

## Notice of Proposed Rulemaking

The New Mexico Opportunity Enterprise Review Board (Board) will hold a public hearing on Friday, March 3, 2023 from 10:00–11:00 a.m., and on Tuesday, March 7, 2023 from 3:00-4:00 p.m. The public comment hearing will be conducted virtually via Zoom; the public may attend the hearing using the following methods:

### **Friday, March 3, 2023 from 10:00 – 11:00 a.m.**

Zoom meeting link: <https://us06web.zoom.us/j/89242811651?pwd=alBxcHFmazNUQUFDUVVnN1k1NjIMUT09>

Meeting ID: 892 4281 1651

Passcode: 302709

To join the meeting by phone dial:

+17193594580,,89242811651#,,,,\*302709# US

+17207072699,,89242811651#,,,,\*302709# US (Denver)

Find your local number: <https://us06web.zoom.us/u/kv50FLsno>

### **Tuesday, March 7, 2023 from 3:00-4:00 p.m.**

Zoom meeting link: <https://us06web.zoom.us/j/85075940948?pwd=RkpKR3dvTEFTMURZU3hjTnZ5SFVoQT09>

Meeting ID: 850 7594 0948

Passcode: 456523

To join the meeting by phone dial:

+17193594580,,85075940948#,,,,\*456523# US

+17207072699,,85075940948#,,,,\*456523# US (Denver)

Find your local number: <https://us06web.zoom.us/u/kerIaF7kEj>

The purpose of the rule hearing is to obtain input and public comment on the following proposed rules:

TITLE 2	PUBLIC FINANCE
CHAPTER 93	OPPORTUNITY ENTERPRISE ACT -- ENTERPRISE ASSISTANCE
PART 1	GENERAL PROVISIONS

**Statutory Authority:** Legal authority for this rulemaking may be found in the Opportunity Enterprise Act, Section 6-34-7 NMSA 1978. Pursuant to NMSA 1978, 6-34-3 and 6-34-5, the New Mexico Finance Authority is responsible for adopting rules relating to the use of the opportunity enterprise revolving fund necessary to carry out the provisions of the Opportunity Enterprise Act and shall provide necessary administrative services to the board.

### **Proposed Rule:**

TITLE 2	PUBLIC FINANCE
CHAPTER 93	OPPORTUNITY ENTERPRISE ACT ENTERPRISE ASSISTANCE
PART 1	GENERAL PROVISIONS

**2.93.1.1**           **ISSUING AGENCY:** New Mexico Opportunity Enterprise Review Board.  
[2.93.1.1 NMAC – N, x/x/2023]

**2.93.1.2**           **SCOPE:** All persons or entities applying for enterprise assistance under the opportunity enterprise revolving fund administered by the New Mexico finance authority, Sections 6-34-8 and 6-34-12, NMSA 1978.  
[2.93.1.2 NMAC – N, x/x/2023]

**2.93.1.3**           **STATUTORY AUTHORITY:** Sections 6-34-6 and 6-34-7, NMSA 1978.  
[2.93.1.3 NMAC – N, x/x/2023]

**2.93.1.4**           **DURATION:** Permanent.  
[2.93.1.4 NMAC – N, x/x/2023]

**2.93.1.5**           **EFFECTIVE DATE:** xxxxxxxxxxxx xx, 2023, unless a later date is cited at the end of a section.

[2.93.1.5 NMAC – N, x/x/2023]

**2.93.1.6 OBJECTIVE:**

**A.** Section 6-34-3, NMSA 1978, provides that the authority may adopt separate rules to administer the opportunity enterprise revolving fund to originate enterprise assistance for opportunity enterprise projects recommended by the board, govern the process through which applicants may apply for enterprise assistance from the opportunity enterprise revolving fund, and collect fees and costs related to providing enterprise financing to each opportunity enterprise financing partner.

**B.** Section 6-34-5, NMSA 1978 provides that the authority shall provide staff support for necessary administrative services of the board.

**C.** Section 6-34-6, NMSA 1978 provides that the authority shall upon the recommendation of the board, process, review and evaluate applications for enterprise assistance received from applicants.

**D.** Section 6-34-7, NMSA 1978 provides that the opportunity enterprise review board is required to adopt rules necessary to carry out the provisions of the act and allowing the authority to establish procedures for applying and qualifying for enterprise assistance, establishing economic development goals for the state in consultation with the department, governing the application procedures and requirements for enterprise assistance, determining how to select and prioritize applications for enterprise assistance to be funded by the authority, and providing safeguards to protect public money and other public resources.

**E.** Section 6-34-12, NMSA 1978 provides that the authority shall administer the opportunity enterprise revolving fund and recover from the opportunity enterprise revolving fund the costs of administering the fund and originating enterprise assistance.

**F.** Subsection K of Section 6-21-5, NMSA 1978 provides that the authority may fix charge and collect fees and other charges in connection with the making of loans, leases and any other services rendered by the authority.

