

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/21/13

A Bill

HOUSE BILL 1832

5 By: Representatives Williams, Steel, J. Edwards, Leding, Jean, Lenderman, Branscum, Lampkin, Ratliff,
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12 By: Senators J. Dismang, Files, Teague, Maloch, B. Sample, Hester, L. Chesterfield, J. English, B. Pierce,
13 Rapert, J. Woods, *D. Sanders*
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

Subtitle

22 THE NEW MARKETS JOBS ACT OF 2013.
23
24
25

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
29 additional subchapter to read as follows:

Subchapter 35 – New Markets Jobs Act of 2013

15-4-3501. Title.

33 This subchapter shall be known and may be cited as the “New Markets
34 Jobs Act of 2013”.
35

15-4-3502. Definitions.

36

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 Department of Finance and Administration;

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 Arkansas Economic Development

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

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

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

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

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

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

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

35 (iii) A corporation, limited liability company,
36 association, partnership, or other business entity primarily engaged in

1 retail sales; or

2 (iv)(a) A corporation, limited liability company,
3 association, partnership, or other business entity that derives or projects
4 to derive at least fifteen percent (15%) of its annual revenue from the
5 rental or sale of real estate.

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

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

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

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

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

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

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

34 (ii) Has at least eighty-five percent (85%) of its
35 cash purchase price used by the issuer to make qualified low-income community
36 investments in qualified active low-income community businesses located in

1 Arkansas by the first anniversary of the initial credit allowance date; and
2 (iii) Is designated by the issuer as a qualified
3 equity investment under this subdivision (8) and is certified by the Arkansas
4 Economic Development Commission as not exceeding the limitation stated in §
5 15-4-3505(d).

6 (B) "Qualified equity investment" includes an investment
7 that does not meet the requirements of subdivision (8)(A)(i) of this section
8 if the investment was a qualified equity investment in the hands of a
9 previous holder;

10 (9) "Qualified low-income community investment" means a capital
11 or equity investment in or loan to a qualified active low-income community
12 business; and

13 (10) "State premium tax liability" means:

14 (A) Tax liability incurred by a corporation, limited
15 liability company, association, partnership, or other business entity under
16 §§ 11-9-301 – 11-9-307, 23-63-102, and 26-57-601 – 26-57-605; or

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

21
22 15-4-3503. New market tax credit.

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

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

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

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

1 (3) The amount of the tax credit claimed by a corporation,
2 limited liability company, association, partnership, or other business entity
3 shall not exceed the state premium tax liability owed by the taxpayer that
4 files the premium tax report for the tax year for which the tax credit is
5 claimed.

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

8
9 15-4-3504. Transferability.

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

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

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

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

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

22
23 15-4-3505. Certification of qualified equity investments.

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

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

30 (B)(i) If the qualified community development entity seeks
31 to have a long-term debt security designated as a qualified equity investment
32 under this section, the qualified community development entity shall not make
33 cash interest payments on the long-term debt security during the period
34 beginning on the date of issuance and ending on the final credit allowance
35 date in an amount that exceeds the cumulative operating income, as determined
36 under 26 C.F.R. § 1.45D-1, as it existed on January 1, 2013, of the qualified

1 community development entity for that period before giving effect to interest
2 expense on the long-term debt security.

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

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

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

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

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

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

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

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

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

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

33 (vi)(a) Examples of the types of qualified active
34 low-income businesses in which the applicant, its controlling entity, or
35 affiliates of its controlling entity have invested under the federal New
36 Markets Tax Credit Program, if any.

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

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

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

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

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

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

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

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

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

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

34 (iii) If the name of a corporation, limited
35 liability company, association, partnership, or other business entity that is
36 eligible to use the tax credit changes as the result of a transfer of a

1 qualified equity investment or an allocation under § 15-4-3504(b), the
2 qualified community development entity shall notify the commission of the
3 change.

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

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

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

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

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

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

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

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

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

35 (2) The qualified community development entity or transferee
36 under subsection (e) of this section must provide the commission with

1 evidence of the receipt of the cash investment within ten (10) business days
2 after receipt.

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

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

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

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

17
18 15-4-3506. Letter rulings.

