

MORTGAGE FINANCE AUTHORITY ACT
OVERSIGHT COMMITTEE

FINAL REPORT
2004 INTERIM

Legislative Council Service
December 2004

MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE

2004 Interim Report

The Mortgage Finance Authority Act oversight committee was created by a provision included in the Mortgage Finance Authority Act, enacted in 1975 by Laws 1975, Chapter 303, Section 5, as amended. That provision is now compiled as Subsection W of Section 58-18-5 NMSA 1978. The subsection also specifies a statutory duty:

W. Subject to any agreement with bondholders and noteholders, to make, alter or repeal, subject to prior approval by the Mortgage Finance Authority Act oversight committee, hereby created, to be composed of four members appointed by the president pro tempore of the senate and four members appointed by the speaker of the house of representatives, such rules and regulations with respect to its operations, properties and facilities as are necessary to carry out its functions and duties in the administration of the Mortgage Finance Authority Act.

Expansion of the committee's duties is found in Section 2-12-5 NMSA 1978, where it is authorized and directed to:

A. determine and monitor the actual distribution of funds derived by the authority from bond issues and other activities of the authority under the provisions of the Mortgage Finance Authority Act, both on a geographical basis and on the basis of the actual distribution to participants in its programs;

B. monitor the authority in its control of the issuance of mortgage commitments;

C. meet on a regular basis to receive and evaluate periodic reports from the authority as to its enforcement of the provisions of the Mortgage Finance Authority Act and the regulations adopted pursuant thereto; and

D. require the authority to document the need to the oversight committee regarding the issuance of any bonds.

The committee met seven times during the 2004 interim. This report contains the committee's work plan, budget and minutes. The committee members were:

VOTING MEMBERS

Rep. Fred Luna, Chair
Sen. Nancy Rodriguez, Vice Chair
Sen. Manny M. Aragon
Sen. Mark Boitano

Rep. Richard P. Cheney
Rep. Jane E. Powdrell-Culbert
Sen. Leonard Lee Rawson
Rep. Harriet Ruiz

ADVISORY MEMBERS

Rep. Thomas A. Anderson
Rep. Miguel P. Garcia
Sen. Ramsay L. Gorham
Sen. Phil A. Griego

Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Daniel P. Silva
Sen. H. Diane Snyder

STAFF

Rachel Ray
Ramona Schmidt

At its last meeting in December, the committee endorsed the following legislative proposals:

- a funding request for the weatherization assistance program;
- a funding request for the state homeless fund;
- a funding request for the IDA (Individual Development Accounts) program
- a bill creating the structure for the state housing trust fund; and
- a bill creating the state housing tax credit program.

2004 APPROVED
WORK PLAN, MEETING SCHEDULE AND BUDGET
for the
MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE

Committee Members:

Rep. Fred Luna, Chair
Sen. Nancy Rodriguez, Vice Chair
Sen. Manny M. Aragon
Sen. Mark Boitano

Rep. Richard Cheney
Rep. Jane E. Powdrell-Culbert
Sen. Leonard Lee Rawson

Advisory Members:

Rep. Thomas A. Anderson
Rep. Miguel P. Garcia
Sen. Ramsay L. Gorham
Sen. Phil A. Griego

Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Harriet Ruiz
Rep. Daniel P. Silva
Sen. H. Diane Snyder

The Mortgage Finance Authority Act oversight committee was created pursuant to the provisions of Section 58-18-5 NMSA 1978. Subsection W of that section provides that:

subject to any agreement with bondholders and noteholders, to make, alter or repeal, subject to prior approval by **the Mortgage Finance Authority Act oversight committee, hereby created, to be composed of four members appointed by the president pro tempore of the senate and four members appointed by the speaker of the house of representatives**, such rules and regulations with respect to its operations, properties and facilities as are necessary to carry out its functions and duties in the administration of the Mortgage Finance Authority Act.

Pursuant to the provisions of Section 2-12-5 NMSA 1978, the committee is further authorized and directed to:

- A. determine and monitor the actual distribution of funds derived by the New Mexico mortgage finance authority (MFA) from bond issues and other activities of the MFA under the provisions of the Mortgage Finance Authority Act, both on a geographical basis and on the basis of the actual distribution to participants in its programs;
- B. monitor the authority in its control of the issuance of mortgage commitments;
- C. meet on a regular basis to receive and evaluate periodic reports from the authority as to its enforcement of the provisions of the Mortgage

Finance Authority Act and the regulations adopted pursuant thereto;
and

- D. require the authority to document the need to the oversight committee regarding the issuance of any bonds.

In addition to carrying out its statutory responsibilities, the committee proposes to focus on the following areas of legislative concern during this interim:

(1) rules and regulations created by the MFA to implement portions of the Affordable Housing Act. This act was passed in the 2003 legislative session and implements the amendment to Article 9, Section 14 of the constitution of New Mexico ratified by voters in the 2002 election; and

(2) progress reports on the establishment of a state housing trust fund pursuant to Senate Joint Memorial 64, enacted in the 2003 legislative session, and a review of the establishing legislation introduced in the 2004 session. There will also be a discussion of and presentations from the newly formed housing trust fund coalition, which seeks to garner grassroots support for the fund.

The committee also voted to consider:

- (1) the Home Loan Protection Act;
- (2) the New Mexico statute dealing with available funds required at a real estate closing (Section 48-7-10.1 NMSA 1978); and
- (3) impact fees for property development.