[2.93.1.6 NMAC – N, x/x/2023]

**2.93.1.7 DEFINITIONS:**

**A.** “Act” means the Opportunity Enterprise Act, Sections 6-34-1 through 6-34-15, NMSA 1978, as the same may be amended and supplemented.

**B.** “Application” means a written document made publicly available by the authority and filed with the authority for enterprise assistance for the purpose of evaluating, in consultation with the department, the applicant’s qualifications and proposed enterprise development project or projects for types of enterprise assistance which may be provided by the authority under the act.

**C.** “Authority” means the New Mexico finance authority.

**D.** “Board” means the opportunity enterprise review board created by the Act.

**E.** “Bylaws” means the bylaws of the board adopted on August 24, 2022, as amended and supplemented from time to time.

**F.** “Department” means the economic development department.

**G.** “Economic development opportunities” means the advancement of an environmentally sustainable economic development goal of the state as determined by the authority, in coordination with the department, and includes the creation of jobs, the provision of needed services and commodities to diverse communities across the state and the increase of tax and other revenue collections resulting from the enterprise development project.

**H.** “Enterprise assistance” means opportunity enterprise financing, an opportunity enterprise lease or an opportunity enterprise loan.

**I.** “Enterprise development project” means the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure to create or expand economic development opportunities within the state.

**J.** “Fund” means the opportunity enterprise revolving fund.

**K.** “Opportunity enterprise partner” means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof that the authority determines is or will be engaged in an enterprise that creates or expands economic development opportunities within the state and is eligible for enterprise assistance pursuant to the act.

**L.** “Project review committee” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review proposed enterprise development projects to be recommended for funding from the fund.

**M.** “State” means the state of New Mexico.  
[2.93.1.7 NMAC – N, x/x/2023]

**2.93.1.8 ELIGIBILITY AND PRIORITIZATION POLICIES FOR ENTERPRISE**

**DEVELOPMENT PROJECTS:** The board will develop and consider a variety of factors in reviewing and evaluating enterprise development project proposals to determine which enterprise development projects to recommend to the authority for enterprise assistance from the fund. Board policies shall give priority to projects that demonstrate:

- A.** local support and financial need,
- B.** create or expand economic development opportunities within the state, and
- C.** other means of financing a proposed enterprise development project are unavailable or insufficient.

The board shall establish policies to consider in prioritizing enterprise development projects.  
[2.93.1.8 NMAC – N, x/x/2023]

**2.93.1.9 ENTERPRISE DEVELOPMENT PROJECT PROPOSAL, REVIEW, PRIORITIZATION AND APPROVAL PROCESS:**

- A.** The board and the department will administer an outreach program to local governments and potential opportunity enterprise partners for the purpose of making recommendations to the authority regarding enterprise assistance, and to notify applicants that enterprise development project proposals are being accepted for review by the project review committee and the board for prioritization and recommendation for funding to the authority.
- B.** The authority will provide forms and guidelines for enterprise development project proposals and applications for enterprise assistance. The authority may consider the recommendations and priorities of the board.
- C.** Applications for enterprise assistance shall describe the scope and plans of the enterprise development project or proposed use of leased property, demonstrate that the enterprise development project or lease will create or expand economic development opportunities within the state, demonstrate that the enterprise development project or lease will comply with all applicable state and federal law, provide sufficient evidence that other means of financing a proposed enterprise development project are unavailable or insufficient, and include any other documentation or certifications that the authority deems necessary.
- D.** Department staff will complete an initial evaluation of the application for enterprise assistance and enterprise development project proposals promptly following receipt. Such evaluation will include recommendations regarding suitability for enterprise assistance. The department may obtain input and information relevant to carrying out the purposes of the act from rely upon the advice of outside consultants in evaluating enterprise development project proposals and applications for enterprise assistance. The department will then forward to the project review committee for review the relevant application and the corresponding recommendation of the department, along with all third-party input and information compiled by the department.
- E.** The project review committee will consider the proposed enterprise development project and may confer with outside parties, including any person familiar with the proposed enterprise development project, as necessary to obtain more information on the feasibility, merit, and cost of the proposed enterprise development project. The project review committee will make a recommendation to the board on each enterprise development project proposal.
- F.** Upon the recommendation of the project review committee, the board will prioritize the proposed enterprise development projects for recommendation to the authority for consideration of enterprise assistance.
- G.** After completion of the review process by the project review committee and the board and receipt of a favorable recommendation on the enterprise development project proposal, the prioritized enterprise development projects will be recommended by the board to the authority for consideration of enterprise assistance.
- H.** NMFA may request an additional application from recommended enterprise assistance projects.
- I.** A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to enterprise assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict.

[2.93.1.9 NMAC – N, x/x/2023]

**2.93.1.10 ENTERPRISE DEVELOPMENT PROJECTS AND ELIGIBLE COSTS:**

- A.** The board may recommend to the authority that enterprise assistance from the fund should be made available for enterprise development projects as provided by Section 6-34-6, NMSA 1978.

