



**STATE CDFI LEGISLATION  
AND ADVOCACY REPORT | 2012**



**OPPORTUNITYFINANCE** ™  
NETWORK

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## FORWARD

The Opportunity Finance Network is proud to offer our 2012 State Legislation and Advocacy Report. As a former state elected official, I find this report to be a valuable record of state legislative action, policy and industry advocacy that is influencing the operating environment of CDFIs across the country.

With the ever increasing fiscal pressure on states, governors and legislatures are seeking non-governmental solutions that address poverty, create jobs and improve communities. CDFIs provide a solution, extending private capital and investment to people in low wealth and low-income communities that mainstream finance does not adequately serve. CDFIs have emerged as a promising channel in a growing number of areas ranging from education to health care to food production and distribution, in addition to housing, nonprofits and small business finance.

States have been incubators of innovation for the opportunity finance industry providing tax credits, access to capital and expanding programs to CDFIs broadening their economic impact. CDFIs have become powerful policy advocates, educating executive and legislative branch decision-makers about the impact this investment makes in the lives of real people and their communities.

OFN's 2012 State Legislation and Advocacy Report provides CDFIs and policymakers state-level data and information about successful CDFI policy initiatives in their markets. We also share success stories of our Members to serve as examples of how they have influenced CDFI state policies and programs.

We hope you will use the 2012 State Legislation and Advocacy Report as a resource to engage in policy and advocacy at your state capitol and work with the Opportunity Finance Network and our Members to align capital with justice.

Sincerely,



Todd A. Eachus  
Chief External Affairs Officer,  
Opportunity Finance Network

## INTRODUCTION

Opportunity Finance Network is pleased to publish its 2012 State Legislation and Advocacy Report. Though OFN's policy work focuses primarily on the federal level, this report provides a snapshot of CDFI-related policy activity in the state level during the 2012 legislative session. As in previous years, in spite of numerous fiscal challenges, CDFIs remain valuable partners for state government in channeling community development resources to underserved communities.

During the Great Recession, fiscal conditions in nearly all states deteriorated dramatically. Between 2008 and 2011, deepening deficits and budget cuts threatened the solvency of many state governments. However, in 2012, states finally began to see improvement in their financial fortunes after years of budget shortfalls and declining revenue. The National Association of State Budget Officer's "The Fiscal Survey of States" showed state finances modestly improved in 2012, recovering in step with the slowly improving national economy, as demonstrated by 42 states enacting higher general fund spending in Fiscal Year 2013 compared to Fiscal Year 2012.<sup>1</sup> Despite this progress, a look beneath the surface indicates that the lingering effects of the recession are still hampering state budgets.

While the fiscal picture for many state governments continues to brighten, there are still structural risks facing many vulnerable populations in distressed communities. Many state governments are facing long-term fiscal challenges, particularly in education and health care spending, which is putting pressure on additional budget areas such as economic development or housing where CDFIs might be recipients of state funding.

States also face significant uncertainty surrounding federal funding sources like Community Development Block Grants because of political gridlock over federal spending decisions in Washington, DC. The effect of declining public spending and austerity at the federal level puts growing pressure on states to find other ways to provide funding for critical services.

These factors indicate that some states will face tough budgetary choices in the coming years.<sup>2</sup> Further compounding the challenges, any changes in state budget priorities will likely disproportionately impact the low- and moderate-income communities served by CDFIs. In spite of these challenges, state governments continue to recognize CDFIs as valuable partners in alleviating poverty and deploying capital in underserved communities. CDFIs have emerged as promising channels in a growing number of areas ranging from education to health care to food production and distribution, in addition to more familiar CDFI roles in affordable housing, nonprofit, and small business finance.

This year, state legislatures used the same three primary mechanisms to increase CDFI's access to state government resources as they had in previous years:

- Tax credit legislation—providing investor tax credits for investing in eligible businesses/entities, in particular programs modeled on the federal New Market Tax Credit
- Access to capital through federal programs administered at the state level
- Opening existing programs to CDFIs by making them eligible lenders or participants

This report includes legislative summaries of opportunity finance legislation introduced in the 2012 session, analysis of legislative trends, information about CDFI participation in the National Mortgage Settlement, State New Markets Tax Credit programs, and the State Small Business Credit Initiative programs, and an advocacy case study profiling foreclosure prevention efforts in Maine.

We hope this report will encourage CDFIs to become advocates for opportunity finance with their state governments. Although the fiscal outlook may be challenging, there are still available resources and existing programs at the state level that can provide access to capital for CDFIs and the communities they serve.

OFN supports CDFI advocacy at the state level, and can provide its Members with information on state lawmakers' efforts to tackle the financial and market environments in which CDFIs work. We also can offer technical assistance to CDFIs hoping to build their advocacy capacity. For more information, please contact **Dafina Williams, Policy Associate**, via phone 215.320.4318 or via email at [dwilliams@opportunityfinance.net](mailto:dwilliams@opportunityfinance.net).

<sup>1</sup> "Fall 2012 Fiscal Survey of States" <http://www.nga.org/files/live/sites/NGA/files/pdf/FSS1212.PDF>

<sup>2</sup> "Spring 2012 Fiscal Survey of States, National Association of State Budget Officers." [http://www.nasbo.org/sites/default/files/Spring%202012%20Fiscal%20Survey\\_1.pdf](http://www.nasbo.org/sites/default/files/Spring%202012%20Fiscal%20Survey_1.pdf)

# 2012 LEGISLATION

## ALASKA

### SENATE BILL 66: AIDEA NEW MARKETS TAX PROGRAM\*

#### PROGRAM DESCRIPTION

Senate Bill 66 creates a New Markets Tax Credit assistance guarantee and loan program within the Alaska Industrial Development and Export Authority (AIDEA). The legislation authorizes the use of Alaska's Enterprise Development Account to secure bonds issued to finance the purchase of loans for projects, purchase participation in the loans for projects, guarantee federal New Markets Tax Credit assistance leveraged loans, and make New Markets Tax Credit assistance leveraged loans.

Guarantees and loans are limited to projects in the Alaska for which New Markets Tax Credits are allocated by a qualified community development entity.

The authority must determine that the project will promote economic development in the state before guaranteeing a leveraged loan or making a leveraged loan. The authority may also agree to restrictions and guidelines arising from the federal New Markets Tax Credit program, including, for the seven-year tax credit period of the New Markets Tax Credit project:

- interest-only payments be made on the leveraged loan;
- substantially all capital must remain invested in the project;
- acceptable collateral may be an interest in a qualified community development entity or an investment entity rather than in the project; and
- substantive restrictions on foreclosure of collateral.

#### LEGISLATIVE HISTORY

Senate Bill 66 was originally introduced in the 2011 legislative session, where it was referred to the Labor and Commerce and Finance Committees. The bill passed the full Senate in April 2011. It introduced in the Alaska House April 14, 2012, passed on April 15, 2012, and was signed by Governor Sean Parnell (R-AK) in late September 2012.

**URL:** [http://www.legis.state.ak.us/basis/get\\_bill\\_text.asp?hsid=SB0066Z&session=27](http://www.legis.state.ak.us/basis/get_bill_text.asp?hsid=SB0066Z&session=27)

## ALABAMA

### ACT 2012-483: ALABAMA NEW MARKETS DEVELOPMENT

#### PROGRAM DESCRIPTION

Act 2012-483 establishes the Alabama New Markets Development Act which allows state income, financial institution excise, and premium tax credits for investments in businesses in impoverished and low-income communities. The legislation provides a tax credit for capital or equity investments in or loans to, certain qualified active low-income community businesses.

Eligible allocatees must be a community development entity (CDE) that has received an allocation from the federal program and has Alabama included in the CDE's service area. The credit provided to the investor would be 50 percent of the purchase price of the investment claimed over a seven-year period allocated as follows:

- zero percent for the first credit allowance date;
- eight and one-third percent for the next six credit allowance dates

The amount of investment that may be made in any one qualified active low-income community business is limited to \$10 million, and the total amount of credits available is limited to \$20 million per year.

#### LEGISLATIVE HISTORY

The bill was signed into law by Governor Robert Bentley (R-AL) on May 16, 2012, and went into effect August 1, 2012.

**URL:** <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2012RS/Printfiles//HB257-enr.pdf>



## ARIZONA

### SENATE BILL 1301: QUALIFIED EQUITY INVESTMENTS; TAX CREDIT

#### PROGRAM DESCRIPTION

Senate Bill 1301 establishes vested premium, and corporate and individual income tax credits for qualified equity investments in qualified community development entities (CDEs). Eligible allocatees must be CDEs receiving an allocation from the federal program for which Arizona is included in the CDE service area.

The bill allows a credit equal to 39 percent of the purchase price paid to the investment's issuer, and the credit amount may be claimed annually as follows:

- zero percent in the first two years;
- seven percent in the third year; and
- eight percent in the succeeding four years.

The amount of credit available annually is limited to \$25 million. Qualified equity investments are limited to \$10 million per qualified active community business. The individual and corporate income tax credits can be carried forward for three taxable years.

#### LEGISLATIVE HISTORY

The bill was introduced in the Arizona Senate on January 26, 2012, where it was reviewed in several committees and amended before it passed the Senate. The bill was sent to the Arizona House in late February, where it died after it failed to pass a roll call vote on March 15, 2012.

**URL:** <http://www.trendtrack.com/texis/walks/az/text.html?session=107&bill=SB1301>

## CALIFORNIA

### ASSEMBLY BILL 2037: CALIFORNIA NEW MARKETS TAX CREDIT PROGRAM

#### PROGRAM DESCRIPTION

Assembly Bill 2037 creates a \$300 million California New Markets Tax Credit Program, administered through the California Tax Credit Allocation Committee (TCAC), to allocate tax credits to qualifying community development entities (CDEs) as a way of stimulating economic development. Assembly Bill 2037 authorizes a tax credit of 39 percent of a taxpayer's qualified equity investment in a CDE, beginning in 2013 and ending in 2019, and allows the credit to be applied against the taxpayer's personal and/or corporate tax liability.

Eligible investments are limited to qualified low-income community investments, which may include loans and capital investments in businesses, real estate and other CDEs that undertake development projects in eligible low-income areas, as defined in the legislation. The bill authorizes up to \$50 million in tax credits to be allocated in any one tax year, for a total allocation of \$300 million over the six years of the program. The California NMTC will be funded by reducing the Small Business Hire Credit (SBHC) from \$400 million to \$100 million. TCAC is required to establish guidelines for implementing the NMTC program and set fees to cover the costs for administering the program.

#### LEGISLATIVE HISTORY

The bill was introduced in February 2012 and referred to the Assembly Committee on Revenue and Taxation and the Assembly Committee on Jobs, Economic Development, and the Economy. The bill was amended in Jobs, Economic Development, and the Economy Committee and re-referred to the Revenue and Taxation Committee. The bill was passed out of that committee in mid-May and sent to the Assembly Appropriations Committee, where it died on August 16, 2012.

**URL:** [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_2001-2050/ab\\_2037\\_bill\\_20120503\\_amended\\_asm\\_v98.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2001-2050/ab_2037_bill_20120503_amended_asm_v98.html)

## **CALIFORNIA ASSEMBLY BILL 2523: AN ACT RELATING TO ECONOMIC DEVELOPMENT.**

### **PROGRAM DESCRIPTION**

Assembly Bill 2523 would authorize the California Infrastructure and Economic Development Bank (I-Bank) to enter into participation loan agreements and syndicated loan agreements with financial institutions for loans they make to small businesses. Under the definitions provided in the California Code, some CDFIs in California qualify as eligible program participants.

Financial institutions include nonprofit organizations that serve as a financial intermediary or microbusiness lender. A financial intermediary is typically an entity that facilitates the channeling of funds between lenders, investors, foundations, or other entities that have money and are interested in connecting with businesses or communities where their money can be deployed. Financial intermediaries include, but are not limited to, banks, financial development corporations, economic developers, microbusiness lenders, and community development organizations.

Microbusiness lender is defined as a nonprofit or nonbank lender that serves very small businesses in low- and moderate-income communities that experience barriers in accessing capital, including businesses owned by minorities, immigrants, women, and persons with disabilities.

### **LEGISLATIVE HISTORY**

The bill was introduced February 24, 2012 in the Assembly Committees on Jobs, Economic Development, and the Economy, Banking and Finance Committees. The bill was amended in these committees as well as the Appropriation Committees before passing the full Assembly on May 31, 2012. The bill was then referred to the Senate Appropriations Committee, where it remained until it died November 30, 2012.

**URL:** [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_2501-2550/ab\\_2523\\_bill\\_20120806\\_amended\\_sen\\_v95.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2501-2550/ab_2523_bill_20120806_amended_sen_v95.html)

## CONNECTICUT

### HOUSE BILL 5224: AN ACT ESTABLISHING AN URBAN REVITALIZATION PILOT PROGRAM

#### PROGRAM DESCRIPTION

House Bill 5224 encourages revitalization and stabilization of urban neighborhoods by promoting homeownership in targeted neighborhoods with high proportions of one- to four-family properties. The bill authorizes one or more statewide nonprofits to administer the program. The administrator must target neighborhoods where concentrated resources can have a substantial impact on the surrounding community and recruit community stakeholders to provide active support for the program, including local banks, local boards of realtors, neighborhood revitalization zone committees, community-based organizations, CDFIs, and similar entities.

The bill also requires the program administrator to:

- draw on diverse public and private funding sources and programs, including foundations, local loan funds, and other Connecticut agencies
- use public funds to leverage private resources;
- provide financing or investment to support property purchase, rehabilitation, construction, demolition, energy efficiency, and aesthetic improvements, including financial products that promote homeownership and identify other financial resources to support such activities;
- offer incentives to investors to develop tenants into owners, apply income restrictions to housing units to ensure affordability, and conduct energy efficiency improvements to meet weatherization goals;
- identify and coordinate access for program participants to rental assistance and foreclosure prevention resources and other resources that will increase homeownership, stabilize or decrease occupancy costs, and stabilize neighborhoods;
- provide assistance to individuals who are or will become homeowners and nonprofit and for-profit entities that will purchase and rehabilitate properties to sell to individuals who will become homeowners;
- provide support services to program participants to maximize the likelihood of their success in maintaining long-term homeownership, including training in skills necessary to be an effective landlord and assistance in resolving problems that may arise after closing on a home;
- identify and structure incentives to encourage program participation by lenders, investors, and developers with a goal of promoting homeownership;
- and assist program participants in locating purchase financing and counseling before and after any purchase and direct them to programs that provide deferred, low, or no-interest or forgivable loans, including the state Rental Housing Revolving Loan Fund.

#### LEGISLATIVE HISTORY

The bill was introduced and referred to Joint Committee on Housing in February 2012. A public hearing was held on the bill in early March 2012, and it passed the Connecticut House on May 4, 2012. It was transmitted to the Senate, where it died when the legislative session ended.

**URL:** <http://www.cga.ct.gov/2012/BA/2012HB-05224-R020647-BA.htm>

## FLORIDA

### HOUSE BILL 7087: AN ACT RELATING TO ECONOMIC DEVELOPMENT\*

#### PROGRAM DESCRIPTION

House Bill 7087 increases the amount of available tax credits in the New Markets Development Program. As part of a larger bill to encourage economic development in Florida, the bill raised the cumulative amount of qualified investments eligible for the credit from \$97.5 million to \$163.8 million. It also increases the amount of credits that may be taken in a single fiscal year from \$20 million to \$33.6 million. The Department of Economic Opportunity began accepting applications for the credit on June 1, 2012.

\*For more information on Florida's New Market Development program, see page 35.

#### LEGISLATIVE HISTORY

House Bill 7087 was introduced in the Florida House in February 2012 and placed on a special calendar. It was amended in the House and passed on February 15, 2012. It was then sent to the Florida Senate, where it was amended in the Budget Subcommittee on Finance and Tax. After being reported favorably out of committee, the bill passed the Senate in early March 2012. The bill returned to the House, where it agreed to the amended Senate bill and passed nearly unanimously. The bill was signed into law by Governor Rick Scott (R-FL) March 28, 2012.

**URL:** <http://www.flsenate.gov/Session/Bill/2012/7087/BillText/er/PDF>

## HAWAII

### SENATE BILL 2895: NEW MARKETS TAX CREDITS

#### PROGRAM DESCRIPTION

Senate Bill 2895 expands the methods for delivering funding to community development projects by providing loans to capitalize a qualified community development entity (CDE) and providing loan guarantees or other credit enhancements that will facilitate private lenders' participation in federal New Markets Tax Credit financing.

The bill increases total maximum funding amounts from \$250,000 to \$5 million and establishes guarantees or credit enhancements to reflect current available funding and facilitate monetization of existing project assets for purposes of new markets tax credit financing. This measure will allow the Community-Based Economic Development (CBED) Revolving Fund the flexibility to participate in attracting funds through federal programs such as the New Markets Tax Credit for community development projects.

The Hawaii Department of Business, Economic Development and Tourism expressed concern about the cost implications generated by the legislation, in that the bill did not provide the necessary funding for loan guarantees within the Community Based Economic Development (CBED) Revolving Fund or for staff with the necessary expertise to administer complex financial instruments such as the federal government's New Market Tax Credits.<sup>3</sup>

#### LEGISLATIVE HISTORY

The bill was introduced in the Senate in late January 2012 and referred to the Committee on Economic Development and Tourism and the Ways and Means Committee. The Economic Development and Tourism committee held a public hearing and amended the bill before passing it; the Ways and Means committee also held a hearing and amended the legislation. The bill passed the full Senate March 6, 2012 and went to the Hawaii House, where it died when the legislative session ended.

**URL:** [http://capitol.hawaii.gov/measure\\_indiv.aspx?billtype=SB&billnumber=2895](http://capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=2895)

## INDIANA

### HOUSE BILL 1248: NEW MARKETS JOB GROWTH TAX CREDIT

#### PROGRAM DESCRIPTION

House Bill 1248 establishes a New Markets Job Growth credit against state tax liability for investments made in a qualified community development entity that then uses the proceeds of the investment to make investments in certain qualified low income community businesses located in Indiana.

The bill allows a credit equal to 39 percent of the purchase price paid to the investment's issuer, and the credit may be annually claimed as follows:

- zero percent multiplied by the purchase price paid, in the first two years;
- seven percent multiplied by the purchase price paid, in the third year; and
- eight percent multiplied by the purchase price paid for the succeeding four years.

#### LEGISLATIVE HISTORY

The bill was introduced January 9, 2012 and referred to the House Committee on Ways and Means, where the bill died when the legislative session ended.

**URL:** <http://www.in.gov/legislative/bills/2012/IN/IN1248.1.html>

## MISSISSIPPI

### SENATE BILL 2587: AN ACT TO CREATE THE FAMILY EMPOWERMENT ACT

#### PROGRAM DESCRIPTION

Senate Bill 2587 authorizes the Mississippi Development Authority (MDA) to contract with one or more fiduciary organizations to administer Individual Development Account (IDAs). Responsibilities of a fiduciary organization include, but are not limited to marketing participation, soliciting matching contributions, counseling project participants, conducting basic economic and financial literacy training and IDA use training for project participants, and conducting required verification and compliance activities. CDFIs are included as eligible fiduciary organizations.

Organizations' proposals will be evaluated based on geographic diversity and an organization's:

- ability to market the project to potential account holders;
- ability to leverage additional matching and operating funds;
- ability to provide safe and secure investments for individual accounts;
- overall administrative capacity, including, but not limited to, the certifications or verifications required to assure compliance with eligibility requirements, authorized uses of the accounts, matching contributions by individuals or businesses, and penalties for unauthorized distributions;
- capacity to provide financial counseling and other related service to potential participants;
- capacity to provide other activities designed to increase the independence of individuals and families through home ownership, small business development, enhanced education and training, saving for retirement, and automobile purchase, or to provide links to such other activities;
- and operating costs.

Any individual, business, organization, or other entity that contributes matching funds to a fiduciary organization is eligible to receive a tax credit against the income tax liability equal to 50 percent of the amount of matching funds contributed to a fiduciary organization during the calendar year. The bill authorizes \$1 million from the Emerging Crops Fund to be used as matching funds.

#### LEGISLATIVE HISTORY

Senate Bill 2587 was introduced in February 2012 and referred to the Finance Committee, where it died when the legislative session ended in early March 2012.

**URL:** <http://billstatus.ls.state.ms.us/documents/2012/html/SB/2500-2599/SB2587IN.htm>



## MISSISSIPPI

### SENATE BILL 2706: HEALTHY FOOD RETAIL ACT

#### PROGRAM DESCRIPTION

Senate Bill 2706 authorizes the Mississippi Department of Human Services, in cooperation with public and private sector partners, to establish a pilot program that provides grants and loans to healthy food retailers that increase access to fresh fruits and vegetables and other affordable healthy food in underserved communities.

The Department may contract with one or more qualified nonprofit organizations or CDFIs to administer the pilot program through a public-private partnership, to raise matching funds, market the program statewide, evaluate applicants, make award decisions, underwrite loans and monitor compliance and impact. The Department and its partners are also required to coordinate with complementary nutrition assistance and education programs.

The pilot program may provide funding for projects such as:

- new construction of supermarkets and grocery stores;
- store renovations, expansion and infrastructure upgrades that improve the availability and quality of fresh produce;
- farmers' markets and public markets, food cooperatives, mobile markets and delivery projects and distribution projects that enable food retailers in underserved communities to regularly obtain fresh produce;
- the installation of equipment at farmers' markets to facilitate the utilization of electronic benefit transfer (EBT) cards at farmers' markets; and
- other projects that create or improve healthy food retail outlets that meet the intent of this chapter as determined by the department.

Funds may be used to leverage other funding, including, but not limited to, federal New Markets Tax Credits, federal and foundation grant programs, incentives available to designated Enterprise Zones or Renewal Communities, operator equity and funding from private sector financial institutions under the federal Community Reinvestment Act.

#### LEGISLATIVE HISTORY

The bill was introduced in the Mississippi Senate on February 20, 2012 and referred to the Senate Committee on Public Health and Welfare and the Senate Appropriations Committee. The bill died when the legislative session ended on early March 2012.

**URL:** <http://billstatus.ls.state.ms.us/documents/2012/html/SB/2700-2799/SB2706IN.htm>

## **MISSOURI**

### **HOUSE BILL 1593: CHANGES THE LAWS REGARDING THE MISSOURI NEW MARKETS DEVELOPMENT PROGRAM AND ESTABLISHES THE MISSOURI ANGEL INVESTMENT INCENTIVE ACT**

#### **PROGRAM DESCRIPTION**

House Bill 1593 establishes the Missouri Angel Investment Incentive Act which is to be administered by the regional Missouri Small Business and Technology Development Center (SBTDC) and the SBTDC home office with the primary goal of encouraging individuals to provide seed-capital financing for emerging Missouri businesses engaged in the development, implementation, and commercialization of innovative technologies, products, and services.

The bill also changes the Missouri New Markets Tax Credit to allow a credit for an investor's cash investment in the qualified securities of a qualified Missouri business. The credit is equal to 50 percent of the investor's cash investment in any qualified Missouri business. Credits not used in their entirety the year the investment was made may be carried forward until the total amount of the credit is used. The maximum tax credit allowed is \$50,000 for a single qualified Missouri business or a total of \$250,000 in tax credits for a single year per investor.

