

**ADOPTED REGULATION OF THE DIRECTOR OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R103-13

Effective June 23, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1 and 3-15, NRS 231A.150; §2, NRS 231A.150 and 232.520.

A REGULATION relating to economic development; providing for certain authority, duties and responsibilities under the Nevada New Markets Jobs Act to be exercised or performed by the Director of the Department of Business and Industry or a designee of the Director; setting forth additional requirements for an application for certification of a qualified equity investment; requiring a qualified community development entity to notify the Department of specified information concerning tax credits, qualified low-income community investments and recapture events; requiring the approval of the Department before certain investments; interpreting certain provisions of the Nevada New Markets Jobs Act; requiring a qualified community development entity to submit specified annual reports to the Director; providing for the treatment of applications for certification of qualified equity investments which are received by the Department on or before October 1, 2013; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Senate Bill No. 357 of the 2013 Legislative Session enacted the Nevada New Markets Jobs Act, codified as chapter 231A of NRS, a new chapter in NRS, which allows certain business entities to receive a credit against the premium tax imposed on insurance companies in exchange for making a qualified equity investment in a qualified community development entity. In accordance with the provisions of the Nevada New Markets Jobs Act, the qualified community development entity will, in turn, use the money from a qualified equity investment to make qualified low-income community investments in qualified active low-income community businesses. This regulation expands upon, interprets and adds to the provisions set forth in the Nevada New Markets Jobs Act.

Section 2 of this regulation provides for the authority, duties and responsibilities of the Director of the Department of Business and Industry under the Nevada New Markets Jobs Act and this regulation, and the authority, duties and responsibilities of the Department under the Nevada New Markets Jobs Act and this regulation, to be exercised or performed by the Director or a designee of the Director.

Section 3 of this regulation adds requirements, in addition to those in subsection 1 of NRS 231A.230, for an application for certification of a qualified equity investment. Such an application could be made by a qualified community development entity seeking to have an equity investment or long-term debt security designated as a qualified equity investment so that the qualified community development entity could use the money from that qualified equity investment to make further investments, known as qualified low-income community investments, in qualified active low-income community businesses. Alternatively, such an application could be made by a qualified community development entity seeking to obtain certified qualified equity investment authority for the purpose of transferring that authority, pursuant to subsection 6 of NRS 231A.230, to one or more other qualified community development entities which could then use the money from the qualified equity investment to make qualified low-income community investments in qualified active low-income community businesses.

Section 4 of this regulation adds to the requirement in subsection 3 of NRS 231A.230 concerning notice to the Department of changes in the names of entities eligible to use tax credits, by requiring the notice to be given within 30 days after the date of the event which caused the change.

Section 5 of this regulation adds requirements, in addition to those in subsection 7 of NRS 231A.230, to the notice that a qualified community development entity or its transferee must provide to the Department when the entity or transferee receives a cash investment pursuant to a qualified equity investment.

Section 6 of this regulation requires a qualified active low-income community business to obtain approval from the Department before accepting qualified low-income community investments from more than one qualified community development entity.

Section 7 of this regulation requires a qualified community development entity to send certain notifications to the Department regarding qualified low-income community investments made by the qualified community development entity.

Section 8 of this regulation interprets the terms “cash proceeds” and “proceeds” for the purposes of certain provisions of NRS 231A.250 relating to the recapture of tax credits by the Department.

Section 9 of this regulation limits the amount of the recapture of tax credits, for the purposes of NRS 231A.250, when a qualified community development entity transfers all or a portion of its certified qualified equity investment authority to another qualified community development entity.

Section 10 of this regulation requires a qualified community development entity to notify the Department of certain events which relate to the recapture of tax credits pursuant to subsection 1 of NRS 231A.250. **Section 10** requires this notification to be made not later than 30 days after the event.

