

Congress of the United States
Washington, DC 20515

May 29, 2020

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Dear Commissioner Rettig and Assistant Secretary Kautter:

We are writing to request relief from certain provisions impacting the New Markets Tax Credit (NMTC) program in order to ensure Community Development Entities (CDEs) can offer flexibility to businesses in communities that were already distressed before the COVID-19 pandemic.

Current regulations make it difficult for CDEs to provide debt modifications (temporary loan deferrals, in particular) to Qualified Active Low-Income Community Business (QALICB) borrowers without incurring significant legal costs and possibly triggering a taxable gain/loss event for both the CDE and the QALICB borrower. We request the rules under Treas. Reg. §1.1001-3 be modified to temporarily suspend the application of Treas. Reg. §1.1001-3 to modifications of qualified low-income community investment (QLICI) loans during the calendar years 2020 and 2021. Under current law, when a debt instrument is significantly modified, it is necessary to determine the amount of taxable gain or loss that may have occurred. If the QALICB borrower is required to recognize a taxable gain as a result of the modification, it further exacerbates the cash flow challenges faced during a pandemic. If the CDE is required to recognize a taxable loss, it could make it difficult to distribute cash to be used to pay other debts in the current year.

We also request the IRS publish a notice that confirms CDEs can modify QLICI loans in order to alleviate a QALICB's economic distress and that such modification, even if it results in a deemed exchange of the QLICI under Treas. Reg. §1.1001-3, does not constitute amounts received for NMTC purposes that would otherwise trigger requirements for reinvestments, including re-verifying QALICB status.

Right now, there are roughly 1,700 NMTC projects in the 7-year compliance period – all in communities that were in economic distress before the COVID-19 crisis. Many NMTC-financed businesses, nonprofits, and community facilities are likely to curtail activities or temporarily close. Treasury can ensure these projects remain viable providing CDEs with the flexibility to provide relief to the terms on existing debt without the burden of Treasury's regulations on the modification of debt instruments.

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Thank you for your consideration.

Sincerely,



Terri Sewell
Member of Congress



Tom Reed
Member of Congress