

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 23rd Floor
San Francisco, CA 94105

NOTICE OF PROPOSED EMERGENCY ACTION
PURSUANT TO GOVERNMENT CODE SECTION 11346.1 AND
INSURANCE CODE SECTION 12921.7

Date: June 13, 2014

Regulation File: ER-2013-00005

COIN – TAX CREDITS FOR QUALIFIED CDFI INVESTMENTS

OPPORTUNITY FOR INTERESTED PARTIES TO SUBMIT COMMENTS
TO THE OFFICE OF ADMINISTRATIVE LAW

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency action to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

TEXT OF REGULATION

[Text attached hereto and incorporated herein by this reference]

EXPRESS FINDING OF EMERGENCY

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret, and make specific the provisions of Revenue and Tax Code sections 12209, 17053.57, and 23657, as well as Insurance Code sections 12939 and 12939.1. Subdivision (f) of Revenue and Taxation Code section 12209, subdivision (d) of Revenue and Taxation Code section 17053.57, and subdivision (e) of Revenue and Taxation Code section 23657 provide the authority for this rulemaking, expressly deeming the promulgation of these regulations to be “an emergency and necessary in order to address a situation calling for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.”

STUDIES AND REPORTS

No technical, theoretical, and empirical study, report or similar document has been relied on in this emergency action.

INFORMATIVE DIGEST; DESCRIPTION OF THE PROBLEM AND THE NECESSITY FOR THE REGULATION

SUMMARY OF EXISTING LAW

Overview

In summary, existing law (primarily in the Revenue and Taxation Code) confers upon the California Department of Insurance (CDI) three mandates, which these regulations seek to effectuate.

1. Existing law requires CDI to accept and review applications for approval of one type of California investment tax-credit for investments that will benefit low and middle-income (LMI) people and regions in California.

These regulations specify the administrative procedure for seeking CDI approval of tax-credit proposals

2. Existing law (a) requires that when CDI approves these tax-credit proposals, it give priority to proposals that appear to provide the most benefit to California's LMI and rural people and regions; (b) gives CDI discretion to determine how to accomplish that objective; and (c) provides general guidance regarding the legislative intent underlying the tax-credit program. (California Insurance Code [CIC] §12939.)

These regulations exercise that discretion, in accordance with the legislative intent, by specifying a process for giving priority to proposals which demonstrate the most benefit to LMI and rural people and regions, as required by law.

3. Existing law requires CDI to approve not only the investments for which tax credit will be given, but also the institutions in which the investments are made. The institutions are termed "community development financial institutions" (CDFIs). Their mission and business plan must be to finance programs that will benefit LMI and rural people and regions in California.

These regulations specify the administrative procedure for seeking CDI's recognition that an institution is a CDFI qualified to receive investments that will provide investors a tax credit.

To enable CDI to implement these mandates, existing law specifically confers upon CDI the authority to: (a) "develop instructions, procedures and standards for applications, and for administering the criteria for the evaluation of applications under this section" and

(b) “adopt, amend or repeal regulations to implement the provisions of this section.”
(R&TC §12209(f))

Further regarding regulations, existing law specifies that (a) “the initial adoption of the regulations implementing this section shall be deemed to be an emergency,” and (b) the emergency regulations may remain in effect indefinitely – they need not be followed by permanent regulations. (R&TC §12209(f))

The COIN Tax Credit Program

The statutory tax-credit program administered by COIN authorizes tax credits to taxpayers investing funds in California financial institutions that in turn make loans or otherwise finance projects which will benefit California low-to-middle income and rural communities (see Cal. Ins. Code [CIC] §12939[d]). The authorizing provisions are in the Cal. Rev. & Tax. Code (R&TC) -- §§12209, 17053.57 and 23657. These are three identical statutes, with the respective tax provisions governing insurer, individual and corporate taxpayers. (As the relevant provisions of the three statutes are the same, citation to a single statute, R&TC§12209 [for insurers], will serve to illustrate the text in all three provisions.)

Unlike other tax-credit programs, the three R&TC statutes designate the California Insurance Commissioner (Commissioner) as the administrative allocator of the credits, rather than the Franchise Tax Board, the Board of Equalization, or any state agency responsible for poverty-alleviation or economic development. The Commissioner administers the credits through a statutorily-created office in the Department of Insurance (Department) entitled the California Organized Investment Network" or "COIN." “[T]he [COIN] is a part of the department, and has the responsibility to pursue active measures to encourage community development investing by insurers.” (CIC §926.3[a].) (There is no "network" per se, but the name signifies the objective that a "network" of investors and financial institutions will ultimately develop.)

As the Legislature further explained, “COIN is the first-in-the-nation collaborative effort among insurance companies, the California Department of Insurance, and other stakeholders involved with community development investments in traditionally underserved communities. The mission of COIN is to provide leadership in increasing the level of insurance industry capital in safe and sound investments providing fair returns to investors and social benefits to underserved communities.” (Uncodified legislative findings and declarations in Section 1[a] of A.B. 41, Stats. 2010, Ch. 340; attached hereto as Exhibit A.)

Insurance Department Role in Tax Credit Allocation

The commissioner's statutory role in administering the tax-credit program is twofold. First, he determines whether financial institutions are qualified to participate in the program as recipients of investments (R&TC §12209[g][1]; [d][1]). Second, he determines whether proposed investments in these institutions have the attributes which

enable investors to take tax credits for making them (§12209[c][2],[d][2],[g][2]). Both functions are the subject of these proposed emergency regulations.

The three R&TC statutes each specify the basic criteria for both the entities eligible to receive investments which qualify for tax credit (§12209[h][2]) and the tax-qualified investments (§12209[h][1]). Those investments must meet three threshold criteria: be a deposit or loan that does not earn interest, or a specified type of equity investment; be for \$50,000 or more; and have a term of 60 months or more. Id. They must also be prioritized according to the social benefits they offer (§§12209[c][4];[d][2]).

If COIN certifies that an investment qualifies for a tax credit (termed a "qualified investment" (R&TC §12209[h][1]), then the investor receives a credit in the amount of 20% of that investment (§12209[a]). The present total amount of investment authorized for tax credits by the three statutes is \$50M per year (§12209[c][3]).

The entities which are authorized to receive the tax-credit investments are termed "community development financial institutions," or "CDFIs" (§12209[h][2]). They are defined in the three tax-credit statutes as being California financial institutions which have a primary mission of lending in low-to-middle income communities, rural communities or "reservation-based" communities (collectively termed herein, consistent with standard practice, "LMI" communities).

The Commissioner's role as allocator of investment tax credits pursuant to the R&TC varies from his longstanding role as regulator, pursuant to the California Insurance Code, of the California insurance industry and those who conduct insurance business here -- insurers, brokers, agents, adjustors, title companies, bail bonders, and many others. The explanation for this somewhat-different function is found in the Department's recent history, and reflects the more-activist role assumed by California's commissioners after they became popularly-elected officials, rather than gubernatorial appointees, as a result of a 1989 initiative measure, Prop.103.

Evolution of Tax Credit Program and COIN's Responsibilities

Insurers have long asserted that they benefit the public not only by providing coverage against life's various financial vicissitudes, but also by investing, in socially-beneficial ways, the premiums that they collect and hold as "reserves." Historically, the companies have done this primarily by buying bonds issued by government entities to finance the building of roads, bridges and other public works. In the 1990s, newly-elected commissioners, who already oversaw insurers' investments as part of the Department's longtime financial regulatory role, thought to enhance and expand this aspect of insurers' social utility, by encouraging them to invest in safe and sound investments which also provided particular benefit to LMI communities. The Department's COIN office was established to perform this function.

The Legislature appears to have viewed this concept favorably (as indicated by the uncodified legislation in Exhibit A), and expanded upon it, by enacting the CDFI tax

credit program in 1997 (c. 947, A.B. 1520), and assigning the commissioner to administer it. Eligibility to receive the tax credits was not restricted to insurers, but also included general corporate and natural-person taxpayers as well (hence the three separate statutes). The original legislation contained a 5-year 'sunset clause,' §12209[j]). Presumably pleased with the results of the tax-credit program and the commissioner's administration of it, the Legislature has continually reauthorized it at various intervals ever since, through good times and bad; most recently in 2013. Attached as Exhibit B are Department press-releases and other literature which provide additional background information on the tax credit program and COIN generally.

The CDFI tax credit program, incidentally, is not the only legislative effort to involve the commissioner in the work of assisting disadvantaged persons and communities. Concurrently with continuing that program, the Legislature has enacted statutes requiring insurers to report to the commissioner their "community development investments," and requiring the Department to publicize those investments on its website, specially identifying insurers with notably commendable investment-records (CIC §§926.1-926.2, enacted in 2006). The Legislature has also required large insurers to prepare community-development investment-policies, and to file the policies with the Department; similarly requiring the commissioner to publicize those policies on its website (CIC §926.3, enacted in 2010). Most recently, the Legislature required large insurers to file with the Department data on their procurement of supplies from firms owned by women, minority-group members and disabled veterans (CIC §§927.2-927.3, enacted in 2012). These additional, incremental, ever-expanding enactments afford both legal and social-policy context for the tax-credit program.

As the tax credit program has been reauthorized and extended over the years, the authorizing legislation was expanded, and its terms evolved, either in the R&TC or the CIC. For example, in 2001, the Legislature added equity investments to the originally-authorized debt investments (then-§12209[f][1]; now §12209[h][1]). Reflecting the program's initial slow start, that legislation also authorized the carry-over of unused credit-amounts to the next year (then-§12209[c]; now in §12209[c][3][A]). In 2006, additional reporting by both COIN and CDFIs was required (CIC §12939.1). Expository and descriptive legislative findings were also added at that time (CIC §12939). In 2011, a COIN advisory board was created (CIC §12939.2).

Last year, two particularly-significant changes occurred, in the latest reauthorization (Stats. 2013, Chapter 608, AB 32). One change increased greatly the annual amount of investment allowable for credit, from \$10M to \$50M (R&TC § 12209[c][3][A]), signifying legislative enthusiasm for the program. Another change, which is especially relevant to this rulemaking, altered the method by which the credits are to be allocated. These changes followed legislative review of a report on the program which detailed its operation and its past and prospective economic impact. A copy of that report is attached as Exhibit C.

Emergence of Prioritization

The original 1997 legislation specified that the credits would be allocated on a 'first come first serve' basis: "Certificates [of investment-qualification] shall be issued in the order that the applications are received." (Then-R&TC §12209[e][2].) Investment proposals had to be processed in the order that they were filed, and whatever investments satisfied the three threshold statutory requirements in §12209(h)(1) were entitled to Department certification. The commissioner had no authority or discretion to compare the filed applications in order to identify which ones appeared to afford the most benefit to LMI communities.

Later legislation gradually modified the 'first come first serve' approach to one of allocation on the basis of social benefit as determined by the commissioner.

First, the 2011 reauthorization (2011 AB 624, Chapter 436) introduced a loose discretionary prioritization-process for one limited situation: where the amount of tax credit applied for by all applicants exceeded the amount statutorily authorized for that year. Reflecting the fact that investor interest had increased to the point where the Department's most-frequent problem was not excess amounts to carry over to the next year, but applications for investment amounts exceeding the available annual credit-amounts, the 2011 legislation specified that if the amount of "total qualified investments" appeared to exceed the aggregate amount of investments available for tax credits (\$10M), then:

"...priority shall be granted to those applications that meet any or all of the following:

(A) Directly benefit low-income persons.

(B) Prioritize rental housing, mortgages for community-based residential programs, and self-help housing ahead of all single family housing.

(C) Represent investments from insurance companies subject to [premium taxation]."
CIC §12939.2(c)(4).

Second, that same reauthorization, which also created the COIN advisory board, pointedly included among the board's duties, "To recommend programmatic guidelines, but not specific allocations, of the tax credit amount to the California Organized Investment Network Program." CIC §12939.2(f)(4).

The Legislature appears to have been pleased with the results of this limited effort at prioritization because, two years later in 2013, at the same time that it increased significantly the amount available for allocation as qualified investments, it also increased significantly the scope of the prioritization requirement. Essentially it pivoted 180 degrees from the original 'first come first serve' approach, instead requiring the commissioner to prioritize all applications according to merit, as measured by the benefits they provided to LMI communities. This was accomplished by adding to the

commissioner's existing mandate to accept and review investment applications, the following new language:

"...with highest priority granted to those applications where the intended use of the investments has the greatest aggregate benefit for low-to-moderate income areas or households or rural areas or households." (§12209[g][2].)

The new prioritization mandate was again mentioned later in the same section, as follows:

“The Insurance Commissioner shall establish tax credit issuance cycles throughout the year as necessary in order to issue tax credit certificates to those applications granted the highest priority.”

