

Effective 5/12/2015

63N-2-603 Certification of qualified equity investments -- Issuance of tax credit related certificates.

- (1)
 - (a) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and as eligible for tax credits under Section 59-9-107 shall apply to the office.
 - (b) The office shall begin accepting applications on September 2, 2014.
 - (c) The qualified community development entity shall include the following in the qualified community development entity's application:
 - (i) evidence of the applicant's certification as a qualified community development entity, including evidence of the service area of the applicant that includes this state;
 - (ii) a copy of an allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;
 - (iii) a certificate executed by an executive officer of the applicant attesting that:
 - (A) the applicant or its controlling entity has received more than one allocation of qualified equity investment authority under the Federal New Markets Tax Credit Program; and
 - (B) the allocation agreement submitted with the application remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund;
 - (iv) a description of the proposed amount, structure, and purchaser of the qualified equity investment;
 - (v) examples of the types of qualified active low-income businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the Federal New Markets Tax Credit Program, except that when submitting an application an applicant is not required to identify qualified active low-income community businesses in which the applicant will invest;
 - (vi) the amount of qualified equity investment authority the applicant agrees to designate as a federal qualified equity investment under Section 45D, Internal Revenue Code, including a copy of the screen shot from the Community Development Financial Institutions Fund's Allocation Tracking System of the applicant's remaining federal qualified equity investment authority;
 - (vii) if applicable, the refundable performance deposit required by Subsection 63N-2-606(1);
 - (viii) a copy of a certificate of qualified equity investment authority under another state's new markets tax credit program; and
 - (ix) evidence that the applicant, its controlling entity, and subsidiary qualified community development entities of the controlling entity have collectively made at least \$40,000,000 in qualified low-income community investments under the Federal New Markets Tax Credit Program and other state's new markets tax credit programs with a maximum qualified low-income community investment size of \$4,000,000 per business.
- (2)
 - (a) Within 30 days after receipt of a completed application containing the information set forth in Subsection (1), including, if applicable, the refundable performance deposit, the office shall grant or deny the application in full or in part.
 - (b) If the office denies any part of the application, the office shall inform the applicant of the grounds for the denial. If the applicant provides additional information required by the office or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission.

- (c) If the applicant fails to provide the information or complete its application within the 15-day period:
 - (i) the application is denied;
 - (ii) the applicant shall resubmit an application in full with a new submission date; and
 - (iii) the office shall return any refundable performance deposit required by Subsection 63N-2-606(1).
- (3)
 - (a) If the application is complete, the office shall certify the proposed equity investment or long-term debt security as a qualified equity investment, subject to the limitation contained in Subsection (6).
 - (b) The office shall provide written notice of the certification to the qualified community development entity.
- (4) The office shall certify qualified equity investments in the order applications are received by the office. Applications received on the same day are considered to have been received simultaneously.
- (5) For applications that are complete and received on the same day, the office shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants as follows:
 - (a) First, the office shall certify applications by applicants that agree to designate qualified equity investments as federal qualified equity investments in accordance with Subsection (1)(c)(vi) in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in an application to be designated as federal qualified equity investments to the total amount of qualified equity investments to be designated as federal qualified equity investments requested in all applications received on the same day.
 - (b) After complying with Subsection (5)(a), the office shall certify the qualified equity investments of all other applicants, including the remaining qualified equity investment authority requested by applicants not designated as federal qualified equity investments in accordance with Subsection (1)(c)(vi), in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in the applications to the total amount of qualified equity investments requested in all applications received on the same day.
- (6)
 - (a)
 - (i) The office shall certify \$50,000,000 in qualified equity investments pursuant to this section.
 - (ii) If a pending request cannot be fully certified due to this limit, the office shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.
 - (b) If a qualified community development entity withdraws its request pursuant to Subsection (6)(a), the office shall return any refundable performance deposit required by Subsection 63N-2-606(1).
 - (c) A partial certification does not decrease the amount of the refundable performance deposit required under Subsection 63N-2-606(1).
- (7) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or a subsidiary qualified community development entity of the controlling entity, provided that the applicant and the transferee notify the office of the transfer with the notice set forth in Subsection (8) and include with the notice the information required in the application with respect to the transferee.
- (8)

