CHAPTER 3-000 ELIGIBILITY FACTORS

3-001 Qualifying for Energy Assistance Payments: To qualify for energy assistance payments a household must—:

1. Be economically vulnerable (see 476 NAC 3-001.01);
2. Have resources within program limits (see 476 NAC 3-001.02);
3. Have income that does not exceed the income guidelines according to household size (see 476 NAC 3-001.03B);
4. Meet the requirements of the Immigration Reform and Control Act of 1986 (see 476 NAC 3-001.04); and
5. Meet the requirements of alien eligibility (see 476 NAC 3-001.05).

There will be a one-time determination for eligibility and payment amount in each heating season program year. Once a benefit has been determined, adjustments in the payment amount for changes in income, etc. will not be made. Any further payments made must be considered under the crisis assistance criteria (see 476 NAC 5-007).

If a household is denied energy assistance and applies at a later date, a new application must be taken and determination made based on current information.

Only one application per household may be approved.

3-001.01 Economic Vulnerability: The local worker ~~shall~~ must determine eligibility for energy assistance with regard to economic vulnerability.

3-001.01A Households Considered Economically Vulnerable: The following households are considered economically vulnerable:

1. Homeowners;
2. Renters whose utilities are included in rent;
3. Renters who pay their own utilities; and
4. Public housing tenants who are responsible for paying a surcharge for their utilities or are responsible for paying their own heating bills during the heating season or their own cooling bills during the cooling season.

3-001.01B Households Not Considered Economically Vulnerable: Tenants who are protected from increases in energy costs are not eligible for energy assistance. The following households are not considered economically vulnerable:

1. Individuals who reside in adult boarding facilities, intermediate care facilities, residential care facilities or skilled nursing facilities and who do not pay a vendor directly for energy costs;
2. Individuals residing in room only or room and board situations;

3. Individuals who reside in public subsidized housing, unless they are responsible for their utility costs.

3-001.02 Resource Maximums: The maximum resource limit for any size household is $5,000.

3-001.02A Public Assistance (PA) Households: Reverification of resources for PA and food stamp households is not necessary since resources have already been verified for these programs and are within the maximum limits.

3-001.02B Non-Public Assistance (Non-PA) Households: The applicant's declaration of resources is accepted. Verification is not necessary unless the statements of the applicant are incomplete, unclear, inconsistent, or unless other circumstances in the particular case indicate to a prudent person that further inquiry should be made.

3-001.02C Assets Counted as Resources

3-001.02C1 Definition of Available Resources: For the determination of eligibility, available resources include cash or other liquid assets or any type of real or personal property or interest in property that the client owns and may convert into cash to be used for support and maintenance.

3-001.02C2 Unavailability of Resource: Regardless of the terms of ownership, if it can be documented in the case record that the resource is unavailable to the client, the value of that resource is not used in determining eligibility. In evaluating the availability of benefit funds, such as funds raised by a benefit dance or auction, the worker ~~shall~~ must determine the purpose of the funds and if the client has access to them.

3-001.02C3 Resources Included: The following assets are counted as resources:

1. Cash;
2. Checking accounts;
3. Savings accounts;
4. Certificates of deposit or time certificates;
5. Stocks and bonds;
6. Credit Union accounts;
7. Contents of safe deposit boxes; and
8. Land contracts.

3-001.02C3a Valuation of Resources: The equity value of non-exempt resources is used in determining eligibility.

3-001.02C3b Treatment of Equity as a Resource: If it belongs to a member of the household and is available, the equity value of the following resources is counted:

1. Boats, utility trailers, recreational vehicles, etc.;
2. Airplanes; and
3. All motor vehicles other than the primary vehicle.

3-001.02C3c Land Contracts: A land contract, or real estate contract of sale, is considered a resource to the seller of the property if the contract can be sold. In determining the value of the contract, the worker and/or the client determines the salability of the contract and the resulting value. To determine the salability of the contract, the worker and/or client shall contact at least two financial authorities, such as bankers, to determine if the contract is salable. Salability of the contract is directly affected by the terms of the contract, particularly the rate of interest under which the contract was drawn up. If the contract is determined to be salable, the net value of the contract becomes the value at which it could be sold - usually at a substantial discount of the actual value in order to yield a reasonable profit to the investor - minus encumbrances, etc., against the property.

