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3 **NEW MEXICO MORTGAGE FINANCE AUTHORITY**
4 **AFFORDABLE HOUSING ACT RULES**
5
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7 **SECTION 1. AUTHORITY.** These Rules are issued under and pursuant to the Mortgage
8 Finance Authority Act, NMSA 1978, § 58-18-1 et seq. (the “MFA Act”) and pursuant to the
9 Affordable Housing Act, NMSA 1978, §6-27-1 et seq. (the “Act”). Following review and
10 comment by the Legislative Oversight Committee (“Oversight Committee”), these Rules
11 will become effective upon the approval of the New Mexico Mortgage Finance Authority’s
12 (“MFA”) Board of Directors.

13
14 **SECTION 2. PURPOSE AND OBJECTIVES.** These Rules are established to effectuate,
15 and shall be applied so as to accomplish, the general purposes of the Act and the following
16 specific objectives:

17
18 2.1 Procedures to ensure that both state and local housing assistance grantees
19 are Qualifying Grantees (defined below) who meet the requirements of the Act and rules
20 promulgated pursuant to the Act both at the time of the award and throughout the term of
21 the grant;

22
23 2.2 The establishment of an application and award timetable for state housing
24 assistance grants to permit the selection of the Qualifying Grantee(s) by the Governmental
25 Entity (defined herein) and/or MFA;

26
27 2.3 The Governmental Entity and/or MFA should consider any of the following
28 criteria when evaluating an applicant, the application and any Qualifying Grantee: the

1 financial and management stability of the applicant, the demonstrated commitment of the
2 applicant to the community, a cost-benefit analysis of the project proposed by the applicant,
3 the benefits to the community of a proposed project, the type or amount of assistance to
4 be provided, the scope of the affordable housing project, any substantive or matching
5 contribution by the applicant to the proposed project, a performance schedule for the
6 Qualifying Grantee with performance criteria, and any other rules or procedures which the
7 Governmental Entity and/or MFA believes is necessary for a full review and evaluation of
8 the applicant, the application, and any Qualifying Grantee or which MFA believes is
9 necessary for a full review of the Governmental Entity's evaluation of the applicant;

10
11 2.4 A requirement for long-term affordability of a state, county, or municipal
12 project so that a project cannot be sold shortly after completion and taken out of the
13 affordable housing market to ensure a quick profit for the Qualifying Grantee;

14
15 2.5 A requirement that the Governmental Entity and/or MFA enter into a contract
16 with the Qualifying Grantee consistent with the Act, which contract shall include remedies
17 and default provisions in the event of the unsatisfactory performance by the Qualifying
18 Grantee and which contract shall be subject to the review of MFA in its discretion;

19
20 2.6 A requirement that a grant for a state or local project must impose a
21 contractual obligation on the Qualifying Grantee that the housing units in any Affordable
22 Housing Project be occupied by low- or moderate-income households;

23
24 2.7 Provisions for adequate security against the loss of public funds or property
25 in the event that the Qualifying Grantee abandons or otherwise fails to complete the
26 project;

27
28 2.8 A requirement for review and approval of a housing grant project budget by
29 the Governmental Entity and/or MFA before any expenditure of grant funds or transfer of
30 granted property;

1 2.9 A requirement that, unless the period is extended for good cause shown,
2 MFA shall act on an application within forty-five (45) days of the date of receipt of that
3 application and, if not acted upon, the application shall be deemed approved;
4

5 2.10 A requirement that a condition of grant approval be proof of compliance with
6 all applicable state and local laws, rules and ordinances;
7

8 2.11 Provisions defining “low-income and moderate-income” and setting out
9 requirements for verification of income levels; and
10

11 2.12 A requirement that a county or municipality that makes a housing assistance
12 grant shall have an existing valid affordable housing plan or housing elements contained
13 in its general Comprehensive plan.
14

15 In carrying out its objectives and purposes, MFA, pursuant to MFA Act has the power to
16 raise funds from private and public investors to make funds available for such purposes; to
17 create and implement programs from time to time as may be necessary or appropriate to
18 accomplish its purposes; and to assist, administer, finance or service housing programs
19 and to contract for such services for or through private and nonprofit organizations and
20 local, state, federal and tribal agencies or their instrumentalities.
21

22 **SECTION 3. GENERAL DEFINITIONS.** The following words and terms shall have the
23 following meanings.¹
24

25 3.1 “Act” shall mean the Affordable Housing Act, Section 6-27-1 et seq. NMSA
26 1978.
27

28 _____
29 3.2 “Affordable” shall mean consistent with minimum rent and/or income
30 limitations set forth in MFA Act, and in guidelines established by MFA.
31

1 3.3 “Affordable Housing” means residential housing primarily for Persons or
2 households of Low- or Moderate-Income.

3
4 3.4 “Affordable Housing Funds” shall mean any or all funds awarded or to be
5 awarded, loaned or otherwise distributed under the Act, which includes any reduction or
6 abatement of taxes or fees that would otherwise be imposed in full on a market-rate project.

7
8 3.5 “Affordable Housing Program” shall mean any programs that a Governmental
9 Entity and/or MFA establish pursuant to the Act.

10
11 3.6 “Affordable Housing Projects” shall mean any work or undertaking, whether
12 new construction, acquisition of existing residential housing, remodeling, improvement,
13 Rehabilitation or conversion approved by the Governmental Entity and/or MFA for the
14 primary purposes as allowed by the Act.

15
16 3.7 “Applicant” shall mean an individual, or a non-individual applicant such as a
17 governmental housing agency, regional housing authority, tribal housing agency, for- profit
18 organization, including a corporation, limited liability company, partnership, joint venture,
19 syndicate, association or a nonprofit organization meeting the appropriate criteria of the
20 Governmental Entity and/or MFA.

21
22 3.8 “Application” shall mean an application to participate in one or more
23 Affordable Housing Projects or programs under the Act submitted by an Applicant to the
24 Governmental Entity and/or MFA.

25
26 3.9 “Authority” shall mean the New Mexico Mortgage Finance Authority.

27
28 3.10 “Builder” shall mean a person or entity licensed as a general contractor to
29 construct Residential Housing in the state which has been approved by the Governmental
30 Entity and/or MFA to participate in an MFA program and/or a program under the Act.

31

1 3.11 “Building” shall mean a structure capable of being renovated or converted
2 into affordable housing or a structure that is to be demolished and is located on land that
3 is donated and upon which Affordable Housing will be constructed.
4

5 3.12 “Congregate Housing Facility” shall mean Residential Housing designed for
6 occupancy by more than four Persons of Low or Moderate Income living independently of
7 each other. The facility may contain group dining, recreational, health care or other
8 communal living facilities and each unit in a Congregate Housing Facility shall contain at
9 least its own living, sleeping, and bathing facilities.
10

11 3.13 “Contribution” shall mean any provision of assistance for affordable housing,
12 including a Housing Assistance Grant or Affordable Housing Funds, made by a state, any
13 instrumentality of the state, county, municipality, or the Authority.
14

15 3.14 “Federal Government” shall mean the United States of America and any
16 agency or instrumentality, corporate or otherwise, of the United States of America.
17

18 3.15 “FHA” shall mean the United States Department of Housing and Urban
19 Development’s Federal Housing Administration.
20

21 3.16 “Governmental Entity” shall mean a state, county, or municipality.²
22

23 3.17 “Household” shall mean one or more persons occupying a housing unit.
24

25 3.18 “Housing Assistance Grant” means the donation, provision, or payment by a
26 Governmental Entity or MFA of:
27

28 A. Land upon which affordable housing will be constructed;
29

30 B. An existing building that will be renovated, converted, or demolished and
31 reconstructed as Affordable Housing;

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- C. The costs of acquisition, development, construction, financing, and operating or owning affordable housing; or
- D. The costs of financing or infrastructure necessary to support Affordable Housing.

