



# MEMO

TO: Legislative Oversight Committee  
FROM: Julie Halbig, Director of Compliance and Initiatives  
DATE: August 30, 2023  
RE: Affordable Housing Act Rules Amendment

## Background

The New Mexico Affordable Housing Act (“AHA or the “Act”) was enacted in 2004, following New Mexican voters’ approval of an amendment to the New Mexico Constitution’s “anti-donation clause”. As the name of this clause suggests, New Mexico’s Constitution, as it was originally written, prohibits any government entity from furnishing donations in any form to anyone. The Affordable Housing Act exempts donations made by “the state, including any agency or instrumentality of the state, or a county, a municipality or the (New Mexico Mortgage Finance) authority” to affordable housing projects, so long as these entities meet the requirements established by the Act and the Affordable Housing Act Rules.

The responsibility for administering the Act has been delegated by the State to the MFA. The Affordable Housing Act Rules (or the “Rules”) were written by MFA to establish how the Act will be administered along with delineating the requirements for any government entity to participate under the Act. To provide donations to develop affordable housing, local governments must first have an Affordable Housing Plan and must have enacted an Affordable Housing Ordinance, both of which must be MFA approved to be valid under state law. The local governments must then collect application materials from potential recipient(s) and together with MFA, certify the potential recipient(s) as a “qualifying grantee” under the Act.

The main reason we are now looking to amend these rules is to revise the definition of “Persons of Very Low, Low or Moderate Income” to include households making up to 150% (up from 120%) of Area Median Income (AMI), along with allowing for this range to be further adjusted for “high-cost areas to accommodate qualification of the purchase of a median priced home in a county of the subject property or rent at the fair market rate.” MFA’s desire to revise the Rules’ AMI cap, combined with the extended process to make any amendment to the Rules, prompted us to review the AHA Rules in their entirety and identify opportunities for streamlining the AHA compliance process for participating local governments.

The process to make any amendment to the Affordable Housing Act Rules proceeded as follows: MFA’s Policy Committee gave their initial approval of the Amendment on May 16, 2023. The Amendment was subject to a minimum thirty (30) day public comment period which started on May 26, 2023, and concluded on June 27, 2023. A public hearing on the proposed amendment was also held on June 26, 2023 at MFA’s offices, where one member of the public attended. The amendment was then approved by the New Mexico Municipal League on July 18, 2023, and New Mexico Counties on August 4, 2023.

MFA must now seek comment from the Legislative Oversight Committee (or “LOC”) before the amended Rules become effective upon their ratification by MFA’s Board of Directors.

## Proposed Changes

The following is a table summarizing all the recommended changes MFA staff would like to make to the Rules. Line numbers on the Rules will be removed following Board ratification.

<b>Page, &amp; Line Number</b>	<b>Recommended Change</b>
Page 1, Lines 27-29	Replace “evaluation by the” with “should consider any of the following criteria when evaluating an applicant, the application, and any Qualifying Grantee”, to specify what MFA and the local government are evaluating.
Page 3, Line 11	Add the word “Comprehensive” to the phrase “general plan” to specify that this requirement extends to Comprehensive plans only.
Page 3, Lines 27-31	Move the footnote from these pages to the end of the document, along with all other footnotes, to better organize the document.
Page 5, Lines 14-15	Add a definition for FHA (Federal Housing Administration), which was a term used in these Rules that was previously undefined
Page 6, Lines 29-31	Move the footnote from these pages to the end of the document, along with all other footnotes to better organize the document.
Page 9, Lines 19-32	Replace the current definition of ‘Person’s of Low or Moderate Income’ with the definition approved as part of the MFA Rules & Regulations Manual approved in November 2022. This new definition raises moderate income AMIs allowed under the Act from 120% to 150% and includes language for further adjustments to AMI for high-cost areas.
Page 11, Lines 14-15	Add a definition for RHS (Rural Housing Service), which was a term used in these Rules that was previously undefined
Page 11, Lines 23-33 & Page 12, Lines 1-12	Remove all language currently in this first paragraph and replace it with a bullet point summary that concisely lists all requirements for government entities. The current language in this subsection does not wholistically list out the requirements for government entities like the revised list would.  Added back in language for “ongoing housing assistance programs” to provide explicit guidance for local governments regarding said programs.
Page 12, Lines 23-25	In the first paragraph, delete references to the “Plan Technical Manual” since it is no longer in use and replace a non-functioning website link for the AHA with the correct website link.
Page 13, Lines 7-18	Reorder the mandatory requirements of this sub-section so they all appear together. Specify that certain “if applicable” requirements would include number of households in overcrowded situations, homeless individuals, and households with special needs.
Page 13, Lines 22-23	Add “if applicable” to beginning of this requirement and relocate the “environmental constraints, availability of infrastructure” language the proceeding requirement in lines 22 and 24 of page 14

<b>Page, &amp; Line Number</b>	<b>Recommended Change</b>
Page 13, Lines 24-31	Delete this requirement; most local governments do not have the capacity to make these determinations.
Page 13, Lines 27-31	Remove the words “such as” and replace with “which may include” to more clearly convey that this requirement may be satisfied with a consideration of any listed items. Add some language from requirement in lines 13-14 above into this requirement and added language listing “protection of ecological resources and green building” as potential considerations.
Page 14, Line 1-2	Delete the “Calculating Minimum Density” requirement; MFA has required local governments to go through the exercise of calculating minimum density calculations so they understand that greater housing density makes housing more affordable (AKA economies of scale work in housing development too). Staff believe that this conclusion is self-evident, and that this requirement is therefore unnecessary.
Page 14, Lines 6-7	Add language conveying that this objective is meant to be met by the local government’s participation under the Act.
Page 14, Lines 9-16	Add and slightly modify language in this requirement to provide local governments greater flexibility in fulfilling this criteria.
Page 14, Line 25-27	Delete this requirement. These topics are already covered by requirement C3 in the “Land use and policy review that includes;” section.
Page 14, Line 26	Add the words “Affordable Housing” to this subsection’s title to make this an item that is referenced in the same way across the Rules.
Page 15, Lines 5-7	Delete this requirement, as it is not something required under the Act to be part of an Affordable Housing Ordinance. Staff believe the original authors of these rules mistakenly conflated the requirements of an Affordable Housing Ordinance under the Act with donating to a qualifying grantee under the Act.
Page 15, Lines 5-7	Delete “Household AMI percentages” requirement from here and put it as a footnote of Section 3. General Definitions, Subsection 3.32, “Person’s of Low or Moderate Income” because staff believe it makes more sense as a footnote explaining how AMIs work as opposed to being in this section of the Rules.
Page 16, Line 15	Add the words “Award of Funds” to this subsection’s title to clarify that what this section already states: that funds can be directly awarded or through the RFP process
Page 18, Lines 10-11	Add language in the last paragraph to clarify that this paragraph only applies to the “Potential Qualifying Grantee” process.
Page 19, Lines 7-34 Page 20, Lines 1-32 Page 21, Lines 1-32 Page 22, Lines 1-30	Rearrange this entire subsection to be laid out in the same order these requirements are laid out in the Act, as opposed to the seemingly random order they are laid out in now. The redline version does not reflect these changes.
Page 19, Lines 6-7	Delete this requirement; this information would already be

Page, & Line Number	Recommended Change
	included in a project narrative, which is required by current requirement 3 in this subsection.
Page 19, Line 24-25	Replace “For a ‘for profit’ entity, an approved mission statement that has” with “Have” to make this a requirement directly mirror the language of this requirement in the Act; doing so should allow prospective qualifying grantees to meet this requirement more easily.
Page 19, Line 28	Add “and performance schedule” to specifically require this document as part of the Rules.
Page 20, Lines 1-2	Delete “Executive Summary &” and add “including unit type and rent summary for Persons of Low or Moderate Income” to mirror language from other MFA applications.
Page 21, Line 33 & Page 22, Lines 1-4	Delete this requirement; an annual budget for the applicant is not needed, only a proposed budget for the Affordable Housing project.
Page 20, Lines 8-11	Delete “and qualifications” to remove this onerous part of the application requirement; replace “submitted” with “requested by the Governmental Entity and/or MFA” to clarify that MFA has the authority to request these documents instead of a “may” provision which gives discretion to the applicant.
Page 26, Lines 1-31	Delete these requirements. These requirements do not mirror what is being required in preceding parts of Section 5.3. Staff also believe that it is best not to tie MFA’s hands with specified reviewing criteria beyond the requirements in the Rules and the Act.
Page 39, Line 12	Add “and as amended on” along with the date MFA’s Board of Directors approves the AH Rules Amendment.
Page 40, Lines 1-17	Create a new “Footnotes” section at the end of the Rules to house all the document’s footnotes.



