

# NEW MEXICO MORTGAGE FINANCE AUTHORITY RULES AND REGULATIONS

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**SECTION 1. AUTHORITY.** These Rules and Regulations are issued under and pursuant to the Mortgage Finance Authority Act, enacted as Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended; Chapter 86 of the Laws of 1982 of the State of New Mexico, as amended (being Section 58-18-1 through 58-18-27, N.M.S.A. (1978); and Section 2-12-5, N.M.S.A. (1978), as amended (collectively, the “Act”). These Rules and Regulations supersede and replace all prior rules and regulations of the MFA and will become effective upon approval of the MFA Oversight Committee.

**SECTION 2. PURPOSE AND OBJECTIVES.** These Rules and Regulations are established to effectuate, and shall be applied so as to accomplish, the general purposes of the Act and the following specific objectives: (i) expanding the supply of funds in New Mexico available for new residential mortgages for persons and families of low or moderate income; (ii) alleviating the shortage of adequate housing, including multiple-family, transitional and congregate dwellings, in New Mexico for persons and families of low or moderate income; (iii) encouraging and providing the financing for the acquisition, construction, rehabilitation and improvement of residential housing, including multiple-family, transitional and congregate dwellings, in New Mexico for persons and families of low or moderate income; (iv) assisting in providing mortgage loans at below-market interest rates for private individuals, organizations and entities willing to undertake the acquisition, development and/or operation of multiple-family, transitional and congregate dwellings for persons and families of low or moderate income; and (v) obtaining the effective participation by lending institutions and others in the mortgage purchase program authorized by the Act, while restricting the financial return and benefit to such lending institutions to that necessary and reasonable to induce such participation. In carrying out its objectives and purposes, the New Mexico Mortgage Finance Authority, pursuant to the Act has the power to raise funds from private and public investors to make funds available for such purposes; to create and implement programs from time to time as may be necessary or appropriate to accomplish its purposes; and to assist, administer, finance or service housing programs and to contract for such services for or through private and nonprofit organizations and local, state, federal and tribal agencies or their instrumentalities.

**SECTION 3. GENERAL DEFINITIONS.** The following words and terms shall have the following meanings. A statutory change in the New Mexico Mortgage Finance Authority Act of any of the following definitions shall result in a corresponding change in the meaning of the same word or term within Section 3. of these Rules and Regulations.

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

B. “Affiliate” shall mean any entity controlling, controlled by or under the common control of another entity, person or common parent company; provided that an entity which is a

Mortgage Lender, must meet the MFA's requirements set forth in the Policies and Procedures of the MFA. For the purposes of this definition, "control" when used with respect to any specified entity, means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract, statute or otherwise. For purposes of this definition the terms "person" and "entity" include non-profit corporation, other public entities, governmental agencies and instrumentalities, Mortgage Lenders, Sponsors, Builders, and Applicants.

C. "Affordable" shall mean consistent with minimum rent and/or income limitations set forth in the Act, and in guidelines established for specific programs administered by MFA.

D. "Applicant" shall mean a lending institution, non-profit corporation, public or tribal entity, governmental agency or instrumentality, Mortgage Lender, Builder, Sponsor, or Affiliate of any of the foregoing, or any other person or entity meeting the appropriate criteria of the MFA.

E. "Application" shall mean an application for MFA approval to participate in one or more programs of the MFA submitted by an Applicant to the MFA.

F. "Bonds" or "Notes" shall mean the bonds or bond anticipation notes, respectively issued by the MFA pursuant to the Act.

G. "Builder" shall mean a person or entity licensed as a general contractor to construct Residential Housing in the state which has been approved by the MFA to participate in an MFA program.

H. "Code" shall mean the Internal Revenue Code of 1986, as amended.

I. "Existing Mortgage Loan" shall mean a loan secured by a Mortgage or Deed of Trust made by a Mortgage Lender to: (i) a Person of Low or Moderate Income to finance the purchase of an owner-occupied single family residence in the state; or (ii) to a person or entity to finance multiple-family, transitional and congregate dwelling projects for persons and families of low or moderate income, which loan was made prior to the date of submission by the Mortgage Lender of its Application.

J. "Federal Government" shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

K. "FHA" shall mean the Federal Housing Administration or its successors.

L. "FHLMC" or "Freddie Mac" shall mean the Federal Home Loan Mortgage Corporation or its successors.

M. "FNMA" or "Fannie Mae" shall mean the Federal National Mortgage Association or its successors.

N. “GNMA” or “Ginnie Mae” shall mean the Government National Mortgage Association or its successors.

O. “Home Improvement Loan” shall mean a mortgage loan to finance such alterations, repairs and improvements on or in connection with an existing residence as the MFA may determine will substantially protect or improve the basic livability or energy efficiency of the residence, including without limitation the acquisition and installation of energy conservation building materials and solar energy equipment.

