

NEW JERSEY REGISTER  
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RULE ADOPTION  
COMMUNITY AFFAIRS  
DIVISION OF HOUSING AND COMMUNITY RESOURCES  
INDIVIDUAL DEVELOPMENT ACCOUNTS

Adopted New Rules: N.J.A.C. 5:46

Proposed: October 1, 2001 at 33 N.J.R. 3394(a).

Adopted: December 11, 2001 by Anthony Cancro, Acting Commissioner, Department of Community Affairs.

Filed: December 11, 2001 as R.2002 d.13, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30- 6.3).

Authority: N.J.S.A. 44:10-90.

Effective Date: January 7, 2002.

Expiration Date: January 7, 2007.

Summary of Public Comments and Agency Responses:

Comments were received from David McMillin, Esq., Senior Attorney, Legal Services of New Jersey, Inc.

COMMENT: Under both Federal and State law, assets accumulated in IDA accounts funded with TANF dollars cannot be considered in determining eligibility for means-tested benefit programs. The rules should provide that assets in IDA accounts funded with non-public dollars be treated in the same way in determining eligibility for such programs. If necessary, the Department should support legislation to that effect.

RESPONSE: As the commenter appears to acknowledge, this is a matter that is beyond the Department's authority. The Department agrees that such legislation would be appropriate.

COMMENT: Since non-TANF funded IRA assets cannot generally be excluded from countable assets in determining eligibility for the Supplemental Security Income (SSI) program, community-based organizations should be required by rule to include in their proposals, if they will offer both TANF and non-TANF matches, a plan for giving beneficiaries of SSI and other programs with similar asset limits priority access to TANF-funded accounts.

RESPONSE: The Department believes that the issue of appropriate funding for different populations can be adequately addressed in the course of the process of selecting those organizations and proposals that most efficiently and effectively serve the target population, in accordance with the rules as proposed.

COMMENT: The rules should require community-based organizations to seek the release of levies on funds in IDA accounts and to oppose turnover motions by creditors. INS Revenue Ruling 99-44 is premised on the assumption that matching funds are beyond the reach of a participant's creditors, but creditors routinely levy on bank accounts containing exempt assets and on joint bank accounts when only one account holder is subject to a judgment.

RESPONSE: Requiring organizations to take legal action to protect account holders, while certainly legitimate, would constitute an imposition of a potentially costly requirement not mentioned in the proposal, and would

therefore not be permissible in the context of an adoption. However, the willingness and ability of an organization to protect participants' assets would certainly be a factor in determining how efficient and effective their program would be.

COMMENT: The prohibition on marketing of a for-profit organization's own products as part of a financial literacy program should be extended to apply to the marketing by a trade association of the products of its members.

RESPONSE: The Department expects that trade associations would, of necessity, not market the products of specific member organizations, since that would be unfair to the rest of their membership. The rule is being amended to make this explicit.

COMMENT: The prohibition on marketing of one's products as part of an educational program should be moved from the definition of "qualified provider organization" to N.J.A.C. 5:46-1.7, since it is a substantive rule.

RESPONSE: The Department agrees and is making the change.

COMMENT: Privately-funded IDAs should not be exempt from the requirement that the plan reach at least one-third former TANF recipients. Households at the lowest income levels have completed IDA programs successfully at the same rate as those at higher levels. Community-based organizations should, at the very least, be required to identify the target populations of their programs by income level.

RESPONSE: Some privately-funded programs are expected to address special needs populations that are not former TANF recipients. These programs should not be disqualified by the rules. Organizations will have to provide information about their target populations in order to document the efficiency and effectiveness of their programs, as required under the rules as proposed.

COMMENT: The \$10.00 per month minimum deposit is a relatively high amount for many low-income people. People at this income level are likely to be unemployed periodically and should be able to put their accounts on hold. If this cannot be done, the minimum deposit should be \$0.00 and the organizations should be able to have procedures for reviewing participation after a period of inactivity.

RESPONSE: Deposits of less than \$10.00 per month would be insufficient to allow the level of accumulation necessary to allow participants to derive any real benefit from the program. One cannot deposit \$0.00. The rules do not require that a person who fails to make a deposit during one or more months be dropped from the program.

COMMENT: The text of the second clause of the second sentence of N.J.A.C. 5:46-1.4(a) should be rewritten to state simply that the instrument must bear "rates and fees at least as favorable to the depositor as the best terms available to other customers with similar accounts at each participating financial institution."

