located on adjoining land.

d. Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.

e. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Damage to existing buildings that are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.

3. Damage to improvements (excluding lawns, shrubbery, or trees) located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment, other than fences, landscaping, or driveways, excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing building on the Land because of any violation of covenants, conditions, or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Modeled on, but not necessarily identical to, ALTA Form 9.5-06 (adopted 06-17-2006).

Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they do not include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.a. and 5, the words "covenants, conditions, or restrictions" do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 9.5-06 (adopted 06-17-2006).

NM FORM 58: FIRST LOSS — MULTIPLE PARCEL TRANSACTION ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

This endorsement is effective only if the Collateral includes at least two parcels of real property.

1. For the purposes of this endorsement:
   a. "Collateral" means all property, including the Land, given as security for the Indebtedness.
   b. "Material Impairment Amount" means the amount by which any matter covered by the policy for which a claim is made diminishes the value of the Collateral below the Indebtedness.

2. In the event of a claim resulting from a matter insured against by the policy, the Company agrees to pay that portion of the Material Impairment Amount that does not exceed the extent of liability imposed by Section 8 of the Conditions without requiring:
   a. maturity of the Indebtedness by acceleration or otherwise,
   b. pursuit by the Insured of its remedies against the Collateral, or
   c. pursuit by the Insured of its remedies under any guaranty, bond or other insurance policy.

3. Nothing in this endorsement shall impair the Company's right of subrogation. However, the Company agrees that its right of subrogation shall be subordinate to the rights and remedies of the Insured. The Company's right of subrogation shall include the right to recover the amount paid to the Insured pursuant to Section 2 of this endorsement from any debtor or guarantor of the Indebtedness, after payment or other satisfaction of the remainder of the Indebtedness and other obligations secured by the lien of the Insured Mortgage. The Company shall have the right to recoup from the Insured Claimant any amount received by it in excess of the Indebtedness up to the amount of the payment under Section 2.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Modeled on, but not necessarily identical to, ALTA Form 20-06 (adopted 06-17-2006).

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 20-06 (adopted 06-17-2006).

NM FORM 60: AGGREGATION — LOAN POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The following policies are issued in conjunction with one another:

POLICY NUMBER:	STATE:	AMOUNT OF INSURANCE:
		$
		$
		$

2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.

3. Subject to the limits in Section 4 of this endorsement, the Aggregate Amount of Insurance under this policy is $ _____.

4. Condition 7.a. is restated in its entirety to read:

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company has the following additional options:

a. *To Pay or Tender Payment of up to the Aggregate Amount of Insurance or to Purchase the Indebtedness*

i. To pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

ii. To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

If the Company purchases the Indebtedness, the Insured must transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Modeled on, but not necessarily identical to, ALTA Form 12, 2021 v. 01.00 (adopted 07-01-2021).

Upon the exercise by the Company of either option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.

5. Condition 8 is restated in its entirety to read:

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy.

a. The extent of liability of the Company for loss or damage under this policy does not exceed the least of:
   i. the Aggregate Amount of Insurance;
   ii. the Indebtedness;
   iii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or
   iv. if a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Insured Mortgage.

b. Fair market value of the Title in Condition 8.a.iii. is calculated using either:
   i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Insured Mortgage; or
   ii. the date the lien of the Insured Mortgage or any assignment set forth in Item 4 of Schedule A is extinguished or rendered unenforceable by reason of a matter insured against by this policy.

c. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.iii.

d. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.c., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

6. Condition 10 is restated in its entirety to read:

10. REDUCTION OR TERMINATION OF INSURANCE

a. All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Aggregate Amount of Insurance by the amount of the payment. However, any payment made by the Company prior to the acquisition of the Title as provided in Condition 2 does not reduce the Aggregate Amount of Insurance afforded under this endorsement, except to the extent that the payment reduces the Indebtedness.

b. When the Title is acquired by the Insured as a result of foreclosure or deed in lieu of foreclosure, the amount credited against the Indebtedness does not reduce the Aggregate Amount of Insurance.

c. The voluntary satisfaction or release of the Insured Mortgage terminates all liability of the Company under this policy, except as provided in Condition 2, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 12, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 60.1: AGGREGATION — STATE LIMITS — LOAN POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The following policies are issued in conjunction with one another:

POLICY NUMBER:	STATE:	AMOUNT OF INSURANCE:
		$
		$
		$

2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.

3. Subject to the limits in Section 4 of this endorsement, the Aggregate Amount of Insurance under this policy is either:

a. $ _____; or

b. If the Land is located in one of the states identified in this subsection, then the Aggregate Amount of Insurance is restricted to the amount shown below:

STATE:	AGGREGATE AMOUNT OF INSURANCE:
	$
	$

4. Condition 7.a. is restated in its entirety to read:

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company has the following additional options:

a. *To Pay or Tender Payment of up to the Aggregate Amount of Insurance or to Purchase the Indebtedness*

i. To pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is

Modeled on, but not necessarily identical to, ALTA Form 12.1, 2021 v. 01.01 (adopted 07-01-2021, technical correction 08-30-2021).

obligated to pay; or

ii. To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

If the Company purchases the Indebtedness, the Insured must transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.

5. Condition 8 is restated in its entirety to read:

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy.

a. The extent of liability of the Company for loss or damage under this policy does not exceed the least of:

i. the Aggregate Amount of Insurance for the State where the Land is located;

ii. the Indebtedness;

iii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or

iv. if a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Insured Mortgage.

b. Fair market value of the Title in Condition 8.a.iii. is calculated using either:

i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Insured Mortgage; or

ii. the date the lien of the Insured Mortgage or any assignment set forth in Item 4 of Schedule A is extinguished or rendered

unenforceable by reason of a matter insured against by this policy.

c. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.iii.

d. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.c., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

6. Condition 10 is restated in its entirety to read:

10. REDUCTION OR TERMINATION OF INSURANCE

a. All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the applicable Aggregate Amount of Insurance by the amount of the payment. However, any payment made by the Company prior to the acquisition of the Title as provided in Condition 2 does not reduce the Aggregate Amount of Insurance afforded under this endorsement, except to the extent that the payment reduces the Indebtedness.

b. If this policy insures the Title to Land located in a state identified in Section 3.b. of this endorsement:

i. all payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Aggregate Amount of Insurance by the amount of the payment; but

ii. a payment made for loss or damage on Land insured in one of the policies identified in Section 1 on Land located outside this state does not reduce the Aggregate Amount of Insurance in Section 3.b. of this endorsement until the Aggregate Amount of Insurance in Section 3.a. is reduced below the Aggregate Amount of Insurance in Section 3.b.

c. When the Title is acquired by the Insured as a result of foreclosure or deed in lieu of foreclosure, the amount credited against the Indebtedness does not reduce the Aggregate Amount of Insurance.

d. The voluntary satisfaction or release of the Insured Mortgage terminates all liability of the Company under this policy, except as provided in Condition 2, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not

(i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 12.1, 2021 v. 01.01 (adopted 07-01-2021, technical correction 08-30-2021).

NM FORM 61: FOUNDATION ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of:

1. The failure of the foundation of the structure under construction on the land to be within the boundary lines of the land as of the date hereof;

2. The location of the foundation as of the date hereof being in violation of the covenants, conditions or restrictions referred to in Schedule B as of the date herein, except
(describe the violation or state “none”).

3. The foundation encroaching as of the date hereof onto any of the easements referred to in Schedule B, except
(describe the encroachment or state “none”).

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 62: ASSIGNMENT OF RENTS / LEASES ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures the insured against loss that the insured shall sustain by reason of:

1. Any defect in the execution of the document entitled _____ referred to in paragraph _____ of part _____ of Schedule____; and

2. The existence, as shown by the public records, of any prior assignment of the lessor's interest in the lease or leases specified in such document, including any assignments of rents thereunder, other than as set forth in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 37-06 (adopted 12-03-2012).

NM FORM 64: ZONING ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement, "Zoning Ordinance" means a zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land at the Date of Policy.

2. The Company insures against loss or damage sustained by the Insured in the event that, at the Date of Policy:

a. According to the Zoning Ordinance, the Land is not classified Zone _____;
b. The following use or uses are not allowed under that classification: _____.

