

STATE OF NEVADA

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Governor



DR. KRISTOPHER SANCHEZ  
Director

PERRY FAIGIN  
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Deputy Directors

DEPARTMENT OF BUSINESS AND INDUSTRY  
OFFICE OF THE DIRECTOR

**Minutes of LCB File No. R036-23 Hearing  
February 27, 2024, at 11:00 a.m.**

On Tuesday, February 27, 2024, the Director's Office of the Nevada Department of Business and Industry (B&I) held the subject public hearing to receive comments from interested persons regarding the adoption and amendment of regulations that pertain to chapter 231A of the Nevada Administrative Code (NAC) and the Nevada New Markets Jobs Act (NMJA). The hearing 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 Schaeerer, Deputy Director  
Perry Faigin, Deputy Director (\*)  
Cara Brown, ALJ, Nevada Consumer Affairs  
Carrie Foley, Program Officer  
Chris Weiss, Management Analyst  
Lauren Lozano, Management Analyst  
Mark Pasek, Management Analyst  
Erica Arnold, Information Technology

**Other Individuals in attendance:**

Areli Alarcon, Carrara Nevada (\*)  
Colleen Platt, Platt Law Group (\*)  
Catherine Blume, Enhanced Capital (\*)  
Hannah Branch, Ferrari Reeder (\*)  
Knox Clark, AMCREF (\*)  
Clifford Kenwood, AMCREF (\*)  
Nic Steele, Access Community Capital (\*)  
Kelly Swanson, City of Las Vegas (\*)  
Sandy Tsutahara, Cristo Rey St. Viator (\*)

### **1. Open Hearing: R036-23.**

Chris Weiss, B&I Management Analyst, called the hearing 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.

The hearing proceeded at approximately 11:05 a.m. Mr. Weiss described specifically how individuals could participate online via Webex, by phone, or in person. He introduced B&I staff who were present in-person for the hearing, including Director Dr. Kristopher Sanchez. He then read a note of hearing instructions pertaining to cell phones, the sign-in sheet, and the availability of hearing materials in the Nevada Room. It is noted for these minutes that no one other than B&I staff attended the hearing in-person at the physical location.

### **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. No comments were made in-person, online, or by phone.

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

Mr. Weiss provided an overview and discussion of proposed regulation LCB File No. R036-23. He said in response to final passage of Nevada Senate Bill 240 by the 2023 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), reflected language from LCB, and 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.

Mr. Weiss said 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 [Nevada] 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. 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 this overview of the proposed regulation, Mr. Weiss discussed consideration of written comments. He described the workshop process by which the Department had solicited comments, including the public postings made and the email distribution to lists maintained by the Department's Financial Institutions Division for NRS 675 and CDFI licensees, and by the Director's Office for the New Markets Jobs Act program. He said no written comments had been received prior to the workshop and that, at the workshop, comments were made by three individuals, two of whom expressed general support for the program and one of whom requested some program information. He said no comments were made or received suggesting changes to the proposed regulation and referred interested parties to the workshop minutes for details.

He said the same process of email notice, posting, and solicitation of comments was performed by staff on January 17, 2024, for today's hearing and that, during the 40 calendar days prior to today's hearing, no comments on the proposed regulation or suggested changes to the proposed regulation had been received.

Mr. Weiss then opened the floor to any comments or discussion concerning the proposed regulation. There were no comments from any attendees in-person, online, or by phone.

#### **4. Adoption and Amendment of Proposed Regulation R036-36 – for possible action.**

Pursuant to the posted agenda and having received no comments concerning the proposed regulation, Dr. Kristopher Sanchez, Director of the Nevada Department of Business and Industry, adopted regulation R036-23 as that regulation is described in the LCB version dated November 14, 2023 ([LCB File No. R036-23RP1](#)).

#### **5. Public Comments – public comments may be limited to three minutes per speaker.**

Pursuant to the posted agenda, and before closing the hearing and adjourning, Mr. Weiss said 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. He then asked if there were any public comments in-person, online, or by phone. There were no comments.

#### **6. Close Hearing: R036-23.**

The hearing ended and was adjourned at approximately 11:28 a.m.