

118TH CONGRESS
1ST SESSION

S. 2963

To amend the Internal Revenue Code of 1986 to provide a credit for investment in Community Development Financial Institutions.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28 (legislative day, SEPTEMBER 22), 2023

Mr. WARNER (for himself, Mr. WICKER, Mr. PETERS, Mrs. HYDE-SMITH, Mr. MORAN, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a credit for investment in Community Development Financial Institutions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Community Develop-
5 ment Investment Tax Credit Act of 2023”.

6 **SEC. 2. COMMUNITY DEVELOPMENT FINANCIAL INSTITU-**
7 **TION INVESTMENT TAX CREDIT.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by adding at the end the following new
2 section:

3 **“SEC. 45BB. COMMUNITY DEVELOPMENT FINANCIAL INSTI-
4 TUTION INVESTMENT TAX CREDIT.**

5 “(a) ALLOWANCE OF CREDIT.—

6 “(1) IN GENERAL.—For purposes of section 38,
7 in the case of a taxpayer who holds a qualified
8 CDFI investment on a credit allowance date of such
9 investment which occurs during the taxable year, the
10 CDFI investment credit determined under this sec-
11 tion for such taxable year is an amount equal to the
12 applicable percentage of the amount paid to the
13 qualified community development financial institu-
14 tion for such investment at its original issue.

15 “(2) APPLICABLE PERCENTAGE.—For purposes
16 of paragraph (1)—

17 “(A) IN GENERAL.—The applicable per-
18 centage is—

19 “(i) 3 percent with respect to the first
20 10 credit allowance dates, and

21 “(ii) 4 percent with respect to the 10
22 credit allowance dates following the last
23 credit allowance date to which clause (i)
24 applies.

1 “(B) INCREASED AMOUNT FOR CERTAIN
2 INVESTMENTS.—In the case of a qualified
3 CDFI investment which does not have a fixed
4 term or duration, the applicable percentage for
5 any credit allowance date shall be increased by
6 one percentage point.

7 “(3) CREDIT ALLOWANCE DATE.—

8 “(A) IN GENERAL.—For purposes of para-
9 graph (1), the term ‘credit allowance date’
10 means, with respect to any qualified CDFI in-
11 vestment—

12 “(i) the date which is one year after
13 the date on which such investment is ini-
14 tially made, and

15 “(ii) each of the 19 anniversary dates
16 of such date thereafter.

17 “(B) LIMITATION.—Notwithstanding sub-
18 paragraph (A), a date shall not be treated as a
19 credit allowance date with respect to any quali-
20 fied CDFI investment if such date occurs after
21 any date on which—

22 “(i) the financial institution in which
23 such CDFI investment is made ceases to
24 be a qualified community development fi-
25 nancial institution, or

1 “(ii) such investment is redeemed, re-
2 purchased, or otherwise repaid by the
3 qualified community development financial
4 institution which issued such investment.

5 “(b) QUALIFIED CDFI INVESTMENT.—For purposes
6 of this section—

7 “(1) IN GENERAL.—The term ‘qualified CDFI
8 investment’ means any investment in a qualified
9 community development financial institution if—

10 “(A) such investment is acquired by the
11 taxpayer at its original issue (directly or
12 through an underwriter) solely in exchange for
13 cash,

14 “(B) such investment is in the form of—

15 “(i) non-voting stock or an equity
16 equivalent investment,

17 “(ii) an interest in an entity which is
18 a partnership, or

19 “(iii) an obligation described in sec-
20 tion 279(b)(2) which has a term of 10
21 years or longer,

22 “(C) such investment has not been des-
23 ignated as a qualified equity investment for
24 purposes of section 45D, and

1 “(D) such investment is designated for
2 purposes of this section by the qualified com-
3 munity development financial institution.

4 Such term shall not include any investment issued
5 by a qualified community development financial in-
6 stitution more than 5 years after the date that such
7 financial institution receives an allocation under sub-
8 section (d)(3). Any allocation not used within such
9 5-year period may be reallocated by the Secretary
10 under subsection (d).

11 “(2) LIMITATION.—The maximum amount of
12 investments issued by a qualified community devel-
13 opment financial institution which may be des-
14 ignated under paragraph (1)(D) by such financial
15 institution shall not exceed the portion of the limita-
16 tion amount allocated under subsection (d) to such
17 financial institution.

18 “(3) TREATMENT OF SUBSEQUENT PUR-
19 CHASERS.—The term ‘qualified CDFI investment’
20 includes any investment which would (but for para-
21 graph (1)(A)) be a qualified CDFI investment in the
22 hands of the taxpayer if such investment was a
23 qualified CDFI investment in the hands of a prior
24 holder.

