

Kuczenski, Tracy

From: Rundell, Lois
Sent: Tuesday, March 23, 2010 3:54 PM
To: Kuczenski, Tracy
Subject: LRB - 4451/P1
Attachments: 09-4451P1.pdf

Hello,

I have some answers for the questions you posed in your notes. I look forward to hearing from you.

Thank you!

Lois Rundell

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

1. (Page 8) Define Community Development Financial Institution ("CDFI") as the following: CDFI is defined as a nonprofit private-sector financial institution that: (1) has a primary mission of promoting economic and community development in struggling areas, both urban and rural; (2) serves a target market; (3) is a financing entity that provides development services; (4) remains accountable to its community, (5) is a non-government entity; (6) is incorporated in the state of Wisconsin and (7) is certified by the US Department of the Treasury Community Development Financial Institution Fund. (For more information about the CDFI Fund, go to <http://cdfifund.gov/index.asp>.)
- ✓ 2. (Page 8) Reduce minimum investment from \$50,000 to \$10,000.
- ✓ 3. (Page 8) Oversight by the Department of Commerce should be kept as simple as possible. The onus for proof of certification should be on the CDFI and their ability to give proof of its current status as a CDFI certified by the US Department of Treasury CDFI Fund. *to simplify, keep definition of CDFI as it is in P1*
- ✓ 4. (Page 8) Delete equity investment and only reference equity-like investment.
5. (Page 8) Define equity-like investment as the following: (1) The equity-like investment is carried as an investment on the investor's balance sheet in accordance with Generally Accepted Accounting Principles (GAAP); (2) It is a general obligation of the CDFI that is not secured by any of the CDFI's assets; (3) It is fully subordinated to the right of repayment of all of the CDFI's other creditors; (4) It does not give the investor the right to accelerate payment unless the CDFI ceases its normal operations; (5) It carries an interest rate that is not tied to any income received by the CDFI and (6) It has a rolling term and therefore, an indeterminate maturity. (Note: This definition is provided by the CDFI Fund.)
6. (Page 8) CDFI should report its annual (12-month calendar year) performance activity to the Department of Commerce, including but not limited to # of loans made in calendar year; volume of loans; purpose of loans; location of loans; # of jobs created/retained; social impact and so forth. Reporting should be completed within 60 days of the last day of the calendar year.

- ✓ 7. (Page 9) Establish maximum limits on tax credits to any one organization/person up to 5% percent of total tax credits available, i.e. if \$1 million is the total amount of tax credits available in a calendar year, the maximum an organization/person would be eligible to receive would be \$50,000 (in exchange for a \$500,000 investment).
- ✓ 8. (Page 9) Limit the amount of tax credits to no more than \$ 1 million per year. Tax credits can be determined by the size of the investment; for example, \$50,000 to \$150,000 investment yields a 10% tax credit over a two-year period and \$150,001 and greater would yield a 15% tax credit over a three-year period.
- ✓ 9. (Page 9) If the investment is withdrawn prior to the five-year required term, the organization/person must pay a penalty up to 50% of the original tax credit received.
- ✓ 10. (Page 10) I can't think of any other rules to specify to commerce.

Kuczenski, Tracy

From: Kuczenski, Tracy
Sent: Friday, March 26, 2010 8:26 AM
To: 'Salli Martyniak'
Cc: Rundell, Lois
Subject: RE: LRB - 4451/P1

Okay. I'll put it into editing today as a /P2 draft with an analysis.

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

From: Salli Martyniak [mailto:SalliM@forwardci.org]
Sent: Thursday, March 25, 2010 4:52 PM
To: Kuczenski, Tracy
Cc: Rundell, Lois
Subject: RE: LRB - 4451/P1

My turn . . .

Best,
Salli

Salli F. Martyniak, President
Forward Community Investments
608/257-3863 or 866/687-1468 (w)
608/516-0879 (m)
608/257-2372 (f)
sallim@forwardci.org

Visit our website at www.forwardci.org to learn more about Forward Community Investments.

From: Kuczenski, Tracy [mailto:Tracy.Kuczenski@legis.wisconsin.gov]
Sent: Thursday, March 25, 2010 4:29 PM
To: Salli Martyniak; Rundell, Lois
Subject: RE: LRB - 4451/P1

My turn: see responses below :-)

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

3/26/2010

From: Salli Martyniak [mailto:Sallim@forwardci.org]
Sent: Thursday, March 25, 2010 4:04 PM
To: Kuczenski, Tracy; Rundell, Lois
Subject: RE: LRB - 4451/P1

See below for my responses.

Best,
Salli

Salli F. Martyniak, President
Forward Community Investments
608/257-3863 or 866/687-1468 (w)
608/516-0879 (m)
608/257-2372 (f)
sallim@forwardci.org

Visit our website at www.forwardci.org to learn more about Forward Community Investments.

From: Kuczenski, Tracy [mailto:Tracy.Kuczenski@legis.wisconsin.gov]
Sent: Thursday, March 25, 2010 1:30 PM
To: Salli Martyniak; Rundell, Lois
Subject: RE: LRB - 4451/P1

Sure thing..

Here's some additional questions, with the goal of getting an as-close-to-final-as-possible draft to you on this next round:

1. In your definition for CDFI, you included a requirement that the CDFI be "incorporated" in this state. Must the "entity" be a corporation, or may it be a partnership or limited liability partnership or cooperative or other form of business organization? To capture a wider range of entities, you may wish to use the phrase "organized under the laws of this state" rather than "incorporated," but I don't know if that would capture some organizations that shouldn't be captured. Let me know what you'd prefer. Looking at the list of CDFIs, I cannot think of one that would not be "incorporated" in this state but if "organized under the laws of this state" would capture the intent, then we should with that. What I am most concerned with is that ONLY CDFIs that are WI entities are eligible for these tax credits. For example, there are CDFIs outside of WI that do business in WI that should not be eligible for this tax credit because the benefit of their business transactions are not solely concentrated in WI. At the end of the day, the intent of this legislation is to encourage local investing in local CDFIs that lend money locally. Did I answer your question? YES.
2. In the drafting instructions regarding reporting requirements, you specify a lot of information about *loans* made by the CDFI. Does a CDFI only make loans? Yes, that is the primary purpose of a CDFI. OK
3. The drafting instructions on reporting requirements also refer to the "social impact" of the CDFI; what does "social impact" mean? How would a social impact manifest itself in the community? Are there any measures or parameters I could include? If not, I'll probably leave this out, and add in a catch all "any other information deemed relevant" clause at the end. I like your language better. OK
4. To provide a mechanism to require that CDFIs submit annual reports, the bill will now require CDFIs to register with the department of Commerce. In addition, a new condition is imposed upon taxpayers seeking tax credits: the taxpayer's qualified investment must be made in a CDFI that is both certified by the federal government and registered with the state. A CDFI that is registered with the state must submit annual reports... This raises some additional questions: The language should read that a CDFI must be actively certified by the US Dept of Treasury and the WI Department of

3/26/2010

Commerce. If they just registered with DOC, that wouldn't mean anything because the critical proof of CDFI status is with the Dept of Treasury and not the DOC. Does this make sense? Right; as I mentioned above, the requirement remains that the CDFI be certified by the Fund but now ALSO requires the CDFI to be registered with Commerce.

A. Do you want to impose any penalties on a CDFI that fails to submit an annual report as will be required under the bill? For example, does the CDFI lose its registration? Or its right to accept qualified investments? Can it get those rights back? To make life simple, I would suggest that you require the CDFI to provide the Dept of Commerce with the same reporting it provides to the US Department of Treasury CDFI Fund. It's very comprehensive and no one would be reinventing the proverbial wheel. Could you do that? OK; but should I eliminate the list of items you had requested before (i.e. the number and location of loans, how the loans were used, how many jobs created, etc.?) Or should the CDFI report to Commerce the information it reports to the Fund supplemented with the information I just listed?

The report we send to the CDFI Fund does include all of that information. What if you said something to the effect, "CDFI will provide the Department of Commerce with a copy of its lending activity report that it annually provides to the CDFI Fund, as supplemented with any information deemed necessary by the Department of Commerce"?

B. What happens to the taxpayer seeking a credit if the CDFI in which the parson has made a qualified investment fails to report? That's why I would suggest that you limit it to the same reporting and the same reporting period. Make things easy for everyone involved. It saves on staff time for both the reporting agency and the Department of Commerce. And, if a CDFI fails to report to the US Department of Treasury, their certification as a CDFI is pulled. I don't know if this adequately answers your question – let me know if it didn't. Well, yes and no. I understand the part about tying the federal reporting requirements to the WI Commerce reporting requirements. BUT, if a CDFI has its certification pulled, then what happens to the investments in the CDFI? Does the CDFI have to liquidate/disburse its investments? I did not draft the eligibility requirement to take this scenario into consideration, but should I have? That is, as drafted, the only thing the taxpayer needs to do to be eligible to obtain tax benefits is:

1. Invest in a CDFI (defined as a certified CDFI incorporated in WI and registered with Commerce)
2. Keep the investment at the CDFI for at least 60 months.

So, as drafted, if a CDFI becomes un-certified, the taxpayer should continue to be certified to receive tax benefits as long as the taxpayer doesn't withdraw the investment early and the CDFI does not have to give the investment back to the taxpayer.

Do I need to modify any portion of the draft to address this issue?

What would happen is that a CDFI would merge with another CDFI rather than going out of business and what I've seen happen is that it is usually a merger with another local CDFI. With that said, the tax benefit is for the first two years – correct? And, there is a penalty if the investor withdraws its investment earlier than five years – correct? (Forgive me, I am walking thru this myself.) So, if the CDFI has its certification pulled, what if you said something like the investor could withdraw his investment and re-invest it with another certified CDFI for the remaining term of the investment??? Would that work???

I think that's all for now.

