

AMENDED AND RESTATED RULES
GOVERNING THE
SMALL BUSINESS RECOVERY LOAN FUND
PURSUANT TO THE SMALL BUSINESS RECOVERY AND STIMULUS ACT
AS
ADOPTED
ON APRIL 28, 2022
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 July 7, 2020, following the 54th Legislature – First Special Session, Governor Michelle Lujan Grisham (the “Governor”) signed into law Senate Bill 3, as amended, titled the Small Business Recovery Act of 2020 (the “2020 Act”), which created in the New Mexico Finance Authority (the “NMFA”) the Small Business Recovery Loan Fund (“SBRLF”) which provides loans to businesses that are experiencing financial hardship due to the Public Health Emergency Order. On March 3, 2021, during the 55th Legislature – First Session, the Governor signed into law Senate Finance Committee Substitute for Senate Bill 3, titled the Small Business Recovery and Stimulus Act (the “2021 Act” and together with the 2020 Act, the “Act”), which amended the Small Business Recovery Act of 2020 to substantially expand the program and make funding available for more New Mexico businesses; and

These rules govern the implementation and administration of the SBRLF enacted under the Act, and do not apply to other programs established by the NMFA.

SECTION 2. DEFINITIONS.

A. “Application” means an application for a Small Business Recovery Loan pursuant to the Act.

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

C. “Average Monthly Business Expenses” means an amount equal to the quotient of:

(1) a Qualifying Small Business’s total expenses excluding depreciation as determined from the business’s federal income tax return for taxable year 2019, 2020 or 2021, divided by the number of months in operations during the respective tax year; or

(2) a Qualifying Small Business’s total expenses excluding depreciation for three months in tax year 2021 as reported by the business and evidenced by financial statements, bank statements, credit card statements, payroll records, lease agreements, invoices and receipts divided by three.

- D. “Board” means the NMFA board of directors.
- 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 Department (as defined below
- G. “credit standard” means a pattern of responsible behavior in meeting prior financial obligations as evidenced by credit report on the business or Nonprofit Corporation:
- (1) for all loan requests, the credit report must be free of creditor collection efforts or creditor charge offs from telecommunications, utilities or rent creditors in calendar year 2019.
 - (2) for loan requests of \$75,000 or greater, the credit report must be free of creditor collection efforts or credit charge offs in calendar year 2019 from creditors other than those listed in Section 2.G(1).
- H. “Creditor Collection Effort” means pursuit, collection through extraordinary means or exercising rights of collateral by a creditor for amounts more than 90-days past due.
- I. “Creditor Charge-Off” means the unpaid amounts deemed uncollectible by creditors.
- J. “Department” means the New Mexico Taxation and Revenue Department.
- K. “DWS” means the New Mexico Department of Workforce Solutions.
- L. “Fund” means the Small Business Recovery Loan Fund created in the NMFA to provide loans to Qualifying Small Businesses.
- M. “identification standard” means third party validation, verification, and authentication of the applicant, owner(s), authorized officers, guarantors, or any other persons that the NMFA may deem applicable.
- N. “Loan Agreement” means the agreement between the Qualifying Small Business and the NMFA entered into in accordance with the Act.
- O. “New Mexico Resident” means an individual who was domiciled in this state during any part of the year or was physically present in this state for one hundred eighty-five days or more during the taxable year. A domicile is the place where an individual has a true, fixed home, that is a permanent establishment to which the individual intends to return after an absence, and is where the individual has voluntarily fixed habitation of self and family with the intention of making a permanent home

- P. "NMFA" means the New Mexico Finance Authority.
- Q. "non-employer business" means a Qualifying Small Business that has no paid employees.
- R. "Nonprofit Corporation" means a corporation which is designated as a Section 501(C)(3), 501(C)(6), 501(c)(8), 501(c)19 or 501(c)(23) entity by the Internal Revenue Service Code and subject to the provisions of the State Non-Profit Corporation Act.
- S. "Ordinary and Necessary Business Expenses" means all expenses, including expenses and capital expenses incurred to operate the business in compliance with the Public Health Emergency Order.
- T. "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.
- U. "Public Health Emergency Order" means the order issued by the New Mexico Department of Health on March 23, 2020, as supplemented or amended.
- V. "Qualifying Small Business" means a business or Nonprofit Corporation that:
- (1) was established prior to the Public Health Emergency Order;
 - (2) can demonstrate, as determined by the NMFA, that it has sustained a substantial decline in gross revenue or a substantial disruption to its operations due to the Public Health Emergency Orders;
 - (3) had an annual net revenue, defined as gross revenues minus the cost of goods sold, of less than five million dollars (\$5,000,000) as determined from the business's federal income tax return for taxable years 2019, 2020 or 2021; and
 - (4) is organized and operated as a Nonprofit Corporation or is owned as follows:
 - (a) for a sole proprietorship, one hundred percent of the assets of the business is owned or leased by a New Mexico Resident, or
 - (b) for a corporation, partnership, joint venture, limited liability company, limited partnership or other business entity, at least fifty-one percent of the total voting power of the entity and at least fifty-one percent of the total value of the equity is owned by one or more New Mexico Residents or the business entity maintains a physical location within the state and has employed at least ten full-time New Mexico Resident employees at any time since January 1, 2019.
- W. "State" means the State of New Mexico.
- X. "substantial decline in gross revenue" means:

(1) a decline in the business's gross receipts by more than twenty percent (20%) from the business's gross receipts in 2020 as compared to that same period in 2019, or 2021 as compared to that same period in 2020, as reported by the business to the Department, or

(2) for a business organized and operated as a Nonprofit Corporation or a business whose receipts are exempt from gross receipts tax, a decline in the business's or Nonprofit Corporation's revenue by more than twenty percent (20%) in 2020 as compared to 2019, or 2021 as compared to that same period in 2020, as determined by tax returns reported by the business or Nonprofit Corporation to the federal internal revenue service.

Y. "substantial disruption to operations" means

(1) Closures for fourteen (14) or more cumulative days that were mandated by the Public Health Emergency Order; or

(2) a reduction in operations for a period of at least 30 days as mandated by the Public Health Emergency Order; or;

(3) a reduction in force or lay-off of at least twenty percent (20%) of the business's or Nonprofit Corporation's employees from December 31, 2019 as evidenced by a quarterly report filed by the business or Nonprofit Corporation with the DWS; or

(4) a twenty percent (20%) increase in cost of goods sold or other operating expenses as evidenced by federal tax returns for tax years 2019 and 2020.

SECTION 3. APPLICATIONS.

A. Applications for loans from the Fund must be received by the NMFA on or before 12:00 PM MDT December 31, 2022. Applications that are incomplete, inconsistent, or missing required information will not be considered. The NMFA may, in its discretion, designate one or more application periods. The NMFA will use its best efforts to notify the applicant of the denial as soon as practicable. Such applicant may submit a new application in a subsequent application period, if applicable, that will be reviewed in the order received.

B. An applicant may apply for a loan during a designated application period by submitting an application to the NMFA, which shall include, without limitation, the proposed use of the loan proceeds, and any other information necessary to evaluate the application pursuant to the Act. At a minimum, applications for loans must include the following information:

(1) federal tax returns for taxable year 2019, 2020 and/or 2021, as applicable, including combined returns for applicants that may be partially or wholly owned by another business entity;

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

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

(4) for a business other than a Nonprofit Corporation, evidence that the applicant is, or fifty-one percent owned by New Mexico Residents, as defined in the Act. Acceptable evidence includes:

(a) Valid New Mexico driver's license or government-issued photo identification card;

(b) Valid driver's license or government-issued photo identification card of another state along with a recent copy of a New Mexico utility bill;

(c) Applicants where no single individual owns more than 20% may submit documentation listing the names, addresses and percentage of ownership that has been submitted to the federal or state governments with penalty of perjury.

C. The NMFA may request from any applicant additional information, in NMFA's sole discretion, including but not limited to the following:

(1) authorization to obtain a credit report of any guarantor, as applicable;

(2) for a Qualifying Small Business opting to evidence Average Monthly Operating Expense pursuant to Section 2.C(2), financial statements for a three-month period during the Qualifying Small Business's tax year 2021 and copies of bank statements, credit card statements, payroll records, invoices and receipts that support the financial statements;

(3) for a business that cannot evidence 51% ownership by one or more New Mexicans but maintains a physical business location in the state and has employed at least ten full-time New Mexico Resident employees at any time since January 1, 2019:

(a) DWS Form ES903A or other applicable DWS form listing employees and a supplemental sheet showing the addresses of the employees listed and the hours worked for the quarter reported.

