

AMENDED AND RESTATED

RULES GOVERNING THE

LOAN PARTICIPATION PROGRAM

UNDER THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT

AS

ADOPTED

ON OCTOBER 26, 2023

BY THE

BOARD OF DIRECTORS

OF THE

NEW MEXICO FINANCE AUTHORITY

AND APPROVED BY THE

NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

ON

NOVEMBER 1, 2023

SECTION 1. NMFA; PURPOSE OF RULES.

The New Mexico Finance Authority (“NMFA”) Loan Participation Program Rules (“Rules”) are adopted by the NMFA pursuant to the Statewide Economic Development Finance Act, §§ 6-25-1 to 6-25-28 NMSA 1978 (“Act”), the purposes of which are to stimulate economic development in New Mexico. Section 6-25-6 NMSA 1978 gives the NMFA certain powers and duties to enable it to implement a program to assist in financing standard projects, including the power to enter into loan participation agreements from the economic development revolving fund. These Rules are adopted, subject to approval of the NMFA Oversight Committee, pursuant to Section 6-25-6(E) of the Act. The purpose of these Rules is to provide a framework for the implementation and administration of the loan participation program authorized by § 6-25-6(D) NMSA 1978. Specific details of the Loan Participation Program, including application contents, establishment of interest rates, underwriting criteria, terms and other lending criteria shall be established in the NMFA’s Loan Management Policies. These Rules do not apply to other programs established by the NMFA.

SECTION 2. DEFINITIONS.

A. “Act” means the Statewide Economic Development Finance Act, §§ 6-25-1 to 6-25-28 NMSA 1978, as amended and supplemented from time to time.

B. “applicant” means an eligible entity that has filed a loan application with an originator that has requested the NMFA to participate in a loan to such eligible entity.

C. “application” means a written document filed with the NMFA by an originator for the purpose of requesting the NMFA to purchase a loan participation to provide financial assistance for the applicant’s project;

D. “Board” means the NMFA Board of Directors;

E. “credit committee” means a committee of staff members appointed by the Chief Executive Officer;

F. “Department” means the New Mexico Economic Development Department;

G. “economic development revolving fund” means the fund of that name created by the Act;

H. “eligible entity” has the meaning provided in the Act;

I. “economic development committee” means a committee appointed by the NMFA Board Chair from the members of the Board and/or the NMFA staff;

J. “NMFA” means the New Mexico Finance Authority;

K. “originator” means a commercial bank, savings and loan association, mutual savings bank, or other financial institution that:

(i) is either insured by the Federal Deposit Insurance Corporation or the National Credit Union Association, or regulated by the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the Federal Reserve, or state banking regulators under New Mexico banking laws or substantially similar banking regulations or statutes of another state and is authorized to perform banking functions within the state;

(ii) is approved by the NMFA; and

(iii) has entered into an agreement with the NMFA to act as a seller and servicer of a loan under the Program.

L. "Oversight Committee" means the joint interim legislative committee established pursuant to § 6-21-30 NMSA 1978;

M. "Program" means the Loan Participation Program authorized by the Act and these Rules;

N. "project" means a standard project;

O. "standard project" has the meaning provided in the Act;

P. "state" means the State of New Mexico.

SECTION 3. ELIGIBLE ENTITIES AND PROJECTS.

The NMFA purchases loan participations (which term includes participations in loans made in exchange for notes, bonds or other instruments evidencing an obligation to repay indebtedness) under the Program from originators of loans to eligible entities for standard projects. Eligible entities must be determined by the Department to be engaged in an enterprise that serves an economic development goal.

SECTION 4. APPLICATION FOR NMFA PARTICIPATION.

A. An applicant may apply for a loan under the Program by contacting and submitting an application to the originator. The originator shall review the application, including the proposed use of the loan proceeds, the applicant's creditworthiness, and any other matters the originator may consider appropriate. When the originator, with the concurrence of the applicant, decides it is appropriate to do so, the originator and the applicant shall prepare an application for NMFA participation in the loan.

