

1 State of Arkansas *As Engrossed: H3/21/13 S3/26/13*

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# A Bill

3 Regular Session, 2013

HOUSE BILL 1832

4

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12 By: Senators J. Dismang, Files, Teague, Maloch, B. Sample, Hester, L. Chesterfield, J. English, B. Pierce,

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14

## For An Act To Be Entitled

15 AN ACT TO PROMOTE ACCESS TO CAPITAL FOR JOB CREATION

16 AND ECONOMIC DEVELOPMENT IN LOW-INCOME COMMUNITIES;

17 TO CREATE AND REGULATE ELIGIBILITY OF THE NEW MARKET

18 TAX CREDIT; AND FOR OTHER PURPOSES.

19

20

21

22

## Subtitle

23

THE NEW MARKETS JOBS ACT OF 2013.

24

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26

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27

28

SECTION 1. Arkansas Code Title 15, Chapter 4, is amended to add an additional subchapter to read as follows:

29

30

Subchapter 35 – New Markets Jobs Act of 2013

31

32

15-4-3501. Title.

33

This subchapter shall be known and may be cited as the “New Markets Jobs Act of 2013”.

34

35

36

15-4-3502. Definitions.



1 As used in this subchapter:

2 (1) "Applicable percentage" means:

3 (A) Zero percent (0%) for the first two (2) credit  
4 allowance dates;

5 (B) Twelve percent (12%) for the third, fourth, and fifth  
6 credit allowance dates; and

7 (C) Eleven percent (11%) for the sixth and seventh credit  
8 allowance dates;

9 (2) "Credit allowance date" means with respect to a qualified  
10 equity investment:

11 (A) The date on which the qualified equity investment is  
12 initially made; and

13 (B) Each of the subsequent six (6) anniversary dates of  
14 the date on which the qualified equity investment was initially made;

15 (3) "Letter ruling" means a written interpretation of law to a  
16 specific set of facts provided by an applicant requesting the written  
17 interpretation from the *Arkansas Economic Development Commission*;

18 (4) "Long-term debt security" means a debt instrument issued by  
19 a qualified community development entity, at par value or a premium, with an  
20 original maturity date of at least seven (7) years from the date of its  
21 issuance without acceleration of repayment, amortization, or prepayment  
22 features before its original maturity date;

23 (5) "Purchase price" means the amount paid to the issuer of a  
24 qualified equity investment for a qualified equity investment;

25 (6)(A) "Qualified active low-income community business" means  
26 the same as defined in 26 U.S.C. § 45D and 26 C.F.R. 1.45D-1, as they existed  
27 on January 1, 2013, if:

28 (i) At the time of the qualified community  
29 development entity's investment in or loan to the corporation, limited  
30 liability company, association, partnership, or other business entity, the  
31 corporation, limited liability company, association, partnership, or other  
32 business entity meets the United States Small Business Administration size  
33 eligibility standards established in 13 C.F.R. 121.101-201, as it existed on  
34 January 1, 2013; and

35 (ii)(a) The corporation, limited liability company,  
36 association, partnership, or other business entity agrees to retain or create

1 jobs that pay an average wage of at least one hundred fifteen percent (115%)  
2 of the federal poverty income guidelines for a family of four (4) for the  
3 census tract.

4 (b) The commission may waive the requirement  
5 stated in subdivision (6)(A)(ii)(a) of this section if the commission  
6 determines that an investment in the proposed active qualified low-income  
7 community business will have a positive impact on the community.

8 (B) A corporation, limited liability company, association,  
9 partnership, or other business entity will be considered a qualified low-  
10 income community business for the duration of the qualified community  
11 development entity's investment in or loan to the corporation, limited  
12 liability company, association, partnership, or other business entity if the  
13 relevant qualified community development entity reasonably expects, at the  
14 time it makes an investment or loan, that the corporation, limited liability  
15 company, association, partnership, or other business entity will continue to  
16 satisfy the requirements for being a qualified active low-income community  
17 business other than the requirements stated in subdivision (6)(A)(i) of this  
18 section throughout the entire period of the investment or loan.