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2  
3 **NEW MEXICO MORTGAGE FINANCE AUTHORITY**  
4 **AFFORDABLE HOUSING ACT RULES**  
5  
6

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7 **SECTION 1. AUTHORITY.** These Rules are issued under and pursuant to the Mortgage  
8 Finance Authority Act, NMSA 1978, § 58-18-1 et seq. (the “MFA Act”) and pursuant to the  
9 Affordable Housing Act, NMSA 1978, §6-27-1 et seq. (the “Act”). Following review and  
10 comment by the Legislative Oversight Committee (“Oversight Committee”), these Rules  
11 will become effective upon the approval of the New Mexico Mortgage Finance Authority’s  
12 (“MFA”) Board of Directors.  
13

14 **SECTION 2. PURPOSE AND OBJECTIVES.** These Rules are established to effectuate,  
15 and shall be applied so as to accomplish, the general purposes of the Act and the following  
16 specific objectives:  
17

18 2.1 Procedures to ensure that both state and local housing assistance grantees  
19 are Qualifying Grantees (defined below) who meet the requirements of the Act and rules  
20 promulgated pursuant to the Act both at the time of the award and throughout the term of  
21 the grant;  
22

23 2.2 The establishment of an application and award timetable for state housing  
24 assistance grants to permit the selection of the Qualifying Grantee(s) by the Governmental  
25 Entity (defined herein) and/or MFA;  
26

27 2.3 The Governmental Entity and/or MFA ~~should~~ may consider any of the  
28 following criteria when evaluating an applicant, the application and any Qualifying Grantee:  
29 the financial and management stability of the applicant, the demonstrated commitment of

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1 the applicant to the community, a cost-benefit analysis of the project proposed by the  
2 applicant, the benefits to the community of a proposed project, the type or amount of  
3 assistance to be provided, the scope of the affordable housing project, any substantive or  
4 matching contribution by the applicant to the proposed project, a performance schedule for  
5 the Qualifying Grantee with performance criteria, and any other rules or procedures which  
6 the Governmental Entity and/or MFA believes is necessary for a full review and evaluation  
7 of the applicant, the application, and any Qualifying Grantee or which MFA believes is  
8 necessary for a full review of the Governmental Entity's evaluation of the applicant;

9  
10 2.4 A requirement for long-term affordability of a state, county, or municipal  
11 project so that a project cannot be sold shortly after completion and taken out of the  
12 affordable housing market to ensure a quick profit for the Qualifying Grantee;

13  
14 2.5 A requirement that the Governmental Entity and/or MFA enter into a contract  
15 with the Qualifying Grantee consistent with the Act, which contract shall include remedies  
16 and default provisions in the event of the unsatisfactory performance by the Qualifying  
17 Grantee and which contract shall be subject to the review of MFA in its discretion;

18  
19 2.6 A requirement that a grant for a state or local project must impose a  
20 contractual obligation on the Qualifying Grantee that the housing units in any Affordable  
21 Housing Project be occupied by low- or moderate-income households;

22  
23 2.7 Provisions for adequate security against the loss of public funds or property  
24 in the event that the Qualifying Grantee abandons or otherwise fails to complete the  
25 project;

26  
27 2.8 A requirement for review and approval of a housing grant project budget by  
28 the Governmental Entity and/or MFA before any expenditure of grant funds or transfer of  
29 granted property;

30  
31 2.9 A requirement that, unless the period is extended for good cause shown,  
32 MFA shall act on an application within forty-five (45) days of the date of receipt of that

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1           3.4    “Affordable Housing Funds” shall mean any or all funds awarded or to be  
2 awarded, loaned or otherwise distributed under the Act, which includes any reduction or  
3 abatement of taxes or fees that would otherwise be imposed in full on a market-rate project.  
4

5           3.5    “Affordable Housing Program” shall mean any programs that a Governmental  
6 Entity and/or MFA establish pursuant to the Act.  
7

8           3.6    “Affordable Housing Projects” shall mean any work or undertaking, whether  
9 new construction, acquisition of existing residential housing, remodeling, improvement,  
10 Rehabilitation or conversion approved by the Governmental Entity and/or MFA for the  
11 primary purposes as allowed by the Act.  
12

13          3.7    “Applicant” shall mean an individual, or a non-individual applicant such as a  
14 governmental housing agency, regional housing authority, tribal housing agency, for-profit  
15 organization, including a corporation, limited liability company, partnership, joint venture,  
16 syndicate, association or a nonprofit organization meeting the appropriate criteria of the  
17 Governmental Entity and/or MFA.  
18

19          3.8    “Application” shall mean an application to participate in one or more  
20 Affordable Housing Projects or programs under the Act submitted by an Applicant to the  
21 Governmental Entity and/or MFA.  
22

23          3.9    “Authority” shall mean the New Mexico Mortgage Finance Authority.  
24

25          3.10 “Builder” shall mean a person or entity licensed as a general contractor to  
26 construct Residential Housing in the state which has been approved by the Governmental  
27 Entity and/or MFA to participate in an MFA program and/or a program under the Act.  
28

29          3.11 “Building” shall mean a structure capable of being renovated or converted  
30 into affordable housing or a structure that is to be demolished and is located on land that  
31 is donated and upon which Affordable Housing will be constructed.  
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1           3.12 “Congregate Housing Facility” shall mean Residential Housing designed for  
2 occupancy by more than four Persons of Low or Moderate Income living independently of  
3 each other. The facility may contain group dining, recreational, health care or other  
4 communal living facilities and each unit in a Congregate Housing Facility shall contain at  
5 least its own living, sleeping, and bathing facilities.  
6

7           3.13 “Contribution” shall mean any provision of assistance for affordable housing,  
8 including a Housing Assistance Grant or Affordable Housing Funds, made by a state, any  
9 instrumentality of the state, county, municipality, or the Authority.  
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11           3.14 “Federal Government” shall mean the United States of America and any  
12 agency or instrumentality, corporate or otherwise, of the United States of America.  
13

14           3.15 “FHA” shall mean the United States Department of Housing and Urban  
15 Development’s Federal Housing Administration.  
16

17           3.16 “Governmental Entity” shall mean a state, county, or municipality.<sup>2</sup>  
18

19           3.17 “Household” shall mean one or more persons occupying a housing unit.  
20

21           3.18 “Housing Assistance Grant” means the donation, provision, or payment by a  
22 Governmental Entity or MFA of:  
23

- 24           A. Land upon which affordable housing will be constructed;
- 25
- 26           B. An existing building that will be renovated, converted, or demolished and  
27 reconstructed as Affordable Housing;
- 28
- 29           C. The costs of acquisition, development, construction, financing, and operating  
30 or owning affordable housing; or
- 31
- 32           D. The costs of financing or infrastructure necessary to support Affordable

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1 Housing.

2  
3 3.19 "HUD" shall mean the United States Department of Housing and Urban  
4 Development.

5  
6 3.20 "Infrastructure" shall mean Infrastructure Improvements and Infrastructure  
7 Purposes.

8  
9 3.21 "Infrastructure Improvement" includes, but is not limited to:

10  
11 A. sanitary sewage systems, including collection, transport, storage, treatment,  
12 dispersal, effluent use and discharge;

13  
14 B. drainage and flood control systems, including collection, transport, diversion,  
15 storage, detention, retention, dispersal, use and discharge;

16  
17 C. water systems for domestic purposes, including production, collection,  
18 storage, treatment, transport, delivery, connection and dispersal;

19  
20 D. areas for motor vehicle use for road access, ingress, egress and parking;

21  
22 E. trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle  
23 use for road access, ingress, egress and parking;

24  
25 F. parks, recreational facilities and open space areas for the use of residents for  
26 entertainment, assembly and recreation;

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28 G. landscaping, including earthworks, structures, plants, trees and related water  
29 delivery systems;

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- 2 H. electrical transmission and distribution facilities;
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- 4 I. natural gas distribution facilities;
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- 6 J. lighting systems;
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- 8 K. cable or other telecommunications lines and related equipment;
- 9
- 10 L. traffic control systems and devices, including signals, controls, markings and
- 11 signs;
- 12
- 13 M. inspection, construction management and related costs in connection with
- 14 the furnishing of the items listed in this subsection; and
- 15
- 16 N. heating, air conditioning and weatherization facilities, systems or services,
- 17 and energy efficiency improvements that are affixed to real property.
- 18

19 3.22 "Infrastructure Purpose" shall mean:

20

- 21 A. planning, design, engineering, construction, acquisition or installation of
- 22 Infrastructure, including the costs of applications, impact fees and other fees,
- 23 permits and approvals related to the construction, acquisition or installation
- 24 of the Infrastructure;
- 25
- 26 B. acquiring, converting, renovating or improving existing facilities for
- 27 Infrastructure, including facilities owned, leased or installed by the owner;
- 28
- 29 C. acquiring interests in real property or water rights for Infrastructure, including
- 30 interests of the owner; and
- 31
- 32 D. incurring expenses incident to and reasonably necessary to carry out the

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1 purposes specified in this subsection.  
2

3 3.23 "Market Value" shall mean the price at which buyers and sellers trade similar  
4 items in an open marketplace. In the absence of a marketplace, it is the estimated highest  
5 price a buyer would be warranted in paying and a seller justified in accepting, provided both  
6 parties were fully informed and acted intelligently and voluntarily.  
7

8 3.24 "MFA" shall mean the New Mexico Mortgage Finance Authority.  
9

10 3.25 "MFA Act" shall mean the Mortgage Finance Authority Act, enacted as  
11 Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (being Sections  
12 58-18-1 through 58-18-27, inclusive, N.M.S.A. (1978), as amended).  
13

14 3.26 "Mortgage" shall mean a mortgage, mortgage deed, deed of trust or other  
15 instrument creating a lien, subject only to title exceptions as may be acceptable to the  
16 Governmental Entity and/or MFA, on a fee interest in real property located within the state  
17 or on a leasehold interest that has a remaining term at the time of computation that exceeds  
18 or is renewable at the option of the lessee until after the maturity day of the Mortgage Loan  
19 or an instrument creating a lien on a mobile home.  
20

21 3.27 "Mortgage Lender" shall mean any bank or trust company, mortgage  
22 company, mortgage banker, national banking association, savings bank, savings and loan  
23 association, credit union, building and loan association and any other lending institution,  
24 and which must be authorized to make mortgage loans in New Mexico.  
25

26 3.28 "Mortgage Loan" shall mean a financial obligation secured by a Mortgage,  
27 including a project Mortgage Loan.  
28

29 3.29 "Multiple Family Housing Project" shall mean Residential Housing that is  
30 designed for occupancy by more than four persons or families living independently of each  
31 other or living in a Congregate Housing Facility, of which the percentage of units set aside  
32 for Persons of Low or Moderate Income, as defined in the applicable Affordable Housing

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1 Plan and Ordinance, shall be in direct proportion to the amount of subsidy provided as a  
2 percentage of total cost. Set asides for Persons of Low or Moderate Income shall include,  
3 without limitation Persons of Low or Moderate Income who are elderly and handicapped  
4 as determined by the Governmental Entity and/or MFA, provided that the percentage of  
5 Persons of Low or Moderate Income shall be at least the minimum, if any, required by  
6 federal tax law, if applicable.

7  
8 3.30 "Multi-Family Housing Program" shall mean a program involving a  
9 Congregate Housing Facility, a Multiple Family Housing Project or a Transitional Housing  
10 Facility.

11  
12 3.31 "Municipality" shall mean an incorporated city, town or village, whether  
13 incorporated under general act, special act or special charter, incorporated counties and H  
14 class counties all as set forth in the Act.

15  
16 3.32 "Oversight Committee" shall mean MFA's Legislative Oversight Committee  
17 created by, and appointed in accordance with, MFA Act.

18  
19 3.33 Person's of Low or Moderate Income": Low Income persons or households  
20 are those with incomes up to 80% of the Area Median Income (AMI). Moderate Income  
21 persons or households are those with income above 80% and up to 150% of the AMI  
22 adjusted for family size. Moderate income limits may be adjusted for high-cost areas to  
23 accommodate qualification of purchase of a median priced home in a county of the subject  
24 property or rent at the fair market rate. This definition of low and moderate income applies  
25 to all non-federal, unrestricted programs administered by MFA. All federal and restricted  
26 programs will continue to follow the income requirements outlined in statute, regulations,  
27 guidance or contractual documents. This definition aligns with the needs throughout the  
28 State and in accordance with the requirements of the Act. Area Median Income (AMI) is  
29 defined as the point at which half the households in an area have lower incomes and half  
30 have higher incomes. <sup>3</sup>

**Deleted:** low income shall mean persons and 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. .

31  
32 3.34 "Policies and Procedures" shall mean Policies and Procedures of MFA,

**Deleted:** 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.

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1 including but not limited to, Mortgage Loan purchasing, selling, servicing and reservation  
2 procedures, which MFA may update and revise from time to time as MFA deems  
3 appropriate.

4  
5 3.35 “Qualifying Grantee” means:

6  
7 A. An individual who is qualified to receive assistance pursuant to the Act and is  
8 approved by the Governmental Entity and/or MFA; and

9  
10 B. A governmental housing agency, regional housing authority, tribal housing  
11 agency, corporation, limited liability company, partnership, joint venture,  
12 syndicate, association or a nonprofit organization that:

13  
14 1) Is organized under State, local, or tribal laws and can provide proof of  
15 such organization;

16  
17 2) If a non-profit organization, has no part of its net earnings inuring to the  
18 benefit of any member, founder, contributor, or individual; and

19  
20 3) Is approved by the Governmental Entity and/or MFA.

21  
22 3.36 “Recertification” shall mean the recertification of Applicants and/or Qualifying  
23 Grantees participating in any Affordable Housing Programs or in any programs under the  
24 Act as determined necessary from time to time by the Governmental Entity and/or MFA.

25  
26 3.37 “Rehabilitation” shall mean the substantial renovation or reconstruction of an  
27 existing single-family residence or a Multi-Family Housing Project, which complies with  
28 requirements established by MFA. Rehabilitation shall not include routine or ordinary  
29 repairs, improvements or maintenance, such as interior decorating, remodeling or exterior  
30 painting, except in conjunction with other substantial renovation or reconstruction.

31  
32 3.38 “Residential Housing” shall mean any Building, structure or portion thereof

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1 that is primarily occupied, or designed or intended primarily for occupancy, as a residence  
2 by one or more Households and any real property that is offered for sale or lease for the  
3 construction or location thereon of such a building, structure or portion thereof. "Residential  
4 Housing" includes congregate housing, manufactured homes, housing intended to provide  
5 or providing transitional or temporary housing for homeless persons and common health  
6 care for supportive housing, kitchen, dining, recreational and other facilities primarily for  
7 use by residents of a residential housing project or a single room occupancy facility.  
8

9 3.39 "Residential Use" shall mean that the structure or the portion of the structure  
10 to benefit from the Affordable Housing Funds or Housing Assistance Grant, is designed  
11 primarily for use as the principal residence of the occupant or occupants and shall exclude  
12 vacation or recreational homes.

13  
14 3.40 "RHS" shall mean the United States Department of Agriculture's Rural  
15 Housing Service."

16  
17 3.41 "State" shall mean the State of New Mexico.  
18

19 3.42 "Transitional Housing Facility" shall mean residential housing that is designed  
20 for temporary or transitional occupancy by Persons of Low or Moderate Income or special  
21 needs.  
22

#### 23 **SECTION 4. REQUIREMENTS FOR GOVERNMENTAL ENTITIES.**

24  
25 The following requirements for Governmental Entities include:

26 a) Governmental Entities must provide MFA an Affordable Housing Plan or develop  
27 affordable housing elements in its general Comprehensive Plan for review and approval.

28 b) Governmental Entities must then provide MFA with an Affordable Housing Ordinance  
29 for review and approval.

30 a. Once a Governmental Entity's Affordable Housing Ordinance receives MFA  
31 approval it is not necessary to draft additional ordinances for subsequent Affordable  
32 Housing Programs or Projects transactions conducted under the approved Ordinance  
33 as long as the program(s) meets the requirements under the Ordinance and the Act.

**Deleted:** 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 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 MFA with documentation confirming that it has an existing valid affordable housing plan or housing elements contained in its general Comprehensive plan, so that 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

**Deleted:** MFA reserves the right to investigate each transaction conducted under the program.

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1 b. MFA reserves the right to investigate each Affordable Housing Program or  
2 Project.

3 c) Governmental Entities must provide MFA with the required documentation of all  
4 potential Qualifying Grantees for MFA review and approval before the Qualifying Grantee  
5 may receive assistance pursuant to the Act.

6 d) Governmental Entities must also provide MFA with written certification confirming that  
7 the Application to participate in an Affordable Housing Project or Plan under the Act is  
8 complete.

