

## NEW MEXICO MORTGAGE FINANCE AUTHORITY HOUSING TRUST FUND ACT RULES

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**SECTION 1. AUTHORITY.** These Rules are issued under and pursuant to the Mortgage Finance Authority Act, NMSA 1978, §58-18-1 et seq. (the “MFA Act”) and pursuant to the Housing Trust Fund Act, NMSA 1978, §58-18C-1 et seq. (the “Act”). Following review and comment by the Legislative Oversight Committee (“Oversight Committee”), these Rules will become effective upon the approval of the New Mexico Mortgage Finance Authority’s (“MFA”) Board of Directors.

**SECTION 2. PURPOSE.** These Rules are established to effectuate, and shall be applied so as to accomplish, the general purpose of the Act, which is to provide flexible funding for housing initiatives in order to produce and preserve significant housing investment in the State.

**SECTION 3. GENERAL DEFINITIONS.** The following words and terms shall have the following meanings.<sup>1</sup>

3.1 “Act” shall mean the Housing Trust Fund Act, NMSA 1978, §58-18C-1 et seq.

3.2 “Affordable” shall mean consistent with minimum rent and/or income limitations established by the Trustee.

3.3 “Affordable Housing” means Residential Housing primarily for Persons or Households of Low or Moderate Income.

3.4 “Affordability Period” shall mean such period of time as may be determined by the Trustee, in its discretion, during which any property which has benefited from an award of Housing Trust Fund Assistance must be maintained as Affordable Housing or be used for Affordable Housing purposes commensurate with the amount of funding awarded, the type of activity pursued with the funding, and the enforceability of the affordability period.

3.5 “Applicant” shall include, but is not limited to individuals and non-individual applicants such as, a Builder, a governmental housing agency, a governmental entity, a governmental instrumentality, a regional housing authority, a tribe, a tribal housing agency, a for-profit organization, a non-profit organization, a corporation, limited liability company, partnership, joint venture, syndicate, association or such other entity as may be approved by the Trustee and which is preparing to submit or has submitted to the Trustee an Application for Housing Trust Fund Assistance and is assuming contractual liability and legal responsibility by executing one or more written agreements entered into with the Trustee.

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<sup>1</sup> The following definitions in these Rules are modeled on the MFA’s internal Rules and Regulations which were most recently revised and adopted by the MFA’s Board on July 24, 2003 and which were reviewed by the Oversight Committee on August 12, 2003: 3.2, 3.10, 3.12, 3.13, 3.15, 3.17, 3.21, 3.22, 3.23, 3.25, 3.26 and 3.27. The following definitions in these Rules are taken directly from the definitions in the Act: 3.3, 3.9, 3.12, and 3.21. The remaining definitions in these Rules have been modeled on the Act and are created to support the goals of the Act and these Rules.

3.6 “Application” shall mean an application to receive Housing Trust Fund Assistance under the Act submitted by an Applicant to the Trustee.

3.7 “Builder” shall mean a person or entity licensed as a general contractor to construct Residential Housing, Multi-Family Housing, Congregate Housing, or other Buildings in the state.

3.8 “Building” shall mean a structure capable of being constructed, renovated or converted into Affordable Housing or a structure that is to be demolished.

3.9 “Committee” shall mean the New Mexico Housing Trust Fund Advisory Committee.

3.10 “Congregate Housing Facility” shall mean Residential Housing designed for permanent or temporary 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 living facilities and each unit in a Congregate Housing Facility shall contain at least its own living, sleeping, and bathing facilities. The facility may also provide supportive services (though Housing Trust Fund Assistance may not be used to pay for such services).

3.11 “Eligible Activities” shall mean the activities defined in Section 5.2 of these Rules.

3.12 “Eligible Applicants” shall mean the applicants defined in Section 5.1 of these Rules.

3.13 “Federal Government” shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

3.14 “Fund” shall mean the New Mexico Housing Trust Fund.

