

PART XIII

NEW MARKETS DEVELOPMENT PROGRAM ACT

288.991 Short title.

288.9912 New Markets Development Program; purpose.

288.9913 Definitions.

288.9914 Certification of qualified investments; investment issuance reporting.

288.9915 Use of proceeds from qualified investments; recordkeeping.

288.9916 New markets tax credit.

288.9917 Community development entity reporting after a credit allowance date; certification of tax credit amount.

288.9918 Annual reporting by a community development entity.

288.9919 Audits and examinations; penalties.

288.9920 Recapture and penalties.

288.9921 Rulemaking.

288.9922 Expiration of the New Markets Development Program Act.

1288.991 Short title.—Sections 288.991-288.9922 may be cited as the “New Markets Development Program Act.”

History.—ss. 4, 15, ch. 2009-50.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

1288.9912 New Markets Development Program; purpose.—The New Markets Development Program is established to encourage capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that make qualified low-income community investments in qualified active low-income community businesses to create and retain jobs.

History.—ss. 5, 15, ch. 2009-50.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

1288.9913 Definitions.—As used in ss. 288.991-288.9922, the term:

(1) “Credit allowance date” means:

- (a) The date on which a qualified investment is made; and
  - (b) Each of the six anniversaries of that date.
- (2) “Long-term debt security” means a debt instrument issued by a qualified community development entity at par value or a premium which has a maturity date of at least 7 years following the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date, except in instances of default.
- (3) “Low-income community” means any population census tract within the state where:
- (a) The poverty rate of such tract is at least 20 percent; or
  - (b) In the case of a tract that is:
    - 1. Not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the statewide median family income; or
    - 2. Located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of the statewide median family income or the metropolitan area median income.
- (4) “Purchase price” means the amount of cash paid to a qualified community development entity in exchange for a qualified investment.
- (5) “Qualified active low-income community business” means a corporation, including a nonprofit corporation, or partnership that complies with each of the following:
- (a)1. Derives at least 50 percent of its total gross income from the active conduct of business within any low-income community for any taxable year.
  - 2. Uses at least 40 percent of its tangible property, whether owned or leased, within any low-income community for any taxable year, which percentage shall be the average value of the tangible property owned or leased and used within a low-income community by the corporation or partnership divided by the average value of the total tangible property owned or leased and used by the corporation or partnership during the taxable year. The value assigned to leased property by the corporation or partnership must be reasonable.
  - 3. Performs at least 40 percent of its services through its employees in a low-income community for any taxable year, which percentage shall be the amount paid by the corporation or partnership for salaries, wages, and benefits to employees in a low-income community divided by the total amount paid by the corporation or partnership for salaries, wages, and benefits during the taxable year.
  - 4. Attributes less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity to collectibles, as defined in 26 U.S.C. s. 408(m)(2), other than collectibles that are held primarily for sale to customers in the ordinary course of the business for any taxable year.

5. Attributes less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity to nonqualified financial property, as defined in 26 U.S.C. s. 1397C(e), for any taxable year.

A corporation or partnership complies with subparagraph 1. if, as calculated in subparagraph 2., it uses at least 50 percent of its tangible property, whether owned or leased, within any low-income community for any taxable year or if, as calculated in subparagraph 3., the corporation or partnership performs at least 50 percent of its services through its employees in a low-income community for any taxable year.

(b) Is reasonably expected by a qualified community development entity at the time of an investment to continue to satisfy the requirements of paragraphs (a), (c), and (d) for the duration of the investment.

(c) Satisfies the requirements of paragraphs (a) and (b), but does not:

1. Derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate, unless the corporation or partnership derives such revenue from the rental of real estate and the primary lessee and user of such real estate is another qualified active low-income community business that is owned or controlled by, or that is under common ownership or control with, such corporation or partnership;

2. Engage predominantly in the development or holding of intangibles for sale or license;

3. Operate a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack, gambling facility, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises; or

4. Engage principally in farming and owns or leases assets the sum of the aggregate unadjusted bases or the fair market value of which exceeds \$500,000.

(d) Will create or retain jobs that pay an average wage of at least 115 percent of the federal poverty income guidelines for a family of four.

(6) "Qualified community development entity" means an entity that:

(a)1. Is certified by the Secretary of the United States Department of the Treasury as a qualified community development entity under 26 U.S.C. s. 45D; and

2. Has entered into, or is controlled by an entity that has entered into, an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to tax credits under 26 U.S.C. s. 45D and is authorized to serve businesses in this state under the agreement; or

(b) Is Enterprise Florida, Inc., or an entity created by Enterprise Florida, Inc.

