

2009 DRAFTING REQUEST

Bill

Received: **03/01/2010**

Received By: **jkreye**

Wanted: **As time permits**

Companion to LRB:

For: **Steve Hilgenberg (608) 266-7502**

By/Representing: **lois**

May Contact:

Drafter: **jkreye**

Subject: **Tax, Business - credits**

Addl. Drafters: **tkuczens**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hilgenberg@legis.wisconsin.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**
tracy.kuczenski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Tax credit for investments in community development financial institutions

Instructions:

See attached

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/?				_____			State
/P1	jkreye 03/09/2010	csicilia 03/15/2010	rschluet 03/15/2010	_____	lparisi 03/15/2010		State
	tkuczens 03/11/2010	csicilia 03/25/2010		_____			
	jkreye 03/11/2010	csicilia 03/29/2010		_____			
	tkuczens			_____			

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/P2			mduchek 03/29/2010	_____	sbasford 03/29/2010		State
/P3	jkreye 03/30/2010	csicilia 03/31/2010	rschlue 03/31/2010	_____	sbasford 03/31/2010		State
/1	jkreye 03/31/2010	bkraft 03/31/2010	phenry 04/01/2010	_____	sbasford 04/01/2010	mbarman 04/06/2010	

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04-07-2010
("1")

requested
by Lois
in Hilgenberg's
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A signature is written over the 'Proofed' column.
The date '2/3/1' is written at the bottom of the 'Proofed' column.

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For: **Steve Hilgenberg (608) 266-7502**

By/Representing: **lois**

This file may be shown to any legislator: **NO**

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3-1-10

6-750Z

Axis — Meren Hilgenberg

▷ tax credit

community development finance
institutions

▷ California model — source info ↕

20% of investments

Title 15

Title 12

Kreye, Joseph

From: Rundell, Lois
Sent: Monday, March 01, 2010 3:25 PM
To: Kreye, Joseph
Subject: Hilgenberg CDFI request

Hello Joseph,

It is a bill California – 2006 AB 2831, Chapter 580 of 2006 statutes.

This appears to be the most direct link to the text of the bill: http://info.sen.ca.gov/pub/05-06/bill/asm/ab_2801-2850/ab_2831_cfa_20060413_153505_asm_comm.html

This is a document from the CA Legislative Services Bureau that I think outlines a recent extension or adjustment of the bill: http://www.ftb.ca.gov/law/legis/06legchng/lc_ab2831_0617.pdf

This is a link to an explanation of the program in their Insurance Bureau:

<http://www.insurance.ca.gov/0250-insurers/0700-coin/cdfi-tax-credit-program.cfm>

This is a letter from their Commissioner of Insurance to CDFIs alerting them of revisions with the text of the bill: <http://www.insurance.ca.gov/0250-insurers/0700-coin/upload/CDFINotice.pdf>

I hope this is helpful – I look forward to hearing from you.
Thank you!

Lois Rundell

Office of Representative Steve Hilgenberg
(608) 266-7502 - (888) 534-0051

Kuczenski, Tracy

From: Rundell, Lois
Sent: Tuesday, March 09, 2010 11:41 AM
To: Kuczenski, Tracy
Subject: RE: Hilgenberg CDFI request

T. conf. w/ Lois 3/9/10:

- CDFIs are federally regulated/certified by US Treasury
- Role of Commerce to certify taxpayer, NOT determine how \$ invested in a CDFI is spent

<http://www.cdfifund.gov/>

Lois Rundell

Office of Representative Steve Hilgenberg
 (608) 266-7502 - (888) 534-0051

Goal: "incentivize" further investment in CDFIs
 Note: there are already CDFIs operating in WI.
 ex/Forward Community Investment.

From: Kuczenski, Tracy
Sent: Tuesday, March 09, 2010 9:40 AM
To: Rundell, Lois
Subject: RE: Hilgenberg CDFI request

Hi Lois -

Joe forwarded your message to me. I am an economic development drafter and will draft the Commerce portion of this draft; unfortunately, I've not had an opportunity to work on this draft yet. I have a couple of other smaller drafts to take care of this morning, then will make this draft a priority.

Tracy

Tracy K. Kuczenski
 Legislative Attorney
 Wisconsin Legislative Reference Bureau
 (608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

From: Kreye, Joseph
Sent: Tuesday, March 09, 2010 9:32 AM
To: Kuczenski, Tracy
Subject: FW: Hilgenberg CDFI request

Hi Tracy,

What do you think would be a reasonable time frame for this?

Joe

Joseph Kreye
Senior Legislative Attorney
 Legislative Reference Bureau
 608 266-2263

From: Rundell, Lois

3/11/2010

Sent: Tuesday, March 09, 2010 9:30 AM
To: Kreye, Joseph
Subject: Hilgenberg CDFI request

Hi Joseph,
I realize your desk is likely piled high with last minute requests like this, but do you have an estimate of when a draft of this CDFI bill may be ready to look at?

Thank you for your time and consideration.

Lois Rundell
Office of Representative Steve Hilgenberg
(608) 266-7502 - (888) 534-0051

From: Rundell, Lois
Sent: Monday, March 01, 2010 3:25 PM
To: Kreye, Joseph
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Hello Joseph,
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This is a document from the CA Legislative Services Bureau that I think outlines a recent extension or adjustment of the bill: http://www.ftb.ca.gov/law/legis/06legchng/lc_ab2831_0617.pdf

This is a link to an explanation of the program in their Insurance Bureau: <http://www.insurance.ca.gov/0250-insurers/0700-coin/cdfi-tax-credit-program.cfm>

This is a letter from their Commissioner of Insurance to CDFIs alerting them of revisions with the text of the bill: <http://www.insurance.ca.gov/0250-insurers/0700-coin/upload/CDFINotice.pdf>

I hope this is helpful – I look forward to hearing from you.
Thank you!

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834 Certified Community Development Financial Institutions as of 12/31/2009

The following organizations have been certified by the Community Development Financial Institutions Fund (Fund) as Community Development Financial Institutions (CDFIs). The organizations are presented alphabetically by state and city.

Certification as a CDFI means that an organization meets the CDFI eligibility requirements. The CDFI eligibility requirements are set forth in the CDFI program regulations at 12 CFR § 1805.200 and are more fully described at 12 CFR § 1805.201. These requirements relate to an organization being a legally existing entity, having a primary mission of promoting community development, principally serving and maintaining accountability to an eligible target market(s), being a financing entity, providing development services, and not being either a government entity or controlled by a government entity. Certification does not constitute an opinion by the Fund as to the effectiveness or financial viability of the certified organization.

Organizations may apply for certification at any time. Once certified, an organization's certification lasts for three years from the date of certification. A certified organization should submit its application for recertification no later than three months prior to the certification expiry date. As long as an organization continues to meet all six certification requirements, there is no limit to the number of times an applicant may be recertified. Organizations seeking certification or recertification may complete either the stand-alone certification application or the Certification Materials section of a CDFI Fund funding application. Both the stand-alone certification application and the funding applications are available on the Fund's web site (www.cdfifund.gov).

If you do not see an organization on this list, call the Fund at (202) 622-8662 to see if the organization has recently been certified or is under review.

12 USC Sec. 4701-4718

Ch. 47 Community Development Banking
Subch. I - CDBanking and Financial
Institutions

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Subpart A—General Provisions

- Sec.
1805.100 Purpose.
1805.101 Summary.
1805.102 Relationship to other Fund programs.
1805.103 Awardee not instrumentality.
1805.104 Definitions.
1805.105 Waiver authority.
1805.106 OMB control number.

Subpart B—Eligibility

- 1805.200 Applicant eligibility.
1805.201 Certification as a Community Development Financial Institution.

Subpart C—Use of Funds/Eligible Activities

- 1805.300 Purposes of financial assistance.
1805.301 Eligible activities.
1805.302 Restrictions on use of assistance.
1805.303 Technical assistance.

Subpart D—Investment Instruments

- 1805.400 Investment instruments—general.
1805.401 Forms of investment instruments.
1805.402 Assistance limits.
1805.403 Authority to sell.

Subpart E—Matching Funds Requirements

- 1805.500 Matching funds—general.
1805.501 Comparability of form and value.
1805.502 Severe constraints waiver.
1805.503 Time frame for raising match.
1805.504 Retained earnings.

Subpart F—Applications for Assistance

- 1805.600 Notice of Funds Availability.

Subpart G—Evaluation and Selection of Applications

- 1805.700 Evaluation and selection—general.
1805.701 Evaluation of applications.

Subpart H—Terms and Conditions of Assistance

- 1805.800 Safety and soundness.
1805.801 Notice of Award.
1805.802 Assistance Agreement; sanctions.
1805.803 Disbursement of funds.
1805.804 Data collection and reporting.
1805.805 Information.
1805.806 Compliance with government requirements.
1805.807 Conflict of interest requirements.
1805.808 Lobbying restrictions.

