

Notice of Proposed Rulemaking and Public Hearings

The New Mexico Opportunity Enterprise and Housing Development Review Board (Board) will hold a public hearing on Thursday, June 20, 2024, from 10:00 – 11:00 a.m., and on Friday, June 21, 2024, from 10:00–11:00 a.m. The hearing will be conducted virtually via Zoom; the public may attend the hearing using the following methods:

Thursday, June 20, 2024, 10:00-11:00 a.m. Mountain Time

Zoom Meeting Link:

<https://nmfa-net.zoom.us/j/88923074770?pwd=iWBvqLCmEQd6qJsF8DMXVsHsonrn2F.1>

Meeting ID: 889 2307 4770

Passcode: 692798

To join the meeting by phone, dial:

+13462487799,,88923074770#,,,,*692798# US - or - +16694449171,,88923074770#,,,,*692798# US

Find your local number: <https://nmfa-net.zoom.us/u/kknsGPrEC>

Friday, June 21, 2024 10:00-11:00 a.m. Mountain Time

Zoom Meeting Link:

<https://nmfa-net.zoom.us/j/82139120505?pwd=tvPk5wADZ4fbTakjF9XVgiAyHjk7Q9.1>

Meeting ID: 821 3912 0505

Passcode: 824077

To join the meeting by phone, dial:

+16694449171,,82139120505#,,,,*824077# US - or -

+17193594580,,82139120505#,,,,*824077# US

Find your local number: <https://nmfa-net.zoom.us/u/kcGUi4Pd0>

The purpose of the rule hearing is to obtain input and public comment on proposed rule amendments relating to opportunity enterprise and housing development assistance consistent with changes made to the Opportunity Enterprise and Housing Development Act, Laws 2024, Ch. 8 (House Bill 195 Approved February 28, 2024).

Copies of the proposed rule may be accessed online at <https://www.nmfinance.com/opportunity-enterprise-review-board> or contact Board staff at OGC@nmfa.net, (505) 984-1454 , or toll free 1-800-ASK-NMFA (1-877-275-6632).

The Board will accept written public comments on the proposed rule beginning May 21, 2024. Please submit written comments on the proposed rule to the NMFA, attention Daniel C. Opperman, Chief Legal Officer, via electronic mail at OGC@nmfa.net, or by regular mail at 207 Shelby Street, Santa Fe, NM 87501. Written comments must be received no later than 5 p.m. on June 21, 2024. Comments received prior to the rule hearing will be posted to the Board website at <https://www.nmfinance.com/opportunity-enterprise-review-board>. Persons will also be given the opportunity to present their comments at the rule hearing.

Individuals who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact the Board Staff as soon as possible at OGC@nmfa.net, (505) 984-1454 , or toll free 1-800-ASK-NMFA (1-877-275-6632). The Board requests advance notice to provide required special accommodations at least one week prior to the meeting or as soon as possible.

Statutory Authority: Legal authority for this rulemaking may be found in the Opportunity Enterprise and Housing Development Act, Section 6-34-7 NMSA 1978 and Laws 2024, Ch. 8. Pursuant to NMSA 1978, 6-34-3, 6-34-5, and Laws 2024, Ch 8, Section , the New Mexico Finance Authority is responsible for adopting rules relating to the use of the opportunity enterprise revolving fund and the housing development revolving fund necessary to carry out the provisions of the Opportunity Enterprise and Housing Development Act and shall provide necessary administrative services to the board.

Proposed Amendment:

This is an amendment to 2.93.1 NMAC, Sections 1, 2, 6, 7, 9, 14, re-numbering Section 13 to Section 20, and adding new Sections 15 through 19, effective 7/30/2024.

2.93.1.1 ISSUING AGENCY: New Mexico Opportunity Enterprise and Housing Development Review Board.
[2.93.1.1 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.2 SCOPE: All persons or entities applying for enterprise assistance under the opportunity enterprise revolving fund and housing development assistance under the housing development revolving fund administered by the New Mexico finance authority, Sections 6-34-8, ~~and~~ 6-34-12, and 6-34-xx NMSA 1978.
[2.93.1.2 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.6 OBJECTIVE:

A. Section 6-34-3, NMSA 1978, provides that the authority may adopt separate rules to administer the opportunity enterprise revolving fund and the housing development revolving fund to originate enterprise assistance and housing development assistance for ~~[opportunity enterprise]~~ projects recommended by the board, govern the process through which applicants may apply for enterprise assistance ~~[from the opportunity enterprise revolving fund]~~ and housing development assistance, and collect fees and costs related to providing ~~[enterprise]~~ financing ~~[to each opportunity enterprise financing partner].~~

B. Section 6-34-5, NMSA 1978 provides that the authority shall provide staff support for necessary administrative services of the board.

