

Department of Economic and Community Development
Insurance Reinvestment Program
Public Act 10-75, sec. 14

Questions and Answers – Attachment 4
Updated 9/14/10

Question: Section (6)(B) of the Public Act provides that in order to maintain certification, a Insurance Reinvestment Fund (“IRF”) must “be in compliance with the revenue impact assessment provided in the application demonstrating that the IRF’s business plan continues to have a revenue neutral or positive impact on the state.” It is unclear how the commissioner will test compliance with this requirement.

Response: DECD will utilize the initial Revenue Impact Assessment (“RIA”) and associated assumptions and data that were provided to demonstrate that an IRF’s plan is revenue neutral/positive for the state. This will become the baseline for comparison with the actual performance outlined in an IRF’s annual report.

DECD will, as part of its compliance review, look at whether the IRF invested in accordance with the assumptions of its RIA (e.g. pace of investment, industry segments, type of investment, timeframe for investment, etc.). DECD will also look at the amount of cumulative revenue generated on a year over year basis, so that if in one reporting year, revenue is negative, but the cumulative amount of revenue for all reporting years continues to be neutral or positive, then the IRF would be in compliance with its revenue impact assessment. In addition, since tax credits earned under the program do not begin until year four, the state costs that would need to be factored into the revenue impact assessment will be limited, which reduces the amount of negative revenue that may be generated. The timing of the tax credit disbursement is particularly important since forfeiture of credits would not occur after the fourth anniversary of the fund’s allocation date so long as an IRF has invested 60% of its fund by the anniversary date and there is no outstanding decertification notice. This means that credits are preserved despite a significant amount of tax credits (i.e. state revenue loss) that do not need to be included in the revenue impact assessment during the first four years, which reduces the revenue impact assessment risk to the IRF.

Also, the Public Act allows for an IRF to apply to the commissioner to amend its plan based on unavoidable or reasonably unanticipated changes to conditions (e.g. economic climate, technology, etc.) and depending on the significance of those changes, an updated revenue impact assessment may need to be provided to reflect the change(s).

Question: Section (7) of the Public Act provides that “[i]n the annual report due *in* the third, fifth, seventh and ninth years after its allocation date, each IRF shall also report to the commissioner its compliance with the investment parameters set forth in its business plan and the revenue impact assessment provided in the application demonstrating that the IRF’s business plan continues to have a revenue neutral or positive impact on the state.” [*emphasis added*]

Annual reports are due not later than January 31. It is unclear which annual reports must contain these additional compliance reports.

Response: The following is an outline of the reporting requirements and the time in which they are due, assuming investments start in 2010. DECD will also need to include its own requirements in order to verify actual dollars invested, jobs, business eligibility, etc. The reports due in the 3rd, 5th, 7th, and 9th year refer to reports of data for the prior year (see table), not the subsequent year, as they propose above. Take for example the report due 1/31/2015 (year 5). This report will be providing an update on year 4 investments (the preceding year), which is also the year in which fund managers are to have invested up to 60% of their allocation.

Tax Year	Report Year	Report Due	Requirements
1	2010	1/31/2011	A, B, C, D, F
2	2011	1/31/2012	A, B, C, D, F
3	2012	1/31/2013	A, B, C, D, E, F
4	2013	1/31/2014	A, B, C, D, F
5	2014	1/31/2015	A, B, C, D, E, F
6	2015	1/31/2016	A, B, C, D, F
7	2016	1/31/2017	A, B, C, D, E, F
8	2017	1/31/2018	A, B, C, D, F
9	2018	1/31/2019	A, B, C, D, E, F
10	2019	1/31/2020	A, B, C, D, F

- (A) The amount of eligible capital remaining at the end of the preceding year;
- (B) Each investment in an eligible business during the preceding year and, with respect to each eligible business, its location and North American Industrial Classification System code;
- (C) The percentage of eligible capital invested in green technology businesses and preseed investments;
- (D) Distributions made by the IRF in the preceding year.
- (E) The annual report due in the third, fifth, seventh and ninth years after its allocation date, each IRF shall also report to the commissioner its compliance with the investment parameters set forth in its business plan and the revenue impact assessment provided in the application and provide an updated revenue impact assessment reflecting actual results through the end of the period tested and demonstrating that the IRF's business plan continues to have a revenue neutral or positive impact on the state.. The initial report due for year three will not include any impact of the tax credits earned by the IRF's investors as they are not permitted to be utilized until the investors' returns are filed in the following year.
- (F) Each IRF shall provide to the commissioner annual audited financial statements.

Question: The Public Act mandates that the Department of Economic and Community Development (“DECD”) test whether IRFs have invested in “eligible businesses” within four and

ten years of their allocation date but has no mechanism by which IRFs can confirm that a business meets the definition of “eligible business” prior to investment or if the investment will be considered consistent with the IRF’s business plan. This creates an administrative problem for the DECD, and investors in IRFs need some level of comfort that IRFs are indeed investing in eligible businesses.

Response: It is the department’s intent to offer an IRF the opportunity to have DECD pre-screen their proposed investments for purposes of determining if they are an “eligible business”, including preseed and green technology businesses as defined under the Public Act, and whether they are consistent with the IRF’s business plan. The IRF application contains information outlining what documentation will need to be provided in order to assist DECD in its determination of eligibility. DECD anticipates being able to complete these reviews in 15 business days provided all relevant documentation has been provided to adequately determine eligibility.

Question: Section (5) of the Public Act imposes a \$25,000 penalty on IRFs and taxpayers that do not close on an allocation of eligible capital within five business days after the IRF’s notice of certification. It is unclear whether this penalty would apply to failure to close on a reallocation of eligible capital.

Response: DECD intends to provide notice to existing certified IRFs when a reallocation of eligible capital has been made available. Based upon this notice, an IRF will be able to submit an updated application and related documents to reflect this new level of eligible capital for which they are applying to receive an additional allocation of tax credits. No additional application fee will be required, if the IRF is all ready certified by DECD.

Question: The Public Act does not address the interplay between the DECD and the Department of Revenue.

Response: As with many of DECD’s programs that include a tax component, DECD would anticipate sharing information with DRS on the participants in the program.

Question: Section (1)(B) of the Public Act defines “eligible business” as “a business that has its principal business operations in Connecticut, has fewer than two hundred fifty employees at the time of investment and not more than ten million dollars in net income in the previous year.” The Public Act does not address investments of follow-on capital in such businesses.

Response: After DECD determines that a business is an eligible business it does not intend to continue monitoring the business for eligibility beyond the time of investment by the IRF.

Question: May a IRF receive a written confirmation from the DECD that future tax credits to be claimed with respect to the IRF are no longer subject to forfeiture under the law?

Response: Pending submission of an IRF’s annual report that demonstrates that at least 60% of its eligible capital has been invested in an eligible business, DECD will issue written confirmation to an IRF that future tax credits are not subject to forfeiture based on the current

law. DECD will not accept interim reports to demonstrate compliance as we believe the existing Annual Report requirements are sufficient; however, DECD will issue a written confirmation upon the fourth anniversary of an IRF's allocation date, provided (i) the IRF has not been decertified on or before such anniversary date, (ii) is not currently under a decertification notice, and (iii) a most recently required annual report of the IRF has demonstrated that at least 60% of the IRF's eligible capital has been invested in eligible businesses..

Question: What, if any, are the implications of a decertification after Year 4 if 60% of the Eligible Capital was invested by the fourth anniversary and no credits were forfeited?

Response: Based on the current language of the Public Act, forfeiture of future credits only occurs before the fourth anniversary of the fund's allocation date.

Question: Section 3 of the business plan, requires a three digit NAICS code be used as part of the Revenue Impact Assessment, can a two digit NAICS code be used for the Revenue Impact Assessment ("RIA"), as opposed to a three digit code?