- 1805.809 Criminal provisions.
1805.810 Fund deemed not to control.
1805.811 Limitation on liability.
1805.812 Fraud, waste and abuse.

AUTHORITY: 12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

SOURCE: 70 FR 73888, Dec. 13, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a merit-based qualitative application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award (BEA) Program (part 1806 of this chapter) if it has:

(i) An application pending for assistance under the Community Development Financial Institutions Program;

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period prior to the

§ 1805.103

12 CFR Ch. XVIII (1-1-09 Edition)

date the Fund selected the CDFI to receive a Bank Enterprise Award (meaning, the date of the Fund's BEA Program notice of award); or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a BEA Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that Controls, is Controlled by, or is under common Control with another company;

(c) *Applicant* means any entity submitting an application for CDFI Program assistance or funding under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and includes, with respect to Insured Credit Unions, the National Credit Union Administration;

(e) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

(f) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(g) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(h) *Community Development Financial Institution (or CDFI)* means an entity currently meeting the eligibility requirements described in § 1805.200;

(i) *Community Development Financial Institution Intermediary (or CDFI Intermediary)* means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(j) *Community Development Financial Institutions Program (or CDFI Program)* means the program authorized by sections 105-108 of the Act (12 U.S.C. 4704-4707) and implemented under this part;

(k) *Community Facility* means a facility where health care, childcare, educational, cultural, or social services are provided;

(l) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(m) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(n) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a State-Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to

Community Development Financial Institutions Fund

§ 1805.104

the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(o) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide Financial Products or Development Services to an Investment Area(s) or a Targeted Population(s);

(p) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described in an applicable Notice of Funds Availability (NOTICE OF FUNDS AVAILABILITY);

(q) *Control* means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons; (2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or (3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

(r) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(s) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products or Financial Services of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(t) *Equity Investment* means an investment made by an Applicant that, in the judgment of the Fund, supports or enhances activities that serve an Investment Area(s) or a Targeted Popu-

lation(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments may comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), a purchase of secondary capital, or any other investment deemed to be an Equity Investment by the Fund;

(u) *Financial Products* means: Loans, Equity Investments and similar financing activities (as determined by the Fund) including the purchase of loans originated by certified CDFIs and the provision of loan guarantees; in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in Insured Credit Union CDFIs, emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs.

(v) *Financial Services* means checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services;

(w) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(x) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(y) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United

§ 1805.104

12 CFR Ch. XVIII (1-1-09 Edition)

States to Indians because of their status as Indians;

(z) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(aa) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(bb) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(cc) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(dd) *Investment Area* means a geographic area meeting the requirements of §1805.201(b)(3);

(ee) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(ff) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949-1953 Comp., p. 758), as amended;

(gg) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in §1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union;

(hh) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands;

(ii) *State-Insured Credit Union* means any credit union that is regulated by,

and/or the member accounts of which are insured by, a State agency or instrumentality;

(jj) *Subsidiary* means any company which is owned or Controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in §1805.200(b)(4);

(kk) *Targeted Population* means individuals or an identifiable group of individuals meeting the requirements of §1805.201(b)(3); and

(ll) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

(mm)(1) *Voting Securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares*. Preferred shares, limited partnership shares or interests, or similar interests are not Voting Securities if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or

Community Development Financial Institutions Fund

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partners (or persons exercising similar functions) of the issuing company.

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the FEDERAL REGISTER.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control numbers 1559-0006, 1559-0021 and 1559-0022.

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in §1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(4) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund:

(i) Receives a complete application for certification from the entity within the time period set forth in an applicable Notice of Funds Availability; and

(ii) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in §1805.201(b) and paragraph (b) of this section within the period set forth in an applicable Notice of Funds Availability.

(3) The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(ii) of this section, the Fund

reserves the right to require an entity to have been certified as described in §1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable Notice of Funds Availability.

(4) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(5) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the Fund for certification that it meets ~~the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund.~~ Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an

certification regardless of whether seeking \$ from the fund

opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, §1805.200(b) or (a)(4) (if applicable) are no longer met.

(b) Eligibility verification. An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) of this section and §1805.200 by providing the information described in the application for certification demonstrating that the Applicant meets the eligibility requirements described in paragraphs (b)(1) through (b)(6) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and §1805.200.

(1) Primary mission. A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of economically distressed communities (which may include Investment Areas).

(2) Financing entity. A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

- (i) Depository Institution Holding Company;
- (ii) Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union; or
- (iii) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such anal-

ysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(3) Target Market. (i) General. An Applicant may be found to serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) in this section.

(ii) Investment Area. (A) General. A geographic area will be considered eligible for designation as an Investment Area if it:

(1) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands); and either

(2) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, or Financial Services as described in paragraph (b)(3)(ii)(E) of this section; or

(3) Encompasses (i.e. wholly consists of) or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) Geographic units. Subject to the remainder of this paragraph (B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American

Community Development Financial Institutions Fund

§ 1805.201

Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(1) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(1) The percentage of the population living in poverty is at least 20 percent;

(2) In the case of an Investment Area located:

(i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(3) The unemployment rate is at least 1.5 times the national average;

(4) In counties located outside of a Metropolitan Area, the county population loss during the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(5) In counties located outside of a Metropolitan Area, the county net migration loss during the five-year period preceding the most recent decennial census is at least five percent.

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if a narrative analysis provided by the Applicant adequately demonstrate a pattern of unmet needs for Financial Products or Financial Services within such area(s).

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents.

(iii) *Targeted Population.* (A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to Financial Products or Financial Services in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities.

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CDFI

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What Are CDFIs?

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History



While the term “community development financial institutions” or “CDFI” is relatively new, the concept itself is part of a rich history of self-help credit. From the immigrant guilds of New York City’s Lower East Side and the Prairie Populists of the late 1800s, to African-American communities forming the first community development credit unions in the 1930s, communities have sought self-help credit solutions because traditional financial institutions have ignored or abandoned them.

The current CDFI industry began taking shape in the late 1960s and early 1970s. Some of the first organizations dedicated to community development were created out of governmental efforts to address poverty alleviation and racial discrimination. The Johnson Administration, under its “War on Poverty” campaign and through the Office of Economic Opportunity, launched community development corporations (CDCs) to work in both urban and rural poor communities. In the successes of many of these early CDCs lay the foundation for today’s CDFI industry.

In the 1970s, CDFIs expanded their funding sources by reaching out to private organizations, particularly religious institutions and individuals. Many business-development loan funds were launched with federal funds from the Department of Housing and Urban Development, the Economic Development Administration and the Department of Agriculture. Community development credit unions and banks were started in the 1970s, such as South Shore Bank in Chicago (1973) and the Santa Cruz Community Credit Union (1977). The Neighborhood Reinvestment Corporation (NRC), a national intermediary that supports local Neighborhood Housing Services offices, was created in 1973 and began financing affordable housing in 1978. In April 2005, Neighborhood Reinvestment Corporation began doing business as Neighborworks® America.

Despite the increased diversity of funding sources, CDFIs grew only incrementally through the 1970s and 1980s. It wasn’t until the 1990s that the CDFI industry expanded dramatically. Factors contributing to this growth include:

- the creation of the CDFI Fund in 1994, a government agency that provides funding to individual CDFIs and their partners through a competitive application process.
- revised Community Reinvestment Act (CRA) regulations in 1995 which explicitly recognize loans and investments in CDFIs as a qualified CRA activity.
- a growing record of success that has inspired confidence in the CDFI industry and attracted new sources of support and funding.

Today the number of CDFIs continues to increase. There are over 800 CDFIs certified by the CDFI Fund. CDFIs operate in every state and the District of Columbia, serving both rural and urban communities.

RELATED PAGES

CDFIs in Wisconsin

Community Development Financial Institutions

What are CDFIs?

CDFIs are mission-driven financial institutions that provide financial products and services to people and communities underserved by traditional financial institutions.

More than 800 CDFIs have been certified by the CDFI Fund in the Department of Treasury. They operate in low-wealth communities in all 50 states and the District of Columbia. CDFIs can be banks, credit unions, loan funds, venture capital funds, community development corporations or microenterprise loan funds. All are united in their primary mission of community development.

Why are CDFIs needed?

CDFIs fill a vital niche in the nation's financial services delivery system, offering loan products and financial services to families or in communities that are difficult for traditional financial institutions to serve. They provide loans and investments to support the development of quality affordable housing, finance businesses, and finance community facilities, including health centers, daycare and education facilities, all with the level of technical assistance needed by their borrowers. CDFIs often serve "micro" borrowers and offer a range of business assistance services to help them succeed. Through their lending and investing CDFIs create jobs and build wealth for low income individuals. Many CDFIs also provide basic financial services to the unbanked and products to combat predatory lending in addition to mortgage products for lower income borrowers. Those services frequently incorporate technical assistance and training such as financial literacy and education, housing or foreclosure counseling and other types of training.