19 (C) "Qualified active low-income community business" does  
20 not include the following:

21 (i)(a) A corporation, limited liability company,  
22 association, partnership, or other business entity that is the beneficiary of  
23 an incentive under § 15-4-2705, § 15-4-2706(b), or § 15-4-2706(c)(2).

24 (b) However, the commission may waive the  
25 requirement stated in subdivision (6)(C)(i)(a) of this section if the  
26 commission determines that an investment in the proposed active qualified  
27 low-income community business will have a positive impact on the community;

28 (ii)(a) Any industry excluded under a rule of the  
29 commission.

30 (b) However, the commission may waive the  
31 requirement stated in subdivision (6)(C)(ii)(a) of this section if the  
32 commission determines that an investment in the proposed active qualified  
33 low-income community business will have a positive impact on the community;  
34 or

35 (iii)(a) A corporation, limited liability company,  
36 association, partnership, or other business entity that derives or projects

1 to derive at least fifteen percent (15%) of its annual revenue from the  
2 rental or sale of real estate.

3 (b) However, the restriction in subdivision  
4 (6)(C)(iv)(a) of this section does not apply to a corporation, limited  
5 liability company, association, partnership, or other business entity that is  
6 controlled by or under common control with another corporation, limited  
7 liability company, association, partnership, or other business entity that:

8 (1) Does not derive or project to derive  
9 at least fifteen percent (15%) of its annual revenue from the rental or sale  
10 of real estate; and

11 (2) Is the primary tenant of the real  
12 estate leased from the corporation, limited liability company, association,  
13 partnership, or other business entity;

14 (7)(A) "Qualified community development entity" means the same  
15 as defined in 26 U.S.C. § 45D, as it existed on January 1, 2013, if the  
16 corporation, limited liability company, association, partnership, or other  
17 business entity has entered into, for the current year or any prior year, an  
18 allocation agreement with the Community Development Financial Institutions  
19 Fund of the United States Department of the Treasury with respect to credits  
20 authorized under 26 U.S.C. § 45D that includes Arkansas within the service  
21 area stated in the allocation agreement.

22 (B) "Qualified community development entity" includes a  
23 qualified community development entity that is controlled by or under common  
24 control with a qualified community development entity described in this  
25 subdivision (7);

26 (8)(A) "Qualified equity investment" means an equity investment  
27 in or a long-term debt security issued by a qualified community development  
28 entity that:

29 (i) Is acquired after the effective date of this act  
30 at its original issue solely in exchange for cash;

31 (ii) Has at least eighty-five percent (85%) of its  
32 cash purchase price used by the issuer to make qualified low-income community  
33 investments in qualified active low-income community businesses located in  
34 Arkansas by the first anniversary of the initial credit allowance date; and

35 (iii) Is designated by the issuer as a qualified  
36 equity investment under this subdivision (8) and is certified by the Arkansas

1 Economic Development Commission as not exceeding the limitation stated in §  
2 15-4-3505(d).

3 (B) “Qualified equity investment” includes an investment  
4 that does not meet the requirements of subdivision (8)(A)(i) of this section  
5 if the investment was a qualified equity investment in the hands of a  
6 previous holder;

7 (9) “Qualified low-income community investment” means a capital  
8 or equity investment in or loan to a qualified active low-income community  
9 business; and

10 (10) “State premium tax liability” means:

11 (A) Tax liability incurred by a corporation, limited  
12 liability company, association, partnership, or other business entity under  
13 §§ 23-63-102 and 26-57-601 – 26-57-605, excluding any liability for taxes on  
14 a health insurance premium; or

15 (B) If the tax liability under subdivision (10)(A) of this  
16 section is eliminated or reduced, any tax liability imposed on an insurance  
17 company or other person that had premium tax liability under the laws of the  
18 state.

19  
20 15-4-3503. New market tax credit.

21 (a) A corporation, limited liability company, association,  
22 partnership, or other business entity that makes a qualified equity  
23 investment earns a vested right to a tax credit against state premium tax  
24 liability.