1 “(4) REDEMPTIONS.—A rule similar to the rule
2 of section 1202(e)(3) shall apply for purposes of this
3 subsection.

4 “(5) EQUITY EQUIVALENT INVESTMENT.—For
5 purposes of this paragraph, the term ‘equity equiva-
6 lent investment’ means an obligation of a qualified
7 community development financial institution
8 which—

9 “(A) is carried as an investment on the in-
10 vestor’s balance sheet in accordance with Gen-
11 erally Accepted Accounting Principles,

12 “(B) is not secured by any of the assets of
13 the qualified community development financial
14 institution,

15 “(C) is fully subordinated to the right of
16 repayment of all of the other creditors of the
17 qualified community development financial in-
18 stitution,

19 “(D) does not give the investor the right to
20 accelerate payment unless the qualified commu-
21 nity development financial institution ceases its
22 normal operations,

23 “(E) carries an interest rate or dividend
24 that is not tied to any income received by the

1 qualified community development financial in-
 2 stitution, and

3 “(F) has an indeterminate maturity.

4 “(c) QUALIFIED COMMUNITY DEVELOPMENT FINAN-
 5 CIAL INSTITUTION.—For purposes of this section, the
 6 term ‘qualified community development financial institu-
 7 tion’ means—

8 “(1) any community development financial in-
 9 stitution (as defined in section 103 of the Commu-
 10 nity Development Banking and Financial Institu-
 11 tions Act of 1994 (12 U.S.C. 4702)), or

12 “(2) any partnership that is controlled, for pur-
 13 poses of section 482, or any investment vehicle the
 14 investment activities of which are otherwise substan-
 15 tially entirely managed and directed, by one or more
 16 community development financial institutions (as so
 17 defined).

18 “(d) NATIONAL LIMITATION ON AMOUNT OF INVEST-
 19 MENTS DESIGNATED.—

20 “(1) IN GENERAL.—There is an investment tax
 21 credit limitation for each calendar year. Such a limi-
 22 tation is—

23 “(A) \$1,000,000,000 for 2023,

24 “(B) \$1,500,000,000 for 2024, and

1 “(C) \$2,000,000,000 for each year there-
2 after.

3 “(2) INFLATION ADJUSTMENT.—

4 “(A) IN GENERAL.—In the case of any cal-
5 endar year after 2025, the \$2,000,000,000 in
6 paragraph (1)(C) shall be increased by an
7 amount equal to—

8 “(i) such dollar amount, multiplied by

9 “(ii) the cost-of-living adjustment de-
10 termined under section 1(f)(3) for the cal-
11 endar year in which the taxable year be-
12 gins, determined by substituting ‘calendar
13 year 2024’ for ‘calendar year 2016’ in sub-
14 paragraph (A)(ii) thereof.

15 “(B) ROUNDING.—If any increase deter-
16 mined under subparagraph (A) is not a multiple
17 of \$1,000,000, such increase shall be rounded
18 to the nearest multiple of \$1,000,000.

19 “(3) ALLOCATION OF LIMITATION.—

20 “(A) IN GENERAL.—The limitation under
21 paragraph (1) shall be allocated by the Sec-
22 retary among qualified community development
23 financial institutions selected by the Secretary
24 based on the following criteria:

1 “(i) Financial and compliance per-
2 formance.

3 “(ii) Demonstrated ability to attract
4 private capital.

5 “(iii) The diversity of business model
6 types.

7 “(iv) The diversity of population den-
8 sity served.

9 “(v) Impact generation capacity.

10 “(vi) The information contained in the
11 investment plan described in subparagraph
12 (B).

13 “(vii) Whether the investment term
14 will exceed 10 years.

15 “(viii) Such other criteria as deter-
16 mined appropriate by the Secretary.

17 “(B) REQUIREMENT TO PROVIDE AN IN-
18 VESTMENT PLAN.—An application submitted to
19 the Secretary under subparagraph (A) shall in-
20 clude a plan that—

21 “(i) describes how the qualified com-
22 munity development financial institution
23 will expand or maintain its lending and in-
24 vesting activity in its target market as a
25 result of qualified CDFI investments, and

1 “(ii) includes such other information
2 as required by the Secretary.

3 “(4) CARRYOVER OF UNUSED LIMITATION.—If
4 the new investment tax credit limitation for any cal-
5 endar year exceeds the aggregate amount allocated
6 under paragraph (2) for such year, such limitation
7 for the succeeding calendar year shall be increased
8 by the amount of such excess.

9 “(5) AUTHORIZATION OF USER FEES.—

10 “(A) IN GENERAL.—The Secretary may
11 charge a user fee for a request for an allocation
12 of the limitation under paragraph (3).

