



MEMORANDUM

TO: **Legislative Oversight Committee**

Through: Policy Committee – November 17, 2015

FROM: **Marjorie Martin/Nicole Sanchez**

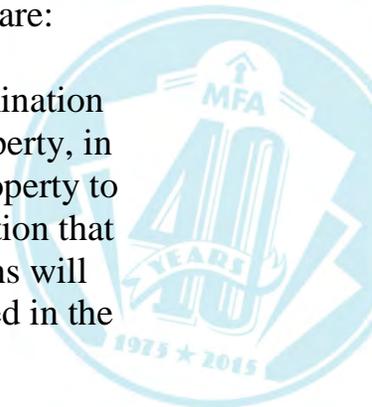
DATE: November 12, 2015

SUBJECT: Proposed Amendments to the Affordable Housing Act Rules

Recommendation: Staff recommends approval of the proposed Amendments, for commencement of the process of ratification pursuant to the Affordable Housing Act's requirements for passage of Affordable Housing Act Rules.

Background: Changes made to the Affordable Housing Act (the "Act") in the 2015 New Mexico legislative session necessitate amendments to the Affordable Housing Act Rules (the "Rules") to prescribe the process required for adherence to or implementation of those changes. The principal changes to the Act necessitating amendments to the Rules are:

- 1) the addition of provisions in the Act permitting early termination of the affordability restrictions placed on a subsidized property, in the event of default by the borrower and transfer of the property to the governmental entity lender or MFA, upon a determination that a sale of the property subject to the affordability restrictions will not permit a sufficient recovery of the public funds invested in the property; and,



- 2) the addition of civil penalties and authorization for the Attorney General to pursue civil action or criminal charges against violators of the Act.

Changes to the Rules were also made to define, redefine, or clarify certain provisions of the Rules that were identified by MFA staff, and in public comments received during the comment period, as unclear, confusing, insufficient in detail, or otherwise unnecessarily restrictive. Comments were received from the City of Albuquerque, the City of Hobbs, Eastern Regional Housing Authority, and the Association of Counties, to which MFA has responded - where appropriate – in the proposed Affordable Housing Act Rules changes, below.

Discussion: Upon a review of the changes made to the Act, and following a thorough review of the Rules in their present iteration, MFA staff determined that the following changes to the Rules were necessary to comply with the changes to the Act, and to provide clearer guidance to local government entities in their efforts to implement affordable housing programs in compliance with the Act and the Rules:

New Mexico Mortgage Finance Authority Affordable Housing Act Rules Summary of Proposed Changes September 1, 2015		
Affordable Housing Act, Section-6-27-8 (B) NMSA 1978: The authority shall adopt rules in accordance with the Administrative Procedures Act to carry out the purposes of the Affordable Housing Act.		
<u>Page</u>	<u>Rule #</u>	<u>Proposed Changes</u>
3	3.4 "Affordable Housing Funds"	The definition is amended to state that the term includes any reduction or abatement of taxes or fees.
3	3.7 "Applicant"	Clarifies the definition of applicant

		by amending it to specify that it includes individuals and non-individual applicants.
4	3.13 "Contribution"	Changes reference to "Affordable Housing Grant" to "Housing Assistance Grant," the term defined in and used throughout the Rules.
6	3.28 "Multiple Family Housing Project"	The definition of the term is amended to delete the requirement for a 60% set aside of units for Persons of Low or Moderate Income, and to state that the set aside shall be directly proportional to the amount of subsidy.
7	3.32 "Persons of Low or Moderate Income"	Definition changed to provide AMI percentages applicable to low and moderate income, and delete prior definition for lack of specificity and insufficient guidance.
9	4.1 and 4.2	Rule 4.1 "The Proposed Ordinance" becomes Rule 4.2, and the original Rule 4.2 An Affordable Housing Plan, is renumbered as Rule 4.1.
9-10	4.1	Modified to allow more flexibility to counties and municipalities on contents of affordable housing plans, and adds a reference to the MFA Affordable Housing Act & Plans Technical Manual.
10	4.1 (B)(2)	A provision is added to identify the gap between market rate housing costs and incomes by area median income.
11-12	4.2	The newly numbered Rule 4.2 is amended to clarify the requirements

		for an affordable housing ordinance, including that it comply with the housing plan; that the AMI percentages do not change annually, despite changes to the numeric amount of income represented by each AMI percentage; that it must be amended pursuant to MFA request; that governmental entities may continue to make lawful donations pending approval of a new ordinance; and that donations must be reported to MFA on an annual basis or pursuant to the ordinance requirements for reporting.
13-14	5.2	**1 Added provisions to specify the requirements applicable to individual, for profit and nonprofit applicants, and deleted prior subsection (E), which provided requirements for "non-individual" applicants.
15	5.3	**2 Separates the qualifications for non-individual applicants from those of individual applicants.
16	5.3 (A)(8)	Clarifies that the requirement for an approved mission statement applies to a "for profit" entity.
17	5.3 (A) (18)	Removed language limiting requirements of applicant and eliminating some redundancies with (19) in same section

**1 Denotes minor correction

**2 Denotes minor correction

19	5.3 (B)	Creates a new subsection B to Rule 5.3, to provide the requirements of the application process for an individual applicant.
26-27	5.7(B)(1)	Clarifies that the low or moderate income set aside requirements for single apartment units within a multifamily property applicable to Qualifying Grantees who are landlords and/or owners are in direct proportion to the amount of the subsidy provided to that property.
27	5.7(B)(2)	Clarifies that the low or moderate income set aside requirements for multiple apartment units, or an entire multifamily property, benefiting from affordable housing assistance is in direct proportion to the amount of subsidy provided.
30-31	Section 8. "In the Event of Default"	Creates a new Section 8, providing the rules applicable to the process and requirements for terminating the affordability restrictions to sell a subsidized property upon default by the borrower.
31	Section 9. "Enforcement"	Renumbers the prior Section 8 as the new Section 9; and adds to the existing provisions for enforcement, provisions for Attorney General investigation of alleged violations of the Act, ability to pursue civil action or criminal charges against violators, and the availability of civil penalties not to exceed \$5,000 per violation.

Proposed timeline for AHA Rules Amendments:

- 1) Thirty (30) day public comment period – September 14, 2015 to October 14, 2015**
- 2) Concurrence from New Mexico Municipal League and Association of Counties – September/October, TBD by Izzy Hernandez**
- 3) Public Hearing on the proposed amendments to the AHA Rules – week of October 26 or November 2**
- 4) Presentation to Policy Committee of proposed additional amendments made in response to public comments received and staff recommendations - November 17, 2015**
- 5) Presentation to Legislative Oversight Committee (LOC) for approval – November 23, 2015**
- 6) Presentation to MFA Board of Directors – December 16, 2015**

Summary: MFA staff is proposing amendments to the Affordable Housing Act Rules (the “Rules”) in accordance with recent amendments to the Affordable Housing Act, passed by the New Mexico legislature. Additionally, staff is proposing other amendments to the Rules for the purpose of providing clarification or supplementing the provisions with information deemed necessary by staff.



NEW MEXICO MORTGAGE FINANCE AUTHORITY AFFORDABLE HOUSING ACT RULES

SECTION 1. AUTHORITY. These Rules are issued under and pursuant to the Mortgage Finance Authority Act, NMSA 1978, § 58-18-1 et seq. (the “MFA Act”) and pursuant to the Affordable Housing Act, NMSA 1978, §6-27-1 et seq. (the “Act”). Following review and comment by the Legislative Oversight Committee (“Oversight Committee”), these Rules will become effective upon the approval of the New Mexico Mortgage Finance Authority’s (“MFA”) Board of Directors.

