

Table of Contents

CHAPTER 1

History of New Markets Tax Credit and Comparable Programs	1
1.01 Introduction	1
1.02 History and Success of the New Markets Tax Credit	2
[1] History and Implementation	2
[2] The Figures	3
1.03 How the New Markets Tax Credit Works	3
1.04 Key Players in the New Markets Tax Credit Industry	4
[1] CDFI Fund (U.S. Treasury Department)	4
[2] CDEs/Allocatees	4
[3] Investors	4
[4] QALICBs	5
[5] Other Program Participants	5
[6] Accounting, Legal and Consulting Professional Firms	5
1.05 New Markets Tax Credits and Community Reinvestment Act	5
1.06 Description of and Interaction with Other Tax Incentives	6
[1] Low-Income Housing Tax Credits	6
[2] Rehabilitation (Historic) Tax Credits	7
[3] Renewable Energy Tax Credits	8
[4] Opportunity Zones Incentive	8
1.07 The Future of New Markets Tax Credits	9

CHAPTER 2

General Operation of the New Markets Tax Credit	11
2.01 Introduction	12
2.02 Basic Structure of the New Markets Tax Credit	12
2.03 Defining the Taxpayer	14
2.04 NMTC Strategies	15
[1] Leveraging Approach	15
[2] Special Allocation Approach	16

2.05 Qualified Community Development Entity	16
[1] Requirements and Characteristics	17
[a] Statutory Requirements for a Community Development Entity	17
[b] Automatic Qualification	17
[c] CDEs with Subsidiaries	18
[d] Specialized CDEs	18
[e] Limitations of a CDE	19
[2] Eligibility and Certification	19
[a] Primary Mission Test	20
[b] Accountability Test	21
[c] Concept of Service Areas	23
[d] Targeted Accountability	24
[e] Who is a Representative?	25
[f] Facts and Circumstances	25
[3] Choosing the Right Kind of CDE	25
[a] Use of a Corporate Entity	26
[b] Using a Partnership or Limited Liability CDE	26
[c] Choosing a CDE–Investor Flexibility	27
[1] Single Partnership	27
[2] Multiple Structures with Subsidiaries	27
[d] Choosing a CDE–Investment Flexibility	28
[4] Allocation Agreement	28
2.06 Qualified Equity Investments	30
[1] Statutory Requirements	30
[2] Revenue Ruling 2003-20 and 2010-17	32
[3] Look-Back Rule	33
[4] Substantially All Test	34
[a] Direct-Tracing Method	35
[b] Safe Harbor Method	35
[c] Operating Rules	36
[5] Designated Investments	37
2.07 Qualified Low-Income Community Investments	38
[1] Statutory Requirements	38
[a] Investment in or Loan to QALICB–Escrow Arrangements or Other Restrictions	39

[b] Purchase of Loans–Clarification	40
[c] Purchase of Loans–Loan Discounts and Example	41
[d] Purchase of Loans–Participations or Tranches	41
[e] Financial Counseling and Other Services	42
[f] Investment in or Loan to CDE	42
[2] Reserves	43
[3] Reinvestment Requirement	43
[4] Restriction on use of QLICI Proceeds	44
2.08 Qualified Active Low-Income Community Business	45
[1] Statutory Requirements	46
[a] Operated in a Low-Income Community	46
[i] Location of Business Operations	46
[A] Gross Income Requirement	46
[B] Tangible Property Requirement	47
[C] Services Performed Requirement	48
[ii] Low-Income Community	49
[A] 2010 Census Data and 2011-2015 ACS Data	50
[B] Allocation Agreement	51
[b] Nonqualifying Assets Limit	53
[i] Collectibles Test	53
[ii] Nonqualified Financial Property Test	54
[c] What is a Qualified Business?	55
[i] Statutory Requirements	55
[ii] Residential Rental Property	57
[iii] Commercial Real Estate	59
[iv] Intangibles	60
[v] Treasury Decision 9600–Non-Real Estate Reinvestments	61
[vi] Other Rules	62
[d] Definition of Active Business	64
[e] Measurement Date and Reasonable Expectations Test	64
[i] Definition of Control	66
[2] Portions of Business Rule	66
[3] Targeted Populations	67
[a] Gross Income Requirement	67

