

**STATE OF COLORADO  
PERMANENT REGULATIONS FOR THE  
CERTIFIED CAPITAL COMPANIES' PROGRAM  
OCTOBER 30, 2006**

**STATEMENT OF BASIS AND STATUTORY AUTHORITY**

These rules implement the Certified Capital Companies' Program pursuant to 10-3.5-101 through 10-3.5-110, 24-48.5-106 and 10-1-103, C.R.S. This program was created by the Colorado State Legislature with the primary purpose being to provide assistance in the formation of new businesses and the expansion of existing businesses that create jobs in the state by providing an incentive for insurance companies to invest in Certified Capital Companies. The Certified Capital Companies will then invest the funds in Colorado Businesses.

Insurance companies will invest cash in Certified Capital Companies, which are for-profit companies, which have received certification from the Colorado Office of Economic Development to do business under this program. The Certified Capital Companies will then invest in certain types of Colorado Businesses utilizing the cash they received from the insurance companies to make these investments. Although the Colorado Statute and this regulation direct the Certified Capital Companies' investment to certain types of Colorado Businesses, the Certified Capital Companies will retain a large amount of flexibility in the decision making process in terms of which businesses receive investment funding from this program. Once a business is determined to be generally eligible under the Statute and this regulation, the Certified Capital Companies have final decision making authority as to whether to invest in such business. A Certified Capital Company may not make any investments in Colorado Businesses, using funds from this program, until it has received its certification from the Colorado Office of Economic Development and until investing insurance companies have received vested Premium Tax Credit Allocations in exchange for their cash investment in the Certified Capital Company.

In exchange for the insurance companies' cash investment in Certified Capital Companies, this program authorizes the Allocation of Premium Tax Credits to insurance companies as an incentive for insurance companies to invest in Certified Capital Companies. The legislature authorized a Premium Tax Credit Allocation Pool of \$100 million for this program. Additionally, the Statute further divided the Pool into a \$25 million Rural Pool and a \$75 million Statewide Pool. The \$25 million Rural Pool shall be available for investment in Designated Rural Counties in Colorado. The \$75 million Statewide Pool shall be available for investment statewide throughout Colorado. The Colorado Office of Economic Development has fully allocated all of the premium tax credits for the Program as of April 15, 2002.

## PURPOSE OF REGULATION

This regulation implements the Certified Capital Companies' Program pursuant to 10-3.5-101 through 10-3.5-110, 24-48.5-106 and 10-1-103, C.R.S. in which the Statute requires that the Colorado Office of Economic Development promulgate such regulation. This regulation clarifies certain definitions and provides for new definitions as needed. It describes the requirements for maintaining its status as a Certified Capital Company and the process for decertification for failure to comply with certain legislative requirements. It provides a fine schedule for certain non-compliance issues. This regulation provides requirements for the insurance company's cash investment in a Certified Capital Company. It provides for technical corrections and amendments to statutes. It describes the Premium Tax Credit Allocation Process, the methods for claiming Premium Tax Credits, and the process for transferring or selling Premium Tax Credits. It details the Distributions Review, which describes a method for calculating the internal rate of return or the 15% calculations pursuant to 103-3.5-108, C.R.S., to be conducted by the Colorado Office of Economic Development and the required reports Certified Capital Companies must file with the Colorado Office of Economic Development.

By promulgating this regulation, the Colorado Office of Economic Development will increase public access to information, public participation in the formulation of administrative policy and procedures, and increase public accountability of the Colorado Office of Economic Development.

## DEFINITIONS 10-3.5-103, C.R.S.

The following language provides definitions for terms provided under 10-3.5-101 through 10-3.5-110, 24-48.5-106 and 10-1-103, C.R.S. that were utilized in the Statute for this program and provides new definitions, both of which are necessary for the implementation of the CAPCOs' Program by the Colorado Office of Economic Development. The following words and terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

**“Applicant”** means one who applies to be a Certified Capital Company. Applicant can also mean proposed Certified Capital Company. If the Office approves Applicant's request, then the Applicant's status shall change to a Certified Capital Company.

**"Business Day"** is defined the same as a working day.

**“CAPCO”** is a Colorado Certified Capital Company certified pursuant to the Certified Capital Companies' Program, 10-3.5-101 through 10-3.5-110, 24-48.5-106 and 10-1-103, C.R.S, and specifically pursuant to the definition provided at 10-3.5-103(4), C.R.S.

**“Capitalization”** shall be relevant for the purposes of initial certification pursuant to 10-3.5-104(2)(c), C.R.S. A CAPCO shall utilize Generally Accepted Accounting Principles (“GAAP”) in recording Equity Capitalization of the CAPCO. At the time of certification, a CAPCO shall have Equity Capitalization of non-Certified Equity Capital in the amount of \$500,000. CAPCOs shall maintain separate and independent records for their non-Certified Equity Capitalization as well as separate and independent records for each Specific Pool of Certified Capital (for example, the Rural Pool and the Statewide Pool as applicable to each CAPCO). Equity Capitalization used in CAPCO Distribution language of this article shall be considered Equity Capitalization from any source at any time.

**“Colorado Business(es)”** are eligible for funding from this program if they meet the eligibility requirements stated under the definition of “Qualified Business” and/or “Qualified Rural Business” under this program’s Statute and this regulation.

**“Colorado Economic Development Commission”** (“EDC”) was legislatively created in 1987, pursuant to 24-46-102, C.R.S. as amended, to encourage, promote and stimulate economic development in Colorado.

**“Day”** means a calendar day as in seven days in a week.

**“Designated Rural County”** means any county, but not any city and county, in this state that, as of the effective date of this article, has a population of not more than one hundred fifty thousand people and, if the county’s population exceeds twenty thousand people, that has a growth rate that does not exceed the statewide average for the period 1990-2000 by more than twenty-five percent as defined in the two most recent decennial censuses.

- (1) Population Estimates for Counties. A Designated Rural County may not have a population of more than 150,000 people as of the effective date of 10-3.5-101 through 10-3.5-110, 24-48.5-106 and 10-1-103, C.R.S., which was June 9, 2001. As of June 9, 2001, the official county population estimates used by the Colorado State Demographer’s Office within the Department of Local Affairs reflect population counts of the 2000 Census. Counties, in Colorado that had in excess of one hundred fifty thousand people on the above date and therefore are **NOT** “Designated Rural Counties” for the purpose of this program, are as follows with their respective populations: Adams (363,857), Arapahoe (487,967), Boulder (291,288), Denver (554,636), Douglas (175,766), El Paso (516,929), Jefferson (527,056), Larimer (251,494), and Weld (180,936).
- (2) County Population Growth. If the county’s population exceeds twenty thousand people, and its population growth rate for the period 1990-2000 exceeds the statewide average by more than twenty-five percent as defined in the most recent decennial censuses, that county will not be considered a “Designated Rural County.” The State of Colorado had a

1990 census population of 3,294,394 and a 2000 census population of 4,301,261, an increase of thirty and six-tenths percent (30.6%). A population growth rate over twenty-five percent (25%) above the statewide growth rate would equal thirty-eight and sixty-five one hundredths percent (38.65%). The following five counties meet these criteria and therefore are **NOT** “Designated Rural Counties” for the purpose of this program:

<b>County</b>	<b>1990 Population</b>	<b>2000 Population</b>	<b>Growth Rate</b>
Eagle	21,928	41,659	90.0%
Fremont	32,273	46,145	43.0%
Garfield	29,974	43,791	46.1%
Summit	12,881	23,548	82.8%
Teller	12,468	20,555	64.9%

- (3) City and County. No city and county may be a Designated Rural County. The following counties are cities and counties and therefore are **NOT** “Designated Rural Counties”: Broomfield and Denver.
- (4) Designated Rural Counties. All other counties in Colorado are considered to be a “Designated Rural County” for the purposes of this program until the 2010 decennial census is issued. At that time, all “Designated Rural Counties” shall be reviewed by the Office and an amendment to the rule shall be published if the “Designated Rural Counties” change based on the Office’s review at that time.

**“Director”** means the Director of the Colorado Office of Economic Development.

**“Distressed Urban Community”** means any county or portion of a county in this state as defined by the Office.

- (1) For the purpose of this program, a “Distressed Urban Community” shall be any area within the list of counties that is **NOT** a Designated Rural County in Paragraphs (1), (2) and (3) of the Designated Rural Counties’ definition and that has been designated as an Enterprise Zone by the Colorado Economic Development Commission pursuant to 39-30-103, C.R.S. An Enterprise Zone is an area, which has been nominated by one or more counties, municipalities, and/or cities and counties as economically distressed, and which has been designated as such by the Colorado Economic Development Commission. The specific boundaries of those zones are on record with the local Enterprise Zones Administrators within the designated Enterprise Zones in the State of Colorado.

- (2) In the event that a “Distressed Urban Community” ceases to be an Enterprise Zone area as a result of a formal action by the Colorado Economic Development Commission to terminate the area's Enterprise Zone status pursuant to 39-30-103, C.R.S. an investment by a Certified Capital Company shall be considered an investment in a Qualified Business that has its Principal Business Operations located in a Distressed Urban Community if the location was in an Enterprise Zone at the time of the first investment by the Certified Capital Company in said business.
- (3) In the event the Enterprise Zone Program is no longer in effect for the State of Colorado, the Office will determine appropriate criteria for consideration as a “Distressed Urban Community” for the purposes of this program and an amendment to the rule shall be published at that time.

“**Distributions**” has the meaning as outlined in the Statute and this regulation, except for the purposes of the internal rate of return calculations or the 15% calculations pursuant to 10-3.5-108, C.R.S. where “Distributions” shall have the meaning specifically defined within this regulation where internal rate of return calculations or the 15% calculations are described.

“**Distributions Review**” means the internal rate of return calculation or the 15% calculations, which the Office shall complete pursuant to 10-3.5-108, C.R.S. and which review shall be completed on an ongoing basis and as part of the Annual Review, if needed, pursuant to 103-3.5-109, C.R.S.

“**Full-time Equivalent**” means an individual who generally works 2080 hours per calendar year.

“**Generally Accepted Accounting Principles**” (“GAAP”) means conventions, rules, and procedures that define accepted accounting practice, including broad guidelines as well as detailed procedures. The basic doctrine was set forth by the Accounting Principles Board of the American Institute of Certified Public Accountants, which was superseded in 1973 by the Financial Accounting Standards Board (“FASB”), an independent self-regulatory organization. GAAP shall be utilized by CAPCO’s in all instances unless an alternative treatment is specified in a specific situation and fully explained in writing by the Independent Certified Public Accountant.

“**Headquarters or Headquartered for a CAPCO**” means the chief place of business from which policies are made and orders are issued.

Each CAPCO and its managing/operating company (if applicable), receiving such certification from the Office, shall maintain a separate physical site location, contact information and contact persons from any other Certified Capital Company and its respective managing/operating

company (if applicable). A CAPCO and its managing/operating company may occupy the same physical site location.

**“Headquarters or Headquartered for a Qualified Business or a Qualified Rural Business”** means the chief place of business from which policies are made and orders are issued.

**“Immediate Family Member”** means spouse, child by birth or adoption, stepchild, stepparent, parent, sibling, legal guardian, significant other or lawful representative.

**“Indebtedness”** has the meaning as outlined in the Statute and this regulation, except for the purposes of the internal rate of return calculations or the 15% calculations pursuant to 10-3.5-108, C.R.S. where “Indebtedness” shall have the meaning specifically defined within this regulation where internal rate of return calculations or the 15% calculations are described. Qualified Debt instruments (including payment of principal and interest) shall be included in the definition of Indebtedness and shall be included in the IRR calculation but not in the 15% calculations as specifically stated in the Statute.

Repayments of debt from an unrelated, unaffiliated entity/third party in an arms-length transaction at market rates (“Indebtedness exception”) shall not be defined as Indebtedness or included as a Distribution for the purpose of the IRR calculation or the 15% calculations. Such payments shall be considered solely as an outflow of cash.

On a case-by-case basis, the Office will consider extending the “Indebtedness exception” to repayments of debt to equity holders (except for Qualified Debt instruments) and related/affiliated entities, will consider not defining the principal amount loaned as Indebtedness and will consider not including the principal amount loaned as a Distribution for the purpose of the IRR calculation or the 15% calculation. However as approved on a case-by-case basis, interest and other forms of return (above and beyond the principal amount loaned) will not be defined as Indebtedness but shall be defined as a Distribution and shall be included in the IRR calculation or the 15% calculation for these type of transactions. A CAPCO shall not convert equity to debt *and* use the exceptions provided in this paragraph—meaning that any such conversions shall be treated as equity for the purposes of the IRR or the 15% calculations.

**“Indirectly”** means deviating from a direct line or relationship, not going straight to the point, not directly aimed at or achieved, as well as any other indirect means or acts. Indirectly may involve one or more intermediaries.

**“Investment of Cash”** means a transaction, which in substance and in form, results in a CAPCO disbursement of cash. Examples of transactions excluded from this definition are circular transactions as determined by the Office; accruals of principal, interest, royalty or other income;

letters of credit; loan guarantees; and loan collection expenses or legal fees incurred by a CAPCO in protecting its collateral interest in an investment.

Investment of Cash further means the commitment of cash in a business in order to earn a financial return. Investing in a business is different and distinct from traditional lending to a business. Investing in a business involves a higher level of risk in exchange for a return exceeding that, which is typical in the banking or lending industry.

An Investment of Cash by a CAPCO shall have a minimum term of 1 year unless determined otherwise by the Office. This provision is not intended to preclude: 1) a business from repaying the investment, at its sole discretion, on an earlier date or 2) a CAPCO from exercising any of its rights as a creditor.

In regards to revolving lines of credit, the highest outstanding balance that has been borrowed by the Qualified Business on any one date within the term of the revolver will be the amount of Qualified Investment dollars that are credited towards the requirements within this program.

**“Material”** means having significant importance as determined by the Office.

**“Premium Tax Credit Allocation Pool”** means the Premium Tax Credit Allocation Pool of \$100 million, which has been authorized by the State of Colorado’s Legislature. The Premium Tax Credit Allocation Pool of \$100 million dollars shall be referred to as the Pool. Additionally, the Pool has been further divided into a \$25 million Rural Pool and a \$75 million Statewide Pool and shall be known generally as Specific Pools. The \$25 million Rural Pool, shall be available for investment in Designated Rural Counties in Colorado. The \$75 million Statewide Pool, shall be available for investment statewide throughout Colorado. The Colorado Office of Economic Development has fully allocated all of the premium tax credits for the Program as of April 15, 2002.

**“Principal Office”** means the office designated by an entity or person as its principal office in the document most recently delivered by the principal office to the secretary of state for filing and filed by the secretary of state providing such information, including any statement of change of principal office. If the secretary of state does not maintain such information, then the entity or person shall provide such designating information in a format required by the Office.

Each CAPCO and its managing/operating company (if applicable), receiving such certification from the Office, shall maintain a separate physical site location, contact information and contact persons from any other Certified Capital Company and its respective managing/operating company (if applicable). A CAPCO and its managing/operating company may occupy the same physical site location.

**“Principal Business Operations”** means more than 50% of the business’ total assets are physically present in Colorado and more than 50% percent of the business’ net income is allocable or apportionable to Colorado in accordance with Colorado income tax law regardless of whether such business is taxable or tax-exempt for Colorado income tax purposes. In addition, more than 75% of the business’ existing total salaries, wages and/or other compensation are paid to Colorado employees (calculated on a full-time equivalent basis).

In regard to a Designated Rural County or a Distressed Urban Community, the Principal Business Operations means more than 50% of the business’ total assets are physically present in a Colorado Designated Rural County or Distressed Urban Community, as applicable, and more than 50% percent of the business’ net income is allocable or apportionable to Colorado in accordance with Colorado income tax law regardless of whether such business is taxable or tax-exempt for Colorado income tax purposes. In addition, more than 75% of the business’ existing total salaries, wages and/or other compensation are paid to Colorado employees (calculated on a full-time equivalent basis).