Section 11 of this regulation interprets the provisions of subsection 3 of NRS 231A.250, which require that 85 percent of a qualified equity investment be invested within 12 months after

the issuance of the qualified equity investment and the 85-percent level of investment be maintained as specified in the statute. **Section 11** provides that the 85-percent requirement applies to the original amount of the qualified equity investment if the qualified community development entity which obtained certification of the qualified equity investment does not transfer any portion of its certified qualified equity investment authority to another qualified community development entity. However, if the qualified community development entity which obtained certification of the qualified equity investment transfers all or a portion of its certified qualified equity investment authority to another qualified community development entity, then the 85-percent requirement applies separately to each applicable portion of the qualified equity investment. (As one example, if the original amount of a qualified equity investment is \$20 million and the qualified community development entity which obtained certification of the qualified equity investment then transfers the authority to invest \$10 million to a subsidiary qualified community development entity while retaining the authority to invest the remaining \$10 million, then the original qualified community development entity and the subsidiary each must invest at least \$8.5 million to satisfy the 85-percent requirement without regard to the amount the other qualified community development entity invested. In other words, if the original qualified community development entity invested the entire \$10 million over which it retained authority then, pursuant to the Department's interpretation in **section 11**, the subsidiary would still need to invest \$8.5 million rather than only \$7 million even though 85 percent of the original \$20 million would be only \$17 million. As a second example, if the original amount of a qualified equity investment is \$20 million and the qualified community development entity which obtained certification of the qualified equity investment then transfers the authority to invest the \$20 million to two subsidiary qualified community development entities, each subsidiary receiving authority to invest \$10 million, then each subsidiary must invest at least \$8.5 million to satisfy the 85-percent requirement without regard to the amount the other subsidiary invested. In other words, if the first subsidiary qualified community development entity invested the entire \$10 million over which it received authority then, pursuant to the Department's interpretation in **section 11**, the second subsidiary would still need to invest \$8.5 million rather than only \$7 million even though 85 percent of the original \$20 million would be only \$17 million.)

Section 12 of this regulation interprets the provisions of subsection 4 of NRS 231A.250, which limit to 25 percent the amount of a qualified equity investment which a qualified community development entity may invest in any one qualified active low-income community business without triggering the recapture of tax credits. **Section 12** provides that the 25-percent limitation applies only to the original amount of a qualified equity investment, so that if portions of the authority to invest the qualified equity investment are transferred to other qualified community development entities, then the full 25 percent of the original amount of the qualified equity investment may still be invested in one qualified active low-income community business. (For example, if the original amount of a qualified equity investment is \$40 million and the qualified community development entity which obtained certification of the qualified equity investment then transfers the authority to invest the \$40 million to four subsidiary qualified community development entities such that each of the subsidiaries has authority to invest \$10 million, then any one of the subsidiaries may invest its entire \$10 million in one qualified active low-income community business provided that none of the other three subsidiaries invests any of the remaining \$30 million in that qualified active low-income community business.)

Section 13 of this regulation requires a qualified community development entity to make annual reports to the Director concerning applicable qualified equity investments.

Section 14 of this regulation authorizes a person to obtain from the Director clarification of or information concerning the Nevada New Markets Jobs Act and this regulation.

Section 15 of this regulation provides for the treatment of applications for certification of qualified equity investments which were received by the Department on or before October 1, 2013.

Section 1. Chapter 231A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. 1. *Any authority granted to the Director and any duty or responsibility assigned to the Director by any provision of this chapter or chapter 231A of NRS, including, without limitation, pursuant to subsection 2, may be exercised or performed by any employee of the Department who is designated by the Director for that purpose.*

2. Any authority granted to the Department and any duty or responsibility assigned to the Department by any provision of this chapter or chapter 231A of NRS may be exercised or performed by the Director.

