

RULES
GOVERNING RECOVERY GRANTS
PURSUANT TO
THE LOCAL ECONOMIC DEVELOPMENT ACT

AS
ADOPTED
ON MARCH 25, 2021
BY THE
BOARD OF DIRECTORS
OF THE
NEW MEXICO FINANCE AUTHORITY

SECTION 1. AUTHORITY; PURPOSE OF RULES.

On March 11, 2020, in response to the presence in New Mexico of a highly contagious respiratory novel coronavirus disease known as COVID-19, Governor Michelle Lujan Grisham declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked all power and authority under the All Hazards Emergency Management Act. On March 23, 2020, the New Mexico Department of Health, pursuant to the All Hazards Emergency Management Act, issued a Public Health Emergency Order to close all businesses and non-profit entities except for those deemed essential, while also limiting mass gatherings due to COVID-19. Since March 23, 2020, the Public Health Emergency Order has been extended and modified to address the ongoing threat of COVID-19. On February 26, 2021, during the 1st Session of the 55th Legislature, the Governor signed into law House Bill 11 (hereafter, the “LEDA Recovery Grants Legislation”), whereby two hundred million dollars (\$200,000,000) was appropriated from the State of New Mexico general fund to the New Mexico Economic Development Department (“Department” or “NMEDD”) for expenditure in fiscal years 2021 through 2023 (“LEDA Grant Funds”) to provide grants, through the NMFA, for the reimbursement of rent, lease or mortgage payments.

These rules govern the implementation and administration of the LEDA Recovery Grant Fund enacted under the LEDA Recovery Grants Legislation, and do not apply to other programs established by the NMFA.

SECTION 2. DEFINITIONS.

A. “Application” means an application for a LEDA Recovery Grant pursuant to the LEDA Recovery Grants Legislation.

B. “Authorized Officer” means the person authorized by the Recovery Entity as having the requisite power and authority to sign the Officer’s Certificate (as defined herein) and legally bind the Recovery Entity to all of its obligations under the LEDA Recovery Grant Agreement.

C. “Board” means the NMFA board of directors.

D. “LEDA Recovery Grant Agreement” means the agreement between the Recovery Entity and the NMFA entered into in accordance with the LEDA Recovery Grants Legislation.

E. “Chief Executive Officer” or “CEO” means the Chief Executive Officer of the NMFA or designee.

F. “CRS” means Combined Reporting System Reports filed with the New Mexico Taxation and Revenue Department.

G. “Credit Standards” means evidence of business solvency verified through a third-party credit and reporting agency or data analytics compliant with applicable federal credit reporting requirements.

H. “Department” or “NMEDD” means the New Mexico Economic Development Department.

I. “DWS” means the New Mexico Department of Workforce Solutions.

J. “Eligible Expenses” means rent, lease or mortgage payments of the recovery entity.

K. “FTE” or “Full-Time Equivalency” means an employee or employees that are paid wages that are reported to DWS and as provided in the NMEDD LEDA Recovery Grant Rules, attached hereto as Exhibit A.

L. “Fund” means the LEDA Recovery Grant Fund created in the NMFA to provide a grant to a Recovery Entity.

M. “Grant Agreement” means the agreement between the Recovery Entity and the NMFA entered into in accordance with the LEDA Recovery Grants Legislation.

N. “Identification Standard” means third-party validation, verification and authentication of the, owner(s), authorized officers, or any other persons that the NMFA may deem applicable.

O. “Lease Payments” means (i) payments made to a third party for long-term use of a commercial premise pursuant to a lease agreement, or (ii) Lease Payments made to an affiliate or other related party with common ownership that is subject to a mortgage held by a financial institution.

P. “Mortgage Payments” means payments made to a financial institution pursuant to a commercial loan agreement.

Q. “NMFA” means the New Mexico Finance Authority.

R. “Public Health Emergency” means the declaration of the Governor of the State of New Mexico on March 11, 2020, as extended from time to time.

S. “Public Health Emergency Order” means the order issued by the New Mexico Department of Health on March 23, 2020, as supplemented or amended.