This brief and broad new language transformed the commissioner's review of proposed COIN investments from ministerial application of objective statutory criteria, to that of a discretionary weighing of the comparative social benefit that the investments afforded to LMI and/or rural areas and households. Moreover, the legislation did not constrain the commissioner's discretion with any specific restrictions or instructions on how to make these subjective, value-based comparative determinations of social benefit. The commissioner's only reference-points were the general statements in existing law about overall legislative intent in CIC §12939 regarding CDFIs, and the guidance in CIC §§926.1-.3 regarding the descriptions and roles of community investments.

In bestowing this new responsibility on the Department, the Legislature evidently believed that the potential risks of inexpert or overly-subjective determinations were outweighed by the potential benefits to be had from determinations that were more-precisely focused upon providing the greatest benefit to LMI communities and people. The Legislature unambiguously entrusted to the commissioner the function of assigning and weighing social-benefit values, and endowed him with almost plenary discretion to carry it out.

To enable the commissioner to discharge his new role, the 2013 legislation added extensive requirements for applicants to describe the impact of their investments (R&TC §12209[d][2][B]).

The commissioner's broad new role was not conferred without commensurate accountability, however. To enable legislative review of how the vastly-enhanced prioritization-process performed, the 2013 legislation also added a requirement for the Legislative Analyst to evaluate the process and render a report in 2016 (one year ahead of the 12/1/17 expiration date in R&TC §12209[m]), on "the effects of the tax credits allowed under this section [and parallel statutes], with a focus on employment in low-to-moderate income and rural areas, and on the benefits of these tax credits to low-to-moderate income and rural persons." (R&TC §2209[l].) Thus, the results of the discretionary prioritization-process will be evaluated to determine whether they meet the

legislative objectives. Accountability is to be accomplished by retrospective evaluation of actual experience.

Enhanced Rulemaking Authority

Recognizing that this expanded discretionary authority required more detailed, transparent and expeditious implementation arrangements than had previously been needed to discharge the Commissioner's more-ministerial role, the 2013 legislation enhanced the commissioner's rulemaking authority in two ways. First, it specified a statutory declaration of emergency, in R&TC §2209(f)(2):

"The initial adoption of the regulations implementing this section shall be deemed to be an emergency and necessary in order to address a situation calling for immediate action to avoid serious harm to the public peace, health, safety, or general welfare."

Second, the Legislature exempted the Department from having to follow the emergency regulations with permanent regulations, instead specifying in §12209(f)(3):

"Notwithstanding [the APA], any emergency regulation adopted or amended by the Insurance Commissioner pursuant to this section shall remain in effect until amended or repealed by the department."

Accordingly, the proposed regulations are emergency regulations, promulgated on the basis of the statutory declaration of emergency.

Additional Scope of Proposed Regulations

Concurrently with rulemaking to implement COIN's new mandate to prioritize investments, the Department also proposes to adopt regulations regarding the Department's two longstanding mandates to review applications by organizations seeking either California CDFI status or authorization for investment tax credits. While the legislation relating to these functions has not been altered as recently or significantly as have the standards for evaluating investments -- a circumstance which has enabled successfully the incremental evolution of the application procedure -- nevertheless adoption of regulations governing them too is appropriate at this point in light of both COIN's accumulated experience and the legislative changes that have enhanced both the extent of COIN's authority over CDFIs and the procedures for investment applications. The enhancements include authority to impose conditions on CDFI certification, limit certification to specified periods of time, suspend or revoke certifications (R&TC §12209[f][1], added in 2007), and require additional reports to COIN on investment-usage (R&TC §12209[d][5], also added then), as well as requirements for CDI to establish "tax-credit issuance-cycles throughout the year" and for tax-credit applicants to provide more detailed information regarding the use of the investment funds for which credits are awarded (R&TC §12209[d][2][B] and [3] and [g][2], both added in 2013 to facilitate prioritization).

Consequently, for completeness with respect to both coverage of subject-matter and compliance with law, these regulations cover COIN's review of applications for CDFI status, and its procedures for review of investment applications, in addition to the criteria and factors which it will employ to prioritize applications.

EFFECT OF PROPOSED ACTION

As a result of the proposed action, application criteria and methodology will be made available to applicants for CDFI certification and tax credit allocation. The proposed action establishes an objective roadmap for COIN's administration of both aspects of the CDFI program. The proposed regulations implement, interpret, and make specific Revenue and Taxation Code sections 12209, 17053.57, and 23657, consistent with Legislative intent set forth in Insurance Code sections 12939, *et seq.*

COMPARABLE FEDERAL LAW

Federal law provides for a Community Development Financial Institutions Program, as governed by the regulations at 12 CFR 1805.100, *et seq.* The Federal CDFI program provides financial and technical assistance to organizations qualifying as Community Development Financial Institutions ("CDFIs") under Federal regulations.

Prior to receiving Federal CDFI assistance, an applicant must be certified as a Federal CDFI under the regulations at 12 CFR 1805.201. In order to be certified as a Federal CDFI, an organization must have community development as a primary mission, provide financial products, development services, or other financing, and target an area or population meeting certain distress criteria.

Once certified as a Federal CDFI, an organization may apply for financial or technical assistance from the Community Development Financial Institutions Fund. Applications are evaluated under 12 CFR 1805.701 for factors relating to prior successes, operational capacity, financial track record, management experience, program design, performance projections, extent of applicant's need for assistance, and other factors. Successful applicants enter into an agreement with respect to the administration of the award, and must report on the progress of the project.

Although both the Federal program and the COIN program pertain to community development and CDFIs, and have similar evaluation mechanisms, the two differ substantially. COIN certified CDFIs may or may not be federally certified. The Federal program provides direct assistance to CDFIs to promote their mission. The COIN program allocates tax credits to third parties investing in COIN certified CDFIs.

In addition to the Federal CDFI program, the Treasury Department administers a tax credit program called the New Markets Tax Credit ("NMTC"). Program rules for NMTC are set forth in 26 CFR §1.45(D)-1, *et seq.* The NMTC allows taxpayers to receive tax credits in return for making qualified equity investments to Certified Development Entities ("CDE").

CDE is defined at 26 U.S.C. §45D(c) as any domestic corporation or partnership: (1) with a primary mission of serving, or providing capital to, low income communities and persons; (2) which has members of the low-income community served on its board; and, (3) which is certified by the Treasury Secretary.

Qualified equity investments under 26 CFR §1.45D-1(c) are stock investments in a CDE for cash; the CDE must use the proceeds of such investment for qualified low-income community investments. The tax credit received by the taxpayer is a variable percentage of the investment, depending on duration of the investment.

While the NMTC program allows tax credits in return for investments in organizations serving low income communities, it does not overlap with the COIN program. Most significantly, tax credits under NMTC are Federal tax credits, whereas COIN tax credits are for California state taxes. In addition, the rules governing operation of NMTC are different than the rules proposed for the COIN program; this is due to the different statutory mandates for the programs.

The proposed regulations neither emulate, nor conflict with, existing Federal law.

POLICY STATEMENT OVERVIEW

The purpose of the proposed regulations is to implement Revenue and Taxation Code sections 12209, 17053.57, and 23657, consistent with Legislative intent set forth in Insurance Code section 12939. The preceding Revenue and Taxation Code statutes allow the Insurance Commissioner to promulgate regulations regarding the administration of CDFI certification and tax credit allocation in the COIN program. Insurance Code section 12939 sets forth Legislative intent and policy goals for the COIN program: the Legislature expects that CDFIs will work for the benefit of economically disadvantaged communities and people in California, and that the tax credits for CDFI investment will be administered for the betterment of those disadvantaged communities and people.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

The proposed regulations are not inconsistent or incompatible with existing state regulations.

No other regulations presently exist regarding the tax-credit statutes being implemented by these regulations. Thus, this rulemaking is an “initial adoption” for purposes of R&TC §12209(f)(2) and counterpart statutes. The tax-credit program created by those statutes is independent of any other state tax-credit program, and has been administered accordingly by CDI.

CDI’s review has determined that several other tax credit programs exist, though completely separate, which may have attributes similar to the COIN program, such as the recently-implemented GO-BIZ program (10 CCR §8000, et seq.) and the Low Income

Housing Tax Credit (10 CCR §10300, et seq.). CDI has reviewed the regulations relating to those programs, and found no conflict or inconsistency. Given the separate and discrete enabling provisions for the COIN program, none would be expected to exist.

The COIN program's statutes are designed to prevent regulatory conflict by providing for consultation between Department of Insurance and State Board of Equalization and Franchise Tax Board. The three enabling statutes in the R & TC each state that the state tax-collection agency which administers taxation of the three categories of taxpayers eligible for COIN tax credits (Board of Equalization and Franchise Tax Board) "...shall, as requested by the Department of Insurance, California Organized Investment Network, or its successor, advise and assist in the administration of this legislation." (See, e.g., R&TC §12209[1].) During the more than 15 years that the COIN tax-credit program has been in effect, and in the course of CDI's intermittent consultation with the applicable taxation agencies, no conflict or inconsistency of any type with any other taxation statute (or other statute or regulation of any type) has been either encountered or suggested.

INCORPORATION BY REFERENCE

No statutes, regulations, reports, or other documents are incorporated into these regulations by reference.

OTHER MATTERS PRESCRIBED BY STATUTE

The Department has complied with Insurance Code section 12921.7.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose a mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS, OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State. The proposed regulations will not impose additional costs on the Department of Insurance beyond those imposed by sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code.

DESCRIPTION OF SPECIFIC FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION; DESCRIPTION OF THE JUSTIFICATION FOR ADOPTION OF THE REGULATION AS AN EMERGENCY REGULATION

Subdivision (f) of Revenue and Taxation Code section 12209, subdivision (d) of Revenue and Taxation Code section 17053.57, and subdivision (e) of Revenue and Taxation Code section 23657 explicitly provide the Department with emergency rulemaking authority, and deem the adoption of implementing emergency regulations “an emergency and necessary in order to address a situation calling for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.”

NECESSITY OF EACH PROPOSED PROVISION TO ADDRESS DEMONSTRATED EMERGENCY

The proposed tax credits for qualified CDFI investments regulation is necessary to implement the CDFI tax credits program, as permitted by sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code. The proposed regulation sets forth instructions, procedures, and standards for tax credit applications, pursuant to the rulemaking authority contained in sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code.

Article 1: Purpose and Scope; Definitions

Section 2696.20. Purpose and Scope

Section 2696.20 explains the nature of the program to be administered under the proposed regulations. Given the relationship between the Insurance Commissioner and the California Organized Investment Network, the complex structure of the tax credit program, and the statutory mandates imposed on the Commissioner and COIN by the Insurance Code and Revenue and Taxation Code, it is necessary to provide explanatory context to the regulation language.

Section 2696.22. Definitions

All the definitions are necessary in order for terms that are regularly used in the regulation to have unambiguous meanings provided in one location and thereby make the regulation shorter and more readable than if terms were defined each time they were used. This necessity (clarity, conciseness, readability) applies to each of the below definitions although not separately repeated infra for each term.

Most of the terms are used in the Revenue and Taxation Code sections that the regulations are implementing and making specific. The definitions of those terms are necessary to implement and make specific the Revenue and Taxation Code sections in which those terms appear.

Subdivision 2696.22 (a)

This subdivision defines "applicant" to mean an organization seeking CDFI certification. The subdivision also defines the term to mean a CDFI seeking a tax credit certificate from COIN. This dual definition follows the approach used in the Revenue and Taxation Code. See, for example, sections 12209(d)(1) and (d)(2)(A). The specific substantive section of the regulation in which the term appears determines which of the two meanings applies. Both definitions derive from and are consistent with the Revenue and Taxation Code usage.

Subdivision 2696.22 (b)

This subdivision defines "application" to mean: (1) documents submitted by the deadline specified by COIN by which an organization requests certification by COIN; (2) documents submitted by the deadline specified by COIN by which a CDFI requests a tax credit certificate; (3) documents submitted after the deadline at the request of COIN or with COIN's consent.

The specific wording of the definition generally codifies COIN's historical practice, and comports with the practice and procedure of many other Department of Insurance units that process applications. The wording of the definition integrates with the language of the various subdivisions of the regulation that address CDFI and tax credit application handling.

This definition is necessary to implement and make specific various Revenue and Taxation Code sections (e.g. 12209(d)(2)(B), (d)(3)(A), (f)(1), and corresponding subdivisions in sections 17053.57 et seq. and 23657 et seq.). Subdivision (f)(1) expressly authorizes "[t]he Insurance Commissioner [to] develop instructions, procedures, and standards for applications..." and "... from time to time, adopt, amend, or repeal regulations to implement the provisions of this section." (Emphasis added.)

Subdivision 2696.22 (c)

This subdivision defines the "California Organized Investment Network (COIN)" to mean the unit within the Department of Insurance that processes applications for CDFI certification and applications for CDFI tax credit certificates. This definition implements and makes specific Revenue and Taxation Code sections 12209, 17053.57 and 23657, which repeatedly refer to COIN handling these functions.

