



NEW MEXICO
FINANCE AUTHORITY

MEMORANDUM

To: New Mexico Finance Authority Oversight Committee
From: Dan Opperman, Chief Legal Officer
Chip Pierce, Chief Financial Strategist
Date: August 12, 2024
Re: Approval of Draft Rule Amendments – Public Project Revolving Fund Rules

Item: Approval of Amended and Restated Rules Governing the Public Project Revolving Fund (“PPRF”) Program.

Background:

As the result of amendments to the NMFA Act during the 2024 Legislative Session (SB 216), staff has undertaken a massive effort to update the PPRF Rules to incorporate the reality of the capital banking environment, our borrowers’ capital access needs, and to make conforming changes due to the legislated changes. In summary, the PPRF Rules are outdated and do not appropriately capture either the most recent legislative changes or the current practices of the PPRF Program.

As the updated Rules must be reviewed and approved by NMFA’s Legislative Oversight Committee, any proposed changes by the NMFA Oversight Committee will be identified when they are brought back to the NMFA Board for final approval.

Key Points of the Proposed Amended PPRF Rules:

- Sections 1 and 2 - Overall conforming changes to defined terms to provide consistency across multiple NMFA programs and practices
- Section 3 – Updated definitions to conform to statutory changes, to include references to the newly created Junior Lien, to update NMFA committee titles, and other minor conforming changes
- Section 4 – Revised to fix outdated practice
- Section 5 (Application Procedures) – updated to capture appropriate policy reference, removed items now included in NMFA’s PPRF Loan Management Policies, updated committee titles
- Section 6 – Minor changes pertaining to evaluations to confirm to current practice

- Section 7 – revised to remove outdated provision of law regarding redirecting funds
- Section 8 – removed loan guarantee’s (was specific to specific legislation only (Metro Court bonds), updated to include the Junior Lien, revised GGRT distribution in Section B(2) to be consistent with policy and practice
- Section 9 – removed items now captured in NMFA’s PPRF Loan Management Policies and other conforming changes
- Section 10 – updated to capture appropriate appeal process
- Sections 11 to 13 – No significant changes, conforming language only

Recommendation:

NMFA Staff recommend approval of the Amended PPRF Rules.

AMENDED AND RESTATED
RULES ~~AND~~
~~REGULATIONS~~
GOVERNING THE
PUBLIC PROJECT REVOLVING FUND PROGRAM

AS ADOPTED

~~**OCTOBER 22, 2015**~~
[AUGUST 29, 2024]

BY THE BOARD OF DIRECTORS OF THE
NEW MEXICO FINANCE AUTHORITY

AND APPROVED BY THE
NEW MEXICO FINANCE AUTHORITY

OVERSIGHT COMMITTEE

~~**OCTOBER 6, 2015**~~
[AUGUST 12, 2024]

SECTION 1. AUTHORITY

The New Mexico Finance Authority (~~“NMFA”~~) Public Project Revolving Fund (~~“PPRF”~~) Program Rules ~~and Regulations~~ (~~“Rules”~~) are adopted by the ~~New Mexico Finance Authority~~ NMFA pursuant to the ~~New Mexico Finance Authority~~ NMFA Act, §§ 6-21-1 to 6-21-31 NMSA 1978, ~~as amended~~. Section 6-21-5(C) NMSA 1978 provides that the ~~New Mexico Finance Authority~~ NMFA has the power to adopt such regulations as are necessary and appropriate ~~to implement the provisions of the~~ New Mexico Finance Authority NMFA Act, subject to the review and approval of the ~~New Mexico Finance Authority~~ NMFA Oversight Committee, as hereinafter ~~defined~~. ~~Section 6-21-6(A) NMSA 1978 creates the "Public Project Revolving Fund" within the~~ Authority NMFA and authorizes the ~~Authority~~ NMFA to establish procedures and regulations as required to administer the ~~Public Project Revolving Fund~~ PPRF subject to the review and approval of the ~~New Mexico Finance Authority~~ NMFA Oversight Committee as required by 6-21-5(C) NMSA 1978.

SECTION 2. PURPOSE OF RULES ~~AND REGULATIONS~~

Section 6-21-7 NMSA 1978 authorizes the ~~New Mexico Finance Authority~~ NMFA to develop and administer a program to assist qualified entities individually or jointly in financing public projects, establish a process and procedures for review and assessment of public project needs in New Mexico, and cooperate with and exchange services and information with federal, state and local government agencies. The purpose of these Amended and Restated Rules ~~and Regulations~~ ~~(the “Rules and Regulations”)~~ is to provide a framework for the implementation and administration of the ~~Public Project Revolving Fund~~ PPRF Program authorized by §§ 6-21-6(A) and 6-21-7 NMSA 1978. Specific details of the PPRF Program, including Application contents, establishment of interest rates, coverage requirements, reserve requirements, portfolio diversification and other lending criteria shall be established in the ~~Authority’s~~ NMFA’s Loan Management Policies. These Rules ~~and Regulations~~ do not apply to other programs established by the ~~Authority~~ NMFA and do not apply to projects funded from the ~~Public Project Revolving Fund~~ PPRF pursuant to the provisions of Section 6-21-6.1 NMSA 1978.

