

New Markets Jobs Act of 2013

(Act 1474 of 2013)

Rules and Regulations

I. Introduction

Overview

The New Markets Jobs Act of 2013, Act 1474 of 2013, §15-4-3601 et seq., creates a state New Market Tax Credit program to be administered by the Arkansas Economic Development Commission (AEDC). New Market Tax Credits, against state premium tax liability, may be earned by corporations, limited liability companies, associations, partnerships, or other business entities (hereafter referred to as entities) that make qualified equity investments in qualified community development entities (QCDEs) that invest capital and equity in eligible qualified active low-income community businesses. The AEDC shall begin accepting applications requesting certification of equity investments or long-term debt securities for New Market Tax Credits on July 15, 2013.

Process

1. A QCDE submits a completed application and requisite fees to the AEDC seeking certification of an equity investment or long-term debt security for New Market Tax Credits.
2. Within thirty (30) days after receipt of a completed application, the AEDC grants or denies the application in full or in part.
 - A. If any part of the application is denied, the AEDC informs the applicant of the grounds for denial.
 - B. (i) If the application is denied as incomplete, and the applicant provides the additional information or documentation required by the AEDC, or otherwise completes its application within fifteen (15) days of the notice of denial, the application shall be considered completed as of the original date of submission.
(ii) If the applicant fails to provide the requested information or complete its application within the fifteen (15) day period, the application remains denied and must be resubmitted in full with a new submission date.

3. If the AEDC determines that the application is complete and meets all application requirements, the AEDC provides written notice to the applicant certifying that the proposed equity investment or long-term debt security is eligible for a New Market Tax Credit subject to any limitations in §15-4-3605(d).
4. Within thirty (30) days of receiving the AEDC notice of certification, the QCDE or any transferee issues the qualified equity investment and receives cash in the amount certified by the AEDC.
 - A. The QCDE provides the AEDC with:
 - (i) Evidence of the receipt of the cash investment within ten (10) business days after receipt.
 - (ii) Identifying information for each entity that will utilize the tax credits earned.
 - (iii) The allocation agreement between the QCDE and the equity investors setting out each investor's allocated share of total credits earned.
 - B. If the QCDE or any transferee does not receive the cash investment and issue the qualified equity investment within thirty (30) days following receipt of the certification notice, the certification shall lapse, and qualified equity investments may not be issued without reapplying to the AEDC for certification.
5. For each qualified low-income community investment, and reinvestments whenever job creation and retention projections with respect to the initial investments were not met; the QCDE submits to the AEDC an information summary sheet. The AEDC will review the information summary sheet and issue a non-binding conditional Letter to Proceed to the QCDE acknowledging that the business meets the criteria established under these rules as set out in Eligible Business Definition section, and the project is eligible to generate a stated dollar value amount of tax credits, subject to all the restrictions, terms and conditions set out herein. The conditional Letter to Proceed will not be an approval of the project, and will contain provisions that expressly exclude any legal opinion by AEDC as to SBA size criteria or US Treasury or IRS rules and qualifications.
6. The QCDE will submit to AEDC requisite documentation, including a project closing date and a revenue impact assessment, prepared by a nationally-recognized, third-party independent economic forecasting firm, demonstrating that the qualified low-income community investment will have a revenue positive impact on the state over ten (10) years against the aggregate tax credit utilized over the same time period.

7. Within ten (10) business days from the receipt of a revenue impact assessment, the AEDC reviews the assessment and notifies the QCDE of its review. Investments shall be deemed revenue positive if the AEDC does not notify a QCDE of its review within ten (10) business days of receipt of a revenue impact assessment.
8. The QCDE makes investments in corporations, limited liability companies, associations, partnerships or other business entities meeting the definitions of “qualified active low-income community business” and “eligible businesses” as defined herein.
9. Once the AEDC has received: a) confirmation of closing, including documents evidencing that the project has been funded and that the 85 percent test has been met; and, b) designation of the tax credit recipient(s) (i.e., the equity investor(s), use Federal IRS Form 8874) from the QCDE/Sub-QCDE, the AEDC will issue a premium tax credit certificate on paper for the appropriate amount in the name(s) that are assigned by the QCDE/Sub-QCDE. The tax credit will have identifying numbers to reflect the QCDE and Sub-QCDE, if applicable, and project identifier. The AEDC will send the original certificate to the QCDE and copies to the Arkansas Department of Finance and Administration and the Arkansas Insurance Department.
10. A QCDE that issues a qualified equity investment under §15-4-3601 et seq., submits a report to the AEDC within five (5) business days after the first anniversary of the initial credit allowance date and subsequent annual reports within five (5) business days after each of the next six anniversaries of the credit allowance date thereafter.