9  
10 If a county or municipality proposes to make a Housing Assistance Grant or provide Housing  
11 Assistance Funds under the Act, it shall provide MFA with the documentation as required in sub-  
12 sections “c” and “d” above in order to be in compliance with the Act and these Rules.

13 For an ongoing housing assistance program, Government Entities must provide MFA with a  
14 detailed written description of the program, in addition to other required documentation as specified  
15 in these Rules. Once the program receives MFA approval, it is not necessary to seek MFA approval  
16 for subsequent transactions conducted under the approved program.

17  
18 4.1 An Affordable Housing Plan.

19  
20 An affordable housing plan or housing elements in a general plan of a county or  
21 municipality shall contain the following elements when feasible and data is readily  
22 available. Detailed guidance which can be used at the discretion of the county or  
23 municipality is provided on the MFA Affordable Housing Act webpages and by MFA staff.  
24 The MFA Affordable Housing Act webpages can be found on MFA’s website:  
25 <https://housingnm.org/resources/affordable-housing-act> ,

- Deleted: in
- Deleted: & Plans Technical Manual
- Deleted: Manual
- Deleted: <http://www.housingnm.org/resources/affordable-housing-act-and-plans>.

26  
27 A. Community and housing profile, which shall include;

- 28
- 29 1) demographic characteristics, such as race and ethnicity, income, age,  
30 employment and population trends;
  - 31
  - 32 2) household characteristics including the number of existing households and  
33 housing units by tenure; and,

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3) housing market analysis including housing costs, rents, vacancy rates, and sales prices;

B. Housing needs assessment that;

1) describes existing needs, such as the number of households with a cost burden for housing, seniors, headed by a female and other identified needs. If measurable data exists this assessment should also describe the number of households living in overcrowded situations, who are homeless, or with special needs, including disabilities and;

**Deleted:** , elderly, headed by a female, homeless, and other identified needs,

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

3) a determination of the number of units needed by type to be created through new construction, rehabilitation and preservation to accommodate expected population growth and job generation;

**Deleted:** 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

**Deleted:** homes

C. Land use and policy review that includes;

1) if applicable, a general analysis of land use parcels including zoning, size and existing use;

2) identification of constraints, which may include land use controls, codes and enforcement, environmental constraints, fees and exactions, processing and permit procedures, on/off site improvements, reasonable accommodation, availability of financing and infrastructure, Other considerations may include land availability and prices, construction costs, local capacity to assist, finance and manage construction, provide housing support services and administer housing funds and programs and protection of ecological resources and green building;

**Deleted:** , environmental constraints, availability of infrastructure;¶  
¶  
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.¶

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**Deleted:** <#>minimum density calculations targeted to affordable housing populations.¶

1  
2  
3 D. Goals, policies and quantifiable objectives that include;

4  
5 1) an estimate of the number and percentage of unit increases, by income  
6 levels, to be constructed, rehabilitated or conserved over a set period of time  
7 through the local government entity's participation under the Act;

8  
9 2) identification of potentially needed programs and agencies responsible for  
10 housing assistance which may include constructing new housing stock,  
11 improving existing housing stock, promoting access and equal opportunity  
12 to affordable housing, and increasing the capacity of residents to lower their  
13 housing cost burden, build long term equity, stabilize their housing situations  
14 through homebuyer training, rental vouchers, assistance to persons with  
15 disabilities, and other housing assistance as deemed appropriate and  
16 necessary;

**Deleted:** capacity

17  
18 3) plan to promote potential regulatory concessions and incentives for removing  
19 or mitigating governmental and non-governmental constraints to  
20 development, rehabilitation or conservation of affordable housing;

21  
22 4) identification of potential sources of federal, state and local financing and  
23 subsidies to support affordable housing;

24  
25  
26 4.2 The Proposed Affordable Housing Ordinance:

**Deleted:** <#>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.¶

27  
28 A. Must be provided to MFA, with other required, documentation, within the  
29 period prescribed by the Rules in Section 5.3(B)(1)(a) for submission to  
30 MFA prior to the county's or municipality's provision of a Housing  
31 Assistance Grant or Affordable Housing Funds. Failure to provide said  
32 ordinance and documentation to MFA, or to provide it in a timely fashion,

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1 or to act in accordance with MFA's determination that an ordinance is  
2 invalid under the Act, the State Constitution, and/or any other applicable  
3 law, shall automatically invalidate the ordinance and shall render invalid  
4 any act taken pursuant to the ordinance.

6  
7  
8 B. May provide for matching or using local, private or federal funds either  
9 through direct participation with a federal agency pursuant to federal law  
10 or through indirect participation through MFA.

11  
12 C. Shall comply with these Rules, as amended.

13  
14 D. Shall be effective subject to local ordinance requirements for publication  
15 and filing.

16  
17 E. Upon amendment, must be submitted to MFA for review of any and all  
18 changes for determination that the amended ordinance remains in  
19 compliance with the Act, these Rules, and other applicable law.

20  
21 F. A county or municipality shall amend its affordable housing ordinance  
22 upon and in accordance with a request by MFA for amendment to the  
23 ordinance to comply with the requirements of the Act and the Rules,  
24 Governmental entities may continue to make lawful donations pending  
25 approval of a new ordinance.

26  
27 G. All donations made pursuant to an affordable housing ordinance must be  
28 reported to MFA on an annual basis or pursuant to the requirements of  
29 the ordinance for reporting donations to MFA, whichever is the lesser  
30 period, in addition to the requirement to report such donations upon  
31 MFA's request.

**Deleted:** <#>Must authorize the type of contribution, state that the contribution complies with the affordable housing plan or housing elements in the general Comprehensive 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.¶

**Deleted:** <#>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.¶

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1           4.3    A county or municipality must base any transaction conducted under an  
2 approved program on a market valuation current at the time of the transaction. MFA may  
3 require proof from the county or municipality that the transaction was based on a current  
4 market value assessment.

5  
6           4.4    Any contribution otherwise made in violation of the Act, the Rules, the  
7 Constitution, or other applicable law, shall be deemed invalid under the Act.

8  
9    **SECTION 5. GENERAL REQUIREMENTS.** With the exception of Housing Assistance  
10 Grants of funding from the State, which shall be governed by Section 5.13 below, the  
11 following requirements shall apply to all Housing Assistance Grants and Affordable  
12 Housing Funds provided by a Governmental Entity and/or MFA under the Act to a  
13 Qualifying Grantee.

14  
15           5.1    Requests for Proposals/Award of Funds. The Governmental Entity and/or  
16 MFA, in its discretion, may issue one or more requests for proposals (“RFP’s”) to solicit  
17 applications (“Applications”) or shall otherwise identify a Qualifying Grantee for the use of  
18 any Affordable Housing Funds or Housing Assistance Grants to be awarded, loaned, or  
19 otherwise distributed under the Act.

20  
21           5.2    Applicant Eligibility. The following individuals, and for profit or nonprofit  
22 entities (“Applicants”) are eligible under the Act to apply for Affordable Housing Funds or a  
23 Housing Assistance Grant to provide housing or related services to Persons of Low or  
24 Moderate Income in their community:

25  
26           A. All individuals who are qualified to receive assistance pursuant to the Act, these  
27 Rules, and the requirements of any applicable affordable housing ordinance.

28  
29           B. All regional housing authorities, tribal governments, tribal housing agencies, and  
30 any governmental housing agencies.

31  
32           C. All for-profit organizations, including any corporation, limited liability company,

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1 partnership, joint venture, syndicate, or association or a nonprofit organization is  
2 eligible to apply if it is:

- 3
- 4 1) Organized under state, local, or tribal laws and can provide proof of such  
5 organization;
- 6
- 7 2) Have among its purposes significant activities related to providing  
8 housing or services to Persons or Households of Low or Moderate  
9 Income;
- 10
- 11 3) Have a functioning accounting system that is operated in accordance with  
12 generally accepted accounting principles or has designated an entity that  
13 will maintain such an accounting system consistent with generally  
14 accepted accounting principles;
- 15
- 16 4) Evidence or certification that it has no significant outstanding or  
17 unresolved monitoring findings from the Governmental Entity, MFA, or its  
18 most recent independent financial audit; and has not been suspended or  
19 debarred by any federal agency or MFA. If the applicant has any  
20 outstanding or unresolved monitoring findings, it must have a certified  
21 letter from the Governmental Entity, MFA, or auditor stating that the  
22 findings are in the process of being resolved.
- 23

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

- 25
- 26 1) A primary mission of the nonprofit organization must be to provide housing or  
27 housing-related services to Persons of Low or Moderate Income; and
- 28
- 29 2) The non-profit organization must have received its 501(c)(3) designation prior  
30 to submitting an Application.
- 31
- 32 3) The non-profit organization must have no part of its net earnings inuring to

Deleted:

1 the benefit of any member, founder, contributor, or individual.

