Community Development Finance Industry Group
Weekly Newsletter

Buchalter

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By: Patrick J. Kennedy III

Update to NMTC Compliance FAQs

On March 29, 2019, the Community Development Financial Institutions Fund (CDFI Fund) updated the NMTC Certification, Compliance, Monitoring, and Evaluation FAQs for the New Markets Tax Credit Program. Notable updates include:

- *Allocatee/Allocation Reporting:* updates on how allocation transfers and QEI reporting is tracked and Allocatee reporting requirements in the CDFI Fund's Award Managing Information System (AMIS) (**FAQ 5**);
- *Affordable Housing:* Clarification of the "housing unit" definition to provide guidance on the types of housing projects that can be financed with Qualified Low-Income Community Investments (QLICIs) (**FAQ 17**);
    - *Rental Housing Projects:* compliance with the 20% affordable requirement must be documented by household income of the initial qualifying tenants *and* each subsequent qualifying tenant through the seven-year NMTC compliance period (**FAQ 18**);
    - *For-Sale Housing Projects:* if Allocatee cannot document a buyer's 38% or less debt-to-income ratio requirement, the Allocatee alternatively show that the purchase price does not exceed 95% of the median purchase price for the area as determined by HUD (**FAQ 18**);
- *Small Dollar QLICIs:* Update to guidance providing that a QALICB cannot receive successive QLICIs from a CDE in a 24-month period that in the aggregate exceed the "small dollar" limit ($4MM for 2018 Allocations) (**FAQ 22**);
- *Food Deserts:* Update that QLICIs closing after November 1, 2018 must use the USDA's updated 2015 Food Access Research Atlas (rather than the 2010 version) to determine whether a QALICB is located in a Food Desert (**FAQ 34**);
- *Use of QLICI Proceeds to Repay/Refinance Third Party Debt:* Clarification that QLICI proceeds amy be used to replay or refinance a third party unaffiliated debt provider to a QALICB that has not incurred expenditures in connection with the QALICB's business or otherwise directly or indirectly fund a QEI (**FAQ 42**);

- *CDE Entity Dissolution:* Guidance for reporting dissolution of Community Development Entities (CDEs) and removal of a Controlling Entity (**FAQs 52 & 60**).

The updated March 2018 FAQ document can be found here:
https://www.cdfifund.gov/Documents/NMTC%20Compliance%20Monitoring%20FAQ%20-%20Approval%20Copy%203-22-2019.pdf

Permanent NMTC Legislation

On March 12, 2019 Senator Roy Blunt (R-MO) introduced the bipartisan New Markets Tax Credit Extension Act (S.750) to permanently extend the New Markets Tax Credit Program at the current 2018 funding level of approximately $5B, with annual increases to adjust for inflation.

The NMTC program's last reauthorization will expire in 2019. The full text of the bill can be found here: https://www.congress.gov/116/bills/s750/BILLS-116s750is.pdf

Opportunity Zone Regulations Update

On March 12, 2019, the Treasury Department submitted the second round of Opportunity Zone regulations to the Office of Information and Regulatory Affairs for review and approval. This round of regulations is anticipated to provide significant additional guidance regarding the formation and operation of Qualified Opportunity Funds and Qualified Opportunity Zone Businesses under the new Opportunity Zone program. The timeline for review is at least 10 days, but the first round of Opportunity Zone regulations was under review for well over a month. Stakeholders are anticipating release of these proposed regulations in April.

The current review status can be viewed here:
https://www.reginfo.gov/public/do/eoDetails?rrid=128920

LIHTC Legislation to Permit Homeless and Veteran Students

On March 13, 2019, Senator Ron Portman (R-OH) introduced the Housing for Homeless Students Act (S. 767) to add exceptions for homeless youth and veterans to the general restriction against application of the Low-income housing tax credit to households consisting of full-time students. Currently, Code Section 42(i)(3)(D) prevents households consisting entirely of full-time students from eligibility for the LIHTC unless one of five exceptions are met that generally cover non-traditional student situations (e.g. students who are single parents, students receiving social security benefits, students in job training programs receive other federal, state, or local assistance, etc.). S. 767 would add exceptions for students who were either homeless or veterans for a certain period prior to occupation of a low-income housing unit.

The full text of the bill can be found here: https://www.congress.gov/bill/116th-congress/senate-bill/767/text

Bipartisan Senate Letter to IRS re Veteran Housing Projects and PABs

On March 15, 2019, a bipartisan group of Senators sent a letter to the IRS requesting clarification that veteran housing projects would continue to qualify for Private Activity Bonds (PABs). Recently, the IRS has informally stated that housing projects with certain occupancy restrictions violate the "general public use" requirement found in Code Section 142 and would not be eligible for PABs. The letter notes that in 2008 LIHTCs were specifically excepted from the "general public use" requirement if failure of that requirement resulted solely because of occupancy restrictions that favor tenants with special needs or who are members of a specified group supported by Federal or State housing programs and policies. Because LIHTCs and PABs are designed to be used together, the letter asks that the LIHTC clarification be extended to PABs.

The full text of the letter can be found here:
https://www.feinstein.senate.gov/public/index.cfm/2019/3/senators-to-irs-allow-veteran-housing-projects-to-receive-tax-exempt-bonds

Technical Fix to Qualified Improvement Property Introduced

On March 26, 2019 Congressman Jimmy Panetta (D-CA) and Congresswoman Jackie Walorski (R-IN) introduced the Restoring Investment Improvements Act (H.R. 1869); bipartisan legislation that would fix the inadvertent reclassification of qualified improvement property (QIP) as 39-year property by the 2017 tax reform legislation. QIP includes any improvements to an interior portion of nonresidential real property (except for building enlargements, escalators and elevators, and internal structural framework) if such improvements were placed in service after the date the building was first placed in service. Prior to the 2017 tax reform legislation, QIP had a recovery period of 15 years or 20 years under alternative depreciation (e.g. if the taxpayer elects out of the business interest limitation). The new law inadvertently eliminated the 15/20 year recovery period and QIP defaulted to 39-year property. H.R. 1869 would restore QIP's classification as 15-year property, making it eligible for 100% bonus depreciation under the 2017 tax law.

- *HTC Impact*: HTCs project with QIP will not be eligible for bonus depreciation as the HTC rules only permit straight-line depreciation methods.

- *LIHTC Impact*: QIP will not apply to LIHTC projects as it only covers non-residential property.

You can read the entire text of the H.R. 1869 here: https://walorski.house.gov/wp-content/uploads/2019/03/Restoring_Investment_in-Improvements_Act.pdf

Contact Us

For more information on any of these topics, please contact a member of Buchalter's Community Development Finance Industry Group at: https://www.buchalter.com/industry-specialty/community-development-finance

Patrick Kennedy is a member of Buchalter's Real Estate and Community Development Finance Industry Groups. He can be reached at pkennedy@buchalter.com or 213.891.5042.