



State of New Mexico Health Care Authority



I. DEPARTMENT

NEW MEXICO HEALTH CARE AUTHORITY

II. SUBJECT

8.139.520.10 NMAC-SOCIAL SERVICES-FOOD STAMP PROGRAM-ELIGIBILITY
POLICY – INCOME AND DEDUCTIONS- COUNTING INCOME

III. PROGRAM AFFECTED

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM-(SNAP)

IV. ACTION

PROPOSED RULE

V. BACKGROUND SUMMARY

The Health Care Authority (HCA) through Income Support Division (ISD) is promulgating regulations for the Supplemental Nutrition Assistance Program (SNAP) under the Food Stamp Program. HCA administers the SNAP program and has the authority to promulgate regulations, and is governed by Chapter 9, Article 8, NMSA (Repl. 1983). Amendments to section 10 of 8.139.520 NMAC are being proposed to gain compliance with Code of Federal Regulations (CFR) 7 CFR 273.11(c)(3)(i).

Section 10 of 8.139.520 NMAC is being updated to reflect that the allowable expenses shall be counted as a pro rata basis, when this occurs, and how to calculate the expense.

Subsection C. (5)(b)(iii): The allowable expense(s) either billed to or paid by the ineligible non-citizen shall be counted on a pro rata basis to the remaining eligible household members. The prorated share is calculated by dividing the expense(s) evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable expense(s).

Subsection C. (5)(c)(iii): The allowable expense(s) either billed to or paid by the ineligible non-citizen shall be counted on a pro rata basis to the remaining eligible household members. The prorated share is calculated by dividing the expense(s) evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable expense(s).

No other sections of 8.139.520 are under review at this time.

Concise Explanatory Statement:

Regulations issued pursuant to the act are contained in 7 CFR 270-282. The rule will be amended under the statutory authority of the food stamp program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011- 2036). State Authority for administering the food stamp programs are 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).

VI. RULES

The register and rule language are available on the HCA website at: <https://www.hca.nm.gov/lookingforinformation/income-support-division-registers-2/> . If you do not have internet access, a copy of the final register and rules may be requested by contacting HCA Office of the Secretary at (505) 827-7750.

VII. PUBLICATION DATE

April 22, 2025

VIII. EFFECTIVE DATE

The Authority is proposing to implement these rules effective August 1, 2025.

IX. PUBLIC HEARING

A hybrid public hearing to receive testimony on this proposed rule will be held, pursuant to Section 14-4-5.6 NMSA 1978, on Thursday, May 29, 2025, at 11:00 a.m. to 12:00 p.m. You may join in person, virtually, or by phone.

You may join in person at:

HCA Administrative Services (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505.

You may join virtually from your computer, tablet or smartphone:

Microsoft Teams

Join the meeting now

Meeting ID: 222 687 599 930

Passcode: aZ734Vp7

You may join by phone:

+1 505-312-4308# United States, Albuquerque

Find a local number

Phone conference ID: 448121174

The register and rule language are available on the HCA website at:

<https://www.hca.nm.gov/lookingforinformation/income-support-division-registers-2/> .

If you do not have internet access, a copy of the final register and rules may be requested by contacting HCA Office of the Secretary at (505) 827-7750.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HCA public hearing, program, or service, please contact the American Disabilities Act Coordinator, at Office-505-709-5468, Fax-505-827-6286 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide the requested alternative formats and special accommodations.

Written comment may be dropped off during the scheduled hearing time at the HCA Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505 if the individual wishes to provide written comment during the scheduled hearing. All written comments will be posted on the agency website within 3 days of receipt.

Individuals wishing to testify may contact the Income Support Division (ISD), P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling (505) 629-8725.

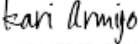
Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, Thursday, May 29, 2025. Please send comments to:

Income Support Division
P.O. Box 2348
Santa Fe, NM 87504-2348

Recorded comments may be left at (505) 629-8725. You may send comments electronically to: HCA-isdrules@hca.nm.gov. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

XI. PUBLICATIONS

Publication of these proposed amendments approved on 3/13/2025 by:

DocuSigned by:

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KARI ARMIJO, SECRETARY
HEALTH CARE AUTHORITY

This is an amendment to 8.139.520 NMAC Section 10 Effective 8/1/2025

8.139.520.10 COUNTING INCOME:

A. Income averaging:

(1) **Optional income averaging:** Income received by a household may be averaged at the household's option (See 8.139.500.10 NMAC) except as specified below.

(2) **Mandatory income averaging:** Averaging is mandatory for income received under the following circumstances:

- (a) contract or self/employment income;
- (b) educational monies.

B. Rounding off: Calculations shall be rounded to the nearest dollar. Figures between one cent and forty/nine cents are rounded down; figures between 50 cents and 99 cents are rounded up. When adding gross amounts received weekly, biweekly or semi/monthly to arrive at the monthly income, cents are retained until the total monthly amount is determined; the total monthly amount is rounded as the final step. Cents resulting from the computation of the twenty percent earned income deduction are rounded before being subtracted from earned income. Cents are retained in the computation of shelter and medical expenses until the final step.

