

1 **UTAH SMALL BUSINESS JOBS ACT AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Utah Small Business Jobs Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ modifies provisions related to qualified equity investments issued before January 1,
- 14 2016, and on or after January 1, 2016;
- 15 ▶ modifies the date when applications for a qualified equity investment tax credit
- 16 under the Utah Small Business Jobs Act may be accepted by the Governor's Office
- 17 of Economic Development (GOED);
- 18 ▶ modifies the dollar amount of qualified equity investments that GOED may certify;
- 19 and
- 20 ▶ makes technical and conforming changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **63N-2-602**, as renumbered and amended by Laws of Utah 2015, Chapter 283



- 28 **63N-2-603**, as renumbered and amended by Laws of Utah 2015, Chapter 283
- 29 **63N-2-604**, as renumbered and amended by Laws of Utah 2015, Chapter 283
- 30 **63N-2-606**, as renumbered and amended by Laws of Utah 2015, Chapter 283
- 31 **63N-2-607**, as renumbered and amended by Laws of Utah 2015, Chapter 283
- 32 **63N-2-611**, as renumbered and amended by Laws of Utah 2015, Chapter 283

34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **63N-2-602** is amended to read:

36 **63N-2-602. Definitions.**

37 As used in this part:

38 (1) "Affiliate" means an entity that directly, or indirectly through one or more
39 intermediaries, controls, or is controlled by, or is under common control with, the entity
40 specified.

41 (2) "Applicable percentage" means:

42 [~~(a) 0% for the first two credit allowance dates;~~]

43 [~~(b) 12% for the next three credit allowance dates; and]~~

44 [~~(c) 11% for the next two credit allowance dates.]~~

45 (a) with respect to a qualified equity investment issued before January 1, 2016:

46 (i) 0% for the first two credit allowance dates;

47 (ii) 12% for the next three credit allowance dates; and

48 (iii) 11% for the next two credit allowance dates; and

49 (b) with respect to a qualified equity investment issued on or after January 1, 2016:

50 (i) 0% for the first six credit allowance dates;

51 (ii) 12% for the next three credit allowance dates; and

52 (iii) 11% for the next two credit allowance dates.

53 (3) "Community Development Financial Institutions Fund" means the fund created in
54 12 U.S.C. Sec. 4703.

55 (4) "Credit allowance date" means with respect to a qualified equity investment:

56 (a) the date on which the qualified equity investment is initially made; and

57 (b) (i) each of the first six anniversary dates of the date described in Subsection

58 (4)(a)[~~]~~ with respect to a qualified equity investment issued before January 1, 2016; or

59 (ii) each of the first 10 anniversary dates of the date described in Subsection (4)(a) with
60 respect to a qualified equity investment issued on or after January 1, 2016.

61 (5) "Federal New Markets Tax Credit Program" means the program created under
62 Section 45D, Internal Revenue Code.

63 (6) "Long-term debt security" means a debt instrument issued by a qualified
64 community development entity:

65 (a) with an original maturity date of at least seven years from the date of its issuance;
66 and

67 (b) with no repayment, amortization, or prepayment features before its original
68 maturity date.

69 (7) "Purchase price" means the amount paid to the qualified community development
70 entity that issues a qualified equity investment for the qualified equity investment that may not
71 exceed the amount of qualified equity investment authority certified pursuant to Section
72 [63N-2-603](#).

73 [~~(8)(a) "Qualified active low-income community business" is as defined in Section~~
74 ~~45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1, but is limited to those businesses~~
75 ~~meeting the United States Small Business Administration size eligibility standards established~~
76 ~~in 13 C.F.R. Sec. 121.101-201 at the time the qualified low-income community investment is~~
77 ~~made.]~~

78 (8)(a) "Qualified active low-income community business" means a business with
79 fewer than 250 employees and less than \$10,000,000 in net income for the preceding taxable
80 year at the time of the qualified low-income community investment and:

81 (i) with respect to a qualified equity investment issued before January 1, 2016, a
82 business that meets the definition of a qualified active low-income community business in
83 Section 45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1; or

84 (ii) with respect to a qualified equity investment issued on or after January 1, 2016, if
85 located in Utah, Salt Lake, Davis, or Weber county, a business that meets the definition of a
86 qualified active low-income community business in Section 45D, Internal Revenue Code, and
87 26 C.F.R. Sec. 1.46D-1.

