



## Memorandum

To: New Mexico Finance Authority Oversight Committee  
From: John Brooks, Chief of Programs  
Dan Opperman, Chief Legal Officer  
Date: August 2, 2024  
Re: Approval of Amended and Restated Opportunity Enterprise Assistance Rules

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### **Item:**

Approval of Amended and Restated Rules governing the administration of Opportunity Enterprise Revolving Fund Financial Assistance.

### **Background:**

The recently amended Opportunity Enterprise and Housing Development Act (“Act”) accomplished several goals, including updating the name of the Act, adding opportunities to provide housing development assistance loans to address the statewide need for both affordable and workforce development housing, and to make minor changes and modifications to the already existing enterprise assistance provisions. The Opportunity Enterprise and Housing Development Review Board (“OE Board”) is charged with prioritizing applications for funding from the Opportunity Enterprise Revolving Fund (“Opportunity Enterprise Fund”), housed at and administered by the NMFA. The Act provides that the Opportunity Enterprise Fund may be used to, among other things, make loans for Enterprise Development Projects.

The Act directs the OE Board to promulgate rules, which the OE Board formally initiated several months ago, and which Rules will be finalized and published in the New Mexico Register on July 31, 2024. The Act also provides that the NMFA may adopt rules related to the use of the Housing Fund necessary to carry out the provisions of the Act. Should NMFA decide to adopt rules, the Act directs that the rules are subject to the approval of the NMFA Oversight Committee. In an attempt to establish rules on a parallel path with the OE Board, staff determined that the already existing Rules for the Enterprise Assistance Program could be updated after the OE Board’s Rules become effective.

On July 25, 2024, NMFA staff presented the attached Rules to NMFA’s Board for an initial review and to the OE Board for consultation on August 8, 2024. NMFA is seeking Oversight Committee approval on the amended rules at its August 12, 2024 meeting in Gallup. Once approved by the NMFA Oversight Committee, the final step will be to bring these Rules back to the NMFA Board for final adoption at the August 29, 2024 meeting. Any proposed changes to the proposed Rules will be incorporated and discussed with the NMFA Board.



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**Key Points of the Proposed Amended Rules:**

Specific to Enterprise Assistance

- Section 1 – Purpose statement updated with conforming statutory references
- Section 2- Definitions updated to appropriately capture new committee titles and statutory definition changes
- Section 3 – Applications – No changes
- Section 4 – Loan Review section updated to capture appropriate committee and Board process
- Section 5 – Elimination of the fifteen year minimum loan term, consistent with statutory changes.
- Sections 6 through 10 – Only changes to appropriately tie Rules to Enterprise Assistance

**Request:**

Staff requests approval of the Amended and Restated Rules Governing Enterprise Assistance Loans.

**AMENDED AND RESTATED**

**RULES**

**GOVERNING ENTERPRISE ~~LOAN~~ ASSISTANCE LOANS**

**UNDER THE OPPORTUNITY ENTERPRISE ACT AS**

**ADOPTED ON ~~NOVEMBER 17~~ AUGUST 29, 20242**

**BY THE BOARD OF DIRECTORS**

**OF THE**

**NEW MEXICO FINANCE AUTHORITY AND**

**APPROVED BY**

**THE NEW MEXICO FINANCE AUTHORITY**

**OVERSIGHT COMMITTEE**

**~~NOVEMBER 10~~ AUGUST 12, 20242**

## SECTION 1. AUTHORITY; PURPOSE OF RULES.

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. On May 15, 2024, amendments to expand the scope of the Act and make appropriate conforming changes consistent with the intent of the Act went into effect. The Act creates the Opportunity Enterprise Revolving Fund (“Opportunity Enterprise Fund”) within the New Mexico Finance Authority (“NMFA”) and authorizes the NMFA to establish rules, administer the FundOpportunity Enterprise Fund, and recover from the FundOpportunity Enterprise Fund such costs of administering the FundOpportunity Enterprise Fund and originating opportunity enterprise assistance.

Pursuant to the Act, the Economic Development Department (“Department”) shall evaluate potential opportunity enterprise partners and formulate recommendations to the Opportunity Enterprise Review Board (“OERB”) regarding suitability for enterprise assistance. Pursuant to Rules adopted by the OERB, the OERB shall establish procedures to select and prioritize applications for enterprise assistance and recommend to the NMFA potential enterprise development projects for financial assistance from the FundOpportunity Enterprise Fund.

These Rules, subject to approval of the New Mexico Finance Authority Oversight Committee, govern the implementation and administration of eEnterprise aAssistance in the form of Opportunity Enterprise Loans under the Opportunity Enterprise Loan Program as authorized by NMSA 1978, Section 6-34-3 (2022)of the Act. These Rules do not apply to other programs established by the NMFA.

