

NMFA Programs	Opportunity Enterprise	6-22-2023 – Original Effective Date
	Revolving Fund	[8-29-2024] – Review Date



## Opportunity Enterprise Revolving Fund Program Policies

*These Opportunity Enterprise Revolving Fund Program Policies (“Policies”) were adopted on the 22<sup>nd</sup> day of June 2023 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

On March 9, 2022, Governor Michelle Lujan Grisham signed into law the Opportunity Enterprise Act (“Act”), NMSA 1978, Section 6-34-1, et seq., to provide enterprise assistance to advance economic development opportunities in the State. The purpose of the Act was to provide a funding program to support communities in building and investing in commercial or entrepreneurial space to directly support local economic development initiatives. The Act creates the Opportunity Enterprise Revolving Fund (“Fund”) within the New Mexico Finance Authority (“NMFA”) and authorizes the NMFA to establish rules, administer the Fund, and recover from the Fund such costs of administering the Fund and originating opportunity enterprise assistance.

Pursuant to the Act, the Economic Development Department (“Department”) evaluates applications submitted by potential opportunity enterprise partners for enterprise development projects and formulates recommendations to the Opportunity Enterprise Review Board (“OERB”) regarding suitability for enterprise assistance. Pursuant to Rules and the Opportunity Enterprise Evaluation and Prioritization Policy adopted by the OERB, the OERB ranks and prioritizes applications for enterprise assistance. The Opportunity Enterprise Evaluation and Prioritization Policy provides a systematic approach to scoring projects according to mission criterion of the program including community impact and support, job creation and employment, applicant need, and sector and geographic diversification. The OERB approves and recommends a prioritized list of enterprise development projects to the NMFA for consideration for potential enterprise assistance awards from the Fund.

Pursuant to the Act, the NMFA Board adopted Rules approved by the NMFA Oversight Committee that govern the implementation and administration of enterprise assistance in the form of Opportunity Enterprise Loans under the Opportunity Enterprise Loan Program as authorized by NMSA 1978, Section 6-34-3 (2022). These Policies provide additional guidance to potential opportunity enterprise partners and NMFA staff regarding program objectives, general

considerations, project eligibility, application requirements, loan structuring parameters and monitoring requirements. These Policies do not apply to other programs established by the NMFA.

## **B. Implementation**

These Policies shall be implemented by the NMFA Board, pursuant to the authority of the Act, as amended and supplemented from time to time, and may, at times, be waived or revised, if the NMFA Board determines a deviation or revision is appropriate. Any waiver of these Policies will be reflected in the minutes of the public meeting at which the waiver is to be considered. Any revisions to these Policies will be reflected in a new documented version of these Policies, dated as of the Board approval of the revisions. Any waiver or revision must not conflict with the provisions of the Act.

## **II. DEFINITIONS**

**A. “Act”** means the Opportunity Enterprise Act, Sections 6-34-1 through 6-34-15, NMSA 1978, as may be amended and supplemented.

**B. “Application”** means a written document filed with the NMFA for Loan assistance for the purpose of evaluating proposed Enterprise Development Projects pursuant to the Program.

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

**D. “Credit Committee”** means a committee of NMFA staff appointed by the CEO.

**E. “Department”** means the New Mexico Economic Development Department.

**F. “Economic Development Committee”** means a committee, appointed by the chair of the NMFA Board, from the members of the Board.

**G. “Economic Development Opportunities”** means the advancement of an environmentally sustainable economic development goal of the state as determined by the authority, in coordination with the department, and includes the creation of jobs, the provision of needed services and commodities to diverse communities across the state and the increase of tax and other revenue collections resulting from the enterprise development project.

**H. “Eligible Applicant”** means an Opportunity Enterprise Partner recommended by the OERB to NMFA submitting an Application to NMFA for Enterprise Assistance from the Fund.

**I. “Enterprise Assistance”** means opportunity financing, an opportunity enterprise lease or an opportunity enterprise loan pursuant to NMSA 1978, Section 6-34-2E.

**J. “Enterprise Development Project”** means a commercial real estate development project primarily occupied by businesses unrelated to the opportunity enterprise partner that

involves the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure to create or expand economic development opportunities within the state.

**K. “Fund”** means the Opportunity Enterprise Revolving Fund created pursuant to NMSA 1978, Section 6-34-12 of the Act.

**L. “Loan”** means an Opportunity Enterprise Loan from the Fund provided by the NMFA to Applicants pursuant to these Rules and Program Policies adopted by the NMFA, as amended and supplemented from time to time.

**M. “OERB”** means the Opportunity Enterprise Review Board created pursuant to NMSA 1978, Section 6-34-5 of the Act.

**N. “Opportunity Enterprise Partner”** means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof that the OERB determines is or will be engaged in an enterprise that creates or expands economic development opportunities within the State and is eligible for assistance pursuant to the Act.