2004 PROPOSED MEETING SCHEDULE AND BUDGET

One-day meeting in Albuquerque (June 8)	\$1,399.25
One-day meeting in Albuquerque (July 13)	1,399.25
One-day meeting in Albuquerque (August 10)	1,399.25
One-day meeting in Albuquerque (September 14)	1,399.25
One-day meeting in Albuquerque (October 12)	1,399.25
One-day meeting in Albuquerque (November 9)	<u>1,399.25</u>
TOTAL	*\$8,395.50

*This amount does not include the \$9,670.50 budget required for per diem and mileage for advisory members.

**MINUTES
of the
FIRST MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE**

**June 8, 2004
Mortgage Finance Authority Office
344 Fourth Street SW
Albuquerque, New Mexico**

The first meeting of the Mortgage Finance Authority Act Oversight Committee was called to order by Representative Fred Luna, chair, on June 8, 2004 at 9:45 a.m.

PRESENT

Rep. Fred Luna, Chair
Sen. Nancy Rodriguez, Vice Chair
Sen. Mark Boitano
Rep. Jane E. Powdrell-Culbert

ABSENT

Sen. Manny M. Aragon
Rep. Richard Cheney
Sen. Leonard Lee Rawson

Advisory Members

Rep. Thomas A. Anderson
Rep. Miguel P. Garcia
Sen. H. Diane Snyder

Sen. Ramsay L. Gorham
Sen. Phil A. Griego
Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Daniel P. Silva

Staff

Rachel Ray

MFA Staff

Isidoro Hernandez
Lionel Holguin
Sandra Marez
Elisabeth Monaghan
Erin Quinn

Tuesday, June 8

The Mortgage Finance Authority (MFA) Oversight Committee discussed a meeting schedule and, without objection, approved one-day monthly meetings for the second Tuesday of each month. All meetings will be at the MFA Office in Albuquerque. Based on that schedule, a budget will be prepared for the committee and considered at the July meeting.

The purpose of the meeting was to consider items to be placed on the committee's interim agenda and to review the issues that the MFA staff considered important. Senator Boitano raised

several issues for the committee to consider, which include a review of the table funding statute, the Home Loan Protection Act, predatory lending issues and property development impact fees. Senator Snyder requested that the committee receive a status report on the MFA's weatherization program during the interim. The committee voted to consider the issues raised by Senators Boitano and Snyder during the interim.

MFA staff listed a number of issues they would like to review during the interim for the committee. They include the State Housing Trust Fund, "Invest New Mexico" (Governor Richardson's strategic infrastructure investment plan for New Mexico), Governor Richardson's Innovation in Housing Awards Program and state funding for other housing activities. MFA staff stated that they are in the process of establishing rules and regulations pursuant to the Affordable Housing Act, which passed in the 2004 legislative session, and emphasized the importance of the committee reviewing and understanding the rules and regulations of the act.

MFA staff next presented an overview of the MFA 2004 handbook. MFA staff reviewed the housing-related bills that were passed in the 2004 general legislative session.

Questions raised that were not related to the interim agenda dealt with the MFA's role in financing single-family residences and the weatherization assistance program.

MFA staff reviewed its upcoming calendar of events for the committee and encouraged committee members to attend as many as possible. Chairman Luna advised members to request per diem for the July and August events. Vice Chair Rodriguez reminded staff that committee members have traditionally received per diem for the Governor's Housing Summit, which is held in August and is hosted by the MFA.

There being no further business to be considered at this meeting, the committee adjourned at 11:00 a.m. after motion duly made, seconded and unanimously adopted.

Material distributed at the meeting is in the meeting file in the Legislative Council Service Library.

MINUTES
of the
SECOND MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE

July 13, 2004
Mortgage Finance Authority Office
344 Fourth Street SW
Albuquerque, New Mexico

The second meeting of the Mortgage Finance Authority Act Oversight Committee was called to order by Representative Fred Luna, chair, on July 13, 2004 at 10:00 a.m.

PRESENT

Rep. Fred Luna, Chair
Sen. Nancy Rodriguez, Vice Chair
Sen. Mark Boitano
Rep. Jane E. Powdrell-Culbert

ABSENT

Rep. Richard Cheney
Sen. Leonard Lee Rawson

Advisory Members

Rep. Thomas A. Anderson
Rep. Miguel P. Garcia
Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Harriet Ruiz

Sen. Ramsay L. Gorham
Sen. Phil A. Griego
Rep. Daniel P. Silva
Sen. H. Diane Snyder

Staff

Rachel Ray

MFA Staff

Isidoro Hernandez
Lionel Holguin
Sandra Marez
Elisabeth Monaghan
Erin Quinn

Tuesday, July 13

The Mortgage Finance Authority (MFA) Oversight Committee heard a panel of experts and advocates discuss the Home Loan Protection Act. Bill Verant, director of the Financial Institutions Division of the Regulation and Licensing Department, was present and informed the committee that rules implementing the Home Loan Protection Act were completed and published in the New Mexico Register.

