Walker, Mike

From:	Jamie Plume <JPlume@rilegislature.gov>
Sent:	Thursday, February 27, 2020 6:32 PM
To:	Rules Coordinator
Cc:	Sen. Ruggerio, Dominick J.; Rep. Mattiello, Nicholas A.; Sen. Conley, Jr, William J.; Rep. Amore, Gregg; Saglio, Jesse; erik.godwin@omb.ri.gov
Subject:	[EXTERNAL] Comments on Proposed Amendment to Rule 870-RICR-30-00-8
Attachments:	2-27-20 ltr fr Sen Conley + Rep Amore to Commerce Corp Re Comments on Proposed Amendment....pdf

Mr. Walker:

Please see the attached comment letter from Chairs Conley and Amore, regarding proposed amendment to Rule 870-RICR-30-00-8.

Sincerely,

Jamie Plume
Chief Clerk

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ADMINISTRATIVE ASSISTANT TO:
Chairman William J. Conley, Jr.
Senator Louis P. DiPalma

State of Rhode Island and Providence Plantations
General Assembly

February 27, 2020

Michael Walker
Commerce Corporation
315 Iron Horse Way, Suite 101
Providence, RI 02908
rulescoordinator@commerceri.com

Re: Comments on Proposed Amendment to Rule 870-RICR-30-00-8

Dear Sir or Madame,

Thank you for the opportunity to offer comments regarding the Commerce Corporation's proposed regulations for the Rhode Island Small Business Development Fund, R.I. Gen. Laws Section 42-64.33-1, et seq. As sponsors of the legislation and chairmen of the committees of jurisdiction that conducted hearings, vetted, and modified the program over two sessions of the general assembly, we write to express concern regarding the proposed regulations.

We appreciate the corporation's commitment to be good stewards of taxpayer dollars as regulator of this program and encourage your diligence to best ensure the intent and purpose of the statute is fulfilled. However, certain provisions in these regulations appear to erect unauthorized and excessive barriers of entry into the program, while also adding significant costs and regulatory burdens. This is an intrusion into the program's statutory framework that we fear could jeopardize the program's success in helping our small businesses obtain the financial resources they need.

Pursuant to R.I. Gen. Laws Section 42-64.33-9, the Commerce Corporation and the Division of Taxation *"may issue reasonable rules and regulations, consistent with this chapter, as are necessary to carry out the intent and purpose and implementation of the responsibilities under this chapter."* For the reasons noted below, we appreciate your consideration of our proposed edits as follows:

<u>Section 8.5(A)(32)-(33) Definitions – Referral and Refusal Letters</u>

Subsection 8.5(A)(32) of the regulations provides a definition for "Referral letter" and Subsection 8.5(A)(33) provides a definition for "Refusal Letter". Both require these letters to be "signed under oath from the Chief Executive Officer of a Depository Institution or equivalent officer" referring or denying an eligible business to a Small Business Development Fund (SBDF).

These definitions are not authorized in the statute, and we do not believe it is necessary or reasonable to require a CEO or equivalent to sign such form under oath. It is unlikely that a CEO, even if accessible and willing to sign, could timely complete such a form.

If included in the final rule, this provision will likely prevent a number of small businesses from accessing capital under the program. We therefore recommend the deletion of this qualification to the definitions in Section 8.5(A)(32)-(33).

Section 8.6(A)(8)(o) Eligibility – Business Plan – Government Letter of Support

Subsection 8.6(A)(8)(o) of the proposed regulations requires an applicant, in order to be deemed eligible for the program, to provide "a letter of support from a governmental unit or political subdivision that administered a similar tax credit program in which the applicant or an affiliate participated" as part of its business plan.

This provision is not authorized in the statute, and we do not believe it reasonable or necessary to cede the keys of entry into our state's program to the discretion of another governmental unit and its relative willingness or ability to issue such letters. We are concerned that this provision could also erect a barrier to entry to applicants that have not participated in other programs. We share your goal of encouraging participation from a variety of applicants.