[b] Employees	68
[c] Ownership	68
[d] Limitations on Location	68
[e] Rental of Real Property for Low-Income Targeted Populations	69
[i] Rents to Others Real Property for Low-Income Targeted Populations	69
[ii] Sole Business is Rental to Others of Real Property	69
[f] GO Zone Targeted Populations	69
[i] Definition	69
[ii] Qualified Active Low-Income Community Business Requirements for GO Zone Targeted Populations	69
[iii] Qualified Active Low-Income Community Location Requirements for GO Zone Targeted Populations	70
[iv] Determination	70
[v] 200 Percent Income Restriction	71
2.09 Timing of the Tax Credits–Credit Allowance Date	72
2.10 Credit Recapture	73
[1] Statutory Requirements	73
2.11 General Waiver Authority	75
REPORTING REQUIREMENTS	75
2.12 Notifications to Investors	75
2.13 Notifications to QALICBs	76
2.14 Internal Revenue Service Reporting Obligations	76
2.15 CDFI Fund Reporting Obligations	77
[1] AMIS Reporting Details	77
[a] Investor Reporting	77
[b] Institution Level Reporting	78
[c] Transaction Level Reporting	78
[d] CDE Dissolution Reporting	78
[e] Annual Audited Financial Statements of Allocatee	79
[f] Reporting Failures and Remedies and Recapture Notification	79
[g] Additional Reporting Requirements	80
2.16 Basis Reduction Requirements	80
2.17 Anti-Abuse Rule	81

2.18 Implication of BEAT	82
2.19 Alternative Minimum Tax (AMT) Implications	82
[1] Alternative Minimum Tax	82
[2] New Markets Tax Credit	83
2.20 Passive Activity Rules	83
2.21 Limitation on Deductions Allocable to Property Used by Governments or Other Tax-Exempt Entities	85
2.22 Mandate to Issue Regulations	85
CHAPTER 3	
The Allocation Process and Priorities for Tax Credits	87
3.01 Allocation Process–Introduction	87
3.02 Statutory Preferences	89
3.03 New Market Tax Credit Allocation Application	92
[1] Business Strategy	92
[2] Community Outcomes	93
[3] Management Capacity	94
[4] Capitalization Strategy	94
[5] Information Regarding Previous Awards	95
3.04 Evaluation Process for an Allocation of New Markets Tax Credits	96
CHAPTER 4	
Recapture of New Markets Tax Credits	99
4.01 Introduction	99
4.02 Statutory Recapture Events	100
4.03 Entity Ceases to be a CDE	100
[1] Primary Mission	100
[2] Accountability	101
[3] Decertification of the Community Development Entity	101
[4] Investor Considerations	101
[5] Investor Reporting Requirements	102
4.04 CDE Ceases to Use Substantially All of the Assets of the Investor’s QEI for QLICI	102

[1] Substantially All Test	103
[2] Not Qualifying Initially for the NMTC	104
[a] Determining the Qualification of an Investment	104
[i] Use of Tangible Property Test	105
[ii] Services Performed Test	107
[b] Presumption that a Business is Qualified	107
[i] No Presumption if Controlled	108
[ii] Measurement Period for a Controlled Business	109
[iii] Issues with Springing Control	109
[iv] Dealing with Uncontrollable Events	109
[v] Cure Period	110
[c] Replacement of the Original Investment	110
[3] Reinvestment and the Substantially All Test	110
[4] Causes of Recapture Associated with the Reinvestment Requirement	112
[a] Reinvestment is not Made Within the 12-Month Period	113
[b] Foreclosure on QALICB Owned Property	113
[5] Investor Considerations	114
4.05 Investor's QEI is Redeemed by the CDE	114
[1] Equity Investment in a C Corporation	115
[2] Equity Investment in an S Corporation	115
[3] Capital Interest in a Partnership	115
[4] Issues with Redemption	117
[5] Investor Considerations	118
[6] Calculating the Recapture Cost and the Tax Benefit Rule	118
4.06 Cure Period	119
[1] Substantially All Cure	119
[2] CDE Decertification Cure	120
4.07 Conclusions	120
[1] How will the Current Recapture Rules Affect NMTC Investments?	121
[2] Requested Changes to the Recapture Rules from the NMTC Industry	122

