

**MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE
NEW MEXICO SMALL BUSINESS INVESTMENT CORP.**

August 16, 2024

A meeting of the New Mexico Small Business Investment Corporation was called to order on this date at 9:00 a.m. via teleconference. A quorum was established.

Members Present

Mr. Joshua Smith, Chair
Ms. Anne Beckett, Vice Chair
Mr. Arsenio Garduño, designee of Hon. Laura M. Montoya, NM State Treasurer
Ms. Sayuri Yamada
Mr. Joshua Grassham

Members Excused

Mr. Robert Valdiviez, Secretary/Treasurer
Ms. Kristina Alley

Executive Director/Financial Adviser to Board

Mr. Russell Cummins

Board Legal Counsel

Mr. Randall McDonald

Recording Secretary

Position is currently vacant

Guests Present:

Mr. Rollin Wood, CEO, Native Partnership for Housing
Ms. Priscilla Otero, COO, Native Partnership for Housing

REVIEW AND ACCEPTANCE OF AGENDA

Ms. Beckett moved approval of the agenda, as published. Mr. Garduño seconded the motion, which passed unanimously by roll call vote.

BOARD MINUTES FOR JUNE 21, 2024

Ms. Beckett moved approval of the Board Minutes for June 21, 2024, as presented. Mr. Grassham seconded the motion, which passed unanimously by roll call vote.

FINANCIAL REPORTS AS OF JUNE 30, 2024

Mr. Cummins noted we are waiting for equity partner reports, therefore the financial reports as of June 30, 2024, are preliminary. Funds available for investments and operations are a little over \$5 million. Mr. Cummins noted when preparing the 2024/2025 budget, balance sheet amounts were forecasted for May and June. There were significant advances paid to lending partners during the forecasted period, resulting in a large budget-versus-actual variance in the beginning balances. While we typically report variances rather than revise budgets, Mr. Cummins said he plans to present a revised budget at an upcoming meeting with changes to the beginning balances.

Ms. Beckett moved to accept the preliminary June 30, 2024, Financial Report as presented. Mr. Grassham seconded the motion, which passed unanimously by roll call vote.

NMSBIC PURPOSE FROM THE SMALL BUSINESS INVESTMENT ACT

Mr. Cummins said this information was provided for reference if needed during the meeting.

NEW MEXICO COMMUNITY DEVELOPMENT LOAN FUND, PROPOSED CHANGES TO LINE OF CREDIT (THE LOAN FUND)

Mr. Cummins said he has three proposed changes to present.

First, The Loan Fund is implementing a new Financial Accounting Standards Board (FASB) reporting requirement for estimating potential credit losses. Implementation of the new requirement is taking longer than anticipated. Mr. Cummins recommended providing an extension for The Loan Fund to provide audited financial statements from June 30, 2024, to August 31, 2024.

Second, the NMSBIC introduced its COVID-19 Lending Program in March 2020. Originally, lending partners were required to provide COVID-19 Lending Program loans to borrowers at an interest rate of no more than 3.75%. The rate was later increased to 4.75%. Given increases in market interest rates, Mr. Cummins recommended the NMSBIC change the rate to no more than 6.75% for COVID-19 Lending Program loans. The Loan Fund modifies or extends.

Third, The Loan Fund reported a Liabilities-to-Net Assets ratio of as of June 30, 2024, that was slightly below the NMSBIC's 24-to-1 limit. While the ratio did not exceed the limit, it was very close. Leroy Pacheco, The Loan Fund's CEO, reported that The Loan Fund is taking actions including increasing the rate on new and modified loans to a range of 6.0% to 7.5%, implementing a 2% closing fee, and continuing to work to obtain

additional bank equity equivalent (EQ2) funding and charitable contributions. Mr. Cummins noted it might take time for these changes to have an impact. While these changes are being implemented, he anticipates The Loan Fund might exceed the NMSBIC's 24-to-1 limit. He recommends a temporary waiver for The Loan Fund of the Liabilities-to-Net Assets ratio to October 31, 2024, or possibly through December 31, 2024, with continued monitoring.