SECTION 2. PURPOSE AND OBJECTIVES. These Rules are established to effectuate, and shall be applied so as to accomplish, the general purposes of the Act and the following specific objectives:

2.1 Procedures to ensure that both state and local housing assistance grantees are Qualifying Grantees (defined below) who meet the requirements of the Act and rules promulgated pursuant to the Act both at the time of the award and throughout the term of the grant;

2.2 The establishment of an application and award timetable for state housing assistance grants to permit the selection of the Qualifying Grantee(s) by the Governmental Entity (defined herein) and/or ~~the~~ MFA;

2.3 The evaluation by the Governmental Entity and/or ~~the~~ MFA of: the financial and management stability of the applicant, the demonstrated commitment of the applicant to the community, a cost-benefit analysis of the project proposed by the applicant, the benefits to the community of a proposed project, the type or amount of assistance to be provided, the scope of the affordable housing project, any substantive or matching contribution by the applicant to the proposed project, a performance schedule for the ~~q~~Qualifying ~~G~~grantee with performance criteria, and any other rules or procedures which the Governmental Entity and/or ~~the~~ MFA believes is necessary for a full review and evaluation of the applicant, the application, and any Qualifying Grantee or which ~~the~~ MFA believes is necessary for a full review of the Governmental Entity’s evaluation of the applicant;

2.4 A requirement for long-term affordability of a state, county, or municipal project so that a project cannot be sold shortly after completion and taken out of the affordable housing market to ensure a quick profit for the Qualifying Grantee;

2.5 A requirement that the Governmental Entity and/or ~~the~~ MFA enter into a contract with the Qualifying Grantee consistent with the Act, which contract shall include

remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee and which contract shall be subject to the review of ~~the~~ MFA in its discretion;

2.6 A requirement that a grant for a state or local project must impose a contractual obligation on the Qualifying Grantee that the housing units in any Affordable Housing Project be occupied by low- or moderate-income households;

2.7 Provisions for adequate security against the loss of public funds or property in the event that the Qualifying Grantee abandons or otherwise fails to complete the project;

2.8 A requirement for review and approval of a housing grant project budget by the Governmental Entity and/or ~~the~~ MFA before any expenditure of grant funds or transfer of granted property;

2.9 A requirement that, unless the period is extended for good cause shown, ~~the~~ MFA shall act on an application within forty-five (45) days of the date of receipt of that application and, if not acted upon, the application shall be deemed approved;

2.10 A requirement that a condition of grant approval be proof of compliance with all applicable state and local laws, rules and ordinances;

2.11 Provisions defining “low-income and moderate-income” and setting out requirements for verification of income levels; and

2.12 A requirement that a county or municipality that makes a housing assistance grant shall have an existing valid affordable housing plan or housing elements contained in its general plan.

In carrying out its objectives and purposes, ~~the~~ MFA, pursuant to ~~the~~ MFA Act has the power to raise funds from private and public investors to make funds available for such purposes; to create and implement programs from time to time as may be necessary or appropriate to accomplish its purposes; and to assist, administer, finance or service housing programs and to contract for such services for or through private and nonprofit organizations and local, state, federal and tribal agencies or their instrumentalities.

SECTION 3. GENERAL DEFINITIONS. The following words and terms shall have the following meanings.¹

¹ The following definitions in these Rules were either modeled on ~~the~~ MFA’s internal Rules and Regulations, which were revised by ~~the~~ MFA in October of 2006, approved by the Oversight Committee on November 14, 2006, and adopted by the Board on January 24, 2007; or they were modeled on or taken directly from the Act, as revised in the 2006 Legislative Session. All definitions given were created to support the goals of the Act and the Rules.

3.1 “Act” shall mean the Affordable Housing Act, Section 6-27-1 et seq. NMSA 1978.

3.2 “Affordable” shall mean consistent with minimum rent and/or income limitations set forth in ~~the~~ MFA Act, and in guidelines established by MFA.

3.3 “Affordable Housing” means residential housing primarily for Persons or households of Low- or Moderate-Income.

3.4 “Affordable Housing Funds” shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act, which includes any reduction or abatement of taxes or fees that would otherwise be imposed in full on a market-rate project.

3.5 “Affordable Housing Program” shall mean any programs that a Governmental Entity and/or ~~the~~ MFA establish pursuant to the Act.

3.6 “Affordable Housing Projects” shall mean any work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement, Rehabilitation or conversion approved by the Governmental Entity and/or ~~the~~ MFA for the primary purposes as allowed by the Act.

3.7 “Applicant” shall mean an individual, or a non-individual applicant such as a governmental housing agency, regional housing authority, tribal housing agency, for-profit organization, including a corporation, limited liability company, partnership, joint venture, syndicate, ~~or~~ association or a nonprofit organization meeting the appropriate criteria of the Governmental Entity and/or ~~the~~ MFA.

3.8 “Application” shall mean an application to participate in one or more Affordable Housing Projects or programs under the Act submitted by an Applicant to the Governmental Entity and/or ~~the~~ MFA.

3.9 “Authority” shall mean the New Mexico Mortgage Finance Authority.

3.10 “Builder” shall mean a person or entity licensed as a general contractor to construct Residential Housing in the state which has been approved by the Governmental Entity and/or ~~the~~ MFA to participate in an MFA program and/or a program under the Act.

3.11 “Building” shall mean a structure capable of being renovated or converted into affordable housing or a structure that is to be demolished and is located on land that is donated and upon which Affordable Housing will be constructed.

3.12 “Congregate Housing Facility” shall mean Residential Housing designed for occupancy by more than four Persons of ~~l~~ow or Moderate Income living independently of each other. The facility may contain group dining, recreational, health

care or other communal living facilities and each unit in a Congregate Housing Facility shall contain at least its own living, sleeping, and bathing facilities.

3.13 “Contribution” shall mean any provision of assistance for affordable housing, including ~~a an Affordable-Housing Assistance~~ Grant or Affordable Housing Funds, made by a state, any instrumentality of the state, county, municipality, or the Authority.

3.14 “Federal Government” shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

3.15 “Governmental Entity” shall mean a state, county, or municipality.²

3.16 “Household” shall mean one or more persons occupying a housing unit.

3.17 “Housing Assistance Grant” means the donation, provision, or payment by a Governmental Entity or MFA of:

- A. Land upon which affordable housing will be constructed;
- B. An existing ~~B~~building that will be renovated, converted, or demolished and reconstructed as Affordable Housing;
- C. The costs of acquisition, development, construction, financing, and operating or owning affordable housing; or
- D. The costs of ~~F~~inancing or ~~I~~nfrastructure necessary to support Affordable Housing.

3.18 “HUD” shall mean the United States Department of Housing and Urban Development.

3.19 “Infrastructure” shall mean Infrastructure Improvements and Infrastructure Purposes.

3.20 “Infrastructure Improvement” includes, but is not limited to:

- A. sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
- B. drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

² Solely for the purposes of the Affordable Housing Act to distinguish the Authority from any other Governmental Entity, the term “MFA” will always be used when a rule or provision applies to the Authority.

- C. water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;
 - D. areas for motor vehicle use for road access, ingress, egress and parking;
 - E. trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for road access, ingress, egress and parking;
 - F. parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;
 - G. landscaping, including earthworks, structures, plants, trees and related water delivery systems;
 - H. electrical transmission and distribution facilities;
 - I. natural gas distribution facilities;
 - J. lighting systems;
 - K. cable or other telecommunications lines and related equipment;
 - L. traffic control systems and devices, including signals, controls, markings and signs;
 - M. inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and
 - N. heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property.
- 3.21 “Infrastructure Purpose” shall mean:
- A. planning, design, engineering, construction, acquisition or installation of Infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the Infrastructure;
 - B. acquiring, converting, renovating or improving existing facilities for Infrastructure, including facilities owned, leased or installed by the owner;
 - C. acquiring interests in real property or water rights for Infrastructure, including interests of the owner; and
 - D. incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection.