Mr. Verant reviewed various sections of the Home Loan Protection Act for the committee. He noted that Section 4 of the act was very important and probably the most controversial provision because it prohibits the practice of flipping, requiring the new loan to have a tangible net benefit to the borrower. Mr. Verant opined that after an implementation period of six months, the act seems to be working. He has had no complaints from borrowers that they cannot get a loan. He noted that federal lenders Freddie Mac and Fannie Mae continue to be key players. Because of the number of people who wanted to say something about the act, including audience members, Chair Luna requested that each speaker observe a presentation limit of 10 minutes. Mr. Verant did not have time to review the new rules with the committee but provided each member with a copy of them.

The next speaker was Adam Consiglio with the Mortgage Brokers Association. Mr. Consiglio opined that the language in the act regarding flipping is ambiguous, noting that currently there is repeated refinancing for customers without determining whether a tangible net benefit exists as required by the act. Andy Feld, a sub-prime lender, spoke next. Mr. Feld stated that currently in New Mexico, there is no secondary market for a high-cost loan and also noted that pre-payment penalties are not allowed. He said that New Mexico is in a small group of states that is viewed as being unfriendly to mortgage lending.

Don Lampe, an attorney from North Carolina and a national expert on predatory lending laws, spoke next. The committee asked for his opinion on why New Mexico's Home Loan Protection Act has not worked. Mr. Lampe noted that in other states, high-cost home loan laws attempt to strike a balance between the consumer and the market. Mr. Lampe believes that the New Mexico statute is ambiguous and hard to comply with and creates a disruption in the secondary market. He believes that because the act is difficult to comply with, those who want to comply with it the most will leave New Mexico. The "bad guys" will continue to do business in New Mexico, and consumers will go to pawn shops and payday lenders. Mr. Lampe said he foresees a great deal of litigation because of the act.

The committee next heard from consumer advocates that support the act. Raynell Zuni of the Fair Lending Center at the UNM School of Law stated that the act will continue to help home owners. She said that 80 percent of Native Americans receive sub-prime loans, and that the act should not be stripped of its strong consumer protections. Ms. Zuni introduced several people in the audience who wanted to share their experiences with high-cost home loans, and Chair Luna allowed several of them to speak. Christopher Kukla of the Center on Responsible Lending also spoke in support of the act. He disagreed with Mr. Lampe that lenders would pull out of New Mexico because of difficulty complying with the act. Matthew Henderson, a representative from the Association for Community Organizations for Reform Now (ACORN), was also present in support of the act. Mr. Henderson requested that several consumers be allowed to tell their own stories about high-cost home loans, which Chair Luna allowed. One consumer talked about

being encouraged to use a "credit card" for home improvements, not realizing that the credit was being placed against the equity in her house. She no longer owns her house. All of the consumers who spoke at the meeting urged the committee members to keep the act in its current form.

Committee members wanted to know why the practice of flipping exists. Mr. Consiglio responded that unscrupulous individuals want to make money, and lenders can engage in flipping regardless of the Home Loan Protection Act. For example, federally chartered banks do not have to comply with state laws. Committee members also wanted further explanation on why some of the speakers believe that the act is too ambiguous. The committee requested that speakers submit explanations in writing to the members.

Rick Word of the Attorney General's Office was in the audience and was recognized by Chair Luna to give his views on the act. Mr. Word stated that he was proud of the work the Attorney General's Office had done on the recently published rules and that he believed they should be given the chance to work. He believes that the rules will resolve the act's presumed ambiguities. A spokesperson for a development committee in Santa Fe was also present and voiced that committee's support of the Home Loan Protection Act.

Committee members discussed whether the act was achieving its original intent by protecting those consumers who needed to be protected from high-cost home loans. Senator Boitano suggested that the act be amended to define loan to mean a high-risk, high-cost loan, making the prohibition against flipping apply only to that category of loans. He further noted that the majority of loans made in New Mexico fit into a non-abusive lending category and that prime borrowers should be able to do whatever they want with their assets.

Committee members wanted to know if the new rules implementing the act have the full force of law. Mr. Lampe opined that the statute had legal superiority over any rules, but Mr. Word noted that the act has a specific provision mandating rule establishment and that the rules have the same legal effect as the statute.

Committee members presented other concerns regarding the education of the borrower and the targeting of certain types of communities. Some members expressed their full support of the current version of the Home Loan Protection Act. Chair Luna opined that there probably should be some amendments to the act. He told the panel of speakers that they should all meet with representatives in the Attorney General's Office to discuss possible amendments and report back to the committee at its November meeting.

A motion was made to approve the minutes from the June meeting, which was seconded and unanimously adopted. There being no further business to be considered at this meeting, the committee adjourned at 1:20 p.m. after motion duly made, seconded and unanimously adopted.

Material distributed at the meeting is in the meeting file in the Legislative Council Service Library.

**of the
THIRD MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE**

**August 10, 2004
Mortgage Finance Authority Office
344 Fourth Street SW
Albuquerque, New Mexico**

The third meeting of the Mortgage Finance Authority (MFA) Act Oversight Committee was called to order by Representative Fred Luna, chair, on August 10, 2004 at 10:00 a.m.

PRESENT

Rep. Fred Luna, Chair
Sen. Nancy Rodriguez, Vice Chair
Rep. Jane E. Powdrell-Culbert
Sen. Leonard Lee Rawson

ABSENT

Sen. Mark Boitano
Rep. Richard Cheney

Advisory Members

Rep. Thomas A. Anderson
Sen. Richard C. Martinez
Rep. Harriet Ruiz
Rep. Daniel P. Silva

Rep. Miguel P. Garcia
Sen. Ramsay L. Gorham
Sen. Phil A. Griego
Rep. Antonio Lujan
Sen. H. Diane Snyder

Staff

Rachel Ray

MFA Staff

Isidoro Hernandez
Lionel Holguin
Sandra Marez
Elisabeth Monaghan
Erin Quinn
Lynn Wehrli

Guests

The guest list is in the meeting file.

