

RULES
GOVERNING THE
CHARTER SCHOOL FACILITY REVOLVING FUND
AS ADOPTED
OCTOBER 31, 2024
BY THE BOARD OF DIRECTORS OF THE
NEW MEXICO FINANCE AUTHORITY

SECTION 1. AUTHORITY

These New Mexico Finance Authority (“NMFA”) Charter School Facility Revolving Fund (“Fund”) Rules are adopted by the NMFA pursuant to the NMFA Act, §§ 6-21-6.16, as amended. Section 6-21-6.16, NMSA 1978 creates the Fund within the NMFA and authorizes the NMFA to establish procedures and rules to administer the Fund.

SECTION 2. PURPOSE OF RULES

Section 6-21-6.16(A) NMSA 1978 authorizes the NMFA to adopt rules governing application procedures and disbursement requirements, and for determining the eligibility of charter schools for funding from the Fund. NMFA shall adopt a separate policy specifying underwriting criterion and financing terms and conditions such as interest rates, repayment periods and coverage requirements. These Rules do not apply to other programs administered by the NMFA.

SECTION 3. DEFINITIONS

- A. “**Act**” means the NMFA Act, §§ 6-21-1 to 6-21-31 NMSA 1978, as amended;
- B. “**Applicant**” means an Eligible Entity as defined in these Rules;
- C. “**Application**” means a written document filed with the NMFA for the purpose of obtaining Financial Assistance from the Fund; an Application may include a form prescribed by the NMFA, written responses to requests for information by the NMFA, or other format as determined by the NMFA;
- D. “**Authorized Representative**” means one or more individuals duly authorized by the governing body of a Charter School to the extent provided by law;
- E. “**Board**” means the NMFA Board of Directors;
- F. “**Chartering Authority**” means, as defined in the Charter Schools Act, either a local school board or the Public Education Commission;
- G. “**Charter School Facilities Revolving Fund Policy**” or “**Fund Policy**” means a policy established by the Board specifying underwriting criterion and financing terms and conditions Applicants must demonstrate in order to qualify for Financial Assistance from the Fund;
- H. “**Charter School**” means, as defined in the Charter Schools Act, a conversion school or start-up school authorized by the chartering authority to operate as a public school;
- I. “**Eligible Entity**” means a Charter School established pursuant to the Charter Schools Act whose charter has been renewed at least once pursuant to Section 22-8B-12, NMSA 1978, or a chartering authority, as defined in the Charter Schools Act, acting on behalf of a Charter School;

J. “**Financial Assistance**” means a financing agreement in the form of a lease-purchase agreement with an Eligible Entity made by the NMFA for eligible Projects;

K. “**Fund**” means the Charter School Facility Revolving Fund, created pursuant to the NMFA Act, §§ 6-21-6.16;

L. “**Lease-Purchase Agreement**” has the meaning set forth in the Public School Lease Purchase Act, Section 22-26A-3(A), as amended and supplemented from time to time;

M. “**NMFA**” means the New Mexico Finance Authority.

N. “**Project**” means the purchase, construction, expansion or renovation of charter school facilities or to pay off a Lease-Purchase Agreement;

O. “**Public Lending Committee**” means a committee appointed by the Board Chair consisting of members of the Board.

P. “**Rules**” means these Rules governing the Charter School Facilities Revolving Loan Fund established by the NMFA Board of Directors, as amended and supplemented from time to time.

SECTION 4. APPLICATION PROCEDURES

A. The NMFA will make publicly available a form of Application and guidelines for use by Eligible Entities. The Fund Policy shall contain provisions which (i) identify specific information to be included in an Application, and (ii) establish the standard for determining an Application is complete and can be acted upon by the Board.

B. NMFA staff will notify an Applicant if an Application is incomplete and shall describe additional information required to complete the Application. Only complete Applications submitted to the NMFA will be considered for Financial Assistance from the Fund.

C. In addition to satisfying any other requirements established by the Fund Policy, an Application must be signed by an Authorized Representative of the Eligible Entity and must include the following:

(1) amount of Financial Assistance being sought and description of the proposed use or uses of the Financial Assistance;

(2) description of the Project to be financed, including, at a minimum:

i. description of the scope of work of the Project;

ii. estimated cost of the Project;

iii. target date for the initiation of the Project and the estimated completion date;

- (3) identification of the source of funds for repayment of the Financial Assistance;
- (4) annual audits of the Charter School from the last three (3) years; and
- (5) evidence that any existing or proposed Lease-Purchase Agreement is in accordance with the Public School Lease Purchase Act.

SECTION 5. EVALUATION OF APPLICATIONS

A. NMFA staff will complete an evaluation of the Application and proposed Project to determine project feasibility, the Applicant's administrative capacity to manage and complete the Project, and the adequacy of the Applicant's financial position to meet the terms and conditions of the requested Financial Assistance. NMFA staff will determine if the Application and proposed Project meet the underwriting requirements specified in the Fund Policy.

B. NMFA may consult with the Applicant's authorizer in evaluating Applications; provided that a final determination shall be made solely by the NMFA.

C. NMFA staff will forward Applications determined complete and recommended for approval to the Public Lending Committee. Staff will provide written notice to an Applicant of its decision not to recommend a completed Application for consideration by the Public Lending Committee within five (5) business days following the Public Lending Committee meeting at which the Application would otherwise have been considered. The written notice shall include an explanation of the reasons for the decision not to recommend the Application. An Applicant may appeal the decision not to recommend the Application as provided in Section 6 of these Rules.

