



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** July 14, 2021

**SUBJECT:** Proposed Rule Amendments: Angel Investor Tax Credit Program (N.J.A.C. 19:31-19.1)

**Request:**

The Members are requested to approve:

1. Attached proposed amendments to the rules implementing the Angel Investor Tax Credit Program based on statutory provisions pertaining to increases in available tax credit amounts for qualified investments made by a taxpayer, with bonuses for qualified investments made in targeted locations, pursuant to P.L. 2019, c. 145; and increases in total amount of tax credits available annually, and an expansion to the definition of a qualified investment pursuant to P.L.2020, c.156 and to authorize staff to (a) submit the proposed rule amendments for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and
2. Delegation to Authority staff (Managing Director of Operations and Program Manager – Operations) to approve individual applications to the Angel Investor Tax Credit Program in accordance with the terms set forth in the program rules. Specifically, delegation is requested for the Managing Director of Operations to approve individual applications involving tax credit amounts of up to \$500,000, and delegation is requested for the Program Manager – Operations to approve individual applications involving tax credit amounts of up to \$100,000.

**Program Purpose / Background:**

P.L. 2013 c.14, enacted January 31, 2013, established the New Jersey Angel Investor Tax Credit Program. The Program incentivizes angel investment into emerging New Jersey technology businesses by authorizing the Authority to provide tax credits (which can be applied against corporate business tax or New Jersey gross income tax) to investors based on percentage of a qualified investment made in an New Jersey business conducting research or engaged in pilot-scale manufacturing or technology commercialization in one of the following industries: advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology. In addition to being engaged in one of these eligible industries, the business receiving the investment must employ fewer than 225 employees, at least 75% of whom work in New Jersey, for the investor to be eligible for the tax credit. Since inception of the Angel Investor Tax Credit Program, the Authority has approved more than 1,600 applications from investors representing more than \$615 million in total qualified investment into emerging New Jersey technology companies.

P.L. 2019, c. 145, enacted June 30, 2019, expanded the program to provide for an increase to the available tax credits on qualified investments, as well as bonuses for businesses located in targeted locations, or certified minority or women-owned businesses.

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act (ERA) of 2020 (P.L.2020, c.156) into law. The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes 15+ economic development programs, including:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

The Angel Investor Tax Credit program is one of the 15+ programs created or updated under the ERA.

This memorandum provides a summary of the proposed rule amendments to the program pursuant to both P.L. 2019, c. 145, and P.L.2020, c.156. This includes increases to the amount of tax credits available annually under the Program, increases to the amount of tax credits available per qualified investment in an emerging New Jersey technology business, bonus credits available for qualified investments made in emerging New Jersey technology businesses in targeted locations or in certified minority or women-owned businesses, and an expansion of the definition of a qualified investment to include investments made in qualified venture funds.

### **Available Tax Credits and Tax Credit Award Calculation**

Pursuant to P.L.2020, c.156 (ERA), the attached rule amendments (N.J.A.C. 19:31-19.1 through 19.8) increase the amount of tax credits available annually under the program from \$25 million to \$35 million.

As stated above, under the program as originally enacted in 2013, tax credit amounts were equal to ten percent of a qualified investment made in an eligible business. Pursuant to P.L. 2019, c. 145, the attached rule amendments revise N.J.A.C. 19:31-19.6(a) to increase the amount of the allowed tax credit from ten percent to twenty percent of the qualified investment made in an emerging New Jersey technology business. Furthermore, an additional five percent bonus tax credit is available for qualified investments made in an emerging New Jersey technology business located in a qualified Opportunity Zone or New Markets Tax Credit Census Tract, or an emerging New Jersey technology business that is also a New Jersey certified minority or women-owned business. Therefore, the maximum allowable tax credit now available under the program, following these proposed rule amendments, is twenty-five percent of a qualified investment.

Collectively, these legislative enhancements and amendments to the rules will expand the size of the program – making a greater amount of tax credits available annually as well as allowing a greater percentage of qualified investment to be eligible for a tax credit, particularly for investments made in economically distressed areas, or for investments made into minority and woman-owned businesses, building a stronger and more equitable New Jersey innovation economy.

The maximum allowed tax credit amount remains \$500,000 for the tax credit vintage year for each qualified investment made by the investor.

### **Expansion to Definition of Qualified Investment**

Pursuant to P.L.2020, c.156 (ERA), the attached rule proposal provides new rules through N.J.A.C. 19:31-19.6(b) allowing for a tax credit of twenty percent of a qualified investment made in a qualified venture fund. An additional five percent bonus tax credit is available for qualified investments made in qualified venture funds which invest 50 percent of its funds in New Jersey diverse entrepreneurs. A qualified venture fund may not apply for the Angel Tax Credit Program as an investor, if one of its investors has already received a tax credit for investing in that qualified venture fund.

For an investment into a venture fund to be eligible as a qualified investment, the investor must enter into an agreement establishing an irrevocable contractual commitment with the qualified venture fund. This agreement must be in writing and fully executed by both the investor and qualified venture fund. An investor must submit a completed application to the Authority within six months of executing an irrevocable contractual commitment to the qualified venture fund to be considered for a tax credit. This is consistent with the existing eligibility criteria for qualified investments in a New Jersey emerging technology business company or a New Jersey emerging technology business holding company which require an investor submit a completed application within six months of the qualified investment date.

The tax credit amount for the qualified investment will be determined according to the total amount specified in the of the irrevocable contractual commitment at execution of the agreement by both the investor and qualified venture fund.

This legislative enhancement and proposed new rule will expand the forms of investment for which a tax credit is allowable under the program, catalyzing New Jersey's innovation economy by growing the size and availability of funding through venture capital firms. Furthermore, these firms will be incented to invest a significant portion of funding in emerging technology businesses owned by diverse entrepreneurs, helping to build a stronger and more equitable New Jersey innovation economy.

### **New or Modified Definitions**

The attached rule proposal makes the following modifications or additions to existing definitions:

- An addition to the existing "Qualified investment" definition of: "Qualified investment" also means the irrevocable contractual commitment to a qualified venture fund.

The attached rule proposal establishes the following new definitions:

- "Qualified venture fund" means a venture fund required by a commitment agreement with the Authority to invest a minimum of 50 percent of the venture fund's committed funds in New Jersey based businesses that the Authority, in its sole discretion, based upon the qualified venture fund's investment history, if any, its private placement memorandum and other relevant information, has determined has the capacity to make the minimum investment.
- "Commitment agreement" means the contract between the qualified venture fund, the investor, and the Authority pursuant to N.J.A.C. 19:31-19.7(d)2.
- "New Jersey based business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State.

- “Venture fund” means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in, which the investment is made. Venture firm may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture firm.
- “Diverse entrepreneur” means a New Jersey based business that meets the criteria for a minority business or female business set forth in section 3 of P.L. 1983, c. 482 (N.J.S.A. 52:32-19), as evidenced by a certification by the State as a minority business or a women’s business pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.).

### **Delegated Authority**

In addition to the rule proposal presented for the Members’ consideration, the Members are also requested to approve changes to delegated authority to support the timely and efficient processing of program applications under the Angel Investor Tax Credit Program.

The proposed delegated authority would permit the Managing Director of Operations to approve applications with a tax credit amount not to exceed \$500,000.

The proposed delegated authority would also permit the Program Manager – Operations to approve applications with a tax credit amount not to exceed \$100,000.

All taxpayers approved for tax credit awards under the Angel Investor Tax Credit Program are subject to an annual cap of no greater than \$500,000 in tax credits per year. This pertains to qualified investments made in either emerging New Jersey technology businesses, or qualified venture funds.

All approvals would be made in accordance with the terms set forth in the program rules. Updates on any approvals made under Delegated Authority will continue to be made to the Board on a quarterly basis.

### **Compliance with Executive Order 63**

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority posted the rule proposal to its Economic Recovery Act transparency website ([www.njeda.com/economicrecoveryact](http://www.njeda.com/economicrecoveryact)) where the public were able to submit written feedback directly through the NJEDA’s website or through a newly established email account.

In addition, the Authority issued a news release advising the public that the Angel Tax Credit Program rule proposal was available for review and of the opportunity to provide informal input. Furthermore, several known stakeholder groups were contacted directly by the Authority and notified that the rule proposal was available for feedback via the Authority’s website.

**Chief Compliance Officer Certification of Draft Rule Proposal**

Pursuant to Section 101(a) of the ERA, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, “review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse”.

Bruce Ciallella has been designated the CCO. In that capacity, Mr. Ciallella has reviewed the proposed rules and regulations for the Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

**Program Evaluation Plan**

While staff already actively tracks application and approval data relative to the Angel Investor Tax Credit Program, staff plans to establish a framework of key performance indicators (KPIs) to quantifiably measure over time how well the Angel Investor Tax Credit Program will meet the NJEDA’s operational and strategic goals.

Along with the goals and outcome of the program, the Authority will also request demographic information related to the New Jersey emerging technology company receiving the investment under the Angel Investor Tax Credit Program application, including demographic information with respect to the company’s ownership, which will not impact program eligibility, but will be used for the Authority’s tracking and reporting purposes.

This is part of the Authority’s ongoing efforts to measure to what extent its programs and services are serving New Jersey’s diverse residents, communities, and businesses. Other metrics are anticipated to focus on the Angel Tax Credit Program’s outreach efforts and volume of applicants, process and operational effectiveness, and economic development outcomes. The KPIs will provide valuable insight for staff and the Board to assess the effectiveness of the program. These KPIs are still under development.

**Recommendation**

The members are requested to approve: (1) The attached proposed amendments to the rules implementing the Angel Investor Tax Credit Program based on statutory provisions pursuant to P.L. 2019, c. 145 and P.L.2020, c.156 and to authorize staff to (a) submit the proposed rule amendments for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and (2) Delegation to Authority staff (Managing Director of Operations and Program Manager – Operations) to approve individual applications to the Angel

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Tim Sullivan, CEO

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Attachments: Appendix A – Proposed New Rules – Angel Investor Tax Credit