Tracy

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

From: Salli Martyniak [mailto:SalliM@forwardci.org]
Sent: Thursday, March 25, 2010 11:36 AM
To: Kuczenski, Tracy; Rundell, Lois
Subject: RE: LRB - 4451/P1

3/26/2010

For simplicity sake, can you just use the equity-like loan and the definition found in (15) CFR 1806.103 (z)?

le 12 x

Best,
Salli

Salli F. Martyniak, President
Forward Community Investments
608/257-3863 or 866/687-1468 (w)
608/516-0879 (m)
608/257-2372 (f)
sallim@forwardci.org

Visit our website at www.forwardci.org to learn more about Forward Community Investments.

From: Kuczenski, Tracy [<mailto:Tracy.Kuczenski@legis.wisconsin.gov>]
Sent: Thursday, March 25, 2010 11:26 AM
To: Salli Martyniak; Rundell, Lois
Subject: RE: LRB - 4451/P1

Okay, so I am going to define "equity-like loan" as having the meaning given in (15) CFR 1806.103 (z).

le 12 x

Should I also define "equity investment" as having the meaning given in (15) CFR 1806.103 (y)?

le 12 x

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

From: Salli Martyniak [<mailto:SalliM@forwardci.org>]
Sent: Thursday, March 25, 2010 11:02 AM
To: Rundell, Lois
Cc: Kuczenski, Tracy
Subject: RE: LRB - 4451/P1

There is no difference between the two – six of one and half-dozen of the other.

Best,
Salli

Salli F. Martyniak, President
Forward Community Investments
608/257-3863 or 866/687-1468 (w)
608/516-0879 (m)
608/257-2372 (f)
sallim@forwardci.org

Visit our website at www.forwardci.org to learn more about Forward Community Investments.

From: Rundell, Lois [mailto:Lois.Rundell@legis.wisconsin.gov]
Sent: Thursday, March 25, 2010 10:56 AM
To: Salli Martyniak
Subject: FW: LRB - 4451/P1

Feel free to reply to her...

Lois Rundell

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

From: Kuczenski, Tracy
Sent: Thursday, March 25, 2010 10:55 AM
To: Rundell, Lois
Cc: 'Salli Martyniak'
Subject: RE: LRB - 4451/P1

Is there a difference between an "equity-like loan" and an "equity-like investment"?

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

From: Rundell, Lois
Sent: Thursday, March 25, 2010 10:49 AM
To: Kuczenski, Tracy
Cc: 'Salli Martyniak'
Subject: FW: LRB - 4451/P1

Tracy,
Is this helpful?

Lois Rundell

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

From: Salli Martyniak [mailto:SalliM@forwardci.org]
Sent: Thursday, March 25, 2010 10:48 AM
To: Rundell, Lois
Subject: RE: LRB - 4451/P1

Send this link to the Leg Reference Bureau and refer them to page 14. In this NOFA, there is also reference to CDFI legislation that defines equity-like investments.

<http://www.cdfifund.gov/docs/bea/2010/BEA%20NOFA%2010.pdf>

Best,
Salli

3/26/2010

Salli F. Martyniak, President
Forward Community Investments
608/257-3863 or 866/687-1468 (w)
608/516-0879 (m)
608/257-2372 (f)
sallim@forwardci.org

Visit our website at www.forwardci.org to learn more about Forward Community Investments.

From: Rundell, Lois [<mailto:Lois.Rundell@legis.wisconsin.gov>]
Sent: Thursday, March 25, 2010 10:31 AM
To: Salli Martyniak
Subject: FW: LRB - 4451/P1

Salli, any help with the below email?

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

From: Kuczenski, Tracy
Sent: Thursday, March 25, 2010 10:30 AM
To: Rundell, Lois
Subject: RE: LRB - 4451/P1

Hi Lois -

The March 2002 document that was attached to explain EQ2's makes reference to "regulatory opinion letters" made in support of these investments, and directs me to go to the "www.communitycapital.org" web page. In an effort to better understand the legitimacy/structure of these EQ2's I went to the "www.communitycapital.org" web page, but I get a message indicating that the web page expired on 3/3/2010.

Can your contact provide me with a current resource?

Thanks,
Tracy

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

From: Rundell, Lois
Sent: Thursday, March 25, 2010 9:33 AM
To: Kuczenski, Tracy
Subject: FW: LRB - 4451/P1

Attached is a clarification of the intended structure of the credit.

I do not know where the definition of "equity-like" investment is in statutes at the federal level. It came from this

3/26/2010

publication <http://www.frbsf.org/publications/community/investments/cra02-2/equity.pdf>.

I hope this is helpful.

Thank you!

Lois Rundell

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

From: Salli Martyniak [mailto:SalliM@forwardci.org]
Sent: Wednesday, March 24, 2010 4:37 PM
To: Rundell, Lois
Subject: RE: LRB - 4451/P1

OK, this is what I did, I created an EXCEL spreadsheet for your review. It really lays things out a lot clearer as far as tax credit availability and answers all of your questions.

I did make some changes to the original details:

- Change maximum tax credit from 15% to 12% (see worksheet) (for loans \$150,001 to \$500,000) over a two-year rather than a three-year period
- Withdrawal penalty

Call me with questions!!!! Or write! Yes, this is FUN!

Best,
Salli

Salli F. Martyniak, President
Forward Community Investments
608/257-3863 or 866/687-1468 (w)
608/516-0879 (m)
608/257-2372 (f)
sallim@forwardci.org

Visit our website at www.forwardci.org to learn more about Forward Community Investments.

From: Rundell, Lois [mailto:Lois.Rundell@legis.wisconsin.gov]
Sent: Wednesday, March 24, 2010 2:16 PM
To: Salli Martyniak
Subject: RE: LRB - 4451/P1

Salli,
I just talked with the drafter re: definitions – the drafter thinks it could be simpler to just cross reference the definitions of a CDFI and equity-like investment to federal law. She seemed to be able to find the definition of a CDFI on the website but was wondering if there is a specific cross reference to equity-like investment. In an effort to make it as simple as possible, it would be useful to know where exactly where the definition of equity-like investment came from in statutes or on the website.

Also, will you help me with the math on this? Is the below correct? If the max is 1 mil would the example change to:

3/26/2010

“eligible to receive would be \$25,000 (in exchange for a \$250,000 investment”)? She is looking over this right now with another drafting attorney and said she might call me for further clarification.

Maximum available tax credits available to allocate in calendar year (will be spread over multiple years):					
\$	1,000,000				
Assume the following re investment size and correlating tax credit:					
Investment range (min/max)		Tax credit available over two-year period			
\$	10,000	\$	150,000	10% (5% in Year One and 5% in Year Two)	
Investment range (min/max)		Tax credit available over two-year period			
\$	150,001	\$	500,000	12% (6% in Year One and 6% in Year Two)	
Assume \$10,000 five-year investment:			Assume \$175,000 five-year investment:		
Total tax credit:	\$	1,000	Total tax credit:	\$	21,000
Year One	\$	500	Year One	\$	10,500
Year Two	\$	500	Year Two	\$	10,500
Leverage factor:		10 to 1	Leverage factor:		8.333 to 1
Assume \$150,000 five-year investment:			Assume \$500,000 five-year investment:		
Total tax credit:	\$	15,000	Total tax credit:	\$	60,000
Year One	\$	7,500	Year One	\$	30,000
Year Two	\$	7,500	Year Two	\$	30,000
Leverage factor:		10 to 1	Leverage factor:		8.333 to 1
Assume AVERAGE investment size at \$100,000:			Maximum tax credits available to one investor:		
# of investments:		100	6.00%	Percentage of total tax credit availability	
Total investments:	\$	10,000,000	\$	60,000.00	Total tax credit available to one investor
Total tax credits:	\$	1,000,000			
Year One	\$	500,000	Cash penalty for early withdrawal:		
Year Two	\$	500,000	100%	If withdrawn in Year One	
Leverage factor:		10 to 1	75%	If withdrawn in Year Two	
			50%	If withdrawn in Year Three	
			25%	If withdrawn in Year Four	
			10%	If withdrawn in Year Five	

INVESTMENTS

THE NEED

A strong permanent capital base is critical for community development financial institutions (CDFIs) because it increases the organization's risk tolerance and lending flexibility, lowers the cost of capital, and protects lenders by providing a cushion against losses in excess of loan loss reserves. It allows CDFIs to better meet the needs of their markets by allowing them to engage in longer-term and riskier lending. A larger permanent capital base also provides more incentive for potential investors to lend money to a CDFI. All of these results help CDFIs grow their operations and solidify their positions as permanent institutions. Unlike for-profit corporations, which can raise equity by issuing stock, nonprofits must generally rely on grants to build this base. Traditionally, nonprofit CDFIs have raised the equity capital they need to support their lending and investing activities through capital grants from philanthropic sources, or in some instances, through retained earnings. However, building a permanent capital base through grants is a time-consuming process, and one that often generates relatively little yield. It is also a strategy that is constrained by the limited availability of grant dollars.

¹ This article is an adaptation of a National Community Capital technical assistance memo written by Laura Sparks.

² Comptroller of the Currency, Administrator of National Banks, in an opinion letter dated January 23, 1997, concerning Citibank's Equity Equivalent investment in the National Community Capital Association.

DEVELOPING A SOLUTION

In 1995, National Community Capital set out to create a new financial instrument that would function like equity for nonprofit CDFIs. To realize this goal, National Community Capital chose an experienced partner—Citibank—to help develop an equity equivalent that would serve as a model for replication by other nonprofit CDFIs and to make a lead investment in National Community Capital. The equity equivalent investment product, or EQ2, was developed through the Citibank/National Community Capital collaboration and provides a new source and type of capital for CDFIs.

THE EQUITY EQUIVALENT — WHAT IS IT?

The Equity Equivalent, or EQ2, is a capital product for community development financial institutions and their investors. It is a financial tool that allows CDFIs to strengthen their capital structures, leverage additional debt capital, and as a result, increase lending and investing in economically disadvantaged communities. Since its creation in 1996, banks and other investors have made more than \$70 million in EQ2 investments and the EQ2 has become an increasingly popular investment product with significant benefits for banks, CDFIs and economically disadvantaged communities.

The EQ2 is defined by the six attributes listed below. All six characteristics must be present; without them, this financial instrument would be treated under current bank regulatory requirements as simple subordinated debt.

