



*Memorandum*

To: Members of the New Mexico Finance Authority Legislative Oversight Committee  
From: Marquita D. Russel, Chief of Programs  
Date: September 8, 2014  
Re: Approval of Amended and Restated Local Government Planning Fund Rules

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**Item:**

Approval of amended and restated Local Government Planning Fund (“LGPF”) rules.

**Background:**

The LGPF was created by 2002 Legislature to provide upfront capital necessary for proper planning of vital water and wastewater projects and provide the basis of an application for federal funding. Over the years, the governing statute has been amended to include a wider array of eligible projects and to change the terms of repayment under the program. In November 2012, the Rules for the LGPF were amended in response to the legislative changes that broadened the eligibility of planning document types and eliminated entirely the repayment requirement.

Having operated the broadened program for nearly two years, staff is recommending changes to the program. Under the New Mexico Finance Authority Act, rules are established by both the NMFA Board of Directors and NMFA Legislative Oversight Committee (“LOC”) approving the same set of rules.

The attached amended and restated LGPF rules were reviewed by the NMFA Board in August and are presented to the LOC for its approval. The proposed revisions primarily fall into three areas:

- 1) Conforming the definitions in rule to the definitions in the template closing documents as well as some minor clean up language;
- 2) Putting Metropolitan Redevelopment Districts (“MRD”) on parity with Local Economic Development Act projects by eliminating the Local Match requirement for MRD projects and providing a separate \$50,000 limit (per two-year period) for MRD plans, irrespective of whether the community is already at its limit for other planning documents.
- 3) Providing explicitly for Median Household Income studies to be used in place of census data.

**Recommendation:**

Staff recommends the adoption of the attached amended and restated LGPF rules.

AMENDED AND RESTATED

RULES

GOVERNING THE

LOCAL GOVERNMENT PLANNING FUND

AS ADOPTED ON

~~NOVEMBER 16, 2012~~  
[\_\_\_\_\_, 2014]

BY THE BOARD OF DIRECTORS

OF THE

NEW MEXICO FINANCE AUTHORITY

AND APPROVED BY THE

NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

ON

~~NOVEMBER 30, 2012~~  
[\_\_\_\_\_, 2014]

## SECTION 1. AUTHORITY FOR AND PURPOSE OF RULES

The Local Government Planning Fund (the "Fund"), ~~originally called the Water and Wastewater Planning Fund,~~ was created ~~by Laws 2002, Chapter 26~~ pursuant to Section 6-21-6.4, NMSA 1978, as amended ~~by Laws 2005, Chapter 180, and Laws 2012, Chapter 49~~ (the "Act"). Pursuant to the Act, the New Mexico Finance Authority ("Finance Authority") is required to establish rules necessary to administer the Fund. The purpose of these Rules, which may be supplemented by Finance Authority Board policies as provided herein, is to define the terms and conditions under which the Finance Authority will make grants available from the Fund and to govern the ~~implementation and~~ administration of the Fund. ~~These Rules do not apply to other programs established by the Authority.~~

## SECTION 2. DEFINITIONS

- A. "Applicant" means a Qualified Entity which has filed ~~a request for a Planning Grant from an~~ Application with the Finance Authority;
- B. "Application" means a written document filed with the Finance Authority by an Applicant for the purpose of obtaining a Planning Grant to ~~evaluate and to estimate the costs of implementing the most feasible alternatives for meeting Water and Wastewater Public Project and other Infrastructure needs or to develop Water Conservation Plans, Long-Term Master Plans, Economic Development Plans or energy audits; fund a Planning Document.~~ An Application must include a completed form prescribed by the Finance Authority, and may also include written responses to requests for information by the Finance Authority, ~~or other format as determined by the Authority;~~
- ~~C.~~ "Authority" means the New Mexico Finance Authority;
- ~~CD.~~ "Board" means the New Mexico Finance Authority Board of Directors ~~created by the New Mexico Finance Authority Act;~~
- ~~ED.~~ "Economic Development Plan" means the plan necessary to implement a Planning Grant Qualified Entity's Local Economic Development Act ordinance as provided in Sections 5-10-1 to 5-10-13, NMSA 1978, ~~a plan necessary to implement a Qualified Entity's Metropolitan Redevelopment Plan as provided in Sections 3-60A-1 to 3-60A-48, NMSA 1978, or a feasibility study designed to determine the viability, need and impact of a proposed economic development opportunity;~~
- ~~E.~~ "Economic Development Feasibility Study" means a study designed to determine the viability, need and impact of a proposed economic development opportunity by a Planning Grant Qualified Entity;