88 (b) Notwithstanding Subsection (8)(a), "qualified active low-income community
89 business" does not include a business that derives or projects to derive 15% or more of its

90 annual revenue from the rental or sale of real estate, unless the business is controlled by or
91 under common control with another business if the second business:

92 (i) does not derive or project to derive 15% or more of its annual revenue from the
93 rental or sale of real estate; and

94 (ii) is the primary tenant of the real estate leased from the initial business.

95 (c) A business is considered a qualified active low-income community business for the
96 duration of the qualified community development entity's investment in, or loan to, the
97 business if the qualified community development entity reasonably expects, at the time it
98 makes the investment or loan, that the business will continue to satisfy the requirements for
99 being a qualified active low-income community business~~[, other than the United States Small
100 Business Administration size standards,]~~ throughout the entire period of the investment or loan.

101 (9) (a) "Qualified community development entity" is as defined in Section 45D,
102 Internal Revenue Code, if the entity has entered into an allocation agreement with the
103 Community Development Financial Institutions Fund of the United States Treasury
104 Department with respect to credits authorized by Section 45D, Internal Revenue Code, that
105 includes Utah within the service area set forth in the allocation agreement.

106 (b) An entity may not be considered to be controlled by another entity solely as a result
107 of the entity having made a direct or indirect equity investment in the other entity that earns tax
108 credits under Section 45D, Internal Revenue Code, or in a similar state program.

109 (c) "Qualified community development entity" includes a subsidiary community
110 development entity of a qualified community development entity.

111 (10) (a) "Qualified equity investment" means an equity investment in, or long-term
112 debt security issued by, a qualified community development entity that:

113 (i) is acquired on or after September 2, 2014, at its original issuance solely in exchange
114 for cash;

115 ~~[(ii) has at least 85% of its cash purchase price used by the qualified community
116 development entity to make qualified low-income community investments in qualified active
117 low-income community businesses located in this state by the first anniversary of the initial
118 credit allowance date; and]~~

119 ~~[(iii) (ii) is designated by the qualified community development entity as a qualified
120 equity investment and is certified by the office pursuant to Section 63N-2-603[-];~~

121 (iii) (A) for a qualified equity investment issued before January 1, 2016, has at least
122 85% of its cash purchase price used by the qualified community development entity to make
123 qualified low-income community investments in qualified active low-income community
124 businesses located in the state within one year of the initial credit allowance date; or

125 (B) for a qualified equity investment issued on or after January 1, 2016, has at least
126 100% of its cash purchase price used by the qualified community development entity to make
127 qualified low-income community investments in qualified active low-income community
128 businesses located in the state within one year of the initial credit allowance date; and

129 (iv) for a qualified equity investment issued on or after January 1, 2016, is:

130 (A) designated by a qualified community development entity as a federal qualified
131 equity investment under Section 45D, Internal Revenue Code; or

132 (B) issued by a qualified community development entity or an affiliate of a qualified
133 community development entity that has issued a qualified equity investment under this part
134 before January 1, 2016.

135 (b) Notwithstanding Subsection (10)(a), "qualified equity investment" includes a
136 qualified equity investment that does not meet the provisions of Subsection (10)(a) if the
137 investment was a qualified equity investment [~~in the hands of~~] held by a prior holder.

138 (11) (a) "Qualified low-income community investment" means a capital or equity
139 investment in, or a loan to, a qualified active low-income community business, except, with
140 respect to any one qualified active low-income community business, the maximum amount of
141 qualified low-income community investments made in such business, on a collective basis with
142 all of the business's affiliates, with the proceeds of qualified equity investments certified under
143 Section 63N-2-603 shall be \$4,000,000, exclusive of qualified low-income community
144 investments made with repaid or redeemed qualified low-income community investments or
145 interest or profits realized on the repaid or redeemed qualified low-income community
146 investments.

147 (b) With respect to a qualified equity investment issued on or after January 1, 2016, a
148 secured loan or the provision of a revolving line of credit to a qualified active low-income
149 community business will only qualify as a qualified low-income community investment if,
150 before the investment, the qualified community development entity obtains an affidavit from
151 the president or similar officer of the qualified active low-income community business attesting

152 that the qualified active low-income community business sought and was denied similar
153 financing from a commercial bank.