1. The equity equivalent is carried as an investment on the investor's balance sheet in accordance with Generally Accepted Accounting Principles (GAAP)
2. It is a general obligation of the CDFI that is not secured by any of the CDFI's assets
3. It is fully subordinated to the right of repayment of all of the CDFI's other creditors
4. It does not give the investor the right to accelerate payment unless the CDFI ceases its normal operations (i.e., changes its line of business)
5. It carries an interest rate that is not tied to any income received by the CDFI
6. It has a rolling term and therefore, an indeterminate maturity

Like permanent capital, EQ2 enhances a CDFI's lending flexibility and increases its debt capacity by protecting senior lenders from losses. Unlike permanent capital, the investment must eventually be repaid and requires interest payments during its term, although at a rate that is often well below market. The equity equivalent is very attractive because of its equity-like character, but it does not replace true equity or permanent capital as a source of financial strength and independence. In for-profit finance, a similar investment might be structured as a form of convertible preferred stock with a coupon.

ACCOUNTING TREATMENT

An investor should treat the equity equivalent as an investment on its balance sheet in accordance with GAAP and can reflect it as an "other asset." The CDFI should account for the investment as an "other liability" and include a description of the investment's unique characteristics in the notes to its financial statements. Some CDFIs have reflected it as "subordinated debt" or as "equity equivalent." For a CDFI's senior lenders, an EQ2 investment functions like equity because it is fully subordinate to their loans and does not allow for acceleration except in very limited circumstances (i.e., material change in primary business activity, bankruptcy, unapproved merger or consolidation).

CRA TREATMENT

On June 27, 1996, the OCC issued an opinion jointly with the Federal Deposit Insurance Corporation, Office of Thrift Supervision, and the Federal Reserve Board that Citibank would receive favorable consideration under CRA regulations for its equity equivalent investment in National Community Capital. The OCC further stated that the equity equivalents would be a qualified investment that bank examiners would consider under the investment test, or alternatively, under the lending test. In some circumstances Citibank could receive consideration for part of the investment under the lending test and part under the investment test.³

This ruling has significant implications for banks interested in collaborating with nonprofit CDFIs because it entitles them to receive leveraged credit under the more important CRA lending test. The investing bank is entitled to claim a pro rata share of the incremental community development loans made by the CDFI in which the bank has invested, provided these loans benefit the bank's assessment

This special debt investment is a precedent-setting community development debenture that will permit 'equity-like' investments in not-for-profit corporations.

area(s) or a broader statewide or regional area that includes the assessment area(s). The bank's pro rata share of loans originated is equal to the percentage of "equity" capital (the sum of permanent capital and equity equivalent investments) provided by the bank.

For example, assuming a nonprofit CDFI has "equity" of \$2 million—\$1 million in the form of permanent capital and \$1 million in equity equivalents provided by a commercial bank—the bank's portion of the CDFI's "equity" is 50 percent. Now assume that the CDFI uses this \$2 million to borrow \$8 million in senior debt. With its \$10 million in capital under management, the CDFI makes \$7 million in community development loans over a two-year period. In this example, the bank is entitled to claim its pro rata share of loans originated—50 percent or \$3.5 million. Its \$1 million investment results in \$3.5 million in lending credit over two years. This favorable CRA treatment provides another form of "return on investment" for a bank

³ See the Resources section of National Community Capital's website www.communitycapital.org for a copy of the opinion letter.

in addition to the financial return. The favorable CRA treatment is a motivating factor for many banks to make an EQ2 investment.

OUTCOMES AND BENEFITS

National Community Capital estimates that approximately \$70 million in EQ2 investments have been made by at least twenty banks, including national, regional and local banks. These transactions have resulted in the following benefits:

EQ2 capital has made it easier for CDFIs to offer more responsive financing products.

With longer-term capital in the mix, CDFIs are finding they can offer new, more responsive products. Chicago Community Loan Fund, one of the first CDFIs to utilize EQ2, once had difficulty making the ten-year mini-permanent loans its borrowers needed. Instead, Chicago had to finance these borrowers with seven-year loans. With over 15% of its capital in the form of EQ2, Chicago can now routinely make ten-year loans and has even started to offer ten-year financing with automatic rollover clauses that effectively provide for a twenty-year term. Cascadia Revolving Fund, a CDFI based in Seattle, finds EQ2 a good source of capital for its quasi-equity financing and long-term, real estate-based lending, and Boston Community Capital has used the EQ2 to help capitalize its venture fund.

Very favorable cost of capital. When National Community Capital first developed the equity equivalent with Citibank, National Community Capital was uncertain about where the market would price this kind of capital. The market rate for EQ2 capital seems to be between two to four percent.

Standardized documentation for EQ2 investments. As EQ2 transactions become more common, CDFIs and banks

ABOUT THE AUTHOR



BETH LIPSON is the manager of special projects in the financial services division at National Community Capital. National Community Capital provides financing, training, consulting and advocacy services to a national network of private-sector Community Development Financial Institutions (CDFIs). Beth manages National Community Capital's collection and publication of CDFI industry data and New Markets Tax Credit efforts. She also underwrites loans and investments to CDFIs. Beth has a BA from the University of Pennsylvania and an MBA from the Wharton School. For more information about National Community Capital, visit www.communitycapital.org.

have worked to standardize the documentation, thereby lowering transaction costs, reducing complexity and expediting closing procedures. There are good examples of both short, concise EQ2 agreements and longer, more detailed agreements. Of particular note are the loan agreements crafted by Boston Community Capital and US Bank. US Bank's three-page agreement, which succinctly lays out the investment terms and conditions, is a user-friendly document that has been used with approximately 25 CDFIs.

The Boston Community Capital documents, with a 23-page loan agreement and a three-page promissory

note, are substantially longer and more detailed, but include several statements and provisions that may make a hesitant bank more likely to simply use the CDFI's standard documents. For example, the agreement specifically references the OCC opinion letter recognizing an EQ2 investment as a qualified investment and includes a formal commitment from Boston Community Capital to assist a bank investor with a Bank Enterprise Award application.⁴

Non-bank investors are beginning to utilize EQ2 investments. Although banks have a unique incentive under the CRA to invest in equity equivalents, other investors can and are beginning to use the tool as well. Chicago Community Loan Fund has secured an EQ2 from a foundation, and Boston Community Capital has secured an EQ2 from a university. While the university and foundation do not have the same CRA incentives, they are able to demonstrate leveraged impact in their communities by making an EQ2 investment—rather than a loan—similar to how banks claim leveraged lending test credit under CRA.

BANK ENTERPRISE AWARD (BEA) CREDIT FOR EQ2 INVESTMENTS

The CDFI Fund's BEA program gives banks the opportunity to apply for a cash award for investing in CDFIs. Banks typically receive a higher cash award (up to 15% of their investment) for equity-like loans in CDFIs than for typical loans (up to 11% of investment). To classify as an equity-like investment for the BEA program, EQ2 investments must meet certain characteristics, including having a minimum initial term of ten years, with a

five year automatic rolling feature (for an effective term of 15 years). The EQ2 must also meet other criteria, which are described in the Fund's Equity-Like Loan Guidance (available through the BEA page of the Fund's website: www.treas.gov/cdfi). For more information on qualifying for equity-like loans under the BEA program, visit the Fund's website or contact the CDFI Fund at 202.622.8662.

CONCLUSION

For CDFIs to grow and prosper, they will need to create more sophisticated financial products that recognize the different needs and motivations of their investors. The EQ2 is one step in this direction. Unlike investors in conventional financial markets, CDFI investors (and particularly investors in non-profit CDFIs) have few investment products to choose from. The form of investment is typically a grant or a below-market senior loan. This new investment vehicle, the EQ2, is one step in developing the financial markets infrastructure for CDFIs by creating a new innovative product which is particularly responsive to one class of investors—banks. Further development and innovation in CDFI financial markets will help increase access to and availability of capital for the industry. *CI*

ADDITIONAL RESOURCES

Please visit National Community Capital's website www.communitycapital.org for the following free documents:

- ▶ Sample Equity Equivalent Agreements
- ▶ Regulatory Opinions Letters regarding EQ2

⁴ *The Bank Enterprise Award Program is a program of the CDFI Fund that provides incentives for banks to make investments in CDFIs.*

REGULATORY OVERVIEW

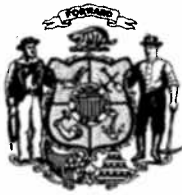
INVESTMENT TYPE: LOW-INCOME HOUSING TAX CREDITS (LIHTCs)

Definition: The equity equivalent investment product (EQ2) is a long-term deeply subordinated loan with features that make it function like equity. These features include the six attributes listed below which are characteristics that must be present under current bank regulatory restrictions. Without them, this financial instrument would be treated as simple subordinated debt. Like permanent capital, the equity equivalent investment enhances the non-profit's lending flexibility and increases the organization's debt capacity by protecting senior lenders from losses. Unlike permanent capital, investments must eventually be repaid and they require interest payments be made during their terms, although at rates that are usually below market. In for-profit finance, a similar investment might be structured as a form of "convertible preferred stock with a coupon."

Attributes:

1. The equity equivalent is carried as an investment on the investing institution's balance sheet in accordance with Generally Accepted Accounting Principles (GAAP),
2. It is a general obligation of the non-profit organization that is not secured by any of the non-profit organization's assets,
3. It is fully subordinated to the right of repayment of all of the other non-profit organization's creditors,
4. It does not give the investing institution the right to accelerate payment unless the non-profit organization ceases its normal operations (i.e., changes its line of business),
5. It carries an interest rate that is not tied to any income received by the non-profit organization, and
6. It has a rolling term and therefore, an indeterminate maturity.

CRA Applicability: On June 27, 1996, and March 28, 1997, the four federal bank regulatory agencies issued joint interpretive letters that financial institutions would receive favorable consideration under the CRA regulation for investments in equity equivalents. The June 27 letter stated that equity equivalents would be qualified investments under the investment test, or alternatively, under the lending test (the pro rata share of loans originated equal to the percentage of "equity" capital provided by the institution). In some circumstances a financial institution could receive consideration for part of the investment under the lending test and part under the investment test. (See the FFIEC interpretive letter issued June 14, 1996.)