**“Statute”** means 10-3.5-101 through 10-3.5-110, 24-48.5-106 and 10-1-103, C.R.S.

**“Utilized”** shall have the meaning as outlined in the Statute and this regulation, except for the purposes of the internal rate of return calculations pursuant to 10-3.5-108, C.R.S. where “Utilized” shall have the meaning specifically defined within this regulation where internal rate of return calculations are described. The definition of “Utilized” for the internal rate of return calculations shall be the allocated amount of Premium Tax Credits available for use in any given year [10% of the Premium Tax Credits allocated to the Certified Investor(s)]. However, the Office shall use the actual amount (as previously applied on Colorado premium tax returns) of Premium Tax Credits Utilized by a Certified Investor if a CAPCO provides the Office with verifiable documentation (prior to each proposed Distribution review and the Annual Review) demonstrating the amount of Premium Tax Credits Utilized by a Certified Investor. The amount Utilized shall not be adjusted subsequent to a completed proposed Distribution review or Annual Review.

**“Working Days”** means a business day in which the Colorado Office of Economic Development is open for normal business. A business day shall begin at 8:30AM Mountain Standard Time or Mountain Daylight Time, as applicable, and shall end at 5:00PM Mountain Standard Time or Mountain Daylight Time, as applicable.



**CERTIFIED CAPITAL COMPANY APPLICATION**  
**10-3.5-104, C.R.S.**

**Filing of Certified Capital Company Application**

1. An Applicant, seeking certification as a Certified Capital Company, shall file an original paper copy of the application with the Office. No other form (such as e-mail or facsimile) of the application shall be accepted. Pertaining to the Rural Pool and/or the Statewide Pool, all Applicants shall fully complete, execute, and file an application with the Office no earlier than 8:30AM Mountain Standard Time or Mountain Daylight Time, as applicable, on October 31, 2001. Once all Premium Tax Credit Allocations for the Pool have been completed by the Office, additional applications shall not be considered by the Office for the Pool. Applications submitted prior to the stated time and date (whether by hand delivery or otherwise) shall be considered to be received as of the stated time and date.
2. The application format may be obtained directly from the Office in paper copy format, by e-mail with an attached Word file or by accessing the Office's website at [www.state.co.us/oed](http://www.state.co.us/oed).
3. An application shall be deemed filed with the Office when the Office receives one original application, including originally executed pages where signatures are required, and the application fee. Applications shall either be hand delivered with signature of receipt required, or delivered by a courier service or certified mail with signature of receipt required. The application must be delivered to the Office of Economic Development located at 1625 Broadway, Suite 1700, Denver, CO 80202.
4. Once an application has been submitted to the Office, the Office shall not recognize such application and shall not certify an Applicant as a Certified Capital Company if there has been an exchange of money or other consideration for purposes of gaining an advantage in regard to the Office's review of Applicant's application and approval of an application for certification.
5. Whenever any material information that the Applicant supplied in its application has become inaccurate or obsolete, the Applicant shall file an amended application in a format prescribed by the Office, including originally executed signatory pages. Amended applications must be submitted within 5 business days, of the information becoming inaccurate or obsolete during the application process. Amended applications shall be filed in the same manner and using the same methods as described in this section, "**Filing of Certified Capital Company Application**"; however, no fee shall be required. The Applicant/CAPCO shall ask the Office to review the amended application and provide approval in the same manner that the Office reviews and approves initial applications; however, the 30-day time frame for approval shall begin upon the submittal of the amended application.

6. The Applicant shall, as soon as possible or within 5 business days, notify the Office in writing when: the Applicant is unable to continue as a viable going concern, the Applicant is subject to litigation which may affect its viability as a going concern, and/or if a merger or acquisition of the Applicant or by the Applicant has occurred. In the case of a merger or acquisition, the Office shall request additional information as needed to determine if the requirements of the CAPCO Statute and this regulation continue to be met. Such notification shall be filed in the same manner and using the same methods as described in this section **‘Filing of Certified Capital Company Application’**. The 30-day time frame for approval shall begin upon the submittal of the amended application.
7. The Office shall stamp applications for certification, Notices of Intent to Request Premium Tax Credit Allocation from the Pool and amended applications with the date and time of receipt.
8. The Office reserves the right to determine what information is deemed material with regards to an Applicant fully completing, executing and filing an application, an amended application, or a Notice of Intent to Request Continuing Certified Capital Company Status with the Office.

### **Requirements of an Application**

The application shall contain:

1. A nonrefundable application fee in the amount of \$7,500 in the form of a cashier’s check, certified check, or company check made payable to the State of Colorado.
2. Statements may be combined into one statement when several certifications are required by the same Person.
3. A statement, signed by a legally authorized representative of the Applicant, that states whether the application is applicable to tax credits associated with the Rural Pool and/or the Statewide Pool during the Pool application process.
4. Signature authorization documentation for the legally authorized representative of the Applicant, which is appropriate for the Applicant’s legal structure. *For example, a fully executed board resolution (authorizing the President of the company to sign such documents and stating who the President is) would be acceptable signature authorization documentation if the Applicant’s legal entity is a Corporation.*
5. Applicant’s complete legal organizational documents which reflect evidence of appropriate filing with appropriate state agencies, if filing is required, along with a signed self certification of good standing in said state dated no earlier than 60 business days prior to submittal. *For example, a complete copy of a corporation’s articles of incorporation and by-laws (which have been filed with the Colorado Secretary of State and reflect a file date/number) and a signed self-certification of good standing in Colorado, would be appropriate legal organizational documents for a corporation.*
6. Any “assumed or doing business as” names that the Applicant conducts business under

- and any required “assumed or doing business as” filings with a state agency, if applicable.
7. If the CAPCO is to be managed by a management or operating company, signature authorizations, the legal organizational documentation, any “assumed or doing business as” name filings, if applicable, appropriate contact people, phone numbers and street address for the management or operating company shall be submitted. Refer to items required under numbers 4., 5., and 6. of this section, “**Requirements of an Application**”, for further guidance on the type of documents.
  8. If the CAPCO is to be managed by a management or operating company, the Applicant shall submit an executed contract between the Applicant and the management or operating company, which describes what actions, the management or operating company may take on behalf of the Applicant. Such contract shall be signed by a legally authorized representative of the Applicant and of the management or operating company. For example, the contract agreement may authorize the management or operating company to submit requests to the Office for a written opinion on the eligibility of a business as a Qualified Business or a Qualified Rural Business on behalf of the Applicant.
  9. A list, including the name and address, of all members of the Applicant’s Board of Directors (voting or otherwise), officers, partners, trustees, managers, members, and principals. Such list shall describe the level of control over the Applicant and prospective CAPCO.
  10. The address, phone number and individual contacts for the Applicant’s Principal Office or Headquarters location in Colorado.
  11. A list, including the name and address, of all the Applicant’s existing office locations.
  12. A list, including the name, Insurance Premium Tax Identification Number issued by the National Association of Insurance Commissioners, address and description, of all Affiliates of the Applicant and a description of the Affiliate’s relationship with the Applicant.
  13. A statement, signed by a legally authorized representative of the Applicant that states the primary business activity of the CAPCO is the Investment of Cash in Qualified Businesses and/or Qualified Rural Businesses.
  14. An audited Balance Sheet, in the legal name of the Applicant, which verifies that the legal Applicant has an Equity Capitalization of \$500,000 or more in the form of unencumbered cash, marketable securities, or other liquid assets. The audited Balance Sheet shall be accompanied by an originally executed, unqualified opinion from an Independent Certified Public Accountant, which states that the legal Applicant meets the Equity Capitalization requirement stated herein. The unqualified opinion shall be dated no earlier than 35 days before the application is submitted to the Office. The unqualified opinion shall be on the Independent Certified Public Accountant’s letterhead and shall include a complete street address and phone number. The Independent Certified Public Accountant shall be a member in good standing with the American Institute of Certified

Public Accountants and, if requested by the Office, such good standing will be documented by a letter, dated no earlier than 60 business days before the submittal to the Office, from the President/Executive Director of the AICPA. If requested by the Office, a copy of the Independent Certified Public Accountant's license in the U.S. state where he or she practices shall be submitted along with a statement from the issuer of the license that the Independent Certified Public Accountant is in good standing in the state where he or she practices dated no earlier than 60 business days of the submittal to the Office. Such statement from the issuer of the license shall contain a street address and phone number.

15. During the Pool application process, a statement, signed by a legally authorized representative of the Applicant, that states the Applicant has a least two principals or at least two individuals (hereafter identified as key employees) employed to manage the funds who have at least two years of money management experience in the venture capital industry if the Applicant is applying to be a Certified Capital Company for only the Statewide Pool or for both the Statewide Pool and the Rural Pool. Such statement shall also be signed by the two principals or the two key employees.

During the Pool application process, a statement, signed by a legally authorized representative of the Applicant, that states the Applicant has at least two principals or at least two individuals (hereafter identified as key employees) employed to manage the funds who each have at least two years of experience in either the venture capital or investment banking industry if the Applicant is applying to be a Certified Capital Company for only the Rural Pool. Such statement shall also be signed by the two principals or the two key employees.

16. The Statute requires that "The Office shall verify whether the Applicant meets the requirements of 10-3.5-104(2)(d), C.R.S.," pertaining to the experience of the Applicant's principals or key employees. In order to accomplish this requirement, the following items shall accompany the statement, described in 15:

- A. a detailed description of how each of the principals or each of the key employees specified in 10-3.5-104(2)(d), C.R.S., qualify as having at least two years of money management experience in the venture capital industry if the Applicant is requesting certification for only the Statewide Pool *or* both the Statewide Pool and the Rural Pool. Such description and supporting documents shall include, but not be limited to, a detailed resume with a listing of references including reference telephone numbers. The Office may, at its request, require additional information from the Applicant including, but not limited to, a description of the success of the principal/key employee in performing his/her function, the attainment of investment return goals, the number of businesses funded, the annual dollar amount of money for which he/she had primary responsibility, and the submission of historical financial statements and/or annual reports.

- B. a detailed description of how each of the principals or each of the key employees qualify as having at least two years of venture capital or investment banking industry experience if the Applicant is requesting certification for only the Rural Pool. Such description and supporting documents shall include, but not be limited to, a detailed resume with a listing of references including reference telephone numbers. The Office may, at its request, require additional information from the Applicant including, but not limited to, a description of the success of the principal/key employee in performing his/her function, the attainment of investment return goals, the number of businesses funded, the annual dollar amount of money for which he/she had primary responsibility, and the submission of historical financial statements and/or annual reports.
- C. a listing of all applicable licenses that each principal or key employee holds (or has held within the last ten years). Such listing shall indicate whether the license is active and in good standing, the date on which it will expire or did expire, whether any license has been revoked, the date of revocation and an explanation surrounding such revocation, whether any disciplinary action has ever been imposed upon the Applicant, the principals, and/or the key employees with regards to such license, the date of such disciplinary action and a description surrounding such disciplinary action, whether any investigation has ever been carried out on the Applicant, the principals, and/or the key employees with regards to such license, and the date of investigation and a description surrounding such investigation. Such listing shall be signed by each applicant, principal and/or key employee and attested as to its truth and validity;
- D. the Applicant's overall investment strategy and the Applicant's three (3) year business plan, including an organizational chart, that has been prepared by the two principals or two key employees, as applicable, and which demonstrates the principals' or key employee's ability to invest cash in qualified businesses or qualified rural businesses pursuant to 10-3.5-104 (3) C.R.S.; and
- E. an authorization stating that the Applicant, the principals and/or the key employees authorize the Office to conduct a background and credit investigation for the purpose of verifying whether the Applicant, the principals and/or the key employees meet the requirements for certification. The Applicant, the principals and/or the key employees may be asked to provide social security numbers and other information pursuant to 10-3.5-104(3), C.R.S. The disclosure of social security numbers is voluntary. Social security numbers will be used only to determine whether the Applicant meets the requirements of the Statute. Social security numbers are confidential.

17. A statement of disclosure from the Applicant's principals, key employees and its management/operating company, if applicable, that will be involved in the direction, management or operation of the Certified Capital Company, stating that the Person has read the Colorado CAPCO Statute and regulations; fully understands the requirements of the Colorado Statute and regulations; is not affiliated with the Colorado Office of Economic Development and/or any of its employees and will not be affiliated with the Colorado Office of Economic Development and/or any of its employees during their affiliation with the Applicant; has never been convicted of and is not currently under indictment or prosecution for securities fraud or any other criminal acts (other than minor vehicle violations); has no overdue federal, state (any state in the United States), or local (any local government in the United States) tax payments or liens, has not been ordered to pay, and/or is not currently involved in legal action with the State of Colorado or any agency thereof for the payment of funds owed to the state, any agency of the State of Colorado, or other parties that the State of Colorado represents. Such statement of disclosure shall be supplied by the Office, shall be completed by each of the Applicant's principals, key employees and its management/operating company, if applicable; and, shall require a full and complete explanation as to the reason and circumstances for any of the requirements described herein not being met.
18. A statement, signed by a legally authorized representative of the Applicant, which states that no insurance company or Affiliate of an insurance company shall, directly or indirectly manage the Applicant's Certified Capital Company or control the direction of investments for the Applicant's Certified Capital Company.
19. A separate listing of all Persons that have voting securities or other voting ownership interests in the legal Applicant along with the Person's respective ownership percentage of such securities or ownership. The sum of all percentages on such list shall total one hundred percent (100%). No insurance company or Affiliate of an insurance company shall, directly, or indirectly, beneficially own, whether through rights, options, convertible interests, or otherwise, fifteen percent (15%) or more of the voting securities or other voting ownership interests of a Certified Capital Company.
20. A statement, signed by a legally authorized representative of the Applicant, stating that the information submitted in the application is complete and accurate.
21. A sample of offering materials used or to be used in investor solicitations. Any offering material involving the sale of securities of the Certified Capital Company shall include the following statement:

"BY AUTHORIZING THE FORMATION OF A CERTIFIED CAPITAL COMPANY, THE STATE DOES NOT NECESSARILY ENDORSE THE QUALITY OF MANAGEMENT OR THE POTENTIAL FOR EARNINGS OF SUCH COMPANY AND IS NOT LIABLE FOR DAMAGES OR LOSSES TO A CERTIFIED INVESTOR IN THE COMPANY. USE OF THE WORD "CERTIFIED" IN AN OFFERING DOES NOT CONSTITUTE A

RECOMMENDATION OR ENDORSEMENT OF THE INVESTMENT BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT. IF ANY APPLICABLE PROVISIONS OF THE "CERTIFIED CAPITAL COMPANY ACT" ARE VIOLATED, THE STATE MAY REQUIRE FORFEITURE OF UNUSED PREMIUM TAX CREDITS AND REPAYMENT OF USED PREMIUM TAX CREDITS."

22. A statement, from a legally authorized representative of the Applicant that states that all information submitted during the application phase will endure and continue to be legally binding if an Applicant is certified by the Office.
23. The Office reserves the right to request additional information after the application and the application fee have been submitted which is reasonable and necessary to complete the evaluation of the application.
24. The Office reserves the right to determine what information is deemed material with regards to an Applicant fully completing, executing and filing an application, an amended application, or a Notice of Intent to Request Continuing Certified Capital Company Status with the Office.

### **Approval of Application and Issuance of Certification**

Within thirty (30) days after receipt of an application (unless amendments to the application have been submitted), the Office shall issue the certification or deny the certification. The Office shall review and approve or reject applications in the order submitted, treating all applications received on the same day as being received simultaneously unless the application is incomplete (refer to "**Incomplete Applications**"). The Office shall consider the requirements stated in the Statute, along with the information requested in this regulation, to determine if an Applicant shall be certified to be a Certified Capital Company. The certification issued by the Office shall indicate whether the certification is applicable to credits allocated pursuant only to the Rural Pool, only the Statewide Pool, or both the Rural Pool and the Statewide Pool during the Pool application process. The certification issued by the Office shall state that the certification is contingent upon all information submitted, except for maintaining Equity Capitalization, during the application phase continuing to be accurate and in force unless written approval for variances have been requested by the Applicant and approved by the Office. The certification issued by the Office shall be effective from the date of issuance and shall continue until such time as the CAPCO has been decertified pursuant to 10-3.5-109 C.R.S., whether such decertification is a result of the CAPCO's Annual Review or otherwise.

### **Incomplete Application**

In the event of an incomplete application or if additional information has been requested by the Office, the application shall be treated as having been received on the date originally submitted

only if the Applicant submits the additional information within fifteen (15) days after the date of the Office's written request. Upon receiving all requested information, the Office shall have ten (10) days from the day that the completed information was submitted to approve or reject the application and certification request. If all application requirements are not met within the time frame stated herein, the application shall be deemed withdrawn and the Office shall have no obligation to provide additional notices to the Applicant.

### **Denial of Application**

If an application is denied, the Office shall communicate in detail to the Applicant the grounds for the denial, including suggestions for the removal of such grounds. A denied Applicant must refile its revised application after taking into account the Office's communication on the grounds for the denial and suggestions for the removal of such grounds. The application will then be treated as a new application in respect to the application process and time frames for reviewing it. Based on the extent of the revisions that need to be made by the Applicant and then reviewed by the Office, the Office shall determine if a new application fee shall be charged. False, inaccurate, or misleading information provided in the application shall be grounds for rejection of the application and denial of further consideration.

## **PREMIUM TAX CREDIT ALLOCATION PROCESS**

### **10-3.5-106, C.R.S.**

#### **Premium Tax Credit Allocation Pools**

The Premium Tax Credit Allocation Pool of \$100 million has been authorized by the CAPCO Statute. Additionally, the Pool is further divided into a \$25 million Rural Pool and a \$75 million Statewide Pool, which may generally be referred to as Specific Pools.

#### **Premium Tax Credit Allocation Claims**

1. The Office of Economic Development shall accept Premium Tax Credit Allocation Claims filed by CAPCOs (on behalf of their investors), pertaining to the Pool, beginning no earlier than 8:30AM Mountain Standard Time or Mountain Daylight Time, as applicable, on April 8, 2002. All of the Rural Pool (\$25,000,000) shall be fully allocated before the Office shall begin allocating the Statewide Pool (\$75,000,000). The CAPCO shall previously have been certified by the Office to be a CAPCO in Colorado in order to be eligible to submit Premium Tax Credit Allocation Claims and such claims shall only



be accepted for the Specific Pools for which the CAPCO has received certification. All Premium Tax Credit Allocation Claim forms submitted prior to the stated time and date (whether by hand delivery or otherwise) shall be considered as received on the stated time and date.

2. The CAPCO shall file original paper copies of the Premium Tax Credit Allocation Claim forms with the Office. No other form (such as e-mail, facsimile, etc.) of the forms shall be accepted.
3. The Premium Tax Credit Allocation Claim forms shall be deemed filed with the Office when the Office receives one original form from each Investor, including originally executed pages where signatures are required and a Master Claims Report from the CAPCO. The Premium Tax Credit Allocation Claim form and the Master Claims Report format shall be obtained directly from the Office. The forms shall either be hand delivered with signature of receipt required, or delivered by a courier service or certified mail with signature of receipt required. The forms must be delivered to the Office of Economic Development located at 1625 Broadway, Suite 1700, Denver, CO 80202.
4. The Office shall stamp Premium Tax Credit Allocation Claim forms with the date and time of receipt.
5. If a CAPCO's certification for the Pool is applicable to the Rural Pool and the Statewide Pool, the CAPCO on an aggregate basis with its Affiliates, shall not file Premium Tax Credit Allocation Claims in excess of \$100,000,000. However, the CAPCO shall not file Premium Tax Credit Allocation Claims in excess of the maximum available under the Rural Pool (\$25,000,000) and the Statewide Pool (\$75,000,000). The CAPCO's Premium Tax Credit Allocation Claim form shall specify that the Premium Tax Credit Allocation Claim is for an allocation of premium tax credits from the Rural Pool only, the Statewide Pool only, or both the Rural Pool and the Statewide Pool and shall state the amount requested from each of the Specific Pool(s). The CAPCO shall previously have been certified by the Office to be a CAPCO in Colorado in order to be eligible to submit Premium Tax Credit Allocation Claims and such claims shall only be accepted for the Specific Pools for which the CAPCO has received certification.

With respect to claims being filed for both the Rural Pool and the Statewide Pool, the maximum amount of Premium Tax Allocation Claims that any one Certified Investor and Affiliates may file, in the aggregate, in one or more Certified Capital Companies shall not exceed Fifteen Million dollars (\$15,000,000).

If a Certified Capital Company, on an aggregate basis with its Affiliates, files Premium Tax Credit Allocation Claims in excess of the limits described herein, the Office shall consider the Premium Tax Credit Allocation Claim as not filed and shall mail it back to the CAPCO by regular mail.

6. If a CAPCO's certification for the Pool is applicable only to the Statewide Pool, the CAPCO on an aggregate basis with its Affiliates, shall not file Premium Tax Credit Allocation Claims in excess of Seventy-Five Million Dollars (\$75,000,000). The CAPCO's Premium Tax Credit Allocation Claim form shall specify that the Premium Tax Credit Allocation Claim is for an allocation of premium tax credits from only the Statewide Pool and shall specify the dollar amount being requested. The CAPCO shall previously have been certified by the Office to be a CAPCO in Colorado in order to be eligible to submit Premium Tax Credit Allocation Claims and such claims shall only be accepted if the CAPCO has received certification for the Statewide Pool.

With respect to claims being filed for only the Statewide Pool, the maximum amount of Premium Tax Allocation Claims that any one Certified Investor and Affiliates may file, in the aggregate, in one or more Certified Capital Companies shall not exceed Fifteen Million dollars (\$15,000,000).

If a Certified Company, on an aggregate basis with its Affiliates, files Premium Tax Credit Allocation Claims in excess of the limits described herein, the Office shall consider the Premium Tax Credit Allocation Claim as not filed and shall mail it back to the CAPCO by regular mail.

7. If a CAPCO's certification for the Pool is applicable only to the Rural Pool, the CAPCO on an aggregate basis with its Affiliates, shall not file Premium Tax Credit Allocation Claims in excess of Twenty-Five Million Dollars (\$25,000,000). The CAPCO's Premium Tax Credit Allocation Claim form shall specify that the Premium Tax Credit Allocation Claim is for an allocation of premium tax credits from only the Rural Pool and shall specify the dollar amount being requested. The CAPCO shall previously have been certified by the Office to be a CAPCO in Colorado in order to be eligible to submit Premium Tax Credit Allocation Claims and such claims shall only be accepted if the CAPCO has received certification for the Rural Pool.

With respect to claims being filed for only the Rural Pool, the maximum amount of Premium Tax Credit Allocation Claims that any one Certified Investor and Affiliates may

file in one or more Certified Capital Companies, in the aggregate, shall not exceed Twenty-Five Million Dollars (\$25,000,000).

If a Certified Company, on an aggregate basis with its Affiliates, files Premium Tax Credit Allocation Claims in excess of the limits described herein, the Office shall consider the Premium Tax Credit Allocation Claim as not filed and shall mail it back to the CAPCO by regular mail.

8. For the Pool of One Hundred Million Dollars (\$100,000,000), the aggregate amount of Certified Capital for which premium tax credits are allowed for all Certified Investors shall not exceed Ten Million Dollars (\$10,000,000) per year for ten years beginning in tax year 2003 for the Pool in accordance with 10-3.5-105, C.R.S.
9. For the Pool, Investors shall not invest Certified Capital in CAPCOs prior to April 1, 2002 in order to be eligible to make a Premium Tax Credit Allocation Claim from the Pool.
10. In conjunction with this section, **Premium Tax Credit Allocation Claims**, each Premium Tax Credit Allocation Claim form shall be accompanied by an original statement executed by the prospective Certified Investor, which states:
  - A. that the Investor agrees to become legally bound and irrevocably committed to make an investment of Certified Capital in a CAPCO in the amount allocated by the Office, even if such amount is less than the amount requested on the Premium Tax Credit Allocation Claim form, subject only to the receipt of an allocation of Premium Tax Credits pursuant to 10-3.5-106 C.R.S.;
  - B. that the Investor has read the Colorado Statute and regulations related to this program and fully understands the CAPCO program requirements and the commitment being made by the Investor;
  - C. that the Investor agrees to pay the Office the amount of the fine levied by the Office, if such a fine is levied, for the Investor's failure to invest the full amount of Certified Capital allocated by the Office to such Investor in accordance with the Premium Tax Credit Allocation Claim form filed by the CAPCO on its behalf. The Investor shall acknowledge that such fine, if levied by the Office, shall not exceed \$50,000; and

- D. that if a fine is levied by the Office, the Investor agrees to submit a certified check, cashier's check or company check made payable to the State of Colorado for the amount of the levied fine within ten (10) business days of receiving written notification from the Office of such fine.
11. In conjunction with this section, **Premium Tax Credit Allocation Claims**, each Investor shall submit either a Resolution from the Investor's Board which states that the Board of Directors has authorized the individual(s) who signed such documents to enter into such contracts/agreements on behalf of the Investor or an incumbency certificate executed by the Secretary of the Investor attesting to the position with the Investor that is held by the individual(s) who signed such documents. Such position, which the individual(s) holds with the Investor, must be one that is given authority to sign such documents in the company's By-Laws or other such document.
12. In conjunction with the requirements of this section, **Premium Tax Credit Allocation Claims**, each Investor shall submit: its address and Insurance Premium Tax Identification Number; a list of all insurance company Affiliates of the Investor (including the Affiliate's name, the Affiliate's Insurance Premium Tax Identification Number, the Affiliate's address and a description of the Affiliate); a list of all Certified Capital Company Affiliates of the Investor (including the Affiliates' name, the Affiliates' address and a description of the Affiliate); and a description of the Investor's relationship with the Affiliate.

The following definition of control shall be used by the Office.

Control means a person (e.g., firm, company, entity, natural person), who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specific person. "Control", including the terms "controlling", "controlled by", and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than commercial contract for goods or non-management services, or otherwise. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifteen percent or more of the voting securities of any other person. Each of a company's officers, directors, or partners exercising executive responsibility (or persons having similar status or functions) is presumed to "control" the company. A person is presumed to control a corporation if the person: (1) directly or indirectly has the right to vote 15% or more of a class of the corporation's voting securities, or (2) has the power to sell or direct the sale of 15% or more of a class of the corporation's voting securities. A person is presumed to control a

partnership if the person has the right to receive upon dissolution, or has contributed, 15% or more of the capital of the partnership. A person is presumed to control a limited liability company (LLC) if the person: (1) directly or indirectly has the right to vote 15% or more of a class of the interests of the LLC; (2) has the right to receive upon dissolution, or has contributed, 15% or more of the capital of the LLC; or (3) is an elected manager of the LLC.

The control determination shall include a review of: (1) all the officers, partners, or directors (or any person performing similar functions); (2) all persons directly or indirectly controlling or controlled by the entity in question; and (3) all of the current employees (other than employees performing only clerical, administrative, support or similar functions). In addition to the above definitions, if a person owns or controls less than the threshold of voting securities involved (15%), that person's relationship with the remaining members in "control" or management should be examined to see if a "control block" exists, directly or indirectly.

In addition to the "test" based on status or voting control, an examination of the contractual, consulting, and other "arrangements" shall be undertaken to see if "control" is being directly or indirectly exercised.

If the CAPCOs, insurance companies, and/or other persons, as applicable, are not able to certify that they meet the above definition of control, then it shall be the responsibility of the CAPCOs, insurance companies, and/or other persons, as applicable, to submit an executed "Confirmation of Compliance with Affiliate and Control Definitions Form" (as issued by the Office), but specify on the Form the areas of non-compliance. Additionally, it shall be the responsibility of the CAPCOs, insurance companies, and/or other persons, as applicable, to provide documentation to the Office which substantiates that such control does not exist.

13. In conjunction with the requirements of this section, **Premium Tax Credit Allocation Claims**, the Premium Tax Credit Allocation Claim forms shall be accompanied by a descriptive list of guaranties, indemnities, bonds, insurance policies, or other payment undertakings that the CAPCO undertook or will undertake for the benefit of its Certified Investors. In no case shall more than one Certified Investor of the CAPCO or Affiliate of the Certified Investor be entitled to provide such payment undertakings in favor of the Certified Investors of the Certified Capital Company and its Affiliates in the State of Colorado. Such list shall include the amount of each payment undertaking, the provider of each payment undertaking in favor of the Certified Investors and a description of the payment undertaking. Such list shall be in the form of a statement by the CAPCO.

**Calculation Method Utilized For Certified Capital  
For Which Premium Tax Credits Are Allowed**

The earliest date that Premium Tax Credit Allocation Claims for the Pool can be filed with the Office is April 8, 2002. The Certified Capital and Premium Tax Credits shall be allocated to Certified Investors, in Certified Capital Companies, in the order in which Premium Tax Credit Allocation Claims requesting an allocation of Premium Tax Credits under each Specific Pool are filed with the Office by Certified Capital Companies on behalf of their Certified Investors. The two Specific Pools, for which Premium Tax Credit Allocations shall be calculated, are the Rural Pool and the Statewide Pool.

The Office shall begin the process by ensuring that all requirements stated under “ **Premium Tax Credit Allocation Claims**” have been met. The Office shall then begin allocating the Rural Pool (\$25,000,000) based on the Premium Tax Credit Allocation Claims filed with the Office. All of the Rural Pool must be fully allocated before the Office can begin allocating the Statewide Pool (\$75,000,000).

If two or more CAPCOs (and their Affiliates) file Premium Tax Credit Allocation Claims related to a Specific Pool with the Office on behalf of their Certified Investors on the same day and the sum of such Premium Tax Credit Allocation Claims exceeds, in the aggregate, the maximum aggregate amount available under such Specific Pool at the time of filing, the Certified Capital for which Premium Tax Credits are allocated shall be allocated among all Certified Investors filing on the same day utilizing a pro-rated basis for calculation purposes and as described herein.

The process herein determines the amount of Certified Capital for which Premium Tax Credits are allowed.

**Calculation Example A**

After the Office verified compliance with all requirements stated under “**Premium Tax Credit Allocation Claims**,” assume that three Certified Capital Companies certified only for the Rural Pool were the only CAPCOs that submit a Premium Tax Credit Allocation Claim for the Rural Pool. On April 8, 2002, if CAPCO A's (and its Affiliates) Investors request \$10 million dollars (over ten years) in premium tax credits; CAPCO B's (and its Affiliates) Investors request \$10 million dollars (over ten years) in premium tax credits; and CAPCO C's (and its Affiliates) Investors request \$25 million dollars (over ten years) in premium tax credits, then the total premium tax credits' requests of \$45 million dollars exceed the \$25 million dollars in premium

tax credits available under the Rural Pool. Therefore, CAPCO A's (and its Affiliates) Investors would be allocated  $(\$10,000,000/\$45,000,000) \times \$25,000,000 = .22 \times \$25,000,000 = \$5,555,556$  in tax credits (over ten years); CAPCO B's (and its Affiliates) Investors would be allocated the same amount of tax credits as CAPCO A's investors which is \$5,555,556 (over ten years) and CAPCO C's (and Affiliates) Investors would be allocated  $(\$25,000,000/\$45,000,000) \times \$25,000,000 = .56 \times \$25,000,000 = \$13,888,888$  in tax credits (over ten years). The Office reserves the right to round up or down within \$1.00 at its discretion in allocating Premium Tax Credits.

### **Calculation Example B**

If not fully allocated on the first day that a request(s) were received by the Office, then Premium Tax Credit Allocations shall be made in the amount requested. The premium tax credit allocations for claims filed on the first day shall be subtracted from the maximum available under the Specific Pool. The remaining balance shall become the new maximum available under the Specific Pool; however, the new maximum available will not impact the CAPCO's Premium Tax Credit Allocation Claims' limits as described in all requirements stated under “**Premium Tax Credit Allocation Claims**”. This process will continue to be utilized if Premium Tax Credit Allocation Claims for each specific date do not exceed the remaining, unallocated tax credit balance. In the event that Premium Tax Credit Allocation Claims exceed the remaining, unallocated tax credit balance on a specific date, the pro-rated calculation method shall then be utilized.

After the Office verified compliance with all requirements stated under “**Premium Tax Credit Allocation Claims**”, assume that two Certified Capital Companies certified only for the Rural Pool and one Certified Capital Company certified for both the Rural Pool and the Statewide Pool were the only CAPCOs that submit a Premium Tax Credit Allocation Claim for the Rural Pool.