(b) For purposes of this section, a full-time employee is an individual that regularly works 32 hours per week.

(4) information pertaining to the applicant's employees, including but not limited to the number of employees employed by the applicant on March 1, 2020 and March 1, 2021, the number of employees on the date of the application, and the number of employees expected to be employed by the applicant on March 1, 2022 (for reporting purposes only);

(5) is the applicant a minority, woman owned, or disadvantaged business (for reporting purposes only);

(6) the applicant's NAICS industry (for reporting purposes only); and

(7) any other information requested by the NMFA to evaluate the application or report on the impact of the Act.

SECTION 4. EVALUATION OF APPLICATION; LOAN APPROVAL.

A. The NMFA will endeavor to review and act upon all complete applications in the order in which they were received.

B. The NMFA will review applications for loans to ensure compliance with Section 4.D of these rules. To the extent required by law, the NMFA will confirm that the applicant is a Qualified Small Business eligible for a Small Business Recovery Loan as required by the Act.

C. The NMFA will evaluate each application in accordance with these Rules, and will determine whether to approve an application for loans based on:

(1) whether the requirements of the Act and these rules have been met;

(2) whether the applicant is a Qualified Small Business; and

(3) whether the applicant meets the credit and identification standards (as more fully set forth below) as determined by the NMFA;

D. An applicant will be deemed to have met the credit and identification standards unless:

(1) the applicant is unable to certify that prior to the issuance of the Public Health Emergency Order it was current on obligations under the Income Tax Act, Corporate and Franchise Tax Act, Withholding Tax Act, Gross Receipts and Compensating Tax Act, Unemployment Compensation Law;

(2) the applicant is unable to certify that in calendar year 2019 no Creditor Charge-Off's or Creditor Collection Efforts were taken by telecommunications, housing or utility creditors as may be verified by an independent credit report; and

(3) the applicant is unable to provide proof of a checking account held in its name at a federally insured financial institution.

E. A guarantee for repayment of that portion of the loan that exceeds \$75,000 must be provided from one or more of the following persons:

(1) a partner or member of the applicant;

(2) a joint venturer with the applicant;

(3) any stockholder with a greater than 20% equity ownership of the applicant; or

(4) the parent corporation or a partner, member or stockholder of the parent corporation if the applicant is a subsidiary.

F. NMFA will require Qualifying Small Businesses that do not meet the credit standards identified in Section 2.G(2) to secure loans greater than \$75,000 with collateral with a value greater than the amount of assistance provided greater than \$75,000.

G. Loans required to be collateralized pursuant to Section 4.F will be secured by personal property with a lien on the personal property which is at the highest lien level attainable to accomplish a successful financing. The NMFA may, in its discretion, review and approve other encumbrances against the personal property that do not affect the NMFA's security for the loan.

H. The CEO is authorized to approve the loan and may direct the NMFA to solicit or receive additional clarifying or other documentation from an applicant in order to assist in the evaluation of any application.

I. If a loan is approved, the NMFA will endeavor to document and fund the loan as soon as practicable.

J. Loans by the NMFA will be for a term of ten (10) years unless a shorter repayment period is requested by the Applicant.

K. Should the CEO not approve the loan, the applicant will be notified in writing of the denial as soon as practicable. Such applicant shall not have any right to appeal the decision of the CEO, however the CEO retains the right to direct the NMFA to solicit or receive additional clarifying or other documentation from an applicant in order to assist in the evaluation of any application. Notwithstanding the foregoing, an applicant shall not be prohibited from submitting a new application in a subsequent application period, nor shall the CEO be prohibited from considering the additional clarifying or other documentation for any denied application. In such case, the completed application shall be reviewed in the order submitted.

M. Businesses and Nonprofit Corporations that borrowed money from the SBRLF as part of the 2020 Act may refinance their loans, including any accrued but unpaid interest, pursuant to these rules.

SECTION 5. LOAN TERMS.

- A. Loans from the Fund must satisfy the conditions prescribed in this Section 5.
- B. Loans shall only be provided if there are available funds held in the Fund.
- C. Loans will be evidenced by entering into a Loan Agreement, as defined above.
- D. The term of the loan will be for a period not to exceed ten (10) years.

E. The amount of the loan shall be in an amount not to exceed three hundred percent of the Qualifying Small Business's average monthly business expenses as determined by the NMFA, provided that the loan amount shall not be greater than \$150,000.

