



Memorandum

To: Members of the NMFA Oversight Committee
From: Marquita D. Russel, CEO
Date: August 14, 2020
Re: Recommendation to Adopt Rules Governing the Essential Services Working Capital Program under the Economic Development Revolving Fund

Item:

Recommendation to adopt rules for the Essential Services Working Capital Program. The new program, which operate as a sub-account in the Economic Development Revolving Fund (“EDRF”), was funded by the NMFA Board utilize the \$12 million of unobligated NMFA operating funds transferred to the EDRF by the NMFA Board in November 2019.

Program Background:

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 three separate sets of rules and regulations.

NMFA’s two loan participation programs – the Smart Money Loan Participation Program (state-funded) and the Collateral Support Participation Program (funded from the federal State Small Business Credit Initiative (“SSBCI”)) – are governed by the Loan Participation Program rules and regulations that were approved in November 2005 by the NMFA Oversight Committee and December 2005 by the NMFA Board of Directors. Additionally, two other sets of rules and regulations have been approved by the NMFA Oversight Committee and NMFA Board of Directors: a Conduit Bond Program established for the potential issuance of several bonds authorized by the 2009 federal stimulus bill and an SSBCI Co-Lending Participation Program. All of these programs require bank participation.

In November 2019, the NMFA Board approved the transfer of \$12 million from unobligated operating funds to the EDRF for use in a new loan participation program - the Business Loan Participation Program (“BLPP”) - which blended the best of the Smart Money and Collateral Support participation programs. Staff was finalizing the BLPP policies for the Board’s approval when Governor issued a Health Emergency Order resulting from the COVID-19 pandemic.



NEW MEXICO FINANCE AUTHORITY

In response to the economic crisis resulting from nationwide stay-at-home orders, the federal CARES Act provided several robust programs to help small businesses. One of these programs, the Paycheck Protection Program, was operated through banks which temporarily overwhelmed their capacity. With bank efforts directed to the new federal programs to help businesses, there was little appetite for a new participation program despite the significant need for assistance.

Prior to the pandemic, NMFA had been in conversation with the Human Services Department about broadening our loan programs to include working capital. The Department had noted that behavioral health care providers in particular needed working capital to ramp up operations in areas that had been previously served by other care providers that had gone out of business. Following the first Public Health Order, the concerns shifted from needing funding for expansion to needing funding in order to maintain services during the pandemic. NMFA has also identified other providers of essential services, such as rural hospitals, child care centers, dentists and medical specialists, that needed working capital in order to maintain operations during the Public Health Order.

In April 2020, the NMFA Board approved the re-dedication of \$12 million transferred to the EDRF for a new program, the Essential Services Working Capital Program, that would provide direct, subordinated working capital loans under the following terms:

- Loans of up to \$1 million, based upon the borrowing capacity of the essential service provider
- Term loans with maturities of up to five years.
- Lines of credit of up to one year, after which time the line may be converted to a term loan and repaid over a period not to exceed five years.
- Secured by receivables and other available personal property of the borrower
- Interest rate at 1%

NMFA used the New Mexico Rules Act as guidance for establishing the emergency rules. The emergency rules are in effect for 180 days, subject to rescission by the NMFA Oversight Committee. NMFA is now seeking the Oversight Committee's approval of the rules so that NMFA may be allowed to continue funding essential service providers impacted by the Public Health Order.

Recommendation:

Staff recommends approval of the rules for the Essential Services Working Capital Program as presented.

RULES
GOVERNING THE
ESSENTIAL SERVICES WORKING CAPITAL PROGRAM
UNDER THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT
AS
ADOPTED
ON APRIL 23, 2020
BY THE
BOARD OF DIRECTORS
OF THE
NEW MEXICO FINANCE AUTHORITY
AND APPROVED BY THE
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE
ON
[AUGUST 14, 2020]

SECTION 1. AUTHORITY; PURPOSE OF RULES.