SECTION 3. DEFINITIONS

A. "Act" means the ~~New Mexico Finance Authority~~ NMFA Act, §§ 6-21-1 to 6-21-31 NMSA 1978, as amended.

~~B. "Agreement" means the document or documents signed by the Board and the Qualified Entity which specify the terms and conditions of obtaining Financial Assistance under the Program;~~

~~A.B.~~ "Applicant" means a Qualified Entity which has filed a request for Financial Assistance from the Program with the ~~Authority~~ NMFA, except when the Qualified Entity is a charter school, in which case the Applicant shall be the chartering authority, as defined in the Charter Schools Act, on behalf of the charter school, or the ~~Charter School~~ charter school itself, acting with the authority of the ~~Charter School’s~~ charter school’s Board of Directors;

B.C.

~~C.~~ "Application" means a written document filed with the ~~Authority~~NMFA by an Applicant for the purpose of obtaining Financial Assistance; an Application may include a form prescribed by the ~~Authority~~NMFA, written responses to requests for information by the ~~Authority~~NMFA, or other format as determined by the ~~Authority~~;

~~D.~~ "Authority" ~~means the New Mexico Finance Authority~~NMFA;

~~E.~~D. "Authorized Representative" means one or more individuals duly authorized by the governing body of a Qualified Entity to act on behalf of the Qualified Entity in connection with its Application, to the extent provided by law;

~~F.~~E. "Board" means the ~~New Mexico Finance Authority~~NMFA Board created by the Act;

~~G.~~F. "Bond" means any bond, note, certificate of participation, loan agreement or other evidence of indebtedness;

~~H.~~G. "Disadvantaged Funding" means the provision of Financial Assistance at fixed interest rates of zero percent or two percent to a Disadvantaged Qualified Entity, as determined by the ~~Authority~~NMFA pursuant to these Rules and ~~its~~NMFA's Loan Management Policies.

~~I.~~H. "Disadvantaged Qualified Entity" means a Qualified Entity with a median household income, as determined by the Board based on the most recent 5-year average of Statewide Median Household Income from census data or through a survey acceptable to the ~~Authority~~NMFA, of less than one hundred (100) percent of the Statewide Median Household Income; ~~(100) percent of the statewide median household income~~;

~~"Finance and Loan Committee" means a committee, appointed by the chairman of the Board from the members of the Board and/or the Authority staff;~~

~~J.~~

~~K.~~I. "Financial Assistance" means a loan to a Qualified Entity made by the ~~Authority~~NMFA, the purchase by the ~~Authority~~NMFA of securities issued by a Qualified Entity, ~~loan guarantees~~Lease-Purchase Agreements, and any other type of assistance authorized by the Act, or a combination thereof, provided by the ~~Authority~~NMFA to a Qualified Entity under the Program for the financing or refinancing of a Public Project, and which may include the provision of Disadvantaged Funding;

~~L.~~J. "General Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, by and between the ~~New Mexico Finance Authority~~NMFA and BOKF, N.A., as successor trustee, as supplemented and amended.

K. "Junior Indenture" means the Junior Lien General Indenture of Trust and Pledge dated as of April 1, 2024 by and between the NMFA and BOKF, N.A., as supplemented and amended.

L. "Lease-Purchase Agreement" has the meaning set forth in the Public School Lease Purchase Act, Section 22-26A-3(A), as amended and supplemented from time to time.

M. "Loan Management Policies" means the specific details governing the Program, including Application contents, establishment of interest rates, coverage requirements, reserve requirements, portfolio diversification and other lending criteria.