13 “(B) USE OF FEES.—Any fees collected by
14 the Secretary pursuant to subparagraph (A)
15 may be used to contract with third parties to
16 verify information relating to the qualification
17 of an entity as a qualified community develop-
18 ment financial institution.

19 “(C) LIMITATION.—The fee charged under
20 subparagraph (A) shall not exceed 0.05 percent
21 of the amount of the allocation requested.

22 “(e) REGULATIONS.—The Secretary shall prescribe
23 such regulations as may be appropriate to carry out this
24 section, including regulations—

1 “(1) which limit the credit under this section
2 for investments which directly or indirectly receive a
3 Federal tax benefit (including a credit under section
4 42 or an exclusion from gross income under section
5 103),

6 “(2) which prevent the abuse of the purposes of
7 this section,

8 “(3) which impose appropriate reporting re-
9 quirements, and

10 “(4) which provide rules for allocations under
11 subsection (d)(3) to persons that have been certified
12 as emerging community development financial insti-
13 tutions under section 105 of the Community Devel-
14 opment Banking and Financial Institutions Act of
15 1994.”.

16 (b) PART OF GENERAL BUSINESS CREDIT.—Section
17 38(b) of such Code is amended by striking “plus” at the
18 end of paragraph (40), by striking the period at the end
19 of paragraph (41) and inserting “, plus”, and by adding
20 at the end the following new paragraph:

21 “(42) the CDFI investment credit determined
22 under section 45BB(a).”.

23 (c) CONFORMING AMENDMENTS.—

24 (1) Section 45D(b)(1) of the Internal Revenue
25 Code of 1986 is amended by striking “and” at the

1 end of subparagraph (B), by striking the period at
 2 the end of subparagraph (C) and inserting “, and”,
 3 and by adding at the end the following new subpara-
 4 graph:

5 “(D) such investment has not been des-
 6 ignated as a qualified CDFI investment for
 7 purposes of section 45BB.”.

8 (2) The table of sections for subpart D of part
 9 IV of subchapter A of chapter 1 of such Code is
 10 amended by adding at the end the following new
 11 item:

“45BB. Community development financial institution investment tax credit.”.

12 (d) **EFFECTIVE DATE.**—The amendments made by
 13 this section shall apply to investments made after the date
 14 of the enactment of this Act.

15 **SEC. 3. COMMUNITY DEVELOPMENT EQUITY FUNDS.**

16 Section 105 of the Community Development Banking
 17 and Financial Institutions Act of 1994 (12 U.S.C. 4704)
 18 is amended by adding at the end the following:

19 “(d) **COMMUNITY DEVELOPMENT EQUITY FUNDS.**—

20 “(1) **DEFINITION.**—In this subsection, the term
 21 ‘community development equity fund’ means a com-
 22 munity development financial institution with a
 23 management entity that manages 1 or more invest-
 24 ment funds where a majority of both the number
 25 and dollar volume of financial products are equity or

1 near equity investments in small businesses located
2 in an investment area or small businesses majority
3 owned by a targeted population.

4 “(2) QUALIFICATIONS.—In an application for
5 assistance under this subtitle, an applicant that is a
6 community development equity fund shall dem-
7 onstrate, to the satisfaction of the Secretary, that
8 the current or proposed management team of the
9 fund is qualified and has the knowledge, experience,
10 and capability necessary for investing in the types of
11 businesses contemplated by this Act, regulations im-
12 plementing this Act, and the business plan of the
13 fund.

14 “(3) TREATMENT.—The management entity of
15 the community development equity fund and all of
16 its current and future managed investment funds
17 shall be treated as one community development fi-
18 nancial institution, regardless of the separation of
19 the corporate structures, if the management entity
20 maintains control over the investment decisions of
21 the managed funds and has not made changes to its
22 management team without approval of the Sec-
23 retary.”.

1 **SEC. 4. EMERGING CDFIS.**

2 Section 105 of the Community Development Banking
3 and Financial Institutions Act of 1994 (12 U.S.C. 4704),
4 as amended by section 3 of this Act, is amended by adding
5 at the end the following:

6 “(e) EMERGING COMMUNITY DEVELOPMENT FINAN-
7 CIAL INSTITUTIONS.—

8 “(1) IN GENERAL.—An entity may submit to
9 the Fund an application to be certified as an emerg-
10 ing community development financial institution.

11 “(2) BUSINESS PLAN.—The application de-
12 scribed in paragraph (1) shall include a business
13 plan that demonstrates that, during the 18-month
14 period beginning on the date on which the business
15 plan is approved, the entity will meet the require-
16 ments of subparagraph (A) of section 103(5) or sub-
17 section (d) of this section.”.

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