25 (b) The tax credit established under subsection (a) of this section  
26 may be utilized as follows:

27 (1) On each credit allowance date of the qualified equity  
28 investment, the corporation, limited liability company, association,  
29 partnership, or other business entity or the subsequent holder of the  
30 qualified equity investment may utilize a portion of the tax credit during  
31 the taxable year that includes the credit allowance date;

32 (2) The tax credit amount shall be equal to the applicable  
33 percentage for the credit allowance date multiplied by the purchase price  
34 paid to the issuer of the qualified equity investment;

35 (3) The amount of the tax credit claimed by a corporation,  
36 limited liability company, association, partnership, or other business entity

1 shall not exceed the state premium tax liability owed by the taxpayer that  
2 files the premium tax report for the tax year for which the tax credit is  
3 claimed; and

4 (4) The tax credit is payable only from the general revenues  
5 derived from the nonallocated portion of the state premium tax liability  
6 funds as described in § 26-57-611.

7 (c) Any unused portion of a tax credit established under this section  
8 may be carried forward for nine (9) consecutive tax years.

9  
10 15-4-3504. Transferability.

11 (a) A tax credit claimed under this subchapter shall not be refundable  
12 or saleable on the open market.

13 (b)(1) A tax credit earned by a corporation, limited liability  
14 company, association, partnership, or other business entity may be allocated  
15 to the partners, members, or shareholders of the corporation, limited  
16 liability company, association, partnership, or other business entity for  
17 their direct use in accordance with any agreement among the partners,  
18 members, or shareholders.

19 (2) An allocation under subdivision (b)(1) of this section:

20 (A) May occur after the issuance of a qualified equity  
21 investment; and

22 (B) Is not a sale for purposes of this subchapter.

23  
24 15-4-3505. Certification of qualified equity investments.

25 (a)(1)(A)(i) A qualified community development entity that seeks to  
26 have an equity investment or a long-term debt security designated as a  
27 qualified equity investment eligible for a tax credit under this subchapter  
28 shall apply to the Arkansas Economic Development Commission.

29 (ii) The commission shall begin accepting  
30 applications on July 15, 2013.

31 (B)(i) If the qualified community development entity seeks  
32 to have a long-term debt security designated as a qualified equity investment  
33 under this section, the qualified community development entity shall not make  
34 cash interest payments on the long-term debt security during the period  
35 beginning on the date of issuance and ending on the final credit allowance  
36 date in an amount that exceeds the cumulative operating income, as determined

1 under 26 C.F.R. § 1.45D-1, as it existed on January 1, 2013, of the qualified  
2 community development entity for that period before giving effect to interest  
3 expense on the long-term debt security.

4 (ii) However, the holder's ability to accelerate  
5 payments on the long-term debt security instrument in situations in which the  
6 issuer has defaulted on covenants designed to ensure compliance with this  
7 subchapter or 26 U.S.C. § 45D, as it existed on January 1, 2013, shall not be  
8 affected by this subchapter.

9 (2)(A) A qualified community development entity seeking  
10 certification of a qualified equity investment shall submit an application to  
11 the commission.

12 (B) The application submitted under subdivision (a)(2)(A)  
13 of this section shall include the following:

14 (i) Evidence of the applicant's certification as a  
15 qualified community development entity, including evidence that the service  
16 area of the applicant includes Arkansas;

17 (ii) A copy of an allocation agreement executed by  
18 the applicant, or its controlling entity, and the Community Development  
19 Financial Institutions Fund;

20 (iii) A certificate executed by an executive officer  
21 of the applicant:

22 (a) Attesting that the allocation agreement  
23 remains in effect and has not been revoked or cancelled by the Community  
24 Development Financial Institutions Fund; and

25 (b) Stating the cumulative amount of  
26 allocations awarded to the applicant by the Community Development Financial  
27 Institutions Fund;

28 (iv) A description of the proposed amount,  
29 structure, and purchaser of the qualified equity investment;