On March 11, 2020, in response to the presence in New Mexico of a highly contagious respiratory novel coronavirus disease known as COVID-19, Governor Michelle Lujan Grisham declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked all power and authority under the All Hazards Emergency Management Act. On March 23, 2020, the New Mexico Department of Health, pursuant to the All Hazards Emergency Management Act, issued a Public Health Emergency Order to close all businesses and non-profit entities except for those deemed essential, while also limiting mass gatherings due to COVID-19. Since March 23, 2020, the Public Health Emergency Order has been extended and modified, and may further be extended or modified, to address the ongoing threat of COVID-19.

The Authority, pursuant to NMSA 1978, Section 6-25-6 (2019), is granted certain powers enabling it to provide financial assistance from the program to essential services providers whose services have been strained and cannot be met with their respective current operating capital due to the Public Health Emergency and Public Health Emergency Order from the Economic Development Revolving Fund.

These rules govern the implementation and administration of the program as authorized by NMSA 1978, Section 6-25-6(D) (2019), and do not apply to other programs established by the Authority.

SECTION 2. DEFINITIONS.

A. “Act” means the Statewide Economic Development Finance Act, NMSA 1978, Sections 6-25-1 to 6-25-29, as amended and supplemented from time to time.

B. “applicant” means an essential business that has filed an application with the Authority.

C. “application” means a written document filed with the Authority by an applicant for the purpose of requesting financial assistance.

D. “Authority” means the New Mexico Finance Authority.

E. “Board” means the Authority board of directors.

F. “credit committee” means a committee of Authority staff appointed by the Authority’s chief executive officer.

G. “Department” means the New Mexico Department of Economic Development.

H. “Economic Development Revolving Fund” means the fund created pursuant to § 6-25-13 of the Act.

I. “economic development committee” means a committee, appointed by the chairman of the Board, from the members of the Board.

J. “eligible entity” has the meaning provided in NMSA 1978, Section 6-25-3(H) (2019), as amended and supplemented from time to time.

K. “essential business” has the meaning as outlined in the Public Health Emergency Order that qualifies as an eligible entity.

L. “essential services provider” means an eligible entity that is an essential business.

M. “financial assistance” means a short term working capital loan.

N. “Oversight Committee” means the joint interim legislative committee established pursuant to NMSA 1978, Section 6-21-30 (1992), as amended and supplemented from time to time.

O. “program” means the Essential Services Working Capital Program authorized by the Act and these rules.

P. “Project” has the meaning provided in NMSA 1978, § 6-25-3(P) (2019), but excludes “state projects” as defined in NMSA 1978, Section 6-25-3(U) (2019), as amended and supplemented from time to time.

Q. “Public Health Emergency” means the declaration of the Governor of the State of New Mexico on March 11, 2020.

R. “Public Health Emergency Order” means the order issued by the New Mexico Department of Health on March 23, 2020, as may be amended, extended or supplemented from time to time.

S. “standard project” has the meaning provided in NMSA 1978, Section 6-25-3(O), as amended and supplemented from time to time.

T. "State" means the State of New Mexico.

SECTION 3. APPLICATION FOR FINANCIAL ASSISTANCE.

A. The Authority will coordinate with the Department and other applicable State agencies to administer an outreach program to notify essential businesses for which the Authority will consider providing financial assistance.

B. An applicant may apply for financial assistance by submitting an application to the Authority, which shall include the proposed use of the financial assistance proceeds, evidence of the applicant’s creditworthiness, and any other matters the Authority may consider appropriate, including but not limited to any of the following:

(i) a list of other unpaid loan(s) to the applicant or to any member, partner or stockholder of the applicant, from the State or any political subdivision or other public corporation of the State along with the applicant's certification that each unpaid loan is current and no other loans exist, and a description of any other incentives to be supplied to the applicant in connection with the project by the State or any local government;

(ii) authorization to obtain a credit report of the applicant and the guarantor, if any;

(iii) 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 ;

(iv) current balance sheet and federal income tax return for the prior two years on all guarantors and co-borrowers;

(v) 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 4 are not audited by a certified public accountant; and

(vi) any other information requested by the Authority to evaluate the application.

C. All communications regarding applications for financial assistance shall be directed to the chief executive officer or other staff member of the Authority designated by the chief executive officer.

SECTION 4. EVALUATION OF APPLICATION; COMMITMENT.

A. All applications received by the Authority will be reviewed by the credit committee. Projects recommended for approval by the credit committee will be presented to the economic development committee.

