



Memorandum

To: New Mexico Finance Authority Oversight Committee
From: Marquita Russel, CEO
Dan Opperman, Chief Legal Officer
Date: August 12, 2024
Re: Approval of Rules Governing Housing Development Assistance

Item:

Approval of rules governing the Opportunity Enterprise Housing Development Program.

Background:

The recently amended Opportunity Enterprise and Housing Development Act (“Act”) accomplished several goals, most notably to add opportunities to provide housing development assistance loans to address the statewide need for both affordable and workforce development housing. The Opportunity Enterprise and Housing Development Review Board (“OE Board”) is charged with prioritizing applications for funding from the newly created Housing Development Revolving Fund (“Housing Fund”), housed at and administered by the NMFA. The Act provides that the Fund may be used to make loans for workforce development housing projects or affordable housing infrastructure projects.

The Act directs the OE Board to promulgate rules, which the OE Board formally initiated several months ago, and which were published in the New Mexico Register on July 30, 2024. The Act also provides that the NMFA may adopt rules related to the use of the Housing Fund necessary to carry out the provisions of the Act. Should NMFA decide to adopt rules, the Act directs that the rules are subject to the approval of the NMFA Oversight Committee. To establish rules on a parallel path with the OE Board, NMFA staff determined that rules for the housing development assistance program could be established shortly after the OE Board’s Rules become effective.

On July 25, 2024, NMFA staff presented the attached Rules to NMFA’s Board for an initial review. On August 8, 2024, NMFA will present the attached Rules to the OE Board for its consultation. Once approved by the NMFA Oversight Committee, the final step will be to bring these Rules back to the NMFA Board for final adoption at the August 29, 2024 meeting. Any proposed changes to the proposed Rules will be incorporated and discussed with the NMFA Board.



Key Points of the Proposed Rules:

Specific for Housing Development Assistance

- Section 1 – Purpose
- Section 2 – Definitions – incorporates specific housing provisions, including “affordable housing,” “middle-income workers,” and “workforce development housing”
- Section 3 – guides Applicants on what will be required for an Application to be considered complete
- Section 4 – Outlines the application review process, from committee level, to the OE Board, to the NMFA Board; explains relevant evaluation criteria; and sets out estimated timelines for the review process
- Section 5 – Outlines loan terms, dollar limitations, and duration. Sets out other criteria which will be part of the loan.
- Section 6 – Closing and disbursement
- Section 7 – Loan Document requirements
- Section 8 – Reporting
- Section 9 – NMFA permitted to collect administrative fees
- Section 10 – Rules can be amended and repealed

Request:

NMFA Staff recommends approval of the attached Rules.

RULES

GOVERNING HOUSING DEVELOPMENT ASSISTANCE

UNDER THE OPPORTUNITY ENTERPRISE AND HOUSING

DEVELOPMENT ACT

AS

ADOPTED

ON

[AUGUST xx, 2024]

BY THE

BOARD OF DIRECTORS

OF THE

NEW MEXICO FINANCE AUTHORITY

AND

APPROVED BY THE NEW MEXICO FINANCE AUTHORITY

OVERSIGHT COMMITTEE [AUGUST xx, 2024]

SECTION 1. AUTHORITY; PURPOSE OF RULES.

On March 9, 2022, Governor Michelle Lujan Grisham signed into law the Opportunity Enterprise Act (“Act”), NMSA 1978, Section 6-34-1, *et seq.*, to provide enterprise assistance to advance economic development opportunities in the State. Effective May 15, 2024, the Act was amended to create the Housing Development Revolving Fund (“Housing Fund”) within the New Mexico Finance Authority (“NMFA”) and authorizes the NMFA to establish rules, administer the Fund, and recover from the Fund such costs of administering the Fund and originating housing development assistance for workforce development housing projects or affordable housing infrastructure projects.

Pursuant to the Act, the Economic Development Department (“Department”) and the Opportunity Enterprise and Housing Development Review Board (“OE Board”) shall coordinate to evaluate housing development partners and eligible housing development projects for suitability for housing development assistance. Pursuant to Rules adopted by the OE Board, the OE Board shall establish procedures to select and prioritize applications for housing assistance and recommend to the NMFA potential housing development projects for housing development assistance from the Housing Fund.

These Rules, subject to approval of the New Mexico Finance Authority Oversight Committee, govern the implementation and administration of housing development assistance in the form of housing development assistance loans under the Program as authorized by Section 6-34-13.2 of the Act. These Rules do not apply to other programs established by the NMFA.

SECTION 2. DEFINITIONS.

A. “Act” means the Opportunity Enterprise and Housing Development Act, Sections 6-34-1 through 6-34-15, NMSA 1978, as may be amended and supplemented.

B. “Affordable Housing” means residential housing primarily for persons or households of low or moderate income as defined in a local housing plan or by programs managed by the Mortgage Finance Authority.

