

**RULES AND REGULATIONS**  
**GOVERNING THE LOAN PARTICIPATION PROGRAM**  
**UNDER THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT**  
**AS**  
**ADOPTED**  
**ON OCTOBER 27, 2005**  
**BY THE**  
**BOARD OF DIRECTORS**  
**OF THE**  
**NEW MEXICO FINANCE AUTHORITY**  
**AND APPROVED BY THE**  
**NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE**  
**ON**  
**NOVEMBER 2, 2005**

## SECTION 1. AUTHORITY; PURPOSE OF RULES AND REGULATIONS.

The New Mexico Finance Authority Loan Participation Program Rules and Regulations are adopted by the New Mexico Finance Authority pursuant to the Statewide Economic Development Finance Act, §§ 6-25-1 to 6-25-28 NMSA 1978, the purposes of which are to stimulate economic development in New Mexico and to provide a method of implementing the economic development assistance provisions of Article IX, Section 14.D of the Constitution of the State. Section 6-25-5 NMSA 1978 provides that the New Mexico Finance Authority and the Department of Economic Development will coordinate to identify and evaluate potential projects' suitability for financing assistance and formulate recommendations. Section 6-25-6 NMSA 1978 gives the New Mexico Finance Authority certain powers and duties to enable it to implement a program to assist in financing projects, including the power to enter into loan participation agreements from the economic development revolving fund. These rules and regulations are adopted, subject to approval of the New Mexico Finance Authority Oversight Committee, pursuant to Section 6-25-6(E) NMSA 1978. The purpose of these rules and regulations is to govern the implementation and administration of the loan participation program authorized by § 6-25-6(D) NMSA 1978. These rules and regulations do not apply to other programs established by the Authority.

## SECTION 2. DEFINITIONS.

A. "Act" means the Statewide Economic Development Finance Act, §§ 6-25-1 to 6-25-28 NMSA 1978, as amended.

B. "applicant" means an eligible entity that has filed a loan application with an originator that has requested the Authority to participate in a loan to such eligible entity.

C. "application" means a written document filed with the Authority by an originator for the purpose of requesting the Authority to purchase a loan participation to provide financial assistance for the applicant's project;

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

E. "board" means the New Mexico Finance Authority board of directors;

F. "Department" means the New Mexico Department of Economic Development;

G. "economic development revolving fund" means the fund of that name created by the Act;

H. "eligible entity" has the meaning provided in § 6-25-3G NMSA 1978, as amended from time to time;

I. "finance committee" means a committee, appointed by the chairman of the board, from the members of the board and/or the Authority staff;

J. “originator” means the State Investment Council or a commercial bank, savings and loan association, mutual savings bank, or other financial institution that:

(i) is either insured by the Federal Deposit Insurance Corporation or the National Credit Union Association, or regulated by the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the Federal Reserve, or state banking regulators under New Mexico banking laws or substantially similar banking regulations or statutes of another state and is authorized to perform banking functions within the state;

(ii) is approved by the Authority; and

(iii) has entered into an agreement with the Authority to act as a seller and servicer of a loan under the loan participation program.

K. “Oversight Committee” means the joint interim legislative committee established pursuant to § 6-21-30 NMSA 1978;

L. “pending project” means a project for an eligible entity seeking a loan participation by the Authority that has been approved for submission to the New Mexico Legislature for approval as required by § 6-25-6 NMSA 1978 prior to receiving detailed analysis and final approval by the Authority;

M. “program” means the Loan Participation Program authorized by the Act and these regulations;

N. “project” has the meaning provided in § 6-25-3N NMSA 1978, as amended or recompiled from time to time;

O. “quantifiable benefits” has the meaning provided in § 6-25-3P NMSA 1978, as amended or recompiled from time to time;

P. “standard project” has the meaning provided in § 6-25-3M NMSA 1978, as amended or recompiled from time to time;

Q. "state" means the State of New Mexico;

R. “state project” has the meaning provided in § 6-25-3S NMSA 1978, as amended or recompiled from time to time.

### SECTION 3. ELIGIBLE ENTITIES AND PROJECTS.

The Authority purchases loan participations (which term includes participations in loans made in exchange for notes, bonds or other instruments evidencing an obligation to repay indebtedness) under the program from originators of loans to eligible entities only for state projects

and standard projects. Eligible entities must be determined by the Department to be engaged in an enterprise that serves an economic development goal.