B. The economic development committee will consider applications for financial assistance recommended by the credit committee and may confer with outside parties as necessary to obtain more information on the creditworthiness of the applicant or necessity of the project. Financial assistance recommendations by the economic development committee will be presented to the Board for its approval or disapproval. To the extent required by law, the Authority will confirm with the Department that the applicant is an eligible entity and is engaged in an enterprise that serves an economic development goal and is suitable for financing assistance, as defined in the Act.

C. The Authority will evaluate each application in accordance with these rules, and will determine whether to approve an application for financial assistance based on

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

- (ii) the applicant's experience and financial history;
- (iii) the creditworthiness of the applicant;
- (iv) the ability of the applicant to continue providing goods and services that are critical for public health, safety and welfare of New Mexicans.

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, without limitation, eligibility, 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 financial assistance as necessary to ensure repayment, including but not limited to, maximum loan term and minimum annual payments.

E. The applicant's experience, financial history, and current financial status are key factors in the evaluation of an application for financial assistance. The Authority 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 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 ratios; and
- (viii) the level of the applicant's equity in the proposed project.

F. The Authority will evaluate each application to determine the ability to repay the funds and need for the financial assistance. If the Authority believes that the projected revenues of the applicant, together with other dedicated sources of repayment, will not be sufficient to repay the requested financial assistance, the Authority will not recommend the application to the Board.

G. If an application is approved by the Board, the Authority will provide a financial assistance commitment.

H. Financial assistance commitments issued by the Authority will be for a term determined by the Authority. Before expiration of the commitment, the applicant may request an extension of the commitment term for a subsequent period of 45 days.

SECTION 5. FINANCIAL ASSISTANCE TERMS.

A. Financial assistance provided under the program must satisfy the conditions prescribed in this Section 6.

B. The amount of the financial assistance may not exceed \$1,000,000.

C. The financial assistance shall be secured by collateral whose value exceeds the amount of assistance provided.

D. Financial assistance secured by personal property must be secured by a lien on the personal property which is at the highest lien level attainable to accomplish a successful financing. The Authority may, in its discretion, review and approve other encumbrances against the personal property that do not affect the Authority's security for the financial assistance.

E. Unless waived by the Authority, the applicant shall obtain insurance coverage on the personal property securing the financial assistance from responsible companies in such amounts and against such risks as is satisfactory to the Authority.

F. If required by the Authority, a guarantee for repayment of the financial assistance must 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; or

(iv) the parent corporation or a partner, member or stockholder of the parent corporation if the applicant is a subsidiary.

SECTION 6. CLOSING AND DISBURSEMENT OF FUNDS.

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

B. Financial assistance proceeds in an amount not to exceed \$50,000 may be advanced to the borrower, as determined by the Authority's chief executive officer or officer of the Board, in advance of specific approval by the Board. Such advancements will be made in those instances where the timing of the Authority's approval does not meet the cash flow needs of the essential services provider, thereby threatening the essential business's ability to meet demand. This advancement of funds shall be reported to the Board at its next regular meeting.

C. Disbursement of funds will be made using the form prescribed by the Authority in the financial assistance agreement. Conditions precedent to disbursement, if any, must be met prior to disbursing financial assistance proceeds, including any advances made pursuant to Section 6.B above.

SECTION 7. FINANCIAL ASSISTANCE DOCUMENTATION REQUIREMENTS.

A. All financial assistance documents shall provide that the Authority 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 financial assistance will be set at the time the Authority issues a financial assistance commitment.

SECTION 8. ADMINISTRATIVE FEES.

A. The Authority may impose and collect reasonable fees in connection with the filing of an application for financial assistance, including an application and commitment fee payable upon issuance of a commitment, and reasonable fees for the extension of any commitment.

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

SECTION 9. DURATION AND AMENDMENT OF RULES.

These Rules may be amended at any time by the Authority, with the prior approval of the New Mexico Finance Oversight Committee, unless the Board determines that an emergency exists which requires immediate action by the Authority in response to the Public Health Emergency Order, at which time the Board may amend these Rules until such time as the New Mexico Finance Authority Oversight Committee is able to meet.