State of Wisconsin
2009 - 2010 LEGISLATURE

P2
LRB-4451/PT
JK&TKK:cjs:rs
insert
Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in
Friday 26
Wed 3-24
due Fri 3-26
Mon 3-29
Gen Cat

SA ✓

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45
2 (2) (a) 10., 76.67 (2) and 77.92 (4); and **to create** 71.07 (5p), 71.10 (4) (ce), 71.28
3 (5p), 71.30 (3) (ce), 71.47 (5p), 71.49 (1) (ce), 76.634 and 560.295 of the statutes;
4 **relating to:** an income and franchise tax credit for investments in a community
5 development financial institution and granting rule-making authority.

Insert analysis
A and B

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:

6 **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act
7 28, is amended to read:
8 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
9 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),

SECTION 1

1 (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a
2 partnership, limited liability company, or tax-option corporation that has added that
3 amount to the partnership's, company's, or tax-option corporation's income under s.
4 71.21 (4) or 71.34 (1k) (g).

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

6 71.07 (5p) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a)

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

9 (b) *Filing claims.* Subject to the limitations provided under this subsection and
10 the requirements under s. 560.295, a claimant may claim as a credit against the tax
11 imposed under s. 71.02, up to the amount of the tax, an amount equal to 20 percent
12 of the amount that the claimant paid in the taxable year as a qualified investment
13 in a community 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 3.** 71.10 (4) (ce) of the statutes is created to read:

INS 2-13

1 71.10 (4) (ce) Community development financial institution credit under s.
2 71.07 (5p).

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

5 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
6 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w),
7 (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and passed through to partners shall
8 be added to the partnership's income.

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

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

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

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

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

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:

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.

20 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act
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,
25 limited liability company, or tax-option corporation that has added that amount to

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

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

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

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

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

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

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

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

24 71.49 (1) (ce) Community development financial institution credit under s.
25 71.47 (5p).

INS
5-12

1 **SECTION 12.** 76.634 of the statutes is created to read:

2 **76.634 Community development financial institution credit. (1) FILING**
3 **CLAIMS.** Subject to the limitations provided under this subsection and the
4 requirements under s. 560.295, an insurer may claim as a credit against the fees due
5 under s. 76.60, 76.63, 76.65, 76.66, or 76.67 an amount equal to 20 percent of the
6 amount that the insurer paid in the taxable year as a qualified investment in a
7 community development financial institution. ✓

8 **(2) CARRY-FORWARD.** If the credit under sub. (1) is not entirely offset against the
9 fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance
10 may be carried forward and credited against those fees for the following 15 years to
11 the extent that it is not offset by those fees otherwise due in all the years between
12 the year in which the expense was made and the year in which the carry-forward
13 credit is claimed.

14 **(3) LIMITATIONS.** No credit may be allowed under this section unless the insurer
15 includes with the insurer's annual return under s. 76.64 a copy of the insurer's
16 certification for tax benefits under s. 560.295 (a) (b). (5)

17 **SECTION 13.** 76.67 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is
18 amended to read:

19 76.67 (2) If any domestic insurer is licensed to transact insurance business in
20 another state, this state may not require similar insurers domiciled in that other
21 state to pay taxes greater in the aggregate than the aggregate amount of taxes that
22 a domestic insurer is required to pay to that other state for the same year less the
23 credits under ss. 76.634, 76.635, 76.636, 76.637, 76.638, and 76.655, except that the
24 amount imposed shall not be less than the total of the amounts due under ss. 76.65
25 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375% of its gross premiums,

1 as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss.
2 76.634, 76.635, 76.636, 76.637, 76.638, and 76.655 against that total, and except that
3 the amount imposed shall not be less than the amount due under s. 601.93.

4 **SECTION 14.** 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is
5 amended to read:

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

22 **SECTION 15.** 560.295 of the statutes is created to read:

23 **560.295 Certification of investments in community development**
24 **financial institutions. (1) DEFINITIONS.** In this section:

SECTION 15

satisfies all of the following \oplus \oplus 10th entity

1 (a) "Community development financial institution" means an entity that is
2 certified by the fund under 12 CFR 1805.201 as meeting the eligibility requirements
3 for a community development financial institution under 12 CFR 1805.200 and
4 1805.201 (b).

Insert
8-5

****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?

STET:
leave as
typed

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

7 (c) 1. Subject to subd. 2., "qualified investment" means any of the following
8 having a value of at least \$50,000^{\$10,000} and made for a period of time^e of at least 60 months:

Insert 8-12

9 a. A deposit or loan that pays no interest to the person who made the deposit
10 or loan.

11 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)?

12 ~~b. c.~~ (c) An equity-like debt instrument that conforms to specifications established
13 by the fund.

Can you provide a citation to the specifications established by the fund?

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

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

****NOTE: Do you want to require a CDFI that receives a qualified investment to submit reports to Commerce indicating how the CDFI uses the qualified investments that

REGISTRATION AND REPORTING REQUIRED

it receives from persons certified by the department? If so, is there any additional information the CDFI should provide to Commerce?

- 1 (2) CERTIFICATION. ^{(a) Subject to the limits under sub (4) ↑} The department may certify a person under this section to
- 2 claim tax credits under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634 if the person
- 3 applies to the department on a form prepared by the department and submits
- 4 evidence satisfactory to the department that the person has made a qualified
- 5 investment in a community development financial institution ^{that is registered under par (b)}

INSERT
9-6

****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 Commerce may certify in any one year? 5. The amount of tax credits that Commerce may certify over the life of the program?

- 6 (3) ELIGIBILITY. (a) Except as provided in par. (b), a person certified under sub.
- 7 (a) is eligible to claim ^{tax credits} a tax credit under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634.
- 8 (b) A person certified under sub. (2) ^(a) who withdraws a qualified investment from
- 9 a community development financial institution prior to the date of withdrawal
- 10 specified in the written notice provided to the person under sub. (4) ^{(5) ✓} (b) and who does
- 11 not immediately reinvest the proceeds of the qualified investment as a qualified
- 12 investment in another community development financial institution shall [...].

Insert
9-13

****NOTE: The California program requires a person who withdraws early to pay a "tax." I have provided this paragraph as an incomplete placeholder for your consideration. Do you want to include any such tax or recapture provision in this bill? If so, what would be the tax or amount recaptured?

Insert
9-12
A

- X (13) ⁽⁵⁾ (4) DUTIES OF THE DEPARTMENT. The department shall do all of the following:
- 14 (a) Notify the department of revenue of every certification issued under sub.
- 15 (2) ^(a) and include the dates on which any such certification is granted and the date on
- 16 which the applicant may withdraw a qualified investment made in a community

1 development financial institution, which date shall be no earlier than the first day
2 of the 61st month after the qualified investment was made.

3 (b) Provide to each applicant ^{for certification} under sub. (2) (a) dated written notice indicating
4 the department's decision to grant or deny certification. If certification is granted,
5 the notice shall include the date on which the applicant may withdraw the qualified
6 investment, which date shall be no earlier than the first day of the 61st month after
7 the qualified investment was made.

8 (d) ~~(c)~~ Promulgate rules to administer this program.

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

9 **SECTION 16. Initial applicability.**

10 (1) This act first applies to taxable years beginning on January 1 of the year
11 in which this subsection takes effect, except that if this subsection takes effect after
12 July 31 this act first applies to taxable years beginning on January 1 of the year
13 following the year in which this subsection takes effect.

14 (END)

(c) Notify the department of revenue of each community development financial institution
registered under sub. (2) (b).

1 **Insert analysis A**

Under this bill, the Department of Commerce (Commerce) may certify a person who makes a qualified investment in a registered community development financial institution (CDFI) to receive a credit against state income and franchise taxes and against license fees paid by insurers. The bill defines a CDFI as an entity that is organized under the laws of this state and has been certified by the ~~CDFI~~ fund as meeting certain eligibility requirements ~~for a CDFI under federal law~~. The bill permits Commerce to register a CDFI that applies to Commerce and complies with annual reporting requirements. ~~The bill defines "fund" as the~~ Community Development Financial Institutions Fund established under federal law. ~~12 USC~~

~~103 (a)~~ The bill defines a "qualified investment" as a ~~loan, deposit,~~ or equity-like loan of at least \$10,000 that is made for a minimum of 60 months and over which the CDFI retains complete control for the duration of the investment period. Federal law defines an "equity-like loan" as a loan provided to a CDFI and made on such terms that it has characteristics of an equity investment which meets such criteria as set forth in the applicable notice of funds availability published by the Fund in the Federal Register, that announces the availability of funds for a particular funding round.

Commerce may revoke the registration of a CDFI that fails to comply with annual reporting requirements or that no longer meets the eligibility requirement for certification by the fund. Commerce may certify up to \$1,000,000 in tax credits in any ~~fiscal~~ year.

2 **Insert 8-5**

3 ✓ 2. The entity is organized under the laws of this state.

4 **Insert 8-12**

5 ✓ b. An equity-like loan. In this subd. 1. b., "equity-like loan" has the meaning
6 given in ¹²15 CFR 1806.103 (z).

7 **Insert 9-6**

8 (b) 1. The department may register a community development financial
9 institution if the community development financial institution applies to the
10 department on a form prepared by the department. The department may revoke the
11 registration of a community development financial institution if the entity no longer
12 meets the eligibility requirements for certification as a community development

As defined in Federal laws

calendar

loan or deposit that pays no interest

parents
move

1 financial institution by the fund or fails to comply with the requirements of this
2 paragraph.

3 2. A community development financial institution registered under this section
4 shall annually, within 60 days after the last day of the preceding calendar year,
5 submit a report containing financial statements of the community development
6 financial institution, prepared according to generally accepted accounting
7 principles^e and including all of the following information for the preceding calendar
8 year to the department:

9 a. The information and documentation submitted to the fund as required under
10 12 CFR 1805.804 (e).

to investments made

****NOTE: My concern about requiring the filing of this information is that it appears to be tied to awards made by the CDFI Fund, not by persons certified under this section. Am I incorrect? Or do I cite to the wrong reporting requirements under federal law?

11 b. Any other information the department considers relevant.

