

Effective 5/12/2015

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63N-2-602 Definitions.

As used in this part:

- (1) "Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the entity specified.
- (2) "Applicable percentage" means:
 - (a) 0% for the first two credit allowance dates;
 - (b) 12% for the next three credit allowance dates; and
 - (c) 11% for the next two credit allowance dates.
- (3) "Community Development Financial Institutions Fund" means the fund created in 12 U.S.C. Sec. 4703.
- (4) "Credit allowance date" means with respect to a qualified equity investment:
 - (a) the date on which the qualified equity investment is initially made; and
 - (b) each of the six anniversary dates of the date described in Subsection (4)(a).
- (5) "Federal New Markets Tax Credit Program" means the program created under Section 45D, Internal Revenue Code.
- (6) "Long-term debt security" means a debt instrument issued by a qualified community development entity:
 - (a) with an original maturity date of at least seven years from the date of its issuance; and
 - (b) with no repayment, amortization, or prepayment features before its original maturity date.
- (7) "Purchase price" means the amount paid to the qualified community development entity that issues a qualified equity investment for the qualified equity investment that may not exceed the amount of qualified equity investment authority certified pursuant to Section 63N-2-603.
- (8)
 - (a) "Qualified active low-income community business" is as defined in Section 45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1, but is limited to those businesses meeting the United States Small Business Administration size eligibility standards established in 13 C.F.R. Sec. 121.101-201 at the time the qualified low-income community investment is made.
 - (b) Notwithstanding Subsection (8)(a), "qualified active low-income community business" does not include a business that derives or projects to derive 15% or more of its annual revenue from the rental or sale of real estate, unless the business is controlled by or under common control with another business if the second business:
 - (i) does not derive or project to derive 15% or more of its annual revenue from the rental or sale of real estate; and
 - (ii) is the primary tenant of the real estate leased from the initial business.
 - (c) A business is considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the qualified community development entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business, other than the United States Small Business Administration size standards, throughout the entire period of the investment or loan.
- (9)
 - (a) "Qualified community development entity" is as defined in Section 45D, Internal Revenue Code, if the entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department with respect to credits authorized by Section 45D, Internal Revenue Code, that includes Utah within the service area set forth in the allocation agreement.

- (b) An entity may not be considered to be controlled by another entity solely as a result of the entity having made a direct or indirect equity investment in the other entity that earns tax credits under Section 45D, Internal Revenue Code, or in a similar state program.
 - (c) "Qualified community development entity" includes a subsidiary community development entity of a qualified community development entity.
- (10)
- (a) "Qualified equity investment" means an equity investment in, or long-term debt security issued by, a qualified community development entity that:
 - (i) is acquired on or after September 2, 2014, at its original issuance solely in exchange for cash;
 - (ii) has at least 85% of its cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date; and
 - (iii) is designated by the qualified community development entity as a qualified equity investment and is certified by the office pursuant to Section 63N-2-603.
 - (b) Notwithstanding Subsection (10)(a), "qualified equity investment" includes a qualified equity investment that does not meet the provisions of Subsection (10)(a) if the investment was a qualified equity investment in the hands of a prior holder.
- (11) "Qualified low-income community investment" means a capital or equity investment in, or a loan to, a qualified active low-income community business, except, with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of the business's affiliates, with the proceeds of qualified equity investments certified under Section 63N-2-603 shall be \$4,000,000, exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized on the repaid or redeemed qualified low-income community investments.
- (12) "Tax credit certificate" is a certificate issued by the office under Subsection 63N-2-603(11) to an entity eligible for a tax credit under Section 59-9-107 that:
- (a) lists the name of the entity eligible for a tax credit;
 - (b) lists the entity's taxpayer identification number;
 - (c) lists the amount of tax credit that the office determines the entity is eligible for the calendar year; and
 - (d) may include other information as determined by the office.