P. “HUD” shall mean the United States Department of Housing and Urban Development.

O. “MFA” shall mean the New Mexico Mortgage Finance Authority.

R. “Mobile Home” shall mean a movable or portable housing structure, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for human occupancy as a residence that may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, except that the definition does not include recreational vehicles or modular or remanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property.

S. “Mortgage” shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the MFA with a fee interest in real property located within the state, or with a leasehold interest that has a remaining term at the time of computation that exceeds the maturity date or is renewable at the option of the lessee after the maturity date, of the Mortgage Loan or the instrument creating a lien on a mobile home.

T. “Mortgage Credit Certificate” shall mean certificates issued by the MFA to Persons of Low or Moderate Income enabling them to claim a credit against federal income tax for a portion of interest paid by such persons on a Mortgage Loan.

U. “Mortgage Lender” shall mean any bank, trust company, mortgage company, mortgage banker, national banking association, credit union, building and loan association and any other lending institution; *provided that the mortgage lender maintains an office in New Mexico, is authorized to make mortgage loans in the state and is approved by the MFA and either the FHA, VA, RHS, HUD’s Office of Native American Programs, FNMA (“Fannie Mae”), or FHLMC (“Freddie Mac”).*<sup>1</sup>

V. “Mortgage Loan” shall mean a financial obligation secured by a Mortgage, including a Project Mortgage Loan.

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<sup>1</sup> Definition of “Mortgage Lender” was amended (as italicized) per 1999 legislative action and was subsequently approved by the MFA Board of Directors and MFA Legislative Oversight Committee.

W. “Municipality” shall mean any county, city, town or village or the state.

X. “New Mortgage Loan” shall mean a Mortgage Loan, including a Home Improvement Loan, made by a Mortgage Lender to a Person of Low or Moderate Income to finance project costs, and containing such terms and conditions as the MFA may require.

Y. “Oversight Committee” shall mean the MFA’s Oversight Committee created by, and appointed in accordance with, the Act.

Z. “Persons of Very Low, Low or Moderate Income” shall mean the categories of income levels attributed to persons and families for the determination of eligibility for MFA’s programs. Very Low, Low or Moderate Income persons and families within the state are those who are determined by the MFA to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of quality affordable, decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to their locality and whose incomes are below the income levels established by the MFA to be in need of the assistance made available by the Act, taking into consideration, without limitation, such factors as defined under the Act. For purposes of this definition, the word “families” shall mean a group of persons consisting of, but not limited to, the head of a household; his or her spouse, if any; and children, if any, who are allowable as personal exemptions for Federal income tax purposes. Very Low Income persons or families are those with income at or below 50% of the Area Median Income (“AMI”). For Loans to persons and families on Indian Reservations, MFA will use the income basis determined under HUD’s Native American Housing and Self Determination Act (NAHASDA). Low Income persons or families are those with income above 50% and up to 80% of the AMI. Moderate Income persons or families are those with income above 80% and up to 120% of the AMI, or up to 140% AMI, on a program by program basis, as determined by MFA, in light of the needs throughout the State and in accordance with the requirements of the Act. AMI is defined as the point at which half the households in an area have lower incomes and half have higher incomes.

AA. “Policies and Procedures” shall mean Policies and Procedures of the MFA, including but not limited to, Mortgage Loan purchasing, selling, servicing and reservation procedures, which the MFA may update and revise from time to time as the MFA deems appropriate.

BB. “Recertification” shall mean the recertification of Applicants participating in MFA programs as determined necessary from time to time by the MFA.

CC. “Rehabilitation” shall mean the substantial renovation or reconstruction of an existing single-family residence, not including an increase in living area, which complies with requirements established by the MFA. Rehabilitation shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction.

DD. “Reservation and Compliance Procedures” shall mean the MFA’s procedures for allocating funds to purchase Mortgage Loans, and allocating Mortgage Credit Certificates, if

applicable. Such procedures may be updated and revised by the MFA as the MFA deems appropriate.