On April 8, 2002, if CAPCO A's (and Affiliates) Investors request \$5 million dollars (over ten years) in premium tax credits; CAPCO B's (and Affiliates) Investors request \$5 million dollars (over ten years) in premium tax credits; and CAPCO C's (and Affiliates) Investors request \$10 million dollars (over ten years) in premium tax credits, then the total requests of \$20 million dollars do not exceed the \$25 million dollars in premium tax credits available under the Rural Pool. Therefore, CAPCO A's Investors would be allocated \$5,000,000 in premium tax credits (over ten years); CAPCO B's Investors would be allocated the same amount of premium tax credits as CAPCO A's Investors which is \$5,000,000 (over ten years) and CAPCO C's Investors would be allocated \$10,000,000 in premium tax credits (over ten years). After the \$20 million dollars are allocated, \$5 million dollars in premium tax credits will still be available. On April 11, 2002, CAPCO D's (and Affiliates) Investors request \$5 million dollars (over ten years) in premium tax credits and CAPCO E's (and Affiliates) Investors request \$10 million dollars (over

ten years) in premium tax credits, then the total new requests of \$15 million dollars exceed the remaining \$5 million dollars in premium tax credits available after the initial allocation. Therefore, CAPCO D's Investors would be allocated  $(\$5,000,000/\$15,000,000) \times \$5,000,000 = .33 \times \$5,000,000 = \$1,666,667$ ; and CAPCO E's Investors would be allocated  $(\$10,000,000/\$15,000,000) \times \$5,000,000 = .67 \times \$5,000,000 = \$3,333,333$ . The Office reserves the right to round up or down within a \$1.00 at its discretion in allocating Premium Tax Credits.

### **Calculation Example C**

Assume that either Calculation A or Calculation B has occurred. The Rural Pool would be fully allocated. The Office shall allocate Premium Tax Credits from the Statewide Pool using the same method described in Calculation Example A and Calculation B.

## **Calculation Method Utilized For Premium Tax Credit**

### **Allocations to Individual Investors**

After calculating the Capital for which "Premium Tax Credits Are Allowed" for each CAPCO that submitted Premium Tax Credit Allocation Claims on behalf of its Certified Investors, the Office shall calculate the Premium Tax Credit Allocations to each Certified Investor of a Certified Capital Company. The amount of Capital for which "Premium Tax Credits Are Allowed" under a Specific Pool shall be allocated among the Certified Investors on a pro-rata basis. The pro-rata allocation for any one Certified Investor shall bear the same relation to the maximum aggregate amount available under each Specific Pool, as that Certified Investor's Premium Tax Credit Allocation under such Specific Pool bears to the total of all Premium Tax Credit Allocation Claims seeking an Allocation of Premium Tax Credits pursuant to the same Specific Pool filed on behalf of all Certified Investors on the same day. Upon the receipt of the Investor's Certified Capital in the amounts calculated herein, the amount determined by these calculations shall be the amount of Certified Capital provided to the CAPCO.

### **Calculation Example D**

Based on the calculation previously made under '**Calculation Method Utilized For Certified Capital For Which Premium Tax Credits Are Allowed, Calculation Example A**', the amount of the Certified Capital for which "Premium Tax Credits Are Allowed" was determined. The Office shall now complete the pro-rata calculation to determine each Investor's Allocation of Premium Tax Credits.

For simplicity, assume that none of the Investors (and Affiliates) are the same Investors (and Affiliates)—thus eliminating the need to verify that individual Investors (and Affiliates) have not



exceeded certain maximum limitations. Assume that CAPCO's (and Affiliates) submitted the following Premium Tax Credit Allocation Claims on behalf of their respective Investors (and Affiliates):

	<u>Investor's Initial Claim</u>	<u>Investor's Allocation</u>
CAPCO A:	Investor 1 @ \$1,000,000	$(\$1,000,000/\$45,000,000) \times \$25,000,000 = \$555,556$
	Investor 2 @ \$1,000,000	$(\$1,000,000/\$45,000,000) \times \$25,000,000 = \$555,556$
	Investor 3 @ \$1,000,000	$(\$1,000,000/\$45,000,000) \times \$25,000,000 = \$555,556$
	Investor 4 @ \$1,500,000	$(\$1,500,000/\$45,000,000) \times \$25,000,000 = \$833,333$
	Investor 5 @ \$1,500,000	$(\$1,500,000/\$45,000,000) \times \$25,000,000 = \$833,333$
	Investor 6 @ \$ 500,000	$(\$ 500,000/\$45,000,000) \times \$25,000,000 = \$277,778$
	Investor 7 @ \$ 500,000	$(\$ 500,000/\$45,000,000) \times \$25,000,000 = \$277,778$
	Investor 8 @ \$ 500,000	$(\$ 500,000/\$45,000,000) \times \$25,000,000 = \$277,778$
	Investor 9 @ \$1,000,000	$(\$1,000,000/\$45,000,000) \times \$25,000,000 = \$555,555$
	Investor 10 @ \$1,500,000	$(\$1,000,000/\$45,000,000) \times \$25,000,000 = 833,333$
	Total \$10,000,000	Total \$5,555,556
CAPCO B:	Investor 1 @ \$1,200,000	$(\$1,200,000/\$45,000,000) \times \$25,000,000 = \$666,667$
	Investor 2 @ \$1,200,000	$(\$1,200,000/\$45,000,000) \times \$25,000,000 = \$666,667$
	Investor 3 @ \$1,200,000	$(\$1,200,000/\$45,000,000) \times \$25,000,000 = \$666,667$
	Investor 4 @ \$1,200,000	$(\$1,200,000/\$45,000,000) \times \$25,000,000 = \$666,667$
	Investor 5 @ \$1,200,000	$(\$1,200,000/\$45,000,000) \times \$25,000,000 = \$666,667$
	Investor 6 @ \$500,000	$(\$ 500,000/\$45,000,000) \times \$25,000,000 = \$277,778$
	Investor 7 @ \$500,000	$(\$ 500,000/\$45,000,000) \times \$25,000,000 = \$277,778$
	Investor 8 @ \$500,000	$(\$ 500,000/\$45,000,000) \times \$25,000,000 = \$277,778$
	Investor 9 @ \$1,000,000	$(\$1,000,000/\$45,000,000) \times \$25,000,000 = \$555,555$
	Investor 10 @ \$1,500,000	$(\$1,500,000/\$45,000,000) \times \$25,000,000 = \$833,332$
	Total \$10,000,000	Total \$5,555,556
CAPCO C:	Investor 1 @ \$3,750,000	$(\$3,750,000/\$45,000,000) \times \$25,000,000 = \$2,083,333$
	Investor 2 @ \$3,750,000	$(\$3,750,000/\$45,000,000) \times \$25,000,000 = \$2,083,333$
	Investor 3 @ \$3,750,000	$(\$3,750,000/\$45,000,000) \times \$25,000,000 = \$2,083,333$
	Investor 4 @ \$3,750,000	$(\$3,750,000/\$45,000,000) \times \$25,000,000 = \$2,083,333$

Investor 5 @ \$3,750,000	$(\$3,750,000/\$45,000,000) \times \$25,000,000 = \$2,083,333$
Investor 6 @ \$3,750,000	$(\$3,750,000/\$45,000,000) \times \$25,000,000 = \$2,083,333$
Investor 7 @ \$500,000	$(\$500,000/\$45,000,000) \times \$25,000,000 = \$277,778$
Investor 8 @ \$2,000,000	$(\$2,000,000/\$45,000,000) \times \$25,000,000 = \$1,111,112$
Total \$25,000,000	Total \$13,888,888

TOTAL SPECIFIC POOL ALLOCATION = \$25,000,000  
(\$5,555,556 + \$5,555,556 + \$13,888,888)

**Calculation Example E**

Based on the calculation previously made under ‘**Calculation Method Utilized For Certified Capital For Which Premium Tax Credits Are Allowed, Calculation Example B**’, the amount of the Certified Capital for which “Premium Tax Credits Are Allowed” was determined. The Office shall now complete the pro-rata calculation to determine each Investor’s Allocation of Premium Tax Credits.

For simplicity, assume that none of the Investors (and Affiliates) are the same Investors (and Affiliates)—thus eliminating the need to verify that individual Investors (and Affiliates) have not exceeded certain maximum limitations. *No calculations are needed for CAPCO A, CAPCO B, and CAPCO C since the Individual Investors shall receive the amount requested.* Calculations are needed for CAPCO D and CAPCO E. Assume that CAPCO’s (and Affiliates) submitted the following Premium Tax Credit Allocation Claims on behalf of their respective Investors:

CAPCO A:	<b><u>Investor’s Initial Claim</u></b>	<b><u>Investor’s Allocation</u></b>
Investor 1 @ \$750,000	\$750,000	
Investor 2 @ \$750,000	\$750,000	
Investor 3 @ \$750,000	\$750,000	
Investor 4 @ \$750,000	\$750,000	
Investor 5 @ \$750,000	\$750,000	
Investor 6 @ \$750,000	\$750,000	
Investor 7 @ \$500,000	\$500,000	
Total \$5,000,000	Total \$5,000,000	
 CAPCO B:		
Investor 1 @ \$750,000	\$750,000	

Investor 2 @ \$750,000	\$750,000
Investor 3 @ \$750,000	\$750,000
Investor 4 @ \$750,000	\$750,000
Investor 5 @ \$750,000	\$750,000
Investor 6 @ \$750,000	\$750,000
Investor 7 @ \$500,000	\$500,000
Total \$5,000,000	Total \$5,000,000

CAPCO C:	Investor 1 @ \$1,500,000	\$1,500,000
	Investor 2 @ \$1,500,000	\$1,500,000
	Investor 3 @ \$1,500,000	\$1,500,000
	Investor 4 @ \$1,500,000	\$1,500,000
	Investor 5 @ \$1,500,000	\$1,500,000
	Investor 6 @ \$1,500,000	\$1,500,000
	Investor 7 @ \$1,000,000	\$1,000,000
	Total \$10,000,000	\$10,000,000

CAPCO D:	Investor 1 @ \$750,000	$(\$750,000/\$15,000,000) \times \$5,000,000^* = \$250,000$
	Investor 2 @ \$750,000	$(\$750,000/\$15,000,000) \times \$5,000,000^* = \$250,000$
	Investor 3 @ \$750,000	$(\$750,000/\$15,000,000) \times \$5,000,000^* = \$250,000$
	Investor 4 @ \$750,000	$(\$750,000/\$15,000,000) \times \$5,000,000^* = \$250,000$
	Investor 5 @ \$750,000	$(\$750,000/\$15,000,000) \times \$5,000,000^* = \$250,000$
	Investor 6 @ \$750,000	$(\$750,000/\$15,000,000) \times \$5,000,000^* = \$250,000$
	Investor 7 @ \$500,000	$(\$500,000/\$15,000,000) \times \$5,000,000^* = \$166,667$
	Total \$5,000,000	Total \$1,666,667

\*\$5,000,000 is the denominator since this is the amount of the Specific Pool that was available on the day that CAPCO D and CAPCO E made their Premium Tax Credit Allocation Claims.

CAPCO E:	Investor 1 @ \$1,500,000	$(\$1,500,000/\$15,000,000) \times \$5,000,000^* = \$500,000$
	Investor 2 @ \$1,500,000	$(\$1,500,000/\$15,000,000) \times \$5,000,000^* = \$500,000$
	Investor 3 @ \$1,500,000	$(\$1,500,000/\$15,000,000) \times \$5,000,000^* = \$500,000$

Investor 4 @ \$1,500,000	$(\$1,500,000/\$15,000,000) \times \$5,000,000^* = \$500,000$
Investor 5 @ \$1,500,000	$(\$1,500,000/\$15,000,000) \times \$5,000,000^* = \$500,000$
Investor 6 @ \$1,500,000	$(\$1,500,000/\$15,000,000) \times \$5,000,000^* = \$500,000$
Investor 7 @ \$1,000,000	$(\$1,000,000/\$15,000,000) \times \$5,000,000^* = \$333,333$
Total \$10,000,000	Total \$3,333,333

\*\$5,000,000 is the denominator since this is the amount of the Specific Pool that was available on the day that CAPCO D and CAPCO E made their Premium Tax Credit Allocation Claims.

TOTAL SPECIFIC POOL ALLOCATION = \$25,000,000  
(\$5,000,000 + \$5,000,000 + \$10,000,000 + 1,666,667 + \$3,333,333)

**Allocation Date and Written Notification of Premium Tax Credit Allocation**

Within 5 business days (except as noted below) after the Office receives a Premium Tax Credit Allocation Claim filed by a Certified Capital Company on behalf of one or more of its Certified Investors, the Office shall notify (by overnight courier with signature of receipt required) the Certified Capital Company of the amount of tax credits allocated to each of the Certified Investors in such Capital Company. Such date shall be the Allocation Date. An alternative Certified Investor or other investor may not contribute Certified Capital to the CAPCO in lieu of the Certified Investor listed on the Office’s notification.

However, Premium Tax Credit Allocation Claims filed for the Statewide Pool shall not be allocated until the Rural Pool has been fully allocated. The Office shall begin allocating the Statewide Pool the next business day after the Rural Pool has been fully allocated. Within 5 business days after the Office begins allocating the Statewide Pool, as applicable, the Office shall notify the Certified Capital Company of the amount of tax credits allocated to each of the Certified Investors in such Certified Capital Company. Such date shall be the Allocation Date. An alternative Certified Investor may not contribute Certified Capital to the CAPCO in lieu of the Certified Investor listed on the Office’s notification.

The Written Notification of Premium Tax Credit Allocation shall require that the CAPCO submit to the Office, within 30 business days of the date of the Written Notification of Premium Tax Credit Allocation, a copy of all material documents relating to each Certified Investor’s investment of Certified Capital and a report containing the following information:

1. The name of each Certified Investor from which the Certified Capital was received (delineated by Specific Pool), including such Certified Investor's Insurance Premium Tax Identification Number;
2. The date on which the Certified Capital was received by the CAPCO delineated by Specific Pool;
3. The amount of each Certified Investor's investment of Certified Capital and Premium Tax Credits (the same amount), delineated by Specific Pool; and
4. Supporting documentation, such as a statement from the CAPCO's financial institution receiving the deposit on behalf of the CAPCO, stating: that the deposit or wire transfer has been completed; the specific amount of the deposit or wire transfer, the date of the deposit or wire transfer, and that the funds are "collected funds" at the financial institution.

With respect to a CAPCO that participated in both the Rural Pool and the Statewide Pool, the 5-business day and 30-business daytime periods set forth in this section will begin on the Allocation Date for the Statewide Pool.

#### **Forfeiture of Allocation and Reallocation of Premium Tax Credits**

In the event that a CAPCO does not receive an investment of Certified Capital equaling the amount of Premium Tax Credits Allocated to the CAPCO's investors within 5 business days of the receipt of the Office's notification (by overnight courier with signature of receipt required) of the Premium Tax Credit Allocated to the CAPCO's investors, the CAPCO shall notify the Office immediately, within 24 hours, by overnight courier with signature of receipt required. As a result of such notification from the CAPCO, the Premium Tax Credit Allocation for the specific investor(s) shall be forfeited. If the Office has not received a copy of all documents relating to each Certified Investor's investment of Certified Capital and the required report within 30 business days, the Premium Tax Credit Allocation for the specific investor(s) shall be forfeited.

If forfeiture of Premium Tax Credit Allocations occurs, the Office shall recalculate the Premium Tax Credit Allocations for each Specific Pool, if affected by such forfeiture, and shall redistribute the forfeited Premium Tax Credit Allocations based on other investor's initial commitment of Certified Capital. Such recalculation shall utilize the same methods described in the Premium Tax Credit Allocation Process but the now ineligible investors shall not be included

in the calculations. If such a pro rata redistribution occurs, the Office shall notify (by overnight courier with signature of receipt required) the Certified Capital Company of the new amount of tax credits allocated to each of the eligible Certified Investors in such Capital Company. Such date of notification shall be the new Allocation Date and the requirements described in this section for receiving investments and notifying the Office shall begin as of such new Allocation Date.

