

TITLE 51
CHAPTER 52
THE LOUISIANA COMMUNITY DEVELOPMENT
FINANCIAL INSTITUTION ACT

§3081. Short title

This Chapter may be cited as the Louisiana Community Development Financial Institution Act.

§3082. Administration of the program

The Office of Financial Institutions shall maintain and interpret policy for the Louisiana Community Development Financial Institution program, shall perform the regulatory and examination functions of the program, and provide for the implementation and administration of the Louisiana Community Development Financial Institution Act.

§3083. Policy statement

The primary purpose of the Louisiana Community Development Financial Institution Act, "LCDFI" Act, is to further community development, diminish poverty, provide assistance in the formation and expansion of businesses in economically distressed areas, which create jobs in the state by providing for the availability of venture capital financing to entrepreneurs, managers, inventors, and other individuals for the development and operation of qualified Louisiana businesses.

§3084. Definitions

- (1) "Applicant entity" means an entity applying to become a LCDFI.
- (2) "CDFI" means an entity that is designated as a Community Development Financial Institution by the United States Department of the Treasury's Community Development Financial Institutions Fund.
- (3) "Certified capital" means an investment pursuant to R.S. 51:3085 into a LCDFI.
- (4) "Commissioner" means the commissioner of the Louisiana Office of Financial Institutions.
- (5) "Equity in a qualified Louisiana business" is defined as an interest that in substance and in form is either:
 - (a) Common stock, preferred stock, or an equivalent ownership interest in the limited liability company, partnership, or other entity.
 - (b) A loan with a stated maturity of not less than five years which provides for conversion into equity at a future date or has at least one of the following equity-like features, such as flexible repayment terms, longer than normal maturities, below market interest rates, or being nonrecourse in nature. The commissioner shall promulgate rules to determine what constitutes equity features for the purpose of this definition.
 - (c) Notwithstanding any other provision of this Chapter to the contrary, the percentage of equity interest in a qualified Louisiana business.
- (6) "Investment for the purposes of earning these tax credits" means a transaction that, in substance and in form, is the investment of cash in exchange for either:
 - (a) Common stock, preferred stock, or an equivalent ownership interest in a LCDFI.
 - (b) A loan receivable or note receivable from a LCDFI which has a stated final maturity date of not less than five years from the origination date of the loan or note and is repaid in a manner which results in the loan or note being fully repaid or otherwise satisfied in equal amounts over the stated maturity of the loan or note.

(7) "Investment date" means, with respect to each investment pool, the date on which the investment pool transaction closes.

(8) "Investment pool" means any certified capital raised in a calendar year for which tax credits are granted under this Chapter.

(9) "Louisiana Community Development Financial Institution" or "LCDFI" means means any partnership, corporation, or other legal entity, whether organized on a profit or nonprofit basis, that has as its primary business activity the investment of cash in such a manner as to acquire equity in or provide financing assistance to qualified Louisiana entrepreneurial businesses in low income low-income communities that are in need of capital for survival, expansion, new product development, or similar business purposes and is certified as a CDFI by the United States Department of the Treasury to be eligible for the tax credit provided in this Chapter.

(10) " Qualified Louisiana business" means:

(a) A business that at the time of investment, or as the direct result of an investment pursuant to this Chapter, operates primarily in Louisiana or performs substantially all of its production in Louisiana, or is headquartered in Louisiana with a substantial portion of its assets located in Louisiana, which is in need of capital and is involved in commerce for the purpose of retail, or the manufacturing, processing, or assembling of products, or conducting research and development, or providing services, provided that at least eighty percent of the total employees of such business shall be domiciled in the state of Louisiana and that at least eighty percent of the payroll of such business shall be paid to such employees.

(b) A Louisiana-based nonprofit corporation which furthers community development and which is in good standing with the Louisiana secretary of state.

(c) Loans to medical service professionals, professional medical corporations, or buildings constructed to house the medical practices of a medical service professional or professional medical corporation, provided that the medical practice is located in a low-income community or a medically underserved area as determined by the United States Department of Health and Human Services.

(d) Any qualified Louisiana business that has been temporarily displaced as a result of a natural disaster, regardless of where the temporary location is based.

(11) "Low-income community" means either any of the following:

(a) Any census tract which has a poverty rate of at least twenty percent or in which the median income of that census tract is eighty percent or less of the statewide median income as determined by the United States Census Bureau; or

(b) Any medically underserved area as designated by the United States Department of Health and Human Services, to the extent the qualified Louisiana business assists in the providing of, or delivery of, health care services, prescription drugs, or medical equipment; or

(c) Any location to which a Louisiana business has been temporarily displaced as a result of a natural disaster.

(d) For purposes of tax credits taken against income and corporation franchise taxes, any community located in an area with respect to which a major disaster has been declared by the president under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina or Rita.

(12) "Minimum capitalization" means five hundred thousand dollars of tangible equity that has been raised from sources other than the state of Louisiana.

(13) "Qualified investment" means an investment that in substance and in form furthers economic development within Louisiana as defined by rule and is either:

(a) A transaction that consists of the investment of cash and results in the acquisition of equity in a qualified Louisiana business; or

(b) Financing assistance provided in cash to a qualified Louisiana business by a LCDFI.

(14) "Tax credit" means any or all of the following: personal income tax credits, corporate income tax credits, and corporate franchise tax credits.

(15) "Total certified capital under management" means, for purposes of investment limits pursuant to R.S. 51:3087(G):

(a) GAAP capital shall include common stock, preferred stock, general partnership interests, limited partnership interests, surplus, and other equivalent interests, all of which shall be exchanged for cash and available for investment in qualified investments; undivided profits or loss which shall be reduced by a fully funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by all organization costs.

(b) Qualified non-GAAP capital shall include the portion of debentures, notes, or any other quasi-equity or debt instruments with a maturity of not less than five years which is available for investment in qualified investments.

¹As appears in enrolled bill. Should be "Chapter".

§3085. Tax credit

A. Qualifying individuals or businesses that invest in an LCDFI as defined by R.S. 51:3084(9) may earn, apply for, and be granted a tax credit on any personal income, corporate income, or corporation franchise tax liability. The credit may be transferred.

B.(1)(a) The tax credit shall be calculated by the commissioner as seventy-five percent of the person's investment for the purposes of earning tax credits.

(b) An investment for the purpose of earning tax credits must be at risk and not secured or guaranteed; however, such investment may be in the form of cash in exchange for nonvoting shares of stock in the LCDFI.

(2) The total tax credits granted shall not result in a reduction of total tax revenues of greater than five million dollars for the fiscal years of 2005-2006 through 2006-2007. The total tax credits granted shall not result in a reduction of total tax revenues of greater than five million dollars for each of the fiscal years 2007-2008 through 2008-2009.

(3) If this Subsection will limit the amount of investments in LCDFIs for which tax credits are allowed, the amount of capital for which tax credits are allowed will be allocated among the LCDFI requesting tax credits for their investors. Requests for allocation shall be prepared for filing not later than December first on a form prescribed by the commissioner, which form shall include an affidavit by the investor pursuant to which such investor shall become legally bound and irrevocably committed to make an investment of certified capital subject only to receipt of an allocation pursuant to this Subsection. Any requests for allocation filed with the commissioner before December first shall be deemed to have been filed on December first. Allocations shall be granted to LCDFIs on a pro rata basis.

(4) Any unused allocation from a previous year may be carried forward until the next year.

C. The amount of the tax credit which exceeds personal income, corporate income, or corporation franchise tax liability for the taxable year for which credits are allowed that are not used by such person for the taxable year in which such credits are granted may be carried forward to subsequent years until the credits are exhausted; however, the reduction in any taxable year shall not exceed the tax liability for such taxable year. The recipient of any transferred tax credit shall only take such credit as a reduction of the tax liability of the recipient for any taxable year.

D. The LCDFI shall include in any offering involving the sale of shares to an investor, the following statement: "The state of Louisiana is not liable for damages to a person who makes an investment in a Louisiana Community Development Financial Institution. Use of the words "Community" or "Louisiana" in an offering does not constitute a recommendation or endorsement of the investment by the Louisiana Office of Financial Institutions or the Louisiana Department of Revenue."