## SECTION 2. 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.

~~C.D.~~ “Commercial Development Committee” means a standing committee of the OE Board, appointed by theits Chair of the OE Board from members of the OE Board pursuant to the OE Board Bylaws, to review proposed Enterprise Development Projects to be recommended for funding from the Opportunity Enterprise Fund.

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

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

F.G. “Economic Development Committee” means a committee, appointed by the chair of

the NMFA Board, from the members of the Board.

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

H.I. “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.

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

J. “Loan” means an ~~Opportunity~~ Enterprise Assistance Loan from the ~~Fund~~Opportunity Enterprise 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.

K. OE Board~~RB~~” means the Opportunity Enterprise Review Board created pursuant to NMSA 1978, Section 6-34-5 of the Act.

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

L.M. “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.

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

N.O. “Nonurban Community” means a municipality with a population of less than forty thousand according to the most recent federal decennial census or the unincorporated area of a county.

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

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

Q.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.

~~R. —“Project Review Committee” means the standing committee of the OERB that shall review proposed development projects to be recommended for potential funding from the Fund.~~

S. “State” means the State of New Mexico.

### SECTION 3. APPLICATIONS, ELIGIBILITY FOR INVESTMENT.

A. Applications for Loans will be made available to Opportunity Enterprise Partners for Enterprise Development Projects recommended by the OERB and referred for evaluation for financing under the Program.

B. 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) Ownership structure of Applicant (for each owner detailing name, address, percentage ownership);
- (ii) Sources and uses of investment (detailed schedule);
- (iii) Business plan and five-year proforma financial statements;
- (iv) Copy of any license, zoning, permitting or other regulatory requirements, as applicable;
- (v) a complete list of outstanding loan(s) to the Applicant, member, partner or stockholder of the Applicant;
- (vi) authorization to obtain a credit report of the Applicant and the guarantor, as applicable;
- (vii) a current balance sheet and year-to-date profit and loss statement for the Applicant, dated not more than 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 years or audited financial statements, as applicable;
- (viii) federal income tax return for the prior two years on all guarantors and co-borrowers, as relevant;
- (ix) 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 (iii) of this Section 3 are not audited by a certified public accountant;
- (x) sufficient evidence that other means of financing the proposed project are unavailable or insufficient; and

(xi) any other information requested by the NMFA to evaluate the Application.

C. If the 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 in paragraphs (i) through (xii) of this Section 3 for the Applicant's existing entities, if any, the Applicant personally, if requested, or any other information requested by the NMFA to evaluate the Application.

D. All communications regarding Applications for enterprise assistance shall be directed to the CEO or other staff member of NMFA designated by the CEO.

#### SECTION 4. ENTERPRISE ASSISTANCE LOAN REVIEW AND APPROVAL PROCESS, ENTERPRISE OPPORTUNITY DEVELOPMENT PROJECT PROPOSAL PRIORITIZATION; COMMITMENT.

A. All complete Applications meeting the requirements of these Rules will be reviewed by the Commercial Development Committee. Enterprise Development Projects recommended for approval by the Commercial Development Committee will be presented to the OE Board, which ~~who~~ will prioritize the proposed Enterprise Development Projects. Enterprise Development Projects approved and prioritized by the OE Board will be presented to the Credit Committee. Enterprise Development Projects recommended for approval by the Credit Committee will be presented to the Economic Development Committee, and if approved, to the NMFA Board for final consideration for a Loan.

Once Applicants have met the initial criteria outlined in Section 3 above, NMFA will prioritize applications based upon local support, financial need, and project location in a Nonurban Community in accordance with the provisions of the Program Policies.

B. NMFA will evaluate each Application in accordance with these Rules, and will determine whether to approve an Application for a Loan based on:

(i) whether the requirements of the Act and these Rules have been met;

(ii) the Applicant's experience and intended use of Loan funds;

(iii) the creditworthiness of the Applicant;

(iv) the viability of the Enterprise Development Project;

(v) the proposed Enterprise Development Project will create or expand economic opportunities within the State, including local job creation and projected total gross receipts and tax collections, and other fee and revenue collections resulting from the Enterprise Development Project;

(vi) the proposed Enterprise Development Project will comply with applicable state and federal law; and

(vii) other means of financing the proposed Enterprise Development Project are unavailable or insufficient.

E. The Applicant's experience, financial history, and current financial status are key factors in the evaluation of an Application for a Loan. For start-up and emerging business entities, past relevant experience across business models or prior work experience will be considered in the evaluation of the Application for a Loan. The NMFA may consider, among other things:

- (i) the education and work history of Opportunity Enterprise Partners, and the officers, members, or partners of the Applicant;
- (ii) the Applicant's experience in managing similar enterprises;
- (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 operating and leverage ratios;
- (viii) the level of the Applicant's equity in the proposed project; and
- (ix) a description of the economic development opportunities within the State that will be created or expanded as a result of the proposed Enterprise Development Project.