N. "NMFA" means the New Mexico Finance Authority.

~~N.O.~~ "Oversight Committee" means the joint interim legislative committee established pursuant to § 6-21-30 NMSA 1978;

~~O.P.~~ "Program" means the ~~Public Project Revolving Fund~~ PPRF Program authorized by the Act;

~~P.Q.~~ "Project Account" means a fund designated exclusively for receipt of Program funds;

R. "Public Lending Committee" means a committee appointed by the Board Chair consisting of members of the Board.

~~Q.S.~~ "Public Project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a Qualified Entity, including ~~but not limited to~~ land, buildings, water rights, water, sewerage and waste disposal systems, streets, housing, airports, municipal utilities, public recreational facilities, public transportation systems, parking facilities, and machinery, furniture and equipment. "Public project" includes all proposed expenditures related to the entire undertaking. "Public project" also includes the acquisition, construction or improvement of real property, buildings, facilities and other assets by the Authority NMFA for the purpose of leasing the property. ~~With respect to a Qualified Entity that is a charter school, "Public Project" means the acquisition, pursuant to the Public School Lease Purchase Act, of facilities essential to the governmental purpose of the charter school;~~

~~R.T.~~ "~~Public Project Revolving Fund~~" or "PPRF" means the Public Project Revolving Fund created by Section 6-21-6(A) NMSA 1978.

S.U. "Qualified Entity" means the state or any agency or institution of the state or any county, municipality, school district, two-year public post-secondary educational institution, charter school, land grant corporation, acequia association, public improvement district, federally chartered college located in New Mexico, intercommunity water or natural gas supply association or corporation, special water, drainage, irrigation or conservancy district or other special district created pursuant to law, nonprofit foundation or other support organization affiliated with a public university, college or other higher educational institution located in New Mexico, including a university research park corporation, ~~or a nonprofit housing developer~~, 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 or a consortium of those Indian entities or a consortium of any two or more qualified entities created pursuant to law. ~~“Qualified Entity” also means a charter school established pursuant to the Charter Schools Act whose charter has been renewed at least once pursuant to § 22-8B-12 NMSA 1978 or a school district on behalf of a charter school, or the Charter School itself, acting with the authority of the Charter School’s Board of Directors;~~

~~F.V.~~ F.V. “Security” or “Securities,” unless the context indicates otherwise, means bonds, notes or other evidence of indebtedness issued by a Qualified Entity or leases or certificates or other evidence of participation in the lessor's interest in and rights under a lease with a Qualified Entity and that are payable from taxes, revenues, rates, charges, assessments or user fees, or from the proceeds of funding or refunding bonds, notes or other evidences of indebtedness of a Qualified Entity or from certificates or evidence of participation in a lease with a Qualified Entity.

~~U.W.~~ U.W. “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.

~~V.X.~~ V.X. “Subordinated Indenture” means the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, by and between the ~~New Mexico Finance Authority~~ NMFA and BOKF, N.A., as supplemented and amended.

SECTION 4. REQUEST FOR LEGISLATIVE AUTHORIZATION

A. ~~No~~ The NMFA will develop an outreach program for Applicants in order to identify Public Projects to present to the Oversight Committee no later than the ~~first~~ Oversight Committee’s last interim meeting of the ~~Board in each~~ calendar year, ~~the Authority will submit to the New Mexico Legislature proposed Public Projects for which authorization by law is requested, as required by Sections 6-21-6 and 6-21-8, NMSA 1978. To~~ to be included in the list of proposed Public Projects for which authorization by law is requested, each request shall include the following:

- (1) Identification of the Qualified Entity on behalf of which the request is made;
- (2) ~~Description~~ Type of the ~~project~~ Public Project for which the request is made, ~~including information sufficient to determine that the project is a Public Project;~~
- (3) ~~Description of the revenues to be pledged as security for Financial Assistance;~~

~~(4)~~ (3) Certification of the request by an Authorized ~~Officer~~ Representative of the Qualified Entity on behalf of which the request is made, ~~or by a cabinet secretary, a legislator or a financial advisor authorized to act on behalf of the Qualified Entity for which the request is made. If the Applicant is a school district on behalf of a charter school, certification by the Public Education Department that the charter school is approved for funding through the Program is also required.~~

B. The ~~Authority~~ NMFA will provide notice to Qualified Entities which have received legislative authorization for a Public Project and to invite Applications for Public Projects authorized by law, as provided in Section 5 of these Rules.

SECTION 5. APPLICATION PROCEDURES FOR FINANCIAL ASSISTANCE

A. The ~~Authority~~NMFA will conduct outreach to notify Qualified Entities that it will accept Applications for financing of new Public Projects or refinancing of existing Public Projects.

B. The ~~Authority~~NMFA will provide a form of Application and/or guidelines for use by Qualified Entities. The ~~Authority's~~NMFA's Loan Management Policies shall contain provisions which (i) identify the specific information to be included in an Application, based on the type of Applicant and Public Project, and (ii) establish the standard for determining that an Application is complete and can be acted upon by the Board.