A Unique Federal Partner: The CDFI Fund

The US Treasury Department's CDFI Fund is an innovative federal agency created to support the growth of CDFIs and to build their capacity to greater expand the availability of credit, investment capital and financial services in distressed urban and rural communities. The CDFI Fund administers a range of programs accessible to CDFIs. Foremost is the Financial and Technical Assistance program, a competitive grant program that provides capital to CDFIs to carry out their business plans. Since its first round of funding in 1996, the CDFI Fund has made almost \$770 million in awards for the FA and TA Program. In total, since its creation in 1994, the CDFI Fund has awarded \$1.13 billion to CDFIs, community development organizations, and financial institutions through the CDFI Program, the Bank Enterprise Award (BEA) Program, and the Native Initiatives. In addition, the CDFI Fund has allocated \$26 billion in tax credit authority to Community Development Entities (CDEs) through the NMTC Program.

Visit www.cdfifund.gov for more information.



Putting CDFI Fund Dollars to Work:

Wisconsin CDFIs bring capital and credit to low-income communities

When Marcia Bacon's father entered college, he was denied dorm privileges because he was African American. After fighting this, he received permission to live and study in a room under the stairwell. Instead of being angry, he continued to work toward his goals. The family chose to honor their father and grandfather by naming their new business "Stairwell Enterprises, LLC." With a Wisconsin Women's Business Initiative Corporation (WWBIC) loan and business assistance, Marcia purchased the truck that they use to transport freight under the name Steady Freight Transportation throughout the United States. The business employs Marcia, her husband Raymond, and sons Edward and Marc Brown. With the help of a \$1.2 million grant from the CDFI Fund in 2008, WWBIC was able to provide this loan. It is an example of the more than 21 years of entrepreneurship, opportunity and success at WWBIC. WWBIC is a nonprofit, statewide, economic development corporation with an emphasis on low-wealth individuals, women, and people of color.

Contact: Wisconsin Women's Business Initiative Corporation, 2745 N. Dr. Martin Luther King Jr. Drive, Milwaukee, WI 53212 www.wwbic.com

mission-driven

bridge the gap

CDFIs in Wisconsin

Where do CDFIs get their money?

CDFIs are capitalized by a diverse group of investors, all attracted by CDFIs' double bottom line. CDFIs combine financial return with a social return. Investors include individuals, religious institutions, foundations, corporations, federal and state government, banks and thrifts, non-depository financial institutions (such as insurance companies or mutual funds), national intermediaries, credit unions and others. The top four investors in CDFIs are:

- **Individuals**, primarily in the form of savings and checking accounts in community development banks and credit unions. Some wealthy "angel investors" make equity investments in venture capital funds.
- **Banks and Thrifts**, mostly mainstream institutions making loans to loan funds for re-lending. They often receive CRA credit for these activities.
- **Non-depository financial institutions**, primarily finance companies, but also insurance companies and socially responsible mutual funds. Most make loans to loan funds for re-lending.
- **Corporations**, mostly as deposits in community development banks.

Investment by the Federal Government accounts for only 7% of all CDFI capital. However, it is important to note that oftentimes federal money serves to attract private resources.

Dollars at Work in Wisconsin Communities

At the end of Fiscal Year 2008, CDFIs in Wisconsin had over \$385 million in financing outstanding. CDFI customers include businesses, affordable housing developers, community facilities, microenterprises (businesses with less than 5 employees), and individuals (for basic checking and savings accounts and personal development loans to buy a home, purchase a used car or pay for an education).

CDFIs in Wisconsin

Brewery Credit Union
Milwaukee
www.brewerycu.com

Community Assets for People
Stevens Point
www.capserv.org

First American Capital Corporation
West Allis
www.aiccw.org

First Service CU
Milwaukee
www.fscu.coop

Forward Community Investments
Madison
www.forwardci.org

Greater Galilee Baptist CU
Milwaukee

Impact Seven, Inc.
Almena
www.impactseven.org

Lac Courte Oreilles Federal Credit Union
Hayward
www.lcofcu.com

Legacy Bank
Milwaukee
www.legacybancorp.com

Legacy Redevelopment Corporation
Milwaukee
www.legacybancorp.com

Milwaukee Economic Development Corp
Milwaukee
www.medonline.com

New Covenant Missionary Baptist Church CU
Milwaukee

NiiJii Small Business Loan Fund, Inc.
Keshena

North Milwaukee State Bank
Milwaukee
www.nmsbank.com

North Milwaukee State Bank
Milwaukee
www.nmsbank.com

Partners Advancing Values in Education
Milwaukee
www.pave.org

Ways to Work
Milwaukee
www.waystowork.org

Wisconsin Women's Business Initiative Corp
Milwaukee
www.wwbic.com

double bottom line

social return



The CDFI Coalition is the unified national voice of community development financial institutions. Our mission is to encourage fair access to financial resources for America's underserved people and communities.

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CALIFORNIA DEPARTMENT OF INSURANCE

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COIN: CALIFORNIA CDFI TAX CERTIFICATION PROGRAM

In September 2006, AB 2831 (Ch. 580, Statutes of 2006) sponsored by the Department of Insurance and authored by Senator Mark Ridley-Thomas extended this program for five more years until January 1, 2012.

It is the intent of the Legislature to provide an incentive in the form of California tax credits to attract much needed additional private capital investments that would not otherwise be available to CDFIs without the benefit of such incentive. It is the expectation of the Legislature that CDFIs will leverage these new investment dollars for the direct benefit of economically disadvantaged communities and low-income people in California.

Each calendar year, qualified investments in CDFIs totaling \$10 million are eligible for tax credits of 20% of the investment amount (\$2 million in total tax credits.) Credits are certified in the order that complete applications are received, subject to the following calendar year limits and set-asides:

1. Until July 1, tax credits for the following investment amounts are set-aside:
 - \$3 million for small investments (Individual investment amounts of \$300,000 or less)
 - \$2.5 million for investments by admitted insurers

Thus credits are available each calendar year for investments totaling \$4.5 million without regard to set-asides.

2. Until October 1, maximum total investments for any one CDFI or its affiliates is \$4 million.

What is a CDFI?

Community Development Financial Institutions (CDFIs) are mission-driven private financial institutions in California specifically dedicated to, and whose core purpose is, providing financial products and services to people and communities underserved by traditional financial markets. They seek to bridge the growing gap that exists between the loans and services available to the economic mainstream and those offered to low-income people and communities, as well as the nonprofit institutions and businesses that serve them.

In addition, they serve a critical role in addressing issues of poverty and access to credit in economically disadvantaged communities by providing development services or technical assistance along with the loans and investments they make for community and economic development.

A CDFI may include a community development loan fund, credit union, bank, microenterprise fund, corporation-based lender or venture fund.

How do I locate COIN-certified CDFIs in California?

Click on the link below for a list of COIN Certified California CDFIs:

[List of Currently Certified CA CDFIs](#)

What is a qualified investment?

A qualified investment is :

- A loan or deposit that does not earn interest, or
- An equity investment, or
- An equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the U.S. Department of the Treasury CDFI Fund.

All qualified investments must be equal to or greater than \$50,000 and for a minimum term of 60 months in exchange for a 20 percent tax credit for the taxable year in which the investment was made.

In addition:

- The CDFI shall have full use and control of the proceeds of the entire amount of the investment as well as any earnings on the investment for its community development purposes.
- The CDFI shall use the proceeds of the investment for a purpose that is consistent with its community development mission and for the benefit of economically disadvantaged communities and low-income people in California.

Who can make qualified investments?

Any individual, fiduciary, estate, trust, partnership, or corporation with a valid tax identification number paying taxes under the California Personal Income Tax Law or Corporation Tax Law are eligible to make a qualified investment.

As of January 1, 2000, insurers became eligible to make qualified investments in exchange for a Premium Tax credit. Qualified investments made by foreign insurers will not be negated by a state's retaliatory law in the event that a foreign insurer's home state has a Premium Tax in excess of California's 2.35 percent.

How does a CDFI apply for certification?

A organization can be certified by COIN as a California CDFI by demonstrating that, consistent with the findings, declarations, and intent set forth in Section 12939 of the Insurance Code:

1. It is a private financial institution located in this State; and
2. Its primary mission is community development; and
3. It lends in urban, rural, or reservation-based communities in this State.

What happens when a qualified investment is made?

The **CDFI** sends a written application requesting COIN to certify a qualified investment that it has accepted from a California taxpayer, along with information sufficient to substantiate qualification for the investment.