D. The Public Lending committee will consider recommended Applications and may confer with outside parties as necessary to obtain more information on the proposed Project. The Public Lending Committee will forward to the Board those Applications recommended for approval. Staff will provide notice to an Applicant of the Public Lending Committee's decision not to recommend a completed Application to the Board for consideration. Such notice shall be made within five (5) business days following the Board meeting at which the Application would have otherwise been considered and shall include an explanation of the reasons cited by the Public Lending Committee. An Applicant may appeal the decision of the Public Lending Committee as provided in Section 6 of these Rules.

E. Following receipt of a recommendation by the Public Lending Committee, the Board will consider the Application no later than the earlier of (i) the next regular Board meeting at which such item may be properly considered, or (ii) sixty (60) days after Public Lending Committee action, whichever comes first. The Board may approve all or part of the application as recommended by the Public Lending Committee. Board approval may specify, at the Board's discretion, terms and conditions of the Financial Assistance as necessary to ensure repayment.

F. NMFA staff will notify the Applicant of the approval or disapproval of its Application by email within seven (7) working days of Board action.

SECTION 6. APPEALS

A. An Applicant may appeal to the NMFA Chief Executive Officer (“CEO”) the decision not to recommend its Application for consideration by notifying the NMFA CEO in writing of the appeal within thirty (30) days following the receipt of written notice of the decision not to recommend the Application. The notice of appeal shall include any reasons and documentation supporting the position that the Application satisfies the requirements of these Rules and the applicable provisions of the Fund Policy. An Applicant’s appeal will be considered by the NMFA CEO within ten (10) days after receipt.

B. Following consideration of a timely filed appeal, the NMFA CEO shall either recommend a reevaluation of the Application or reject the appeal. The NMFA CEO shall provide to the Applicant written notice of the rejection of an appeal within five (5) business days following such rejection.

C. An Applicant may appeal the NMFA CEO’s decision not to recommend its Application by submitting a notice of appeal to the Board within ten (10) business days following receipt of the notice of that decision, which notice of appeal shall include any reasons and documentation supporting the position that the Application satisfies the requirements of these Rules and the applicable provisions of the Fund Policy. An Applicant’s appeal to the Board will be considered by the Board at its first scheduled meeting occurring ten (10) days or more after the notice of appeal is received.

SECTION 7. FINANCIAL ASSISTANCE

A. All agreements for Finance Assistance will be in the form of Lease-Purchase Agreements. Lease-Purchase Agreements must be in accordance with the Public School Lease Purchase Act and approved by the Public Education Department.

B. Financial Assistance secured by real property will require a first-lien mortgage, leasehold mortgage, or deed of trust and assignment of leases and rents, as applicable, which shall be recorded in the county where the property is located, and a title commitment and loan policy of title insurance issued by a title insurance company acceptable to NMFA and in form and content acceptable to NMFA.

C. Financial Assistance secured by personal property will require a Uniform Commercial Code tax lien and judgment search to confirm the highest lien level lien on the personal property attainable to accomplish a successful financing, security agreement and the filing of a Uniform Commercial Code Financing Statement in the appropriate county or state offices. The NMFA may, in its discretion, review and approve other encumbrances against the personal property that do not affect NMFA’s security for the Financial Assistance.

D. Unless waived by the NMFA, the Applicant shall obtain insurance coverage on all property securing the Financial Assistance from responsible companies in such amounts and against such risks as is satisfactory to NMFA.

E. Financial Assistance documentation shall provide NMFA has all available remedies in the event of a default including, without limitation, rights to foreclose, repossess collateral, sell collateral at public or private sale, obtain deficiency judgments, and exercise all other remedies available at law or in equity.

F. Financial Assistance agreements shall include forms required for disbursement of funds and reporting requirements. NMFA requires complete and timely submission of all forms and reporting requirements.

SECTION 8. CLOSING AND DISBURSEMENT OF FUNDS

A. Upon certification signed by the Applicant that all provisions of the Financial Assistance commitment have been complied with, the Financial Assistance will be scheduled for closing.

B. Disbursement of funds will be made using the form prescribed by NMFA in the Financial Assistance agreement.

C. Conditions precedent to disbursement, if any, must be met prior to the disbursement of Financial Assistance proceeds.

SECTION 9. REPORTING REQUIREMENTS

All recipients of Financial Assistance agree to submit all documents required and outlined in the Financial Assistance agreement, including annual facilities maintenance reports, audited financial statements, public education and public school facilities filings and reports and evidence of adequate insurance.

SECTION 10. ADMINISTRATION OF THE FUND

A. The Fund consists of appropriations, gifts, grants, donations, receipts from the repayment of principal or interest, and any other fees or charges paid to NMFA in connection with Financial Assistance provided by the Fund.

B. The Fund shall be administered by the authority as a separate account and may consist of such sub-accounts as NMFA deems necessary to carry out the purposes of the Fund.

C. Money in the Fund may be disbursed by NMFA to provide Financial Assistance. Money in Fund that is not needed for immediate disbursement, including money held in reserve, may be deposited or invested in the same manner as other funds administered by the NMFA.

D. Balances in the Fund at the end of the fiscal year shall not revert.

E. Money in the Fund may be used to pay reasonably necessary administrative and other costs incurred by NMFA in evaluating Applications and providing Financial Assistance from the Fund.