

**RULES
GOVERNING THE
CANNABIS MICROBUSINESS PROGRAM UNDER THE STATEWIDE ECONOMIC
DEVELOPMENT FINANCE ACT**

AS

ADOPTED

ON

OCTOBER 28, 2021

BY THE

BOARD OF DIRECTORS

OF THE

NEW MEXICO FINANCE AUTHORITY

AND

APPROVED BY THE NEW MEXICO FINANCE AUTHORITY

OVERSIGHT COMMITTEE [OCTOBER 14, 2021]

SECTION 1. AUTHORITY; PURPOSE OF RULES.

On April 12, 2021, Governor Michelle Lujan Grisham signed into law the Cannabis Regulation Act, NMSA 1978, Section 26-2C-1 *et seq.* (“CRA”), which creates a comprehensive licensing, taxing and enforcement regulatory structure for adult use cannabis in the state that will be administered by the Cannabis Control Division (“CCD”), which is located in the Regulation and Licensing Department (“RLD”). The CCD will administer the CRA and the licensing and regulatory provisions of the Medical Cannabis Program that was created by the Lynn and Erin Compassion Use Act (“LECUA”).

The New Mexico Finance Authority (“NMFA”), pursuant to the provisions of the Statewide Economic Development Finance Act, NMSA 1978, Section 6-25-6 (“SWEDFA”), is granted certain powers enabling it to provide financial assistance to eligible entities 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 NMFA.

SECTION 2. DEFINITIONS.

- A. “Applicant” means a business that has filed an application with the NMFA.
- B. “Application” means a written document filed with the NMFA by an applicant for the purpose of requesting financial assistance.
- C. “Board” means the NMFA Board of Directors.
- D. “CCD” means the Cannabis Control Division created within RLD.
- E. “Controlling Person” has the meaning provided NMSA 1978, Section 26-2C-2 (U) (2019), as amended and supplemented from time to time. For purposes of these Rules, a controlling person shall include a person that controls a financial or voting interest of ten percent or more of, or an officer or board member of, a cannabis establishment, but does not include a bank or licensed lending institution.
- F. “CRA” means the Cannabis Regulation Act, NMSA 1978, Sections 26-2C-1 to 26-2C-42, as amended and supplemented from time to time.
- G. “Chief Executive Officer” or “CEO” means the Chief Executive Officer of the New Mexico Finance Authority or designee.
- H. “Credit Committee” means a committee of NMFA staff appointed by the NMFA’s CEO.
- I. “Economic Development Department” means the New Mexico Department of

Economic Development.

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

J. “Economic Development Committee” means a committee, appointed by the chairman of the Board, from the members of the Board.

K. “Eligible Entity” has the meaning provided in NMSA 1978, Section 6-25-3(H) (2019), as amended and supplemented from time to time. For purposes of these Rules, an eligible entity shall include certain integrated cannabis microbusinesses or cannabis producer microbusinesses under the CRA and further defined in the CRA, as amended and supplemented from time to time.

L. “Financial Assistance” means loans from the Economic Development Revolving Fund provided by the NMFA to Applicants pursuant to these Rules and applicable policies adopted by the NMFA, as amended and supplemented from time to time.

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

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 Cannabis Microbusiness Program authorized by the CRA and these rules.

P. “RLD” means the New Mexico Regulation and Licensing Department.

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

R. “SWEDFA” 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.

SECTION 3. APPLICATION FOR FINANCIAL ASSISTANCE.

A. A complete application for financial assistance includes information relating to the proposed use of financial assistance proceeds, evidence of the Applicant’s creditworthiness, and any other matters the NMFA may consider appropriate, which may include, but is not limited to, any of the following:

(i) Applicant legal entity type and formation documents, including a certificate of good standing from the New Mexico Secretary of State, if applicable;

(ii) Ownership structure of Applicant (for each owner detailing name, address, percentage ownership);