Chair Smith said he believes it might take more than a few months for the leverage ratio to be corrected. He said there is a lot of information and suggested discussing each recommendation separately. He noted the NMSBIC appears to be motivating below market rates with the COVID-19 Lending Program rate. He asked if the COVID-19 Lending Program term was also extended.

Mr. Cummins replied that yes, the term was extended. Loans in the COVID-19 Lending Program were originally eligible for a 0% interest rate from the NMSBIC for up to three years, and that was later extended to up to five years.

Chair Smith asked if we have data showing interest rates for The Loan Fund's existing loans. Mr. Cummins referred to a report in the board package with information on The Loan Fund's interest rates, showing the weighted average rate for The Loan Fund's NMSBIC portfolio had dropped from 5.8% in 2021 to 4.7% in 2024.

Chair Smith asked if we should consider a floor on interest rates. Mr. Cummins said that might limit The Loan Fund's ability to work with borrowers experiencing financial difficulties.

Ms. Beckett recalled that at a previous NMSBIC board meeting, Mr. Pacheco made a presentation regarding discussions with banks to raise additional EQ2 funds. Ms. Beckett inquired about the status. Mr. Cummins referred to a page in the board package showing continuing discussions with two banks regarding EQ2 funding. Chair Smith asked about two other banks previously mentioned. Mr. Cummins said it's his understanding discussions are continuing with those banks regarding increasing lines of credit, which are also important to The Loan Fund. Mr. Cummins said had focused only on the EQ2 discussions because those could possibly impact The Loan Fund's Liabilities-to-Net Assets ratio.

Mr. Garduño asked about consequences regarding a waiver of the Liabilities-to-Net Assets ratio. Mr. Cummins said if the ratio is exceeded without a temporary waiver in place, he would need to stop funding advances until the NMSBIC could meet and review a possible exception.

Mr. Garduño asked if the Federal Reserve reduces rates in September as some are anticipating, what impact that might have. Mr. Cummins responded that over time, it

might result in interest rates from traditional banks coming down, which might reduce loan demand for The Loan Fund.

Mr. Grassham asked how The Loan Fund's board sees this issue. Mr. Cummins said it's his understanding there are board members who support increasing net assets, and other board members focused on fulfilling the mission of helping small businesses.

Mr. Garduño said if the NMSBIC approves a waiver of the leverage ratio, he would prefer to keep it for a shorter period of time.

Mr. Cummins noted that Mr. Pacheco had suggested eliminating the leverage ratio and replacing it with a cash-to-assets ratio.

Chair Smith said The Loan Fund is definitely key to our mission, and we want to work with them as best we can.

Ms. Beckett moved that the NMSBIC board of directors approve a modification of the line of credit with the New Mexico Community Development Loan Fund to:

- **Provide a temporary waiver of the Liabilities to Net Assets Ratio covenant to October 31, 2024, and**
- **Extend the due date for delivery of December 31, 2023, audited financial statements to the NMSBIC, to August 31, 2024, and**
- **Continue to provide a 0% interest rate on NMSBIC Covid-19 Lending Program loans for up to 60 months from when loans entered the portfolio, provided the borrower's interest rate is at 6.75% or less, and**
- **That the NMSBIC's board chair and president, or vice chair and vice president, be authorized to sign any all documents related to these changes, subject to review and approval by the NMSBIC's legal counsel and the NMSBIC's executive director/investment advisor; and**
- **That the NMSBIC's executive director/investment advisor report back to the board when the changes have been completed.**

Ms. Yamada seconded the motion, which passed unanimously by roll call vote.

NATIVE PARTNERSHIP FOR HOUSING, PROPOSED NEW NMSBIC REVOLVING LINE OF CREDIT

Mr. Cummins introduced Native Partnership for Housing (NPH) representatives Rollin Wood, CEO, and Priscilla Otero, COO/CFO. He also introduced the NMSBIC board members and legal counsel. Mr. Cummins provided a brief overview of NPH and referred to a Discussion Term Sheet with proposed terms for a \$500,000 NMSBIC line of credit. He noted NPH planned to use the funds to provide a line of credit to Clearwater Construction Partners (CWCP), a Native-owned small business. CWCP would engage in

projects to built or remodel properties on or near the Navajo Nation, and possibly other Native American Tribes. Mr. Cummins said he was also having discussions with NPH and the New Mexico Climate Investment Center (NMCIC), about a possible three-way partnership focused on greenhouse gas reduction projects. Mr. Cummins said he is still waiting for some requested documentation from NPH and suggested tabling this item.

