

<b>NMFA Programs</b>	<b>Cannabis Microbusiness Program</b>	<b>Original Effective Date: 11/18/2021</b>
		<b>Last Revision: 2/18/2022</b>



## CANNABIS MICROBUSINESS PROGRAM POLICIES

*These Cannabis Microbusiness Program Policies (“Policies”) were adopted on the 18<sup>th</sup> day of November 2021 by the Board of Directors of the New Mexico Finance Authority (“NMFA”), a public body politic and corporate, separate and apart from the State of New Mexico constituting a governmental instrumentality, created by the New Mexico Finance Authority Act, Section 6-21-1 et. seq., NMSA 1978.*

### I. PURPOSE

#### A. Purpose Statement.

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 created a comprehensive licensing, taxing and enforcement regulatory structure for adult use cannabis in the state administered by the Cannabis Control Division (“CCD”), which is located in the Regulation and Licensing Department (“RLD”).

CRA provisions specifically include a mandate around Social and Economic Equity, where the RLD must adopt procedures that promote and encourage full participation in the cannabis industry by: (i) representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions; (ii) rural communities likely to be impacted by cannabis production; and (iii) agricultural producers from economically disadvantaged communities.

RLD believes a significant portion of licensed cannabis microbusinesses owned by minorities or located in rural or economically disadvantaged communities will face disproportionate barriers in accessing the financing they would need to participate in the emerging cannabis industry. To address these barriers, the Cannabis Microbusiness Program will offer affordable financing to cannabis establishments that demonstrate the technical and managerial capacity to operate.

#### B. Objectives.

The goal of these Policies is to provide guidance to potential borrowers and NMFA staff regarding the terms of financial assistance the Cannabis Microbusiness Program will offer cannabis establishments. This includes guidance on program eligibility, application requirements, general considerations, loan structuring parameters and monitoring requirements.

## **C. Implementation.**

These Policies shall be implemented by the NMFA Board, pursuant to the authority of the Statewide Economic Development Finance Act, Sections 6-25-1 et seq., NMSA 1978, as amended and supplemented from time to time (“SWEDFA”), and may, at times, be waived or revised, if the NMFA Board determines a deviation or revision is appropriate. Any waiver of these Policies will be reflected in the minutes of the public meeting at which the waiver is considered. Any revisions to these Policies will be reflected in a new documented version of these Policies, dated as of the Board approval of the revisions. Any waiver or revision must not conflict with the provisions of SWEDFA.

## **II. DEFINITIONS**

- A.** “Application” means a written document filed with the NMFA by an Eligible Applicant for the purpose of requesting financial assistance.
- B.** “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.
- C.** “CCD” means the Cannabis Control Division created within RLD.
- D.** “Controlling Person” means 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” (as defined in Section 26-2C-2(U) of the CRA), but does not include a bank or licensed lending institution.
- E.** “CRA” means the Cannabis Regulation Act, NMSA 1978, Sections 26-2C-1 to 26-2C-42, as amended and supplemented from time to time.
- F.** “Eligible Applicant” means (i) a cannabis establishment that is a for-profit or not-for-profit business, including an agricultural enterprise, such as new or ongoing agricultural projects that add value to New Mexico agricultural products, and including a corporation, limited liability company, partnership or other entity, determined by the New Mexico Economic Development Department (“EDD”) to be engaged in an enterprise that serves an economic development goal and is suitable for financing assistance, (ii) that has been deemed eligible by the 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.
- G.** “Financial Assistance” means loans from the Economic Development Revolving Fund provided by the NMFA to Applicants pursuant to NMFA Rules and Policies, as amended and supplemented from time to time.

- H. “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.
- I. “NMFA” means the New Mexico Finance Authority.
- J. “NMFA Rules” mean the Rules governing the Cannabis Microbusiness Program under SWEDFA adopted by the NMFA Board on November 18, 2021 and approved by the NMFA Oversight Committee on November 30, 2021.
- K. “RLD” means the New Mexico Regulation and Licensing Department.
- L. “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.

