

IRS Comment Letters  
The Community Partners Financial Group Comment on Proposed Regulations  
(REG-119436-01) Regarding New Markets Tax Credit

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Marlene Gross  
Deputy Associate Chief Counsel  
Passthroughs and Special Industries  
Internal Revenue Service  
Department of Treasury  
1111 Constitution Avenue, Northwest  
Washington, DC 20224

**Re: *New Market Tax Credit Programs--Comments to Proposed Rule***

Dear Ms. Gross:

The Community Partners, LLC was established to raise debt and equity in order to invest in affordable housing and economic development projects located in America's distressed, neglected and emerging urban communities. Urban America, LP was established to become America's preeminent vehicle for fiscally and socially prudent investment in inner city commercial real estate. Each organization intends to participate in the New Market Tax Credit Program by using the New Market Tax Credits ("NMTCs") to finance commercial real estate projects in qualified low-income communities. The following comments to the proposed rule for the New Market Tax Credit program are based upon issues that we believe will affect our ability to use the program to acquire and develop commercial real estate projects.

1. Question 1 (a)--*Definition of "Substantially All"*. "Substantially All" for purposes of section 45D(b)(1)(B) should be defined as total proceeds raised from the sale of the NMTCs less eligible underwriting fees, and expenses. In a typical syndication transaction, the amount of capital attributed to an investor that is used to calculate financial return does not include underwriting fees and expenses incurred by the fund sponsor or the corporate entity into which the investor is investing. Those expenses are considered to be transaction costs that are customarily incurred to effect the transaction. A typical transaction "load" for an equity investment in a fund is 12 -15%.

2. Question 1(b)--*Qualified Low-Income Community Investments*. One hundred percent of the equity raised from the sale of the NMTCs, and all transaction costs related thereto, should be treated as used to make qualified low-income community investments ("QLICIs"). Transaction costs related to the investment should include underwriter's compensation, legal fees, organizational fees, and other due diligence fees. Since all of these costs are being used to identify potential investments and to invest in them, these costs should be included.

3. Question 1(c)--*Time to Invest in A Qualified Low-Income Community Investment*. Once cash has been received by a CDE in exchange for a commitment for NMTCs, the CDE should have twelve (12) months to invest the cash into a QLICI. This twelve-month period would allow the CDE to perform all necessary underwriting of potential investments in order to ensure that an investment is warranted. Similar to the low-income housing tax credit ("LIHTC") program, the regulations should require that a minimum of 10.0% of the equity raised by the sale of the NMTCs be invested at the end of the first calendar year. Furthermore, the credit period should not begin until an investment has occurred into a QLICI, thus providing a financial incentive for expeditious underwriting, in

addition to the regulatory incentive discussed above.

4. Question 1(d)--*Repayments of Equity and Principal*. Repayments of equity should be considered to be a termination of the QLICI if such repayment occurs prior to the expiration of the seven-year credit period. Repayments of principal should be considered to be a termination of the QLICI if such repayment of the entire outstanding balance occurs prior to the expiration of the seven-year credit period. It should be required that in order for the CDE to continue to provide tax benefits to its investors following the repayment of equity or principal, that the equity or principal be reinvested in another QLICI within a certain time frame. This will ensure that the proceeds are being used for the purpose intended by the legislation: to promote investments in QLICIs.

5. Question 1(e)--*"Substantially All" for the Seven-Year Holding Period*. Assuming that substantially all of the equity investments must be invested within the first year of an investment, then the "substantially all" requirement can be administered by monitoring the investments to ensure that any repayment of equity or principal during the seven-year period be followed by an immediate reinvestment of such proceeds into another QLICI. To the extent that another QLICI has not been identified, then it should be required that the proceeds of the repayment of equity or principal be maintained in an interest bearing account similar in fashion to a 1031 exchange transaction, as a result of which tax benefits will be suspended until such time as another QLICI is identified into which the equity or principal can be placed. Time limits similar to section 1031 requirements should be placed on this transitional period, such as 45 days to identify an alternative QLICI, and a maximum of 180 days in which to effect the transaction.

6. Question 2(a)--*Definition of Aggregate Gross Assets*. Aggregate gross assets should be defined as the total equity raised from the sale of an allocation of NMTCs less qualified transaction expenses. Assets that should not be taken into account for this definition should include overhead, equipment, and materials purchased by the CDE to support its stated business purpose which are not invested directly into a QLICI.

