



*Memorandum*

To: Members of the NMFA Oversight Committee  
From: Marquita D. Russel, CEO  
Re: Overview of Proposed Amendments to Rules Governing Federally Funded Direct Lending Activities Under the Statewide Economic Development Finance Act

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**Item:**

Recommendation to approve Amended and Restated Rules (“Rules”) governing federally funding direct lending activities under the Statewide Economic Development Finance Act (“SWEDFA”). If approved, the Rules would allow NMFA to make direct loans using federal funds, including funds made available under the federal State Small Business Credit Initiative (“SSBCI”).

**Background on SWEDFA and SSBCI:**

Enacted in 2003, the Statewide Economic Development Finance Act (“SWEDFA”) authorizes the NMFA to issue bonds, make loans and provide loan and bond guarantees on behalf of private for-profit and non-profit entities. Similar to the NMFA Act, SWEDFA requires that rules governing the authorized programs be approved by the NMFA Oversight Committee and NMFA Board of Directors. SWEDFA established the Economic Development Revolving Fund (“EDRF”) from which NMFA may make loans, buy loan participations, make guarantees, and purchase bonds. The EDRF received its first funding for the SWEDFA programs in 2005 and has subsequently established four separate sets of rules and regulations.

The federal State Small Business Credit Initiative (“SSBCI”) was established in 2010 to help increase the flow of capital to small businesses. Congress recently reauthorized and expanded SSBCI through the American Rescue Plan Act (“SSBCI 2.0”) and provided \$10 billion to states to support small businesses as the country emerges from the pandemic.

In early 2022 the New Mexico Economic Development Department (“NMEDD”) applied to the US Department of Treasury (“Treasury”) for the State’s allotment of SSBCI 2.0. The State’s application outlined the use of the \$74.4 million on two specific programs: venture capital/equity fund program and a collateral assistance program, with initial targets of \$65.4 million and \$9 million, respectively. On September 1, 2022, NMEDD entered into an Allocation Agreement with Treasury for a total potential allocation of \$74.4 million to be disbursed in three tranches based upon performance.

In May 2023, NMFA Board of Directors approved a Memorandum of Agreement with NMEDD to manage the venture capital portion of the allocation. Given additional capital available at NMFA for alternative venture capital investments, NMEDD and NMFA have



available at NMFA for alternative venture capital investments, NMEDD and NMFA have agreed to collaborate on a revised application to Treasury to reallocate approximately \$50 million in SSBCI 2.0 funding to allow for the addition of credit support and enhancement programs to eligible programs to be administered by NMFA.

**Amended and Restated Rules Governing Federally Funded Directing Lending Programs**

In November 2011, the NMFA Oversight Committee approved rules to allow NMFA to enter into direct loans with eligible entities as part of an SSBCI co-lending program. At the time, NMFA was able to enter into loan participations, but Treasury required the additional avenue of funding as it feared that New Mexico would be unable to fully allocate its SSBCI funding with just purchased loan participations. The rules were never used.

Since the beginning of the pandemic, the federal government has made funding available to states to support various activities through loans to private enterprises. NMFA is well-positioned to work with its sister agencies to administer loans using these one-time federal grants through the powers granted to NMFA under SWEDFA.

NMFA proposes to broaden the existing Direct Lending rules to allow NMFA to make loans using federal funds that may become available from time to time. The amended rules eliminate the requirement that another lender participate in the financing and provide a framework for administration of these programs, leaving the specific application requirements to policy.

The attached Rules incorporate current statutory provisions, updated legal guidance, and existing practices, including the use of an internal credit committee to vet applications considered for funding and eliminate unnecessary fees.

**Recommendation:**

The NMFA Board is scheduled to adopt these Rules at its October 26, 2023 Board Meeting. Staff recommends the approval of the Amended and Restated Rules Governing the Administration of Federally Funded Direct Lending Activities.