B. An application for NMFA participation submitted by the originator to the NMFA may include a nonrefundable application fee in an amount determined by the NMFA from time to time. If the NMFA issues a commitment to purchase a participation in an originator's loan, a loan commitment will be issued by the NMFA and must be accepted, signed and returned to the NMFA by the originator and the applicant. The NMFA may require the originator to include with the application any of the following:

- (i) a letter of transmittal;
- (ii) a loan summary, including evidence of originator approval at the required level of authority;
- (iii) a list of other unpaid loan(s) to the applicant or to any member, partner or stockholder of the applicant, from the state or any political subdivision or other public corporation of the state along with the applicant's certification that each unpaid loan is current and no other loans exist and a description of any other incentives to be supplied to the applicant in connection with the project by the state or any local government;
- (iv) a current credit report of the applicant and the guarantor, if any;
- (v) a signed current balance sheet and year-to-date profit and loss statement on the applicant, dated not more than 90 days prior to the date of application, fiscal year-end balance sheet and profit and loss statement for the prior three years on the applicant; current balance sheet and federal income tax return for the prior two years on all guarantors and co-borrowers;
- (vi) copies of the applicant's federal income tax returns for the prior three years, if the balance sheets and profit and loss statements required from the applicant in paragraph (v) of this section are not audited by a certified public accountant;
- (vii) copies of the earnest money receipt and the option or contract to purchase land and improvements, or the contract or invoice for purchase of tangible personal property related to the project;
- (viii) a copy of a lease for land and improvements related to the project;
- (ix) a detailed description of real or tangible personal property to be acquired for the project and the cost thereof;
- (x) a detailed estimate of the cost of construction satisfactory to the NMFA;
- (xi) an estimate of the number of jobs to be created or retained by this project satisfactory to the NMFA and the wages associated with those jobs;
- (xii) if the loan is to be secured by real property, a written appraisal report acceptable to the NMFA estimating the value of the real property;
- (xiii) if the loan is for the purchase of tangible personal property, an appraisal in a format acceptable to the NMFA prepared by an appraiser who is acceptable to the NMFA;
- (xiv) copies of leases or agreements to lease or renew a lease between the applicant and project tenants, including a list of tenants, lease rates, terms and options;
- (xv) a financial feasibility analysis satisfactory to the NMFA;
- (xvi) an environmental risk assessment satisfactory to the NMFA followed by an

environmental audit if required by the NMFA; and

(xvii) any other information requested by the NMFA to evaluate the application.

C. All communications regarding applications for loan participations shall be directed to the NMFA Chief Executive Officer or other staff member of the NMFA designated by the NMFA's Chief Executive Officer.

D. If requested by the NMFA, the applicant will update the information provided pursuant to Paragraph B above.

E. If a loan participation for a project has not been purchased, or if the eligible entity and the originator have not notified the NMFA their desire to continue to pursue funding from the Program within ninety (90) days of the application, then a loan participation will not be provided.

SECTION 5. EVALUATION OF APPLICATION AND PROJECT; COMMITMENT.

A. Only completed applications, as determined by the NMFA pursuant to the NMFA's Loan Management Policies, will be eligible for consideration. Staff will notify an originator if an application is incomplete and shall describe the additional information needed to complete the application. The NMFA will evaluate each application in accordance with this Section 5 of these Rules, taking into account Section 6 and/or Section 7 of these Rules, as applicable, and NMFA Loan Management Policies and will determine whether to approve an application for a loan participation based on:

- (i) whether the requirements of the Act and these Rules have been met;
- (ii) the applicant's experience and financial history;
- (iii) the economic feasibility of the proposed project;
- (iv) the impact the proposed loan participation would have on the loan participation portfolio of the NMFA on the concentration by industry area and geographic region; and
- (v) the ability of the project to advance economic development goals.

B. Staff will present the application to the credit committee along with a determination as to whether to recommend the participation to the economic development committee. Such determination and recommendation shall include the maximum percentage, amount and terms of participation. The credit committee will forward applications determined to be complete and recommended for approval to the economic development committee. Staff will provide notice to an

originator of its decision not to recommend a completed application for consideration to the economic development committee within five business days following the credit committee's decision to not recommend the application.

C. The economic development committee will consider the purchase of the loan participation for the project and may confer with outside parties as necessary to obtain more information on the feasibility of the applicant's project and the creditworthiness of the applicant. The economic development committee will forward to the Board those applications recommended for approval. Such recommendation will specify the total loan amount and the recommended amount of the NMFA's participation. To the extent required by law, the NMFA will confirm with the Department that, with respect to each applicant for which a loan participation is being considered, the applicant is engaged in an enterprise that serves an economic development goal and is suitable for financing assistance, as defined in the Act.

D. 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 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 eligibility, the 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 loan participation as necessary to ensure repayment, including but not limited to, maximum loan term and minimum annual payments.

E. The NMFA will notify the originator of the approval or disapproval of the application within seven working days of Board action.

