

STATE OF NEVADA

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Governor



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DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE DIRECTOR

**Minutes of LCB File No. R036-23 Workshop
December 15, 2023, at 11:00 a.m.**

On Friday, December 15, 2023, the Director's Office of the Nevada Department of Business and Industry (B&I) held the subject public workshop to solicit comments from interested persons concerning the proposed amendment of regulations concerning the Nevada New Markets Jobs Act (NMJA) and whether the proposal (LCB File No. R036-23) is likely to impose a direct and significant burden upon a small business or directly restrict the formation, operation, or expansion of a small business. The workshop was conducted in accordance with NRS 233B.061 and interested persons were able to participate in-person (B&I Nevada State Business Center at 3300 West Sahara Avenue, Suite 400, Nevada Room, Las Vegas, Nevada) or remotely via phone and Webex. An asterisk (*) in the attendance list indicates remote attendance.

B&I Staff in attendance:

Kristopher Sanchez, Director
Marcel Schaerer, Deputy Director
Perry Faigin, Deputy Director (*)
Carrie Foley, Program Officer
Chris Weiss, Management Analyst
Erica Arnold, Information Technology

Other Individuals in attendance:

Alex Pike (*)
Areli Alarcon, Carrara Nevada (*)
Chip Windisch, PETROS Pace Finance (*)
Claire Munoz (*)
Dillon Luther, Baker Tilly (*)
Karen Schnog, City of Las Vegas (*)
Kathleen Taylor, Nevada Women's Business Center (*)
Matt Malcom, PETROS Pace Finance (*)
Nick Vander Poel, Flynn Giudici (*)
Robert Kim, Ballard Spahr (*)
Ryan Congrove, Stonehenge Capital (*)
Sandra Moore, Advantage Capital (*)
Stefan Kershow, The Bernstein Companies (*)
Nic Steele, Access Community Capital

1. Open Workshop: R036-23.

Chris Weiss, B&I Management Analyst, called the workshop to order at approximately 11:00 a.m. and indicated the Department would wait a few minutes longer to allow additional people to log in or show up in person. Carrie Foley, B&I Program Officer, asked several remote attendees to identify themselves for the record.

At approximately 11:05 a.m., Mr. Weiss proceeded with the workshop by describing specifically how individuals could log in to participate, how they could attend in-person, and how they could submit written comments by email. He identified B&I staff who were present in-person for the workshop, including Director Dr. Kristopher Sanchez. He then read a note of workshop instructions pertaining to cell phones, the sign-in sheet, and the availability of workshop materials in the Nevada Room.

2. Public Comments – public comments may be limited to three minutes per speaker.

Mr. Weiss indicated pursuant to the posted agenda, and before presenting and discussing the proposed regulation, the Department would first take public comment from anyone wishing to do so. He said comments could address any matter of importance and need not be limited to the proposed regulation, then asked if there were any public comments, first among those in attendance at the Nevada Room.

Nic Steele, Executive Director, Access Community Capital, introduced himself and stated Access Community Capital was a local Nevada community loan fund whose mission is to support the creation of strong communities and economic development by making strategic investments in small businesses, primarily in underserved communities throughout the state. He said the organization had seen firsthand the detrimental impact of high-interest loans and predatory debt on good cash-flowing businesses. He said the Legislature had done exceptional work to address these situations by supporting innovative and effective approaches to providing business owners with reasonable alternatives. He said Access Community Capital was excited and eager for the opportunity to participate in the newly enacted impact qualified NMJA program and supported the Department's proposal to integrate the impact qualified allocation statute into the regulations. He said the \$30 million impact qualified allocation would go to well-deserving minority, women, veteran, and LGBTQ owned businesses, which was the focal point at Access Community Capital. He said their portfolio was currently comprised of over 65% women owned and over 60% minority owned businesses and believed the impact qualified program would allow for additional leverage. He stated Access Community Capital had a dedicated team ready to begin deploying those investments. He concluded by saying that as a mentor of business owners and a lender to small businesses, he saw the challenges companies are facing and said the impact qualified allocation provided a pathway to make investments into quality companies. He said this type of capital was transformational, not only for the businesses and the business owners, but for their communities as well.

Seeing no further comments from in-person attendees at the Nevada Room, Mr. Weiss then asked if there was anyone online wishing to make any public comments.