### **Overview of Proposed Amendments:**

Amending Rules Initially put in place in December 16, 2011 solely for a co-lending participation program using the State Small Business Credit Initiative (SSBCI) funding utilizing authority granted under the Statewide Economic Development Finance Act, §§ 6-25-1 to 6-25-28 NMSA 1978, as amended (the “Act” or “SWEDFA”) to make loans to for-profit and non-profit enterprises determined eligible by NMEDD.

- Rules are being broadened to cover the implementation and administration of any federally funded direct lending programs, including the SSBCI funding.
- These amended rules strip out the SSBCI -specific requirements and references
- The rules provide a framework for the federally funded programs including application contents, establishment of interest rates, underwriting criteria, terms and other lending criteria shall be established in separately established NMFA Program Policies for each program pursuant to any application federal guidelines for the respective federal grants.
- Eliminates language that is more appropriate for policy.

### **DEFINITIONS**

#### **Eliminates definitions of:**

- “Allocation Agreement” specific to the SSBCI funding requirements
- “LPP” the specific co-lending participation program
- “Total Loan” means the sum of a loan made by a Co-Lending Financial Institution and the NMFA, under the SSBCI to an applicant;

#### **Amends definitions of:**

- “applicants” and “application” to eliminate specific references to LPP of the NMFA
- “lender” to eliminate the option for a related-party lender to participate as a co-lender.
- “eligible entity” to eliminate references to the co-lender and substitutes the means provided in the Act.
- “Finance Committee” to “Economic Development Committee” to align the current name of Board Committee.
- “Program” to broaden the potential projects beyond co-lending program to include other Direct Lending Program activity authorized by federal law, the Act and these Rules;
- “SSBCI” Updates definition of SSBCI to include references to the American Rescue Plan of 2021

#### **Adds the definitions of:**



- “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;
- “Fund” means the Economic Development Revolving Fund established pursuant to the Act;
- “project” means a project as provided in the Act;
- “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;

**Eliminates Specific Definitions of Eligible Entities and Projects as these may vary dependent on the specific federal requirements for the respective federal grant.**

**Sets out Application Procedures:**

- NMFA will evaluate applications for creditworthiness and proposed use of loan proceeds as well as any other matters required by the Program or that NMFA may otherwise consider appropriate.
- Provides that NMFA may charge an application fee, but eliminates NMFA’s ability to collect a commitment fee.
- Eliminates the use of specific forms
- Provides that the NMFA may require the applicant to include evidence of approval of other financing, financial statements, description of direct and indirect ownership, a list of all outstanding debt and a credit report.
- Provides that NMFA may also require any guarantors to provide personal and/or corporate financial statements, tax returns, and credit reports.
- May require evidence of other project or financing readiness
- May require evidence of project benefits
- May require appraisals
- Provides for protection of confidential and proprietary information consistent with provisions of SWEDFA

**EVALUATION OF APPLICATION AND PROJECT; COMMITMENT**

- New material: Specified that only complete applications will be evaluated by NMFA and requiring NMFA to notify the applicant if an application is incomplete and shall describe the information needed to complete the application.
- Clarifies that staff will present the completed application to the internal credit committee with a determination as to whether to recommend the loan to the Economic Development



Committee. Projects not recommended by the credit committee will be notified within five business days of the decision.

- Aligns rules with current Board and Board committee process, including the requirement that NMFA notify applicant within five days of the Economic Development Committee's decision to not recommend the project to the Board.
- Provides that applicant will be notified with seven days of the Board's action.
- Outlines the evaluation factors considered in making a loan:
  
- Provides that NMFA will evaluate each project to determine feasibility and the ability for the loan to be repaid. Provides that NMFA will not make the loan if it believes that the dedicated sources of repayment are insufficient to make the loan. (unchanged)
- Eliminates a separate review by NMFA on economic development goal of the state.
- Eliminates loan commitment fees
- Clarifies that loan commitments will be for 90 days and provides that NMFA may extend the commitment for 45 days. Eliminates loan extension fees.