### III. GENERAL CONSIDERATIONS

#### A. Licensed by CCD.

Only Eligible Applicants that demonstrate proof of CCD licensure may submit applications for financial assistance. Applicants approved for financial assistance must maintain and provide annual evidence of CCD licensure for the duration of the term of financial assistance.

#### B. Prioritization of Applications; Social and Economic Equity.

This program has been designed to prioritize Applications for financial assistance according to 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 by cannabis production; and (iv) agricultural producers from economically disadvantaged communities.

#### C. Technical and Managerial Capacity; Business Plan.

As determined by NMFA in its sole discretion, applications failing to demonstrate relevant technical capacity, as evidenced by prior experience in the cannabis sector and/or agricultural production, and relevant managerial capacity, as evidenced by professional start-up and/or business operating experience, will not be recommended to receive a loan. Applications failing to present a business plan adequately representing the relevant

experience of the team, business strategy, sustainable financial projections, plans for mitigating competition and other risks, and operational procedures particularly with regards to financial management and accounting will not be recommended to receive a loan.

**D. Financial Feasibility; Repayment; Security.**

Loans will be structured to achieve repayment from operating cash flows without adversely impacting operations. If an analysis of future operating cash flows cannot reasonably demonstrate ability to repay a loan, the loan will not be deemed financially feasible and the corresponding application for financial assistance will be declined. Cash flow from operations will be the primary consideration factor when determining loan repayment, with additional security in the form of collateral and guarantees also considered on a secondary basis.

**E. Regulatory and Emerging Industry Risk.**

The cannabis sector is an emerging industry with developing regulatory frameworks. The NMFA reserves the right to cease review and consideration of applications for financial assistance should the NMFA Board, upon recommendation from NMFA Staff, determine cannabis sector market risks too challenging to support the underwriting and structuring of loans.

**IV. APPLICATION REQUIREMENTS; PRIORITIZATION**

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.

**A. Application Requirements.**

Applicants must submit a complete package including the Cannabis Microbusiness Program application form and accompanying attachments, including but not limited to:

- Copy of license from CCD
- Consent for CCD to share applicant information with NMFA
- Copy of business permit (or conditional business permit) from local government where business is located if such jurisdiction requires issuance of business permits
- Applicant legal entity type and all entity formation documents, including a certificate of good standing from the New Mexico Secretary of State, if applicable
- Ownership structure of the Applicant (for each owner detailing name, address, percentage ownership)
- Organizational chart
- Management team bios
- Copies of all operating policies, as applicable/available, including:

- Compensation/HR policy
- Social and economic equity plan
- Healthy and safety policy
- Cyber/information security
- Insurance policies
- Sources and uses of loan proceeds (detailed schedule)
- Business plan and a minimum of three (3) years of pro-forma financial statements
- Complete list of outstanding indebtedness, along with terms, to Applicant or to any Controlling Person
- List of assets including current value
- Current balance sheet and P&L statement
- Financial statements for last three (3) years, audited or unaudited, if available
- Authorization to obtain a credit report on all owners, Controlling Persons and guarantors

**B. Application Prioritization.**

Priority will be given to Eligible Applicants that meet social, economic, demographic and/or other criteria as defined by RLD, from time to time. Financial assistance will be awarded in monthly rounds. If demand for financial assistance exceeds supply in a given month, financial assistance awards will be prioritized toward Eligible Applicants located in census tracts or census designated places with the lowest median household income (MHI). The address of the licensed premises of the Eligible Applicant will be utilized to determine applicable MHI.

**V. SWEDFA CONFIDENTIALITY**

Information obtained from Applicants or prospective applicants that is proprietary technical or business information shall be held in confidence in accordance with the confidentiality provisions of SWEDFA. Any violation of the SWEDFA provisions can lead to disciplinary procedures including being charged with a misdemeanor.