12 **Insert 9-12A**

43

13 add to the person's liability for taxes imposed under s. 71.02, 71.23, or 71.42, or fees
14 imposed under s. 76.60, 76.63, 76.65, 76.66, or 76.67, one of the following percentages
15 of the amount of the credits received under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or
16 76.634: ✓

17 a. If the withdrawal occurs during the first year after the date on which the
18 person made the qualified investment, 100 percent.

19 b. If the withdrawal occurs during the 2nd year after the date on which the
20 person made the qualified investment, 75 percent.

21 c. If the withdrawal occurs during the 3rd year after the date on which the
22 person made the qualified investment, 50 percent.

1 d. If the withdrawal occurs during the 4th year after the date on which the
2 person made the qualified investment, 25 percent.

3 e. If the withdrawal occurs during the 5th year after the date on which the
4 person made the qualified investment, 10 percent.

5 2. If the registration of a community development financial institution in which
6 a person certified under sub. (2) (a) has made a qualified investment is revoked by
7 the department or if the entity no longer meets the eligibility requirements for
8 certification as a community development financial institution by the fund, the
9 person certified under sub. (2) (a) may do any of the following:

10 a. Subject to the liabilities for taxes or fees (required under) subd. 1., withdraw
11 the qualified investment.

12 b. ^{Immediately} Reinvest the proceeds of the qualified investment as a qualified investment
13 in another community development ^{Financial} institution for the duration of the investment
14 period.

15 **Insert 9-13**

16 (4) LIMITS. No more than \$1,000,000 in tax benefits may be claimed under this
17 section in any calendar year.

④ ^{cc} *** NOTE: Would it be possible or likely that a CDFI would lose
its certification from the fund but that a taxpayer would
elect to keep the investment with the non-certified CDFI?
If so, should the taxpayer be required to pay the fees or
repay the tax credits or provided under sub (3)(b)(c)?

Insert analysis B

A person certified to receive tax credits may claim, in two consecutive years, five percent of the person's investment, if the investment is at least \$10,000, but not more than \$150,000, or six percent of the person's investment, if the investment is more than \$150,000, but not more than \$500,000. If the person withdraws the qualified investment from the CDFI before the end of the investment period and does not reinvest the qualified investment in another CDFI, the person must repay the credit amounts that the person received by adding those amounts to the person's tax or fee liability in a subsequent year. However, the amount that the person must repay depends on when the person withdraws the investment during the investment period. The amount that the person must repay decreases the longer the person holds the investment during the investment period.

Insert 2 - 13

1 in each taxable year for 2 consecutive years, beginning with the taxable year
2 in which the investment is made, an amount equal to 5 percent of the claimant's
3 qualified investment in a community development financial institution, if the
4 investment is at least \$10,000, but not more than \$150,000, or 6 percent of the
5 claimant's qualified investment in a community development financial institution,
6 if the investment is more than \$150,000, but not more than \$500,000

Insert 3 - 25

7 in each taxable year for 2 consecutive years, beginning with the taxable year
8 in which the investment is made, an amount equal to 5 percent of the claimant's
9 qualified investment in a community development financial institution, if the
10 investment is at least \$10,000, but not more than \$150,000, or 6 percent of the
11 claimant's qualified investment in a community development financial institution,
12 if the investment is more than \$150,000, but not more than \$500,000

Insert 5 - 12

13 in each taxable year for 2 consecutive years, beginning with the taxable year
14 in which the investment is made, an amount equal to 5 percent of the claimant's

1 qualified investment in a community development financial institution, if the
2 investment is at least \$10,000, but not more than \$150,000, or 6 percent of the
3 claimant's qualified investment in a community development financial institution,
4 if the investment is more than \$150,000, but not more than \$500,000

Insert 6 - 7

5 in each taxable year for 2 consecutive years, beginning with the taxable year
6 in which the investment is made, an amount equal to 5 percent of the insurer's
7 qualified investment in a community development financial institution, if the
8 investment is at least \$10,000, but not more than \$150,000, or 6 percent of the
9 claimant's qualified investment in a community development financial institution,
10 if the investment is more than \$150,000, but not more than \$500,000

insurer's

Kreye, Joseph

From: Rundell, Lois
Sent: Tuesday, March 30, 2010 10:57 AM
To: Kreye, Joseph
Cc: Kuczenski, Tracy
Subject: FW: Comments on Proposed Legislation

Joe,
I understand Tracy is out of the office and that you'll be able to field these last few changes.

Re: "equity like" investment - it is my understanding that an equity-like investment is for 10 years or longer. It is Salli and her lawyer's opinion that this specification is not necessary because most investments will not be longer than 5 years. We believe that it would make the draft simpler to take out the "equity-like investment" and just specify that it must be longer than 60 months. Do you have any problem with this? In effect the tax credit is not meant (although 10 year investment is great) to incent investments of long term - 10- year - investments but rather just the initial investment.

Please see further comments in below email from Mellissa Scholz. Let me know what questions you have.

Is it too much to request to get this back by the end of the day today or tomorrow?

Lois Rundell

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

From: Salli Martyniak [mailto:SalliM@forwardci.org]
Sent: Tuesday, March 30, 2010 8:16 AM
To: Rundell, Lois; Melissa Auchard Scholz
Subject: FW: Comments on Proposed Legislation

Lois, please see the comments below. There is also another suggestion and that is to remove all references to equity-like loans - it seems to complicate the issue rather than simplify it. I will be available to talk after 9:00 - OK?

Best,
Salli

Salli F. Martyniak, President
Forward Community Investments
608/257-3863 or 866/687-1468 (w)
608/516-0879 (m)
608/257-2372 (f)
sallim@forwardci.org

Visit our website at www.forwardci.org to learn more about Forward Community Investments.

From: npstrategies@gmail.com [mailto:npstrategies@gmail.com] **On Behalf Of** Melissa Auchard Scholz
Sent: Monday, March 29, 2010 10:18 PM

3/30/2010

To: Salli Martyniak
Subject: Comments on Proposed Legislation

Hi Salli, in follow up to our phone call tonight, I have the following comments on the proposed legislation:

Use funds exclusively in Wisconsin - on p. 9, Section 15, I propose that language is added to require the CDFIs to use any investments acquired through this credit exclusively for Wisconsin based projects. It may be necessary to use the term "qualified community development financial institution" and define that term as to include the currently proposed 560.295(1)(a)1 & 2 and then add "3" to limit the use of the investment tax credit funds to Wisconsin-based projects. OR this requirement could be added to the definition of "qualified investment" in 560.295(1)(c)(2).

Addition to definition of "qualified investment" under 560.295(1)(c)(2) - I propose adding to the end of this section: "and the investment shall be subject to any additional terms and conditions of the investment agreement between the community development financial institution and the investor, which are not inconsistent with the requirements of this section."

Furnishing financial statements - I propose that 560.295(2)(b)(2) be modified to require financial statements within 90 days (rather than 60).

Recertification process- on p. 10, I agree with the drafter's concern that this certification relates only to award recipients. I cannot find any specific reference to ongoing certification requirements, except the Material Events form, which can be found at http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=9.

As we discussed, the rules re: ongoing certification are changing. Here is what Treasury's website says about *recertification* as of now but I don't find anything about annual obligations for CDFIs that are not "Awardees":

Recertification

1. My organization's CDFI certification will expire soon, what should we do?

The CDFI Fund is currently in the process of revising its recertification process. Prior to your organization's certification expiration date, your Authorized Representative should receive a letter notifying him/her that the expiration date has been extended indefinitely until further notice. The CDFI Fund will contact all CDFIs with extended certification expirations dates once a revised recertification process is in place, and will provide those CDFIs with instructions as to how to proceed.

Do you think the Material Event certification process would be sufficient??? How about requiring the Material Event form along with a certification to Commerce that the Fund meets the requirements of 560.295 (1)(a) 1, 2 & 3 (if added as suggested above)?

Re: revocation issues in 560.295(3)(b)(2), I propose adding the following on Line 19 after "department": "and such revocation has not been cured within 120 days"
 And add to the end of Line 19 after "eligibility requirements": "for more than 120 days"

That's it for now. Please let me know if you need anything else from me.

Thanks,
 Melissa

--

Melissa Auchard Scholz
 Scholz Nonprofit Law LLC

3/30/2010

612 W. Main Street, Suite 302
Madison, WI 53703
melissa@scholznnonprofitlaw.com
608/268-0076(o) 608/852-5043 (m)
<http://scholznnonprofitlaw.com/>

Under U.S. Treasury rules, I am required to inform you that any advice in this communication was not intended or written to be used, and cannot be used, to avoid any government penalties that may be imposed on a taxpayer.

This message may contain privileged or confidential information. If you are not the intended recipient of this message, you may not make any use of, or rely in any way on, this information, and you should destroy this message and notify the sender by reply email.



P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

59-

in tier 3-30

due filed 3-31

inserts

Gen Cat

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45
 2 (2) (a) 10., 76.67 (2) and 77.92 (4); and **to create** 71.07 (5p), 71.10 (4) (ce), 71.28
 3 (5p), 71.30 (3) (ce), 71.47 (5p), 71.49 (1) (ce), 76.634 and 560.295 of the statutes;
 4 **relating to:** an income and franchise tax credit for investments in a community
 5 development financial institution and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under this bill, the Department of Commerce (Commerce) may certify a person who makes a qualified investment in a registered community development financial institution (CDFI) to receive a credit against state income and franchise taxes and against license fees paid by insurers. The bill defines a CDFI as an entity that is organized under the laws of this state and has been certified by the Community Development Financial Institutions Fund established under federal law (fund) as meeting certain eligibility requirements. The bill permits Commerce to register a CDFI that applies to Commerce and complies with annual reporting requirements. The bill defines a "qualified investment" as a loan or deposit that pays no interest, or an equity-like loan, as defined in federal law, of at least \$10,000 that is made for a minimum of 60 months and over which the CDFI retains complete control for the duration of the investment period.

Commerce may revoke the registration of a CDFI that fails to comply with annual reporting requirements or that no longer meets the eligibility requirement for certification by the fund. Commerce may certify up to \$1,000,000 in tax credits in any calendar year.