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

3.20 “Infrastructure” shall mean Infrastructure Improvements and Infrastructure Purposes.

3.21 “Infrastructure Improvement” includes, but is not limited to:

- A. sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
- B. drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;
- C. water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;
- D. areas for motor vehicle use for road access, ingress, egress and parking;
- E. trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for road access, ingress, egress and parking;

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- F. parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;
- G. landscaping, including earthworks, structures, plants, trees and related water delivery systems;
- H. electrical transmission and distribution facilities;
- I. natural gas distribution facilities;
- J. lighting systems;
- K. cable or other telecommunications lines and related equipment;
- L. traffic control systems and devices, including signals, controls, markings and signs;
- M. inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and
- N. heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property.

3.22 “Infrastructure Purpose” shall mean:

- A. planning, design, engineering, construction, acquisition or installation of Infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the Infrastructure;

1 B. acquiring, converting, renovating or improving existing facilities for
2 Infrastructure, including facilities owned, leased or installed by the owner;

3
4 C. acquiring interests in real property or water rights for Infrastructure, including
5 interests of the owner; and

6
7 D. incurring expenses incident to and reasonably necessary to carry out the
8 purposes specified in this subsection.

9
10 3.23 "Market Value" shall mean the price at which buyers and sellers trade similar
11 items in an open marketplace. In the absence of a marketplace, it is the estimated highest
12 price a buyer would be warranted in paying and a seller justified in accepting, provided both
13 parties were fully informed and acted intelligently and voluntarily.

14
15 3.24 "MFA" shall mean the New Mexico Mortgage Finance Authority.

16
17 3.25 "MFA Act" shall mean the Mortgage Finance Authority Act, enacted as
18 Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (being Sections
19 58-18-1 through 58-18-27, inclusive, N.M.S.A. (1978), as amended).

20
21 3.26 "Mortgage" shall mean a mortgage, mortgage deed, deed of trust or other
22 instrument creating a lien, subject only to title exceptions as may be acceptable to the
23 Governmental Entity and/or MFA, on a fee interest in real property located within the state
24 or on a leasehold interest that has a remaining term at the time of computation that exceeds
25 or is renewable at the option of the lessee until after the maturity day of the Mortgage Loan
26 or an instrument creating a lien on a mobile home.

27
28 3.27 "Mortgage Lender" shall mean any bank or trust company, mortgage
29 company, mortgage banker, national banking association, savings bank, savings and loan
30 association, credit union, building and loan association and any other lending institution,
31 and which must be authorized to make mortgage loans in New Mexico.

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3.28 “Mortgage Loan” shall mean a financial obligation secured by a Mortgage, including a project Mortgage Loan.

3.29 “Multiple Family Housing Project” 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, of which the percentage of units set aside for Persons of Low or Moderate Income, as defined in the applicable Affordable Housing Plan and Ordinance, shall be in direct proportion to the amount of subsidy provided as a percentage of total cost. Set asides for Persons of Low or Moderate Income shall include, without limitation Persons of Low or Moderate Income who are elderly and handicapped as determined by the Governmental Entity and/or MFA, provided that the percentage of Persons of Low or Moderate Income shall be at least the minimum, if any, required by federal tax law, if applicable.

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

3.31 “Municipality” shall mean an incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties all as set forth in the Act.

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

3.33 Person’s of Low or Moderate Income”: Low Income persons or households are those with incomes up to 80% of the Area Median Income (AMI). Moderate Income persons or households are those with income above 80% and up to 150% of the AMI adjusted for family size. Moderate income limits may be adjusted for high-cost areas to accommodate qualification of purchase of a median priced home in a county of the subject

1 property or rent at the fair market rate. This definition of low and moderate income applies
2 to all non-federal, unrestricted programs administered by MFA. All federal and restricted
3 programs will continue to follow the income requirements outlined in statute, regulations,
4 guidance or contractual documents. This definition aligns with the needs throughout the
5 State and in accordance with the requirements of the Act. Area Median Income (AMI) is
6 defined as the point at which half the households in an area have lower incomes and half
7 have higher incomes. ³

8
9 3.34 “Policies and Procedures” shall mean Policies and Procedures of MFA,
10 including but not limited to, Mortgage Loan purchasing, selling, servicing and reservation
11 procedures, which MFA may update and revise from time to time as MFA deems
12 appropriate.

13
14 3.35 “Qualifying Grantee” means:

15
16 A. An individual who is qualified to receive assistance pursuant to the Act and is
17 approved by the Governmental Entity and/or MFA; and

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19 B. A governmental housing agency, regional housing authority, tribal housing
20 agency, corporation, limited liability company, partnership, joint venture,
21 syndicate, association or a nonprofit organization that:

22
23 1) Is organized under State, local, or tribal laws and can provide proof of
24 such organization;

25
26 2) If a non-profit organization, has no part of its net earnings inuring to the
27 benefit of any member, founder, contributor, or individual; and

28
29 3) Is approved by the Governmental Entity and/or MFA.

30
31 3.36 “Recertification” shall mean the recertification of Applicants and/or Qualifying

1 Grantees participating in any Affordable Housing Programs or in any programs under the
2 Act as determined necessary from time to time by the Governmental Entity and/or MFA.

3
4 3.37 "Rehabilitation" shall mean the substantial renovation or reconstruction of an
5 existing single-family residence or a Multi-Family Housing Project, which complies with
6 requirements established by MFA. Rehabilitation shall not include routine or ordinary
7 repairs, improvements or maintenance, such as interior decorating, remodeling or exterior
8 painting, except in conjunction with other substantial renovation or reconstruction.

9
10 3.38 "Residential Housing" shall mean any Building, structure or portion thereof
11 that is primarily occupied, or designed or intended primarily for occupancy, as a residence
12 by one or more Households and any real property that is offered for sale or lease for the
13 construction or location thereon of such a building, structure or portion thereof. "Residential
14 Housing" includes congregate housing, manufactured homes, housing intended to provide
15 or providing transitional or temporary housing for homeless persons and common health
16 care for supportive housing, kitchen, dining, recreational and other facilities primarily for
17 use by residents of a residential housing project or a single room occupancy facility.

18
19 3.39 "Residential Use" shall mean that the structure or the portion of the structure
20 to benefit from the Affordable Housing Funds or Housing Assistance Grant, is designed
21 primarily for use as the principal residence of the occupant or occupants and shall exclude
22 vacation or recreational homes.

23
24 3.40 "RHS" shall mean the United States Department of Agriculture's Rural
25 Housing Service."

26
27 3.41 "State" shall mean the State of New Mexico.

28
29 3.42 "Transitional Housing Facility" shall mean residential housing that is designed
30 for temporary or transitional occupancy by Persons of Low or Moderate Income or special
31 needs.

1
2 **SECTION 4. REQUIREMENTS FOR GOVERNMENTAL ENTITIES.**
3

4 The following requirements for Governmental Entities include:

- 5 a) Governmental Entities must provide MFA an Affordable Housing Plan or develop
6 affordable housing elements in its general Comprehensive Plan for review and approval.
7 b) Governmental Entities must then provide MFA with an Affordable Housing Ordinance
8 for review and approval.
9 a. Once a Governmental Entity's Affordable Housing Ordinance receives MFA
10 approval it is not necessary to draft additional ordinances for subsequent Affordable
11 Housing Programs or Projects transactions conducted under the approved Ordinance
12 as long as the program(s) meets the requirements under the Ordinance and the Act.
13 b. MFA reserves the right to investigate each Affordable Housing Program or
14 Project.
15 c) Governmental Entities must provide MFA with the required documentation of all
16 potential Qualifying Grantees for MFA review and approval before the Qualifying Grantee
17 may receive assistance pursuant to the Act.
18 d) Governmental Entities must also provide MFA with written certification confirming that
19 the Application to participate in an Affordable Housing Project or Plan under the Act is
20 complete.
21

22 If a county or municipality proposes to make a Housing Assistance Grant or provide Housing
23 Assistance Funds under the Act, it shall provide MFA with the documentation as required in sub-
24 sections "c" and "d" above in order to be in compliance with the Act and these Rules.

25 For an ongoing housing assistance program, Government Entities must provide MFA with a
26 detailed written description of the program, in addition to other required documentation as specified
27 in these Rules. Once the program receives MFA approval, it is not necessary to seek MFA approval
28 for subsequent transactions conducted under the approved program.
29

30 4.1 An Affordable Housing Plan.
31

32 An affordable housing plan or housing elements in a general plan of a county or
33 municipality shall contain the following elements when feasible and data is readily

1 available. Detailed guidance which can be used at the discretion of the county or
2 municipality is provided on the MFA Affordable Housing Act webpages and by MFA staff.
3 The MFA Affordable Housing Act webpages can be found on MFA's website:
4 <https://housingnm.org/resources/affordable-housing-act>

5
6 A. Community and housing profile, which shall include;

- 7
- 8 1) demographic characteristics, such as race and ethnicity, income, age,
9 employment and population trends;
 - 10
 - 11 2) household characteristics including the number of existing households and
12 housing units by tenure; and,
 - 13
 - 14 3) housing market analysis including housing costs, rents, vacancy rates, and
15 sales prices;
 - 16

17 B. Housing needs assessment that;

- 18
- 19 1) describes existing needs, such as the number of households with a cost
20 burden for housing, seniors, headed by a female and other identified needs. If
21 measurable data exists this assessment should also describe the number of
22 households living in overcrowded situations, who are homeless, or with
23 special needs, including disabilities and;
 - 24
 - 25 2) identifies the gap between market rate housing costs and incomes, by area
26 median income (AMI).
 - 27
 - 28 3) a determination of the number of units needed by type to be created through
29 new construction, rehabilitation and preservation to accommodate expected
30 population growth and job generation;
 - 31

1 C. Land use and policy review that includes;

2
3 1) if applicable, a general analysis of land use parcels including zoning, size and existing
4 use;

5 2) identification of constraints, which may include land use controls, codes and
6 enforcement, environmental constraints, fees and exactions, processing and
7 permit procedures, on/off site improvements, reasonable accommodation,
8 availability of financing and infrastructure. Other considerations may include
9 land availability and prices, construction costs, local capacity to assist, finance
10 and manage construction, provide housing support services and administer
11 housing funds and programs and protection of ecological resources and green
12 building;

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16 D. Goals, policies and quantifiable objectives that include;

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18 1) an estimate of the number and percentage of unit increases, by income
19 levels, to be constructed, rehabilitated or conserved over a set period of time
20 through the local government entity's participation under the Act;

21
22 2) identification of potentially needed programs and agencies responsible for
23 housing assistance which may include constructing new housing stock,
24 improving existing housing stock, promoting access and equal opportunity
25 to affordable housing, and increasing the capacity of residents to lower their
26 housing cost burden, build long term equity, stabilize their housing situations
27 through homebuyer training, rental vouchers, assistance to persons with
28 disabilities, and other housing assistance as deemed appropriate and
29 necessary;

30
31 3) plan to promote potential regulatory concessions and incentives for removing

1 or mitigating governmental and non-governmental constraints to
2 development, rehabilitation or conservation of affordable housing;

3
4 4) identification of potential sources of federal, state and local financing and
5 subsidies to support affordable housing;

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7
8 4.2 The Proposed Affordable Housing Ordinance:

9
10 A. Must be provided to MFA, with other required, documentation, within the
11 period prescribed by the Rules in Section 5.3(B)(1)(a) for submission to
12 MFA prior to the county’s or municipality’s provision of a Housing
13 Assistance Grant or Affordable Housing Funds. Failure to provide said
14 ordinance and documentation to MFA, or to provide it in a timely fashion,
15 or to act in accordance with MFA’s determination that an ordinance is
16 invalid under the Act, the State Constitution, and/or any other applicable
17 law, shall automatically invalidate the ordinance and shall render invalid
18 any act taken pursuant to the ordinance.

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21
22 B. May provide for matching or using local, private or federal funds either
23 through direct participation with a federal agency pursuant to federal law
24 or through indirect participation through MFA.

25
26 C. Shall comply with these Rules, as amended.

27
28 D. Shall be effective subject to local ordinance requirements for publication
29 and filing.

30
31 E. Upon amendment, must be submitted to MFA for review of any and all

1 changes for determination that the amended ordinance remains in
2 compliance with the Act, these Rules, and other applicable law.

3
4 F. A county or municipality shall amend its affordable housing ordinance
5 upon and in accordance with a request by MFA for amendment to the
6 ordinance to comply with the requirements of the Act and the Rules,
7 Governmental entities may continue to make lawful donations pending
8 approval of a new ordinance.

9
10 G. All donations made pursuant to an affordable housing ordinance must be
11 reported to MFA on an annual basis or pursuant to the requirements of
12 the ordinance for reporting donations to MFA, whichever is the lesser
13 period, in addition to the requirement to report such donations upon
14 MFA's request.

15
16 4.3 A county or municipality must base any transaction conducted under an
17 approved program on a market valuation current at the time of the transaction. MFA may
18 require proof from the county or municipality that the transaction was based on a current
19 market value assessment.

20
21 4.4 Any contribution otherwise made in violation of the Act, the Rules, the
22 Constitution, or other applicable law, shall be deemed invalid under the Act.

23
24 **SECTION 5. GENERAL REQUIREMENTS.** With the exception of Housing Assistance
25 Grants of funding from the State, which shall be governed by Section 5.13 below, the
26 following requirements shall apply to all Housing Assistance Grants and Affordable
27 Housing Funds provided by a Governmental Entity and/or MFA under the Act to a
28 Qualifying Grantee.

29
30 5.1 Requests for Proposals/Award of Funds. The Governmental Entity and/or
31 MFA, in its discretion, may issue one or more requests for proposals ("RFP's") to solicit

1 applications (“Applications”) or shall otherwise identify a Qualifying Grantee for the use of
2 any Affordable Housing Funds or Housing Assistance Grants to be awarded, loaned, or
3 otherwise distributed under the Act.