3. There is no liability under this endorsement based on:

a. The lack of compliance with any condition, restriction, or requirement contained in the Zoning Ordinance, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. Section 3.a. does not modify or limit the coverage provided in Covered Risk 5.

b. The invalidity of the Zoning Ordinance until after a final decree of a State or federal court having jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses described in Section 2.b.

c. The refusal of any person to purchase, lease, or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY
By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 3, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 64.1: ZONING — UNIMPROVED LAND — NO APPLICABLE ZONING ORDINANCES ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy, the Land is subject to any applicable zoning ordinance.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 65: ZONING — COMPLETED STRUCTURE ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement, "Zoning Ordinance" means a zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land at the Date of Policy.

2. The Company insures against loss or damage sustained by the Insured in the event that, at the Date of Policy:

a. According to the Zoning Ordinance, the Land is not classified Zone _____;

b. The following use or uses are not allowed under that classification: _____;

c. There is no liability under Section 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the Zoning Ordinance, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. Section 2.c. does not modify or limit the coverage provided in Covered Risk 5.

3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a State or federal court having jurisdiction either prohibiting the use of the Land, with any existing structure, as specified in Section 2.b. or requiring the removal or alteration of the structure because, at the Date of Policy, the Zoning Ordinance has been violated with respect to any of the following matters:

a. The area, width, or depth of the Land as a building site for the structure;
b. The floor space area of the structure;
c. A setback of the structure from the property lines of the Land;
d. The height of the structure; or
e. The number of parking spaces.

4. There is no liability under this endorsement based on:

a. The invalidity of the Zoning Ordinance until after a final decree of a State or federal court having jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses described in Section 2.b.

b. The refusal of any person to purchase, lease, or lend money on the Title covered by this policy.

Modeled on, but not necessarily identical to, ALTA Form 3.1, 2021 v. 01.00 (adopted 07-01-2021).

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 3.1, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 65.1: 3.2 ZONING — LAND UNDER DEVELOPMENT ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement:

a. "Improvement": A building, structure, road, walkway, driveway, curb, subsurface utility, or water well existing at the Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.

b. "Plans": Those site and elevation plans made by **[***name of architect or engineer***]**
dated ____, last revised _____, designated as **[***name of project***]**
consisting of ___sheets.

c. "Zoning Ordinance": A zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land at the Date of Policy.

2. The Company insures against loss or damage sustained by the Insured in the event that, at the Date of Policy:

a. According to the Zoning Ordinance, the Land is not classified Zone _____;

b. The following use or uses are not allowed under that classification: _____;

c. There is no liability under Section 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the Zoning Ordinance, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. Section 2.c. does not modify or limit the coverage provided in Covered Risk 5.

3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a State or federal court having jurisdiction either prohibiting the use of the Land, with any Improvement, as specified in Section 2.b. or requiring the removal or alteration of the Improvement because, at the Date of Policy, the Zoning Ordinance has been violated with respect to any of the following matters:

a. The area, width, or depth of the Land as a building site for the Improvement;

b. The floor space area of the Improvement;

c. A setback of the Improvement from the property lines of the Land;

d. The height of the Improvement; or

e. The number of parking spaces.

Modeled on, but not necessarily identical to, ALTA Form 3.2, 2021 v. 01.00 (adopted 07-01-2021).

4. There is no liability under this endorsement based on:

a. The invalidity of the Zoning Ordinance until after a final decree of a State or federal court having jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses described in Section 2.b.

b. The refusal of any person to purchase, lease, or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 3.2, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 65.2: ZONING — COMPLETED STRUCTURE — NO APPLICABLE ZONING ORDINANCES ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy, the Land is subject to any applicable zoning ordinance.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 66: CONTIGUITY — MULTIPLE PARCELS ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by Insured by reason of;

1. The failure [of the_____ boundary line of Parcel A] of land to be contiguous to [the _____ boundary line of Parcel B] **[For more than two parcels, continue as follows:"; of [the _____ boundary line of Parcel B] of the Land to be contiguous to [the _____ boundary line of Parcel C] and so on until all contiguous parcels described in the policy have been accounted for.]; or**

2. The presence of any gaps, strips, or gores separating any of the contiguous boundary lines described above.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 19-06 (adopted 06-17-2006).

NM FORM 67: ACCESS AND ENTRY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage sustained by the insured if, at date of policy: (i) the land does not abut and have both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the "street"), (ii) the street is not physically open and publicly maintained, or (iii) the insured has no right to use existing curb cuts or entries along that portion of the street abutting the land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of policy, or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 17-06 (adopted 06-17-2006).

NM FORM 68: INDIRECT ACCESS AND ENTRY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured if, at Date of Policy, (i) the easement identified in Schedule A (the "Easement") does not provide that portion of the Land identified in Schedule A both actual vehicular and pedestrian access to and from (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Easement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 17.1-06 (adopted 06-17-2006).

NM FORM 69: UTILITY ACCESS ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services:
_____ Water service _____ Natural gas service _____ Telephone service
_____ Electrical power service _____ Sanitary sewer _____ Storm water drainage
either over, under or upon rights-of-way or easements for the benefit of the Land because of:

(1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;
(2) a gap between the boundaries of the rights-of-way or easements ; or
(3) a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 17.2-06 (adopted 06-17-2006).

NM FORM 70: COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 8.2-06 (adopted 10-16-2008).

NM FORM 71: FUTURE ADVANCE — REVERSE MORTGAGE ENDORSEMENT
This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 3 and 4 of this endorsement is subject to the exclusions in Section 5 of this endorsement and the Exclusions from Coverage in the policy (except Exclusion 3.d.), the Conditions, and the exceptions from coverage contained in Schedule B.

2. The following terms when used in this endorsement mean:

a. "Advance": Only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure; amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title; and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

b. "Agreement": The note or loan agreement, the repayment of Advances under which is secured by the Insured Mortgage.

c. "Changes in the Rate of Interest": Only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at the Date of Policy.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.

b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.

c. The invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances, and unpaid interest resulting from:

i. re-Advances and repayments of Indebtedness;

ii. earlier periods of no indebtedness owing during the term of the Insured Mortgage;

iii. the Insured Mortgage not complying with the requirements of State law of the State in which the Land is located to secure Advances;

iv. failure of the Insured Mortgage to state the term for Advances; or

v. failure of the Insured Mortgage to state the maximum amount secured by the Insured Mortgage.

Modeled on, but not necessarily identical to, ALTA Form 14.3, 2021 v. 01.00 (adopted 07-01-2021).

d. The invalidity or unenforceability of the lien of the Insured Mortgage because of the failure of the mortgagor to be at least 62 years of age at the Date of Policy.

4. The Company further insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for:

i. interest on interest;

ii. Changes in the Rate of Interest; or

iii. the addition of unpaid interest to the principal of the Indebtedness.

b. The lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by:

i. Changes in the Rate of Interest;

ii. interest on interest; or

iii. increases in the principal of the Indebtedness resulting from the addition of unpaid interest. As used in Section 4, “interest” includes lawful interest based on appreciated value.

5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:

a. The invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for any Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor;

b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after the Date of Policy;

c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of:

i. Knowledge of the Insured that a federal tax lien was filed against the mortgagor; or

ii. the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);

d. Any federal or state environmental protection lien**[**; or**]**

e. Any usury law or Consumer Protection Law**[**; or

f. Any mechanic’s or materialman’s lien**]**.

6. The Indebtedness includes Advances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a

provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 14.3, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 72: SINGLE TAX PARCEL ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 18-06 (adopted 06-17-2006).

NM FORM 73: MULTIPLE TAX PARCEL — EASEMENTS ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel: Tax Identification Numbers:

2. the easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes, assessments or other charges imposed on the servient estate by a governmental authority.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 18.1-06 (adopted 06-17-2006).

NM FORM 74: DOING BUSINESS ENDORSEMENT

**This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage on the ground that making the loan secured by the Insured Mortgage constituted a violation of the "doing - business" laws of the State where the Land is located because of the failure of the Insured to qualify to do business under those laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 24-06 (adopted 10-16-2008).

NM FORM 75: SUBDIVISION ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the State subdivision statutes and the subdivision ordinances of the county or municipality of the State applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 26, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 76: EASEMENT — DAMAGE OR ENFORCED REMOVAL ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

(1) damage to an existing building located on the Land, or

(2) enforced removal or alteration of an existing building located on the Land, as a result of the exercise of the right of use or maintenance of the easement referred to in Exception_____ of Schedule B for the purpose for which it was granted or reserved.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 28-06 (adopted 10-16-2008).