## **CONTINUING CERTIFICATION REQUIREMENTS**

### **10-3.5-107 C.R.S.**

A Certified Capital Company must fully comply with all of the requirements described under the following sections of “**CONTINUING CERTIFICATION REQUIREMENTS**”.

#### **Continued Accuracy of Information Submitted in the Application**

Whenever any material information that the CAPCO supplied in its initial application becomes inaccurate or obsolete (including, but not limited to, retention of the two experienced principals or key employees reflected in the application), the CAPCO shall file an amended application in a format prescribed by the Office, including originally executed signatory pages. Amended applications shall be submitted within 10 business days of the information becoming inaccurate or obsolete; however, amended applications shall be filed within 5 business days in the event any of the experienced principals or key employees required in the Statute leaves the CAPCO. Amended applications shall be filed in the same manner and using the same methods as described in the section, “**Filing of Certified Capital Company Application**”; however, no fee shall be required. The CAPCO shall notify its Certified Investors of the amended application and a copy of such notification shall be provided to the Office. Amended applications shall demonstrate the CAPCO’s continued ability to be in compliance with initial application requirements.

#### **Continuation as a Viable Going Concern**

The CAPCO shall, as soon as possible, but in any event within 5 business days, notify the Office and its Certified Investors in writing when the CAPCO may be unable to continue as a viable going concern or when the CAPCO is subject to litigation which may affect its viability as a going concern. Examples of when a CAPCO may be unable to continue as a viable going concern include, but are not limited to, the inability of a CAPCO to make scheduled debt payments (including principal, interest, and any applicable fees) and/or other obligations of the

CAPCO, either in the ordinary course of business or otherwise, within the terms of when such payments are due. Notifications shall either be hand delivered with signature of receipt required, or delivered by a courier service or certified mail with signature of receipt required. Such notifications must be delivered to the Office of Economic Development located at 1625 Broadway, Suite 1700, Denver, CO 80202.

Upon the CAPCO notifying the Office by the procedure outlined in this section or if a viable going concern issue is noted in any audits, procedural reviews, or compliance reviews received by the Office, the CAPCO shall immediately discontinue any further investment of Certified Capital in Qualified Businesses or Qualified Rural Businesses unless interim management by an entity authorized in the Statute has occurred.

**Interim Management Notification**

In the event interim management is assumed as authorized in the Statute, the assuming entity shall immediately notify the Office in writing and provide a plan and timetable for selecting replacement CAPCO management. Such notification shall be hand delivered with signature of receipt required, or delivered by a courier service or certified mail with signature of receipt required. The notification must be delivered to the Office of Economic Development located at 1625 Broadway, Suite 1700, Denver, CO 80202. By the 10<sup>th</sup> of the following month in which the interim management was assumed and continuing monthly thereafter, the assuming entity shall provide a written status update on the hiring of replacement management.

**Submittal of Documentation for Certified Investor’s Investment of Certified Capital**

The Written Notification of Premium Tax Credit Allocation shall require that the CAPCO submit to the Office, within 30 business days of the date of the Written Notification of Premium Tax Credit Allocation, a copy of all material documents relating to each Certified Investor’s investment of Certified Capital and a report containing the information described in the **“Allocation Date and Written Notification of Premium Tax Credit Allocation”** section of **“PREMIUM TAX CREDIT ALLOCATION PROCESS”** in this regulation. All documents relating to the Certified Investors’ investment of Certified Capital in the CAPCO shall be made available at the time of Audit or Office Annual Review.

## Eligibility Determination For CAPCO Qualified Investments

A CAPCO shall use its Certified Capital to make Qualified Investments in Qualified Businesses and/or Qualified Rural Businesses. Such Qualified Investments shall occur after the Allocation Date pertaining to such Certified Capital. If a CAPCO substitutes Certified Capital for any investment made prior to the Allocation Date and/or the CAPCO uses Certified Capital to purchase all or part of an investment made prior to the Allocation Date, then such use of Certified Capital shall not be considered a Qualified Investment under this program.

In order to meet Qualification requirements, the CAPCO's investment: 1) must be a Qualified Investment of Cash, 2) must be in a Qualified Business or Qualified Rural Business; and must meet the definition of Qualified Investment as defined in 10-3.5-103(14). In order to be a Qualified Investment of Cash, the investment must meet the Investment of Cash definition found in the **DEFINITION** section of these regulations and must meet the Investment of Cash eligibility determination as set forth below. In order to be a Qualified Business or Qualified Rural Business, the business must meet the definition of a Qualified Business or a Qualified Rural Business as defined in 10-3.5-103(11) and 10-3.5-103(15), C.R.S. respectively and must meet the Qualified Business/Qualified Rural Business eligibility determination set forth below. Both eligibility determinations must be met in order for any CAPCO investment to be deemed a Qualified Investment.

1. In order to make an eligibility determination with regard to the investment meeting the Investment of Cash criteria, prior to making any Qualified Investment in the form of debt or a convertible instrument which could result in debt or debt characteristics, then the CAPCO shall submit or maintain, as applicable, the following information for the Office's review:
  - A. Proof that the business is unable to obtain a loan as defined by the Colorado State Banking Board Commercial Bank Rules (*CB101.42*). To meet this requirement, the business must have applied for and been declined bank financing. Before May 27, 2004, a decline letter from a bank which is located within 100 miles of the business' primary business operation, whose geographic marketing area includes the location of the business' primary business operation, and which is located within the State of Colorado must be provided to the Office. On or after May 27, 2004, two declination letters from two different commercial banks that are federally or state chartered in the State of Colorado and that make small business loans, at least one of which banks is a preferred or certified lender designated by the federal small business administration



and which is located within 100 miles of the business' primary business operation, whose geographic marketing area includes the location of the business' primary business operation, and which is located within the State of Colorado (unless a preferred or certified lender is not located within these geographic restrictions and in that case, the geographic restrictions except for Colorado will not apply) must be provided to the Office. Such declination letters must be dated no earlier than 90 business days prior to the CAPCO's investment, shall be executed on bank letterhead, and shall contain a complete address and phone number for the bank and the name of the company's contact at the bank. The decline letters shall indicate that the bank has been requested to provide a loan for the same reason for which the CAPCO may provide an investment; the bank has been provided with sufficient information required by the bank to made a determination of financing eligibility; the bank declines to fund the entire amount and/or a portion of the total financing requested; and the bank official certifies that the bank is located within 100 miles of the business' primary business location, the business' primary business location is within the bank's geographic marketing area, the bank is located within the State of Colorado, and when applicable, the bank is a commercial bank that is federally or state chartered in the State of Colorado and makes small business loans and is a preferred or certified lender designated by the federal small business administration.

The CAPCO shall be required to provide a certification (format to be contained in the Qualified Business Determination form) that the loan that it proposes to make is not a loan as defined under Colorado State Banking Board Commercial Bank Rules (CB101.42). Loan decline letters shall not be required when such certification is provided and accepted by the Office. The Office will consult with the Division of Banking when such approval is requested.

- B. Proof that the business is unable to obtain financing from the Revolving Loan Funds operating within the State of Colorado. Such Revolving Loan Funds have received funding previously or currently from Community Development Block Grant Funds, which the Office administers. A current list of the Revolving Loan Funds and their respective geographical service areas may be obtained from the Office. A current list is one, which has been obtained from the Office no more than 90 business days prior to any investment being made by a CAPCO. To meet this requirement, the business must have applied for and been declined Revolving Loan Fund financing (if a Revolving Loan Fund serves the geographical area for the company's primary business operations in the State of Colorado). A decline letter from the Revolving Loan Fund which serves the geographical area for the business' primary business operation within Colorado shall be executed on the Revolving Loan Fund's letterhead and shall be dated no earlier than 90 business days prior to the CAPCO's investment. The decline letter shall indicate that the Revolving Loan Fund has been requested to

provide a loan for the same reason for which the CAPCO may provide an investment; the Revolving Loan Fund has been provided with sufficient information required by the Revolving Loan Fund to make a determination of financing eligibility; the Revolving Loan Fund declines to fund the entire amount and/or a portion of the total financing requested. If a Revolving Loan Fund does not cover the geographical area where the company's principal business operations are located, then the CAPCO shall submit a statement to such effect.

- C. On or after May 27, 2004, a certification shall be provided by the CAPCO that states that any loan made by a CAPCO shall not be made through or in connection with any guaranteed loan program. CAPCO files shall contain loan documentation that verifies this certification.
2. In order to make an eligibility determination with regard to Qualified Business or Qualified Rural Business, the CAPCO shall submit or maintain, as applicable, the following information for the Office's review:
- A. The CAPCO shall submit an original statement executed by the CAPCO and the business which:
    - 1. States the business' legal name and street address;
    - 2. States if the CAPCO's first investment in the business occurred before May 27, 2004:
      - a. that the business is Headquartered as defined in this regulation in the State of Colorado;
      - b. the business' Principal Business Operations as defined in this regulation are located in the State of Colorado;
      - c. that the business is a small business concern as described in the small business size regulations of the United States Small Business Administration, 13 CFR 121.201; and
      - d. that it is not a business predominately engaged in professional services provided by accountants or lawyers.

3. States if the CAPCO's first investment in the business occurred on or after May 27, 2004:
  - a. either that the business is Headquartered as defined in this regulation in the State of Colorado, its Principal Business Operations as defined in this regulation are located in the State of Colorado and the Certified Capital Company has a reasonable expectation, based upon an affidavit of one of the principal officers of the business or other comparable evidence, that the business intends to preserve its Headquarters and principal place of business in Colorado for at least three years after the Qualified Investment and that the business will expend 80% (unless otherwise approved by the Office) of the Qualified Investment within Colorado. If a business meets some but not all of these criteria the business may nevertheless be deemed to be a Qualified Business if the Colorado Economic Development Commission determines that an investment of Certified Capital proposed by a CAPCO pursuant to this article will further the economic development of the State; or
  - b. that the business has entered into a contract with the CAPCO to comply with the requirements stated in 3.a. above within ninety days after the finalization/execution of the contract and the contract contains enforceable provisions requiring a return of any investment of Certified Capital if the business fails to so comply;
4. States the business' number of employees, as defined by the United States Small Business Administration's ("SBA") guidance for 13 CFR 121.201, delineated by its Colorado location(s) and non-Colorado location(s);
5. States the business' North American Industry Classification System ("NAICS") code based on the business' industry and sub sector;
6. States if the CAPCO's first investment in the business occurred on or after May 27, 2004, that it is not a business predominantly engaged in:
  - a. Professional services provided by accountants, doctors, or lawyers;
  - b. Banking or lending;
  - c. Real estate development;

- d. Insurance;
  - e. Oil and gas exploration;
  - f. Direct gambling activities, which shall not include ancillary gambling equipment and other indirect gambling activities such as manufacturing of gambling machines, etc; or
  - g. Businesses that make loans to or invest in a Certified Capital Company or an affiliate of a Certified Capital Company or Insurance Company.
7. Contain a comprehensive and concise analysis of how the business qualifies under the SBA's 13 CFR 121.201. Such analysis shall include a specific determination for every criteria listed in the SBA's guidance for 13 CFR 121,201, including the SBA guidance issued on "How does SBA establish size standards?", "What is affiliation?", "How does SBA calculate annual receipts?", "How does SBA define business concern or concern?", "How does SBA calculate number of employees?", "How does SBA determine a concern's primary industry?", and "What size standards has SBA identified by North American Classification System codes?". If specific criteria are not applicable, then the analysis shall so state and provide the reason why it is not applicable. Such comparisons, with the SBA size standards found under 13 CFR 121.201, shall utilize the most recent SBA size standards available;
  8. Is dated no earlier than 90 business days before the date submitted to the Office for a written opinion. If a written opinion is not requested, the statement shall be dated no earlier than 90 business days before the CAPCO's initial investment in the Qualified Business, as applicable, and maintained in the CAPCO's files with all supporting documentation;
  9. States that the business' Principal Business Operations, as defined in this regulation, are in a Designated Rural County or Distressed Urban Community if applicable, as defined in this regulation;
  10. States that supporting documentation, for all of the above statements, is attached to the request submitted to the Office for a written opinion or shall be available for review by the Office, at its discretion any time, if the Office's determination will not be made until the Office's Annual Review. Such supporting documentation shall include, but not be limited to, legal structure documentation; specific authorization for the individual to execute such statements on behalf of such business as well as stating individual's capacity for such business; a business

plan; complete financial statements, including the preparer's cover letter and notes, as described in the SBA's guidance for 13 CFR 121.201; state and federal tax returns for the most recent 3 year fiscal period, or the portion of the period for which they are available if the business has been in operation less than 3 years; payroll reports described in the SBA's guidance for 13 CFR 121.201, which are further delineated by Colorado and non-Colorado operations and again, further divided by Designated Rural County or Distressed Urban County if applicable; a statement, dated no earlier than 90 business days from the date submitted to the Office or from the initial investment in the business by a CAPCO, from the local Enterprise Zone Administrator stating that the business is located within a Distressed Urban County if applicable; and any other information submitted by the business or obtained by the CAPCO in regard to the request.

11. States that the CAPCO shall not invest more than 15% of its Total Certified Capital in any one Qualified Business or Qualified Rural Business, as applicable. The CAPCO shall provide a statement, dated no earlier than 90 business days before the submittal to the Office or the investment in the business, which states the Specific Pool to be utilized, the amount of investment and the type of investment it will make in the business.
  
12. States that the CAPCO shall not own, through an initial Qualified Investment occurring on or after May 27, 2004, in aggregate total with a business that was organized by (to include any business with a proposed or actual investment of equity or with equity features from a CAPCO), is a franchisee of, or is an affiliate of, the CAPCO, more than 49% of any one Qualified Business or Qualified Rural Business without specific approval of the Office; except that nothing in this paragraph shall preclude a CAPCO from exercising any:
  - a. Right or remedy upon a default by the Qualified Business pursuant to an investment contract; or
  - b. Anti-dilution or preemptive rights it may have been granted in connection with an initial Qualified Investment that can be exercised upon an investment in the business by a party other than the CAPCO or an affiliate of the CAPCO.
  
13. States that the business either does or does not qualify for the definition of seed and early stage as defined in 10-3.5-103(15.5), C.R.S at the time of the initial Qualified Investment. If the business does qualify under this definition, supporting documentation for the items required in 10-3.5-103(15.5), C.R.S will need to be submitted to the Office with the request for determination.

For Qualified Businesses/Qualified Investments that previously were approved by the Office but did not receive approval as meeting the definition of seed and early stage as defined in 10-3.5-103(15.5) C.R.S at the time of the initial Qualified Investment, a CAPCO can complete the information found in Exhibit A of this regulation and submit it to the Office for approval.

- B. If the CAPCO did not submit an original statement executed by the CAPCO and the business along with supporting documentation as described in 2.A. within this section, then the CAPCO shall maintain such statement and supporting documentation in its files for review during the Annual Review.
3. At its option, a CAPCO, making a proposed investment in a business, may request from the Office a written opinion that the Investment of Cash either before or after the investment, which it proposes should be considered a Qualified Investment. And, at its option, a CAPCO, making a proposed investment in a business, may request from the Office a written opinion that the business in which it proposes to invest either before or after the investment, should be considered a Qualified Business or a Qualified Rural Business, as applicable.
- A. Upon receiving such request, the Office shall have 10 business days to determine whether the investment and the business meet the applicable eligibility determinations. The Office shall notify the CAPCO of its determinations with an explanation of such determinations.
  - B. If the business is determined to be a Qualified Business or a Qualified Rural Business by the Office and the Investment of Cash is determined to be a Qualified Investment, the CAPCO must make such investment in said business within a 6-month period or the Office's determination shall be null and void.
  - C. If the Office determines that the business is a Qualified Business or a Qualified Rural Business or if the Office determines that the Investment of Cash is a Qualified Investment, and a merger or acquisition of the business is negotiated before the CAPCO has made any investments in said business, the Office's determination shall be null and void.
  - D. If insufficient information has been provided to the Office, the Office shall notify the CAPCO that the business does not meet the eligibility determinations due to the information provided to the Office being insufficient. If the CAPCO resubmits the

request with additional information, the 10-business day period shall begin again at that time.