Tuesday, August 10

The focus of the meeting's agenda was to review the proposed rules established by the MFA to enact the Affordable Housing Act. The rules are included in a booklet that was distributed to and reviewed by the members. The booklet can be found in the Legislative Council Service library.

Katherine Miller, the new MFA executive director, was introduced to the committee by Michael Sivage, the vice chair of the board of directors. Ms. Miller then addressed the committee for several minutes.

MFA staff reviewed the Affordable Housing Act rules. Committee members asked for clarification on whether a person can receive a grant pursuant to the act, and MFA staff responded that a person can receive a grant and that "individual" as used in the act has a number of meanings. Committee members opined that the act should have addressed the housing concerns of people with special needs.

MFA staff next reviewed a handout on Invest New Mexico, describing affordable housing issues in the state and listing the MFA's goals in response to those issues. The handout, along with a copy of the slide presentation, can be found in the booklet. Committee members expressed concern over high-cost mortgage loans and discussed how they can be reduced. MFA staff noted that legislation like the Home Loan Protection Act should be instrumental in reducing high-cost loans. Committee members also made comments concerning the rehabilitation of existing affordable housing and homeownership rates. (One of the Invest New Mexico goals is to increase the homeownership rate from 69.3 percent to 75 percent by creating 45,000 new single-family homes and 6,840 new rental homes.)

MFA staff reminded committee members that the Governor's Housing Summit will be held at the end of August and requested that members who wish to attend register as soon as possible.

There being no further business to be considered at this meeting, the committee adjourned at 12:00 noon after motion duly made, seconded and unanimously adopted.

Material distributed at the meeting is in the meeting file in the Legislative Council Service Library.

**MINUTES
of the
FOURTH MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE**

**September 14, 2004
Mortgage Finance Authority Office
344 Fourth Street SW
Albuquerque, New Mexico**

The fourth meeting of the Mortgage Finance Authority (MFA) Act Oversight Committee was called to order by Representative Fred Luna, chair, on September 14, 2004 at 10:00 a.m.

PRESENT

Rep. Fred Luna, Chair
Sen. Nancy Rodriguez, Vice Chair
Rep. Jane E. Powdrell-Culbert
Rep. Harriet Ruiz

ABSENT

Sen. Mark Boitano
Rep. Richard Cheney
Sen. Leonard Lee Rawson

Advisory Members

Rep. Thomas A. Anderson
Sen. Richard C. Martinez

Rep. Miguel P. Garcia
Sen. Ramsay L. Gorham
Sen. Phil A. Griego
Rep. Antonio Lujan
Rep. Daniel P. Silva
Sen. H. Diane Snyder

Staff

Rachel Ray

MFA Staff

Isidoro Hernandez
Lionel Holguin
Sandra Marez

Tuesday, September 14

MFA staff introduced Dewey Kay as the new deputy director of the Mortgage Finance Authority.

MFA staff, along with outside counsel Dana Cox, provided further review of the Affordable Housing Act rules — a continuation from the August meeting. Staff noted that the New Mexico Association of Counties was invited to attend meetings regarding the drafting of rules for the Affordable Housing Act, but the association did not participate. The MFA

interpreted the nonparticipation to be tacit approval of the rules. Staff distributed a letter to the committee with a request and recommendation from the Town of Taos to change the rules. However, Ms. Cox stated that accepting this recommendation would put the rules in noncompliance with the act. She further noted that when the rules were drafted, the drafters were faithful to the language of the act. Staff reviewed the requirements to become a grantee pursuant to the act for the committee. The reviewed sections are set forth in an outline that was provided to the committee and is in the meeting file.

Committee members asked about Taos's specific concern regarding the rules. The Taos city attorney was present and stated that Taos wants more autonomy in the grant process and noted that Taos has not had input in the rule drafting process. Committee members stated that the New Mexico Municipal League representatives should have been informing all of the towns in New Mexico of the progress with the rule drafting. There was concern over whether the act would have to be amended to effectively address Taos's concern about the dual approval process. Ms. Cox explained that first, the governmental entity must certify to the MFA that the grantee qualifies. Then, the MFA must approve the application. Ms. Cox noted that, pursuant to the act, there is no maximum donation amount for a qualifying grantee.

An audience member, Ben Martinez, who had participated in the drafting meetings, was recognized by Chair Luna. Mr. Martinez stated that the issue of towns' autonomy in the grant process was covered extensively in the drafting meetings, and noted that there was tremendous input from the participants. He further noted that the drafters wanted to cover teachers' and policemen's salaries in the rules. Some committee members expressed continued support of the Affordable Housing Act in its current form and opined that the Town of Taos should work with the Municipal League to resolve its concerns. Ms. Cox emphasized that the act's ordinance requirement does not relieve towns from going through the application approval process.

Committee members asked about the requirement of long-term affordability in Section 6-27-8 NMSA 1978. Ms. Cox explained that the donated land has to be used for affordable housing purposes for a certain amount of time. She noted that the requirement is similar to the one found in federal HUD regulations. MFA staff stated that grantee applicants must disclose what the donation would be used for at the time of application.

