

RULES
GOVERNING THE
CANNABIS MICROBUSINESS PROGRAM UNDER THE STATEWIDE ECONOMIC
DEVELOPMENT FINANCE ACT
AS
ADOPTED
ON
NOVEMBER 18, 2021
BY THE
BOARD OF DIRECTORS
OF THE
NEW MEXICO FINANCE AUTHORITY
AND
APPROVED BY THE NEW MEXICO FINANCE AUTHORITY
OVERSIGHT COMMITTEE
NOVEMBER 30, 2021

SECTION 1. AUTHORITY; PURPOSE OF RULES.

On April 12, 2021, Governor Michelle Lujan Grisham signed into law the Cannabis Regulation Act, NMSA 1978, Section 26-2C-1 *et seq.* (“CRA”), which creates a comprehensive licensing, taxing and enforcement regulatory structure for adult use cannabis in the State that will be administered by the Cannabis Control Division (“CCD”) of the Regulation and Licensing Department (“RLD”).

The New Mexico Finance Authority (“NMFA”), pursuant to the provisions of the Statewide Economic Development Finance Act, NMSA 1978, Section 6-25-6 (“SWEDFA”), is granted certain powers enabling it to provide financial assistance to eligible entities from the Economic Development Revolving Fund.

The NMFA, pursuant to SWEDFA’s economic development goal provisions, NMSA 1978, Section 6-25-3(F), is granted authority to provide financial assistance to rural and underserved areas designed to increase business activity, including agricultural projects that add value to New Mexico agricultural products, attract new business and create and promote an environment suitable for the support of start-up and emerging businesses in the cannabis industry.

The NMFA will administer these rules in compliance with the social and economic equity mandate under the CRA and 16.8.1.8 NMAC, which promotes and encourages full participation in the cannabis industry of (i) representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions; (ii) representatives with racial, ethnic, gender, geographic diversity; (iii) rural communities likely to be impacted cannabis production; and (iv) agricultural producers from economically disadvantaged communities.

These rules govern the implementation and administration of the Cannabis Microbusiness Program as authorized by NMSA 1978, Section 6-25-6(D), and do not apply to other programs established by the NMFA.

SECTION 2. DEFINITIONS.

A. “Application” means a written document filed with the NMFA by an Eligible Applicant for the purpose of requesting financial assistance.

B. “Board” means the NMFA Board of Directors.

C. “Cannabis Producer Microbusiness” means a cannabis producer at a single licensed premise that possesses no more than two hundred total mature plants at any one time.

D. “CCD” means the Cannabis Control Division created within RLD.

E. “Controlling Person” has the meaning provided NMSA 1978, Section 26-2C-2 (U), as amended and supplemented from time to time. For purposes of these Rules, a controlling person shall include a person that controls a financial or voting interest of ten percent or more of, or an

officer or board member of, a cannabis establishment, but does not include a bank or licensed lending institution.

F. “Chief Executive Officer” or “CEO” means the Chief Executive Officer of the New Mexico Finance Authority or designee.

G. “CRA” means the Cannabis Regulation Act, NMSA 1978, Sections 26-2C-1 to 26-2C-42, as amended and supplemented from time to time.

H. “Credit Committee” means a committee of NMFA staff appointed by the NMFA’s CEO.

I. “Economic Development Department” means the New Mexico Department of Economic Development.

J. “Economic Development Revolving Fund” means the fund created pursuant to NMSA 1978, Section 6-25-13 of SWEDFA.

K. “Economic Development Committee” means a committee, appointed by the chairman of the Board, from the members of the Board.

L. “Eligible Applicant” means (i) a cannabis establishment that is a for-profit or not-for-profit business, including an agriculture enterprise, and includes a sole proprietor, corporation, limited liability company, partnership or other entity, as determined to be engaged in an enterprise that serves an economic development goal and is suitable for financial assistance, (ii) that has been deemed eligible by EDD, (iii) that has been issued a license to operate as a cannabis establishment by the CCD, and (iv) is either a licensed Cannabis Producer Microbusiness or an Integrated Cannabis Microbusiness.

M. “Eligible Entity” has the meaning provided in NMSA 1978, Section 6-25-3(H) of SWEDFA, as amended and supplemented from time to time. For purposes of these rules, an eligible entity shall include certain Integrated Cannabis Microbusinesses or Cannabis Producer Microbusinesses under the CRA and further defined in the CRA, as amended and supplemented from time to time.

N. “Financial Assistance” means loans from the Economic Development Revolving Fund provided by the NMFA to Applicants pursuant to these rules and Program Policies adopted by the NMFA, as amended and supplemented from time to time.

O. “Integrated Cannabis Microbusiness” means a person that is authorized to conduct one or more of the following: (i) production of cannabis at single licensed premises; (ii) manufacture of cannabis products at a single licensed premises; (iii) sale or transportation of only cannabis products produced or manufactured by that person; (iv) operation of only one retail establishment; and (v) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

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

Q. “Oversight Committee” means the joint interim legislative committee established pursuant to NMSA 1978, Section 6-21-30 of SWEDFA, as amended and supplemented from time to time.

R. “Program” means the Cannabis Microbusiness Program administered by NMFA and authorized by SWEDFA and these rules.

S. “Program Policies” means the policies adopted by the NMFA to provide guidance to potential borrowers and NMFA staff regarding the terms of financial assistance for the Program, including program eligibility, Application requirements, general considerations, loan structuring parameters and monitoring requirements.

T. “Quantifiable Benefits” means advancement of economic development goals as measured by SWEDFA, pursuant to NMSA 1978, Section 6-25-3(R), as amended and supplemented from time to time and further identified by the Program Policies.

U. “RLD” means the New Mexico Regulation and Licensing Department.

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

W. “SWEDFA” means the Statewide Economic Development Finance Act, NMSA 1978, Sections 6-25-1 to 6-25-29, as amended and supplemented from time to time.

SECTION 3. APPLICATION FOR FINANCIAL ASSISTANCE.

A. Applications will be available to Eligible Applicants pursuant SWEDFA’s economic development goals provisions and targeted by the CRA’s social and economic equity mandate to promote and encourage full participation in the cannabis industry.

B. A complete Application for financial assistance includes information relating to the proposed use of financial assistance proceeds, evidence of the Applicant’s creditworthiness, and any other matters the NMFA may consider appropriate, which may include, but is not limited to, any of the following:

1. Applicant legal entity type and formation documents, including a certificate of good standing from the New Mexico Secretary of State, if applicable;

2. Ownership structure of Applicant (for each owner detailing name, address, percentage ownership);

3. Sources and uses of financial assistance proceeds (detailed schedule);

4. Business plan and a minimum of three (3) years of proforma financial statements, as further set forth in the Program Policies;

5. Copy of license or conditional license from CCD;
6. Copy of permit or conditional permit from the local government where the business is located, as applicable;
7. a complete list of outstanding loan(s) to the Applicant or to any Controlling Person as defined under the CRA, member, partner or stockholder of the Applicant;
8. authorization to obtain a credit report of the Applicant and the guarantor, as applicable;
9. a current balance sheet and year-to-date profit and loss statement for the Applicant, dated not more than ninety (90) days prior to the date of Application, a fiscal year-end balance sheet, and the Applicant's profit and loss statement for the prior three (3) years or audited financial statements, as applicable;
10. federal income tax return for the prior two (2) years on all guarantors and co-borrowers, as relevant;
11. copies of the Applicant's federal income tax returns for the prior three (3) years if the balance sheets and profit and loss statements required from the Applicant in this Section are not audited by a certified public accountant; and
12. any other information requested by the NMFA to evaluate the Application.

C. If the Applicant is a newly created entity formed for the sole purpose of doing business under the CRA, the Applicant shall provide the information in paragraphs 1 through 12 of this Section 3 for the Applicant's existing entities, if any, the Applicant personally, if requested, or any other information requested by the NMFA to evaluate the Application.

D. All communications regarding Applications for Financial Assistance shall be directed to the CEO or other staff member of NMFA designated by the CEO.

SECTION 4. EVALUATION OF APPLICATION; COMMITMENT.

A. Priority will be given to Eligible Applicants that meet social, economic, demographic and/or other criterion as defined by RLD, from time to time. Once Applicants have met the initial criteria outlined by RLD, priority will be further determined in accordance with the provisions of the Program Policies.

B. All complete Applications meeting these rules will be reviewed by the Credit Committee. Projects recommended for approval by the Credit Committee will be presented to the Economic Development Committee.

C. The Economic Development Committee will consider Applications for Financial Assistance recommended by the Credit Committee and may confer with outside parties such as the CCD or others as necessary to obtain information on the Applicant or viability of the project. Financial Assistance recommendations by the Economic Development Committee will be presented to the Board for its approval or disapproval. To the extent required by law, the NMFA will confirm with the Economic Development Department that the Applicant is an Eligible Entity and is engaged in an enterprise that serves an economic development goal and is suitable for financing assistance, as defined in the SWEDFA.

D. NMFA will evaluate each Application in accordance with these Rules, and will determine whether to approve an Application for Financial Assistance based on:

1. whether the requirements of the SWEDFA and these Rules have been met;
2. the Applicant's experience, including past relevant experience across business sectors and models, including managing similar enterprises, if any;
3. the education and work history of the officers, managers, Controlling Person(s), members, or partners of the Applicant;
4. the creditworthiness of the Applicant;
5. the viability of the business enterprise;
6. the level of the Applicant's equity in the proposed project;
7. existence of liens or encumbrances on the Applicant's assets;
8. the Applicant's ability to service debt;
9. loan-to-value, debt-to-equity, or other applicable operating and leverage ratios;
10. the Applicant's Quantifiable Benefits, including the impact on local job creation and projected total gross receipts and tax collections, and other fee and revenue collections resulting from the Applicant's business enterprise; and
11. the ability of the Applicant to continue providing goods and services that are critical for public health, safety and welfare of New Mexicans.