Tax Credit* Allowances

Credit Allowance Date	Applicable Percentage
Date of Initial Qualified Equity Investment	0%
1 st Anniversary Date of Equity Investment	0%
2 nd Anniversary Date of Equity Investment	12%
3 rd Anniversary Date of Equity Investment	12%
4 th Anniversary Date of Equity Investment	12%
5 th Anniversary Date of Equity Investment	11%
6 th Anniversary Date of Equity Investment	11%
Total Credits (Percentage)	58%

**The tax credit amount shall be equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment, not to exceed the state premium tax liability owed by the taxpayer for the tax year in which the tax credit is claimed.*

Unused credits may be carried forward for nine (9) consecutive tax years and shall not be refundable or saleable on the open market.

Rulemaking Authority

The AEDC has authority, at §15-4-3614, to promulgate rules to implement the New Markets Jobs Act of 2013.

II. Definitions

1. “Applicable percentage” means:
 - A. Zero percent (0%) for the first two (2) credit allowance dates;
 - B. Twelve percent (12%) for the third, fourth, and fifth credit allowance dates; and
 - C. Eleven percent (11%) for the sixth and seventh credit allowance dates;
2. “Commission” means the Arkansas Economic Development Commission (AEDC);
3. “Credit allowance date” means, with respect to a qualified equity investment:
 - A. The date on which the qualified equity investment is initially made; and
 - B. Each of the subsequent six (6) anniversary dates of the date on which the qualified equity investment was initially made;
4. “Cure period” means the six-(6) month period prior to enforcement of recapture provisions under §15-4-3607 in which qualified community development entities may correct noncompliance issues identified in writing by AEDC. The cure period commences on the date of the AEDC notice of noncompliance;
5. “Eligible businesses” means non-retail businesses engaged in commerce for profit which are classified in one of the categories listed in categories A. through I. below. Businesses not classified in any of the following categories are deemed ineligible.
 - A. (i) Manufacturers classified in sectors 31-33 in the North American Industrial Classification System (NAICS), as in effect January 1, 2007.
(ii) Manufacturers classified in sectors 20-39 according to the Standard Industrial Classification (SIC) standards but which are classified under NAICS in another sector;
 - B. Businesses primarily engaged in the design and development of prepackaged software, digital content production and preservation, computer processing and data preparation services, or information retrieval services;
 - C. Businesses primarily engaged in motion picture productions;

- D. A distribution center or intermodal facility;
 - E. An office sector business;
 - F. A national or regional corporate headquarters, North American Industrial Classification System (NAICS) Code 551114, as in effect January 1, 2007;
 - G. Firms primarily engaged in commercial, physical and biological research as classified in the North American Industrial Classification System (NAICS) code 541710, as in effect January 1, 2007;
 - H. Scientific and technical services business;
 - I. A non-retail business may be classified as an eligible business by the AEDC if the AEDC Executive Director determines that the proposed qualified low-income community investment will have a positive impact on the community;
6. “Letter ruling” means a written interpretation of law to a specific set of facts provided by an applicant requesting the written interpretation from the *Arkansas Economic Development Commission*;
7. “Long-term debt security” means a debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven (7) years from the date of its issuance without acceleration of repayment, amortization, or prepayment features before its original maturity date;
8. “New full-time permanent employee” means:
- A. (i) A job or position that was created pursuant to the qualified low-income community investment and that is filled by one (1) or more employees who:
 - (a) Are or will be Arkansas taxpayers; and
 - (b)(1) Work at the qualified active low-income community business premises,
 - (2) New employees who do not work at the premises may be counted as new full-time permanent employees if they:
 - (a) Otherwise meet the definition of “new full-time permanent employee”; and
 - (b) Are subject to the Arkansas Income Tax Withholding Act, Ark. Code Ann. §26-51-901 et seq.; and
 - (ii) The position or job held by the employee or employees shall have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week each tax year during the duration of the investment; and

