

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
Informational Statement
LCB FILE NO. R036-23**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 231A, Nevada New Markets Jobs Act.

1. A clear and concise explanation of the need for the adopted regulation.

To implement changes made to the requirements governing the Nevada New Markets Jobs Act (NMJA) as enacted by Senate Bill 240 (SB240) of the 2023 Session of the Nevada Legislature; to incorporate and make permanent language from a previous temporary NMJA regulation (LCB File No. T004-20A) to facilitate the creation of qualified low-income community investments by allowing a capital, equity investment or loan to be made directly or indirectly to a qualified or impact qualified low-income community business; and to increase the number of calendar days in which the Director of the Nevada Department of Business and Industry can approve or deny a request for investment by a qualified or impact qualified low-income community business. The SB240 changes involve incorporating the concept of “impact qualified” investment – as that type of investment is 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 has been added to include “impact qualified” investment – the intent being to ensure administrative standards and processes apply to the new “impact qualified” activities the same way they apply to “qualified” activities.

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

The Department solicited comments from interested parties via workshop and hearing. On November 22 and November 27, 2023, the Department posted the proposed regulation on its website and distributed it to the email list maintained by the Department’s Financial Institutions Division (FID) for NRS 675 and Community Development Financial Institution (CDFI) licensees, as well as to the existing contact list for the Nevada New Markets Jobs Act program maintained by the Director’s Office, to notify interested persons of a workshop on the proposed regulation to be held on December 15, 2023, and to solicit comments on both the regulation and any impacts it might have on small business. This solicitation comprised 289 contacts, of which 23 proved undeliverable, for a final count of 266. Recipients were provided copies of the Notice of Workshop and Workshop Agenda, proposed regulation, small business impact statement, enrolled version of Nevada Senate Bill 240, and 2020 temporary regulation LCB File No. T004-20A. These documents were also posted online at the Department of Business and Industry’s website at

<http://www.business.nv.gov>, the Nevada Public Notice website at <http://notice.nv.gov>, and the Nevada Legislature website at <https://leg.state.nv.us/>. The Notice of Workshop and Workshop Agenda was posted at the Department's principal offices/in-person physical locations in Las Vegas and Carson City (3300 W. Sahara Ave., Suite 425, Las Vegas, NV 89102 and 1830 College Parkway, Suite 100, Carson City, NV 89706, respectively), at the Nevada State Business Center and Grant Sawyer Buildings in Las Vegas, and provided by email for posting by the Nevada State Library, Archives and Public Records Administrator and by the Nevada Legislature.

No written comments were received prior to the workshop. The workshop was held on December 15, 2023, with interested persons able to participate in person at 3300 W. Sahara Avenue, Suite 400 (Nevada Room), Las Vegas, Nevada 89102; or remotely by Webex or phone. No written comments were received at the event. At the workshop, Nic Steele, Executive Director, Access Community Capital, commented in support of the proposed impact qualified provisions. Sandra Moore, Managing Director and Chief Impact Officer, Advantage Capital, commented in support of the New Markets Jobs Act program and proposed regulation. Kathleen Taylor, Nevada Women's Business Center and Nevada Business Opportunity Fund, asked for additional information concerning the program and types of businesses involved. No comments were made or received suggesting changes to the proposed regulation. Please see the workshop minutes (Exhibit A) for details.

On January 17, 2024, the Department posted the proposed regulation on its website and distributed it to the email list maintained by the Department's FID for NRS 675 and CDFI licensees, as well as to the existing contact list for the Nevada New Markets Jobs Act program maintained by the Director's Office, to notify interested persons of the Department's intent to act upon the regulation and to hold a public hearing on February 27, 2024, to solicit comments on both the regulation and any impacts it might have on small business. This solicitation comprised 269 contacts, none of which proved undeliverable. Recipients were provided copies of the Notice of Intent to Act Upon a Regulation, Notice of Public Hearing, proposed regulation, small business impact statement, enrolled version of Nevada Senate Bill 240, and 2020 temporary regulation LCB File No. T004-20A. These documents were also posted online at the Department of Business and Industry's website at <http://www.business.nv.gov>, the Nevada Public Notice website at <http://notice.nv.gov>, and the Nevada Legislature website at <https://leg.state.nv.us/>. The Notice of Intent to Act Upon a Regulation and Notice of Public Hearing were posted at the Department's principal offices/in-person physical locations in Las Vegas and Carson City (3300 W. Sahara Ave., Suite 425, Las Vegas, NV 89102 and 1830 College Parkway, Suite 100, Carson City, NV 89706, respectively), at the Nevada State Business Center and Grant Sawyer Buildings in Las Vegas, and provided by email for posting by the Nevada State Library, Archives and Public Records Administrator and by the Nevada Legislature.

No written comments were received during the comment period. The public hearing was held on February 27, 2024, with interested persons able to participate in person at 3300 W. Sahara Avenue, Suite 400 (Nevada Room), Las Vegas, Nevada 89102; or remotely by Webex or phone. No written comments were received at the hearing. No comments were

made at the hearing. Please see the hearing minutes (Exhibit B) for details.

A copy of this summary of public response to the proposed regulation may be obtained from the Department of Business and Industry, Director's Office, 3300 W. Sahara Ave., Suite 425, Las Vegas, Nevada 89102; by phone 702-486-2750, or email to cweiss@business.nv.gov.

3. The number of persons who:

- (a) Attended each hearing:** Dec. 15, 2023 – 20; Feb. 27, 2024 – 18
- (b) Testified at each hearing:** Dec. 15, 2023 – 3; Feb. 27, 2024 – 0
- (c) Submitted to the agency written comments:**
No written comments were submitted.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified in #3, above, as provided to the agency is attached as Exhibit C.