Subdivision 2696.22 (d)

This subdivision defines "CDFI" to mean "community development financial institution." The definition implements and makes specific Revenue and Taxation Code sections 12209(h)(2), 17053.57(g)(2) and 23657(g)(2) by providing a convenient acronym in place of a lengthy term that otherwise would need to be used throughout the regulation.

Subdivision 2696.22 (e)

This subdivision defines "certification" to mean the status conferred by COIN on a CDFI authorizing the CDFI to receive qualified investments and apply for tax credits on behalf of taxpayers. The definition implements and makes specific Revenue and Taxation Code sections 12209(d)(1), 17053.57(c)(1) and 23657(c)(1), which repeatedly use this term but do not define it.

Subdivision 2696.22 (f)

This subdivision defines "COIN" to mean the California Organized Investment Network. The definition provides a cross-reference of the acronym of COIN to the definition that appears in the definitions section under the full title of the organization.

Subdivision 2696.22 (g)

This subdivision defines "Certified CDFI" to mean a CDFI that COIN has authorized to apply for tax credits under the program. This definition distinguishes CDFIs that have not been certified from those that have been certified. This distinction is important because the regulation refers to both types of CDFIs. For example, a CDFI that has not yet applied for certification, or that has applied and is having its application reviewed by COIN, is not a "certified CDFI." The regulation frequently refers to "CDFIs" that are not certified. It also frequently refers to "certified CDFI."

Subdivision 2696.22 (h)

This subdivision defines "community development financial institution (CDFI)" as having the meanings provided in Sections 12209(h)(2), 17053.57(g)(2) and 23657(g)(2) of the Revenue and Taxation Code. This definition implements and makes specific the cited Revenue and Taxation Code sections. It is necessary to define this term for the sake of clarity, even though the definition merely duplicates the statutory definition, since this term is used so often throughout the regulation. COIN includes this definition pursuant to 1 CCR 12(b)(1).

Subdivision 2696.22 (i)

This subdivision defines "Department" to mean the California Department of Insurance. This section is necessary to avoid any ambiguity about which department is being referred to when the regulation uses the word "Department."

Subdivision 2696.22 (j)

This subdivision defines "green investment" to have the meaning provided in section 926.1(e) of the Insurance Code. Sections 926.1 and 926.2 concern insurance company reports on investments in community development. In other words, both the instant tax credit program and section 926.1 involve community development, including green investment. The Legislature has provided a definition in section 926.6(e) for green investment for community development purposes. That definition provides an appropriate definition to use for this regulation since this

regulation also concerns community development. This definition is necessary to be consistent with the definition in Insurance Code section 926.6(e) that involves a related program and purpose.

Subdivision 2696.22 (k)

This subdivision defines "high unemployment area" to mean that if the California average unemployment rate is less than 10%, then counties with an unemployment rate 25 percent higher than the State average are defined as high unemployment areas. However, if the California average unemployment rate is greater than 10%, then counties with an unemployment rate 15 percent higher than the State average are defined as high unemployment areas. The definition derives from 22 C.C.R. § 4429(b), which was promulgated by the Employment Development Department. It is appropriate for COIN, which lacks sufficient expertise to properly define this term, to defer to EDD, which presumably possesses the expertise, and has defined the term in regulation.

Subdivision 2696.22 (l)

This subdivision defines "insurer" to mean any organization holding a certificate of authority from the Insurance Commissioner of the State of California, admitted reciprocal exchanges and home protection companies. The definition clarifies that "insurer" refers not only to traditional insurance companies (e.g., those that transact automobile, fire, life or health insurance, and possess a certificate of authority pursuant to Insurance Code section 700(a)), but also to various types of "quasi-insurer" that likewise hold certificates of authority (e.g. motor clubs and fraternal benefit societies). In addition, the term applies to reciprocal exchanges which are essentially insurers but are not technically the holders of a certificate of authority, and home protection companies, which are quasi-insurers that hold a license that is not referred to in the Insurance Code as a "certificate of authority."

Subdivision 2696.22 (m)

This subdivision defines "low-to-moderate income" (LMI) to mean "low-income" and "moderate- income" as those terms are defined in Section 926.1 of the Insurance Code. The definition combines the two definitions used in the Insurance Code into the single term used in the applicable Revenue and Taxation Code sections (see, for example, section 12209(d)(2)(B)(ii) and (g)(2)) and throughout the regulation.

Subdivision 2696.22 (n)

This subdivision defines "low-to-moderate income area" to mean a geographical area in which the median household income is less than 80% of the statewide average. This definition derives from Insurance Code section 926(j), which defines "moderate income" to mean an individual income that is at least 50 percent but less than 80 percent of the area median income, or a median family income that is at least 50 percent but less than 80 percent of the area median income in the case of a geographical area. This definition is necessary to implement and makes specific the

term as used in the applicable Revenue and Taxation Code sections in a manner consistent with usage in the Insurance Code involving a related program and purpose.

Subdivision 2696.22 (o)

This subdivision defines "program" to mean all acts and duties related to the purposes or requirements of sections 12209, 17053.57 and 23657 of the Revenue and Taxation Code. This definition is necessary to provide clarity and conciseness.

Subdivision 2696.22 (p)

This subdivision states that "qualified investment" has the meaning provided in Sections 12209(h)(1), 17053.57(g)(1) and 23657(g)(1) of the Revenue and Taxation Code. It is necessary to define this term for the sake of clarity, even though the definition merely duplicates the statutory definition, since this term is used so often throughout the regulation. COIN includes this definition pursuant to 1 CCR 12(b)(1).

Subdivision 2696.22 (q)

This subdivision defines "rural area" to mean any open country or any place, town, village, or city which by itself and taken together with any other places, towns, villages, or cities that it is part of or associated with: (a) has a population not exceeding 10,000; or (b) has a population not exceeding 20,000 and is contained within a nonmetropolitan area. The subdivision also defines "Rural area" to mean any open country, place, town, village, or city located within a Standard Metropolitan Statistical Area (as defined in section 926.1(i) of the Insurance Code) if the population thereof does not exceed 20,000 and the area is not part of, or associated with, an urban area and is rural in character. This definition is necessary to implement and make specific various Revenue and Taxation Code sections (e.g. 12209(d)(2)(B)(iii), (g)(2), (h)(2), and (l), and corresponding subdivisions in sections 17053.57 et seq. and 23657 et seq.), which repeatedly identify rural areas as beneficiaries of the tax credit program. The definition is copied from California Health and Safety Code section 50101.

Subdivision 2696.22 (r)

This subdivision defines "tax credit" to mean the credit against the amount of tax referred to in Sections 12209, 17053.57 and 23657 of the Revenue and Taxation Code. This definition is necessary to implement and make specific various Revenue and Taxation Code sections (e.g. 12209(c)(3)(A), (g)(2), (h)(1), and (l), and corresponding subdivisions in sections 17053.57 et seq. and 23657 et seq.), which repeatedly uses the term "tax credit."

Subdivision 2696.22 (s)

This subdivision defines "tax credit certificate" (certificate) to mean the document provided by COIN to a taxpayer documenting the awarding of a tax credit in a certain amount on a certain date. This definition is necessary to implement and make specific various Revenue and Taxation

Code sections (e.g. 12209(g)(2) and (3) and corresponding subdivisions in sections 17053.57 et seq. and 23657 et seq.), which repeatedly uses the term "tax credit certificate."

Subdivision 2696.22 (t)

This subdivision defines "tax credit issuance cycle (cycle)" to mean the period that begins when COIN publishes a due date for submittal of applications for certificates and ends when COIN has issued all certificates COIN intends to issue in response to those applications. This definition is necessary to comply with, implement and makes specific Revenue and Taxation Code sections 12209(g)(2), 17053.57(f)(2) and 23657(f)(2), which requires COIN to establish tax credit issuance cycles throughout the year to facilitate prioritizing investments.

Subdivision 2696.22 (u)

This subdivision defines "taxpayer" to mean any person eligible to receive a tax credit pursuant to Sections 12209, 17053.57 and 23657 of the Revenue and Taxation Code. This definition is necessary to implement and make specific this term which appears dozens of times in the specified sections and in the regulation.

Article 2: Community Development Financial Institution Certification

Section 2696.24. Applications for CDFI Certification

Organizations seeking to receive qualified investment proceeds under the Revenue and Tax Code provisions implemented by these regulations are required to apply to COIN for certification of their CDFI status [R&TC §§12209(d)(1), 17053.57(c)(1), 23657(c)(1)], and COIN is required to accept and review such applications [R&TC §§12209((g)(1), 17053.57(f)(1), 23657(f)(1)]. The Revenue and Taxation code sections herein implemented permit the Insurance Commissioner to "develop instructions, procedures, and standards for applications, and for administering the criteria for evaluation of applications." [R&TC §§12209(f)(1), 17053.57(d)(1), 23657(e)(1)] The statutes also state that, in order to qualify as CDFIs, applicant organizations must conform to specific statutory criteria, as well as the COIN program legislative intent at Cal. Ins. Code §12939. [R&TC §§12209(h)(2), 17053.57(g)(2), 23657(g)(2)] However, the statutes are otherwise silent with respect to how entities apply for certification and how certifications are administered. Therefore, Section 2696.24 (and Sections 2696.26 and 2696.28) are necessary to provide procedures and standards for CDFI certification.

Section (a) requires that applicants submit applications in the format designated by COIN, per section (a)(1), and requires the CEO of the applicant to certify that the application is true and complete, and that the applicant acknowledges conditions to be certified and participate in the COIN program, per section (a)(2).

Subsections (a)(1) and (a)(2) are necessary to establish a uniform application format to facilitate review, to ensure that applicants provide truthful and complete application materials, and to be sure that applicants are made aware of program rules designed to ensure compliance with

statutory requirements and to prevent fraud. The necessity for the program rules themselves will be discussed in greater detail in subsequent sections.

This section also prohibits amendments to applications after an application deadline has passed, per section (a)(3). This provision is necessary to ensure fairness to applicants who meet the deadline and to ease administrative burdens on COIN which would be caused by otherwise continual application updates.

Finally, this section sets forth preliminary grounds for rejection of an application, per section (a)(4). This provision is necessary to allow the rejection of applications which are not timely, do not provide required documentation, or originate from applicants not in compliance with program requirements. The necessity for application deadlines implicated at (a)(4)(A), supporting documentation at (a)(4)(B), and program requirements at (a)(4)(D) and (a)(4)(E) will be discussed in greater detail in subsequent sections.

Section (b) sets forth the information and supporting documents that applicants must provide in support of an application for CDFI certification. These types of information regarding the applicant, its legal organization, financial health, management profile, and area of operation are requested for purposes of identification, prevention of fraud, verifying that the applicant meets statutory certification criteria, and ensuring that the applicant is or will be an ongoing business for the 60 month qualified investment period set forth in the statutes.

The information requested in subsection (b), in conjunction with the review procedures of Section 2692.26, is necessary in order to positively identify the applicant, confirm that the applicant meets statutory criteria for CDFI certification, and to safeguard qualified investment proceeds against fraud or loss by the CDFI or its staff. The information requested in the section sets forth in regulation form information which has historically been requested by the COIN program when completing CDFI certification review; current versions of those COIN documents and the information they request is attached as Exhibit D.

The information requested in section (b)(1) describes contents of the COIN CDFI certification application form, which provide a summary of the applicant and its operations and are necessary for efficient review and classification of applications.

Information requested at sections (b)(1)(A), (b)(1)(B), and b(1)(G) is necessary to identify the applicant and provide a contact for the application. Information requested by sections (b)(1)(C) through (b)(1)(F) is necessary to ensure the applicant satisfies statutory program requirements set forth in R&TC §§12209(h)(2), 17053.57(g)(2), 23657(g)(2) that the applicant promote community development, be located in California, and be a private entity. Sections (b)(1)(H) and (b)(1)(I) request information about the applicant's participation in other community development programs, which is necessary to verify the applicant's operational history and to allow for cross-checking of application materials.

The information requested in section (b)(2) describes contents of the COIN CDFI certification application form relating specifically to compliance of the applicant with statutory criteria at R&TC §§12209(h)(2), 17053.57(g)(2), 23657(g)(2). Section (b)(2)(A) requires that applicants

affirm, as set forth on the application form, that the applicant is a private financial institution located in California, that its primary mission is community development, and that it lends to urban, rural, or reservation-based communities.

This information is necessary to verify compliance with the statutory criteria set forth above. Section (b)(2)(B) requires the applicant to state whether or not its operations will change within five years of the application date, in such a way as to render the applicant no longer compliant with the statutory criteria set forth above. This information is necessary to ensure that the applicant will continue to be an eligible recipient of qualified investment funds for the entire 60 month investment period specified at R&TC §§12209(h)(1), 17053.57(g)(1), 23657(g)(1).

The supporting documents described in section (b)(3) are requested to provide enhancement for the summary information requested in sections (b)(1) and (b)(2). It is necessary to request these documents to obtain primary source verification of information provided in the application form, to verify the applicant's compliance with statutory criteria for CDFI certification, to provide information on the financial health and operational history of the applicant, and to prevent fraud or financial mismanagement by officers or board members of the applicant.