NM FORM 77: CO-INSURANCE — SINGLE POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

Attached to and made a part of Company ("Issuing Co-Insurer") Policy No. ("Co-Insurance Policy"). Issuing Co-Insurer and any other coinsurers are collectively referred to as "Co-Insurers."

1. Co-Insurer issues this endorsement as evidence of Co-Insurer's liability under Co-Insurance Policy and directs that this endorsement be attached to the Co-Insurance Policy adopting its Covered Risks, Exclusions, Conditions, Schedules and Endorsements, as follows:

Co-insuring Companies	**Name and Address**	**Policy Number [File Number]**	**Amount of Insurance**	**Percentage of Liability**
Issuing Co-Insurer				
Co-Insurer				
Co-Insurer				
Co-Insurer				
Aggregate Amount of Insurance				

2. Each Co-Insurer shall be liable to the Insured under the Co-insurance Policy only for the total of the loss and costs multiplied by its Proportion of Liability.

3. Any notice of claim and any other notice or statement in writing required to be given under the Co-Insurance Policy must be given to Co-Insurer at its address set forth above.

4. Any endorsement to the Co-Insurance Policy issued after the date of this Co-Insurance Endorsement must be signed on behalf of the Co-Insurer by its authorized officer or agent.

5. This Co-Insurance Endorsement is effective as of the Date of Policy of the Co-Insurance Policy. This Co-Insurance Endorsement may be executed in counterparts.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Modeled on, but not necessarily identical to, ALTA Form 23-06 (adopted 10-16-2008).

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 23-06 (adopted 10-16-2008).

NM FORM 78: SAME AS SURVEY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified as that identified on the survey made by:
_____dated _____,and designated Job No. _____.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 25-06 (adopted 10-16-2008).

NM FORM 79: SAME AS PORTION OF SURVEY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified as [Example: Parcel A, B, C or Parcel 1, 2,3] on the survey made by: _____,dated _____,and designated Job No. _____.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 25.1-06 (adopted 10-18-2008).

NM FORM 80: MORTGAGE MODIFICATION ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title at the Date of Endorsement as a result of the agreement dated _____, recorded _____ ("Modification"); and

b. The lack of priority of the lien of the Insured Mortgage, at the Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: ***[****Drafting Instruction: Specify exceptions, if any****]***

2. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the Modification being a:

a. fraudulent conveyance or fraudulent transfer;
b. voidable transfer under the Uniform Voidable Transactions Act; or
c. preferential transfer to the extent the Modification is not a transfer made as a contemporaneous exchange for new value or for any other reason unless the preferential transfer results solely from the failure:
    i. to timely record the Modification in the Public Records after execution and delivery of the Modification to the Insured; or
    ii. of the recording of the Modification in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

Modeled on, but not necessarily identical to, ALTA Form 11, 2021 v. 01.00 (adopted 07-01-2021).

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 11, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 80.1: MORTGAGE MODIFICATION WITH SUBORDINATION

ENDORSEMENT
This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title at the Date of Endorsement as a result of the agreement dated _____, recorded _____ ("Modification"); and

b. The lack of priority of the lien of the Insured Mortgage, at the Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: ***[****Drafting Instruction: Specify exceptions, if any****]***

c. The following matters not being subordinate to the lien of the Insured Mortgage: ***[****Drafting Instruction: Specify subordinate matters, if any****]***

2. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the Modification being a:

a. fraudulent conveyance or fraudulent transfer;

b. voidable transfer under the Uniform Voidable Transactions Act; or

c. preferential transfer to the extent the Modification is not a transfer made as a contemporaneous exchange for new value or for any other reason, unless the preferential transfer results solely from the failure:

i. to timely record the Modification in the Public Records after execution and delivery of the Modification to the Insured; or

ii. of the recording of the Modification in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Modeled on, but not necessarily identical to, ALTA Form 11.1, 2021 v. 01.00 (adopted 07-01-2021).

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 11.1, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 80.2: MORTGAGE MODIFICATION WITH ADDITIONAL AMOUNT OF INSURANCE ENDORSEMENT
This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement only:

a. "Modification": The agreement between _____ and _____ dated _____ **[**and recorded _____ as document number _____**]**.

b. "Date of Endorsement": _____.

2. The Amount of Insurance is increased to $_____.

3. Subject to the exclusions in Section**[**s**]** 4**[** and 5**]** of this endorsement, the Exclusions from Coverage, the Exceptions contained in Schedule B, and the Conditions contained in the policy, and any exclusion or exception in any prior endorsement, the Company insures as of the Date of Endorsement against loss or damage sustained by the Insured by reason of any of the following:

a. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title as a result of the Modification;

b. The lack of priority of the lien of the Insured Mortgage over defects in or liens or encumbrances on the Title, except: ***[****Drafting Instruction: Specify additional exceptions, if any****];***

c. The failure of the following matters to be subordinate to the lien of the Insured Mortgage: ***[****Drafting Instruction: Specify matters to be insured as subordinate, if any****].***

4. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the Modification being a:

a. fraudulent conveyance or fraudulent transfer;

b. voidable transfer under the Uniform Voidable Transactions Act; or

c. preferential transfer to the extent the Modification is not a transfer made as a contemporaneous exchange for new value or for any other reason unless the preferential transfer results solely from the failure:

i. to timely record the Modification in the Public Records after execution and delivery of the Modification to the Insured; or

ii. of the recording of the Modification in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

[5. This endorsement does not insure against loss or damage, and the Company will

Modeled on, but not necessarily identical to, ALTA Form 11.2, 2021 v. 01.00 (adopted 07-01-2021).

not pay costs, attorneys' fees, or expenses, by reason of the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage because all applicable mortgage recording or similar intangible taxes were not paid at time of recording of the Modification**]**.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY
By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 11.2, 2021 v. 01.00 (adopted 07-01-2021).

NM FORM 81: CLOSING PROTECTION LETTER

SINGLE TRANSACTION
Issued by
BLANK TITLE INSURANCE COMPANY

"Addressee":

"Date":

"Issuing Agent" or "Approved Attorney":
[Issuing Office:
Issuing Office's ALTA® Registry ID:**]**

"Real Estate Transaction":
[Seller:
Buyer:
Property Address:
Loan Number:**]**

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, **[***Blank Title Insurance Company***]** (the "Company"), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of the Real Estate Transaction conducted by the Issuing Agent or Approved Attorney on or after the Date of this letter, subject to the Requirements and Conditions and Exclusions set forth below:

REQUIREMENTS

1. The Company issues or is contractually obligated to issue a Policy for Your protection in connection with the Real Estate Transaction;

2. You are to be a:
a. lender secured by the Insured Mortgage on the Title to the Land; or
b. purchaser or lessee of the Title to the Land;

3. The aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed $_____; and

Modeled on, but not necessarily identical to, ALTA Closing Protection Letter — Single Transaction (adopted 04-02-2021).

4. Your loss is solely caused by:

a. a failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions that relate to:

i. (a). the disbursement of Funds necessary to establish the status of the Title to the Land; or

(b). the validity, enforceability, or priority of the lien of the Insured Mortgage; or

ii. obtaining any document, specifically required by You, but only to the extent that the failure to obtain the document adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land; or

b. fraud, theft, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

CONDITIONS AND EXCLUSIONS

1. Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney for the Real Estate Transaction constitutes Your acceptance of this letter.

2. For purposes of this letter:

a. “Commitment” means the Company’s written contractual agreement to issue the Policy.

b. “Funds” means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.

c. “Policy” means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.

d. “You” or “Your” means:

i. the Addressee of this letter;

ii. the borrower, if the Land is improved solely by a one-to-four family residence; and

iii. subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,

(a). the assignee of the Insured Mortgage, provided such assignment
was for value and the assignee was, at the time of the assignment,
without Knowledge of facts that reveal a claim under this letter; and

(b). the warehouse lender in connection with the Insured Mortgage.

e. "Indebtedness," "Insured Mortgage," "Knowledge" or "Known," "Land," and "Title" have the same meaning given them in the American Land Title Association Loan Policy.

