

**NEW MEXICO FINANCE AUTHORITY  
NEW MARKETS TAX CREDIT PROGRAM  
LENDING AND CREDIT POLICIES**

**A. PURPOSE**

The New Mexico Finance Authority (“NMFA”) is granted broad authority to finance projects that stimulate economic development through the Statewide Economic Development Finance Act (“SWEDFA”). Pursuant to amendments made to SWEDFA in 2006, the NMFA formed Finance New Mexico, LLC (“Finance New Mexico”), a qualified Community Development Entity (“CDE”) for the purpose of operating a New Markets Tax Credit (“NMTC”) Program. The NMFA, as the governing body for Finance New Mexico, will use this participation in the NMTC program and the capital derived from its allocation of NMTC to make below-market rate loans as authorized under the NMTC guidelines.

Pursuant to its Allocation Agreement with the Community Development Financial Institutions (“CDFI”) Fund at the US Department of the Treasury, the New Mexico Finance Authority, on behalf of Finance New Mexico, must provide:

- ◆ Equity or equity-equivalent financing;
- ◆ Interest rates that are 50% lower than either the prevailing market rates for the particular product or lower than NMFA’s current offering for the particular product; or
- ◆ Provide at least 5 forms of flexible or non-traditional lending rates and terms.

Together with NMFA-approved New Markets Tax Credit Program Policies and the New Markets Tax Credit Economic Impact Policies, these Lending and Credit Policies set forth the criteria by which the NMFA may make NMTC loans or investments to qualified businesses in qualified low-income communities.

**B. POLICY GOAL**

The goal of these Lending and Credit Policies is to provide guidance to NMFA staff, Finance New Mexico Advisory Board and potential borrowers regarding acceptable risk parameters, pricing and securitization of qualified investments as permitted under federal and state laws, and structuring enhancements available within the NMTC program. Through these policies, the NMFA Board shall determine:

- ◆ Collateral requirements, including acceptable loan to value and lien positions;
- ◆ Methods of determining below-market interest rates and fees;
- ◆ Acceptable loan and investment structures, including interest-only periods and convertible debt features; and
- ◆ Borrower credit standards and acceptable levels of loan loss reserves.

## **C. IMPLEMENTATION**

These Lending and Credit Policies shall be implemented by the New Mexico Finance Authority Board (the “Board”) as the manager of Finance New Mexico and its subsidiary CDEs, and may, at times, be waived by the Board if the Board determines that a deviation from its adopted policies is necessary. Such waiver will be reflected in the minutes of the meeting at which the waiver is considered.

### **SECTION 1. TYPES OF FINANCING PRODUCTS**

#### **Section 1.1 Overview**

The New Markets Tax Credit program is designed to stimulate the flow of new investment capital into qualified areas by filling financings gaps with affordable capital.

#### **Section 1.2 General Considerations**

In keeping with the spirit of the legislation and pursuant to Finance New Mexico’s application for a New Markets Tax Credit Allocation, the majority of Finance New Mexico’s investments into qualified businesses will take the form of non-traditional finance packages that offer flexible, advantageous loan terms. Pursuant to its Allocation Agreement with CDFI, Finance New Mexico may also provide investments in the form of equity, equity equivalents, and debt with equity-like features as outlined in these Lending and Credit Policies.

#### **Section 1.3 Equity, Equity Equivalent and Debt with Equity-Like Features:**

NMFA’s experience is as a lender, not an equity provider and as such, Finance New Mexico will provide the majority of its investments in the form of debt. However, in circumstances where equity is required to make the transaction possible or where it provides favorable tax implications for the qualifying business, the NMFA may consider allowing Finance New Mexico to make an equity investment in lieu of debt for qualified low-income community business under conditions outlined below.

##### **1. Equity**

The NMFA, on behalf of Finance New Mexico, will require each investment to have an exit fee that totals at least the amount it would have been required to repay if the investment had been structured as a loan and will carry the same personal guarantees as an NMTC Proceeds Loan would have carried.

##### **2. Equity-Equivalent Financing**

Equity-Equivalent Financing will not be considered by Finance New Mexico at this time.

##### **3. Debt with Equity-Like Features**

Finance New Mexico may provide its qualified businesses with a variety of debt structures that may be convertible to equity under certain conditions, including

promissory note that converts all or a portion of the outstanding principal to preferred or common stock or preferred stock that converts to debt at certain coupons. Additionally, Finance New Mexico may require companies to provide royalties or warrants in exchange for certain structuring flexibilities as described in Sections 2 and 3 of these Lending and Credit Policies.

#### **Section 1.4 Loans**

NMFA expects that the majority of the investments made in qualified businesses will be funded by a combination of loans from Leverage lenders and flexible, low-interest loans made by Finance New Mexico with capital provided through the sale of tax credits.