C. Only completed Applications, as determined by Staff pursuant to the ~~Authority's Application Procedures Policy~~NMFA's Loan Management Policies, will be eligible for consideration by the Board for approval of ~~the provision of~~ Financial Assistance. In addition to satisfying any other requirements established by the ~~Authority's Application Procedures Policy~~NMFA's Loan Management Policies, an Application ~~shall~~must be signed by an Authorized Representative of the Qualified Entity and ~~shall~~must include the following:

- (1) amount of Financial Assistance being sought and description of the proposed use or uses of the Financial Assistance;
- (2) description of the Public Project or Public Projects to be financed or refinanced, including:
 - i. description of the scope of work of the Public Project;
 - ii. estimated cost of the Public Project;
 - iii. target date for the initiation of the Public Project and the estimated completion date;
- (3) identification of all indebtedness of the Applicant presently outstanding secured by the proposed revenue stream, including, without limitation, bonds, lease purchase agreements and other loans, by name and principal amount (both the original principal amount and the currently outstanding amount) and the debt service schedule associated with each indebtedness;
- (4) identification of the source ~~of funds~~ for repayment of the Financial Assistance;
- (5) the Applicant's audited financial reports for the most recent three years for which such reports are available or, where the Applicant is not subject to the State Audit Act, internally prepared financial statements in a form acceptable to the NMFA;
- ~~(6) if the Qualified Entity is a charter school:~~
 - ~~i. a business plan that includes the mission and history of the school, resumes of leadership, cash flow projections and evidence of outside~~

- support;
- ii. ~~audits of the charter school and chartering authority for which the charter school is a component unit, the latest of which must be current for the fiscal year ended not less than twenty four (24) months prior to submission;~~
- iii. ~~last five (5) years of quarterly reports to PED;~~
- iv. ~~evidence of annual lease payments budgeted in chartering authority, including evidence of public review of the budget;~~
- v. ~~an appraisal of the Public Project acceptable to the Authority~~
- vi. ~~a certification by the Applicant that, should the charter school's charter be revoked or not renewed, that it would make a good faith effort to identify another qualified charter school to lease the Public Project or, if qualified, assume the Financial Assistance; and~~
- vii. ~~certification that the public education department has approved the terms of the proposed lease-purchase arrangement.~~

~~C.~~ D. The Authority NMFA may waive, in its sole discretion, disclosure of certain financial information in connection with Applications submitted by Indian Nations, tribes or pueblos, as provided by lending policies applicable to such entities. Such Applications will be approved only upon a demonstration that the repayment of Financial Assistance is fully secured by collateral acceptable to and readily accessible by the Authority NMFA, pursuant to Section 9(E) of these Rules and Regulations the NMFA's Loan Management Policies.

~~D.~~ E. Staff will evaluate Applications for compliance with the Act, these Rules, and applicable, Authority NMFA policies and procedures. Staff will forward Applications determined to be complete and recommended for approval to the Finance and Loan Public Lending Committee. Staff will notify an Applicant if an Application is incomplete and shall describe the additional information needed to complete the Application. Staff will provide written notice to an Applicant of its decision not to recommend a completed Application for consideration by the Finance and Loan Public Lending Committee within 5 business days following the Finance and Loan Public Lending Committee meeting at which the Application would otherwise be considered. The written notice shall include an explanation of the reasons for the decision not to recommend the Application for consideration by the Finance and Loan Public Lending Committee. An Applicant may appeal the decision not to recommend the Application as provided in Section 10 of these Rules.

~~E.~~ F. The Finance and Loan Public Lending committee will consider the Application and staff's recommendation and may confer with outside parties as necessary to obtain more information on the feasibility, merit, and priority of the Application and the proposed Public Project. The Finance and Loan Public Lending Committee will forward to the Board those Applications recommended for approval. Staff will provide notice to an Applicant of the Finance and Loan Public Lending Committee's decision not to recommend a completed Application to the Board for consideration. Such notice shall be made within 5 business days following the Board meeting at which the Application would have otherwise been considered and shall include an explanation of the reasons cited by the Finance and Loan Public Lending Committee. An Applicant may appeal to the Board the decision of the Finance and Loan Public Lending Committee not to

recommend the Application as provided in Section 10 of these Rules. ~~If the Application was timely received for consideration,~~ Staff may recommend an Application to the Board for approval at the next scheduled Board meeting without prior consideration by the ~~Finance and Loan~~ Public Lending Committee if the ~~Application was timely received for consideration at the next scheduled Board meeting, and the Finance and Loan~~ Public Lending Committee will not meet prior to that Board meeting.

~~F.~~ G. Following receipt of a recommendation on the Application by the ~~Finance and Loan~~ Public Lending Committee, the Board will consider the Application no later than the earlier of (i) the next regular Board meeting at which such item may be properly considered, or (ii) 60 days after ~~Finance and Loan~~ Public Lending Committee action, whichever comes first. The Board may approve all or part of the application as recommended by the ~~Finance and Loan~~ Public Lending Committee. Board approval may specify, at the Board's discretion, terms and conditions of the Financial Assistance as necessary to ensure repayment, including but not limited to, maximum loan term and maximum annual payments.

