

Lending Department	New Markets Tax Credit Lending and Credit Policies	Original Effective Date: 5/28/2008
		Latest Revision Date: 2/24/2022



# NEW MEXICO FINANCE AUTHORITY

## NEW MARKETS TAX CREDIT LENDING AND CREDIT POLICIES

*This Policy was adopted on May 28, 2008 by the Board of Directors of the New Mexico Finance Authority ( “NMFA”), a public body politic and corporate, separate and apart from the State of New Mexico constituting a governmental instrumentality, created by the New Mexico Finance Authority Act, Section 6-21-1 et. seq., NMSA 1978.*

### I. PURPOSE

#### A. Purpose Statement.

Pursuant to amendments made to Statewide Economic Development Finance Act (“SWEDFA”) in 2006, the NMFA formed Finance New Mexico, LLC (“Finance New Mexico” or “FNM”), a qualified Community Development Entity (“CDE”) for the purpose of operating a New Markets Tax Credit (“NMTC”) Program. The NMFA, as the governing body for Finance New Mexico, will use this participation in the NMTC program and the capital derived from its allocation of NMTC to make below-market rate loans as authorized under the NMTC guidelines.

Pursuant to its Allocation Agreements with the Community Development Financial Institutions Fund (“CDFI Fund”) at the US Department of the Treasury, the NMFA, on behalf of Finance New Mexico, must provide:

- ◆ Equity, equity-equivalent debt or other debt financing that does not meet the definition of equity-equivalent debt;
- ◆ Interest rates that are 50% lower than either the prevailing market rates for the particular product or lower than NMFA’s current offering for the particular product; or
- ◆ Provide at least 5 forms of flexible or non-traditional lending rates and terms.

Together with NMFA-approved New Markets Tax Credit Program Policies and Procedures and the New Markets Tax Credit Economic Impact Policies, these Lending and Credit Policies set forth the criteria by which the NMFA may make NMTC loans or investments to qualified businesses in qualified low-income communities.

B. Objectives.

The goal of these Lending and Credit Policies is to provide guidance to NMFA staff, Finance New Mexico Advisory Board and potential borrowers regarding acceptable risk parameters, pricing and securitization of qualified investments as permitted under federal and state laws, and structuring enhancements available within the NMTC program. Through these policies, the New Mexico Finance Authority Board of Directors (“NMFA Board”) shall determine:

- ◆ Collateral requirements, including acceptable loan to value and lien positions;
- ◆ Methods of determining below-market interest rates and fees;
- ◆ Acceptable loan and investment structures, including interest-only periods and convertible debt features; and
- ◆ Borrower credit standards and acceptable levels of loan loss reserves.

C. Implementation.

These Program Policies and Procedures shall be implemented by the NMFA Board as the manager of Finance New Mexico and its subsidiary CDEs, and may, at times, be waived if the NMFA Board determines that a deviation from its adopted policies is necessary. Such waiver will be reflected in the minutes of the public meeting at which the waiver is considered.

## II. TYPES OF FINANCING PRODUCTS.

The New Markets Tax Credit program is designed to stimulate the flow of new investment capital into qualified areas by filling financings gaps with affordable capital.

In keeping with the spirit of the legislation and pursuant to Finance New Mexico’s application for a New Markets Tax Credit Allocation, the majority of Finance New Mexico’s investments into qualified businesses will take the form of non-traditional finance packages that offer flexible, advantageous loan terms. Pursuant to its Allocation Agreements with the CDFI Fund, Finance New Mexico may also provide investments in the form of equity, equity equivalents, and debt with equity-like features as outlined in these Lending and Credit Policies.

A. Equity, Equity Equivalent Debt and Other Debt.

NMFA’s experience is as a lender, not an equity provider and as such, Finance New Mexico will provide the majority of its investments in the form of debt as defined below. However, in circumstances where equity is required to make the transaction possible, or where it provides favorable tax implications for the qualifying business, the NMFA may consider allowing Finance New Mexico to make an equity investment in lieu of debt for a qualified low-income community business under conditions outlined below.