Sandra Moore, Managing Director and Chief Impact Officer, Advantage Capital, introduced herself. She indicated she was there to speak on behalf of the success of the current Nevada New Markets program and the opportunity that exists to drive additional capital to the places most needed in the state of Nevada with the new law. She said Advantage Capital looked forward to the regulatory framework, noting that besides driving capital to where it would otherwise not go, which is what the Nevada NMJA allowed them to do, the important thing was to be accountable for the outcomes. Consequently, Advantage Capital looked forward to the regulatory framework which would make them attentive to those outcomes. She concluded by stating Advantage Capital was honored to work with B&I over the years and looked forward to doing the same with this new and expanded program, and they would be paying close attention to meeting and exceeding the expectations in the new regulations.

Mr. Weiss asked if there was anyone else online wishing to make any public comments. No comments were made. He then asked if there was anyone on the phone wishing to make public comments. No comments were made.

3. Presentation and Discussion of Proposed Regulation – for possible action.

Mr. Weiss proceeded to an overview and discussion of the proposed regulation LCB File No. R036-23. He said this past summer in response to final passage of Nevada Senate Bill 240 by the Nevada Legislature and the bill's approval by Governor Lombardo, B&I reviewed Chapter 231A of the Nevada Administrative Code (NAC) to identify changes needed to accommodate provisions in the new law and related requirements of the Nevada NMJA Program. He noted the Department submitted draft language to the Legislative Counsel Bureau (LCB) in Aug/Sept. 2023, which LCB reviewed and revised, resulting in the proposed regulation under consideration.

He said the proposed regulation did three basic things:

- First, it incorporated the concept of “impact qualified” investment – as that type of investment was defined and described by Senate Bill 240 – into the existing regulatory framework of the Nevada New Markets Jobs Act. Where previous NAC language and concepts referred only to “qualified” investment, language had been added to include “impact qualified” investment – the intent being to ensure administrative standards and processes applied to the new “impact qualified” activities the same way they applied to “qualified” activities.
- Second, it increased the timeframe for the Director to review and approve proposed investments from 21 days to 28 days. This was thought important given (1) the general increase in proposed investments B&I had seen from participating development entities under the 2019 NMJA program allocation, and (2) the likely increase in administrative reviews required by creation of a second, “impact qualified” category of investment.
- Third, it incorporated language from a previous temporary regulation that needed to be made permanent to ensure ongoing clarity for participating CDEs regarding the use of special purpose entities.

He then summarized each section of the proposed regulation as follows:

- Section 1 stated NAC Chapter 231A was to be amended by adding to it the language of Sections 2 and 3 of the proposed regulation.
- Section 2 stipulated the Department would recapture credit from an impact qualified community development entity if the entity ceased to qualify as one pursuant to the definition in SB240. This was tied to Section 10 of the proposed regulation (dealing with notice to B&I of recapture circumstances) and reflected language from LCB; Mr. Weiss noted B&I's initial draft had said that, as it related to impact qualified CDEs, B&I would interpret recapture circumstances cited in NRS 231A.250 to include a circumstance where the impact qualified CDE no longer met the definition for one in SB240. He said this was intended to cover a gap in the notice and recapture standards created by SB240 between qualified and impact qualified CDEs. Under the current NMJA program, one circumstance subject to recapture [NRS 231A.250(1)] was when CDEs with federal tax credit available to their NMJA qualified equity investments had any of that federal credit recaptured "under section 45D of the Internal Revenue Code of 1986, 26 U.S.C. § 45D." One of the triggers in the Federal law for that was no longer meeting the definition of a CDE.

He clarified that SB240 introduced three ways to qualify as an impact qualified CDE, two of which the existing Federal citation basically covered. However, a third way to qualify was as "a partnership, limited-liability company or corporation that has its principal business operations in this State and is engaged in lending or other investment activity." That definition, which was not captured by the Federal citation, was covered by this change.

- Section 3 added and made permanent the language from a previously adopted and since expired temporary regulation (LCB File No. T004-20A) to facilitate the creation of qualified low-income community investments by allowing capital or equity investment loans to be made directly or indirectly to a qualified low-income community business through one or more special purpose entities.
- Section 4 applied the existing NAC Chapter 231A standards for "*Application for designation as qualified equity investment: Required provisions*" to impact qualified CDEs.
- Section 5 applied the existing NAC Chapter 231A standards for "*Notice to Department of change of names of entities eligible to use tax credits*" to transfers of impact qualified equity investments and to impact qualified CDEs.
- Section 6 applied the existing NAC Chapter 231A standards for "*Additional information to be provided to Department with evidence of receipt of cash investment*" to impact qualified CDEs and impact qualified equity investments.
- Section 7 applied the existing NAC Chapter 231A standards for "*Approval required to accept qualified low-income community investments from more than one qualified community development entity*" to impact qualified active low-income community businesses and to include investments from impact qualified CDEs, while subsection (3) increased B&I's

window for granting or denying a written request for approval from 21 calendar days to 28 calendar days.