Response: DECD will allow for the use of a two digit NAICS code for the purposes of the RIA, understanding that there is a significant variation in the multipliers within a two-digit category. This means that a REMI analysis could over or under estimate the economic and fiscal effects of the proposed investments.

Question: The RIA asks for information on type, terms and uses of the investment capital that will be provided to a business. Given this investment could be several years in the future, this would be complete guesswork, can we just identify the type of investment (debt or equity) for modeling purposes?

Response: Yes, the fund manager can just identify the type of investment (debt or equity). Recognizing that these investments occur over time, DECD asks that the fund manager estimate as accurately and completely the types of investments to be made (debt or equity) as each one will have different consequences for modeling with the understanding that the fund manager will later need to report on actual portfolio investment types, amounts, targets, uses and other information useful in determining revenue neutrality. It is important to include all assumptions and input data used in the economic model, which will allow DECD to verify revenue neutrality or better.

Question: How will the commissioner test compliance with the investment parameters in an IRF's business plan?

Response: With respect to the proposed pace at which investments in eligible businesses will be made, an IRF will be in compliance with this investment parameter if it invests at the pace detailed in its business plan or at a faster pace.

With respect to industry segments, an IRF will be in compliance with this investment parameter only if it invests its eligible capital in the NAICS codes identified in its business plan. The commissioner may test compliance with this investment parameter annually.

With respect to the type and allocation of investment capital provided by the IRF, an IRF will be in compliance with this investment parameter provided it has capital available (either uninvested eligible capital, capital other than eligible capital contributed to the IRF or cash received as returns of capital or profits from investments) to achieve the percentages of type and allocation projected in its business plan. The commissioner may test compliance with this investment parameter annually.

Question: What all must an IRF submit to the commissioner in its application to amend its business plan under Section (6)(A)?

Response: The commissioner will allow an IRF to amend its business plan so long as it submits with its amendment: (1) a description of the unavoidable or reasonably unanticipated changes that precipitated the need for such amendment and (2) a detailed description of the proposed changes. If the commissioner determines that the changes are sufficiently material to the assumptions contained in the IRF's original revenue impact assessment, it may require to the IRF to submit a revised revenue impact assessment demonstrating that the fund's business plan, as amended, continues to have a revenue neutral or positive impact on the state.

For threshold purposes, the commissioner should be made aware of any changes that would cause a 10% or more adverse deviation from the business plan or other such change that the IRF believes requires a review by the commissioner to be warranted. DECD will determine, in consultation with the IRF whether it will require an amendment to the IRF's business plan and related documents, however, DECD will have the final decision making authority.

Question: May an applicant withdraw its application?

Response: So long as the applicant has not been certified as an IRF by the commissioner and its investors have not been allocated tax credits, the applicant may withdraw its application. The application fee, however, is nonrefundable as outlined under the Public Act. Any resubmitted application will be deemed to be received for allocation purposes on the actual date of its resubmission.

Question: May an applicant amend its application to request additional eligible capital?

Response: So long as (1) the applicant has not been certified as an IRF by the commissioner, (2) there are remaining tax credits and (3) the applicant submits an additional affidavit by each taxpayer committing an investment of eligible capital as well as an updated business plan and revenue impact assessment demonstrating the impact of the additional eligible capital, an applicant may amend its application to request additional eligible capital equal to the commitment of the taxpayer(s).

Question: May an applicant amend its application to split its allocation request among one or more affiliated funds?

Response: So long as (1) the applicant has not been certified as a IRF by the commissioner, (2) the total aggregate investor commitments remain the same, (3) the applicant submits an amended application reflecting the reduced fund size, including a revised business plan and revenue impact assessment and new investor commitment affidavits, (4) each additional applicant submits a complete application, including a nonrefundable application fee of \$7,500, the applicant may amend its application to split its allocation request among one or more affiliated applicants, and the commissioner will deem such allocation requests for the affiliated applications to be submitted as of the date of submission of the original application.

Additional questions and answers will be added as they are received by DECD.