- (iii) Retained jobs or positions may not be considered new full-time permanent employees unless they meet the definition of “retained job or position” herein.
 - B. A contractual employee may qualify as a new full-time permanent employee only when offered a benefits package comparable to a direct employee of the business;
 - C. Self-employed contractors hired by qualified active low-income community businesses to provide professional services may qualify as full-time permanent employees if they were Arkansas taxpayers during the year in which the tax credits were earned and worked a minimum of 1040 hours for the qualified active low-income community business in the tax year in which the tax credits were earned;
9. “New Markets Performance Guarantee Fund” means a miscellaneous fund on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State consisting of fees paid under §15-4-3609; grants made by a person, organization, or federal or state government agency; and, any other funds provided by law to be used by AEDC to guarantee qualified community development entities’ performance under §15-4-3601 et seq.;
10. “Purchase price” means the amount paid to the issuer of a qualified equity investment for a qualified equity investment;
11. A. “Qualified active low-income community business” means the same as defined in 26 U.S.C. § 45D and 26 C.F.R. 1.45D-1, as they existed on January 1, 2013, if:
- (i) At the time of the qualified community development entity's investment in or loan to the corporation, limited liability company, association, partnership, or other business entity, the corporation, limited liability company, association, partnership, or other business entity meets the United States Small Business Administration size eligibility standards established in 13 C.F.R. 121.101-201, as it existed on January 1, 2013; and
 - (ii) The corporation, limited liability company, association, partnership, or other business entity agrees to retain or create jobs that pay an average wage of at least one hundred fifteen percent (115%) of the federal poverty income guidelines for a family of four (4). The AEDC may waive this requirement if it determines that an investment in the proposed qualified active low-income community business will have a positive impact on the community.

- B. A corporation, limited liability company, association, partnership, or other business entity will be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in or loan to the corporation, limited liability company, association, partnership, or other business entity if the relevant qualified community development entity reasonably expects, at the time it makes an investment or loan, that the corporation, limited liability company, association, partnership, or other business entity will continue to satisfy the requirements for being a qualified active low-income community business other than the requirements stated in §15-4-3602(6)(A)(i) throughout the entire period of the investment or loan.
- C. Qualified active low-income community business does not include the following:
- (i) A corporation, limited liability company, association, partnership, or other business entity that is the beneficiary of an incentive under § 15-4-2705, § 15-4-2706(b), or § 15-4-2706(c)(2). The AEDC may waive this requirement if it determines that an investment in the proposed active qualified low-income community business will have a positive impact on the community;
 - (ii) Any industry excluded under a rule of the AEDC. The AEDC may waive this requirement if it determines that an investment in the proposed active qualified low-income community business will have a positive impact on the community; or,
 - (iii)(a) A corporation, limited liability company, association, partnership, or other business entity that derives or projects to derive at least fifteen percent (15%) of its annual revenue from the rental or sale of real estate.
 - (b) However, this restriction does not apply to a corporation, limited liability company, association, partnership, or other business entity that is controlled by or under common control with another corporation, limited liability company, association, partnership, or other business entity that:
 - (1) Does not derive or project to derive at least fifteen percent (15%) of its annual revenue from the rental or sale of real estate; and
 - (2) Is the primary tenant of the real estate leased from the corporation, limited liability company, association, partnership, or other business entity;

12.
 - A. “Qualified community development entity” means the same as defined in 26 U.S.C. § 45D, as it existed on January 1, 2013, if the corporation, limited liability company, association, partnership, or other business entity has entered into, for the current year or any prior year, an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized under 26 U.S.C. § 45D that includes Arkansas within the service area stated in the allocation agreement.
 - B. Qualified community development entity includes a qualified community development entity that is controlled by or under common control with a qualified community development entity;
13.
 - A. “Qualified equity investment” means an equity investment in or a long-term debt security issued by a qualified community development entity that:
 - (i) Is acquired after the effective date of §15-4-3601 et seq., at its original issue solely in exchange for cash;
 - (ii) Has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in Arkansas by the first anniversary of the initial credit allowance date; and
 - (iii) Is designated by the issuer as a qualified equity investment under this definition and is certified by the AEDC as not exceeding the limitation stated in § 15-4-3605(d).
 - B. Qualified equity investment includes an investment that was not acquired after the effective date of §15-4-3601 et seq., at its original issue solely in exchange for cash if the investment was a qualified equity investment in the hands of a previous holder;
14. “Qualified low-income community investment” means a capital or equity investment in or loan to a qualified active low-income community business;
15. “Retained job or position” means:
 - A. An employee hired by qualified active low-income community businesses prior to receiving capital or equity investments from qualified community development entities certified by AEDC that their proposed equity investment is eligible for a New Market Tax Credit subject to any limitations defined by §15-4-3605(d).