Typically, this would include:

- 1) The name of the investor;
- 2) The amount and date of the investment;
- 3) The amount of tax credit that is due the taxpayer;
- 4) The tax ID number for each individual, partner, or corporation making the investment;
- 5) A copy of the document setting forth the terms and conditions of the investment; and
- 6) A copy of the wire transfer or canceled check evidencing the amount and date of the investment.

Upon certification, COIN will issue the investor a certificate certifying the tax credit, and a copy of the certification will be sent to the CDFI. Certificates will be issued in the order that complete applications were received.

What happens if I withdraw or reduce my qualified investment early?

If a qualified investment is *withdrawn* before the end of the 60th month and not redeposited or reinvested in another CDFI within 60 days, there shall be added to the "tax," as defined in Section 28 of Article XIII of the California Constitution in the case of insurers, and Sections 17039 or 23036 of the Revenue and Taxation Code for all other investors, for the year in which the withdrawal occurs, the entire amount of any credit previously allowed.

If a qualified investment is *reduced* before the end of the 60th month, but not below fifty thousand dollars (\$50,000), there shall be added to the "tax," as defined in Section 28 of Article XIII of the California Constitution in the case of insurers, and Sections 17039 or 23036 of the Revenue and Taxation Code for all other investors, for the year in which the withdrawal occurs, an amount equal to 20 percent of the total reduction for the year.

CDFI reporting requirement in the event of full or partial early withdrawal or reduction of a qualified investment:

CDFIs are required to report the names, tax ID numbers, and relevant details of qualified investments for every taxpayer making a withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment to:

- 1) COIN *and* the State Board of Equalization in the case of insurer investors,
(Revenue and Taxation Code, Section 12209);
- 2) COIN *and* the Franchise Tax Board for all other investors,
(Revenue and Taxation Code, Sections 17053.57 or 23657).

Does the CDFI have to report how it uses the investment proceeds?

Yes. In 2006, the Legislature added a requirement for CDFIs to report to COIN their use of proceeds received from qualified investments under the California CDFI Tax Credit Program.

For additional information, or to contact COIN:

- **California Organized Investment Network (COIN)**, Department of Insurance
300 Capitol Mall, 16th Floor, Sacramento, CA 95814
(916) 492-3525, (916) 323-1944 (Fax)
- **Franchise Tax Board**, PO Box 942840, Sacramento, CA 94240-6090
- **State Board of Equalization**, PO Box 942879, Sacramento, CA 94279

DEPARTMENT OF INSURANCE

CALIFORNIA ORGANIZED INVESTMENT NETWORK (COIN)
300 CAPITOL MALL, SUITE 1600
SACRAMENTO, CA 95814
(916) 492-3525
(916) 323-1944 (FAX)
www.insurance.ca.gov



December 11, 2006

TO CALIFORNIA COIN CERTIFIED CDFIs:

Notice of Changes to the California CDFI Tax Credit Program

The purpose of this letter is to alert all California Community Development Financial Institutions (CDFIs) certified by the California Organized Investment Network (COIN) of several significant changes to the California CDFI Tax Credit Program.

The California Department of Insurance is pleased that a new law sponsored by Insurance Commissioner John Garamendi and authored by Assemblyman Mark Ridley-Thomas has extended the CDFI Tax Credit Program to January 1, 2012. We appreciated the opportunity to work with many of you throughout the legislative process who provided suggestions for program improvements and worked with us to get the legislation enacted.

Attached is a summary of key changes as well as the full text of the new law (Chapter 580/2006). COIN strongly encourages you to read the law itself - at least Section 1 and one of the next three Sections. Section 1 of the law covers the Legislature's intentions for the program. Sections 2, 3 and 4 are nearly identical to each other, with differences tailoring the text to each class of taxpayer eligible for the tax credit. Your potential investors may be particularly interested in reviewing the Section that pertains to their own classification as a California taxpayer.

COIN would like to highlight one change. It impacts the determination of when a tax credit application is received. All tax credit applications received on the same business day are deemed to be received at the same time. If the aggregate amount of the tax credit applications received on a single business day exceeds the amount of tax credits available, tax credits shall be approved for qualifying investments on a pro rata basis.

For more information concerning the CDFI Tax Credit Program please contact Anna Gragg or me. Anna may be reached at (916) 492-3422 or gragga@insurance.ca.gov. You may also wish to visit the COIN Web site: <http://www.insurance.ca.gov/0200-industry/0700-COIN/>.

We look forward to working with you in the coming year.

Sincerely,

Delores McKinnon
Director, California Organized Investment Network (COIN)

Enclosures

**CA Community Development Financial Institution (CDFI)
Tax Credit Program
Key Changes Created by Enactment of AB 2831, Chapter 580 (2006)**

Legislative Intent Codified - New Section 12939 added to the California Insurance Code. This Section codifies the findings, declarations, and intent of the Legislature regarding requirements for CDFI Certification and use of program monies, including Section 12939.(d) which reads:

"It is the intent of the Legislature to provide an incentive in the form of California tax credits to attract much needed additional private capital investments that would not otherwise be available to CDFIs without the benefit of such incentive. It is the expectation of the Legislature that CDFIs will leverage these new investment dollars for the direct benefit of economically disadvantaged communities and low-income people in California."

Totals, Set-Asides and Limits

Each calendar year, qualified investments in CDFIs totaling \$10,000,000 are eligible for tax credits of 20% of the investment amount (\$2,000,000 in total tax credits.)

EFFECTIVE JANUARY 1, 2007:

Set-Asides - until July 1 each year, tax credits for the following investment amounts are set-aside:

- For **small investments** (individual investment amounts of \$300,000 or less) **\$3.00 million**
- For investments by **admitted insurers** **\$2.50 million**

Amount available for investments each calendar year without regard to set-asides **\$4.50 million**

Maximum total investments each calendar year for any one CDFI or affiliated CDFIs **\$4.00 million**
This maximum applies until October 1 each year.

Pro-rating of tax credits when the program is oversubscribed - All applications received on the same business day are deemed to be received at the same time. If the aggregate amount of the tax credit applications received on a single business day exceeds the amount of tax credits available, tax credits shall be approved for qualifying investments received on that day on a pro rata basis.

New Specifications for Investments

- The CDFI shall have **full use and control** of the proceeds of the entire amount of the investment as well as any earnings on the investment for its community development purposes.
- The CDFI shall **use the proceeds** of the investment **for a purpose that is consistent with its community development mission and for the benefit of economically disadvantaged communities and low-income people in California.**

New Reporting Requirements

- **CDFIs** - The Legislature has added a requirement for CDFIs to report to COIN on their use of the CDFI tax credit program. COIN will work with the CDFIs to develop instructions on the reporting schedule, content and format beginning with the 2006 calendar year. The reports must have the information needed for COIN and the Legislative Analyst to carry out the analyses and reports required of them.
- **COIN Report to the Legislature** - Based on the reports received from the CDFIs, COIN is now required to provide information on the tax credit program for inclusion biennially in the Department of Insurance's Report to the Governor and the Legislature.
- **Legislative Analyst Report to the Legislature** - The Legislative Analyst is to prepare an analysis of the tax credit program, including, but not limited to, its fiscal impact, what programs, projects, and other uses were funded or carried out by the CDFIs that were supported in whole or in part by the tax credit investments, and the resulting benefits to economically disadvantaged communities and low income people in California. The report is due on or before December 31, 2010.

Assembly Bill No. 2831

CHAPTER 580

An act to add Article 1.1 (commencing with Section 12939) to Division 3 of Chapter 2 of the Insurance Code, and to amend Sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 28, 2006. Filed with
Secretary of State September 28, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2831, Ridley-Thomas. Insurance, income, and corporation tax credits: CDFI.

Existing insurance tax law, the Personal Income Tax Law, and the Corporation Tax Law, authorize, until January 1, 2007, a credit in an amount equal to 20% of a qualified investment, as defined, made into a community development financial institution, as defined, but not to exceed, in the aggregate amount under all those laws, \$10,000,000 per year.

The bill would extend the operation of the credits until January 1, 2012, make changes relating to certification in connection with the credits, and make legislative findings and declarations in connection thereto, and require reports to various entities, as specified. This bill would also require the Legislative Analyst to prepare an analysis, on or before December 31, 2010, on the fiscal impact and various effects of the specified tax credits in California.