#### **SECTION 5. TERMS OF REAL PROPERTY LOANS (largely unchanged)**

- Outlines the requirements of NMFA loans made for or secured by real estate and/or buildings. Requires that loans be completely amortized and require periodic payments.
- Provides 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.
- Provides conditions before NMFA can make a loan secured by real property:
  - Eliminates the requirement that appraisers opine on a completed construction project before closing on a loan; current requirement is for an updated appraisal rather than an opinion from an appraiser.
  - Requires assurance that building meets occupancy and permitting conditions.
  - Requires NMFA review and approve any land lease, which shall exceed the effective term of the loan by 10 years approved by NMFA
- Requires the applicant to obtain insurance coverage for the improvements and the collateral
- Allows NMFA to require guarantees

#### **SECTION 6. TERMS OF PERSONAL PROPERTY LOANS (Unchanged)**

- Outlines the use of loan proceeds and provides that the loans must be secured with a lien on the assets.



- Allows a participating co-lender to amortize its loan differently than NMFA's loans, so long as they mature at the same time.
- Provides that the terms and conditions of a lease that secures a personal property loan must be approved by the NMFA.
- Requires the eligible entity to obtain insurance coverage on business assets.
- Provides for NMFA to obtain guarantees.

#### **SECTION 7. LOAN CLOSING AND DISBURSEMENT OF FUNDS**

- Eliminates co-lender participation requirement; provides NMFA will finalize the loan upon the eligible entity meeting loan commitment requirements set by NMFA.

#### **SECTION 8. LOAN REQUIREMENTS**

- Prescribes requirements of NMFA loan documents (unchanged)
- Eliminates the requirement that another lender provide a loan of at least 51%
- Provides that the interest rate be set at the time of the loan commitment (unchanged); eliminates the co-lender's interest rate requirements (will be directed to policy)
- Allows NMFA to charge a prepayment fee in the first five years of the loan.
- SSBCI-specific Loan assurances and requirements are eliminated in rule

#### **SECTION 9. INTERCREDITOR AGREEMENT**

- Outlines the requirements of intercreditor agreements without change; eliminates Co-Lending Servicing Agreements (NMFA will service its own loans); continues to allow NMFA to modify loan agreements to support businesses during economic hardship.

#### **SECTION 10. ADMINISTRATIVE FEES**

- No changes. Provides that the NMFA may impose and collect a reasonable application fee and other fees NMFA deems appropriate.

#### **SECTION 11. ADMINISTRATION OF THE FUNDS; REPORTING**

- Provides that each of the federal funding sources may be accounted for separately by the NMFA and clarifies that loan repayments will return to their respective loan funds from the loan was made.
- Broadens the reporting beyond SSBCI and requires NMFA to include in loan documents respective reporting and compliance requirements.

#### **SECTION 12. PREVAILING PROVISIONS**

- Clarifies that if the Rules conflict with federal guidelines or the Act, that the terms of the federal guidelines, then the Act will prevail.



NEW MEXICO  
**FINANCE AUTHORITY**

**SECTION 13. AMENDMENT OF RULES**

- Clarifies that rules may only be amended with prior approval of the NMFA Oversight Committee and may be repealed by NMFA at any time.

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.

DRAFT

AMENDED AND RESTATED RULES AND REGULATIONS

GOVERNING THE NEW MEXICO FINANCE AUTHORITY

ADMINISTRATION OF

~~CO-LENDING A/K/A~~ FEDERALLY FUNDED DIRECT LENDING ACTIVITIES PROGRAMS UNDER THE

~~NEW MEXICO SSB CI LOAN PARTICIPATION PROGRAM~~

~~UNDER THE STATE SMALL BUSINESS CREDIT INITIATIVE (SSBCI) ESTABLISHED UNDER THE~~

~~FEDERAL SMALL BUSINESS JOBS ACT OF 2010~~

AS

ADOPTED

ON ~~[DECEMBER 16, 2011]~~ [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

~~[NOVEMBER 30, 2011]~~ [OCTOBER 6, 2023]