F. The applicant's experience, financial history and current financial status are key factors in the evaluation of an application for a loan participation. The NMFA may consider, among other things:

- (i) the education and work history of the officers, managers, members, or partners of the applicant;
- (ii) the applicant's experience in the industry and in managing projects similar to the proposed project;
- (iii) assets and liabilities of the applicant;
- (iv) income and expenses of the applicant;
- (v) existence of liens or encumbrances on the applicant's assets;
- (vi) the applicant's ability to service debt;
- (vii) loan-to-value, debt-to-equity or other applicable ratios; and
- (viii) the level of the applicant's equity in the proposed project.

G. The NMFA will evaluate each project to determine its feasibility. If the NMFA believes there are basic flaws in the concept, design, or purpose of the project or that the projected revenues of the project, together with other dedicated sources of repayment, will not be sufficient to repay the requested loan, the NMFA will not participate in the loan.

H. If an application for a loan participation is approved by the NMFA, the NMFA will provide a loan commitment that is effective upon acceptance of the commitment.

I. Loan commitments issued by the NMFA will be for a term of 90 days or as otherwise determined by the NMFA Board. Before expiration of the loan commitment term, the originator may request an extension of the loan commitment term for a subsequent period of 45 days if the NMFA has not funded the NMFA's participation in the loan. NMFA, in its sole discretion, will determine whether the extension shall be granted.

SECTION 6. TERMS OF REAL PROPERTY LOAN PARTICIPATIONS.

A. If the NMFA participates in a loan made to acquire land, or to acquire or construct buildings, improvements, and structures on land, or a loan for other purposes, including for operating capital purposes, which is secured by real property (a "real property loan"), the loan must satisfy the conditions prescribed in this section.

B. The amount of the NMFA's participation in a real property loan may not exceed \$5,000,000.

C. A real property loan must be secured by a mortgage on real property in fee simple or on a leasehold estate 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 real property that do not affect the NMFA's security for the loan.

D. The loan terms for any real property loan must require complete amortization provisions and require periodic payments by the eligible entity.

E. Before closing a real property loan where construction of the improvements in part or whole has taken place, an originator shall obtain a statement in writing from an authorized official that the buildings and structures may be occupied and that the occupancy, buildings, and structures conform to all requirements of federal, state and municipal law; or if there is no authorized official or if requested by the NMFA, a registered architect or professional engineer that the property offered as security for the real property loan is structurally sound and that buildings or structures conform to applicable building codes.

F. The terms and conditions of a land lease that secures a real property loan for a project are subject to approval by the NMFA. The term of the lease must exceed the effective term of the loan by at least 10 years. However, the NMFA may approve a land lease for a shorter term

if there is an irrevocable option to renew the lease that is acceptable to the NMFA in the sole discretion of the NMFA.

G. Unless waived by the NMFA, the applicant shall obtain insurance coverage for the improvements on the real property from responsible companies in such amounts and against such risks as is satisfactory to the NMFA. An American Land Title Association title insurance loan policy covering the property with exceptions that are acceptable to the NMFA is required if real property is involved.

H. If required by the NMFA, the originator must obtain a guarantee for repayment of an applicant's loan from one or more of the following persons:

- (i) a partner or member of the applicant;
- (ii) a joint venturer with the applicant;
- (iii) any stockholder of the applicant; or
- (iv) the parent corporation or a partner, member or stockholder of the parent corporation if the applicant is a subsidiary.

SECTION 7. TERMS OF PERSONAL PROPERTY LOAN PARTICIPATIONS.

A. If the NMFA participates in a loan made to acquire or build fixtures, machinery, equipment, or other personal property, or a loan for other purposes, including for operating capital purposes, which is secured by personal property (a "personal property loan"), the loan must satisfy the conditions prescribed in this section.

B. The amount of the NMFA's participation in a real property loan may not exceed \$5,000,000.

C. A personal property loan must be secured by 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.

D. The terms and conditions of a lease that secures a personal property loan must be approved by the NMFA.

E. Unless waived by the NMFA, the applicant shall obtain insurance coverage on the personal property securing the personal property loan from responsible companies in such amounts and against such risks as is satisfactory to the NMFA.

F. If required by the NMFA, the originator must obtain a guarantee for repayment of an applicant's loan from one or more of the following persons:

- (i) a partner or member of the applicant;

- (ii) a joint venturer with the applicant;
- (iii) any stockholder of the applicant; or
- (iv) the parent corporation or a partner, member or stockholder of the parent corporation if the applicant is a subsidiary.

SECTION 8. LOAN CLOSING AND DISBURSEMENT OF FUNDS.