The New Mexico Housing Trust Fund Coalition next made a presentation on the history of the State Housing Trust Fund bill that was introduced in the last legislative session. That bill proposed funding sources for the trust that included proceeds from the severance fund, unclaimed property, the New Mexico estate tax, private activity bonds and general fund appropriations. State coalition representatives stated that the coalition is working with national trust fund coalitions. The state coalition would like to see an additional \$10 million allocated to housing concerns for poor people in rural areas. Representatives opined that New Mexico is just coming to the table on affordable housing issues.

Committee members wanted to know if the matching funds concept could be used for rural areas adjacent to towns. Coalition representatives stated that they are thinking more of frontier counties, acknowledging that there needs to be a definition of "frontier". Committee

members believed that there might be a duplication of effort in that regard because rural areas could receive matching funds. MFA staff noted that Sandoval County does not have enough money to meet its housing needs, and that additional funds would allow more families to qualify for affordable housing.

Committee members asked whether the coalition is a partner with Habitat for Humanity, and staff replied that it is. They also wanted to know if specific minority groups, such as American Indians, are being targeted for preferential treatment. Some members opined that the allocation of funds should be based on need without special treatment of any group. On the issue of funding sources for the trust fund, some members opined that because New Mexico is a land poor state, estate taxes should not be used as a funding source. Other members noted that because the tax is already imposed, it seems logical to put it to a good use such as affordable housing.

Finally, MFA staff advised the committee that the MFA has published a draft action plan pursuant to HUD requirements. New Mexico citizens and legislators are encouraged to attend public hearings to be held to discuss the plan.

Minutes from the July and August meetings were approved by the committee. There being no further business to be considered at this meeting, the committee adjourned at 12:00 noon after motion duly made, seconded and unanimously adopted.

Material distributed at the meeting is in the meeting file in the Legislative Council Service Library.

**MINUTES
of the
FIFTH MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE**

**October 12, 2004
Mortgage Finance Authority Office
344 Fourth Street SW
Albuquerque, New Mexico**

The fifth meeting of the Mortgage Finance Authority (MFA) Act Oversight Committee was called to order by Representative Fred Luna, chair, on October 12, 2004 at 10:10 a.m.

PRESENT

Rep. Fred Luna, chair
Sen. Nancy Rodriguez, vice chair
Sen. Mark Boitano
Rep. Harriet Ruiz

ABSENT

Rep. Richard P. Cheney
Rep. Jane E. Powdrell-Culbert
Sen. Leonard Lee Rawson

Advisory Members

Rep. Thomas A. Anderson
Rep. Daniel P. Silva
Sen. H. Diane Snyder

Rep. Miguel P. Garcia
Sen. Ramsay L. Gorham
Sen. Phil A. Griego
Rep. Antonio Lujan
Sen. Richard C. Martinez

Staff

Ramona Schmidt

MFA Staff

Isidoro Hernandez
Sandra Marez
Katherine Miller
Erin Quinn

Tuesday, October 23

William Verant, director, Financial Institutions Division of the Regulation and Licensing Department, addressed the funding of real estate transactions. He noted that although Senate Bill 315 was meant to correct perceived problems in closing real estate transactions in the state, a number of issues and concerns remain. Debbie Bulcock, representing the New Mexico Mortgage Lenders Association, stated that a work group had been formed and is preparing a rough draft of the proposed changes to the act to more clearly identify the regulator, smooth the process, define penalties and clarify definitions. Ms. Bulcock noted a need for clearer definitions and defined penalties.

Committee members asked for specificity of problems being addressed. Dan Terrell of First American Title Insurance Company represented the New Mexico Land Title Association and stated that, on occasion, at the time the transaction was ready to close, the lender had not funded the loan and so closing could not occur. Lengthy discussion ensued as to conflicts between RESPA requirements that allow a three-day right of rescission and the New Mexico statute that provides that funds must be available at closing. Mr. Terrell reiterated that one of the problems with current law is definitional: currently, "closing" is not clearly defined. Mr. Terrell noted that the physical signing of closing documents is not closing and an individual does not want to go to recordation until funds are secured.

Committee members inquired as to the frequency with which these types of closing problems occur. It was noted that there are some issues that arise that are of no particular fault but can affect closing. For example, there is a possibility that the deed cannot be filed if there is an intervening claim, but this is a very rare occurrence. It was noted that New Mexico is a recordation state and, as such, laws would have to be changed to allow for table funding.

When asked why an individual had to go through the complete process when refinancing for a lower rate when there had been no other changes, Mr. Verant stated that if there was any change in any condition, the secondary market holder required the process to be completed again because of the expectation of a certain yield on the loan. The Home Loan Protection Act holds that any refinanced loan must offer a net tangible benefit to the borrower.

Concern was raised as to how to ensure that citizens may redress injuries. The new proposal would allow the Regulation and Licensing Department to go beyond revoking, suspending or denying a license based on investigation when an originating lender violates mortgage lending regulations and may issue a cease and desist order, may censure, may bar or suspend a loan broker, issue against and impose a civil penalty of up to \$5,000. If there is an unfair trade practice, a criminal act or fraud, the office of the attorney general is notified to prosecute criminally. It is intended that funds be completely in place at closing; lenders currently ensure that conditional funds are in place to comply with New Mexico law, but as a condition, a funding number is required to ensure that the check is good and those conditions depend by lender. The potential amendments could put the funding provision under the Mortgage Loan Act to make a direct connection to the act, and the borrower would have redress in civil court, in addition to the \$5,000 penalty and possibility of license revocation.