## SECTION 1. MISSIONS AND GOALS

~~These Amended and Restated Rules and Regulations governing the New Mexico Finance Authority (“NMFA”) administration of the Co-lending a/k/a Direct Lending Activities Programs (“Rules”) under the New Mexico State Small Business Credit Initiative (as further defined below, “SSBCI”) Loan Participation Program are adopted by the NMFA 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 and 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.~~

~~The State of New Mexico has submitted an application to the United States Department of the Treasury (the “Treasury Department”) and received approval and a monetary allocation for a Loan Participation Program (as further defined below, “LPP”) under the SSBCI. A Loan Participation Program is one of a number of “State Other Credit Support Programs” as set forth in Section 3002(12) (15 U.S.C. 5701(12)) of the State Small Business Credit Initiative Act of 2010 under which the U.S. Treasury is charged with making capital investments in eligible institutions in order to increase the availability of credit for small businesses.~~

~~The New Mexico Economic Development Department (“NMEDD”) and the Treasury Department have entered into that certain State Small Business Credit Initiative Allocation Agreement for Participating States dated October 11, 2011 (as amended or supplemented, the “Allocation Agreement”). As memorialized in the Allocation Agreement, the Treasury Department has allocated \$13,168,350 under the SSBCI to the State of New Mexico, through the NMEDD and as to be administered by the NMFA on behalf of the NMEDD. Pursuant to the Allocation Agreement (in particular, Annex 1 thereto) the NMFA shall administer the LPP on behalf of the NMEDD. In addition, pursuant to the Allocation Agreement (in particular, Annex 1 thereto), the State of New Mexico, through the NMEDD, has applied to the NMFA to administer the LPP, and as such, the NMFA is required to comply with Articles IV and VI of the Allocation Agreement and has the rights of the State of New Mexico under Articles IV and VI of the Allocation Agreement. The NMFA and NMEDD, through a Memorandum of Understanding, have agreed to use the funds to operate a loan participation program through direct loans to borrowers that are made in conjunction with loans from private lenders to a borrower, which focuses on shorter term working capital loans, particularly for projects located in rural and underserved areas of New Mexico because of perceived credit risk or reduced asset valuations that occur there.~~

~~The SSBCI provides funds and authorization for both “collateral support program,” whereby the NMFA purchases an interest in an underlying loan, and “direct lending” or “co-lending” program, where the NMFA makes a loan alongside a financial institution, and in direct contract privity with the underlying borrower. Separately, the NMFA has adopted policies for its collateral support program under the SSBCI. These Rules and Regulations govern the “provide a framework for the implementation and administration of direct lending programs, including a “or “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. The purposes of the collateral support and direct lending / co-lending programs are to stimulate economic development in New Mexico. These Rules and Regulations do not apply to other programs operated with non-federal dollars established by the NMFA or to the collateral support programs of the NMFA.~~

~~Purposes specific to this policy are:~~

- ~~◆ Define the criteria that will ensure high quality lending decisions, including full and timely repayment of all borrowings;~~
- ~~◆ Promote consistency and continuity in the decision making and monitoring process;~~
- ~~◆ Define the NMFA’s desirable, undesirable or prohibited loans;~~
- ~~◆ Determine interest rate policy and risk policy;~~
- ~~◆ Define collateral requirements;~~
- ~~◆ Determine of acceptable lien position; and~~
- ~~◆ Define loan administration roles and loan monitoring guidelines.~~

## SECTION 2. DEFINITIONS

~~A. \_\_\_\_\_ “Act” means the Statewide Economic Development Finance Act, §§ 6-25-1 to 6-25- 28 NMSA 1978, as amended;~~

~~A. \_\_\_\_\_ “Allocation Agreement” means that certain State Small Business Credit Initiative Allocation Agreement for Participating States dated October 11, 2011 by and between the NMEDD and the Treasury Department, as amended or supplemented;~~