- B. For the purpose of revenue impact assessments and reviews, a retained job or position may be counted as a new full-time permanent employee only if:
 - (i) The retained job or position is within a business that has been in existence in Arkansas for at least two (2) years, and
 - (a) Has sustained a net loss during the one (1) or two (2) year period prior to the qualified investment of at least twenty percent (20%) of the business' net worth; or
 - (b) Has violated primary commercial bank loan covenants and has been notified that continued access to credit from such bank has or will be discontinued, or
 - (ii) The retained job or position would have been transferred out-of-state, as evidenced by a written offer and acceptance of relocation assistance from an economic development agency from another state; or
 - (iii) The AEDC Executive Director determines that the potential job loss will significantly affect the local economy, as documented by any additional data requested by the AEDC Executive Director to supplement the revenue impact assessment.
- C. Retained jobs or positions may account for no more than fifty percent (50%) of all jobs in any revenue impact assessment; however, the AEDC may waive this requirement if it determines that an investment in the proposed active qualified low-income community business will have a positive impact on the community;

16. "Revenue impact assessment" means:

- A. An economic analysis prepared by a nationally-recognized, third-party independent economic forecasting firm, utilizing the Regional Economics Model, Inc. or MIG, Inc. model that demonstrates that, over a ten-year period, the qualified low-income community investment will have a revenue positive impact on the state given aggregate utilization of New Market Tax Credits.
- B. Revenue impact assessments shall not include any retained job or position that does not meet the definition of "retained job or position" defined herein.
- C. Revenue impact assessments shall be prepared for all initial qualified low-income community investments made by a QCDE.
- D. Revenue impact assessments shall only be prepared for reinvestments whenever initial job creation and retention projections were not met as reported on the QCDE's immediately-preceding annual report or a report

containing substitute information and certified by an executive officer of the QCDE;

17. “State premium tax liability” means:
- A. Tax liability incurred by a corporation, limited liability company, association, partnership, or other business entity under §§ 23-63-102 and 26-57-601 — 26-57-605, excluding any liability for taxes on a health insurance premium; or
 - B. If the state premium tax liability identified above is eliminated or reduced, any tax liability imposed on an insurance company or other person that had premium tax liability under the laws of the state.

III. Eligibility for Tax Credit

New Market Tax Credits, against state premium tax liabilities under §§ 23-63-102 and 26-57-601 - 26-57-605, excluding any liability for taxes on health insurance premiums, are earned by entities making qualified equity investments, as certified by the AEDC, in QCDEs.

IV. Application for Tax Credit

QCDEs seeking to have equity investments or long-term debt securities designated as qualified equity investments eligible for New Market Tax Credits shall submit a completed AEDC-approved application containing all required documentation, signed affidavits and certifications, containing the following documentation:

1. Evidence of the applicant’s certification as a QCDE, including evidence that the service area of the applicant includes Arkansas;
2. A copy of the allocation agreement executed by the applicant or its controlling entity and the Community Development Financial Institutions Fund;
3. A certificate executed by an executive officer of the applicant attesting that the allocation agreement remains in effect and stating the cumulative amount of allocations awarded to the applicant by the Community Development Financial Institutions Fund;
4. A description of the proposed amount, structure, and purchaser of the qualified equity investment;

5. If known at the time of application, identifying information for each entity that will utilize the tax credits earned from the issuance of the qualified equity investment;
6. Examples, if any, of types of investments made by the applicant, its controlling entity or affiliates, under the Federal New Market Tax Credit Program with qualified active low-income businesses;
7. A nonrefundable application fee of five thousand dollars (\$5,000) and a refundable performance fee in the amount of one-half of one percent (0.5%) of the amount of the equity investment or long-term debt security requested to be designated by AEDC as a qualified equity investment. Once the QCDE's allocation amount has been certified, the difference between the one-half of one percent of the application amount and one-half of one percent of the actual allocation amount will be refunded to the QCDE;
8. A description of the QCDE's intended typical structure for investment in a qualified active low-income community business in Arkansas, to include targeted types of business, industry sector, amount and type of investment, fee structure, expected rate of return and benefits to the qualified low-income business and community;
9. An affidavit executed by the Chief Executive Officer of the QCDE (the applicant) acknowledging a complete and full understanding that the AEDC, at this time, has no appropriation, and therefore no authority or mechanism to refund any of the refundable application fee required to accompany the application;
10. The current balance sheet and last full-year annual report of the QCDE or its controlling entity if the QCDE has no historical operations; and
11. Completed and executed declarations for all of the principals of the QCDE (applicant), or the principals of the parent company, if a subsidiary.