RESPONSE: The suggested revision is accepted.

COMMENT: Funds should be available on 10 days' notice, rather than 30 days' notice. Administering organizations do not need 30 days to approve withdrawal of funds and interest and eligibility for matching funds.

RESPONSE: The Department believes that 10 days would not be sufficient time for all reviews to be done properly in a new program. Once all parties have had more experience with the program, this is a matter that could be revisited if there were to appear to be a problem.

COMMENT: Most participants will not be able to save anywhere near \$1,500 per

year. In order to encourage successful participation and allow accumulation of sufficient funds, participants should be allowed up to five years to earn a maximum of \$4,500 in matching funds.

RESPONSE: The Department believes that allowing three years to accumulate enough funds to be of value for purchase of a home, starting a business or getting a post-secondary education is not unreasonable. The rules provide that more time can be allowed in unusual circumstances. This is a matter that will be revisited should experience demonstrate that more time is needed for meaningful results.

COMMENT: The statutory limitation on the use of funds for the three specified purposes only applies to TANF-funded accounts. The Department should allow other uses for non-TANF funded accounts, including home repairs, auto-related expenses and household furniture.

RESPONSE: The purpose of seeking and using non-TANF funds is to expand the program, not to have a parallel program with different objectives. Any expansion of the list of permitted uses of program funds is a matter for the Legislature to determine.

COMMENT: The program should allow potential IDA program participants who have philosophical or religious objections to receiving interest or matching funds to waive payment.

RESPONSE: The Department considers it unlikely that anyone having such beliefs would want to participate in this program, since the whole incentive for participation is the matching funds. Should such a person desire to participate only in an economic literacy program, the Department will provide information about such programs.

#### Federal Standards Statement

These rules implement a program that has been developed in response to Federal legislation authorizing the states to undertake initiatives to bring persons who have been dependent on public welfare into the labor market, so that they can become self-sufficient. These rules are consistent with the Individual Development Account Act, a statute adopted by New Jersey as its initiative under the Federal Law.

Full text of the adoption follows:

CHAPTER 46  
NEW JERSEY INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAM RULES  
SUBCHAPTER 1. GENERAL PROVISIONS

<< NJ ADC 5:46-1.1 >>

5:46-1.1 Title, scope; purpose

(a) This chapter shall be known as the "New Jersey Individual Development Account Program Rules."

(b) The scope of this chapter includes the following:

1. Policies concerning the establishment of individual development accounts;
2. Minimum standards for economic literacy education;

3. Selection criteria and requirements for participating community-based organizations; and

4. Eligibility criteria for individual participants.

(c) This chapter is intended to facilitate fair and efficient implementation of the New Jersey Individual Development Account Act, P.L. 2001, c.93, so that all eligible individuals will have an opportunity to establish individual development accounts with State assistance, to the extent that funding will permit.

<< NJ ADC 5:46-1.2 >>

#### 5:46-1.2 Definitions

(a) All definitions set forth in section 3 of the New Jersey Individual Development Account Act, N.J.S.A. 44:10-88, as follows, shall be applicable to this chapter.

"Account holder" means a person who is the owner of an individual development account.

"Commissioner" means the Commissioner of Community Affairs.

"Community-based organization" means a not-for-profit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(a)), that is approved by the Commissioner to implement the New Jersey Individual Development Account Program established under the Act.

"Department" means the Department of Community Affairs.

"Economic literacy" means a basic understanding of budgets and savings accounts, credit and interest and how to use financial services; and having a savings plan and using it to reach the account holder's savings goal for an individual development account.

"Eligible individual" means an adult with an annual household gross income up to a maximum of 200 percent of the official poverty level.

"Financial institution" means a State or Federally chartered bank, savings bank, savings and loan association or credit union with an office in this State.

"Fund" means the Individual Development Account Fund established pursuant to 42 U.S.C. § 604(h) and 45 C.F.R. Part 263 (45 C.F.R. §§ 263.0 et seq.).

"Individual development account" means an account established pursuant to 42 U.S.C. § 604(h) and 45 C.F.R. Part 263 (45 C.F.R. §§ 263.0 et seq.) in trust for an eligible individual that is a trust account pursuant to the "Multiple-party Deposit Account Act," P.L. 1979, c.491 (N.J.S.A. 17:16I-1 et seq.).

