

TITLE 2 PUBLIC FINANCE
CHAPTER 91 GRANTS
PART 2 REVIEW AND SELECTION OF COLONIAS INFRASTRUCTURE PROJECTS

2.91.2.1 ISSUING AGENCY: New Mexico Colonias Infrastructure Board.
 [2.91.2.1 NMAC – N, 2/15/12]

2.91.2.2 SCOPE: All persons or entities applying for financial assistance under the colonias infrastructure project fund administered by the New Mexico finance authority, NMSA 1978, 6-30-6 and NMSA 1978, 6-30-8.
 [2.91.2.2 NMAC – N, 2/15/12]

2.91.2.3 STATUTORY AUTHORITY: NMSA 1978, 6-30-6 and NMSA 1978, 6-30-8.
 [2.91.2.3 NMAC – N, 2/15/12]

2.91.2.4 DURATION: Permanent.
 [2.91.2.4 NMAC – N, 2/15/12]

2.91.2.5 EFFECTIVE DATE: February 15, 2012, unless a later date is cited at the end of a section.
 [2.91.2.5 NMAC – N, 2/15/12]

2.91.2.6 OBJECTIVE:

A. Section 6-30-5, NMSA 1978 provides that the New Mexico colonias infrastructure board is required to adopt rules governing the acceptance, evaluation and prioritization of applications by qualified entities for financial assistance from the colonias infrastructure project fund; authorizes the board to prioritize the qualified projects for financial assistance; and authorizes the board to recommend the prioritized qualified projects to the New Mexico finance authority for financial assistance.

B. Section 6-30-3, NMSA 1978, provides that a qualified project eligible for consideration for financial assistance by the board shall be a capital outlay project which may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies. The purpose of these rules is to set forth the intent of the board and to outline, in general terms, the criteria and procedures to be used in evaluating, prioritizing and funding qualified projects from the colonias infrastructure project fund.

C. Section 6-30-6, NMSA 1978, provides that the authority shall provide staff support for the colonias infrastructure board; administer the colonias infrastructure project fund; at the direction of the board, process, review and evaluate applications for financial assistance received from qualified entities; and at the direction of the board, administer qualified projects that receive financial assistance.

D. Section 6-30-8, NMSA 1978, provides that the authority may adopt separate procedures and rules to administer the colonias infrastructure project fund, originate grants or loans for qualified projects recommended by the board; recover from the colonias infrastructure project fund the costs of administering the fund and originating the grants and loans; and govern the process through which qualified entities may apply for financial assistance from the colonias infrastructure project fund.
 [2.91.2.6 NMAC – N, 2/15/12]

2.91.2.7 DEFINITIONS:

A. "Act" means the Colonias Infrastructure Act, Sections 6-30-1 through 6-30-8, NMSA 1978, as the same may be amended and supplemented.

B. "Agreement" means the document or documents signed by the board and a qualified entity which specify the terms and conditions of obtaining financial assistance from the colonias infrastructure project fund.

C. "Applicant" means a qualified entity which has filed a colonias infrastructure project proposal with the authority for initial review and referral to the board, or to the board's project review committee.

D. "Authority" means the New Mexico finance authority.

E. "Authorized representative" means one or more individuals duly authorized to act on behalf of the qualified entity in connection with its financial application, colonias infrastructure project proposal or agreement.

F. "Board" means the New Mexico colonias infrastructure board created by the act.

G. "Bylaws" means the bylaws of the board adopted on October 7, 2011, as amended and supplemented from time to time.

H. "Colonia" means a rural community with a population of 25,000 persons or less located within 150 miles of the United States-Mexico border that (1) has been designated as a colonia by the municipality or county in which

it is located because of a lack of potable water supply, a lack of adequate sewage systems, or a lack of decent, safe and sanitary housing; (2) has been in existence as a colonia prior to November 1990; and (3) has submitted appropriate documentation to the board to substantiate the conditions under (1) and (2) of this definition.

I. "Colonias infrastructure project account" means a fund designated by a qualified entity exclusively for receipt of financial assistance for a qualified project.

J. "Colonias infrastructure project fund" means the fund of that name created in the authority by Section 6-30-8, NMSA 1978.

K. "Colonias infrastructure project proposal" means a written project proposal submitted by a qualified entity for review by the project review committee and consideration by the board.

L. "Colonias infrastructure trust fund" means the fund of that name created in the state treasury by Section 6-30-7, NMSA 1978.

M. "Financial application" means a written document filed with the authority by an applicant for the purpose of evaluating the applicant's qualifications and proposed project or projects for types of financial assistance which may be provided by the board under the act.

N. "Financial assistance" means loans, grants and any other type of assistance authorized by the act, or a combination thereof, provided from the colonias infrastructure project fund to a qualified entity for the financing of a qualified project.

O. "Political subdivision of the state" means a municipality, a county, a water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, Chapter 3, Article 29 NMSA 1978, or any other entity recognized by statute as a political subdivision of the state.

P. "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 colonias infrastructure projects to be recommended for funding from the colonias infrastructure project fund.

Q. "Qualified entity" means a county, municipality or other entity recognized as a political subdivision of the state.

R. "Qualified project" means a capital outlay project selected by the board for financial assistance that is primarily intended to develop colonias infrastructure, and may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

S. "State" means the state of New Mexico.

[2.91.2.7 NMAC – N, 2/15/12]

2.91.2.8 ELIGIBILITY: PRIORITIZATION OF COLONIAS INFRASTRUCTURE PROJECTS: The board will develop and consider a variety of factors in reviewing and evaluating colonias infrastructure project proposals to determine which colonias infrastructure projects to recommend to the authority as qualified projects for financial assistance from the colonias infrastructure project fund. The board shall give priority to projects that have urgent needs that ensure adequate financial resources for infrastructure development for colonia recognized communities, that provide for the planning and development of infrastructure in an efficient and cost-effective manner, and that develop infrastructure projects to improve quality of life and encourage economic development. The board shall seek to identify opportunities to leverage federal and other funding. The board shall establish policies for prioritization of colonias infrastructure projects.

[2.91.2.8 NMAC – N, 2/15/12]

2.91.2.9 COLONIAS INFRASTRUCTURE PROJECT PROPOSAL, REVIEW, PRIORITIZATION AND APPROVAL PROCESS:

A. The board and the authority will administer an outreach program to notify qualified entities that colonias infrastructure project proposals are being accepted to identify colonias infrastructure projects for review by the project review committee and the board for prioritization and recommendation for funding to the authority as qualified projects.

B. The authority will provide forms and guidelines for colonias infrastructure project proposals and applications for financial assistance.

C. The authority staff will complete an initial evaluation of the application for financial assistance and colonias infrastructure project proposals promptly following receipt. Such evaluation will include, to the extent applicable, an evaluation of colonias infrastructure project feasibility, administrative capacity of the qualified entity, financial position, debt management and economic and demographic factors. The authority may rely upon the advice of an interdisciplinary team in evaluating colonias infrastructure project proposals and applications for financial assistance.

D. The authority staff will forward all completed colonias infrastructure project proposals and the initial evaluation of applications for financial assistance and colonias infrastructure project proposals to the project review committee. The project review committee will consider the proposed colonias infrastructure project and may confer with

outside parties, including any local interdisciplinary teams familiar with the proposed colonias infrastructure project, as necessary to obtain more information on the feasibility, merit, and cost of the proposed colonias infrastructure project. The project review committee will make a recommendation to the board on each colonias infrastructure project proposal.

E. Upon the recommendation of the project review committee, the board will prioritize the proposed colonias infrastructure projects for recommendation to the authority for funding.

F. After completion of the review process by the project review committee and the board and receipt of a favorable recommendation on the colonias infrastructure project proposal, the prioritized colonias infrastructure projects will be recommended by the board to the authority for funding as qualified projects to the extent of the available moneys in the colonias infrastructure project fund.

G. At least annually, the board will recommend to the authority a list of qualified projects recommended for funding. The authority will provide financial assistance for qualified projects as recommended by the board under policies jointly established by the board and authority.

[2.91.2.9 NMAC – N, 2/15/12]

2.91.2.10 COLONIAS INFRASTRUCTURE QUALIFIED PROJECTS AND ELIGIBLE COSTS:

A. The board may authorize the authority to provide financial assistance from the colonias infrastructure project fund to qualified entities only for qualified colonias infrastructure projects as provided by Section 6-30-3 and Section 6-30-5, NMSA 1978.

B. Financial assistance from the colonias infrastructure project fund shall be made only for eligible items, which include:

- (1) planning, designing, construction, improving or expanding a qualified project;
- (2) developing engineering feasibility reports for qualified projects;
- (3) inspecting construction of qualified projects;
- (4) providing professional services;
- (5) completing environmental assessments or archeological clearances and other surveys for qualified

projects;

- (6) acquiring land, water rights, easements or rights of way; and

(7) paying legal costs and fiscal agent fees associated with development of qualified projects, within limits set by the board.

C. A qualified entity which has had financial assistance approved by the board for financing a qualified project may apply to the board to redirect the financial assistance to a different colonias infrastructure project made necessary by unanticipated events. The decision to redirect the financial assistance to a different qualified project will be at the sole discretion of the board upon the advice of the authority staff.

[2.91.2.10 NMAC – N, 2/15/12]

2.91.2.11 QUALIFIED PROJECT FINANCING: The authority may recommend structured financial assistance packages that include loans, grants and any other type of assistance authorized by the authority and the board. The structure, terms and conditions of the financial assistance will be determined by the authority in accordance with the policies jointly established by the board and the authority. Any variance from the policies in connection with financial assistance for any qualified project shall be approved by the authority and the board. Financial assistance for qualified projects may be pooled, at the sole discretion of the authority, under policies jointly established by the board and authority.

[2.91.2.11 NMAC – N, 2/15/12]

2.91.2.12 FINANCING APPROVAL REQUIREMENTS: Based on the priority and evaluation factors set forth in Sections 8, 9, and 10, the board may recommend to the authority approval of the qualified project for financial assistance.

[2.91.2.12 NMAC – N, 2/15/12]

2.91.2.13 RECONSIDERATION OF BOARD DECISIONS: Any applicant or qualified entity 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 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 or qualified entity believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chairman 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 or qualified entity 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.

[2.91.2.13 NMAC – N, 2/15/12]

2.91.2.14 FINANCIAL ASSISTANCE AGREEMENT:

A. The board, the authority and the qualified entity will enter into an agreement to establish the terms and conditions of financial assistance from the board. The agreement will include the terms of repayment and remedies available to the board and the authority in the event of a default. The board, or the authority, on behalf of the board, will monitor terms of the agreement and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection.

B. The interest rate on any financial assistance extended shall be determined by the authority based on the cost of funds and ability of a qualified entity to repay a loan, and in accordance with the policies jointly established by the board and the authority. The interest rate shall not change during the term of the financial assistance unless refinanced or unless the financial assistance is structured as a variable rate obligation.

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

D. In the event of default under a financial assistance agreement by a qualified entity, the board, or the authority, on behalf of the board, may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

[2.91.2.14 NMAC – N, 2/15/12]

2.91.2.15 ADMINISTRATIVE COSTS:

A. The authority may impose and collect reasonable fees and costs in connection with the filing of a colonias infrastructure project proposal or an application for financial assistance seeking approval of a colonias infrastructure project, and for financial assistance from the board and the authority. The authority also may impose and collect an administrative fee from each qualified entity that receives financial assistance from the colonias infrastructure project fund. If an administrative fee is assessed, the administrative fee will be a percentage of the principal amount of the financial assistance provided to a qualified entity. The administrative fee may be withheld from the principal amount of the financial assistance and will be retained in the colonias infrastructure project fund. Alternatively, the authority may levy an annual fee equal to a percentage of the outstanding principal amount of a loan. Specific percentages will be based on, among other things, the volume of financial assistance being provided to qualified entities, the administrative costs of the board and the authority, and the availability of other revenue sources to cover the board's and the authority's administrative costs. The filing and administrative fee or fees may be used for, among other purposes, reimbursing the board or the authority for all or part of the costs of issuing bonds and other administrative costs, including any audits of the colonias infrastructure project fund and the colonias infrastructure trust fund.

B. The authority may establish such other charges, premiums, fees and penalties deemed necessary for the administration of the colonias infrastructure project fund and the colonias infrastructure trust fund.

[2.91.2.15 NMAC – N, 2/15/12]

2.91.2.16 ADMINISTRATION OF THE COLONIAS INFRASTRUCTURE TRUST FUND:

A. Pursuant to Section 6-30-7, NMSA 1978, the colonias infrastructure trust fund shall be administered by the state treasurer's office and shall be invested by the state investment officer in the same manner as land grant permanent funds are invested under state law. All investment earnings on the colonias infrastructure trust fund shall be credited to the colonias infrastructure trust fund. The colonias infrastructure trust fund shall not be expended for any purpose, but an annual distribution from the trust fund shall be made to the project fund pursuant to Section 6-30-7, NMSA 1978.

B. Annual distributions to the colonias infrastructure project fund from the colonias infrastructure trust fund shall be made as required by the authority.

[2.91.2.16 NMAC – N, 2/15/12]

2.91.2.17 ADMINISTRATION OF THE COLONIAS INFRASTRUCTURE PROJECT FUND:

A. The colonias infrastructure project fund shall be administered by the authority as a separate account, but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money from repayments of loans made by the board for qualified projects shall be deposited in the colonias infrastructure project fund. The colonias infrastructure project fund shall also consist of any other money appropriated, distributed or otherwise allocated to the colonias infrastructure project fund for the purpose of financing qualified projects under the act.

C. The authority shall adopt a uniform accounting system for the colonias infrastructure project fund and each account and subaccount established by the authority, based on generally accepted accounting principles.

D. The authority may establish procedures and adopt rules as required to administer the colonias infrastructure project fund and to recover from the colonias infrastructure project fund costs of administering the fund and originating grants and loans.

[2.91.2.17 NMAC – N, 2/15/12]

2.91.2.18 AMENDMENT OF RULES: This rule may be amended or repealed at any time by a majority vote of a quorum of the board.

[2.91.2.18 NMAC – N, 2/15/12]

HISTORY OF 2.91.2 NMAC: [RESERVED]