3.22 “Market Value” shall mean the price at which buyers and sellers trade similar items in an open marketplace. In the absence of a marketplace, it is the estimated highest price a buyer would be warranted in paying and a seller justified in accepting, provided both parties were fully informed and acted intelligently and voluntarily.

3.23 “MFA” shall mean the New Mexico Mortgage Finance Authority.

3.24 “MFA Act” shall mean the Mortgage Finance Authority Act, enacted as Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (being Sections 58-18-1 through 58-18-27, inclusive, N.M.S.A. (1978), as amended).

3.25 “Mortgage” shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the Governmental Entity and/or ~~the~~ MFA, on a fee interest in real property located within the state or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the Mortgage Loan or an instrument creating a lien on a mobile home.

3.26 “Mortgage Lender” shall mean any bank or trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union, building and loan association and any other lending institution, and which must be authorized to make mortgage loans in New Mexico.

3.27 “Mortgage Loan” shall mean a financial obligation secured by a Mortgage, including a project Mortgage Loan.

3.28 “Multiple Family Housing Project” shall mean Residential Housing that is designed for occupancy by more than four persons or families living independently of each other or living in a Congregate Housing Facility, of which the percentage of units set aside for at least sixty percent (60%) of whom are Persons of Low or Moderate Income, as defined in the applicable Affordable Housing Plan and Ordinance, shall be in direct proportion to the amount of subsidy provided as a percentage of total cost. Set asides for Persons of Low or Moderate Income shall include, including without limitation Persons of Low or Moderate Income who are elderly and handicapped as determined by the Governmental Entity and/or ~~the~~ MFA, provided that the percentage of ~~low income persons and families~~ Persons of Low or Moderate Income shall be at least the minimum, if any, required by federal tax law, if applicable.

3.29 “Multi-Family Housing Program” shall mean a program involving a Congregate Housing Facility, a Multiple Family Housing Project or a Transitional Housing Facility.

3.30 “Municipality” shall mean an incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties all as set forth in the Act.

3.31 “Oversight Committee” shall mean ~~the~~ MFA’s Legislative Oversight Committee created by, and appointed in accordance with, ~~the~~ MFA Act.

3.32 “Persons of Low or Moderate Income” low income shall mean persons and ~~families~~ families who earn up to 80% of local Area Median Income (AMI). Persons of moderate income shall mean persons and families who earn up to 120% of local AMI, within the state who are determined by the MFA to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to their locality and whose incomes are below the income levels established by the MFA to be in need of the assistance made available by the Act, taking into consideration, without limitation, such factors as defined under the Act. For purposes of this definition, the word “families” shall mean a group of persons consisting of, but not limited to, the head of a household; his or her spouse, if any; and children, if any, who are allowable as personal exemptions for Federal income tax purposes.

3.33 “Policies and Procedures” shall mean Policies and Procedures of ~~the~~ MFA, including but not limited to, Mortgage Loan purchasing, selling, servicing and reservation procedures, which ~~the~~ MFA may update and revise from time to time as ~~the~~ MFA deems appropriate.

3.34 “Qualifying Grantee” means:

- A. An individual who is qualified to receive assistance pursuant to the Act and is approved by the Governmental Entity and/or ~~the~~ MFA; and
- B. A governmental housing agency, regional housing authority, tribal housing agency, corporation, limited liability company, partnership, joint venture, syndicate, association or a nonprofit organization that:
 - 1) Is organized under State, local, or tribal laws and can provide proof of such organization;
 - 2) If a non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and
 - 3) Is approved by the Governmental Entity and/or ~~the~~ MFA.

3.35 “Recertification” shall mean the recertification of Applicants and/or Qualifying Grantees participating in any Affordable Housing Programs or in any programs under the Act as determined necessary from time to time by the Governmental Entity and/or ~~the~~ MFA.

3.36 “Rehabilitation” shall mean the substantial renovation or reconstruction of an existing single-family residence or a Multi-Family Housing Project, which complies with requirements established by ~~the~~ MFA. Rehabilitation shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction.

3.37 “Residential Housing” shall mean any Building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more Households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. “Residential Housing” includes congregate housing, manufactured homes, housing intended to provide or providing transitional or temporary housing for homeless persons and common health care for supportive housing, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project or a single room occupancy facility.

3.38 “Residential Use” shall mean that the structure or the portion of the structure to benefit from the Affordable Housing Funds or Housing Assistance Grant, is designed primarily for use as the principal residence of the occupant or occupants and shall exclude vacation or recreational homes.

3.39 “State” shall mean the State of New Mexico.

3.40 “Transitional Housing Facility” shall mean residential housing that is designed for temporary or transitional occupancy by Persons of Low or Moderate Income or special needs.

SECTION 4. REQUIREMENTS FOR GOVERNMENTAL ENTITIES. If a county or a municipality proposes to make a Housing Assistance Grant or provide Housing Assistance Funds under the Act, it shall first provide ~~the~~ MFA with a copy of the proposed ordinance and written certification that the proposed recipient is in compliance with the Act and these Rules. The county or municipality must also provide ~~the~~ MFA with documentation confirming that it has an existing valid affordable housing plan or housing elements contained in its general plan, so that ~~the~~ MFA may confirm that the ordinance is in compliance with the Act, that the Application is complete, and that the proposed recipient is a Qualifying Grantee under the Act and these Rules. For an ongoing housing assistance program, the county or municipality must provide MFA with a detailed written description of the program, in addition to other required documentation as specified in these Rules. Once the program receives MFA approval, it is not necessary to draft additional ordinances for subsequent transactions conducted under the approved program. MFA reserves the right to investigate each transaction conducted under the program.

~~4.1. — The Proposed Ordinance:~~

- ~~A. Must be provided to MFA, with other required documentation, within the period prescribed by the Rules in Section 5.3(B)(1)(a) for submission to MFA prior to the county's or municipality's provision of a Housing Assistance Grant or Affordable Housing Funds. Failure to provide said ordinance and documentation to the MFA, or to provide it in a timely fashion, or to act in accordance with the MFA's determination that an ordinance is invalid under the Act, the State Constitution, and/or any other applicable law, shall automatically invalidate the ordinance and shall render invalid any act taken pursuant to the ordinance.~~
- ~~B. Must authorize the contribution, state the requirements and purpose, and authorize the transfer or disbursement to the Qualifying Grantee only after a budget is submitted to and approved by the governing body of the county or municipality.~~
- ~~C. May provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through the MFA.~~
- ~~D. Shall comply with these Rules, as amended.~~
- ~~E. Shall be effective subject to local ordinance requirements for publication and filing.~~
- ~~F. Upon amendment, must be submitted to MFA for review of any and all changes for determination that the amended ordinance remains in compliance with the Act, these Rules, and other applicable law.~~

~~4.12 An Affordable Housing Plan. An Affordable Housing Plan created subsequent to the November 2007 amendment of these Rules must comply with the requirements set forth below. A housing plan created prior to November 2007 must, upon amendment, be made to comply with the requirements set forth below.~~

~~An valid affordable housing plan or housing elements in a general plan of a county or municipality shall contain the following elements when feasible and data is readily available. Detailed guidance which can be used at the discretion of the county or municipality is provided in the MFA Affordable Housing Act & Plans Technical Manual and by MFA staff. The Manual can be found on MFA's website: <http://www.housingnm.org/resources/affordable-housing-act-and-plans>.~~

- A. Community and housing profile, which shall include;
 - 1) demographic characteristics, such as race and ethnicity, income, age, employment and population trends;

- 2) household characteristics including the number of existing households and housing units by tenure; and,
- 3) housing market analysis including housing costs, rents, vacancy rates, and sales prices;

B. Housing needs assessment that **describes**;

- 1) **describes** existing needs, such as the number of households with a cost burden for housing, living in overcrowded situations, or with special needs, including disabilities, elderly, headed by a female, homeless, and other identified needs, and;

2) identifies the gap between market rate housing costs and incomes, by area median income (AMI).