19 (a) Subject to the requirements and limitations of this section, the
20 Arkansas Department of Finance and Administration shall issue letter rulings
21 regarding the tax credit program authorized under this subchapter.

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

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

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

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

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

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

35 (iii) The facts or issues presented in the request
36 are unclear, overbroad, insufficient, or otherwise inappropriate as a basis

1 upon which to issue a letter ruling; and

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

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

8 (c) An applicant may:

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

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

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

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

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

21
22 15-4-3507. Recapture.

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

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

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

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

36 (B) If a recapture occurs under subdivision (2)(A) of this

1 section, the commission's recapture shall be proportionate to the amount of
2 the redemption or repayment with respect to the qualified equity investment;

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

4 (i) Invest an amount equal to eighty-five percent
5 (85%) of the purchase price of the qualified equity investment in qualified
6 low-income community investments in Arkansas within twelve (12) months of the
7 issuance of the qualified equity investment; and

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

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

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

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

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

32 (ii) The date by which a qualified community
33 development entity has made qualified low-income community investments with
34 the proceeds of such qualified equity investment on a cumulative basis equal
35 to at least one hundred fifty percent (150%) of such proceeds; or

36 (4) At any time before the final credit allowance date of a

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

10
11 15-4-3508. Cure period – Notice of noncompliance.

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

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

19
20 15-4-3509. Refundable performance fee.

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

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

30 (1) The qualified community development entity and its
31 subsidiary qualified community development entities fail to:

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

34 (B) Receive cash in the total amount certified under and
35 within the time period stated in § 15-4-3505; or

36 (2)(A) The qualified community development entity or any

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

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

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

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

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

17
18 15-4-3510. Retaliatory tax.

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

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

26
27 15-4-3511. Decertification.

28 (a)(1) If a qualified equity investment is certified under § 15-4-
29 3505, the qualified equity investment shall not be decertified unless the
30 requirements of subsection (b) of this section are met.

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

1 (A) The cumulative operating income, as determined under
2 26 C.F.R. § 1.45D-1, as it existed on January 1, 2013, earned by the
3 qualified community development entity since issuance of the qualified equity
4 investment, before giving effect to any expense from interest on long-term
5 debt securities designated as qualified equity investments; and

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

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

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

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

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

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

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

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

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

32
33 15-4-3512. Reports.

34 (a)(1) A qualified community development entity that issues a
35 qualified equity investment under this subchapter shall submit a report to
36 the Arkansas Economic Development Commission within five (5) business days

1 after the first anniversary of the initial credit allowance date.

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

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

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

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

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

20 (2) The report required under subdivision (b)(1) of this section
21 shall:

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

24 (B) Include without limitation the following:

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

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

29 (iii) Any other information required by the
30 commission; and

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

34 (c) A qualified community development entity shall not include in a
35 report required under this section a qualified low-income community
36 investment that has been redeemed or repaid.

1
2 15-4-3513. Revenue impact assessment.

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

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

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

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

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

26
27 15-4-3514. Rules.

28 The Arkansas Economic Development Commission shall promulgate rules to
29 implement this subchapter.

30
31 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 12, is
32 amended to add an additional section to read as follows:

33 19-5-1249. New Markets Performance Guarantee Fund.

34 (a) There is created on the books of the Treasurer of State, the
35 Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous
36 fund to be known as the "New Markets Performance Guarantee Fund".

1 (b) The fund shall consist of:

2 (1) Fees paid under § 15-4-3509;

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

5 (3) Any other funds provided by law.

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

9
10 SECTION 3. DO NOT CODIFY. Applicability. This act applies only to a
11 return or report originally due on or after the effective date of this act.

12
13 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
14 General Assembly of the State of Arkansas that the unemployment rate in
15 Arkansas is high; that the high rate of unemployment in this state hinders
16 Arkansas's economic recovery; that there is an urgent need to create jobs in
17 this state; and that this act is immediately necessary to encourage the
18 creation of additional jobs for Arkansans and to support Arkansas's continual
19 economic recovery. Therefore, an emergency is declared to exist, and this act
20 being immediately necessary for the preservation of the public peace, health,
21 and safety shall become effective on:

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

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

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

28
29 */s/Williams*