- E. If the Office fails to notify the CAPCO with respect to the proposed investment within such 10 working day period, the Investment of Cash, which the CAPCO proposes shall be deemed to be a Qualified Investment and the business in which the CAPCO proposes to invest shall be deemed to be a Qualified Business or Qualified Rural Business, as applicable.
  - F. If the Office has made a written determination that a business is a Qualified Business or a Qualified Rural Business and/or that the Investment of Cash is a Qualified Investment but the CAPCO's first investment in the business did not occur before May 27, 2004, the Office's determination shall be null and void.
- 4. If a CAPCO has not requested a written opinion regarding the Qualified Investment eligibility determination described in this section, the Office shall make such determination during its Annual Review.
  - 5. If the Office determines that a business in which a Certified Capital Company proposes to invest before May 27, 2004, is not a Qualified Business or a Qualified Rural Business because it does not meet all of the criteria set forth in section 10-3.5-103 (11)(a) or (15), C.R.S., as applicable, the Office may nevertheless consider the business a Qualified Business or Qualified Rural Business, as applicable, if the Colorado Economic Development Commission determines that investment in the proposed business will further the economic development of the state. The following criteria must be met:
    - A. If the business does not meet all of the criteria set forth in 10-3.5-103(11) or (15), C.R.S., as applicable, the business must still meet some of the criteria.
    - B. For the Colorado Economic Development Commission to review a proposed investment in a business which does not meet all of the criteria set forth in 10-3.5-103(11) or (15), C.R.S., as applicable, the Investment of Cash must meet the Qualified Investment criteria as set forth in this section and the Director must first request the Colorado Economic Development Commission to review the proposed business and provide a recommendation.
    - C. The review by the Colorado Economic Development Commission shall be scheduled

at the Colorado Economic Development Commission's convenience.

- D. Based on the recommendation made by the Colorado Economic Development Commission, the Director shall approve or deny the proposed business accordingly as meeting the definition of a Qualified Business or a Qualified Rural Business and thus shall approve or deny the proposed investment as Qualified.
6. A business that is classified as a Qualified Business or a Qualified Rural Business at the time of the first investment in said business by a CAPCO, when such investment occurs before May 27, 2004 shall remain classified as a Qualified Business or a Qualified Rural Business, as applicable, and may receive continuing investments from any CAPCO or any of its Affiliates. Such continuing investments, as long as they meet the Investment of Cash eligibility determination, shall be Qualified Investments even though such business may not meet the definition of a Qualified Business or a Qualified Rural Business, as applicable, at the time of such continuing investments.
  7. A business that is classified as a Qualified Business or a Qualified Rural Business at the time of the first investment in said business by a CAPCO, when such investment occurs on or after May 27, 2004 shall remain classified as a Qualified Business or a Qualified Rural Business, as applicable, and may receive continuing investments from any CAPCO or any of its Affiliates. Such continuing investments, as long as they meet the Investment of Cash eligibility determination, shall be Qualified Investments even though such business may not meet the definition of a Qualified Business or a Qualified Rural Business, as applicable, at the time of such continuing investments except that:
    - A. A business that is classified as a Qualified Business or Qualified Rural Business at the time of the first investment in said business by a CAPCO, when such investment occurs on or after May 27, 2004, but subsequently violates the requirements of section 10-3.5-103(11)(b)(I) or 11(c) within the first six months after such Qualified Investment, shall not be deemed to be a Qualified Business or a Qualified Rural Business, as applicable, for the purposes of 10-3.5-107(1) and 10-3.5-109(2)(a) and may not receive continuing investments from any Certified Capital Company or any of its affiliates.
    - B. An investment in a business that relocates either its headquarters or its principal business operations outside of Colorado after six months, but less than three years after the initial Qualified Investment shall:
      1. Not be deemed to satisfy a requirement of section 10-3.5-109(2)(a) if such



requirement has not already been complied with and if the relocation occurred during the CAPCO's investment in the business; and

2. Be deemed to continue to satisfy a requirement of section 10-3.5-109(2)(a) that has already been complied with and paragraphs (a) and (b) of section 10-3.5-107(1).
- C. Unless otherwise determined by the Economic Development Commission, a business shall not be eligible to receive further Qualified Investments if:
1. It has relocated its headquarters or principal business operations outside of this State; or
  2. It has not expended 80% of its prior Qualified Investments within Colorado; except that this limitation shall not be deemed to either:
    - a. Preclude the purchase of services or goods from outside of Colorado if such services are performed and such goods are used in Colorado; or
    - b. Apply retroactively to disqualify a Qualified Investment previously approved by the Office after the Qualified Investment has been made.

#### **Eligibility of Other Investments of Certified Capital**

All Certified Capital, not currently invested in Qualified Investments by the CAPCO, shall be invested in types of investments authorized specifically by 10-3.5-107(6), C.R.S.

#### **January 31<sup>st</sup> Report and Continued Certification Fee**

On or before January 31<sup>st</sup> of each year, each CAPCO shall submit the following to the Office:

A report containing:

1. The amount of the CAPCO's Certified Capital at the end of its immediately preceding fiscal year;
2. Whether or not the CAPCO has invested more than 15% of its Total Certified Capital in any one business; and
3. All Qualified Investments that the CAPCO made during the previous calendar year;

4. A nonrefundable certification fee of \$5,000 except that no such fee shall be required within 6 months of the initial allocation date of a Specific Pool(s) of a CAPCO. Only one such certification fee shall be required annually regardless of the number of Specific Pools for which the CAPCO received certification or if additional Specific Pools are authorized for such CAPCO. If a CAPCO fails to pay the certification fee within 60 business days after January 31<sup>st</sup>, the CAPCO may be subject to decertification.
5. The location and number of new jobs that have been created due to the CAPCO's Qualified Investments during the previous twelve months and since the CAPCO's initial Qualified Investment. Such new jobs shall be reported on a full-time equivalent basis. The report shall quantify the number of jobs created by each of the Qualified Businesses or Qualified Rural Businesses (delineated by Colorado county and non-Colorado), the name of the business, the location of the business and the type of business (such as service, manufacturing and so on). Such job creation report shall record jobs created after the investment of Certified Capital through the date that the CAPCO is no longer subject to regulation by the Office or the date that the investment has been fully repaid, whichever occurs first. Such job creation report should reflect net new jobs and should generally reflect more jobs than previously reported when making the SBA eligibility determination of Qualified Business or Qualified Rural Business, as applicable.

#### **Annual Audit by an Independent Certified Public Accountant**

Annually, and within 90 days after the close of its fiscal year, each CAPCO shall provide to the Office an audited financial statement that includes an originally executed, unqualified opinion of an Independent Certified Public Accountant. The unqualified opinion shall be on the Independent Certified Public Accountant's letterhead and shall include a complete street address and phone number. The Independent Certified Public Accountant shall be a member in good standing with the American Institute of Certified Public Accountants and, if requested by the Office, such good standing will be documented by a letter, dated no earlier than 60 business days before the submittal to the Office, from the President/Executive Director of the AICPA. If requested by the Office, a copy of the Independent Certified Public Accountant's license in the U.S. state where he or she practices shall be submitted along with a statement from the issuer of the license that the Independent Certified Public Accountant is in good standing in the state where he or she practices, dated no earlier than 60 business days of the submittal to the Office. Such statement from the issuer of the license shall contain a street address and phone number.

The audit shall include agreed upon procedures including addressing the methods of operation and conduct of the business of the CAPCO to determine if the CAPCO is complying with 10-

3.5-101 through 10-3.5-110, 24-48.5-106 and 10-1-103, C.R.S. and this regulation, which includes that Certified Capital has been invested as required by the time limits provided by 10-3.5-107(1).

### **Annual Business Plan Review Meetings**

During each calendar year from 2003 to 2010, the Office shall hold a meeting in each of 5 counties that have populations of no more than 150,000 individuals at which a representative from each CAPCO shall be present to review business plans from Qualified Businesses Headquartered in those counties.

### **Schedule of Qualified Investments**

The aggregate cumulative amount of all Qualified Investments made by the CAPCO from an Allocation Date from each Specific Pool shall be considered in the calculation of the percentage requirements under the following “**Schedule of Investments**” section of “**CONTINUING CERTIFICATION REQUIREMENTS**” unless otherwise noted. Any proceeds, defined as cash for the purposes of the following “**Schedule of Investments**” section of “**CONTINUING CERTIFICATION REQUIREMENTS**”, received by the CAPCO from a Qualified Investment or from other uses may be invested in another Qualified Investment and shall be utilized to calculate the “**Schedule of Investments**” with respect to investments of Certified Capital unless otherwise noted. The date cash is placed in the business, as evidenced by the date of a check or other means of funds transfer, shall be the date utilized for determining if the Schedule of Qualified Investments has been met.

The CAPCO must meet specific time frames, percentages and requirements pertaining to Qualified Investments as follows:

1. Within the period ending 3 years after an allocation date for a Specific Pool, a CAPCO shall have made Qualified Investments cumulatively equal to at least 30% of the Certified Capital allocated to its Certified Investors for the Specific Pool on such allocation date. Although Qualified Distributions are allowed by the Statute in general, the 30% calculation herein shall not take into account any Qualified Distributions. A CAPCO, that received Certified Capital from the Statewide Pool allocation, shall be deemed to have invested \$2 for every \$1 invested in a Qualified Rural Business or a Qualified Business that has its Principal Business Operations located in a Distressed Urban Community and such \$2 for \$1 calculation shall be applied to the Specific Statewide Pool from which the Certified Capital was raised for investment in such businesses.

2. Within the period ending 5 years after an allocation date for a Specific Pool, a CAPCO shall have made Qualified Investments cumulatively equal to at least 50% of the Certified Capital allocated to its Certified Investors for the Specific Pool on such allocation date. Although Qualified Distributions are allowed by the Statute in general, the 50% calculation herein shall not take into account any Qualified Distributions. A CAPCO, that received Certified Capital from the Statewide Pool allocation, shall be deemed to have invested \$2 for every \$1 invested in a Qualified Rural Business or a Qualified Business that has its Principal Business Operations located in a Distressed Urban Community and such \$2 for \$1 calculation shall be applied to the Specific Statewide Pool from which the Certified Capital was raised for investment in such businesses.
  
3. A business that is classified as a Qualified Business or a Qualified Rural Business at the time of the first investment in said business by a CAPCO, when such investment occurs on or after May 27, 2004 shall remain classified as a Qualified Business or a Qualified Rural Business, as applicable, and may receive continuing investments from any CAPCO or any of its Affiliates. Such continuing investments, as long as they meet the Investment of Cash eligibility determination, shall be Qualified Investments even though such business may not meet the definition of a Qualified Business or a Qualified Rural Business, as applicable, at the time of such continuing investments except that:
  - A. A business that is classified as a Qualified Business or Qualified Rural Business at the time of the first investment in said business by a CAPCO, when such investment occurs on or after May 27, 2004, but subsequently violates the requirement of section 10-3.5-103(11)(b)(I) or 11(c) within the first six months after such Qualified Investment, shall not be deemed to be a Qualified Business or a Qualified Rural Business, as applicable, and may not receive continuing investments from any Certified Capital Company or any of its affiliates. Additionally if this exception occurs, the Qualified Investment shall not be used in the 30% and 50% calculations described within this Schedule of Qualified Investments and the calculations described in 10-3.5-109(2)(a).
  
  - B. An investment in a business that relocates either its Headquarters or Principal Business Operations outside of Colorado after six months but less than three years after the initial Qualified Investment shall:
    1. Not be deemed to satisfy a requirement of section 10-3.5-109 (2) (a) if such requirement has not already been complied with and if the relocation occurred during the Certified Capital Company's investment in the business; and

2. Be deemed to continue to satisfy a requirement of section 10-3.5-109 (2) (a) that has already been complied with and 10-3.5-107(1). In order to calculate such percentages, CAPCOs shall maintain separate records and separate tracking for each specific allocation of Certified Capital (for example, the Rural Pool, Statewide Pool, as applicable to each CAPCO).

## **DISTRIBUTIONS-REMITTANCE OF PROCEEDS**

### **10-3.5-108 and 10-3.5-109 C.R.S.**

#### **Eligible Distributions**

1. **Before May 27, 2004:**

- A. A CAPCO may make reasonable Qualified Distributions at any time.

- B. In order to make a Distribution occurring before May 27, 2004, out of Certified Capital to its Certified Investors on a particular Allocation Date *other than reasonable Qualified Distributions which may be made at any time*, a CAPCO shall have made Qualified Investments in an amount cumulatively equal to 100% of the Certified Capital allocated to its Certified Investors on such allocation date, except that a CAPCO may make repayments of principal and interest on its Indebtedness without any restriction whatsoever, including repayments of Indebtedness of the CAPCO on which Certified Investors earned Premium Tax Credits.

- C. A CAPCO may make a Distribution at anytime to return any equity capitalization paid into the CAPCO before May 27, 2004 *from any equity capitalization contributions paid into the CAPCO before May 27, 2004*, proceeds or gains from Qualified Investments, or proceeds or gains from any other use of Certified Capital.

2. **On or after May 27, 2004 and before the beginning of the tenth anniversary of an allocation date:**

- A. At any time, a CAPCO may make reasonable Qualified Distributions; may make Distributions to make repayments of principal and interest on its Indebtedness without any restriction whatsoever, including repayments of Indebtedness of the CAPCO on which Certified Investors earned Premium Tax Credits; may make payments on items specifically approved under the “Indebtedness exception”; may make Distributions to pay

any projected increase in federal or state taxes, including penalties and interest related to federal and state income taxes, of the equity owners of a CAPCO resulting from operations or ownership of the CAPCO without any restriction whatsoever; or may make Distributions to return any equity capitalization paid into the CAPCO before May 27, 2004 from any equity capitalization contributions paid into the CAPCO before May 27, 2004, proceeds or gains from Qualified Investments, or proceeds or gains from any other use of Certified Capital.

B. In order to make any other types of Distributions that have not been described in 2.A. in this section out of proceeds or gains from Qualified Investments, proceeds or gains from any other use of Certified Capital, equity capitalization contributions paid into the CAPCO on or after May 27, 2004, or Certified Capital allocated to its Certified Investors on a particular Allocation Date, a CAPCO shall have made Qualified Investments in an amount to cumulatively equal to:

1. 100% of the Certified Capital allocated to its Certified Investors on such allocation date.
2. In order for initial and continuing Qualified Investments to count towards the 100% requirement described in 2.B.1. in this section, a business that is a Qualified Business or Qualified Rural Business at the time of the first investment by a Certified Capital Company in such business (when such investment occurred on or after May 27, 2004) shall not have violated the requirement for the business to maintain its headquarters and principal place of business in Colorado for at least six-months after the initial Qualified Investment or after it has relocated from another state [within ninety days after the finalization of the contract as described in 10-3.5-103(11)(b)(I)]. If the business violates these requirements, then the investment in such business shall not count towards the investment milestones contained in 10-3.5-107(1) and 10-3.5-109(2)(a) only and may not receive continuing investments from any CAPCO or any of its affiliates.
3. At least one-third of the Certified Capital allocated to its Certified Investors from the Statewide Pool in Qualified Businesses that are in the seed or early stage. For a CAPCO with only a Statewide Pool, a CAPCO shall make Qualified Investments equal to at least 1/3 of its Statewide Pool that are seed or early stage. For a CAPCO with both a Statewide and Rural Pool, seed or early stage Qualified Investments of Certified Capital from both pools shall count toward meeting the 1/3 of its Statewide Pool requirement. A CAPCO may exceed the 100% Qualified Investment requirement if it chooses to do so in order to make the required Qualified Investments in seed/early stage businesses equal to or greater than 1/3 of its Statewide Pool's

Certified Capital; however, this choice shall not affect the timeframe by which the 100% Qualified Investment requirement must be met.