Sec. 3. *In addition to the requirements set forth in subsection 1 of NRS 231A.230, an application submitted pursuant to that subsection must:*

- 1. Be in writing;*
- 2. Be made on a form provided for that purpose by the Department;*
- 3. Include, with regard to the qualified community development entity which is submitting the application:*
 - (a) The name of the qualified community development entity;*
 - (b) Any name under which the qualified community development entity does or expects to do business;*

(c) The federal employer identification number of the qualified community development entity;

(d) The state in which the qualified community development entity is incorporated or otherwise organized, if applicable;

(e) The date upon which the qualified community development entity was incorporated or otherwise organized, if applicable;

(f) The mailing address of the qualified community development entity;

(g) The county in which the mailing address of the qualified community development entity is located;

(h) The physical address of the qualified community development entity;

(i) Every telephone number, facsimile number, electronic mail address and Internet address of the qualified community development entity; and

(j) The name and title of the natural person who is the primary contact for the qualified community development entity; and

4. Include any other information required by the Department.

Sec. 4. For the purposes of subsection 3 of NRS 231A.230, if the names of the entities that are eligible to use the tax credits change as the result of a transfer of a qualified equity investment or an allocation pursuant to NRS 231A.210, the qualified community development entity shall notify the Department of the change not later than 30 days after the date of the transfer or allocation, as applicable.

Sec. 5. A qualified community development entity or transferee pursuant to subsection 6 of NRS 231A.230 which provides to the Department, in accordance with subsection 7 of NRS

231A.230, evidence of the receipt of a cash investment must include with the evidence provided to the Department:

1. Identifying information for any entity which will use the tax credits earned as a result of the issuance of the qualified equity investment, including, without limitation, any information previously submitted in accordance with paragraph (e) of subsection 1 of NRS 231A.230;

2. Notification of any change to the names of the entities which are eligible to use the tax credits as required pursuant to subsection 3 of NRS 231A.230 and section 4 of this regulation; and

3. Any other information required by the Department.

Sec. 6. 1. A qualified active low-income community business shall not accept qualified low-income community investments from more than one qualified community development entity unless the qualified active low-income community business first obtains approval from the Department.

2. To request approval from the Department for the purposes of subsection 1, a qualified active low-income community business must submit to the Department at the address set forth in section 14 of this regulation a written request for approval on a form prescribed by the Department.

3. The Department will grant or deny a written request for approval submitted in accordance with subsection 2 not later than 21 calendar days after the date on which the Department receives the written request. If the Department does not grant or deny the written request within 21 calendar days after the Department receives the written request, the request shall be deemed approved.

4. The Department will approve a written request pursuant to subsection 3 unless the Department determines that it is in the best interests of this State to deny the written request.

Sec. 7. 1. Not later than 30 days after the date on which a qualified community development entity makes a qualified low-income community investment, the qualified community development entity shall notify the Department of the qualified low-income community investment.

2. Not later than 30 days after the date on which a qualified community development entity makes a qualified low-income community investment which causes 85 percent or more of the amount of a qualified equity investment regarding which the qualified community development entity has certified qualified equity investment authority to have been invested in qualified low-income community investments in this State, in accordance with the requirements of subsection 3 of NRS 231A.250 as interpreted by the Department pursuant to section 11 of this regulation, the qualified community development entity shall notify the Department that 85 percent or more of the applicable amount of the qualified equity investment has been invested in qualified low-income community investments in this State.

3. A notification made in accordance with this section must include any other information required by the Department.

Sec. 8. For the purposes of NRS 231A.250, the Department will interpret the terms:

1. "Cash proceeds," as used in subsection 4 of NRS 231A.250; and

2. "Proceeds," as used in paragraph (b) of subsection 3 of NRS 231A.250,

↪ to have the meaning ascribed to "purchase price" in NRS 231A.100.

Sec. 9. For the purposes of NRS 231A.250, if a qualified community development entity transfers, pursuant to subsection 6 of NRS 231A.230, all or a portion of its certified qualified

equity investment authority regarding a qualified equity investment to another qualified community development entity, and:

1. The transferee causes a recapture of tax credits pursuant to NRS 231A.250, the Department will recapture only those tax credits relating to the portion of the qualified equity investment regarding which the transferee received certified qualified equity investment authority.

2. The transferor causes a recapture of tax credits pursuant to NRS 231A.250, the Department will recapture only those tax credits relating to the portion of the qualified equity investment regarding which the transferor retained certified qualified equity investment authority.