EE. “Residential Housing” shall mean a specific work or improvement undertaken primarily to provide one or more dwelling accommodations, including, without limitation, mobile homes, single-family, multiple-family, transitional and congregate dwellings for Persons of Low or Moderate Income, including the acquisition, construction or rehabilitation of real property, buildings and improvements

FF. “Residential Use” shall mean that the structure is designed primarily for use as the principal residence of the occupant or occupants and shall exclude vacation or recreational homes.

GG. “RHS/USDA” shall mean Rural Housing Service of the United States Department of Agriculture and Rural Housing Community Development Service (RHCDS) and its successors.

HH. “State” shall mean the State of New Mexico.

II. “VA” shall mean the Department of Veterans Affairs.

**SECTION 4. GENERAL REQUIREMENTS.** The following requirements shall apply to all programs established by the MFA.

4.1 Fees and Charges of the MFA. The MFA may establish and collect fees from Applicants who file Applications: (i) requesting allocations of funds for Mortgage Loans; or (ii) selling or offering to sell Mortgage Loans to the MFA in such amounts as the MFA may deem appropriate. Such fees may be used for, among other purposes: (i) reimbursing the MFA for all or part of its reasonably expected costs of issuing its bonds or other obligations and of administering its programs; and (ii) providing inducements to make or deliver Mortgage Loans or other financing for public purposes which the MFA determines require additional inducements to accomplish. The MFA may establish such other charges, premiums and penalties as it shall deem to be necessary in connection with the administration of its programs.

4.2 Servicing of Mortgage Loans. The MFA shall cause each Mortgage Loan financed by the MFA to be serviced pursuant to the Policies and Procedures of the MFA.

4.3 Examination of Books and Records. The MFA shall cause to be made such examinations of the books and records of each Applicant as the MFA deems necessary or appropriate to determine compliance with the terms of the Act, these Rules and Regulations and any agreement between the Applicant and the MFA. The MFA may require each Applicant to pay the costs of any such examination.

4.4 Consent to Jurisdiction. Each Applicant shall consent to the jurisdiction of the courts of the State, or the appropriate tribal court, over any proceeding to enforce compliance with the terms of the Act, these Rules and Regulations and any agreement between the Applicant and the MFA.

4.5 Purchase of the MFA's Bonds. No Mortgage Lender (including any "related person," as defined in Section 103 of the Code, and the regulations related thereto) shall, pursuant to any arrangement, formal or informal, or direct or indirect, purchase Bonds or other obligations of the MFA in an amount related to the aggregate principal amount of the Mortgage Loans to be sold to the MFA by such Mortgage Lender (or related person).

4.6 Policies and Procedures. The MFA shall adopt written Policies and Procedures for each of its programs and for the general conduct of its business. MFA's Policies and Procedures Manual shall become effective upon approval by the Board of Directors of the MFA; and shall be established in accordance with the Act, the Code, these Rules and Regulations, and if applicable, the requirements of the guarantor, insurer or purchaser with respect to the particular program. All Policies and Procedures and these Rules and Regulations shall be maintained at the offices of the MFA and be available for review by all Applicants and the general public during normal business hours.

4.7 Recertification. The MFA may establish procedures for recertifying Applicants from time to time. Applicants which fail to satisfy the MFA's requirements for recertification shall cease to be eligible and shall be denied further participation in MFA programs until the requirements of the MFA are satisfied.

**SECTION 5. SINGLE FAMILY HOMEOWNERSHIP PROGRAMS.** In addition to the programs defined in this Section 5, the MFA shall have the power to create variations or extensions of such programs, or additional programs which comply with the Act and these Rules and Regulations.

5.1 Additional Definitions. The following words and terms shall have the following meanings only within this Section 5.

A. "Single Family Homeownership Programs" shall mean the MFA's single family mortgage programs in which funds are available to finance Mortgage Loans through the sale of Bonds or other obligations, or from the proceeds of a secondary market facility, or from the MFA's general fund, or through the issuance of mortgage credit certificates allocated to Applicants on an aggregate or loan-by-loan basis pursuant to the Act and these Rules and Regulations set forth in this Section 5, and shall include: (i) the MFA's program pursuant to which the MFA shall issue Mortgage Credit Certificates to Persons of Low or Moderate Income; (ii) the financing of Home Improvement Loans; and (iii) the purchase and sale of Mortgage Loans.