- C. In order to make any Distributions, a CAPCO shall have submitted the schedules described under “Schedules and Other Information” to the Office and calculated the amount of transfers identified in 10-3.5-108(3) utilizing either the annual internal rate of return calculation or the 15% calculation method as further described in these regulations except as follows:
1. A CAPCO shall not be required to submit additional proposed Distribution review requests throughout the calendar year if the most recently submitted proposed Distribution amounts have not changed for any of the items (except for Qualified Distributions) described in 2.A. within this section. If Qualified Distributions change, a CAPCO shall not be required to submit the changes to the Office on a proposed basis throughout the calendar year. Eligibility of Qualified Distributions shall be reviewed by the Office during its Annual Review. However, a CAPCO shall be responsible for ensuring that it shall have sufficient cash remaining in the future to make required payments to the designated non-profit entities if future Distributions (including Qualified Distributions and Qualified Debt payments) are to be made.
  2. A CAPCO shall not be required to submit additional proposed Distribution review requests for the Annual Review if the most recently submitted proposed Distribution amounts have not changed for any of the items (except for Qualified Distributions) described in 2.A. within this section and the most recently submitted proposed Distribution amounts reflect the actual Distributions as of the end of a CAPCO’s fiscal year end. Eligibility of Qualified Distributions shall be reviewed by the Office during its Annual Review. However, a CAPCO shall be responsible for ensuring that it shall have sufficient cash remaining in the future to make required payments to the designated non-profit entities if future Distributions (including Qualified Distributions and Qualified Debt payments) are to be made.
- D. After completing the calculations required in 2.C. and as stated in this regulation, a CAPCO shall make the transfers to the entities as required in 10-3.5-108(3)(c) and (d).
3. **On or after May 27, 2004 and beginning on the tenth anniversary of an allocation date**, a CAPCO shall make no further Distributions of any kind, including Qualified Distributions, from Certified Capital or proceeds or gains from any type of investment of

Certified Capital, unless and until the CAPCO has made Qualified Investments cumulatively equal to 100% of the Certified Capital allocated to its Certified Investors on such allocation date [the 100% includes the requirements listed in section 10-3.5-108(2)(a)(I)]; except that this restriction on further Distributions shall not prohibit payments on Indebtedness of the CAPCO, including Indebtedness to Certified Investors, on qualified debt instruments, payments on items specifically approved under the “Indebtedness exception” or Distributions permitted by 10-3.5-108(2)(b).

### **Schedules and Other Information**

On or after May 27, 2004, equity holders may contribute additional equity to a CAPCO at anytime upon submittal of a certification by the CAPCO to the Office in writing that there is a legitimate business purpose for the equity contribution which is not intended as a device for the purpose of reducing its internal rate of return (or otherwise avoiding or reducing required Distributions to the non-profit entities designated in the Statute).

Eligible Distributions, described in the above section, are for the purpose of determining what type of Distributions may be made and the potential timing of such Distributions. However, once a CAPCO has met the 100%/6 month/1/3 seed or early stage investment requirements, unless otherwise approved by the Office, a CAPCO shall make Distributions as soon as commercially reasonable. A CAPCO shall use the Eligible Distributions section described above and the Distribution Review-Remittance of Portion of Proceeds section to determine whether such Distributions impact the amount of funds, if any, required to be transferred to the non-profit entities designated in the Statute.

Before May 27, 2004, the information needed by the Office to perform the Distributions Review includes, but is not limited to, the following: schedule of all Distributions itemized by type of Distribution (with the exception of Qualified Distributions but including and not limited to, principal and interest payments with respect to Qualified Debt instruments); schedule of Qualified Investments; schedule of outflows of Certified Capital; and schedule of Additional Capital.

In addition on or after May 27, 2004, Distributions *out of* proceeds or gains from Qualified Investments, proceeds or gains from any other use of Certified Capital, proceeds or gains from equity capitalization contributions, equity capitalization contributions, Certified Capital allocated to Certified Investors on a particular allocation date, proposed Distributions, schedule of debt for unaffiliated entity/third party in an arms-length transaction, and schedule of debt to equity holders and related/affiliated entities shall be included on such schedules and shall specifically be examined when a CAPCO proposes to make a Distribution and as a part of the



Annual Review.

Actual Distributions shall be verified against the schedules during each Annual Review. If the schedules submitted for the Annual Review are the same as the schedules previously submitted to the Office for prior calculations and no further Distributions are proposed, the Office will not need to make new calculations at that time.

### **Distributions Review**

1. The Office shall review if the CAPCO has followed the requirements of the Statute and this regulation with regard to when Distributions can be made.
2. Upon the adoption of this regulation, the CAPCO shall submit to the Office complete schedules (which shall include future estimated amounts as described previously). Such schedules shall provide a cumulative record of the required information including specific dates on which transactions occurred (or shall occur) beginning with the Allocation Date for the Specific Pool of Certified Capital and continuing through the date of submittal. The CAPCO shall also have calculated the amount of transfers required.

Thereafter, the CAPCO shall submit to the Office complete schedules (which shall include future estimated amounts as described previously) when proposing to make a Distribution. Such schedules shall be submitted to the Office thirty days prior to a proposed Distribution and shall provide a cumulative record of the required information including specific dates on which transactions occurred (or shall occur) beginning with the Allocation Date for the Specific Pool of Certified Capital and continuing through the date of submittal. The CAPCO shall also have calculated the amount of transfers identified in 10-3.5-108(3) utilizing either the internal rate of return calculation or the 15% calculation method as further described in these regulations.

3. The Office shall verify that the CAPCO has calculated the appropriate reporting and transfer amounts within 30 days (date stamp for receipt by the Office required) of the CAPCO having submitted existing and/or proposed Distribution information to the Office using the procedures described in the Statute and this regulation. If the Office does not respond in 30 days, the existing and/or proposed Distribution and calculation shall be deemed to be approved by the Office.
4. The Office shall verify whether the annual rate of return (IRR) exceeds ten percent on the Certified Capital allocated to the Certified Investors of the CAPCO on such allocation date plus additional equity capitalization contributed to the CAPCO. When the Office verifies the IRR (also known as the discount rate), it shall specifically review whether the

present value of the aggregate total of both cash and non-cash Distributions when combined with 10% of the Premium Tax Credits allocated on the Allocation Date to the Certified Investors and Utilized pursuant to the Statute equals the present value of the Certified Capital allocated to the Certified Investors of the CAPCO on the Allocation Date plus any additional equity capitalization of the CAPCO. The Office shall determine the amount of Distributions to be reported by applying a negative cash flow until the internal rate of return is reduced to 10%. The IRR calculation shall:

A. Not include Qualified Distributions and exempted items as stated in the definition of “Indebtedness”. In order for the Office to verify the exempted items (as stated in the definition of “Indebtedness”), a CAPCO shall submit a certified statement signed by both the unrelated, unaffiliated entity/third party and the CAPCO stating that the transaction does not meet the definition of “Indebtedness”. Such certified statement shall be submitted to the Office for its concurrence prior to the CAPCO beginning to make payments related to such transaction and shall clearly delineate all payments to be made.

On a case-by-case basis, the Office will consider extending the “Indebtedness exception” to repayments of debt to equity holders (except for Qualified Debt instruments) and related/affiliated entities, will consider not defining the principal amount loaned as Indebtedness and will consider not including the principal amount loaned as a Distribution for the purpose of the IRR calculation. However as approved on a case-by-case basis, interest and other forms of return (above and beyond the principal amount loaned) will not be defined as Indebtedness but shall be defined as a Distribution and shall be included in the IRR calculation for these type of transactions. Additionally, this paragraph does not apply to Qualified Debt instruments (including payment of principal and interest) that will be included in the IRR calculation as specifically stated in the Statute. A CAPCO shall not convert equity to debt and use the exceptions provided in this paragraph—meaning that any such conversions shall be treated as equity for the purposes of the IRR calculations.

B. Include, without limitation, all Distributions out of proceeds or gains from Qualified Investments, Distributions out of proceeds or gains from any other use of Certified Capital, Distributions out of proceeds or gains from equity capitalization contributions, Distributions of equity capitalization contributions, and Distributions of Certified Capital allocated to Certified Investors on a particular allocation date, Distributions for repayment of principal and interest with respect to a CAPCO’s Indebtedness including repayments of Indebtedness of the CAPCO on which Certified Investors earned premium tax credits, Distributions to pay any projected increase in federal or state taxes of the equity owners of a Certified Capital Company resulting from operations or ownership of the CAPCO, Distributions for return of equity capitalization and all other Distributions.

C. Not include proceeds or gains from: Qualified Investments; any other use of Certified Capital; or equity capital contributions *as* equity capitalization contributed to the CAPCO but shall include Distributions from these sources of funds when made.

5. The CAPCO shall report to the Division of Housing in the Department of Local Affairs within thirty days of receiving notification from the Office the amount of money equal to twenty percent (*unless the CAPCO fails to have made Qualified Investments cumulatively equal to 100% of the Certified Capital allocated to its Certified Investors on such allocation date as described in 10-3.5-109(2)(a)(III) which will result in the amount to be reported to increase from 20% to the stated amount in this citation*) of any further Distributions above the amount required to produce such 10% return minus any amounts reported and transferred previously under the 15% calculation method (described under #7 below).

The CAPCO shall make the transfers required pursuant to 10-3.5-108(3)(c) and (d). However, Distributions to pay any projected increase in federal or state taxes of the equity owners of a CAPCO resulting from operations or ownership of the CAPCO, Distributions to repay principal and interest on a CAPCO's Indebtedness, including repayments of Indebtedness of the CAPCO on which Certified Investors earned premium tax credits, payments on items specifically approved under the "Indebtedness exception" or Distributions to return equity capitalization paid into the CAPCO before May 28, 2004, shall either be reported to the Division of Housing or accrued for reporting at a later date as determined by the Economic Development Commission. In no event shall this paragraph restrict a CAPCO's ability to make repayments of Indebtedness, including making repayments of Indebtedness of the CAPCO on which Certified Investors earned premium tax credits.

6. For the Distribution that results in the IRR exceeding 10%, a CAPCO shall use the IRR calculation method (described under #4 and #5 above) for that portion of the Distribution that exceeds 10% and will use the 15% calculation method (described under #7 below) for that portion of the Distribution resulting in an IRR of 10% or less.
7. If the internal rate of return determined in accordance with the Statute and these regulations does not exceed 10%, then the CAPCO shall submit a proposed Distribution request and the Office shall review the 15% calculation to determine if amounts will need to be reported and transferred.

The CAPCO shall report to the Division of Housing in the Department of Local Affairs within 30 days of receiving notification from the Office the amount of money equal to 15% of the proposed Distribution amount (or actual Distributions that have already occurred on or after May 27, 2004 for the initial review to take place upon the adoption

of these regulations). However, this calculation shall not include Qualified Distributions or Distributions to pay any projected increase in federal or state taxes of the equity owners of a CAPCO resulting from operations or ownership of the CAPCO, or Distributions to repay principal and interest on a CAPCO's Indebtedness, including repayments of Indebtedness of the CAPCO on which Certified Investors earned premium tax credits, payments on items specifically approved under the "Indebtedness exception" or Distributions to return equity capitalization paid into the CAPCO before May 28, 2004.

In order for the Office to verify items exempted under the definition of "Indebtedness" and thus not included as a Distribution for the purpose of the 15% calculations, a CAPCO shall submit a certified statement signed by both the unrelated, unaffiliated entity/third party and the CAPCO stating that the transaction does not meet the definition of "Indebtedness". Such certified statement shall be submitted to the Office for its concurrence prior to the CAPCO beginning to make payments related to such transaction and shall clearly delineate all payments to be made.

On a case-by-case basis, the Office will consider extending the "Indebtedness exception" to repayments of debt to equity holders (except for Qualified Debt Instruments) and related/affiliated entities, will consider not defining the principal amount loaned as Indebtedness and will consider not including the principal amount loaned as a Distribution for the purpose of the 15% calculations. However as approved on a case-by-case basis, interest and other forms of return (above and beyond the principal amount loaned) will not be defined as Indebtedness but shall be defined as a Distribution and shall be included in the 15% calculation for these type of transactions. A CAPCO shall not convert equity to debt and use the exceptions provided in this paragraph—meaning that any such conversions shall be treated as equity for the purposes of the IRR calculations.

The CAPCO shall make the transfers required pursuant to 10-3.5-108(3)(c) and (d).

The CAPCO shall continue the 15% Distribution calculation until the internal rate of return exceeds 10%-at that time the IRR calculation described in #4 and #5 above will be used to determine transfer amounts. Amounts previously transferred shall be taken into consideration when determining the net amount of future transfers under the internal rate of return calculation.

8. The CAPCO shall submit a report to the Office of any and all reports and transfers made as directed by the Division of Housing in the Department of Local Affairs and the Executive Director of the Department of Human Services with all proposed Distribution review requests and within 90 business days of the CAPCO's fiscal year end for review

during the Annual Review.

**Example — Distributions Review-Remittance of Proceeds**

XYZ, a venture capital firm, applies to the Office to become a CAPCO. XYZ has \$500,000 in equity capitalization and meets all other application requirements. The Office notifies XYZ that its application for certification has been approved.

XYZ submits Premium Tax Credit Allocation Claim forms totaling \$10,000,000 out of the 2002 Statewide Pool. The Office is able to allocate all \$10,000,000 in Premium Tax Credits to XYZ's Certified Investors. Ten percent (10%) of the Premium Tax Credit Allocations are available for use in Years 2 through 11 (ten years). Within the required 5 business days, XYZ receives all \$10,000,000 of Certified Capital from its Certified Investors. The Certified Capital received from Certified Investors is comprised of \$10,000,000 in Qualified Debt at an interest rate of 7%. Qualified Debt payments in this example are based on payments being made by a CAPCO over a twelve-year period and include payments of cash and Premium Tax Credits. If a 12-year level and fully amortizing payment schedule is used, the Qualified Debt payments (amount of cash and Premium Tax Credits) will be different. XYZ makes tax Distributions annually in years 3 thru 10.

XYZ shall invest the \$10,000,000 of Certified Capital in Qualified Businesses. By the end of year 6, XYZ has made Qualified Investments cumulatively equal to: 100% of the Certified Capital allocated to its Certified Investors and met the 6-month requirement, and at least one-third of the Certified Capital allocated to its Certified Investors under the Statewide Pool in Qualified Businesses that are in seed or early stage.

For the purposes of this example, the schedules contained in this section have been received within 90 business days of the CAPCO's fiscal year end and report the following annual results:

	Year 1 2002	Year 2 2003	Year 3 2004	Year 4 2005	Year 5 2006	Year 6 2007	Year 7 2008	Year 8 2009	Year 9 2010	Year 10 2011	Year 11 2012	Year 12 2013
Equity Capitalization Inflow	\$500,000											
<b>Total Certified Capital Inflow</b>	<b>\$10,000,000</b>											
Qualified Debt Distributions (Cash)	\$545,466	\$545,466	\$545,466	\$545,466	\$545,466	\$545,466	\$545,466	\$545,466	\$545,466	\$545,466	\$545,466	
Qualified Debt Distributions (Premium Tax Credits)		\$500,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$500,000
Tax Distributions			\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	
Initial Equity Capitalization Distribution						\$500,000						
Other Distributions						\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	
<b>Total Annual Distributions</b>	<b>\$545,466</b>	<b>\$1,045,466</b>	<b>\$1,595,466</b>	<b>\$1,595,466</b>	<b>\$1,595,466</b>	<b>\$3,595,466</b>	<b>\$3,095,466</b>	<b>\$3,095,466</b>	<b>\$3,095,466</b>	<b>\$3,095,466</b>	<b>\$2,500,000</b>	<b>\$500,000</b>
IRR	-98.62%	-72.33%	-42.39%	-25.14%	-14.31%	-1.26%	4.88%	8.88%	11.62%	13.57%	14.74%	14.93%
Total Distributions used in Designated Non-Profit Payment Calculations						\$1,500,000	\$1,500,000	\$1,500,000	\$1,928,466	\$3,095,466	\$2,500,000	\$500,000
15% for IRR < 10%						\$225,000	\$225,000	\$225,000				
20% for IRR >10%									\$385,693	\$619,093	\$500,000	\$100,000
Less 15% payments for IRR < 10%									<u>-\$385,693</u>	<u>-\$289,307</u>		
Net payment amount for IRR > 10%									\$0	\$329,786	\$500,000	\$100,000
Total Annual Payments to Designated Non-Profits						\$225,000	\$225,000	\$225,000	\$0	\$329,786	\$500,000	\$100,000
Cumulative Payments to Designated Non-Profits						\$225,000	\$450,000	\$675,000	\$675,000	\$1,004,786	\$1,504,786	\$1,604,786
<b>Balance of 15% payments</b>						<b>\$225,000</b>	<b>\$450,000</b>	<b>\$675,000</b>	<b>\$289,307</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

In this example, the internal rate of return (IRR) and the Distributions are calculated annually at the end of each calendar year. However, calculations shall be made on a proposed Distribution and Annual Review basis as described within this section. The CAPCO does not report any amount to the Division of Housing until year 6 in accordance with the Statute and regulations, since the only Distributions made prior to year 6 are Qualified Debt and Tax Distributions. Additionally in years 1 through 8, the IRR is less than 10% and there is no requirement to report any portion of the Qualified Debt and the Tax Distributions to the Division of Housing. As of the end of year 6, the CAPCO is assumed to have invested cumulative amounts in Qualified Businesses equal to 100% of the Certified Capital allocated to it and makes a one-time Distribution of the initial “equity capitalization” of \$500,000 (made prior to May 27, 2004). On 12/31 in years 6, 7 and 8, XYZ makes “Other Distributions” to XYZ Equity Holders of \$1,500,000. Since the IRR does not exceed 10% in years 6, 7, or 8, the basis for the calculation of the amount reported to the Division of Housing in the Department of Local Affairs is determined to be the “Other Distributions” only, which equals \$225,000 for each year, computed as 15% of \$1,500,000. No other Distributions are included in this amount due to the IRR being

less than 10% for that year. Therefore, in year 8 the cumulative payments reported to the Division of Housing since the IRR is less than 10% equals \$675,000 (3 times \$225,000).