7. Question 2(b)--*Determination of Aggregate Gross Assets*. See the above.

8. Question 2(c)--*Compliance with the 85.0% test*. To ensure compliance, first, the test should be satisfied on a per asset basis, and second, it should be satisfied on an aggregate basis throughout the seven-year period. For instance, for each QLICI, the test should be applied to ensure that of the total amount of equity that is allocated to such investment, 85.0% of such equity should go into the investment for qualified costs, and the remaining 15.0% can be used for transaction costs. In addition, all QLICI of the CDE should be totaled and the test should be applied to the aggregate as well. A grace period should be provided to allow for the contribution of capital pursuant to a schedule into a QLICI in accordance with a contractual agreement between the CDE and the recipient of the investment. This will ensure that from an investment point of view equity is placed into a deal in as prudently a manner as possible as determined by the CDE.

9. Question 3(a)--*Definition of Substantial Portion*. Substantial portion should be defined as 25.0%.

10. Question 3(b)--*Determination of Business as a Qualified Active Low-Income Community Business*. The qualification of a business as an active low-income community business should be made at the time of the investment by the CDE based upon reasonable expectations of the CDE after reviewing an application and investment documents from the potential qualified low-income community business. An investment in a business should lose its status as a qualified low-income community investment to the extent that the investment fails to meet the requirements of a qualified active low-income community business or the extent to which the business is otherwise run in violation of federal law. The degree of control of the CDE over the business should not be relevant to tiffs determination.

11. Question 3(c)--*Special Rules for Newly-Formed Entities*. Special rules should not be provided under section 45D(d)(2)(A) regarding the satisfaction of requirements for a qualified active low-

income community business. New businesses, which by definition will not have a track record,, should be required to complete a business plan that will specify the purpose of the business, the area in which it will operate, and other factors which can be used to determine if the business will satisfy the requirements for a qualified active low-income community business.

12. Question 4 -*Financial Counseling and Other Services*. Intentionally Omitted.

13. Question 5(a)--*Restrictions Regarding Investment by one CDE into another CDE*. Provided that each CDE operates in accordance with its comprehensive investment plan, there should be no restrictions regarding an investment by one CDE into another CDE.

14. Question 5(b)--*Loss of status as QLICI*. CDEs should be held accountable to the same standard as non-CDE investors in connection with the loss of status as a QLICI.

The degree of control of the investing CDE over the recipient CDE should not require any additional scrutiny. Provided that the CDEs are operating in accordance with their comprehensive investment plans and in accordance with the requirements of the legislation, no other reason should exist for loss of status.

15. Question 6(b)--*Recapture Requirements*. One such circumstance that should not constitute a change in the use of proceeds of a qualified equity investment is where a qualified low-income community, as a result of improving economic conditions, no longer meets the definition of a qualified low-income community. To the extent that this occurs during the credit-holding period, the investment should remain a qualified low-income investment. Secondly, to the extent that a business located in such qualified low-income community experiences such growth that it begins to conduct a portion of its business outside of the qualified low-income community in excess of the requirements of the legislation during the holding period, and such growth in business is a result of positive economic change and not a result of an attempt by the business to violate the requirements of the program, then such an occurrence should not constitute a change in the use of proceeds.

16. Question 6(b)--*Remedial Action*. A CDE should be given the right to rectify any conditions under its control that caused a change in the use of the proceeds of the qualified equity investments, provided, that the offending use was not the direct and intentional result of actions taken by the CDE with full knowledge of non-compliance of the act.

17. Question 7--*Limitations on the New Market Tax Credit*. Investments should be treated as directly or indirectly subsidized by other federal tax benefits only where a clear and identifiable tax benefit can be determined to be a result of the use of the other federal tax benefits in connection with the NMTC. A situation where the benefit is not tax related but economic related, such as using the NMTC and LIHTC in a mixed-use real estate development, should not be regulated. To regulate this would limit severely the tremendous community development potential that is created by the NMTC with respect to the development of shopping centers and retail centers in qualified low-income communities. The possibility of creating a mixed-use community consisting of housing subsidized by the LIHTC and commercial and retail subsidized by the NMTC, should be preserved.

18. Question 8 - *Anti-Abuse Regulations*. Intentionally Omitted.

Sincerely,

/s/

Bradley C. Jefferies

Chief Executive Officer

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