\$500,000

A person certified to receive tax credits may claim, in two consecutive years, five percent of the person's qualified investment, if the investment is at least \$10,000, but not more than \$150,000, or six percent of the person's qualified investment, if the investment is more than \$150,000, but not more than \$500,000. If the person withdraws the qualified investment from the CDFI before the end of the investment period and does not reinvest the qualified investment in another CDFI, the person must repay a portion of the credit amounts that the person received by adding the portion to the person's tax or fee liability in a subsequent year. However, the portion that the person must repay depends on when the person withdraws the investment during the investment period. The portion that the person must repay decreases the longer the person holds the investment during the investment period.

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:

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),
5 (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a
6 partnership, limited liability company, or tax-option corporation that has added that
7 amount to the partnership's, company's, or tax-option corporation's income under s.
8 71.21 (4) or 71.34 (1k) (g).

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

10 71.07 **(5p)** COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a)
11 *Definition.* In this subsection, "claimant" means a person who files a claim under this
12 subsection.

13 (b) *Filing claims.* Subject to the limitations provided under this subsection and
14 the requirements under s. 560.295, a claimant may claim as a credit against the tax
15 imposed under s. 71.02, up to the amount of the tax, in each taxable year for 2

1 consecutive years, beginning with the taxable year in which the investment is made,
2 an amount equal to 5 percent of the claimant's qualified investment in a community
3 development financial institution, if the investment is at least \$10,000, but not more
4 than \$150,000, or 6 percent of the claimant's qualified investment in a community
5 development financial institution, if the investment is more than \$150,000, but not
6 more than \$500,000.

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

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

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

18 71.10 (4) (ce) Community development financial institution credit under s.
19 71.07 (5p).

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

22 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
23 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w),
24 (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and passed through to partners shall
25 be added to the partnership's income.

SECTION 5

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

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

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

10 71.28 (5p) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a)
11 *Definition.* In this subsection, "claimant" means a person who files a claim under this
12 subsection.

13 (b) *Filing claims.* Subject to the limitations provided under this subsection and
14 the requirements under s. 560.295, a claimant may claim as a credit against the tax
15 imposed under s. 71.23, up to the amount of the tax, in each taxable year for 2
16 consecutive years, beginning with the taxable year in which the investment is made,
17 an amount equal to 5 percent of the claimant's qualified investment in a community
18 development financial institution, if the investment is at least \$10,000, but not more
19 than \$150,000, or 6 percent of the claimant's qualified investment in a community
20 development financial institution, if the investment is more than \$150,000, but not
21 more than \$500,000.

22 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
23 corporations may not claim the credit under this subsection, but the eligibility for,
24 and the amount of, the credit are based on their payment of amounts under par. (b).
25 A partnership, limited liability company, or tax-option corporation shall compute

1 the amount of credit that each of its partners, members, or shareholders may claim
2 and shall provide that information to each of them. Partners, members of limited
3 liability companies, and shareholders of tax-option corporations may claim the
4 credit in proportion to their ownership interests.

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

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

8 71.30 (3) (ce) Community development financial institution credit under s.
9 71.28 (5p).

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

12 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
13 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
14 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p),
15 and (8r) and passed through to shareholders.

16 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act
17 28, is amended to read:

18 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
19 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3w), (5e), (5f),
20 (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a partnership,
21 limited liability company, or tax-option corporation that has added that amount to
22 the partnership's, limited liability company's, or tax-option corporation's income
23 under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47
24 (1), (3), (3t), (4), (4m), and (5).

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

1 **71.47 (5p) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT.** (a)
2 *Definition.* In this subsection, “claimant” means a person who files a claim under this
3 subsection.

4 (b) *Filing claims.* Subject to the limitations provided under this subsection and
5 the requirements under s. 560.295, a claimant may claim as a credit against the tax
6 imposed under s. 71.43, up to the amount of the tax, in each taxable year for 2
7 consecutive years, beginning with the taxable year in which the investment is made,
8 an amount equal to 5 percent of the claimant’s qualified investment in a community
9 development financial institution, if the investment is at least \$10,000, but not more
10 than \$150,000, or 6 percent of the claimant’s qualified investment in a community
11 development financial institution, if the investment is more than \$150,000, but not
12 more than \$500,000.

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

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

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

24 **71.49 (1) (ce)** Community development financial institution credit under s.
25 71.47 (5p).

1 **SECTION 12.** 76.634 of the statutes is created to read:

2 **76.634 Community development financial institution credit. (1) FILING**
3 **CLAIMS.** Subject to the limitations provided under this subsection and the
4 requirements under s. 560.295, an insurer may claim as a credit against the fees due
5 under s. 76.60, 76.63, 76.65, 76.66, or 76.67 in each taxable year for 2 consecutive
6 years, beginning with the taxable year in which the investment is made, an amount
7 equal to 5 percent of the insurer's qualified investment in a community development
8 financial institution, if the investment is at least \$10,000, but not more than
9 \$150,000, or 6 percent of the insurer's qualified investment in a community
10 development financial institution, if the investment is more than \$150,000, but not
11 more than \$500,000.

12 **(2) CARRY-FORWARD.** If the credit under sub. (1) is not entirely offset against the
13 fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance
14 may be carried forward and credited against those fees for the following 15 years to
15 the extent that it is not offset by those fees otherwise due in all the years between
16 the year in which the expense was made and the year in which the carry-forward
17 credit is claimed.

18 **(3) LIMITATIONS.** No credit may be allowed under this section unless the insurer
19 includes with the insurer's annual return under s. 76.64 a copy of the insurer's
20 certification for tax benefits under s. 560.295 (5) (b).

21 **SECTION 13.** 76.67 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is
22 amended to read:

23 **76.67 (2)** If any domestic insurer is licensed to transact insurance business in
24 another state, this state may not require similar insurers domiciled in that other
25 state to pay taxes greater in the aggregate than the aggregate amount of taxes that

1 a domestic insurer is required to pay to that other state for the same year less the
2 credits under ss. 76.634, 76.635, 76.636, 76.637, 76.638, and 76.655, except that the
3 amount imposed shall not be less than the total of the amounts due under ss. 76.65
4 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375% of its gross premiums,
5 as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss.
6 76.634, 76.635, 76.636, 76.637, 76.638, and 76.655 against that total, and except that
7 the amount imposed shall not be less than the amount due under s. 601.93.

8 **SECTION 14.** 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is
9 amended to read:

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

3. The entity uses qualified investments for which a person may be certified for tax credits under sub. (2) for projects that are based in this state.

1 SECTION 15. 560.295 of the statutes is created to read:

2 **560.295 Certification of investments in community development**

3 **financial institutions. (1) DEFINITIONS.** In this section:

4 (a) "Community development financial institution" means an entity that
5 satisfies all of the following:

6 1. The entity is certified by the fund under 12 CFR 1805.201 as meeting the
7 eligibility requirements for a community development financial institution under 12
8 CFR 1805.200 and 1805.201 (b).

9 2. The entity is organized under the laws of this state.

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

12 (c) 1. Subject to subd. 2., "qualified investment" means any of the following
13 having a value of at least \$10,000 and made for a period of at least 60 months.

14 a. A deposit or loan that pays no interest to the person who made the deposit
15 or loan if the deposit or loan has

16 b. An equity-like loan. In this subd. 1. b., "equity-like loan" has the meaning
17 given in 12 CFR 1806.103 (z).

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

22 (2) CERTIFICATION; REGISTRATION AND REPORTING REQUIRED. (a) Subject to the
23 limits under sub. (4), the department may certify a person under this section to claim
24 tax credits under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634 if the person applies
25 to the department on a form prepared by the department and submits evidence

but the investment may be subject to any additional terms and conditions of the investment agreement between the community development financial institution and the investor which are not inconsistent with the requirements of this section

1 satisfactory to the department that the person has made a qualified investment in
2 a community development financial institution that is registered under par. (b).

3 (b) 1. The department may register a community development financial
4 institution if the community development financial institution applies to the
5 department on a form prepared by the department. The department may revoke the
6 registration of a community development financial institution if the entity no longer
7 meets the eligibility requirements for certification as a community development
8 financial institution by the fund or fails to comply with the requirements of this
9 paragraph.

10 2. A community development financial institution registered under this section
11 shall annually, within ⁹⁰60 days after the last day of the preceding calendar year,
12 submit a report containing financial statements of the community development
13 financial institution, prepared according to generally accepted accounting principles
14 and including all of the following information for the preceding calendar year to the
15 department:

16 a. The information and documentation submitted to the fund as required under
17 12 CFR 1805.804 (e).

NOTE: My concern about requiring the filing of this information is that it appears to be tied to awards made by the CDFI Fund, not to investments made by persons certified under this section. Am I incorrect? Or do I cite to the wrong reporting requirements under federal law?

18 b. Any other information the department considers relevant.

19 (3) ELIGIBILITY. (a) Except as provided in par. (b), a person certified under sub.
20 (2) (a) is eligible to claim tax credits under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or
21 76.634.

22 (b) 1. A person certified under sub. (2) (a) who withdraws a qualified investment
23 from a community development financial institution prior to the date of withdrawal

11

14

INSERT 10-17

C

x

y

x

1 specified in the written notice provided to the person under sub. (5) (b) and who does
2 not immediately reinvest the proceeds of the qualified investment as a qualified
3 investment in another community development financial institution shall add to the
4 person's liability for taxes imposed under s. 71.02, 71.23, or 71.43, or fees imposed
5 under s.76.60, 76.63, 76.65, 76.66, or 76.67, one of the following percentages of the
6 amount of the credits received under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634:

7 a. If the withdrawal occurs during the first year after the date on which the
8 person made the qualified investment, 100 percent.

9 b. If the withdrawal occurs during the 2nd year after the date on which the
10 person made the qualified investment, 75 percent.

11 c. If the withdrawal occurs during the 3rd year after the date on which the
12 person made the qualified investment, 50 percent.

13 d. If the withdrawal occurs during the 4th year after the date on which the
14 person made the qualified investment, 25 percent.