30 (v) If known at the time of application, identifying  
31 information for each corporation, limited liability company, association,  
32 partnership, or other business entity that will utilize the tax credits  
33 earned from the issuance of the qualified equity investment;

34 (vi)(a) Examples of the types of qualified active  
35 low-income businesses in which the applicant, its controlling entity, or  
36 affiliates of its controlling entity have invested under the federal New

1 Markets Tax Credit Program, if any.

2 (b) An applicant shall not be required to  
3 identify qualified active low-income community businesses in which the  
4 applicant will invest when submitting an application;

5 (vii) A nonrefundable application fee of five  
6 thousand dollars (\$5,000); and

7 (viii) The refundable performance fee required under  
8 § 15-4-3509.

9 (b)(1) Within thirty (30) days after receipt of a completed  
10 application, the commission shall grant or deny the application in full or in  
11 part.

12 (2)(A) If the commission denies any part of an application, the  
13 commission shall inform the qualified community development entity of the  
14 grounds for the denial.

15 (B)(i) If an application is denied as incomplete and the  
16 qualified community development entity provides the additional information or  
17 documentation required by the commission or otherwise completes its  
18 application within fifteen (15) days of the notice of denial, the application  
19 shall be considered completed as of the original date of submission.

20 (ii) If the qualified community development entity  
21 fails to provide the information or complete its application within the  
22 fifteen-day period, the application remains denied and must be resubmitted in  
23 full with a new submission date.

24 (3)(A) If the application is complete and meets the requirements  
25 of this subchapter, the commission shall certify the proposed equity  
26 investment or long-term debt security as a qualified equity investment that  
27 is eligible for a tax credit under this subchapter, subject to the  
28 limitations contained in subsection (d) of this section.

29 (B)(i) The commission shall provide written notice of the  
30 certification to the qualified community development entity.

31 (ii) The written notice shall include the name, if  
32 known, of each corporation, limited liability company, association,  
33 partnership, or other business entity that will earn the tax credit and the  
34 respective tax credit amount.

35 (iii) If the name of a corporation, limited  
36 liability company, association, partnership, or other business entity that is



1 eligible to use the tax credit changes as the result of a transfer of a  
2 qualified equity investment or an allocation under § 15-4-3504(b), the  
3 qualified community development entity shall notify the commission of the  
4 change.

5 (c)(1) The commission shall certify qualified equity investments in  
6 the order the applications are received by the commission.

7 (2)(A) Applications received on the same day shall be deemed to  
8 have been received simultaneously.

9 (B) For applications that are complete and meet the  
10 requirements of this subchapter and are received on the same day, the  
11 commission shall certify, consistent with the remaining qualified equity  
12 investment capacity, the qualified equity investments in proportionate  
13 percentages based on the ratio of the amount of qualified equity investment  
14 requested in an application to the total amount of qualified equity  
15 investments requested in all applications received on the same day.

16 (d)(1) The commission shall certify up to one hundred sixty-six  
17 million dollars (\$166,000,000) in qualified equity investments.

18 (2) If a pending request cannot be fully certified because of  
19 the limitation stated in subdivision (d)(1) of this section, the commission  
20 shall certify the portion that may be certified unless the qualified  
21 community development entity elects to withdraw its request rather than  
22 receive partial certification.

23 (e) An approved applicant may transfer all or part of the applicant's  
24 certified qualified equity investment authority to the applicant's  
25 controlling entity or any qualified community development entity controlled  
26 by or under common control with the applicant:

27 (1) Provides the information required in the application with  
28 respect to the transferee; and

29 (2) Notifies the commission of the transfer by providing  
30 evidence of the receipt of the cash investment as required under subdivision  
31 (f)(2) of this section.

32 (f)(1) Within thirty (30) days of the applicant receiving notice of  
33 certification, the qualified community development entity or any transferee  
34 under subsection (e) of this section shall issue the qualified equity  
35 investment and receive cash in the amount of the certified amount.

36 (2) The qualified community development entity or transferee

1 under subsection (e) of this section must provide the commission with  
2 evidence of the receipt of the cash investment within ten (10) business days  
3 after receipt.