B. FOR PURPOSES OF THE MAKING OF LOANS TO MORTGAGE LENDERS, THE PURCHASE OF MORTGAGE LOANS AND HOME IMPROVEMENT LOANS, "Residential Housing" shall mean an owner-occupied, single family residence located in the State, which the mortgagor(s) intend(s) to occupy as his or her (their) principal residence within sixty (60) days after: (1) the date of the closing of the purchase of the residence, or (2) in the case of a Rehabilitation loan where the Rehabilitation is to be accomplished by the

mortgagor, the date of completion of the Rehabilitation. For purposes of this definition, with regard to those properties and projects funded by tax exempt bonds, a single family residence:

(a) shall not include:

(i) a residence intended for occupancy by more than one family;

(ii) a residence which has been used as a residence for more than one family, or which could be used as a residence for more than one family;

(iii) a residence where more than an incidental portion 15% of the total area of which is reasonably expected to be used primarily in a trade or business, which is used as a vacation or recreational home, or with respect to which all or any portion of the land acquired with the proceeds of the related Mortgage Loan is used in a trade or business. The term "incidental", as used in the paragraph, shall be determined by the MFA on a program basis;

(iv) a residence which has a separate entrance to a section thereof which contains a second kitchen consisting of a sink and cooking facilities in addition to the residence's main kitchen; and

(b) shall meet such other requirements as the MFA may from time to time determine to be necessary or appropriate to properly administer the Single Family Homeownership Program.

## 5.2 Allocation of Funds for Financing.

A. Notice of Funds Availability (NOFA). When funds from tax exempt bonds are available or expected to be available, the MFA will issue a Notice of Funds Availability. The notice shall be an invitation to submit a request for reservation of funds to the MFA.

B. Allocation of Funds by the MFA. Funds may be allocated by the MFA either on an aggregate or on a loan-by-loan basis in accordance with the MFA's Reservation and Compliance Procedures. Allocations of funds for mortgages and/or Home Improvement Loans financed by the MFA shall be conclusive. In making such allocations, the MFA may consider, among other things, as appropriate:

1. In the case of programs, the funds of which are allocated on a loan-by-loan basis, the order of receipt of a request for reservation of funds, so as to generally allocate funds on a first-come, first-served basis;

2. The ability of the Applicant to deliver individual Mortgage Loans or Home Improvement Loans or otherwise utilize the funds for the purpose stated in the notice within the time limits of the program;

3. In the case of programs for the purchase of Existing Mortgage Loans, the terms and conditions of the Mortgage Loans offered for sale by the Applicant.

C. Allocation of Mortgage Credit Certificates. Mortgage Credit Certificates shall be allocated on a loan-by-loan basis in accordance with the Policies and Procedures established by the MFA.

### 5.3 Applications.

A. Process for Applying. The MFA shall maintain an application policy for Applicants wishing to apply for MFA approval to participate in the Single Family Homeownership Program. Applications will be mailed together provided with all documents required to be executed and submitted in connection therewith upon request. An Application to sell Mortgage Loans or Home Improvement Loans to the MFA shall contain, among other things, the unconditional agreement of the Applicant, upon acceptance of the Application by the MFA, to sell Mortgage Loans or Home Improvement Loans to the MFA or its designee which comply with the terms of an agreement to be signed by the Applicant and the MFA.

B. Review by the MFA. On receipt of an Application, the MFA shall review and analyze the Applicant's ability to sell Mortgage Loans or Home Improvement Loans to the MFA or its designee and to service such Mortgage Loans or Home Improvement Loans, or cause them to be serviced.

C. Notification of Acceptance. The MFA, by written notice shall notify each Applicant which has submitted an Application of the approval or disapproval of its Application. Upon approval of its Application, a Mortgage Lender or other Applicant shall be considered approved by the MFA to participate in the Single Family Homeownership Program. The MFA's approval or disapproval of any Application shall be conclusive.

5.4 Acceptance. The MFA shall establish Policies and Procedures for the purchase of Mortgage Loans and Home Improvement Loans as set forth in paragraph 4.6 of these Rules and Regulations. Each allocation of funds shall be conditioned upon the receipt by the MFA from the Applicant of a commitment fee, if any, and the documents required by the MFA within the time specified in the acceptance. In all cases the MFA may deny requests and may reallocate funds in accordance with the MFA's Reservation and Compliance Procedures. The allocation and reallocation of funds by the MFA for the financing of Mortgage Loans and Home Improvement Loans shall be conclusive.

5.5 Financing of Mortgage Loans and Home Improvement Loans. The financing of Mortgage Loans and Home Improvement Loans by the MFA shall be in accordance with the Policies and Procedures established by the MFA. Each Mortgage Loan and Home Improvement Loan financed must: (i) be the subject of an allocation of funds; (ii) be the subject of a written



agreement executed by the MFA and the Applicant; (iii) comply with the terms and conditions of such agreement; (iv) be serviced in compliance with the servicing requirements of such agreement; and (v) otherwise comply with the MFA's requirements for the financing and servicing of Mortgage Loans and Home Improvement Loans under the Single Family Homeownership Program.