C. Ineligible or disqualified household members: An ineligible or disqualified household member shall not be included when:

- (1) determining the maximum food stamp benefit amount for the household's size;
- (2) comparing the household's monthly income with the income eligibility standards; or
- (3) comparing the household's resources with the resource eligibility limits.

(4) **Intentional program violation (IPV) or work disqualified:**

(a) The income and resources of individuals disqualified for IPV or noncompliance with E&T work requirements shall be counted in their entirety.

(b) A household's allowable deductions for earned income, medical expenses, dependent care expenses, excess shelter expenses, and the standard deduction continue to apply to the remaining household members.

(c) HSD shall make sure that a household's food stamp benefit amount is not increased as a result of the disqualification of one or more members.

(5) **Ineligible ~~alien~~ non-citizen or SSN disqualified:**

(a) **Resources:** Resources of ineligible ~~aliens~~ non-citizen, or individuals disqualified for failure or refusal to apply for or provide a social security number, shall be counted in their entirety.

(b) **Income and deductions of ineligible ~~aliens~~ non-citizen:**

(i) Income belonging to the ineligible ~~alien~~ non-citizen shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the ineligible ~~alien's~~ non-citizen's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

(ii) The twenty percent earned income deduction is applied to the countable income attributed to the remaining eligible household members.

(iii) ~~[The allowable expense(s) either billed to or paid by the ineligible alien shall be allowed in its entirety as a household expense.]~~ The allowable expense(s) either billed to or paid by the ineligible non-citizen shall be counted on a pro rata basis to the remaining eligible household members. The prorated share is calculated by dividing the expense(s) evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable expense(s).

(c) **Income and deductions for ABAWD or SSN disqualified individuals:**

(i) Income belonging to an individual disqualified because of ABAWD status or failure or refusal to provide a social security number shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the disqualified member's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

(ii) The twenty percent earned income deduction is applied to the countable income attributed to the remaining household members.

(iii) ~~[The portion an allowable expense either paid by or billed to a disqualified individual(s) is divided evenly among all household members, including the disqualified individual(s).]~~

~~All but the disqualified individual's share is counted as a deductible expense for the remaining household members.] The allowable expense(s) either billed to or paid by the ineligible non-citizen shall be counted on a pro rata basis to the remaining eligible household members. The prorated share is calculated by dividing the expense(s) evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable expense(s).~~

(6) **Reduction/termination during certification period:** When an individual is excluded or disqualified during the certification period, the caseworker shall determine the eligibility of the remaining household members based on information already in the case record.

(7) **Excluded for IPV disqualification:** If a household's benefits are reduced or terminated during the certification period because one of its members was disqualified for an IPV, the caseworker shall notify the remaining household members of changes in eligibility and food stamp benefit amount at the same time the excluded member is notified of the disqualification. The household is not entitled to an adverse action notice but may request a fair hearing to contest the reduction or termination of benefits, unless it has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing.

(8) **Excluded for other causes:** If a household's benefits are reduced or terminated during the certification period because one or more of its members is an ineligible ~~alien~~ non-citizen, is disqualified for failure to comply with E&T work requirements, disqualified for failing or refusing to apply for or provide a social security number, the caseworker shall issue an adverse action notice informing the household of the individual's ineligibility, the reason for the ineligibility, the eligibility and benefit amount of the remaining member(s), and the actions the household must take to end the disqualification.

D. Non-household members:

(1) **Income and resources:** The income and resources of non-household members, such as certain students, roomers, and boarders, are not considered available. Cash payments from a non-household member to the household shall be counted as income (Subsection E of 8.139.520.8 NMAC). Vendor payments (Subsection D of 8.139.520.9 NMAC) shall be excluded as income.

(2) **Deductible expenses:** If a household shares deductible expenses with a non-household member, only the amount actually paid or contributed by the household is deductible as an expense. If the payments or contributions cannot be differentiated, the expenses shall be divided evenly among individuals actually paying or contributing to the expense; only the household's pro rata share is deducted.

(3) **Combined income of household/non-household members:** When the earned income of one or more household members and the earned income of a non-household member are combined as one wage, the income for the household shall be determined as follows.

(a) If the household's share can be identified, it is counted as earned income.

(b) If the household's share cannot be identified, the caseworker shall divide the earned income among all those whom it was intended to cover and count a prorated share to the household.

E. Self/employed household: The following guidelines shall be used to determine eligibility and food stamp benefit amount for self/employed households, including those households that own or operate commercial boarding houses.

(1) **Averaging self/employment income:**

(a) **Annualizing:**

(i) Households which by contract or self/employment derive their annual income in a period of time shorter than one year shall have income averaged over a 12 month period, provided that the income from the contract is not received on an hourly or piecework basis.

(ii) Annualizing shall not apply to seasonal or migrant farm workers.