Mr. Wood discussed accounting issues NPH has experienced, and a change in NPH's external auditors. He said tabling this item would give them time to resolve those issues. He added that NPH is also working on projects to improve wireless and broadband connectivity in rural areas and reservations. Mr. Wood noted that NPH is in-line for about \$5.5 million in federal grant funding. There will be a requirement for matching funds, and he hopes to work with the NMSBIC on that.

Mr. Wood described CWCP. He noted it is a Native-owned company, that employs Native American workers. He said employees are cross trained to be framers, cabinet installers, and tile setters, which allows them to remain employed throughout more of the construction process. CWCP started with two employees and grew to twenty employees but has now dropped back down to a small number of employees.

Mr. Wood said NPH is working with many of the Pueblos and expanding beyond the Navajo nation. If all goes well, he hopes to establish a second office in Albuquerque.

Chair Smith left the meeting at 10:00 am and turned the meeting over to Vice Chair Beckett.

Chair Beckett asked about NPH's board members. Mr. Wood responded with information about the board members.

Mr. Garduño asked to receive a copy of NPH's audit management letter. Mr. Cummins said he would follow up an provide it.

Chair Beckett asked about broadband. Mr. Wood said NPH is working with Michael Dell's company, Echostar. He noted there is also an agreement with the FCC regarding towers and delivery of wireless.

Mr. McDonald asked about the relationship between NPH and CWCP. Mr. Wood said NPH is a nonprofit, with no owners, and therefore does not qualify as a Native-owned company. CWCP was formed as a Native-owned company, which gives it priority when bidding on contracts on the Navajo Nation. Mr. Cummins said he would provide an organization chart to Mr. McDonald.

Mr. McDonald asked if there are traditional loan lending documents between NPH and CWCP. Mr. Rollin said there have never been any loan documents, only an operating

agreement. He agreed that at this point they will need to establish official lending documents between NPH and CWCP.

Chair Beckett thanked Mr. Wood and Ms. Otero for their presentation. Mr. Wood and Ms. Otero then left the meeting.

B:SIDE FUND AND B:SIDE CAPITAL, PROPOSED CHANGES TO NEW LINE OF CREDIT

Chair Beckett asked Mr. Cummins about status of loans to B:Side Fund and B:Side Capital. Mr. Cummins responded that B:Side Fund presented a proposed intercreditor agreement to NMSBIC that was not in accordance with terms approved by NMSBIC. After discussions, B:Side withdrew its request regarding the intercreditor agreement. B:Side then proposed an additional change regarding advance requests prior to when loans are closed, which is the item on today's agenda.

Mr. Cummins said for most of the NMSBIC's lending partners, the lending partners close NMSBIC borrower loans with their own funds, and then request advances from the NMSBIC. B:Side Fund and B:Side Capital are requesting the NMSBIC advance funds prior to when NMSBIC borrower loans are closed.

Mr. Cummins said the NMSBIC has this type of arrangement in place with The Loan Fund, where the NMSBIC advances funds for Borrower NMSBIC Loans expected to fund in the next 60 days. There is a Deposit Account Control Agreement (DACA), which is a three-party agreement between the NMSBIC, The Loan Fund, and The Loan Fund's bank. The NMSBIC has the right, with notice provided to the bank, to take control of funds in the deposit account. Mr. Cummins said he recommends this same type of arrangement with B:Side Fund and B:Side Capital.

Mr. Garduño asked if there any risks with type of account. Mr. Cummins said a risk would be if the lending partner does not deposit or hold funds in the deposit account as required under the agreement. Mr. Cummins said that for The Loan Fund, he obtains a copy of the deposit account statement each quarter and reviews it to verify the account is being used as required. He said he would do the same thing for B:Side Fund and B:Side Capital.