5.6 Yield on Mortgage Loans and Home Improvement Loans. Mortgage Loans and Home Improvement Loans under the Single Family Homeownership Program shall bear interest at such a rate or rates as in the aggregate shall produce a yield to the MFA on such Mortgage Loans and Home Improvement Loans sufficient to (i) pay interest on any related issue of the MFA's bonds or other obligations; (ii) provide adequate reserves, if any, for the holder of any of the MFA's bonds or other obligations; and (iii) cover the operating costs of the MFA.

5.7 Conditions of Mortgage Loans and Home Improvement Loans.

A. Mortgage Loans and Home Improvement Loans financed by the MFA under the Single Family Homeownership Program shall: (i) comply with the applicable terms and conditions prescribed by the MFA in a written agreement between the MFA and the Applicant for such Mortgage Loan or Home Improvement Loan; and (ii) comply with the Policies and Procedures of the MFA.

B. Each loan commitment to make a Mortgage Loan or Home Improvement Loan must be made to a Person of Low or Moderate Income. Mortgage Loans and Home Improvement Loans shall be financed by the MFA within such time periods as are specified by the MFA.

5.8 Restrictions on Return Realized by Mortgage Lenders. The MFA shall establish and set forth the maximum rate or rates of return which may be realized by Mortgage Lenders from Mortgage Loans or Home Improvement Loans, including any commitment fees, premiums, bonuses, points or other fees charged by the Mortgage Lender in connection with the making of such Mortgage Loans or Home Improvement Loans. Such maximum rates of return shall be set in such amounts as the MFA finds to be reasonably necessary to induce participation in the Single Family Homeownership Program by Applicants in order to accomplish the purposes of the Act.

5.9 Mobile Homes. The eligibility of mobile homes for use as security for Mortgage Loans shall be determined in accordance with standards established by the MFA.

**SECTION 6 MULTIPLE FAMILY DWELLING, TRANSITIONAL, AND CONGREGATE PROJECT MORTGAGE LOANS.** In addition to the Multi-Family Housing Programs as defined in this Section 6, the MFA shall have the power to create variations or extensions of the programs, or additional programs which comply with the Act and these Rules and Regulations.

6.1 Additional Definitions. The following words and terms shall have the following meanings only within this Section 6.

A. “Congregate Housing Facility” shall mean residential housing designed for occupancy by more than four Persons of Low or Moderate Income living independently of each other. The facility may contain group dining, recreational, health care or other communal facilities and each unit in a congregate housing facility shall contain at least its own living, sleeping and bathing facilities.

B. “Lender Loan” shall mean a loan made by the MFA to a Mortgage Lender, pursuant to the Act and these Rules and Regulations, the proceeds of which are used directly or indirectly to make Project Mortgage Loans.

C. “Multiple-Family Dwelling Project” shall mean the residential housing that is designed for occupancy by more than four persons or families living independently of each other or living in a congregate housing facility, at least sixty percent of whom are Persons of Low or Moderate Income, including without limitation Persons of Low or Moderate Income who are elderly and handicapped as determined by the MFA, provided that the percentage of low-income persons and families shall be at least the minimum, if any, required by federal tax law or other federal or state funding regulations.

D. “Multi-Family Housing Program” shall mean a program involving a Congregate Housing Facility, a Multi-Family Dwelling Project or a Transitional Housing Facility.

E. “Project” shall mean any work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement, rehabilitation or conversion approved by the MFA for the primary purpose of providing sanitary, decent, safe and affordable residential housing within the State for one or more Persons of Low or Moderate Income.

F. “Project Mortgage Loan” shall mean a Mortgage Loan made to Sponsor to finance project costs of a Multi-Family Housing Project

G. “Sponsor” shall mean an individual, association, corporation, public or tribal entity, joint venture, partnership, limited partnership, trust or any combination thereof which has been approved by the MFA as qualified to own and maintain a multiple-family dwelling, transitional or congregate housing project, maintains its principal office or a branch office in New Mexico and has agreed to subject itself to the regulatory power of the MFA and the jurisdiction of the courts of the State, including Tribal courts having jurisdiction of projects located on Native American Trust Lands located in New Mexico.

H. “Transitional Housing Facility” shall mean residential housing that is designed for temporary or transitional occupancy by Persons of Low or Moderate Income or special needs.

