

TO: State Directors, Rural Development

ATTN: Business Programs Directors
State Energy Coordinators

SUBJECT: New Markets Tax Credits and Rural Energy for America Program
Guaranteed Loans

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance and clarification concerning the Agency's policy on using the New Markets Tax Credits (NMTC) program with the Rural Energy for America Program (REAP).

COMPARISON WITH PREVIOUS AN:

There is no previous guidance.

IMPLEMENTATION RESPONSIBILITIES:

The NMTC was authorized by Congress as part of the Community Renewal Tax Relief Act of 2000 to attract investment capital to low-income communities by permitting investors to receive a tax credit against their Federal income tax return in exchange for making equity investments in specialized financial institutions called Community Development Entities (CDEs).

The Department of Treasury administers the Community Development Financial Institutions Fund (CDFI), which allocates tax credit authority to the NMTC. The CDFI Fund designates eligible CDEs and allocates the tax credit through a competitive application process. The Internal Revenue Service (IRS) provides and monitors compliance with the NMTC Income Tax Regulations—the rules under which the taxpayer may receive the tax credit.

EXPIRATION DATE:

May 31, 2018

FILING INSTRUCTIONS:

Preceding RD Instructions 4280-B
and 4279-B

Only CDFI Fund-certified CDEs are able to compete for and receive NMTC allocations. After receiving an allocation, the CDE has 5 years to raise Qualified Equity Investments (QEIs) from investors. The CDE has 12 months to place the QEIs into Qualified Low Income Community Investments (QLICIs) that include: (1) loans to, or investments in, Qualified Active Low-Income Community Businesses (QALICBs); (2) loans to, or investments in, other CDEs; (3) the purchase of qualifying loans originated by other CDEs; and (4) financial counseling and other services (FCOS) to low-income community businesses. The tax credits total 39 percent of the cash invested and is claimed over a 7-year credit allowance period.

NMTCs provide the flow of capital to businesses and low-income communities by providing a tax incentive to private investors as well as loan funds from lenders. Specifically, through the leveraged NMTC model, equity and leveraged funds are invested in CDEs and funds flow through to the Qualified Active Low-Income Community Business (QALICB) or borrower.

REAP Guaranteed Loans to NMTC QALICBs may be considered when REAP Guaranteed Loan requirements are met. The NMTC lender must meet eligibility requirements cited in RD Instruction 4280.125. Sub-entities under the control of a non-regulated lender approved as an eligible lender under REAP do not need to separately meet the requirements of 4280.125. A CDE or sub CDE must meet conflict of interest requirements as found in RD Instruction 4280.106. The borrower must meet eligibility requirements cited in RD Instruction 4280.112 as well as RD Instruction 4280.127 (a) through (e).

REAP Guaranteed Loans to leveraged lender loans may be considered when REAP Guaranteed Loan requirements are met. An investment fund entity, such as an investor partnership or investor LLC, may be an eligible borrower as long as the investor fund is established for a single specific NMTC investment, 100 percent of guaranteed loan funds are passed through the Qualified Equity Investment (QEI) by the CDE or sub-CDE to the QALICB through a direct tracing method and REAP eligibility requirements are met. The QALICB's project must be the ultimate use of REAP funds and the QALICB must meet REAP eligibility requirements. The terms and payment schedule of the lender's loan to the QEI must be at least equal to the terms and payment schedule of the CDE's loan to the QALICB.

The Office of the General Counsel Regional Attorney is available to review any issues or questions related to legal compliance and sufficiency of NMTC transactions. It is the responsibility of the State Office to review the documents for program compliance.

In summary, when considering applicability of the REAP Guaranteed Loan Program in conjunction with New Market Tax Credits, each project must be considered on its own individual merit under REAP eligibility criteria as well as compliance with NMTC requirements.

If you have any questions regarding this AN, please contact Will Dodson at (202) 768-0592, or via e-mail at will.dodson@wdc.usda.gov.

/s/ CHADWICK O. PARKER

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