3.15 “Household” shall mean one or more persons occupying a housing unit.

3.16 “Housing Trust Fund Assistance” shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act.

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

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

3.19 “MFA 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).

3.20 “Multi-Family Housing” shall mean 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, a percentage 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 Trustee, provided that the percentage of low-income persons and families shall be at least the minimum, if any, required by any applicable federal tax law. The Trustee, in its discretion, may increase or decrease the percentage of units that must be occupied by Persons of Low or Moderate Income in any agreement with an Applicant consistent with the purposes of the Act.

3.21 “New Mexico Housing Trust Fund” shall mean the Fund created by the Act in the MFA and which Fund consists of all distributions and appropriations made to the Fund. Earnings of the Fund shall be credited to the Fund, and unexpended and unencumbered balances in the Fund shall not revert to any other fund. The MFA shall be the Trustee for the Fund and the State investment council shall be the investment agent for the Fund. The Fund shall consist of revenue from the following recurring sources:

- (A) Appropriations and transfers from the State general fund;
- (B) Any other money appropriated or distributed to the Fund; or
- (C) Any private contributions to the Fund.

Money in the Fund is appropriated to the MFA as Trustee for the purposes of carrying out the provisions of the Act.

3.22 “NOFA” shall mean Notice of Funding Availability.

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

3.24 “Persons of Low or Moderate Income” shall mean persons and Households within the state who are determined by the Trustee to lack sufficient income to pay enough to cause private enterprise to build or preserve an adequate supply of 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 Trustee to be in need of the assistance made available by the Act, taking into consideration, without limitation, such factors as defined under the Act.

3.25 “Rehabilitation” shall mean the substantial renovation or reconstruction of existing Residential Housing or Multi-Family Housing, which complies with requirements established by the Trustee. 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, but shall include moderate rehabilitation including but not limited to weatherization activities, roof repair, and improvements to meet Americans with Disabilities Act requirements.

3.26 “Residential Housing” shall mean any Building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more Households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. “Residential Housing” includes Congregate Housing Facilities, Multi-Family Housing, manufactured homes, and housing intended to provide or providing Transitional Housing or temporary housing for homeless persons.

3.27 “Residential Use” shall mean that the structure or the portion of the structure to benefit from Housing Trust Fund Assistance is designed primarily for use as the principal residence of the occupant or occupants and shall exclude vacation or recreational homes.

3.28 “RFP” shall mean Request for Proposals.

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

3.30 “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.

3.31 “Trustee” shall mean the MFA, as Trustee of the Fund.

**SECTION 4. ROLE OF THE COMMITTEE.** The Committee shall be advisory to the Trustee and shall be subject to oversight by the MFA Act Oversight Committee. The Committee shall adopt rules regarding the time, place and procedures for Committee meetings; the procedures for the review of and standards for recommending Applications for loans or grant projects; and the procedures for review of and standards for recommending program guidelines. As applicable, the Committee shall either review project applications or program guidelines and make recommendations to the Trustee for funding them. The Committee shall not be involved in or advisory to the Trustee in matters relating to the investment of the Fund.

**SECTION 5. APPLICATION PROCESS FOR THE AWARD OF HOUSING TRUST FUND ASSISTANCE.** The award of Housing Trust Fund Assistance to eligible Applicants shall be subject to the Act, these Rules, the Application and funding guidelines and requirements established by the Trustee and applicable law.