(7) “Qualified investment” means an equity investment in, or a long-term debt security issued by, a qualified community development entity that:

(a) Is issued solely in exchange for cash; and

(b) Is designated by the qualified community development entity as a qualified investment under this paragraph and is approved by the department as a qualified investment.

(8) “Qualified low-income community investment” means a capital or equity investment in, or loan to, any qualified active low-income community business.

History.—ss. 6, 15, ch. 2009-50; s. 39, ch. 2010-147; s. 196, ch. 2011-142.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

1288.9914 Certification of qualified investments; investment issuance reporting.—

(1) ELIGIBLE INDUSTRIES.—

(a) The department, in consultation with Enterprise Florida, Inc., shall designate industries using the North American Industry Classification System which are eligible to receive low-income community investments. The designated industries must be those industries that have the greatest potential to create strong positive impacts on or benefits to the state, regional, and local economies.

(b) A qualified community development entity may not make a qualified low-income community investment in a business unless the principal activities of the business are within an eligible industry. The department may waive this limitation if the department determines that the investment will have a positive impact on a community.

(2) APPLICATION.—A qualified community development entity must submit an application to the department to approve a proposed investment as a qualified investment. The application must include:

(a) The name, address, and tax identification number of the qualified community development entity.

(b) Proof of certification as a qualified community development entity under 26 U.S.C. s. 45D.

(c) A copy of an allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund, which authorizes the entity to serve businesses in this state.

(d) A verified statement by the chief executive officer of the entity that the allocation agreement remains in effect.

(e) A description of the proposed amount, structure, and purchaser of an equity investment or long-term debt security.

- (f) The name and tax identification number of any person authorized to claim a tax credit earned as a result of the purchase of the proposed qualified investment.
- (g) A detailed explanation of the proposed use of the proceeds from a proposed qualified investment.
- (h) A nonrefundable application fee of \$1,000, payable to the department.
- (i) A statement that the entity will invest only in the industries designated by the department.
- (j) The entity's plans for the development of relationships with community-based organizations, local community development offices and organizations, and economic development organizations. The entity must also explain steps it has taken to implement its plans to develop these relationships.
- (k) A statement that the entity will not invest in a qualified active low-income community business unless the business will create or retain jobs that pay an average wage of at least 115 percent of the federal poverty income guidelines for a family of four.

(3) REVIEW.—

- (a) The department shall review applications to approve an investment as a qualified investment in the order received. The department shall approve or deny an application within 30 days after receipt.
- (b) If the department intends to deny the application, the department shall inform the applicant of the basis of the proposed denial. The applicant shall have 15 days after it receives the notice of the intent to deny the application to submit a revised application to the department. The department shall issue a final order approving or denying the revised application within 30 days after receipt.

2(c) The department may not approve a cumulative amount of qualified investments that may result in the claim of more than \$178.8 million in tax credits during the existence of the program or more than \$36.6 million in tax credits in a single state fiscal year. However, the potential for a taxpayer to carry forward an unused tax credit may not be considered in calculating the annual limit.

(4) APPROVAL.—

- (a) The department shall provide a copy of the final order approving an investment as a qualified investment to the qualified community development entity and to the Department of Revenue. The notice shall include the identity of the taxpayers who are eligible to claim the tax credits and the amount that may be claimed by each taxpayer.
- (b) The department shall approve an application for part of the amount of the proposed investment if the amount of tax credits available is insufficient.
- (c) If more than one application is found to comply with subsection (3) on the same day and the amount of tax credits available is insufficient for all of the applications, the tax credits available to each applicant shall be in proportion to the proposed purchase price to the total purchase price of all of the proposed investments.

(5) DURATION OF APPROVAL.—The qualified community development entity must issue the qualified investment in exchange for cash within 60 days after it receives the order approving an investment as a qualified investment, otherwise the order is void.

(6) REPORT OF ISSUANCE OF A QUALIFIED INVESTMENT.—The qualified community development entity must provide the department with evidence of the receipt of the cash in exchange for the qualified investment within 30 business days after receipt.

History.—ss. 7, 15, ch. 2009-50; s. 197, ch. 2011-142; s. 16, ch. 2012-32; s. 36, ch. 2013-42.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

2Note.—Section 25, ch. 2012-32, provides that:

“(1) The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, for the purpose of implementing this act.