"Program" means the New Jersey Individual Development Account Program established pursuant to the provisions of the Act.

"Program contributor" means a person or entity who makes a contribution to an individual development account reserve fund, except that "program contributor" does not mean the account holder.

"Reserve fund" means the individual development account reserve fund created by a community-based organization for the purposes of funding the costs incurred in the administration of the program; receiving matching funds from the State; and

providing matching funds for individual development accounts pursuant to section 5 of the Act, N.J.S.A. 44:10-90.

(b) Additionally, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the New Jersey Individual Development Account Act, P.L. 2001, c.93, N.J.S.A. 44:10-86 et seq.

"Qualified provider organization" means an organization delivering economic literacy training which is approved by the Commissioner to provide such training, and may include a non-profit community-based organization, a public or private school or school district, an institution of higher education, a nonprofit consumer protection or consumer education organization, a for-profit educational institution or a trade association of financial institutions. <<- A for-profit organization shall not market its own products or services in the course of training.->>

"Supervised savings account" means a savings account of an individual account holder for which a community-based organization receives at least quarterly financial documentation and has documentation sufficient to establish the source of all deposits.

<< NJ ADC 5:46-1.3 >>

5:46-1.3 Participation criteria for organizations

(a) In order to qualify for approval for participation in the Program, a community-based organization shall demonstrate, to the satisfaction of the Department, that it meets the following criteria:

1. It shall qualify as a tax-exempt, not-for-profit organization under sections 501(a) and 501(c)(3) of the U.S. Internal Revenue Service;

2. It shall maintain sufficient facilities that are reasonably accessible to account holders, including people with disabilities;

3. It shall have human and material resources sufficient to implement the Program in its local community and shall have a history of providing service to low-income persons in that community and of success in raising funds for that purpose. If it is a new organization, it shall have staff and board members who have had such experience in other organizations;

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

5. It shall offer a comprehensive economic literacy program suited to the needs of the participating individuals, either with its own staff or under a proposed agreement with a qualified provider organization;

6. It shall identify the target population, together with a workable plan to exceed, to the extent that it shall identify, the minimum requirement of 33.3 percent participation by current or former WorkFirst New Jersey recipients pursuant to P.L. 1997, c.38 (N.J.S.A. 44:10-55 et seq.), or Aid to Families with Dependent

Children recipients, or Temporary Assistance for Needy Families (TANF) recipients pursuant to 42 U.S.C. § § 601 et seq. when using Federal TANF funding; and

7. It shall demonstrate that it has made a good faith effort to develop a satisfactory working relationship with the WorkFirst New Jersey Program and with the Workforce Investment Board of the county in which the community is located; and

(b) The Department shall select for participation in the Program those organizations that, in its judgment, would most effectively and efficiently provide to the target population the service required by the statute.

<< NJ ADC 5:46-1.4 >>

5:46-1.4 Trust accounts for individuals

(a) A community-based organization participating in the Program shall maintain a separate trust account in a financial institution as defined by the Multiple Party Deposit Account Act, P.L. 1979, c.491, N.J.S.A 17:16I-1 et seq. The trust account shall be an interest-bearing savings instrument<<-, not less favorable to the depositor than the rates and fees of prevailing market rateaccounts of each participating financial institution, applicable to like deposits by financial institutions in this State->> <<+bearing rates and fees at least as favorable to the depositor as the best terms available to other customers with similar accounts at each participating financial institution+>>.

(b) To the extent that available funding, including funding from both public and non-public sources, may allow, the match rate shall be at least one dollar for each dollar deposited by the account holder into a supervised savings account.

1. Matching trust account deposits shall only be made for income earned by the individual and not deposited by any third party.

<< NJ ADC 5:46-1.5 >>

5:46-1.5 Supervised savings accounts

(a) The community-based organizations shall apply criteria for minimum and maximum levels of deposit that have been approved by the Department. These criteria shall be determined based upon the circumstances of the population to be served; provided, however, that in all cases the minimum level of deposit shall be not less than \$10.00 per month.

(b) Deposits in excess of \$1,500 per year shall not be eligible for matching funds.

(c) No withdrawal of funds from any supervised savings account shall be permitted by a financial institution without signatures of both the account holder and an authorized representative of the community-based organization.