C. Section 6-34-6, NMSA 1978 provides that the authority shall upon the recommendation of the board, process, review and evaluate applications for enterprise assistance and housing development assistance received from applicants.

D. Section 6-34-7, NMSA 1978 provides that the opportunity enterprise and housing development review board is required to adopt rules necessary to carry out the provisions of the act and allowing the authority to establish procedures for applying and qualifying for enterprise assistance and housing development assistance, establishing economic development goals for the state in consultation with the department, governing the application procedures and requirements for enterprise assistance and housing development assistance, determining how to select and prioritize applications for enterprise assistance and housing development assistance to ~~[by]~~ be funded by the authority, prioritizing projects that are in political subdivisions that are implementing zoning reforms that support housing development projects, and providing safeguards to protect public money and other public resources.

E. Section 6-34-12, NMSA 1978 provides that the authority shall administer the opportunity enterprise revolving fund and the housing development revolving fund and recover from the ~~[opportunity enterprise revolving fund]~~ funds the costs of administering the ~~[fund]~~ funds and originating enterprise assistance.

F. Subsection K of Section 6-21-5, NMSA 1978 provides that the authority may fix charges and collect fees and other charges in connection with the making of loans, leases and any other services rendered by the authority.

[2.93.1.6 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.7 DEFINITIONS:

A. “Act” means the Opportunity Enterprise and Housing Development Act, Sections 6-34-1 through ~~[6-34-15]~~ 6-34-xx, NMSA 1978, as the same may be amended and supplemented.

B. “Application” means a written document made publicly available by the authority and filed with the authority for enterprise assistance for the purpose of evaluating, in consultation with the department, the applicant’s qualifications and proposed enterprise development project or projects for types of enterprise assistance which may be provided by the authority under the act.

C. “Authority” means the New Mexico finance authority.

D. “Board” means the opportunity enterprise and housing development review board created by the act.

E. “Bylaws” means the amended and restated bylaws of the board adopted on ~~[August 24, 2022]~~ May 2, 2024, as amended and supplemented from time to time.

F. “Commercial development committee” means a standing committee, appointed by the chairman of the board from members of the board pursuant to the bylaws to review proposed enterprise development projects to be recommended for funding from the opportunity enterprise revolving fund.

~~[F]~~ **G.** “Department” means the economic development department.

~~[G]~~ **H.** “Economic development opportunities” means the advancement of an environmentally sustainable economic development goal of the state as determined by the authority, in coordination with the department, and includes the creation of jobs, the provision of needed services and commodities to diverse communities across the state and the increase of tax and other revenue collections resulting from the enterprise development project.

~~[H]~~ **I.** “Enterprise assistance” means opportunity enterprise financing, an opportunity enterprise lease or an opportunity enterprise loan.

~~[I]~~ **J.** “Enterprise development project” means the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure to create or expand economic development opportunities within the state.

~~[J]~~ **K.** “[~~Fund means the opportunity enterprise revolving fund~~] Housing development assistance” means a loan for workforce development housing projects or affordable housing infrastructure.

~~L.~~ “Housing development committee” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review proposed housing development projects to be recommended for funding from the housing development revolving fund.

~~M.~~ “Housing development partners” means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or any other private business entity or combination thereof that the authority determines is or will be engaged in a project that creates or expands housing within the state and is eligible for housing development assistance pursuant to the act.

~~N.~~ “Housing development project” means an affordable housing infrastructure project or a workforce development housing project.

~~O.~~ “Middle income workers” means families with incomes that fall between the lesser of a local jurisdiction’s upper limit for housing assistance by relevant housing type or by the New Mexico Mortgage Finance Authority’s upper limit for housing development assistance, and three hundred percent of the US Housing and Urban Development Area Median Income for the county.

~~[K]~~ **P.** “Opportunity enterprise partner” means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof that the authority determines is or will be engaged in an enterprise that creates or expands economic development opportunities within the state and is eligible for enterprise assistance pursuant to the act.

~~Q.~~ “Opportunity Enterprise Revolving Fund” means the opportunity enterprise revolving fund.

~~[L.]~~ “Project review committee” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review proposed enterprise development projects to be recommended for funding from the fund.]

~~[M]~~ **R.** “State” means the state of New Mexico.

~~S.~~ “Workforce development housing” means below-market housing addressing demand for workforce housing for middle income workers in proximity to employment centers as determined by board policy.

~~T.~~ “Workforce development housing project” means a residential real estate development project that involved the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure that provides housing, including housing that provides the option of home ownership.

~~U.~~ “Zoning reforms” means policies, procedures and regulations implemented by political subdivisions intended to decrease the costs and timing of constructing affordable housing and workforce housing, including expedited permitting, high density zoning, and other criteria as determined by policies of the board.
[2.93.1.7 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.9 ENTERPRISE DEVELOPMENT PROJECT PROPOSAL, REVIEW, PRIORITIZATION AND APPROVAL PROCESS:

A. The board and the department will administer an outreach program to local governments and potential opportunity enterprise partners for the purpose of making recommendations to the authority regarding enterprise assistance, and to notify applicants that enterprise development project proposals are being accepted for review by the project review committee and the board for prioritization and recommendation for funding to the authority.

B. The authority will provide forms and guidelines for enterprise development project proposals and applications for enterprise assistance. The authority may consider the recommendations and priorities of the board.

C. Applications for enterprise assistance shall describe the scope and plans of the enterprise development project or proposed use of leased property, demonstrate that the enterprise development project or

lease will create or expand economic development opportunities within the state, demonstrate that the enterprise project or lease will contribute to the diversification of the state's economy, demonstrate that the enterprise development project or lease will comply with all applicable state and federal law, provide sufficient evidence that other means of financing a proposed enterprise development project are unavailable or insufficient, and include any other documentation or certifications that the authority deems necessary.

D. Department staff will complete an initial evaluation of the application for enterprise assistance and enterprise development project proposals promptly following receipt in consideration of information provided by applicants according to the factors listed in Subsection C of 2.93.1.9.NMAC. Such evaluation will include recommendations regarding suitability for enterprise assistance. The department may obtain input and information relevant to carrying out the purposes of the act from outside consultants in evaluating enterprise development project proposals and applications for enterprise assistance. The department will then forward to the ~~[project review]~~ commercial development committee for review, the relevant application and the corresponding recommendation of the department, along with all third-party input and information compiled by the department.

E. The ~~[project review]~~ commercial development committee will consider the proposed enterprise development project and may confer with outside parties, including any person familiar with the proposed enterprise development project, as necessary to obtain more information on the feasibility, merit, and cost of the proposed enterprise development project. The ~~[project review]~~ commercial development committee will make a recommendation to the board on each enterprise development project proposal.

F. Upon the recommendation of the ~~[project review]~~ commercial development committee, the board will prioritize the proposed enterprise development projects for recommendation to the authority for consideration of enterprise assistance.

G. After completion of the review process by the ~~[project review]~~ commercial development committee and the board and receipt of a favorable recommendation on the enterprise development project proposal, the prioritized enterprise development projects will be recommended by the board to the authority for consideration of enterprise assistance.

H. NMFA may request an additional application from recommended enterprise assistance projects.

I. A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to enterprise assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict. [2.93.1.9 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.13 ~~[RECONSIDERATION OF BOARD DECISIONS: Any applicant affected by a decision of the board may request reconsideration of the decision of the board by notifying the board in writing within 15 days following the meeting at which the decision was made. Notice of a decision made in an open meeting of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless of whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for reconsideration, including any factual or legal matter on which the applicant believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chair of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.] [RESERVED]~~ [2.93.1.13 NMAC – N, 4/25/2023; Rn. 2.93.1.20 NMAC, 7/30/2024]

2.93.1.14 ENTERPRISE ASSISTANCE CONTRACT:

A. The authority and opportunity enterprise partner awarded enterprise assistance will enter into a contract to establish the terms and conditions of enterprise assistance from the authority. The contract to provide enterprise assistance shall:

- (1) define the roles and responsibilities of the authority and the opportunity enterprise partner;
- (2) provide clawback or recapture provisions, if applicable, that protect the public investment in the event of a default on the contract;
- (3) provide a finance plan detailing the financial contributions and obligations of the authority and opportunity enterprise partner;
- (4) require an opportunity enterprise partner to provide guarantees, letters of credit or other

acceptable forms of security, as determined by the authority;

- (5) specify how rents, if applicable, will be collected and accounted for;
- (6) specify how debts incurred on behalf of the opportunity enterprise partner will be repaid;

and

(7) provide that, in the event of a default, the authority may (a) elect to take possession of the property, including the succession of all right, title and interest in the enterprise development project; and (b) terminate the lease or cease any further funding and exercise any other rights and remedies that may be available.

B. The interest rate on any enterprise assistance extended, if applicable, shall be determined by the authority

C. The contract will contain provisions which require enterprise assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. The authority will monitor terms of the contract and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection. In the event of default under an enterprise assistance contract by an applicant, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

E. ~~[A]~~ A list of contracts for enterprise assistance shall be provided to the board by the authority no later than thirty days from the execution of that contract. The board shall review contracts from time to time and determine whether the use of enterprise assistance is a prudent expenditure of public funds and report to the legislature annually on that determination. The board ~~[shall]~~ may also make recommendations to the authority of potential rulemaking, application or lending changes to ensure transparent and efficient processes for carrying out the provisions of the act.