4 (3)(A) If the qualified community development entity or a  
5 transferee under subsection (e) does not receive the cash investment and  
6 issue the qualified equity investment within thirty (30) days following  
7 receipt of the certification notice, the certification shall lapse, and the  
8 corporation, limited liability company, association, partnership, or other  
9 business entity may not issue the qualified equity investment without  
10 reapplying to the commission for certification.

11 (B) A lapsed certification reverts back to the commission  
12 and shall be reissued:

13 (i) First, pro rata to any other applicants whose  
14 qualified equity investment allocations were reduced under subsection (d) of  
15 this section; and

16 (ii) Second, in accordance with the application  
17 process.

18  
19 15-4-3506. Letter rulings.

20 (a) Subject to the requirements and limitations of this section, the  
21 Arkansas Economic Development Commission shall issue letter rulings regarding  
22 the tax credit program authorized under this subchapter.

23 (b)(1) The commission shall respond to a request for a letter ruling  
24 within sixty (60) days of receiving the request.

25 (2)(A) However, the commission may deny a request for a letter  
26 ruling for good cause.

27 (B) If the commission denies a request for a letter ruling  
28 for good cause, it shall list the specific reasons for refusing to issue the  
29 letter ruling.

30 (C) Good cause for denying a request for a letter ruling  
31 under this subsection (b) includes without limitation the following:

32 (i) The applicant requests the commission to  
33 determine whether a statute is constitutional or a regulation is lawful;

34 (ii) The request involves a hypothetical situation  
35 or alternative plans;

36 (iii) The facts or issues presented in the request

1 are unclear, overbroad, insufficient, or otherwise inappropriate as a basis  
2 upon which to issue a letter ruling; and

3 (iv) The issue is currently being considered in a  
4 rulemaking procedure, contested case, or other agency or judicial proceeding  
5 that may resolve the issue.

6 (3) In rendering letter rulings under this subchapter, the  
7 commission shall look for guidance to 26 U.S.C. § 45D and 26 C.F.R. 1.45D-1,  
8 as they existed on January 1, 2013, and to the extent they are applicable.

9 (c) An applicant may:

10 (1) Provide a draft letter ruling for the commission's  
11 consideration; and

12 (2) Withdraw a request for a letter ruling, in writing, before  
13 the issuance of the letter ruling.

14 (d) Letter rulings bind all state agencies, including the commission  
15 and the commission's agents and successors until the qualified community  
16 development entity or its shareholders, members, or partners claim all of the  
17 applicable tax credits under this subchapter on a Arkansas tax return or  
18 report.

19 (e)(1) A letter ruling issued under this section applies only to the  
20 applicant that requested the letter ruling.

21 (2) However, a taxpayer identified in a letter ruling may rely  
22 on the letter ruling to the extent the letter ruling applies to the taxpayer.

23  
24 15-4-3507. Recapture.

25 The Arkansas Economic Development Commission shall recapture the tax  
26 credit allowed under this subchapter from the taxpayer that claimed the tax  
27 credit if:

28 (1)(A) Any amount of a federal tax credit available with respect  
29 to a qualified equity investment that is eligible for a tax credit under this  
30 subchapter is recaptured under 26 U.S.C. § 45D, as it existed on January 1,  
31 2013.

32 (B) If a recapture occurs under subdivision (1)(A) of this  
33 section, the commission's recapture shall be proportionate to the federal  
34 recapture with respect to the qualified equity investment;

35 (2)(A) The issuer redeems or makes principal repayment with  
36 respect to a qualified equity investment before the seventh anniversary of

1 the issuance of the qualified equity investment.

2 (B) If a recapture occurs under subdivision (2)(A) of this  
3 section, the commission's recapture shall be proportionate to the amount of  
4 the redemption or repayment with respect to the qualified equity investment;

5 (3)(A) The issuer fails to:

6 (i) Invest an amount equal to eighty-five percent  
7 (85%) of the purchase price of the qualified equity investment in qualified  
8 low-income community investments in Arkansas within twelve (12) months of the  
9 issuance of the qualified equity investment; and

10 (ii) Maintain the minimum investment level required  
11 under subdivision (3)(A)(i) of this section until the last credit allowance  
12 date for the qualified equity investment.