#### **LEGISLATIVE HISTORY**

House Bill 1593 was introduced in early February 2012 and referred to the House Committee on Economic Development. The bill was the focus of a hearing and an Executive Session before it was amended and passed the Assembly. The bill reached the Missouri Senate on April 2, 2012 and was referred to the committee on Jobs, Economic Development, and Local Government. A public hearing was held on the bill in late April 2012, but the bill failed to pass the Senate before the session ended.

**URL:** <http://www.house.mo.gov/billtracking/bills121/biltxt/perf/HB1593P.htm>

## **NORTH CAROLINA**

### **HOUSE BILL 1149: AN ACT TO ENACT NEW MARKETS JOB GROWTH INVESTMENT INITIATIVE PROGRAM DESCRIPTION**

House Bill 1149 creates the New Markets Job Growth Initiative which provides tax credit for a qualified equity investment. The bill, to be administered by the Department of Revenue, limits the annual cap on credits to \$40 million. Only CDES that received an allocation through the federal New Markets Tax Credit program are eligible to receive the credit.

The bill allows a credit equal to 39 percent of the purchase price paid to the investment's issuer, and the credit may be claimed annually as follows:

- zero percent multiplied by the purchase price paid, in the first two years;
- seven percent multiplied by the purchase price paid, in the third year; and
- eight percent multiplied by the purchase price paid for the succeeding four years.

The bill also instructs the Department of Revenue to look for guidance on section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations in rendering letter rulings and making other determinations. Under this bill, applications for qualified equity investments will not be accepted by the Department after January 1, 2015.

#### **LEGISLATIVE HISTORY**

The bill was introduced in the North Carolina House on May 29, 2012 and referred to the Committee on Commerce and Job Development, where the bill was substituted and reported favorably out of committee. The bill was then referred to the Committee on Finance, where it died when the legislative session ended.

**URL:** <http://www.ncleg.net/Sessions/2011/Bills/House/HTML/H1149v2.html>

## NEBRASKA

### LEGISLATIVE BILL 1128: NEW MARKETS JOB GROWTH INVESTMENT ACT\*

#### PROGRAM DESCRIPTION

Legislative Bill 1128 amends the Nebraska Revised Statutes dealing with revenue and taxation to create the New Markets Job Growth Investment Act. The bill would provide a nonrefundable nontransferable income tax credit for investment in entities that invest in low-income community businesses. The credit may be used against the state's financial institutions, the insurance premium and income taxes. The bill allows a credit equal to 39 percent of the purchase price paid to the investment's issuer, and the credit may be annually claimed as follows:

- zero percent multiplied by the purchase price paid, in the first two years;
- seven percent multiplied by the purchase price paid, in the third year; and
- eight percent multiplied by the purchase price paid for the succeeding four years.

The total amount of credits is limited to \$15 million in any fiscal year.

#### LEGISLATIVE HISTORY

The bill was introduced in the Nebraska Legislature on Jan 19, 2012 and referred to the Revenue Committee. There was a hearing held on the bill in mid-February, and the bill passed the legislature on April 5, 2012. The bill was approved by Governor Dave Heineman (R-NE) on April 11, 2012.

**URL:** <http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB1128.pdf>

## **NEW JERSEY**

### **SENATE BILL 531: CONCERNING FUNDING OF THE NEW JERSEY FOOD ACCESS INITIATIVE WITH CERTAIN SALES TAX REVENUE**

#### **PROGRAM DESCRIPTION**

This bill dedicates five percent of the sales tax generated in Urban Enterprise Zones to the New Jersey Economic Development Authority (NJEDA) to cover the costs of implementing the Fresh Food Access Act. NJEDA is required to use that revenue to expand the New Jersey Food Access Initiative, which is currently administered as part of a public-private partnership between the NJEDA and The Reinvestment Fund (TRF), a CDFI and OFN Member.

The Food Access Initiative is a program of loan and grant funds primarily administered by TRF and is designed to meet the financing needs of supermarket operators that are seeking to locate within an area where infrastructure costs and credit needs are often high and unmet by conventional financing institutions. The initiative currently provides below-market-rate loans and is modeled on the Pennsylvania Fresh Food Financing Initiative.

The bill directs the NJEDA to establish a loan and grant fund within the initiative. The grant fund will provide loan recipients under the program with direct pass-through funds or interest rate subsidies in order to increase the effectiveness of the program. The grants are to be administered by the NJEDA or through a contract with a private entity. Loans and grants are to be administered based upon three primary considerations: supplying the areas with the greatest need for fresh food, generating the most jobs and supporting businesses that will become self-sustaining and successful without the need for any further assistance.

#### **LEGISLATIVE HISTORY**

The bill was introduced in the Senate on January 10, 2012, and referred to the Senate Economic Growth Committee, where the bill is still pending.

**URL:** [http://www.njleg.state.nj.us/2012/Bills/S1000/531\\_11.HTM](http://www.njleg.state.nj.us/2012/Bills/S1000/531_11.HTM)

## NEW MEXICO

### SENATE BILL 76: STATE NEW MARKETS CORPORATE INCOME TAX CREDIT

#### PROGRAM DESCRIPTION

Senate Bill 76 provides corporate income tax or premium tax credits for taxpayers who qualify for federal New Markets Tax Credits and who invest in loans and other financing for businesses in certain low-income areas. The bill adds a new section of the Corporate Income and Franchise Tax Act to allow a taxpayer that files a New Mexico corporate income tax return for a taxable year to claim a tax credit against the corporate income tax liability equal to 39 percent of the purchase price of a qualified equity investment.

The purposes of the state new markets corporate income tax credit are:

- to provide a 39 percent state tax credit for taxpayers that qualify to receive the federal new markets tax credit for the same qualified equity investment in a qualified active low-income community business;
- to promote long-term job creation and investment in new, viable businesses; and
- to fulfill the goals adopted by the New Mexico Finance Authority in its federal new markets tax credit program economic impact policies

The tax credits are to be administered by the New Mexico Finance Authority. The maximum amount of aggregate new markets tax credits allowable in a calendar year \$16 million, and the bill authorizes the credits through 2019.

#### LEGISLATIVE HISTORY

The bill was introduced in January 2012 and referred to the Senate Corporations and Transportation Committee, where it was postponed indefinitely.

**URL:** <http://www.nmlegis.gov/Sessions/12%20Regular/bills/senate/SB0076.html>

## NEW MEXICO

### HOUSE BILL 176/SENATE BILL 198: TAX CREDIT FOR CERTAIN BUSINESS INVESTMENTS

#### PROGRAM DESCRIPTION

House Bill 176, like Senate Bill 76, provides a tax credit against the state corporate income and insurance premium taxes for qualified investments. The New Mexico Economic Development Department (EDD), which administers the program, is required to determine eligibility and certification requirements for the tax credits.

The maximum amount of qualified equity investments is \$200 million. The maximum amount of a qualified low-income community investment in any one qualified active low-income community business is \$10 million.

A negative fiscal impact statement adversely impacted this legislation's chance of passage.

#### LEGISLATIVE HISTORY

The Senate bill was introduced in January 2012 and referred to the Senate Corporations & Transportation Committee, where it was postponed indefinitely.

**URL:** <http://www.nmlegis.gov/Sessions/12%20Regular/firs/SB0198.pdf>

<http://www.nmlegis.gov/Sessions/12%20Regular/bills/house/HB0176.html>

## **OHIO**

### **HOUSE BILL 558: TO MAKE VARIOUS CHANGES TO THE ADMINISTRATION OF THE NEW MARKETS TAX CREDIT**

#### **PROGRAM DESCRIPTION**

House Bill 558 amends the Ohio New Markets Tax Credit Program, expands the definition of eligible businesses, and adjusts the amount of credit that may be claimed each year.

The bill accelerates an investor's receipt of credit installments by permitting credits of five percent of qualified equity investments in community development entities (CDEs) for the first three years and six percent for the final four years, compared with the current schedule of zero percent in the first two years, seven percent in the third year, and eight percent in the final four years. The new credit allocation is the same credit allocation used in the federal New Markets Tax Credit.

The bill allows a CDE to make eligible investments in a low-income community business that derives 15 percent or more of its annual revenue from renting or selling real estate. Under current law, investments in such businesses would not be counted towards the required investment that would allow an investor to be eligible to claim the Ohio credit.

#### **LEGISLATIVE HISTORY**

The bill was introduced to the House Ways and Means Committee on May 23, 2012 where it died when the legislative session ended.

**URL:** [http://www.legislature.state.oh.us/BillText129/129\\_HB\\_558\\_I\\_Y.html](http://www.legislature.state.oh.us/BillText129/129_HB_558_I_Y.html)



## OHIO

### SENATE BILL 327: REGARDING THE NEW MARKETS TAX CREDIT

#### PROGRAM DESCRIPTION

Senate Bill 327 divides Ohio's New Markets Tax Credit into two separate programs – the New Markets Revitalization Tax Credit and the New Markets Expansion Tax Credit. The bill increases the annual limit on the total amount of credits that may be awarded per fiscal year from \$10 million to \$50 million, and divides the overall limit to allow \$15 million of Revitalization Credits and \$35 million of Expansion Credits to be claimed per Fiscal Year. The bill would also increase the limit on the amount of eligible investments that a qualified low-income community business may receive in a Fiscal Year, from \$2.564 million to \$4 million under the Revitalization Credit program or \$10 million under the Expansion Credit program.

Similar to House Bill 558, Senate Bill 327 accelerates, with respect to the Revitalization Credit, an investor's receipt of a credit by permitting credits equal to five percent of a qualified investment for each of the first three years of the seven-year credit period and six percent for each of the final four years. The Senate bill also maintains the current law's credit allocation process with respect to Revitalization Credits, but prescribes a new application process for certification of credit-eligible investments under the Expansion Credit program.

#### LEGISLATIVE HISTORY

The bill was introduced in the Ohio Senate in April 2012 and was referred to the Senate Committees on Ways And Means and Economic Development, where the bill remained when the legislative session ended. For more information on the Ohio New Markets Tax Credit, read the Finance Fund Case Study on page 41.

**URL:** [http://www.legislature.state.oh.us/BillText129/129\\_SB\\_327\\_PS\\_Y.html](http://www.legislature.state.oh.us/BillText129/129_SB_327_PS_Y.html)

## WASHINGTON

### HOUSE BILL 1490: CONCERNING A BUSINESS AND OCCUPATION TAX DEDUCTION FOR CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

#### PROGRAM DESCRIPTION:

House Bill 1490 provides a business and occupation tax deduction on interest received on loans issued by eligible entities as part of a first-time home buyer program. The bill defines “eligible entity” as a nonprofit organization certified as a CDFI by the CDFI Fund.

#### LEGISLATIVE HISTORY

The bill was first introduced January 24, 2011 and referred to the House Community Development and Housing Committee. The bill passed that committee and the Ways and Means committee in mid-February, after a public hearing was held. The bill passed the full House in March 2011, and after another public hearing, passed the Senate. The bill was returned to the House Rules committee and held over through both 2011 special sessions. House Bill 1490 was reintroduced during the 2012 session, but failed to pass the Senate Ways and Means before the legislative session ended.

**URL:** <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/House%20Bills/1490.E.pdf>

# **ADVOCACY CASE STUDIES**

## HOUSING FINANCE REFORM: NATIONAL MORTGAGE SETTLEMENT

### BACKGROUND

In February 2012, 49 state attorneys general, the District of Columbia and the federal government announced a historic \$25 billion joint state-federal settlement with the country's five largest mortgage servicers: Ally/GMAC, Bank of America, Citi, JPMorgan Chase, Wells Fargo. The settlement, which represents the largest consumer financial protection settlement in U.S. history, seeks to address and remedy misconduct in mortgage loan servicing and widespread foreclosure abuses.