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

**P. “Oversight Committee”** means the joint interim legislative committee established pursuant to the New Mexico Finance Authority Act, NMSA 1978, Section 6-21-30 (1992), as amended and supplemented from time to time.

**Q. “Program”** means the Opportunity Enterprise Loan Program as authorized by NMSA 1978, Section 6-34-3 (2022) and further described by these Rules.

**R. “Program Policies”** means the policies adopted by the NMFA to provide guidance to potential borrowers and NMFA staff regarding Program Loan terms, including Program eligibility, Application requirements, general considerations, loan structuring parameters and monitoring requirements.

**S. “Project Application”** means a written document made publicly available by the authority and filed with the authority for enterprise assistance for the purpose of evaluating, in consultation with the NMEDD, the applicant’s qualifications and proposed project or projects for types of enterprise assistance which may be provided by the authority under the Act.

**T. “Rural” (non-urban community)** means a municipality with a population of less than 60,000 according to the most recent federal decennial census or the unincorporated area of a county not including Class H counties.

**U. “State”** means the State of New Mexico.

**V. “Urban”** means a continuously built-up area with a population of 60,000 or more.

Urban areas may include one or more municipalities or census designated places.

**W. “Unrelated - Opportunity Enterprise Partner” or “Partner”** means that the business ownership relationship between the developer and the tenant is limited. The developer or a third-party will not have control/ownership of the tenant. A Partner (Developer) should not have more than 30% affiliation with the tenant.

**X. “Unrelated – Percentage of Occupancy” Percentage of occupancy** means that the project developer/partner should not have more than 30% ownership of intended tenant or 30% occupancy of the proposed project.

### **III. GENERAL CONSIDERATIONS**

#### **A. Economic Development Objectives**

The vision laid out in the State’s 20-year comprehensive statewide strategic plan is “New Mexico will have a diverse and robust economy that engages local talent, cultivates innovation, and delivers prosperity for all New Mexicans.” Consistent with this goal, the Opportunity Enterprise program seeks to invest in projects advancing:

- a diversified, resilient and inclusive economy
- high-paying jobs across New Mexico
- private-sector investment and growth in targeted industries
- community well-being and benefit

The Opportunity Enterprise Program seeks to invest in projects attracting private investment in local economies, expanding economic opportunities in diverse communities, and revitalizing areas experiencing economic decline. Types of projects expected to align with the economic development objectives of the program include site-ready industrial spaces, manufacturing hubs, commercial kitchens, maker spaces, speculative development, mixed-use development, adaptive reuse, redevelopment of vacant facilities, infill development and reconstruction of blighted properties.

#### **B. OERB Evaluation & Prioritization Criterion**

The OERB scores and ranks projects according to the following categories and as detailed further in the OERB Evaluation and Prioritization Policy:

- *Location of Developer.* Developer of project headquartered in New Mexico will receive more points than a “National” developer who is headquartered outside of the state.
- *Community Impact and Support:* a project’s ability to improve the quality of life for the residents in close and direct proximity to the project will receive priority. Applicants will be required to submit evidence of strong community benefit and support, including a description of the benefits the project such as Environmental

Impact, Square Footage of Project, Training and Apprenticeship opportunities and Re-Development impact.

- *Project Location and Building Type.* Projects located in Rural communities receive greater points. Total investment in rural community will have a greater economic impact than those projects located in more heavily populated community. Building/Business Type is evaluating the type of business that will have the most impact on location. Manufacturing, Office/Commercial and retail all play important role in the economy and have different levels of impacts based on types of jobs that are created.
- *Applicant Need and Readiness.* Availability of private capital to support the project and likelihood of success will be measured. The about to demonstrate a Qualified Development Team and Leveraging of Private Capital. Priority will be given to projects that are able to begin the project expeditiously:
- *Project Designation.* a project meeting the NMEDD’s target industries and projects diversifying the local economies in the areas dependent on environmentally unsustainable industries.

### **C. OERB Fund Concentration Limits**

To ensure equitable distribution of enterprise assistance to diverse projects and communities, the OERB incorporated geographic, industry and project concentration limits in the OERB Evaluation and Prioritization Policy:

- No more than \$17,500,000 may be awarded to a single project
- No more than 25% of the Fund may be invested in one county
- Opportunity Enterprise Partners may only participate in one Application per round and may not receive enterprise assistance awards for more than one project in any calendar year

NMFA cannot approve Applications for enterprise assistance that would cause a breach in the concentration limits contained in the OERB Policy.

