

**RULES
GOVERNING THE
VENTURE CAPITAL PROGRAM FUND
UNDER THE VENTURE CAPITAL PROGRAM ACT
AS
ADOPTED
ON
[], 2023
BY THE
BOARD OF DIRECTORS
OF THE
NEW MEXICO FINANCE AUTHORITY**

SECTION 1. AUTHORITY; PURPOSE OF RULES.

On March 1, 2022, Governor Michelle Lujan Grisham signed into law the Venture Capital Program Act, NMSA 1978, Section 6-33-1 *et seq.* (“Act”). The Act creates the Venture Capital Program Fund (“Fund”) within the New Mexico Finance Authority (“NMFA”) and authorizes the NMFA to establish guidelines and policies to administer the Act and to pay the costs of administering the Act from the Fund. On April 4, 2023, following the 56th Legislature, Governor Lujan Grisham signed into law Senate Bill 402, which contains amendments to the Act, effective June 16, 2023; and

The NMFA, pursuant to NMSA 1978, Section 6-33-4, as amended, is granted authority to make differential rate investments in venture private equity funds or early-stage investments in New Mexico businesses whose investments or enterprises enhance the economic development objectives of the State; and

These rules govern the implementation and administration of the Program as authorized by NMSA 1978, Section 6-33-3 (2023), and do not apply to other programs established by the NMFA.

SECTION 2. DEFINITIONS.

A. “Act” means the Venture Capital Program Act, Sections 6-33-1 through 6-33-7, NMSA 1978, as may be amended and supplemented.

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

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

D. “Economic Development Committee” means a committee appointed by the chair of the Board from the members of the Board.

E. “Fund” means the Venture Capital Program Fund, created pursuant to NMSA 1978, Section 6-33-3 of the Act.

F. “New Mexico Business” means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico, or in the case of a limited partnership, a business with its principal place of business and at least eighty percent (80%) of its assets located in New Mexico.

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

H. “Program” means the Venture Capital Program administered by NMFA and authorized by the Act and these rules.

I. “VC Program Investment Policy” means the policy adopted by NMFA to provide guidance regarding program objectives, administration, strategy, investment and portfolio parameters and monitoring requirements.

J. “State” means the State of New Mexico.

K. “Fund” means the Venture Capital Program Fund created pursuant to NMSA 1978, Section 6- 33-3 of the Act.

L. “Venture Private Equity Fund” means an entity that makes, manages or sources potential investments in New Mexico businesses and that: (i) has as its primary business activity the investment of funds in return for equity in or debt of businesses for the purpose of providing capital for start-up, expansion, product or market development, recapitalization or business purposes in early-stage development; (ii) holds out prospects for capital appreciation; (iii) has at least one full-time manager with at least three (3) years professional experience in assessing growth prospects of businesses or evaluating business plans; and (iv) accepts investments only from accredited investors, as that term is defined in the federal Securities Act of 1933, as amended, or federally recognized Indian nations, tribes and pueblos with at least five million dollars (\$5,000,000) in overall investment assets.

M. “Venture Capital Investment Committee” means a committee of NMFA staff providing oversight of the Fund, including evaluation of investments and monitoring of portfolio risks, financial performance, mission objectives and policy compliance.

SECTION 3. ELIGIBILITY FOR INVESTMENT.

The NMFA may make investments in Venture Private Equity Funds or New Mexico Businesses that meet the criteria of these rules and that comply with the requirements of the VC Program Investment Policy, which details the Program strategy objectives and guidelines for investments from the Fund.

SECTION 4. INVESTMENT REVIEW AND APPROVAL PROCESS; CLOSING.

A. NMFA staff with the support of investment consultant(s) will evaluate each proposed investment in accordance with these rules and the VC Program Investment Policy and present recommendations to the Venture Capital Investment Committee. In addition to staff analysis and recommendations, the Venture Capital Investment Committee will consider due diligence information, analysis and recommendations of external consultants and presentations from external parties.

B. All proposed investments in Venture Private Equity Funds or New Mexico Businesses pursuant to the Act and meeting these rules will be reviewed by the Venture Capital Investment Committee. Investments recommended for approval by the Venture Capital Investment Committee will be presented to the Economic Development Committee.

C. The Economic Development Committee will consider investments recommended by the Venture Capital Investment Committee and may confer with NMFA staff and investment

consultant(s). Investment recommendations by the Economic Development Committee will be presented to the Board for its approval or disapproval.

D. Once a recommendation has been made on an investment by the Economic Development Committee, the Board will consider the investment 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 investment 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 investment, 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 investment.