[2.93.1.14 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.15 ELIGIBILITY AND PRIORITIZON POLICIES FOR HOUSING DEVELOPMENT

PROJECTS: The board will develop determine which housing development projects to recommend to the authority for housing development assistance from the housing development revolving fund. Board policies shall give priority to projects that:

- A. demonstrate local support and need.
- B. create or expand attainable housing units within the state.
- C. are located in political subdivisions that have implemented zoning reforms, and
- D. other means of financing a proposed housing development project are unavailable or insufficient.

The board shall establish policies to consider in prioritizing housing development projects.

[2.93.1.15 NMAC – N, 7/30/2024]

2.93.1.16 HOUSING DEVELOPMENT PROJECT PROPOSAL, REVIEW, PRIORITIZATION AND APPROVAL PROCESS:

A. The board will administer an outreach program to local governments and potential housing development partners for the purpose of making recommendations to the authority regarding housing assistance, and to notify applicants that housing development project proposals are being accepted for review by the housing development committee and the board for prioritization and recommendation for funding to the authority.

B. The authority will provide forms and guidelines for housing development project proposals and applications for housing development assistance. The authority may consider the recommendations and priorities of the board.

C. Applications for housing development assistance shall describe the scope and plans of the housing development project, demonstrate that the housing development project will create or expand attainable housing within the state, and provide sufficient evidence that other means of financing a proposed housing development project are unavailable or insufficient, and include any other documentation or certifications that the authority deems necessary.

D. Authority staff will complete an initial evaluation of the application for housing assistance and housing development project proposals promptly following receipt in consideration of information provided by applicants according to the factors listed in Subsection C of 2.93.1.15. Such evaluation will include recommendations regarding suitability for housing development assistance. The authority may obtain input and information relevant to carrying out the purposes of the act from outside consultants in evaluating housing development project proposals and applications for housing assistance. The department will then forward to the housing development committee for review, the relevant application, and the corresponding recommendation of the department, along with all third-party input and information compiled by the department.

E. The housing development committee will consider the proposed housing development project and may confer with outside parties, including any person familiar with the proposed housing development project, as necessary to obtain more information on the feasibility, merit, and cost of the proposed housing development project. The housing development committee will make a recommendation to the board on each housing development project proposal.

F. Upon the recommendation of the housing development committee, the board will prioritize the proposed housing development projects for recommendation to the authority for consideration of housing assistance.

G. After completion of the review process by the housing development committee and the board and receipt of a favorable recommendation on the housing development project proposal, the prioritized housing development projects will be recommended by the board to the authority for consideration of housing assistance.

H. NMFA may request an additional application from recommended housing development assistance projects.

I. A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to housing development assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict.
[2.93.1.16 NMAC – N, 7/30/2024]

2.93.1.17 HOUSING DEVELOPMENT PROJECTS AND ELIGIBLE COSTS:

A. The board may recommend to the authority that housing development assistance from the housing development revolving fund should be made available for housing development projects as provided by Section 6-34-[xx], NMSA 1978.

B. Housing development assistance from the housing development revolving fund shall be made only for eligible items, a determined by the authority, which includes:

- (1) opportunity housing loans;
- (2) paying the reasonably necessary administrative costs and other costs and fees incurred by the authority in carrying out the provisions of the act.

[2.93.1.17 NMAC – N, 7/30/2024]

2.93.1.18 HOUSING DEVELOPMENT PROJECT FINANCING: The authority may recommend structured housing development assistance packages that include housing developments loans. The structure, terms and conditions of the loans will be determined by the authority.

[2.93.1.18 NMAC – N, 7/30/2024]

2.93.1.19 FINANCING APPROVAL REQUIREMENTS: Based on the priority and evaluation factors set forth in Sections 15, 16, and 17 above, as well as the requirements of the act, the board may recommend to the authority housing development projects for consideration of housing development assistance. Board recommendations may be considered by the authority but shall not be binding on the authority. A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to housing assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict.

[2.93.1.19 NMAC – N, 7/30/2024]

2.93.1.20 RECONSIDERATION OF BOARD DECISIONS: Any applicant affected by a decision of the board may request reconsideration of the decision of the board by notifying the board in writing within 15 days following the meeting at which the decision was made. Notice of a decision made in an open meeting of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless of whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for reconsideration, including any factual or legal matter on which the applicant believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chair of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.

[2.93.1.20 NMAC – N, 7/30/2024]

HISTORY OF 2.93.1 NMAC: [RESERVED]