C. “Affordable Housing Infrastructure Project” means infrastructure projects needed to support affordable housing.

D. “Applicant” means a housing development partner.

E. “Application” means a written document made publicly available by the NMFA and filed with the NMFA for the purpose of evaluating the Applicant’s qualifications and proposed housing development projects for housing development assistance which may be provided by the NMFA under the Act.

F. “Bylaws” means the amended and restated bylaws of the OE Board adopted on May 2, 2024, as may be further amended and supplemented from time to time.

- G. “Chief Executive Officer” or “CEO” means the Chief Executive Officer of the NMFA.
- H. “Credit Committee” means a committee of NMFA staff appointed by the CEO.
- I. “Department” means the New Mexico Economic Development Department.
- J. “Economic Development Committee” means a committee, appointed by the chair of the NMFA Board, from the members of the NMFA Board.
- K. “Housing Development Assistance” means a loan for workforce development housing projects or affordable housing infrastructure projects, and includes single family homes for rent or purchase and multi-family rentals, not including congregate or transitional housing.
- L. “Housing Development Committee” means a standing committee, appointed by the chairman of the OE Board from the members of the OE Board pursuant to the bylaws to review proposed housing development projects to be recommended for funding from the Housing Fund.
- M. “Housing Development Loan” means a loan for a housing development project provided by the NMFA from the Housing Fund pursuant to these Rules and program policies adopted by the NMFA, as amended and supplemented from time to time.
- N. “Housing Development Partner” means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or any other private business entity or combination thereof that the authority determines is or will be engaged in a project that creates or expands housing within the state and is eligible for housing development assistance pursuant to the Act.
- O. “Housing Development Project” means an affordable housing infrastructure project or a workforce development housing project.
- P. “Housing Fund” means the Housing Development Revolving Fund created pursuant to Section 6-34-13.3 of the Act.
- Q. “Housing Fund Loan Policies” means these policies adopted by the NMFA Board governing the Housing Development Revolving Fund.
- R. “Middle income workers” means families with incomes that fall between the lesser of a local jurisdiction’s upper limit for housing assistance by relevant housing type or by the New Mexico Mortgage Finance Authority’s upper limit for housing development assistance, and three hundred percent of the US Housing and Urban Development Area Median Income for the county.
- S. “NMFA” means the New Mexico Finance Authority.
- T. “Nonurban Community” means a municipality with a population of less than sixty thousand according to the most recent federal decennial census or the unincorporated area of a county.

U. “Oversight Committee” means the joint interim legislative committee established pursuant to the New Mexico Finance Authority Act, Section 6-21-30, NMSA 1978, as amended and supplemented from time to time.

V. “State” means the State of New Mexico.

W. “Workforce Development Housing” means below-market housing addressing demand for workforce housing for middle income workers in proximity to employment centers as determined by policies of the OE Board.

X. “Workforce Development Housing Project” means a residential real estate development project that involves the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure that provides housing, including housing that provides the option of home ownership.

Y. “Zoning Reforms” means policies, procedures and regulations implemented by political subdivisions intended to decrease the costs and timing of constructing affordable housing and workforce housing, including expedited permitting, high density zoning, and other criteria as determined by policies of the OE Board.

SECTION 3. APPLICATIONS, ELIGIBILITY FOR HOUSING DEVELOPMENT ASSISTANCE.

A. Applications for Housing Development Assistance will be made available to Housing Development Partners for Housing Development Projects recommended by the OE Board..

B. A complete Application for a Housing Development Loan will:

- (i) Describe of the scope and plans of the housing development project;
- (ii) Demonstrate that the housing development project will create or expand attainable housing within the state;
- (iii) Demonstrate that the proposed housing development project will comply with applicable local, state and federal law;
- (iv) Provide sufficient evidence that other means of financing a proposed housing development project are unavailable or insufficient;
- (v) Provide a market study of the proposed housing development project;
- (vi) Provide the ownership structure of the Applicant (for each owner detailing name, address, percentage ownership);
- (vii) Include five-year proforma financial statements for the housing development partner;

(viii) Include a copy of any license, zoning, permitting or other regulatory requirements, as applicable;

(ix) Include a complete list of outstanding loan(s) to the Applicant, member, partner or stockholder of the Applicant;

(x) Include an authorization to obtain a credit report of the Applicant and any guarantor, as applicable;

(xi) a current balance sheet and year-to-date profit and loss statement for the Applicant, dated not more than 90 days prior to the date of Application, a fiscal year-end balance sheet, and the Applicant's profit and loss statement for the prior three years or audited financial statements, as applicable;

(xii) federal income tax return for the prior two years on all guarantors and co-borrowers, as relevant;

(xiii) copies of the Applicant's federal income tax returns for the prior three years if the balance sheets and profit and loss statements required from the Applicant in paragraph (iii) of this Section 3 are not audited by a certified public accountant;

(xiv) any other information or certifications requested by the NMFA to evaluate the Application for housing development assistance.

