

NCNMEDD Revolving Loan Fund Policy July 23, 2021

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# History of NCNMEDD and its Revolving Loan Fund

The origins of the North Central New Mexico Economic Development District (NCNMEDD) date back to passage of the Public Works and Economic Development Act (Public Law 89-136) by the U.S. Congress in 1965.  This legislation created the Economic Development Administration (EDA) under the U. S. Department of Commerce and authorized designated distressed multi-county regions to form economic development districts to promote the socioeconomic environment of their members. Since then, EDA has provided financial and technical assistance to these economically distressed areas throughout the nation.

NCNMEDD was created in 1967 by statutory authority of the Joint Powers Agreement (JPA) Act, Section 4-22-1 to 4-22-7, New Mexico Statutes Annotated, to assist local governments to develop and implement a regional economic development program under the authority of PL 89-136. Communities participating in the JPA are the eight New Mexico counties of Colfax, Los Alamos, Mora, Rio Arriba, San Miguel, Sandoval, Santa Fe, and Taos, and the City of Santa Fe, New Mexico.

NCNMEDD received funding for a Revolving Loan Fund (RLF) in 1983 for business gap financing in the seven counties of Colfax, Los Alamos, Mora, Rio Arriba, San Miguel, Santa Fe, and Taos.The RLF was initially capitalized with an EDA grant award of $500,000 which was matched with $166,667 in local funding raised by NCNMEDD. During the life of the funds, this initial investment has allowed NCNMEDD to lend almost $3.5 million to 49 firms. Projects have generated $15 million of business development activity and have created and retained over 1,000 jobs created in the region.

As a requirement of EDA, NCNMEDD adopted a Revolving Loan Fund Plan in 1985. The Plan was modified in 1998, 2009, 2018 and again in 2020 to reflect EDA RLF funding in the amount of $500,000 from the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, which NCNMEDD used to create a new loan program.

In 2020, the federal government passed the Reinvigorating Lending for the Future Act (RLF Act) which enabled EDA to release the federal interest in RLF awards for which the final disbursement occurred more than seven years ago. NCNMEDD requested defederalization in March 2021 for its original EDA award from 1983. EDA approved the defederalization request on May 3, 2021.

This Policy applies to these defederalized funds as well as the local match for the 1983 award. At the date of this policy’s adoption, the $500,000 EDA CARES Act award from 2020 did not qualify for defederalization and remains governed by NCNMEDD’s Revolving Loan Fund Plan.

# 2.0 Mission

NCNMEDD will use its RLF to support and sustain economic and job growth and to fill gaps in financing for the region, which includes Colfax, Los Alamos, Mora, Rio Arriba, San Miguel, Santa Fe, Taos, and rural Sandoval County.

# 3.0 Sources of Funds

NCNMEDD’s business lending activities are supported with the following sources. As NCNMEDD obtains additional sources for lending, each will be added to this section along with a summary of applicable restrictions and requirements. Separate funding agreements, policies or plans that govern the use of these funds are noted below and are controlling in the case of a conflict with this Policy.

## 3.1 TCR Funds:

These funds were initially used as a local match for the now defederalized EDA Funds received in 1983. There are no additional restrictions on TCR funds beyond those found in this Policy.

## 3.2 Defederalized EDA Funds:

These funds were an RLF Award to NCNMEDD in 1983. The federal interest in these funds was removed in 2021. These funds must be used in accordance with this Policy as well as the signed and executed Defederalization Release Agreement. The summarized restrictions from the Defederalization Agreement are as follows:

1. Funds may not be used to construct schools, community centers, municipal buildings, pay the general costs of government, or for any purpose outside of Public Works and Economic Development Act (PWEDA) of 1965.
2. Funds may not be transferred to an ineligible entity under sections 3(4) and 209 of PWEDA.
3. Funds may not be used to induce the relocation of existing jobs.
4. Funds used for construction must be compliant with the Davis-Bacon Act.
5. Funds must be used in accordance with all applicable laws and may not be used for any purpose that would violate the Establishment Clause.
6. Funds can be used without EDA approval or permission if they continue the economic development purposes of PWEDA.
7. NCNMEDD must be able to report to EDA on how the funds have been used, if asked.

# 4.0 Uses of Funds:

## 4.1 Lending Programs and Loan Products

NCNMEDD intends to design and offer lending programs and loan products that respond to the financing needs of the region. In addition to participation and direct lending, NCNMEDD may provide microlending for working capital, gap financing, revolving lines of credit and address other financing needs, subject to funding source agreements and restrictions.