## 6.2 Application Procedures.

A. Offers to Sell Project Mortgage Loans. Application procedures for offers to sell Project Mortgage Loans shall be set forth in the Policies and Procedures established by the MFA in accordance with paragraph 4.6 of these Rules and Regulations. The Application shall contain such information as required by the Act and the MFA for determining whether the MFA shall finance the Mortgage Loans.

B. Loans to Lenders Program. A Sponsor requesting a Lender Loan from the MFA must first submit an Application to the MFA, in the form prescribed by the MFA. Formal Application procedures for loans to lenders shall be set forth, in writing, in the Policies and Procedures established by the MFA in accordance with paragraph 4.6 of these Rules and Regulations.

C. Other Programs Established by the MFA. The MFA shall, from time to time, establish Application procedures for programs. The Application procedures shall be published in Policies and Procedures established by the MFA in accordance with paragraph 4.6 of these Rules and Regulations for various programs. The Application procedures shall take into consideration:

1. timely completion and submission to the MFA of a program Application;
2. timely submission of all other information and documentation related to the program required by the MFA, as set forth in MFA's Policies and Procedures;
3. timely payment of any fees required to be paid to the MFA at the time of submission of the Application; and
4. compliance with program eligibility requirements as set forth in MFA's Policies and Procedures.

### 6.3 Standards for Approving Qualification of Applicants.

A. Sponsors. The MFA shall, from time to time, establish standards for approving qualifications of Sponsors, which standards shall be published in Policies and Procedures established for the particular program. These standards shall take into consideration the following factors:

1. The MFA shall require each Sponsor, at the time of such Sponsor's request for MFA approval, to submit a verified certificate stating that, among other things:
  - (a) for every Multi-Family Housing Program, including every assisted or insured project of HUD, RHS/USDA, FHA and any other state or local government housing finance agency in which such Sponsor has been or is a principal;
  - (b) except as shown on such certificate:

(i) no mortgage on a project listed on such certificate has ever been in default, assigned to the United States government or foreclosed, nor has any mortgage relief by the mortgagee been given;

(ii) there has not been a suspension or termination of payments under any HUD assistance contract in which the Sponsor has had a legal or beneficial interest;

(iii) such Sponsor has not been suspended, debarred or otherwise restricted by any department or agency of the federal government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and

(iv) the Sponsor has not defaulted on an obligation covered by a surety or performance bond.

If such Sponsor cannot certify to each of the above, such Sponsor shall submit a signed statement to explain the facts and circumstances which such Sponsor believes will explain the lack of certification. The MFA may then, in its sole and absolute discretion, determine if such Sponsor is or is not qualified.

2. The experience of the Sponsor in developing, financing and managing Multiple-Family Residential Housing.

3. Whether the Sponsor has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

B. Mortgage Lenders. In approving Mortgage Lenders, the MFA shall consider, among other things:

1. The financial condition of the Mortgage Lender;

2. The terms and conditions of the Lender Loans to be made;

3. The aggregate principal balances of Lender Loans to be made to each Mortgage Lender compared with the aggregate principal balances of the Lender Loans to be made to all other Mortgage Lenders;

4. The MFA's assessment of the ability of the Mortgage Lender or its designated servicer to act as originator and servicer of Mortgage Loans for the Multi-Family Housing Programs to be financed; and

5. Previous participation by the Mortgage Lender in the MFA's programs and HUD, FHA, or RHS/USDA programs.

C. Other Applicants. The MFA shall, from time to time, establish standards for approving the qualifications of other Applicants seeking MFA assistance, which standards shall be published in Policies and Procedures established for the particular program.

6.4 Notice of Acceptance. The MFA shall, in writing, notify each Applicant, which has submitted an Application as to the aggregate principal balance of the loan, if any, the MFA shall agree to make, subject to the conditions set forth in the Application. The aggregate principal balance of loans, which the MFA agrees to make to any Applicant, may be in an amount less than that requested.

6.5 Standards for Determining Minimum Equity Requirements, Acceptable Debt-to-Equity Ratios, and Acceptable Loan-to-Value Ratios.

A. Generally. The MFA shall, from time to time, establish standards for (i) minimum equity requirements and acceptable debt-to-equity ratios; and (ii) acceptable loan-to-value ratios for each project under a particular program, which standards shall be in accordance with generally accepted standards in the lending industry and shall be published in Policies and Procedures established for the particular program.