- ~~F. "Fund" means the Local Government Planning Fund;~~
- FG. "GGRT" means the portion of the Governmental Gross Receipts Tax received by the Finance Authority pursuant to Section 7-1-6.38, NMSA 1978, as amended;
- GH. "Local Average Annual Residential Rate" means the amount, on an annualized basis, a residential customer of a Planning Grant Qualified Entity would pay for 6,000 gallons of water, ~~or~~ wastewater service per month or solid waste services per month;
- HI. "Local Match" means the percentage of Unmet Need not eligible for Planning Grant funds as determined under Section 5. Such match may include state or federal funding, but may not include a regional partner's Planning Grant;
- IJ. "Local Median Household Income" means the median household income, as determined by the Board, for the relevant service area of the Planning Grant Qualified Entity;
- KJ. "Long-Term Master Plan" means a plan that evaluates the infrastructure needs of a Planning Grant Qualified Entity that are anticipated to exist for a period of at least 5 years, and methods of addressing such needs;
- K. "Metropolitan Redevelopment Plan" means the plan necessary to implement a Planning Grant Qualified Entity's Metropolitan Redevelopment Area as provided in Sections 3-60A-1 to 3-60A-48, NMSA 1978;
- L. "Oversight Committee" means the joint interim legislative committee established pursuant to § 6-21-30, NMSA 1978;
- M. "Planning Grant" means financial assistance from the Finance Authority in the form of a grant pursuant to ~~Laws 2012, Chapter 49, the Act~~ and these Rules ~~for the purpose of financing a Planning Document~~;
- N. "Planning Grant Agreement" means an agreement between the Finance Authority and an Applicant for a Planning Grant providing for the terms and conditions of the use and, if applicable, reimbursement of the Planning Grant;
- O. "Planning Grant Qualified Entity" means a Qualified Entity excluding water or wastewater systems or other entities to whom a grant would constitute an impermissible donation within the meaning of Section 14, Article IX of the Constitution of the State of New Mexico;
- P. "Planning Document" means a project-written document filed with the Finance Authority by an Applicant to evaluate and to estimate the costs of implementing

the most feasible alternatives for meeting public infrastructure project needs, including Environmental Information Documents compliant with ~~the~~New Mexico's Drinking Water State Revolving Fund State Environmental Review Plan, Comprehensive Plans and Asset Management Plans, or to develop a Water Conservation Plan, Long-Term Master Plan, Economic Development Plan, Metropolitan Redevelopment Plan, Economic Feasibility Study or energy audit for the Planning Grant Qualified Entity;

- Q. "Qualified Entity" means the state or any agency or institution of the state or any county, municipality, school district, special district, community water association or an Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision or a wholly owned enterprise of an Indian nation, tribe or pueblo;
- R. "Rules" means these Rules Governing the Local Government Planning Fund;
- S. "State Average Residential Rate for Water or Wastewater" means the average residential rate for water or wastewater service within the State as determined by the Finance Authority;
- T. "Statewide Median Household Income" means the median household income for the State of New Mexico as most recently determined by the United States Bureau of the Census or Median Household Surveys conducted pursuant to the USDA Rural Development Requirements;
- U. "Unmet Need" means the ~~maximum~~ amount of planning grant funding for which the Planning Grant Qualified Entity cannot cash fund~~that an entity may receive for its project limited by the lesser of the planning grant limit or local match requirement~~;
- V. "Water and Wastewater Public Project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a Planning Grant Qualified Entity for its water or wastewater system;
- W. "Water Conservation Plan" means a comprehensive program, including training, change in maintenance practices or facilities, or landscape alteration, designed to reduce water consumption or operating costs through the implementation of conservation measures.