~~B.~~ \_\_\_\_\_

~~C.B.~~ “applicant” means an eligible entity that has filed a loan application ~~for~~ with the NMFA ~~to provide for~~ a direct loan ~~under the LPP of the NMFA~~;

~~D.C.~~ “application” means a written document filed with the NMFA by an applicant to ~~receive request~~ a direct loan ~~under the LPP of the NMFA~~;

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

~~F.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; ~~or~~

~~(iv) an applicant, so long as the applicant has provided letters from lenders who would have otherwise qualified under clauses (i) — (iii) whereby such lenders have declined the opportunity to lend to such applicant (such declination letters to be in form, substance and quantity acceptable to NMFA staff).~~

~~G.F.~~ ~~In each case, such Co-Lending Financial Institution shall be approved by the NMFA~~ “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;

~~H.G.~~ “eligible entity” ~~means an entity that qualifies to receive a Total Loan under this policy and the underwriting requirements of the Co-Lending Financial Institution~~ has the meaning provided in Act;

~~H.~~ “Finance Economic Development Committee” means a committee, appointed by the ~~chairman of 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. “LPP” means a Loan Participation Program as provided in the SSBCI;~~

~~K. “NMEDD” means the New Mexico Department of Economic Development Department;~~

~~L. “NMFA” means the New Mexico Finance Authority;~~

~~M. “Oversight Committee” means the joint interim legislative committee established pursuant to § 6-21-30 NMSA 1978;~~

~~N. “project” means a project as provided in the Act;~~

~~O. “program” means the Loan Participation Program a federally funded Co-Lending Program authorized by SSBCI or other Direct Lending Program activity authorized by federal law, the Act and these regulations;~~

~~P. “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;~~

~~Q. “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.~~

~~R. “state” means the State of New Mexico;~~

~~S. “Total Loan” means the sum of a loan made by a Co-Lending Financial Institution and the NMFA, under the SSBCI to an applicant; and~~

~~T. “Treasury Department” means the United States Department of the Treasury.~~

### ~~SECTION 3. ELIGIBLE ENTITIES AND PROJECTS~~

~~The NMFA shall directly make loans (which term includes extensions of credit in exchange for notes, bonds or other instruments evidencing an obligation to repay indebtedness) under the program to eligible entities. Eligible entities must be determined by the NMFA to be engaged in an enterprise that serves an economic development goal.~~

~~Pursuant to SSBCI federal requirements (15 U.S.C. 5705(c)), (i) the LPP shall target an average borrower size of 500 employees or less; (ii) eligible entities shall not have more than 750 employees at the time credit support is extended; (iii) the LPP shall target support toward loans with an average principal amount of \$5,000,000 or less; and (iv) the LPP shall not be used to extend credit support to loans that exceed a principal amount of \$20,000,000.~~

~~In each case, the NMFA shall not be the sole lender to an eligible entity. As a maximum, the NMFA shall provide 49% of the outside credit financing to an eligible entity. That is, the NMFA shall only provide 49% of investment to an eligible entity, and the remaining 51% shall be provided by new, private Co-Lending Financial Institution.~~

~~Pursuant to the SSBCI, the NMFA shall only extend credit where it has the reasonable expectation that, when considered with all other all approved state programs under the SSBCI, such programs together have the ability to use federal contributions to such programs to generate small business lending at least 10 times the new federal contribution amount. The foregoing 10:1 ratio may include subsequent private financing to the applicant closed or committed before December 31, 2016, that is the cause and result of the initial SSBCI funded transaction and additional transactions to other borrowers closed or committed before December 31, 2016, that are funded with recycled SSBCI funds. "Private financing" means private financing across all approved state programs and includes all loans or investments from a private source to an eligible borrower or eligible portfolio company, whether occurring at or subsequent to loan/investment closing (subject to the provisions of Annex 7 of the Allocation Agreement), and whether funded or unfunded. It encompasses equity investments, written commitments of future equity investments, term loans, lines of credit, and any new infusions of cash by the borrower. The required ratios under this Section 3 shall be assessed pursuant to applicable SSBCI regulation and guidance.~~