1. Equity. The NMFA, on behalf of Finance New Mexico, will require each investment to have an Exit Fee that totals at least the amount it would have been required to repay if the investment had been structured as a loan and will carry the same personal guarantees as an NMTC Proceeds Loan would have carried.
2. Equity-Equivalent Debt. The CDFI Fund defines “Equity-Equivalent debt” as Qualified Low Income Community Investment (“QLICI”) debt that allows the borrower to retain a portion of the NMTC benefit after the end of the compliance period. As defined by the CDFI Fund, Equity Equivalent Debt has been and will continue to be the predominate financing provided by Finance New Mexico.
3. Other Debt. Finance New Mexico may provide other debt structures such as interest rate reductions where the qualified borrower’s primary benefits are access to reduced rate financing in areas and for projects where such capital access is inadequate.

B. Loans.

NMFA expects that the majority of the investments made in qualified businesses will be funded by a combination of loans from Leverage lenders and flexible, low-interest loans made by Finance New Mexico with capital provided through the sale of tax credits.

1. Leverage Loans. Designated Finance New Mexico subsidiary CDEs will make loans to qualified businesses using funds from non-recourse loans provided to the subsidiary CDE by conventional lenders, private investors or an affiliate of the borrower. Typically, these loans will have the following characteristics:
  - a. They will be structured on the same terms and conditions of the bank loan pursuant to security interests held by Finance New Mexico and as further described in Section V.D of these Lending and Credit Policies;
  - b. They will impose a refinancing at the end of seven (7) years; and
  - c. They may have independent servicing agents as described in Section V.D.3.
2. FNM Leverage Loans. In certain instances, and with explicit approval from affected Finance New Mexico investors, Finance New Mexico-Service Company, LLC may make leverage loans to investors for designated subsidiary CDEs using funds it holds as investor reserves for loans. Finance New Mexico-Service Company, LLC may make leverage loans under the following conditions:
  - a. The qualifying borrower is located in a qualifying census tract in a Non-Metropolitan County; and

- b. The NMFA has determined that an NMTC financing is not able to be completed without the FNM Leverage Loan and the project would not otherwise be able to move forward as proposed;
  - c. FNM Leverage Loans may be structured as a non-recourse loan to the investment fund of the specific NMTC transaction either directly or through a participation with a regulated financial institution providing a Leverage Loan;
  - d. FNM Leverage Loans may be subordinated to a Leverage Loan made by a regulated financial institution if NMFA has determined the cash flow is sufficient to service the debt and that the collateral value meets the Collateral Valuation Determination guidelines set forth in Section V.D of these Lending and Credit Policies;
  - e. The interest rate charged on FNM Leverage Loan will be set at a market rate that will not be less than the Leverage Loan made by a regulated financial institution. If a regulated financial institution is not involved in the transaction, NMFA, on behalf of Finance New Mexico, will determine the market rate;
  - f. FNM Leverage Loans must be repaid in full and without discount not later than the end of the 7-year compliance period; and
  - g. FNM Leverage Loans may not be greater than \$1 million and the overall NMTC transaction may not exceed \$8 million.
3. NMTC Proceeds Loans. Finance New Mexico will make loans to qualified businesses from capital provided by a private investor. These loans may:
- a. Be structured with flexible lending criteria as outlined in Section IV of these Lending and Credit Policies;
  - b. Be subject to an Exit Fee of 10% which shall be paid to Finance New Mexico at the end of the 7-year compliance period.
    - i. The economics of the transaction will be reviewed at the end of the Compliance Period. The borrower may petition for the reduction or forgiveness of the 10% Exit Fee. The borrower must show significant and consequential impact to the business by some of the following:
      - a) Revenues have decreased over 25% in the past three consecutive years.

- b) Debt Service Coverage Ratios have fallen below fundable conventional rates by a measure of at least 15 basis points or no higher than 1.10x DSCR.
  - c) To avert the closure of the operating business.
  - d) Business have suffered over 50% employment loss through no specific action taken on the part of the employer (such as automation) and/or the business will be required to shut down some portion of the operations without access to the capital and will therefore be required to suffer employee loss greater than 25% at unwind.
  - e) Any other demonstrative events that may arise.
- ii. The amount of the Exit Fee will be based upon the economic impact of a project and other factors determined by the FNM Advisory Board and NMFA Board. Such criteria will be outlined by the project's Economic Impact in a community which will be found in the Project Benefit Agreement;
  - iii. Project Benefit Agreement will be part of the agreed upon term sheet which borrowers will be considering.