- 2)3) identifies the projected needs which shall include the number of new units needed by tenure, type, and cost to meet current needs and to accommodate expected population growth and job generation and a determination of the number of homes to be created through new construction, rehabilitation and preservation;

C. Land use and policy review that includes;

- 1) a general analysis of **land land** use parcels including zoning, size and existing use, environmental constraints, availability of infrastructure;
- 2) an evaluation of suitability, availability and realistic development capacity of developable sites, including appropriate zoning for special needs housing, such as multi-family rental, mobile homes, transitional and homeless shelters;
- 3) identification of constraints, such as land use controls, codes and enforcement, fees and exactions, processing and permit procedures, on/off site improvements, reasonable accommodation, availability of financing, land availability and prices, construction costs, local capacity to assist, finance and manage construction, provide housing support services and administer housing funds and programs;
- 4) minimum density calculations targeted to affordable housing populations.

D. Goals, policies and quantifiable objectives that include;

- 1) an estimate of the number and percentage of unit increases, by income levels, to be constructed, rehabilitated or conserved over a set period of time;
- 2) identification of needed programs and agencies responsible for constructing new housing stock, improving existing housing stock, promoting access and equal opportunity to affordable housing, and increasing the capacity of residents to lower their housing cost burden, build long term equity, stabilize their housing situations through homebuyer training, rental vouchers, assistance to persons with disabilities, and other capacity assistance as deemed appropriate and necessary;
- 3) plan to promote potential regulatory concessions and incentives for removing or mitigating governmental and non-governmental constraints to development, rehabilitation or conservation of affordable housing;
- 4) identification of potential sources of federal, state and local financing and subsidies to support affordable housing;
- 5) a thorough consideration of related issues, such as public participation, job/housing mix, consistency with existing planning and land use policy, protection of ecological resources, promotion of efficient development patterns and green building.

4.2 The Proposed Ordinance:

A. Must be provided to MFA, with other required, documentation, within the period prescribed by the Rules in Section 5.3(B)(1)(a) for submission to MFA prior to the county's or municipality's provision of a Housing Assistance Grant or Affordable Housing Funds. Failure to provide said ordinance and documentation to ~~the~~ MFA, or to provide it in a timely fashion, or to act in accordance with ~~the~~ MFA's determination that an ordinance is invalid under the Act, the State Constitution, and/or any other applicable law, shall automatically invalidate the ordinance and shall render invalid any act taken pursuant to the ordinance.

B. Must authorize the type of contribution, state that the contribution complies with the affordable housing plan or housing elements in the general plan, state the requirements and purpose, and authorize the transfer or disbursement to the Qualifying Grantee only after a budget is submitted to and approved by the governing body of the county or municipality.

C. Household AMI percentages designated by ordinance provisions as qualifying for subsidy may remain the same despite annual changes to the numeric amounts of income attributed to each AMI percentage.

~~B-D.~~ May provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through ~~the~~ MFA.

~~C-E.~~ Shall comply with these Rules, as amended.

~~D-F.~~ Shall be effective subject to local ordinance requirements for publication and filing.

~~E-G.~~ Upon amendment, must be submitted to MFA for review of any and all changes for determination that the amended ordinance remains in compliance with the Act, these Rules, and other applicable law.

H. A county or municipality shall amend its affordable housing ordinance upon and in accordance with a request by MFA for amendment to the ordinance to comply with the requirements of the Act and the Rules. Governmental entities may continue to make lawful donations pending approval of a new ordinance.

I. All donations made pursuant to an affordable housing ordinance must be reported to MFA on an annual basis or pursuant to the requirements of the ordinance for reporting donations to MFA, whichever is the lesser period, in addition to the requirement to report such donations upon MFA's request.

4.3 A county or municipality must base any transaction conducted under an approved program on a market valuation current at the time of the transaction. MFA may require proof from the county or municipality that the transaction was based on a current market value assessment.

4.4 Any contribution otherwise made in violation of the Act, the Rules, the Constitution, or other applicable law, shall be deemed invalid under the Act.

SECTION 5. GENERAL REQUIREMENTS. With the exception of Housing Assistance Grants of funding from the State, which shall be governed by Section 5.13 below, the following requirements shall apply to all Housing Assistance Grants and Affordable Housing Funds provided by a Governmental Entity and/or ~~the~~ MFA under the Act to a Qualifying Grantee.

5.1 Requests for Proposals. The Governmental Entity and/or ~~the~~ MFA, in its discretion, may issue one or more requests for proposals ("RFP's") to solicit applications

("Applications") or shall otherwise identify a Qualifying Grantee for the use of any Affordable Housing Funds or Housing Assistance Grants to be awarded, loaned, or otherwise distributed under the Act.

5.2 Applicant Eligibility. The following individuals, and for profit or nonprofit or entities ("Applicants") are eligible under the Act to apply for Affordable Housing Funds or a Housing Assistance Grant to provide housing or related services to Persons of Low or Moderate Income in their community:

A. All individuals who are qualified to receive assistance pursuant to the Act, and these Rules, and the requirements of any applicable affordable housing ordinance.

A.B. All regional housing authorities, tribal governments, tribal housing agencies, and any governmental housing agencies.;

B.C. All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate, or association or a nonprofit organization is eligible to apply if it is:

1) Organized under state, local, or tribal laws and can provide proof of such organization;

2) Have among its purposes significant activities related to providing housing or services to Persons or Households of Low or Moderate Income;

3) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;

4) Evidence or certification that it has no significant outstanding or unresolved monitoring findings from the Governmental Entity, MFA, or its most recent independent financial audit; and has not been suspended or debarred by any federal agency or MFA. If the applicant has any outstanding or unresolved monitoring findings, it must have a certified letter from the Governmental Entity, MFA, or auditor stating that the findings are in the process of being resolved.

or;

C.D. Nonprofit organizations are eligible to apply if the following requirements are met:

- 1) A primary mission of the nonprofit organization must be to provide housing or housing-related services to Persons of Low or Moderate Income; and
- 2) The non-profit organization must have received its 501(c)(3) designation prior to submitting an Application.
- 3) The non-profit organization must have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual.

~~D. For any non individual applicant to be eligible, it must also:~~

- ~~(1) Be organized under state, local, or tribal laws and can provide proof of such organization;~~
- ~~(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;~~
- ~~(3) Have among its purposes significant activities related to providing housing or services to Persons or Households of Low or Moderate Income; and~~
- ~~(4) Evidence or certification that the applicant has no significant outstanding or unresolved monitoring findings from the Governmental Entity, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the Governmental Entity, the MFA, or auditor stating that the findings are in the process of being resolved.~~

Any eligible Applicant may, at any time, submit to the Governmental Entity and/or ~~the~~ MFA the information required by Section 5.3(A) sub-paragraphs (4), (5), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (20), (21), and (22) of these Rules, as applicable, in order to pre-qualify as a potential Qualifying Grantee. The Governmental Entity and/or ~~the~~ MFA will review the information provided by any eligible Applicant and in its discretion, may certify in writing that the Applicant is a "Potential Qualifying Grantee." The Governmental Entity shall provide a copy of the certification to ~~the~~ MFA upon its request. The Governmental Entity's and/or ~~the~~ MFA's certification shall be valid for up to one (1) year, subject to the ability of the Potential Qualifying Grantee to certify in writing, at the time of any Application or response to any RFP, that there have been no material changes in any of the information or documentation provided by, or representations made by the Potential Qualifying Grantee to the Governmental Entity and/or ~~the~~ MFA and upon which information, documentation, and/or representations the Governmental Entity and/or ~~the~~ MFA has based its decision to certify the Applicant as a Potential Qualifying Grantee. Notwithstanding the foregoing, simply because an Applicant is certified by the Governmental Entity and/or ~~the~~ MFA as a Potential

Qualifying Grantee does not mean that the Potential Qualifying Grantee will be chosen by the Governmental Entity or ~~the~~ MFA as a Qualifying Grantee, or that ~~the~~ MFA will determine that the Potential Qualifying Grantee is a Qualifying Grantee, or that any Application submitted by the Potential Qualifying Grantee is complete or otherwise in compliance with the Act and these Rules or that the Potential Qualifying Grantee will be awarded any Affordable Housing Funds or any Housing Assistance Grants.