This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. Article 1.1 (commencing with Section 12939) is added to Division 3 of Chapter 2 of the Insurance Code, to read:

**Article 1.1. The California Community Development Financial
Institution Tax Credit Program**

12939. The Legislature finds and declares all of the following:

(a) There are specialized financial institutions in California that are specifically dedicated to, and whose core purpose is to, provide financial products and services to people and communities underserved by traditional financial markets. These Community Development Financial Institutions or CDFIs seek to bridge the growing gap that exists between

the financial products and services available to the economic mainstream and those offered to low-income people and communities, as well as the nonprofit institutions that serve them. In addition, they serve a critical role in addressing issues of poverty and access to credit in economically disadvantaged communities by providing services, including, but not limited to, credit counseling to consumers, financial literacy training, homeownership counseling, entrepreneurial education, and technical assistance to small business owners.

(b) These mission-driven financial institutions require additional capital in order to expand their ability to provide financial products and services for low-income individuals and communities, and the businesses and nonprofit agencies that serve them. For example, some offer responsible alternatives to high-cost check-cashing services and payday lenders that have moved into low-income communities. Others help finance small businesses, affordable housing, and community services and facilities that, in turn, help stabilize low-income neighborhoods and alleviate poverty.

(c) In carrying out their mission, funding community development is given priority over providing high returns to investors.

(d) It is the intent of the Legislature to provide an incentive in the form of California tax credits to attract much needed additional private capital investments that would not otherwise be available to CDFIs without the benefit of such incentive. It is the expectation of the Legislature that CDFIs will leverage these new investment dollars for the direct benefit of economically disadvantaged communities and low-income people in California.

12939.1. (a) The department, California Organized Investment Network (COIN), or any successor thereof, shall require the CDFIs receiving tax credit investments pursuant to Sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code to submit reports to the department, COIN, or any successor thereof, on their use of the program and may specify by notice to those CDFIs the form, content, and manner of the reports.

(b) Biennially the department, COIN, or any successor thereof, shall include in the report required by Section 12922, information on the CDFI tax credit program based on the reports submitted by the CDFIs pursuant to subdivision (a).

(c) On or before December 31, 2010, the Legislative Analyst shall prepare an analysis, based upon data provided by the Franchise Tax Board, the Department of Insurance, and COIN, to the Legislative Analyst on or before September 30, 2010, of the tax credit investments provided for in Sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code, including, but not limited to, the credits' fiscal impact, what programs, projects, and other uses were funded or carried out by the CDFIs that were supported in whole or in part by the tax credit investments, and the resulting benefits to economically disadvantaged communities and low income people in California.

CDFI must submit reports

analysis by legislative analyst:

- fiscal impact*
- identify programs & projects aimed with assistance from out by CDFIs*
- benefits to economically disadvantaged communities*

SEC. 2. Section 12209 of the Revenue and Taxation Code is amended to read:

12209. (a) For each year beginning on or after January 1, 1999, and before January 1, 2012, there shall be allowed as a credit against the amount of tax, as defined in Section 28 of Article XIII of the California Constitution, an amount equal to 20 percent of the amount of each qualified investment made by a taxpayer during the taxable year into a community development financial institution that is certified by the Department of Insurance, California Organized Investment Network, or any successor thereof.

(b) For purposes of determining any tax that may be imposed under Section 685 of the Insurance Code on a taxpayer not organized under the laws of this state, the amount of the credit allowed by subdivision (a) shall be treated as a tax paid under Section 12201 or Section 28 of Article XIII of the California Constitution.

(c) (1) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network, or its successor within the Department of Insurance, certifies that the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section.

(2) No credit shall be allowed by this section unless the applicant and the taxpayer provide satisfactory substantiation to, and in the form and manner requested by, the Department of Insurance, California Organized Investment Network, or any successor thereof, that the investment is a qualified investment as defined in paragraph (1) of subdivision (g). In addition, on or after January 1, 2007, the aggregate certified investments shall meet all of the following:

(A) Each year, until October 1, the total qualified investments certified in any calendar year from any one community development financial institution together with its affiliates, as defined in Section 1215 of the Insurance Code, does not exceed the lesser of either ten million dollars (\$10,000,000) or 40 percent of the annual aggregate amount of qualified investments authorized in the first sentence of paragraph (3), or until a date or an amount determined in regulations promulgated by the Insurance Commissioner.

(B) Each year, until July 1, the annual aggregate amount of qualified investments specified in the first sentence of paragraph (3) that is reserved for investments by admitted insurers is 25 percent, or until a date or an amount determined in regulations promulgated by the Insurance Commissioner.

(C) Each year, until July 1, the annual aggregate amount of qualified investments authorized in the first sentence of paragraph (3) that is reserved for individual investment amounts of less than or equal to three hundred thousand dollars (\$300,000) is three million dollars (\$3,000,000), or until a date or amounts determined in regulations promulgated by the Insurance Commissioner.

(3) The aggregate amount of qualified investments made by all taxpayers pursuant to this section, Section 17053.57, and Section 23657 shall not exceed ten million dollars (\$10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars (\$10,000,000), the difference may be carried over to the next year, and any succeeding year during which this section remains in effect, and added to the aggregate amount authorized for those years.

(d) The community development financial institution shall do all of the following:

(1) Apply to the Department of Insurance, California Organized Investment Network, or its successor, for certification of its status as a community development financial institution.

(2) Apply to the Department of Insurance, California Organized Investment Network, or its successor, on behalf of the taxpayer for certification of the amount of the investment and the credit amount allocated to the taxpayer, obtain the certification, and retain a copy of the certification.

(3) Obtain the taxpayer's California company identification number for tax administration purposes and provide this information to the Department of Insurance, California Organized Investment Network, or its successor, with the application required in paragraph (2).

(4) Provide an annual listing to the State Board of Equalization, in the form and manner agreed upon by the State Board of Equalization and the Department of Insurance, California Organized Investment Network, or its successor, of the names and taxpayer's California company identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

(5) Submit reports to the department, COIN, or any successor thereof, as required pursuant to subdivision (a) of Section 12939.1 of the Insurance Code.

(e) The Insurance Commissioner may develop instructions, procedures, and standards for applications, and for administering the criteria for the evaluation of applications under this section. The Insurance Commissioner may, from time to time, issue regulations to implement the provisions of this section.

(f) The Department of Insurance, California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept and evaluate applications for certification from financial institutions and issue certificates that the applicant is a community development financial institution qualified to receive qualified investments. To receive a certificate, an applicant shall satisfy the Department of Insurance, California Organized Investment Network, or any successor thereof, that it meets the specific requirements to be a community development financial institution for this state program as defined in paragraph (2) of subdivision (g). The certificate may be issued

for a specified period of time, and may include reasonable conditions to effectuate the intent of this section. The Insurance Commissioner may suspend or revoke a certification, after affording the institution notice and the opportunity to be heard, if the commissioner finds that an institution no longer meets the requirement for certification.

(2) Accept and evaluate applications for certification from any community development financial institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (c). The certificate shall include the amount eligible to be made as an investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the year. Applications for tax credits shall be accepted and evaluated throughout the year. Certificates shall be issued in the order that complete applications are received. If the aggregate amount of tax credit applications exceeds the amount of tax credits available, tax credits shall be approved for qualifying investments on a first-come-first-served basis as determined by the order in which complete applications are received. All applications received on the same business day are deemed to be received at the same time. If the aggregate amount of tax credit applications received on a single business day exceeds the amount of tax credits available, tax credits shall be approved for qualifying investments received on that day on a pro rata basis.

(3) Provide an annual listing to the State Board of Equalization, in the form or manner agreed upon by the State Board of Equalization and the Department of Insurance, California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective National Association of Insurance Commissioners company number and employer's tax identification number, the amount of the qualified investment made by each taxpayer, and the total amount of qualified investments.

(4) Include information specified pursuant to subdivision (b) of Section 12939.1 of the Insurance Code in the report required by Section 12922 of the Insurance Code.

(g) For purposes of this section:

(1) "Qualified investment" means an investment that is a deposit or loan that does not earn interest, or an equity investment, or an equitylike debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its successor, or, in the absence of that prescription, as defined by the Insurance Commissioner. The investment must be equal to or greater than fifty thousand dollars (\$50,000) and made for a minimum duration of 60 months. During that 60-month period, the community development financial institution shall have full use and control of the proceeds of the entire amount of the investment as well as any earnings on the investment for its community development purposes. The entire amount of the investment shall be received by the community development financial institution before the

application for the tax credit is submitted. The community development financial institution shall use the proceeds of the investment for a purpose that is consistent with its community development mission and for the benefit of economically disadvantaged communities and low-income people in California.

(2) "Community development financial institution" means a private financial institution located in this state that is certified by the Department of Insurance, California Organized Investment Network, or its successor, that, consistent with the findings, declarations, and intent set forth in Section 12939 of the Insurance Code, has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, or a community development venture fund.

(h) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another community development financial institution within 60 days, there shall be added to the "tax," as defined in Section 28 of Article XIII of the California Constitution, for the year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars (\$50,000), there shall be added to the "tax," as defined in Section 28 of Article XIII of the California Constitution, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the year.