### **III. INTEREST RATE SETTING POLICY.**

Pursuant to its Allocation Agreements with the CDFI Fund, Finance New Mexico will strive to lower interest rates to at least 50% below market. The terms and interest rates of the QLICs provided by Finance New Mexico will be compared to market rate equivalents in determining whether the QLICs meet this goal of providing interest rates at least 50% below market.

#### **A. General Considerations.**

The NMFA will take into consideration its “cost of funds” when setting the interest rates on its loans to qualified businesses. The primary goal of the interest rate policy is to set an interest rate sufficient to cover the operating costs of Finance New Mexico on a break-even basis.

#### **B. Interest Rates.**

Finance New Mexico will provide fixed interest rates which will be set commensurate with its costs of funds and risk on the transaction. The interest rate charged to borrowers will be blended based upon the following:

1. **Leverage Loan Note** will carry interest rates and terms as set by the Leverage lender with no additional fees assessed by Finance New Mexico.
2. **NMTC Proceeds Note**, often referred to the “B Note,” will carry a maximum fixed interest rate of 2% unless the NMFA Board determines that the interest rate shall be less.

The blended interest rate shall in no event be less than the rate needed for interest payments to be sufficient to pay annual management fees (including audit and tax preparation) to the Subsidiary CDE lender or one of its affiliates.

C. Fees.

Finance New Mexico has established the following fee structure for its program that takes into account the operating costs and implementation of the fund on a break-even basis as well as the market discount of the per credit price of the tax credits.

1. Sponsor Fee shall be calculated on the QEI or total NMTC investment. The Sponsor Fee shall be equal to 3%. Typically this fee is paid at the CDE level, but can be paid at either the Investment Fund level or the Borrower level.
2. Investment Fund Management Fee shall be charged on those transactions where Finance New Mexico is required to be the Manager. The fee is equal to 1% of the QEI and can be charged annually or upfront as determined by the NMFA.
3. The audit and tax fees for the Subsidiary CDE shall be paid from the proceeds of the borrower’s interest payments used to pay the annual management fee described above. Any other extraordinary costs associated with a particular transaction will be passed along to the borrower at cost.
4. Exit Fees, as described in Section II.B.3.b. above.

#### IV. LOAN STRUCTURING POLICY

The goal of the New Markets Tax Credit program is to provide flexible financing to qualified businesses located in low-income communities that have historically lacked access to credit offered at advantageous terms. This loan structuring policy provides the framework for NMFA staff and consultants to provide flexible loan structures to Finance New Mexico borrowers.

A. General Considerations.

Consistent with its Allocation Agreements, Finance New Mexico will offer a variety of non-traditional lending terms to its borrowers, subject to specific approval by the NMFA Board. Finance New Mexico may consider an array of non-traditional lending terms which will be tailored to fit the characteristics of each transaction.

## B. Maximum Loan Amortization.

Finance New Mexico recognizes that structuring flexible amortization schedules is the key to accomplishing successful NMTC transactions. NMFA staff and consultants, on behalf of Finance New Mexico, expect to build upon the flexibility ingrained in other NMFA programs to the benefit of qualified businesses in low-income areas by offering the following flexibility in structuring loan amortizations on its NMTC Proceeds Loans:

1. Buildings and Real Estate: Loans used to purchase real estate and/or construct buildings may have a term of up to 40 years. This allows for a 7-year interest only period and a 33-year amortization period.
2. Machinery and Equipment: Machinery and equipment loans may not exceed fifteen (15) years and typically will not exceed the useful life of the equipment. This allows for a 7-year interest only period and an 8-year amortization period.
3. Working Capital: Loans for working capital may be made only for qualified expenditures within a low-income community and all expenditures will be subject to monitoring and tracing of working capital uses.
4. Finance New Mexico offers interest-only periods of up to seven (7) years on the NMTC Proceeds Loans.
5. NMFA will require a mandatory payment of the NMTC Proceeds loans following the end of the 7-year compliance period, subject to the Exit Fee agreements and borrower performance as outlined in Section II.B.3.b above.
6. Any FNM Leverage Loan must be repaid following the end of the 7-year compliance period or must be re-approved for renewal and re-issuance at the end of the compliance period.