154 (12) "Tax credit certificate" is a certificate issued by the office under Subsection
155 63N-2-603(11) to an entity eligible for a tax credit under Section 59-9-107 that:

156 (a) lists the name of the entity eligible for a tax credit;
157 (b) lists the entity's taxpayer identification number;
158 (c) lists the amount of tax credit that the office determines the entity is eligible for the
159 calendar year; and

160 (d) may include other information as determined by the office.

161 Section 2. Section 63N-2-603 is amended to read:

162 **63N-2-603. Certification of qualified equity investments -- Issuance of tax credit**
163 **related certificates.**

164 (1) (a) A qualified community development entity that seeks to have an equity
165 investment or long-term debt security certified as a qualified equity investment and [as] eligible
166 for tax credits under Section 59-9-107 shall apply to the office.

167 (b) The office shall begin accepting applications:

168 (i) on September 2, 2014[-], for an equity investment issued before January 1, 2016;
169 and

170 (ii) on September 2, 2016, for an equity investment issued on or after January 1, 2016.

171 (c) The qualified community development entity shall include the following in the
172 qualified community development entity's application:

173 (i) evidence of the applicant's certification as a qualified community development
174 entity, including evidence of the service area of the applicant that includes this state;

175 (ii) a copy of an allocation agreement executed by the applicant, or its controlling
176 entity, and the Community Development Financial Institutions Fund;

177 (iii) a certificate executed by an executive officer of the applicant attesting that:

178 (A) the applicant or its controlling entity has received more than one allocation of
179 qualified equity investment authority under the Federal New Markets Tax Credit Program; and

180 (B) the allocation agreement submitted with the application remains in effect and has
181 not been revoked or cancelled by the Community Development Financial Institutions Fund;

182 (iv) with respect to a qualified equity investment issued before January 1, 2016, a

183 description of the proposed amount, structure, and purchaser of the qualified equity investment;

184 (v) examples of the types of qualified active low-income businesses in which the
185 applicant, its controlling entity, or affiliates of its controlling entity have invested under the
186 Federal New Markets Tax Credit Program, except that when submitting an application an
187 applicant is not required to identify qualified active low-income community businesses in
188 which the applicant will invest;

189 (vi) the amount of qualified equity investment authority the applicant agrees to
190 designate as a federal qualified equity investment under Section 45D, Internal Revenue Code,
191 including a copy of the screen shot from the Community Development Financial Institutions
192 Fund's Allocation Tracking System of the applicant's remaining federal qualified equity
193 investment authority;

194 (vii) if applicable, the refundable performance deposit required by Subsection
195 [63N-2-606\(1\)](#);

196 (viii) a copy of a certificate of qualified equity investment authority under another
197 state's new markets tax credit program; and

198 (ix) evidence that the applicant, its controlling entity, and subsidiary qualified
199 community development entities of the controlling entity have collectively made at least
200 \$40,000,000 in qualified low-income community investments under the Federal New Markets
201 Tax Credit Program and other state's new markets tax credit programs with a maximum
202 qualified low-income community investment size of \$4,000,000 per business.

203 (2) (a) Within 30 days after receipt of a completed application containing the
204 information set forth in Subsection (1), including, if applicable, the refundable performance
205 deposit, the office shall grant or deny the application in full or in part.

206 (b) (i) If the office denies any part of the application, the office shall inform the
207 applicant of the grounds for the denial.

208 (ii) If the applicant provides additional information required by the office or otherwise
209 completes its application within 15 days of the notice of denial, the application shall be
210 considered completed as of the original date of submission.

211 (c) If the applicant fails to provide the information or complete its application within
212 the 15-day period:

213 (i) the application is denied;

214 (ii) the applicant ~~[shall]~~ may resubmit an application in full with a new submission
215 date; and

216 (iii) the office shall return any refundable performance deposit required by Subsection
217 [63N-2-606\(1\)](#).

218 (3) (a) If the application is complete, the office shall certify the proposed equity
219 investment or long-term debt security as a qualified equity investment, subject to the limitation
220 contained in Subsection (6).

221 (b) The office shall provide written notice of the certification to the qualified
222 community development entity.

223 (4) (a) The office shall certify qualified equity investments in the order applications are
224 received by the office.

225 (b) Applications received on the same day are considered to have been received
226 simultaneously.

227 (5) For applications that are complete and received on the same day, the office shall
228 certify, consistent with remaining qualified equity investment capacity, qualified equity
229 investments of applicants as follows:

230 (a) with respect to a qualified equity investment issued before January 1, 2016:

231 ~~[(a)]~~ (i) first, the office shall certify applications by applicants that agree to designate
232 qualified equity investments as federal qualified equity investments in accordance with
233 Subsection (1)(c)(vi) in proportionate percentages based upon the ratio of the amount of
234 qualified equity investments requested in an application to be designated as federal qualified
235 equity investments to the total amount of qualified equity investments to be designated as
236 federal qualified equity investments requested in all applications received on the same day[-];
237 and

238 ~~[(b)]~~ (ii) after complying with Subsection (5)(a)(i), the office shall certify the qualified
239 equity investments of all other applicants, including the remaining qualified equity investment
240 authority requested by applicants not designated as federal qualified equity investments in
241 accordance with Subsection (1)(c)(vi), in proportionate percentages based upon the ratio of the
242 amount of qualified equity investments requested in the applications to the total amount of
243 qualified equity investments requested in all applications received on the same day[-]; and

244 (b) with respect to a qualified equity investment issued on or after January 1, 2016, the

245 office shall certify qualified equity investments in proportionate percentages based upon the
246 ratio of the requested amount of qualified equity investments in the applications to the total
247 amount of requested qualified equity investments in all applications received on the same day.

248 (6) (a) (i) The office shall certify [~~\$50,000,000~~] \$100,000,000 in qualified equity
249 investments pursuant to this section.

250 (ii) If a pending request cannot be fully certified due to this limit, the office shall
251 certify the portion that may be certified unless the qualified community development entity
252 elects to withdraw its request rather than receive partial certification.

253 (b) If a qualified community development entity withdraws its request pursuant to
254 Subsection (6)(a), the office shall return any refundable performance deposit required by
255 Subsection 63N-2-606(1).

256 (c) A partial certification does not decrease the amount of the refundable performance
257 deposit required under Subsection 63N-2-606(1).

258 (7) An approved applicant may transfer all or a portion of its certified qualified equity
259 investment authority to its controlling entity or a subsidiary qualified community development
260 entity of the controlling entity, provided that the applicant and the transferee notify the office of
261 the transfer with the notice set forth in Subsection (8) and include with the notice the
262 information required in the application with respect to the transferee.

263 (8) (a) Within 45 days of the applicant receiving notice of certification, the qualified
264 community development entity or any transferee under Subsection (7) shall:

- 265 (i) issue the qualified equity investment;
266 (ii) receive cash in the amount of the certified amount; and
267 (iii) if applicable, designate the required amount of qualified equity investment
268 authority as federal qualified equity investments.

269 (b) The qualified community development entity or transferee under Subsection (7)
270 shall provide the office with evidence of the receipt of the cash investment and designation of
271 the qualified equity investment as a federal qualified equity investment, if applicable, within 50
272 days of the applicant receiving notice of certification.

273 (c) The certification under this section lapses and the qualified community
274 development entity may not issue the qualified equity investment without reapplying to the
275 office for certification if, within 45 days following receipt of the certification notice, the

276 qualified community development entity or any transferee under Subsection (7) does not:

277 (i) receive the cash investment;

278 (ii) issue the qualified equity investment; and

279 (iii) if applicable, designate the required amount of qualified equity investment

280 authority as federal qualified equity investments.

281 (d) A lapsed certification under this Subsection (8) reverts back to the office and shall
282 be reissued as follows:

283 ~~[(i) first, pro rata to applicants whose qualified equity investment allocations were
284 reduced under Subsection (5)(a), if applicable;]~~

285 ~~[(ii) second, pro rata to applicants whose qualified equity investment allocations were
286 reduced under Subsection (5)(b); and]~~

287 (i) with respect to qualified equity investments issued before January 1, 2016:

288 (A) first, pro rata to applicants whose qualified equity investment allocations were
289 reduced under Subsection (5)(a)(i), if applicable; and

290 (B) second, pro rata to applicants whose qualified equity investment allocations were
291 reduced under Subsection (5)(a)(ii);

292 (ii) with respect to qualified equity investments issued on or after January 1, 2016, pro
293 rata to applicants whose qualified equity investment allocations were reduced under Subsection
294 (5)(b); and

295 (iii) after complying with Subsections (8)(d)(i) and (ii), in accordance with the
296 application process.

297 (e) (i) The office shall:

298 (A) calculate an annual fee to be paid by each applicant certified pursuant to
299 Subsection (3)(a), regardless of the number of transferees under Subsection (7), by dividing
300 \$100,000 by the number of applications certified pursuant to Subsection (3)(a); and

301 (B) notify each successful applicant of the amount of the annual fee.