Documents requested in sections (b)(3)(A) through (b)(3)(C) require the applicant to explain in detail how its operations comport with the statutory criteria for CDFI certification contained in R&TC §§12209(h)(2), 17053.57(g)(2), 23657(g)(2), provide a narrative explanation of its mission statement, and to provide the corporate formation documents for the applicant.

The documents requested in sections (b)(3)(A) through (b)(3)(C) are necessary to ensure that the applicant's operations and mission statement comply with statutory criteria for CDFI certification described above, and that the applicant has the necessary corporate powers to carry out operations required of a certified CDFI under those same statutory criteria. Similarly, the organizational chart and board member directory and resumes requested at (b)(3)(D) and (b)(3)(E) are necessary to ensure that the applicant meets the statutory criterion that it be a private entity.

The documents requested at (b)(3)(D) through (b)(3)(G) identify the officers and board members of the applicant, as well as their backgrounds; these documents also describe the decision-making processes of the applicant organization. These documents are necessary to prevent fraud or financial mismanagement by officers or board members of the applicant. Review of backgrounds is necessary to prevent fraud and financial mismanagement. Similarly, review of organizational decision-making is necessary to understand the operations of the CDFI and its management, and therefore to prevent fraud and mismanagement.

The documents requested at (b)(3)(H) through (b)(3)(O) relate to the applicant's financial and operational history, including the applicant's involvement with other social investment programs; the CARS rating ("CDFI Assessment and Rating System") requested at (b)(3)(O) is a third-party rating of CDFI stability and capacity frequently used in the community development field. Requesting the financial documents is necessary to verify that the applicant is solvent, demonstrates sound financial management practices, and will retain sufficient financial resources to administer qualified investment proceeds consistent with R&TC §§12209(h)(1),

17053.57(g)(1), 23657(g)(1), as well as legislative intent for the COIN program set forth at CIC §12939(d) that “CDFIs leverage . . . investment dollars for the direct benefit of economically disadvantaged communities and low income people in California.” Requesting operational history documents is necessary to ensure that the applicant has previously, and will continue to, comply with statutory criteria for CDFIs at R&TC §§12209(h)(2), 17053.57(g)(2), 23657(g)(2), as well as legislative intent for the COIN program at CIC §12939.

Section (b)(3)(P) allows applicants for CDFI certification to include other documents the applicant considers relevant to consideration of the application. It is necessary to allow applicants the opportunity to include additional materials in case the materials requested at (b)(3)(A) through (b)(3)(O) do not completely encompass all the information the applicant believes COIN will need to properly evaluate the application.

Section 2696.26. CDFI Certification Evaluation and Issuance; Duration; Termination

This section describes the manner in which applications for CDFI certification are evaluated, establishes the period for which certification is valid, and sets forth conditions which attach to CDFI certification. As discussed above, COIN is required to accept and review applications for CDFI certification and tax credit allocation [R&TC §§12209((g)(1&2), 17053.57(f)(1&2), 23657(f)(1&2)]. The Revenue and Taxation code sections herein implemented permit the Insurance Commissioner to “develop instructions, procedures, and standards for applications, and for administering the criteria for evaluation of applications.” [R&TC §§12209(f)(1), 17053.57(d)(1), 23657(e)(1)]. Additionally, COIN must ensure that the operations of applicants and Certified CDFIs comply with the legislative intent of the COIN program at CIC §12939, and may do so by imposing reasonable conditions so as to effectuate the sections herein implemented [R&TC §§12209((g)(1), 17053.57(f)(1), 23657(f)(1)]. On this basis, it is necessary to implement the provisions described in detail below.

Section (a) sets forth the evaluation criteria for issuance of CDFI certification by COIN. These criteria relate to organization and mission of the applicant, as well as financial stability of the applicant. These criteria are necessary to ensure that the applicant meets statutory criteria for organizational structure and mission set forth at R&TC §§12209(h)(2), 17053.57(g)(2), 23657(g)(2); they are also necessary to ensure the applicant is solvent and has financial stability sufficient to administer investment proceeds for the minimum 60 month term set forth at R&TC §§12209(h)(1), 17053.57(g)(1), 23657(g)(1), and to ensure that invested funds directly benefit “disadvantaged communities and low income people” as the Legislative intent for the program requires per CIC §12939(d).

Section (b) sets forth procedures for COIN to request supplementation of an application. This provision is necessary to allow COIN to obtain updated information for unclear or incomplete applications.

Section (c) sets forth the duration of certification, along with provisions modifying the duration if COIN adopts a periodic application cycle, or if a certified CDFI undergoes a change in control. Establishing a duration is necessary to implement R&TC §§12209(g)(1), 17053.57(f)(1), 23657(f)(1) allowing for certification to be issued for a specified period of time. Section

(c)(1)(A), establishing that certification expires on the last date of a reapplication cycle, is necessary for potential reduction in administrative burdens associated with the program; requiring all certified CDFIs to renew within the same timeframe will allow COIN to schedule CDFI renewal evaluations for a time when the organization is not reviewing tax credit applications.

Section (c)(1)(B) establishes that CDFI certification expires 30 calendar days after a CDFI undergoes a merger, sale, or other form of change in control, unless the CDFI timely files a new application for certification, in which case certification remains valid during consideration of the new application. It is necessary for certification to expire subsequent to a change in control of the certified CDFI, and for the CDFI undergoing the change in control to submit a new certification application, to allow COIN to determine whether the resulting entity continues to meet statutory criteria for CDFI certification at R&TC §§12209(h)(2), 17053.57(g)(2), 23657(g)(2), and will retain sufficient financial resources to administer qualified investment proceeds consistent with R&TC §§12209(h)(1), 17053.57(g)(1), 23657(g)(1), as well as legislative intent for the COIN program set forth at CIC §12939(d) that “CDFIs leverage . . . investment dollars for the direct benefit of economically disadvantaged communities and low income people in California.”

Section (c)(2) requires that certified CDFIs provide annual information updates; certified CDFIs are required to provide updated versions of documents submitted as part of the initial certification process. The necessity for the types of documents themselves is discussed in previous sections. It is necessary to request annual updates so that COIN may verify that the certified CDFI continues to meet statutory criteria for CDFI certification at R&TC §§12209(h)(2), 17053.57(g)(2), 23657(g)(2), and continues to retain sufficient financial resources to administer qualified investment proceeds consistent with R&TC §§12209(h)(1), 17053.57(g)(1), 23657(g)(1), as well as legislative intent for the COIN program set forth at CIC §12939(d) that “CDFIs leverage . . . investment dollars for the direct benefit of economically disadvantaged communities and low income people in California.”

Section (d) sets forth conditions which attach to CDFI certification and allows for revocation of certification if a certified CDFI does not comply with the conditions of CDFI certification. Establishing conditions is necessary to implement R&TC §§12209(g)(1), 17053.57(f)(1), 23657(f)(1) allowing for certification to be issued with “reasonable conditions to effectuate the intent of [the COIN program statutes].” Allowing for revocation if conditions of certification are not observed is necessary to allow meaningful enforcement of the conditions.

Section (d)(1) conditions certification on the certified CDFI not engaging in conduct prohibited in subdivisions (g) and (h) of this section of the regulations; subdivision (g) relates to financial and criminal misconduct expressly prohibited in the Insurance Code, while subdivision (h) details rules specific to the COIN program which are designed to prevent misrepresentation, fraud, loss, or misuse of funds. The necessity for sections (g) and (h) will be discussed in detail in subsequent sections. It is necessary to condition CDFI certification upon observance of these program rules in order to make them effective.

Section (d)(2) conditions certification upon the certified CDFI providing the annual information updates required by subdivision (c)(2), the necessity for which is described in preceding sections. It is necessary to condition CDFI certification upon providing the required updates in order to ensure that certified CDFIs comply with the update requirement.

Section (d)(3) conditions certification upon the certified CDFI retaining certification until the 5-year anniversary of allocation of tax credits upon any qualified investment held by the CDFI. This provision is necessary to ensure that certified CDFIs observe program rules while administering qualified investment proceeds. Qualified investments must be made for a “minimum duration of 60 months,” and certified CDFIs receiving qualified investment proceeds “shall use [them] for a purpose that is consistent with [community development] and for the benefit of economically disadvantaged communities and low-income people in California.” [R&TC §§12209(h)(1), 17053.57(g)(1), 23657(g)(1).] Requiring certified CDFIs to retain certification during the minimum duration of a qualified investment is necessary to ensure that qualified investment recipients use the investment proceeds in a manner consistent with the Revenue and Taxation code requirements set forth above.

Section (d)(4) conditions certification upon the certified CDFI providing reports to COIN as required by CIC §12939.1. It is necessary to condition CDFI certification upon observance of the reporting statute in order to make effective the reporting requirements of CIC §12939.1.

Section (d)(5) conditions certification upon the certified CDFI observing conditions on certification such as COIN deems reasonably necessary. It is necessary to allow additional conditions in this fashion to effectuate R&TC §§12209(g)(1), 17053.57(f)(1), 23657(f)(1) and CIC §12939 by permitting COIN to address issues that may be unique to a specific certified CDFI, by virtue of corporate structure, finances, operational history, ownership or management, or such other issues as may pertain to a certified CDFI.

Section (e) allows COIN to issue non-compliance notices to CDFIs which have breached any of the conditions pertaining to certification. Such non-compliance notices would allow a specified period for remediation of the conduct identified, in lieu of suspension or revocation of CDFI certification. It is necessary to allow resolution of non-compliant CDFI behavior in this fashion to promote administrative efficiency; dialogue between COIN and the non-compliant CDFI uses fewer resources than moving immediately to a hearing.

Section (f) allows COIN to revoke the certification of a CDFI that has not complied with the terms of a non-compliance notice issued pursuant to section (e). This provision is necessary to provide non-compliant CDFIs with an incentive to remediate their conduct informally.

Section (g) allows COIN to deny applications for certification, or suspend or revoke CDFI certification of applicants or certified CDFIs which violate the licensing provisions contained in CIC §1668. These sections of the Insurance Code govern the licensing of insurance producers and are intended to prevent persons from becoming licensed (or maintaining a license) who have been subject to criminal or administrative sanctions, who have behaved in a fraudulent manner or are lacking in integrity, who lack competence in the conduct of business, who have made false statements to the Insurance Commissioner, or who have otherwise violated the Insurance Code.

These well-established provisions comprehensively prevent fraud, misrepresentation, loss, and mismanagement and are necessary to safeguard qualified investment proceeds and to prevent applicants or certified CDFIs from making misrepresentations to others or misstatements to the Commissioner and his designees.

Section (h) allows COIN to deny applications for certification, or suspend or revoke CDFI certification of applicants or certified CDFIs which do not comply with specific COIN program rules outlined in the section. It is necessary to require compliance with these rules to prevent fraud, misrepresentation of the COIN program, loss or misuse of investment proceeds, or non-compliance with regulations governing the COIN program.

Section (h)(1) allows COIN to deny applications for certification, or suspend or revoke CDFI certification of applicants or certified CDFIs which declare bankruptcy, are placed in receivership, or are otherwise subject to insolvency proceedings. This provision is necessary to safeguard qualified investment proceeds from loss, and therefore to ensure that investment proceeds are used in accordance with legislative intent at CIC §12939.

Section (h)(2) allows COIN to deny applications for certification, or suspend or revoke CDFI certification of applicants or certified CDFIs which violate terms and requirements of the COIN program. This section is necessary to ensure general compliance with COIN program rules as set forth in these regulations.

Section (h)(3) allows COIN to deny applications for certification, or suspend or revoke CDFI certification of applicants or certified CDFIs which engage in material misrepresentation regarding the COIN program. This is necessary to prevent CDFIs from misrepresenting the nature of the COIN program, or tax credits available through the program, to potential investors; prior experience of COIN staff is that CDFIs have made false statements about the nature of the program in order to induce investors to make investments.

Section (h)(4) allows COIN to suspend or revoke CDFI certification of certified CDFIs which pre-pay without written authorization from the investor, qualified investments upon which tax credits have been allocated. If a qualified investment amount is reduced before the 60 month investment term has concluded, R&TC §§12209(i)(2), 17053.57(h)(2), 23657(h)(2) require recapture of the tax credit. In the experience of COIN staff, CDFIs have previously sought to have investments forgiven or gifted by the investor by indicating that the CDFI would trigger the recapture provision by pre-paying the investment. Tax planning certainty is an important aspect of making the COIN program attractive to investors; therefore, it is necessary to prevent pre-payment of investments in order to make capital available to CDFIs as set forth in the legislative intent statute at CIC §12939(d).