B. If the Applicant is a newly created entity formed for the sole purpose of developing or operating the proposed housing development project, the Applicant shall provide the information in paragraphs (i) through (xii) of this Section 3 for the Applicant's existing entities, if any, or any other information requested by the NMFA to evaluate the Application.

C. All communications regarding Applications for housing development assistance shall be directed to the CEO or other staff member of NMFA designated by the CEO.

SECTION 4. LOAN REVIEW AND APPROVAL PROCESS, HOUSING DEVELOPMENT PROJECT PROPOSAL PRIORITIZATION; COMMITMENT.

A. All complete Applications will be reviewed by the Housing Development Committee and prioritized based upon the prioritization policy of the OE Board, which give priority to projects that demonstrate local support and need, create or expand attainable housing units, are located in political subdivisions implementing zoning reforms, and where other means of financing are unavailable or insufficient. and presented to the OE Board. Upon the recommendation of the Housing Development Committee, the Board will prioritize the proposed Housing Development Projects for recommendation to the NMFA for consideration of Housing Development Assistance.

B. NMFA will evaluate each Application in accordance with these Rules, and will determine whether to approve an Application for a Loan based on:

(i) whether the requirements of the Act and these Rules have been met;

- (ii) the Applicant's experience and intended use of housing development assistance funds;
- (iii) the creditworthiness of the Applicant;
- (iv) the viability of the housing development project;
- (v) the proposed housing development project will create or expand housing across the State;
- (vi) whether housing development projects are located in political subdivisions that are implementing zoning reforms that support housing development projects;
- (vii) the proposed housing development project will comply with applicable state and federal law; and
- (viii) other means of financing the proposed housing development project are unavailable or insufficient.

C. The Applicant's experience, financial history, and current financial status are key factors in the evaluation of an Application for a Loan. For start-up Applicants, past relevant experience across business models or prior work experience will be considered in the evaluation of the Application. The NMFA may consider, among other things:

- (i) the education and work history of Applicants, and the officers, members, or partners of the Applicant;
- (ii) the Applicant's experience in managing similar enterprises;
- (iii) assets and liabilities of the Applicant;
- (iv) income and expenses of the Applicant;
- (v) existence of liens or encumbrances on the Applicant's assets;
- (vi) the Applicant's ability to service debt;
- (vii) loan-to-value, debt-to-equity, or other applicable operating and leverage ratios;
- (viii) the level of the Applicant's equity in the proposed housing development project; and
- (ix) a description of the housing development project opportunities within the State that will be created or expanded as a result of the proposed housing development project.

D. The Credit Committee will evaluate each Application to determine the ability to

repay the funds and need for the housing development assistance. If the Credit Committee believes that projected revenues of the Applicant, together with other dedicated sources of repayment, will not be sufficient to repay the requested housing development assistance, the Credit Committee will not recommend the Application to the Economic Development Committee.

E. The Economic Development Committee will consider Applications recommended by the Credit Committee and may confer with outside parties such as the Department or others as necessary to obtain information on the Applicant or viability of the housing development project. Recommendations by the Economic Development Committee will be presented to the NMFA Board for its approval or disapproval.

(i) Once a recommendation has been made by the Economic Development Committee, the NMFA Board will consider the Application no later than the next regular Board meeting at which such item may be properly considered, or forty-five (45) days after Economic Development Committee action, whichever comes first. The Board may approve all or part of the Application as recommended by the Economic Development Committee and shall either adopt the findings set forth in the recommendation with respect to, without limitation, eligibility, nature of the project, and the adequacy of consideration, or shall specify the Board's own findings on those subjects. NMFA Board approval may specify, at the NMFA Board's discretion, terms and conditions of the housing development assistance loan as necessary to ensure repayment, including but not limited to, maximum loan term and minimum annual payments.

(ii) If an Application is approved by the NMFA Board, the NMFA will provide a housing development assistance loan commitment outlining the terms of the proposed housing development assistance loan, any conditions precedent to closing, and the time period in which the conditions need to be met.

SECTION 5. LOAN TERMS.

A. Housing Development Loans provided under the Program must satisfy conditions prescribed in this Section 5.

B. Housing Development Loans may not exceed fifteen million dollars (\$15,000,000) and shall be secured by all legally acceptable collateral whose value exceeds the amount of housing development assistance provided and meets loan-to-value requirements as described by the Housing Fund Loan Policies. Collateral may require an independent qualified appraisal to estimate fair market value.

C. Housing development assistance loans shall be made for terms not to exceed forty (40) years. There shall be no penalty or premium for prepayment of the balance of the indebtedness.