13 (B)(i) A qualified equity investment shall be considered  
14 held by an issuer even if a qualified low-income community investment has  
15 been sold or repaid if the issuer reinvests an amount equal to the capital  
16 returned to or recovered by the issuer from the original qualified low-income  
17 community investment, exclusive of any profits realized, in another qualified  
18 low-income community investment within twelve (12) months of the receipt of  
19 such returned capital.

20 (ii) Periodic amounts received during a calendar  
21 year as repayment of principal on a loan that is a qualified low-income  
22 community investment shall be treated as continuously invested in a qualified  
23 low-income community investment if the amounts are reinvested in one (1) or  
24 more qualified low-income community investments by the end of the following  
25 year.

26 (C) An issuer shall not be required to reinvest capital  
27 returned from a qualified low-income community investment, and the qualified  
28 low-income community investment shall be considered held by the issuer  
29 through the seventh anniversary of the qualified equity investment's issuance  
30 after the earlier of:

31 (i) The sixth anniversary of the credit allowance  
32 date of the qualified equity investment, the proceeds of which were used to  
33 make the qualified low-income community investment; or

34 (ii) The date by which a qualified community  
35 development entity has made qualified low-income community investments with  
36 the proceeds of such qualified equity investment on a cumulative basis equal

1 to at least one hundred fifty percent (150%) of such proceeds; or

2 (4) At any time before the final credit allowance date of a  
3 qualified equity investment, the issuer uses the cash proceeds of the  
4 qualified equity investment to make qualified low-income community  
5 investments in any one (1) or more qualified active low-income community  
6 businesses, including without limitation affiliated qualified active low-  
7 income community businesses and excluding reinvestments of capital returned  
8 or repaid with respect to earlier qualified equity investments in the  
9 qualified active low-income community business and its affiliates in excess  
10 of twenty-five percent (25%) of the cash proceeds of all qualified equity  
11 investments issued by the issuer under this section.

12  
13 15-4-3508. Cure period – Notice of noncompliance.

14 (a) Enforcement of each the recapture provisions under § 15-4-3507 is  
15 subject to a six-month cure period.

16 (b) Recapture shall not occur until the Arkansas Economic Development  
17 Commission has given the qualified community development entity written  
18 notice of its noncompliance and has afforded the qualified community  
19 development entity six (6) months from the date of the notice to cure the  
20 noncompliance.

21  
22 15-4-3509. Refundable performance fee.

23 (a) A qualified community development entity that seeks to have an  
24 equity investment or long-term debt security designated as a qualified equity  
25 investment eligible for a tax credit under this subchapter shall pay a fee in  
26 the amount one-half of one percent (0.5%) of the amount of the equity  
27 investment or long-term debt security requested to be designated as a  
28 qualified equity investment to the Arkansas Economic Development Commission  
29 for deposit into the New Markets Performance Guarantee Fund, § 19-5-1249.

30 (b) The qualified community development entity shall forfeit the fee  
31 required under this section if:

32 (1) The qualified community development entity and its  
33 subsidiary qualified community development entities fail to:

34 (A) Issue the total amount of qualified equity investments  
35 certified by the commission; and

36 (B) Receive cash in the total amount certified under and

1 within the time period stated in § 15-4-3505; or

2 (2)(A) The qualified community development entity or any  
3 subsidiary qualified community development entity that issues a qualified  
4 equity investment certified under this subchapter fails to meet the  
5 investment requirement under § 15-4-3507(3) by the second credit allowance  
6 date of the qualified equity investment.

7 (B) Forfeiture of the fee under subdivision (b)(2)(A) of  
8 this section shall be subject to the six-month cure period established under  
9 § 15-4-3508.