Section (h)(5) allows COIN to suspend or revoke CDFI certification of certified CDFIs which use qualified investment proceeds in a manner significantly different from that proposed in the application, or which do not deploy the invested funds at all. In the experience of COIN staff, CDFIs have previously held qualified investment proceeds to improve their balance sheets, rather than disbursing them for the community development purposes stated in the underlying tax credit application. It is necessary to prevent misdirection or non-use of qualified investment

funds in order to provide products and services to low-income persons and communities as set forth in the legislative intent statute at CIC §12939(b).

Section (h)(6) allows COIN to deny applications for certification, or suspend or revoke CDFI certification of applicants or certified CDFIs which submit to COIN documents, information, or communications containing material misrepresentations. It is necessary to prevent applicants and certified CDFIs from making misrepresentations to COIN in order that COIN may carry out its responsibilities to accept and review CDFI certification and tax credit allocation applications per R&TC §§12209(f)(1&2), 17053.57(d)(1&2), 23657(e)(1&2).

Section 2696.28. CDFI Certificate Renewal and Reapplication

This section sets forth the manner in which a certified CDFI may apply for recertification, as well as the manner in which COIN may establish a recertification cycle. As discussed above, COIN must ensure that the operations of Certified CDFIs comply with the legislative intent of the COIN program at CIC §12939, and may do so by imposing reasonable conditions so as to effectuate the sections herein implemented [R&TC §§12209((g)(1), 17053.57(f)(1), 23657(f)(1)]. On this basis, it is necessary to implement the provisions described in detail below.

Section (a) provides that a certified CDFI may apply for recertification prior to expiration of its current certification and that its certification will remain valid during evaluation of a timely filed application for recertification. It is necessary to require certified CDFIs to apply for recertification allow COIN to determine whether the certified CDFI continues to meet statutory criteria for CDFI certification at R&TC §§12209(h)(2), 17053.57(g)(2), 23657(g)(2), and will retain sufficient financial resources to administer qualified investment proceeds consistent with R&TC §§12209(h)(1), 17053.57(g)(1), 23657(g)(1), as well as legislative intent for the COIN program set forth at CIC §12939(d) that “CDFIs leverage . . . investment dollars for the direct benefit of economically disadvantaged communities and low income people in California.” Providing that certification remains valid during evaluation of a timely filed renewal application is necessary to allow the certified CDFI to normal operations during application review.

Section (b) provides that COIN may establish one or more yearly periods for certified CDFIs to reapply for certification. This section requires that COIN post the final acceptance date for applications on its website no more than 90 days in advance of the date. Due to the overlap inherent in moving from ad hoc to cyclic review of renewal applications, the section also provides that no certified CDFI will be required to renew fewer than 24 months after certification. Allowing for creation of a recertification period is necessary to reduce administrative burdens on COIN; this provision will allow COIN to schedule recertification evaluations during a different part of the year than tax credit evaluations. The provisions relating to notice and minimum certification duration are necessary to ensure fairness to the certified CDFIs.

Article 3: Investment Tax Credit Certificates

Section 2696.30. Tax Credit Applications

Subdivision 2696.30(a)(1)

This subdivision states that an applicant shall file a separate completed application, on paper, using the current form provided by COIN, to apply for each certificate.

There are several parts to this subdivision: "separate," "completed," "paper," "current." The "separate" requirement is necessary to address the following situation. A CDFI files two applications for two taxpayers. The application form requests information about the CDFI, the taxpayer, and the specific investment. The "separate" requirement is necessary to prevent a CDFI from submitting information about itself as part of the application for taxpayer A, then telling COIN to refer to that application in the application for taxpayer B. Without this requirement COIN's review and record-keeping would be substantially more complicated.

The "completed" requirement is necessary so COIN may reject applications that are not substantially complete.

The "paper" requirement is necessary because COIN currently lacks the software and hardware to process applications on-line.

The reference to the "current form" is necessary to allow COIN to make non-substantive changes to the application form (typographical or formatting changes) in keeping with these regulations, or substantive changes in keeping with later statutory amendments or amendments to these regulations.

Subdivision 2696.30(a)(2)

This subdivision states that COIN may reject an application received after a deadline for filing applications, and that applicants must retain proof that they submitted their applications timely.

An application deadline is necessary because all applications are comparatively evaluated. Therefore, evaluation cannot begin until all applications are received. A requirement that the applicant retain proof of timely submittal is necessary to place applicants on notice that they have the evidentiary burden of proof of establishing that they have met the filing deadline.

Subdivision 2696.30(a)(3)

This subdivision states that an applicant may not change or supplement an application after an application deadline without COIN's prior consent, which may only be granted for good cause.

This language is necessary to allow exceptions to the application deadline when good cause exists, such as when an applicant seemingly failed inadvertently to check a box on the

application form, or when a part of a page of a large document is illegible presumably due to a copier malfunction.

Section 2696.30(b)

Section 2696.30(b) contains the title “Application form contents.” It also contains a sentence that requires applicants or taxpayers to provide the items listed in the following five subdivisions on or with the application form.

This section is necessary to introduce the list of items recited in subdivisions (1) – (5), discussed immediately infra.

Subdivision 2696.30(b)(1)(A)

This subdivision requires applicants or taxpayers to provide the name of the CDFI.

This subdivision is necessary so COIN can identify the CDFI and distinguish it from other CDFIs.

Subdivision 2696.30(b)(1)(B)

This subdivision requires applicants or taxpayers to provide the name, title, telephone number, fax number, business address, mailing address and E-mail address of the CDFIs contact.

This subdivision is necessary so COIN can identify the contact person at the CDFI and obtain various ways to communicate with that person. CDFIs also must provide the information pursuant to sections 12209(d)(3)(A), 17053.57(c)(3)(A) and 23657(c)(3)(A) of the Revenue and Taxation Code.

Subdivision 2696.30(b)(1)(C)

This subdivision requires applicants or taxpayers to provide the number of certificate applications being filed by the CDFI during the current cycle.

This provision is necessary to satisfy internal and statutory reporting requirements (e.g. R&TC § 12209(g)(3) while minimizing the need for COIN to perform manual counting).

Subdivision 2696.30(b)(1)(D)

This subdivision requires applicants or taxpayers to provide the name and taxpayer ID number of the taxpayer to whom or which the certificate would be issued.

This subdivision is necessary so COIN can provide the proper, unique identifying information about the taxpayer to the appropriate taxing agency (Franchise Tax Board; Board of Equalization) if COIN awards the taxpayer a tax credit, in order to comply with subdivisions

12209(d)(3)(A)(5), 17053.57(c)(3)(A)(5) and 23657(c)(3)(A)(5) of the Revenue and Taxation Code.

Subdivision 2696.30(b)(1)(E)

This subdivision requires applicants or taxpayers to provide the name, title, telephone number, fax number, business address, mailing address and E-mail address of the taxpayer's contact.

This provision is necessary so COIN can identify the contact person at the taxpayer and obtain various ways to communicate with that person.

Subdivision 2696.30(b)(2)(A)

This subdivision requires applicants or taxpayers to provide the qualified investment and tax credit amounts for which a certificate is being requested.

This provision is necessary to: (a) know the amount of the tax credit being requested to verify that meets the \$50,000 statutory minimum threshold (e.g. R&TC § 12209(h)(1)); (b) ensure that the amount of the qualified investment suffices for the amount of the tax credit being requested.

Subdivision 2696.30(b)(2)(B)

This subdivision requires applicants or taxpayers to confirm that the qualified investment is for a minimum duration of 60 months, and provide the final maturity date of the investment if it is an equity-like debt instrument.

The requirement for confirmation that the qualified investment is for a minimum duration of 60 months is necessary to ensure compliance with sections 12209(h)(1), 23657(g)(1) and 17053.57(g)(1) of the Revenue and Taxation Code. These sections define “qualified investment” as being for a minimum of 60 months. Similarly, the final maturity date is needed to ensure that, if a qualified investment is in the form of such an instrument, it is at least 60 month by virtue of its maturity date.

Subdivision 2696.30(b)(2)(C)

This subdivision requires applicants or taxpayers to document remittance of invested funds.

This requirement is necessary to ensure that a taxpayer has actually invested funds before it applies for and receives a tax credit based on that investment (as required by R&TC § 12209(h)(1)).

Subdivision 2696.30(b)(2)(D)

This subdivision requires applicants or taxpayers to explain if the entire amount invested is different from the qualified investment amount for which the certificate is sought.

This subdivision is necessary because a taxpayer could invest more money in a CDFI for a particular project than the amount it decides to designate as a qualified investment and seek a tax credit for. If so, COIN would need to know this and the reason the taxpayer did so.

Subdivision 2696.30(b)(3)(A)

This subdivision requires applicants or taxpayers to provide a copy of the agreement between the CDFI and the taxpayer regarding the qualified investment, and all other documents directly or indirectly altering the terms of the agreement, whether entered into before or after the agreement.

The documents exchanged between the CDFI and the taxpayer will always convey valuable information about how the invested money will be used and whether the parties have complied and will comply with the applicable statutes and this regulation. Therefore, it is necessary for COIN to obtain and review these documents.

Subdivision 2696.30(b)(3)(B)

This subdivision requires applicants or taxpayers to provide a summary of the main terms of the agreement between the taxpayer and the CDFI regarding the qualified investment. These terms must include at least the items specified in subdivisions (B) 1-12.

The requirement for a summary of the agreement is necessary because a summary will expedite COIN's review of the agreement by providing an overview before COIN's full perusal and by highlighting for COIN the aspects of the agreement of most importance.

Subdivision 2696.30(b)(3)(B) 1.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include the names of the CDFI and taxpayer.

This requirement is necessary because the names of the parties are essential terms in any summary of any agreement.

Subdivision 2696.30(b)(3)(B) 2.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include the effective date of the agreement.

This requirement is necessary because the effective date of an agreement is an essential term in any summary of any agreement.

Subdivision 2696.30(b)(3)(B) 3.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include the date(s) the agreement was executed.

This requirement is necessary because the execution date of an agreement is an essential term in any summary of any agreement.

Subdivision 2696.30(b)(3)(B) 4.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to describe whether the qualified investment is a deposit, a zero-interest loan, an equity investment or an equity-like debt instrument.

This requirement is necessary because it quickly conveys to COIN which of the four basic statutorily-mandated types of investments the application involves. (See R&TC § 12209(h)(1).)

Subdivision 2696.30(b)(3)(B) 5.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include the specific intended use of the investment.

This requirement is necessary to enable COIN to quickly ascertain how the parties intend the investment to be used (according to the agreement). (Another part of the application requires a much more detailed description of the intended use of the investment.) Investment use is a key aspect of determining priority under section 2696.32.

Subdivision 2696.30(b)(3)(B) 6.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include whether the CDFI will have full use and control of the proceeds and earnings.

This requirement is necessary to ensure that the investment constitutes a “qualified investment” as defined in sections 12209(h)(1), 23657(g)(1) and 17053.57(g)(1) of the Revenue and Taxation Code. These sections define “qualified investment” as requiring, inter alia, that the CDFI “shall have full use and control of the proceeds of the entire amount of the investment as well as any earnings on the investment for its community development purposes.”

Subdivision 2696.30(b)(3)(B) 7.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include the percentage of the investment proceeds that will be used in California.

This requirement is necessary to ensure that the investment constitutes a “qualified investment” as defined in sections 12209(h)(1), 23657(g)(1) and 17053.57(g)(1) of the Revenue and Taxation Code. These sections define “qualified investment” as requiring, inter alia, that the CDFI “shall use the proceeds of the investment for a purpose that is consistent with its community development mission and for the benefit of economically disadvantaged communities and low-income people in California.” (Emphasis added.)

Subdivision 2696.30(b)(3)(B) 8.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include confirmation that the agreement contains a disclosure to the investor of the tax consequences if the investment is withdrawn early.

This section is necessary because the Revenue and Taxation Code (e.g. § 12209(i)) states that amounts of the tax credit shall be added to a taxpayer's (i.e. investor's) net tax if a qualified investment is withdrawn and not reinvested in another CDFI within 60 days.

Subdivision 2696.30(b)(3)(B) 9.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include confirmation that the agreement addresses whether the CDFI may repay the investment before the end of its term, despite the tax consequences.

This provision relates to subdivision (B) 8 immediately supra. Since a taxpayer would incur a tax liability if a CDFI repaid an investment before the end of its term, it is necessary that this fact be disclosed to the taxpayer in the agreement, and in turn that the existence of this disclosure be made known to COIN.

Subdivision 2696.30(b)(3)(B) 10.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include an explanation of any fees.

As part of its basic regulation of the tax credit program, COIN needs to be informed of fees charged as part of the agreements between CDFIs and taxpayers. Fees constitute consideration, and consideration is a material term in any agreement. Having this information in the summary will make it readily accessible to COIN staff compared to being contained solely in the agreement itself.

Subdivision 2696.30(b)(3)(B) 11.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include an explanation of all prior financial arrangements between the parties for the past five years.

The relationship between a CDFI and a taxpayer is supposed to be arms-length. However, potential exists for the tax credit program to be misused. That potential can be partly mitigated by reviewing prior financial relationships between the CDFI and the taxpayer. For that reason, this provision is necessary.