## 4.2 Capital Base:

The total capital base is defined as the total amount of funding that NCNMEDD has available to lend in addition to the principal balances on any loans among all funding sources.

## 4.3 Interest and Fees:

Unless otherwise restricted by funding source agreements, revenue generated by interest or fees may be used at NCNMEDD’s discretion for the following purposes: unrestricted income, general or lending-related administrative and operating expenses, capitalization of new lending programs, or incorporation into the capital base.

## 4.4 Concentration Limits and Portfolio Targets:

NCNMEDD’s loan concentration limit will be 33% (one-third) of its capital base. The concentration limit applies to singular borrowers, guarantors, agents, principals as well as to exposure through participating lenders. The RLF Committee may make exceptions to this provision and all such exceptions shall be documented.

4.5 Direct and Participation Lending:

NCNMEDD will seek to maintain a balance between direct and participation lending programs and will not exceed 75% concentration of the capital base in one or the other. The RLF Committee may make exceptions to this provision and all such exceptions shall be documented.

4.6 Eligibility

Eligible Borrowers: In general, all small businesses or legally organized entities are eligible for RLF Funding if they can demonstrate a need for the loan proceeds and will use the funds for a sound business purpose in alignment with the Mission.

Ineligible Borrowers: Unless otherwise specified in the funding source agreements, NCNMEDD will reference the SBA listing of ineligible businesses as a guide for businesses that are ineligible for RLF funding. A summary of these businesses is provided in Appendix 1, but the full and current listing may be found at 13 CFR § 120.110. If a borrower is ineligible but can display a need for the loan proceeds and will use the funds for a sound business purpose, the loan request may be considered if the business purpose is in alignment with the Mission.

Ineligible Uses: RLF Capital may not be used:

1. By NCNMEDD to acquire an equity position in a private business.
2. By NCNMEDD to subsidize interest payments on an existing RLF loan.
3. To provide for borrowers’ equity contributions under other loan programs.
4. To enable borrowers to acquire an interest in a business either through the purchase of stock or acquisition of assets unless sufficient justification is provided.
5. For the purpose of investing in interest bearing accounts, certificates of deposit or any investment unrelated to the RLF.
6. To refinance existing debt unless sufficient justification is provided.
7. To serve as collateral to obtain credit or any other type of financing (e.g., loan guarantees).
8. To finance gambling activity, performances or products of a prurient sexual nature, illegal activity, or cannabis-related legal businesses.

# 5.0 Administrative Procedures

## 5.1 Delegations of Authority and Responsibility

NCNMEDD’s Executive Committee is responsible for oversight of all NCNMEDD lending programs. A majority vote by a quorum of the Executive Committee at a properly noticed meeting is required for formal action on any matter. The Executive Committee is responsible for the following:

1. To amend this Policy as needed;
2. To authorize, apply for, and accept capital contributions;
3. To create a RLF Committee and appoint and/or replace members of the Committee, a majority of whom shall have experience in financial services;
4. For loans under $100,000, to ratify loan approvals made by the RLF Committee;
5. For loans over $100,000 or complex deals, to review and approve loans and establish terms, rates, and other conditions;
6. To approve contracts with third parties supporting NCNMEDD’s lending activities, in accordance with NCNMEDD’s Procurement Policy; and
7. To make final decisions regarding loan collection or administration issues; and
8. To accept or modify recommendations from the annual review of the loan loss reserve and risk ratings.

The Executive Committee appoints a three-person RLF Committee, a majority of which has significant experience in the financial services industry, to provide more frequent and detailed review of lending activities. A majority vote of the RLF Committee is required for formal action on any matter. These votes may be recorded through a meeting or via email. The RLF Committee is responsible for the following:

1. To recommend amendments to this Policy as needed;
2. To recommend application for and acceptance of capital contributions;
3. For loans under $100,000, to review and approve loans and establish terms, rates, and other conditions;
4. For loans over $100,000 or complex or unusual deals, to review and recommend to the Executive Committee approval, denial, terms, rates, and other conditions. Regardless of the loan amount, the RLF Committee may forward for consideration to the Executive Committee any loan that requires an additional or higher level of review.
5. To recommend contracts with third parties supporting NCNMEDD’s lending activities, in accordance with NCNMEDD’s Procurement Policy;
6. To make recommendations regarding loan collection and administration issues;
7. To oversee an annual review of the loan loss reserve and risk ratings;
8. To initiate and approve day-to-day procedural changes and paperwork as needed; and
9. To provide direction and guidance to the NCNMEDD staff performing lending activities.