If it is determined and documented that the contract is not salable, the contract is not considered an available resource to the client.

Any income received from a land contract is considered unearned income to the client.

3-001.02C4 Resources Excluded: Disregarded income is also disregarded as a resource unless there is regulation stating otherwise. In addition, the following assets are not counted as resources:

1. One motor vehicle (vehicle with the greatest equity);
2. Burial lots, trusts, and contracts;
3. Savings up to $3,000 identified for burial expenses (for individuals age 60 or older who do not have an irrevocable burial trust);
4. Life estates in real property;
5. Trust or guardianship funds;
6. Tax credits;
7. The home and surrounding property which is not separated from the home by intervening property owned by others. The worker shall note that -
   a. Public rights of way, such as roads which run through the surrounding property and separate it from the home, do not affect the exemption of the property.
   b. The home and surrounding property remain exempt when temporarily unoccupied for reasons of employment, training, illness, or not habitable due to disaster, if the household intends to return.
   c. Households that currently do not own a home, but own a lot on which they intend to build or are building a permanent home, are entitled to receive an exclusion for the value of the lot and, if it is partially completed, for the home;

8. Household goods, such as furniture;
9. Personal effects, including all clothing and jewelry;
10. The cash value of life insurance policies and pension funds, except for Keogh and IRA plans which involve no contractual relationship with individuals who are not household members;
    Note: When counting IRA or Keogh plans, include the total cash value of the account or plan minus the amount of the penalty (if any) that would be assessed for the early withdrawal of the entire amount in the account or plan.
11. Property which annually produces income consistent with its fair market value, even if it is only used on a seasonal basis;
12. Property deemed essential to the employment or self-employment of a household member, or undocumented alien or disqualified person whose resources are being counted as part of the household's resources, such as farm land, rental homes, and work-related equipment (e.g., the tools of a tradesman or the machinery of a farmer);
    Exception: The worker shall count a rental home which is used by the household for vacation purposes at some time during the year as a resource unless excluded because it produces income consistent with its fair market value.
13. Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with the fair market value of the land or buildings;
14. The value of property sold under an installment contract or held as security in exchange for a purchase price consistent with the fair market value of that property;
15. Any government payments such as, but not limited to, Individual and Family Grant (IFG) payments and Small Business Administration (SBA) loans when used for the restoration of a home damaged in a disaster. The household is subject to a legal sanction if the funds are not used as intended;
16. A business bank account provided the account is clearly separated from the household's personal bank account;
17. Land that can be sold only with the approval of the Bureau of Indian Affairs or Indian lands held jointly with the tribe;
18. Stocks, inventories, and supplies required by a self-employed individual to produce his/her income; and
19. An Individual Development Account (an account set up for postsecondary education, purchase of a client’s first home, or establishment of a business).

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3-001.02D Determination of Ownership of Resources: A resource which appears on record in the name of a client must be considered belonging to the client.

3-001.02D1 Jointly Owned Resources: As a general rule, the words and/or or or appearing on a title or other legal contract denote joint tenancy. This means that either owner(s) could sign and turn the resource to cash without the other; therefore, the total resource is considered available to either owner(s).

The term and generally refers to "tenancy in common." This means that each owner holds an undivided interest in the resource without rights of survivorship to the other owner(s). Only the proportionate share based on the number of owners of the resource is available to each owner.

If the worker substantiates that the client is not the true owner of a resource, it is permissable to allow the client to remove his/her name from the title of ownership in order to reflect true ownership.

3-001.03 Income Guidelines for Eligibility

3-001.03A Public Assistance Households: It is not necessary to verify the income of a public assistance household.

3-001.03B Non-Public Assistance Households: The total annual income of non-public assistance households qualifying for energy assistance payments must not exceed the income guidelines according to size of the household. The income limits are based on the federal poverty guidelines (see 476-000-202), with a minimum of 110 percent of FPL.