3. The Company is not liable under this letter for any loss arising from any:

a. failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection in connection with the Real Estate Transaction inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent or Approved Attorney after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment will not be deemed to require inconsistent title insurance protection;

b. loss or impairment of Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit Your Funds in a bank that You designated by name;

c. constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. Condition and Exclusion 3.c. does not modify or limit Your coverage, if any, as to any lien for services, labor, materials, or equipment in the Policy;

d. defect, lien, encumbrance, adverse claim, or other matter in connection with the Real Estate Transaction. Condition and Exclusion 3.d. does not modify or limit Your coverage in the Policy;

e. fraud, theft, dishonesty, misappropriation, or negligence by You or by Your employee, agent, attorney, or broker;

f. fraud, theft, dishonesty, or misappropriation by anyone other than the Company, Issuing Agent, or Approved Attorney;

g. settlement or release of any claim by You without the Company's written consent;

h. matters created, suffered, assumed, agreed to, or Known by You;

i. failure of the Issuing Agent or Approved Attorney to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. Condition and Exclusion 3.i. does not modify or limit Your coverage in the Policy;

Modeled on, but not necessarily identical to, ALTA Closing Protection Letter — Single Transaction (adopted 04-02-2021).

j. Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other law relating to truth-in-lending, predatory lending, or a borrower's ability to repay a loan, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;

k. federal or state laws establishing the standards or requirements for assetbacked securitization including, but not limited to, exemption from credit risk retention, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;

l. periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land;

m. Issuing Agent or Approved Attorney acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code; or

n. wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email, or document production system, business email compromise, identity theft, or diversion of Funds to a person or account not entitled to receive the Funds. Condition and Exclusion 3.n. does not modify or limit:

i. Your coverage in the Policy; or

ii. indemnification in this letter for Your loss solely caused by fraud, theft, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

4. If the closing is to be conducted by an Approved Attorney, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.

5. When the Company indemnifies You pursuant to this letter, it is subrogated to all rights and remedies You have against any person, entity, or property had You not been indemnified. The Company's liability for indemnification is reduced to the extent that You have impaired the value of this subrogation right.

6. The Company's liability for loss under this letter does not exceed the least of:

a. the amount of Your Funds;

b. the Company's liability under the Policy at the time written notice of a claim is made under this letter;

c. the value of the lien of the Insured Mortgage;

d. the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter; or

e. the amount stated in Requirement 3.

7. The Company is liable only to the owner of the Indebtedness at the time that payment is made. Condition and Exclusion 7 does not apply to a purchaser, borrower, or lessee.

8. Payment to You or to the owner of the Indebtedness under either the Policy or from any other source reduces liability under this letter by the same amount. Payment in accordance with the terms of this letter constitutes a payment pursuant to the Conditions of the Policy.

9. The Issuing Agent is the Company's agent only for the limited purpose of issuing policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. The Company is not liable for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

10. The Company is not liable for a loss if the written notice of a claim is not received by the Company within one year from the date of the transmittal of Funds. The condition that the Company must be provided with written notice under Condition and Exclusion 10 will not be excused by lack of prejudice to the Company.

11. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____. If the Company is prejudiced by Your failure to provide prompt notice, the Company's liability to You under this letter is reduced to the extent of the prejudice.

12. When requested by the Company, You, at the Company's expense, must:

a. give the Company all reasonable aid in:

i. securing evidence, obtaining witnesses, prosecuting or defending any action or proceeding, or effecting any settlement; and

ii. any other lawful act that in the opinion of the Company may be necessary or desirable to enable the Company's investigation and determination of its liability under this letter;

b. deliver to the Company all records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and

c. submit to examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.

13. The Company is not liable under this letter if:
a. the Real Estate Transaction has not closed within one year from the Date of this letter; or
b. at any time after the Date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.

14. The protection of this letter extends only to real estate in **[***State***]**, and any court or arbitrator must apply the law of that state to interpret and enforce the terms of this letter. The court or arbitrator must not apply conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having jurisdiction.

This letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction and may not be modified by the Issuing Agent or Approved Attorney.

[Witness clause optional]

[DATE]

BLANK TITLE INSURANCE COMPANY

By:_____
[Authorized Signatory]

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)

Modeled on, but not necessarily identical to, ALTA Closing Protection Letter — Single Transaction (adopted 04-02-2021).

NM FORM 81.1: CLOSING PROTECTION LETTER
MULTIPLE TRANSACTIONS
Issued by
BLANK TITLE INSURANCE COMPANY

"Addressee":

"Date":

"Issuing Agent" or "Approved Attorney":
[Issuing Office:
Issuing Office's ALTA® Registry ID:**]**

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, **[***Blank Title Insurance Company***]** (the "Company"), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of any real estate transaction (the "Real Estate Transaction") conducted by the Issuing Agent or Approved Attorney on or after the Date of this letter, subject to the Requirements and Conditions and Exclusions set forth below:

REQUIREMENTS

1. The Company issues or is contractually obligated to issue a Policy for Your protection in connection with the Real Estate Transaction;

2. You are to be a lender secured by the Insured Mortgage on the Title to the Land;

3. The aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed $_____; and

4. Your loss is solely caused by:

a. a failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions that relate to:
   i. (a). the disbursement of Funds necessary to establish the status of the Title to the Land; or
      (b). the validity, enforceability, or priority of the lien of the Insured Mortgage; or
   ii. obtaining any document, specifically required by You, but only to the extent that the failure to obtain the document adversely affects the

Modeled on, but not necessarily identical to, ALTA Closing Protection Letter — Multiple Transactions, (adopted 04-02-2021).

status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land; or

b. fraud, theft, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

CONDITIONS AND EXCLUSIONS

1. Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney for the Real Estate Transaction constitutes Your acceptance of this letter.

2. For purposes of this letter:

a. "Commitment" means the Company's written contractual agreement to issue the Policy.

b. "Funds" means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.

c. "Policy" means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.

d. "You" or "Your" means:

i. the Addressee of this letter;

ii. the borrower, if the Land is improved solely by a one-to-four family residence; and

iii. subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,

(a). the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the assignment, without Knowledge of facts that reveal a claim under this letter; and

(b). the warehouse lender in connection with the Insured Mortgage.

e. "Indebtedness," "Insured Mortgage," "Knowledge" or "Known," "Land," and "Title" have the same meaning given them in the American Land Title Association Loan Policy.

3. The Company is not liable under this letter for any loss arising from any:

a. failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection in connection with the Real Estate Transaction inconsistent with that set forth in the Commitment. Your

written closing instructions received and accepted by the Issuing Agent or Approved Attorney after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment will not be deemed to require inconsistent title insurance protection;

b. loss or impairment of Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit Your Funds in a bank that You designated by name;

c. constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. Condition and Exclusion 3.c. does not modify or limit Your coverage, if any, as to any lien for services, labor, materials, or equipment in the Policy;

d. defect, lien, encumbrance, adverse claim, or other matter in connection with the Real Estate Transaction. Condition and Exclusion 3.d. does not modify or limit Your coverage in the Policy;

e. fraud, theft, dishonesty, misappropriation, or negligence by You or by Your employee, agent, attorney, or broker;

f. fraud, theft, dishonesty, or misappropriation by anyone other than the Company, Issuing Agent, or Approved Attorney;

g. settlement or release of any claim by You without the Company's written consent;

h. matters created, suffered, assumed, agreed to, or Known by You;

i. failure of the Issuing Agent or Approved Attorney to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. Condition and Exclusion 3.i. does not modify or limit Your coverage in the Policy;

j. Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other law relating to truth-in-lending, predatory lending, or a borrower's ability to repay a loan, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;

k. federal or state laws establishing the standards or requirements for assetbacked securitization including, but not limited to, exemption from credit risk retention, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;

l. periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land;

Modeled on, but not necessarily identical to, ALTA Closing Protection Letter — Multiple Transactions, (adopted 04-02-2021).

m. Issuing Agent or Approved Attorney acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code; or

n. wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email, or document production system, business email compromise, identity theft, or diversion of Funds to a person or account not entitled to receive the Funds. Condition and Exclusion 3.n. does not modify or limit:

i. Your coverage in the Policy; or

ii. indemnification in this letter for Your loss solely caused by fraud, theft, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

4. If the closing is to be conducted by an Approved Attorney, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.

5. When the Company indemnifies You pursuant to this letter, it is subrogated to all rights and remedies You have against any person, entity, or property had You not been indemnified. The Company's liability for indemnification is reduced to the extent that You have impaired the value of this subrogation right.

6. The Company's liability for loss under this letter does not exceed the least of:

a. the amount of Your Funds;

b. the Company's liability under the Policy at the time written notice of a claim is made under this letter;

c. the value of the lien of the Insured Mortgage;

d. the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter; or

e. the amount stated in Requirement 3.

7. The Company is liable only to the owner of the Indebtedness at the time that payment is made. Condition and Exclusion 7 does not apply to a purchaser, borrower, or lessee.