Sec. 10. *1. For the purposes of subsection 1 of NRS 231A.250, a qualified community development entity which has certified qualified equity investment authority pursuant to NRS 231A.230 regarding any portion of a qualified equity investment shall notify the Department not later than 30 days after the qualified community development entity:*

(a) Learns of the recapture under section 45D of the Internal Revenue Code of 1986, 26 U.S.C. § 45D, of any amount of a federal tax credit relating to the portion of the qualified equity investment regarding which the qualified community development entity has certified qualified equity investment authority; or

(b) Experiences a recapture event as described in section 45D of the Internal Revenue Code of 1986, 26 U.S.C. § 45D.

2. The provisions of this section apply to a qualified community development entity without regard to whether the qualified community development entity received its certified qualified equity investment authority regarding a portion of a qualified equity investment:

(a) By applying for and receiving certification pursuant to NRS 231A.230 for the qualified equity investment; or

(b) Through a transfer pursuant to subsection 6 of NRS 231A.230 from another qualified community development entity.

Sec. 11. *For the purposes of subsection 3 of NRS 231A.250, the Department will interpret the requirements of that subsection to apply only to the amount of the qualified equity investment regarding which a qualified community development entity has certified qualified equity investment authority. In accordance with the requirements of subsection 3 of NRS 231A.250 as interpreted by the Department pursuant to this section:*

1. If a qualified community development entity applies for and receives certification pursuant to NRS 231A.230 for a qualified equity investment and the qualified community development entity does not transfer, pursuant to subsection 6 of NRS 231A.230, any portion of its certified qualified equity investment authority regarding the qualified equity investment, the qualified community development entity must invest and maintain invested as required by subsection 3 of NRS 231A.250 an amount equal to 85 percent or more of the original amount of the qualified equity investment which is certified by the Department pursuant to subsection 3 of NRS 231A.230 and for which cash is received in accordance with subsection 7 of NRS 231A.230.

2. If a qualified community development entity transfers, pursuant to subsection 6 of NRS 231A.230, all or a portion of its certified qualified equity investment authority regarding a qualified equity investment to another qualified community development entity:

(a) The transferee must invest and maintain invested as required by subsection 3 of NRS 231A.250 an amount equal to 85 percent or more of the portion of the qualified equity

investment regarding which the transferee received certified qualified equity investment authority and for which cash is received in accordance with subsection 7 of NRS 231A.230.

(b) The transferor must invest and maintain invested as required by subsection 3 of NRS 231A.250 an amount equal to 85 percent or more of the portion of the qualified equity investment regarding which the transferor retained certified qualified equity investment authority and for which cash is received in accordance with subsection 7 of NRS 231A.230.

Sec. 12. *For the purposes of subsection 4 of NRS 231A.250, the Department will interpret the requirements of that subsection to apply only to the original amount of a qualified equity investment which is certified by the Department pursuant to subsection 3 of NRS 231A.230 and for which cash is received in accordance with subsection 7 of NRS 231A.230. In accordance with the requirements of subsection 4 of NRS 231A.250 as interpreted by the Department pursuant to this section:*

1. Up to 25 percent of the original amount of the qualified equity investment may be invested in any one qualified active low-income community business without regard to whether the qualified community development entity which applied for and received certification pursuant to NRS 231A.230 for the qualified equity investment has transferred to another qualified community development entity any portion of the certified qualified equity investment authority regarding that qualified equity investment; and

2. A qualified community development entity which, as referenced in subsection 1, receives a portion of the certified qualified equity investment authority regarding a qualified equity investment may invest in any one qualified active low-income community business up to 100 percent of the amount of the qualified equity investment over which the qualified community development entity received authority if the amount of the investment, when

combined with all other investments in the qualified active low-income community business which are directly or indirectly drawn from the original qualified equity investment, does not exceed 25 percent of the original amount of the qualified equity investment as certified by the Department pursuant to subsection 3 of NRS 231A.230 and for which cash was received in accordance with subsection 7 of NRS 231A.230.