~~G.~~ H. The ~~Authority~~ NMFA will notify the Applicant of the approval or disapproval of its application by ~~mailing written notification~~ email within seven working days of Board action.

~~H.~~ I. All communications regarding an Application or qualification for Financial Assistance shall be directed to the ~~NMFA's~~ Chief Executive Officer of Programs or ~~other staff member of the Authority~~ Managing Director, Lending.

SECTION 6. EVALUATION OF APPLICATION AND PUBLIC PROJECT

~~The Authority~~ NMFA staff will complete an evaluation of the Application and the ~~proposed~~ Public Project to determine project feasibility, the Applicant's capacity to administer the Public Project, the Applicant's financial position, and economic and demographic factors.

A. Project Feasibility. The ~~Authority~~ NMFA will analyze each Public Project to determine whether the project is feasible as proposed, ~~taking into consideration whether there are basic flaws in the concept, design, or purpose of the proposed Public Project that cannot be corrected, and, if applicable, whether the projected revenues of the Public Project, together with other dedicated sources of repayment, will be sufficient to repay the requested Financial Assistance. If the repayment sources are insufficient, the Authority will not provide Financial Assistance for the proposed Public Project.~~

~~Provision of Financial Assistance by the Authority does not constitute a warranty or other guarantee to any party as to the feasibility of the Public Project.~~

B. Administrative Capacity. The ~~Authority~~ NMFA will evaluate the Applicant's administrative capacity to carry out and operate the Public Project and to meet its payment obligations on the requested Financial Assistance.

C. Financial Position. The ~~Authority~~ NMFA will evaluate each Applicant's financial position to assess the Applicant's ability to meet its payment obligations on the requested Financial

Assistance -as provided in the ~~Authority's~~NMFA's Loan Management Policies.

D. Debt Management. The Applicant's debt management history –and the credit worthiness of any pledged funds will be examined as provided in the ~~Authority's~~NMFA's Loan Management Policies.

SECTION 7. ELIGIBLE PUBLIC PROJECTS AND COSTS

The ~~Authority~~NMFA provides Financial Assistance under the Program to Qualified Entities ~~only~~ for Public Projects. Costs which may be financed under the Program include all or any portion of the cost of Public Projects; the refinancing of any outstanding obligations, mortgages or advances made, issued or given for financing costs of such projects; ~~and~~ bond or loan issuance costs associated with eligible Public Project financings or refinancings. ~~An Applicant for which Financial Assistance has been approved by the Board for the financing or refinancing specific public projects may apply, and all other proposed expenditures related to the Board to redirect the Financial Assistance to a different entire undertaking of the Public Project made necessary by unanticipated events. The decision to redirect the Financial Assistance will be at the sole discretion of the Board and subject to specific authorization by law of the different Public Project as required by Section 6-21-8 NMSA 1978.~~

SECTION 8. PUBLIC PROJECT FINANCING

The ~~Authority~~NMFA may structure Financial Assistance packages that include loans, ~~loan guarantees~~Lease-Purchase Agreements, Disadvantaged Funding, and any other type of assistance authorized by the Act. Financial Assistance transactions will be structured, to the extent practicable, to enable the ~~Authority~~NMFA to issue PPRF Bonds or bond anticipation notes, or to draw on lines of credit, to replenish the PPRF for moneys advanced from the PPRF to originate those transactions, through the pledge of all or a portion of the debt service obligations payable under the Financial Assistance for the benefit of PPRF bond owners. The ~~Authority~~NMFA reserves the right to pledge loans to, and securities purchased from, Qualified Entities as assets under either the General Indenture ~~or~~, the Subordinated Indenture, or the Junior Indenture and to structure Financial Assistance as it deems necessary or appropriate for the placement of assets under either the General Indenture ~~or~~, the Subordinated Indenture, or the Junior Indenture.

The structure, terms and conditions of the Financial Assistance, including requirements for debt service reserves, revenue intercepts, and monthly payments, will be determined by the Board on a case-by-case basis depending on the credit of the borrower, cash available in the PPRF, the pledge of the Financial Assistance as an asset under the General Indenture ~~or~~, the Subordinated Indenture, or the Junior Indenture and as further provided in the ~~Authority's~~NMFA's Loan Management Policies. Financial Assistance for Public Projects may be pooled, at the discretion of the ~~Authority~~NMFA.