E. Notwithstanding any provision of this Chapter to the contrary, proceeds of tax exempt bonds which are invested in a LCDFI shall not be considered equity for the purposes of determining tax credits under this Chapter.

§3086. Certification of a Louisiana Community Development Financial Institution

A. The commissioner shall provide by rule or regulation in accordance with the provisions of the Administrative Procedure Act for the procedures for making an application as a LCDFI.

B. The commissioner shall review the articles of incorporation or the articles of partnership or articles of organization of each applicant entity for certification and the business history of the applicant entity, determine that the capitalization is at least five hundred thousand dollars from sources other than the state of Louisiana, and determine that the officers, board of directors, partners, managers, or members are thoroughly acquainted with the requirements of the LCDFI Act.

C. The commissioner shall also verify that the applicant entity has been certified as a CDFI by the United States Department of the Treasury.

D. Within sixty days of application, the commissioner shall issue the certification as a LCDFI and notify the Department of Revenue of said certification or shall refuse the certification and communicate in detail to the applicant entity the grounds for the refusal, including suggestions for the removal of those grounds.

E. The commissioner shall furnish a list of persons or businesses who may claim the tax credit to the Department of Revenue on an annual basis each calendar year following receipt of such quarterly information as provided for under R.S. 51:3087.

3087. Requirements for continuance of certification as a LCDFI

A. A LCDFI is required to comply with all of the requirements of this Section in order to make investments in its loan or investment funds eligible for tax credits. A LCDFI must make qualified investments from each investment pool according to the following schedule:

(1) Within five years after the investment date for each investment pool, at least fifty percent of each investment pool must be placed in qualified investments.

(2) Within seven years after the investment date for each investment pool, at least eighty percent of each investment pool must be invested in qualified Louisiana businesses.

(3) One hundred percent of all capital raised must be invested in low-income communities before June 30, 2015.

B. The following are not qualified investments under this Section:

(1) Investments in businesses predominantly engaged in oil and gas exploration and development, gaming, real estate development for resale, banking, lending, insurance, or professional services provided by accountants or lawyers.

(2) Investments in associates of LCDFIs. The secretary, by rule, shall define "associate". If a legal entity is not an associate before a LCDFI or any of its affiliated LCDFIs initially invests in the entity, it will not be an associate of the LCDFI or any of its affiliated LCDFIs provides additional investment subsequent to the initial investment in the entity.

(3) That portion of a LCDFI's qualified investments outstanding at any one time in any qualified Louisiana business or group of affiliated qualified Louisiana businesses in excess of twenty-five percent of the LCDFI's total certified capital.

(4) Qualified investments, with the exception of participations between LCDFIs, which are reported as qualified investments on another LCDFI's books.

(5) Reciprocal investments or loans made between LCDFIs.

C.(1) Each LCDFI shall report the following to the commissioner on a calendar quarterly basis, starting with the first quarter after certification and each quarter thereafter, if any of the following information has changed since the first or any subsequent quarterly report filed:

(a) The name of each investor in a LCDFI entitled to a personal income, corporate income, or corporate franchise tax credit, including federal and state income tax identification numbers and, if applicable, the income tax identification number.

(b) The amount of each investor's investment and tax credit.

(c) The date on which the LCDFI received the investment.

(d) The amount of the LCDFI's certified capital at the end of the quarter.

(e) Whether or not the LCDFI has invested more than fifteen percent of the total certified capital under management in any one company.

(2) Each LCDFI shall report to the commissioner annually, on or before January thirty-first, all qualified investments that the company has made during the previous calendar year, as well as the investment pool from which each investment originated.

(3) The LCDFI shall submit to the commissioner, on or before April thirtieth, annual audited financial statements which include the opinion of an independent certified public accountant.

(4) The LCDFI shall also submit copies of its annual transaction level report and institutional level report, which include detailed information on job creation and retention, to the commissioner upon their completion, provided that all the information specified in R.S. 51:1927.2 is included in or in addition to these reports.

D.(1) Prior to making an investment in a business, a LCDFI shall obtain from an authorized representative of the business a signed affidavit which shall be maintained by the company in its files.

(2) The commissioner shall by rule specify the substantive content of the affidavit.