2  
3 Any eligible Applicant may, at any time, submit to the Governmental Entity and/or MFA the  
4 information required by Section 5.3(A) sub-paragraphs (4), (5), (6), (8), (9), (10),  
5 (11), (12), (13), (14), (15), (16), (17), (20), (21), and (22) of these Rules, as applicable, in  
6 order to pre-qualify as a potential Qualifying Grantee. The Governmental Entity and/or  
7 MFA will review the information provided by any eligible Applicant and in its discretion, may  
8 certify in writing that the Applicant is a "Potential Qualifying Grantee." The Governmental  
9 Entity shall provide a copy of the certification to MFA upon its request. The Governmental  
10 Entity's and/or MFA's certification of an individual or entity as a Potential Qualifying  
11 Grantee shall be valid for up to one (1) year, subject to the ability of the Potential Qualifying  
12 Grantee to certify in writing, at the time of any Application or response to any RFP, that  
13 there have been no material changes in any of the information or documentation provided  
14 by, or representations made by the Potential Qualifying Grantee to the Governmental Entity  
15 and/or MFA and upon which information, documentation, and/or representations the  
16 Governmental Entity and/or MFA has based its decision to certify the Applicant as a  
17 Potential Qualifying Grantee. Notwithstanding the foregoing, simply because an Applicant  
18 is certified by the Governmental Entity and/or MFA as a Potential Qualifying Grantee does  
19 not mean that the Potential Qualifying Grantee will be chosen by the Governmental Entity  
20 or MFA as a Qualifying Grantee, or that MFA will determine that the Potential Qualifying  
21 Grantee is a Qualifying Grantee, or that any Application submitted by the Potential  
22 Qualifying Grantee is complete or otherwise in compliance with the Act and these Rules or  
23 that the Potential Qualifying Grantee will be awarded any Affordable Housing Funds or any  
24 Housing Assistance Grants.

25  
26 5.3 Applications.

27 A. Application Process for Non- Individual Applicants. Non-individual entities  
28 wishing to apply for Affordable Housing Funds to participate in any  
29 Affordable Housing Program are also required to submit to the Governmental  
30 Entity and/or MFA the following, as applicable:

31  
32 1) One original Application, together with all required schedules,

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1 documents, or such other information which may be required by the  
2 Governmental Entity and/or MFA or in any RFP which may have been  
3 issued by the Governmental Entity or MFA, must be included in the  
4 completed Application;

6 2) Evidence or certification that the Applicant has no significant outstanding  
7 or unresolved monitoring findings from the Governmental Entity, MFA,  
8 or its most recent independent financial audit; or if it has any significant  
9 outstanding or unresolved monitoring findings from the Governmental  
10 Entity, MFA, or its most recent independent financial audit, it has a  
11 certified letter from the Governmental Entity, MFA, or the auditor stating  
12 that the findings are in the process of being resolved;

14 3) Evidence (or a certification as may be allowed by the Governmental  
15 Entity and/or MFA) that the Applicant has a functioning accounting  
16 system that is operated in accordance with generally accepted  
17 accounting principles, or has a designated entity that will maintain such  
18 an accounting system consistent with generally accepted accounting  
19 principles;

21 4) Current independent financial audit;

23 5) Have among its purposes significant activities related to providing  
24 housing or housing-related services to Persons or Households of Low or  
25 Moderate Income; ;

27 6) A proposed budget and performance schedule for the Affordable Housing  
28 Project for which the Applicant is applying for Affordable Housing Funds  
29 or for a Housing Assistance Grant;

31 7) Project Narrative(s) that address the evaluation criteria set forth in any  
32 RFP issued by the Governmental Entity or MFA for the Affordable  
33 Housing Funds or the Housing Assistance Grant for which the Applicant  
34

**Deleted:** <#>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;¶

**Deleted:** For a "for profit" entity, an approved mission statement that has

**Deleted:** Executive Summary &

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1 is applying, including unit type and rent summary for Persons of Low or  
2 Moderate Income;

4  
5 8) List of current board members, including designated homeless  
6 participation, where required by the Governmental Entity and/or MFA;

7  
8 9) Organizational chart, including job titles for the Applicant's employees or  
9 as otherwise may be required by the Governmental Entity and/or MFA in  
10 its discretion. Job descriptions may be requested by the Governmental  
11 Entity and/or MFA as appropriate;

12  
13 10) Documentation that the Applicant is duly organized in accordance with  
14 State or local law and is in good standing with any state authorities such  
15 as the Public Regulation Commission (e.g. Articles, Bylaws, and  
16 Certificate of Good Standing for a Corporation; Articles, Operating  
17 Agreement, and Certificate of Good Standing for a Limited Liability  
18 Company; partnership agreement and certificate of limited partnership  
19 for a partnership);

20  
21 11) For non-profit organizations, proof of 501(c)(3) tax status;

22  
23 12) For non-profit organizations, documentation which confirms that no part  
24 of its net earnings inures to the benefit of any member, founder,  
25 contributor or individual;

26  
27 13) Certifications as may be required by the Governmental Entity and/or MFA  
28 signed by Chief Executive Officer, Board President or other authorized  
29 official of the Applicant;

30  
31 14) Information as may be required by the Governmental Entity and/or MFA  
32 in order for it to determine the financial and management stability of the

**Deleted:** <#>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 MFA in its discretion;¶

**Deleted:** and qualifications

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- 1 Applicant;
- 2
- 3 15) Information as may be required by the Governmental Entity and/or MFA
- 4 in order for it to determine the demonstrated commitment of the Applicant
- 5 to the community;
- 6
- 7 16) Applicant shall submit adequate information, as required by the
- 8 Governmental Entity and/or MFA, of the Affordable Housing Project
- 9 proposed by the Applicant. The information provided must clearly
- 10 evidence that the value of the housing assistance grant reduces the
- 11 housing costs to persons of low or moderate income;
- 12
- 13 17) Applicant shall submit information to the Governmental Entity and/or
- 14 MFA supporting the benefits to the community of the Affordable Housing
- 15 Project proposed by the Applicant;
- 16
- 17 18) The Governmental Entity and/or MFA may require that the applicant
- 18 provide proof of substantive or matching funds or contributions and/or in-
- 19 kind donations to the proposed Affordable Housing Project in connection
- 20 with the Application for funds under the Act. Nothing contained herein
- 21 shall prevent or preclude an Applicant from matching or using local,
- 22 private, or federal funds in connection with a specific Housing Assistance
- 23 Grant or a grant of Affordable Housing Funds under the Act;
- 24
- 25 19) Applicant shall provide the Governmental Entity and/or MFA with any
- 26 certifications or other proof which it may require in order for the
- 27 Governmental Entity and/or MFA to confirm that the Applicant is in
- 28 compliance with all applicable federal, state and local laws, rules and
- 29 ordinances;
- 30

31 B. For Applicants who are submitting Applications in connection with a Multi-

32 Family Housing Project, the following additional information shall also be

Deleted:

1 required to be submitted by the Applicant to the Governmental Entity and/or  
2 MFA:

3  
4 a) A verified certificate that, among other things:

5  
6 i. identifies every Multi-Family Housing Program, including every  
7 assisted or insured project of HUD, RHS, FHA and any other  
8 state or local government housing finance agency in which  
9 such Applicant has been or is a principal;

10  
11 ii. except as shown on such certificate, states that:

12  
13 I. no mortgage on a project listed on such certificate has ever  
14 been in default, assigned to the United States government  
15 or foreclosed, nor has any mortgage relief by the mortgagee  
16 been given;

17  
18 II. there has not been a suspension or termination of payments  
19 under any HUD assistance contract in which the Applicant  
20 has had a legal or beneficial interest;

21  
22 III. such Applicant has not been suspended, debarred or  
23 otherwise restricted by any department or agency of the  
24 federal government or any state government from doing  
25 business with such department or agency because of  
26 misconduct or alleged misconduct; and

27  
28 IV. the Applicant has not defaulted on an obligation covered by  
29 a surety or performance bond.

30  
31 If such Applicant cannot certify to each of the above, such Applicant  
32 shall submit a signed statement to explain the facts and

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1 circumstances which such Applicant believes will explain the lack of  
2 certification. The Governmental Entity and/or MFA may then  
3 determine if such Applicant is or is not qualified.  
4

5 b) The experience of the Applicant in developing, financing and  
6 managing Multiple-Family Housing Projects.  
7

8 c) Whether the Applicant has been found by the United States Equal  
9 Employment Opportunity Commission or the New Mexico Human  
10 Rights Commission to be in noncompliance with any applicable civil  
11 rights laws.  
12

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

15 a. The financial condition of the Applicant;

16 b. The terms and conditions of any loans to be made;

17  
18 c. The aggregate principal balances of any loans to be made to each  
19 Applicant compared with the aggregate principal balances of the loans  
20 to be made to all other Applicants;  
21

22  
23 d. The Governmental Entity and/or MFA's assessment of the ability of  
24 the Applicant or its designated servicer to act as originator and  
25 servicer of Mortgage Loans for any Multi-Family Housing Programs or  
26 other programs to be financed; and  
27

28 e. Previous participation by the Applicant in MFA's programs and HUD,  
29 FHA, or RHS programs.  
30

31 C. Application Process For Individual Applicants: One original Application  
32 together with all required schedules, documents, or such other information

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1 which may be required by the Governmental Entity and/or MFA must be  
2 included in the completed Application;

3  
4 All Applications, from individual and non-individual Applicants, shall contain a verification  
5 signed by the Applicant before a notary public that the information provided, upon penalty  
6 of perjury, is true and correct to the best of the Applicant's information, knowledge, and  
7 belief.

8  
9 D. Submission Procedure:

10  
11 1) Time, Place and Method of Submission Delivery.

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

27  
28 b) Applications shall be submitted by Applicants to the Governmental  
29 Entity or MFA in the form and by the time as required by the  
30 Governmental Entity or MFA and shall contain all information which  
31 is required by the Act, these Rules, any RFP which may have been  
32 issued, and by the Governmental Entity or MFA.

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

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

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1 will be treated as missing information and evaluated accordingly.

2  
3 d. The Governmental Entity and/or MFA reserve the right to request  
4 further information from any Applicant so long as the request is  
5 done fairly and does not provide any Applicant an undue  
6 advantage over another.

7  
8 e. The Governmental Entity or MFA in its discretion may cancel any  
9 RFP or reject any or all proposals in whole or part submitted by any  
10 Applicant.

11  
12 f. Neither the Governmental Entity nor MFA shall be responsible for  
13 any expenses incurred by an Applicant in preparing and submitting  
14 an Application. However, the Governmental Entity or MFA, as  
15 applicable, may establish and collect fees from Applicants who file  
16 Applications. Notice that fees will be charged and the amount of  
17 any such fees shall be included by the Governmental Entity or  
18 MFA, as applicable, in any RFP, or otherwise shall be advertised  
19 as part of the Application solicitation process.

20  
21 E. Review by the Governmental Entity and/or MFA. On receipt of an Application,  
22 the Governmental Entity and/or MFA shall:

23  
24 1) Determine whether the Application submitted by the Applicant is complete  
25 and responsive;-

26  
27 2) Determine whether the Applicant is a Qualifying Grantee as defined  
28 herein and in the Act;

29  
30  
31 5.4 Certification by the Governmental Entity to MFA.  
32

**Deleted:** <#>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;¶

¶ 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; Do we include language from above here as well? The Governmental Entity and/or MFA may waive this criteria if no other organization has applied for Affordable Housing Funds or a Housing Assistance Grant;¶

¶ 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 MFA in any RFP or otherwise;¶

¶ Determine whether the Applicant has support from "public service agencies," or such other support as may be required by the Governmental Entity and/or 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;¶

¶ 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;¶

¶ 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;¶

¶ Ascertain whether the Applicant has and can demonstrate the capability to manage the implementation of the program for which the Applicant is applying;¶

¶ If Applicant is a prior recipient of either a Housing g.

**Deleted:**

1 A. The Governmental Entity upon:

- 2
- 3 1) Completion of its review of the Application;
- 4
- 5 2) Determination that the Application is complete;
- 6
- 7 3) Determination that the requirements of these Rules and the Act have
- 8 been satisfied; and
- 9
- 10 4) Determination that the Applicant is a Qualifying Grantee shall so certify
- 11 in writing to MFA.
- 12

13 B. Review by MFA. MFA upon its receipt of the certification from the

14 Governmental Entity may, in its discretion, review the Application and any

15 of the materials submitted by the Applicant to the Governmental Entity.

16 MFA may also request any additional information from the Applicant,

17 which it may require in order to determine whether the Applicant is a

18 Qualifying Grantee under the Act and the Application is complete. MFA

19 will then notify the Governmental Entity of its determination of whether or

20 not the Application is complete and that the requirements of the Act and

21 these Rules have been satisfied and the Applicant is a Qualifying

22 Grantee. Unless the period is extended for good cause shown, MFA shall

23 act on an Application within forty- five

24 (45) days of its receipt of any Application, which MFA deems to be

25 complete, and, if not acted upon, the Application shall be deemed to be

26 approved.

27 5.5 Notification to Applicant. The Governmental Entity and/or MFA, upon

28 completion of its review of the Application and an evaluation of the criteria for approval of

29 the Application as set forth in the Act, in any applicable ordinance, these Rules and in any

30 RFP issued by the Governmental Entity and/or MFA and upon its determination that the

31 Applicant is a Qualifying Grantee, and upon its receipt of notification from MFA that it

32 agrees that the Application is complete and that the Act and these Rules have been

Deleted:

1 satisfied and the Applicant is a Qualifying Grantee, by written notice shall notify each  
2 Applicant which has submitted an Application of the approval or disapproval of its  
3 Application. Upon approval of its Application, the Applicant shall be considered approved  
4 to participate in the Affordable Housing Program. The Governmental Entity's and/or MFA's  
5 determination of any Application shall be conclusive.

6  
7 5.6 Additional Requirements. Upon acceptance, the following additional  
8 requirements shall apply to any Applicant, who is a Qualifying Grantee:

9  
10 A. Contractual Requirements. The Qualifying Grantee shall enter into one or more  
11 contracts with the Governmental Entity and/or MFA, which contract(s) shall be  
12 consistent with the Act and subject to the review of MFA, in its discretion, and  
13 which contract(s) shall include remedies and default provisions in the event of  
14 the unsatisfactory performance by the Qualifying Grantee;

15  
16 B. Security Provisions; Collateral Requirements. In accordance with the Act and  
17 these Rules, the Governmental Entity and/or MFA shall require the Qualifying  
18 Grantee to execute documents, which will provide adequate security against the  
19 loss of public funds or property in the event the Qualifying Grantee abandons or  
20 fails to complete the Affordable Housing Project, and which shall further provide,  
21 as may be permitted by law, for the recovery of any attorneys' fees and costs  
22 which the Governmental Entity and/or MFA may incur in enforcing the provisions  
23 of these Rules, the Act and/or any agreement entered into by the Governmental  
24 Entity and/or MFA and the Qualifying Grantee, and which documents may  
25 include, but are not limited to the following: note, Mortgage, loan agreement,  
26 land use restriction agreement, restrictive covenant agreements and/or any  
27 other agreement which the Governmental Entity and/or MFA may require in  
28 order to allow for any funds which the Qualifying Grantee may receive under a  
29 Housing Assistance Grant to be adequately secured and to allow the  
30 Governmental Entity and/or MFA to ensure that such funds shall be utilized by  
31 the Qualifying Grantee in accordance with the Act and these Rules;

32 Deleted:



1 C. Performance Schedule and Criteria. The Qualifying Grantee shall be required to  
2 abide by a reasonable performance schedule and performance criteria which the  
3 Governmental Entity and/or MFA, in its discretion, may establish; and  
4

5 D. Examination of Books and Records. The Qualifying Grantee shall submit to and  
6 the Governmental Entity and/or MFA shall cause to be made such examinations  
7 of the books and records of each Qualifying Grantee as the Governmental Entity  
8 and/or MFA deems necessary or appropriate to determine the Qualifying  
9 Grantee's compliance with the terms of the Act, these Rules and any contracts  
10 between the Qualifying Grantee and the  
11 Governmental Entity and/or MFA. The Governmental Entity and/or MFA may  
12 require each Qualifying Grantee to pay the costs of any such examination.  
13

14 E. Cost Reimbursement Contracts:  
15

16 1) Cost Reimbursements. Payment to a Qualifying Grantee under cost  
17 reimbursable contract provisions shall be made upon the Governmental  
18 Entity's and/or MFA's receipt from the Qualifying Grantee of certified and  
19 documented invoices for actual expenditures allowable under the terms of  
20 any agreement between the Qualifying Grantee and the Governmental Entity  
21 and/or MFA.  
22

23 2) Cost Reimbursements For Units of Service. Payment under any unit cost  
24 contract provisions shall be made upon the Governmental Entity's and or  
25 MFA's receipt from the Qualifying Grantee of a certified and documented  
26 invoice showing the number of units of service provided during the billing  
27 period.  
28

29 3) Rate at which Costs Incurred. Under unit cost or cost reimbursable contracts,  
30 it is anticipated that costs will be incurred by the Qualifying Grantee at an  
31 approximate level rate during the term of any agreement between the  
32 Qualifying Grantee and the Governmental Entity and/or

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1 MFA. If the Governmental Entity and/or MFA determine that the Qualifying  
2 Grantee is underspending or overspending, then the Governmental Entity  
3 and/or MFA may reduce the budget and/or exercise such other budgetary  
4 fiscal controls it deems appropriate.