(i) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" for the next four years, or until the credit has been exhausted, whichever occurs first.

(j) The State Board of Equalization shall, as requested by the Department of Insurance, California Organized Investment Network, or its successor, advise and assist in the administration of this section.

(k) This section shall remain in effect only until December 31, 2012, and as of that date is repealed.

SEC. 3. Section 17053.57 of the Revenue and Taxation Code is amended to read:

17053.57. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2012, there shall be allowed as a credit against the amount of "net tax," as defined in Section 17039, an amount equal to 20 percent of the amount of each qualified investment made by a taxpayer during the taxable year into a community development financial institution that is certified by the Department of Insurance, California Organized Investment Network, or any successor thereof.

(b) (1) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network, or its successor within the Department of Insurance, certifies that

the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section.

(2) No credit shall be allowed by this section unless the applicant and the taxpayer provide satisfactory substantiation to, and in the form and manner requested by, the Department of Insurance, California Organized Investment Network, or any successor thereof, that the investment is a qualified investment, as defined in paragraph (1) of subdivision (f). In addition, on or after January 1, 2007, the aggregate certified investments shall meet all of the following:

(A) Each year, until October 1, the total qualified investments certified in any calendar year from any one community development financial institution together with its affiliates, as defined in Section 1215 of the Insurance Code, does not exceed the lesser of either ten million dollars (\$10,000,000) or 40 percent of the annual aggregate amount of qualified investments authorized in the first sentence of paragraph (3), or until a date or an amount determined in regulations promulgated by the Insurance Commissioner.

(B) Each year, until July 1, the annual aggregate amount of qualified investments specified in the first sentence of paragraph (3) that is reserved for investments by admitted insurers is 25 percent, or until a date or an amount determined in regulations promulgated by the Insurance Commissioner.

(C) Each year, until July 1, the annual aggregate amount of qualified investments authorized in the first sentence of paragraph (3) that is reserved for individual investment amounts of less than or equal to three hundred thousand dollars (\$300,000) is three million dollars (\$3,000,000), or until a date or amounts determined in regulations promulgated by the Insurance Commissioner.

(3) The aggregate amount of qualified investments made by all taxpayers pursuant to this section, Section 12209, and Section 23657 shall not exceed ten million dollars (\$10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars (\$10,000,000), the difference may be carried over to the next year, and any succeeding year during which this section remains in effect, and added to the aggregate amount authorized for those years.

(c) The Community Development Financial Institution shall do all of the following:

(1) Apply to the Department of Insurance, California Organized Investment Network, or its successor, for certification of its status as a Community Development Financial Institution.

(2) Apply to the Department of Insurance, California Organized Investment Network, or its successor, on behalf of the taxpayer for certification of the amount of the investment and the credit amount allocated to the taxpayer, obtain the certification, and retain a copy of the certification.

(3) Obtain the taxpayer's identification number, or in the case of a partnership, the taxpayer identification numbers of all the partners for tax administration purposes and provide this information to the Department of Insurance, California Organized Investment Network, or its successor, with the application required in paragraph (2).

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the Department of Insurance, California Organized Investment Network, or its successor, of the names and taxpayer identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

(5) Submit reports to the department, COIN, or any successor thereof, as required pursuant to subdivision (a) of Section 12939.1 of the Insurance Code.

(d) The Insurance Commissioner may develop instructions, procedures, and standards for applications, and for administering the criteria for the evaluation of applications under this section. The Insurance Commissioner may, from time to time, issue regulations to implement the provisions of this section.

(e) The Department of Insurance, California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept and evaluate applications for certification from financial institutions and issue certificates that the applicant is a Community Development Financial Institution qualified to receive qualified investments. To receive a certificate, an applicant shall satisfy the Department of Insurance, California Organized Investment Network, or any successor thereof, that it meets the specific requirements to be a community development financial institution for this state program as defined in paragraph (2) of subdivision (f). The certificate may be issued for a specified period of time, and may include reasonable conditions to effectuate the intent of this section. The Insurance Commissioner may suspend or revoke a certification, after affording the institution notice and the opportunity to be heard, if the commissioner finds that an institution no longer meets the requirement for certification.

(2) Accept and evaluate applications for certification from any Community Development Financial Institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (b). The certificate shall include the amount eligible to be made as an investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Applications for tax credits shall be accepted and evaluated throughout the year. Certificates shall be issued in the order that complete applications are received. If the aggregate amount of tax credit applications exceeds the amount of tax credits available, tax credits shall be approved for qualifying investments on a first-come-first-served basis as determined by the order in which complete applications are received.

All applications received on the same business day are deemed to be received at the same time. If the aggregate amount of tax credit applications received on a single business day exceeds the amount of tax credits available, tax credits shall be approved for qualifying investments received on that day on a pro rata basis.

(3) Provide an annual listing to the Franchise Tax Board, in a form or manner agreed upon by the Franchise Tax Board and the Department of Insurance, California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective tax identification numbers, the amount of the qualified investment made by each taxpayer, and the total amount of all qualified investments.

(4) Include information specified pursuant to subdivision (b) of Section 12939.1 of the Insurance Code in the report required by Section 12922 of the Insurance Code.

(f) For purposes of this section:

(1) "Qualified investment" means an investment that is a deposit or loan that does not earn interest, or an equity investment, or an equitylike debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its successor, or, in the absence of that prescription, as defined by the Insurance Commissioner. The investment must be equal to or greater than fifty thousand dollars (\$50,000) and made for a minimum duration of 60 months. During that 60-month period, the community development financial institution shall have full use and control of the proceeds of the entire amount of the investment as well as any earnings on the investment for its community development purposes. The entire amount of the investment shall be received by the community development financial institution before the application for the tax credit is submitted. The community development financial institution shall use the proceeds of the investment for a purpose that is consistent with its community development mission and for the benefit of economically disadvantaged communities and low-income people in California.

(2) "Community development financial institution" means a private financial institution located in this state that is certified by the Department of Insurance, California Organized Investment Network, or its successor, that, consistent with the legislative findings, declarations, and intent in Section 12939 of the Insurance Code, has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, or a community development venture fund.

(g) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another Community Development Financial Institution within 60 days, there shall be added to the "net tax,"

as defined in Section 17039, for the taxable year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars (\$50,000), there shall be added to the “net tax,” as defined in Section 17039, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the taxable year.

(h) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” for the next four taxable years, or until the credit has been exhausted, whichever occurs first.

(i) The Franchise Tax Board shall, as requested by the Department of Insurance, California Organized Investment Network, or its successor, advise and assist in the administration of this section.

(j) This section shall remain in effect only until December 1, 2012, and as of that date is repealed.

SEC. 4. Section 23657 of the Revenue and Taxation Code is amended to read:

23657. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2012, there shall be allowed as a credit against the amount of “tax,” as defined in Section 23036, an amount equal to 20 percent of the amount of each qualified investment made by a taxpayer during the taxable year into a community development financial institution that is certified by the Department of Insurance, California Organized Investment Network, or any successor thereof.

(b) (1) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network, or its successor within the Department of Insurance, certifies that the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section.

(2) No credit shall be allowed by this section unless the applicant and the taxpayer provide satisfactory substantiation to, and in the form and manner requested by, the Department of Insurance, California Organized Investment Network, or any successor thereof, that the investment is a qualified investment, as defined in paragraph (1) of subdivision (f). In addition, on or after January 1, 2007, the aggregate certified investments shall meet all of the following:

(A) Each year, until October 1, the total qualified investments certified in any calendar year from any one community development financial institution together with its affiliates, as defined in Section 1215 of the Insurance Code, does not exceed the lesser of either ten million dollars (\$10,000,000) or 40 percent of the annual aggregate amount of qualified investments authorized in the first sentence of paragraph (3), or until a date or an amount determined in regulations promulgated by the Insurance Commissioner.

(B) Each year, until July 1, the annual aggregate amount of qualified investments specified in the first sentence of paragraph (3) that is reserved for investments by admitted insurers is 25 percent, or until a date or an amount determined in regulations promulgated by the Insurance Commissioner.

(C) Each year, until July 1, the annual aggregate amount of qualified investments authorized in the first sentence of paragraph (3) that is reserved for individual investment amounts of less than or equal to three hundred thousand dollars (\$300,000) is three million dollars (\$3,000,000), or until a date or amounts determined in regulations promulgated by the Insurance Commissioner.

(3) The aggregate amount of qualified investments made by all taxpayers pursuant to this section, Section 12209, and Section 17053.57 shall not exceed ten million dollars (\$10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars (\$10,000,000), the difference may be carried over to the next year, and any succeeding year during which this section remains in effect, and added to the aggregate amount authorized for those years.