302 (ii) (A) The initial annual fee shall be due and payable to the office with the evidence
303 of receipt of cash investment set forth in Subsection (8)(b).

304 (B) After the initial annual fee, an annual fee shall be due and payable to the office
305 with each report submitted pursuant to Section 63N-2-610.

306 (iii) An annual fee may not be required once a qualified community development entity

307 together with all transferees under Subsection (7) have decertified all qualified equity
308 investments in accordance with Subsection 63N-2-607(2).

309 (iv) To maintain an aggregate annual fee of \$100,000 for all qualified community
310 development entities, the office shall recalculate the annual fee as needed upon:

311 (A) the lapse of any certification under Subsection (8)(c);

312 (B) the recapture of tax credits pursuant to Section 63N-2-604; or

313 (C) the decertification of qualified equity investments pursuant to Subsection
314 63N-2-607(2).

315 (v) An annual fee collected under this Subsection (8)(e) shall be deposited into the
316 General Fund as a dedicated credit for use by the office to implement this part.

317 (9) (a) A qualified community development entity that issues a debt instrument
318 described in Subsection 63N-2-602(6) may not make cash interest payments on the debt
319 instrument during the period beginning on the date of issuance and ending on the [final]
320 seventh credit allowance date in an amount that exceeds the cumulative operating income, as
321 defined by regulations adopted under Section 45D, Internal Revenue Code, of the qualified
322 community development entity for that period before giving effect to the interest expense of the
323 long-term debt security.

324 (b) This Subsection (9) does not limit the holder of the debt instrument's ability to
325 accelerate payments on the debt instrument in situations when the qualified community
326 development entity has defaulted on covenants designed to ensure compliance with this part or
327 Section 45D, Internal Revenue Code.

328 (10) (a) A qualified community development entity that issues qualified equity
329 investments shall notify the office of the names of the entities that are eligible to use tax credits
330 under this section and Section 59-9-107:

331 (i) pursuant to an allocation of tax credits;

332 (ii) pursuant to a change in allocation of tax credits; or

333 (iii) due to a transfer of a qualified equity investment.

334 (b) The office may by rule, made in accordance with Title 63G, Chapter 3, Utah
335 Administrative Rulemaking Act, provide for the form and content of the notice required under
336 this Subsection (10).

337 (11) (a) An entity may claim a tax credit under Section 59-9-107 against tax liability

338 under Title 59, Chapter 9, Taxation of Admitted Insurers, if the entity:

339 (i) makes a qualified equity investment; and

340 (ii) obtains a tax credit certificate in accordance with Subsection (11)(b).

341 (b) ~~[For]~~ (i) With respect to qualified equity investments issued before January 1,
342 2016, for each calendar year, beginning with calendar year 2016, an entity is eligible for a tax
343 credit under this section and Section 59-9-107, the office shall issue to the entity a tax credit
344 certificate for use after January 1, 2017, and provide the State Tax Commission a copy of the
345 tax credit certificate.

346 (ii) With respect to qualified equity investments issued on or after January 1, 2016, for
347 each calendar year beginning with calendar year 2022 an entity is eligible for a tax credit under
348 this section and Section 59-9-107, the office shall issue to the entity a tax credit certificate for
349 use after January 1, 2023, and provide the State Tax Commission a copy of the tax credit
350 certificate.

351 (c) On each credit allowance date of the qualified equity investment, the entity that
352 made the qualified equity investment, or the subsequent holder of the qualified equity
353 investment, may claim a portion of the tax credit during the calendar year that includes the
354 credit allowance date.

355 (d) The office shall calculate the tax credit amount and the tax credit amount shall be
356 equal to the applicable percentage for the credit allowance date multiplied by the purchase
357 price paid to the qualified community development entity for the qualified equity investment.

358 (e) A tax credit allowed to a partnership, limited liability company, or S-corporation
359 shall be allocated to the partners, members, or shareholders of the partnership, limited liability
360 company, or S-corporation for the partners', members', or shareholders' direct use in accordance
361 with the provisions of any agreement among the partners, members, or shareholders.

362 (f) An entity may not sell a tax credit allowed under this section on the open market.

363 (12) (a) An entity that claims a tax credit under Section 59-9-107 and this section shall
364 provide the office with a document that expressly directs and authorizes the State Tax
365 Commission to disclose to the office the entity's tax returns and other information concerning
366 the entity that are required by the office and that would otherwise be subject to confidentiality
367 under Section 59-1-403 or Section 6103, Internal Revenue Code.

368 (b) The office shall submit the document described in Subsection (12)(a) to the State

369 Tax Commission.

370 (c) Upon receipt of the document described in Subsection (12)(a), the State Tax
371 Commission shall provide the office with the information requested by the office that the entity
372 authorized the State Tax Commission to provide to the office in the document described in
373 Subsection (12)(a).

374 Section 3. Section **63N-2-604** is amended to read:

375 **63N-2-604. Recapture.**

376 (1) ~~[The]~~ Under the following conditions, the office may recapture a tax credit from an
377 entity that claimed the tax credit allowed under Section 59-9-107 on a return~~[-if any of the~~
378 ~~following occur] if:~~

379 (a) ~~[Hf]~~ any amount of a federal tax credit available with respect to a qualified equity
380 investment that is eligible for a tax credit under this part is recaptured under Section 45D,
381 Internal Revenue Code, the office may recapture the tax credit in an amount that is
382 proportionate to the federal recapture with respect to the qualified equity investment~~[-];~~

383 (b) ~~[Hf]~~ the qualified community development entity redeems or makes principal
384 repayment with respect to a qualified equity investment before the seventh anniversary of the
385 issuance of the qualified equity investment, the office may recapture an amount proportionate
386 to the amount of the redemption or repayment with respect to the qualified equity
387 investment~~[-];~~

388 (c) (i) ~~[Hf]~~ with respect to qualified equity investments issued before January 1, 2016,
389 the qualified community development entity fails to invest an amount equal to 85% of the
390 purchase price of the qualified equity investment in qualified low-income community
391 investments in Utah within 12 months of the issuance of the qualified equity investment and
392 maintains at least 85% of the level of investment in qualified low-income community
393 investments in Utah until the last credit allowance date for the qualified equity investment~~[-the~~
394 ~~office may recapture the tax credit.]; or~~

395 (ii) with respect to qualified equity investments issued on or after January 1, 2016,
396 unless any of the requirements of this Subsection (1)(c)(ii) are waived by the office, the
397 qualified community development entity fails:

398 (A) to invest an amount equal to 100% of the purchase price of the qualified equity
399 investment in qualified low-income community investments in Utah within 12 months of the

400 issuance of the qualified equity investment with no more than 50% of those investments made
401 in qualified active low-income community businesses located in Salt Lake County;

402 (B) to invest an amount equal to 25% of the purchase price of the qualified equity
403 investment in qualified active low-income community businesses located outside Utah, Salt
404 Lake, Weber, and Davis counties;

405 (C) to invest, in addition to the amount described in Subsection (1)(c)(ii)(B), an
406 amount equal to 25% of the purchase price of the qualified equity investment in qualified
407 active low-income community businesses located outside Utah, Salt Lake, Weber, and Davis
408 counties or engaged in aerospace and defense, energy and natural resources, financial services,
409 life sciences, outdoor products, software development, or information technology industries; or

410 (D) to maintain an amount equal to 100% of the purchase price of the qualified equity
411 investment in qualified low-income community investments in the state until the seventh credit
412 allowance date of the qualified equity investment;

413 (d) a qualified community development entity makes a distribution or debt payment in
414 violation of Subsection [63N-2-607\(1\)](#); or

415 (e) there is a violation of Section [63N-2-609](#).

416 [(ii)] (2) (a) For purposes of this part, an investment is considered held by a qualified
417 community development entity even if the investment has been sold or repaid if the qualified
418 community development entity reinvests an amount equal to the capital returned to or
419 recovered by the qualified community development entity from the original investment,
420 exclusive of any profits realized, in another qualified low-income community investment
421 within 12 months of the receipt of the capital.

422 [(iii)] (b) Periodic amounts received as repayment of principal pursuant to regularly
423 scheduled amortization payments on a loan that is a qualified low-income community
424 investment shall be treated as continuously invested in a qualified low-income community
425 investment if the amounts are reinvested in one or more qualified low-income community
426 investments by the end of the following calendar year.

427 [(iv)] (c) A qualified community development entity is not required to reinvest capital
428 returned from a qualified low-income community investment after the sixth anniversary of the
429 issuance of the qualified equity investment, and the qualified low-income community
430 investment shall be considered held by the qualified community development entity through

431 the seventh anniversary of the qualified equity investment's issuance.

432 ~~[(d) If a qualified community development entity makes a distribution or debt payment~~
433 ~~in violation of Subsection 63N-2-607(1), the office may recapture the tax credit.]~~

434 ~~[(e) If there is a violation of Section 63N-2-609, the office may recapture the tax~~
435 ~~credit.]~~

436 ~~[(2)]~~ (3) A recaptured tax credit under this section and the related qualified equity
437 investment authority revert back to the office and ~~[shall]~~ may be reissued[?] in accordance with
438 the application process described in Section 63N-2-603.

439 ~~[(a) first, pro rata to applicants whose qualified equity investment allocations were~~
440 ~~reduced under Subsection 63N-2-603(5)(a);]~~

441 ~~[(b) second, pro rata to applicants whose qualified equity investment allocations were~~
442 ~~reduced under Subsection 63N-2-603(5)(b); and]~~

443 ~~[(c) after complying with Subsections (2)(a) and (b), in accordance with the application~~
444 ~~process.]~~

445 Section 4. Section 63N-2-606 is amended to read:

446 **63N-2-606. Refundable performance deposit -- Small Business Jobs Performance**
447 **Guarantee Account.**

448 (1) (a) A qualified community development entity that seeks to have an equity
449 investment or long-term debt security certified as a qualified equity investment and as eligible
450 for tax credits under Section 59-9-107 shall pay a deposit in the amount of .5% of the amount
451 of the equity investment or long-term debt security requested in an application to be certified as
452 a qualified equity investment to the office for deposit into the Small Business Jobs
453 Performance Guarantee Account.

454 (b) (i) There is created in the General Fund a restricted account known as the "Small
455 Business Jobs Performance Guarantee Account" that consists of deposits made under
456 Subsection (1)(a).

457 (ii) The Small Business Jobs Performance Guarantee Account does not earn interest.

458 (iii) At the end of a fiscal year, any amount in the Small Business Jobs Performance
459 Guarantee Account that a qualified community development entity forfeits under this section is
460 to be transferred to the General Fund.

461 (iv) The office shall work with the Division of Finance to ensure that money in the

462 Small Business Jobs Performance Guarantee Account is properly accounted for at the end of
463 each fiscal year.

464 (c) A qualified community development entity shall forfeit the deposit required under
465 Subsection (1)(a) in its entirety if:

466 (i) the qualified community development entity and its subsidiary qualified community
467 development entities fail to issue the total amount of qualified equity investments certified by
468 the office and receive cash in the total amount certified under Section 63N-2-603; or

469 (ii) the qualified community development entity or any subsidiary qualified community
470 development entity that issues a qualified equity investment certified under this part fails to
471 make qualified low-income community investments before the second credit allowance date of
472 such qualified equity investment in qualified active low-income community businesses in Utah
473 equal to at least:

474 (A) 85% of the purchase price of the qualified equity investment [~~by the second credit~~
475 ~~allowance date of such qualified equity investment.~~] with respect to qualified equity
476 investments made before January 1, 2016; or

477 (B) 100% of the purchase price of the qualified equity investment with respect to
478 qualified equity investments made on or after January 1, 2016.

479 (d) The six-month cure period established under Section 63N-2-605 is not applicable to
480 the forfeiture of a deposit under Subsection (1)(c).

481 (2) (a) A deposit required under Subsection (1) shall be paid to the office and held in
482 the Small Business Jobs Performance Guarantee Account until such time as compliance with
483 this Subsection (2) is established.

484 (b) A qualified community development entity may request a refund of the deposit
485 from the office no sooner than 30 days after the qualified community development entity and
486 all transferees under Subsection 63N-2-603(7) have invested 85% of the purchase price of the
487 qualified equity investment authority certified by the office pursuant to Subsection
488 63N-2-603(3).

489 (c) The office has 30 days to comply with the request for a refund or give notice of
490 noncompliance.

491 Section 5. Section 63N-2-607 is amended to read:

492 **63N-2-607. 150% and 175% investment requirement -- Ceasing of certification.**

493 (1) (a) Once certified under Section 63N-2-603, a qualified equity investment shall
494 remain certified until all of the requirements of Subsection (2) have been met.