CHAPTER 5	
Generally Accepted Accounting Principles for New Markets Tax Credits	123
5.01 Introduction	123
5.02 Consolidated Method	125
5.03 Equity Method	125
5.04 Cost Method	128
5.05 Effective Yield Method and Proportional Amortization Method	129
5.06 Impairment	131
5.07 Consolidation of Variable Interest Entities	132
5.08 De Facto Agent and Related Party	138
5.09 Other Accounting Considerations for the New Markets Tax Credit	139
5.10 Accounting for Lending Fees and Lending Costs	140
5.11 Deferred Tax Liabilities and Tax Assets	141
CHAPTER 6	
Partnership Allocation Rules	143
6.01 Introduction	143
6.02 Theoretical Foundation for the Allocation Rules	144
6.03 When Reallocation of NMTCs Might Occur	146
6.04 Partnership Allocations—Introduction to the Technical Rules	146
6.05 Partner Nonrecourse Loans	148
6.06 Related Party Loans	149
6.07 NMTC Allocations	149
[1] Introduction	149
[2] Technical Basis for Allocation	150
[a] Allocation of NMTC and Basis Adjustment	153
[i] Basis Reduction Required for NMTC Gives Rise to an IRC Section 705(a)(2)(B) Expenditure	153
[ii] An IRC Section 705(a)(2)(b) Expenditure Can Be Specially Allocated	154
[iii] NMTC May Be Allocated Consistent With the Allocation of the IRC Section 705(a)(2)(B) Expenditure	155

[iv] Allocation Approach Must Be Based, Wherever Practical, on Federal Income Tax Accounting Principles	156
6.08 Substantial Economic Effect–IRC Section 704(b)	156
6.09 Alternative Economic Test	158
6.10 Application of the General Allocation Rules	159
6.11 Nonrecourse Deductions	160
6.12 Application of the Minimum Gain Chargeback	161
6.13 De Minimis Rule	161
6.14 Nonrecourse Debt–Basis Rules	162
6.15 Recourse Deductions	162
6.16 Deficit Restoration Obligation	162
 APPENDIX A	
Internal Revenue Code Sections	163
 APPENDIX B	
Treasury Regulations	181
Final Treasury Regulations (9/28/2012)	182
TD 9560 - Targeted Populations Under Section 45D(e)(2)	218
TD 9600 - New Markets Tax Credit Non-Real Estate Investments	238
 APPENDIX C	
IRS Guidance	249
Notices	250
Notice 2010-62	250
Notice 2016-28	255
Private Letter Rulings	258
PLR 198646014	258
PLR 200910024	261
PLR 200926022	267
PLR 200947005	279
PLR 201004008	291
PLR 201004021	295
PLR 201243003	299

PLR 201418035	310
PLR 201429018	317
PLR 201429019	322
Revenue Rulings	327
Rev. Rul. 2003-20	327
Rev. Rul. 2010-16	330
Rev. Rul. 2010-17	334
Chief Counsel Advice	335
CCA 200944050	335
CCA 201147025	338
CCA 201147025	338
CCA 20125201F	346
Forms	369
Form 8874	369
Form 8874A	372
Form 8874B	374
APPENDIX D	
CDFI Fund Documents and Guidance	377
2019 Introduction to the NMTC Program	378
2019 Notice of Allocation Availability	417
2019 NMTC Program Application	453
2019 NMTC Program Application FAQs	559
2019 NMTC Program Certification, Compliance, Monitoring and Evaluation FAQs	631
NMTC Census Data Transition FAQs	683
AMIS Training Manual – CDE Certification Application Submission	696
APPENDIX E	
Legislation	751
List of NMTC Legislation	752
APPENDIX F	
Community Reinvestment Act Related Guidance and Materials	755
New Markets Tax Credits: Unlocking Investment Potential	756

OCC Interpretive Letter #984:	778
OCC Interpretive Letter #996	782
NMTC Working Group Comment Letter Proposed Changes Interagency Q&A	790
Notice Interagency Questions and Answers Regarding Community Reinvestment	794
Community Development Data Guidebook	807
OCC Insights: Community Development Loan Fund: Opportunities for Banks	829

APPENDIX G

Sample GAAP Schedule	857
-----------------------------	------------

APPENDIX H

Index	867
--------------	------------

APPENDIX H

Index	867
--------------	------------