1. **Leverage Loans:** Finance New Mexico will make loans to qualified businesses using funds from non-recourse loans provided to Finance New Mexico by conventional lenders, private investors or an affiliate of the borrower. Typically, these loans will have the following characteristics:
  - a. They will be structured on the same terms and conditions of the bank loan pursuant to security interests held by Finance New Mexico and as further described in Section 4.6 of these Lending and Credit Policies;
  - b. They will impose a refinancing at the end of seven years; and
  - c. They may have independent servicing agents as described in Section 4.6 (2).
2. **NMTC Proceeds Loans:** Finance New Mexico will make loans to qualified businesses from capital provided by a private investor. These loans may:
  - a. Be structured with flexible lending criteria as outlined in Section 3 of these Lending and Credit Policies;
  - b. Be subject to a buy-out of the loan by the borrower at a discount at the end of the seven-year compliance period, under the following conditions:
    - i. The discount applied will be determined by the Board on a case-by-case basis with the following parameters:
    - ii.
      1. up to 20% based upon timely reporting;
      2. up to 50% based upon the economic impact of a project and other factors determined by the Board. Such criteria will be approved by the NMFA Board as that project's Economic Development Threshold;
      3. 5% to be discounted if the project is located in an NMTC-qualified "non-metropolitan" census tract;

4. 5% to be discounted for Tribal Projects; and
  5. in no instance shall the discount exceed 80% of the NMTC Proceeds Loan.
- iii. Additionally, the NMFA may allow for the NMTC transaction and legal costs paid from NMTC Proceeds Loans to be deducted from that portion of the loan required to be repaid at the end of the Compliance Period.

## **SECTION 2: INTEREST RATE SETTING POLICY**

### **Section 2.1 Overview**

Pursuant to its Allocation Agreement with the CDFI, Finance New Mexico will strive to lower the interest rates by 100 to 300 basis points per transaction. It is anticipated that businesses will benefit from interest rate reductions of between 100 and 300 basis points below typical local market rates.

### **Section 2.2 General Considerations**

The NMFA will take into consideration its “cost of funds” when setting the interest rates on its loans to qualified businesses. The primary goal of the interest rate policy is to set an interest rate sufficient to cover the operating costs of Finance New Mexico, LLC, on a break-even basis.

### **Section 2.3 Interest Rates:**

Finance New Mexico will provide fixed interest rates which will be set commensurate with its costs of funds and risk on the transaction:

1. **Leverage Loans** will carry interest rates and terms as set by the Leverage lender with no additional fees assessed by Finance New Mexico.
2. **NMTC Proceeds Loans** will carry a maximum fixed interest rate of 2% unless the NMFA Board of Directors determines that the interest rate shall be less.

### **Section 2.4 Fees:**

Finance New Mexico has established the following fee structure for the program that takes into account the operating costs and implementation of the fund on a break-even basis as well as the market discount of the per credit price of the tax credits.

1. Sponsor Fee shall be calculated on the total NMTC investment. The Sponsor Fee shall be equal to 300 basis.
2. Any extraordinary costs associated with a particular transaction will be passed along to the borrower at cost.

## **SECTION 3 LOAN STRUCTURING POLICY**

### **Section 3.1 Overview**

The goal of the New Markets Tax Credit program is to provide flexible financing to qualified businesses located in low-income communities that have historically lacked access to credit offered at advantageous terms. This loan structuring policy provides the framework for NMFA staff and consultants to provide flexible loan structures to the Finance New Mexico borrowers.

### **Section 3.2 General Considerations**

Consistent with its Allocation Agreement, Finance New Mexico will offer a variety of non-traditional lending terms to its borrowers, subject to specific approval by the NMFA Board. Finance New Mexico may consider an array of non-traditional lending terms which will be tailored to fit the characteristics of each transaction.

### **Section 3.3. Maximum Loan Amortization**

Finance New Mexico recognizes that structuring flexible amortization schedules is the key to accomplishing successful NMTC transactions. NMFA staff and consultants, on behalf of Finance New Mexico, expect to build upon the flexibility ingrained in the Smart Money program to the benefit of qualified businesses in low-income areas by offering the following flexibility in structuring loan amortizations on its NMTC Proceeds Loans:

1. Buildings and Real Estate: Loans used to purchase real estate and/or construct buildings may have an amortization period of up to 40 years.
2. Machinery and Equipment: Loans used to purchase machinery and equipment may not exceed 15 years and typically will not exceed the useful life of the equipment.
3. Working Capital: Loans for working capital may be made only for qualified expenditures within a low-income community and all expenditures will be subject to monitoring and tracing of working capital uses.
4. Finance New Mexico may offer interest-only periods of up to seven years on the NMTC Proceeds Loans.
5. NMFA will require a mandatory payment of the NMTC Proceeds loans following the end of the seven-year compliance period.