The settlement followed ten months of intense negotiations between the five banks and a coalition of state attorneys general and federal agencies, including the Departments of Justice, Treasury, and Housing and Urban Development. As a result, the National Mortgage Settlement will provide at least \$25 billion in relief to distressed borrowers in the states who signed on to the settlement and direct payments to signing states and the federal government.<sup>4</sup>

The communities in which CDFIs work were particularly vulnerable to mortgage abuses and hard hit by foreclosures. There are numerous opportunities for CDFIs involved with housing financing to work closely with state governments to provide some of the counseling, foreclosure, and mortgage restructuring. The National Mortgage Settlement presents an opportunity for CDFIs to become involved in the housing and foreclosure programs in their states. The additional financial resources available under the settlement can fund housing counseling and new foreclosure remediation programs, and assist the borrowers and distressed communities served by CDFIs.

### KEY PROVISIONS

The settlement has several key provisions including financial relief for homeowners, payments to states and the federal government, and mortgage servicing reforms. There are numerous opportunities, detailed later in this section, for CDFIs involved with housing financing to work closely with state governments to provide some of the counseling, foreclosure, and mortgage restructuring.

#### FINANCIAL RELIEF FOR HOMEOWNERS:

- Up to \$10 billion dedicated to reducing principal for borrowers who, as of the date of the settlement, owe more on their mortgages than their homes are worth and are either delinquent or at imminent risk of default;
- Up to \$3 billion in refinancing for “underwater” homeowners who are current on their mortgages but owe more than their homes’ current market value; and
- Up to \$7 billion to other forms of relief, including facilitation of short sales which allow houses to be bought and sold when the mortgage balance exceeds the value of the property, unemployed payment forbearance, which will defer payments for homeowners who are between jobs, relocation assistance for homeowners facing foreclosure, waiving of deficiency balances, benefits for service members who are forced to sell their homes at a loss as a result of a Permanent Change in Station and funding for remediation of blighted properties.

#### PAYMENTS TO STATE AND FEDERAL GOVERNMENTS:

- \$1.5 billion Borrower Payment Fund to provide cash payments to homeowners who lost their homes to foreclosure between Jan. 1, 2008 and Dec. 31, 2011;
- \$2.25 billion in direct cash payments to the 49 signing states include efforts to support the prevention of foreclosure as well as consumer protection and education programs, and for civil penalties. Each state’s allocation was determined based on a formula that takes into account the state’s share of foreclosure starts nationwide, seriously delinquent loans, residential loans serviced, and underwater mortgages; and
- \$750 million in direct payments to the federal government.

<sup>4</sup>Borrowers from Oklahoma will not be eligible for any of the relief directly to homeowners because Oklahoma elected not to join the settlement.

**MORTGAGE SERVICING REFORMS:**

The settlement establishes nationwide reforms to mortgage servicing standards. The standards will require banks to offer loss mitigation alternatives to borrowers before pursuing foreclosure. They also increase the transparency of the loss mitigation process, impose time lines to respond to borrowers, and restrict the unfair practice of “dual tracking,” where foreclosure is initiated despite the borrower’s engagement in a loss mitigation process.<sup>5</sup>

The new standards will prevent mortgage servicers from engaging in robo-signing and other improper foreclosure practices. In addition, the settlement created a Monitor whose job it is to oversee the servicers and ensure their compliance with the consent judgments. National banks will be required to regularly report compliance with the settlement to the independent, outside monitor that reports to state Attorneys General. Servicers will have to pay heavy penalties for non-compliance with the settlement, including missed deadlines.

**STATES’ USE OF FUNDS**

After the settlement was announced, states were charged with the task of deciding how to disperse the settlement funding. The terms of the settlement dictated how much of the funding was to be directed to housing activities with the exception of the \$2.5 billion in payments allocated directly to the states. State legislatures and attorneys general were given discretion to decide how that portion of the settlement funding was allocated. Amidst a continuing housing problem and teetering on the edge of an economic meltdown, some states are taking allocated funds and diverting them to non housing-related activities, angering housing advocates and distressed homeowners. As millions of homeowners continue to struggle some states, including some with higher than the national average foreclosure rates, are not using their funds for housing-related activities.

For example, California and Georgia, both states with higher than national average foreclosure rates, used the entire settlement funding for non-housing related programs. According to American Banker, California sent its full \$400 million settlement to the general fund pay for the state’s housing debt service to plug holes in their general funds and operating budgets.<sup>6</sup> In Georgia, the entire \$99 million settlement will be used to fund two existing economic development programs. In South Carolina, Governor Nikki Haley attempted to stop the legislature from using its funding for non-housing activities, but was overridden by the legislature. Missouri is using its \$39.5 million to prevent cuts in the state’s higher education budget, while New Jersey’s \$72 million was sent directly into the state’s general fund.<sup>7</sup>

Although some states are using the settlement funds for other purposes, the majority of states are using the funds for housing related activities to support and stabilize a still troubled market. Their activities present opportunities for CDFIs involved with housing financing to work closely with state governments to provide some of the counseling, foreclosure, and mortgage restructuring.

**CDFI PARTICIPATION IN NATIONAL MORTGAGE SETTLEMENT**

Some states, like Colorado, have already contracted directly with CDFIs to administer programs, while states like Michigan and Maryland have issued Requests for Proposals for innovative housing counseling programs that are designed to deal with the foreclosure crisis. Many OFN Members are involved in these efforts; for example New York State has an extensive network of CDFIs in its housing counseling program, including three OFN Members: La Fuerza Unida Inc., Home Headquarters, Inc., and AAFE Community Development Fund. This section of the report details activities in states that are already directly working with CDFIs to implement their portion of the National Mortgage Settlement.

<sup>5</sup>Specifics can be found in the NMS Executive Summary Servicing standards <https://www.mortgageoversight.com/wp-content/uploads/2012/03/Servicing-Standards.pdf>.

<sup>6</sup>Kevin Wack. The State That Ate the National Mortgage Settlement. December 27, 2012. Accessed January 11, 2013. <http://www.americanbanker.com/countdown2013/news/california-the-state-that-ate-the-national-mortgage-settlement-1055479-1.html?pg=2>

<sup>7</sup>Levin, Adam. “Back From the Vomitorium: The Looting of the Mortgage Settlement Agreement” <http://abcnews.go.com/Business/back-vomitorium-looting-mortgage-settlement-agreement/story?id=17571324&page=2>

## COLORADO

In Colorado, the state's Attorney General was committed to using the settlement funds to focus on the states' foreclosure problem. After the terms of the settlement were announced, the state held numerous stakeholder meetings for input on how the state should allocate funds. After much public input, Colorado allocated its \$51.17 million to a series of programs and organizations to provide statewide foreclosure and housing relief over the next three years:

- \$24.0 Million to fund four supplemental loan modification programs.<sup>8</sup>
- \$18.196 million for affordable housing programs including \$13.2 million allocated to the Colorado Housing Investment Fund (CHIF) to address Colorado's need for affordable rental housing. The CHIF funds can be used for short term, low interest loans to bridge the long-term permanent financing sources (a portion of loan may remain in the project as permanent debt) and short term loan guarantees for new construction and rehabilitation. Eligible borrowers are nonprofit and for-profit housing developers and Housing Authorities. Eligible activities include acquisition, bridge loans, new construction, and rehabilitation. The first applications were reviewed through March 2013 for the soundness of each project's financial plan and the need of the proposed projects.
- 5.625 million for housing counseling, including \$4.4 Million for fee-for-service counseling support over the course of three years, \$625,000 in ramp-up costs to meet new demand and \$275,000 in ramp-up costs for expansion of rural housing counseling agencies;<sup>9</sup>
- \$1.5 million for Colorado Legal Services;
- \$750,000 for temporary staffing at the Attorney General's Office;
- \$600,000 for the Colorado Foreclosure Hotline Colorado foreclosure hotline; and
- \$500,000 for marketing and outreach efforts.

OFN Member Colorado Housing Assistance Corporation (CHAC), a U.S. Department of Housing and Urban Development Certified Housing Counseling Agency, was chosen to work with the state to administer the Delinquent Payment Assistance Program, a foreclosure loan prevention program. CHAC's program offers flexible low interest loans to eligible homeowners in the County and City of Denver in order to help them catch up on past due mortgage payments. CHAC's Foreclosure Prevention Loan program helps low to moderate income homeowners keep their home in the face of a hardship via a secured loan that brings the homeowner's mortgage current, allowing them to resume regular monthly payments.

CHAC was not previously experienced with policy advocacy or working with the state government, and the state was relatively new to working with CDFIs. Big bank servicers in the state were also initially resistant to working with CDFIs, but the CDFI industry had a strong ally in the Colorado Division of Housing, who really understood the role that CHAC could play in the housing recovery. The Division of Housing encouraged the big five banks to find ways to work with CDFIs to maximize the impact of the new foreclosure settlement programs.

In the end, CHAC was selected because of its statewide service area, broad reach, and experience in housing lending. Michelle Martin of CHAC, states that selecting a smaller CDFI to administer the program as opposed to a large state agency such as the Division of Housing demonstrates the high level of support for CDFIs in the Colorado Attorney General's office. So far, CHAC has been very pleased with the program.

While difficult to determine if the change is related to the foreclosure programs, Colorado's housing market is showing signs of improvement. Foreclosures filings in February 2013 dropped 28 percent when compared to February 2012, according to RealtyTrac.<sup>10</sup>

<sup>8</sup>[http://www.chfainfo.com/documents/SuppLoanMod\\_ProgramChart.pdf](http://www.chfainfo.com/documents/SuppLoanMod_ProgramChart.pdf)

<sup>9</sup><http://www.chfainfo.com/documents/HousingCounselingSupportProgram1.pdf>

<sup>10</sup>Heather Draper. "RealtyTrac: Colorado foreclosure filings in Feb. up from Jan., but down from 2012," Denver Business Journal. Mar 13, 2013. Accessed March 15, 2013. <http://www.bizjournals.com/denver/news/2013/03/13/realtytrac-colorado-foreclosure.html>

**KENTUCKY<sup>11</sup>**

Kentucky received \$19.2 million, 79 percent of which will go to housing-related activities. Kentucky Housing Corporation (KHC) received \$7.5 million, including \$3 million to the NeighborWorks Alliance, which will leverage matching grants for an additional \$7.5 million. There are several CDFIs in the Kentucky Neighborworks Alliance, including OFN Members Federation of Appalachian Housing Enterprises and Community Ventures Corporation.<sup>11</sup>

Funds will be provided to federally-supported housing programs in Kentucky's 120 counties to assist with purchase and rehabilitation of existing properties, purchase and rehabilitation of affordable rental properties, and purchase of mortgages to restructure payment in an effort to allow homeowners to retain properties. It will also set aside \$3 million to establish a down payment pool and closing cost assistance pool for owners who want to purchase vacant or foreclosed properties.

The settlement also provides:

- \$1.5 million to the City of Louisville:
  - \$750,000 to the city's Vacant Abandoned Property Initiative that targets properties in Louisville that have been abandoned by foreclosing on the city liens to return them to productive use and the property tax rolls. The money is eligible for a match by the Bloomberg Foundation;
  - \$500,000 to the Targeted Demolition Program that addresses the problem of blight by removing deteriorated structures that have been abandoned;
  - \$250,000 to the Affordable Housing Trust Fund, which provides grants to organizations dedicated to creating or preserving affordable housing for low and moderate-income families;
- \$1.5 million to the Homeownership Protection Center, which will fund 19 Kentucky Housing Corporation approved counseling agencies that provide foreclosure prevention and pre-purchase counseling;
- \$250,000 to each of the four regional Legal Aid centers in Kentucky. Money will be used to assist homeowners who are going through the foreclosure process or seeking to avoid foreclosure;
- \$4 million to update the Kentucky All Schedule Prescription Electronic Reporting Program. Money will be used to enhance software to ensure compliance with Kentucky's newly enacted prescription drug abuse law;
- \$5 million to the Office of the Attorney General to assist consumers and investigate mortgage and securities issues, including potential litigation regarding MERS involvement in wrongful foreclosures; and
- \$150,000 to the Cabinet for Health and Family Services. Funds will provide lead abatement through the Division of Public Health.