(c) The Community Development Financial Institution shall do all of the following:

(1) Apply to the Department of Insurance, California Organized Investment Network, or its successor, for certification of its status as a Community Development Financial Institution.

(2) Apply to the Department of Insurance, California Organized Investment Network, or its successor, on behalf of the taxpayer, for certification of the amount of the investment and the credit amount allocated to the taxpayer, obtain the certification, and retain a copy of the certification.

(3) Obtain the taxpayer's identification number, or in the case of an "S" corporation, the taxpayer identification numbers of all the shareholders for tax administration purposes and provide this information to the Department of Insurance, California Organized Investment Network, or its successor, with the application required in paragraph (2).

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the Department of Insurance, California Organized Investment Network, or its successor, of the names and taxpayer identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

(5) Submit reports to the department, COIN, or any successor thereof, as required pursuant to subdivision (a) of Section 12939.1 of the Insurance Code.

(d) The Insurance Commissioner may develop instructions, procedures, and standards for applications, and for administering the criteria for the evaluation of applications under this section. The Insurance Commissioner

may, from time to time, issue regulations to implement the provisions of this section.

(e) The Department of Insurance, California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept and evaluate applications for certification from financial institutions and issue certificates that the applicant is a Community Development Financial Institution qualified to receive qualified investments. To receive a certificate, an applicant shall satisfy the Department of Insurance, California Organized Investment Network, or any successor thereof, that it meets the specific requirements to be a community development financial institution for this state program as defined in paragraph (2) of subdivision (f). The certificate may be issued for a specified period of time, and may include reasonable conditions to effectuate the intent of this section. The Insurance Commissioner may suspend or revoke a certification, after affording the institution notice and the opportunity to be heard, if the commissioner finds that an institution no longer meets the requirement for certification.

(2) Accept and evaluate applications for certification from any Community Development Financial Institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (b). The certificate shall include the amount eligible to be made as an investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Applications for tax credits shall be accepted and evaluated throughout the year. Certificates shall be issued in the order that complete applications are received. If the aggregate amount of tax credit applications exceeds the amount of tax credits available, tax credits shall be approved for qualifying investments on a first-come-first-served basis as determined by the order in which complete applications are received. All applications received on the same business day are deemed to be received at the same time. If the aggregate amount of tax credit applications received on a single business day exceeds the amount of tax credits available, tax credits shall be approved for qualifying investments received on that day on a pro rata basis.

(3) Provide an annual listing to the Franchise Tax Board, in the form or manner agreed upon by the Franchise Tax Board and the Department of Insurance, California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective tax identification numbers, the amount of the qualified investment made by each taxpayer, and the total amount of all qualified investments.

(4) Include information specified pursuant to subdivision (b) of Section 12939.1 of the Insurance Code in the report required by Section 12922 of the Insurance Code.

(f) For purposes of this section:

(1) "Qualified investment" means an investment that is a deposit or loan that does not earn interest, or an equity investment, or an equitylike debt instrument that conforms to the specifications for these instruments as

prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its successor, or, in the absence of that prescription, as defined by the Insurance Commissioner. The investment must be equal to or greater than fifty thousand dollars (\$50,000) and made for a minimum duration of 60 months. During that 60-month period, the community development financial institution shall have full use and control of the proceeds of the entire amount of the investment as well as any earnings on the investment for its community development purposes. The entire amount of the investment shall be received by the community development financial institution before the application for the tax credit is submitted. The community development financial institution shall use the proceeds of the investment for a purpose that is consistent with its community development mission and for the benefit of economically disadvantaged communities and low-income people in California.

(2) "Community development financial institution" means a private financial institution located in this state that is certified by the Department of Insurance, California Organized Investment Network, or its successor, that, consistent with the legislative findings, declarations, and intent in Section 12939 of the Insurance Code, has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, or a community development venture fund.

(g) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another Community Development Financial Institution within 60 days, there shall be added to the "tax," as defined in Section 23036, for the taxable year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars (\$50,000), there shall be added to the "tax," as defined in Section 23036, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the taxable year.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" for the next four taxable years, or until the credit has been exhausted, whichever occurs first.

(i) The Franchise Tax Board shall, as requested by the Department of Insurance, California Organized Investment Network or its successor, advise and assist in the administration of this section.

(j) This section shall remain in effect only until December 1, 2012, and as of that date is repealed.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

O



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4451/P1
JK&TKK:.....

Sort draft

gjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*SA ✓
x-126 ✓*

in thru 3-11

due Monday 3-15

Gen Cat

1 AN ACT *[...]*; relating to: an income and franchise tax credit for investments in a
2 community development financial institution and ~~requiring the exercise of~~
3 rule-making authority. *granting*

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
For further information see the **state** fiscal estimate, which will be printed as
an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act
5 28, is amended to read:
6 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
7 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),
8 (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), *5p*, and (8r) and not passed through by a
9 partnership, limited liability company, or tax-option corporation that has added that

x

1 amount to the partnership's, company's, or tax-option corporation's income under s.
2 71.21 (4) or 71.34 (1k) (g).

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28.

3 SECTION 2. 71.07 (5p) of the statutes is created to read:

4 71.07 (5p) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a)

5 *Definition.* In this subsection, "claimant" means a person who files a claim under this
6 subsection.

the requirements under

7 (b) *Filing claims.* Subject to the limitations provided under this subsection and
8 s. 560.295 (2), a claimant may claim as a credit against the tax imposed under s.
9 71.02, up to the amount of the tax, an amount equal to 20 percent of the amount that
10 the claimant paid in the taxable year as a qualified investment in a community
11 development financial institution.

12 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
13 corporations may not claim the credit under this subsection, but the eligibility for,
14 and the amount of, the credit are based on their payment of amounts under par. (b).
15 A partnership, limited liability company, or tax-option corporation shall compute
16 the amount of credit that each of its partners, members, or shareholders may claim
17 and shall provide that information to each of them. Partners, members of limited
18 liability companies, and shareholders of tax-option corporations may claim the
19 credit in proportion to their ownership interests.

20 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
21 s. 71.28 (4), applies to the credit under this subsection.

22 SECTION 3. 71.10 (4) (ce) of the statutes is created to read:

23 71.10 (4) (ce) Community development financial institution credit under s.
24 71.07 (5p).

1 SECTION 4. 71.21 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is
2 amended to read:

3 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
4 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w),
5 (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and passed through to partners shall
6 be added to the partnership's income.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 1995 a. 27, 400; 1997 a. 27; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007 a. 20, 96; 2009 a. 2, 28.

7 SECTION 5. 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Act 28,
8 is amended to read:

9 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
10 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3t),
11 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a
12 partnership, limited liability company, or tax-option corporation that has added that
13 amount to the partnership's, limited liability company's, or tax-option corporation's
14 income under s. 71.21 (4) or 71.34 (1k) (g).

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479, 483; 2007 a. 20, 96, 97, 151, 226; 2009 a. 2, 28.

15 SECTION 6. 71.28 (5p) of the statutes is created to read:

16 71.28 (5p) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a)
17 Definition. In this subsection, "claimant" means a person who files a claim under this
18 subsection.

the requirements under

19 (b) Filing claims. Subject to the limitations provided under this subsection and
20 s. 560.295 (2), a claimant may claim as a credit against the tax imposed under s.
21 71.23, up to the amount of the tax, an amount equal to 20 percent of the amount that
22 the claimant paid in the taxable year as a qualified investment in a community
23 development financial institution.

1 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
 2 corporations may not claim the credit under this subsection, but the eligibility for,
 3 and the amount of, the credit are based on their payment of amounts under par. (b).
 4 A partnership, limited liability company, or tax-option corporation shall compute
 5 the amount of credit that each of its partners, members, or shareholders may claim
 6 and shall provide that information to each of them. Partners, members of limited
 7 liability companies, and shareholders of tax-option corporations may claim the
 8 credit in proportion to their ownership interests.

9 (d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under
 10 sub. (4), applies to the credit under this subsection.

11 **SECTION 7.** 71.30 (3) (ce) of the statutes is created to read: X

12 71.30 (3) (ce) Community development financial institution credit under s.
 13 71.28 (5p). ✓

14 **SECTION 8.** 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Act 28,
 15 is amended to read: X

16 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
 17 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
 18 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p),
 19 and (8r) and passed through to shareholders. ✓

History: 1987 a. 312; 1987 a. 411 ss. 18, 23, 146; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16,
 109; 2003 a. 33, 99, 135, 255, 326; 2005 a. 25, 49, 74, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28.

20 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act X

21 28, is amended to read:

22 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
 23 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3w), (5e), (5f),
 24 (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a partnership,

1 limited liability company, or tax-option corporation that has added that amount to
2 the partnership's, limited liability company's, or tax-option corporation's income
3 under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47
4 (1), (3), (3t), (4), (4m), and (5).