5  
6 4) Invoices. Qualifying Grantees shall not submit invoices more than once a  
7 month, unless written approval is obtained in advance from the  
8 Governmental Entity and/or MFA. Failure to submit invoices within twenty  
9 (20) days of the close of the month for which payment is sought may result in  
10 the non-availability of funds for reimbursement.

11  
12 5) No Dual Application of Costs. The Qualifying Grantee shall certify that any  
13 direct or indirect costs claimed by the Qualifying Grantee will not be allocable  
14 to or included as a cost of any other program, project, contract, or activity  
15 operated by the Qualifying Grantee and which has not been approved by the  
16 Governmental Entity and/or MFA in advance in writing.

17  
18 6) Prohibition of Substitution of Funds. Any Affordable Housing Funds or other  
19 amounts received by Qualifying Grantee may not be used by Qualifying  
20 Grantee to replace other amounts made available or designated by State or  
21 local governments through appropriations for use for the purposes of the Act.

22  
23 7) Cost Allocation. If required by the Governmental Entity and/or MFA, the  
24 Qualifying Grantee shall clearly identify and distribute all costs incurred  
25 pertaining to the Affordable Housing Project by a methodology and cost  
26 allocation plan at times and in a manner prescribed by, or acceptable to the  
27 Governmental Entity and/or MFA.

28  
29 F. Additional Information. Qualifying Grantees shall provide the Governmental  
30 Entity and/or MFA with any and all information which the Governmental Entity  
31 and/or MFA reasonably may require in order for it to confirm that the Qualifying  
32 Grantees continue to satisfy the requirements of the Act and these Rules

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1 throughout the term of any contract and/or any Affordability Period (defined  
2 below) or otherwise as may be required by the Governmental Entity and/or MFA  
3 in its discretion. At a minimum, on an annual basis, the Governmental Entity shall  
4 certify to MFA in writing that the Qualifying Grantee is still in compliance with the  
5 Act and these Rules.  
6

7 5.7 Affordable Housing Requirements. All Affordable Housing Funds or Housing  
8 Assistance Grants awarded under the Act are to be used by Qualifying Grantees for the  
9 benefit of Persons of Low or Moderate Income subject to the provisions of the Act and with  
10 particular regard to their to their housing related needs.  
11

12 A. Single Family Property. Qualifying Grantees shall agree that they shall maintain  
13 any single-family property which has been acquired, rehabilitated, weatherized,  
14 converted, leased, repaired, constructed, or which property has otherwise  
15 benefited from Affordable Housing Funds, including but not limited to any loans  
16 which have been repaid with Affordable Housing Funds and which loans  
17 previously were secured by such properties, as Affordable Housing for so long  
18 as any or all of the Affordable Housing Funds which have been awarded, loaned,  
19 or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or  
20 the Affordability Period (defined below), whichever is longer.  
21

22 B. Multi-Family Property.  
23

24 1) Single Apartment within a Multi-Family Property. Qualifying Grantees shall  
25 agree that, if any single apartments are to be rehabilitated, weatherized,  
26 converted, leased, repaired, constructed, or otherwise are to benefit from  
27 Affordable Housing Funds, those apartments shall be leased to Persons of  
28 Low or Moderate Income at the time of any such award. Qualifying Grantees,  
29 who are the landlords and/or owners of such properties, shall further agree  
30 to contribute a percentage of the total cost of the rehabilitation,  
31 weatherization, conversion, lease, repair, and/or construction, as required by  
32 the local government or MFA. Qualifying Grantees also shall agree that the

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1 Persons of Low or Moderate Income, who are tenants of those apartments,  
2 shall be allowed to remain tenants for so long as there are no uncured  
3 defaults by those tenants under their respective leases and provided that  
4 there is no just cause for the landlord to terminate any lease agreement with  
5 those tenants.  
6

7 2) Multiple Apartments. Qualifying Grantees shall agree that, if multiple  
8 apartments or an entire multi-family property are to be acquired,  
9 rehabilitated, weatherized, converted, leased, repaired, constructed, or  
10 otherwise are to benefit from Affordable Housing Funds, including but not  
11 limited to any loans which have been repaid with Affordable Housing Funds  
12 and which loans previously were secured by such properties, they shall  
13 maintain as Affordable Housing a percentage of units set aside for Persons  
14 of Low or Moderate Income, that is in direct proportion to the amount of  
15 subsidy provided as a percentage of total cost. These set aside units shall be  
16 maintained as Affordable Housing for so long as any or all of the Affordable  
17 Housing Funds which have been awarded, loaned, or otherwise conveyed to  
18 the Qualifying Grantee are unpaid and outstanding or the Affordability Period,  
19 whichever is longer.  
20

21 C. Non-Residential Property. Qualifying Grantees shall agree that they shall  
22 maintain any non-residential property which has been acquired, rehabilitated,  
23 weatherized, converted, leased, repaired, constructed, or which property has  
24 otherwise benefited from Affordable Housing Funds, including but not limited to  
25 any loans which have been repaid with Affordable Housing Funds and which  
26 loans previously were secured by such properties, as a facility which provides  
27 housing related-services to Persons of Low or Moderate Income for so long as  
28 any or all of the Affordable Housing Funds which have been awarded, loaned,  
29 or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or  
30 the Affordability Period, whichever is longer.  
31

32 D. Housing Assistance Grant Affordability Requirements. Qualifying Grantees shall

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1 agree that they shall maintain any land or buildings received as a Housing  
2 Assistance Grant either as either single-family or multi-family Affordable Housing  
3 in accordance with paragraphs A and B of this Section

4 45.6 or as a facility which provides housing related-services to Persons of Low  
5 or Moderate Income in accordance with paragraph C of this Section 45.6 (as  
6 applicable) for the duration of the Affordability Period. Qualifying Grantees shall  
7 agree that they shall maintain any land or buildings for which they have received  
8 the costs of acquisition, development, construction, financing, operating, or  
9 owning as a Housing Assistance Grant either as either single- family or multi-  
10 family Affordable Housing or as a facility which provides housing related-  
11 services to Persons of Low or Moderate Income (as applicable) for the duration  
12 of the Affordability Period. In calculating the Affordability Period for Housing  
13 Assistance Grants of either land or buildings, or the costs of acquisition,  
14 development, construction, financing, operating or owning land or buildings, or  
15 the costs of Infrastructure at the time of the donation by the state, county or  
16 municipality shall apply.

17  
18 E. Affordability Period Defined. If the fair market value of any Housing Assistance  
19 Grant or the total amount of Affordable Housing Funds which have been  
20 awarded, loaned, donated, or otherwise conveyed to the Qualifying Grantee is  
21 from \$1 to \$14,999, then the Affordability Period shall be not less than five (5)  
22 years. If the fair market value of any Housing Assistance Grant or the total  
23 amount of Affordable Housing Funds is from \$15,000 up to and including  
24 \$40,000, then the Affordability Period shall be not less than ten (10) years. If the  
25 fair market value of any Housing Assistance Grant or the total amount of  
26 Affordable Housing Funds is from \$40,000 up to and including  
27 \$100,000, then the Affordability Period shall be not less than fifteen (15) years.  
28 If the fair market value of any Housing Assistance Grant or the total amount of  
29 Affordable Housing Funds is greater than \$100,000, then the Affordability Period  
30 shall be not less than twenty (20) years. The Governmental Entity and/or MFA,  
31 in its discretion, may increase the Affordability Period in any contract, note,  
32 mortgage, loan agreement, land use restriction agreement, restrictive covenant

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1 agreements and/or any other agreement which the Governmental Entity and/or  
2 MFA may enter into with any Qualifying Grantee or beneficiary of the Affordable  
3 Housing Funds or of the Housing Assistance Grant. Notwithstanding the  
4 foregoing, in the discretion of MFA, Weatherization Funds conveyed from the  
5 State to MFA and/or any other similar conveyances where an Affordability Period  
6 is not practical, shall not be subject to the Affordability Period requirements of  
7 this Section; but nevertheless, any such conveyances may be subject to  
8 recapture on some pro-rated basis as determined by the Governmental Entity  
9 and/or MFA.

