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Proposed Rules

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Chapter XVIII

New Markets Tax Credit Program

AGENCY: Community Development Financial Institutions Fund, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides advance notice of proposed rulemaking for the issuance of regulations relating to the New Markets Tax Credit (NMTC) Program as authorized by 26 U.S.C. 45D. This document invites comments from the public on certain issues regarding the designation of low-income communities for purposes of the NMTC Program. All materials submitted will be available for public inspection and copying.

DATES: All comments and submissions must be received by July 8, 2005.

ADDRESSES: Comments should be sent by mail to: NMTC Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; by e-mail to *cdfihelp@cdfi.treas.gov*; or by facsimile at (202) 622–7754. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Matthew Josephs, (202) 622–9254. Information regarding the Community Development Financial Institutions (CDFI) Fund and its programs may be downloaded from the CDFI Fund's Web site at *http://www.cdfifund.gov*.

SUPPLEMENTARY INFORMATION: Section 121(a) of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554), enacted on December 21, 2000, amended the Internal Revenue Code (IRC) by adding IRC section 45D, New Markets Tax Credit. The New Markets Tax Credit (NMTC) is a credit against Federal income taxes provided to taxpayers that make qualified equity investments in qualified Community Development Entities (CDEs). The credit provided to the taxpayer totals 39 percent of the cost of the investment and is claimed over a seven-year credit period. Substantially all of the cash from the taxpayer's qualified equity investment must in turn be used by the CDE for making Qualified Low-Income Community Investments (QLICIs). IRC section 45D(d)(1) defines a QLICI as (A) any capital or equity investment in, or loan to, any Qualified Active Low-Income Community Business (QALICB); (B) the purchase from another CDE of any loan made by such entity which is a QLICI; (C) financial counseling and other services to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, a CDE.

Under IRC section 45D(c)(1), a CDE is any domestic corporation or partnership if (A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons; (B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the CDFI Fund for purposes of IRC section 45D as being a CDE.

The term Low-Income Community, as defined under IRC section 45D(e)(1), means any population census tract in which (A) the poverty rate is at least 20 percent; or (B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide (or possessionwide) median family income, or (B)(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide (or possessionwide) median family income or the metropolitan area median family income.

Section 221(a) of the American Jobs Creation Act of 2004 (Act) (Pub. L. 108–357) amended IRC section 45D(e)(2) to provide that the Secretary shall prescribe regulations under which one or more Targeted Populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20)) may be treated as Low-Income Communities. Such regulations are to include procedures for determining which entities are QALICBs with respect to such Targeted Populations. Under section 221(c)(1) of the Act, the amendment made by section 221(a) of the Act applies to designations made by the Secretary after October 22, 2004. Prior to amendment by the Act, IRC section 45D(e)(2) provided that the Secretary could designate any area within any census tract as a Low-Income Community if (A) the boundary of the area was continuous; (B) the area would have satisfied the requirements of IRC section 45D(e)(1) if it were a census tract; and (C) an inadequate access to investment capital existed in such area.

Section 221(b) of the Act added IRC section 45D(e)(4) which provides that a population census tract with a population of less than 2,000 shall be treated as a Low-Income Community for purposes of IRC section 45D if such tract (A) is within an empowerment zone, the designation of which is in effect under IRC section 1391; and (B) is contiguous to one or more Low-Income Communities (determined without regard to IRC section 45D(e)(4)). Under section 221(c)(2) of the Act, the amendment made by section 221(b) of the Act applies to investments made after October 22, 2004.

Section 223(a) of the Act added IRC section 45D(e)(5) which provides that, in the case of a population census tract located within a high migration rural county, the term Low-Income Community includes a tract not located within a metropolitan area if the median family income for such tract does not exceed 85 percent of the statewide median family income. For this purpose, the term ''high migration rural county'' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period. Section 223(b) of the Act provides that the amendment made by section 223 is in effect as if included in the original authorizing legislation for the NMTC (section 121(a) of the Community Renewal Tax Relief Act of 2000).

The CDFI Fund will likely provide additional guidance on its Web site (at *http://www.cdfifund.gov*) indicating where interested parties may access the data necessary to determine whether certain census tracts qualify under IRC sections 45D(e)(4) and (e)(5), but it is not anticipated that further regulations will be published with respect to these two provisions.