If the QCDE seeks to have a long-term debt security designated as a qualified equity investment under §15-4-3605, the QCDE shall not make cash interest payments on the long-term debt security during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as determined under 26 C.F.R. §1.45D-1, as it existed on January 1, 2013, of the QCDE for that period before giving effect to interest expense on the long-term debt security.

However, the holder's ability to accelerate payments on the long-term debt security instrument in situations which the issuer has defaulted on covenants designed to ensure compliance with §15-4-3601 et seq., or 26 U.S.C. §45D, as it existed on January 1, 2013, shall not be affected by §15-4-3601 et seq.

V. AEDC Application Review and Certification of Qualified Equity Investments

The AEDC shall begin accepting applications on July 15, 2013.

The application process:

1. A QCDE submits an application, and requisite fees, to AEDC seeking certification of the proposed equity investment or long-term debt security as a qualified equity investment.
2. Within thirty (30) days after receipt of a completed application, the AEDC grants or denies the application in full or in part.
 - A. If any part of the application is denied, the AEDC informs the applicant of the grounds for denial.
 - B. (i) If the application is denied as incomplete, and the applicant provides the additional information or documentation required by the AEDC, or otherwise completes its application within fifteen (15) days of the notice of denial, the application shall be considered completed as of the original date of submission.
(ii) If the applicant fails to provide the requested information or complete its application within the fifteen (15) day period, the application remains denied and must be resubmitted in full with a new submission date.

The certification process:

1. If the AEDC determines that the application is complete and meets all application requirements, the AEDC provides written notice to the applicant certifying that the proposed equity investment or long-term debt security - including the names, if known, of each entity that will earn the tax credit and their respective tax credit amounts—is eligible for a New Market Tax Credit subject to any limitations in §15-4-3605(d). If a pending request cannot be fully certified because of this limitation, the AEDC shall certify the portion that may be certified unless the QCDE elects to withdraw its request rather than receive partial certification.

Any changes to the names of these entities as the result of a transfer of a qualified equity investment or an allocation under §15-4-3604(b) shall be communicated to the AEDC by the QCDE.

2. The AEDC shall certify qualified equity investments in the order the applications are received by the AEDC. Applications received on the same day shall be deemed to have been received simultaneously.
3. For applications that are complete and meet the requirements of §15-4-3601 et seq., and are received on the same day, the AEDC shall certify, consistent with the remaining qualified equity investment capacity, the qualified equity investments in proportionate percentages based on the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

In accordance with §15-4-3605(d), the AEDC shall certify up to one hundred sixty-six million dollars (\$166,000,000) in qualified equity investments.

VI. Investments in Qualified Community Development Entities

Within thirty (30) days of receiving the AEDC notice of certification, the QCDE or any transferee shall issue the qualified equity investment and receive cash in the amount of the certified amount.

The QCDE or any transferee must provide AEDC with evidence of the receipt of the cash investment within ten (10) business days after receipt.

If the QCDE or any transferee does not receive the cash investment and issue the qualified equity investment within thirty (30) days following receipt of the certification notice, the certification shall lapse, and the qualified equity investment cannot be issued without reapplying to AEDC for certification. Lapsed certifications revert back to the AEDC and are reissued:

1. First, pro rata to any other applicants whose qualified equity investment allocations were reduced under §15-4-3605(d); and
2. Second, in accordance with the application process.

VII. Investments in Qualified Active Low-Income Community Businesses

QCDEs must invest in corporations, limited liability companies, associations, partnerships or other business entities meeting the definition of “Qualified Active Low-Income Community Business” as defined in 26 U.S.C. § 45D and 26 C.F.R. 1.45D-1, as they existed on January 1, 2013, if:

1. At the time of the QCDE’s investment, or loan, the qualified active low-income community business meets the US Small Business Administration size eligibility standards established in 13 C.F.R. 121.101-201 as it existed on January 1, 2013; and,
2. The qualified active low-income community business agrees to retain or create jobs that pay an average wage of at least one hundred and fifteen percent (115%) of the federal poverty income guidelines for a family of four (4) in Arkansas.