David Campbell, attorney, representing the National Association of Industrial and Office Properties, addressed impact fees and housing affordability. Mr. Campbell explained that impact fees are charges or assessments imposed by a municipality or county to generate revenue to fund or recoup the costs of capital improvements necessitated by and attributable to new development. He pointed out that, under the New Mexico Development Fees Act, government entities are subject to impact fees when they engage in development activities and that although fees may be reduced or waived (e.g., for affordable housing projects), the revenues they would have generated must still be paid for by other sources. Mr. Campbell raised a number of questions

related to the issue of impact fees and their relation to affordable housing. Discussion occurred as to the use of impact fees as incentive or penalty. Impact fees are designed in service districts to be relatively compact to ensure nexus and not a generalized tax.

Michael Cadigan, Albuquerque City Council representative, noted that an impact fee is collected only once, and at times not at all, and varies in charge. Mr. Cadigan stated that he proposes changing the current cost system in Albuquerque to a calculation based on a formula. Currently, there are three ways to pay the cost: federal/state grants, bonding or payment by home buyers and/or home builders. Mr. Cadigan's proposed legislation also recognizes that fees for new infrastructure should be calculated differently than impact fees for already established communities, municipalities offering higher services and development that demonstrates particular efficiencies (e.g., location efficiency of affordable housing). A hearing will take place on October 18 at the Albuquerque City Council regarding the issue, with a vote on November 3 or 4. Mr. Cadigan stated that national experience shows that the economy does not feel the impact fee and it can be reacted to and balanced out by the community.

The definition for impact fee appears to be all-inclusive, and there is less accountability for how the fees are spent. Mr. Campbell stated that the initial goal of the impact fee legislation was to gain greater accountability. There is a list of items for which impact fees cannot be used. Mr. Campbell suggested not changing the current legislation, with the exception of schools.

Discussion occurred on a number of issues, including:

- the appropriateness of earmarking funds that are raised in particular locations to be spent only in those locations;
- whether to remove the requirement for governments to impose impact fees on themselves;
- ways to provide affordable housing and remove costs affected by high impact fees;
- clarification as to what can be waived by impact fees; and
- the scaled approach to the impact fee charge, based on the square footage of the house and the current infrastructure of the community (concern was raised to basing assumption on more occupants per square footage).

It was noted that the central issue is who shares the burden of impact fees between builders, government and homeowners and who benefits from new development. The "burden sharing" percentage is unknown and is paid through different bonds or treatments; some argue that certain constituencies benefit and others argue that all constituencies benefit. From a revenue generating viewpoint, it is fair to state that growth helps to drive revenue to the city, county and state. Mr. Cadigan contended that the incremental increase in value from raw land to residential land is generally revenue neutral, from a capital point of view, while a business is revenue enhancing. Mr. Cadigan also stated that the city would like to maintain the status quo as to growth and, therefore, wants to ensure that the impact fee does not have a negative or positive impact on growth.

A question was raised as to whether the current system addresses schools not being included in paying for infrastructure. The tendency in government finance is to allow the municipalities to address the funding of infrastructure. The current trend in Albuquerque is citizens voting against bond funding for construction and maintenance of schools, and its impact was discussed.

Minutes from the September meeting were approved by the committee. There being no further business to be considered at the meeting, the committee adjourned at 12:25 p.m., after motion duly made, seconded and unanimously adopted.

Material distributed at the meeting is in the meeting file in the Legislative Council Service Library.

**MINUTES
of the
SIXTH MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE**

**November 9, 2004
Mortgage Finance Authority Office
344 Fourth Street SW
Albuquerque, New Mexico**

The sixth meeting of the Mortgage Finance Authority (MFA) Act Oversight Committee was called to order by Representative Fred Luna, chair, on November 9, 2004 at 10:05 a.m.

PRESENT

Rep. Fred Luna, chair
Sen. Nancy Rodriguez, vice chair
Sen. Mark Boitano
Rep. Jane E. Powdrell-Culbert
Sen. Leonard Lee Rawson
Rep. Harriet Ruiz

ABSENT

Rep. Richard P. Cheney

Advisory Members

Rep. Thomas A. Anderson
Sen. Richard C. Martinez

Rep. Miguel P. Garcia
Sen. Ramsay L. Gorham
Sen. Phil A. Griego
Rep. Antonio Lujan
Rep. Daniel P. Silva
Sen. H. Diane Snyder

Staff

Ramona Schmidt

MFA Staff

Linda Bridge
Isidoro Hernandez
Sandra Marez
Katherine Miller
Erin Quinn

Tuesday, November 9

Erin Quinn, MFA staff, addressed the following points related to the New Mexico Housing Trust Fund:

- MFA would provide staff at no operating cost to the state;
- the State Investment Council could invest the fund using its expertise;

- annual earnings of the fund would be distributed and used to generate and finance affordable housing; and
- loans would be made where possible, to return money to the fund and grants would be made where necessary.

Ms. Quinn noted that the trust fund would:

- create a substantial and increasing source of revenue and finance;
- provide a flexible source of revenue to better address the full continuum of affordable housing;
- leverage more than three times its capitalization in other housing resources during its first 10 years; and
- increase the permanent trust fund by almost half the amount of original capitalization during its first 10 years.