The CDFI Fund is publishing this advance notice of proposed rulemaking to seek comments from the public with respect to how Targeted Populations under IRC section 45D(e)(2) may be treated as eligible Low-Income Communities under the NMTC Program. The CDFI Fund specifically invites comments from the public on the following issues and any other issues related to IRC section 45D(e)(2) for which the public believes guidance is particularly needed.

1. *Definition of Targeted Population.* The term ''Targeted Population,'' as defined in 12 U.S.C. 4702(20), means individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons (Low-Income Targeted Population); or (B) otherwise lack adequate access to loans or equity investments (Other Targeted Populations). The term ''low-income,'' as defined in 12 U.S.C. 4702(17), means having an income, adjusted for family size, of not more than (A) for metropolitan areas, 80 percent of the area median income; and (B) for non-metropolitan areas, the greater of (i) 80 percent of the area median income; or (ii) 80 percent of the statewide nonmetropolitan area median income. Under the CDFI Program (see 12 CFR 1805.201(b)(3)(iii) and 69 FR 65250), the CDFI Fund has already determined, for purposes of 12 U.S.C. 4702(20), that there exists strong evidence that the following groups of individuals lack adequate access to loans and equity investments on a national level and automatically qualify as Other Targeted Populations: Blacks or African-Americans; Native Americans or American Indians; and Hispanics or Latinos. The CDFI Fund has also determined that there exists strong evidence that Alaska Natives residing in Alaska and Native Hawaiians or other Pacific Islanders, residing in Hawaii or other Pacific Islands, lack adequate access to loans and equity investments and automatically qualify as Other Targeted Populations.

(a) Should these same populations (*i.e.*, Blacks or African Americans; Native Americans or American Indians; Hispanics or Latinos; Alaska Natives residing in Alaska; and Native Hawaiians or other Pacific Islanders residing in Hawaii or other Pacific Islands) automatically qualify as Other Targeted Populations for the purposes of the NMTC Program? Should any of these identified populations be removed, or additional populations be added? If so, what evidence (*i.e.*, research, studies) exists to support your position?

(b) Is it appropriate for the CDFI Fund to designate certain populations to automatically qualify as Other Targeted Populations for the purposes of the NMTC Program without applying a further test to determine whether the person or persons specifically benefiting from a given NMTC transaction in fact lack adequate access to loans and equity investments?

(c) Assuming the CDFI Fund does designate certain populations to automatically qualify as Other Targeted Populations, should the CDFI Fund permit CDE applicants to request that the CDFI Fund designate additional populations as Other Targeted Populations? If so, what evidence should an applicant be required to provide to demonstrate the population lacks adequate access to loans and equity investments?

2. *CDE Certification.* The CDFI Fund's Guidance for Certification of Community Development Entities, New Markets Tax Credit Program (66 FR 65806), provides that an entity may be certified as a CDE under IRC section 45D(c)(1) only if, among other things, the entity designates a geographic service area and demonstrates that at least 20 percent of the membership of its governing board or advisory board is representative of the interests of the residents of Low-Income Communities in that service area. In general, the CDFI Fund's CDE certification guidance provides that the following persons are representative of the interests of Low-Income Community residents: residents of Low-Income Communities; certain small business owners located in Low-Income Communities; representatives or employees of community-based organizations operating in Low-Income Communities; religious leaders whose congregations are based in Low-Income Communities; and employees of governmental agencies or departments that principally serve Low-Income Communities.

(a) Should CDEs wishing to serve Targeted Populations be required to identify a geographic service area as part of their CDE certification and NMTC Program allocation application materials?

(b) Should CDEs wishing to serve Targeted Populations be required to demonstrate that members of the designated Targeted Population are directly represented on their Governing Board or Advisory Board? If the CDFI Fund should impose such a requirement, should the minimum threshold be 20 percent of the total number of board members, which is the percentage currently required in the CDFI Fund's CDE certification guidance?

(c) Assuming that a CDE is interested in serving both a geographic Low-Income Community and a Targeted Population, should it be sufficient for that CDE to simply demonstrate that 20 percent of its board membership is representative of *either* geographic Low-Income Communities or Targeted Populations—or should a CDE be required to separately demonstrate that at least 20 percent of its board is representative of residents of geographic Low-Income Communities *and* at least 20 percent of its board is representative of members of the Targeted Population?

(d) If a CDE has already been certified by the CDFI Fund but now wishes to serve Targeted Populations, how should the CDE be required to demonstrate that it is accountable to those Targeted Populations? