

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

LCB FILE NO. T004-20A

**The following document is an adopted temporary regulation submitted
by the agency on 10/27/2020**

SECRETARY OF STATE
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**Form for Filing
Administrative Regulations**

Agency

Nevada Department of Business and Industry

FOR EMERGENCY
REGULATIONS ONLY

Effective date / /2020

Effective date / /2020

Governor's Signature

Classification: PROPOSED

TEMPORARY
ADOPTED BY AGENCY

EMERGENCY

Brief description of action.

The Nevada Department of Business and Industry, New Market Tax Credits Program, is clarifying NRS 231A.140 in regard to capital or equity investment loans to be made directly or indirectly to a Qualified Low-Income Business.

Authority citation other than 233B, NRS 231A.150

Notice Date September 10, 2020

Date of Adoption by Agency August 1, 2020

STEVE SISOLAK
Governor

STATE OF NEVADA

TERRY J. REYNOLDS
Director



**DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE DIRECTOR**

NOTICE OF ADOPTION OF TEMPORARY REGULATION

The Department of Business and Industry (B&I) adopted temporary regulations to administer the Nevada New Markets Jobs Act. This notice is provided in compliance with NRS 241.020 and 233B.061. A copy of the regulation as adopted is attached hereto.

Name of Organizations: Department of Business and Industry

Date and Time: September 10, 2020; 4:00 pm

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

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

AUTHORITY:§1 NRS 231A.150.

A TEMPORARY REGULATION revising provisions of the Nevada New Markets Jobs Act to facilitate the creation of a Qualified Low-Income Community Investment by allowing a capital, equity investment or loan to be made directly or indirectly to a Qualified Low-Income Community Business and providing other matters properly relating thereto.

Section 1. *1. For the purposes of NRS 231A.140, a capital or equity investment or loan may be made directly or indirectly to a qualified active low-income community business through one or more special purpose entity.*

2. A special purpose entity may not pay any fees in connection with any activity associated with the qualified low-income community investment.

3. For the purposes of this section, a “special purpose entity” means an entity created solely for the purpose to make or otherwise facilitate qualified low-income community investments in a qualified active low-income community business.

Sec. 2. This regulation applies retroactively to a qualified low-income community investment made on or before the effective date of this regulation.

Informational Statement for the Temporary Regulation to the Nevada New Markets Jobs Act

1. Explanation of the need for the proposed temporary regulation.

The New Markets Jobs Act (NRS321A) addresses the critical need for access to capital for Nevada businesses in low-income areas by providing below market rate loans. This temporary regulation delineates the administrative requirements of NRS 231A New Markets Job Act. It allows the equity investment or loan to be made indirectly to a qualified active low-income community business through one or more special purpose entities.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed temporary regulation, notices of workshop and notices of intent to act upon the adopted temporary regulations promulgated under NRS 231A were posted to Nevada Public Notice website: www.notice.nv.gov and Department of Business & Industry website: www.business.nv.gov

Pursuant to Governor Sisolak's March 22, 2020 Declaration of Emergency Directive 006, requirement contained in NRS 241.023(1)(b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Corona Virus). Accordingly, the workshop and hearing were held via videoconference.

A workshop was held pursuant to NRS 233B.061 on July 2, 2020 and a list of attendees and minutes of that meeting, attached hereto, contain a summary of the discussion held regarding the proposed regulations.

A public hearing was held on July 23rd, 2020. At that hearing public comments were solicited but no concerns were raised. The minutes of that meeting and attendance list is attached hereto.

Additional copies of this summary of the public response to the adopted temporary regulation may be obtained from the Department of Business and Industry by contacting Karen Schnog at (702) 486-3755 or email at kschnog@business.nv.gov.

3. The number of persons who:

(a) Attended each hearing: July 2, 2020: 29; July 23, 2020: 16

(b) Testified at each hearing: July 2, 2020: 1; July 23, 2020: 0

(c) Submitted to the agency written comments: Written comments were received from Ballard-Spahr and attached hereto as Exhibit B.

4. **A list of names and contact information, including telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.**
5. **A description of how comments were solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to question #1.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

These temporary regulations promulgated under NRS 231A facilitate and helps meet the critical need for access to capital for businesses in Low-Income Areas by providing them the ability to get below-market rate loans.