#### SECTION 4. APPLICATION FOR AUTHORITY PARTICIPATION.

A. In accordance with § 6-25-5 NMSA 1978, the Authority will coordinate with the Department to administer an outreach program to notify originators, potential originators, eligible entities and local governments that the Authority will consider purchasing loan participations from originators of loans to eligible entities for projects and to identify projects that satisfy the basic requirements of the program.

B. An applicant may apply for a loan under the loan participation program by contacting and submitting an application to the originator. The originator shall review the application, including the proposed use of the loan proceeds, the applicant's creditworthiness, and any other matters the originator may consider appropriate. When the originator, with the concurrence of the applicant, decides it is appropriate to do so, but after the originator has approved the loan, the originator and the applicant shall prepare an application, on the form prescribed by the Authority, for Authority participation in the loan.

C. An application for Authority participation submitted by the originator to the Authority may include a nonrefundable application fee in an amount determined by the Authority from time to time. If the Authority issues a commitment to purchase a participation in an originator's loan, and the loan commitment issued by the Authority is accepted and signed by the originator and the applicant and returned to the Authority, the application fee will be credited against the Authority's commitment fee. The Authority may require the originator to include with the application any of the following:

- (i) a letter of transmittal;
- (ii) a loan summary, including evidence of originator approval at the required level of authority;
- (iii) a list of other unpaid loan(s) to the applicant or to any member, partner or stockholder of the applicant, from the state or any political subdivision or other public corporation of the state along with the applicant's certification that each unpaid loan is current and no other loans exist and a description of any other incentives to be supplied to the applicant in connection with the project by the state or any local government;
- (iv) a current credit report of the applicant and the guarantor, if any;
- (v) a signed current balance sheet and year-to-date profit and loss statement on the applicant, dated not more than 90 days prior to the date of application, fiscal year-end balance sheet and profit and loss statement for the prior three years on the applicant; current

balance sheet and federal income tax return for the prior two years on all guarantors and co-borrowers;

(vi) 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 (v) of this section are not audited by a certified public accountant;

(vii) copies of the earnest money receipt and the option or contract to purchase land and improvements, or the contract or invoice for purchase of tangible personal property related to the project;

(viii) a copy of a lease for land and improvements related to the project;

(ix) a detailed description of real or tangible personal property to be acquired for the project and the cost thereof;

(x) a detailed estimate of the cost of construction satisfactory to the Authority;

(xi) an estimate of the number of jobs to be created or retained by this project satisfactory to the Authority and the wages associated with those jobs;

(xii) if the loan is to be secured by real property, a written appraisal report acceptable to the Authority estimating the value of the real property;

(xiii) if the loan is for the purchase of tangible personal property, an appraisal in a format acceptable to the Authority prepared by an appraiser who is acceptable to the Authority;

(xiv) copies of leases or agreements to lease or renew a lease between the applicant and project tenants, including a list of tenants, lease rates, terms and options;

(xv) a financial feasibility analysis satisfactory to the Authority;

(xvi) an environmental risk assessment satisfactory to the Authority followed by an environmental audit if required by the Authority;

(xvii) a description of the benefits the eligible entity will contract to provide, such as local hiring quotas, job training commitments and installation of public facilities or infrastructure, whether in connection with the proposed loan or in connection with any economic development incentives available to the applicant from any other source; and

(xviii) any other information requested by the Authority to evaluate the application.

D. All communications regarding applications for loan participations shall be directed to the executive director or other staff member of the Authority designated by the executive director.

E. To ensure a detailed review of an application for a loan participation, the completed application must be received by the Authority no later than December 31 prior to the session of the Legislature at which the project will be considered. Applications received after December 31 but prior to the next legislative session may, at the option of the Authority, be submitted as a pending project to the New Mexico Legislature for the approval required by § 6-25-6 NMSA 1978. A pending project may not be prioritized for funding by the Authority until it has received final approval by the board.

F. All projects approved by the New Mexico Legislature shall be subject to further analysis and final approval by the Authority.

G. If requested by the Authority, the applicant will update the information provided pursuant to Paragraph C above.

H. If a loan participation for a project has not been purchased, or if the eligible entity and the originator have not certified to the Authority their desire to continue to pursue funding from the program, within the time specified in the law constituting specific authorization for that project, then a loan participation will not be provided for that project until the New Mexico Legislature has again provided specific authorization for such project. The Authority will contact each originator of a loan participation application that has received legislative authorization for a project for which no loan participation has been purchased by the Authority, and, prior to the expiration of the legislative authorization, solicit a letter indicating whether or not that originator and eligible entity would like to continue to pursue funding from the program.