### SECTION 3. PROJECT FUNDING AVAILABLE AND ELIGIBLE PROJECTS

~~Initial funding for this program was made available via the issuance of bonds in an amount not to exceed one million dollars (\$1,000,000) payable from an amount of GGRT not to~~

~~exceed thirty five percent (35%) of the GGRT deposited in the PPRF, which net proceeds of the bonds was deposited in the Fund and used for purposes of the Fund. Funding has or may also be made available from general fund money and Public Project Revolving Funds appropriated by the legislature to the Fund or from any other public or private money dedicated to the Fund.~~

~~Because of the relatively small amount of Planning Grant funding available, t~~The total amount of Planning Grant funding available per planning document may not exceed \$50,000 and the total amount of Planning Grant funding per entity may not exceed \$100,000 per 24 month period unless the Board waives ~~either~~ requirement due to additional availability of funds or critical need. Notwithstanding this limit, Planning Grant Qualified Entities may receive an additional \$50,000 per 24-month period for funding of Metropolitan Redevelopment Plans. The Board shall have discretion to prioritize applications received ~~from by~~ Planning Grant Qualified Entities as outlined in the Board's policies. Planning Grant funding ~~will~~may be made available only for the portion of a Planning Document that the Planning Grant Qualified Entity cannot cash fund, as determined by the Finance Authority.

Any Planning Grant Qualified Entity that ~~receives-enters into~~ a Planning Grant Agreement from the Fund for funding in excess of \$50,000 shall be required under a Planning Grant Agreement to reimburse the Fund for the amount of the Planning Grant when the Planning Grant Qualified Entity receives ~~financing from~~ any federal financing for the project set out in the Application source. Pursuant to a Planning Grant Agreement, each Planning Grant Qualified Entity that receives a Planning Grant from the Fund shall be required to submit annual financial statements and shall be required to report annually to the Finance Authority on the status of the project and any financing applied for or received, if applicable.

Grants from the Fund may be made to Planning Grant Qualified Entities without specific authorization by law as required in Section 6-21-6 and 6-21-8, NMSA 1978.

#### **SECTION 4. EVALUATION OF APPLICANT AND PROJECT**

To be considered for a Planning Grant, a Planning Grant Qualified Entity must submit an Application to the Finance Authority ~~for financial assistance for a Planning Document.~~ The Finance Authority will analyze the Application to determine if the Planning Grant Qualified Entity has the financial capacity to fund the Planning Document completely from its available financial resources. The amount of the Planning Document that cannot be cash funded from available financial resources, such as unrestricted cash balances, will be considered to be the Planning Grant Qualified Entity's Unmet Need for that project. The maximum amount of a Planning Grant award that the Finance Authority will provide for the Planning Document is the lesser of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit of \$50,000, with a maximum of \$100,000 per entity per 24-month period, unless otherwise waived by the Board in accordance with these Rules and applicable policies.

The ~~Authority's Board of Directors~~ shall establish minimum criteria for acceptable ~~plans~~Planning Documents. All final Planning Documents must be in a form acceptable to the Finance Authority.

## SECTION 5. DETERMINATION OF QUALIFIED ENTITIES FINANCIAL NEED

### 5.1 Base Planning Grant Award Determinations

To determine the base amount of any Planning Grant award for an Applicant (except as provided in Section 5.2 of these Rules) ~~in connection with a Planning Document for an Economic Development Plan, Environmental Information Document or an Urgent project~~, the Finance Authority will evaluate the Planning Grant Qualified Entity's Local Median Household Income and place it into a Planning Grant category, as described below in Section 5.1 (A). Second, the Finance Authority will calculate, for projects proposed to be financed with utility system or other ~~enterprise~~ system revenues derived from user charges, the Local Burden Ratio of the Planning Grant Qualified Entity, as described in Section 5.1 (B) or for Economic Development Feasibility Studies, the determination of relative economic need of the Planning Grant Qualified Entity, as described in Section 5.1 (C) to determine if the Planning Grant Qualified Entity is eligible to qualify for an additional Planning Grant award. These two calculations taken together provide the total Planning Grant award, if any.

#### (A) Local Median Household Income.

Based on the Planning Grant Qualified Entity's Local Median Household Income, the Finance Authority will classify each Planning Grant Qualified Entity into one of the following three categories:

(1) Category I - Planning Grant Qualified Entities with Local Median Household Incomes of less than one-hundred percent (100%) but greater than or equal to seventy-~~five-six~~ percent (~~756~~%) of the State Median Household Income. Planning Grant Qualified Entities in this category may be eligible for a Planning Grant of twenty-five percent (25%) of their Planning Document cost, not to exceed the amount lesser of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

(2) Category II - Planning Grant Qualified Entities with Local Median Household Incomes of less than ~~or equal to~~ seventy-~~six~~five percent (~~756~~%) but greater than or equal to fifty-~~one~~ percent (~~510~~%) of the State Median Household Income. Planning Grant Qualified Entities in this category may be eligible for a Planning Grant of fifty percent (50%) of their Planning Document cost, not to exceed the amount lesser of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

(3) Category III - Planning Grant Qualified Entities with Local Median Household Incomes of less than ~~or equal to~~ fifty ~~one~~ percent (5~~10~~%) of the State Median Household Income. Entities in this category maybe eligible for a Planning Grant of seventy-five percent (75 %) of their Planning Document cost, not to exceed the lesser of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

(B) Additional Consideration for Projects Proposed to be Financed with Utility System or other ~~Enterprise~~ System Revenues

The Finance Authority may provide additional grant funding for projects proposed to be financed with utility system or other ~~enterprise~~-system revenues based upon a calculation of the Planning Grant Qualified Entity's Local Burden Ratio as described below to determine if the Planning Grant Qualified Entity is eligible to qualify for an additional Planning Grant award. These two calculations taken together provide the total Planning Grant award, if any.

(1) Local Burden Ratio. In addition to taking Local Median Household Income into consideration, the Finance Authority may also consider the Planning Grant Qualified Entity's efforts to generate revenue streams sufficient to cash fund the Planning Document.

In evaluating Local Burden Ratio, the Finance Authority will determine the Planning Grant Qualified Entity's local water, wastewater or solid waste rate burden. The Finance Authority will then compare the local rate burden with the state average rate burden as follows:

$$\text{Local Burden Ratio} = \frac{\frac{\text{Local Average Annual Residential Rate}}{\text{Local Median Household Income}}}{\frac{\text{State Average Residential Rate}}{\text{State Median Household Income}}}$$

If the Local Burden Ratio for the Planning Grant Qualified Entity is greater than or equal to 1.0 but less than 1.5, then the Planning Grant Qualified Entity may be eligible to receive an additional twenty-five percent (25%) of its Planning Document in the form of a Grant, not to exceed the lesser of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

If the Local Burden Ratio for the Planning Grant Qualified Entity is greater than or equal to 1.5 but less than 2.5, then the Planning Grant Qualified Entity may be eligible to receive an additional fifty percent (50%) of its Planning Document in the form of a Grant, not to exceed the lesser of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

If the Local Burden Ratio for the Planning Grant Qualified Entity is greater than or equal to 2.5, then the Planning Grant Qualified Entity may be eligible to receive an additional seventy-five percent (75%) of its Planning Document in the form of a Grant, not to exceed the lesser of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