D. The Applicant must meet credit and identification criteria, as determined by the NMFA.

E. The Applicant must certify that the proceeds of the housing development loan will be used for a housing development project.

F. The Applicant must meet any other requirement for a housing development project as determined by the NMFA.

G. Housing development loans shall bear an annual interest rate of no less than zero percent and as further described in the Housing Fund Loan Policies.

H. The Applicant must provide evidence satisfactory to the NMFA that the Applicant has the requisite experience to monitor compliance related to affordable housing.

I. Housing Development Loans for workforce development housing projects must contain deed restrictions, as determined by the NMFA, during the repayment term of the housing development loan, with a minimum duration of ten (10) years.

J. Housing Development Loans will include limits on developer fees in accordance with the provisions of the Housing Fund Loan Policies.

K. Housing Development Loans will contain restrictions on the use of loan proceeds for reimbursement of developer land purchases in accordance with the provisions of the Housing Fund Loan Policies.

L. Loans secured by real property will require a mortgage, leasehold mortgage, or deed of trust and assignment of leases and rents, as applicable, which shall be recorded in the county where the property is located, and a title commitment and loan policy of title insurance issued by a title insurance company acceptable to NMFA and in form and content acceptable to NMFA. The NMFA's security interest in the real property shall be at the highest lien level attainable to accomplish a successful financing, provided that NMFA may only be subordinate to a loan made by a federally insured financial institution.

M. Loans secured by personal property will require a Uniform Commercial Code, and tax lien and judgment search to confirm the highest lien level lien on the personal property attainable to accomplish successful financing, including execution of a security agreement and the filing of a Uniform Commercial Code Financing Statement in the appropriate county or state offices. The NMFA may, in its discretion, review and approve other encumbrances against the personal property that do not affect NMFA's security for the Loan.

N. Unless waived by the NMFA, the Applicant shall obtain insurance coverage on all property securing the housing development assistance loan from responsible companies in such amounts and against such risks as is satisfactory to NMFA.

O. Loans shall require a personal guarantee for repayment to be provided from one or more of the following persons:

- a partner, or member of the Applicant;
- a joint venturer with the Applicant;
- any stockholder of the Applicant;

- the parent corporation or a partner, member, or stockholder of the parent corporation if the Applicant is a subsidiary.

P. Loan proceeds shall be used only for the acceptable purposes further determined in accordance with the provisions of the Housing Fund Loan Policies.

SECTION 6. CLOSING AND DISBURSEMENT OF FUNDS.

A. Upon certification by the Applicant that all provisions of the Housing Development Loan commitment have been complied with, the Housing Development Loan will be scheduled for closing.

B. Disbursement of funds will be made using the form prescribed by NMFA in the Housing Development Loan agreement. Conditions precedent to disbursement, if any, must be met prior to disbursing loan proceeds, including the requirement that funding is available in the Housing Fund.

SECTION 7. LOAN DOCUMENTATION REQUIREMENTS.

A. All Housing Development Loan documents shall provide that NMFA has all available remedies in the event of a default. Such remedies will include, without limitation, rights to foreclose, repossess collateral, sell collateral at public or private sale, obtain deficiency judgments, and exercise all other remedies available at law or in equity.

B. The interest rate for the housing development assistance loan will be set at the time the NMFA issues a loan commitment.

SECTION 8. MONITORING AND REPORTING.

A. After project completion, borrowers shall submit financial statements and business performance reports not less than semi-annually. Business performance reports shall include, but are not limited to: 1) total number of affordable housing units and workforce development housing units supported by the Housing Development Assistance; 2) Occupancy data and rent rolls, as applicable; 3) Job creation metrics; and 4) Certification of all representations, warranties, and covenants; and certification that there have been no ownership changes in the Applicant.

B. Beginning December 1, 2024, and each succeeding December 1 thereafter, the NMFA shall submit a report as required by Section 6-34-14 of the Act. Reports shall include the preceding fiscal year's Program activity, including the total number of affordable housing units and workforce development housing units supported by housing development assistance.

SECTION 9. ADMINISTRATIVE FEES; DEFAULT.

A. NMFA may impose and collect from the Housing Fund reasonable fees in connection with the filing and evaluation of an Application for a housing development assistance loan, including an Application and commitment fee payable upon issuance of a commitment, and reasonable fees for the extension of any commitment.

B. NMFA may establish such other charges, premiums, fees, and penalties as it shall deem necessary for the administration of the Program.

C. In the event of default, the NMFA may take proper steps to ensure payment of principal and interest, or other pursue other appropriate legal remedies to collect matured interest and principal.

SECTION 10. DURATION AND AMENDMENT OF RULES.

These Rules may be repealed by the NMFA at any time and amended by the NMFA with the approval of the Oversight Committee.