## **IV. APPLICATION REQUIREMENTS FOR ENTERPRISE ASSISTANCE**

### **A. Application Requirements**

Applications for Loans for Enterprise Development Projects will be made available to Eligible Applicants recommended by the OERB and referred for evaluation for financing under the Program. A complete Application for a Loan includes information relating to the proposed use of financial assistance proceeds, evidence of the Applicant’s creditworthiness, and any other matters the NMFA may consider appropriate, which may include, but is not limited to, any of the following:

- (i) Certification from opportunity enterprise partner that proceeds will be used for an Enterprise Development Project;
- (ii) Ownership structure of the Eligible Applicant (for each owner detailing name, address, percentage ownership);
- (iii) Eligible Applicant legal entity type and all entity formation documents, including a certificate of good standing from the New Mexico Secretary of State, if applicable;
- (iv) Sources and uses of investment (detailed schedule);
- (v) Project planning documents including site and design plans and project budget;
- (vi) Copy of any license, zoning, permitting or other regulatory requirements, as applicable;
- (vii) Business plan and five-year proforma financial statements;
- (viii) Complete list of outstanding loan(s) to the Eligible Applicant, member, partner or stockholder of the Eligible Applicant;
- (ix) Authorization to obtain a credit report of the Eligible Applicant and the guarantor, as applicable;
- (x) Current balance sheet and year-to-date profit and loss statement for the Eligible Applicant, dated not more than ninety (90) days prior to the date of Application, a fiscal year-end balance sheet, and the Applicant's profit and loss statement for the prior three (3) years or audited financial statements, as applicable;
- (xi) Federal income tax return for the prior two (2) years on all guarantors and co-borrowers, as relevant;
- (xii) Copies of the Eligible Applicant's federal income tax returns for the prior three (3) years if the balance sheets and profit and loss statements are not audited by a certified public accountant;
- (xiii) Sufficient evidence that other means of financing the proposed project are unavailable or insufficient;
- (xiv) If the Eligible Applicant is a newly created entity formed for the sole purpose of developing or operating the proposed Enterprise Development Project, the Applicant shall provide the information for the Eligible Applicant's existing entities, if any, and the Eligible Applicant personally; and
- (xv) Any other information requested by the NMFA to evaluate the Application.

## **B. Prioritization of Enterprise Assistance from the Fund**

The OERB Project Review Committee recommends rankings to the OERB, which in turn recommends a prioritized list of Enterprise Development Projects to the NMFA for consideration. Enterprise assistance from the Fund will be awarded in rounds with enterprise assistance awards allocated to approved Enterprise Development Projects receiving the highest scores from the OERB.

## **V. LOAN STRUCTURING PARAMETERS**

**A. Loan Amounts.** Loan amounts are not to exceed \$17,500,000.

**B. Use of Proceeds.** Loan proceeds may be used to finance the acquisition and construction of commercial real estate, including but not limited to land and buildings, equipment and labor.

**C. Maximum Loan Amortization.** Loans will be structured with an interest-only period and a stabilization period that combined is not to exceed three (3) years. Loans will be fully amortization for a maximum term of thirty (30) years.

**D. Prepayment Penalty.** There is no penalty or premium for prepayment of Loan balance.

**E. Debt Service Coverage Requirement.** At the time of underwriting NMFA requires a debt service coverage ratio of 1.10x at a seventy-five percent (75%) occupancy rate.

**F. Interest Rates.** Loans will be structured with fixed interest rates set at sixty percent (60%) of the prevailing prime rate at the time the loan of approval, with interest rates no lower than three percent (3%).

**G. Collateral; Loan-to-Value Requirement.** Loans must be secured by all legally acceptable collateral including, but not limited to real property.

Loans will be underwritten with loan-to-value ratios of up to eighty-five percent (85%). Applicants should provide an estimate of an asset's fair market value prepared by an independent, qualified appraiser where available. NMFA requires security interests in collateral to be perfected and will require post-filing lien searches that document the approved lien.

**H. Equity Requirement.** Applicants are required to contribute a minimum of ten percent (10%) of the total loan amount, in the form of owner contributions, cash or in-kind, or down payments.

**I. Personal and Corporate Guaranties.** All loans will require personal guaranties from one or more of the following persons:

- a partner, or member of the Eligible Applicant
- a joint venture with the Eligible Applicant
- any stockholder of the Eligible Applicant
- the parent corporation or a partner, member, or stockholder of the parent corporation if the Applicant is a subsidiary

A corporate guaranty may be required if the borrower is a related company.

**J. Credit History.** Applicants are required to authorize the NMFA to obtain credit reports on all owners and guarantors, both at the time of Application and yearly if approved for a Loan.

## **VI. MONITORING AND REPORTING**

Borrowers are required to submit quarterly financial statements, and a detailed reporting package that includes:

- Latest complete financial statements
- Business performance report including:
  - Brief narrative on project completion status
  - Project budget (during construction phase only)
  - Business performance including occupancy data and rent rolls, (as applicable), and
  - Economic impact including job creation metrics
- Certification that all representations, warranties and covenants remain true and correct
- Certification that there has been no change in business ownership/change in control

The NMFA reserves the right to request additional information for monitoring purposes.

## **VII. REFERENCES**

- NMSA 1978 Section 6-21-1, et. seq.
- NMSA 1978, Section 6-34-1, et seq.