T. “Public Health Order Set-Aside” means \$20 million of the \$200 million Fund to be held for applications from certain Set-Aside Businesses that were required by the Public Health Emergency Order to remain closed at the time House Bill 11 was signed into law, specifically February 26, 2021.

U. “Recovery Entity” means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is a business operating in the State with one or more employees but with fewer than seventy-five people employed at any of the business’s business locations, is current on all state and local tax obligations, and experienced a decline in business revenue between one or more comparable quarters in taxable years 2019 and 2020, as determined in accordance with the NMEDD LEDA Recovery Grant Rules and NMFA’s LEDA Recovery Grant Rules.

V. “Rent Payments” means payments made to third party for short-term use of a commercial premise pursuant to a rental agreement.

W. “Set-Aside Businesses” means businesses in the following North American Industry Classification System (“NAICS”) codes:

- (1) Bars and clubs [NAICS code 722410]
- (2) Large entertainment venues [includes NAICS code 512131 (theaters), NAICS codes 561920 (convention halls), 711110 & 711120 (other theaters)]
- (3) Performance venues [NAICS code 711211]
- (4) Racetracks [NAICS code 711212]
- (5) Concert venues [NAICS code 711310]

X. "State" means the State of New Mexico.

SECTION 3. APPLICATIONS.

A. Application Periods. The NMFA may, in its sole discretion, designate one or more application periods and shall provide notice to the public regarding the availability of the application.

(1) NMFA will open an application period prior to April 30, 2021 that shall end prior to June 30, 2021. The NMFA will make available for grant awards in this application period at least \$150 million for non-Set-Aside Businesses, with allocations separated for Recovery Entities based upon their locations as follows:

(a) At least \$100 million will be available to Recovery Entities located in the urban areas of City of Albuquerque, City of Las Cruces, City of Rio Rancho and City of Santa Fe as well as the communities within a ten-mile radius of their respective city limits.

(b) At least \$50 million will be made available to Recovery Entities located outside of the urban areas listed in Section 3.A(1)(a).

(2) Any unused funds from the first application period will be made available as part of a second application period that shall open in August 2021 and be complete before October 31, 2021.

(3) Additional application periods may be offered depending on the availability of funds. All non-Set-Aside Business application periods shall be completed prior to December 31, 2021.

B. The NMFA shall offer a separate application for Set-Aside Businesses which shall occur prior to June 30, 2022.

C. The NMFA will use its best efforts to notify the Recovery Entity of the determination of award status as soon as practicable. Applications that are incomplete or missing required information will not be considered. Recovery Entities that have been denied may submit a new application in a subsequent application period, if applicable, that will be reviewed in the order received.

D. A Recovery Entity may apply for a LEDA Recovery Grant by submitting an application to the NMFA, which shall include the proposed use of the grant proceeds, and any other information necessary to evaluate the application pursuant to the LEDA Recovery Grants Legislation. At a minimum, applications for grants must include the following information:

(1) copy of federal tax return for tax year 2019 or 2020;

(2) documentation of base employment levels: DWS Form ES903A listing individuals employed by the business for the quarters ended March 31, 2020 and for the most recently ended quarter along with a supplemental sheet certified to be true and correct by an Authorized Officer listing the hours worked by each employee during that quarter;

(3) documentation of rental, lease and mortgage agreements evidencing past due, current and future payments due under the respective agreements;

(4) documentation required by the Department in conformance with the NMEDD Recovery Grant Rules, attached hereto as Exhibit A, including:

(a) number of employees to be added by quarter between January 1, 2020 and June 30, 2023, including hours worked;

(b) average wages to be paid to new employees added by quarter between January 1, 2020 and June 30, 2023, including total projected annual payroll;

(5) documentation evidencing decline in business revenue between one or more comparable quarters in taxable year 2019 to taxable year 2020.