10 (c)(1) The fee required under subsection (a) of this section shall be  
11 held in the New Markets Performance Guarantee Fund until compliance with the  
12 requirements of this section is established.

13 (2)(A) A qualified community development entity may request a  
14 refund of the fee from the commission no sooner than thirty (30) days after  
15 having met all the requirements of this section.

16 (B) The Treasurer of State shall comply with a request  
17 under subdivision (c)(2)(A) of this section or give notice of noncompliance  
18 within thirty (30) days of receiving the request.

19  
20 15-4-3510. Retaliatory tax.

21 (a) An entity claiming a tax credit under this chapter is not required  
22 to pay any additional retaliatory tax levied under § 23-63-102 as a result of  
23 claiming the tax credit.

24 (b) In addition to the exclusion in subsection (a) of this section, it  
25 is the intent of this subchapter that an entity claiming a tax credit under  
26 this subchapter is not required to pay any additional tax that may arise as a  
27 result of claiming the tax credit.

28  
29 15-4-3511. Decertification.

30 (a)(1) If a qualified equity investment is certified under § 15-4-  
31 3505, the qualified equity investment shall not be decertified unless the  
32 requirements of subsection (b) of this section are met.

33 (2) Until all qualified equity investments issued by a qualified  
34 community development entity are decertified under this section, the  
35 qualified community development entity shall not distribute to its equity  
36 holders or make cash payments on long-term debt securities that have been

1 designated as qualified equity investments in an amount that exceeds the sum  
2 of:

3 (A) The cumulative operating income, as determined under  
4 26 C.F.R. § 1.45D-1, as it existed on January 1, 2013, earned by the  
5 qualified community development entity since issuance of the qualified equity  
6 investment, before giving effect to any expense from interest on long-term  
7 debt securities designated as qualified equity investments; and

8 (B) Fifty percent (50%) of the purchase price of the  
9 qualified equity investments issued by the qualified community development  
10 entity.

11 (b) To be decertified, a qualified equity investment shall:

12 (1) Be beyond its seventh credit allowance date;

13 (2)(A) Have been in compliance with § 15-4-3507 up through its  
14 seventh credit allowance date, including any cures under § 15-4-3508.

15 (B) The requirement under subdivision (b)(2)(A) of this  
16 section is satisfied if no recapture action has been commenced by the  
17 Arkansas Economic Development Commission as of the seventh credit allowance  
18 date; and

19 (3) Have invested its proceeds in qualified active low-income  
20 community investments such that the total qualified active low income  
21 community investments made, cumulatively including reinvestments, exceeds one  
22 hundred fifty percent (150%) all qualified equity investments issued by the  
23 issuer.

24 (c)(1) A qualified community development entity that seeks to have a  
25 qualified equity investment decertified under this section shall send notice  
26 to the commission of its request for decertification along with evidence  
27 supporting the request.

28 (2)(A) A request under subdivision (c)(1) of this section shall  
29 not be unreasonably denied and shall be responded to within thirty (30) days  
30 of receiving the request.

31 (B) If the request is denied for any reason, the burden of  
32 proof shall be on the commission in any administrative or legal proceeding  
33 that follows to establish that the request was not unreasonably denied.

34  
35 15-4-3512. Reports.

36 (a)(1) A qualified community development entity that issues a

1 qualified equity investment under this subchapter shall submit a report to  
2 the Arkansas Economic Development Commission within five (5) business days  
3 after the first anniversary of the initial credit allowance date.

4 (2) The report required under subdivision (a)(1) of this section  
5 shall provide evidence:

6 (A) That at least eighty-five percent (85%) of the cash  
7 purchase price for each qualified equity investment was used to make  
8 qualified low-income community investments in qualified active low-income  
9 community businesses located in Arkansas;

10 (B) Of each qualified low-income community investment by  
11 providing a bank statement for the qualified community development entity  
12 that includes the qualified low-income community investment; and

13 (C) That each business was a qualified low-income  
14 community business at the time the qualified low-income community investment  
15 was made and shall state the name, location, and industry code of each  
16 qualified low-income community business receiving a qualified low-income  
17 community investment.