**B.** Enterprise assistance from the fund shall be made only for eligible items, a determined by the authority, which includes:

- (1) opportunity enterprise financing;
- (2) opportunity enterprise loans;
- (3) acquiring title or other interest in an enterprise development project;
- (4) paying the reasonably necessary administrative costs, payments in lieu of taxes and other

costs and fees incurred by the authority in carrying out the provisions of the act.

[2.93.1.10 NMAC – N, x/x/2023]

**2.93.1.11 ENTERPRISE DEVELOPMENT PROJECT FINANCING:** The authority may recommend structured enterprise assistance packages that include opportunity enterprise financing, opportunity enterprise leases, opportunity enterprise loans, any other type of assistance authorized by the authority and the board, if applicable. The structure, terms and conditions of the financial assistance will be determined by the authority. Upon completion of an enterprise development project, the authority shall allow the opportunity enterprise partner responsible for the completion of that project an opportunity to obtain an opportunity enterprise lease for that property, provided that any breach of the terms of any enterprise assistance may preclude that opportunity enterprise partner from leasing the property, and in that event, the property shall be made available for lease to other opportunity enterprise partners.

[2.93.1.11 NMAC – N, x/x/2023]

**2.93.1.12 FINANCING APPROVAL REQUIREMENTS:** Based on the priority and evaluation factors set forth in Sections 8, 9, and 10, as well as the requirements of the Act, the board may recommend to the authority enterprise development projects for consideration of enterprise assistance. Board recommendations may be considered by the authority but shall not be binding on the authority. A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to enterprise assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict.

[2.93.1.12 NMAC – N, x/x/2023]

**2.93.1.13 RECONSIDERATION OF BOARD DECISIONS:** Any applicant affected by a decision of the board may request reconsideration of the decision of the board by notifying the board in writing within 15 days following the meeting at which the decision was made. Notice of a decision made in an open meeting of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless of whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for reconsideration, including any factual or legal matter on which the applicant believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chair of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.

[2.93.1.13 NMAC – N, x/x/2023]

**2.93.1.14 ENTERPRISE ASSISTANCE CONTRACT:**

**A.** The authority and opportunity enterprise partner awarded enterprise assistance will enter into a contract to establish the terms and conditions of enterprise assistance from the authority. The contract to provide enterprise assistance shall:

- (1) define the roles and responsibilities of the authority and the opportunity enterprise partner;
- (2) provide clawback or recapture provisions, if applicable, that protect the public investment in the event of a default on the contract;
- (3) provide a finance plan detailing the financial contributions and obligations of the authority and opportunity enterprise partner;
- (4) require an opportunity enterprise partner to provide guarantees, letters of credit or other acceptable forms of security, as determined by the authority;
- (5) specify how rents, if applicable, will be collected and accounted for;

and (6) specify how debts incurred on behalf of the opportunity enterprise partner will be repaid;

(7) provide that, in the event of a default, the authority may (a) elect to take possession of the property, including the succession of all right, title and interest in the enterprise development project; and (b) terminate the lease or cease any further funding and exercise any other rights and remedies that may be available.

B. The interest rate on any enterprise assistance extended, if applicable, shall be determined by the authority

C. The contract will contain provisions which require enterprise assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. The authority will monitor terms of the contract and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection. In the event of default under an enterprise assistance contract by an applicant, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

E. All contracts for enterprise assistance shall be provided to the board by the authority no later than thirty days from the execution of that contract. The board shall review contracts from time to time and determine whether the use of enterprise assistance is a prudent expenditure of public funds and report to the legislature annually on that determination. The board shall also make recommendations to the authority of potential rulemaking, application or lending changes to ensure transparent and efficient processes for carrying out the provisions of the Act.

[2.93.1.14 NMAC – N, x/x/2023]

#### **HISTORY OF 2.93.1 NMAC: [RESERVED]**

Copies of the proposed rule may be accessed online at <https://www.nmfinance.com/opportunity-enterprise-review-board> or contact Board staff at [OGC@nmfa.net](mailto:OGC@nmfa.net), (505) 984-1454 , or toll free 1-800-ASK-NMFA (1-877-275-6632).

The Board will accept written public comments on the proposed rule beginning January 31, 2023. Please submit written comments on the proposed rule to the NMFA, attention Daniel C. Opperman, Chief Legal Officer, via electronic mail at [OGC@nmfa.net](mailto:OGC@nmfa.net), or by regular mail at 207 Shelby Street, Santa Fe, NM 87501. Written comments must be received no later than 5 p.m. on March 7, 2023. Comments received prior to the rule hearing will be posted to the Board website at <https://www.nmfinance.com/opportunity-enterprise-review-board>. Persons will also be given the opportunity to present their comments at the rule hearing.

Individuals who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact the Board Staff as soon as possible at [OGC@nmfa.net](mailto:OGC@nmfa.net), (505) 984-1454 , or toll free 1-800-ASK-NMFA (1-877-275-6632). The Board requests advance notice to provide required special accommodations at least one week prior to the meeting or as soon as possible.