4
5 5.2 Applicant Eligibility. The following individuals, and for profit or nonprofit
6 entities (“Applicants”) are eligible under the Act to apply for Affordable Housing Funds or a
7 Housing Assistance Grant to provide housing or related services to Persons of Low or
8 Moderate Income in their community:

9
10 A. All individuals who are qualified to receive assistance pursuant to the Act, these
11 Rules, and the requirements of any applicable affordable housing ordinance.

12
13 B. All regional housing authorities, tribal governments, tribal housing agencies, and
14 any governmental housing agencies.

15
16 C. All for-profit organizations, including any corporation, limited liability company,
17 partnership, joint venture, syndicate, or association or a nonprofit organization is
18 eligible to apply if it is:

19
20 1) Organized under state, local, or tribal laws and can provide proof of such
21 organization;

22
23 2) Have among its purposes significant activities related to providing
24 housing or services to Persons or Households of Low or Moderate
25 Income;

26
27 3) Have a functioning accounting system that is operated in accordance with
28 generally accepted accounting principles or has designated an entity that
29 will maintain such an accounting system consistent with generally
30 accepted accounting principles;

1 4) Evidence or certification that it has no significant outstanding or
2 unresolved monitoring findings from the Governmental Entity, MFA, or its
3 most recent independent financial audit; and has not been suspended or
4 debarred by any federal agency or MFA. If the applicant has any
5 outstanding or unresolved monitoring findings, it must have a certified
6 letter from the Governmental Entity, MFA, or auditor stating that the
7 findings are in the process of being resolved.
8

9 D. Nonprofit organizations are eligible to apply if the following requirements are met:
10

- 11 1) A primary mission of the nonprofit organization must be to provide housing or
12 housing-related services to Persons of Low or Moderate Income; and
13
- 14 2) The non-profit organization must have received its 501(c)(3) designation prior
15 to submitting an Application.
16
- 17 3) The non-profit organization must have no part of its net earnings inuring to
18 the benefit of any member, founder, contributor, or individual.
19

20 Any eligible Applicant may, at any time, submit to the Governmental Entity and/or MFA the
21 information required by Section 5.3(A) sub-paragraphs (4), (5), (6), (8), (9), (10),
22 (11), (12), (13), (14), (15), (16), (17), (20), (21), and (22) of these Rules, as applicable, in
23 order to pre-qualify as a potential Qualifying Grantee. The Governmental Entity and/or
24 MFA will review the information provided by any eligible Applicant and in its discretion, may
25 certify in writing that the Applicant is a "Potential Qualifying Grantee." The Governmental
26 Entity shall provide a copy of the certification to MFA upon its request. The Governmental
27 Entity's and/or MFA's certification of an individual or entity as a Potential Qualifying
28 Grantee shall be valid for up to one (1) year, subject to the ability of the Potential Qualifying
29 Grantee to certify in writing, at the time of any Application or response to any RFP, that
30 there have been no material changes in any of the information or documentation provided
31 by, or representations made by the Potential Qualifying Grantee to the Governmental Entity

1 and/or MFA and upon which information, documentation, and/or representations the
2 Governmental Entity and/or MFA has based its decision to certify the Applicant as a
3 Potential Qualifying Grantee. Notwithstanding the foregoing, simply because an Applicant
4 is certified by the Governmental Entity and/or MFA as a Potential Qualifying Grantee does
5 not mean that the Potential Qualifying Grantee will be chosen by the Governmental Entity
6 or MFA as a Qualifying Grantee, or that MFA will determine that the Potential Qualifying
7 Grantee is a Qualifying Grantee, or that any Application submitted by the Potential
8 Qualifying Grantee is complete or otherwise in compliance with the Act and these Rules or
9 that the Potential Qualifying Grantee will be awarded any Affordable Housing Funds or any
10 Housing Assistance Grants.

11
12 **5.3 Applications.**

13 A. Application Process for Non- Individual Applicants. Non-individual entities
14 wishing to apply for Affordable Housing Funds to participate in any
15 Affordable Housing Program are also required to submit to the Governmental
16 Entity and/or MFA the following, as applicable:

- 17
- 18 1) One original Application, together with all required schedules,
19 documents, or such other information which may be required by the
20 Governmental Entity and/or MFA or in any RFP which may have been
21 issued by the Governmental Entity or MFA, must be included in the
22 completed Application;
 - 23
 - 24 2) Evidence or certification that the Applicant has no significant outstanding
25 or unresolved monitoring findings from the Governmental Entity, MFA,
26 or its most recent independent financial audit; or if it has any significant
27 outstanding or unresolved monitoring findings from the Governmental
28 Entity, MFA, or its most recent independent financial audit, it has a
29 certified letter from the Governmental Entity, MFA, or the auditor stating
30 that the findings are in the process of being resolved;
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- 3) Evidence (or a certification as may be allowed by the Governmental Entity and/or MFA) that the Applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principles;
- 4) Current independent financial audit;
- 5) Have among its purposes significant activities related to providing housing or housing-related services to Persons or Households of Low or Moderate Income;-
- 6) A proposed budget and performance schedule for the Affordable Housing Project for which the Applicant is applying for Affordable Housing Funds or for a Housing Assistance Grant;
- 7) Project Narrative(s) that address the evaluation criteria set forth in any RFP issued by the Governmental Entity or MFA for the Affordable Housing Funds or the Housing Assistance Grant for which the Applicant is applying, including unit type and rent summary for Persons of Low or Moderate Income;
- 8) List of current board members, including designated homeless participation, where required by the Governmental Entity and/or MFA;
- 9) Organizational chart, including job titles for the Applicant's employees or as otherwise may be required by the Governmental Entity and/or MFA in its discretion. Job descriptions may be requested by the Governmental Entity and/or MFA as appropriate;

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10) Documentation that the Applicant is duly organized in accordance with State or local law and is in good standing with any state authorities such as the Public Regulation Commission (e.g. Articles, Bylaws, and Certificate of Good Standing for a Corporation; Articles, Operating Agreement, and Certificate of Good Standing for a Limited Liability Company; partnership agreement and certificate of limited partnership for a partnership);

11) For non-profit organizations, proof of 501(c)(3) tax status;

12) For non-profit organizations, documentation which confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;

13) Certifications as may be required by the Governmental Entity and/or MFA signed by Chief Executive Officer, Board President or other authorized official of the Applicant;

14) Information as may be required by the Governmental Entity and/or MFA in order for it to determine the financial and management stability of the Applicant;

15) Information as may be required by the Governmental Entity and/or MFA in order for it to determine the demonstrated commitment of the Applicant to the community;

16) Applicant shall submit adequate information, as required by the Governmental Entity and/or MFA, of the Affordable Housing Project proposed by the Applicant. The information provided must clearly evidence that the value of the housing assistance grant reduces the

1 housing costs to persons of low or moderate income;

2
3 17) Applicant shall submit information to the Governmental Entity and/or
4 MFA supporting the benefits to the community of the Affordable Housing
5 Project proposed by the Applicant;

6
7 18) The Governmental Entity and/or MFA may require that the applicant
8 provide proof of substantive or matching funds or contributions and/or in-
9 kind donations to the proposed Affordable Housing Project in connection
10 with the Application for funds under the Act. Nothing contained herein
11 shall prevent or preclude an Applicant from matching or using local,
12 private, or federal funds in connection with a specific Housing Assistance
13 Grant or a grant of Affordable Housing Funds under the Act;

14
15 19) Applicant shall provide the Governmental Entity and/or MFA with any
16 certifications or other proof which it may require in order for the
17 Governmental Entity and/or MFA to confirm that the Applicant is in
18 compliance with all applicable federal, state and local laws, rules and
19 ordinances;

20
21 B. For Applicants who are submitting Applications in connection with a Multi-
22 Family Housing Project, the following additional information shall also be
23 required to be submitted by the Applicant to the Governmental Entity and/or
24 MFA:

25
26 a) A verified certificate that, among other things:

27
28 i. identifies every Multi-Family Housing Program, including every
29 assisted or insured project of HUD, RHS, FHA and any other
30 state or local government housing finance agency in which
31 such Applicant has been or is a principal;

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ii. except as shown on such certificate, states that:

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 Applicant has had a legal or beneficial interest;

III. 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; and

IV. the Applicant has not defaulted on an obligation covered by a surety or performance bond.

If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances which such Applicant believes will explain the lack of certification. The Governmental Entity and/or MFA may then determine if such Applicant is or is not qualified.

b) The experience of the Applicant in developing, financing and managing Multiple-Family Housing Projects.

c) Whether the Applicant has been found by the United States Equal

1 Employment Opportunity Commission or the New Mexico Human
2 Rights Commission to be in noncompliance with any applicable civil
3 rights laws.

4
5 2) If the Applicant is a Mortgage Lender, the Governmental Entity and/or
6 MFA shall consider, among other things:

- 7
8 a. The financial condition of the Applicant;
9 b. The terms and conditions of any loans to be made;
10
11 c. The aggregate principal balances of any loans to be made to each
12 Applicant compared with the aggregate principal balances of the loans
13 to be made to all other Applicants;
14
15 d. The Governmental Entity and/or MFA's assessment of the ability of
16 the Applicant or its designated servicer to act as originator and
17 servicer of Mortgage Loans for any Multi-Family Housing Programs or
18 other programs to be financed; and
19
20 e. Previous participation by the Applicant in MFA's programs and HUD,
21 FHA, or RHS programs.

22
23 C. Application Process For Individual Applicants: One original Application
24 together with all required schedules, documents, or such other information
25 which may be required by the Governmental Entity and/or MFA must be
26 included in the completed Application;

27
28 All Applications, from individual and non-individual Applicants, shall contain a verification
29 signed by the Applicant before a notary public that the information provided, upon penalty
30 of perjury, is true and correct to the best of the Applicant's information, knowledge, and
31 belief.

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D. Submission Procedure:

1) Time, Place and Method of Submission Delivery.

a) If the Governmental Entity has issued an RFP, all Applications must be received by the Governmental Entity no later than whatever deadline has been set forth in the RFP; otherwise, all Applications must be received by the Governmental Entity by whatever deadline the Governmental Entity has established in connection with the respective award or grant. So that any Qualifying Grantees may be selected prior to January of the year in which any Housing Assistance Grant would be made, the Governmental Entity shall issue any RFP's, solicit any Applications, or otherwise identify any Qualifying Grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to any such RFP, solicitation, or otherwise, and further to allow MFA not less than forty-five (45) days in which to review any such Applications or otherwise determine or confirm that an Applicant is a Qualifying Grantee under the Act and consistent with these Rules.

b) Applications shall be submitted by Applicants to the Governmental Entity or MFA in the form and by the time as required by the Governmental Entity or MFA and shall contain all information which is required by the Act, these Rules, any RFP which may have been issued, and by the Governmental Entity or MFA.

2) Additional Factors. The Application procedures shall take into consideration:

a. Timely completion and submission to the Governmental Entity or MFA of an Affordable Housing Program Application or other appropriate response to any solicitation by the Governmental

1 Entity or MFA;

2
3 b. Timely submission of all other information and documentation
4 related to the program as required by the Governmental Entity
5 and/or MFA, or as set forth in these Rules;

6
7 c. Timely payment of any fees required to be paid to the
8 Governmental Entity or MFA at the time of submission of the
9 Application; and

10
11 d. Compliance with program eligibility requirements as set forth in the
12 Act and these Rules.

13
14 3) Submission Format:

15
16 a. Governmental Entity or MFA forms must be used when provided
17 and no substitutions will be accepted; however attachments may
18 be provided as necessary.

19
20 b. An Applicant's failure to provide or complete any element of an
21 Application, including all requirements of the Governmental Entity
22 or MFA, or as may be listed on any RFP, may result in the rejection
23 of the Application prior to review.

24
25 c. Illegible information, information inconsistent with other
26 information provided in the application, and/or incomplete forms
27 will be treated as missing information and evaluated accordingly.

28
29 d. The Governmental Entity and/or MFA reserve the right to request
30 further information from any Applicant so long as the request is
31 done fairly and does not provide any Applicant an undue

1 advantage over another.

2
3 e. The Governmental Entity or MFA in its discretion may cancel any
4 RFP or reject any or all proposals in whole or part submitted by any
5 Applicant.

6
7 f. Neither the Governmental Entity nor MFA shall be responsible for
8 any expenses incurred by an Applicant in preparing and submitting
9 an Application. However, the Governmental Entity or MFA, as
10 applicable, may establish and collect fees from Applicants who file
11 Applications. Notice that fees will be charged and the amount of
12 any such fees shall be included by the Governmental Entity or
13 MFA, as applicable, in any RFP, or otherwise shall be advertised
14 as part of the Application solicitation process.

15
16 E. Review by the Governmental Entity and/or MFA. On receipt of an Application,
17 the Governmental Entity and/or MFA shall:

- 18
19 1) Determine whether the Application submitted by the Applicant is complete
20 and responsive;
- 21
22 2) Determine whether the Applicant is a Qualifying Grantee as defined
23 herein and in the Act;

24
25
26 5.4 Certification by the Governmental Entity to MFA.

27
28 A. The Governmental Entity upon:

- 29
30 1) Completion of its review of the Application;

- 1 2) Determination that the Application is complete;
- 2
- 3 3) Determination that the requirements of these Rules and the Act have
- 4 been satisfied; and
- 5
- 6 4) Determination that the Applicant is a Qualifying Grantee shall so certify
- 7 in writing to MFA.
- 8

9 B. Review by MFA. MFA upon its receipt of the certification from the
10 Governmental Entity may, in its discretion, review the Application and any
11 of the materials submitted by the Applicant to the Governmental Entity.
12 MFA may also request any additional information from the Applicant,
13 which it may require in order to determine whether the Applicant is a
14 Qualifying Grantee under the Act and the Application is complete. MFA
15 will then notify the Governmental Entity of its determination of whether or
16 not the Application is complete and that the requirements of the Act and
17 these Rules have been satisfied and the Applicant is a Qualifying
18 Grantee. Unless the period is extended for good cause shown, MFA shall
19 act on an Application within forty- five
20 (45) days of its receipt of any Application, which MFA deems to be
21 complete, and, if not acted upon, the Application shall be deemed to be
22 approved.

23 5.5 Notification to Applicant. The Governmental Entity and/or MFA, upon
24 completion of its review of the Application and an evaluation of the criteria for approval of
25 the Application as set forth in the Act, in any applicable ordinance, these Rules and in any
26 RFP issued by the Governmental Entity and/or MFA and upon its determination that the
27 Applicant is a Qualifying Grantee, and upon its receipt of notification from MFA that it
28 agrees that the Application is complete and that the Act and these Rules have been
29 satisfied and the Applicant is a Qualifying Grantee, by written notice shall notify each
30 Applicant which has submitted an Application of the approval or disapproval of its
31 Application. Upon approval of its Application, the Applicant shall be considered approved

1 to participate in the Affordable Housing Program. The Governmental Entity's and/or MFA's
2 determination of any Application shall be conclusive.

3
4 5.6 Additional Requirements. Upon acceptance, the following additional
5 requirements shall apply to any Applicant, who is a Qualifying Grantee:

6
7 A. Contractual Requirements. The Qualifying Grantee shall enter into one or more
8 contracts with the Governmental Entity and/or MFA, which contract(s) shall be
9 consistent with the Act and subject to the review of MFA, in its discretion, and
10 which contract(s) shall include remedies and default provisions in the event of
11 the unsatisfactory performance by the Qualifying Grantee;

12
13 B. Security Provisions; Collateral Requirements. In accordance with the Act and
14 these Rules, the Governmental Entity and/or MFA shall require the Qualifying
15 Grantee to execute documents, which will provide adequate security against the
16 loss of public funds or property in the event the Qualifying Grantee abandons or
17 fails to complete the Affordable Housing Project, and which shall further provide,
18 as may be permitted by law, for the recovery of any attorneys' fees and costs
19 which the Governmental Entity and/or MFA may incur in enforcing the provisions
20 of these Rules, the Act and/or any agreement entered into by the Governmental
21 Entity and/or MFA and the Qualifying Grantee, and which documents may
22 include, but are not limited to the following: note, Mortgage, loan agreement,
23 land use restriction agreement, restrictive covenant agreements and/or any
24 other agreement which the Governmental Entity and/or MFA may require in
25 order to allow for any funds which the Qualifying Grantee may receive under a
26 Housing Assistance Grant to be adequately secured and to allow the
27 Governmental Entity and/or MFA to ensure that such funds shall be utilized by
28 the Qualifying Grantee in accordance with the Act and these Rules;

29
30 C. Performance Schedule and Criteria. The Qualifying Grantee shall be required to
31 abide by a reasonable performance schedule and performance criteria which the

1 Governmental Entity and/or MFA, in its discretion, may establish; and

2
3 D. Examination of Books and Records. The Qualifying Grantee shall submit to and
4 the Governmental Entity and/or MFA shall cause to be made such examinations
5 of the books and records of each Qualifying Grantee as the Governmental Entity
6 and/or MFA deems necessary or appropriate to determine the Qualifying
7 Grantee's compliance with the terms of the Act, these Rules and any contracts
8 between the Qualifying Grantee and the
9 Governmental Entity and/or MFA. The Governmental Entity and/or MFA may
10 require each Qualifying Grantee to pay the costs of any such examination.

11
12 E. Cost Reimbursement Contracts:

13
14 1) Cost Reimbursements. Payment to a Qualifying Grantee under cost
15 reimbursable contract provisions shall be made upon the Governmental
16 Entity's and/or MFA's receipt from the Qualifying Grantee of certified and
17 documented invoices for actual expenditures allowable under the terms of
18 any agreement between the Qualifying Grantee and the Governmental Entity
19 and/or MFA.

20
21 2) Cost Reimbursements For Units of Service. Payment under any unit cost
22 contract provisions shall be made upon the Governmental Entity's and or
23 MFA's receipt from the Qualifying Grantee of a certified and documented
24 invoice showing the number of units of service provided during the billing
25 period.

26
27 3) Rate at which Costs Incurred. Under unit cost or cost reimbursable contracts,
28 it is anticipated that costs will be incurred by the Qualifying Grantee at an
29 approximate level rate during the term of any agreement between the
30 Qualifying Grantee and the Governmental Entity and/or
31 MFA. If the Governmental Entity and/or MFA determine that the Qualifying

1 Grantee is underspending or overspending, then the Governmental Entity
2 and/or MFA may reduce the budget and/or exercise such other budgetary
3 fiscal controls it deems appropriate.
4

5 4) Invoices. Qualifying Grantees shall not submit invoices more than once a
6 month, unless written approval is obtained in advance from the
7 Governmental Entity and/or MFA. Failure to submit invoices within twenty
8 (20) days of the close of the month for which payment is sought may result in
9 the non-availability of funds for reimbursement.
10

11 5) No Dual Application of Costs. The Qualifying Grantee shall certify that any
12 direct or indirect costs claimed by the Qualifying Grantee will not be allocable
13 to or included as a cost of any other program, project, contract, or activity
14 operated by the Qualifying Grantee and which has not been approved by the
15 Governmental Entity and/or MFA in advance in writing.
16

17 6) Prohibition of Substitution of Funds. Any Affordable Housing Funds or other
18 amounts received by Qualifying Grantee may not be used by Qualifying
19 Grantee to replace other amounts made available or designated by State or
20 local governments through appropriations for use for the purposes of the Act.
21

22 7) Cost Allocation. If required by the Governmental Entity and/or MFA, the
23 Qualifying Grantee shall clearly identify and distribute all costs incurred
24 pertaining to the Affordable Housing Project by a methodology and cost
25 allocation plan at times and in a manner prescribed by, or acceptable to the
26 Governmental Entity and/or MFA.
27

28 F. Additional Information. Qualifying Grantees shall provide the Governmental
29 Entity and/or MFA with any and all information which the Governmental Entity
30 and/or MFA reasonably may require in order for it to confirm that the Qualifying
31 Grantees continue to satisfy the requirements of the Act and these Rules

1 throughout the term of any contract and/or any Affordability Period (defined
2 below) or otherwise as may be required by the Governmental Entity and/or MFA
3 in its discretion. At a minimum, on an annual basis, the Governmental Entity shall
4 certify to MFA in writing that the Qualifying Grantee is still in compliance with the
5 Act and these Rules.

6
7 5.7 Affordable Housing Requirements. All Affordable Housing Funds or Housing
8 Assistance Grants awarded under the Act are to be used by Qualifying Grantees for the
9 benefit of Persons of Low or Moderate Income subject to the provisions of the Act and with
10 particular regard to their to their housing related needs.

11
12 A. Single Family Property. Qualifying Grantees shall agree that they shall maintain
13 any single-family property which has been acquired, rehabilitated, weatherized,
14 converted, leased, repaired, constructed, or which property has otherwise
15 benefited from Affordable Housing Funds, including but not limited to any loans
16 which have been repaid with Affordable Housing Funds and which loans
17 previously were secured by such properties, as Affordable Housing for so long
18 as any or all of the Affordable Housing Funds which have been awarded, loaned,
19 or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or
20 the Affordability Period (defined below), whichever is longer.

21
22 B. Multi-Family Property.

23
24 1) Single Apartment within a Multi-Family Property. Qualifying Grantees shall
25 agree that, if any single apartments are to be rehabilitated, weatherized,
26 converted, leased, repaired, constructed, or otherwise are to benefit from
27 Affordable Housing Funds, those apartments shall be leased to Persons of
28 Low or Moderate Income at the time of any such award. Qualifying Grantees,
29 who are the landlords and/or owners of such properties, shall further agree
30 to contribute a percentage of the total cost of the rehabilitation,
31 weatherization, conversion, lease, repair, and/or construction, as required by

1 the local government or MFA. Qualifying Grantees also shall agree that the
2 Persons of Low or Moderate Income, who are tenants of those apartments,
3 shall be allowed to remain tenants for so long as there are no uncured
4 defaults by those tenants under their respective leases and provided that
5 there is no just cause for the landlord to terminate any lease agreement with
6 those tenants.

7
8 2) Multiple Apartments. Qualifying Grantees shall agree that, if multiple
9 apartments or an entire multi-family property are to be acquired,
10 rehabilitated, weatherized, converted, leased, repaired, constructed, or
11 otherwise are to benefit from Affordable Housing Funds, including but not
12 limited to any loans which have been repaid with Affordable Housing Funds
13 and which loans previously were secured by such properties, they shall
14 maintain as Affordable Housing a percentage of units set aside for Persons
15 of Low or Moderate Income, that is in direct proportion to the amount of
16 subsidy provided as a percentage of total cost. These set aside units shall be
17 maintained as Affordable Housing for so long as any or all of the Affordable
18 Housing Funds which have been awarded, loaned, or otherwise conveyed to
19 the Qualifying Grantee are unpaid and outstanding or the Affordability Period,
20 whichever is longer.

21
22 C. Non-Residential Property. Qualifying Grantees shall agree that they shall
23 maintain any non-residential property which has been acquired, rehabilitated,
24 weatherized, converted, leased, repaired, constructed, or which property has
25 otherwise benefited from Affordable Housing Funds, including but not limited to
26 any loans which have been repaid with Affordable Housing Funds and which
27 loans previously were secured by such properties, as a facility which provides
28 housing related-services to Persons of Low or Moderate Income for so long as
29 any or all of the Affordable Housing Funds which have been awarded, loaned,
30 or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or
31 the Affordability Period, whichever is longer.

1
2 D. Housing Assistance Grant Affordability Requirements. Qualifying Grantees shall
3 agree that they shall maintain any land or buildings received as a Housing
4 Assistance Grant either as either single-family or multi-family Affordable Housing
5 in accordance with paragraphs A and B of this Section
6 45.6 or as a facility which provides housing related-services to Persons of Low
7 or Moderate Income in accordance with paragraph C of this Section 45.6 (as
8 applicable) for the duration of the Affordability Period. Qualifying Grantees shall
9 agree that they shall maintain any land or buildings for which they have received
10 the costs of acquisition, development, construction, financing, operating, or
11 owning as a Housing Assistance Grant either as either single- family or multi-
12 family Affordable Housing or as a facility which provides housing related-
13 services to Persons of Low or Moderate Income (as applicable) for the duration
14 of the Affordability Period. In calculating the Affordability Period for Housing
15 Assistance Grants of either land or buildings, or the costs of acquisition,
16 development, construction, financing, operating or owning land or buildings, or
17 the costs of Infrastructure at the time of the donation by the state, county or
18 municipality shall apply.

19
20 E. Affordability Period Defined. If the fair market value of any Housing Assistance
21 Grant or the total amount of Affordable Housing Funds which have been
22 awarded, loaned, donated, or otherwise conveyed to the Qualifying Grantee is
23 from \$1 to \$14,999, then the Affordability Period shall be not less than five (5)
24 years. If the fair market value of any Housing Assistance Grant or the total
25 amount of Affordable Housing Funds is from \$15,000 up to and including
26 \$40,000, then the Affordability Period shall be not less than ten (10) years. If the
27 fair market value of any Housing Assistance Grant or the total amount of
28 Affordable Housing Funds is from \$40,000 up to and including
29 \$100,000, then the Affordability Period shall be not less than fifteen (15) years.
30 If the fair market value of any Housing Assistance Grant or the total amount of
31 Affordable Housing Funds is greater than \$100,000, then the Affordability Period

1 shall be not less than twenty (20) years. The Governmental Entity and/or MFA,
2 in its discretion, may increase the Affordability Period in any contract, note,
3 mortgage, loan agreement, land use restriction agreement, restrictive covenant
4 agreements and/or any other agreement which the Governmental Entity and/or
5 MFA may enter into with any Qualifying Grantee or beneficiary of the Affordable
6 Housing Funds or of the Housing Assistance Grant. Notwithstanding the
7 foregoing, in the discretion of MFA, Weatherization Funds conveyed from the
8 State to MFA and/or any other similar conveyances where an Affordability Period
9 is not practical, shall not be subject to the Affordability Period requirements of
10 this Section; but nevertheless, any such conveyances may be subject to
11 recapture on some pro-rated basis as determined by the Governmental Entity
12 and/or MFA.

13
14 5.8 Consent to Jurisdiction. Each Qualifying Grantee shall consent to the
15 jurisdiction of the courts of the State of New Mexico over any proceeding to enforce
16 compliance with the terms of the Act, these Rules and any agreement between the
17 Qualifying Grantee and the Governmental Entity and/or MFA.

18
19 5.9 Recertification. The Qualifying Grantee must meet the requirements of the
20 Act and these Rules and any applicable ordinance both at the time of any award and
21 throughout the term of any grant and contract related thereto. The Governmental Entity
22 and/or MFA may establish procedures for recertifying Qualifying Grantees from time to
23 time. Qualifying Grantees which fail to satisfy the requirements for recertification shall
24 cease to be eligible and shall be denied further participation in Affordable Housing
25 programs until the requirements of the Governmental Entity and/or MFA are satisfied.

26
27 5.10 Compliance with the Law. Qualifying Grantee shall provide the Governmental
28 Entity and/or MFA with any certifications or other proof which it may require in order for the
29 Governmental Entity and/or MFA to confirm that the Qualifying Grantee and the Qualifying
30 Grantee's proposed project are in compliance with all applicable federal, state and local
31 laws, rules and ordinances.

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5.11 Extension of Affordable Housing Programs. MFA shall have the power to create variations or extensions of such Affordable Housing programs, or additional programs which comply with the Act and these Rules.

5.12 The Governmental Entity and/or MFA:

- A. May hold any award of Affordable Housing Funds or any Housing Assistance Grant made by any county or municipality in suspense pending the issuance by the Governmental Entity and/or MFA of any RFP, or pending the award of the Affordable Housing Funds or of the Housing Assistance Grant by the Governmental Entity and/or MFA to the Qualifying Grantee without the issuance of an RFP by the Governmental Entity and/or MFA.

- B. Shall have oversight over the Qualifying Grantee under these Rules, upon the Qualifying Grantee's receipt of Affordable Housing Funds or a Housing Assistance Grant.

5.13 School District and Post-Secondary Educational Institution Grant Requirements. If a school district or a post-secondary educational institution intends to make a Housing Assistance Grant, then it shall provide MFA with a written certification that the proposed grantee is in compliance with the Act and these Rules so that MFA may confirm that the Application is complete and the proposed grantee is a Qualifying Grantee under the Act and these Rules. Any transfer of land by a school district to a county or municipality to be further granted as part or all of an Affordable Housing grant shall be subject to the additional limitations contained in the Act that the school district and the governing body of the county or municipality enter into a contract that provides the school district with a negotiated number of affordable housing units that will be reserved for employees of the school district. Any transfer of land by a post- secondary educational institution shall be subject to the additional limitations contained in the Act that (1) the property transferred shall be granted by the county, municipality or tribal government as

1 part or all of an Affordable Housing grant; and (2) the governing board of the post-
2 secondary educational institution and the governing body of the county, municipality or
3 tribal government enter into a contract that provides the post- secondary educational
4 institution with Affordable Housing units. As used in this Section, “post- secondary
5 educational institution” means a state university or a public community college. The
6 Governmental Entity and/or MFA, in their discretion, may also hold any Housing Assistance
7 Grant made by any school district or post-secondary educational institution in suspense
8 pending the issuance by the Governmental Entity and/or MFA of any RFP or pending the
9 award of the Housing Assistance Grant by the Governmental Entity and/or the MFA to the
10 Qualifying Grantee without the issuance of an RFP by the Governmental Entity and/or
11 MFA. Any award of a Housing Assistance Grant by a school district or a post-secondary
12 educational institution shall subject the Qualifying Grantee of the grant to the oversight of
13 the Governmental Entity and/or MFA under these Rules.

14
15 5.14 Housing Assistance Grants From the State. All Housing Assistance Grants
16 from the State pursuant to the Act shall be appropriated to the Department of Finance and
17 Administration for disbursement by MFA to a Qualifying Grantee through use of a contract
18 consistent with the provisos in the State appropriation and these Rules.

19
20 **SECTION 6. DISCRIMINATION PROHIBITED**. The development, construction,
21 occupancy and operation of an Affordable Housing Program or an Affordable Housing
22 Project financed or assisted under the Act shall be undertaken in a manner consistent with
23 principles of non-discrimination and equal opportunity, and the Governmental Entity and/or
24 MFA shall require compliance by all Qualifying Grantees with all applicable federal and
25 State laws and regulations relating to affirmative action, non-discrimination and equal
26 opportunity.

27
28 **SECTION 7. ADMINISTRATION**. The Governmental Entity and/or MFA shall administer
29 any Affordable Housing programs in accordance with provisions of the Act, these Rules,
30 any applicable state and federal laws and regulations as each of which may be amended
31 or supplemented from time to time. The Governmental Entity and/or MFA, in establishing,

1 funding and administering the Affordable Housing Programs and by making, executing,
2 delivering and performing any award, contract, grant or any other activity or transaction
3 contemplated by the Act, shall not violate any provision of law, rule or regulation or any
4 decree, writ, order, injunction, judgment, determination or award and will not contravene
5 the provisions of or otherwise cause a default under any of its agreements, indentures, or
6 other instruments to which it may be bound.

7
8 **SECTION 8. IN THE EVENT OF DEFAULT.** In the event that a Qualifying Grantee defaults
9 on a contractual obligation for a subsidized affordable housing project, or abandons or
10 otherwise fails to complete an affordable housing project, for which the Governmental
11 Entity has donated land or funds to purchase the land, a Governmental Entity shall act in
12 the manner set forth below to ensure the property's timely sale and recovery of the public
13 funds invested in the project.

14
15 A. The Governmental Entity must ascertain that the title to the property has been
16 transferred to the Governmental Entity through a foreclosure sale, a transfer of title
17 by deed in lieu of foreclosure or any other manner.

18
19 B. If the Governmental Entity has or will acquire title, then it must determine if, under
20 the contractually imposed affordability restrictions requiring long-term occupancy by
21 Persons of Low or Moderate Income, the property is or is not marketable for a price
22 that would sufficiently recover the investment of public funds.

23
24 C. If the determination is that the property cannot be sold under the affordability
25 restrictions for a price that would recover the investment of public funds in the

1 property, then the Governmental Entity shall obtain a written appraisal of the fair
2 market value of the project, without the affordability restrictions, that is current to the
3 time the project is put up for sale.

4
5 D. The Governmental Entity shall thereafter, prior to the sale of the project, request
6 MFA review and approval of the determination to release the affordability restrictions
7 on the property to effect a sale. The Governmental Entity must provide MFA with a
8 certification that its determination to sell the affordable housing project without the
9 affordability restrictions was made pursuant to the requirements of this Section of
10 these Rules. Following receipt of MFA approval of the determination to release the
11 affordability restrictions to effect a sale, the Governmental Entity may release the
12 affordability restrictions upon sale of the project at a fair market value current to the
13 time of the sale.

14
15 E. Exercise reasonable efforts to ensure that all proceeds from the sale of a property
16 pursuant to this section are used solely for purposes pursuant to the Affordable
17 Housing Act and that the Qualifying Grantee that held title to the property shall not
18 benefit from the sale of the property or from the transfer of the affordable housing
19 project.

20
21 **SECTION 9. ENFORCEMENT.** The New Mexico Attorney General's Office is the State
22 agency responsible for enforcing compliance with the requirements of the Act and these
23 Rules. Noncompliance by any entity whose actions fall within the jurisdiction of the Act and
24 these Rules will be reported by MFA to the Attorney General's Office for investigation. The
25 Attorney General's Office will investigate an alleged violation of the Act reported by the
26 Authority, and based on a reasonable belief that a violation of the Act has occurred, may
27 bring a civil action and/or pursue criminal charges against the alleged violator. Civil
28 penalties for a judicial finding of a violation of the Act shall not exceed the amount of five
29 thousand dollars (\$5,000) per violation, in addition to any equitable relief imposed by the
30 court.

1 **SECTION 10. MISCELLANEOUS**. Capitalized terms not otherwise defined in these Rules
2 and Regulations have the same meaning as defined in the Act.

3

4 **SECTION 11. AMENDMENT TO RULES AND REGULATIONS**. These Rules may be
5 amended or supplemented by MFA at any time. With regard to any amended or
6 supplemental rules under this Section, MFA shall seek comment from the Oversight
7 Committee, provide a public hearing in accordance with the State Administrative
8 Procedures Act, and require concurrence in any rule having application to local
9 government by both the New Mexico municipal league and the New Mexico Association of
10 Counties, all as required by the Act.

11

12 Adopted by the MFA's Board: October 17, 2007 and, as amended, on December 16, 2015
13 and as amended on December 13, 2023.

1 Footnotes

2

3 ¹ The following definitions in these Rules were either 1) modeled on MFA’s internal Rules
4 and Regulations, which were revised by t MFA in October of 2006, approved by the
5 Oversight Committee on November 14, 2006, and adopted by the Board on January 24,
6 2007, 2) modeled on or taken directly from the Act, as revised in the 2006 Legislative
7 Session, or 3) taken directly from MFA’s Policy and Procedures manual approved by
8 MFA’s Board of Directors in November of 2022. All definitions given were created to
9 support the goals of the Act and the Rules.

10

11 ² Solely for the purposes of the Affordable Housing Act to distinguish the Authority from any
12 other Governmental Entity, the term “MFA” will always be used when a rule or provision
13 applies to the Authority.

14

15 ³ Household AMI percentages designated by ordinance provisions as qualifying for subsidy
16 may remain the same despite annual changes to the numeric amounts of income attributed
17 to each AMI percentage.