B. Sponsors. With respect to establishing such standards for Sponsors, the MFA shall require that the maximum mortgage amount not exceed the estimate of the replacement cost of the Multi-Family Housing Project when the proposed improvements are completed and required reserves are funded. The replacement cost may include land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the MFA, including an allowance for Builder's and Sponsor's profit and risk.

6.6 Uniform Accounting System. The accounting system used by Sponsors shall be based upon generally accepted accounting standards for the industry. Additional requirements may be dictated by the state or federal funding source, which in such cases will be included in the Sponsor's contract or loan documents.

6.7 Costs of the Project.

A. Submission of Cost Certificate. Upon completion of any Multi-Family Housing Project, the MFA shall require the Sponsor to submit a cost certificate detailing the specific items of the project if required by the regulations of the funding source. MFA will require the Sponsor to document all costs funded by MFA.

B. Cost Approvals. The MFA shall, from time to time, develop standards for approving Project costs for Projects to be financed through an MFA program. These standards shall be set forth in Policies and Procedures established for the particular program and shall include such factors as:

1. the cost of the land upon which the project is to be built;

2. the architect's and other professionals' fees;
3. organizational and legal expenses;
4. the number of square feet to be built together with the cost per square foot to build;
5. the amount of Builder's and Sponsor's overhead to be allocated to the project;
6. the amount of Builder's and Sponsor's profit;
7. taxes and insurance, including title insurance and recording fees; and
8. the Sponsor's relationship, if any, with the Builder or general contractor for the project, including any collateral agreements.

The MFA shall take into account the guarantor's, insurer's, or purchaser's approved cost limits in effect at the time in evaluating the reasonableness of and approving the project costs for each project. These standards shall also take into consideration the requirements of the Act, the Code and the requirements of any applicable federal government program.

6.8 Geographic Allocation and Other Site Considerations. The MFA shall make all reasonable efforts to provide loan assistance under various Multi-Family Housing Programs on a statewide basis. In providing for reasonable geographic allocation for all MFA Multi-Family Housing Programs, the MFA may consider with respect to a project, among other things:

- A. the nature of the proposed neighborhood;
- B. whether there is a need in the area for decent, safe and sanitary housing for Persons of Low and Moderate Income;
- C. the number of similar multi-family housing projects, if any, located in the particular area and the type, location, number of units and size of such projects;
- D. the occupancy history of similar multi-family housing projects in the area;
- E. the need for new housing in the area to attract a new industry or plant;
- F. the availability of adequate utilities (water, sewer, gas and electricity) and streets to service the project;
- G. the availability of, and accessibility to, social, recreational, educational, commercial and health facilities and services, which should at least be equivalent to those found in neighborhoods consisting largely of unassisted, standard housing of similar market rents; and

H. whether the project site is free from adverse environmental conditions, natural or man-made, such as instability, flooding, sewage hazards, harmful air pollution, smoke or dust, excessive vehicular traffic and fire hazards.

In addition, the MFA shall give great weight in making its determination with respect to geographic allocation to whether the project will promote a greater choice of housing opportunities in the area and will avoid an undue concentration of assisted persons in areas containing a high proportion of Persons of Low and Moderate Income. The MFA may rely on such guarantor's, insurer's or purchaser's approval as evidence that the above criteria have been met.

6.9 Discrimination Prohibited. The development, construction, occupancy and operation of a Multi-Family Housing Program financed or assisted by the MFA shall be undertaken in a manner consistent with principles of non-discrimination and equal opportunity, and the MFA shall require compliance with all applicable federal and State laws and regulations relating to affirmative action, non-discrimination and equal opportunity.

**SECTION 7. HOUSING OPPORTUNITY FUND ("HOF").** In addition to the following programs defined in this Section 7, the MFA shall have the power to create certain variations or extensions of the programs, or additional programs which comply with the Act and these Rules and Regulations.

7.1 Additional Definitions. The following words and terms shall have the following meanings only within this Section 7.

A. "Down Payment Assistance Programs" shall mean the MFA's programs that provide down payment and closing cost assistance in the form of a second mortgage lien to Persons of Low and Moderate Income who are, with few exceptions, using the MFA's Single Family Homeownership Program (as defined in Section 5, above) to acquire single family homes.

B. "Partners Program" shall mean the MFA's program designed to serve as a secondary market for below-market-rate single family mortgages which have been originated by nonprofit organizations to provide financing for families earning no more than 50%-60% of county or median income as published by the US Department of Housing and Urban Development at the time of initial family qualification by participants and MFA. This income limitation will be increased to a maximum of 60% of county or area median for areas that exhibit a combination of high housing costs and low median incomes which will be determined by the MFA on an annual basis and published in the Notice of Funds Availability (NOFA) Program Policies.