5.1 Eligible Applicants. To be eligible to receive Housing Trust Fund Assistance, an Applicant shall:

- (A) Satisfy any eligibility requirements that may be established by the Trustee and applicable law;

- (B) To the extent applicable, for any Applicant:
- (1) Be organized under state, local, or tribal laws and can provide proof of such organization and that Applicant is in good standing, as applicable;
  - (2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;
  - (3) Have (a) no significant financial audit findings, and (b) no significant outstanding or unresolved monitoring findings from the MFA, as Trustee or otherwise, or if it has any such findings, it has a certified letter from the MFA, as Trustee or otherwise stating that the findings are in the process of being resolved;
  - (4) Such Applicant 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;
  - (5) Have among its purposes significant activities related to providing housing or services to Persons of Low or Moderate Income; and
  - (6) Such Applicant has not defaulted on any obligation covered by a surety or performance bond.
- (C) If a non-profit organization:
- (1) Provide the Trustee proof of its 501(c)(3) tax status;
  - (2) Have no part of its net earnings inuring to the benefit of any member, founder, contributor or individual; and
  - (3) Provide the Trustee with proof of its compliance with the Charitable Solicitations Act, NMSA 1978, §57-22-1 et seq. and the filing requirements of the New Mexico Attorney General's Office under that Act.
- (D) If an individual:
- (1) Be an individual who is qualified to receive assistance pursuant to the Affordable Housing Act, NMSA 1978 § 6-27-1 et seq. and be approved by the Trustee; and

- (2) Provide the Trustee with all required schedules, documents, or such other information which may be required by the Trustee.

5.2 Eligible Activities. Subject to the Act, these Rules, and applicable law, the eligible activities for which an Applicant may submit an Application to receive Housing Trust Fund Assistance shall be as established by the Trustee in a NOFA, RFP, or otherwise and may include, but are not limited to, costs of infrastructure and infrastructure purposes, financing in whole or in part through loans or grants, the costs necessary to support, operate or own affordable housing projects, the acquisition, construction, Rehabilitation, renovation, reconstruction, alteration or repair of Residential Housing, Multi-Family Housing, Congregate Housing Facilities, Transitional Housing Facilities, or Buildings for use as or that will provide Affordable Housing. All Housing Trust Fund Assistance awarded to Eligible Applicants for Eligible Activities shall be subject to an Affordability Period as shall be established by the Trustee, provided, however, that where an Affordability Period is not practical, the conveyance shall not be subject to an affordability period, but nevertheless, any such conveyance may be subject to recapture on a pro-rated basis as determined by the Trustee in its discretion.

5.3 Award Priorities. The Committee shall recommend award priorities for the Trustee's review and consideration in its discretion. The Trustee shall establish award priorities for the Fund and in its discretion may modify such priorities and proposed Fund targets to meet the needs and demands of changing circumstances. The factors, which the Trustee may consider in establishing funding priorities, may include, but are not limited to, housing activity, population, geographic area, past allocation of Fund resources, market conditions such as vacancy rates, rent levels, utilization of Section 8 vouchers, and Section 8 waiting lists, access for the disabled and handicapped, energy efficiency, unanticipated events such as natural disasters and public health emergencies, and the availability of other resources to meet the Affordable Housing need, program or project for which the award of Housing Trust Fund Assistance is being sought by an Applicant. The Committee may also consider these factors in making any recommendations of award priorities to the Trustee.

5.4 Selection Criteria. The Committee shall recommend selection criteria for awards of Housing Trust Fund Assistance for the Trustee's review and consideration in its discretion. The Trustee shall establish selection criteria for awards of Housing Trust Fund Assistance and in its discretion may modify such criteria and proposed Fund targets to meet the needs and demands of changing circumstances. The selection criteria that the Trustee may adopt in its discretion may include both threshold and priority or ranking criteria. The Committee shall also recommend threshold and priority or ranking criteria for the Trustee's review and consideration in its discretion. The Trustee may develop point-scoring systems to rank Applications objectively according to the ranking or rating criteria. The Committee may also recommend point-scoring systems or ranking or rating criteria for the Trustee's review and consideration in its discretion. Examples of the types of threshold criteria that the Committee may recommend or that the Trustee may utilize include, but are not limited to, leveraging criteria, affordability standards (beneficiary income levels and housing costs), housing standards (such as for Section 8, city zoning and building codes), and basic financial need and feasibility. Examples of the types of ranking criteria that the Committee may recommend or that the Trustee may utilize include, but are not limited to, criteria

related to program targets, priorities, and effectiveness, the amount of available matching funds or leverage, efficiency, project location, the degree to which the Applicant's proposed project exceeds certain standards (such as minimum Affordability Periods), and evidence of community support. Notwithstanding the foregoing, where an award will be made based on need, the Committee need only recommend, and the Trustee need only establish, those selection criteria that are necessary to establish that an applicant meets the program guidelines.