### **SECTION 43. APPLICATION PROCEDURES POLICY**

~~A. — The application procedures policy provides guidance to the NMFA and the applicant on information required in order for an application to be considered complete.~~

~~B.A.~~ An applicant may apply for a loan under the direct loan LPP 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 ~~the originator required by the Program or that~~ NMFA may otherwise consider appropriate. ~~In conjunction with an applicant's submission, the applicant shall submit authorization to the NMFA for the Co-Lending Financial Institution to disclose all of its underwriting materials, loan documents and determinations to the NMFA.~~

~~C.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. ~~For projects recommended by staff to NMFA's Economic Development Committee, the NMFA will require that the benefiting business complete an Economic Impact Questionnaire and an Economic Disclosure Statement. The Economic Impact Questionnaire will be used by the NMEDD to determine the potential economic impact of a project and the Economic Disclosure Statement will provide information to the NMFA Board regarding the individuals and entities that will benefit from the financing. These forms will be provided by NMFA.~~ If the NMFA issues a commitment to make a direct ~~co-lending~~ loan to an applicant, ~~and the loan commitment~~ will be issued by the NMFA ~~is and must be~~ accepted, ~~and signed~~ and returned by the applicant, ~~the application fee will be credited against the NMFA's commitment fee.~~ The NMFA may require the applicant to include with the application any of the following:

- (i) a letter of transmittal;
- (ii) a ~~loan~~-summary of financing, including evidence of Co-Lending Financial Institution approval at the required level of authority and all supporting documentation, if applicable;
- ~~(iii)~~ (iii) audited and unaudited financial statements and financial projections as applicable;
- ~~(iii)~~ (iv) a depiction of the equity structure of the applicant that shows all individuals who hold direct or indirect interests in the entity;
- ~~(iv)~~ (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;

~~(v)~~(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;

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

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

~~(viii)~~(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;

~~(ix)~~(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;

~~(x)~~(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;

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

~~(xii)~~(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;

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

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

~~(xv)~~(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

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

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

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#### SECTION 54. EVALUATION OF APPLICATION AND PROJECT; COMMITMENT

A. ~~The Finance 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 Finance Committee will make a written recommendation to the Board. Such recommendation will propose either approval or disapproval of specific projects and will specify the Total Loan amount and the recommended amount of the NMFA’s loan. To the extent required by law, the NMFA will confirm that, with respect to each applicant for which a loan is being considered, the applicant is engaged in an enterprise that serves an economic development goal and is suitable for financing assistance under the SSBCI.~~

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 Regulations and applicable Program Policies and will determine whether to recommend approve approval of an application for a loan based on:

(i) whether the requirements of the ~~SSBCI~~applicable federal guidelines, the Act and these ~~rules~~Rules and regulations 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 ~~loan and applicable loan~~ Program participation 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 ~~and to provide benefits~~.

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 ~~Finance~~ 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 ~~Finance~~ 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 ~~Total Loan amount and the recommended amount and terms~~ of the NMFA's loan. ~~To the extent required by law, the NMFA will confirm that, with respect to each applicant for which a loan is being considered, the applicant is engaged in an enterprise that serves an economic development goal and is suitable for financing assistance under the SSBCI.~~ 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 ~~Finance~~ 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 ~~Finance~~ Economic Development Committee action, whichever comes first. The Board may approve all or part of the application as recommended by the ~~Finance~~ 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.

~~D.E.~~ The NMFA will notify the ~~Co-Lending Financial Institution~~ applicant of the approval or disapproval of the application within seven days of the Board action.

~~E.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. The NMFA will review each application to determine whether the proposed project advances the economic development goals of the state. The anticipated benefits of each proposed project will be reviewed and considered.~~

H.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 ~~payment by the applicant of a commitment fee as specified in the acceptance of~~ the commitment.