Ms. Quinn stated they are looking for at least \$10 million to seed properly and set up a proper fund. She also noted that this initiative has been recognized by Governor Richardson. The committee thanked Ms. Quinn for her presentation and for her assistance to the committee throughout the year.

Ms. Quinn and Linda Bridge, MFA staff, addressed the state housing Tax Credit Program, which is another initiative being proposed in the next legislative session. Ms. Bridge noted this is a state affordable tax program modeled on the Missouri approved affordable housing tax credit adjusted to fit New Mexico. Ms. Bridge reviewed how the program works.

Ms. Bridge stated that in-kind donations, as well as cash donations, would qualify. She noted that part of the requirements would need to meet certain requirements to ensure affordability applying to either rents or sale. The program is open to both home ownership and rentals in the expectation to create more projects and fill the gap for other sources of financing, as well as an incentive to build more affordable housing.

Committee members inquired if the reduction would be passed on to tenants or home buyers and Ms. Bridge noted that, yes, they would receive a reduction and this would be included in the deed and long-term use restrictions. It is estimated that the split between rental and home ownership would probably be 50/50. This could apply to those too small to fit under the federal program. Ms. Bridge stated that at this time, MFA is trying to leave the act as broad as possible to be flexible for demand fluctuation as opposed to specifying percentages of rentals or home ownership.

Isidoro Hernandez, MFA staff, gave a presentation on the Weatherization Assistance Program and stated that the purpose is to grant funds to low-income families to reduce energy consumption with four partners throughout the state: the Los Amigos Educational Resource Center, the Community Action Agency of Southern New Mexico, the Central New Mexico Housing Corporation and the Siete del Norte. Mr. Hernandez reviewed activities included in the program. Current funding is from the Department of Energy and the Low-Income Housing and

Energy Assistance Program, which allows weatherization of approximately 700 homes with priorities for elderly and handicapped families and individuals at 150 percent of the federal poverty level. Mr. Hernandez stated that the Department of Finance and Administration has included \$800,000 in its budget for this year for the program and has respectfully requested \$200,000 from the state to allow for additional homes and more work to be performed.

It was noted that this is a year-round program that takes applications on an ongoing basis, but if an application is received in November, assistance may not be able to be provided until spring dependent upon prioritization of severity of need. The priority for different households includes a preference to the elderly and handicapped and individuals with young children based on a point system. The waiting lists are evaluated every six months to ensure the eligibility requirements still exist.

Mike Robertson, director of the Homeless Advocacy Program, reviewed the following priorities for the 2005 legislative session.

1. Creation of a New Mexico affordable housing trust fund. The fund would help develop all types of affordable housing, including supportive housing for the homeless.
2. Increase state homeless funding to \$1.1 million. This would include \$200,000 for the Homeless Meals Program and \$900,000 for the State Homeless Fund administered by MFA for shelter, supportive housing operations and supportive services.
3. Creation of designated homeless funding within the Children, Youth and Families Department (CYFD) to support programs for homeless children and youth. The coalition is working with the CYFD to develop a proposal.
4. Support legislation to mandate that Medicaid and other benefits be suspended but not terminated when people enter institutions. This would allow benefits to start right away when an individual leaves an institution and would prevent disabled people from becoming homeless when they leave an institution.
5. Create legislation to protect the rights of day laborers. The legislation would help ensure that day laborers' wages are not reduced below minimum wage by charges for check cashing, gloves and hard hats, and would provide other protections. These protections would help homeless people use day labor as a bridge to permanent employment and housing.

Concern was raised regarding identifying individuals when they enter an institution and are Medicaid eligible to ensure they are enrolled back on Medicaid upon release. It was noted that in this case, the individual's Medicaid benefits would be suspended rather than terminated. Mr. Robertson stated that agencies are currently working on suspending benefits that will be held within the state until the individual is released. Presently, when people are institutionalized in public state facilities for more than 30 days, all benefits are terminated and the preference would be to suspend the benefits.

Mr. Robertson stated that systems would be set up in certain areas to work with issues by day laborers and to inform them of resources and he noted that he is working with others on proposed legislation.

Discussion occurred as to release of individuals and the evaluation system in place to ensure that they have housing and are not homeless unless they so choose. Mr. Robertson noted that there are some good pre-discharge plans, but there is little follow-up, and individuals with particular mental health problems may be seen less than others.

Senator Rodriguez made a motion to hold an additional committee meeting in December to address the Home Loan Protection Act to review legislation. Senator Rawson noted that the Legislative Council has not been supportive for December meetings and suggested moving for support of the legislation proposed today. Senator Rodriguez then made a motion for conceptual approval of the Housing Trust Fund Act, the increase in funding for the homeless funding items 2 and 3 (as delineated above), the Weatherization Assistance Program funding the Affordable Housing Act and the tax credit issue. Mr. Hernandez clarified that the Affordable Housing Act was passed last session, the rules and regulations presented to the committee and approved so that item does not require approval. He also noted the Homeless Management Information System funding request will be combined with other homeless legislation and it does not require separate approval. Senator Rawson seconded the motion and the motion was adopted by the committee members.