E. A LCDFI shall not:

(1) Operate or conceal any fact or condition which, if such operation or condition had existed at the time of application for certification, would have justified the commissioner's refusal of the LCDFI's certification.

(2) Make any material misrepresentation to the commissioner in an application for certification which would have justified the commissioner's refusal of the certification.

(3) Violate any provision of this Chapter, any rule or regulation promulgated hereunder, or any order of the commissioner or the secretary of the Department of Revenue.

F. In the event of a change of control of a LCDFI, at least thirty days prior to the effective date, the LCDFI shall provide written notification to the commissioner of the proposed transaction. Unless additional information is required, the commissioner shall review the information submitted and shall issue either an approval or denial of the change of control within thirty days of the receipt of the notification. Information to be included in the notification shall be defined by rule.

G. A LCDFI shall make no investment if after making such investment, the total investment outstanding would exceed fifteen percent of the total certified capital under management unless the investment is defined to be a permissible investment for a LCDFI. The department may promulgate rules which include a method of defining "permissible investments".

§3088. Decertification

A. The LCDFIs shall submit copies of their reports sent to the CDFI Fund, and the commissioner may conduct an annual review of each LCDFI to determine if the LCDFI is abiding by the requirements of certification for its various investment pools, to advise the LCDFI as to the certification status of its qualified investments, and to ensure compliance with R.S. 51:3085 and 3087. The cost of program administration and the annual review shall be paid by each LCDFI according to a reasonable fee schedule adopted under the provisions of the Administrative Procedure Act.

B. Any violation of R.S. 51:3087, other than R.S. 51:3087(A), shall be grounds for decertification of the LCDFI and any investment pools that have not been decertified. A violation of R.S. 51:3087 shall be grounds for decertification of the noncomplying investment pool in accordance with Subsection C of this Section. If the commissioner determines that a company is not in compliance with any of the requirements of R.S. 51:3087, he shall, by written notice, inform the officers of the company and the board of directors, partners, managers, or members that the LCDFI and any investment pools that have not yet been decertified, as the case may be, may be subject to involuntary decertification in ninety days from the date of mailing of the notice unless they correct the deficiencies and are again in compliance with all requirements for certification.

C. At the end of the ninety-day grace period, if the LCDFI and any investment pools that have not yet been decertified, as the case may be, are still not in compliance with R.S. 51:3087, the commissioner shall send a notice of involuntary decertification of the LCDFI and any affected investment pools, as appropriate, to the company and to the secretary of the Department of Revenue. Voluntary or involuntary decertification of a LCDFI and any affected investment pools shall cause the forfeiture of the remaining and unclaimed tax credits under this Chapter and shall cause the recapture of all credits taken by investors with respect to such LCDFI or to such investment pools to be due and payable to the Department of Revenue in the year of decertification, notwithstanding the years for which the credits were originally taken may have prescribed, as follows:

(1) If any investment pools are decertified due to the inability of a LCDFI to comply with all requirements for continued certification under the provisions of R.S. 51:3087 within three years of the investment dates of such investment pools, one hundred percent of all credits relating to such investment pools which have been taken by investors shall be due and payable and any remaining and previously unclaimed investor credits relating to such investment pools shall be forfeited.

(2) When a LCDFI meets all requirements for continued certification of any investment pools under R.S. 51:3087, including R.S. 51:3087(A)(1), but excluding R.S. 51:3087(A)(2), fifty percent of those tax credits relating to such investment pools which have been or will be taken by investors within three years from the investment dates of such investment pools will not be subject to recapture or repayment.

(3) When a LCDFI meets all requirements for continued certification of any investment pools, including R.S. 51:3087(A)(1) and (2), no tax credits relating to such pools shall be subject to recapture, repayment, retaliation, or forfeiture.

(4) The commissioner may promulgate rules and regulations regarding the recapture or forfeiture of tax credits and which fail to meet the continuing certification requirements of R.S. 51:3087.

(5) When the LCDFI has invested one hundred percent of such investment pool in qualified investments, the LCDFI may voluntarily decertify such investment pool by sending a written request to the secretary or commissioner for a review and decertification. If the decertification of the investment pool is approved by the secretary or commissioner, no tax credits claimed or to be claimed under R.S. 51:3085 with respect to such investment pool will be subject to repayment, recapture, retaliation, or forfeiture by the LCDFI or its investors, except as otherwise provided by rules adopted by the commissioner pursuant to this Section.