H.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 ~~90~~ 45 days if the NMFA has not funded the NMFA's loan. The NMFA, in its sole discretion, will determine whether the grant a loan commitment term extension shall be granted. effective upon receipt by the NMFA of a non refundable fee as specified in the commitment. The NMFA may grant subsequent loan commitment term extensions for one or more additional 30 day periods effective upon receipt by the NMFA of an additional non refundable fee.

## SECTION ~~65~~. 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 ~~;~~

E.



~~A. the author of the original appraisal, or other appraiser acceptable to the NMFA, that construction was substantially completed according to the plans and specifications included in the original appraisal submitted to the NMFA and that the completed value is at least equal to an amount which would meet the requirements of Paragraph B of this section;~~

~~F. \_\_\_\_\_~~

~~B.E.~~ 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 76. 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 87. LOAN CLOSING AND DISBURSEMENT OF FUNDS

Upon ~~certification by the Co-Lending Financial Institution and~~ NMFA’s determination that the applicant ~~has met the terms that all provisions~~ of the loan commitment and, as applicable, the

terms of ~~the 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 98. 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 Co Lending Financial Institution shall advance at least 51 percent of the principal amount of the Total Loan.~~

~~C.~~

~~D.      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. The rate of interest on the Co Lending Financial Institution's loan is set by the Co Lending Financial Institution, but may not exceed the rate of interest the Co Lending Financial Institution would normally charge a borrower such as the applicant under similar circumstances but not involving a direct loan by the NMFA.~~

~~B.~~

~~D.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.~~

~~E.      Loan Purpose. Consistent with the SSBCI, each eligible entity shall provide assurance stating that the loan proceeds will not be used for an impermissible purpose under the SSBCI program. Each borrower shall certify and affirm to the NMFA and Co Lending Financial Institution that:~~

~~(i)      The loan proceeds must be used for a "business purpose." A business purpose includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes acquiring or holding passive investments such as commercial real estate ownership, or the purchase of securities; and lobbying activities (as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104 65, as amended).~~

~~(ii) — The loan proceeds will not be used to:~~

~~a) — repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or~~

~~b) — repay taxes held in trust or escrow, e.g. payroll or sales taxes; or~~

~~c) — reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or~~

~~d) — purchase any portion of the ownership interest of any owner of the business.~~

~~(iii) — The borrower is not:~~

~~a) — an executive officer, director, or principal shareholder of the NMFA or Co-Lending Financial Institution; or~~

~~b) — a member of the immediate family of an executive officer, director, or principal shareholder of the NMFA or Co-Lending Financial Institution; or~~

~~c) — a related interest of such an executive officer, director, principal shareholder, or member of the immediate family.~~

~~d) — For the purposes of the foregoing borrower restrictions, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to a Co-Lending Financial Institution as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.~~

~~(iv) — The borrower is not:~~

~~a) — a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or is not:~~

~~b) — a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company Community Development Financial Institution; or~~

~~c) — a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or~~

~~d) — a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or~~

~~e) — a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.~~

~~(v) — No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity."~~

~~G. — Co-Lending Financial Institution Restrictions:~~

~~(i) — Each Co-Lending Financial Institution shall have a meaningful amount of its own capital at risk, to the extent required by SSBCL.~~

~~(ii) — Each Co-Lending Financial Institution shall require an assurance from the borrower stating that the loan proceeds will not be used for an impermissible purpose under the SSBCL.~~

~~(iii) — Consistent with the SSBCL, each Co-Lending Financial Institution shall certify and affirm to the NMFA:~~

~~(a) — The loan has not been made in order to place under the SSBCL program prior debt that is not covered under the approved SSBCL parameters and that is~~

~~or was owed by the borrower to the Co-Lending Financial Institution or to an affiliate of the Co-Lending Financial Institution.~~

~~(b) The loan is not a refinancing of a loan previously made to that borrower by the Co-Lending Financial Institution or an affiliate of the Co-Lending Financial Institution.~~

