

AMENDED AND RESTATED RULES
GOVERNING THE NEW MEXICO FINANCE AUTHORITY
ADMINISTRATION OF
FEDERALLY FUNDED DIRECT LENDING PROGRAMS

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

[OCTOBER 6, 2023]

SECTION 1. MISSIONS AND GOALS

These Amended and Restated Rules governing the New Mexico Finance Authority (“NMFA”) administration of Direct Lending Programs (“Rules”) pursuant to the Statewide Economic Development Finance Act, §§ 6-25-1 to 6-25-28 NMSA 1978, as amended (“the Act”). Periodically, the State is a recipient of federal dollars that can be used to meet mission objectives through loans to private enterprises including for-profit businesses and non-profits, including funding made available through the State Small Business Credit Initiative Act of 2010 (title III of the Small Business Jobs Act of 2010, Public Law 111-240, 124 Stat. 2568, 2582) and amended by the American Rescue Plan of 2021 (Public Law No. 117-2, 135 Stat. 4) (“ARPA”) and all federal law, regulations, policies, guidelines and national standards related thereto.

These Rules provide a framework for the implementation and administration of direct lending programs, including a “co-lending” program, authorized by § 6-25-6(D) of the Act. Specific details of any program operated with federal funds, including application contents, establishment of interest rates, underwriting criteria, terms and other lending criteria shall be established in the NMFA Program Policies established for the funding pursuant to any applicable federal guidelines for the respective federal grants. These Rules do not apply to other programs operated with non-federal dollars 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;

B. “applicant” means an eligible entity that has filed a loan application with the NMFA for a direct loan;

C. “application” means a written document filed with the NMFA by an applicant to request a direct loan;

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

E. “Co-Lending Financial Institution” 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; or

(ii) is authorized to perform banking functions within the state; or

(iii) a Community Development Financial Institution.

F. "Credit Committee" means a committee of NMFA staff members appointed by the Chief Executive Officer to review loan applications and make recommendations to the Economic Development Committee;

G. "eligible entity" has the meaning provided in Act ;

H. "Economic Development Committee" means a committee, appointed by the NMFA Board Chair, from the members of the Board and/or the NMFA staff;

I. "Fund" means the Economic Development Revolving Fund established pursuant to the Act;

J. "NMEDD" means the New Mexico Economic Development Department;

K. "NMFA" means the New Mexico Finance Authority;

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

M. "project" means a project as provided in the Act;

N. "Program" means a federally funded Co-Lending Program authorized by SSBCI or other Direct Lending Program activity authorized by federal law, the Act and these Rules;

O. "Program Policies" means policies and procedures governing the administration of the Programs established to deliver federal funds to eligible entities that meet the objectives and guidelines of federal funding;

P. "SSBCI" means the State Small Business Credit Initiative as created by the Small Business Credit Initiative Act of 2010 (title III of the Small Business Jobs Act of 2010, Public Law 111-240, 124 Stat. 2568, 2582) as amended by the American Rescue Plan of 2021 (Public Law No. 117-2,

135 Stat. 4) (“ARPA”) and all federal law, regulations, policies, guidelines and national standards related thereto.

Q. “state” means the State of New Mexico;

R. “Treasury Department” means the United States Department of the Treasury.

SECTION 3. APPLICATION PROCEDURES

A. An applicant may apply for a loan under the Program by contacting and submitting an application to the NMFA. The NMFA staff shall evaluate each loan application utilizing the process set forth below. Such evaluation will include, to the extent applicable: proposed use of the loan proceeds, the applicant’s creditworthiness and any other matters required by the Program or that NMFA may otherwise consider appropriate.

B. An application for an NMFA direct loan submitted by the applicant 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 make a direct loan to an applicant, a loan commitment will be issued by the NMFA and must be accepted, signed and returned by the applicant. The NMFA may require the applicant to include with the application any of the following:

(i) a letter of transmittal;

(ii) a summary of financing, including evidence of Co-Lending Financial Institution approval at the required level of authority and all supporting documentation, if applicable;

(iii) audited and unaudited financial statements and financial projections as applicable;

(iv) a depiction of the equity structure of the applicant that shows all individuals who hold direct or indirect interests in the entity;

(v) a list of all outstanding loan(s) to the applicant or to any member, partner or stockholder of the applicant along with the lender’s statement that each loan is current and that no other loans exist and a description of any other incentives to be supplied to the applicant in connection with the project;

(vi) for the applicant and any co-borrowers: a current credit report, three most recent years' financial statements and federal income tax returns as well as signed, current year-to-date financial statements, including balance sheet, profit and loss statement and federal income tax return. Depending on the complexity of the statements, the NMFA may require audited financial statements;

(vii) for any guarantor: a current credit report, a signed current balance sheet and federal income tax returns for the prior two years;

(viii) if available, copies of the earnest money receipt and the option or contract to purchase land or personal property for the project;

(ix) a contractor's estimates for improvements to real property or the contract or detailed estimates for the purchase of tangible personal property related to the project;

(x) a copy of any lease for land, building and improvements related to the project, including 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;

(xi) for projects where NMFA is making an interim construction loan, copies of contractor resumes and detailed time budget, including estimated construction costs satisfactory to the NMFA;

(xii) an estimate of the number of jobs to be created or retained by this project and the wages associated with those jobs;

(xiii) a description of the benefits an applicant will contract to provide, such as local hiring quotas, job training commitments and installation of public facilities or infrastructure, in connection with the proposed loan or with any economic development incentives available to the applicant from any other source;

(xiv) a general description of collateral for the loan and position of lien priority;

(xv) for land and buildings, a written appraisal report for any real property securing a loan prepared by a certified appraiser;

(xvi) on equipment loans where NMFA has a subordinate interest in the collateral, an appraisal in a format acceptable to and prepared by an appraiser acceptable to the NMFA; and

(xvii) any additional information requested by the NMFA to evaluate an applicant.