10  
11 5.8 Consent to Jurisdiction. Each Qualifying Grantee shall consent to the  
12 jurisdiction of the courts of the State of New Mexico over any proceeding to enforce  
13 compliance with the terms of the Act, these Rules and any agreement between the  
14 Qualifying Grantee and the Governmental Entity and/or MFA.

15  
16 5.9 Recertification. The Qualifying Grantee must meet the requirements of the  
17 Act and these Rules and any applicable ordinance both at the time of any award and  
18 throughout the term of any grant and contract related thereto. The Governmental Entity  
19 and/or MFA may establish procedures for recertifying Qualifying Grantees from time to  
20 time. Qualifying Grantees which fail to satisfy the requirements for recertification shall  
21 cease to be eligible and shall be denied further participation in Affordable Housing  
22 programs until the requirements of the Governmental Entity and/or MFA are satisfied.

23  
24 5.10 Compliance with the Law. Qualifying Grantee shall provide the Governmental  
25 Entity and/or MFA with any certifications or other proof which it may require in order for the  
26 Governmental Entity and/or MFA to confirm that the Qualifying Grantee and the Qualifying  
27 Grantee's proposed project are in compliance with all applicable federal, state and local  
28 laws, rules and ordinances.

29  
30 5.11 Extension of Affordable Housing Programs. MFA shall have the power to  
31 create variations or extensions of such Affordable Housing programs, or additional  
32 programs which comply with the Act and these Rules.

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5.12 The Governmental Entity and/or 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 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 MFA to the Qualifying Grantee without the issuance of an RFP by the Governmental Entity and/or 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 MFA with a written certification that the proposed grantee is in compliance with the Act and these Rules so that 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

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1 Governmental Entity and/or MFA, in their discretion, may also hold any Housing Assistance  
2 Grant made by any school district or post-secondary educational institution in suspense  
3 pending the issuance by the Governmental Entity and/or MFA of any RFP or pending the  
4 award of the Housing Assistance Grant by the Governmental Entity and/or the MFA to the  
5 Qualifying Grantee without the issuance of an RFP by the Governmental Entity and/or  
6 MFA. Any award of a Housing Assistance Grant by a school district or a post-secondary  
7 educational institution shall subject the Qualifying Grantee of the grant to the oversight of  
8 the Governmental Entity and/or MFA under these Rules.

9  
10 5.14 Housing Assistance Grants From the State. All Housing Assistance Grants  
11 from the State pursuant to the Act shall be appropriated to the Department of Finance and  
12 Administration for disbursement by MFA to a Qualifying Grantee through use of a contract  
13 consistent with the provisos in the State appropriation and these Rules.

14  
15 **SECTION 6. DISCRIMINATION PROHIBITED**. The development, construction,  
16 occupancy and operation of an Affordable Housing Program or an Affordable Housing  
17 Project financed or assisted under the Act shall be undertaken in a manner consistent with  
18 principles of non-discrimination and equal opportunity, and the Governmental Entity and/or  
19 MFA shall require compliance by all Qualifying Grantees with all applicable federal and  
20 State laws and regulations relating to affirmative action, non-discrimination and equal  
21 opportunity.

22  
23 **SECTION 7. ADMINISTRATION**. The Governmental Entity and/or MFA shall administer  
24 any Affordable Housing programs in accordance with provisions of the Act, these Rules,  
25 any applicable state and federal laws and regulations as each of which may be amended  
26 or supplemented from time to time. The Governmental Entity and/or MFA, in establishing,  
27 funding and administering the Affordable Housing Programs and by making, executing,  
28 delivering and performing any award, contract, grant or any other activity or transaction  
29 contemplated by the Act, shall not violate any provision of law, rule or regulation or any  
30 decree, writ, order, injunction, judgment, determination or award and will not contravene  
31 the provisions of or otherwise cause a default under any of its agreements, indentures, or  
32 other instruments to which it may be bound.

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

- 8
- 9 A. The Governmental Entity must ascertain that the title to the property has been  
10 transferred to the Governmental Entity through a foreclosure sale, a transfer of title  
11 by deed in lieu of foreclosure or any other manner.
- 12
- 13 B. If the Governmental Entity has or will acquire title, then it must determine if, under  
14 the contractually imposed affordability restrictions requiring long-term occupancy by  
15 Persons of Low or Moderate Income, the property is or is not marketable for a price  
16 that would sufficiently recover the investment of public funds.
- 17
- 18 C. If the determination is that the property cannot be sold under the affordability  
19 restrictions for a price that would recover the investment of public funds in the

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1 property, then the Governmental Entity shall obtain a written appraisal of the fair  
2 market value of the project, without the affordability restrictions, that is current to the  
3 time the project is put up for sale.

4  
5 D. The Governmental Entity shall thereafter, prior to the sale of the project, request  
6 MFA review and approval of the determination to release the affordability restrictions  
7 on the property to effect a sale. The Governmental Entity must provide MFA with a  
8 certification that its determination to sell the affordable housing project without the  
9 affordability restrictions was made pursuant to the requirements of this Section of  
10 these Rules. Following receipt of MFA approval of the determination to release the  
11 affordability restrictions to effect a sale, the Governmental Entity may release the  
12 affordability restrictions upon sale of the project at a fair market value current to the  
13 time of the sale.

14  
15 E. Exercise reasonable efforts to ensure that all proceeds from the sale of a property  
16 pursuant to this section are used solely for purposes pursuant to the Affordable  
17 Housing Act and that the Qualifying Grantee that held title to the property shall not  
18 benefit from the sale of the property or from the transfer of the affordable housing  
19 project.

20  
21 **SECTION 9. ENFORCEMENT.** The New Mexico Attorney General's Office is the State  
22 agency responsible for enforcing compliance with the requirements of the Act and these  
23 Rules. Noncompliance by any entity whose actions fall within the jurisdiction of the Act and  
24 these Rules will be reported by MFA to the Attorney General's Office for investigation. The  
25 Attorney General's Office will investigate an alleged violation of the Act reported by the  
26 Authority, and based on a reasonable belief that a violation of the Act has occurred, may  
27 bring a civil action and/or pursue criminal charges against the alleged violator. Civil  
28 penalties for a judicial finding of a violation of the Act shall not exceed the amount of five  
29 thousand dollars (\$5,000) per violation, in addition to any equitable relief imposed by the  
30 court.

31  
32 **SECTION 10. MISCELLANEOUS.** Capitalized terms not otherwise defined in these Rules

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1 and Regulations have the same meaning as defined in the Act.

2  
3 **SECTION 11. AMENDMENT TO RULES AND REGULATIONS.** These Rules may be  
4 amended or supplemented by MFA at any time. With regard to any amended or  
5 supplemental rules under this Section, MFA shall seek comment from the Oversight  
6 Committee, provide a public hearing in accordance with the State Administrative  
7 Procedures Act, and require concurrence in any rule having application to local  
8 government by both the New Mexico municipal league and the New Mexico Association of  
9 Counties, all as required by the Act.

10  
11 Adopted by the MFA's Board: October 17, 2007 and, as amended, on December 16, 2015  
12 and as amended on

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1 Footnotes

2  
3 <sup>1</sup> The following definitions in these Rules were either 1) modeled on MFA's internal Rules  
4 and Regulations, which were revised by t MFA in October of 2006, approved by the  
5 Oversight Committee on November 14, 2006, and adopted by the Board on January 24,  
6 2007, 2) modeled on or taken directly from the Act, as revised in the 2006 Legislative  
7 Session, or 3) taken directly from MFA's Policy and Procedures manual approved by  
8 MFA's Board of Directors in November of 2022. All definitions given were created to  
9 support the goals of the Act and the Rules.

10  
11 <sup>2</sup> Solely for the purposes of the Affordable Housing Act to distinguish the Authority from any  
12 other Governmental Entity, the term "MFA" will always be used when a rule or provision  
13 applies to the Authority.

14  
15 <sup>3</sup> Household AMI percentages designated by ordinance provisions as qualifying for subsidy  
16 may remain the same despite annual changes to the numeric amounts of income attributed  
17 to each AMI percentage.

**Moved (insertion) [1]:** <sup>2</sup> 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.¶

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