(a) for Recovery Entities required to pay gross receipts tax, decline in business revenue shall be determined by CRS reports for the applicable quarters in taxable year 2019 and taxable year 2020;

(b) for Recovery Entities not subject to gross receipts tax, decline in business revenue shall be determined by the Recovery Entity's

(i) federal tax returns for tax year 2019 and tax year 2020; or

(ii) bank statements and invoices certified to be accurate by an Authorized Officer of the Recovery Entity.

E. The NMFA will request from any Recovery Entity additional information, including but not limited to the following:

(1) proof of the applicant's bank account information with a federally insured financial institution;

(2) valid driver's license or government-issued photo identification card for Authorized Officer; owner(s), or any other persons that the NMFA deems applicable;

(3) authorization to obtain a credit report of the Recovery Entity;

(4) information pertaining to the Recovery Entities employees, including but not limited to the number of employees employed by the Recovery Entity on March 1, 2020, March 31, 2021, the date of the Application and projected employment on March 31, 2022;

(5) for applicants making Lease Payments to an affiliated landlord, evidence that the commercial premises are subject to mortgages or other commercial loan agreements;

(6) the applicant's NAICS industry; and

(7) any other information requested by the NMFA to evaluate the application or report on the impact of the LEDA Recovery Grants Legislation.

SECTION 4. EVALUATION OF APPLICATION; GRANT APPROVAL.

A. The NMFA will evaluate each application in accordance with these rules and the NMEDD LEDA Recovery Grant Rules, attached as Exhibit A, including:

(1) whether the requirements of the LEDA Recovery Grants Legislation and all applicable rules have been met;

- (2) whether the applicant is a Recovery Entity;
- (3) whether the LEDA Grant Funds will be used for Eligible Expenses; and
- (4) whether the Recovery Entity met applicable Credit Standards and Identification Standards.

B. The NMFA shall prioritize funding in each application period to Recovery Entities that experienced the greatest percentage decline in business revenue between comparable quarters in taxable year 2019 to taxable year 2020:

(1) for Recovery Entities required to pay gross receipts tax, decline in business revenue shall be determined by CRS reports for the applicable quarters in taxable year 2019 and taxable year 2020;

(2) for Recovery Entities not subject to gross receipts tax, decline in business revenue shall be determined by the Recovery Entity's bank statements and invoices certified to be accurate by an Authorized Officer of the Recovery Entity.

C. The CEO is authorized to approve LEDA Recovery Grants.

D. If a LEDA Recovery Grant is approved, the NMFA will endeavor to document and fund the grant as soon as practicable.

E. LEDA Recovery Grants by the NMFA will be for a term not to exceed two (2) years.

F. Should the CEO not approve the Application, the Recovery Entity will be notified in writing of the denial as soon as practicable. Such Recovery Entity shall not have any right to appeal the decision of the CEO, but shall not be prohibited from submitting a new application. In such case, the completed application shall be reviewed in accordance with these Rules.

SECTION 5. GRANT TERMS.

A. Grants from the Fund must satisfy the conditions prescribed in this Section 5.

B. Grants shall only be provided if there are available funds held in the Fund.

C. Grants will be evidenced by entering into a Grant Agreement, as defined above.

D. The amount of the LEDA Recovery Grant shall be calculated in accordance with the NMEDD LEDA Recovery Grant Rules, attached hereto as Exhibit A.

E. Grants shall not exceed \$100,000, and shall be payable in accordance with the NMEDD LEDA Recovery Grant Rules, attached hereto as Exhibit A

F. The Grant Agreement will include a written certification signed by an Authorized Officer (“Officer’s Certificate”) of the Recovery Entity that certifies that:

(1) the officer understands that, pursuant to the Local Economic Development Act, the LEDA Recovery Grant shall be accompanied by new job creation in accordance with the NMEDD LEDA Recovery Grant Rules, attached hereto as Exhibit A, and the terms of the Grant Agreement;

(2) all documents submitted in support of the Application are true and accurate to the best of the officer’s knowledge;

(3) the officer has a reasonable basis to believe that, as of the date of origination of the Grant Agreement, and receipt of the grant proceeds, the business does not expect to permanently cease business operations or file for bankruptcy;

(4) as of the date of the Application and receipt of LEDA Grant Funds, the Recovery Entity is current on all obligations pursuant to the Income Tax Act, the Corporate Income and Franchise Tax Act, the Withholding Tax Act, the Gross Receipts and Compensating Tax Act, and the Unemployment Compensation Law applicable to the Recovery Entity’s business’s operations; and

(5) all LEDA Recovery Grant proceeds will be used for purpose of payment of rent, lease or mortgage payments of the Recovery Entity pursuant to the Local Economic Development Act.