5.3 Applications.

- A. Application Process for Applying Non- Individual Applicants, ~~and all other Applicants Non-individual entities~~ wishing to apply for ~~a Housing Assistance Grant or~~ Affordable Housing Funds to participate in any Affordable Housing Program are also required to submit to the Governmental Entity and/or ~~the~~ MFA the following, as applicable:
- 1) One original Application, together with all required schedules, documents, or such other information which may be required by the Governmental Entity and/or ~~the~~ MFA or in any RFP which may have been issued by the Governmental Entity or ~~the~~ MFA, must be included in the completed Application;
 - 2) A proposal describing the nature and scope of the Affordable Housing Project proposed by the Applicant and for which the Applicant is applying for funds or a grant under the Act, and which describes the type and/or amount of assistance which the Applicant proposes to provide to Persons of Low or Moderate Income;
 - 3) Executive Summary & Project Narrative(s) that address the evaluation criteria set forth in any RFP issued by the Governmental Entity or ~~the~~ MFA for the Affordable Housing Funds or the Housing Assistance Grant for which the Applicant is applying;
 - 4) For non-profit organizations, proof of 501(c)(3) tax status;
 - 5) For non-profit organizations, documentation which confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;
 - 6) Current Annual Budget for the Applicant, including all sources and uses of funds not just those related to relevant programs and/or a Current Annual Budget only for the program for which the Applicant is applying for a Housing Assistance Grant, or as otherwise may be required by the Governmental Entity and/or ~~the~~ MFA in its discretion;

- 7) A proposed budget for the Affordable Housing Project for which the Applicant is applying for Affordable Housing Funds or for a Housing Assistance Grant;
- 8) For a “for profit” entity, an A approved mission statement that has among its purposes significant activities related to providing housing or housing-related services to Persons or Households of Low or Moderate Income;
- 9) List of current board members, including designated homeless participation, where required by the Governmental Entity and/or ~~the~~ MFA;
- 10) Current independent financial audit;
- 11) Evidence (or a certification as may be allowed by the Governmental Entity and/or ~~the~~ MFA) that the Applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principles;
- 12) Evidence or certification that the Applicant has no significant outstanding or unresolved monitoring findings from the Governmental Entity, ~~the~~ MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the Governmental Entity, ~~the~~ MFA, or its most recent independent financial audit, it has a certified letter from the Governmental Entity, ~~the~~ MFA, or the auditor stating that the findings are in the process of being resolved;
- 13) Organizational chart, including job titles and qualifications for the Applicant’s employees or as otherwise may be required by the Governmental Entity and/or ~~the~~ MFA in its discretion. Job descriptions may be submitted as appropriate;
- 14) Documentation that the Applicant is duly organized in accordance with State or local law and is in good standing with any state authorities such as the Public Regulation Commission (e.g. Articles, Bylaws, and Certificate of Good Standing for a Corporation; Articles, Operating Agreement, and Certificate of Good Standing for a Limited Liability Company; partnership agreement and certificate of limited partnership for a partnership);

- 15) Certifications as may be required by the Governmental Entity and/or ~~the~~ MFA signed by Chief Executive Officer, Board President or other authorized official of the Applicant;
- 16) Information as may be required by the Governmental Entity and/or ~~the~~ MFA in order for it to determine the financial and management stability of the Applicant;
- 17) Information as may be required by the Governmental Entity and/or ~~the~~ MFA in order for it to determine the demonstrated commitment of the Applicant to the community;
- 18) Applicant shall submit adequate information, as required by the Governmental Entity and/or ~~the~~ MFA, of the Affordable Housing Project proposed by the Applicant. The information provided must clearly evidence ~~the need for the subsidy~~, that the value of the housing assistance grant reduces the housing costs to persons of low or moderate income, ~~and that there is or will be a direct benefit from the project proposed by the Applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act~~;
- 19) Applicant shall submit information to the Governmental Entity and/or ~~the~~ MFA supporting the benefits to the community of the Affordable Housing Project proposed by the Applicant;
- 20) The Governmental Entity and/or ~~the~~ MFA may require that the applicant provide proof of substantive or matching funds or contributions and/or in-kind donations to the proposed Affordable Housing Project in connection with the Application for funds under the Act. Nothing contained herein shall prevent or preclude an Applicant from matching or using local, private, or federal funds in connection with a specific Housing Assistance Grant or a grant of Affordable Housing Funds under the Act;
- 21) Applicant shall provide the Governmental Entity and/or ~~the~~ MFA with any certifications or other proof which it may require in order for the Governmental Entity and/or ~~the~~ MFA to confirm that the Applicant is in compliance with all applicable federal, state and local laws, rules and ordinances;
- 22) For Applicants who are submitting Applications in connection with a Multi-Family Housing Project, the following additional information shall also be required to be submitted by the Applicant to the Governmental Entity and/or ~~the~~ MFA:

- a) A verified certificate that, among other things:
- i. identifies every Multi-Family Housing Program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such Applicant has been or is a principal;
 - ii. except as shown on such certificate, states that:
 - I. no mortgage on a project listed on such certificate has ever been in default, assigned to the United States government or foreclosed, nor has any mortgage relief by the mortgagee been given;
 - II. there has not been a suspension or termination of payments under any HUD assistance contract in which the Applicant has had a legal or beneficial interest;
 - III. such Applicant has not been suspended, debarred or otherwise restricted by any department or agency of the federal government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and
 - IV. the Applicant has not defaulted on an obligation covered by a surety or performance bond.

If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances which such Applicant believes will explain the lack of certification. The Governmental Entity and/or ~~the~~ MFA may then determine if such Applicant is or is not qualified.

- b) The experience of the Applicant in developing, financing and managing Multiple-Family Housing Projects.
- c) Whether the Applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

23) If the Applicant is a Mortgage Lender, the Governmental Entity and/or ~~the~~ MFA shall consider, among other things:

- a. The financial condition of the Applicant;
- b. The terms and conditions of any loans to be made;

- c. The aggregate principal balances of any loans to be made to each Applicant compared with the aggregate principal balances of the loans to be made to all other Applicants;
- d. The Governmental Entity and/or ~~the~~ MFA's assessment of the ability of the Applicant or its designated servicer to act as originator and servicer of Mortgage Loans for any Multi-Family Housing Programs or other programs to be financed; and
- e. Previous participation by the Applicant in ~~the~~ MFA's programs and HUD, FHA, or RHS programs.

B. Application Process For Individual Applicants: One original Application together with all required schedules, documents, or such other information which may be required by the Governmental Entity and/or MFA must be included in the completed Application;

All Applications, from individual and non-individual Applicants, shall contain a verification signed by the Applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information, knowledge, and belief.

B-C. Submission Procedure:

1) Time, Place and Method of Submission Delivery.

- a) If the Governmental Entity has issued an RFP, all Applications must be received by the Governmental Entity no later than whatever deadline has been set forth in the RFP; otherwise, all Applications must be received by the Governmental Entity by whatever deadline the Governmental Entity has established in connection with the respective award or grant. So that any Qualifying Grantees may be selected prior to January of the year in which any Housing Assistance Grant would be made, the Governmental Entity shall issue any RFP's, solicit any Applications, or otherwise identify any Qualifying Grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to any such RFP, solicitation, or otherwise, and further to allow ~~the~~ MFA not less than forty-five (45) days in which to review any such Applications or otherwise determine or confirm that an Applicant is a Qualifying Grantee under the Act and consistent with these Rules.
- b) Applications shall be submitted by Applicants to the Governmental Entity or ~~the~~ MFA in the form and by the time as required by the Governmental Entity or ~~the~~ MFA and shall contain all information

which is required by the Act, these Rules, any RFP which may have been issued, and by the Governmental Entity or ~~the~~ MFA.