E. Once a recommendation has been made on the Application by the Economic Development Committee, the Board will consider the Application no later than the next regular Board meeting at which such item may be properly considered, or forty-five (45) days after Economic Development Committee action, whichever comes first. The Board may approve all or part of the Application as recommended by the Economic Development Committee and shall either adopt the findings set forth in the recommendation with respect to, without limitation, eligibility,

nature of the project, and the adequacy of consideration, or shall specify the Board's own findings on those subjects. Board approval may specify, at the Board's discretion, terms and conditions of the financial assistance as necessary to ensure repayment, including but not limited to, maximum loan term and minimum annual payments.

F. NMFA will evaluate each Application to determine the ability to repay the funds and need for the financial assistance. If the NMFA believes that projected revenues of the Applicant, together with other dedicated sources of repayment, will not be sufficient to repay the requested financial assistance, NMFA will not recommend the Application to the Board.

G. If an Application is approved by the Board, the NMFA will provide a financial assistance commitment.

H. Financial assistance commitments issued by NMFA will be for a term determined by the NMFA, not to exceed five (5) years.

SECTION 5. FINANCIAL ASSISTANCE TERMS.

A. Financial assistance provided under the program must satisfy conditions prescribed in this Section 5.

B. Financial assistance may not exceed \$250,000 and shall be secured by all legally acceptable collateral whose value exceeds the amount of assistance provided, including, but not limited to equipment, buildings, accounts receivable and inventory, and meets loan-to-value requirements. Collateral may require independent qualified appraisal to estimate fair market value.

C. Financial assistance requires an equity requirement by contribution of a minimum of 5% of the loan amount in a form of an owner contributions, cash or in-kind, or in down payments.

D. Financial assistance secured by real property will require a first-lien mortgage, leasehold mortgage, or deed of trust and assignment of leases and rents, as applicable, which shall be recorded in the county where the property is located, and a title commitment and loan policy of title insurance issued by a title insurance company acceptable to NMFA and in form and content acceptable to NMFA.

E. Financial assistance secured by personal property will require a Uniform Commercial Code tax lien and judgment search to confirm the highest lien level lien on the personal property attainable to accomplish a successful financing, security agreement and the filing of a Uniform Commercial Code Financing Statement in the appropriate county or state offices. The NMFA may, in its discretion, review and approve other encumbrances against the personal property that do not affect NMFA's security for the financial assistance.

F. Unless waived by the NMFA, the Applicant shall obtain insurance coverage on all property securing the financial assistance from responsible companies in such amounts and against such risks as is satisfactory to NMFA.

G. Financial assistance shall require a personal guarantee for repayment to be provided from one or more of the following persons:

1. a partner, Controlling Person, or member of the Applicant;
2. a joint venturer with the Applicant;
3. any stockholder of the Applicant;
4. the parent corporation or a partner, member, or stockholder of the parent corporation if the Applicant is a subsidiary.

H. Financial assistance proceeds shall be used only for the acceptable purposes further determined in accordance with the provisions of the Program Policies.

SECTION 6. CLOSING AND DISBURSEMENT OF FUNDS.

A. Upon certification by the Applicant that all provisions of the financial assistance commitment have been complied with, the financial assistance will be scheduled for closing.

B. Disbursement of funds will be made using the form prescribed by NMFA in the financial assistance agreement. Conditions precedent to disbursement, if any, must be met prior to disbursing financial assistance proceeds.

SECTION 7. FINANCIAL ASSISTANCE DOCUMENTATION REQUIREMENTS.

A. All financial assistance documents shall provide that NMFA has all available remedies in the event of a default. Such remedies will include, without limitation, rights to foreclose, repossess collateral, sell collateral at public or private sale, obtain deficiency judgments, and exercise all other remedies available at law or in equity.

B. The interest rate for the financial assistance will be set at the time the NMFA issues a financial assistance commitment.

SECTION 8. MONITORING AND REPORTING.

After disbursement of funds, borrowers shall submit quarterly financial statement and annual reporting, to include:

- A. complete financial statements;
- B. most recent inspection/compliance report and licensure renewal from CCD; and

C. business performance report, to include job creation metrics; annual certification of all representations, warranties, and covenants; and certification that there have been no ownership changes in the business enterprise.

SECTION 9. ADMINISTRATIVE FEES.

A. NMFA may impose and collect reasonable fees in connection with the filing of an Application for financial assistance, including an Application and commitment fee payable upon issuance of a commitment, and reasonable fees for the extension of any commitment.

B. NMFA may establish such other charges, premiums, fees, and penalties as it shall deem necessary for the administration of the program.

SECTION 10. DURATION AND AMENDMENT OF RULES.

These Rules may be amended at any time by the NMFA, with the prior approval of the Oversight Committee.