F. For a loan recipient that is not a non-employer business, a minimum of eighty percent (80%) of the loan proceeds must be used for:

(1) Ordinary and Necessary Business Expenses, including capital expenses and excluding compensation for individuals who own equity in the Qualifying Small Business;

(2) making adaptations or improvements to assets, including real property, that are necessary due to the Public Health Emergency Order to protect the public health; or

(3) purchasing or improving any assets for the purpose of developing and growing the qualifying small business's e-commerce production and sales capacity.

G. For a loan recipient that is a non-employer business, a minimum of fifty percent (50%) of the loan proceeds must be used for:

(1) Ordinary and Necessary Business Expenses, including capital expenses and excluding compensation for individuals who own equity in the Qualifying Small Business;

(2) making adaptations or improvements to assets, including real property, that are necessary due to the Public Health Emergency Order to protect the public health; or

(3) purchasing or improving any assets for the purpose of developing and growing the qualifying small business's e-commerce production and sales capacity

H. The interest rate of the loan will be set on the date the application is submitted at the rate of one-half of the Wall Street Journal Prime Rate fixed per annum (the "Interest Rate"). Interest rates shall remain in effect for a period of thirty (30) days from of submission, after which time a new application will be required if an interest rate change has occurred. The interest rate shall be calculated on a simple interest, 30-360-day calendar year.

I. No interest shall accrue on loans during the first year of the loan.

J. Loans will be begin to incur interest on the first anniversary of the funding of the loan. Thereafter, for the next two years, interest only payments will be due annually on the anniversary of the funding of the loan.

K. Beginning on the third anniversary of the loan and continuing through the term of the loan, principal and interest payments will be due monthly and paid pursuant to the provisions of subsection T of this Section 5, as set forth below. NMFA may structure loans with principal and interest payments due other than monthly for Qualifying Small Businesses that make a request and

can demonstrate a track record of timely meeting prior loan obligations, provided that principal and interest payments shall be made at least annually.

L. For loans that do not exceed \$75,000, Applicants are not required to provide a personal guarantee.

M. For loans that exceed \$75,000, a personal guaranty from all equity owners with a greater than 20% ownership to secure that portion of the loan that exceeds \$75,000, in accordance with [Section 4.E.] of these Rules, as determined by the NMFA.

N. Unless sooner paid, renewed or extended, the entire outstanding principal balance, plus any remaining accrued interest, shall be due and payable in full upon the expiration of the Term of the Loan Agreement.

O. Loan balances may be prepaid without penalty or premium at any time.

P. The Loan Agreement will include a written certification signed by an Authorized Officer (“Officer’s Certificate”) of the Qualifying Small Business that certifies that:

(1) the officer understands that the business is receiving a loan under the Act that must be repaid by the business with interest under the terms of the loan agreement;

(2) all documents submitted in support of the loan application and all statements and certifications made in the application are true and accurate to the best of the officer’s knowledge;

(3) prior to the issuance of the Public Health Emergency Order, the business was 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 business’s operations; and

(4) all loan proceeds will be used for purposes as provided in the Act, including that a minimum of eighty percent (80%) of the loan proceeds (or fifty-one percent (51%) of the loan proceeds if a non-employer business) must be used for Ordinary and Necessary Business Expenses, including capital expenses and excluding compensation for individuals who own equity in the borrower’s business; and

Q. Borrowers will covenant to provide the NMFA with ongoing information pertaining to jobs and other information as may be requested by the NMFA from time to time to satisfy its obligations under the Act, including but not limited to any and all bankruptcy filings or discharges.

R. The loan 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.

S. Borrowers will covenant to register and repay their loans through NMFA's online payment portal, located at: <https://www.e-billexpress.com/ebpp/NMFinance/>.

SECTION 6. CLOSING AND DISBURSEMENT OF FUNDS.

A. Upon certification by the applicant that all provisions of the loan commitment have been complied with, a loan agreement will be sent to the applicant for execution.

B. Disbursement of funds will be made via automated clearinghouse into an account held in the applicant's name at a federally insured financial institution.

SECTION 7. ADMINISTRATIVE FEES AND OTHER EXPENSES.

The NMFA will impose and collect a fee of two percent (2%) of the State Investment Council's commitment to the Fund, not to exceed \$10,000,000.

SECTION 8. DURATION AND AMENDMENT OF RULES.

These rules are enacted pursuant to the Act and may be amended or superseded by the Board.