G. Recovery Entities awarded a LEDA Recovery Grant will covenant to provide the NMFA and NMEDD with ongoing information pertaining to jobs and other information as may be requested by the NMFA and NMEDD from time to time to satisfy its obligations under the LEDA Recovery Grants Legislation, including but not limited to any and all bankruptcy filings or discharges.

H. The Grant Agreement shall provide that the NMFA has all available remedies in the event of a default. Such remedies will include, without limitation, rights to obtain deficiency judgments, and exercise all other remedies available at law or in equity.

SECTION 6. CLOSING AND DISBURSEMENT OF FUNDS.

A. Upon certification by the Recovery Entity that all provisions of the Grant Agreement have been complied with, a Grant Agreement will be sent to the Recovery Entity for execution.

B. Disbursement of funds will be made quarterly into an account held in the applicant’s name at a federally insured financial institution. The first payment shall be made

following the execution of the Grant Agreement in an amount equal to 25% of the total grant award.

C. Additional grant disbursement will be made quarterly upon evidence that:

(1) job creation requirements outlined in the Grant Agreement have been met as evidenced through a copy of the most recent quarterly DWS Form 903SA submitted to DWS including the listing of employees. This form shall be supplemented with a list certified by the Recovery Entity showing the hours worked and wages paid to each of the employees listed;

(2) Certification and evidence that the Recovery Entity remains active and open;

(3) Certification that the Recovery Entity is current on state and local tax obligations; and

(4) the Recovery Entity paid rent, lease or mortgage obligations of the Recovery Entity for its business locations within the state of New Mexico from the date of application to the present request for a subsequent quarterly payment that exceeds all payments to the Recovery Entity to date.

D. The amount of grant disbursements following the initial payment shall be based upon the number of net new FTEs over the baseline FTE count contained in the Grant Agreement, less any amounts disbursed to date and as further provided by NMEDD's Recovery Grant Rules, attached hereto as Exhibit A. The maximum amount of any single disbursement is 25% of the total grant award.

E. Grantees that are not able to evidence they met the eligibility requirements or other grant conditions as outlined in the Grant Agreement will not be allowed to draw any funds from the grant until such time as they are able to provide evidence that the eligibility requirements and grant conditions have been met. NMFA shall not revert any unused grant proceeds until the earlier of (i) the certification by the Recovery Entity that no more jobs will be created, or (ii) the Grant Agreement expires.

SECTION 7. ADMINISTRATIVE FEES AND OTHER EXPENSES.

The NMFA will be reimbursed by the NMEDD for its costs associated with providing and administering LEDA Recovery Grants from balances in the Fund.

SECTION 8. DURATION AND AMENDMENT OF RULES.

These rules are enacted pursuant to the LEDA Recovery Grant Legislation and may be amended or superseded by the Board.

EXHIBIT A

NMEDD LEDA Recovery Grant Rules

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TITLE 2 PUBLIC FINANCE
CHAPTER 92 LEDA RECOVERY GRANT
PART 1 GENERAL PROVISIONS

2.92.1.1 ISSUING AGENCY: Economic development department.
[2.92.1.1 NMAC – N/E, 4/16/2021]

2.92.1.2 SCOPE: All persons or entities applying for grants for the reimbursement of rent, lease or mortgage payments pursuant to House Bill 11 of 1st Session of the 55th Legislature (hereafter, the “LEDA Recovery Grants Legislation”).
[2.92.1.2 NMAC - N/E, 4/16/2021]

2.92.1.3 STATUTORY AUTHORITY: Section 5-10-16 NMSA 1978 (hereafter, the “LEDA Recovery Grants Legislation”).
[2.92.1.3 NMAC - N/E, 4/16/2021]