D. All communications regarding applications for loans shall be directed to the Chief Executive Officer or other staff member of the NMFA designated by the Chief Executive Officer.

E. Pursuant to the Act, once determined by the NMEDD that the project serves an economic development purpose and is suitable for funding, confidential and proprietary information submitted to the NMFA with the application will not be subject to the Inspection of Public Records Act. The determination from NMEDD that the project is an “eligible entity” under the Act does not constitute a promise to provide funding.

SECTION 4. EVALUATION OF APPLICATION AND PROJECT; COMMITMENT

A. Only completed applications, as determined by the NMFA, will be eligible for consideration. NMFA staff will notify the applicant 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 these Rules and applicable Program Policies and will determine whether to recommend approval of an application for a loan based on:

(i) whether the requirements of the applicable federal guidelines, 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 would have on the applicable Program 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 or other programmatic objectives of the Program.

B. Staff will present the application to the credit committee along with a determination as to whether to recommend the loan to the economic development committee. Such determination and recommendation shall include 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 applicant 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 making of a loan 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 make a written recommendation to the Board. Such recommendation will propose either approval or disapproval of specific projects and will specify the recommended amount and terms of the NMFA's loan. Staff will provide notice to an applicant of its decision not to recommend a completed application for consideration to the Board within five business days following the Economic Development Committee's decision to not recommend the application.

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

E. The NMFA will notify the applicant of the approval or disapproval of the application within seven days of the 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. 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.

F. 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 make the loan.

G. If an application for a loan is approved by the NMFA and all other required approvals have already been obtained, the NMFA will provide a loan commitment that is effective upon in the acceptance of the commitment.

H. Loan commitments issued by the NMFA will be for a term of 90 days or as otherwise determined by the NMFA. Before expiration of the loan commitment term, the borrower 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 loan. The NMFA, in its sole discretion, will determine whether the extension shall be granted.

SECTION 5. TERMS OF REAL PROPERTY LOANS

A. If the NMFA provides a loan 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. 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.

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

D. The NMFA may allow the Co-Lending Financial Institution to amortize its portion of the loan using a different amortization schedule than is used for the NMFA's portion of the loan, so long as both portions mature on the same date or the principal of the Co-Lending Financial Institution matures after the principal of the NMFA.

E. Before closing a real property loan where construction of the improvements in part or whole has taken place, the borrower shall provide 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, and may be exercised by the NMFA.

G. 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. A 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 applicant 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 6. TERMS OF PERSONAL PROPERTY LOANS

A. If the NMFA makes a loan 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. 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.

C. The NMFA may allow the Co-Lending Financial Institution to amortize its portion of the loan using a different amortization schedule than is used for the NMFA’s portion of the loan, so long as both portions mature on the same date or the principal of the Co-Lending Financial Institution matures after the principal of the NMFA.

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

E. 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 applicant 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. LOAN CLOSING AND DISBURSEMENT OF FUNDS

Upon NMFA's determination that the applicant has met the terms of the loan commitment and, as applicable, the terms of any loan between the borrower and the Co- Lending Financial Institution have been complied with, the loan will be scheduled for closing review and disbursement of the Loan.

SECTION 8. LOAN REQUIREMENTS

A. All loan documents shall be in a form approved by the NMFA, and such loan documents shall provide that the NMFA 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.

B. The initial rate of interest on a NMFA direct real property loan or personal property loan will be set at the time the NMFA issues a loan commitment.

C. The NMFA may, in its discretion, require prepayment fees on a real property loan or personal property loan in amounts and for a period of time it determines appropriate, except that the NMFA will not charge a prepayment fee later than five years from the date the NMFA funds its loan.

SECTION 9. INTERCREDITOR AGREEMENT

A. If the loan is part of a Co-Lending financing, the NMFA shall enter into an intercreditor agreement with each Co-Lending Financial Institution that may:

(i) provide for notice and cure periods between the NMFA and the Co-Lending Financial Institution;

(ii) provide for an allocation of collateral and surety obligations between the NMFA and the Co-Lending Financial Institution;

- (iii) provide for standstill and other forbearance periods;
- (iv) provide for prioritization and subordination of collateral and payment rights;
- (v) provide for restrictions and consent rights as to additional indebtedness and amendments to each lender's loan documents.; and
- (vi) contain any other provisions as the parties deem necessary.

C. The NMFA may, in its discretion, enter into a loan modification agreement 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 10. 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, a reasonable commitment fee payable upon issuance of a commitment, and reasonable fees for the extension of any commitment.

B. The NMFA may establish such other charges, premiums, fees and penalties as it shall deem necessary for the administration of the program.

SECTION 11. ADMINISTRATION OF THE FUNDS; REPORTING

A. The NMFA shall account for each federal Program operated from the Fund in a separate subaccount as the NMFA deems necessary.

B. Money from repayments of Program loans shall be deposited into their respective Program subaccount of the Fund.

C. The NMFA shall adopt a uniform accounting system established by the NMFA, based on generally accepted accounting principles.

D. The NMFA shall comply with the reporting requirements of the respective federal grants and all loan documents for an NMFA loan shall require the borrower to provide all information necessary to comply with the any federal reporting and compliance requirements.

SECTION 12. PREVAILING PROVISIONS

To the extent that the provisions of any of these Rules conflict with the terms of the federal funding or the Act, the terms of the federal funds, or the Act, in that order of priority, shall prevail and control.

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.