

**Objective:**

Documenting that a reasonable expectation exists that the business in which the Qualified Active Low-Income Community Investment (“QALICB”) has been made will continue to be a Qualified Active Low-Income Community Business (“QALICB”).

**Background:**

In accordance with the Temporary Regulations issued by the Department of the Treasury, if the Community Development Entity (“CDE”) controls or obtains control over the proposed QALICB at any time during the seven year period, the entity will be treated as a QALICB only if it satisfies the gross income, services, tangible property, collectibles and nonqualified financial property tests throughout the entire period that the CDE controls the entity.

If the CDE does not have control over the proposed QALICB, the entity is treated as a QALICB for the duration of the CDE’s investment in the entity if the CDE has a reasonable expectation at the time of its investment in the borrower/investee that the borrower/investee will satisfy the requirements to be a QALICB through the entire period of the investment or loan.

**Recommended Practices:**

- List of documents that should be obtained from the management of the Proposed QALICB
  - Audited financials, including breakout of capital (if available)
  - Most recent Tax Return (if available)
  - Partnership/Operating Agreement/Articles of Incorporation
  - Business Plans, if available
  - Financial Projections, if available
- Other documents that can be obtained from the management of the Proposed QALICB, if applicable
  - Deed to the real property
  - Lease agreement

Note: To the extent possible, these procedures should be performed using the audited financials. If the audited financials are not available, the next preferred documentation would be the most recently filed tax return. If the most recently filed tax return is not available use the trial balance.

**Control test**

- Inquire of management of the proposed QALICB regarding the total value of capital, voting rights, and management rights.
- Review the loan agreement/partnership agreement from the proposed QALICB to determine the total value of capital, voting rights, and management rights.

- If the CDE is a partnership/corporation, review tax return to obtain the total value of capital/stock and value of capital/stock held by the CDE, if any.
- Based upon the review the Partnership Agreement/Operating Agreement/Articles of Incorporation and inquiry of the management of the proposed QALICB, evaluate the management rights controlled by the CDE over the proposed QALICB.
- Based upon the review of the Partnership Agreement/Operating Agreement/Articles of Incorporation, evaluate the voting rights controlled by the CDE over the proposed QALICB.
- The CDE controls the proposed QALICB if the CDE holds more than 33% of the total capital, voting rights or management rights.

Note : If the CDE controls the proposed QALICB, the CDE cannot rely upon the reasonable expectations test.

- *Verify that the procedures set forth in the recommended practices to determine that a real estate/non real-estate business is a Qualified Active Low-Income Community Business have been performed with respect to the proposed QALICB.*
- *Obtain management representation letter/certification from the management of the proposed QALICB.*
- *Verify that the loan/investment agreement includes the recommended covenants as set forth in the procedures for Standardized Borrower/Investee Certifications and Loan Covenants.*

**Eligible Business test:**

- Inquire of management regarding future plans to expand into businesses listed in Section 1.45D-1T (d)(iii)(A) of the Temporary Regulations issued by the Department of the Treasury.

The businesses included in Section 1.45-1T(d)(iii)(A) are:

- Massage parlor
- Hot tub facility
- Suntan facility
- Country Club
- Racetrack or other facility used for gambling
- Sale of alcoholic beverages for consumption off premises
- Development or holding of intangibles for sale
- Private or Commercial Golf Course

**Potential Additional Procedures**

- If the Proposed QALICB is in real estate, review the deed of title to the real property. In case of leased property, verify that the lease period covers the compliance period. If the lease period is less than 7 years, inquire of management regarding plans to move within the compliance period.
- For mixed use businesses (both commercial and residential rental use property), verify inclusion of clause in loan agreement that at least 20% of the gross rental income will be derived from the commercial use of the property.
  - Similar clause to be included in partnership/operating agreement of the Proposed QALICB if equity investment is made by the CDE.
  - Review lease agreement of commercial space to verify that the lease period is at least the compliance period.

**Inquiry of Management**

Make inquiries of management regarding future plans:

- to move/expand existing operations to a new address not located in a low-income census tract.
- that may affect the percent of gross income that is be derived from the active conduct of a qualified business in a low-income census tract.
- that may affect the percent of employee services that are performed in low-income communities.
- that may affect the percent of use of tangible property in a low-income communities.
- that may increase the nonqualified financial property
- that may increase the collectibles

**Review Business Plan/Financial Projections**

Review Business Plan/Financial Projections, if available to evaluate the growth pattern and determine the potential for:

- move/expansion of the business into new locations
- employment of additional personnel in new locations
- increase in tangible property
- increase in nonqualified financial property
- increase in collectibles not held primarily for sale in the ordinary course of business

- Further inquiries can be made of management if deemed necessary.