

Proposed Amendments to New Markets Tax Credit Regulations
Treasury Regulations Section 1.45D-1
Pursuant to I.R.C. § 45D(e)(2)
Revisions in Red, Underlined Typeface

(d) Qualified low-income community investments--

...

(4) Qualified active low-income community business--

(i) In general.

The term qualified active low-income community business means, with respect to any taxable year, a corporation (including a nonprofit corporation) or a partnership engaged in the active conduct of a qualified business (as defined in paragraph (d)(5) of this section), if:

(A) the requirements in paragraphs (d)(4)(i)(A), (B), (C), (D), and (E) of this section are met, or,

(B) the requirements in paragraphs (d)(4)(i)(D) and (E) and paragraph (d)(4)(v) of this section are met.

Solely for purposes of this section, a nonprofit corporation will be deemed to be engaged in the active conduct of a trade or business if it is engaged in an activity that furthers its purpose as a nonprofit corporation.

...

(v) Qualified Active Low-Income Community Business with Respect to Targeted Populations.

(A) An entity meets the requirements of this paragraph (d)(4)(v) under any one of the following three conditions:

(1) Sales to targeted populations. At least 50 percent of the gross income of such entity is from sales to persons that are members of a targeted population.

(2) Employees in a targeted population. At least 40 percent of the employees of such entity are persons that are members of a targeted population when hired. For purposes of this paragraph (v)(A)(2), the term "employees" includes employees under a management contract, substantially all of the services of which are to provide services to the entity for purposes of conducting the entity's active low-income community business.

(3) Ownership by a targeted population. More than 50 percent of the owners of such entity are persons that are members of a targeted population at the time the qualified investment is made.

(a) Change of ownership. If a change of ownership occurs, then such entity will continue to satisfy this paragraph (d)(v)(A)(3) to the extent that more than 50 percent of the owners of such entity are persons that are members of a targeted population. If, after a change of ownership, more than 50% of such entity is no longer owned by persons that are members of a targeted population, then such investment shall be deemed to continue to be a qualified low-income community investment to the extent that the underlying investment agreement governing the loan or equity investment provide that in such an event the loan must be repaid or the equity investment returned. Any repayments received are subject to the reinvestment rules of paragraph (d)(2).

(b) Special rule for existing owners. For purposes of determining members of a targeted population, any owner who was a person who was a member of a targeted population prior to the change of ownership, shall continue to be treated as a person who is a member of a targeted population after the change of ownership.

(B) Targeted population.

(1) Low-Income Targeted Population. A targeted population means individuals whose income in the prior tax year is 80 percent or less of area median gross income, as adjusted for family size, determined pursuant to section 8 of the United States Housing Act of 1937;¹ or

(2) Other Targeted Populations. A member of an identifiable group of individuals, including an Indian tribe, who otherwise lack adequate access to loans or equity investments.

(D) Rental Properties.

For purposes of lessors of tangible property, an entity meets the requirements of this paragraph (d)(4)(v) if at least 85% of the tangible property is leased and, in the aggregate, its lessees satisfy the requirements of paragraph (d)(4)(v)(A), (B) or (C).

(E) Property located within an Empowerment or Enterprise Zones.

If substantially all² of an entity's property is located within an Empowerment

¹ The Code and Regulations use the term “area median gross income” without defining it. See, e.g., I.R.C. § 42(g)(1)(A); Treas. Reg. § 1.42-15(a).

² “Substantially all” is defined as 85 percent in Treas. Reg. § 1.45D-1(c)(5).

or Enterprise Zone, as defined in Sections 1391 (including, without limitation, Section 1391(g)(3)(A)(iii)) and 1397C), then the numbers 50 percent, 40 percent, and 50 percent in paragraphs (v)(A)(1), (2) and (3) shall be replaced with the numbers 25 percent, 20 percent, and 25 percent, respectively.

(d) Qualified low-income community investments--

. . .

(6) Qualifications—(i) In general. Except as provided in paragraph (d)(6)(ii) of this section, an entity is treated as a qualified active low-income community business for the duration of the CDE’s investment in the entity if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a qualified active low-income community business under paragraphs (d)(4)(i) to (d)(v) and (d)(5) of this section throughout the entire period of the investment or loan.