A. Financial Assistance package may consist of a loan to, or the purchase of bonds or securities issued by, a Qualified Entity for a Public Project, which may be funded from proceeds of PPRF Bonds or bond anticipation notes, lines of credit, or available moneys in the PPRF at interest rates determined by the ~~Authority~~NMFA pursuant to its Loan Management Policies. The

Authority NMFA may require, in providing a loan to or purchasing securities from a Qualified Entity:

(1) that financing may include payment of the Authority's NMFA's costs of origination or issuance of PPRF Bonds, bond anticipation notes or credit lines used to originate the Financial Assistance, as provided in the Authority's NMFA's Loan Management Policies.

(2) that the interest rates ~~–applicable to the loan or securities include–~~ an administrative fee component of the interest rate as determined by the Board and as provided in the Authority's NMFA's Loan Management Policies.

B. The Authority NMFA may offer Financial Assistance to Disadvantaged Qualified Entities subject to the provisions outlined in this subsection:

(1) The ~~–Financial Assistance –to –Disadvantaged –Qualified –Entities –is~~ limited to Public Projects ~~–the Board determines affect the ability of the entity to provide governmental services necessary to public health, safety or welfare.~~

(2) ~~At the beginning of or during each fiscal year, the Board may designate an amount of up~~ Up to twenty (20) percent of the governmental gross receipts tax proceeds, ~~less the thirty five (35) percent of the governmental gross receipts tax proceeds reserved or allocated for various purposes pursuant to §6-21-6.1 NMSA-1978, distributed to the public project revolving fund~~ PPRF in the preceding fiscal year ~~as being~~ is available for Financial Assistance to Disadvantaged Qualified Entities. ~~Additionally, the Board may designate unless otherwise designated by the Board by resolution additional amounts of governmental gross receipts tax proceeds, over and above this twenty (20) percent limitation, as being available for Financial Assistance to Disadvantaged Qualified Entities.~~ Funds so designated, that are unused at the end of a fiscal year, may be carried forward into the next fiscal year. Disadvantaged funds will be earmarked for a specific Public Project upon final approval of that ~~–Public Project~~ by the Board.

~~(3)~~ Financial Assistance to Disadvantaged Qualified Entities is limited to one hundred fifty thousand dollars (\$150,000) per equipment project and five hundred thousand dollars (\$500,000) per infrastructure project. No single Disadvantaged Qualified Entity shall receive more than five hundred thousand dollars (\$500,000) in any fiscal year. Financial Assistance in excess of ~~–this cap~~ shall be available at the rates and terms offered other Qualified Entities.

~~(4)(3)~~ A Disadvantaged Qualified Entity may qualify for lower interest rate Financial Assistance based on a comparison of the median household income for the entity compared to the Statewide Median Household Income (“Median Household Income Percentage”) or the applicable census tract encompassing the entity, as determined by the Board, to that of the State as a whole as follows:

(a) A Disadvantaged Qualified Entity with a ~~median household income, as determined by the Board,~~ Median Household Income Percentage of less than one hundred (100) percent but greater than eighty (80) percent of the ~~state median household income~~ Statewide Median Household Income may qualify for Financial Assistance of up to five hundred thousand dollars (\$500,000) per fiscal year at a fixed interest rate of two (2) percent, provided all other requirements

for Financial Assistance approval are met. Authority NMFA Administrative fees, if any, are included in the two (2) percent interest rate.

(b) A ~~disadvantaged~~Disadvantaged Qualified Entity with a ~~median household income, as determined by the Board,~~Median Household Income Percentage of eighty (80) percent or less of the ~~statewide median income~~Statewide Median Household Income may qualify for Financial Assistance of up to five hundred thousand -dollars -(\$500,000) -per -fiscal -year -at a fixed interest rate of zero (0) -percent, provided all other -requirements for Financial Assistance approval are met. Authority NMFA Administrative fees, if any, will be added -to the zero -(0) percent -rate.

C. The Authority NMFA may offer Financial Assistance to qualified charter schools subject to the provisions outlined in this subsection:

(1) The Authority NMFA may acquire the Public Project and enter into a lease-purchase ~~arrangement~~agreement pursuant to the Public School Lease Purchase Act with a chartering authority, which in turn will sublease the Public Project to the charter school. The lease--purchase payments would be special obligations secured by a first lien on the sublease payments to the chartering authority for Public Project and by charter school revenues described in Subsection ~~9(F)-~~of these Rules. The term of such Financial Assistance shall not exceed thirty (30) years.

(2) The total amount of Financial Assistance shall not exceed the lesser of the value of the Public Project or the cash flow coverage of the assets pledged pursuant to ~~Subsection 9(F)(1) through 9(F)(7):~~these Rules.