C. "Primero Investment Fund" shall mean the MFA's program designed to provide flexible financing to nonprofit organizations, Tribal and public agencies, as well as for-profit entities undertaking the development of Affordable owner-occupied, rental or special needs housing projects.

D. “ACCESS Loan Program” shall mean the MFA’s program designed to provide guaranteed or insured construction and permanent financing for affordable rental developments.

E. “BUILD IT Loan Guaranty Program” shall mean the MFA’s program designed to guaranty interim financing provide by other lenders for affordable housing developments.

F. “HERO” shall mean the MFA’s program designed to provide a first fixed-rate mortgage loan, including down payment and closing cost assistance in the amount of a 3.5% grant to be funded to the borrower at the time of loan closing, to households in which at least one member is a teacher, safety worker, health care worker or active member of the armed forces.

## 7.2 Funding.

A. Initial Funding. The HOF shall be initially funded with net residual assets of the MFA’s issue of Home Improvement Loan Revenue Bonds, 1985 Series A and financing adjustment factor (FAF) savings derived from the MFA’s Multi-Family Housing Refunding Revenue Bonds 1990 Series A.

B. Additional Sources. Additional sources of funding may include, but are not limited to:

1. gifts, loans and grants received from the federal government, private foundations, corporate and private individuals and other sources;
2. money and other assets specifically allocated by the MFA to the HOF from time to time; and
3. earnings of the HOF.

7.3 Use of Funds. Monies and other assets of the HOF shall be disbursed to Applicants in accordance with the purposes of the HOF and Policies and Procedures developed and established by the MFA for the HOF as follows:

A. to provide down payment assistance for the financing of housing by Persons of Low and Moderate Income;

B. to provide closing cost assistance for the financing of housing by Persons of Low and Moderate Income;

C. to pay fees for services utilized in connection with HOF programs;

D. to pay costs of acquisition, rehabilitation and/or construction of Affordable housing projects, as well as costs associated with single family mortgages; and



E. in such other manner as the MFA may determine from time to time.

7.4 Administration. The MFA shall administer the affairs of the HOF in accordance with provisions of the Act, these Rules and Regulations, any applicable state and federal laws and regulations, each of which may be amended or supplemented from time to time. The MFA, in establishing, funding and administering the affairs of the HOF and by making, executing, delivering and performing any award, contract, grant or any other activity or transaction contemplated by the HOF, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgment, determination or award and will not contravene the provisions of or otherwise cause a default under any of its agreements, indentures, or other instruments to which it may be bound.

7.5 Program Guidelines. The MFA shall, from time to time, develop and adopt Policies and Procedures for each program of the HOF, which shall set forth the specific Application and approval procedures.

**SECTION 8. SECONDARY MARKET FACILITY.** The MFA may establish and implement a secondary market facility for Mortgage Loans and to otherwise act as a conduit for public and private funds to provide an increased degree of liquidity for mortgage investments. In establishing a secondary market facility, the MFA may issue pass-through securities and may purchase and contract to purchase Mortgage Loans, pass-through securities, obligations secured by Mortgage Loans or revenues therefrom or interests therein. The MFA shall establish Policies and Procedures, in accordance with paragraph 4.6 of these Rules and Regulations, which Policies and Procedures shall provide for the governing of the operations of the secondary market facility, the issuance of pass-through securities and for the purchase or issuance by, or the sale of, such obligations to the secondary market facility. The Policies and Procedures shall include, among other things: (i) the submission by Mortgage Lenders of offers to sell Mortgage Loans; pass-through securities; and obligations secured by Mortgage Loans or pledges of Mortgage Loan revenues; (ii) standards for allocating available funds or guarantees among Mortgage Lenders through the secondary market facility; (iii) qualifications or conditions relating to the reinvestment by Mortgage Lenders of the funds made available to Mortgage Lenders by the secondary market facility; and (iv) characteristics of pass-through securities to be issued by the secondary market facility.

**SECTION 9. MISCELLANEOUS.** Capitalized terms not otherwise defined in these Rules and Regulations have the same meaning as defined in the Act.

**SECTION 10. AMENDMENT TO RULES AND REGULATIONS.** These Rules and Regulations may be amended or supplemented by the MFA, with the approval of the Oversight Committee, at any time. Proposed amendments to these Rules and Regulations will be posted on MFA's website for a minimum of thirty (30) days prior to approval by the Oversight Committee, to enable public comment on the proposed changes.