Subdivision 2696.30(b)(3)(B) 12.

This subdivision requires the summary of the agreement between the taxpayer and the CDFI to include all other material restrictions or requirements not listed above.

This subdivision is necessary to ensure important restrictions and requirements in the agreement between taxpayers and the CDFI are highlighted by being included in the summary.

Subdivision 2696.30(b)(3)(C)

This subdivision requires applicants or taxpayers to provide a numerical summary of investment uses.

This subdivision is necessary to introduce the list of items recited in subdivisions (1) – (5), discussed immediately infra.

Subdivision 2696.30(b)(3)(C) 1.

This subdivision requires applicants or taxpayers to provide the percentage of the investment that will be a direct benefit to LMI households, and the percentage that will be a direct benefit to rural areas.

This information is necessary because the amount of the benefit to LMI households and rural areas are the two main criteria on which COIN evaluates and prioritizes applications pursuant to section 2696.32(a)(1)(A)&(B). Without requesting this information COIN would need to determine the information itself (which is not part of its mandate and which it lacks the staff to do).

Subdivision 2696.30(b)(3)(C) 2.

This subdivision requires applicants or taxpayers to provide the percentage of the investment that will go toward green investment, go toward affordable rental housing, go toward community-based residential programs go toward self-help housing, go toward single-family owned housing, and be from an insurance company.

The information concerning green investment is necessary because the amount of benefits from green investment is a criterion on which COIN evaluates and prioritizes applications pursuant to section 2696.32(a)(1)(D). Similarly, the information regarding housing is needed because it is a criterion on which COIN evaluates and prioritizes applications pursuant to section 2696.32(a)(1)(G). The information regarding insurance companies is necessary due to section 2696.32(a)(1)(E). Without requesting this information COIN would need to determine the information itself (which is not part of its mandate and which it lacks the staff to do).

Subdivision 2696.30(b)(3)(C) 3.

This subdivision requires applicants or taxpayers to provide the number of temporary and permanent jobs created, and the number of those jobs in high unemployment areas.

This information is necessary because it relates to the benefit of the proposed investment on job creation, retention, and training, which in turn relates to a major criterion on which COIN evaluates and prioritizes applications pursuant to section 2696.32(a)(1)(C). Without requesting this information COIN would need to determine the information itself (which is not part of its mandate and which it lacks the staff to do).

Subdivision 2696.30(b)(3)(C) 4.

This subdivision requires applicants or taxpayers to provide any other statistical information that addresses the factors in Section 2696.32(b)(2). The factors in section 2696.32(b)(2) are: The characteristics of the persons and organizations that will provide benefits under the proposed investment; The value of benefits delivered relative to the cost of delivering those benefits to the persons or organization which provide the benefits; The characteristics of the households and areas that will receive benefits under the proposed investment; The number of households and areas that will receive benefits; The locations of households and areas that will receive benefits; When benefits will begin and end; The type and quality of benefits; How many households need the benefits in the area served by the investment; How acutely the households need the benefits in the area served by the investment.

COIN considers these factors, along with the criteria specified in section 2696.32(a)(1), in evaluating applications for tax credit certificates. Subdivision 2696.30(b)(3)(C) 4, in asking for any other statistical information that addresses the factors, offers applicants the opportunity to provide as much or as little data as they desire in order to establish the merits of their applications. This item is necessary to ensure applicants understand they must provide numerical information they know or should know is relevant regarding key factors upon which their applications will be evaluated.

Subdivision 2696.30(b)(3)(C) 5.

This subdivision requires applicants or taxpayers to provide a list of the metrics the applicant deems most appropriate for evaluating the impact of its investment, and the calculations the applicant used with those metrics to determine the impact.

The regulations implement and make specific the prioritization of tax credit applications that the Legislature mandated by statute, using various criteria and factors, some of which are quantitative (i.e. metrics). However, applicants must be given the opportunity to present metrics not specified by the regulation that the applicants believe will further establish the positive social impact of their investments, along with the data and calculations the applicant has used with the metrics to show the impact. This subdivision is necessary to provide that opportunity.

Subdivision 2696.30(b)(4)

This subdivision, entitled “Acknowledgments and agreements,” requires applicants to provide a signed statement acknowledging or agreeing to provide the list of items recited in subdivisions (A) – (G), and discussed immediately infra.

Subdivision 2696.30(b)(4)(A)

This subdivision requires applicants or taxpayers to acknowledge and agree that the program may change due to statutory, regulatory or judicial actions.

Without such an acknowledgement and agreement, disputes could arise between COIN and applicants or taxpayers in which the latter two groups might contend that an applicable or operative law, rule or COIN procedure should be the one in effect at an earlier time despite subsequent statutory or regulatory changes or judicial actions. By signing this acknowledgement and agreement, an applicant and taxpayer cannot contend it was unaware of the possibility of a future change. Being “on notice” may remove an argument that can be used against COIN in any dispute.

Subdivision 2696.30(b)(4)(B)

This subdivision requires applicants or taxpayers to acknowledge and agree that tax credit amounts allocated may be reduced if the terms and amounts of project sources and uses of funds are modified.

Without such an acknowledgement and agreement, an applicant or taxpayer could contest a reduction even though the basis for the tax credit award would have changed, the reduction would be warranted, and the contest would be unwarranted.

Subdivision 2696.30(b)(4)(C)

This subdivision requires applicants or taxpayers to acknowledge and agree that the applicant and taxpayer must continue to comply with all laws and regulations, including those prohibiting discrimination, and program requirements.

Without such an acknowledgement and agreement, it might be more difficult in some cases for COIN to penalize an applicant or taxpayer for failing to comply with all laws and regulations.

Subdivision 2696.30(b)(4)(D)

This subdivision requires applicants or taxpayers to acknowledge and agree that some information submitted to COIN may be subject to disclosure under the California Public Records Act.

This subdivision is necessary to put applicants and taxpayers on notice that certain documents may be disclosed to the public.

Subdivision 2696.30(b)(4)(E)

This subdivision requires applicants or taxpayers to acknowledge and agree to hold the Department and its employees harmless from liability deriving from the program.

Without such an acknowledgement and agreement, the Department and its employees could be more at risk of being found liable.

Subdivision 2696.30(b)(4)(F)

This subdivision requires applicants or taxpayers to acknowledge and agree that the application will be evaluated according to COIN regulations.

Without such an acknowledgement and agreement, an applicant or taxpayer could theoretically argue that an application should be evaluated pursuant to other laws or equitable or utilitarian principles.

Subdivision 2696.30(b)(4)(G)

This subdivision requires applicants to acknowledge and agree that the CDFI will upon later request provide to COIN information needed to establish the benefits of the investment if a certificate is issued.

This subdivision is necessary so COIN may audit CDFIs to determine how actual investment results compare to the anticipated results indicated in the investment proposals set forth in applications. The Revenue and Taxation Code expressly requires CDFIs to report to COIN on the tax credit program (e.g. R&T sec. 12209(d)(5).)

Subdivision 2696.30(b)(5)(A)

This subdivision requires applicants to provide an original signature on the application form by a CDFI corporate officer attesting that all information provided by the CDFI is true and correct, and that the CDFI will notify COIN of changes causing information in the application to become materially inaccurate or incomplete.

This subdivision is necessary to ensure, to the greatest extent reasonably possible, that the applicant provides COIN with information that is true and correct, both at the time the application is filed, and while it is being reviewed.

Subdivision 2696.30(b)(5)(B)

This subdivision requires taxpayers to provide an original signature on the application form by a natural person taxpayer, or an officer of a taxpayer that is not a natural person, attesting that all information provided by the taxpayer is true and correct, and that the taxpayer will notify COIN of changes causing information in the application to become materially inaccurate or incomplete.

This subdivision is necessary to ensure, to the greatest extent reasonably possible, that the taxpayer provides COIN with information that is true and correct, both at the time the application is filed, and while it is being reviewed.

Subdivision 2696.30(c)

This subdivision, entitled “Detailed narrative,” requires applicants to submit with the application form a detailed narrative description of the intended use of the qualified investment and its anticipated benefits, along with any supporting documentation, including data.

This subdivision is necessary to require from applicants, pursuant to the Revenue and Taxation Code (e.g. section 12209(d)(2)(B)) a detailed explanation of how the investment funds will be expended, and how the expenditure will achieve one or more of the benefits targeted by the Legislature.

Subdivision 2696.30(d)

This subdivision, entitled “Additional information,” requires that upon request by COIN an applicant shall provide any other information reasonably necessary to evaluate an application.

This subdivision is necessary to give COIN the authority to solicit additional information from applicants if the information initially provided was incomplete, unclear or otherwise insufficient in any respect, as is sometimes the case in COIN's experience (and, by implication, to reject an application if the applicant fails to provide the needed information).

Subdivision 2696.30(e)

This subdivision, entitled “Preliminary review,” requires that an application that does not include all required or requested information, or which does not comply with the specific statutory requirements to be a qualified investment, will not be evaluated further pursuant (applying the various evaluation criteria and factors) to determine whether a certificate should be granted.

This subdivision is necessary to prevent a situation in which COIN would otherwise arguably need to expend dozens of hours evaluating an application which would ultimately be rejected due to a fatal, fundamental flaw. This section implements the Revenue and Taxation Code (e.g. section 12209(h)(1)) which requires that COIN ensure that an investment is a "qualified investment" before it considers awarding a tax credit based on that investment. The section also implements the Revenue and Taxation Code sections requiring prioritization (e.g. 12209(g)(2)). Assuming an applicant and application satisfies the qualified investment and other statutory, minimum requirements, the application will move from "preliminary review" to "phase two" priority evaluation pursuant to section 2696.32.

Subdivision 2696.30(f)

This subdivision, entitled “Tax credit issuance cycle,” provides that at least 90 days before applications are due, COIN shall publish on its website the final date when applications will be accepted. Not later than 90 days after the due date for receiving applications, COIN shall issue all certificates to applicants that COIN intends to issue for that cycle. Upon good cause and sufficient notice, COIN may modify these periods.

This subdivision is necessary to comply with various sections of the Revenue and Taxation Code (as amended by AB 32(2013)), which states: "Applications for tax credits shall be accepted and evaluated throughout the year. The Insurance Commissioner shall establish tax credit issuance cycles throughout the year as necessary in order to issue tax credit certificates to those applications granted the highest priority." Revenue and Taxation Code sections 12209(g)(2), 17053.57(f)(2) and 23657(f)(2).

Article 4: Tax Credit Application Evaluation

Section 2696.32. Evaluation Criteria and Factors

R&TC §12209(f)(2) and corresponding provisions specifically confer upon COIN authority to develop “procedures and standards” for “administering the criteria for the evaluation of applications under this section.” Section 2696.32 specifies the general criteria and factors which COIN will apply when evaluating investment applications to determine which proposals that meet the statutory minimum standards in R&TC §12209(h)(1) should receive priority consideration pursuant to §12209(g)(2) for receipt of tax-credit authorization.

Section 2696.32 contains two subsections, (a) and (b). Subsection (a) identifies and describes the general criteria by which investments will be evaluated to determine their priority – primarily, whether the investment would benefit the statutorily-designated or otherwise-intended beneficiaries. The greater the benefit that an investment would be to the beneficiaries, the higher its priority and the more likely that the investment will qualify for credit.¹

¹ Section 2696.32 repeatedly uses the terms "priority" and "weight" in describing the evaluation of tax credit applications. These terms convey related but distinct concepts. "Priority" refers to the comparative ranking of the *applications* COIN receives based on the extent to which those applications satisfy, or fail to satisfy, the positive and negative criteria specified in section 2696.32(a)(1), and the factors in section 2696.32(b)(2).

"Weight" refers to the fact that, in ranking applications, certain criteria (e.g., benefits to LMI areas and households [subd. (a)(1)(A)]) are more important than other criteria, pursuant to statute, legislative history, or both. Thus, because of weight, an application comprising investment that provides good or very good LMI benefits (most weight) might receive a higher overall priority than an application with an investment that provides very good or excellent job creation (tertiary weight) or green benefits (lowest weight).

In short, applications receive *priority*; criteria (i.e., the type of benefits delivered pursuant to the investment) and factors receive *weight*.

Subsection (b) identifies and describes the factors which COIN will apply in order to determine the extent to which a proposed investment satisfies each of the criteria in subsection (a).

Subsection (a)(1).

Description.

This subsection describes seven key criteria. The first four (A-D) are listed in order of importance. The next three criteria are less-significant than any of the first four, but can still contribute to raising or lowering an application's priority.

Investment criterion (A) is the extent of benefit which an investment would provide to LMI areas and households. The greater the benefit provided, the higher the priority the application will receive. This is the primary criterion for receiving a tax credit. It outweighs all others combined.

Criterion (B) is the extent of benefit which an investment would provide to rural areas and households. This is the second most significant criterion.