“(2) Notwithstanding any provision of law, such emergency rules shall remain in effect for 6 months after the date adopted and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.”

1288.9915 Use of proceeds from qualified investments; recordkeeping.—

2(1) For the period from the issuance of the qualified investment to the 7th anniversary of such issuance, a qualified community development entity may make cash interest payments on a long-term debt security that is a qualified investment, but not in excess of the entity’s cumulative operating income as of the date of the cash interest payment. For purposes of calculating operating income under this section, the interest expense on the security is disregarded.

(2) A qualified community development entity shall keep detailed records showing the use of proceeds from qualified investments to fund qualified low-income community investments.

(3) A qualified active low-income community business, including its affiliates, may not receive more than \$10 million in qualified low-income community investments under the New Markets Development Program Act.

History.—ss. 8, 15, ch. 2009-50; s. 17, ch. 2012-32.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

2Note.—Section 25, ch. 2012-32, provides that:

“(1) The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, for the purpose of implementing this act.

“(2) Notwithstanding any provision of law, such emergency rules shall remain in effect for 6 months after the date adopted and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.”

1288.9916 New markets tax credit.—

(1) A person or entity that makes a qualified investment earns a vested tax credit pursuant to the New Markets Development Program Act against taxes under s. 220.11 or s. 624.509 equal to 39 percent of the purchase price of the qualified investment. The holder of a qualified investment may claim the tax credit as follows:

(a) The holder may apply 7 percent of the purchase price against its tax liability in the tax year containing the third credit allowance date.

(b) The holder may apply 8 percent of the purchase price against its tax liability in the tax years containing the fourth through seventh credit allowance dates.

(c) A taxpayer may not claim a tax credit in excess of the taxpayer’s tax liability. If the credit granted pursuant to this section is not fully used in any single year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers in the order provided in s. 220.02(8). Carryover credit amounts shall be treated as unused credits for purposes of the transfer of unused credits pursuant to paragraph (2)(b).

(d) An insurance company that is subject to the insurance premium tax under s. 624.509 must apply the tax credit against the insurance premium tax. An insurer that claims a credit against premium tax liability earned by making a qualified investment under this section is not required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming the tax credit. If the credit granted pursuant to this section is not fully used in any single year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers. Carryover credit amounts shall be treated as unused credits for purposes of the transfer of unused credits pursuant to paragraph (2)(b).

(2) A tax credit earned under this section may not be sold or transferred, except as provided in this subsection.

(a) A partner, member, or shareholder of a partnership, limited liability company, S-corporation, or other “pass-through” entity may claim the tax credit pursuant to an agreement among the partners, members, or shareholders. Any change in the allocation of a tax credit under the agreement must be reported to the department and to the Department of Revenue.

(b) Eligibility to claim a tax credit transfers to subsequent purchasers of a qualified investment. Such transfers must be reported to the department and to the Department of Revenue along with the identity, tax identification number, and tax credit amount allocated to a taxpayer pursuant to paragraph (a). The notice of transfer also must state whether unused tax credits are being transferred and the amount of unused tax credits being transferred.

History.—ss. 9, 15, ch. 2009-50; s. 198, ch. 2011-142.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

1288.9917 Community development entity reporting after a credit allowance date; certification of tax credit amount.—

(1) A qualified community development entity that has issued a qualified investment shall submit the following to the department within 30 days after each credit allowance date:

(a) A list of all qualified active low-income community businesses in which a qualified low-income community investment was made since the last credit allowance date. The list shall also describe the type and amount of investment in each business and the address of the principal location of each business. The list must be verified by the chief executive officer of the community development entity.

(b) Bank records, wire transfer records, or similar documents that provide evidence of the qualified low-income community investments made since the last credit allowance date.

(c) A verified statement by the chief financial or accounting officer of the community development entity that no redemption or principal repayment was made with respect to the qualified investment since the previous credit allowance date.

(d) Information relating to the recapture of the federal new markets tax credit since the last credit allowance date.

(2) The department shall certify in writing to the qualified community development entity and to the Department of Revenue the amount of the tax credit authorized for each taxpayer eligible to claim the tax credit in the tax year containing the last credit allowance date.

History.—ss. 10, 15, ch. 2009-50; s. 199, ch. 2011-142.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

1288.9918 Annual reporting by a community development entity.—

(1) A community development entity that has issued a qualified investment shall submit an annual report to the department by January 31 after the end of each year which includes a credit allowance date. The report shall include information on investments made in the preceding calendar year to include but not be limited to the following:

(a) The identity of the types of industries, identified by the North American Industry Classification System Code, in which qualified low-income community investments were made.