**MASSACHUSETTS**

Massachusetts received \$44.45 million, of which \$6.9 million will go to the state general fund as civil penalties and fees. Another \$26 million of the allocation will create the HomeCorps program, which includes loan modifications, borrower representation, and borrower recovery initiatives, and the remaining \$14.6 million will provide compensation for homeowners who lost their homes to foreclosure. Under the HomeCorps program, Massachusetts awarded \$5.8 million in Municipal and Community Restoration Grants to 18 organizations, cities and towns across the state, including OFN Member Worcester Community Housing Resources, the only certified CDFI to receive funding under the program.<sup>12</sup>

<sup>11</sup>"Attorney General Conway Announces Allocation of National Mortgage Foreclosure Settlement". Kentucky Office of the Attorney General. July 30, 2012. Accessed January 14, 2013. <http://migration.kentucky.gov/newsroom/ag/mortgagesettlementmoney.htm>

<sup>12</sup>"More Than \$19 Million in HomeCorps Grants Awarded to Address Foreclosure Crisis Across the Commonwealth", Massachusetts Office of Attorney General. August 20, 2012. Accessed February 23, 2013.

Community Restoration Grants are designed to help Massachusetts and its communities mitigate the impacts of the foreclosure crisis on cities and towns, revitalize distressed neighborhoods and communities that have suffered the impact of foreclosure clusters, promote home ownership and affordable housing in our communities, and achieve other related revitalization goals. The grants were awarded to innovative programs with a focus on assisting and revitalizing communities heavily impacted by the foreclosure crisis.

## TENNESSEE

Tennessee received \$41.21 million through the settlement. Ten percent of direct settlement dollars will go into the state general fund as civil penalties. Of the remaining \$37 million, \$34.5 million is designated for the “Keep My Tennessee Home” foreclosure prevention program. The remaining \$2.5 million will support legal aid, consumer education, and law enforcement programs. OFN Member The Housing Fund, and two other certified CDFIs, Affordable Housing Resources and United Housing, are participants in Tennessee’s foreclosure prevention programs, including the “Keep My Tennessee Home” program.<sup>13</sup>

The “Keep My Tennessee Home” program provides loans to unemployed or substantially underemployed homeowners who, through no fault of their own, are financially unable to make their mortgage payments and are in danger of losing their homes to foreclosure. The Keep My Tennessee Home program provides a zero percent interest, non-recourse, deferred-payment, forgivable, subordinate loan to allow borrowers to make homeowners’ payments on their mortgage and mortgage related expenses such as property taxes, homeowner insurance, homeowner association dues, and/or past-due mortgage payments that accumulated during a period of unemployment.<sup>14</sup>

Homeowners who qualify for financial assistance may receive up to 18 months of monthly mortgage payments and/or funds to pay past due mortgage payments to bring the mortgage current; these funds are paid directly to the loan servicer/lender. The maximum benefit in all 95 counties in Tennessee is up to \$40,000 over a period of up to 36 months. A forgiveness clause will reduce the loan amount by 20 percent a year for every year the borrower stays in the home up until five years. At the end of five years the note will be considered satisfied and Tennessee Housing Development Agency (THDA) will release the lien securing the note.

<sup>13</sup>THDA Foreclosure Prevention Counselors <http://www.thda.org/DocumentCenter/Home/View/52>

<sup>14</sup>Tennessee is one of 18 states plus the District of Columbia that are receiving Hardest Hit Funds due to having an unemployment rate that is higher than the national average. The Hardest Hit Fund is being administered in Tennessee by the Tennessee Housing Development Agency (THDA)



## STATE NEW MARKETS TAX CREDIT PROGRAMS BACKGROUND

State New Markets Tax Credits are an increasingly popular way for state governments to stimulate economic development by offering an additional state tax credit for certain types of investments. The federal New Markets Tax Credit Program (NMTC Program) was established by Congress in 2000 to spur new or increased investments into operating businesses and real estate projects located in low-income communities. The NMTC Program attracts investment capital to low-income communities by permitting individual and corporate investors to receive a tax credit against their Federal income tax return in exchange for making equity investments in specialized financial institutions called community development entities (CDEs). The credit totals 39 percent of the original investment amount and is claimed over a period of seven years (five percent for each of the first three years, and six percent for each of the remaining four years).<sup>15</sup>

When the federal New Markets Tax Credit program was enacted in 2000, with the exception of California's COIN program<sup>16</sup>, there were few state programs providing tax credits for promoting investments in targeted low-income communities in a similar manner as the federal program. However, the success of the federal NMTC at stimulating economic development and investment in low-income communities led many states to consider enacting programs of their own to complement the federal program and provide investors with even greater incentives. State NMTC programs have the potential to unlock new sources of capital for distressed communities across the country, and to provide CDFIs with an additional source of financing to meet ever growing capital needs.

By the end of the 2012 legislative sessions, fourteen states (Alabama, Connecticut, Florida, Illinois, Kentucky, Louisiana, Maine, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Oregon, and Texas) had enacted programs similar to the New Markets Tax Credit program.<sup>17</sup> Ten of these programs were enacted between 2009 and 2012 alone. An additional seven states introduced legislation to create a state NMTC program, but these measures failed to pass their legislatures.<sup>18</sup>

State governments are taking notice of the trend of creating state New Markets Tax Credit programs to encourage additional investment when layered with the federal credit. Allocatees, including CDFIs, often combine the state tax credit programs with the federal program. Administering a state tax credit program can present challenges, and oversight can be difficult, time-consuming, and costly. By paralleling the federal program, states can greatly reduce their administrative burden by relying on the existing rules and regulations governing the federal program. In practice, not all state tax credit programs exactly parallel the federal NMTC, as states attempt to adjust the parameters of the programs to address the individual needs of their state.

Some of the most common differences in state and federal programs are credit schedules and the timing of credit allocations. Under the federal program, the tax credit is claimed over seven years: five percent for the first three credit allowance dates and six percent for the last four credit allowance dates. However, in many state programs, the credit schedule is zero percent for the first two years, seven percent in year three, and eight percent in years four through seven. In addition, uncertainty about the timing and availability of federal tax credits can create challenges for CDFIs looking to apply for state credits, particularly in states that require the receipt or use of federal credits as a precondition to receiving state credits.

<sup>15</sup>[http://cdfifund.gov/what\\_we\\_do/programs\\_id.asp?programID=5](http://cdfifund.gov/what_we_do/programs_id.asp?programID=5)

<sup>16</sup>California's COIN program was created in 1997. For more information, see page 35.

<sup>17</sup>Texas, Connecticut, and California all have existing tax credit programs that allow for investments in CDFIs but are markedly different from the federal program.

<sup>18</sup>Arizona, California, Hawaii, Indiana, Indiana, New Mexico, North Carolina, and Wisconsin.

CDFIs, which are automatically designated as CDEs by the CDFI Fund, can be valuable partners in the success of state tax credit programs as in the federal program. Yet CDFIs are not always successful applicants for the state credits; there are several states with active NMTC program where CDFIs have not received any allocations. However, state governments can engage in education and outreach efforts in which to ensure thriving, robust tax credit programs that work for CDFIs, and allow them to channel the capital into low- and moderate-income communities in which they work.

The increase in state NMTC programs as a tool to stimulate investment into low income communities is encouraging, but states can do more to promote their tax credit programs to CDFIs and encourage them to become allocatees, and to foster understanding about CDFIs within their new markets programs. The following section of the report provides information on existing state New Markets Tax Credit programs, or programs that provide tax credits for investments in CDEs or CDFIs.

## STATE TAX CREDIT PROGRAMS

### ALABAMA

The Alabama New Markets Development program (see bill description on page 6) began accepting applications in September 2012. The credits reduce tax liability against the state income, financial institution excise, and insurance premium taxes. Credits are available to investors in CDEs that provide qualified equity investments in businesses located in certain low-income communities in Alabama. The credit, administered by the Alabama Department of Commerce, is limited to \$20 million per year and the maximum qualifying credit for a particular project is \$10 million.

[Alabama New Markets Development Program Regulations](#)

### CONNECTICUT

Enacted in 2000, the Connecticut Urban and Industrial Sites Reinvestment Tax Credit provides a tax credit for projects that create significant jobs and capital investment in underserved areas. Investments in urban and industrial site projects through community development entities are eligible to receive the tax credit.

Direct investments must be made in a minimum amount of \$5 million or, in the case of an investment in an eligible project for the preservation of an historic facility and redevelopment of the facility for mixed uses that includes at least four housing units, a total asset value of not less than \$2 million dollars. A project using these credits must be, at a minimum, revenue neutral to the state. The law provides strict audit, compliance and penalty provisions that are strictly adhered to throughout the life of the project.

The Credit is administered by the Department of Economic and Community Development (DECD). Under the program, the state may provide up to \$100 million in tax credits over a ten-year period. The corporate tax credit is dispersed to the recipient over a ten-year period on the following schedule: zero percent years 1-3, ten percent years 4-7, and 20 percent years 8-10. Any requests for credits over \$20 million must be submitted to the legislature for review.

In October 2011, the aggregate amount of business tax credits available under the Urban and Industrial Site Reinvestment Program was reduced from \$750 million to \$650 million, and \$540 million of those credits have already been allocated. Officials at the DCED are unsure if the credit will be renewed when all the money has been allocated.

[Urban and Industrial Site Reinvestment Tax Credit Program Description](#)

### FLORIDA

Florida's New Markets Development Program was created to encourage capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that make qualified low-income community investments in qualified active low-income community businesses to create and retain jobs. The legislation creating the program passed the Florida legislature in 2010.

Florida's credits can be taken on the following schedule: zero percent in years one through three, ten percent years four through seven, and eight percent years eight through ten. CDEs that received a federal NMTC allocation are eligible to participate in the Florida program. At the time of publication, all available tax credits have been allocated. None of the recipients were CDFIs. In April 2012, Florida Governor Rick Scott signed H.B. 7087 to increase the amount of credits available under the New Markets Development Program. The bill increases the amount of credits available under the program to \$163.8 million, and sets a yearly cap of \$33.6 million.

[New Markets Development Program Act](#)

**ILLINOIS**

The Illinois New Markets Development Program provides state tax credits to investors against their state income tax liability. Only CDEs certified by the Federal NMTC program and has entered into an allocation agreement with the CDFI Fund is eligible to apply for the Illinois NMTC Program. The Illinois program was enacted in 2009, and provides a 39 percent tax credit for qualified investments.

As in Florida's program, credits can be taken on the following schedule: zero percent in years one through three, ten percent years four through seven, and eight percent years eight through ten. The program is administered by the Illinois Department of Commerce and Economic Opportunity.

[Illinois New Markets Development Program \(NMTC\) Guidelines](#)

**KENTUCKY**

Enacted in 2010, the Kentucky New Markets Development program encourages investment in promising small businesses located in distressed communities throughout the state. Modeled after the federal New Markets Tax Credit program, the goal of the state program is to attract large, long-term investors to Kentucky's low-income communities, promoting new expansion, creating new job opportunities and building on existing growth in the state.

Like Florida and Illinois, credits can be taken on the following schedule: zero percent in years one through three, ten percent years four through seven, and eight percent years eight through ten. The total amount of tax credits that may be awarded by the department is limited to \$5 million each Fiscal Year.