Criterion (C) is the extent to which an investment would provide benefits in the form of job creation, retention and training. This criterion is third in significance.

Criterion (D) is the extent to which an investment is a green (environmentally-sound) investment. This criterion is fourth in significance.

Criterion (E) is whether the investor (taxpayer) is an insurer.

Criterion (F) is the extent to which an investment would have an adverse impact on LMI households or areas, or the COIN program itself.

Criterion (G) is whether an investment in housing supports any of several forms of statutorily-preferred housing alternatives (affordable rental housing, housing for veterans, mortgages for community-based residential programs, or self-help housing) rather than single-family housing.

The criteria are not, of course, mutually exclusive. Rather, they can be cumulative, and can complement and reinforce one another. Thus, an investment could benefit LMI people, in a rural area, in a way that is 'green.' Such an investment would meet multiple criteria and be weighted accordingly to obtain a high priority for certification by COIN.

Unfortunately, "priority" and "weight" can be conflated through syntax. This occurred in Revenue and Taxation Code section 12209(g)(2): "with highest priority granted to those applications where the intended use of the investments has the greatest aggregate benefit for low-to-moderate income areas or households or rural areas or households." In this passage, "priority" is referring to ranking all applications generally based on two particular benefit types – aid to LMI and rural areas and households. Thus, the concept being described is really "weight." (Therefore, when citing this R&T section below, "priority" really means "weight.")

Necessity.

Criterion A (LMI priority) is necessary in order to implement the primary purpose of the tax credit program, as repeatedly stated in the governing statutes in both the R&TC and the Insurance Code: to assist LMI persons and areas. Section 12209(h)(1) [and corresponding provisions] specifically require that: “The [CDFI] shall use the proceeds of the investment ... for the benefit of economically-disadvantaged communities and low-income people in California.” To accomplish this objective, §12209(a)(2) and corresponding provisions specifically state that: “A credit shall not be allowed by this section unless the applicant [for investment-approval] and the taxpayer provide satisfactory substantiation to, and in the form and manner requested by [COIN] that the investment is a qualified investment as defined in paragraph (1) of subdivision (h).” (Quoted just previously.) Of particular importance, the statutory provision requiring COIN to prioritize investment applications states that applications shall be evaluated, “...with highest priority granted to those applications where the intended use of the investment has the greatest aggregate benefit for low to moderate income areas or households or rural areas or households.” (§12209[g][2] and corresponding statutes.) Additional COIN-related statutes which emphasize the key objective of benefit to LMI communities are CIC §12939.1(c) (commissioning a 2010 study of the COIN program’s investments, “... and resulting benefits to economically disadvantaged communities and low-income people in California.”), 12939.2(f) (which establishes the COIN advisory board and gives it the task of suggesting ways to increase insurers to make investments that provide both fair investment returns and “...social benefits to underserved communities.”).

Assignment of greatest weight to proposals that provide the greatest benefit to LMI communities is necessary to comply with the cited statutes. It is also necessary in order to accomplish the legislative intent of the COIN tax-credit program. CIC §12939(d) clearly describes that intent: “It is the expectation of the legislature that CDFIs will leverage these new investment dollars [from the COIN program] for the direct benefit of economically disadvantaged communities and low-income people in California.” Assignment of greatest weight to projects that provide the greatest benefit to LMI communities is necessary to achieve this legislative intent. Assignment of more weight to LMI benefits than all other factors combined is necessary to reflect the fact that the legislative intent provision and several other statutes identify LMI benefits as the only objective of the tax credit program and also to reconcile those provisions with the other statutes which identify additional beneficiaries besides LMI beneficiaries.

Criterion B (rural areas and households) is necessary in order to implement a secondary but still important purpose of the tax credit program: benefit to rural areas and households. While key provisions of the R&TC statutes (quoted above) refer solely to benefit for LMI persons and communities, others refer also to rural areas and persons. The prioritization provision cited previously, §12209(g)(2), adds, after its reference to LMI people and areas, “or rural areas or households.” Similarly, the recently-added requirement for a legislative study on the effect of the program directs the study to focus not only on employment in LMI areas but also in rural areas. Additionally, to ensure that rural as well as LMI impact is evaluated by COIN, R&TC §12209(d)(2)(B)(iii) (and corresponding provisions) require applicants seeking certification of investment proposals to state not only the percentage of the investment that provides LMI

benefits, but: “The percentage of the intended use of the investment funds that would directly benefit rural areas.” (This provision contrasts with the provision which established the 2010 study, §12939.1(c), and referred only to LMI communities and people, not rural communities or people.) Thus, rural beneficiaries must receive priority but a lesser priority than LMI beneficiaries, both because they follow LMI beneficiaries in the priority-list and because they are not mentioned at all in some statutes. Assignment of high but secondary weight to the extent of benefit to rural people and areas is necessary to ensure that benefit to rural areas receives significant weight, as contemplated by law, but not as much weight as benefit to LMI persons and areas.

Criterion C (employment priority) is necessary in order to implement another priority identified as important in a recently-added provision which specifies what the Legislative Analyst must focus on when it reports to the Legislature in 2016 on “the effects of the tax credits allowed under ... [the three R&TC sections].” The analyst’s report must “...focus on employment on low to moderate income and rural areas, and on the benefits of these tax credits to low-to moderate income and rural persons.” (§12209[I].) Subsection I indicates that employment is a key type of benefit for LMI and rural areas and people. This provision contrasts with the 2010 study-statute (quoted in the preceding paragraphs) which did not identify employment as a separate specific consideration. An earlier expression of legislative interest in employment as a desired benefit of insurer investments in CDFIs appears in uncodified Section 1(e) of AB 1011 (Stats. 2010, Ch. 418), which states that such investments should “create jobs” as well as achieve environmental benefits.

Thus, a particular type of benefit – employment – must be accorded significant priority, but a lesser priority than benefits to the two key types of beneficiaries most frequently identified in the enabling statutes. Assignment of high but tertiary weight to employment benefits is necessary to ensure that this form of benefit receive significant weight, as contemplated by the mandatory focus of the 2016 study, but not as much weight as benefits to LMI and rural persons and areas.

Criterion D (green investment) is necessary in order to implement another purpose which was identified as important by the same 2013 legislation which added the focus on employment, discussed in the preceding section. Newly-added §12209(d)(2)(B)(iv) (and corresponding provisions) require that the “detailed description of the intended use of the investment funds” filed by an applicant for tax credit specifically identify “[t]he percentage of the intended use of the investment funds that is a green investment as defined in Section 926.1 of the Insurance Code[.]” along with the percentages of intended use for the “direct benefit” of LMI and rural households and areas (subsections [iii] and [iv]). Green investments are thus grouped together with those that benefit LMI and rural areas, as being especially desirable investment-types (though green investments are not so listed elsewhere in the statutes). The application provision in §12209(d)(2)(B)(iv) relating to green investments requires that COIN consider green impact as well as LMI and rural impact.

Further evidence that the Legislature views green projects as a desired benefit of investments in CDFIs appears in uncodified Section 19(e) of 2010 AB 1011 (referenced in the preceding section; see Exhibit A), which states that, “[b]y making investments that support community development financial institutions in low- and moderate-income communities, including needed

financial services, economic development, and housing, the insurance community can help those communities better accommodate new growth in compact forms, so as to deemphasize automobile dependency, integrate new growth into existing communities, support a diversity of affordable housing, and [as previously cited] create jobs.” Investment in green projects can also create benefits for LMI communities, as this statement of legislative intent indicates. Thus, like employment, green benefits are not mutually exclusive with LMI benefits.

Assignment of fourth-place weight to green investments is necessary to ensure that this form of investment receives some weight, as contemplated by §12209(d)(2)(B)(v), but not as much weight as the benefits that are expressly identified in §12209(g)(2) as meriting "highest priority,"² or the benefit that is identified in §12209(l) as being the "focus" of the Legislative Analyst's 2016 study.

Criterion E (insurer priority) is necessary in order to accomplish the public-policy objective which led to the creation of the investment tax program in the first place, and to the Legislature's selection of CDI to administer it, even though CDI is a regulatory agency, not a tax-collection agency. That policy, as stated in CIC § 926.3(a), is that: “It is the policy of the State of California that (1) insurers should, where practicable, be supportive of community development investments and community development infrastructure investments, and insurers should be encouraged to invest in prudent community development investments and community development infrastructure investments that benefit California and California's low- and moderate-income communities; (2) every admitted insurer that writes a substantial amount of insurance in the state should consider community development investments and community development infrastructure investments; and (3) the California Organized Investment Network is a part of the department, and has the responsibility to pursue active measures to encourage community development investing by admitted insurers.”

The fact that encouragement of insurer investment was the key focus and purpose of the COIN program from its inception is clearly evident from the Legislature's (uncodified) findings and declarations in Section 1(a) and (b) of AB 41 (Ch. 340, Stats. 2010; see Exhibit A), which states: “In 1996, California policymakers and insurance companies instituted efforts to encourage investments by insurance companies in urban and economically disadvantaged areas through the establishment of the [COIN]... The mission of COIN is to provide leadership in increasing the level of insurance industry capital in safe and sound investments providing fair returns to investors and social benefits to underserved communities.”

The statutory policy in §926.3(a) is also reflected in CIC §12939.2, quoted above, which establishes COIN's Advisory Board and gives the Board the duty to advise COIN on, “...the best methods to increase the level of insurance industry capital in safe and sound investments while providing fair returns to investors and social benefits to underserved communities.” (§12939.2[f][1].) Notably, the statute does not refer to capital from other sources, only insurers.

Still another legislative expression of this policy is in uncodified Section 1 to AB 1011 (Ch. 418, Stats. 2010) (which amended COIN-related legislation in various ways). It details the Legislature's declaration that insurers should invest in green projects in order to “help reduce

² "Priority" here actually refers to "weight."

greenhouse gas emissions” (subsection [e]), and in CDFIs in low-and moderate income communities to “help those communities better accommodate new growth in compact forms...and create jobs.” (See Exhibit A)

Despite this express statutory policy, other aspects of both California and federal law impede its implementation. First, another major category of institutional investor, banks and similar financial institutions, have express federal or state statutory or other regulatory obligations to make community-development investments, notably under the Community Reinvestment Act (12 U.S.C. §2901, *et seq.*). Insurers have no comparable statutory obligations. The banks’ statutory community-investment mandate gives them a strong incentive to compete against insurers for available tax-advantaged community-development investments such as the COIN program offers, and to ‘crowd out’ the insurers. In fact, that is precisely what has happened in practice. Most COIN investment tax-credits have gone to banks and other institutions which were investing in accordance with federal community-investment requirements. Since banks do not need extra tax-incentives because they already have regulatory mandates, the anomalous result has been that most tax credits have gone to the institutions which need them the least.

Inhibiting the statutory policy even more, and enhancing the anomaly of the existing situation with COIN tax credits, is the fact that despite §926.3(a), insurers are actually penalized financially for making COIN investments, under California statutes and accounting practices that govern insurers’ reserves and related accounting practices (the “risk based capital” statutes, CIC §§739 *et seq.*, which incorporate by reference the National Association of Insurance Commissioners’ [NAIC] “RBC Instructions” [§§739(i), 739.2(a)]). California is required to enact those statutes and apply those accounting policies by the NAIC, a national association of regulators which promotes uniform solvency-regulation of insurers in accordance with federal policies that also promote such uniform regulation. The national insurance-accounting standards incorporated into the “risk-based capital” statutes require that insurers keep higher reserves if they make investments deemed under those standards to be riskier or lower-yielding. Most investments which would qualify for a COIN tax credit fall into those categories. Some investments, such as loans that do not bear interest, might not even be counted as reserve investments at all under California statutes governing insurer investments (CIC §1195). Thus, paradoxically, insurers are penalized, under mandatory nationwide uniform accounting statutes and standards, and even other state laws, for following an express state statutory policy.

In order to offset both the disincentives to insurer investment in community development and the incentives for bank investment, so as to reconcile rationally the competing policies and create a ‘level playing field’ for insurers, it is necessary to give greater weight to investments by insurers. Providing greater weight to investments from a class of investor facing specified deterrents to such investments is necessary to further the declared Legislative intent “to attract much needed additional private capital investments that would not otherwise be available to CDFIs without the benefit of such investment.” (CIC §12939[d]).

Priority for insurers is also necessary to effectuate the preference of COIN Advisory Board members, expressed pursuant to their specific “powers and duties,” which include: “[t]o recommend programmatic guidelines, but not specific allocations of the tax credit amount, to the [COIN].” (CIC §12939.2[f][4].)

Priority for insurers is also necessary to maintain COIN's uncontested continual practice since the inception of the tax-credit program. Priority for insurers also enables them to obtain public recognition for good deeds through investing (*cf.* CIC §926.2(b), requiring that CDI publish information about beneficial investments), which generally bolsters the image of the industry in California.

Criterion (F) (adverse-impact priority) is necessary to ensure that COIN-certified investments will accomplish their primary objective of assisting LMI people and areas, and to enable the program itself to maintain and increase its ability to assist LMI and rural people and areas.