E. If an investment is approved by the Board, the NMFA will take steps to close the approved investment commitment. Subject to satisfactory legal negotiation and documentation, closing shall occur within one hundred twenty (120) days from final Board approval unless extended for good cause in the sole discretion of the Chief Executive Officer.

SECTION 5. INVESTMENT PARAMETERS.

A. Investments provided under the Program must satisfy conditions prescribed in this Section 5.

B. Investments in any one Venture Private Equity Fund cannot exceed thirty percent (30%) of the balance of the Fund at the time of investment approval.

C. Investments in any one industry cannot exceed thirty percent (30%) of the balance of the Fund at the time of investment approval.

D. Investments in any one New Mexico Business cannot exceed ten percent (10%) of the balance of the Fund at the time of investment approval.

E. Investments in any one New Mexico Business cannot exceed fifty-one percent (51%) of the total investment capital in the business unless the additional ownership interest is due to foreclosure or other action by NMFA pursuant to agreements with the business or other investors in the business, is necessary to protect the business, and does not require additional investment of the Fund.

F. Investment commitments issued by NMFA will be for a term determined by the NMFA, not to exceed fifteen (15) years, including all extensions.

G. Investments shall require a matching commitment to investing or helping secure investment by others in an amount at least equal to the total investment made by the Fund unless the investment is in an underserved industry targeted for economic development purposes or the proposed investment benefits an underserved or disadvantaged community. Proposed investments seeking to waive the 1:1 matching investment requirement must demonstrate potential for economic and diversification benefit.

H. Legal documents shall incorporate terms no less favorable than the Institutional Limited Partners Association (“ILPA”) standard terms for such investments, including, but not limited to:

- (i) Target fund size, fund term and commitment period;
- (ii) Organizational and annual fund expense cap;
- (iii) Key person clause;
- (iv) Standard of care provision;
- (v) General Partner removal for cause;
- (vi) Annual audited financial statements within one hundred twenty (120) days of each fiscal year;
- (vii) ILPA portfolio company and diversity metrics template reporting;
- (viii) Limited Partnership Advisory Committee representation;
- (ix) Conflict of Interest policy;
- (x) Fund portfolio valuation methodology;
- (xi) Indemnification provisions, to the extent permitted by law;
- (xii) No fault provisions for dissolution of the investment fund;
- (xiii) Governing law and venue provisions.

I. All legal documents shall further provide that NMFA has all available remedies available at law or in equity.

SECTION 6. PROPRIETARY INFORMATION; CONFIDENTIALITY.

Information obtained by NMFA in order to make investments from the Fund which is proprietary, technical, trade secret or business information shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act.

SECTION 7. CONFLICTS OF INTEREST

A. NMFA Board members are subject to the Governmental Conduct Act, which requires full disclosure of real or potential conflicts of interest. The NMFA also maintains an internal Code of Conduct for NMFA staff, which details procedures for disclosing potential conflicts of interest.

B. NMFA staff and members of the Venture Capital Investment Committee, Economic Development Committee and NMFA Board shall disclose personal financial interests in proposed Venture Private Equity Funds or New Mexico Businesses seeking investment from the Fund. Where an actual or potential for a perceived conflict of interest exists NMFA staff, Committee and Board members shall recuse themselves from the investment review and approval process for a proposed investment.

C. Venture Private Equity Funds and New Mexico Businesses seeking investment from the Fund may not seek to influence investment recommendations of NMFA staff, Committee or Board members involved in the investment approval process outside of participation in the

investment proposal review and due diligence process conducted by NMFA staff and external investment consultant(s).

SECTION 8. MONITORING AND REPORTING.

A. Venture Private Equity Funds and New Mexico Businesses shall submit periodic reports to NMFA including but not limited to 1) quarterly complete financial statements; 2) quarterly investment performance report, including economic development metrics; 3) annual audits; 4) annual compliance reports; and 5) annual certification of all representations, warranties, and covenants; and any other information the NMFA reasonably requests.

B. No later than July 1 each year, the NMFA shall submit a report to those interim committees required by NMSA, 1978, Section 6-33-7 of the Act, as amended from time to time. Reports shall include the preceding calendar year's Program activity, including amounts invested in each Venture Private Equity Fund, its objectives, portfolio company investments and how such investments enhance the economic development objectives of the State. Each report shall also provide the amounts invested in each New Mexico business during the prior calendar year.

SECTION 9. ADMINISTRATIVE FEES.

A. NMFA shall prepare an operating budget for administering and investing the Fund, which shall be reviewed and approved by the Board annually. Fund assets may be used to pay actual costs of administering the Act. Administration costs may be deducted from Fund assets on a monthly basis.

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 or repealed at any time by the NMFA Board.