[Kentucky New Markets Development Act](#)

**MISSISSIPPI**

Mississippi's Equity Investment Tax Credit passed the legislature in 2009. The program allows a state credit equal to 24 percent of the Qualified Equity Investment (QEI) against a income or insurance premium tax for eligible investments made by CDEs in designated low income census tracts in the state, The credit is allocated eight percent over three years, and is intended to be used in conjunction with the federal program, and applicants

Credits are based on a Mississippi investment being maintained for a minimum of seven years, as required under the federal program. The maximum investment eligible for credits on any project is \$10 million, and total Mississippi Equity Investment Credits are \$15 million per year. The state credits act as companion credits to the Federal New Markets Tax Credits (NMTC) Program.

[Mississippi Tax Incentives, Exemptions, and Credits](#)

**MISSOURI**

The Missouri New Markets Tax Credit was created to help small businesses that could not get bank loans expand and hire more Missouri workers. An Applicant CDE that is certified by the Federal NMTC program and has entered into an allocation agreement with the CDFI is eligible to apply for the state NMTC program. The state application will be a two part process:

The Department of Economic Development administers the credit on a first come, first serve basis. The tax credit can be claimed as follows: zero percent for each of the first two credit allowance dates; seven percent for the third credit allowance date; and eight percent for the next four credit allowance dates.

[Missouri New Markets Tax Credit Guidelines](#)

**NEBRASKA**

The Nebraska New Markets Job Growth Investment Tax Credit allows individuals, corporations, estates and trusts, financial institutions, and insurance companies to claim nonrefundable, nontransferable tax credits for an investment in a qualified community development entity (CDE). The credits may be used against income tax, the premium tax imposed on insurance companies, or the franchise tax imposed on financial institutions.

Nebraska's definition of a "qualified low-income community investment" is more restrictive than the definition used under the federal NMTC program Internal Revenue Code Both the Nebraska and federal definitions include "any capital investment in, or loan to, any qualified active low-income community business." The Nebraska definition does not include the purchase from another CDE of any loan made by an entity that is a qualified low-income community investment; financial counseling and other services specified in regulation prescribed by the Secretary to businesses located in, and residents of, low-income communities; and any equity investment in, or loan to, any qualified CDE.

Applications for the program were released November 2012. Eligible recipients must already be allocates of the federal program. The funding cap is set at \$15 million per year for seven years, and is taken as follows zero percent year one and two, seven percent in year three, and eight percent in years four through seven.

[New Markets Job Growth Investment Act](#)

**OKLAHOMA**

Oklahoma's Small Business Capital Formation Tax Credit provides a 20 percent tax credit over five years for a minimum investment of \$1 million made in qualified small business capital companies which are subsequently invested in an Oklahoma small business venture by the qualified small business capital company. In 2010, legislators placed a two-year moratorium on nearly 30 tax credit programs, including the Small Business Capital Formation Tax, to help deal with significant state revenue shortfalls brought on mostly by the national recession. That moratorium expired December 31, 2012.

[Small Business Capital Formation Incentive Act](#)

**OREGON**

Oregon's New Markets Development Program was enacted in 2011. A total of \$16 million in tax credits is available each Fiscal Year. The maximum amount of Oregon tax credits invested in any one project cannot exceed \$4 million. The total tax credit is calculated as 39 percent of the total qualified investment. The qualified investment amount is not to exceed \$4 million per project or \$1.56 million in tax credits per project. The credit is taken as follows zero percent year one and two, seven percent in year three, and eight percent in years four through seven.

Fifteen percent of the total \$16 million in available credits, or \$2.4 million, is reserved for investments in clean energy projects that: produce goods that directly reduce emissions of greenhouse gases or are designed as environmentally sensitive replacements for products in current use; or have a primary purpose of improving the environment or reducing emissions of greenhouse gases. Only five applications have been submitted and all five received allocations.

[Oregon New Markets Tax Credit](#)

## TEXAS

The Texas Certified Capital Company (CAPCO) program supports economic development and generates tax revenues for the state through business growth and job creation. In 2007 the legislature approved HB 1741 which authorized an additional \$200 million in investment credits and added low-income community business as an investment option for CAPCOs.

A CAPCO must invest 25 percent of the total certified capital in operations defined as early-stage businesses (centered on manufacturing and research and development). In addition, at least 15 percent must be invested in businesses with principal business operations in strategic investment areas or low income communities.

Funds are provided to CAPCOs by participating insurance companies who, in turn, received premium tax credits equal to the amount of their investment, plus interest income and, in some cases, an opportunity to participate in the profits of CAPCO. Funds must be distributed on a schedule established by the legislature with 30 percent of certified capital invested within three years and 50 percent invested within five years.

[Texas CAPCO Regulations](#)

## CDFIS AND STATE TAX CREDIT PROGRAMS

### CALIFORNIA<sup>19</sup>

Established in 1997, the CDFI Tax Credit Program was created to attract and leverage private capital to fund investments that yield social benefits for California's underserved markets. Administered by the California Office of Insurance (COIN), COIN allocates a state tax credit of 20 percent on qualified investments defined as: a deposit or loan that does not earn interest; an equity investment; or an equity-like debt instrument. Investors must place a minimum of \$50,000 on funds on deposit or in equity with a CDFI for 60 months at zero percent interest to qualify for the tax credit.

The COIN program has invested more than \$100 million into underserved communities. During 2011, COIN certified 26 investments in 11 CDFIs totaling \$23.58 million. In contrast, only \$1.65 million investments were made in 2010.<sup>20</sup> A 2011 law (Assembly Bill 624) extended the COIN program through Jan. 1, 2015. Prior to the passage of this bill, investments were certified only on a first-come-first-served basis. Under AB 624, if the Commissioner determines that demand will outstrip the supply of tax credits, COIN now grants priority to applications that foster investments that benefit economically disadvantaged communities and low-income people in California or Investments Made by Insurance Companies that yield social and/or environmental benefits. Applications that satisfy criteria will receive a higher priority.

CDFI	2009	2010	2011
Clearinghouse CDFI	\$1,750,000	\$250,000	\$700,000
Community Commerce Bank	—	—	\$300,000
Faith Based Federal Credit Union	\$100,000	—	—
Impact Community Capital CDE, LLC	—	—	\$5,500,000
Impact Community Capital LLC	—	—	\$5,500,000
Local Initiatives Support Corporation	\$300,000	—	—
Low Income Investment Fund	—	—	\$9,000,000
Marin Workforce Housing Trust	—	—	\$200,000
NCB Capital Impact	\$5,000,000	—	—
NHS Neighborhood Lending Services, Inc.	\$100,000	—	—
Neighborhood Housing Services of Orange County	\$200,000	—	\$100,000
Northeast Community Federal Credit Union	\$100,000	\$100,000	—
Northern California Community Loan Fund	\$50,000	\$50,000	\$50,000
Opportunity Fund Northern California	\$350,000	\$250,000	—
Rural Community Assistance Corporation	\$500,000	—	\$415,000
Santa Cruz Community Credit Union	\$100,000	—	—
Self-Help Federal Credit Union California Division	\$750,000	\$1,000,000	\$815,000
Southern California Reinvestment CDFI	\$50,000	—	—
The Housing Trust of Santa Clara County	—	—	\$1,000,000
<b>Total Investment</b>		<b>\$1,650,000</b>	<b>\$23,580,000</b>
<b>Total State Tax Credit</b>		<b>\$330,000</b>	<b>\$4,716,000</b>

<sup>19</sup>California's COIN program, although not a state New Markets Tax Credit program, provides a tax credit for investments in CDFIs, and is featured in the case studies.

<sup>20</sup>The 2011 report contains the most recent data available. The 2012 report will not be released until later in 2013. <http://www.insurance.ca.gov/0400-news/0200-studies-reports/0700-commissioner-report/upload/2011CDIAnnualReportFinal.pdf>

## MAINE

The Maine New Markets Capital Investment Program provides refundable state tax credits of up to 39% to investors in qualified community development entities (CDEs) that reinvest in certain businesses in eligible low-income communities in Maine. The program, which went into effect January 1, 2012 is modeled after the federal New Markets Tax Credit Program, and is administered by the Finance Authority of Maine (FAME), in cooperation with Maine Revenue Services and the Maine Department of Economic and Community Development.

Maine had been a successful applicant to the federal NMTC program several times, receiving \$778 million in tax credit authority, all of which flowed through OFN Member Coastal Enterprises, Inc (CEI).<sup>21</sup> CEI is the only organization in the state of Maine authorized to distribute the New Markets Tax credits. Although CEI was very successful in receiving tax credit allocations from the federal program, statutory limits on the credits were making it very difficult for the credits to reach certain parts of the state.

The issue stems from how the federal government designates which census tracts are eligible for NMTC investments. Under the federal NMTC guidelines, low-income communities are defined as census tracts in which the poverty rate is greater than 20% or in which the median income is less than 80 percent of the statewide average. This left Maine underserved, as there are areas in the state that may not meet the definition of low- income but have high levels of unemployment and a need for investment. CEI saw this dearth in the market and wanted to make a broader footprint. As a CDE and certified CDFI, CEI was accessing the federal NMTC program in Maine already, having received tax credit allocations totaling \$220 million since the program's inception. To that end, CEI joined with other like-minded organizations in the state and formed a coalition to create a state NMTC program for Maine to advocate for a state version of the federal NMTC program.

After months of meeting with legislators and other elected officials, the bill to create the Maine New Markets Capital Investment Program finally became law in 2011. The Legislature enacted the Maine New Markets Investment Program to attract additional investment in the state by providing investors a 78 percent tax credit (39 percent federal and 39 percent state of Main) for making a qualified equity investment in a Maine CDE. The CDE then uses the proceeds of the equity investment to make loans to businesses located in low-income communities. Maine's program provided a one-time allocation \$250 million in credits. FAME opened the application process in January 2012, and by February 2012, six CDEs were approved to receive tax credits, each receiving \$42 million in eligible investment.

The tax credits are awarded on a first-come first-served basis provided they meet criteria established in the federal program. No more than \$20 million in state tax credits can be paid out in any given Fiscal Year, and companies receive their credits over a seven-year period. Allocatees have two years to find a qualifying project or the funding is lost. CEI Capital Management, a subsidiary of CEI, is the only allocatee that is a certified CDFI. An amendment to the state's FY 2013 budget increased the individual tax credit cap for the state's New Markets Capital Investment Program (NMCIP) program from \$10 million to \$40 million in an effort to encourage private sector investment and job creation in rural areas of Maine that have not received as much economic investment as other areas. CEI hopes there will be an additional allocation of funding under Maine's New Tax Credit Program, and they are looking forward to closing its first deals with the initial round of tax credit allocations.

<sup>21</sup><http://cdfifund.gov/awardees/db/basicSearchResults.asp>



## OHIO

The Ohio New Markets Tax Credit Program is designed to leverage the Federal New Markets Tax Credit Program by offering state tax credits to attract additional federal tax credits and private investments in Ohio businesses. The program is designed to help finance business investments in low-income communities by providing investors with state tax credits in exchange for delivering below-market-rate investment options to Ohio businesses. OFN Member Finance Fund, an experienced lender serving the state of Ohio and federal NMTC allocatee, was an integral part of creating the Ohio program, providing advice and suggestions to the Governor's staff as the created the legislative proposal.

The state tax credits are limited to \$4 million per community development organization and cannot exceed \$1 million in tax credits for a single project. The original credit, authorized in 2009, focused on urban areas near transportation hubs. Finance Fund, as a statewide lender, recognized the need to broaden that focus, and successfully advocated for expansion of the programs focus. Entities that received a tax credit allocation from the federal New Markets Tax Credit program are eligible to apply.