5.5 Application Process. Subject to the Act, these Rules, applicable law, and the Application guidelines and submission requirements established by the Trustee, Housing Trust Fund Assistance shall be awarded to Eligible Applicants for use in Eligible Activities through a formal competitive Application process, or based on need, as determined by the Trustee.

- (A) Receipt of Applications. The Trustee will accept Applications received before such deadlines as are set forth in any NOFA, RFP or other solicitation of Applications as may be released or issued by the Trustee.
- (B) Contents of Applications. Each Application must contain such information as is required by the Trustee in any NOFA, RFP, or otherwise, together with verification certified by the Applicant that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information, knowledge, and belief.
- (C) Application Fee. The Trustee, in its discretion, may charge Applicants an Application fee.

5.6 Trustee Review of Applications. On receipt of an Application, the Trustee shall:

- (A) Determine whether the Application submitted by the Applicant is timely, complete and responsive;
- (B) Determine whether the Applicant is an Eligible Applicant;
- (C) As applicable, determine whether the project proposed by the Applicant is an Eligible Activity;
- (D) Determine whether the Application satisfies any Award Priorities or Selection Criteria that may be established by the Trustee;
- (E) As applicable, determine whether any matching, local, private, or Federal Government funds or in-kind services will be used by the Applicant in connection with the Housing Trust Fund Assistance for which the Applicant is applying and further determine the amount of such other funds or the value of such in-kind services; and

- (F) Determine whether the requirements of the Act, these Rules, and any requirements established by the Trustee have been satisfied.

5.7 Review of Applications or Program Guidelines by the Committee. As applicable, the Committee shall either review Applications received by the Trustee from Eligible Applicants for Eligible Activities or shall review program guidelines

5.8 Recommendation of Applications or Program Guidelines. As applicable, the Committee, after completing its review of the Applications or program guidelines shall make recommendations to the Trustee for funding the Applications.

5.9 Final Determination by the Trustee. The Trustee, following its receipt of the funding recommendation from the Committee, shall decide whether to approve or disapprove the Application or program guidelines in its discretion and shall notify the Committee of its decision. Within the parameters of the authorization levels approved by the MFA Board of Directors Trustee may make modifications to the awards including increases and decreases in amount and changes to terms.

5.10 Notification of Acceptance. The Trustee shall notify each Applicant in writing, including by electronic means, of the Trustee's approval or disapproval of the Application. The Trustee's determination on any Application shall be conclusive, but is subject to protest all as set forth in Section 8 of these Rules.

5.11 Conditions of Award of Housing Trust Fund Assistance. The Trustee, in its discretion, may establish conditions that must be satisfied by any Applicant prior to the award of Housing Trust Fund Assistance. These conditions may include, but are not limited to:

- (A) Requirements that Applicants enter into one or more loan agreements with the Trustee, which loan agreement(s) shall be consistent with the Act, these Rules, and any requirements established by the Trustee and which loan agreement(s) may include remedies and default provisions in the event of the unsatisfactory performance by the Applicant and which may also provide adequate security against the loss of public funds or property in the event the Applicant abandons or fails to complete any Affordable Housing project;
- (B) Requirements that the Applicant abide by a reasonable performance schedule and performance criteria, as well as a monitoring and review process;
- (C) Requirements that the project for which the Applicant is seeking Housing Trust Fund Assistance will constitute or provide Affordable Housing for the applicable Affordability Period;



- (D) Requirements that the Applicant maintain its books and records of its use and disposition of any Housing Trust Fund Assistance and that the Applicant allow the Trustee to examine such books and records and that the Applicant provide an audit of such books and records on not less than an annual basis or as otherwise may be required by the Trustee; and
- (E) Requirements that the Applicant comply with applicable Federal, State and local law, ordinances, rules, and regulations.