1. Prior to consenting to any withdrawal of funds, a representative of the community-based organization shall discuss with the account holder the consequences of the intended withdrawal of funds. The community-based organization shall not unreasonably withhold its consent to the withdrawal.

(d) The account holder may, upon the approval of the community-based organization, withdraw moneys from the account holder's individual development account in the form of a joint check or transfer of funds made payable to the account holder and the payee of the approved withdrawal, pursuant to 45 C.F.R. § 263.22, for any of the

following purposes:

1. Post-secondary educational expenses as defined in 42 U.S.C. § 604(h)(5) and 45 C.F.R. § 263.20;
2. Qualified acquisition costs of a primary residence as defined in 42 U.S.C. § 604(h)(5) and 45 C.F.R. § 263.20; and
3. Qualified business capitalization expenses, as defined in 42 U.S.C. § 604(h)(5) and 45 C.F.R. § 263.20.

(e) In the event that an account holder withdraws any money from a supervised savings account for any other than post-secondary educational expenses, qualified acquisition costs of a primary residence, or qualified business capitalization expenses there shall be a commensurate reduction in the amount of money held by the community-based organization in the trust account maintained for that account holder. Funds withdrawn from the trust account pursuant to this subsection shall be used for matching deposits in other trust accounts, unless the Department shall otherwise direct.

<< NJ ADC 5:46-1.6 >>

#### 5:46-1.6 Time limitations

(a) An account holder who wishes to withdraw money from a supervised savings account and receive matching funds from the matching trust account shall give to the community-based organization serving as trustee not less than 30 days advanced notice of intent to make such withdrawal.

(b) In order to be eligible to withdraw funds from the supervised savings account and receive matching funds from the trust account, an account holder must first maintain the supervised savings account until he or she satisfactorily completes the financial education course and asset-specific training program.

1. The Department may, at its discretion, set specific criteria governing withdrawal of funds from the supervised savings account and receipt of matching funds prior to the satisfactory completion of the financial education course and asset-specific training program to allow an account holder to attain an asset-specific goal.

(c) Matching funds may be earned for a period not to exceed 36 months.

1. The Department may, at its discretion, extend the maximum length of time an account holder may participate in the program to accommodate the needs of special populations and/or extraordinary circumstances.

<< NJ ADC 5:46-1.7 >>

#### 5:46-1.7 Financial education

(a) Each account holder shall be required to satisfactorily complete a financial education course and an asset-specific training program in one of the three qualified areas under N.J.A.C. 5:46-1.5(d), sponsored by the participating community-based organization.

(b) Community-based organizations may use either their own staff or a qualified

provider organization to teach financial education courses and asset-specific training programs to account holders.

(c) Upon being approved for funding by the Department, any qualified provider organization, or any community-based organization that wishes to use its own staff to teach financial education courses and asset-specific training programs, shall submit its proposed course and program to the Department for approval at least 60 days prior to the first session. The application for approval may be in letter form.

(d) Each application for course and program approval shall be submitted in the name of the organization by a person authorized by the governing board to do so and shall, at a minimum, contain the following information:

1. A description of the length of each session, the frequency of the sessions and the total number of sessions;
2. An outline of the course and program content, broken down by session;
3. A description of any materials or texts to be used;
4. A statement of the qualifications of the person(s) who will be teaching the course and program;
5. A statement of how often the course and program will be offered;
6. A statement that the organization will notify the Department if the course and program is withdrawn or changed in any way;
7. A statement that, if the course and program is taught by a qualified provider organization, it will inform the community-based organization whenever a participant withdraws from the training;
8. A statement that the organization will conduct the course and program in accordance with the Act, this chapter and any directives that the Department may issue pursuant thereto; and
9. A statement of any rules or requirements of the organization with which account holders must comply.

(e) Upon verification that a proposed course and program meets the requirements and intent of this chapter and of the Act, the Department shall issue a letter of approval to the organization that includes any terms and conditions of the approval. The approval shall only continue in effect so long as the course and program conforms to the application and to any terms and conditions imposed by the Department.

(f) The Department may revoke its approval, after notice and an opportunity to be heard, whenever it determines that a course and program does not conform to the requirements of the Act, of this chapter or of the terms and conditions of the approval.

<<+(g) A for-profit organization shall not market its own products or services in the course of training, nor shall a trade organization market the products of a specific for-profit organization.+>>



**34 N.J.R. 270(a)**  
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