(C) Additional Consideration for Economic Development Feasibility Studies ~~or Metropolitan Redevelopment Plans~~

The Finance Authority may provide funding for economic development feasibility studies ~~or Metropolitan Redevelopment plans~~ to those Planning Grant Qualified Entities that have adopted their Local Economic Development Act ordinances or Metropolitan Redevelopment Plans. To determine the amount, if any, of the Economic Development feasibility study ~~Planning Grant award greater than the base amount provided under Section 5.1(A)~~, the Finance Authority will consider the Applicant's relative economic need in determining whether to provide a Planning Grant ~~and the amount of the Planning Grant~~. Using figures available from the latest census, the Finance Authority will consider two measures which are computed for the Applicant and then compared to the State:

(1) Job Availability. Are there sufficient jobs available given the working age population? To determine jobs available in relation to working age population (age 16 and above), the Finance Authority will calculate the:

$$\frac{(\text{Qualified Entity's Employed Persons 16+} / \text{Qualified Entity's Population 16+})}{(\text{Statewide Employed Persons 16+} / \text{Statewide Population 16+})}$$

If the Applicant's percentage of working age population is less than the State's percentage, then the Planning Grant Qualified Entity may be eligible to receive an additional twenty five percent (25%) of its Planning Document in the form of a Grant, not to exceed the lesser of the Planning Grant Qualified Entity's ~~Unmet~~ Need or the Planning Grant limit.

(2) Wage sufficiency. Wage sufficiency shall be determined solely by the median earnings of those workers using the following calculation:

$$\frac{\text{Median earnings of Employed Persons within the Qualified Entity}}{\text{Median earnings of Employed Persons Statewide}}$$

If the Applicant's median earnings among those employed are lower than the statewide median, then the Planning Grant Qualified Entity may be eligible to receive an additional twenty five percent (25%) of its Planning Document in the form of a Grant, not to exceed the lesser of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

## Section 5.2 Waivers of Local Match Requirement

Applications for infrastructure feasibility studies needed to cure Urgent needs or address declining economic development, such as chronic or acute violations of state or federal regulations, Economic Development Plans needed to implement the Local Economic Development Act, Sections 5-10-1 to 5-10-13, NMSA 1978, and Environmental Information Documents that are compliant with New Mexico's State Environmental Review Process plan

~~approved by the US EPA,~~ will be provided with 100% grant funds for the identified project as further provided under the Board's policies.

## SECTION 6. ADMINISTRATIVE FEES AND COSTS

Administrative fees and costs of the Finance Authority associated with any Planning Grant award under these Rules and the Act will come from the Fund.

## SECTION 7. PLANNING GRANT APPROVAL REQUIREMENTS

Based on Sections 4 and 5 above, the Board may award a Planning Grant to the Applicant provided the following requirements are satisfied.

- A. In approving a Planning Grant award, the Board must find that the Planning Grant Qualified Entity does not have the ability to cash fund the Planning Document with legally available funds.
- B. To be eligible for a Planning Grant, the Planning Grant Qualified Entity must agree to properly maintain separate project accounts in accordance with generally accepted accounting principles and to conduct an annual audit or review of the Applicant's financial records.

~~C. In addition to the foregoing, the Planning Grant Qualified Entity must satisfy any other requirements as may be determined by the Authority.~~

## SECTION 8. COOPERATION WITH STATE AGENCIES

The Finance Authority or its staff may request the assistance of other state agencies, e.g. including without limitation the Department of Finance and Administration, the New Mexico Environment Department, New Mexico State Engineer, the Department of Transportation, the Energy, Minerals and Natural Resources Department or the New Mexico Economic Development Department, in determining the sufficiency or adequacy of an ~~a~~ Applicant and/or ~~A~~ application, as well as in evaluating the completed Planning Document.

## SECTION 9. AMENDMENT OF RULES

These Rules may be amended or repealed at any time by the Finance Authority with the prior approval of the Oversight Committee.