- (a) Within 45 days of the applicant receiving notice of certification, the qualified community development entity or any transferee under Subsection (7) shall:
 - (i) issue the qualified equity investment;
 - (ii) receive cash in the amount of the certified amount; and
 - (iii) if applicable, designate the required amount of qualified equity investment authority as federal qualified equity investments.
 - (b) The qualified community development entity or transferee under Subsection (7) shall provide the office with evidence of the receipt of the cash investment and designation of the qualified equity investment as a federal qualified equity investment within 50 days of the applicant receiving notice of certification.
 - (c) The certification under this section lapses and the qualified community development entity may not issue the qualified equity investment without reapplying to the office for certification if, within 45 days following receipt of the certification notice, the qualified community development entity or any transferee under Subsection (7) does not:
 - (i) receive the cash investment;
 - (ii) issue the qualified equity investment; and
 - (iii) if applicable, designate the required amount of qualified equity investment authority as federal qualified equity investments.
 - (d) A lapsed certification under this Subsection (8) reverts back to the office and shall be reissued as follows:
 - (i) first, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection (5)(a), if applicable;
 - (ii) second, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection (5)(b); and
 - (iii) after complying with Subsections (8)(d)(i) and (ii), in accordance with the application process.
 - (e)
 - (i) The office shall:
 - (A) calculate an annual fee to be paid by each applicant certified pursuant to Subsection (3) (a), regardless of the number of transferees under Subsection (7), by dividing \$100,000 by the number of applications certified pursuant to Subsection (3)(a); and
 - (B) notify each successful applicant of the amount of the annual fee.
 - (ii)
 - (A) The initial annual fee shall be due and payable to the office with the evidence of receipt of cash investment set forth in Subsection (8)(b).
 - (B) After the initial annual fee, an annual fee shall be due and payable to the office with each report submitted pursuant to Section 63N-2-610.
 - (iii) An annual fee may not be required once a qualified community development entity together with all transferees under Subsection (7) have decertified all qualified equity investments in accordance with Subsection 63N-2-607(2).
 - (iv) To maintain an aggregate annual fee of \$100,000 for all qualified community development entities, the office shall recalculate the annual fee as needed upon:
 - (A) the lapse of any certification under Subsection (8)(c);
 - (B) the recapture of tax credits pursuant to Section 63N-2-604; or
 - (C) the decertification of qualified equity investments pursuant to Subsection 63N-2-607(2).
 - (v) An annual fee collected under this Subsection (8)(e) shall be deposited into the General Fund as a dedicated credit for use by the office to implement this part.
- (9)

- (a) A qualified community development entity that issues a debt instrument described in Subsection 63N-2-602(6) may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under Section 45D, Internal Revenue Code, of the qualified community development entity for that period before giving effect to the interest expense of the long-term debt security.
 - (b) This Subsection (9) does not limit the holder of the debt instrument's ability to accelerate payments on the debt instrument in situations when the qualified community development entity has defaulted on covenants designed to ensure compliance with this part or Section 45D, Internal Revenue Code.
- (10)
- (a) A qualified community development entity that issues qualified equity investments shall notify the office of the names of the entities that are eligible to use tax credits under this section and Section 59-9-107:
 - (i) pursuant to an allocation of tax credits;
 - (ii) pursuant to a change in allocation of tax credits; or
 - (iii) due to a transfer of a qualified equity investment.
 - (b) The office may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the form and content of the notice required under this Subsection (10).
- (11)
- (a) An entity may claim a tax credit under Section 59-9-107 against tax liability under Title 59, Chapter 9, Taxation of Admitted Insurers, if the entity:
 - (i) makes a qualified equity investment; and
 - (ii) obtains a tax credit certificate in accordance with Subsection (11)(b).
 - (b) For each calendar year, beginning with calendar year 2016, an entity is eligible for a tax credit under this section and Section 59-9-107, the office shall issue to the entity a tax credit certificate for use after January 1, 2017, and provide the State Tax Commission a copy of the tax credit certificate.
 - (c) On each credit allowance date of the qualified equity investment, the entity that made the qualified equity investment, or the subsequent holder of the qualified equity investment, may claim a portion of the tax credit during the calendar year that includes the credit allowance date.
 - (d) The office shall calculate the tax credit amount and the tax credit amount shall be equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid to the qualified community development entity for the qualified equity investment.
 - (e) A tax credit allowed to a partnership, limited liability company, or S-corporation shall be allocated to the partners, members, or shareholders of the partnership, limited liability company, or S-corporation for the partners', members', or shareholders' direct use in accordance with the provisions of any agreement among the partners, members, or shareholders.
 - (f) An entity may not sell a tax credit allowed under this section on the open market.
- (12)
- (a) An entity that claims a tax credit under Section 59-9-107 and this section shall provide the office with a document that expressly directs and authorizes the State Tax Commission to disclose to the office the entity's tax returns and other information concerning the entity that are required by the office and that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.

- (b) The office shall submit the document described in Subsection (12)(a) to the State Tax Commission.
- (c) Upon receipt of the document described in Subsection (12)(a), the State Tax Commission shall provide the office with the information requested by the office that the entity authorized the State Tax Commission to provide to the office in the document described in Subsection (12)(a).

Renumbered and Amended by Chapter 283, 2015 General Session