## SECTION 5. EVALUATION OF APPLICATION AND PROJECT; COMMITMENT.

A. The finance committee will consider the purchase of the loan participation for the project and may confer with outside parties as necessary to obtain more information on the feasibility of the applicant's project and the creditworthiness of the applicant. The finance committee will make a written recommendation to the board. Such recommendation will propose either approval or disapproval of specific projects and will specify the total loan amount and the recommended amount of the Authority's participation. To the extent required by law, the Authority will confirm with the Department that, with respect to each applicant for which a loan participation is being considered, the applicant is engaged in an enterprise that serves an economic development goal and is suitable for financing assistance, as defined in the Act. Any recommendation for approval shall include a finding that the applicant is an eligible entity and shall specify whether the project is a state project or a standard project, in which case the recommendation shall note the consideration being provided and the adequacy thereof and shall describe the anticipated quantifiable benefits of the project. The Authority may apply different standards with respect to quantifiable benefits or other matters to state projects than it applies to standard projects.

B. The Authority will evaluate each application in accordance with this Section 5 of these rules, taking into account Section 6 and/or Section 7 of these rules, as applicable, and will determine whether to approve an application for a loan participation based on

- been met;
- (i) whether the requirements of the Act and these rules and regulations have been met;
  - (ii) the applicant's experience and financial history;
  - (iii) the economic feasibility of the proposed project;
  - (iv) the impact the proposed loan participation would have on the loan participation portfolio of the Authority on the concentration by industry area and geographic region; and
  - (v) the ability of the project to advance economic development goals and to provide quantifiable benefits.

C. Once a recommendation has been made on the application by the finance committee, the board will consider the application no later than the next regular board meeting at which such item may be properly considered, or 45 days after finance committee action, whichever comes first. The board may approve all or part of the application as recommended by the finance committee and shall either adopt the findings set forth in the recommendation with respect to eligibility, the nature of the project, and the adequacy of consideration or shall specify the board's own findings on those subjects. Board approval may specify, at the board's discretion, terms and conditions of the loan participation as necessary to ensure repayment, including but not limited to, maximum loan term and minimum annual payments.

D. The Authority will notify the originator of the approval or disapproval of the application by mailing written notification within seven working days of board action.

E. The applicant's experience, financial history and current financial status are key factors in the evaluation of an application for a loan participation. The Authority may consider, among other things:

- (i) the education and work history of the officers, managers, members, or partners of the applicant;
- (ii) the applicant's experience in the industry and in managing projects similar to the proposed project;
- (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 ratios; and
- (viii) the level of the applicant's equity in the proposed project.

F. The Authority will evaluate each project to determine its feasibility. If the Authority believes there are basic flaws in the concept, design, or purpose of the project or that the projected revenues of the project, together with other dedicated sources of repayment, will not be sufficient to repay the requested loan, the Authority will not participate in the loan.

G. The Authority will review each application to determine whether the proposed project advances the economic development goals of the state. The anticipated quantifiable benefits of each proposed project will be reviewed and considered.

H. If an application for a loan participation is approved by the Authority and approval by law by the New Mexico Legislature has already been obtained, the Authority will provide a loan commitment that is effective upon payment by the applicant of a commitment fee as specified in the commitment. If approval by law of the New Mexico Legislature has not yet been obtained when the Authority approves a loan participation, the Authority may provide a loan commitment that is effective upon approval by law by the New Mexico Legislature and payment of the commitment fee as specified in the commitment.

I. Loan commitments issued by the Authority will be for a term determined by the Authority. Before expiration of the loan commitment term, the originator may request an extension of the loan commitment term for a subsequent period of 90 days if the Authority has not funded the Authority's participation in the loan. The Authority will grant a loan commitment term extension effective upon receipt by the Authority of a non-refundable fee as specified in the commitment. The Authority may grant subsequent loan commitment term extensions for one or more additional 30-day periods effective upon receipt by the Authority of an additional non-refundable fee.

## SECTION 6. TERMS OF REAL PROPERTY LOANS.

A. If the Authority participates in a loan made to acquire land, or to acquire or construct buildings, improvements, and structures on land, or a loan for other purposes, including for operating capital purposes, which is secured by real property (a "real property loan"), the loan must satisfy the conditions prescribed in this section.