495 (b) Until such time as the qualified equity investments issued by a qualified community
496 development entity are no longer certified, the qualified community development entity may
497 not distribute to its equity holders or make cash payments on long-term debt securities that
498 have been certified as qualified equity investments in an amount that exceeds the sum of:

499 (i) the cumulative operating income, as defined by regulations adopted under Section
500 45D, Internal Revenue Code, earned by the qualified community development entity since
501 issuance of the qualified equity investment, before giving effect to any interest expense from
502 long-term debt securities certified as qualified equity investments; and

503 (ii) 50% of the purchase price of the qualified equity investments issued by the
504 qualified community development entity.

505 (2) Subject to the other provisions of this section, a qualified equity investment ceases
506 to be certified when:

507 (a) it is beyond its seventh credit allowance date;

508 (b) the qualified community development entity issuing the qualified equity investment
509 has been in compliance with Section 63N-2-604 through its seventh credit allowance date,
510 including any cures under Section 63N-2-605;

511 (c) the qualified community development entity issuing such qualified equity
512 investment has used the cash purchase of such qualified equity investment, together with
513 capital returned, repaid, or redeemed or profits realized with qualified low-income community
514 investments, to invest in qualified active low-income community businesses such that the total
515 qualified low-income community investments made, cumulatively including reinvestments[;]:

516 (i) exceeds 150% of the qualified equity investment with respect to qualified equity
517 investments issued before January 1, 2016; or

518 (ii) exceeds 175% of the qualified equity investment with respect to qualified equity
519 investments issued on or after January 1, 2016; and

520 (d) the qualified community development complies with Subsection (4).

521 (3) For purposes of making the calculation under Subsection (2)(c), qualified
522 low-income community investments to any one qualified active low-income community
523 business, on a collective basis with its affiliates, in excess of \$4,000,000 may not be included,

524 unless such investments are made with capital returned or repaid from qualified low-income
525 community investments made by the qualified community development entity in other
526 qualified active low-income community businesses or interest earned on or profits realized
527 from any qualified low-income community investments.

528 (4) (a) A qualified community development entity shall file a request for ceasing
529 certification of a qualified equity investment in a form, provided by the office, that establishes
530 that the qualified community development entity has met the requirements of Subsection (2)
531 along with evidence supporting the request for ceasing certification.

532 (b) Subsection (2)(b) shall be considered to be met if no recapture action has been
533 commenced by the office as of the seventh credit allowance date.

534 (5) (a) A request for ceasing certification may not be unreasonably denied and the
535 office shall respond to the request within 30 days of the office receiving the request.

536 (b) Upon grant of a request for ceasing certification, the qualified community
537 development entity is no longer subject to Section [63N-2-610](#).

538 (c) If the request is denied for any reason, the office has the burden of proof in any
539 administrative or legal proceeding that follows.

540 Section 6. Section [63N-2-611](#) is amended to read:

541 **[63N-2-611. Revenue impact assessment.](#)**

542 (1) ~~[Before]~~ With respect to qualified equity investments made before January 1, 2016:

543 (a) before making a qualified low-income community investment, a qualified
544 community development entity shall submit to the office a revenue impact assessment prepared
545 using a nationally recognized economic development model that demonstrates that the
546 qualified low-income community investment will have a revenue positive impact on the state
547 over 10 years against the 58% tax credit utilization over the same 10-year period[-]; and

548 ~~[(2) The]~~ (b) the office shall notify the qualified community development entity within
549 five business days if the qualified low-income community investment does not have a revenue
550 positive impact on the state over 10 years against the 58% tax credit utilization over the same
551 10-year period using the revenue impact assessment submitted.

552 (2) With respect to qualified equity investments made on or after January 1, 2016:

553 (a) before making a qualified low-income community investment, a qualified
554 community development entity shall submit to the office a revenue impact assessment prepared

555 using a nationally recognized economic development model that demonstrates that the
556 qualified low-income community investment will have a revenue positive impact on the state
557 over 11 years against the 58% tax credit utilization over the same 11-year period; and

558 (b) the office shall notify the qualified community development entity within five
559 business days if the qualified low-income community investment does not have a revenue
560 positive impact on the state over 11 years against the 58% tax credit utilization over the same
561 11-year period using the revenue impact assessment submitted.

562 (3) If the office determines that the revenue impact assessment does not reflect a
563 revenue positive qualified low-income community investment, the office may waive the
564 requirement under this section if the office determines that the proposed qualified low-income
565 community investment will further economic development.

Legislative Review Note
Office of Legislative Research and General Counsel