15 e. If the withdrawal occurs during the 5th year after the date on which the
16 person made the qualified investment, 10 percent.

for more than 120 consecutive days

17 2. If the registration of a community development financial institution in which
18 a person certified under sub. (2) (a) has made a qualified investment is revoked by
19 the department) or if the entity no longer meets the eligibility requirements for
20 certification as a community development financial institution by the fund, the
21 person certified under sub. (2) (a) may do any of the following:

fails to meet

22 a. Subject to subd. 1., withdraw the qualified investment.

23 b. Immediately reinvest the proceeds of the qualified investment as a qualified
24 investment in another community development financial institution for the duration
25 of the investment period.

and not reinstated by the department within 120 days following the revocation,

4451/P3
JK

Insert 10-17

a.

(9) (b.) the material events certification form required by the U.S. Department of the Treasury.

(9) (c.) Certification; in the form and manner prescribed

(b.) by the department; that the community development financial institution satisfies the ^{criteria} ~~requirements~~ under sub. (1)(a) 1. to 3.

end of insert 10-17



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4451/03

JK&TKK:cjs:rs

stays

Handwritten initials and signature

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA-

*in filed 3-31 PM
due thru 4-1 AM*

regen.

1 AN ACT *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45
2 (2) (a) 10., 76.67 (2) and 77.92 (4); and *to create* 71.07 (5p), 71.10 (4) (ce), 71.28
3 (5p), 71.30 (3) (ce), 71.47 (5p), 71.49 (1) (ce), 76.634 and 560.295 of the statutes;
4 **relating to:** an income and franchise tax credit for investments in a community
5 development financial institution and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under this bill, the Department of Commerce (Commerce) may certify a person who makes a qualified investment in a registered community development financial institution (CDFI) to receive a credit against state income and franchise taxes and against license fees paid by insurers. The bill defines a CDFI as an entity that is organized under the laws of this state and has been certified by the Community Development Financial Institutions Fund established under federal law (fund) as meeting certain eligibility requirements. The bill permits Commerce to register a CDFI that applies to Commerce and complies with annual reporting requirements. The bill defines a "qualified investment" as a loan or deposit that pays no interest of at least \$10,000 that is made for a minimum of 60 months and over which the CDFI retains complete control for the duration of the investment period.

Commerce may revoke the registration of a CDFI that fails to comply with annual reporting requirements or that no longer meets the eligibility requirement for certification by the fund. Commerce may certify up to \$500,000 in tax credits in any calendar year.

A person certified to receive tax credits may claim, in two consecutive years, five percent of the person's qualified investment, if the investment is at least \$10,000, but not more than \$150,000, or six percent of the person's qualified investment, if the investment is more than \$150,000, but not more than \$500,000. If the person withdraws the qualified investment from the CDFI before the end of the investment period and does not reinvest the qualified investment in another CDFI, the person must repay a portion of the credit amounts that the person received by adding the portion to the person's tax or fee liability in a subsequent year. However, the portion that the person must repay depends on when the person withdraws the investment during the investment period. The portion that the person must repay decreases the longer the person holds the investment during the investment period.

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:

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),
5 (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a
6 partnership, limited liability company, or tax-option corporation that has added that
7 amount to the partnership's, company's, or tax-option corporation's income under s.
8 71.21 (4) or 71.34 (1k) (g).

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

10 71.07 (5p) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a)
11 *Definition.* In this subsection, "claimant" means a person who files a claim under this
12 subsection.

13 (b) *Filing claims.* Subject to the limitations provided under this subsection and
14 the requirements under s. 560.295, a claimant may claim as a credit against the tax
15 imposed under s. 71.02, up to the amount of the tax, in each taxable year for 2

1 consecutive years, beginning with the taxable year in which the investment is made,
2 an amount equal to 5 percent of the claimant's qualified investment in a community
3 development financial institution, if the investment is at least \$10,000, but not more
4 than \$150,000, or 6 percent of the claimant's qualified investment in a community
5 development financial institution, if the investment is more than \$150,000, but not
6 more than \$500,000.

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

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

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

18 71.10 (4) (ce) Community development financial institution credit under s.
19 71.07 (5p).

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

22 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
23 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w),
24 (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and passed through to partners shall
25 be added to the partnership's income.

SECTION 5

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

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

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

10 71.28 (5p) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a)
11 *Definition.* In this subsection, "claimant" means a person who files a claim under this
12 subsection.

13 (b) *Filing claims.* Subject to the limitations provided under this subsection and
14 the requirements under s. 560.295, a claimant may claim as a credit against the tax
15 imposed under s. 71.23, up to the amount of the tax, in each taxable year for 2
16 consecutive years, beginning with the taxable year in which the investment is made,
17 an amount equal to 5 percent of the claimant's qualified investment in a community
18 development financial institution, if the investment is at least \$10,000, but not more
19 than \$150,000, or 6 percent of the claimant's qualified investment in a community
20 development financial institution, if the investment is more than \$150,000, but not
21 more than \$500,000.

22 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
23 corporations may not claim the credit under this subsection, but the eligibility for,
24 and the amount of, the credit are based on their payment of amounts under par. (b).
25 A partnership, limited liability company, or tax-option corporation shall compute

1 the amount of credit that each of its partners, members, or shareholders may claim
2 and shall provide that information to each of them. Partners, members of limited
3 liability companies, and shareholders of tax-option corporations may claim the
4 credit in proportion to their ownership interests.

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

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

8 71.30 (3) (ce) Community development financial institution credit under s.
9 71.28 (5p).

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

12 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
13 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
14 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p),
15 and (8r) and passed through to shareholders.

16 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act
17 28, is amended to read:

18 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
19 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3w), (5e), (5f),
20 (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a partnership,
21 limited liability company, or tax-option corporation that has added that amount to
22 the partnership's, limited liability company's, or tax-option corporation's income
23 under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47
24 (1), (3), (3t), (4), (4m), and (5).

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

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

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

(b) Filing claims. Subject to the limitations provided under this subsection and the requirements under s. 560.295, a claimant may claim as a credit against the tax imposed under s. 71.43, up to the amount of the tax, in each taxable year for 2 consecutive years, beginning with the taxable year in which the investment is made, an amount equal to 5 percent of the claimant's qualified investment in a community development financial institution, if the investment is at least \$10,000, but not more than \$150,000, or 6 percent of the claimant's qualified investment in a community development financial institution, if the investment is more than \$150,000, but not more than \$500,000.

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

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

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

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

1 **SECTION 12.** 76.634 of the statutes is created to read:

2 **76.634 Community development financial institution credit. (1) FILING**
3 **CLAIMS.** Subject to the limitations provided under this subsection and the
4 requirements under s. 560.295, an insurer may claim as a credit against the fees due
5 under s. 76.60, 76.63, 76.65, 76.66, or 76.67 in each taxable year for 2 consecutive
6 years, beginning with the taxable year in which the investment is made, an amount
7 equal to 5 percent of the insurer's qualified investment in a community development
8 financial institution, if the investment is at least \$10,000, but not more than
9 \$150,000, or 6 percent of the insurer's qualified investment in a community
10 development financial institution, if the investment is more than \$150,000, but not
11 more than \$500,000.

12 **(2) CARRY-FORWARD.** If the credit under sub. (1) is not entirely offset against the
13 fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance
14 may be carried forward and credited against those fees for the following 15 years to
15 the extent that it is not offset by those fees otherwise due in all the years between
16 the year in which the expense was made and the year in which the carry-forward
17 credit is claimed.

18 **(3) LIMITATIONS.** No credit may be allowed under this section unless the insurer
19 includes with the insurer's annual return under s. 76.64 a copy of the insurer's
20 certification for tax benefits under s. 560.295 (5) (b).

21 **SECTION 13.** 76.67 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is
22 amended to read:

23 **76.67 (2)** If any domestic insurer is licensed to transact insurance business in
24 another state, this state may not require similar insurers domiciled in that other
25 state to pay taxes greater in the aggregate than the aggregate amount of taxes that

1 a domestic insurer is required to pay to that other state for the same year less the
2 credits under ss. ~~76.634~~, 76.635, 76.636, 76.637, 76.638, and 76.655, except that the
3 amount imposed shall not be less than the total of the amounts due under ss. 76.65
4 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375% of its gross premiums,
5 as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss.
6 ~~76.634~~, 76.635, 76.636, 76.637, 76.638, and 76.655 against that total, and except that
7 the amount imposed shall not be less than the amount due under s. 601.93.

8 **SECTION 14.** 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is
9 amended to read:

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

1 **SECTION 15.** 560.295 of the statutes is created to read:

2 **560.295 Certification of investments in community development**

3 **financial institutions. (1) DEFINITIONS.** In this section:

4 (a) "Community development financial institution" means an entity that
5 satisfies all of the following:

6 1. The entity is certified by the fund under 12 CFR 1805.201 as meeting the
7 eligibility requirements for a community development financial institution under 12
8 CFR 1805.200 and 1805.201 (b).

9 2. The entity is organized under the laws of this state.

10 3. The entity uses qualified investments for which a person may be certified for
11 tax credits under sub. (2) (a) for projects that are based in this state.

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

14 (c) 1. Subject to subd. 2., "qualified investment" means a deposit or loan that
15 pays no interest to the person who made the deposit or loan, if the deposit or loan has
16 a value of at least \$10,000 and is made for a period of at least 60 months.

17 2. A community development financial institution that receives an investment
18 described under subd. 1. shall have complete control over the entire investment
19 amount, including any interest earned on the investment, for the duration of the
20 investment period, but the investment may be subject to any additional terms and
21 conditions of the investment agreement between the community development
22 financial institution and the investor which are not inconsistent with the
23 requirements of this section.

24 **(2) CERTIFICATION; REGISTRATION AND REPORTING REQUIRED.** (a) Subject to the
25 limits under sub. (4), the department may certify a person under this section to claim

1 tax credits under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634 if the person applies
2 to the department on a form prepared by the department and submits evidence
3 satisfactory to the department that the person has made a qualified investment in
4 a community development financial institution that is registered under par. (b).