## 5.2 Loan Approval Processes

NCNMEDD’s shall designate a Loan Officer who will accept applications for RLF loans, underwrite the loans, and prepare a loan write-up for the RLF Committee’s review. The loan write-up will contain, at minimum:

Summary of Loan Application:

1. Loan Request: The amount of the request and the recommended monthly amortization and term.
2. Interest: Indicate the rate, specifying if fixed or floating rate.
3. Use of Funds and Purpose: Use of loan funds by category ( fixed asset financing, leasehold improvements, working capital, etc.).
4. Borrower Description: Type of entity (corporation, partnership, sole proprietorship), list of owners and their percentage of the business.
5. Guarantor Description: Names and relationships of the guarantors to the owners of the business.
6. Description of Business: Background and history of business operations, including a brief industry analysis.
7. Public Benefit: Benefit of this loan in terms of jobs created, retained and/or saved. Jobs saved are defined as jobs that would be imminently lost without RLF assistance. Indicate the value of this borrower to the community.
8. Environmental Issues: Environmental issues identified at the location of the business, if applicable. Identify actions the borrower must take to comply with any environmental findings or requirements.
9. Collateral: Collateral pledged for this loan and indicate the secured position. If property is being pledged, show the present market value and net equity available. Date of appraisal, name of appraiser and loan to value shall also be included.
10. Loan Fees: Describe any loan fees charged.

Analysis and Recommendation:

1. Eligibility: Indicate if borrower and the use of funds are eligible based on criteria established in the Policy and applicable Funding Source Agreements.
2. Credit Report: Analysis of the credit reports obtained on the principals, guarantors, and the business.
3. Financial Analysis: Analysis of the company's financial performance as reflected by its financial statements and projections, if applicable.
4. Personal Financial Analysis: Analysis of the principal's and guarantor(s) personal financial statements.
5. Recommendation: Recommendation to approve, approve with conditions or deny the loan based on analysis of the business' industry, its place in that industry, financial analysis, and ability to repay. The recommendation will include a Risk Rating of 1 or 2 (see Table 1).

For loans of $100,000 or more, the Loan Officer will present the loan write-up to the RLF Committee. The RLF Committee will vote to recommend approval, approval with conditions or denial of the loan. After recommendation, the loan will be placed on the following month’s Executive Committee agenda. Loan approval requires a majority vote of a quorum of voting members. The motion will include all exceptions, conditions or special terms imposed on the borrower. Minutes of the Executive Committee are corporate and public records and constitute legal documentation of formal action on the loan.

For loans of $100,000 or less, the Loan Officer will present the loan write-up to the RLF Committee. The RLF Committee will vote approve, approve with conditions, or deny the loan. Loan approval requires a majority vote of the Committee. Voting may be conducted at scheduled meetings or on an as-needed basis through email. NCNMEDD shall maintain all documentation of votes. The motion will include all exceptions, conditions or special terms imposed on the borrower. The Executive Committee then ratifies the RLF Committee’s decision at its next meeting.

Once a loan is approved, the Loan Officer notifies the borrower and/or the participating bank of the decision in writing. A commitment letter is sent if the loan is approved. A standard decline letter is sent when the loan is denied.

## 5.3 Accounting Processes

NCNMEDD may include different sources of funds in a single loan to a borrower. NCNMEDD will follow each funding source’s restrictions and keep separate booked accounts for each source.

When an RLF loan is funded, all sources will be listed. All repayments, interest payments, and fees will be remitted to each funding source according to the ratio of funding sources. Internally, this will be done by assigning a “letter” to each source that funds are taken from, for example:

* AB001 – this represents the loan number and total loan amount for a loan.
* AB001-A –the amount of funding from Source A.
* AB001-B –the amount of funding from Source B.
* AB001-C – the amount of funding from Source C.

While the borrower will make one payment on AB001, internally NCNMEDD will track the payments to each of their individual sources based on the proportion of the loan that each source funded. This ensures a booked separation of each funding source for ease of reporting and tracking.

