

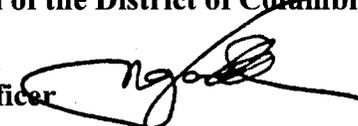
**Government of the District of Columbia
Office of the Chief Financial Officer**



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi 
Chief Financial Officer

DATE: October 1, 2009

SUBJECT: Fiscal Impact Statement – “Certified Capital Companies
Improvement Amendment Act of 2009”

REFERENCE: Bill Number 18-402 – As Introduced

Conclusion

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The proposed legislation does not have an impact on the District’s budget and financial plan.

Background

The proposed legislation would amend the Certified Capital Companies Act of 2003¹ as follows: (1) to promote investment in certain lines of business and certain geographical areas (Neighborhood Investment Program target areas or the District of Columbia Enterprise Zone); (2) to limit the nature of Qualified Investments²; (3) to promote accelerated distribution of capital to District businesses; (4) to require Certified Capital Companies to substantiate each Qualified Investment; (5) to require all Certified Capital Companies and Qualified Businesses to annually report and file specific economic development information; and (6) to require the Commissioner to manage and issue an annual economic impact study and report.

Specifically, the proposed legislation would:

- Define Tier One, Tier Two, Tier Three, and Tier Four Qualified Businesses³ based on their primary line of business and location of their headquarters in relation to a Neighborhood Investment Program target area or the District of Columbia Enterprise Zone. Additionally, define Economic Impact Study⁴, Initial Investment and Follow-on Investment⁵, and Principal Business Operations⁶;
- Amend the definition of Qualified Business to include certain conditions of relocating to the District, limitations on ownership interest by a Certified Capital Company, and additions to businesses excluded⁷;

- Amend the definition of Qualified Investment to add new conditions on debt maturity and equity share limitations⁸;
- Tighten the requirements for continuance of certification:
- Add to the 100 percent investment requirements section⁹ a new subsection that if a Certified Capital Company has not made Qualified Investments cumulatively equal to 100 percent of its Certified Capital within ten years after its Allocation Date, that company would be prohibited from using its Certified Capital to pay its management fees.
- Amend decertification¹⁰ section to require that any material violation or non-compliance to the entirety of the Act would constitute grounds for decertification, as opposed to only the requirements for the continuance of certification section (D.C. Official Code §31-5235)¹¹; and include and new waiver conditions within a new section.¹²
- Add a new section on compliance and economic impact to include new data and reporting requirements

The proposed legislation would not impair any existing Qualified Investment or distribution made by any existing Certified Capital Company.

Financial Plan Impact

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation.

Under current law, companies must invest a certain percentage of their certified capital within given time limits. The new tiered business system proposed by this legislation changes the rules for calculating these percentages; it is expected to change the amount and composition of investment dollars from certified capital companies, and therefore could affect the timing of premium insurance tax credit claims. But the aggregate limit of \$50 million on the insurance premium tax credits over the life of the program and the \$10 million total premium tax credit cap per certified investor are sustained, as well as the annual allocation rules. Therefore, the proposed legislation does not increase the foregone tax revenue, estimated at \$12.5 million annually starting FY 2009.¹³ This estimate is already incorporated in the District's budget and financial plan.

¹ Effective March 10, 2004 (D.C. Law 15-87; D.C. Official Code § 31-5231 *et seq.*)

² "Qualified Investment" means the investment of cash by a Certified Capital Company in a Qualified Business for the purchase of any debt, debt participation, equity, or hybrid security, of any nature and description, including a debt instrument or security which has the characteristics of debt but which provides for conversion into equity or equity participation instruments, such as options or warrants.

³ "Tier One Qualified Business" means any Qualified Business (i) engaged in one of the following lines of business as its primary line of business: healthcare services, information technology, environmental services/technology, internet information providers, communication services, biotechnology/research services, multimedia/graphics software, business management services, and financial services and (ii) whose headquarters are located within a Neighborhood Investment Program target area designated pursuant to the Neighborhood Investment Act of 2004 (D.C. Law 14-131; D.C. Official

Code § 6-1072) or the District of Columbia Enterprise Zone as defined by Section 1400 of the Internal Revenue Code, (111 Stat. 788; Pub. L. No. 111-34).

"Tier Two Qualified Business" means any Qualified Business that is not a Tier One Qualified Business and is engaged in one of the following lines of business as its primary line of business: healthcare services, information technology, environmental services/technology, internet information providers, communication services, biotechnology/research services, multimedia/graphics software, business management services, and financial services.

"Tier Three Qualified Business" means any Qualified Business that is not a Tier One or a Tier Two Qualified Business and whose headquarters are located within a Neighborhood Investment Program target area or the D. C. Enterprise Zone.

"Tier Four Qualified Business" is any Qualified Business that is not a Tier One, Tier Two, or a Tier Three Qualified Business. Per the proposed legislation, for the purposes of satisfying the percentage requirements of the Qualified Investment schedule of a Certified Capital Company, each dollar invested in (i) a Tier One Qualified Business would be considered as \$1.25, (ii) a Tier Two Qualified Business would be considered as \$1.00, (iii) a Tier Three Qualified Business would be considered as \$0.75, (iv) a Tier Four Qualified Business would be considered as \$0.50, and (v) a Qualified Business that receives an Initial Investment pursuant to a waiver granted in reference to Section 9b and that fails to satisfy the eligibility criteria to receive an Initial Investment within six months of the waiver would be considered as \$0.00.

⁴ "Economic Impact Study" is defined as an assessment of the performance of a Certified Capital Company program, including job growth in Qualified Businesses after the receipt of Qualified Investments, estimates of the taxation revenue generated as a result of Qualified Investments, and comparison of these measures among all Certified Capital Companies.

⁵ The definitions are, respectively, the first Qualified Investment that a Certified Capital Company makes in a Qualified Business, and any Qualified Investment that a Certified Capital Company makes in a Qualified Business subsequent to its Initial Investment in that Qualified Business.

⁶ The state or jurisdiction in which a business employs at least 75 percent of its employees.

⁷ (1) If the business is headquartered and has its Principal Business Operations located outside the District, it would certify in an affidavit that it will relocate its headquarters and its Principal Business Operations to the District within 90 days after its receipt of the Initial Investment by the Certified Capital Company; (2) the business should not have been organized by a Certified Capital Company or an affiliate; and should not have an ownership interest, investment interest, compensation agreement, or similar financial relationship with a Certified Capital Company or any affiliate before a Certified Capital Company makes an Initial Investment in the business. However, these provisions would not prohibit a Certified Capital Company from providing financial, technical or similar advice to a business before making an investment in it; (3) the exclusions to Qualified Businesses would also include regional or national franchises and those businesses primarily engaged in real estate development, insurance, or street-vending.

⁸ Any debt instrument purchased from a Qualified Business by a Certified Capital Company would have a maturity of at least 24-months from the date that the debt is incurred; and after an equity investment (including the conversion and exercise of any equity participation or hybrid security that may be converted into equity), a Certified Capital Company would not own more than 49 percent of the voting equity of the Qualified Business.

⁹ D.C. Official Code § 31-5236.

¹⁰ D.C. Official Code § 31-5237.

¹¹ D.C. Official Code § 31-5237(b) and (c).

¹² D.C. Official Code § 31-5237(g).

¹³ OCFO's letter to the D.C. Auditor, dated July 21, 2008.