5 (b) 1. The department may register a community development financial
6 institution if the community development financial institution applies to the
7 department on a form prepared by the department. The department may revoke the
8 registration of a community development financial institution if the entity no longer
9 meets the eligibility requirements for certification as a community development
10 financial institution by the fund or fails to comply with the requirements of this
11 paragraph.

12 2. A community development financial institution registered under this section
13 shall annually, within 90 days after the last day of the preceding calendar year,
14 submit a report containing financial statements of the community development
15 financial institution, prepared according to generally accepted accounting principles
16 and including all of the following information for the preceding calendar year, to the
17 department:

18 a. The material events certification form required by the U.S. department of
19 the treasury.

20 b. Certification, in the form and manner prescribed by the department, that the
21 community development financial institution satisfies the criteria under sub. (1) (a)
22 1. to 3.

23 c. Any other information the department considers relevant.

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

4 (b) 1. A person certified under sub. (2) (a) who withdraws a qualified investment
5 from a community development financial institution prior to the date of withdrawal
6 specified in the written notice provided to the person under sub. (5) (b) and who does
7 not immediately reinvest the proceeds of the qualified investment as a qualified
8 investment in another community development financial institution shall add to the
9 person's liability for taxes imposed under s. 71.02, 71.23, or 71.43, or fees imposed
10 under s. 76.60, 76.63, 76.65, 76.66, or 76.67, one of the following percentages of the
11 amount of the credits received under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634:

12 a. If the withdrawal occurs during the first year after the date on which the
13 person made the qualified investment, 100 percent.

14 b. If the withdrawal occurs during the 2nd year after the date on which the
15 person made the qualified investment, 75 percent.

16 c. If the withdrawal occurs during the 3rd year after the date on which the
17 person made the qualified investment, 50 percent.

18 d. If the withdrawal occurs during the 4th year after the date on which the
19 person made the qualified investment, 25 percent.

20 e. If the withdrawal occurs during the 5th year after the date on which the
21 person made the qualified investment, 10 percent.

22 2. If the registration of a community development financial institution in which
23 a person certified under sub. (2) (a) has made a qualified investment is revoked by
24 the department, and not reinstated by the department within 120 days following the
25 revocation, or if the entity fails to meet the eligibility requirements for more than 120

1 consecutive days for certification as a community development financial institution
2 by the fund, the person certified under sub. (2) (a) may do any of the following:

3 a. Subject to subd. 1., withdraw the qualified investment.

4 b. Immediately reinvest the proceeds of the qualified investment as a qualified
5 investment in another community development financial institution for the duration
6 of the investment period.

7 **(4) LIMITS.** No more than \$500,000 in tax benefits may be claimed under this
8 section in any calendar year.

9 **(5) DUTIES OF THE DEPARTMENT.** The department shall do all of the following:

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

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

20 (c) Notify the department of revenue of each community development financial
21 institution registered under sub. (2) (b).

22 (d) Promulgate rules to administer this program.

23 **SECTION 16. Initial applicability.**

24 (1) This act first applies to taxable years beginning on January 1 of the year
25 in which this subsection takes effect, except that if this subsection takes effect after

1 July 31 this act first applies to taxable years beginning on January 1 of the year
2 following the year in which this subsection takes effect.

3 (END)

Kreye, Joseph

From: Rundell, Lois
Sent: Wednesday, March 31, 2010 5:14 PM
To: Kreye, Joseph; Basford, Sarah
Subject: RE: Draft review: LRB 09-4451/P3 Topic: Tax credit for investments in community development financial institutions

This is ready to go – what do I need to do to finalize it to send out for co-sponsorship?

Lois Rundell

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

From: Basford, Sarah
Sent: Wednesday, March 31, 2010 2:45 PM
To: Rep.Hilgenberg
Subject: Draft review: LRB 09-4451/P3 Topic: Tax credit for investments in community development financial institutions

Following is the PDF version of draft LRB 09-4451/P3.

Kreye, Joseph

From: Rundell, Lois
Sent: Wednesday, March 31, 2010 12:44 PM
To: Kreye, Joseph
Subject: FW: Comments on Proposed Legislation

Joe, 2 more real issues...and I'm sorry, these should be the last comments headed your way. Let me know if you have questions about this.

If at all possible it would be ideal to have this by the end of the day but I realize with these two additional issues that may be difficult. When do you think the earliest is that we could get this?

Thank you!

1)

"The information and documentation submitted to the fund as required under 12 CFR 1805.804 (e).

****NOTE FROM THE DRAFTER: My concern about requiring the filing of this information is that it appears to be tied to awards made by the CDFI Fund, not to investments made by persons certified under this section. Am I incorrect? Or do I cite to the wrong reporting requirements under federal law?"

REPLY TO THE DRAFTER: The concern is valid and citing this federal regulation would apply only to CDFIs receiving awards from the CDFI Fund in any given calendar year. Can this section just be deleted and we could work with Department of Commerce IF the legislation is approved to determine the annual reporting requirements and how to best link those requirements with the CDFI Fund?

2)

RE: the \$1,000,000, according to the legislation:

(4) LIMITS. No more than \$1,000,000 in tax benefits may be claimed under this section in any calendar year.

This should be \$1 million over 2 years, so \$500,000 per year.

Lois Rundell

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

From: Rundell, Lois
Sent: Tuesday, March 30, 2010 10:57 AM
To: Kreye, Joseph
Cc: Kuczenski, Tracy
Subject: FW: Comments on Proposed Legislation

Joe,

I understand Tracy is out of the office and that you'll be able to field these last few changes.

Re: "equity like" investment - it is my understanding that an equity-like investment is for 10 years or longer. It is Salli and her lawyer's opinion that this specification is not necessary because most investments will not be longer

3/31/2010

than 5 years. We believe that it would make the draft simpler to take out the "equity-like investment" and just specify that it must be longer than 60 months. Do you have any problem with this? In effect the tax credit is not meant (although 10 year investment is great) to incent investments of long term – 10- year – investments but rather just the initial investment.

Please see further comments in below email from Mellissa Scholz. Let me know what questions you have.

Is it too much to request to get this back by the end of the day today or tomorrow?

Lois Rundell

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

From: Salli Martyniak [mailto:SalliM@forwardci.org]
Sent: Tuesday, March 30, 2010 8:16 AM
To: Rundell, Lois; Melissa Auchard Scholz
Subject: FW: Comments on Proposed Legislation

Lois, please see the comments below. There is also another suggestion and that is to remove all references to equity-like loans – it seems to complicate the issue rather than simplify it. I will be available to talk after 9:00 – OK?

Best,
Salli

Salli F. Martyniak, President
Forward Community Investments
608/257-3863 or 866/687-1468 (w)
608/516-0879 (m)
608/257-2372 (f)
sallim@forwardci.org

Visit our website at www.forwardci.org to learn more about Forward Community Investments.

From: npstrategies@gmail.com [mailto:npstrategies@gmail.com] **On Behalf Of** Melissa Auchard Scholz
Sent: Monday, March 29, 2010 10:18 PM
To: Salli Martyniak
Subject: Comments on Proposed Legislation

Hi Salli, in follow up to our phone call tonight, I have the following comments on the proposed legislation:

Use funds exclusively in Wisconsin - on p. 9, Section 15, I propose that language is added to require the CDFIs to use any investments acquired through this credit exclusively for Wisconsin based projects. It may be necessary to use the term "qualified community development financial institution" and define that term as to include the currently proposed 560.295(1)(a)1 & 2 and then add "3" to limit the use of the investment tax credit funds to Wisconsin-based projects. OR this requirement could be added to the definition of "qualified investment" in 560.295(1)(c)(2).

Addition to definition of "qualified investment" under 560.295(1)(c)(2) - I propose adding to the end of this section: "and the investment shall be subject to any additional terms and conditions of the

3/31/2010

investment agreement between the community development financial institution and the investor, which are not inconsistent with the requirements of this section.

Furnishing financial statements - I propose that 560.295(2)(b)(2) be modified to require financial statements within 90 days (rather than 60).

Recertification process- on p. 10, I agree with the drafter's concern that this certification relates only to award recipients. I cannot find any specific reference to ongoing certification requirements, except the Material Events form, which can be found at http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=9.

As we discussed, the rules re: ongoing certification are changing. Here is what Treasury's website says about *recertification* as of now but I don't find anything about annual obligations for CDFIs that are not "Awardees":

Recertification

1. My organization's CDFI certification will expire soon, what should we do?

The CDFI Fund is currently in the process of revising its recertification process. Prior to your organization's certification expiration date, your Authorized Representative should receive a letter notifying him/her that the expiration date has been extended indefinitely until further notice. The CDFI Fund will contact all CDFIs with extended certification expirations dates once a revised recertification process is in place, and will provide those CDFIs with instructions as to how to proceed.

Do you think the Material Event certification process would be sufficient??? How about requiring the Material Event form along with a certification to Commerce that the Fund meets the requirements of 560.295 (1)(a) 1, 2 & 3 (if added as suggested above)?

Re: revocation issues in 560.295(3)(b)(2), I propose adding the following on Line 19 after "department": "and such revocation has not been cured within 120 days"
And add to the end of Line 19 after "eligibility requirements": "for more than 120 days"

That's it for now. Please let me know if you need anything else from me.

Thanks,
Melissa

--

Melissa Auchard Scholz
Scholz Nonprofit Law LLC
612 W. Main Street, Suite 302
Madison, WI 53703
melissa@scholznprofitlaw.com
608/268-0076(o) 608/852-5043 (m)
<http://scholznprofitlaw.com/>

Under U.S. Treasury rules, I am required to inform you that any advice in this communication was not intended or written to be used, and cannot be used, to avoid any government penalties that may be imposed on a taxpayer.

This message may contain privileged or confidential information. If you are not the intended recipient of this message, you may not make any use of, or rely in any way on, this information, and you should destroy this message and notify the sender by reply email.

Barman, Mike

From: Rundell, Lois

Sent: Tuesday, April 06, 2010 2:19 PM

To: LRB.Legal

Subject: Draft Review: LRB 09-4451/1 Topic: Tax credit for investments in community development financial institutions

Please send to 5N, Rep Hilgenberg's office. Thank you!

Please Jacket LRB 09-4451/1 for the ASSEMBLY.