- (iii) Sources and uses of financial assistance proceeds (detailed schedule);
- (iv) Business plan and five-year proforma financial statements;
- (v) Copy of license or conditional license from CCD;
- (vi) Copy of permit or conditional permit from the local government where the business is located, as applicable;
- (vii) a complete list of outstanding loan(s) to the Applicant or to any Controlling Person as defined under the CRA, member, partner or stockholder of the Applicant;
- (viii) authorization to obtain a credit report of the Applicant and the guarantor, as applicable;
- (ix) a current balance sheet and year-to-date profit and loss statement for the Applicant, dated not more than 90 days prior to the date of application, a fiscal year-end balance sheet, and the Applicant's profit and loss statement for the prior three years or audited financial statements, as applicable;
- (x) federal income tax return for the prior two years on all guarantors and co-borrowers, as relevant;
- (xi) copies of the Applicant's federal income tax returns for the prior three years if the balance sheets and profit and loss statements required from the Applicant in paragraph (iii) of this Section 3(vi) are not audited by a certified public accountant; and
- (xii) any other information requested by the NMFA to evaluate the application.

B. If the Applicant is a newly created entity formed for the sole purpose of doing business under the CRA, the Applicant shall provide the information in paragraphs (i) through (xii) of this Section 3 for the Applicant's existing entities, if any, the Applicant personally, if requested, or any other information requested by the NMFA to evaluate the application.

C. All communications regarding applications for financial assistance shall be directed to the CEO or other staff member of NMFA designated by the CEO.

SECTION 4. EVALUATION OF APPLICATION; COMMITMENT.

A. All complete applications meeting these Rules 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 such as the CCD or others as necessary to obtain information on the Applicant or viability 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 NMFA

will confirm with the Economic Development 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 SWEDFA.

C. NMFA 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 SWEDFA and these rules have been met;
- (ii) the Applicant's experience and intended use of financial assistance funds;
- (iii) the creditworthiness of the Applicant;
- (iv) the viability of the business enterprise;
- (v) the Applicant's impact on local job creation and/or other economic development metrics; and
- (vi) 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 NMFA may consider, among other things:

- (i) the education and work history of the officers, managers, Controlling Person(s), members, or partners of the Applicant;
- (ii) the Applicant's experience in managing similar enterprises;
- (iii) assets and liabilities of the Applicant;
- (iv) income and expenses of the Applicant;
- (v) existence of liens or encumbrances on the Applicant's assets;

- (vi) the Applicant's ability to service debt;
- (vii) loan-to-value, debt-to-equity or other applicable operating and leverage ratios; and
- (viii) the level of the Applicant's equity in the proposed project.

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

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

H. Financial assistance commitments issued by NMFA will be for a term determined by NMFA.

SECTION 5. FINANCIAL ASSISTANCE TERMS.

A. Financial assistance provided under the program must satisfy conditions prescribed in this Section 5.

B. Financial assistance may not exceed the dollar amounts and shall be secured by collateral and meet loan-to-value requirements set forth in the related Microbusiness Program Policies.

C. Financial assistance secured by real property will require a first-lien mortgage, leasehold mortgage, or deed of trust and assignment of leases and rents, as applicable, which shall be recorded in the county where the property is located, and a title commitment and loan policy of title insurance issued by a title insurance company acceptable to NMFA and in form and content acceptable to NMFA.

D. Financial assistance secured by personal property will require a Uniform Commercial Code tax lien and judgment search to confirm the highest lien level lien on the personal property attainable to accomplish a successful financing, security agreement and the filing of a Uniform Commercial Code Financing Statement in the appropriate county or state offices. The NMFA may, in its discretion, review and approve other encumbrances against the personal property that do not affect NMFA's security for the financial assistance.

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

F. If required by NMFA, a guarantee for repayment of the financial assistance must be provided from one or more of the following persons:

- (i) a partner, Controlling Person, 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. Disbursement of funds will be made using the form prescribed by NMFA in the financial assistance agreement. Conditions precedent to disbursement, if any, must be met prior to disbursing financial assistance proceeds.

SECTION 7. FINANCIAL ASSISTANCE DOCUMENTATION REQUIREMENTS.

A. All financial assistance documents shall provide that NMFA has all available remedies in the event of a default. Such remedies will include, without limitation, rights to foreclose, repossess collateral, sell collateral at public or private sale, obtain deficiency judgments, and exercise all other remedies available at law or in equity.

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

SECTION 8. ADMINISTRATIVE FEES.

A. NMFA 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. NMFA 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 or repealed at any time by the NMFA, with the prior approval of the Oversight Committee.