Upon certification by the originator and the applicant that all provisions of the loan commitment have been complied with, the loan will be scheduled for closing review and payment of money to the originator.

SECTION 9. PARTICIPATION REQUIREMENTS.

A. All loan documents used by the originator for any loan in which the NMFA participates shall be in a form approved by the NMFA, and such loan documents shall provide that the originator will have all available remedies in the event of a default by the borrower. Such remedies will include, without limitation, rights to foreclose, repossess collateral, sell collateral at public or private sale, obtain deficiency judgments, and exercise other remedies available at law or in equity. No changes shall be made to such forms without the prior written consent of the NMFA. The NMFA shall be a third-party beneficiary of agreements between the originator and the borrower under any loan in which the NMFA participates, and the originator shall monitor the loan and exercise remedies under the loan documents for the benefit of the NMFA.

B. The originator of a loan shall retain at least a 51 percent share of the principal amount of the loan and shall not sell, transfer or permit prepayment or other early retirement of any portion of its participation interest without the permission of the NMFA.

C. The initial rate of interest on the NMFA's participation in a real property loan or personal property loan will be set at the time the NMFA issues a loan commitment. The rate of interest on the originator's portion of a loan is set by the originator, but may not exceed the rate of interest the originator would normally charge a borrower such as the applicant under similar circumstances but not involving participation by the NMFA.

D. The NMFA may, in its discretion, approve a modification of the interest rate and/or loan term on the NMFA's portion of a loan under the Program as follows:

(i) effective upon the NMFA's approval of a written request from the eligible entity and originator for an interest rate modification or extension of loan term, or both, the NMFA will change the interest rate to the current fixed interest rate published by the NMFA for a loan with a term equal to the original term of the NMFA's portion of the loan, plus extensions of the original term, if any, as allowed, and extend the loan term up to the maximum term permitted under Section 7 and Section 8, except that in no case will the total aggregate loan term exceed the maximum term as permitted under Section 7 and Section 8;

(ii) the NMFA may, in its discretion, adjust the scheduled payment on the loan to reflect a change in interest rate or loan term, or both, in order to maintain the proper loan amortization;

(iii) the borrower and originator may request modification of the interest rate and loan term more than once during the term of the loan, subject to the maximum loan term permitted in Section 7 and Section 8.

SECTION 10. SERVICING OF LOANS.

A. The NMFA will enter into a participation agreement with each originator that

(i) provides that all servicing be by the originator;

(ii) provides methods for the collection of delinquent payments of principal and interest and foreclosure or exercise of security rights undertaken by the originator;

(iii) provides for periodic reports to the NMFA by the originator;

(iv) requires the originator to service the loan in accordance with accepted business practices, including, but not limited to, prompt collection of amounts due under the loan and prompt exercise of rights in the event of default by the borrower;

(v) provides that the NMFA shall be a third party beneficiary of agreements between the originator and the borrower under any loan in which the NMFA participates; and

(vi) requires the originator to notify and consult with the NMFA in the event of a default under any loan in which the NMFA has participated.

B. The originator must indemnify the NMFA against willful misconduct, gross negligence or actual fraud committed by the originator, including any of the originator's officers, directors, employees, and agents.

C. The NMFA may, in its discretion, enter into a loan modification agreement with the originator and the eligible entity if the NMFA determines that such a modification will assist in the economic survival of the eligible entity during a period of economic hardship while maximizing the ultimate return to the NMFA.

SECTION 11. ADMINISTRATIVE FEES.

A. The Board may impose and collect a reasonable application fee in connection with the filing of an application for financial assistance with the NMFA.

B. The NMFA may establish such other charges, premiums, fees and penalties as it shall deem necessary for the administration of the Program and as further delineated in the NMFA Loan Management Policies.

SECTION 12. ADMINISTRATION OF THE ECONOMIC DEVELOPMENT REVOLVING FUND; OTHER FUNDS.

A. The economic development revolving fund shall be administered by the NMFA as a separate account, but may consist of such sub accounts as the NMFA deems necessary to carry out the purposes of the economic development revolving fund.

B. Money from repayments of loan participations shall be deposited in the economic development revolving fund. The economic development revolving fund shall also consist of any other money appropriated, distributed or otherwise allocated to the economic development revolving fund for the purpose of acquiring loan participations for projects authorized specifically by law.

C. The NMFA shall establish additional funds and accounts as necessary to implement the Program.

D. The NMFA shall adopt a uniform accounting system for the economic development revolving fund and each other fund and account established by the NMFA, based on generally accepted accounting principles.

SECTION 13. AMENDMENT OF RULES.

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