- Section 8 applied the existing NAC Chapter 231A standards for “*Notice to Department of qualified low-income community investments*” to impact qualified CDEs and impact qualified equity investments.
- Section 9 applied the existing NAC Chapter 231A standards for “*Recapture: Amount of tax credits Department will recapture*” to impact qualified CDEs and impact qualified equity investments.
- Section 10 applied the existing NAC Chapter 231A standards for “*Recapture: Notice to Department*” to impact qualified CDEs and impact qualified equity investments. Subsection (2) further required notice to the Department by a qualified CDE or impact qualified CDE not later than 30 days after experiencing a recapture event described in Section 2 of the proposed regulation – where tax credit was claimed for an impact qualified equity investment made in an impact qualified CDE that ceased to qualify as such a CDE before the last credit allowance date for the investment.
- Section 11 applied the existing NAC Chapter 231A standards for “*Recapture: Provisions of subsection 3 of NRS 231A.250 interpreted*” to impact qualified equity investments and impact qualified CDEs. Mr. Weiss noted the referenced NRS subsection pertained to minimum equity investment thresholds, timing, maintenance, and reinvestment standard, all of which remained unchanged.
- Section 12 applied the existing NAC Chapter 231A standards for “*Recapture: Provisions of subsection 4 of NRS 231A.250 interpreted*” to impact qualified equity investments, impact qualified CDEs, and impact qualified active low-income community businesses. Mr. Weiss noted the referenced NRS subsection pertained to a 25% cap on any one development entity’s overall investment into any one active low-income community business.
- Section 13 applied the existing NAC Chapter 231A standards for “*Submission of annual report by qualified community development entity*” to impact qualified equity investments, impact qualified CDEs, and impact qualified active low-income community businesses, while modifying the standards to include additional specific data required by SB240 for qualified low-income community investments relating to impact qualified equity investments, and pertaining to women, disabled veterans, persons who are lesbian, gay, bisexual or transgender or members of a racial or ethnic minority group. Subsection (2)(a) revised existing language concerning the required submittal date to make it more definitive and reflect current practice (“not earlier than October 1” and “not later than October 31”).
- Section 14 amended the address of the Director to give correct information.
- Section 15 provided transitory language tied to (1) Section 3 of the proposed regulation and its language from the former temporary regulation, and (2) use in Section 15 of the definition of “qualified low-income community investment” as modified by SB240 to include impact qualified active low-income community businesses.

- Section 16 provided transitory language tied to (1) B&I's timing and handling of applications for certification of qualified equity investments and impact qualified equity investments as authorized by SB240, and (2) relevant definitions used in Section 16.

Having completed the preceding overview of the proposed regulation, Mr. Weiss solicited comments from anyone in-person, online, or by phone who had comments they wished to make on the proposed regulation.

There were no comments from in-person attendees at the Nevada Room. One person online had comments.

Kathleen Taylor, Nevada Women's Business Center and Nevada Business Opportunity Fund, introduced herself. She asked if B&I could provide an actual concrete example of a qualified equity investment or a company that is authorized to provide investments in or loans to certain businesses through one or more special purpose entities. She asked if B&I could provide a concrete example of potentially who or what kind of entity investment that covers and what type of businesses would be eligible for this type of investment and how the tax credits would apply. She said she had, to a degree, some understanding of legislative jargon; however, for the majority who did not, she asked if B&I could provide an actual concrete example of what was being talked about as it related to the proposed regulation.

Mr. Weiss replied by indicating special purpose entities pertained to the way some community development entities structured their investments and the flow of allocations to businesses. Concerning the types of businesses eligible for NMJA investment, he noted some of the general considerations used by community development entities, then cited a few examples from the program. He indicated he could send Ms. Taylor copies of the program's biennial reports to the Nevada Legislature, which offered more detail on the program and identified the diverse businesses that had been receiving investment. Ms. Taylor said that would be wonderful.

Mr. Weiss asked if anyone else online or by phone had comments on the proposed regulation. There were no comments.

4. Public Comments – public comments may be limited to three minutes per speaker.

Mr. Weiss indicated pursuant to the posted agenda, and before closing the workshop and adjourning, the Department would again take public comment from anyone wishing to do so. He said comments could address any matter of importance and need not be limited to the proposed regulation, then asked if there were any public comments, first among those in attendance at the Nevada Room, then online, and lastly by phone. There were no comments.

5. Close Workshop: R036-23.

The workshop ended and was adjourned at approximately 11:36 a.m.