8. Payment to You or to the owner of the Indebtedness under either the Policy or from any other source reduces liability under this letter by the same amount. Payment in accordance with the terms of this letter constitutes a payment pursuant to the

Conditions of the Policy.

9. The Issuing Agent is the Company's agent only for the limited purpose of issuing policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. The Company is not liable for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

10. The Company is not liable for a loss if the written notice of a claim is not received by the Company within one year from the date of the transmittal of Funds. The condition that the Company must be provided with written notice under Condition and Exclusion 10 will not be excused by lack of prejudice to the Company.

11. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____. If the Company is prejudiced by Your failure to provide prompt notice, the Company's liability to You under this letter is reduced to the extent of the prejudice.

12. When requested by the Company, You, at the Company's expense, must:

a. give the Company all reasonable aid in:

i. securing evidence, obtaining witnesses, prosecuting or defending any action or proceeding, or effecting any settlement; and

ii. any other lawful act that in the opinion of the Company may be necessary
or desirable to enable the Company's investigation and determination of its liability under this letter;

b. deliver to the Company all records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and

c. submit to examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.

13. The Company is not liable under this letter if:

a. the Real Estate Transaction has not closed within one year from the Date of this letter; or

b. at any time after the Date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.

Modeled on, but not necessarily identical to, ALTA Closing Protection Letter — Multiple Transactions, (adopted 04-02-2021).

14. The protection of this letter extends only to real estate in **[***State***]**, and any court or arbitrator must apply the law of that state to interpret and enforce the terms of this letter. The court or arbitrator must not apply conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having jurisdiction.

This letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction and may not be modified by the Issuing Agent or Approved Attorney.

BLANK TITLE INSURANCE COMPANY

By:_____
[Authorized Signatory]

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)

Modeled on, but not necessarily identical to, ALTA Closing Protection Letter — Multiple Transactions, (adopted 04-02-2021).

NM FORM 83: CONSTRUCTION LOAN ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11.a. of this policy is deleted.

2. The insurance **[**for Construction Loan Advances**]** added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

a. "Construction Loan Advance": An advance that constitutes Indebtedness made on or before the Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

b. "Date of Coverage": _____[Drafting Instructions: Insert a specific date], unless the Company sets a different Date of Coverage by a NM FORM 84 Disbursement Endorsement issued at the discretion of the Company.

c. "Mechanic's Lien": Any statutory lien or claim of lien under State law, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and

c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials, or equipment for which the Mechanic's Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before the Date of Coverage.

4. This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses by reason of any lien or claim of lien arising from services, labor, material, or equipment:

a. Furnished after the Date of Coverage; or

Modeled on, but not necessarily identical to, ALTA Form 32, 2021 v. 01.01 (adopted 07-01-2021, technical correction 09-27-2021).

b. Not designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before the Date of Coverage.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 32, 2021 v. 01.01 (adopted 07-01-2021, technical correction 09-27-2021).

NM FORM 83.1: CONSTRUCTION LOAN — DIRECT PAYMENT ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11.a. of this policy is deleted.

2. The insurance **[**for Construction Loan Advances**]** added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

a. "Construction Loan Advance:" An advance that constitutes Indebtedness made on or before the Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

b. "Date of Coverage": _____[Drafting Instructions: Insert a specific date], unless the Company sets a different Date of Coverage by a NM FORM 84 Disbursement Endorsement issued at the discretion of the Company.

c. "Mechanic's Lien": Any statutory lien or claim of lien under State law, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and

c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials, or equipment for which the Mechanic's Lien is claimed has been made by the Company or by the Insured with the Company's written approval.

4. This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses by reason of any lien or claim of lien arising from services, labor, material, or equipment:

a. Furnished after the Date of Coverage; or

b. To the extent that the Mechanic's Lien claimant was not directly paid by the

Modeled on, but not necessarily identical to, ALTA Form 32.1, 2021 v. 01.01 (adopted 07-01-2021, technical correction 09-27-2021).

Company or by the Insured with the Company's written approval.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 32.1, 2021 v. 01.01 (adopted 07-01-2021, technical correction 09-27-2021).

NM FORM 83.2: CONSTRUCTION LOAN — INSURED'S DIRECT PAYMENT ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. Covered Risk 11.a. of this policy is deleted.

2. The insurance **[**for Construction Loan Advances**]** added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

a. "Construction Loan Advance": An advance that constitutes Indebtedness made on or before the Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

b. "Date of Coverage": _____ *[Drafting Instructions: Insert Specific Date]* unless the Company sets a different Date of Coverage by a FORM 84 Disbursement Endorsement issued at the discretion of the Company. M

c. "Mechanic's Lien": Any statutory lien or claim of lien under State law, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and

c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials, or equipment for which the Mechanic's Lien is claimed has been made by the Insured or on the Insured's behalf on or before the Date of Coverage.

4. This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses by reason of any lien or claim of lien arising from services, labor, materials, or equipment:

a. Furnished after the Date of Coverage; or

Modeled on, but not necessarily identical to, ALTA Form 32.2, 2021 v. 01.01 (adopted 07-01-2021, technical correction 09-27-2021).

b. To the extent that the Mechanic's Lien claimant was not directly paid by the Insured or on the Insured's behalf.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 32.2, 2021 v. 01.01 (adopted 07-01-2021, technical correction 09-27-2021).

NM FORM 84: DISBURSEMENT ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The Date of Coverage is amended to _____.
   a. The current disbursement is: $_____.
   b. The aggregate amount, including the current disbursement, recognized by the Company as disbursed by the Insured is: $_____.

2. Schedule A is amended as follows:

3. Schedule B is amended as follows:

[Part I]

[Part II]

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 33-06 (adopted 06-17-2006).

NM FORM 85: IDENTIFIED RISK ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement "Identified Risk" means: [insert description of the title defect, restriction encumbrance or other matter] described in Exception _____ of Schedule B;

2. The Company insures against loss or damage sustained by the Insured by reason of
   a. A final order or decree enforcing the Identified Risk in favor of an adverse party; or
   b. The release of a prospective purchaser or lessee of the Title or lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk, but only if
      i. there is a contractual condition requiring the delivery of marketable title, and
      ii. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement

3. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.

4. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk, but if the Company does establish the Title free of the identified Risk or removes it, Section 9(a) of the Conditions applies.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY
By: _____
[Authorized Signatory]

NM FORM 86: POLICY AUTHENTICATION ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, the Company has caused this endorsement to be issued and become valid when signed by an authorized officer or licensed agent of the Company.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 39-06 (adopted 06-17-2006).

NM FORM 88: ENERGY PROJECT — LEASEHOLD/EASEMENT OWNER'S POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.
b. "Easement" means each easement described in Schedule A.
c. "Easement Interest" means the right of use granted in the Easement for the Easement Term.
d. "Easement Term" means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.
e. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion,transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
f. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.

Modeled on, but not necessarily identical to, ALTA Form 36-06 (adopted 04-02-2012).

g. "Lease" means each lease described in Schedule A.

h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.

i. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by *(insert name of architect or engineer)* dated___, last revised, designated as *(insert name of project or project number)* consisting of____ sheets.

k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.

l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent

damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.

c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or sub easement grantees on account of the breach of any lease or sublease or easement or sub easement specifically permitted by the Lease or the Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

Modeled on, but not necessarily identical to, ALTA Form 36-06 (adopted 04-02-2012).

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 36-06 (adopted 04-02-2012).

NM FORM 88.1: ENERGY PROJECT — LEASEHOLD/EASEMENT — LOAN POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.
b. "Easement" means each easement described in Schedule A.
c. "Easement Interest" means the right of use granted in the Easement for the Easement Term.
d. "Easement Term" means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.
e. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
f. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.

Modeled on, but not necessarily identical to, ALTA Form 36.1-06 (adopted 04-02-2012).

g. "Lease" means each lease described in Schedule A.
h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
i. " Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated ___, last revised ___designated as (insert name of project or project number) consisting of ____ sheets.
k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.
l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
m. "Tenant" means the tenant under the Lease or a grantee under the Easement, as applicable, and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.
b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.
c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured

against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

Modeled on, but not necessarily identical to, ALTA Form 36.1-06 (adopted 04-02-2012).

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.

c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or sub easement grantees on account of the breach of any lease or sublease or easement or sub easement specifically permitted by the Lease or the Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 36.1-06 (adopted 04-02-2012).