Qualified active low-income community business does not include:

1. Entities receiving incentives under §15-4-2705, §15-4-2706(b), or §15-4-2706(c)(2), unless waived by the AEDC;
2. Any industry excluded under a rule of the AEDC, unless waived by the AEDC;
3. Entities that derive or project to derive at least fifteen percent (15%) of its annual revenue from the rental or sale of real estate. This restriction does not apply when the entity is controlled by or under common control with another corporation, limited liability company, association, partnership, or other business entity that does not derive or project to derive at least fifteen percent (15%) of its annual revenue from the rental or sale of real estate and is the primary tenant of the real estate leased from the entity.

VIII. Utilization of Tax Credit

New Market Tax Credits may be utilized as follows:

1. On each credit allowance date, the holder of the qualified equity investment may utilize a portion of the tax credit during the taxable year that includes the credit allowance date;

2. The tax credit amount shall be equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment;
3. The amount of the tax credit claimed shall not exceed the state premium tax liability owed by the taxpayer that files the premium tax report for the tax year for which the tax credit is claimed;
4. The tax credit is payable only from the general revenues derived from the non-allocated portion of the state premium tax liability funds as described in §26-57-611; and
5. Unused credits may be carried forward for nine (9) consecutive tax years but are not refundable or saleable on the open market. However, tax credits earned by entities may be allocated to the partners, members, or shareholders of the entity for their direct use in accordance with any agreement among the partners, members, or shareholders. Those tax credits may be further allocated through “pass through” entities in accordance with any agreement among the partners, members, or shareholders for direct use.

IX. Letter Rulings

Applicants may request letter rulings from the AEDC regarding New Market Tax Credits. Letter rulings bind all state agencies, including the AEDC, its agents and successors, until the QCDE or its shareholders, members, or partners claim all of the applicable New Market Tax Credits on an Arkansas tax return or report.

The AEDC shall respond to letter ruling requests within sixty (60) days of such receipt of request. In rendering letter rulings under §15-4-3601 et seq., the AEDC shall look for guidance to 26 U.S.C. § 45D and 26 C.F.R. 1.45D-1, as they existed on January 1, 2013, and to the extent they are applicable.

The AEDC may deny a letter ruling request for good cause by listing reasons which include, without limitation, the following:

1. The applicant requests the AEDC to determine whether a statute is constitutional or a regulation is lawful;
2. The request involves a hypothetical situation or alternative plans;

3. The facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling; and
4. The issue is currently being considered in a rulemaking procedure, contested case, or other agency or judicial proceeding that may resolve the issue.

An applicant may provide a draft letter ruling for AEDC's consideration and may withdraw a request for a letter ruling, in writing, before the issuance of the letter ruling. A letter ruling issued under this section applies only to the applicant that requested the letter ruling. However, a taxpayer identified in a letter ruling may rely on the letter ruling to the extent the letter ruling applies to the taxpayer.

X. Recapture of Tax Credits

The AEDC shall recapture the tax credit allowed under §15-4-3601 et seq., from the taxpayer that claimed the tax credit if:

1.
 - A. Any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under §15-4-3601 et seq., is recaptured under 26 U.S.C. § 45D, as it existed on January 1, 2013.
 - B. If a recapture occurs under §15-4-3607(1)(A), the AEDC's recapture shall be proportionate to the federal recapture with respect to the qualified equity investment;
2.
 - A. The issuer redeems or makes principal repayment with respect to a qualified equity investment before the seventh anniversary of the issuance of the qualified equity investment.
 - B. If a recapture occurs under §15-4-3607(2)(A), the AEDC's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment;
3.
 - A. The issuer fails to:
 - (i) Invest an amount equal to eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income community investments in Arkansas within twelve (12) months of the issuance of the qualified equity investment; and
 - (ii) Maintain the minimum investment level required under §15-4-3607(3)(A)(i) until the last credit allowance date for the qualified equity investment.