In year 9, XYZ makes an “Other Distribution” to XYZ Equity Holders in the amount of \$1,500,000 and Qualified Debt and Tax Distributions totaling \$1,595,466. When the IRR is calculated for that year, it equaled 11.62%. Since the IRR exceeds 10%, the Office then determines the basis for the calculation of the amount to be reported to the Division of Housing. The basis for year 9 is calculated by taking the total Distributions of \$3,095,466 (not including Qualified Distributions) minus the Distributions needed to generate a 10% IRR (\$1,167,000) which equals \$1,928,466. The amount to be reported to the Division of Housing is \$0, using the 20% calculation, \$1,928,466 times 20% or \$385,693 less \$385,693 in credit due to XYZ for payments made in years when there were Distributions made and the IRR was less than 10%. This results in an outstanding credit still due to XYZ of \$289,307 (\$675,000-\$385,693). In year 10, XYZ makes an “Other Distribution” to XYZ Equity Holders totaling \$1,500,000 and Qualified Debt and Tax Distributions totaling \$1,595,466. When the IRR is calculated for that year, it equals 13.57%. Since the IRR exceeds 10%, the Office then determines the basis for the calculation of the amount to be reported to the Division of Housing. The basis for year 10 since the IRR exceeded 10% in year 9 is calculated by taking the total Distributions of \$3,095,466 (not including Qualified Distributions). The amount to be reported to the Division of Housing is \$329,786, using the 20% calculation is \$3,095,466 times 20% or \$619,093 less \$289,307 in outstanding credit due to XYZ for payments made in years when there were Distributions made and the IRR was less than 10%. This results in no outstanding credit due to XYZ.

In year 11, XYZ makes an “Other Distribution” to XYZ Equity Holders totaling \$1,500,000 and Qualified Debt and Tax Distributions totaling \$1,000,000. When the IRR is calculated for that year, it equals 14.74%. Since the IRR exceeds 10%, the Office then determines the basis for the calculation of the amount to be reported to the Division of Housing. The basis for year 11 since the IRR exceeded 10% in year 9 is calculated by taking the total Distributions of \$2,500,000 (not including Qualified Distributions). The amount to be reported to the Division of Housing is \$500,000, using the 20% calculation is \$2,500,000 times 20% or \$500,000, there was no outstanding credit due to XYZ for payments made in years when there were Distributions made and the IRR was less than 10%. In year 12, XYZ does not make an “Other Distribution” to XYZ Equity Holders, but does make Qualified Debt Distributions totaling \$500,000. When the IRR is calculated for that year, it equals 14.93%. Since the IRR exceeds 10%, the Office then determines the basis for the calculation of the amount to be reported to the Division of Housing. The basis for year 12 since the IRR exceeded 10% in year 9 is calculated by taking the total Distributions of \$500,000 (not including Qualified Distributions). The amount to be reported to the Division of Housing is \$100,000, using the 20% calculation is \$500,000 times 20% or \$100,000, there was no outstanding credit due to XYZ for payments made in years when there were Distributions made and the IRR was less than 10%.

In the event that XYZ is proposing a Distribution that will cause the IRR to exceed 10% and the proposed Distribution includes Qualified Debt Distributions, Tax Distributions and “Other Distributions”, a CAPCO may make the Other Distributions first and calculate the amount to be reported to the Division of Housing using the 15% calculation method until the “Other Distributions” causes the IRR to be 10%. Once the IRR is 10%, the CAPCO shall use the IRR/20% calculation method for the remainder of the “Other Distributions”, Qualified Debt Distributions, and Tax Distributions to determine the total amount to be reported to the Division of Housing. In this type of situation only, a CAPCO may have a portion of its proposed Distribution amount reported to the Division of Housing from the 15% calculation plus a portion from the 20% calculation. In all other cases, only one calculation method shall be used.

Such Distributions Review shall continue on a proposed Distribution review basis and an Annual Distribution Review basis as described within these regulations.

NOTE: Internal Rate of Return calculations are computed using a Microsoft Excel spreadsheet with the Analysis Tool Pak — VBA and the XIRR formula.

### **ANNUAL REVIEW-DECERTIFICATION-PENALTIES**

#### **10-3.5-109 C.R.S.**

The Office shall conduct an Annual Review of each CAPCO to determine whether the CAPCO is abiding by the requirements of certification, to advise the Certified Capital Company as to the eligibility status of its Qualified Investments, and to ensure that no investment has been made in violation of the Statute and this regulation.

Additional program information will be reviewed as needed. The cost of the Annual Review shall be paid by each CAPCO according to a reasonable fee schedule adopted by the Office. Upon completion of its review, the Office shall send an invoice for the Annual Review to the CAPCO. The total invoiced amount shall include the number of billable hours associated with the Annual Review and the Annual Review report. The billable hourly rate shall be \$50 per hour. Payment shall be due within 30 business days from the date of the invoice. Payment shall be made by certified, cashier’s check, or company check.



### Decertification-Penalties

2. Any material violation before May 27, 2004, of the Statute and **CONTINUING CERTIFICATION REQUIREMENTS** contained in this regulation shall be grounds for decertification of a CAPCO. The Office shall decertify CAPCOs in accordance with 10-3.5-109(1)-(4), C.R.S. and 10-3.5-109(6)-(7).
3. On or after May 27, 2004, the Office shall review the CAPCOs in accordance, but not limited to, with 10-3.5-109(1-7) and 10-3.5-107, C.R.S. as amended.
4. On or after May 27, 2004, any material violation of 10-3.5-107, C.R.S. shall be grounds for decertification of the CAPCO as specifically described in 10-3.5-109, C.R.S. and/or assessment of an administrative fine(s) to be determined by the Office as described in 10-3.5-109, C.R.S. and utilizing the schedules describe below.
  - A. Material violations of 10-3.5-107 C.R.S. that would be grounds for decertification of the CAPCO are not making Qualified Investments as required by 10-3.5-107(1) and 10-3.5-107(4) C.R.S.
  - B. Violations involving an unauthorized use of funds under this article shall require the repayment or reinvestment of the funds plus a fine not to exceed the amount of funds involved. Such violations would involve misuse of funds under 10-3.5-107(6) C.R.S.
  - C. Violations not involving an unauthorized use of funds under this article may be assessed a fine not to exceed \$25,000 for the first violation, which may increase by \$25,000 for each additional violation not to exceed \$100,000. If the fine reaches the \$100,000 level, then the fine amount will always be \$100,000 going forward. Such violations would involve non-compliance with 10-3.5-104(2)(d), 10-3.5-104(6), 10-3.5-107(7)(b), (c), (d) and (e), and 10-3.5-108 C.R.S.
  - D. If the Office determines that a CAPCO is not in compliance with the requirements contained in A., B. or C. of this section, the CAPCO may be subject to decertification and/or the assessment of a fine 120 days after the date of mailing of the notice of deficiencies (to officers of the CAPCO) unless the deficiencies are corrected and the CAPCO is again in compliance with all requirements of certification.
  - E. At the end of the one-hundred-twenty-day period described in D. and if the Certified Capital Company is still not in compliance with the requirements that were the subject of the notice of deficiency(ies), the Office may do the following:

1. Send a notice of decertification to the CAPCO and to all other appropriate state agencies, including without limitation the division of insurance in the department of regulatory agencies for a violation of 10-3.5-107(1) and 10-3.5-107(4). The Office shall also send written notice to the address of each Certified Investor whose premium tax credit has been subject to recapture or forfeiture, using the address shown on the most recent premium tax filing. The Office shall have the authority to waive any recapture or forfeiture of credits if, after considering all facts and circumstances, it determines that such waiver will have the effect of furthering the economic development of the state
2. Assess an administrative fine as described in B. and/or C. against the CAPCO. The assessment shall occur only after the director of the Office holds a hearing in accordance with section 24-4-105, C.R.S. Judicial review may be obtained in the court of appeals pursuant to section 24-4-106 (11), C.R.S. The Office shall transfer any such fine that it receives to the state treasurer, who shall credit it to the general fund.

### **CAPCO No Longer Subject To Regulation By Office**

A CAPCO shall no longer be subject to regulation by the Office except insofar as is necessary to oversee the Distributions made pursuant to 10-3.5-108 (3) (b), C.R.S. if the following requirements have been met:

- A. A CAPCO has invested an amount cumulatively equal to one hundred percent of its Certified Capital in Qualified Investments. Although the Statute allows Qualified Distributions in general, the 100% calculation herein shall not take into account any Qualified Distributions;
- B. A CAPCO has invested an amount cumulatively equal to at least one-third of the Certified Capital allocated to its Certified Investors from the Statewide Pool in Qualified Businesses that meet the definition of “Seed or Early Stage”. Seed or Early Stage investments of Certified Capital from the Statewide Pool and the Rural Pool (if applicable) shall both count toward meeting this requirement;

- C. All Qualified Businesses funded by a CAPCO have maintained their Headquarters and Principal Business Operations/principal place of business in Colorado for at least six-months after the first Qualified Investment has been made if the business was located in Colorado at the time of the investment or for at least six-months after the business relocated to Colorado from another state. If the Business' has not met the six month requirement, then this investment will not be included in the 100% calculation required in 1.A. above;
  
- D. Completion of the final Annual Review [except for oversight of Distributions pursuant to 10-3.5-108(3)(b) C.R.S.] will be initiated after confirming that the CAPCO has achieved its investment requirements of one hundred percent/six-month/one-third seed-early stage. The Office will complete its Final Annual Review within 6 months of a CAPCO submitting all required reports/audits per the Statute and this regulation and upon the CAPCO notifying the Office by Certified Mail With Receipt of its request for a Final Annual Review by the Office; and
  
- E. Submittal of the CAPCO's final Annual Audit by an Independent Certified Public Accountant and any other final reports and satisfactory review by the Office.

### **Material Determination**

In all cases, the Office reserves the right to determine the materiality of a requested item unless such item has specifically been addressed in the Statute or this regulation.

### **Use, Transfer and/or Sale of Premium Tax Credits**

Due to the "estimated" nature of quarterly tax payments, Premium Tax Credits may only be used on an annual basis against actual Premium Tax Liabilities. Premium Tax Credits may first be used for the March payment that is due in 2004, with regard to the actual tax liability for the calendar year 2003.

The Premium Tax Credits, established pursuant to the Statute for this program, may be transferred or sold. A transfer or sale shall not affect the time schedule for taking the Premium Tax Credit as provided in the Statute in 10-3-5.105, C.R.S.

1. Premium Tax Credits earned by a Certified Investor pursuant to 10-3.5-106, C.R.S. (the

“Certified Investor” or “Transferor”) may be transferred or sold in whole or part to one or more insurance companies (the “Transferee”) that are subject to the State of Colorado’s Premium Tax.

2. Transfer or sale of Premium Tax Credits, whether by the original investor or a re-sale by a Transferee, shall only be made once per calendar year and shall occur no later than December 31<sup>st</sup> of each calendar/tax year in order to be valid for Premium Taxes related to such calendar/tax year ending December 31<sup>st</sup> which are subsequently due on March 1<sup>st</sup> of the following calendar/tax year.

In the event of a change in ownership or control of the holder of Premium Tax Credits, transfers of such Premium Tax credits to a new owner may occur without being subject to the once per calendar year limitation except that such transfers shall occur no later than December 31<sup>st</sup> of each calendar/tax year in order to be valid for Premium Taxes related to such calendar/tax year ending December 31<sup>st</sup> which are due on March 1<sup>st</sup> of the following calendar/tax year.

3. The format of all transfer or sale documents shall be approved by the Office. Any Premium Tax Credits recaptured pursuant to section 10-3.5-109, C.R.S. shall be the liability of the taxpayer who actually claimed the Premium Tax Credits. The “taxpayer who actually claimed the Premium Tax Credits” shall refer to each taxpayer, whether a Certified Investor or a subsequent Transferee, who has used a Premium Tax Credit to reduce its state premium tax liability in any tax year. Since any Premium Tax Credits recaptured pursuant to 10-3.5-109, C.R.S. shall be the liability of the taxpayer who actually claimed the Premium Tax Credits, the Office shall require that the Transferee be actively licensed and in compliance with all licensing requirements, including minimum net worth requirements, as set forth by the State of Colorado to conduct such insurance business.
4. All owners of Premium Tax Credits (Certified Investor or Transferees) shall submit an Annual Report to the Office in a format provided by the Office, with a copy to the Colorado Division of Insurance, no later than January 31<sup>st</sup> of each year (for the previous calendar/tax year) which provides details on the following information broken out by each Specific Pool:
  - 1) owner’s initial Premium Tax Credits delineated by initial year of eligibility;
  - 2) amount of Premium Tax Credits transferred or sold and the years to which such transfer or sale applies;

- 3) the sale price of such Premium Tax Credits transferred or sold;
- 4) name, address, and Insurance Tax Identification Numbers for the owner and the Transferee;
- 5) the date of such transfers or sales;
- 6) the amount of Premium Tax Credits taken against Colorado Premium Tax liability to date delineated by tax year;
- 7) the first date that the Premium Tax Credits could be taken by the owner;
- 8) the owner's remaining Premium Tax Credit balance;
- 9) carryforward tax credits and the related year; and
- 10) other information as requested by the Office.

**EXHIBIT A**  
**COLORADO OFFICE OF ECONOMIC DEVELOPMENT**  
**& INTERNATIONAL TRADE (Office)**

PRE-EXISTING QUALIFIED INVESTMENT AS SEED/EARLY STAGE INVESTMENT  
CERTIFICATION FOR THE 2002 POOL

Seed or early stage, in reference to a Qualified Business, means that the Qualified Business, at the time of the initial Qualified Investment, either: (please check which of the below situation(s) were true at the time of the initial Qualified Investment)

- 1)\_\_\_\_\_ Had less than five hundred thousand dollars in total revenues for the fiscal year immediately preceding the initial Qualified Investment; (please supply audited financials if possible, business' financials if audited financials are not available)
  
- 2)\_\_\_\_\_ Has received no more than one investment from a professional venture capital firm with funds raised from institutional investors; or (please supply detailed summary of the equity section of the financials)
  
- 3)\_\_\_\_\_ Does not have positive operational cash flow for the fiscal year immediately preceding the initial Qualified Investment. (please supply audited financials if possible, business' financials if audited financials are not available)

I do hereby certify that we have read and understand the above statement and that this information and documentation supplied to the Colorado Office of Economic Development & International Trade for review is true and accurate.

Signature of the Certified Capital Company and Date

Name and Title of Authorized Member  
(Printed)

\_\_\_\_\_

\_\_\_\_\_

Signature of the Colorado Business and Date

Name and Title of Authorized Member  
(Printed)

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