B. The amount of the Authority's participation in a real property loan may not exceed \$5,000,000.

C. A real property loan must be secured by a mortgage on real property in fee simple or on a leasehold estate which is at the highest lien level attainable to accomplish a successful financing. The Authority may, in its discretion, review and approve other encumbrances against the real property that do not affect the Authority's security for the loan.

D. The loan terms for any real property loan must require complete amortization provisions and require periodic payments by the eligible entity.

E. The Authority may allow the originator to amortize its portion of the loan using a different amortization schedule than is used for the Authority's portion of the loan, so long as both portions mature on the same date.

F. Before closing a real property loan where construction of the improvements in part or whole has taken place, an originator shall obtain a statement in writing from

(i) the author of the original appraisal, or other appraiser acceptable to the Authority, that construction was substantially completed according to the plans and specifications included in the original appraisal submitted to the Authority and that the completed value is at least equal to an amount which would meet the requirements of Paragraph B of this section;

(ii) an authorized official that the buildings and structures may be occupied and that the occupancy, buildings, and structures conform to all requirements of federal, state and municipal law; or if there is no authorized official or if requested by the Authority, a registered architect or professional engineer that the property offered as security for the real property loan is structurally sound and that buildings or structures conform to applicable building codes.

G. The terms and conditions of a land lease that secures a real property loan for a project are subject to approval by the Authority. The term of the lease must exceed the effective term of the loan by at least 10 years. However, the Authority may approve a land lease for a shorter term if there is an irrevocable option to renew the lease that is acceptable to the Authority in the sole discretion of the Authority.

H. Unless waived by the Authority, the applicant shall obtain insurance coverage for the improvements on the real property from responsible companies in such amounts and against such risks as is satisfactory to the Authority. An American Land Title Association title insurance loan policy covering the property with exceptions that are acceptable to the Authority is required if real property is involved.

I. If required by the Authority, the originator must obtain a guarantee for repayment of an applicant's loan from one or more of the following persons:

- (i) a partner or member of the applicant;
- (ii) a joint venturer with the applicant;
- (iii) any stockholder of the applicant; or

(iv) the parent corporation or a partner, member or stockholder of the parent corporation if the applicant is a subsidiary.

#### SECTION 7. TERMS OF PERSONAL PROPERTY LOANS.

A. If the Authority participates in a loan made to acquire or build fixtures, machinery, equipment, or other personal property, or a loan for other purposes, including for operating capital purposes, which is secured by personal property (a “personal property loan”), the loan must satisfy the conditions prescribed in this section.

B. The amount of the Authority’s participation in a real property loan may not exceed \$5,000,000.

C. A personal property loan must be secured by a lien on the personal property which is at the highest lien level attainable to accomplish a successful financing. The Authority may, in its discretion, review and approve other encumbrances against the personal property that do not affect the Authority’s security for the loan.

D. The Authority may allow the originator to amortize its portion of the loan using a different amortization schedule than is used for the Authority’s portion of the loan, so long as both portions of the loan mature on the same date.

E. The terms and conditions of a lease that secures a personal property loan must be approved by the Authority

F. Unless waived by the Authority, the applicant shall obtain insurance coverage on the personal property securing the personal property loan from responsible companies in such amounts and against such risks as is satisfactory to the Authority.

G. If required by the Authority, the originator must obtain a guarantee for repayment of an applicant’s loan from one or more of the following persons:

- (i) a partner or member of the applicant;
- (ii) a joint venturer with the applicant;
- (iii) any stockholder of the applicant; or

(iv) the parent corporation or a partner, member or stockholder of the parent corporation if the applicant is a subsidiary.

SECTION 8. LOAN CLOSING AND DISBURSEMENT OF FUNDS. Upon certification by the originator and the applicant that all provisions of the loan commitment have been complied with, the loan will be scheduled for closing review and payment of money to the originator.

## SECTION 9. PARTICIPATION REQUIREMENTS.

A. All loan documents used by the originator for any loan in which the Authority participates shall be in a form approved by the Authority, and such loan documents shall provide that the originator will have all available remedies in the event of a default by the borrower. Such remedies will include, without limitation, rights to foreclose, repossess collateral, sell collateral at public or private sale, obtain deficiency judgments, and exercise other remedies available at law or in equity. No changes shall be made to such forms without the prior written consent of the Authority. The Authority shall be a third-party beneficiary of agreements between the originator and the borrower under any loan in which the Authority participates, and the originator shall monitor the loan and exercise remedies under the loan documents for the benefit of the Authority.