Assignment of lesser priority to proposals that could have adverse impact on the program's intended beneficiaries, LMI people and areas, is necessary to avoid defeating the basic purpose of the program, and to conform to the key principle of public policy: "first, do no harm." Further, in evaluating and certifying investments based on their purported social benefits, it is necessary that COIN attempt to avoid unintended consequences, and "collateral damage."

Assignment of lesser priority to investments that could have adverse impact on the program itself is necessary to maintain public and policymaker confidence in it, and to avoid the distraction of gratuitous entanglement in controversies that are extrinsic to the program's essential objectives. Policymakers and the public tend to be dissatisfied, understandably, when tax-advantages are used to subsidize highly-controversial projects. Additionally, the subject matter and merits of many controversies relating to social benefits may be outside of CDI's agency expertise, suggesting that the agency should not be seen to take sides on them. Thus, according a lesser priority to potentially controversial proposals is a reasonable, prudent and reassuring way to administer the program.

Criterion (G) (priority among housing types) is necessary in order to make the regulatory criteria conform to an express statutory prioritization-requirement relating to one type of investment: housing. R&TC 12209(c)(4) and corresponding statutes specify that: "Priority among housing applications shall be given to applications that support affordable rental housing, housing for veterans, mortgages for community based residential programs and self-help housing ahead of single-family owned housing." This priority provision specifically for housing is separate from, and additional to, the main prioritization requirement in 12209(g)(2) and corresponding statutes, and predates them. The housing-priority statutes do not prioritize housing against other investment-types such as employment, or categories of statutorily-preferred beneficiary such as LMI or rural; they only give some types of housing investments priority over others. The regulatory criterion for housing, consistent with the statutes, does not require that housing proposals receive greater (or lesser) weight than other types of investments or beneficiaries, but does recognize that housing investments must be weighted in accordance with an additional priority-system that would take precedence over other considerations relating specifically to that type of investment. The weight accorded housing in relation to other criteria would depend on the benefits it provided to LMI and rural persons and areas, as well as its employment impact, if any, and "green" attributes.

Subsection (a)(2).

This subsection comprises three subdivisions. Subdivision (A) states that COIN will determine the weight to give each factor in subdivision (b)(2). Subdivision (B) states that COIN will determine the credibility and reliability of all information provided in an application, including but not limited to the qualifications, bias, truthfulness, assumptions, analysis, and other considerations with respect to experts, expert testimony, and studies and reports supporting an application. Subdivision (C) states that COIN will determine whether the applicant and the taxpayer have provided satisfactory substantiation that the investment justifies an award of a tax credit based on the totality of evidence and explanations submitted.

Necessity.

This subdivision is necessary to implement R&TC §12209(c)(2) and corresponding provisions, which state that, “[a] credit shall not be allowed unless the applicant [CDFI] and the taxpayer provide satisfactory substantiation to, and in the form and manner requested by ...[COIN] that the investment is a qualified investment as defined in paragraph (1) of subdivision (h).” That definition, in turn, requires that investments be used “for the benefit of economically disadvantaged communities and low-income people in California.” This subsection is also necessary to implement related R&TC §12209(g)(2), which requires COIN to “evaluate applications” for investment tax credit. The subsection assists applicants to understand that COIN will necessarily determine, in the course of its evaluation of applications, whether and to what extent the “substantiation” provided in the application is “satisfactory” with respect to all aspects of the statutory definition including benefit to economically disadvantaged communities and people. The application process accords applicants wide latitude to provide a variety of materials and evidence in support of the predictably-wide variety of proposals which will be proffered (2696.30[b][3][C][4]). This subsection apprises applicants that the scope of COIN’s responsibility to determine whether the proffered evidence is satisfactory is coextensive with the scope of the evidence admissible in support of an application.

To "evaluate applications" effectively and determine whether they "provide satisfactory substantiation" requires COIN to determine the appropriate weight of each factor according to the facts of each application. For the same reason, COIN must determine the credibility and reliability of all information provided in an application, including but not limited to the qualifications, bias, truthfulness, assumptions, analysis, and other considerations with respect to experts, expert testimony, and studies and reports supporting an application.

Subdivisions (b)(1) and (2).

These subdivisions specify that COIN will evaluate applications by considering and applying the factors specified in (b)(2) to determine whether and to what extent the applications meet the criteria specified in (a)(1).

These subdivisions are necessary in order to delineate the considerations which COIN will utilize to evaluate and prioritize applications, by specifying how the factors listed in subdivision (b)(2) relate to the criteria listed in subdivision(a)(1).

Subdivision (b)(2).

Description.

Subdivision(b)(2) lists the factors which COIN will consider and apply in evaluating applications for investment tax credit, to determine whether and to what extent they meet the criteria in subdivision (a)(1). Sixteen factors are listed, (A) through (P). They are not listed in a particular order of importance, because their importance may vary depending on the facts of an application.

The factors cover what COIN believes, based on both its experience and the provisions of the enabling legislation, to be the six different essential aspects of any community-development investment: (1) The benefit-provider (Factor A); (2) the benefit-recipient(s) (Factors C, D); (3) the benefit itself (Factors B, E, F, I, J, K, L); (4) the need for the proposed benefit (Factors G, H); (5) the need for tax credits in order to provide to proposed benefit (Factor M); and (6) the availability of matching funds (Factor N). The regulation also permits consideration of the credibility of the statistics and metrics provided by the applicant in order to determine how the statutorily-based criteria apply (Factor O), as well as how a proposed investment will promote the general welfare of LMI or rural communities (Factor P).

The multiple factors relating to benefit-recipients cover the following aspects needed to identify the recipients: (C) (general identifying characteristics) and (D) (number).

The multiple factors relating to the benefit itself cover the following aspects needed to evaluate the merits of the benefit: (B) (cost/benefit value); (F) (type and quality); (I) (quantity); (J) (feasibility); (K) (local employment); (L) (direct or indirect benefit); and (P) (general welfare).

The multiple factors relating to need cover the following aspects needed to evaluate the necessity for the benefit: (G) (extent) and (H) (severity).

As noted above, the remaining factors each cover a single aspect of the investment. Factor (A) pertains to the benefit-provider; Factors L, M, and N effectuate specific aspects of the declared legislative intent in CIC §12939(d). Factor (P) affords flexibility to consider the general welfare of LMI or rural communities.

Necessity.

Subdivision(b)(2) is necessary in order to inform CDFIs, investors and other interested persons of the factors which COIN will consider and apply in determining whether and to what extent investment proposals meet the criteria specified in subdivision (a)(1).

Factor (A) (characteristics of benefit-provider) is necessary in order for COIN to evaluate the provider's ability to deliver the benefits which the investment is supposed to provide to the designated beneficiaries. Even the best investment-plan, and the most deserving beneficiaries, will be for naught if the proposed provider in which the CDFI will invest (or the CDFI itself, if it will be the provider) is unable for any reason to effectively deliver the proposed benefits to the

beneficiaries for at least the entire mandatory five-year investment-period specified in §12209(h)(1) and corresponding sections. COIN's statutory mission is to promote diverse benefits to LMI and other communities, which necessarily involves many types of benefit provider. Due to the impracticability of enumerating all characteristics of an organization with potential relevance as regards COIN program goals, the breadth of Factor A allows COIN flexibility to consider all salient aspects of benefit providers / qualified investment recipients. This drafting is necessary to avoid precluding COIN from considering information it might be required to consider under statute.

Factors (C) and(D), (information about benefit-recipient) are necessary in order for COIN to evaluate whether and to what extent the proposed beneficiaries are within the classes of beneficiary which are statutorily designated, as explained above, to receive priority consideration for this tax credit, and are thus the subject of the most significant criteria: LMI, rural, employment, and green. The three factors cover the three key elements which COIN needs to consider in making this evaluation.

Factor (C) is necessary to enable COIN to evaluate who the intended beneficiaries of the investment are. Evaluation of beneficiaries, and relevant beneficiary characteristics, enables COIN to target tax credit allocation to produce the greatest aggregate benefit. As with Factor (A), it is not possible to enumerate all possible relevant characteristics of benefit recipients, and relevance may shift over time with the socio-political climate of the state; consequently, Factor C is sufficiently broad to encompass all characteristics which may be relevant to fulfilling COIN's statutory mission. Like Factor A, this drafting is necessary so that COIN is not precluded from considering information the statute may require be considered.

Factor (D) is necessary to enable COIN to evaluate how many beneficiaries would be helped.

Factors (B), (E), (F), (I), (J), (K) and (L) (information on expected benefit from investment) are necessary in order for COIN to evaluate whether and to what extent the investment will actually benefit the designated beneficiaries, and thus further the purposes of the tax-credit program. The seven factors cover the seven key aspects which COIN needs to consider in making this evaluation.

Factor (B) is necessary to enable COIN to evaluate the value of the benefits in relation to their cost, an important consideration.

Factor (E) is necessary to enable COIN to evaluate how long the benefits will last.

Factor (F) is necessary to enable COIN to evaluate the type and quality of benefits.

Factor (I) is necessary to enable COIN to evaluate the quantity, or amount, of benefits to recipients.

Factor (J) is necessary to enable COIN to evaluate the practical feasibility of the proposal.

Factor (K) is necessary to enable COIN evaluate whether and to what extent proposed investments in businesses would result in local employment and ownership.

Factor (L) (information on whether benefits are direct or indirect) is necessary to enable COIN to evaluate whether benefits are a direct or indirect result of the investment, and thus to enable greater weight for proposals which would provide direct rather than indirect benefits, so as to implement the express statutory emphasis on direct benefits as seen in CIC §12929(d) ("It is the expectation of the Legislature that CDFIs will leverage these new investment dollars for the direct benefit of economically disadvantaged communities and low-income people in California."), and in R&TC §12209(d)(1)(B)(ii) (Applications must state, "[t]he percentage of the intended use of the investment funds that would directly benefit low-to-moderate income households.") and (iii) ("The percentage of the intended use of the investment funds that would directly benefit rural areas.") (and corresponding provisions). The examples contrast an investment which offers LMI benefits (employment) that are incidental to primary benefits to others (sometimes colloquially termed "trickle-down" benefits), with an investment which has LMI benefits as its primary object and result.

Factor (M) (necessity for tax credit) is necessary to enable COIN to evaluate whether and to what extent a tax credit is needed in order for the investment to occur, so as to effectuate the declared legislative intent "...to provide an incentive in the form of California tax credits to attract much needed additional private capital investments that would not otherwise be available to CDFIs without the benefit of such incentive." (CIC §12939[d]; emphasis added.)

Factor (N) (information on availability of matching funds) is necessary to enable COIN to evaluate whether and to what extent the size and impact of the tax-credit portion of the investment will be enhanced by receipt of matching funds from other sources, so as to effectuate the statutory declaration that, "[i]t is the expectation of the Legislature that CDFIs will leverage these new investment dollars for the direct benefit [LMI people and areas]." (CIC §12939[d]; emphasis added.) The meaning of "leverage," specifically in reference to community-development investment, is explained in the Dictionary of Community Economic Development Terms (Calif. Community Economic Development Assoc., 3rd. Ed., 2011, p. 43), as being a "[m]eans of increasing availability of funds for economic or community development programs by using a current source of funds (e.g. public or foundation) to stimulate additional funding from other sources (e.g. private business). The result is a certain amount of public [here, tax credit] funds with a proportionately larger amount of private funds." The legislative intent, and Factor N which effectuates it, additionally reflect the well-established government practice of conditioning financial grants to other instrumentalities upon the availability of matching funds from either the grantee, or other sources.

Factor (O) (credibility of metrics and calculations) is necessary to provide COIN with a basis for prioritizing applications based on the quality of the metrics, calculations and data the applicant provides.

Factor (P) (general welfare) is necessary so that COIN may completely carry out its statutory mandate to provide benefits to LMI or rural communities. The enabling statutes for the COIN program require that COIN administer tax credits to promote "the greatest aggregate benefit to

LMI areas or households or rural areas or households.” The term general welfare is a term of art. It is used in the proposed regulations to encompass potential benefits not particularly described elsewhere in the regulation text. Factor (P) is necessary so that COIN is not prevented from considering any potential benefit to LMI or rural communities. This, in turn, is necessary so that COIN is not precluded from fulfilling its statutory mission of promoting the greatest aggregate benefit to LMI or rural communities. Because the potential scope of the subject-matter of all potential investments is so broad, the proposed regulations must permit COIN to take into account all relevant considerations.

CONTACT PERSON

Damon Diederich
California Department of Insurance
45 Fremont St., 24th Floor
San Francisco, CA 94105
(415) 538-4406
Damon.Diederich@insurance.ca.gov

BACKUP CONTACT PERSON

James Holmes
California Department of Insurance
45 Fremont St., 24th Floor
San Francisco, CA 94105
(415) 538-4422
James.Holmes@insurance.ca.gov