~~(c) No principal of the Co-Lending Financial Institution has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity."~~

~~H. Any involvement of the NMFA in relation to Small Business Administration (SBA) guaranteed loans shall be in compliance with the SSBCI and shall have received the consent, if necessary, from the Treasury Department.~~

## ~~SECTION 109. INTERCREDITOR AGREEMENT AND SERVICING OF LOANS~~

A. ~~If the loan is part of a Co-Lending financing, t~~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.

~~B. The NMFA may enter into a servicing agreement with a Co-Lending Financial Institution or its affiliate or servicer that may:~~

~~(i) provide that all servicing be by the Co-Lending Financial Institution;~~

~~(ii) provide methods for the collection of delinquent payments of principal and interest and foreclosure or exercise of security rights undertaken by the Co-Lending Financial Institution;~~

~~(iii) provide for periodic reports to the NMFA by the Co-Lending Financial Institution;~~

~~(iv) require the Co-Lending Financial Institution to service the loan in accordance with accepted business practices, including, but not limited to, prompt collection of amounts due under the loan and prompt exercise of rights in the event of default by the borrower;~~

~~(v) requires the originator to notify and consult with the NMFA in the event of a default under any loan in which the NMFA has made; and~~

~~(vi) provide that the NMFA will pay a servicing fee to the Co-Lending Financial Institution.~~

~~C. In the event a servicing agreement is entered into, the Co-Lending Financial Institution must indemnify the NMFA against errors, omissions, fraud, or dishonesty committed by the originator, including any of the originator's officers, directors, employees, and agents.~~

~~D.C. The NMFA may, in its discretion, enter into a loan modification agreement with the originator and the eligible entity 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. The NMFA may require that it receive a non-~~

~~refundable modification fee in an amount determined by the NMFA before entering a loan modification agreement.~~

#### SECTION ~~11~~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 ~~12~~11. ADMINISTRATION OF THE ~~SSBCI ALLOCATION; OTHER FUNDS; REPORTING~~

A. ~~The SSBCI NMFA shall account for each federal Program operated from the Fund in a allocation shall be administered by the NMFA as a separate account, but may consist of such subaccounts as the NMFA deems necessary to carry out the purposes of the SSBCI allocation.~~

B. Money from repayments of ~~SSBCI allocation disbursements~~Program loans shall be deposited into ~~an SSBCI allocation fund~~their respective Program subaccount of the Fund.

~~C. The NMFA shall establish additional funds and accounts as necessary to implement the program.~~

~~D.C. The NMFA shall adopt a uniform accounting system for the SSBCI allocation fund and each other fund and account established by the NMFA, based on generally accepted accounting principles. The SSBCI allocation fund shall be accounted for in compliance with the requirements of the Allocation Agreement.~~

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

#### SECTION ~~13~~12. PREVAILING PROVISIONS

To the extent that the provisions of any of these Rules ~~and Regulations~~ conflict with the terms of the ~~SSBCI federal funding, the Allocation Agreement,~~ or the Act, the terms of the ~~SSBCI,~~



~~the Allocation Agreement~~ federal funds, or the Act, in that order of priority, shall prevail and control. ~~In the event of a conflict between the terms of SSBCI, the Allocation Agreement, or the Act, the NMFA shall apply to the Treasury Department or the New Mexico Attorney General for guidance. In the event that any of the provisions of the foregoing Rules and Regulations are provisions of the SSBCI that have been incorporated herein, whether such incorporation is expressly noted or not, in the event that the SSBCI is amended, such amendments shall automatically be deemed to be incorporated herein.~~

#### SECTION ~~1413~~. AMENDMENT OF RULES ~~AND REGULATIONS~~

These Rules ~~and Regulations~~ may be ~~amended or~~ repealed at any time by the NMFA ~~and~~ may be amended, with the prior approval of the Oversight Committee.

DRAFT

~~Approved by NM LOC November 30, 2011  
Adopted by NMFA Board of Directors December 16, 2011~~