NM FORM 88.2: ENERGY PROJECT — LEASEHOLD — OWNER'S POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.

b. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

d. "Lease" means each lease described in Schedule A.

e. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.

f. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

Modeled on, but not necessarily identical to, ALTA Form 36.2-06 (adopted 04-02-2012).

g. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last revised ,designated as (insert name of project or project number) consisting of sheets.

h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.

i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any

Modeled on, but not necessarily identical to, ALTA Form 36.2-06 (adopted 04-02-2012).

Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent or damages that, by the terms of the Lease , the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.

Modeled on, but not necessarily identical to, ALTA Form 36.2-06 (adopted 04-02-2012).

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 36.2-06 (adopted 04-02-2012).

NM FORM 88.3: ENERGY PROJECT — LEASEHOLD — LOAN POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the Policy.

2. For purposes of this endorsement only:

a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.

b. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

d. "Lease" means each lease described in Schedule A.

e. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.

f. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

g. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last

Modeled on, but not necessarily identical to, ALTA Form 36.3-06 (adopted 04-02-2012).

revised ,designated as (insert name of project or project number)
consisting of sheets.

h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.

i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

j. "Tenant" means the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title

determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent or damages that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 36.3-06 (adopted 04-02-2012).

NM FORM 88.4: ENERGY PROJECT — COVENANTS, CONDITIONS AND RESTRICTIONS — LAND UNDER DEVELOPMENT — OWNER'S POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

b. "Electricity Facility" means an electricity generating facility that may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last revised , designated as (insert name of project or project number) consisting of sheets.

d. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. The Company insures against loss or damage sustained by the Insured by reason of:

Modeled on, but not necessarily identical to, ALTA Form 36.4-06 (adopted 04-02-2012).

a. A violation of an enforceable Covenant by any Electricity Facility or Severable Improvement, unless an exception in Schedule B of the policy identifies the violation;

b. Enforced removal of any Electricity Facility or Severable Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or

c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection, describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

a. any Covenant contained in an instrument creating a lease or easement;

b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

c. except as provided in Section 3.c., any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 36.4-06 (adopted 04-02-2012).

NM FORM 88.5: ENERGY PROJECT — COVENANTS, CONDITIONS AND RESTRICTIONS — LAND UNDER DEVELOPMENT — LOAN ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4
of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. “Covenant” means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

b. “Electricity Facility” means an electricity generating facility that may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last revised ,designated as (insert name of project or project number) consisting of sheets.

d. ”Severable Improvement” means property affixed to the Land at Date of Policy or
to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. A violation of a Covenant that:

Modeled on, but not necessarily identical to, ALTA Form 36.5-06 (adopted 04-02-2012).

i. divests, subordinates, or extinguishes the lien of the Insured Mortgage;

ii. results in the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage; or

iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness.

b. A violation of an enforceable Covenant by any Electricity Facility or Severable Improvement, unless an exception in Schedule B of the policy identifies the violation;

c. Enforced removal of any Electricity Facility or Severable Improvement, as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or

d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection, describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

a. any Covenant contained in an instrument creating a lease or easement;

b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

c. except as provided in Section 3.d., any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 36.5-06 (adopted 04-02-2012).

NM FORM 88.6: ENERGY PROJECT — ENCROACHMENTS ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Electricity Facility" means an electricity generating facility that may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

b. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last revised, designated as (insert name of project or project number) consisting of sheets.

c. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. The Company insures against loss or damage sustained by the Insured reason of:
a. An encroachment of any Electricity Facility or Severable Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an exception in Schedule B of the policy identifies the encroachment;

Modeled on, but not necessarily identical to, ALTA Form 36.6-06 (adopted 04-02-2012).

b. An encroachment of an improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;

c. Enforced removal of any Electricity Facility or Severable Improvement, as a result of an encroachment by the Electricity Facility or Severable Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Electricity Facility or Severable Improvement;

d. Damage to any Electricity Facility or Severable Improvement that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved ; or

e. he coverage of Sections 3.c. and 3.d. shall not apply to the encroachments listed in Exception(s) of Schedule B.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from contamination, explosion, fire, vibration, fracturing, earthquake or subsidence.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 36.6-06 (adopted 04-02-2012).

NM FORM 88.7: ENERGY PROJECT — FEE ESTATE — OWNER'S POLICY ENDORSEMENT

**This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY**

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

(a) "Constituent Parcel" means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.

(b) "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

(c) "Ejected" or "Ejection" means (i) the lawful divestment, in whole or in part, of the Title to the Land or (ii) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in either case as a result of a matter covered by this policy.

(d) "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by *(insert name of architect or engineer)* dated , last revised, designated as *(insert name of project or project number)* consisting of sheets.

(e) "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of

Modeled on, but not necessarily identical to, ALTA Form 36.7-06 (adopted 04-02-2012).

attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. aluation of Title as an integrated project:

(a) If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Insured is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.

(b) A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.

(c) The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.

(d) The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

(a) In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by the salvage value of the Severable Improvement.

(b) The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to: (i) the attachment, perfection or priority of any security interest in any Severable Improvement; (ii) the vesting or ownership of title to or rights in any Severable Improvement; (iii) any defect in or lien or encumbrance on the title to any Severable Improvement; or (iv) the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

Modeled on, but not necessarily identical to, ALTA Form 36.7-06 (adopted 04-02-2012).

If the Insured is Ejected, the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

(a) The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.

(b) Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.

(c) The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.

(d) Damages caused by the Ejection that the Insured is obligated to pay to lessees
or easement grantees on account of the breach of any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.

(e) The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the Ejection.

(f) If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage, or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

Modeled on, but not necessarily identical to, ALTA Form 36.7-06 (adopted 04-02-2012).

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 36.7-06 (adopted 04-02-2012).

NM FORM 88.8: ENERGY PROJECT — FEE ESTATE — LOAN POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

(a) "Constituent Parcel" means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.

(b) "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale, or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

(c) "Ejected" or "Ejection" means (a) the lawful divestment, in whole or in part, of the Title to the Land or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in either case as a result of a matter covered by this policy.

(d) "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by *(insert name of architect or engineer)* dated , last revised , designated as *(insert name of project or project number)* consisting of sheets.

(e) "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law

Modeled on, but not necessarily identical to, ALTA Form 36.8-06 (adopted 04-02-2012).

does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

(f) "Vestee" means the party in which the Title is vested as stated in Schedule A and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an integrated project:

(a) If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Vestee is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.

(b) A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.

(c) The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.

(d) The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

(a) In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by the salvage value of the Severable Improvement.

(b) The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to: (i) the attachment, perfection, or priority of any security interest in any Severable Improvement; (ii) the vesting or ownership of title to or rights in any Severable Improvement; (iii) any defect in or lien or encumbrance on the title to any Severable Improvement;

or (iv) the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:
If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Ejected, the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

(a) The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.

(b) Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.

(c) The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.

(d) Damages caused by the Ejection that the Insured is obligated to pay to lessees or easement grantees on account of the breach of any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.

(e) The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services, and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the Ejection.

(f) If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services,

environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage, or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 36.8-06 (adopted 04-02-2012).

NM FORM 89: MEZZANINE FINANCING ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The Mezzanine Lender is: _____ and each successor in ownership of its loan ("Mezzanine Loan") reserving, however, all rights and defenses as to any successor that the Company would have had against the Mezzanine Lender, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by this policy as affecting Title.

2. The Insured
a. assigns to the Mezzanine Lender the right to receive any amounts otherwise payable to the Insured under this policy, not to exceed the outstanding indebtedness under the Mezzanine Lender; and
b. agrees that no amendment of or endorsement to this policy can be made without the written consent of the Mezzanine Lender.

3. The Company does not waive any defenses that it may have against the Insured, except as expressly stated in this endorsement.

4. In the event of a loss under the policy, the Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b) or (e) to refuse payment to the Mezzanine Lender solely by reason of the action or inaction or Knowledge, as of Date of Policy, of the Insured, provided

a. the Mezzanine Lender had no Knowledge of the defect, lien, encumbrance or other matter creating or causing loss on Date of Policy.
b. this limitation on the application of Exclusions from Coverage 3(a), (b) and (e) shall
    i. apply whether or not the Mezzanine Lender has acquired an interest (direct or indirect) in the Insured either on or after Date of Policy, and
    ii. benefit the Mezzanine Lender only without benefiting any other individual or entity that holds an interest (direct or indirect) in the Insured or the Land.