## C. Pre-Payment.

Given the tax considerations arising from unexpected loan repayments, Finance New Mexico will not allow companies to prepay only a portion of its loans with Finance New Mexico.

## V. SECURITY POLICY

The goal of the New Markets Tax Credit program is to make economically marginal transactions feasible by providing flexible financing to qualified businesses located in low-income communities. This security policy defines the acceptable levels of security for all Finance New Mexico loans and will be implemented by NMFA staff and consultants.

A. General Considerations.

Finance New Mexico will structure its loans so as to achieve the greatest security without impacting the operations, growth and cash-flows of the qualified borrowers. All Finance New Mexico loans will be fully secured and Finance New Mexico will consider the quality and liquidity value of collateral securing each loan. Under no circumstances will collateral value substitute for a borrower’s ability to repay the loans from cash flow. Cash flow will be the primary source of repayment, with collateral and guarantees providing the secondary and tertiary sources of repayment.

B. Collateral Lien Level.

Finance New Mexico will strive to achieve the highest lien level possible in structuring its loans, but expects that the majority of its loan structures will subordinate NMTC Proceeds Loans to Leverage Loans. NMFA staff and consultants, on behalf of Finance New Mexico, will not undertake undue economic risk to accomplish the financing and all transactions are subject to specific approval by the NMFA Board.

C. Collateral Value Determination.

Finance New Mexico will strive to meet the mission of the NMTC program by structuring its loans in a manner that maximizes the leverage of the assets available for security by offering its NMTC Proceeds Loans with higher than standard loan-to-value ratios as outlined below.

Asset Category	Loan-to-Value Limits %		
	Bank Limit	FNM Leverage Loan Limits	NMTC Proceeds Limit
Raw Land	65%	50%-70%	65%-90%
Land Development	75%	75%-80%	75%-90%
Construction	80%	80%-95%	80%-95%
Commercial Property	85%	80%-90%	85%-95%
Machinery and Equipment	80%	75%-80%	80%-95%
Inventory: based on durability	50%	50%-60%	50%-80%
Accounts Receivable (90 day)	75%	75%	90%

1. In accordance with standard banking procedures, applicants should provide an estimate of an asset’s fair market value prepared by an independent, qualified appraiser acceptable to the NMTC Investor and the NMFA.
2. Finance New Mexico will seek the commitment of its borrowers toward the project through minimum owner contributions or down-payments:
  - a. 5% for total investment requests of less than \$8,000,000

b. 10% for total investment requests \$8,000,000 or greater

D. Loan Security.

1. The NMFA will require that security interests be perfected in order to obtain the desired lien positions agreed upon and will require post-filing lien searches that document the approved lien positions.
2. Finance New Mexico will perfect and hold the security interests set forth by the Leverage Lenders for loans made from their funds.
3. As outlined in the New Markets Tax Credit Program Policies and Procedures, borrowers will be subject to regular reporting on economic development benefits of their projects in addition to loan monitoring requests by Finance New Mexico or its servicing agent. Leverage lenders wishing to mitigate their risk in NMTC loan transactions may act as servicing agent.

E. Non-Traditional Forms of Collateral.

Finance New Mexico may securitize its loans to qualified borrowers with non-traditional forms of collateral such as intellectual property, including patents.

F. Personal and Corporate Guaranties.

All NMTC Proceeds Loans made to private companies by Finance New Mexico will require personal guarantees of all owners with more than 20% ownership of the business and/or property. Exceptions may be considered on a case-by case basis. A corporate guarantee of the operating company is required if the borrower is a Limited Liability Company or a Limited Partnership.

G. Character and Credit History.

Finance New Mexico will consider the character and credit history of its applicants prior to extending credit and will extend credit to companies whose principals and guarantors have demonstrated responsible behavior. Credit reports will be required for all guarantors and principals with at least a 20% ownership interest. Recent bankruptcies and felony convictions of any guarantor or principal will disqualify a company from NMTC program participation. Lesser criminal convictions and credit record blemishes will be considered on a case-by-case basis.

Borrowers proposed for transactions undertaken with leverage lenders that are not publicly traded or federally regulated, are subject to background checks performed to the satisfaction of the NMFA.

**Finance New Mexico, LLC is an Equal Opportunity Provider**