The current Ohio law requires applicants to layer the state credit with the federal credit. This can present a challenge to investors because it becomes difficult to time the deals properly with the federal credit due to uncertainty concerning extension of the federal program, and CDEs being unsure if they will receive a federal allocation due to timing issues. Further, Ohio's program operates under a July 1-June 30 Fiscal Year, while the federal credits are on calendar year, further complicating the effort to effectively find qualified deals and close them in a timely manner.

In addition, the redemption schedule of the Ohio credits is not the same as the federal program. Under the federal program, the applicable percentage is five percent for the first three credit allowance dates and six percent for the last four credit allowance dates. However, Ohio's program provides a 39 percent tax credit taken over ten years, with no credit available in the first two years, a seven percent credit for years four through seven, and an eight percent credit in years eight through ten.

Due to some of the difficulties in attempting to use both tax credits at once, there have been efforts made to adjust the program to make it more efficient. In the 2012 legislative session, there was a push in the Ohio Senate last year to make changes to the program and expand from \$10 million to \$50 million. However, Governor was opposed to the changes in the legislation and threatened to use the line item veto to combat any changes made to the program by the legislature. The CDEs in Ohio also worked together to tweak to the program, including increasing the amount of available credits. Finance Fund is supportive of increasing the amount of available credits in Ohio, and plans to advocate for those changes in 2013 legislative session.

Finance Fund has been very successful applying and receiving credit allocations from the Ohio program, and attributes that success to careful evaluation of proposed projects to determine if they can qualify for both the state and federal credits before proceeding with a deal. As a result, a recent Finance Fund transaction awarded a total of \$15.36 million in federal and state New Markets Tax Credit (NMTC) financing to Ironville Improvement, LLC a subsidiary of Midwest Terminals of Toledo, Inc. The investments will be used to build a rail system and infrastructure, upgrade the dock face with sheet pile, purchase and install a material handling system, and make land improvements. The project will create 40 permanent full-time jobs and 160 construction jobs in a low-income census tract with a 17 percent poverty rate where unemployment is approaching 13 percent.

## STATE SMALL BUSINESS CREDIT INITIATIVE BACKGROUND

The State Small Business Credit Initiative (SSBCI) was created in the Small Business Jobs Act of 2010, and implemented by the Obama Administration starting in 2011. The program provided \$1.5 billion in funding to strengthen state programs that support lending to small businesses and small manufacturers. In the legislation, Community Development Financial Institutions (CDFIs) are specifically listed as eligible lenders. Increasingly, state governments are looking to CDFIs as partners to deploy SSBCI funding and increase the amount of credit available to small businesses and small manufacturers in their states.

State agencies received the first funding allocations from the SSBCI in mid-2011, and are required under the statute to draw down their entire allocation within two years of signing their Allocation Agreement with the Treasury Department. Several states, including California, Hawaii, Indiana, Kansas, Maryland, Missouri, North Carolina, and Vermont signed allocation agreements in June 2011, and are approaching the two year deadline. States with a significant portion of their funding left to deploy risk having to return undisbursed portions of their allocation to the Treasury are looking to adopt changes that will increase their ability to deploy SSBCI funding in a timely manner. As a result, states are looking to new strategies and partners to find ways to stimulate small business lending, including partnering with CDFIs.

Under the Small Business Jobs Act, state governments were given considerable flexibility to create SSBCI programs suited to the needs of the businesses and communities in their state. With so much latitude left to the states, multiple successful models for working with CDFIs have been implemented. In some states, like California and New York, CDFIs are enrolled as eligible lenders in existing programs; in others, like Georgia and Montana, CDFIs are partnering with state agencies and banks in loan participation programs. Still other states, such as Pennsylvania and Washington, provided grant capital directly to CDFIs, which CDFIs use to lend to small businesses in the communities they serve.

Although there are many successful models for CDFIs working with the SSBCI, incomplete knowledge of CDFI operations and concern from state agencies and traditional lenders about partnering with non-depository financial institutions has created barriers to the participation for CDFIs in some states.

While variation of program types and knowledge of CDFI business practices can pose challenges to states looking to implement CDFI-focused SSBCI programs, early results show that states which have incorporated CDFIs into their strategy are having success deploying their capital, while some states that are not working as closely with CDFIs are encountering more difficulty lending their capital in a timely manner. There are several factors contributing to the success of CDFIs as SSBCI lenders. CDFIs have the capacity and knowledge of the low- and moderate-income communities targeted in the statute, and can therefore help SSBCI funding reach underserved communities. CDFIs also often have established relationships with local banks, local chambers of commerce, economic development authorities and small business owners, and typically already possess the lending infrastructure required to make SSBCI loans, allowing them to quickly provide much needed funds to small businesses.

Some CDFI-SSBCI programs, such as those in Montana and Georgia, allow CDFIs to retain SSBCI funding as equity on balance sheets after the loans are repaid. Opportunity Finance Network believes that this is a key component for success. In other states, funds may revert back to the state agencies after December 2016. Allowing participating CDFIs to retain the capital creates the opportunity for SSBCI funds to revolve indefinitely, further stimulating lending, providing more capital for businesses, and increasing SSBCI's impact in low- and moderate-income communities.

The Treasury Department's CDFI Fund reports that, on average, CDFIs leverage \$13 in capital from non-federal sources for every \$1 of federal subsidy – an impressive track record of direct relevance to the goals and design of the SSBCI program.<sup>22</sup> The confluence of these factors makes CDFIs excellent partners for helping deploy SSBCI funding, particularly in distressed communities.

The following section of this report highlights three states that are working with CDFIs to deploy SSBCI capital. For more information on other states that are working with their state government to create SSBCI programs with significant CDFI components, read OFN's interim status report.

<sup>22</sup> "Creating Jobs and Transforming Communities: Funding for the Small Business Administration and the Community Development Financial Institutions Fund." Testimony before the Senate Appropriations Subcommittee on Financial Services and General Government. May 25, 2011. Accessed January 16, 2013.

## CDFIs AND THE STATE SMALL BUSINESS CREDIT INITIATIVE

### CALIFORNIA

California was one of the first states to have a Capital Access Program, and they have seen much success in operating the program, enrolling loans, and deploying funds. The state also supported CDFIs through their CAP program before the SSBCI, including several OFN Members.

Of the loans enrolled in the California Capital Access Program using SSBCI funds, more than 89 percent have been made through CDFIs. As of the beginning of 2013, more than 1700 loans made through CDFIs in California were assisted with SSBCI funds. California officials state that California has supported more CAP lending loans through CDFIs than all other states combined. In 2012 alone, OFN Members 3CORE, Arcata Economic Development Corporation, CA Coastal Rural Development Fresno CDFI, Opportunity Fund, and TMC Working Solutions enrolled 948 loans totaling nearly \$10.6 million in the CalCAP program.<sup>23</sup>

For some states, the most difficult parts of creating and administering a Capital Access Program under the SSBCI can be creating and funding the loan loss reserve accounts, and deploying capital in a timely manner.

For the CalCAP program the loan loss reserve requirements were not a significant barrier for the state, as the current CalCAP loan loss reserve accounts had a separate funding source for loan loss reserves funded by fees from state bond issuances. However, administrative costs of running the program were still an issue, and to help streamline the high volume, low-dollar lending in the CAP program, California used a trustee bank to help administer the CalCAP program. Having a trustee bank for the CalCAP program was hugely important; CalCAP bargained with the bank to pay \$500,000 per year, and the bank handles backend accounting like holding the funds, monitoring LLR accounts, and providing CDFIs with monthly statements.

Experienced with CAP programs for many years, California officials understood that the issue with the SSBCI funds for the CAP program was loan size and volume as opposed to structural deficiencies in the program. However, the some of the loan amounts can be as low as \$500, meaning the state contribution would be about \$35 per loan. While the program was functioning effectively, it was not deploying capital at a rate that would allow California to draw down its allocation in a timely manner.

To address this deployment issue, in 2012, California sought to amend its application with the Treasury department to create a Collateral Support Program. In this program, if a lender is facing a collateral shortfall, they can apply for a cash deposit for up to 50 percent of the loan amount.

After presenting the plan to create a Collateral Support Program to lenders, CPCFA hosted a public discussion regarding the addition of this Program and sought received feedback from lenders and investors about how this type of program would work for their institutions and in their fields. California continues to work with CDFIs to deploy SSBCI funds to underserved communities and continues to promote the CalCAP and Collateral Support Programs as vital tools to stimulate small business lending throughout the state.

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<sup>23</sup><http://www.treasurer.ca.gov/cpcfca/calcap/sb/institutions.pdf>

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## NORTH CAROLINA

North Carolina's \$27.1 million allocation of State Small Business Credit Initiative (SSBCI) funds to the state have been committed to three programs and have leveraged an additional commitment of \$191.3 million in private capital for loans and investments. During the first round of funding alone, North Carolina made 260 loans and investments.<sup>24</sup>

North Carolina operates several programs using SSBCI funds, including the North Carolina Capital Access Program and the Loan Participation Program. The NC Capital Access Program provides matching reserve funds for business loans that are just outside a lender's usual standards. The average NC-CAP loan is \$100,000. When a loan is approved and enrolled in NC-CAP, the borrower pays a fee, which is matched with money from the program. The funds together are deposited into a reserve account held by the lender, to offset losses in case of default. Potential borrowers may apply through their local lenders. Sixty lenders across the state are participating in the NC Capital Access Program with an average loan size of \$122,000, including three OFN Members: The Support Center, Natural Capital Investment Fund, Inc., and Mountain Biz Capital, Inc.

The NC Loan Participation Program reduces a lender's risk by purchasing up to 20 percent of a loan. The program typically assists loans of \$250,000 to \$5 million. Special consideration may be given for loans to businesses in underserved communities and to businesses owned by women and minorities. Potential borrowers apply through their local lenders. In addition to for-profit businesses, loans are available to charitable, religious, and nonprofit institutions for business purposes. Loans have been made to a wide range of borrowers, ranging from manufacturing plants, distribution centers, medical practices, retail and service businesses to non-profit daycares and charter schools.

Twenty-eight lenders are participating in the NC Loan Participation Program, with an average loan of \$1.2 million. Participating lenders are located in 98 of North Carolina's 100 counties, and loans have been made in 45 counties, both rural and urban, with a special emphasis on low to moderate income communities. OFN Members North Carolina Community Development Initiative Capital and the Support Center are participating lenders in the program.

[NC-CAP information for lenders](#)

[NC-CAP lenders by county](#)

[Loan Participation Program information for lenders](#)

[Loan Participation lenders](#)

<sup>24</sup><http://www.governor.state.nc.us/NewsItems/PressReleaseDetail.aspx?newsItemID=2637>

## **WISCONSIN**

Wisconsin's Housing and Economic Development Agency (WHEDA) provided \$3 million to the statewide CAP program offered through the Wisconsin Business Development (WBD) in partnership with Milwaukee Economic Development Corporation (MEDC), a CDFI and OFN Member, to fund bank loan loss reserves for eligible Wisconsin lenders. CAP is expected to generate over \$30 million in private capital investment in Wisconsin businesses. These investments are expected to create or sustain approximately 6,500 jobs in the state over the next five years.

The Capital Access Program (CAP) provides access to financing for companies in the state of Wisconsin, especially start-ups and small businesses, which may not be able to obtain conventional financing. CAP is a flexible loan loss reserve program that provides lenders with a way to fund projects considered too risky for conventional lending through creating a lender specific loan loss reserve.