2) Additional Factors. The Application procedures shall take into consideration:

- a. Timely completion and submission to the Governmental Entity or ~~the~~ MFA of an Affordable Housing Program Application or other appropriate response to any solicitation by the Governmental Entity or ~~the~~ MFA;
- b. Timely submission of all other information and documentation related to the program as required by the Governmental Entity and/or ~~the~~ MFA, or as set forth in these Rules;
- c. Timely payment of any fees required to be paid to the Governmental Entity or ~~the~~ MFA at the time of submission of the Application; and
- d. Compliance with program eligibility requirements as set forth in the Act and these Rules.

3) Submission Format:

- a. Governmental Entity or MFA forms must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.
- b. An Applicant's failure to provide or complete any element of an Application, including all requirements of the Governmental Entity or ~~the~~ MFA, or as may be listed on any RFP, may result in the rejection of the Application prior to review.
- c. Illegible information, information inconsistent with other information provided in the application, and/or incomplete forms will be treated as missing information and evaluated accordingly.
- d. The Governmental Entity and/or ~~the~~ MFA reserve the right to request further information from any Applicant so long as the request is done fairly and does not provide any Applicant an undue advantage over another.
- e. The Governmental Entity or ~~the~~ MFA in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any Applicant.

- f. Neither the Governmental Entity nor ~~the~~ MFA shall be responsible for any expenses incurred by an Applicant in preparing and submitting an Application. However, the Governmental Entity or ~~the~~ MFA, as applicable, may establish and collect fees from Applicants who file Applications. Notice that fees will be charged and the amount of any such fees shall be included by the Governmental Entity or ~~the~~ MFA, as applicable, in any RFP, or otherwise shall be advertised as part of the Application solicitation process.

C.D. Review by the Governmental Entity and/or ~~the~~ MFA. On receipt of an Application, the Governmental Entity and/or ~~the~~ MFA shall:

- 1) Determine whether the Application submitted by the Applicant is complete and responsive;
- 2) Determine whether the Applicant is a Qualifying Grantee as defined herein and in the Act;
- 3) Review and analyze whether the Applicant has shown a demonstrated need for activities to promote and provide affordable housing and related services to Persons of Low or Moderate Income;
- 4) Determine whether the Applicant has demonstrated experience related to providing housing or services to Persons of Low or Moderate Income, as well as experience and/or the capacity to administer the Affordable Housing Program or Project for which the Applicant has applied;
- 5) Determine whether the Applicant's proposal provides a plan for coordinating with other service providers in the community; whether the Applicant's plan addresses how Low Income or Moderate Income individuals or families in need of housing and/or housing related supportive services can receive supportive services and referrals to federal, state and local resources; and, whether the Applicant's plan addresses outreach efforts to reach the population to be served as identified by the Governmental Entity and/or ~~the~~ MFA in any RFP or otherwise;
- 6) Determine whether the Applicant has support from "public service agencies," or such other support as may be required by the Governmental Entity and/or ~~the~~ MFA in its discretion, for its proposed services in the community. "Public Service Agencies" shall include, but are not limited to, any entities that support Affordable Housing and which believe that the program or project proposed by the Applicant is

worthy and advisable, but which are not involved, either directly or indirectly, in the Affordable Housing Program or Project for which the Applicant is applying;

- 7) Ascertain the amount of any matching funds or in-kind services specific to the program which may be utilized by the Applicant in connection with the program;
- 8) Ascertain whether any local, private, or federal funds will be used by the Applicant in connection with the specific grant for which the Applicant is applying;
- 9) Ascertain whether the Applicant has and can demonstrate the capability to manage the implementation of the program for which the Applicant is applying;
- 10) If Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other program funds, confirm that the Applicant had no outstanding findings or matters of non-compliance with program requirements from the Governmental Entity or ~~the~~ MFA, as applicable, or if it has any such findings, it has a certified letter from the Governmental Entity, ~~the~~ MFA, or auditor stating that the findings are in the process of being resolved;
- 11) If Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other program funds, confirm that the Applicant reasonably committed and expended the funds under the prior program and/or met anticipated production levels as set forth in any contract with the Governmental Entity or ~~the~~ MFA, as applicable, for those prior program funds;
- 12) Evaluate the Applicant's proposal in part based upon the Applicant's current financial audit;
- 13) Evaluate the Applicant's proposed budget for the project for which the Applicant is applying for Affordable Housing Funds or a Housing Assistance Grant, which proposed budget must be approved by the Governmental Entity and /or ~~the~~ MFA before Applicant can be approved as a Qualifying Grantee and any expenditure of grant funds under the Act or granted property is transferred to the Applicant;
- 14) On receipt of an Application from a Builder, the Governmental Entity and/or ~~the~~ MFA will analyze the Builder's ability to construct and sell sufficient Residential Housing units to Persons of Low or Moderate Income within the time or times as may be required by the Governmental Entity.

15) The Governmental Entity and/or ~~the~~ MFA may consider whatever factors it deems appropriate to ensure a reasonable geographic allocation for all Affordable Housing Programs.

5.4 Certification by the Governmental Entity to ~~the~~ MFA.

A. The Governmental Entity upon:

- 1) Completion of its review of the Application;
- 2) Determination that the Application is complete;
- 3) Determination that the requirements of these Rules and the Act have been satisfied; and
- 4) Determination that the Applicant is a Qualifying Grantee shall so certify in writing to ~~the~~ MFA.

B. Review by ~~the~~ MFA. ~~The~~ MFA upon its receipt of the certification from the Governmental Entity may, in its discretion, review the Application and any of the materials submitted by the Applicant to the Governmental Entity. ~~The~~ MFA may also request any additional information from the Applicant, which it may require in order to determine whether the Applicant is a Qualifying Grantee under the Act and the Application is complete. ~~The~~ MFA will then notify the Governmental Entity of its determination of whether or not the Application is complete and that the requirements of the Act and these Rules have been satisfied and the Applicant is a Qualifying Grantee. Unless the period is extended for good cause shown, ~~the~~ MFA shall act on an Application within forty- five (45) days of its receipt of any Application, which ~~the~~ MFA deems to be complete, and, if not acted upon, the Application shall be deemed to be approved.

5.5 Notification to Applicant. The Governmental Entity and/or ~~the~~ MFA, upon completion of its review of the Application and an evaluation of the criteria for approval of the Application as set forth in the Act, in any applicable ordinance, these Rules and in any RFP issued by the Governmental Entity and/or ~~the~~ MFA and upon its determination that the Applicant is a Qualifying Grantee, and upon its receipt of notification from ~~the~~ MFA that it agrees that the Application is complete and that the Act and these Rules have been satisfied and the Applicant is a Qualifying Grantee, by written notice shall notify each Applicant which has submitted an Application of the approval or disapproval of its Application. Upon approval of its Application, the Applicant shall be considered approved to participate in the Affordable Housing Program. The Governmental Entity's and/or ~~the~~ MFA's determination of any Application shall be conclusive.

5.6 Additional Requirements. Upon acceptance, the following additional requirements shall apply to any Applicant, who is a Qualifying Grantee:

- A. Contractual Requirements. The Qualifying Grantee shall enter into one or more contracts with the Governmental Entity and/or ~~the~~ MFA, which contract(s) shall be consistent with the Act and subject to the review of ~~the~~ MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee;
- B. Security Provisions; Collateral Requirements. In accordance with the Act and these Rules, the Governmental Entity and/or ~~the~~ MFA shall require the Qualifying Grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the Qualifying Grantee abandons or fails to complete the Affordable Housing Project, and which shall further provide, as may be permitted by law, for the recovery of any attorneys' fees and costs which the Governmental Entity and/or ~~the~~ MFA may incur in enforcing the provisions of these Rules, the Act and/or any agreement entered into by the Governmental Entity and/or ~~the~~ MFA and the Qualifying Grantee, and which documents may include, but are not limited to the following: note, Mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the Governmental Entity and/or ~~the~~ MFA may require in order to allow for any funds which the Qualifying Grantee may receive under a Housing Assistance Grant to be adequately secured and to allow the Governmental Entity and/or ~~the~~ MFA to ensure that such funds shall be utilized by the Qualifying Grantee in accordance with the Act and these Rules;
- C. Performance Schedule and Criteria. The Qualifying Grantee shall be required to abide by a reasonable performance schedule and performance criteria which the Governmental Entity and/or ~~the~~ MFA, in its discretion, may establish; and
- D. Examination of Books and Records. The Qualifying Grantee shall submit to and the Governmental Entity and/or ~~the~~ MFA shall cause to be made such examinations of the books and records of each Qualifying Grantee as the Governmental Entity and/or ~~the~~ MFA deems necessary or appropriate to determine the Qualifying Grantee's compliance with the terms of the Act, these Rules and any contracts between the Qualifying Grantee and the Governmental Entity and/or ~~the~~ MFA. The Governmental Entity and/or ~~the~~ MFA may require each Qualifying Grantee to pay the costs of any such examination.
- E. Cost Reimbursement Contracts:

- 1) Cost Reimbursements. Payment to a Qualifying Grantee under cost reimbursable contract provisions shall be made upon the Governmental Entity's and/or ~~the~~ MFA's receipt from the Qualifying Grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the Qualifying Grantee and the Governmental Entity and/or ~~the~~ MFA.
- 2) Cost Reimbursements For Units of Service. Payment under any unit cost contract provisions shall be made upon the Governmental Entity's and or ~~the~~ MFA's receipt from the Qualifying Grantee of a certified and documented invoice showing the number of units of service provided during the billing period.
- 3) Rate at which Costs Incurred. Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the Qualifying Grantee at an approximate level rate during the term of any agreement between the Qualifying Grantee and the Governmental Entity and/or ~~the~~ MFA. If the Governmental Entity and/or ~~the~~ MFA determine that the Qualifying Grantee is underspending or overspending, then the Governmental Entity and/or ~~the~~ MFA may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.
- 4) Invoices. Qualifying Grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the Governmental Entity and/or ~~the~~ MFA. Failure to submit invoices within twenty (20) days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.
- 5) No Dual Application of Costs. The Qualifying Grantee shall certify that any direct or indirect costs claimed by the Qualifying Grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the Qualifying Grantee and which has not been approved by the Governmental Entity and/or ~~the~~ MFA in advance in writing.
- 6) Prohibition of Substitution of Funds. Any Affordable Housing Funds or other amounts received by Qualifying Grantee may not be used by Qualifying Grantee to replace other amounts made available or designated by State or local governments through appropriations for use for the purposes of the Act.
- 7) Cost Allocation. If required by the Governmental Entity and/or ~~the~~ MFA, the Qualifying Grantee shall clearly identify and distribute all costs incurred pertaining to the Affordable Housing Project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the Governmental Entity and/or ~~the~~ MFA.

F. Additional Information. Qualifying Grantees shall provide the Governmental Entity and/or ~~the~~ MFA with any and all information which the Governmental Entity and/or ~~the~~ MFA reasonably may require in order for it to confirm that the Qualifying Grantees continue to satisfy the requirements of the Act and these Rules throughout the term of any contract and/or any Affordability Period (defined below) or otherwise as may be required by the Governmental Entity and/or ~~the~~ MFA in its discretion. At a minimum, on an annual basis, the Governmental Entity shall certify to ~~the~~ MFA in writing that the Qualifying Grantee is still in compliance with the Act and these Rules.

5.7 Affordable Housing Requirements. All Affordable Housing Funds or Housing Assistance Grants awarded under the Act are to be used by Qualifying Grantees for the benefit of Persons of Low or Moderate Income subject to the provisions of the Act and with particular regard to their to their housing related needs.

A. Single Family Property. Qualifying Grantees shall agree that they shall maintain any single-family property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period (defined below), whichever is longer.

B. Multi-Family Property.

1) Single Apartment within a Multi-Family Property. Qualifying Grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from Affordable Housing Funds, those apartments shall be leased to Persons of Low or Moderate Income at the time of any such award. Qualifying Grantees, who are the landlords and/or owners of such properties, shall further agree to set aside a percentage of units for Persons of Low or Moderate Income, which shall be in direct proportion to the amount of subsidy provided as a percentage contribute at least sixty percent (60%) of the total cost of the rehabilitation, weatherization, conversion, lease, repair, and/or construction. Qualifying Grantees also shall agree that the Persons of Low or Moderate Income, who are tenants of those apartments, shall be allowed to remain tenants for so long as there are no uncured defaults by those tenants under their respective leases and provided that there is no just cause for the landlord to terminate any lease agreement with those tenants.

- 2) Multiple Apartments. Qualifying Grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, they shall maintain as Affordable Housing a percentage of units set aside for Persons of Low or Moderate Income, that is in direct proportion to the amount of subsidy provided as a percentage of total cost. not less than sixty percent (60%) of the These set aside housing units shall be maintained as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.
- C. Non-Residential Property. Qualifying Grantees shall agree that they shall maintain any non-residential property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as a facility which provides housing related-services to Persons of Low or Moderate Income for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.
- D. Housing Assistance Grant Affordability Requirements. Qualifying Grantees shall agree that they shall maintain any land or buildings received as a Housing Assistance Grant either as either single-family or multi-family Affordable Housing in accordance with paragraphs A and B of this Section 45.6 or as a facility which provides housing related-services to Persons of Low or Moderate Income in accordance with paragraph C of this Section 45.6 (as applicable) for the duration of the Affordability Period. Qualifying Grantees shall agree that they shall maintain any land or buildings for which they have received the costs of acquisition, development, construction, financing, operating, or owning as a Housing Assistance Grant either as either single-family or multi-family Affordable Housing or as a facility which provides housing related-services to Persons of Low or Moderate Income (as applicable) for the duration of the Affordability Period. In calculating the Affordability Period for Housing Assistance Grants of either land or buildings, or the costs of acquisition, development, construction, financing, operating or owning land or buildings, or the costs of Infrastructure at the time of the donation by the state, county or municipality shall apply.
- E. Affordability Period Defined. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds which have

been awarded, loaned, donated, or otherwise conveyed to the Qualifying Grantee is from \$1 to \$14,999, then the Affordability Period shall be not less than five (5) years. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from \$15,000 up to and including \$40,000, then the Affordability Period shall be not less than ten (10) years. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from \$40,000 up to and including \$100,000, then the Affordability Period shall be not less than fifteen (15) years. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is greater than \$100,000, then the Affordability Period shall be not less than twenty (20) years. The Governmental Entity and/or ~~the~~ MFA, in its discretion, may increase the Affordability Period in any contract, note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the Governmental Entity and/or ~~the~~ MFA may enter into with any Qualifying Grantee or beneficiary of the Affordable Housing Funds or of the Housing Assistance Grant. Notwithstanding the foregoing, in the discretion of ~~the~~ MFA, Weatherization Funds conveyed from the State to ~~the~~ MFA and/or any other similar conveyances where an Affordability Period is not practical, shall not be subject to the Affordability Period requirements of this Section; but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the Governmental Entity and/or ~~the~~ MFA.

5.8 Consent to Jurisdiction. Each Qualifying Grantee shall consent to the jurisdiction of the courts of the State of New Mexico over any proceeding to enforce compliance with the terms of the Act, these Rules and any agreement between the Qualifying Grantee and the Governmental Entity and/or ~~the~~ MFA.