2.92.1.4 DURATION: 120 days.
[2.92.1.4 NMAC - N/E, 4/16/2021]

2.92.1.5 EFFECTIVE DATE: April 16, 2021, unless a later date is cited at the end of a section.
[2.92.1.5 NMAC - N/E, 4/16/2021]

2.92.1.6 OBJECTIVE: Explanatory note: On March 11, 2020, in response to the presence in New Mexico of a highly contagious respiratory novel coronavirus disease known as COVID-19, Governor Michelle Lujan Grisham declared that a public health emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked all power and authority under the All Hazards Emergency Management Act. On March 23, 2020, the New Mexico department of health, pursuant to the All Hazards Emergency Management Act, issued a public health emergency order to close all businesses and non-profit entities except for those deemed essential, while also limiting mass gatherings due to COVID-19. Since March 23, 2020, the Public Health Emergency Order has been extended and modified to address the ongoing threat of COVID-19. On February 26, 2021, during the 1st Session of the 55th Legislature, the Governor signed into law House Bill 11 (hereafter, the “LEDA Recovery Grants Legislation”), whereby two hundred million dollars (\$200,000,000) was appropriated from the state of New Mexico general fund to the New Mexico economic development department (“department” or “NMEDD”) for expenditure in fiscal years 2021 through 2023 (“LEDA Grant Funds”) to provide grants, through the NMFA, for the reimbursement of rent, lease or mortgage payments. These rules govern the implementation and administration of the LEDA Recovery Grant Fund enacted under the LEDA Recovery Grants Legislation, and do not apply to other programs established by the economic development department.
[2.92.1.6 NMAC – N/E, 4/16/2021]

2.92.1.7 DEFINITIONS:

A. “Full-time-equivalent employee or FTE” is defined as an employee who works an average of 40 hours or more per week from their qualifying date of hire throughout the quarterly qualification period. The hours of employees who work fewer than 40 hours are calculated as proportions of a single FTE and aggregated. An FTE must be paid wages that are reported to the department of workforce solutions quarterly and subject to unemployment taxes. To qualify, the FTE must be “net new”, representing:

(1) a growth of FTE beyond the “baseline” FTE count, with “baseline” defined as the number of FTE reported on December 31, 2020 or any subsequent quarterly ES903A filed with the department of workforce solutions prior to application whichever is lower;

(2) a growth of FTE beyond the number for which the recovery entity received total or partial grant payments in prior quarters; and

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(3) a growth of FTE beyond the number in the quarter immediately preceding the request for a subsequent quarterly payment and for which a quarterly unemployment insurance report was filed with the department of workforce solutions.

B. “Qualifying date of hire” is a date on or after April 1, 2021 and falling within a quarterly department of workforce solutions reporting period prior to application for a quarterly payment subsequent to the initial payment.

C. “Loss in revenue” is defined as a decline in revenue for one or more quarters in 2020 compared with the same quarter or quarters in 2019. If the recovery entity is required to submit gross receipts taxes for these revenues, the recovery entity must provide the tax documentation supplied to the taxation and revenue department demonstrating this decline. If the recovery entity is not subject to gross receipts taxes, the decline must be demonstrated through other documentation as provided through rule by the New Mexico finance authority.
[2.92.1.7 NMAC - N/E, 4/16/2021]

2.92.1.8 MAXIMUM EMPLOYEE COUNT: The maximum employee count in House Bill 11 of “fewer than 75 people employed at any of the business’s business locations” for a business to qualify as a recovery entity includes all employees, both full- and part-time employees.
[2.92.1.8 NMAC - N/E, 4/16/2021]

2.92.1.9 PER JOB CALCULATION: Pursuant to the Local Economic Development Act, the recovery grant shall be accompanied by net new FTE job creation. As part of the initial application, the recovery entity shall estimate the net new FTE to be created from the initial qualifying date of hire through March 31, 2022 and provide the job titles for those positions, the FTE calculations and the total average hourly wages. The maximum amount of the recovery grant to be provisionally awarded and set aside for disbursement shall be determined by the following calculation of funds per net new FTE job created:

- A.** The base amount of the grant per net new FTE job created: \$5,000;
- B.** If the recovery entity has a loss in revenue of at least twenty percent and less than forty percent: \$7,000;
- C.** If the recovery entity has a loss in revenue of at least forty percent and less than sixty percent: \$9,000;
- D.** If the recovery entity has a loss in revenue of at least sixty percent and less than eighty percent: \$11,000; or
- E.** If the recovery entity has a loss in revenue equal to or in excess of eighty percent: \$13,000.
- F.** Wage bonus:

(1) If the average wage of all the recovery entity’s net new FTE is over \$13 per hour, the recovery entity may receive a bonus of \$1,000 per net new FTE for which a base payment is calculated.

(2) If the average wage of the recovery entity’s net new FTE is over \$17 per hour, the recovery entity may receive an additional \$1,000 per net new FTE for which a base payment is calculated.

G. The maximum grant amount per net new FTE job created is \$15,000

H. The maximum number of FTE that may be included in the recovery entity’s estimates in the application is equal to the maximum number of FTE employed by the recovery entity in any quarterly period from January 1, 2019 to the date of application and documented through the ES903A filed with the department of workforce solutions.

[2.92.1.9 NMAC - N/E, 4/16/2021]

2.92.1.10 QUARTERLY PAYMENTS: Quarterly payments to recovery entities shall be determined by taking the initial per job calculation above and multiplying it by the number of FTE being claimed by the recovery entity for a given quarterly period. The per job amount may be reduced if the New Mexico finance authority and the economic development department determine the actual average wages paid fall below the thresholds for either or both of the \$1,000 bonuses to a degree that indicates a reasonable attempt was not made to pay the wages estimated by the recovery entity in its grant application.
[2.92.1.10 NMAC - N/E, 4/16/2021]

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2.92.1.11 QUARTERLY PAYMENT LIMIT: Quarterly payments to recovery entities are limited to the lesser of twenty-five percent of the provisional grant award or the eligible amount under the requirements and calculations set forth in this rule. The maximum amount that may be distributed in total to a recovery entity under the LEDA Recovery Grant project is \$100,000.
[2.92.1.11 NMAC - N/E, 4/16/2021]

2.92.1.12 DOCUMENTATION REQUIRED FOR PROOF OF QUALIFYING NET NEW FTE JOBS CREATED:

A. A recovery entity must provide its quarterly unemployment insurance filings with the department of workforce solutions (ES903A) at time of application for the quarter ending March 31, 2021 and, if applicable, the most recent quarterly ES903A filed with the department of workforces solutions available at the time of application.

B. A recovery entity provided an initial quarterly payment must provide the most recent quarterly filing of the ES903A prior to additional funds being released for a subsequent quarterly payment. The recovery entity must also provide documentation, in a form and manner to be prescribed by the New Mexico finance authority, to list the net new FTE requested to qualify for additional funds with the associated average hourly wage, hours worked per week and the total average wage for all net new FTE.

C. Upon request, the recovery entity shall submit to the New Mexico finance authority and the economic development department additional payroll documentation to validate the calculations and request.
[2.92.1.12 NMAC - N/E, 4/16/2021]

2.92.1.13 DOCUMENTATION REQUIRED FOR PROOF OF PAYMENT OF RENT, LEASE OR MORTGAGE: To prove payment of rent, mortgage or lease, a recovery entity must complete the affirmation provided by the economic development department to the New Mexico finance authority for distribution to recovery entities, along with proof of payment including a bank statement, canceled check, credit card receipt, ACH transaction or other forms of proof generally accepted. The rent, lease or mortgage payments must be for the recovery entity's place of business within New Mexico and must be payments related to land or buildings. Equipment rentals or leases do not qualify under the Local Economic Development Act.
[2.92.1.13 NMAC - N/E, 4/16/2021]

HISTORY OF 2.92.1 NMAC: [RESERVED]