C. The Credit Committee will evaluate each Application to determine the ability to repay the funds and need for the financial assistance. If the Credit Committee believes that projected revenues of the Applicant, together with other dedicated sources of repayment, will not be sufficient to repay the requested financial assistance, the Credit Committee will not recommend the Application to the Economic Development Committee.

D. The Economic Development Committee will consider Loan Applications recommended by the Credit Committee and may confer with outside parties such as the Department or others as necessary to obtain information on the Applicant or viability of the Enterprise Development Project. Loan recommendations by the Economic Development Committee will be presented to the NMFA Board for its approval or disapproval.

F. Once a recommendation has been made on the Application by the Economic Development Committee, the NMFA Board will consider the Application no later than the next regular Board meeting at which such item may be properly considered, or forty-five (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, without limitation, eligibility, nature of

the project, and the adequacy of consideration, or shall specify the Board's own findings on those subjects. NMFA 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.

G. If an Application is approved by the NMFA Board, the NMFA will provide a Loan commitment outlining the terms of the proposed Loan, any conditions precedent to closing, and the time period in which the conditions need to be met.

## SECTION 5. ENTERPRISE ASSISTANCE LOAN TERMS.

A. Loans provided under the Program must satisfy conditions prescribed in this Section 5.

B. Loans may not exceed seventeen million five hundred thousand dollars (\$17,500,000) and shall be secured by all legally acceptable collateral whose value exceeds the amount of assistance provided, including, but not limited to equipment buildings, and inventory, and meets loan-to-value requirements as described by the Program Policies. Collateral may require independent qualified appraisal to estimate fair market value.

C. Beginning no later than the third anniversary of the funding date of the Loan, payment on the outstanding principal of the loan shall be due according to a schedule determined by the NMFA.

D. Loans shall be made for terms based upon the useful life of the Enterprise Development Project as described in the Program Policies, with ~~a minimum term of fifteen (15) years and~~ a maximum term of thirty (30) years. There shall be no penalty or premium for prepayment of the balance of the indebtedness.

E. Loans shall bear an annual interest rate of no less than zero percent and as further described in the Program Policies.

F. Loans will include an equity requirement by contribution of a minimum amount equal to the loan amount in a form of owner contributions, cash or in-kind, or in down payments as described in the Program Policies.

G. Loans secured by real property will require a 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. The NMFA's security interest in the real property shall be at the highest lien level attainable to accomplish a successful financing, provided that NMFA may only be subordinate to a loan made by a federally insured financial institution.

E. Loans secured by personal property will require a Uniform Commercial Code, and tax lien and judgment search to confirm the highest lien level lien on the personal property attainable to accomplish successful financing, including execution of a 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 Loan.

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

G. Loans shall require a personal guarantee for repayment to be provided 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;
- (iv) the parent corporation or a partner, member, or stockholder of the parent corporation if the Applicant is a subsidiary.

H. Loan proceeds shall be used only for the acceptable purposes further determined in accordance with the provisions of the Program Policies.

#### SECTION 6. CLOSING AND DISBURSEMENT OF FUNDS.

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

B. Disbursement of funds will be made using the form prescribed by NMFA in the Loan agreement. Conditions precedent to disbursement, if any, must be met prior to disbursing Loan proceeds.

#### SECTION 7. ENTERPRISE ASSISTANCE LOAN DOCUMENTATION REQUIREMENTS.

A. All Loan documents shall provide that NMFA has all available remedies in the event of a default. Such remedies will include, 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.

B. The interest rate for the Loan will be set at the time the NMFA issues a loan commitment.

#### SECTION 8. MONITORING AND REPORTING.

A. After project completion, Loan borrowers shall submit financial statements and business performance reports not less than semi-annually. Business performance reports shall include, but are not limited to: 1) Occupancy data and rent rolls, as applicable; 2) Job creation metrics; and 3) Certification of all representations, warranties, and covenants; and certification that

there have been no ownership changes in the Opportunity Enterprise Partner.

B Beginning October 1, 2023, and no later than October 1 of each succeeding year, the NMFA shall submit a report as required by NMSA, 1978, Section 6-34-14 of the Act, and the Oversight Committee. Reports shall include the preceding fiscal year's Program activity, including the total amount of enterprise assistance for Enterprise Development Projects and the State revenue derived from each, the total number of loans made, the amount of those loans, the delinquency status of such loans, their sectors and industry types, and the number of employees employed by the Enterprise Development Project directly and indirectly.

#### SECTION 9. ADMINISTRATIVE FEES; DEFAULT.

A NMFA may impose and collect reasonable fees in connection with the filing and evaluation of an Application for a Loan, including an Application and commitment fee payable upon issuance of a commitment, and reasonable fees for the extension of any commitment.

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

C In the event of default, the NMFA may take proper steps to ensure payment of principal and interest, or other pursue other appropriate legal remedies to collect matured interest and principal.

#### SECTION 10. DURATION AND AMENDMENT OF RULES.

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