~~(1)(3)~~ The Authority NMFA shall require that the charter school or Applicant contribute to a Repair and Replacement Fund, as provided in the Authority's NMFA's Loan Management Policies.

~~(2)(4)~~ NMFA shall require that the charter school meet accountability standards

~~(3)(5)~~ The Authority NMFA shall require that the charter school notify the Authority NMFA immediately of any adverse action taken by the public education department or chartering authority.

D. Grants. Pursuant to Section 6-21-5(I), grants will not be made from the ~~Public Project Revolving Fund~~PPRF.

~~E.—— Loan Guarantees. Loan guarantees may be used at the discretion of the Authority to assist qualified entities in securing bond credit ratings which result in the lowest interest rate possible. The Authority may pledge available funds to guarantee the loans or bonds of Qualified Entities in the event that a Qualified Entity is unable to pay principal or interest on an outstanding obligation.~~

SECTION 9. FINANCING APPROVAL REQUIREMENTS

Based on the evaluation factors set forth in Section 5 ~~of these Rules~~, the Board may award Financial Assistance to the Applicant provided the following requirements are satisfied:

A. In approving an Application for Financial Assistance, the Board must find that the Public Project is important to the overall capital needs of the citizens of the state. The Board will give priority to those Public Projects which directly enhance the health and safety of the citizens of the state (or promote economic development) within the state, ~~as provided in the Authority's Loan Management Policies.~~

B. In determining the qualification for Financial Assistance, the Board may consider the ability of the Qualified Entity to secure financing from other sources and the costs of the Financial Assistance.

C. In approving an ~~application~~Application for Financial Assistance, the Board must find that the average useful life of the Public Project will meet or exceed the average maturity of loans made or bonds purchased or issued by the Board and must meet standards for reasonable costs set by the Board.

D. In approving an ~~application~~Application, the Board must find that the Applicant has the ability to repay the loan extended or bonds issued, and that the proposed Financial Assistance is within parameters established in the ~~Authority's~~NMFA's Loan Management Policies.

E. In connection with an Application for Financial Assistance submitted by an Indian Nation, tribe or pueblo, the ~~Authority~~NMFA may approve Financial Assistance based upon the ~~Authority's~~NMFA's determination that repayment is adequately secured ~~by one or more of the following, as may further be provided~~as detailed in the ~~Authority's~~NMFA's Loan Management Policies:

- ~~(1) — for tribal utility projects, net utility system revenues;~~
- ~~(2) — a gross receipts tax pledge for a tribal entity with an approved tax compact with the state;~~
- ~~(3) — an irrevocable letter of credit from a lender and pursuant to terms acceptable to the Authority;~~
- ~~(4) — marketable securities acceptable to the Authority;~~
- ~~(5) — Bureau of Indian Affairs loan guaranty acceptable to the Authority;~~
- ~~(6) — cash or other assets legally available and readily accessible to the Authority; and/or~~
- ~~(7) — the borrower's general obligation to pay debt service on the loan when due.~~

(1) In approving such ~~applications~~Applications, the ~~Authority~~NMFA will require as conditions of ~~either application approval or closing of the Financial Assistance transaction, waivers of sovereign immunity and exhaustion of tribal remedies, and other assurances of the availability of state court remedies satisfactory to the~~ AuthorityNMFA, in NMFA's sole discretion.

F. In connection with an Application for Financial Assistance submitted by a charter school, the ~~Authority~~NMFA may approve Financial Assistance based upon the ~~Authority's~~NMFA's determination that repayment is adequately secured by a first mortgage on the Public Project and ~~by one or more of the following, as may further beas~~ provided in the ~~Authority's~~NMFA's Loan Management Policies:

~~(1) money from the school's general fund;~~

~~(2) investment income actually received from investments;~~

~~(3) loans, grants or lease payments received from the public school capital outlay council pursuant to the Public School Capital Outlay Act;~~

~~(4) fees and assessments received by the school district;~~

~~(5) proceeds from the sale of real property and rental income received from the rental or leasing of school property;~~

~~(6) amounts irrevocably pledged by private parties for this purpose;~~

~~(7) any other legally available funds.~~

A.G. As further provided in the ~~Authority's~~NMFA's Loan Management Policies, agreements for Financial Assistance shall include appropriate provisions for maintenance of separate ~~project~~ accounts in accordance with applicable accounting principles, delivery of annual audit information relating to the Public Project, insurance, title or legal occupancy arrangements, prohibitions against ~~discrimination~~ in contracts and subcontracts, posting of performance bonds, and other measures necessary or appropriate to assure compliance with the Act, these Rules, applicable policies of the ~~Authority~~NMFA, and other applicable laws and regulations.