Each bank participating in CAP has its own reserve to protect against losses on loans approved by the bank and enrolled in the program. The bank sets its own criteria for determining whether to make the loan, as well as determines the loan term, interest rate, fees, collateral requirements and other loan conditions, and the reserve percent for each loan. The lender along with the borrower set aside funds as a reserve, the combined total of which is matched by MEDC. The reserve amount is 3 percent to 7% of the loan, with a minimum contribution of 1.5 percent each, from bank and borrower. MEDC matches combined contributions up to 7 percent. If the bank and borrower each contribute 1.5% of the loan amount, MEDC contributes 3 percent.

If a borrower defaults, this reserve can be used to reduce the bank's loss. If the funds aren't needed, they become part of a permanent reserve for future loans made by the lender through CAP. Nonprofit and for-profit companies are eligible for CAP and can couple the program with other short-term loans and/or lines of credit. CAP loan sizes range from \$1,000 to \$500,000.

### [MEDC Cap Program](#)

## MAINE FORECLOSURE PREVENTION PROGRAM

While the terms of the National Mortgage Settlement were being negotiated, other states, like the state of Maine, were already actively working to mitigate the impact of the housing crisis in their communities. Foreclosures are not often thought to provide opportunities, but that is exactly what the housing crisis in Maine provided for OFN Member Coastal Enterprises, Inc (CEI). The collapse of the housing market in 2007 led to a widespread foreclosure crisis across the country. As the federal government looked to solutions to stabilize the crisis on a national scale, many states and regions were looking to implement their own solutions to the crisis erupting in their own back yards.

An early leader on addressing and remedying the housing crisis, CEI played a leadership role in helping to pass Maine's 2007 anti-predatory lending and 2009 foreclosure prevention laws. In March 2009, the Judiciary set up a commission to look into foreclosure problem and concluded that judicial mediation was needed to combat the crisis and keep people in their homes. Learning from judicial foreclosure models in Connecticut and Philadelphia, PA, the Judicial Branch Commission on Foreclosure Diversion was established to develop and propose a foreclosure diversion process. On the commission were stakeholders from all sectors of the housing finance industry in Maine, including CEI's Vice President for Policy, Carla Dickstein.

Simultaneously, CEI and other housing advocates in Maine were working together to create infrastructure to mobilize stakeholders around this issue. Traditional financial institutions initially expressed some opposition, but community banks and credit unions supported the foreclosure prevention model. CEI worked diligently to craft a coalition and promote the coalition's interests, including finding clients to testify at legislative hearings and working to organize other interested groups.

In June 2009, the Maine Legislature passed "The Act to Preserve Homeownership and Stabilize the Economy by Preventing Unnecessary Foreclosure."<sup>25</sup> Implementation of the new law was left to the Maine Supreme Court, and the Foreclosure Diversion Program (FDP) created in the legislation is governed by Maine Rule of Civil Procedure 93.<sup>26</sup>

The Foreclosure Diversion Program provides, through mediation, the opportunity for parties in foreclosure to consider alternatives that might allow distressed homeowners to stay in their homes through enhanced loan modifications. It also provides payments to victims of unfair foreclosure practices and support for housing counseling and state-level foreclosure prevention programs.

The judicial mediation in Maine provided homeowners a chance to save their homes their present case by meeting directly with their lender and a mediator to try to negotiate the best possible outcome for the borrower. CEI's role is to help these homeowners understand and prepare for the process. Under the FDP, CEI provides support and representation to borrowers without legal aid. CEI also assists borrowers in gathering appropriate documents, which enables the bank and mediator to use that information to determine the cost effectiveness of foreclosure versus other alternatives, such as mediation or loan modification.

The Foreclosure Diversion program exemplifies CEI's strategy for its policy advocacy: combining the experience of what they do on the ground through their foreclosure and housing programs with policy and advocacy work, and trying to come up with solutions that benefit the people of Maine. Although CEI undertook significant advocacy efforts that were critical to the bill's passage, the work was not done when the bill passed.

In 2010, after the elections, CEI was concerned that banks would take the opportunity of a change in composition of the legislature and a new Governor to push back on some of the foreclosure remediation processes in place. However, CEI discovered that the banks were not interested in rolling back the foreclosure prevention programs, and the pilot program continues to show signs of success.

<sup>25</sup>Maine Public Law Chapter 402 [http://www.mainelegislature.org/legis/bills/bills\\_124th/chapters/PUBLIC402.asp](http://www.mainelegislature.org/legis/bills/bills_124th/chapters/PUBLIC402.asp)

<sup>26</sup>State of Maine Judicial Branch [http://www.courts.state.me.us/maine\\_courts/fdp/index.html](http://www.courts.state.me.us/maine_courts/fdp/index.html)

According to the annual report to the legislature, over the last three years, 6,242 mediation sessions were held in 3,789 cases, or 26 percent of the 14,437 foreclosure cases filed from 2010 through 2012. In that time period, the rate of participation in the FDP also increased. In 2012, parties in 43 percent of foreclosure cases requested mediation, up from 30 percent in 2010.<sup>27</sup>

The data shows that mediation has achieved positive results. An increasing number of foreclosure cases in the FDP have concluded in dismissal, which generally indicates that both the home and the loan were maintained. To date, more than half of the cases mediated in 2010 and 2011 have been dismissed. Including 2012 data, 40% of all mediated foreclosure cases have been dismissed so far. Foreclosure judgments have been issued in 21% of cases mediated in the last three years, but in 33% of the cases mediated in 2010.<sup>28</sup>

CEI is now looking at ways to tweak the program to make it even more effective. For example, the court could improve access to its foreclosure data because although the program serves many people, it can still be difficult to judge its effectiveness. In addition, reporting requirements can be burdensome. For CEI, the program has brought new growth opportunities. CEI was already a HUD-certified housing counselor, but since the FDP, has greatly expanded its role and is now is the largest housing counseling agency serving the entire state.

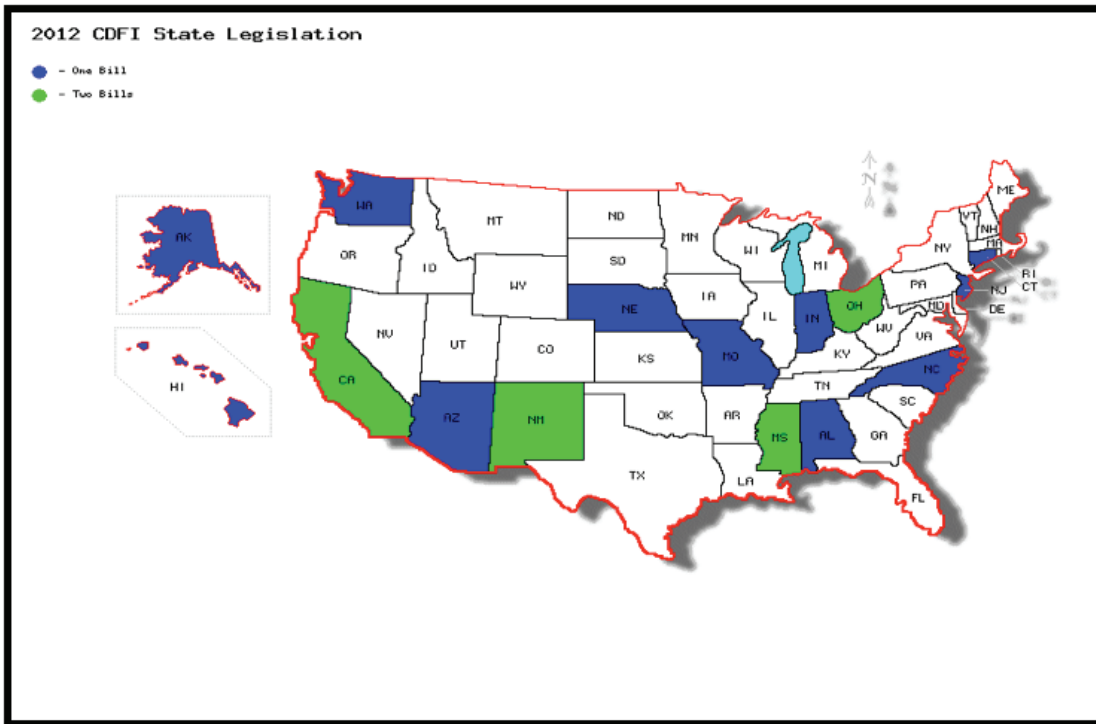
<sup>27</sup> Judicial Branch Foreclosure Diversion Program Report to the Joint Standing Committee on Insurance and Financial Services 126th Legislature February 15, 2013.  
[http://www.courts.state.me.us/maine\\_courts/fdp/pdfs/FDP%20Annual%20Report%202012.pdf](http://www.courts.state.me.us/maine_courts/fdp/pdfs/FDP%20Annual%20Report%202012.pdf)

<sup>28</sup> Ibid.



In the 2012 legislative session, there were 20 CDFI-specific bills introduced in 16 states.<sup>30</sup> This is three more than the numbers of CDFI-specific bills than were introduced in 2011, when there were 17 bills that specifically mentioned CDFIs. Of the 20 bills, four passed their legislatures and were signed into law, including legislation in Alaska, Alabama, Florida, and Nebraska. Only one bill is currently pending in New Jersey, and the remaining bills died when the legislative session ended.

The map below shows the states where CDFI-specific legislation was introduced in 2012, and is color coded based on the number of bills introduced in the state.



Tax credit legislation, including legislation modeled after the federal New Markets Tax Credit (NMTC) program, continues to be a popular legislative model for states seeking to spur investment. Nine states introduced bills modeled after the NMTC program: Alabama, Arizona, California, Hawaii, Indiana, Nebraska, New Mexico, and North Carolina. Alaska, Missouri, and Ohio introduced legislation making technical changes to existing tax credit programs.

Tax credit legislation passed in three states: Alaska, Alabama, and Nebraska.

<sup>29</sup>See methodology for the criteria used to select CDFI-specific legislation.

## METHODOLOGY

### LEGISLATIVE RESEARCH

The report features only legislation that has the greatest potential impact on the opportunity finance industry. Finding relevant legislation involved a systematic search of Congressional Quarterly's Statetrack legislative tracking software, and state assembly websites for legislation that contained the term "community development financial institution." These bills were considered "CDFI-specific".

Not every bill containing the words CDFI is listed in the guide; bills are screened for relevance and potential impact, so legislation containing only substantive policy changes instead of making technical and conforming changes is listed. An effort was made to exclude programs that sounded incidental or very small. The demarcation line of whether or not an initiative is relevant is subjective.

For legislation discovered through assembly searches, it was usually possible to identify the status of the bill. Where the bill had stalled beyond the current assembly, we contacted the state legislature to determine if the bill was dead or if it carried over into a new session.

There are a number of states that have legislative sessions lasting two years, which carry bills over into the second session. For more than half of state legislatures, 2012 was the second year in a two-year session, and bills that remained in committee at the adjournment of the session will be considered inactive or dead.

### CAVEATS

Uniform resource locators (URLs) included with descriptions of legislation may not be valid beyond the current session of a state legislature.

Users can likely find bills online using the bill number cited here by searching the appropriate year's database on a state legislature's site.

Inclusion of legislation in this guide does not imply endorsement by OFN. We do not analyze the impact of any bill on CDFIs or their constituents, or evaluate any other factors affecting a bill's progress through the legislature.

### PROFILES

Information about the State Small Business Credit Initiative was compiled from a variety of sources, particularly federal and state agency websites, and websites of participating OFN Members and other organizations. Footnotes and citations are presented where relevant.

### ADVOCACY CASE STUDIES

OFN conducted interviews with CDFI practitioners for the advocacy case studies. In addition, research, relevant documents related to legislation, media and press coverage were used to supplement the interviews. Special thanks to Michelle Mitchell of Colorado Housing Assistance Corporation, Moniqua Spencer and Amanda Hoyt of Finance Fund, Charlie Spies and Laura Buxbaum of CEI, and Nancy Tromblee from California's SSBCI Program for their significant input and advice.





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