## 5.4 Reporting

Unless otherwise specified in the funding source agreements, NCNMEDD will compile monthly loan reports and portfolios to track loan performance for the RLF Committee and Executive Committee.

## 5.5 Loan Loss Reserve and Risk Ratings

Unless otherwise specified in the funding source agreements, NCNMEDD will seek to create a loan loss reserve in accordance with the Financial Accounting Standards Board (FASB). Each loan will be assigned a Risk Rating when underwritten in accordance with Table 1. Loans approved by NCNMEDD shall have a risk rating of 1 or 2, while existing loans shall have risk ratings of 1-5.

The loan loss reserve will be booked as a non-cash booked expense in anticipation of loan defaults as NCNMEDD expands its lending capacity. It will not be a funded set-aside. On an annual basis, NCNMEDD will commission a third-party, independent review of the loan loss reserve and risk ratings. The review and recommendations will be reported to the RLF Committee and Executive Committee. The Executive Committee may accept or modify the recommendations and staff will update the loan loss reserve and risk ratings accordingly.

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| --- | --- | --- | --- |
| **Table 1: Risk Rating and Loan Loss Reserve Guidance** | | | |
| Risk Rating | Category | Conditions | Loan Loss Reserve |
| 1 | Very Good | This rating applies if there is no information indicating issues with repayment and:   * New Loans – The loan meets or exceeds all underwriting criteria. * Existing Loans – Borrower has not missed any payments | 1% |
| 2 | Good | This rating applies if there is no information indicating issues with repayment and:   * New Loans – The loan meets most underwriting criteria, but exceptions were granted, or conditions were imposed. * Existing Loans – The borrower has made one or two late payments of 30 days or more in a 12-month period. | 2-4% |
| 3 | Impaired | This rating applies if the borrower is responsive to requests for information and corrects or has a credible plan to correct the following:   * Information received indicating issues with repayment. * Pattern of late payments indicated by three late payments of 30 days or more in a 12-month period. | 5-30% |
| 4 | Significantly  Impaired | This risk rating applies if the borrower is unresponsive to requests for information and/or does not provide or follow-through on a credible plan to correct the following:   * Information received indicating significant problems which will likely impair repayment or successful business operations. * Consistent late payments of 30 days or more in a 12-month period. | 31-50% |
| 5 | Seriously  Impaired | This risk rating applies if the borrower is unresponsive to requests for information and/or does not provide or follow-through on a credible plan to correct the following:   * Loan not repaid in full on due date with no assurance of when it will be paid. * Business has serious financial or other problems that make it likely or certain that NCNMEDD will not be repaid. | 51-100% |

## 5.6 Loan Servicing and Collections

Participation Loans:

For participation loans, the lead bank will receive all payments and remit to NCNMEDD its share of interest and principal as negotiated in the participation agreement. Staff will receive and post payments. No NCNMEDD receipt is provided to the borrower. The loan payment schedule will be kept up to date with payments posted as principal and interest.

Staff will monitor monthly loan reports for defaults in covenants and loan payments. Staff will also monitor UCC filings, financial statements, insurance updates, and other compliance requirements if needed. Delinquencies in payments will be discussed with the participating bank.

Responsibility for late payment follow-up will be with the participating bank. In the case of chronic late payments or extended delinquency, NCNMEDD will arrange a meeting with the participating bank loan officer to review loan terms and seek to effect remedies that will eliminate late payment issues. Staff will report late accounts monthly to the Board, with a report on the progress toward collection under the available remedies.

If an account is declared delinquent, NCNMEDD will examine the program objectives of the RLF, the performance of the loan, the financial position of the borrower, the impact on the community, and the condition of the collateral and seek to work with the participating bank to modify or restructure the loan, to provide additional technical assistance to the borrower or to seek immediate collection through the normal foreclosure process as prescribed by New Mexico State law. NCNMEDD may engage legal assistance in pursuing foreclosure or other legal remedies against delinquent loans.

After 180 days of continuous delinquency, if the Executive Committee determines that all reasonable restructuring or collection avenues have been exhausted, the Executive Committee may authorize the loan to be written off.

Direct Loans:

For direct loans, NCNMEDD will collect payments through either a check or electronically through an ACH withdrawal and provide the borrower with receipts of all payments. The loan payment schedule will be kept up to date with payments posted as principal and interest.

Staff will develop monthly loan reports and monitor for defaults in covenants and loan payments. Staff will also monitor UCC filings, financial statements, insurance updates, and other compliance requirements if needed. Staff will report late accounts monthly to the Board, with a report on the progress toward collection under the available remedies.