18 (b)(1) After submitting the report required under subsection (a) of  
19 this section, a qualified community development entity shall submit an annual  
20 report to the commission within five (5) business days after each anniversary  
21 of the credit allowance date.

22 (2) The report required under subdivision (b)(1) of this section  
23 shall:

24 (A) Be submitted to the commission in electronic form and  
25 as a hard copy; and

26 (B) Include without limitation the following:

27 (i) The number of employment positions created and  
28 retained as the result of each qualified low-income community investment;

29 (ii) The average annual salary of the positions  
30 described in subdivision (b)(2)(B)(i) of this section;

31 (iii) Any other information required by the  
32 commission; and

33 (iv) Any other information submitted by the  
34 qualified community development entity to demonstrate the effectiveness of  
35 the qualified low-income community investment.

36 (c) A qualified community development entity shall not include in a



1 report required under this section a qualified low-income community  
2 investment that has been redeemed or repaid.

3  
4 15-4-3513. Revenue impact assessment.

5 (a)(1) Before making a qualified low-income community investment, a  
6 qualified community development entity shall submit to the Arkansas Economic  
7 Development Commission for review a revenue impact assessment prepared by a  
8 nationally recognized third-party independent economic forecasting firm  
9 utilizing the Regional Economics Model, Inc. or MIG, Inc. model that  
10 demonstrates that the qualified low-income community investment will have a  
11 revenue positive impact on the state over ten (10) years against the  
12 aggregate tax credit utilization over the same ten-year period.

13 (2) The aggregate tax credit utilization under subdivision  
14 (a)(1) of this section is equal to the amount of the qualified low-income  
15 community investment multiplied by fifty-eight percent (58%).

16 (b)(1) The commission shall complete its review and notify the  
17 qualified community development entity within ten (10) business days from the  
18 receipt of a revenue impact assessment.

19 (2) A proposed qualified low-income community investment shall  
20 be deemed revenue positive if the commission does not notify a qualified  
21 community development entity of its review with ten (10) business days of  
22 receipt of a revenue impact assessment.

23 (c) If the commission determines that the revenue impact assessment  
24 does not reflect a revenue positive qualified low-income community  
25 investment, the commission may waive the requirement under this section if  
26 the commission determines that the proposed qualified low-income community  
27 investment will further economic development.

28  
29 15-4-3514. Rules.

30 The Arkansas Economic Development Commission shall promulgate rules to  
31 implement this subchapter.

32  
33 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 12, is  
34 amended to add an additional section to read as follows:

35 19-5-1249. New Markets Performance Guarantee Fund.

36 (a) There is created on the books of the Treasurer of State, the

1 Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous  
2 fund to be known as the "New Markets Performance Guarantee Fund".

3 (b) The fund shall consist of:

4 (1) Fees paid under § 15-4-3509;

5 (2) Grants made by a person, organization, or federal or state  
6 government agency; and

7 (3) Any other funds provided by law.

8 (c) The fund shall be used by the Arkansas Economic Development  
9 Commission to guarantee qualified community development entities' performance  
10 under the New Markets Jobs Act of 2013, § 15-4-3501 et seq.

11  
12 SECTION 3. DO NOT CODIFY. Applicability. This act applies only to a  
13 return or report originally due on or after the effective date of this act.

14  
15 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
16 General Assembly of the State of Arkansas that the unemployment rate in  
17 Arkansas is high; that the high rate of unemployment in this state hinders  
18 Arkansas's economic recovery; that there is an urgent need to create jobs in  
19 this state; and that this act is immediately necessary to encourage the  
20 creation of additional jobs for Arkansans and to support Arkansas's continual  
21 economic recovery. Therefore, an emergency is declared to exist, and this act  
22 being immediately necessary for the preservation of the public peace, health,  
23 and safety shall become effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,  
26 the expiration of the period of time during which the Governor may veto the  
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is  
29 overridden, the date the last house overrides the veto.

30  
31 */s/Williams*

32  
33  
34 **APPROVED: 04/22/2013**