Senator Boitano stated that the Home Loan Protection Act was heard by the committee in June. It was noted that meetings had been held with the interested parties to review language but the group had been unable as of this date to come to a consensus amending the language due in part to the unexpected absence of Mike Walker. Representative Luna suggested that if the committee is unable to meet in December, it may meet before the beginning of session.

The minutes from the October meeting were approved by the committee. There being no further business to be considered at the meeting, the committee adjourned at 12:00 noon, after motion duly made, seconded and unanimously adopted.

Material distributed at the meeting is in the meeting file in the Legislative Council Service Library.

**MINUTES
of the
SEVENTH MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE**

**December 7, 2004
Mortgage Finance Authority Office
344 Fourth Street SW
Albuquerque, New Mexico**

The sixth meeting of the Mortgage Finance Authority (MFA) Act Oversight Committee was called to order by Representative Fred Luna, chair, on November 9, 2004 at 9:00 a.m.

PRESENT

Rep. Fred Luna, chair
Sen. Nancy Rodriguez, vice chair
Sen. Mark Boitano
Rep. Harriet Ruiz

ABSENT

Rep. Richard P. Cheney
Rep. Jane E. Powdrell-Culbert
Sen. Leonard Lee Rawson

Advisory Members

Rep. Thomas A. Anderson
Sen. Richard C. Martinez

Rep. Miguel P. Garcia
Sen. Ramsay L. Gorham
Sen. Phil A. Griego
Rep. Antonio Lujan
Rep. Daniel P. Silva
Sen. H. Diane Snyder

Staff

Ramona Schmidt

MFA Staff

Linda Bridge
Isidoro Hernandez
Lionel Holguin
Sandra Marez
Katherine Miller
Erin Quinn

Tuesday, December 7

The meeting was called to order by Chairman Luna at 9:10 a.m. The proposed 2005 legislation requests were reviewed by MFA staff. Lionel Holguin from the MFA spoke briefly about the Weatherization Assistance Program and noted that it had been presented in detail previously to the committee. Mr. Holguin stated that the MFA is requesting \$200,000 to complement \$800,000 budgeted by the Department of Finance and Administration. Senator

Martinez will sponsor the request. Senator Rodriguez moved to endorse support for the request by the committee. Motion was duly made and adopted.

Hank Hughes from the New Mexico Coalition to End Homelessness stated he was bringing before the committee a bill to appropriate \$150,000 in additional funds to the State Homeless Assistance Program Fund and to support maintaining the \$950,000 already in the budget. Mr. Hughes stated that Senator Mary Kay Papen will sponsor the bill, but he asked for the endorsement by the committee as well. Senator Rodriguez moved for support of the request by the committee members. Motion was duly made and adopted. Senator Rodriguez noted that the committee would like to co-sponsor the bill with Senator Papen.

Sally Moore, Sharon Henderson and Ona Porter from the New Mexico Association of Community Action Agency requested \$1.5 million for the Individual Development Account (IDA) Program. These dollars will be matched from dollars in the state. Ms. Henderson stated the IDA is a specially designated savings account managed in a custodial sense by a nonprofit organization. The primary assets purchased under these accounts are for first-time homeowners, higher education and microlending/business development (previously known as small business lending). Representative Luna moved for support of the program. Motion was duly made and adopted.

Erin Quinn from the MFA presented a request for a proposed state housing trust fund. She distributed a handout reflecting information from the Housing Fund Coalition. The draft legislation for the state housing trust fund was reviewed and Ms. Quinn noted the bill draft has been revised from the bill introduced in the previous legislative session to allow for more flexibility and make the language consistent with other MFA legislation. Senator Rodriguez stated that she will sponsor the bill and the committee moved for support of the program. Motion was duly made and adopted.

The State Housing Tax Credit Program was reviewed by Katherine Miller from the MFA. Ms. Miller addressed the importance of home ownership by New Mexicans. Ms. Miller noted the following issues:

- the goal is to increase the New Mexico home ownership rate from 70 percent to 75 percent over the next 10 years;
- housing costs are increasing more than twice as fast as family incomes;
- the financing gap varies in New Mexico based on housing costs and family incomes in each area;
- the home ownership rates vary by income and the percent of households owning a home; the MFA proposes to address this issue through the creation of a charitable state tax credit for affordable housing projects;
- there are two types of state tax credits for housing — investment tax credits and charitable state tax credits;
- the reasons for a state affordable housing tax credit;
- how the affordable housing tax credit works;

- the proposed state allocation is based on a per capita basis of \$1.75 with an annual inflationary factor (same as the federal tax credit); and
- other tax credit characteristics.

Ms. Miller reviewed a chart comparing state affordable housing tax credit programs for Missouri, North Carolina, Illinois and Minnesota. She stated the tax credit is an efficient way for people to assist in affordable housing through cash and in-kind donations. Discussion occurred on a number of issues, including whether the program could apply to schools, clarification of the colonias designation and whether county by county there is an issue with affordable housing. Ms. Miller stated she would conduct research to see if the program could be adapted for school projects. It was noted that the estimated impact of the two initiatives is about 2,700 affordable homes for one year and all dollars spent. The committee moved to support the tax credit bill. Motion was duly made and adopted.

The November minutes were approved by the committee with the correction that Representative Anderson and Senator Martinez were in attendance at the November meeting. There being no further business, the committee adjourned at 10:40 a.m.

Material distributed at the meeting is in the meeting file in the Legislative Council Service Library.