Sec. 13. 1. Except as otherwise provided in this subsection, with regard to each qualified equity investment for which a qualified community development entity receives certification from the Department pursuant to NRS 231A.230, the qualified community development entity shall submit to the Director an annual report for each of the 6 years immediately following the date on which the qualified equity investment was initially made. If the qualified community development entity transfers, pursuant to subsection 6 of NRS 231A.230, all or a portion of its certified qualified equity investment authority regarding the qualified equity investment to another qualified community development entity:

(a) The transferee shall submit to the Director the annual report for the portion of the qualified equity investment regarding which the transferee receives certified qualified equity investment authority; and

(b) The transferor shall submit to the Director the annual report for the portion of the qualified equity investment regarding which the transferor retains certified qualified equity investment authority.

2. The annual report required by subsection 1 must be submitted:

(a) Not earlier than the annual anniversary date at the end of the year to which the annual report relates and not later than 5 business days after that annual anniversary date; and

(b) In writing and in an electronic format acceptable to the Director.

3. *The first annual report required by subsection 1 for a qualified equity investment must:*

(a) Provide evidence satisfactory to the Director that 85 percent or more of the amount of the qualified equity investment regarding which the qualified community development entity has certified qualified equity investment authority has been invested in qualified low-income community investments in this State in accordance with the requirements of subsection 3 of NRS 231A.250 as interpreted by the Department pursuant to section 11 of this regulation;

(b) Identify any business owned by a person who is a member of a racial or ethnic minority group into which the qualified community development entity made a qualified low-income community investment relating to the qualified equity investment;

(c) Include a description of all organizations, agencies and other groups with which the qualified community development entity collaborated in identifying or selecting a qualified active low-income community business into which to make a qualified low-income community investment;

(d) For each qualified low-income community investment relating to the qualified equity investment:

(1) Include a bank statement of the qualified community development entity which clearly shows that the qualified low-income community investment was made;

(2) Provide evidence satisfactory to the Director, including, without limitation, a certified statement from the president of the business or another similar person, that the business into which the qualified low-income community investment was made was a qualified active low-income community business at the time the qualified low-income community investment was made;

(3) With regard to the business identified in subparagraph (2), indicate:

(I) The name of the business;

(II) The physical address of the business;

(III) The county in which the physical address of the business is located;

(IV) The federal employer identification number of the business;

(V) The standard industrial classification of the business; and

(VI) The amount of the qualified low-income community investment which was made in the business; and

(4) Include a projection of the total number of jobs which will be created because of the qualified low-income community investment and the total number of jobs which will be retained because of the qualified low-income community investment; and

(e) Include any other information required by the Director.

4. Except as otherwise provided in subsection 6, the second through sixth annual reports required by subsection 1 for a qualified equity investment must:

(a) Identify any business owned by a person who is a member of a racial or ethnic minority group into which the qualified community development entity made a qualified low-income community investment relating to the qualified equity investment;

(b) Identify any organization, agency or other group relating to a racial or ethnic minority group with which the qualified community development entity worked in making a qualified low-income community investment relating to the qualified equity investment;

(c) For each qualified low-income community investment relating to the qualified equity investment, include the current total number of jobs created because of the qualified low-income community investment and the current total number of jobs retained because of the qualified low-income community investment;

(d) With regard to the numbers of jobs reported pursuant to paragraph (c), indicate the current total number of jobs created and the current total number of jobs retained for persons who are members of a racial or ethnic minority group;

(e) With regard to the jobs reported pursuant to paragraph (c), indicate the average salary;

(f) Identify the current cost basis of the qualified equity investment; and

(g) Include any other information required by the Director.

5. In an annual report required by subsection 1 for a qualified equity investment, the qualified community development entity may include any information in addition to the information required pursuant to subsection 3 or 4 to demonstrate the effectiveness of a qualified low-income community investment relating to the qualified equity investment.

6. In the second through sixth annual reports required by subsection 1 for a qualified equity investment, the qualified community development entity shall not include information relating to a qualified low-income community investment which has been sold by, returned to or repaid to the qualified community development entity.

7. For the purposes of subparagraph (4) of paragraph (d) of subsection 3:

(a) A job may be projected to be created if the job is reasonably anticipated by the qualified community development entity to meet the definition of “job created” beginning at any time on or before the last credit allowance date for the applicable qualified equity investment and continuing for 26 or more consecutive weeks, during which time the hours worked in the position are reasonably anticipated to average 30 or more hours per week.