SECTION 10. APPEALS

A. An Applicant may appeal to the ~~Finance and Loan Committee~~NMFA Chief Executive Officer ("CEO") the Staff's ~~decision not to recommend its Application for consideration by the Finance and Loan~~Public Lending Committee by notifying the ~~Chief Executive Officer of the Authority~~NMFA CEO in ~~writing of the appeal within 30 days following the receipt of written notice of the decision not to recommend the Application. The notice of appeal shall include any reasons and documentation supporting the position that the Application satisfies the requirements of these Rules and the applicable~~ Authority Application Procedures Policy provisions of the NMFA's

Loan Management Policies. An Applicant's appeal will be considered by the ~~Finance and Loan Committee at its first scheduled meeting occurring~~NMFA CEO within 10 days ~~or more~~ after the notice of appeal is received.

B. Following consideration of ~~ana~~ timely filed appeal, the ~~Finance and Loan Committee~~NMFA CEO shall either consider the Application as provided in Section 5(E) of these Rules, or reject the appeal. The ~~Authority~~NMFA CEO shall provide to the Applicant written notice of the rejection of an appeal within 5 business days following such rejection.

C. An Applicant may appeal the ~~Finance and Loan Committee's~~NMFA CEO's decision not to recommend its Application by submitting a notice of appeal to the Board within 10 business days following receipt of the notice of that decision, which notice of appeal shall include any reasons and documentation supporting the position that the Application satisfies the requirements of these Rules and the applicable ~~Authority application policies and procedures~~provisions of the NMFA's Loan Management Policies. An Applicant's ~~appeal to the~~ Board will be considered by the Board at its first scheduled meeting occurring 10 days or more after the notice of appeal is received.

SECTION 11. FINANCIAL ASSISTANCE AGREEMENT

A. The ~~Authority~~NMFA will provide Financial Assistance only pursuant to an agreement establishing the terms and conditions of Financial Assistance that satisfies the requirements of the Act, these Rules, the ~~Authority's~~NMFA's Loan Management ~~policies~~Policies and other applicable requirements. At a minimum, the agreement will include the terms of repayment and remedies available to the ~~Authority~~NMFA in the event of a default. The ~~Authority~~NMFA will monitor terms of the agreement and enforce ~~all~~ terms and conditions thereof, including prompt notice and collection. The ~~Authority~~NMFA will take actions as necessary to ensure loan repayment and compliance with the Act, these Rules, and the ~~Authority's~~NMFA's Loan Management Policies.

B. The interest rate on Financial Assistance shall be determined by the Board ~~as~~ outlined in Section 8 above, and in accordance with the ~~Authority's~~NMFA's Loan Management Policies.

SECTION 12. ADMINISTRATIVE FEES AND COST OF ISSUANCE ASSISTANCE.

A. The ~~Authority~~NMFA may impose and collect a reasonable application fee ~~in~~ connection ~~with~~ the filing of an Application for Financial Assistance with the ~~Authority~~NMFA. The ~~Authority~~NMFA also may impose and collect an administrative fee from each Qualified Entity that receives Financial Assistance from the Program as compensation for the cost of administering the Financial Assistance for each recipient. Administrative fees may be imposed as a percentage of the principal amount of ~~the~~ Financial Assistance provided to the Qualified Entity on a one-time basis to be withheld from the principal amount of the Financial Assistance and retained by the ~~Authority~~NMFA, or as an annual fee equal to a percentage of the outstanding principal amount of a loan, not to exceed 0.75 percent, as further provided in the ~~Authority's~~NMFA's Loan Management Policies.

B. The AuthorityNMFA may provide costs of issuance assistance to Qualified Entities. Costs of issuance include the costs of originating Financial Assistance and the funding of Financial Assistance from proceeds of bonds (whether through reimbursement of the Public Project Revolving FundPPRF for moneys loaned from that fund, direct funding of Financial Assistance from bond proceeds, or other methods).

(1) The aggregate amount of cost of issuance assistance paid from the Public Project Revolving FundPPRF for a single Qualified Entity in any one fiscal year shall not exceed two hundred thousand (\$200,000) dollars.

(2) The aggregate amount of costs of issuance assistance paid from the Public Project Revolving FundPPRF in any fiscal year shall not exceed three hundred fifty thousand dollars (\$350,000) without prior approval of the Board.

C. The AuthorityNMFA may establish such other charges, premiums, fees and penalties as it shall deem necessary for the administration of the Program, as provided in its Loan Management Policies.

SECTION 13. AMENDMENT OF RULES ~~AND REGULATIONS~~

These Rules ~~and Regulations~~ may be amended or repealed at any time by the AuthorityNMFA, with the prior approval of the Oversight Committee.