(6) The commissioner shall promulgate rules and regulations pursuant to the Administrative Procedure Act no later than October, 2005 providing for the repayment of capital raised by LCDFIs as a result of tax credits granted pursuant to this Act.

D. No distribution to equity owners shall be made from the certified capital contained within a pool prior to decertification other than for any of the following:

(1) Debt service.

(2) Tax payments or distributions to the equity owners of a LCDFI in an amount equal to any projected increase in tax liability to the extent such increase is related to the ownership, management, or operation of the LCDFI.

§3089. Rules and regulations

The commissioner may make and promulgate rules and regulations in accordance with the Administrative Procedure Act as necessary to carry out the provisions of this Chapter, including but not limited to the following:

(1) Providing for definitions.

(2) Establishing licensure requirements.

(3) Providing for certification and decertification of licensees.

(4) Establishing fees and assessments.

(5) Establishing dates by which reports shall be filed with the commissioner.

(6) Providing for administrative and enforcement actions.

§3090. Guidance by commissioner; advisory opinions

Advisory opinions and interpretations of the commissioner shall not be considered rules requiring compliance with the rulemaking process under the Louisiana Administrative Procedure Act.

§3091. Other Office of Financial Institutions responsibilities

The Office of Financial Institutions, in addition to other grants of authority is hereby authorized to serve as a clearinghouse for information relevant to potential incorporators or organizers of LCDFI and for the locating and promoting of qualified Louisiana businesses seeking infusions of capital.

§3092. Corporation income and franchise tax exemption

Notwithstanding any other provision of law to the contrary, any corporation that is a LCDFI as provided for in this Chapter shall be exempt from the corporation income tax and the corporation franchise tax levied pursuant to Title 47 of the Louisiana Revised Statutes of 1950 for five consecutive taxable periods. The exemption from the corporation income tax shall commence with the taxable period in which the capital company is certified by the commissioner. The exemption from the corporation franchise tax shall commence with the taxable period next following the taxable period in which certification as a LCDFI is obtained from the commissioner.

§3093. Confidentiality of records

A. The provisions of R.S. 51:2389(G)(5) shall apply to all records of LCDFI provided to or generated by the Office of Financial Institutions.

B. In conjunction with the execution of their respective duties and responsibilities, the Office of Financial Institutions and the Department of Revenue may share with one another documents and other materials submitted by a LCDFI or by qualified Louisiana businesses. All information exchanged by the Office of Financial Institutions and the Department of Revenue shall be kept strictly confidential within the respective agencies.

C. Notwithstanding any provision in this Section to the contrary, the commissioner and the secretary of the Department of Revenue shall not be prohibited from disclosure of the following information:

- (1) The total amount of certified capital raised.
- (2) The total amount of certified capital raised by each LCDFI.
- (3) The total amount of certified capital invested in qualified Louisiana businesses.
- (4) The total amount of certified capital that each LCDFI has that has yet to meet the fifty percent or one hundred percent requirements contained in R.S. 51:3087.
- (5) The total amount of certified capital invested in qualified Louisiana businesses by each LCDFI.
- (6) The amounts and types of jobs created or retained by the investments of certified capital by each LCDFI.

§3094. Program termination

The program shall terminate on July 1, 2009, provided however, that the provisions of this Chapter shall continue to apply to any granted tax credits until July 1, 2012.

Acts 2005, No. 491, §1, eff. July 12, 2005; Acts 2005, 1st Ex. Sess., No. 58, §1, eff. Dec. 6, 2005; Acts 2007, No. 345, §2, eff. June 30, 2007.

[The Louisiana State Law Institute (LSLI), the official advisory law revision commission of the State of Louisiana, made required revisions pursuant to the authority granted by R.S. 24:251 et seq., to address the overlapping of section numbers in Title 51 of the Revised Statutes that resulted from the enactment of Acts 2005, No. 491 and No. 499. The LSLI changed the Chapter designation in Act 491 from "51" to "52"; designated the sections as "3081" through "3094"; and changed "this Act" to "this Chapter" in the newly designated section "3094."]