Modeled on, but not necessarily identical to, ALTA Form 16-06 (adopted 06-17-2006).

5. In the event of a loss under the Policy, the Company also agrees that it will not deny liability to the Mezzanine Lender on the ground that any or all of the ownership interests (direct or indirect) in the Insured have been transferred to or acquired by the Mezzanine Lender, either on or after the Date of Policy.

6. The Mezzanine Lender acknowledges

a. that the Amount of Insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is hereafter executed by an Insured and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment under this policy; and

b. that the Company shall have the right to insure mortgages or other conveyances of an interest in the Land, without the consent of the Mezzanine Lender.

7. If the Insured, the Mezzanine Lender or others have conflicting claims to all or part of the loss payable under the Policy, the Company may interplead the amount of the loss into Court. The Insured and the Mezzanine Lender shall be jointly and severally liable for the Company's reasonable cost for the interpleader and subsequent proceedings, including attorneys' fees. The Company shall be entitled to payment of the sums for which the Insured and Mezzanine Lender are liable under the preceding sentence from the funds deposited into Court, and it may apply to the Court for their payment.

8. Whenever the Company has settled a claim and paid the Mezzanine Lender pursuant to this endorsement, the Company shall be subrogated and entitled to all rights and remedies that the Mezzanine Lender may have against any person or property arising from the Mezzanine Loan. However, the Company agrees with the Mezzanine Lender that it shall only exercise these rights, or any right of the Company to indemnification, against the Insured, the Mezzanine Loan borrower, or any guarantors of the Mezzanine Loan after the Mezzanine Lender has recovered its principal, interest, and costs of collection.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Modeled on, but not necessarily identical to, ALTA Form 16-06 (adopted 06-17-2006).

AGREED AND CONSENTED TO:

(Insert name of Insured) *(Insert name of Mezzanine Lender)*

By:_____ By:_____

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Form 16-06 (adopted 06-17-2006).

NM FORM 90: RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY
Issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature. Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Condition 16.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS, and provided that the Land is improved with an existing one-to-four family residence or residential condominium unit, **[**Blank Title Insurance Company**]**, a **[**Blank**]** corporation (the "Company"), insures as of the Date of Policy against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured solely by reason of the Modification resulting in either:

1. The invalidity or unenforceability of the lien of the Identified Mortgage upon the Title at the Date of Policy.

2. The loss of priority of the lien of the Identified Mortgage, at the Date of Policy, over any lien or encumbrance on the Title that has been created, attached, filed or recorded in the Public Records subsequent to the date the Identified Mortgage was recorded in the Public Records.

DEFENSE OF COVERED CLAIMS

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

[Witness clause**]**

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Mortgage Modification Policy, 2021 v. 01.00 (adopted 07-01-2021, revised 04-02-2022).

EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. Any invalidity, unenforceability, or lack of priority of the Identified Mortgage or the Modification. Exclusion 1 does not modify or limit the coverage provided under the Covered Risks.

2. The status or ownership of the Title.

3. Any defect, lien, encumbrance, adverse claim, or other matter:
- a. created, suffered, assumed, or agreed to by the Insured Claimant;
- b. Known to the Insured Claimant whether or not disclosed in the Public Records;
- c. resulting in no loss or damage to the Insured Claimant;
- d. not recorded or filed in the Public Records at the Date of Policy; or
- e. attaching or created subsequent to the Date of Policy.

4. Any usury or Consumer Protection Law.

5. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction creating the Modification is a:
- a. fraudulent conveyance or fraudulent transfer;
- b. voidable transfer under the Uniform Voidable Transactions Act; or
- c. preferential transfer.

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Mortgage Modification Policy, 2021 v. 01.00 (adopted 07-01-2021, revised 04-02-2022).

[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.f.:

Issuing Agent:
Issuing Office:
Issuing Office's ALTA® Registry ID:
Loan ID Number:
Issuing Office File Number:
Property Address:**]**

SCHEDULE

Name and Address of Title Insurance Company:
Policy Number:
Amount of Insurance: $ **[**Premium: $_____**]**

Date of Policy: **[**at a.m./p.m.]

1. The Insured is:

2. The Identified Mortgage is described as follows:

3. The Modification is described as follows:

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Mortgage Modification Policy, 2021 v. 01.00 (adopted 07-01-2021, revised 04-02-2022).

CONDITIONS

1. DEFINITION OF TERMS

In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:

a. "Affiliate": An Entity:

i. that is wholly owned by the Insured;

ii. that wholly owns the Insured; or

iii. if that Entity and the Insured are both wholly owned by the same person or Entity.

b. "Amount of Insurance": The Amount of Insurance stated in the Schedule, as may be decreased by Condition 10.

c. "Consumer Protection Law": Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other law relating to truth-in-lending, predatory lending, or a borrower's ability to repay a loan.

d. "Date of Policy": The Date of Policy stated in the Schedule.

e. "Entity": A corporation, partnership, trust, limited liability company, or other entity authorized by law to own title to real property in the State where the Land is located.

f. "Government Mortgage Agency or Instrumentality": Any government agency or instrumentality that is the owner of the Indebtedness, an insurer, or a guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness, or any part of it, whether named as an Insured or not.

g. "Identified Mortgage": The Mortgage described in Item 2 of the Schedule.

h. "Indebtedness": Any obligation secured by the Identified Mortgage as modified by the Modification, including an obligation evidenced by electronic means authorized by law. If that obligation is the payment of a debt, the Indebtedness is:

i. the sum of:

(a). principal disbursed as of the Date of Policy;

(b). interest on the loan;

(c). expenses of foreclosure and any other costs of enforcement;

(d). advances for insurance premiums;

(e). advances to assure compliance with law or to protect the validity, enforceability, or priority of the lien of the Identified Mortgage before the acquisition of the estate or interest in the Title; including, but not limited to:

(1). real estate taxes and assessments imposed by a governmental taxing authority, and

(2). regular, periodic assessments by a property owners' association; and

(f). advances to prevent deterioration of improvements before the Insured's acquisition of the Title, but ii. reduced by the sum of all payments and any amounts forgiven by an Insured.

i. "Insured":

i. (a). The Insured named in Item 1 of the Schedule or future owner of the Indebtedness other than an Obligor, if the named Insured or future owner of the Indebtedness owns the Indebtedness, the Title, or an estate or interest in the Land as provided in Condition 2, but only to the extent the named Insured or the future owner either:

(1). owns the Indebtedness for its own account or as a trustee or other fiduciary, or

(2). owns the Title after acquiring the Indebtedness;

(b). the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as defined by applicable electronic transactions law;

(c). the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;

(d). the successor to the Title of an Insured resulting from its conversion to another kind of Entity;

(e). the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is an Affiliate;

(f). an Affiliate that acquires the Title through foreclosure or deed-in-lieu of foreclosure of the Identified Mortgage; or

(g). any Government Mortgage Agency or Instrumentality.

ii. With regard to Conditions 1.i.i.(a). and 1.i.i.(b)., the Company reserves all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.

iii. With regard to Conditions 1.i.i.(c)., 1.i.i.(d)., 1.i.i.(e)., and 1.i.i.(f)., the Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.

j. "Insured Claimant": An Insured claiming loss or damage arising under this policy.

k. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.

l. "Land": The land described in the Identified Mortgage and improvements located on that land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond that described in the Identified Mortgage, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway.

m. "Modification": The Modification described in Item 3 of the Schedule.

n. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Mortgage Modification Policy, 2021 v. 01.00 (adopted 07-01-2021, revised 04-02-2022).

o. "Obligor": A person or Entity that is or becomes a maker, borrower, or guarantor as to all or part of the Indebtedness or other obligation secured by the Identified Mortgage. A Government Mortgage Agency or Instrumentality is not an Obligor.

p. "Public Records": *The recording or filing system established under Section 14-9-1 NMSA 1978, as amended to the Date of Policy, under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge.*

q. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

r. "Title": The estate or interest in the Land purported to be encumbered by the Identified Mortgage.

2. CONTINUATION OF COVERAGE

This policy continues as of the Date of Policy in favor of an Insured after the Insured's acquisition of the Title through either foreclosure or deed in lieu of foreclosure of the Identified Mortgage. Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy does not continue in force or effect in favor of any person or Entity that is not the Insured and acquires the Title or an obligation secured by a purchase money mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured must notify the Company promptly in writing if the Insured has Knowledge of any litigation or other matter for which the Company may be liable under this policy. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under this policy is reduced to the extent of the prejudice.