**VI. LOAN STRUCTURING PARAMETERS**

**A. Loan Amounts.**

Loan amounts are expected to range between \$50,000 and \$100,000 and are not to exceed \$250,000.

**B. Use of Proceeds.**

Loan proceeds may be used to fund the purchase of assets or operational costs directly related to cannabis production, including:

- Buildings (including greenhouses)
- Equipment (including lighting, security systems)
- Agricultural inputs (including, without limitation, seeds, soil, fertilizers, insecticides, water/irrigation systems)
- Working capital (including lease and utility payments, labor, transportation, technical assistance, professional certification/development, consulting, marketing)

**C. Maximum Loan Amortization.**

Loans will be structured with an initial interest-only period to allow for operational ramp-up and for maximum terms of five (5) years.

**D. Debt Service Coverage Requirement.**

At the time of underwriting NMFA requires a debt service coverage ratio of 1.25x or greater, calculated on the maximum annual debt service payment projected over the term of the loan.

**E. Interest Rates.**

NMFA will provide fixed interest rates of 2% for loans with terms of three (3) years or less or amounts up to and including \$100,000, and 3% per annum for loans with terms greater than three (3) years or amounts higher than \$100,000.

**F. Collateral; Loan-to-Value Requirement.**

Loans must be secured by all legally acceptable collateral including, but not limited to:

- Equipment
- Buildings
- Inventory, excluding “cannabis product” as defined in Section 26-2C-2(K) of the CRA, as may be amended from time to time
- Outstanding accounts

Loans will be underwritten with loan-to-value ratios of up to 90%. Applicants should provide an estimate of an asset’s fair market value prepared by an independent, qualified appraiser where available. NMFA requires security interests in collateral to be perfected and will require post-filing lien searches that document the approved lien.

**G. Equity Requirement**

Applicants are required to contribute a minimum of 5% of the loan amount for loans under \$100,000, and 10% of the loan amount for loans over \$100,000, in the form of owner contributions, cash or in-kind, or down payments.

## **H. Personal and Corporate Guaranties.**

All loans will require personal guarantees of all Controlling Persons. A corporate guaranty may be required if the borrower is a related company.

## **I. Credit History.**

Applicants are required to authorize the NMFA to obtain credit reports on all owners, Controlling Persons and guarantors, both at the time of application and yearly if approved for a loan.

## **VII. BANKING; MONITORING AND REPORTING**

Borrowers will be required to bank with financial institutions approved by NMFA and will be required to authorize the sharing of bank account information with NMFA. Borrowers are required to submit monthly bank account statements, quarterly financial statements, and a detailed annual reporting package that includes:

- Latest complete financial statements
- Latest inspection/compliance report and licensure renewals from CCD and other relevant regulatory bodies
- Brief narrative on business performance including job creation metrics
- Certification that all representations, warranties and covenants remain true and correct
- Certification that there has been no change in business ownership/change in control

The NMFA reserves the right to request additional information for monitoring purposes.

## **VIII. REFERENCES**

- New Mexico Finance Authority Act, Section 6-21-1 *et seq.*, NMSA 1978, as amended and supplemented from time to time
- Statewide Economic Development Finance Act, Section 6-25-1 *et seq.*, NMSA 1978, as amended and supplemented from time to time
- Cannabis Regulation Act, Section 26-2C-1 *et seq.*, NMSA 1978, as amended and supplemented from time to time
- Commercial and Medical Cannabis Rules, Title 16, Chapter 8, NMRA, August 24, 2021, as may be amended and supplemented from time to time
- New Mexico Finance Authority Rules Governing the Microbusiness Loan Program, adopted by the New Mexico Finance Authority Board of Directors on November 18, 2021 and approved by the NMFA Oversight Committee on November 30, 2021, as may be amended and supplemented from time to time.