### **Section 3.4 Pre-Payment**

Given the tax considerations arising from unexpected loan repayments, Finance New Mexico will not allow companies to prepay only a portion of its loans with Finance New Mexico. Though highly discouraged, all full prepayments of loans whether voluntary or involuntary prior to the seventh anniversary date will be subject to a pre-payment penalty equal to 10% of then current principal balance.

## **SECTION 4 SECURITY POLICY**

### **Section 4.1 Overview**

The goal of the New Markets Tax Credit program is to make economically marginal transactions feasible by providing flexible financing to qualified businesses located in low-income communities. This security policy defines the acceptable levels of security for all Finance New Mexico loans and will be implemented by NMFA staff and consultants.

### **Section 4.2 General Considerations**

Finance New Mexico will structure its loans so as to achieve the greatest security without impacting the operations, growth and cash-flows of the qualified borrowers. All Finance New Mexico loans will be fully secured and Finance New Mexico will consider the quality and liquidity value of collateral securing each loan. Under no circumstances will collateral value substitute for a borrower's ability to repay the loans from cash flow. Cash flow will be the primary source of repayment, with collateral and guarantees providing the secondary and tertiary sources of repayment.

### **Section 4.3 Collateral Lien Level**

Finance New Mexico will strive to achieve the highest lien level possible in structuring its loans, but expects that the majority of its loan structures will subordinate NMTC Proceeds Loans to Leverage Loans. The NMFA staff and consultants, on behalf of Finance New Mexico, will not undertake undue economic risk to accomplish the financing and all transactions are subject to specific approval by the NMFA Board of Directors.

### **Section 4.4. Collateral Value Determination**

Finance New Mexico will strive to meet the mission of the NMTC program by structuring its loans in a manner that maximizes the leverage of the assets available for security by offering its NMTC Proceeds Loans with higher than standard loan-to-value ratios as outlined below.

<b>Asset Category</b>	<b>Loan-to-Value Limits %</b>		<b>NMTC Program</b>
	<u>Bank's Regulatory</u> <u>Limit</u>	<u>NMFA Smart Money</u> <u>Limits</u>	
Raw land	65%	50%-70%	65%-90%
Land development	75%	75%-80%	75%-90%
Construction	80%	80%-95%	80%-95%
Commercial Property	85%	80%-90%	85%-95%
Machinery and Equipment	80%	75%-80%	80%-95%
Inventory: based on durability	50%	50%-60%	50%-80%
Accounts Receivable (90 day)	75%	75%	90%

1. In accordance with standard banking procedures, applicants must provide an estimate of an asset's fair market value prepared by an independent, qualified appraiser acceptable to the NMFA.

2. Finance New Mexico will seek the commitment of its borrowers toward the project through minimum owner contributions or down-payments:
  - a. 5% for total investment requests of less than \$8,000,000
  - b. 10% for total investment requests \$8,000,000 or greater

#### **Section 4.5. Loan Security**

1. The NMFA will require that security interests be perfected in order to obtain the desired lien positions agreed upon and will require post-filing lien searches that document the approved lien positions.
2. Finance New Mexico will perfect and hold the security interests set forth by the Leverage Lenders for loans made from their funds.
3. As outlined in the New Markets Tax Credit Program Policies, borrowers will be subject to regular reporting on economic development benefits of their projects in addition to loan monitoring requests by Finance New Mexico or its servicing agent. Leverage lenders wishing to mitigate their risk in NMTC loan transactions may act as servicing agent.

#### **Section 4.6 Non-traditional forms of collateral**

Finance New Mexico may securitize its loans to qualified borrowers with non-traditional forms of collateral such as intellectual property, including patents.

#### **Section 4.7 Personal and Corporate Guaranties**

All NMTC Proceeds Loans made to private companies by Finance New Mexico will require personal guarantees of all owners with more than 20% ownership of the business and/or property. Exceptions may be considered on a case-by case basis. Corporate guarantee of the operating company is required if borrower is a Limited Liability Company or a Limited Partnership.

#### **Section 4.9 Character and Credit History:**

Finance New Mexico will consider the character and credit history of its applicants prior to extending credit and will extend credit to companies whose principals and guarantors have demonstrated responsible behavior. Credit reports and background checks will be required for all guarantors and principals with at least a 20% ownership interest. Recent bankruptcies and felony convictions of any guarantor or principal will disqualify a company from NMTC program participation. Lesser criminal convictions and credit record blemishes will be considered on a case-by-case basis.

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