- B. (i) A qualified low-income community investment shall be considered held by an issuer even if a qualified low-income community investment has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original qualified low-income community investment, exclusive of any profits realized, in another qualified low-income community investment within twelve (12) months of the receipt of such returned capital.
(ii) Periodic amounts received during a calendar year as repayment of principal on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one (1) or more qualified low-income community investments by the end of the following year.
- C. An issuer shall not be required to reinvest capital returned from a qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the seventh anniversary of the qualified equity investment's issuance after the earlier of:
 - (i) The sixth anniversary of the credit allowance date of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment; or
 - (ii) The date by which a qualified community development entity has made qualified low-income community investments with the proceeds of such qualified equity investment on a cumulative basis equal to at least one hundred fifty percent (150%) of such proceeds; or
- 4. At any time before the final credit allowance date of a qualified equity investment, the issuer uses the cash proceeds of the qualified equity investment to make qualified low-income community investments in any one (1) or more qualified active low-income community businesses, including without limitation affiliated qualified active low-income community businesses and excluding reinvestments of capital returned or repaid with respect to earlier qualified equity investments in the qualified active low-income community business and its affiliates in excess of twenty-five percent (25%) of the cash proceeds of all qualified equity investments issued by the issuer under this section.

Enforcement of each of the recapture provisions under § 15-4-3607 is subject to a six-month cure period. Recapture shall not occur until the AEDC has given the QCDE

written notice of its noncompliance and has afforded the QCDE six (6) months from the date of the notice to cure the noncompliance.

XI. Refundable Performance Fees

QCDEs applying for certification of equity investments or long-term debt securities shall submit to the AEDC a refundable performance fee in the amount one-half of one percent (0.5%) of the amount of the equity investment or long-term debt security for deposit into the New Markets Performance Guarantee Fund, §19-5-1254. The QCDE shall forfeit the refundable performance fee if it fails to issue the total amount of qualified equity investments certified by the AEDC and receive cash in the total amount certified under and within the time period stated in § 15-4-3605 or if it fails to meet the investment requirement under § 15-4-3607(3) by the second credit allowance date of the qualified equity investment. Forfeiture of the fee under §15-4-3609(b)(2)(A) shall be subject to the six-month cure period established under § 15-4-3608.

The refundable performance fee shall be held in the New Markets Performance Guarantee Fund until compliance with the requirements of §15-4-3609 is established.

A QCDE may request a refund* of the performance fee from the AEDC no sooner than thirty (30) days after having met all the requirements of §15-4-3609. The Treasurer of State shall comply with the refund request or give notice of noncompliance within thirty (30) days of receiving the request.

****Note: At the time of New Markets Jobs Act of 2013 Rules and Regulations development, an appropriation for the New Markets Performance Guarantee Fund did not exist. Therefore, until legislative appropriation is authorized, funds deposited into this account, that is one-half of one percent of the actual allocation amount, will not be available for refund in accordance with §15-4-3609. Requests for refunds shall not be considered received prior to the date of appropriation authorization.***

XII. Retaliatory Tax

An entity claiming a New Market Tax Credit under §15-4-3601, et seq., is not required to pay any additional retaliatory tax levied under § 23-63-102 nor any additional tax that may arise as a result of claiming New Market Tax Credits.

XIII. Decertification

1.
 - A. Qualified equity investments certified under § 15-4-3605 shall not be decertified unless the requirements of §15-4-3611(b) are met.
 - B. Until all qualified equity investments issued by a QCDE are decertified under §15-4-3611, the QCDE shall not distribute to its equity holders or make cash payments on long-term debt securities that have been designated as qualified equity investments in an amount that exceeds the sum of:
 - (i) The cumulative operating income, as determined under 26 C.F.R. § 1.45D-1, as it existed on January 1, 2013, earned by the QCDE since issuance of the qualified equity investment, before giving effect to any expense from interest on long-term debt securities designated as qualified equity investments; and
 - (ii) Fifty percent (50%) of the purchase price of the qualified equity investments issued by the QCDE.
2. To be decertified, a qualified equity investment shall:
 - A. Be beyond its seventh credit allowance date;
 - B. Have been in compliance with § 15-4-3607 up through its seventh credit allowance date, including any cures under § 15-4-3608. This requirement is satisfied if no recapture action has been commenced by the AEDC as of the seventh credit allowance date; and
 - C. Have invested its proceeds in qualified active low-income community investments such that the total qualified low-income community investments made, cumulatively including reinvestments, exceeds one hundred fifty percent (150%) of all qualified equity investments issued by the issuer.
3.
 - A. A QCDE that seeks to have a qualified equity investment decertified shall send notice to the AEDC of its request for decertification along with evidence supporting the request.
 - B.
 - (i) A request for decertification shall not be unreasonably denied and shall be responded to within thirty (30) days of receiving the request.
 - (ii) If the request is denied for any reason, the burden of proof shall be on the AEDC in any administrative or legal proceeding that follows to establish that the request was not unreasonably denied.