5. A description of how comment was 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 at the end of response to question #2 above.

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.

The permanent regulation was adopted on February 27, 2024, in the form as described in the Legislative Counsel Bureau version dated November 14, 2023 (LCB File No. R036-23RP1) because there was no significant objection to the proposed language.

7. The estimated economic effect of the adopted 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.**

(a) Both adverse and beneficial effects

The Department does not foresee any adverse effects of the adopted regulation on entities or qualified businesses regulated by NRS chapter 231A and any regulations adopted pursuant thereto. Qualified businesses that decide to pursue or accept funding from an

allocattee of the Nevada New Markets Jobs Act (NMJA) program as defined in NRS 231A and certified by the Director are expected to benefit in the immediate and long-term from increased and more flexible access to capital.

(b) Both immediate and long-term effects.

See Item # 7(a).

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

The Department identified additional costs to the Director's Office for implementation and administration of the "impact qualified" provisions. These costs were included in a fiscal note to Senate Bill 240 (2023), funded in the legislation as approved, and estimated at \$103,135 for fiscal year 2023-2024 and \$99,665 for fiscal year 2024-2025.

9. A description of any regulations of other state or government agencies 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 agencies regulations known by the Department that the regulation overlaps or duplicates.

10. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The regulation does not include provisions which are known to be more stringent than a federal regulation which regulates the same activity.

11. If the regulation provides 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.

The regulation does not provide for a new fee or increase an existing fee.

EXHIBIT A

STATE OF NEVADA

JOSEPH M. LOMBARDO
Governor



DR. KRISTOPHER SANCHEZ
Director

PERRY FAIGIN
MARCEL SCHAERER
Deputy Directors

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.

EXHIBIT B

STATE OF NEVADA

JOSEPH M. LOMBARDO
Governor



DR. KRISTOPHER SANCHEZ
Director

PERRY FAIGIN
MARCEL SCHAERER
NIKKI HAAG
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 Schaerer, 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.
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- 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”).
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- 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.

EXHIBIT C

ATTENDEES - DECEMBER 15, 2023, WORKSHOP – LCB File No. R036-23

Dr. Kristopher Sanchez, Director, Nevada Dept. of Business and Industry (B&I), Las Vegas, NV
Marcel Schaerer, Deputy Director, B&I, Las Vegas, NV
Perry Faigin, Deputy Director, B&I, Carson City, NV
Carrie Foley, Program Officer, Office of Business Finance and Planning (OBFP), B&I, Las Vegas, NV
Chris Weiss, Mgmt. Analyst, OBFP, B&I, Las Vegas, NV
Erica Arnold, Information Technology Specialist, B&I, Las Vegas, NV
Alex Pike, no business affiliation provided
Areli Alarcon, Director of Public Policy Advocacy, Carrara Nevada, Las Vegas, NV
Chip Windisch, SVP Tax Credit Finance, PETROS Pace Finance
Claire Muñoz, no business affiliation provided
Dillon Luther, Managing Director, Baker Tilly Capital
Karen Schnog, Mgmt. Analyst, City of Las Vegas, Las Vegas, NV
Kathleen Taylor, Program & Marketing Coordinator, Nevada Women's Business Center, Las Vegas, NV
Matt Malcom, Director NMTC, PETROS Pace Finance, Austin, TX
Nick Vander Poel, Principal, Flynn Giudici
Robert Kim, Managing Partner, Ballard Spahr, Las Vegas, NV
Ryan Congrove, Stonehenge Capital
Sandra Moore, Managing Director/Chief Impact Officer, Advantage Capital, New Orleans, LA
Stefan Kershow, Managing Director, Structured Finance, The Bernstein Companies
Nic Steele, Executive Director, Access Community Capital, Las Vegas, NV

ATTENDEES - FEBRUARY 27, 2024, HEARING – LCB File No. R036-23

Dr. Kristopher Sanchez, Director, Nevada Dept. of Business and Industry (B&I), Las Vegas, NV
Marcel Schaerer, Deputy Director, B&I, Las Vegas, NV
Perry Faigin, Deputy Director, B&I, Carson City, NV
Cara Brown, Administrative Law Judge, Nevada Consumer Affairs, B&I, Las Vegas, NV
Carrie Foley, Program Officer, OBFP, B&I, Las Vegas, NV
Chris Weiss, Mgmt. Analyst, OBFP, B&I, Las Vegas, NV
Lauren Lozano, Mgmt. Analyst, OBFP, B&I, Las Vegas, NV
Mark Pasek, Mgmt. Analyst, OBFP, B&I, Las Vegas, NV
Erica Arnold, IT Specialist, B&I, Las Vegas, NV
Areli Alarcon, Director of Public Policy Advocacy, Carrara Nevada, Las Vegas, NV
Colleen Platt, Platt Law Group, Reno, NV
Catherine Blume, Vice President, Enhanced Capital, New Orleans, NV
Hannah Branch, Legislative Analyst, Ferrari Reeder, Reno, NV
Knox Clark, Co-Founder/Partner, AMCREF Community Capital, New Orleans, LA
Clifford Kenwood, Co-Founder/Partner, AMCREF Community Capital, New Orleans, LA
Nic Steele, Executive Director, Access Community Capital, Las Vegas, NV
Kelly Swanson, Financial Analyst, City of Las Vegas, Las Vegas, NV
Sandy Tsutahara, CFO, Cristo Rey St. Viator College Prep HS, North Las Vegas, NV