Ms. Beckett asked if the deposit account earns interest. Mr. Cummins said it can, but that is not required by the NMSBIC. If any interest is earned on the deposit account, the interest income belongs to the lending partner. Mr. Cummins added that he is having discussions with The Loan Fund to have the deposit account fully insured by the Federal Deposit Insurance Corporation (FDIC) with an Insured Cash Sweep (ICS) account. Mr. Cummins said the deposit accounts with B:Side Fund and B:Side Capital would likely have balances that are less than the \$250,000 FDIC insurance limit. However, over time, if the B:Side deposit account balances increase, ICS coverage might be added.

Chair Beckett asked if the DACA was in place with The Loan Fund from the beginning, or if was added after having a relationship with The Loan Fund for a while.

Mr. McDonald said the DACA with The Loan Fund was put in place in 2008, which was after the original agreement with The Loan Fund. He added that in the beginning, the NMSBIC's major lending partners were The Loan Fund and DreamSpring. At that time, the NMSBIC's lending relationships were much simpler and there were much simpler agreements. Over time the agreements became more structured, which is when the control agreement came in place for the loan. Mr. McDonald added that the DACA provides additional protection for the NMSBIC.

Mr. Grassham asked if, for the Small Business Administration (SBA) loans, the NMSBIC would be pari passu with the SBA. Mr. Cummins responded that only B:Side Capital will be originating SBA loans. The SBA will provide a guarantee which will increase the NMSBIC's security for its loans. Given the NMSBIC is not an SBA lender, in the event of a default by B:Side Capital, the NMSBIC would not be able to take control of the SBA loans, and would rather need to find another SBA approved lender to take over the loans on behalf of the NMSBIC. Given B:Side Capital will pledge the SBA loans to NMSBIC as collateral, B:Side Capital will be required to obtain SBA's prior approval of the lending arrangement with NMSBIC.

Mr. Grassham asked if the deposit account will be held with a New Mexico bank. Mr. Cummins responded that it's not an NMSBIC requirement. However, B:Side Fund and B:Side Capital have indicated plans to open the deposit accounts at New Mexico Bank & Trust.

Mr. Grassham moved that the NMSBIC board of directors approve a change to the line of credit with B:Side Fund, as follows:

- **Advances shall include anticipated Borrower NMSBIC Loans expected to be funded by Borrower in the next 60 days, and**
- **Borrower shall maintain a bank deposit account with a Deposit Account Control Agreement acceptable to NMSBIC, and**
- **The balance of the deposit account plus the outstanding NMSBIC Loan Portfolio must always be equal to or greater than the amount owed by Borrower to the NMSBIC, and**
- **That the NMSBIC's board chair and president, or vice chair and vice president, be authorized to sign any all documents related to the line of credit, including the Deposit Account Control Agreement, subject to review and approval by the NMSBIC's legal counsel and the NMSBIC's executive director/investment advisor; and**
- **That the NMSBIC's executive director/investment advisor report back to the board when the documents have been completed.**

Mr. Garduño seconded the motion, which passed unanimously by roll call vote.

Mr. Grassham moved that the NMSBIC board of directors approve a change to the line of credit with B:Side Capital, as follows:

- **Advances shall include anticipated Borrower NMSBIC Loans expected to be funded by Borrower in the next 60 days, and**
- **Borrower shall maintain a bank deposit account with a Deposit Account Control Agreement acceptable to NMSBIC, and**
- **The balance of the deposit account plus the outstanding NMSBIC Loan Portfolio must always be equal to or greater than the amount owed by Borrower to the NMSBIC, and**
- **That the NMSBIC’s board chair and president, or vice chair and vice president, be authorized to sign any all documents related to line of credit, including the Deposit Account Control Agreement, subject to review and approval by the NMSBIC’s legal counsel and the NMSBIC’s executive director/investment advisor; and**
- **That the NMSBIC’s executive director/investment advisor report back to the board when the changes have been completed.**

Mr. Garduño seconded the motion, which passed unanimously by roll call vote.

EXECUTIVE DIRECTOR/INVESTMENT ADVISOR REPORT

- Mr. Cummins noted that WESST has a delinquent loan, which does not happen often with WESST’s loans. The NMSBIC established a specific loss allowance for the loan and is monitoring the loan status.
- The NMSBIC is having discussions with the Black Chamber of Commerce of New Mexico about a possible new small business lending CDFI.
- DreamSpring will be having a 30th anniversary celebration. Mr. Cummins will provide details to board members.
- Ventana Fund is sponsoring a Housing Summit in Hobbs next week. Mr. Cummins and Chair Smith plan to attend. Mr. Grassham is helping with planning for the conference.
- Mr. Cummins will be making a presentation to the Investments and Pensions Oversight Committee (IPOC) on August 29th in Taos. IPOC is a subcommittee of the Legislative Finance Committee.

Chair Beckett asked about \$3.5 million committed to MFA, with nothing outstanding. Mr. Cummins responded that MFA has a low-income housing tax credit (LIHTC) project in process in Southern New Mexico and plans to draw funds from NMSBIC soon related to that multifamily construction project. He added that MFA also has some single-family development projects approved, but it’s taking longer than expected to get these projects started.

Mr. McDonald noted that the Take-Away report references a reverse discrimination lawsuit against LiftFund. He said the lawsuit has been dismissed by the Federal District Court in the Western District of Texas. The plaintiffs have appealed it, but his assessment is the lawsuit is not going anywhere.

LOFTIS & LOVATO GROUP, PROPOSED CHANGE TO ENGAGEMENT LETTER

Mr. Cummins said the NMSBIC recently entered into an engagement letter with Loftis & Lovato Group to provide financial analysis support to the NMSBIC at \$105 per hour. He recommends expanding the engagement letter to also provide administrative services support to the NMSBIC at \$50 per hour. The administrative services would primarily be taking minutes at the NMSBIC board meetings.

Mr. Grassham moved that the NMSBIC board of directors approve a change to the engagement letter with Loftis & Lovato as follows:

- **Add Administrative Assistant Services at \$50.00 per hour plus New Mexico Gross Receipts Tax, and**
- **That the NMSBIC's board chair and president, or vice chair and vice president, be authorized to sign any all documents related to this change, subject to review and approval by the NMSBIC's legal counsel and the NMSBIC's executive director/investment advisor; and**
- **That the NMSBIC's executive director/investment advisor report back to the board when the documents have been completed.**

Ms. Yamada seconded the motion, which passed unanimously by roll call vote.

BOARD MEETING SOFTWARE, APPROVAL OF PROPOSED NEW SOFTWARE

Mr. Cummins said this recommendation was tabled from the previous board meeting. He recommends implementing Notion board reporting software. Based on a comparison of several board reporting software companies, Notion was the most affordable. Notion is used by, and recommended by, Ventana Fund. Mr. Cummins provided a demonstration of the Notion software.

Chair Beckett noted there appears to be a function to print individual pages from the board package, which would allow her to make notes.

Mr. McDonald asked if files are automatically uploaded to the software. Mr. Cummins responded that no, the board meeting documents are manually uploaded. Chair Beckett asked if this is something the administrative assistant might help with. Mr. Cummins responded that the administrative assistant could help with this.

Ms. Yamada moved the NMSBIC board of directors approve acquiring Notion team collaboration software at a total cost of \$900 per year for three users, for use in

preparing, delivering, and presenting information at NMSBIC board meetings, and that the NMSBIC purchase up to seven (7) tablet computers or personal computers, at a total cost of up to \$1,500, for board members to use to access the board meeting software.

Mr. Grassham seconded the motion, which passed unanimously by roll call vote.

BOARD CONTINUING EDUCATION

Mr. Cummins referred to information in the board package with a summary of opinion letters from the New Mexico Attorney General's office from 2001 to 2007. Mr. Cummins said the opinion letters provide helpful information regarding the NMSBIC's powers and recommends board members review this information from time to time.

CHAIR'S COMMENTS

Chair Beckett thanked everyone for attending.

ADJOURNMENT

Ms. Yamada moved to adjourn at 11:11 a.m. Mr. Garduño seconded the motion, which passed unanimously by roll call vote.

ADJOURNMENT: 11:11 a.m.



Joshua Smith, Board Chair

10/18/24

Date