To determine who is included in the household, see 476 NAC 5-001.01.

3-001.04 Legalization of Alien: The Immigration Reform and Control Act of 1986 (P.L. 99-603) allows certain aliens to apply for legal residence. Individuals who were able to prove that they entered the United States before January 1, 1982, and had resided continuously in the country since that date were allowed to apply for legal resident status. Those aliens who were granted either temporary or permanent resident status are not eligible for Energy Assistance if they were granted lawful status under Section 245A or 210A. These individuals would have been issued either–:

1. I-688 (Temporary Resident Card) for lawful temporary residents; or
2. I-551 (Resident Alien Card or "Green Card") for lawful permanent residents.

For five years from the date of status adjustment to temporary resident, these individuals are ineligible for Energy Assistance.

~~Exception: If the alien is receiving AABD or has been given status as a Special Agricultural Worker, s/he does meet citizenship requirements for Energy Assistance.~~

3-001.04A Mixed Household: If the household consists of eligible and non-eligible aliens, the worker ~~shall –~~ must:

1. Take the income for the entire household;
2. Divide by the number of household members; and
3. Multiply this figure by the number of eligible household members.

The resulting figure is the income used to determine if the household qualifies for Energy Assistance.

3-001.05 Eligibility of Aliens:

3-001.05A Ineligible Aliens: The following aliens are ineligible:

1. Undocumented individuals;
2. Individuals who would otherwise be considered Permanently Residing Under Color of Law; and
3. Temporary residents, such as individuals entering under student visas, etc.

3-001.05B Aliens Entering After August 22, 1996: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) prohibits aliens who entered the U.S. on or after August 22, 1996, from receiving Energy Assistance unless the alien is–:

1. A refugee admitted to the U.S. under section 207 of the Immigration and Nationality Act (INA);
2. An asylee under section 208 of INA;
3. An alien whose deportation is withheld under section 243(h) of INA;

4. An alien a~~A~~dmitted to the U.S. for permanent residence under INA and who has worked 40 qualified quarters;
   Note: A qualifying quarter is a calendar quarter that qualifies for coverage under Title II of the Social Security Act (eligible for withholding of Social Security). The qualified quarter may have been worked by the alien, by the parent when the alien was under age 18 or by a spouse of the alien during their marriage. After December 31, 1996, no qualifying quarters can be credited to the alien if the individual, parent, or spouse of the alien in the previously listed circumstances received any federal means-tested public benefit during the quarter.
5. A refugee from Cuba or Haiti who was admitted under Section 501(e)(2) of the Refugee Education Assistance Act of 1980;
6. A veteran who is on active duty or has been honorably discharged and his/her spouse and unmarried dependent child(ren);
7. A refugee who entered the U.S. before April 1, 1980, and was granted conditional entry; ~~and~~
8. An alien who is paroled into the U.S. under Section 212(d)(5) of INA for a period of at least one year~~.~~;
9. An Amerasian immigrant under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as amended; or
10. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family who is residing in the same household as the alien. The child or children of a battered alien are also eligible.

All other aliens are prohibited from receiving assistance for five years from their arrival.

3-001.05B1 Deeming After Five Year Prohibition: After five years an alien may receive assistance if s/he meets program eligibility requirements. If the alien has a sponsor, all income of the sponsor is counted in determining financial eligibility for the alien (with no allowance for the needs of the sponsor and his/her family).

The sponsor's income is deemed until the alien becomes a citizen or has worked for 40 qualifying quarters.

3-001.06 Disqualification for Misrepresenting Residence: Any person convicted in federal or state court of having fraudulently misrepresented his/her residence in order to obtain energy assistance in two or more states is ineligible for energy assistance for ten years from the date of conviction. Only the individual convicted of the misrepresentation is ineligible; other members of the family or household may receive benefits.

3-001.07 Ineligibility of Fleeing Felon: An individual is ineligible for energy assistance during any period in which the individual is - :

1. Fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime that is a felony under the law of the place from which the individual is fleeing; or
2. Violating a condition of federal or state probation or parole.