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Part III - Administrative, Procedural, and Miscellaneous
Section 45D.--New Markets Tax Credit

Notice 2001-75

PURPOSE

This notice clarifies that certain equity investments may be eligible for the new markets tax credit under §45D of the Internal Revenue Code, notwithstanding that they are made before the receipt of a credit allocation from the Secretary of the Treasury under §45D(f)(2).

BACKGROUND

Section 45D(a)(1) provides a new markets tax credit on certain credit allowance dates described in § 45D(a)(3) with respect to a qualified equity investment in a qualified community development entity (CDE).

Section 45D(b)(1) provides that an investment in a CDE is a qualified equity investment only if, among other things, the CDE designates the investment as a qualified equity investment.

Section 45D(c)(1) provides that an entity is a CDE only if, among other things, the entity is certified by the Secretary as a CDE.

Section 45D(b)(2) provides that the maximum amount of equity investments issued by a CDE that may be designated by the CDE as qualified equity investments may not exceed the portion of the new markets tax credit limitation set forth in §45D(f) that is allocated to the CDE by the Secretary under §45D(f)(2).

The Secretary has delegated certain administrative functions relating to the new markets tax credit program to the Under Secretary (Domestic Finance), who in turn has delegated those functions to the Community Development Financial Institutions Fund (CDFI Fund). In accordance with procedures to be issued by the CDFI Fund in the future, the CDFI Fund will request and evaluate applications for CDE certification and for new markets tax credit allocations. Under those procedures, if a CDE is selected to receive a credit allocation, the CDFI Fund will provide to the CDE a notification of credit allocation. However, the CDE's actual receipt of a credit allocation under §45D(f)(2) will be contingent upon the CDE subsequently entering into an allocation agreement with the CDFI Fund.

DISCUSSION

Questions have arisen as to whether an equity investment in an entity may be eligible to be designated as a qualified equity investment if it is made before the entity is certified by the CDFI Fund as a CDE under § 45D(c)(1) and before the entity enters into an allocation agreement with the CDFI Fund. In such a situation, an equity investment in an entity will be eligible to be designated as a qualified equity investment under § 45D(b)(1) if:

1. The equity investment is made on or after April 20, 2001;
2. The entity in which the equity investment is made is certified by the CDFI Fund as a CDE under § 45D(c)(1) before January 1, 2003;
3. The entity in which the equity investment is made receives notification of a credit allocation (with the actual receipt of such credit allocation contingent upon subsequently entering into an allocation agreement) from the CDFI Fund before January 1, 2003; and
4. The equity investment otherwise satisfies the requirements of §45D.

In the case of an equity investment that is designated as a qualified equity investment in accordance with this notice, the first credit allowance date under § 45D(a)(3)(A) will be the effective date of the allocation agreement between the CDE and the CDFI Fund.

Regulations to be issued in the near future will incorporate the guidance set forth in this notice. Taxpayers may rely on this notice until those regulations are issued.

DRAFTING INFORMATION

The principal author of this notice is Paul Handleman of the Office of Associate Chief Counsel

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