B. The originator of a loan shall retain at least a 51 percent share of the principal amount of the loan and shall not sell, transfer or permit prepayment or other early retirement of any portion of its participation interest without the permission of the Authority.

C. The initial rate of interest on the Authority's participation in a real property loan or personal property loan will be set at the time the Authority issues a loan commitment. The rate of interest on the originator's portion of a loan is set by the originator, but may not exceed the rate of interest the originator would normally charge a borrower such as the applicant under similar circumstances but not involving participation by the Authority.

D. The Authority may, in its discretion, require prepayment fees on its participation share in a real property loan or personal property loan in amounts and for a period of time it determines appropriate, except that the Authority will not charge a prepayment fee later than five years from the date the Authority funds its participation.

E. The Authority may, in its discretion, approve a modification of the interest rate and/or loan term on the Authority's portion of a loan under the loan participation program as follows:

(i) effective upon the Authority's approval of a written request from the eligible entity and originator for an interest rate modification or extension of loan term, or both, the Authority will change the interest rate to either a current variable interest rate published by the Authority, or the current fixed interest rate published by the Authority for a loan with a term equal to the original term of the Authority's portion of the loan, plus extensions of the original term, if any, as allowed, and extend the loan term up to the maximum term permitted under Section 7 and Section 8, except that in no case will the total aggregate loan term exceed the maximum term as permitted under Section 7 and Section 8;

(ii) the Authority may, in its discretion, adjust the scheduled payment on the loan to reflect a change in interest rate or loan term, or both, in order to maintain the proper loan amortization;

(iii) upon Authority approval of a modification described in either Paragraph E(i) of this section, the originator must remit to the Authority a one percent fee, calculated on the outstanding principal balance of the Authority's portion of the loan.

(iv) the borrower and originator may request modification of the interest rate and loan term more than once during the term of the loan, subject to the maximum loan term permitted in Section 7 and Section 8 and remittance to the Authority of a one percent fee calculated as described in paragraph (iii) of this section for each such modification.

#### SECTION 10. SERVICING OF LOANS.

A. The Authority will enter into a participation agreement with each originator that

(i) provides that all servicing be by the originator;

(ii) provides methods for the collection of delinquent payments of principal and interest and foreclosure or exercise of security rights undertaken by the originator;

(iii) provides for periodic reports to the Authority by the originator;

(iv) requires the originator to service the loan in accordance with accepted business practices, including, but not limited to, prompt collection of amounts due under the loan and prompt exercise of rights in the event of default by the borrower;

(v) provides that the Authority shall be a third party beneficiary of agreements between the originator and the borrower under any loan in which the Authority participates; and

(vi) requires the originator to notify and consult with the Authority in the event of a default under any loan in which the Authority has participated; and

(vii) may provide that the Authority will pay a servicing fee to the originator.

B. The originator must indemnify the Authority against errors, omissions, fraud, or dishonesty committed by the originator, including any of the originator's officers, directors, employees, and agents.

C. The Authority may, in its discretion, enter into a loan modification agreement with the originator and the eligible entity if the Authority determines that such a modification will assist in the economic survival of the eligible entity during a period of economic hardship while maximizing the ultimate return to the Authority. The Authority may require that it receive

a non-refundable modification fee in an amount determined by the Authority before entering a loan modification agreement.

#### SECTION 11. ADMINISTRATIVE FEES.

A. The board may impose and collect a reasonable application fee in connection with the filing of an application for financial assistance with the Authority, a reasonable commitment fee payable upon issuance of a commitment, and reasonable fees for the extension of any commitment.

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

#### SECTION 12. ADMINISTRATION OF THE ECONOMIC DEVELOPMENT REVOLVING FUND; OTHER FUNDS.

A. The economic development revolving fund shall be administered by the Authority as a separate account, but may consist of such sub accounts as the Authority deems necessary to carry out the purposes of the economic development revolving fund.

B. Money from repayments of loan participations shall be deposited in the economic development revolving fund. The economic development revolving fund shall also consist of any other money appropriated, distributed or otherwise allocated to the economic development revolving fund for the purpose of acquiring loan participations for projects authorized specifically by law.

C. The Authority shall establish additional funds and accounts as necessary to implement the program.

D. The Authority shall adopt a uniform accounting system for the economic development revolving fund and each other fund and account established by the Authority, based on generally accepted accounting principles.

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

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