**SECTION 6. ADMINISTRATION.** The Trustee shall administer the Fund in accordance with provisions of the Act, these Rules, any criteria or priorities established by the Trustee, and applicable law, all of which may be amended or supplemented from time to time.

6.1 Administration Fee. The Trustee may retain up to five percent (5%) of the funds disbursed from the Fund annually for its actual expenses in administering the Fund.

6.2 Leveraging Threshold. The Trustee shall be responsible for ensuring that on an overall basis the total Housing Trust Fund Assistance awarded for housing activities attracts at least three times as much funding from other sources.

6.3 Fund Investment. The Trustee of the Fund is empowered to hold, invest, loan, grant, distribute or otherwise take action with regard to the Fund all as set forth in the Act and the MFA Act.

6.4 Limitations on Housing Trust Fund Assistance. The Trustee, in its discretion, may set limits on the amount of Housing Trust Fund Assistance to be awarded per Application, per NOFA, per RFP or otherwise. The Trustee, in its discretion, also may set limits on the total amount of Housing Trust Fund Assistance to be awarded per quarter, per year or otherwise. Any award of Housing Trust Fund Assistance is also contingent upon sufficient appropriations and authorization being made by the State of New Mexico and is further subject to applicable law. If sufficient appropriations and authorizations are not made or subject to applicable law, any loan or other agreement between the Trustee and any successful, Eligible Applicant shall terminate upon written notice being given by the Trustee to the Applicant. The Trustee's decision as to whether sufficient appropriations are available or whether Housing Trust Fund Assistance may be awarded subject to applicable law shall be accepted by any Applicant and shall be final.

6.5 Records and Accounting. The Trustee shall maintain such records as are required by applicable law and shall account for the Fund and its actions with regard thereto as Trustee.

6.6 Conflict of Laws. The Trustee, in funding programs and projects under the Act, in administering the Fund, and by making, executing, delivering and performing any award, loan agreement, grant or any other activity or transaction contemplated by the Act, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgement, 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. If, however, any part of the Act or these Rules is found to be in conflict with any federal requirements that are a prescribed condition to the allocation of federal funds to the State, the conflicting part of the Act or these Rules shall be inoperative solely to the extent of the conflict and with respect to the agencies directly affected. However, such a conflict shall not affect the remainder of the Act or these Rules in its application.

**SECTION 7. DISCRIMINATION PROHIBITED.** All awards of Housing Trust Fund Assistance shall be utilized by Applicants in a manner consistent with principles of non-discrimination and equal opportunity, and the Committee and the Trustee shall require compliance by all Applicants with all applicable federal and State laws and regulations relating to affirmative action, non-discrimination, and equal opportunity.

**SECTION 8. PROTEST.** Any Applicant who is aggrieved in connection with any award of Housing Trust Fund Assistance made or to be made by the Trustee pursuant to a competitive RFP, NOFA, or otherwise may protest to the Trustee. The protest process shall align with MFA's then current policies and procedures. The protest process outlined in MFA's policies and procedures shall not apply to any needs based program established by the Trustee pursuant to the Act and these Rules. Provided, however, that program guidelines established by the Trustee for any needs based program shall include an administrative grievance process, which shall be developed by the Trustee.

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

**SECTION 10. AMENDMENT TO RULES.** These Rules may be amended or supplemented by the Trustee at any time. With regard to any amended or supplemental rules under this section, the Trustee shall seek comment from the Oversight Committee.