5.9 Recertification. The Qualifying Grantee must meet the requirements of the Act and these Rules and any applicable ordinance both at the time of any award and throughout the term of any grant and contract related thereto. The Governmental Entity and/or ~~the~~ MFA may establish procedures for recertifying Qualifying Grantees from time to time. Qualifying Grantees which fail to satisfy the requirements for recertification shall cease to be eligible and shall be denied further participation in Affordable Housing programs until the requirements of the Governmental Entity and/or ~~the~~ MFA are satisfied.

5.10 Compliance with the Law. Qualifying Grantee shall provide the Governmental Entity and/or ~~the~~ MFA with any certifications or other proof which it may require in order for the Governmental Entity and/or ~~the~~ MFA to confirm that the Qualifying Grantee and the Qualifying Grantee's proposed project are in compliance with all applicable federal, state and local laws, rules and ordinances.

5.11 Extension of Affordable Housing Programs. ~~The~~ MFA shall have the power to create variations or extensions of such Affordable Housing programs, or additional programs which comply with the Act and these Rules.

5.12 The Governmental Entity and/or ~~the~~ MFA:

- A. May hold any award of Affordable Housing Funds or any Housing Assistance Grant made by any county or municipality in suspense pending the issuance by the Governmental Entity and/or ~~the~~ MFA of any RFP, or pending the award of the Affordable Housing Funds or of the Housing Assistance Grant by the Governmental Entity and/or ~~the~~ MFA to the Qualifying Grantee without the issuance of an RFP by the Governmental Entity and/or ~~the~~ MFA.
- B. Shall have oversight over the Qualifying Grantee under these Rules, upon the Qualifying Grantee's receipt of Affordable Housing Funds or a Housing Assistance Grant.

5.13 School District and Post-Secondary Educational Institution Grant Requirements. If a school district or a post-secondary educational institution intends to make a Housing Assistance Grant, then it shall provide ~~the~~ MFA with a written certification that the proposed grantee is in compliance with the Act and these Rules so that ~~the~~ MFA may confirm that the Application is complete and the proposed grantee is a Qualifying Grantee under the Act and these Rules. Any transfer of land by a school district to a county or municipality to be further granted as part or all of an Affordable Housing grant shall be subject to the additional limitations contained in the Act that the school district and the governing body of the county or municipality enter into a contract that provides the school district with a negotiated number of affordable housing units that will be reserved for employees of the school district. Any transfer of land by a post-secondary educational institution shall be subject to the additional limitations contained in the Act that (1) the property transferred shall be granted by the county, municipality or tribal government as part or all of an Affordable Housing grant; and (2) the governing board of the post-secondary educational institution and the governing body of the county, municipality or tribal government enter into a contract that provides the post-secondary educational institution with Affordable Housing units. As used in this Section, "post-secondary educational institution" means a state university or a public community college. The Governmental Entity and/or ~~the~~ MFA, in their discretion, may also hold any Housing Assistance Grant made by any school district or post-secondary educational institution in suspense pending the issuance by the Governmental Entity and/or ~~the~~ MFA of any RFP or pending the award of the Housing Assistance Grant by the Governmental Entity and/or ~~the~~ MFA to the Qualifying Grantee without the issuance of an RFP by the Governmental Entity and/or ~~the~~ MFA. Any award of a Housing Assistance Grant by a school district or a post-secondary educational institution shall subject the Qualifying Grantee of the grant to the oversight of the Governmental Entity and/or ~~the~~ MFA under these Rules.

5.14 Housing Assistance Grants From the State. All Housing Assistance Grants from the State pursuant to the Act shall be appropriated to the Department of Finance and Administration for disbursement by ~~the~~ MFA to a Qualifying Grantee through use of a contract consistent with the provisos in the State appropriation and these Rules.

SECTION 6. DISCRIMINATION PROHIBITED. The development, construction, occupancy and operation of an Affordable Housing Program or an Affordable Housing Project financed or assisted under the Act shall be undertaken in a manner consistent with principles of non-discrimination and equal opportunity, and the Governmental Entity and/or ~~the~~ MFA shall require compliance by all Qualifying Grantees with all applicable federal and State laws and regulations relating to affirmative action, non-discrimination and equal opportunity.

SECTION 7. ADMINISTRATION. The Governmental Entity and/or ~~the~~ MFA shall administer any Affordable Housing programs in accordance with provisions of the Act, these Rules, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The Governmental Entity and/or ~~the~~ MFA, in establishing, funding and administering the Affordable Housing Programs and by making, executing, delivering and performing any award, contract, grant or any other activity or transaction contemplated by the Act, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgment, determination or award and will not contravene the provisions of or otherwise cause a default under any of its agreements, indentures, or other instruments to which it may be bound.

SECTION 8. IN THE EVENT OF DEFAULT. In the event that a Qualifying Grantee defaults on a contractual obligation for a subsidized affordable housing project, or abandons or otherwise fails to complete an affordable housing project, for which the Governmental Entity has donated land or funds to purchase the land, a Governmental Entity shall act in the manner set forth below to ensure the property's timely sale and recovery of the public funds invested in the project.

- A. The Governmental Entity must ascertain that the title to the property has been transferred to the Governmental Entity through a foreclosure sale, a transfer of title by deed in lieu of foreclosure or any other manner.
- B. If the Governmental Entity has or will acquire title, then it must determine if, under the contractually imposed affordability restrictions requiring long-term occupancy by Persons of Low or Moderate Income, the property is or is not marketable for a price that would sufficiently recover the investment of public funds.
- A.—C. If the determination is that the property cannot be sold under the affordability restrictions for a price that would recover the investment of public funds in the property, then the Governmental Entity shall obtain a written appraisal of the fair market value of the project, without the affordability restrictions, that is current to the time the project is put up for sale.

C.–D. The Governmental Entity shall thereafter, prior to the sale of the project, request MFA review and approval of the determination to release the affordability restrictions on the property to effect a sale. The Governmental Entity must provide MFA with a certification that its determination to sell the affordable housing project without the affordability restrictions was made pursuant to the requirements of this Section of these Rules.

E. Following receipt of MFA approval of the determination to release the affordability restrictions to effect a sale, the Governmental Entity may release the affordability restrictions upon sale of the project at a fair market value current to the time of the sale.

F. Exercise reasonable efforts to ensure that all proceeds from the sale of a property pursuant to this section are used solely for purposes pursuant to the Affordable Housing Act and that the Qualifying Grantee that held title to the property shall not benefit from the sale of the property or from the transfer of the affordable housing project.

SECTION 89. ENFORCEMENT. The New Mexico Attorney General's Office is the State agency responsible for enforcing compliance with the requirements of the Act and these Rules. Noncompliance by any entity whose actions fall within the jurisdiction of the Act and these Rules will be reported by ~~the~~ MFA to the Attorney General's Office for investigation. The Attorney General's Office will investigate an alleged violation of the Act reported by the Authority, and based on a reasonable belief that a violation of the Act has occurred, may bring a civil action and/or pursue criminal charges against the alleged violator. Civil penalties for a judicial finding of a violation of the Act shall not exceed the amount of five thousand dollars (\$5,000) per violation, in addition to any equitable relief imposed by the court.

SECTION 910. MISCELLANEOUS. Capitalized terms not otherwise defined in these Rules and Regulations have the same meaning as defined in the Act.

SECTION 110. AMENDMENT TO RULES AND REGULATIONS. These Rules may be amended or supplemented by ~~the~~ MFA at any time. With regard to any amended or supplemental rules under this Section, ~~the~~ MFA shall seek comment from the Oversight Committee, provide a public hearing in accordance with the State Administrative Procedures Act, and require concurrence in any rule having application to local government by both the New Mexico municipal league and the New Mexico Association of Counties, all as required by the Act.

Adopted by the MFA's Board: October 17, 2007 and as amended on December 16, 2015 (pending).