4. PROOF OF LOSS

The Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and must state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

a. Upon written request by the Insured, and subject to the options contained in Condition 7, the Company, at its own cost and without unreasonable delay, will provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company has the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to

represent the Insured as to those covered causes of action. The Company is not liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of any cause of action that alleges matters not insured against by this policy.

b. The Company has the right, in addition to the options contained in Condition 7, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the lien of the Identified Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it is liable to the Insured. The Company's exercise of these rights is not an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under Condition 5.b., it must do so diligently.

c. When the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court having jurisdiction. The Company reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

a. When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured will secure to the Company the right to prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. When requested by the Company, the Insured, at the Company's expense, must give the Company all reasonable aid in:

i. securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and

ii. any other lawful act that in the opinion of the Company may be necessary or desirable to establish the lien of the Identified Mortgage, as insured. If the Company is prejudiced by any failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation, regarding the matter requiring such cooperation.

b. The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after the Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant must grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all the records in the custody or control of a third

party that reasonably pertain to the loss or damage. No information designated in writing as confidential by the Insured Claimant provided to the Company pursuant to Condition 6 will be later disclosed to others unless, in the reasonable judgment of the Company, disclosure is necessary in the administration of the claim or required by law. Any failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in Condition 6.b., unless prohibited by law, terminates any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company has the following additional options:

a. *To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness*

i. To pay or tender payment of the Amount of Insurance under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

ii. To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay. If the Company purchases the Indebtedness, the Insured must transfer, assign, and convey to the Company the Indebtedness and the Identified Mortgage, together with any collateral security. Upon the exercise by the Company of either option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.

b. *To Pay or Otherwise Settle with Parties other than the Insured or with the Insured Claimant*

i. To pay or otherwise settle with parties other than the Insured for or in the name of the Insured Claimant. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

ii. To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Modeled on, but not necessarily identical to, ALTA Residential Limited Coverage Mortgage Modification Policy, 2021 v. 01.00 (adopted 07-01-2021, revised 04-02-2022).

Upon the exercise by the Company of either option provided for in Condition 7.b., the Company's liability and obligations to the Insured under this policy for the claimed loss or damage terminate, including any obligation to defend, prosecute, or continue any litigation.

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY
This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy.

a. The extent of liability of the Company for loss or damage under this policy does not exceed the least of:

i. the Amount of Insurance;

ii. the Indebtedness;

iii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or

iv. if a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Identified Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Identified Mortgage.

b. Fair market value of the Title in Condition 8.a.iii. is calculated using either:

i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Identified Mortgage; or

ii. the date the lien of the Identified Mortgage is finally determined, as set forth in Condition 9.b., to have been rendered invalid, unenforceable, or to have lost priority by reason of the Modification.

c. In addition to the extent of liability for loss or damage under Condition 8.a., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

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9. LIMITATION OF LIABILITY

a. The Company fully performs its obligations and is not liable for any loss or damage caused to the Insured if the Company accomplishes any of the following in a reasonable manner:

i. removes the alleged defect, lien, encumbrance, adverse claim, or other matter; or

ii. establishes the lien of the Identified Mortgage,

all as insured. The Company may do so by any method, including litigation and the completion of any appeals.

b. The Company is not liable for loss or damage arising out of any litigation, including litigation by the Company or with the Company's consent, until a State or federal court having jurisdiction makes a final, non-appealable determination adverse to the lien of the Identified Mortgage, as insured.

c. The Company is not liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

d. The Company is not liable under this policy for any indirect, special, or consequential damages.

e. An Insured Claimant must own the Indebtedness or have acquired the Title at the time that a claim under this policy is paid.

f. The Company is not liable for the content of the Transaction Identification Data, if any.

10. REDUCTION OR TERMINATION OF INSURANCE

a. All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Amount of Insurance by the amount of the payment.

b. The voluntary satisfaction or release of the Identified Mortgage terminates all liability of the Company, except as provided in Condition 2.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage are determined in accordance with the Conditions, the Company will pay the loss or damage within 30 days.

12. COMPANY'S RECOVERY AND SUBROGATION RIGHTS UPON SETTLEMENT AND PAYMENT

a. *Company's Right to Recover*

i. If the Company settles and pays a claim under this policy, it is subrogated and entitled to the rights and remedies of the Insured Claimant in the Title or Identified Mortgage and all other rights and remedies of the Insured Claimant in respect to the claim that the Insured Claimant has against any person, entity, or property to the fullest extent permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant must execute documents to transfer these rights and remedies to the Company. The Insured Claimant permits the

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Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

ii. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company defers the exercise of its subrogation right until after the Insured Claimant fully recovers its loss.

b. *Company's Subrogation Rights against Obligors*

The Company's subrogation right includes the Insured's rights against Obligors including the Insured's rights to repayment under a note, indemnity, guaranty, warranty, insurance policy, or bond, despite any provision in those instruments that addresses recovery or subrogation rights. An Obligor cannot avoid the Company's subrogation right by acquiring the Indebtedness as a result of an indemnity, guaranty, warranty, insurance policy, or bond, or in any other manner. The Obligor is not an Insured under this policy. The Company may not exercise its rights under Condition 12.b. against a Government Mortgage Agency or Instrumentality.

c. *Insured's Rights and Limitations*

i. The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Identified Mortgage, or release any collateral security for the Indebtedness, if the action does not affect the enforceability or priority of the lien of the Identified Mortgage.

ii. If the Insured exercises a right provided in Condition 12.c.i. but has Knowledge of any claim adverse to the Title or the lien of the Identified Mortgage insured against by this policy, the Company is required to pay only that part of the loss insured against by this policy that exceeds the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's subrogation right.

13. POLICY ENTIRE CONTRACT

a. This policy together with all endorsements, if any, issued by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy will be construed as a whole. This policy and any endorsement to this policy may be evidenced by electronic means authorized by law.

b. Any amendment of this policy must be by a written endorsement issued by the Company. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this policy, the term or provision of the endorsement controls. Unless the endorsement expressly states, it does not:

i. modify any prior endorsement;

ii. extend the Date of Policy;

iii. insure against loss or damage exceeding the Amount of Insurance; or

iv. increase the Amount of Insurance.

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14. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, this policy will be deemed not to include that provision or the part held to be invalid, but all other provisions will remain in full force and effect.

15. CHOICE OF LAW AND CHOICE OF FORUM

a. *Choice of Law*

The Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the State where the Land is located.

The State law of the State where the Land is located, or to the extent it controls, federal law, will determine the validity of claims against the Title or the lien of the Identified Mortgage and the interpretation and enforcement of the terms of this policy, without regard to conflicts of law principles to determine the applicable law.

b. *Choice of Forum*

Any litigation or other proceeding brought by the Insured against the Company must be filed only in a State or federal court having jurisdiction.

16. NOTICES

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at: _____ *(fill in)* _____.

*NOTE: Bracketed **[ ]** material optional*

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NM FORM 91: CONTRACT PURCHASER CONVERSION ENDORSEMENT

This endorsement is issued as part of
Policy Number_____
Issued by
BLANK TITLE INSURANCE COMPANY

Attached to and made a part of NM 1 Owner's Policy No.: ____("Policy"):

1. Schedule A of the Policy is hereby amended as follows:
   A. Date of Policy: _____
   B. Amount of Insurance: $_____
   C. The estate or interest in the land which is covered by this Policy is Fee Simple and title to said estate or interest is vested in the Insured.

2. Schedule B of the policy is hereby amended by adding or deleting the following additional special exceptions as follows:
   A. [Add or delete exceptions here, or if none, add the word "NONE"]
   B. _____

3. The Policy as modified by this Conversion Endorsement consists of the NM form 1 Owner's Policy jacket including the Covered Risks, Exclusions from Coverage and Conditions, this Owner's Contract Purchaser's Conversion Endorsement, Schedules A and B of the Policy as modified by this Conversion Endorsement, and the following Endorsement(s): [List additional owner's endorsements here, or if none, add the word "NONE"]

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

2024 New Mexico Register

Submittal Deadlines and Publication Dates

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Issue	Submittal Deadline	Publication Date
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Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	February 29	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 7
Issue 10	May 9	May 21
Issue 11	May 23	June 11
Issue 12	June 13	June 25
Issue 13	July 8	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 8
Issue 20	October 10	October 22
Issue 21	October 24	November 5
Issue 22	November 7	November 19
Issue 23	November 26	December 10
Issue 24	December 12	December 23

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