(iii) Self/employment income representing a household's annual income shall be averaged over a 12 month period, even if the income is received within only a short period of time.

(iv) The self/employment income shall be annualized even if the household receives income from other sources in addition to self/employment.

(v) Self/employed households include, but are not limited to, school employees, sharecroppers, and farmers. Tenured teachers who may not actually have a signed contract shall have their income considered on this basis.

(vi) For self/employed households that receive their annual income in a short period of time, an initial certification period is assigned to bring the household into the annual cycle.

(vii) Households which receive their annual income from self/employment and have no other source of income may be certified for up to 12 months.

(b) Anticipated income:

(i) If the average annualized amount or self/employment income received on a monthly basis does not accurately reflect a household's actual circumstances because it has experienced a substantial increase or decrease in business, self/employment income shall be calculated on anticipated earnings.

(ii) Income shall not be calculated based on previous income (e.g., income tax returns) if a self/employed household has experienced a substantial increase or decrease in business.

(c) Projected income: If a household's self/employment enterprise has been in existence for less than one year, the income from self/employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year. If the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household shall be certified for short periods of time until the business has been in operation long enough to make a longer projection.

(d) Seasonal income: Self/employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

(2) Determining monthly self/employment income:

(a) For the period of time over which self/employment income is averaged, the caseworker shall add all self/employment income, including capital gains, exclude the cost of producing the self/employment income, and divide the self/employment income by the number of months over which the income shall be averaged.

(b) A capital gain is defined as proceeds from the sale of capital goods or equipment. Capital gains are counted in full as income to determine self/employment income.

(c) For households with self/employment income calculated on an anticipated basis, the caseworker shall add any capital gains the household anticipates receiving in the next 12 months, beginning with the date the application is filed. The resulting amount is counted in successive certification periods during the 12 months, except that a new average monthly amount is calculated if the anticipated amount of capital gains changes.

(3) Determining net self/employment income:

(a) A household's total self/employment income, minus the allowable costs of producing the income, shall be counted as gross income to the household. The gross self/employment income shall be added to any other earned income.

(b) The total monthly gross earned income, after allowing the twenty percent earned income deduction, is added to all monthly unearned income to determine income eligibility.

(c) For households anticipating income, the cost of producing income is calculated by anticipating allowable costs of producing the self/employment income.

(d) Expenses exceeding self/employment income shall not be deducted from other income.

(e) If a self/employment enterprise is a farming or ranching operation, expenses exceeding self/employment income may be offset against any other countable household income, provided that the farming or ranching operation grosses or is anticipated to gross at least \$1,000 annually.

(4) Allowable costs: Allowable costs of producing self/employment income include, but are not limited to:

(a) identifiable costs of labor, stock, raw material, seed and fertilizer.

(b) payments on the principal of the purchase price of income/producing real estate and capital assets, equipment, machinery, and other durable goods;

(c) interest paid to purchase income/producing property;

(d) insurance premiums, and taxes paid on income/producing property;

(e) transportation costs necessary to produce self employment income, such as farmers carrying grain to elevators, or trips to obtain needed supplies, are allowable costs of doing business; costs are allowed at twenty-five cents per mile;

(f) payment of gross receipts taxes.

(5) Costs not allowed: In determining net self/employment income, the following shall not be allowed as a cost of doing business:

(a) net losses from previous periods;

(b) federal, state, and local personal income taxes, money set aside for retirement purposes, and other work/related personal expenses (such as transportation to and from work), since these expenses are accounted for by the twenty percent earned income deduction (Paragraph (3) of Subsection E of 8.139.520.10 NMAC);

- (c) charitable contributions and entertainment; and
- (d) depreciation.

F. Boarders:

(1) Individuals paying a reasonable amount for room and board shall be excluded from a household when determining the household's eligibility and food stamp benefit amount.

(2) Payments from a boarder shall be counted as self/employment income.

(3) Household income eligibility is determined as follows.

(a) Income from a boarder includes all direct payments to the household for room and meals, including contributions for shelter expenses.

(b) Shelter expenses paid by a boarder directly to someone outside the household shall not be counted as income. Such payments are considered vendor payments and are not used to determine reasonable compensation (Paragraph (4) of Subsection C of 8.139.400.11 NMAC), or as a shelter expense for the household.

(4) After determining the income received from a boarder, the caseworker shall exclude the portion of the boarder payment which is a cost of doing business. The cost of doing business is equal to either of the following, provided that the amount allowed as a cost of doing business does not exceed the payment the household receives from the boarder for lodging and meals:

(a) the amount of the maximum food stamp allotment for a household size that is equal to the number of boarders (Subsection E of 8.139.500.8 NMAC); or

(b) the actual documented cost of providing room and meals if the actual cost exceeds the appropriate maximum food stamp allotment; if actual costs are used, only separate and identifiable costs of providing room and meals to boarders are excluded.

[8.139.520.10 NMAC - Rp, 8.139.520.10 NMAC, 11/21/2023; A, 8/1/2025]