XIV. Reports

A QCDE that issues a qualified equity investment under §15-4-3601 et seq., shall submit an initial report to the AEDC within five (5) business days after the first anniversary of the initial credit allowance date. This report shall provide evidence:

1. That at least eighty-five percent (85%) of the cash purchase price for each qualified equity investment was used to make qualified low-income community investments in qualified active low-income community businesses located in Arkansas;
2. Of each qualified low-income community investment by providing a bank statement for the QCDE that includes the qualified low-income community investment; and
3. That each business was a qualified low-income community business at the time the qualified low-income community investment was made and shall state the name, location, and industry code of each qualified low-income community business receiving a qualified low-income community investment.

Subsequent to the initial report, a QCDE shall submit an annual report, in electronic form and as a hard copy, to the AEDC within five (5) business days after each anniversary of the credit allowance date.

The report shall include, without limitation, the following:

1. The number of employment positions created and retained as the result of each qualified low-income community investment;
2. The average annual salary of the positions reported above;
3. Any other information required by AEDC; and
4. Any other information submitted by the QCDE to demonstrate the effectiveness of the qualified low-income community investment.

A QCDE shall not include in any report a qualified low-income community investment that has been redeemed or repaid.

XV. Revenue Impact Assessment

Prior to making a qualified low-income community investment, or reinvestment whenever initial job creation and retention projections were not met, a QCDE shall submit to the AEDC for review an information summary sheet and a revenue impact assessment prepared by a nationally-recognized third-party independent economic forecasting firm utilizing the Regional Economics Model, Inc. or MIG, Inc. model that demonstrates that the qualified low-income community investment, or reinvestment, will have a revenue positive impact on the state over ten (10) years against the aggregate tax credit utilization over the same ten-year period. The aggregate tax credit is equal to the amount of the qualified low-income community investment multiplied by fifty-eight percent (58%). Only jobs created and/or retained that meet the definitions of “new full-time permanent employee” for new jobs and “retained job or position” for retained jobs by eligible businesses shall be considered in the assessment.

The information summary sheet will provide a summary of the revenue impact assessment and include the following data:

1. Name of project;
2. Name of nationally-recognized, third-party independent economic forecasting firm preparing the revenue impact assessment;
3. Number of retained jobs and new jobs (reported separately) to be created as a result of the project;
4. Average hourly wage of retained and new jobs to be created as a result of the project;
5. NAICS classification code of the business receiving the investment;
6. Amount of investment in construction, equipment, existing buildings, land and working capital;
7. Estimated ten-year revenue positive impact to the state as a result of the project.

The AEDC shall review each revenue impact assessment by analyzing the methodology and assumptions modeled for each project in accordance with standard AEDC fiscal review practices to confirm that the revenue impact assessment demonstrates that the qualified low-income community investment will have a revenue positive impact on the state over ten (10) years against the aggregate tax credit utilization over the same ten-year period. Investment resulting from the qualified low-income community investment and jobs created and/or retained that meet the definitions of “new full-time permanent

employee” for new jobs and “retained job or position” for retained jobs by eligible businesses will be considered in the AEDC analyses.

If the AEDC determines, after review, that the revenue impact assessment does not reflect a revenue positive impact, the AEDC will notify the QCDE and suspend the time frame for such review until sufficient information is provided to generate a revenue positive impact.

The AEDC will complete its review and notify the QCDE of the results of AEDC analyses of revenue impact assessments within ten (10) business days from the receipt of a revenue impact assessment. The AEDC may waive the requirement for a revenue positive impact if it determines that the proposed qualified low-income community investment, or reinvestment, will further economic development.

A proposed qualified low-income community investment shall be deemed revenue positive if the commission does not notify a QCDE of its review with ten (10) business days of receipt of a revenue impact assessment.

XVI. New Market Performance Guarantee Fund

There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the “New Markets Performance Guarantee Fund” consisting of fees paid under § 15-4-3609; grants made by a person, organization, or federal or state government agency; and any other funds provided by law. The fund shall be used by the AEDC to guarantee QCDEs’ performance under the New Markets Jobs Act of 2013, § 15-4-3601 et seq.