

STATE OF LOUISIANA
OFFICE OF FINANCIAL INSTITUTIONS
BATON ROUGE, LOUISIANA

March 3, 2015

POLICY NO. DI-01-2015 (B,SL,SB)
Preceded By: **B-09-92**

**INVESTMENT POWERS OF STATE-CHARTERED FINANCIAL INSTITUTIONS
IN COMMUNITY DEVELOPMENT CORPORATIONS**

PURPOSE:

To clarify the Louisiana Banking Law (LBL) as it relates to the investment powers of state-chartered financial institutions in Community Development Corporations.

TO WHOM THIS POLICY APPLIES:

This policy applies to state-chartered financial institutions including banks, savings and loan associations, and savings banks.

SPECIFICS:

The following provision of the LBL, R.S. 6:241(B)(2), provides that Louisiana banks have, among their powers, the power:

"To receive, hold, purchase, acquire, and convey by and under its corporate name any property, including bonds, stocks, and securities of the United States of America, or any of the states, or of any corporation, board, or body, public or private, as may be necessary, proper, or convenient to the objects of the financial institution and to exercise in relation thereto all the direct and incidental rights of ownership. State financial institutions may lawfully purchase, acquire, hold, and convey, unless acting as trustee or agent, immovable property only in accordance with the provisions of this chapter."¹

A state-chartered financial institution may invest in a community development corporation (CDC) when the primary purpose of the investment is to promote community welfare and simultaneously expand a financial institution's investment in market opportunities. Any state-chartered financial

¹ Refer to LSA-R.S. 6:1136(A) and LSA-R.S. 6:822(6) for restrictions on investments in CDCs by savings banks and savings and loan associations, respectively.

institution that desires to make an equity investment in a CDC may do so subject to certain conditions, provided that investment primarily serves a public purpose. Public investments are generally those that:

- Promote housing and economic revitalization or development in low- and moderate-income areas and target areas selected by federal, state or local government for redevelopment; and
- Directly benefit low- and moderate-income residents or small business.

(1) *Investments not requiring prior approval* - A state-chartered financial institution may make an investment in a CDC without the Commissioner's prior written approval if all the following conditions are met:

(A) The investment is in a corporation, limited partnership, or other entity, and:

- (i) The entity primarily serves a public purpose;
- (ii) The entity has been certified as a CDC or CDFI pursuant to LSA-R.S. 33:130.754; and
- (iii) The entity, directly or indirectly, engages solely in or makes loans solely for the purposes of one or more of the following community development activities:
 - (a) Investing in, developing, rehabilitating, managing, selling, or renting residential property if a majority of the units will be occupied by low- and moderate-income persons, or if the property is a "qualified low-income building" as defined in section 42(c)(2) of the Internal Revenue Code ([26 U.S.C. 42\(c\)\(2\)](#));
 - (b) Investing in, developing, rehabilitating, managing, selling, or renting nonresidential real property or other assets located in a low- or moderate-income area and targeted towards low- and moderate-income persons;
 - (c) Investing in one or more small businesses located in a low- or moderate-income area to stimulate economic development;
 - (d) Investing in, developing, or otherwise assisting job training or placement facilities or programs that will be targeted towards low- and moderate-income persons;
 - (e) Investing in an entity located in a low- or moderate-income area if the entity creates long-term employment opportunities, a majority of which (based on full-time equivalent positions) will be held by low- and moderate-income persons; and
 - (f) Providing technical assistance, credit counseling, research, and program development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development;

- (B) The investment will not expose the financial institution to liability beyond the amount of the investment;
- (C) The financial institution is at least well capitalized for purposes of prompt-corrective-action (PCA);
- (D) The financial institution received a composite CAMELS rating of "1" or "2" under the Uniform Financial Institutions Rating System as of its most recent examination and an overall rating of "1" or "2" as of its most recent consumer compliance examination;
- (E) The financial institution is not subject to any written agreement, cease-and-desist order, capital directive, PCA directive, or memorandum of understanding issued by this Office, or its primary federal financial institutions regulator; and
- (F) The aggregate of all such investments does not exceed five percent of the sum of its Tier 1 and Tier 2 capital plus any residual balance of the financial institution's allowance for loan and lease losses (ALLL), not included in its Tier 2 capital.

(2) Investments requiring prior approval – A state-chartered financial institution must obtain the prior written approval of the Commissioner to make any investment pursuant to this policy if the proposed investment does not satisfy all of the provisions of Section 1 above. Further, if the proposed investment will cause the financial institution to exceed the aggregate investment limitation as defined in Section 1(F), in no event, may such investments exceed 10 percent of the financial institution's Tier 1 and Tier 2 capital plus any residual balance of the financial institution's ALLL not included in its Tier 2 capital.

Requests for prior approval under this paragraph shall include, at a minimum:

- (i) The amount of the proposed investment;
- (ii) A description of the entity in which the investment is to be made;
- (iii) An explanation of why the investment is a public welfare investment;
- (iv) A description of the financial institution's potential liability under the proposed investment;
- (v) The amount of the financial institution's aggregate outstanding public welfare investments;
- (vi) The dollar amount of each of the financial institution's capital accounts and its ALLL as reported on its most recent Call Report; and
- (vii) If the financial institution's investment is not eligible under paragraph (1) of this policy, explain the reason or reasons why it is ineligible.

(3) Accounting - Such investments are accounted for on the financial institution's books under "other assets." A state-chartered financial institution must carry, at current value based upon an annual appraisal, the public purpose investment as an asset. Examiners will treat the public purpose investment as "other assets" permissible under the applicable provision of the LBL, provided the project is predominately civic, community, or public nature and not merely private and entrepreneurial; and the investment does not exceed the limitations established by this policy.

(4) Equity Investments - While no rules or regulations have been issued by this Office on equity investments, there are certain cautions that must be considered. It shall be the policy of this Office that as long as the CDC continues to operate within the guidelines established by this policy, this Office will not object to such real estate ownership. This ownership of immovables by the CDC will not be considered a violation of the LBL as it relates to a particular state-chartered financial institution.

(5) Remedial action - If the Commissioner finds that an investment made pursuant to the policy is in violation of law or regulation, is inconsistent with the safe and sound operation of the financial institution, or does not satisfy the provisions of this policy, the financial institution shall take appropriate remedial action as determined by the Commissioner.

(6) Divestiture of investments - A financial institution may be required to divest itself of an investment made under this policy to the extent that the investment exceeds the scope of, or ceases to meet, the requirements of section (1) above.

(7) Exceptions - Any exception to this Policy requires the prior written approval of the Commissioner.



John Ducrest, Commissioner

March 3, 2015

Date