We therefore recommend the deletion of Section 8.6(A)(8)(o).

Section 8.6(A)(10) Eligibility – Bond or other such Surety

Subsection 8.6(A)(10) of the proposed regulations requires an applicant, in order to be deemed eligible for the program, to file a bond or other such surety for the total value of tax credits to be issued for a period of ten years and six months.

This provision is not authorized in the statute, and we do not believe it is reasonable or necessary to require a surety in such form. The statute provides extensive safeguards, penalty provisions, and for the recapture of tax credits in R.I.G.L. §42-64.33 in order to protect taxpayer risk. A surety may provide enhanced protections for taxpayers, but as noted in the corporations' regulatory analysis, the required surety in the form presented would add significant costs to the operation of the program, estimated at $193,500 to $967,500 per year. This could render the program commercially unnavigable, which could leave the program either without applicants, or put such serious financial strain on program participants that it could jeopardize the success of the program.

An alternative form of surety could provide a less costly means to achieve the taxpayer protection sought. As designed, the state accrues economic benefits from the investments made beginning in year one of the program, and the economic impact to the state can be measured throughout the program until exit. Since tax credits are only issued in years 4, 5, and 6 of the program, it is unreasonable and unnecessary to require applicants to file a surety three years before any credits are issued. Furthermore, it is unreasonable and unnecessary to require filing a surety in excess of economic impact already generated to the state. Any surety should be limited to the taxpayer exposure in existence to date.

We therefore recommend that any surety required be limited to the difference between revenue impact generated for the state and the amount of tax credits issued to date (Total Tax Credits Issued to Date – Total Revenue Impact = Amount of Surety to be filed on a yearly basis). Under this model, no surety would need be provided until at least year 4, only if the revenue impact to date is deficient of the credits issued, and limited to this differential. This would achieve the corporation's objective of protection taxpayer funds, while also providing a reasonable process and significantly reduced cost means to achieving such protection.

Section 8.7(A)(12) – 2020 Global Investment Performance Standards

Subsection 8.7(A)(12) of the proposed regulations requires an applicant provide evidence of compliance with the 2020 Global Investment Performance Standards ("GIPS").

This provision is not authorized by statute, and was not discussed at any point during the hearing process. The statute established clear qualifications that applicants must satisfy in order to participate in the program, including federal licensure as a Small Business Investment Company or a Rural Business Investment Company, and evidence of having invested at least $100,000,000 in nonpublic companies. We also are unaware of this standard being applied via regulation to any other commerce corporation programs. Furthermore, the regulation does not provide clear expectations regarding how an applicant would proceed to satisfy such standard.

We therefore do not believe compliance with GIPS is reasonable or necessary to fulfill the intent or purpose of the statute and that it could serve as a barrier to entry for qualified applicants. As such, we recommend the deletion of Section 8.7(A)(12).

Section 8.10(D) – Board Consideration of Application – approval of Qualified Investments

Subsection 8.10(D) of the proposed regulations provides that the Commerce Corporation's Board "... may condition approval of an Application in its discretion, including but not limited to, requirements for the ongoing review and approval of proposed Qualified Investments for compliance with this Part."

The purpose and intent of the legislation is to engage professional, federally licensed and experienced fund managers to raise and immediately deploy private capital into Rhode Island small businesses free from government interference. It was clearly presented that government should not play any role in picking winners and losers in this program, especially the investments to be made. It is a clear violation of the statutory intent of the program for the corporation to grant itself discretion to condition approval of applications subject to its approval of investments to be made by fund managers. Such power is ripe for abuse, and could set the state back on the wrong path of doing things the "old way".

We find this provision to be contrary to the statute, unreasonable and unnecessary, and therefore strongly urge the deletion of Section 8.10(D)

Thank you for your consideration.

Sincerely,

Senator William J. Conley, Jr.
Chairman, Senate Committee on Finance

Representative Gregg Amore
Chairman, House Committee on Small Business