

**Effective 9/2/2014**

**Renumbered 5/12/2015**

**63M-1-3507 150% investment requirement -- Ceasing of certification.**

- (1)
  - (a) Once certified under Section 63M-1-3503, a qualified equity investment shall remain certified until all of the requirements of Subsection (2) have been met.
  - (b) Until such time as the qualified equity investments issued by a qualified community development entity are no longer certified, the qualified community development entity may not distribute to its equity holders or make cash payments on long-term debt securities that have been certified as qualified equity investments in an amount that exceeds the sum of:
    - (i) the cumulative operating income, as defined by regulations adopted under Section 45D, Internal Revenue Code, earned by the qualified community development entity since issuance of the qualified equity investment, before giving effect to any interest expense from long-term debt securities certified as qualified equity investments; and
    - (ii) 50% of the purchase price of the qualified equity investments issued by the qualified community development entity.
- (2) Subject to the other provisions of this section, a qualified equity investment ceases to be certified when:
  - (a) it is beyond its seventh credit allowance date;
  - (b) the qualified community development entity issuing the qualified equity investment has been in compliance with Section 63M-1-3504 through its seventh credit allowance date, including any cures under Section 63M-1-3505;
  - (c) the qualified community development entity issuing such qualified equity investment has used the cash purchase of such qualified equity investment, together with capital returned, repaid, or redeemed or profits realized with qualified low-income community investments, to invest in qualified active low-income community businesses such that the total qualified low-income community investments made, cumulatively including reinvestments, exceeds 150% of the qualified equity investment; and
  - (d) the qualified community development complies with Subsection (4).
- (3) For purposes of making the calculation under Subsection (2)(c), qualified low-income community investments to any one qualified active low-income community business, on a collective basis with its affiliates, in excess of \$4,000,000 may not be included, unless such investments are made with capital returned or repaid from qualified low-income community investments made by the qualified community development entity in other qualified active low-income community businesses or interest earned on or profits realized from any qualified low-income community investments.
- (4) A qualified community development entity shall file a request for ceasing certification of a qualified equity investment in a form, provided by the office, that establishes that the qualified community development entity has met the requirements of Subsection (2) along with evidence supporting the request for ceasing certification. Subsection (2)(b) shall be considered to be met if no recapture action has been commenced by the office as of the seventh credit allowance date.
- (5)
  - (a) A request for ceasing certification may not be unreasonably denied and the office shall respond to the request within 30 days of the office receiving the request.
  - (b) Upon grant of a request for ceasing certification, the qualified community development entity is no longer subject to Section 63M-1-3510.

- (c) If the request is denied for any reason, the office has the burden of proof in any administrative or legal proceeding that follows.