(b) The names of the counties in which the qualified active low-income businesses are located which received qualified low-income community investments.

(c) The number of jobs created and retained by qualified active low-income community businesses receiving qualified low-income community investments, including verification that the average wages paid meet or exceed 115 percent of the federal poverty income guidelines for a family of four.

(d) A description of the relationships that the entity has established with community-based organizations and local community development offices and organizations and a summary of the outcomes resulting from those relationships.

(e) Other information and documentation required by the department to verify continued certification as a qualified community development entity under 26 U.S.C. s. 45D.

(2) By April 30 after the end of each year which includes a credit allowance date, a community development entity shall submit annual financial statements for the preceding tax year, audited by an independent certified public accountant.

History.—ss. 11, 15, ch. 2009-50; s. 200, ch. 2011-142; s. 34, ch. 2013-39.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

2Note.—The word “be” was inserted by the editors to improve clarity.

1288.9919 Audits and examinations; penalties.—

(1) AUDITS.—A community development entity that issues an investment approved by the department as a qualified investment shall be deemed a recipient of state financial assistance under s. 215.97, the Florida Single Audit Act. However, an entity that makes a qualified investment or receives a qualified low-income community investment is not a subrecipient for the purposes of s. 215.97.

(2) EXAMINATIONS.—The department may conduct examinations to verify compliance with the New Markets Development Program Act.

History.—ss. 12, 15, ch. 2009-50; s. 201, ch. 2011-142.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

1288.9920 Recapture and penalties.—

(1) Notwithstanding s. 95.091, the department shall direct the Department of Revenue, at any time before December 31, 2022, to recapture all or a portion of a tax credit authorized pursuant to the New Markets Development Program Act if one or more of the following occur:

(a) The Federal Government recaptures any portion of the federal new markets tax credit. The recapture by the Department of Revenue shall equal the recapture by the Federal Government.

(b) The qualified community development entity redeems or makes a principal repayment on a qualified investment before the final allowance date. The recapture by the Department of Revenue shall equal the redemption or principal repayment divided by the purchase price and multiplied by the tax credit authorized to a taxpayer for the qualified investment.

(c)1. The qualified community development entity fails to invest at least 85 percent of the purchase price in qualified low-income community investments within 12 months after the issuance of a qualified investment; or

2. The qualified community development entity fails to maintain 85 percent of the purchase price in qualified low-income community investments until the last credit allowance date for a qualified investment.

For the purposes of this paragraph, an investment by a qualified community development entity includes principal recovered from an investment for 12 months after its recovery or principal recovered after the sixth credit allowance date. Principal held for longer than 12 months or recovered before the sixth credit allowance date is not an investment unless it is reinvested in a qualified low-income community investment.

(d) The qualified community development entity fails to provide the department with information, reports, or documentation required by the New Markets Development Program Act.

(e) The department determines that a taxpayer received tax credits to which the taxpayer was not entitled.

(2) The department shall provide notice to the qualified community development entity and the Department of Revenue of a proposed recapture of a tax credit. The entity shall have 6 months following the receipt of the notice to cure a deficiency identified in the notice and avoid recapture. The department shall issue a final order of recapture if the entity fails to cure a deficiency within the 6-month period. The final order of recapture shall be provided to the entity, the Department of Revenue, and a taxpayer otherwise authorized to claim the tax credit. Only one correction is permitted for each qualified equity investment during the 7-year credit period. Recaptured funds shall be deposited into the General Revenue Fund.

(3) An entity that submits fraudulent information to the department is liable for the costs associated with the investigation and prosecution of the fraudulent claim plus a penalty in an amount equal to double the tax credits claimed by investors in the entity's qualified investments. This penalty is in addition to any other penalty that may be imposed by law.

History.—ss. 13, 15, ch. 2009-50; s. 40, ch. 2010-147; s. 202, ch. 2011-142.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

1288.9921 Rulemaking.—The Department of Economic Opportunity and the Department of Revenue may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer ss. 288.991-288.9920.

History.—ss. 14, 15, ch. 2009-50; s. 203, ch. 2011-142.

1Note.—Expires December 31, 2022, pursuant to s. 15, ch. 2009-50.

288.9922 Expiration of the New Markets Development Program Act.—Sections 288.991-288.9921 and this section expire December 31, 2022.

History.—s. 15, ch. 2009-50.