Late and delinquent payments will be addressed through the actions described in Table 2: Collections Guidance. If an account is declared delinquent, NCNMEDD will examine this policy, the performance of the loan, the financial position of the borrower, the impact on the community, and the condition of the collateral and seek to work with the borrower to modify or restructure the loan, to provide additional technical assistance or to seek immediate collection through the normal foreclosure process as prescribed by New Mexico State law. NCNMEDD may engage legal assistance in pursuing foreclosure or other legal remedies against delinquent loans.

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| --- | --- | --- | --- |
| **Table 2: Collections Guidance** | | | |
| Days Past Due | Actions | Risk  Rating | Loan Loss Reserve |
| 0 | All payments are due on the first day of the month, unless otherwise specified in the loan documents. | 1 | 1% |
| 1 | All Payments received after the due date will be considered “Late” however, a late fee will not be assessed unless the payment is received after the penalty date established in the loan documents. | 1 | 1% |
| 10 | If payment is received after the “Late” period (10 days unless otherwise specified in the loan documents) there will be a late fee assessed (if applicable). | 1 | 1% |
| 15 | After 10 days past due, but before 15 days past due, an email and letter will be sent to the borrower explaining that a late fee has been charged (if applicable) and warning the borrower that the account will become delinquent if they have not paid before 30 days. | 1 | 1% |
| 30 | After 30 days of nonpayment, an account is considered Delinquent. A 30-day notice will be sent by regular mail and email requesting payment or to meet and discuss a remediation plan before 45 days past due. | 2 | 2-4% |
| 45 | If there has been no response by the 45th day from the payment due date, staff will visit the business to be proactive in ensuring that the loan is repaid, or a payment plan is figured out. | 2 | 2-4% |
| 60 | If no action is taken by the 60th day after payment is due, the RLF Committee may direct staff to send a “Foreclosure Pending” notice to the borrower through email and certified mail to the borrower.  The notice should state that the Board will vote on foreclosure if the account becomes 90 days delinquent and remind the borrower that they must meet with staff to create an approved remediation and payment plan. | 3 | 5-30% |
| 90 | If an account is 90 days delinquent or has failed to complete an approved remediation and payment plan, the RLF committee may recommend foreclosure to the Executive Committee. If the Executive Committee approves the foreclosure, the borrower will receive through regular and certified mail a letter noting that they have 30 days to:   1. Become current on payments, or 2. If there are no other liens or claims on the title of the collateral and it is acceptable, sign a deed-in-lieu of foreclosure, or 3. Allow the foreclosure to proceed. After proceedings begin the only option available to the borrower shall be to pay the delinquent amount and all legal costs, alternatively, NCNMEDD may demand the payment in full of the entire loan. | 4 | 31-50% |
| 120 | If a foreclosure would be prohibitive, action has not been taken, and the borrower has not been responsive, the RLF Committee may recommend writing off any remaining credit balance to the Executive Committee. | 5 | 51-100% |

## 5.7 Conflicts of Interest

All potential conflicts of interest involving NCNMEDD staff, RLF Committee members, and Executive Committee members must be disclosed in accordance with NCNMEDD’s Conflict of Interest Policy.

# Appendix 1: Summary of SBA Ineligible Businesses

Summary of SBA Listing of Ineligible Businesses (Full Ineligible Listing is at 13 CFR § 120.110)

* Non-profit businesses.
* Financial businesses primarily engaged in the business of lending.
* Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds.
* Life insurance companies.
* Businesses located in a foreign country.
* Pyramid sale distribution plans.
* Businesses deriving more than 1/3 of gross annual revenue from legal gambling activities.
* Businesses engaged in any illegal activity.
* Private clubs and businesses which limit the number of memberships for reasons other than capacity.
* Government-owned entities.
* Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting.
* Consumer and marketing cooperatives.
* Loan packagers earning more than 1/3 of gross annual revenue from packaging SBA loans.
* Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude.
* Businesses in which the Lender or CDC, or any of its Associates owns an equity interest.
* Businesses which present live performances of a prurient sexual nature.
* Businesses which Derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.
* Businesses that have previously defaulted on a Federal loan or Federally assisted financing.
* Businesses primarily engaged in political or lobbying activities.
* Speculative businesses (such as oil wildcatting).