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 253, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28.

5 **SECTION 10.** 71.47 (5p) of the statutes is created to read:

6 **71.47 (5p) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT.** (a)

7 *Definition.* In this subsection, "claimant" means a person who files a claim under this
8 subsection.

the requirements under

9 (b) *Filing claims.* Subject to the limitations provided under this subsection and
10 s. 560.295 (2), a claimant may claim as a credit against the tax imposed under s.
11 71.43, up to the amount of the tax, an amount equal to 20 percent of the amount that
12 the claimant paid in the taxable year as a qualified investment in a community
13 development financial institution.

14 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
15 corporations may not claim the credit under this subsection, but the eligibility for,
16 and the amount of, the credit are based on their payment of amounts under par. (b).
17 A partnership, limited liability company, or tax-option corporation shall compute
18 the amount of credit that each of its partners, members, or shareholders may claim
19 and shall provide that information to each of them. Partners, members of limited
20 liability companies, and shareholders of tax-option corporations may claim the
21 credit in proportion to their ownership interests.

22 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
23 s. 71.28 (4), applies to the credit under this subsection.

24 **SECTION 11.** 71.49 (1) (ce) of the statutes is created to read:

1 71.49 (1) (ce) Community development financial institution credit under s.
2 71.47 (5p).

3 SECTION 12. 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is
4 amended to read:

5 77.92 (4) "Net business income," with respect to a partnership, means taxable
6 income as calculated under section 703 of the Internal Revenue Code; plus the items
7 of income and gain under section 702 of the Internal Revenue Code, including taxable
8 state and municipal bond interest and excluding nontaxable interest income or
9 dividend income from federal government obligations; minus the items of loss and
10 deduction under section 702 of the Internal Revenue Code, except items that are not
11 deductible under s. 71.21; plus guaranteed payments to partners under section 707
12 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
13 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),
14 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), and (8r); and plus or minus, as
15 appropriate, transitional adjustments, depreciation differences, and basis
16 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
17 loss, and deductions from farming. "Net business income," with respect to a natural
18 person, estate, or trust, means profit from a trade or business for federal income tax
19 purposes and includes net income derived as an employee as defined in section 3121
20 (d) (3) of the Internal Revenue Code.

History: 1989 a. 335; 1991 a. 39, 269; 1993 a. 16, 112, 490; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007
a. 20, 96; 2009 a. 2, 28.

21 SECTION 13. 76.634 of the statutes is created to read:

22 76.634 Community development financial institution credit. (1) FILING
23 CLAIMS. Subject to the limitations provided under this subsection and s. 560.295 (2),
24 an insurer may claim as a credit against the fees imposed under s. 76.60, 76.63, 76.65,

due the requirements under

1 76.66, or 76.67 an amount equal to 20 percent of the amount that the insurer paid
2 in the taxable year as a qualified investment in a community development financial
3 institution.

4 (2) LIMITATIONS. No credit may be allowed under this section unless the insurer
5 includes with the insurer's annual return under s. 76.64 a copy of the insurer's
6 certification for tax benefits under s. 560.295 (4) (b). ¹

7 (3) CARRY-FORWARD. If the credit under sub. (2) is not entirely offset against the
8 fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance
9 may be carried forward and credited against those fees for the following 15 years to
10 the extent that it is not offset by those fees otherwise due in all the years between
11 the year in which the expense was made and the year in which the carry-forward
12 credit is claimed.

13 SECTION 14. 560.295 of the statutes is created to read:

14 **560.295 Certification of investments in community development**
15 **financial institutions.** (1) DEFINITIONS. In this section:

16 (a) "Community development financial institution" means an entity that is
17 certified by the fund under 12 CFR 1805.201 as meeting the eligibility requirements
18 for a community development financial institution under 12 CFR 1805.200 and
19 1805.201 (b).

****NOTE: This definition differs from the definition provided in the California
community development financial institution (CDFI) legislation. Okay?

****NOTE: Do you want to require the CDFI to be certified by the Department of
Commerce as well? If so, what information / evidence must the CDFI submit to
Commerce? Would certification by Commerce be permanent or would the CDFI be
required to be re-certified after a certain number of years? Could Commerce revoke
certification granted to a CDFI? If so, do you want to specify under what conditions?

20 (b) "Fund" means the Community Development Financial Institutions Fund
21 established under 12 USC 4703 (a).

INS
X

1 (c) 1. Subject to subd. 2., "qualified investment" means any of the following
2 having a value of at least \$50,000 and made for a period of time of at least 60 months:

3 a. A deposit or loan that pays no interest to the person who made the deposit
4 or loan.

5 b. An equity investment.

****NOTE: Should "equity investment" be defined? Will an "equity investment"
under this section be different than an "equity investment" under s. 560.21 (1) (b)? ✓

6 c. An equity-like debt instrument that conforms to specifications established
7 by the fund. ✓

****NOTE: The California CDFI legislation used ^{the} ~~this~~ unusual term, "equity-like
debt instrument". Is there a better term? Or a better definition?

8 2. A community development financial institution that receives an investment
9 described under subd. 1. shall have complete control over the entire investment
10 amount, including any interest earned on the investment, for the duration of the
11 investment period.

****NOTE: Do you ^{of Commerce} want to require a CDFI that receives a qualified investment to
submit reports to the department indicating how the CDFI uses the qualified
investments that it receives from persons certified by the department? If so, is there any
additional information the CDFI should provide to Commerce?

12 (2) CERTIFICATION. The department may certify a person under this section to
13 claim tax credits under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634 if the person
14 applies to the department on a form prepared by the department and submits
15 evidence satisfactory to the department that the person has made a qualified
16 investment in a community development financial institution.

****NOTE: The California bill provides that a person may claim tax credits of 20%
of the amount of the qualified investment. May the full 20% be claimed in the first year?

****NOTE: Do you want to place limits on any of the following: 1. The amount of tax
credits that a person may claim in any one year? 2. The amount of tax credits that a
person may claim over the life of the person's qualified investment? 3. The amount of tax
credits that a person may claim from all qualified investments made in CDFIs? 4. The
amount of tax credits that the department may certify in any one year? 5. The amount
of tax credits that the department may certify over the life of the program?

Commerce 2x

I have provided this paragraph as an incomplete placeholder for your consideration.

1 (3) ELIGIBILITY. (a) Except as provided in par. (b), a person certified under sub.
2 (2) is eligible to claim a tax credit under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634

3 in each year in which the qualified investment made by the person is held by the
4 community development financial institution

5 (b) A person certified under sub. (2) who withdraws a qualified investment from
6 a community development financial institution prior to the date of withdrawal
7 specified in the written notice provided as to the person under sub. (4) (b) and who

8 does not immediately reinvest ^{the} proceeds of the qualified investment in an other
9 community development financial institution shall not be eligible to claim a tax
10 credit in the year in which the qualified investment was withdrawn.

****NOTE: The California program requires a person who withdraws early to pay a "tax". Do you want to include any such tax or recapture provision in this bill? If so, what would be the tax or amount recaptured?

as a qualified investment

11 (4) DUTIES OF THE DEPARTMENT. The department shall do all of the following:

12 (a) Notify the department of revenue of every certification issued under sub.
13 (2) and include the dates on which any such certification is granted and the date on
14 which the applicant may withdraw a qualified investment made in a community
15 development financial institution, which date shall be no earlier than the first day
16 of the 61st month after the qualified investment was made.

17 (b) Provide to each applicant under sub. (2) a dated written notice indicating
18 the department's decision to grant or deny certification. If certification is granted,
19 the notice shall include the date on which the applicant may withdraw the qualified
20 investment, which date shall be no earlier than the first day of the 61st month after
21 the qualified investment was made.

22 (c) Promulgate rules to administer this program.

****NOTE: Do you want to specify any particular rules to be promulgated by Commerce?

~~Also, would such a tax or other penalty apply to the person who would otherwise be eligible to carry forward?~~
~~Indirect amount of credit that due to pay~~

INS X

④ SEC. #. AM; 76.67(2) as affected by 2009 Wisconsin Act 28,

~~76.67(2)~~

76.634

④ 76.67 (2) If any domestic insurer is licensed to transact insurance business in another state, this state may not require similar insurers domiciled in that other state to pay taxes greater in the aggregate than the aggregate amount of taxes that a domestic insurer is required to pay to that other state for the same year less the credits under ss. 76.635, 76.636, 76.637, 76.638, and 76.655, except that the amount imposed shall not be less than the total of the amounts due under ss. 76.65 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375% of its gross premiums, as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss. 76.635, 76.636, 76.637, 76.638, and 76.655 against that total, and except that the amount imposed shall not be less than the amount due under s. 601.93.

76.634