7. **The estimated economic effect of the regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
 - (a) **Both adverse and beneficial effects; and**
 - (b) **Both immediate and long-term effects.**

1. **The estimated economic effect of the regulation on the businesses, which it is to regulate:**

- a. **Adverse effect:**
 - i. **Immediate effect - No adverse effect due to the promulgation of this temporary regulation.**
 - ii. **Long-term effect - No adverse effect due to the promulgation of this temporary regulation.**
- b. **Beneficial effect:**
 - i. **Immediate effect – Qualified Active Low-Income Community Businesses will be able to access below market rate loans. These loans will help them expand their business.**
 - ii. **Long-term effect – Qualified Active Low-Income Community Businesses will have below market rate loans to provide operating capital to grow and expand their businesses. They will be able to hire more employees.**

2. **The estimated economic effect of the regulation on the public:**

- a. **Adverse effect:**
 - i. **Immediate effect - No adverse effect due to the promulgation of this temporary regulation.**
 - ii. **Long-term effect - No adverse effect due to the promulgation of this temporary regulation.**

b. Beneficial effect:

i. Immediate effect – The public may become aware of low-interest loans for businesses in low-income areas and notice businesses are investing new operating capital to expand and grow.

ii. Long-term effect – With Qualified Active Low-Income Community Businesses having below market rate loans to help them grow and expand, the public will likely notice businesses are growing and more people are working.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this temporary regulation.

9. A description of any regulations of other state or government agencies of which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

10. Does the regulation include provisions that are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

N/A

11. Does the regulation provide a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

N/A

Exhibit A – Minutes of Workshop/Hearings and Attendees

Sign-in for Workshop on Temporary Regulation to the NMJA (NRS231A)
July 2, 2020 at 11:00 AM

Attendee	Company	Email	Phone
Karen Schnog	MA, B&I	kschnog@business.nv.gov	702-486-2750
Terry Reynolds	Director, B&I	on file	775-684-2920
Budd Milazzo	Deputy Director, B&I	on file	775-684-2920
Marcel Schaerer	Deputy Director, B&I	on file	702-486-2750
Emily Ku	MA, B&I	on file	702-486-2750
Leslie Olson	Exec. Sec. B&I	on file	775-684-2920
Jennifer Ramsay	Financial Institutions Division	on file	702-486-2750
Mary Young	Financial Institutions Division	on file	702-486-2750
Chris Weiss	MA, B&I	on file	702-486-2750
Grant Reynolds	IT, B&I	on file	775-684-2920
Ted Hendricks	IT, B&I	on file	775-684-2920
Brian Sagert	Clearinghouse CDFI	brians@ccdfi.com	702-423-8555
Cindy Berg	Central States Development Partners	cberg@centralstates.us.com	309-794-6711
Clifford Kenwood	AMCREF Community Capital	cliff@amcref.com	on file
Jay Harrison	Clearinghouse CDFI	jayh@ccdfi.com	949-528-3069
John Hownack	Hampton Roads Ventures, LLC	jkownack@hamptonroadsventures.com	757-937-6830
Mark Scheffel	Advantage Capital	mscheffel@advantagecap.com	on file
Mendy Elliot	Capitol Partners	mendy@capitolpartners.us	on file
Mike	Value Advisor fund	mike.kewatwaski@bakertilly.com	262-853-7542
Nick Vander Poel	Capitol Partners	nick@capitolpartners.us	702-324-8781
Phil Aftuck	Consortium	Phil Aftuck < paftuck@tbco.biz >	on file
Robert Kim	Ballard Spahr LLP	kimr@ballardspahr.com	702-580-3521
Robin Stewart	United Fund Advisors	robin@unitedfundadvisors.com	(503) 546-2631
Shelly	United Fund Advisors	shelly@unitedfundadvisors.com	on file
Shelley Whittington	Stonehenge Community Development	sgwhittington@stonehengecapital.com	on file
Teresa Miranda	Prestamos CDFI	teresa.miranda@cplc.org	602) 257-6757,
Elizabeth Leathers	HRV	eleathers@hamptonroseventures.com	757-962-1531
Sandy O'Laughlin	Commissioner, Financial Institutions Division	solaughlin@fid.state.nv.us	on file
Ryan Congrove	Stonehenge Capital Company	rjcongrove@stonehengecapital.com	(614) 545-7248

WORKSHOP TO ADDRESS THE IMPACT OF THE PROPOSED
TEMPORARY REGULATION ON NRS 231A NEW MARKETS JOBS ACT.