(b) A job may be projected to be retained if the job is reasonably anticipated by the qualified community development entity:

(1) To meet the definition of “job retained” at any time on or before the last credit allowance date for the applicable qualified equity investment; and

(2) To be filled by an employee who meets the requirements of subparagraphs (1), (2) and (3) of paragraph (a) of subsection 8 beginning when the job meets the definition of “job retained” and continuing for 26 or more consecutive weeks, during which time the hours worked in the position are reasonably anticipated to average 30 or more hours per week.

8. As used in this section:

(a) “Job created” means, as represented by a qualified active low-income community business located within this State, a new, full-time and permanent position at the qualified active low-income community business which is filled by one or more natural persons, each of whom:

(1) Is a resident of this State and is expected by the qualified community development entity to be a resident of this State during the entire year for which the applicable annual report is made;

(2) Works and, after being hired, continues to work for the remainder of the year for which the applicable annual report is made:

(I) On the premises of the qualified active low-income community business located within this State; or

(II) Off the premises of the qualified active low-income community business only if the position is a qualified off-premises position; and

(3) Is employed by the qualified active low-income community business:

(I) Directly; or

(II) As a contractual employee only if the qualified active low-income community business offers benefits to the contractual employee which are comparable to the benefits the business offers to the persons it employs directly.

↪ The term also includes a new position related to a qualified active low-income community business which is filled by a self-employed contractor if, during the year for which the applicable annual report is made, the self-employed contractor pays taxes to this State and works not less than 1,040 hours for the qualified active low-income community business performing professional services for the business.

(b) “Job retained” means, as represented by a qualified active low-income community business located within this State, a position filled by an employee of the qualified active low-income community business if the employee meets the requirements of subparagraphs (1), (2) and (3) of paragraph (a), the employee was hired by the business to fill the position before the business received the applicable qualified low-income community investment, and:

(1) The qualified active low-income community business was in existence and located in this State for not less than 2 years immediately preceding the date on which the business received the applicable qualified low-income community investment, and:

(I) The qualified active low-income community business lost 20 percent or more of its net worth during either the 1-year period or the 2-year period immediately preceding the date on which the business received the applicable qualified low-income community investment; or

(II) The president of the qualified active low-income community business or another similar person certifies that the position would not have been retained but for the applicable qualified low-income community investment; or

(2) The position would have been transferred to a location outside of this State but for the applicable qualified low-income community investment, as evidenced either by a certified statement from the president of the qualified active low-income community business or another similar person or by a written and accepted offer of relocation assistance from an economic development agency from another state.

(c) “Qualified off-premises position” means a position:

(1) Which has been filled for 26 or more consecutive weeks;

(2) For which, during the time the position has been filled, the hours worked in the position have averaged 30 or more hours per week; and

(3) For which it is anticipated by the qualified community development entity that the hours worked in the position will continue to average 30 or more hours per week for each tax year of the qualified active low-income community business which occurs, in whole or in part, on or before the last credit allowance date for the applicable qualified equity investment.

Sec. 14. *A person may obtain clarification of or information concerning the requirements of this chapter or chapter 231A of NRS and any procedure for submitting applications, requests or reports to the Department or the Director pursuant to this chapter or chapter 231A of NRS by sending a written request for the clarification or information to the Director at the following address:*

Attn: Director

Department of Business and Industry

555 East Washington Avenue, Suite 4900

Las Vegas, Nevada 89101-1075

Sec. 15. 1. The Department of Business and Industry shall begin accepting applications for certification of qualified equity investments on October 1, 2013.

2. An application for certification of a qualified equity investment which is received by the Department before October 1, 2013, shall be deemed to have been received by the Department on October 1, 2013.

3. All applications for certification of qualified equity investments which are received by the Department on October 1, 2013, or which are deemed to have been received by the Department on October 1, 2013, pursuant to subsection 2, shall be deemed to have been received on the same day for the purposes of subsection 4 of NRS 231A.230.