MINUTES JULY 2, 2020 WORKSHOP

Due to Covid-19 this meeting was held via WebEx in accordance with Governor Sisolak's Directive 006. As such, a power point presentation was used during the meeting and can be found at the end of this document as Exhibit 1. The sign-in sheet for all attendees can be seen at the end of this document as Exhibit 2. Letters received by the department are at the end of this document as Exhibit 3.

Those conducting the meeting included:

- Terry Reynolds – Director of the Department of Business and Industry (B&I)
- Karen Schnog - Management Analyst, Director's office B&I, who oversees the NMJA

Emily Ku - Meeting Coordinator, Management Analyst, Director's office B&I

11:00 AM The workshop was called to order by Director Terry Reynolds, Department of Business and Industry.

Karen Schnog reviewed protocols for participating in the WebEx meeting and asked all participants to type their name, company, and contact information (phone and email) in to the chat box. For those joining by phone each were unmuted and their information was recorded. (see sign-in sheet)

The meeting agenda was reviewed.

The meeting was opened for Public Comments not pertaining directly to the regulations.

No comments were received.

The Temporary Regulation was read out loud in its' entirety.

In summary the purpose of this temporary regulation is to facilitate investments of NMJA funds into qualified businesses.

Director Reynolds pointed out that this temporary regulation is exactly the same as the one enacted in the 2013 round of NMJA.

One letter was received prior to the workshop on 6/29/2020 from Robert Kim of Ballard Spahr Law Firm (Exhibit 3).

Robert Kim reviewed the purpose of the letter which was to specify that the temporary regulation was consistent with and does not change the statute with respect to fees paid to affiliates outlined in the permanent regulations.

Director Reynolds thanked Mr. Kim and commented on the letter stating the department believes the temporary regulation is consistent with the fees outlined in the statute. He also stated that approval will be given for transactions closing prior to the adoption of the regulation as requested by Ballard Spahr. Reaffirming the last section of the temporary regulation, that it applies retroactively.

The meeting was opened for additional public comments regarding the temporary regulation, no additional comments were made.

The meeting was then opened to general public comments and none were made.

The meeting was closed by thanking all participants, providing website information and contact information for Karen Schnog and noting that the hearing to adopt the temporary regulation will be held at 10:30 AM on July 23, 2020.

11:18 AM Meeting Adjourned.

Sign-in for Hearing on Temporary Regulation to the NMJA (NRS231A)			
July 23, 2020 at 10:30 AM			
Attendee	Company	Email	Phone
Karen Schnog	MA, B&I	kschnog@business.nv.gov	702-486-2750
Terry Reynolds	Director, B&I	on file	775-684-2920
Marcel Schaerer	Deputy Director, B&I	on file	702-486-2750
Emily Ku	MA, B&I	on file	702-486-2750
Leslie Olson	Exec. Sec. B&I	on file	775-684-2920
Chris Weiss	MA, B&I	on file	702-486-2750
Cindy Berg	Central States Development Partners	cberg@centralstates.us.com	309-794-6711
Jay Harrison	Clearinghouse CDFI	jayh@ccdfi.com	949-528-3069
Mark Scheffel	Advantage Capital	mscheffel@advantagecap.com	on file
Robin Stewart	United Fund Advisors	robin@unitedfundadvisors.com	(503) 546-2631
Teresa Miranda	Prestamos CDFI	teresa.miranda@cplc.org	602) 257-6757,
Elizabeth Leathers	HRV	eleathers@hamptonroseventur	757-962-1531
Leah Hendricks	Advantage Capital	lhendricks@advantagecap.com	775-409-3266
Jabari Johnson	Bernstein Companies	jjohnson@tbco.biz	202-448-0142
David Castillo	Prestamos CDFI	David.Castillo@cplc.org	602-257-6750
Colleen Platt	Platt Law Group	Colleen Platt <plattlawgroup@outlook.com>	

**HEARING TO ADOPT THE TEMPORARY REGULATION ON
NRS 231A NEW MARKETS JOBS ACT.
MINUTES JULY 23, 2020 HEARING**

Due to Covid-19 this meeting was held via WebEx in accordance with Governor Sisolak's Directive 006. As such, a power point presentation was used during the meeting and can be found at the end of this document as Exhibit 1. The sign-in sheet for all attendees can be seen at the end of this document as Exhibit 2. Letters received by the department are at the end of this document as Exhibit 3.

Those conducting the meeting included:

Terry Reynolds – Director of the Department of Business and Industry (B&I)
Karen Schnog - Management Analyst, Director's office B&I, who oversees the NMJA
Emily Ku - Meeting Coordinator, Management Analyst, Director's office B&I
Coleen Platt – Legal Council for the NMJA for the Department

10:30 AM The meeting was called to order by Director Terry Reynolds, Department of Business and Industry.

Karen Schnog reviewed protocols for participating in the WebEx meeting and asked all participants to type their name, company, and contact information (phone and email) into the chat box. For those joining by phone they were unmuted, and their information was recorded. (see sign-in sheet, Exhibit 2 below)

The meeting agenda was reviewed.

The meeting was opened for Public Comments not pertaining directly to the regulations.

No comments were received.

The Temporary Regulation was read out loud in its' entirety.

In summary the purpose of this temporary regulation is to facilitate investments of NMJA funds into qualified businesses.

Director Reynolds noted that this temporary regulation is exactly the same as the one enacted in the 2013 round of NMJA.

One letter was received prior to the workshop on 6/29/2020 from Robert Kim of Ballard Spahr Law Firm (Exhibit 3). No other comments or letters were received on or before the Hearing.

Director Reynolds noted the letter and stated we would not be making changes to the regulation based on the comments and thanked Mr. Kim for the comments.

The meeting was opened for additional public comments regarding the temporary regulation, no additional comments were made.

The meeting was then opened to general public comments and none were made.

Director Reynolds stated the regulation was officially adopted.

Colleen Platt requested that we open the meeting for general public comment a second time to follow open meeting law.

The meeting was open for public comment. No comment was received.

The meeting was closed by thanking all participants.

10:48 AM Meeting Adjourned.

Exhibit B – Letter from Ballard Spahr

Ballard Spahr LLP

One Summerlin
1980 Festival Plaza Drive, Suite 900
Las Vegas, NV 89135-2953
TEL 702.471.7000
FAX 702.471.7070
www.ballardspahr.com

Robert C. Kim
Direct: 702.868.7512
kimr@ballardspahr.com

June 29, 2020

Via Email (TReynolds@business.nv.gov)

Terry J. Reynolds, Director
Nevada Department of Business and Industry
1830 College Parkway, Suite 100
Carson City, NV 89706

Re: Comments to Proposed Temporary Regulation dated May 28, 2020

Mr. Reynolds:

The purpose of this letter is to provide comments to the proposed temporary regulation dated May 28, 2020 (the "Proposed Regulation") with respect to the language of Section 1(2) of the Proposed Regulation.

NRS 231A.150 provides that the Director may adopt regulations to carry out the provisions of NRS Chapter 231A. To this end, the Proposed Regulation provides clarification as to equity investments or loans so as to acknowledge that such equity investments or loans can be made either directly or indirectly to the qualified active low-income community business (the "QALICB") through one or more special purpose entities.

The Proposed Regulation is identical to the temporary regulation previously adopted by the Nevada Department of Business and Industry and is meant to facilitate New Markets Tax Credit ("NMTC") transactions that utilize both state and federal tax credits, i.e., a stacked state/federal NMTC transaction. These stacked state/federal NMTC transactions generally involve one or more federal sub-community development entities ("CDEs") and one or more federal investment funds that are a part of the flow of funds that constitute one or more qualified low income community investments (each, a "QLICI") in the QALICB. The support for such stacked state/federal NMTC transactions was further demonstrated through the adoption of NRS 231A.245 during the 2019 Nevada Legislative Session.

Based on the foregoing, we are submitting this letter to confirm the interpretation of Section 1(2) of the Proposed Regulation such that the limitation to the payment of fees is a limitation on the payment of fees to the affiliate of the special purpose entity. This interpretation is appropriate for the following reasons: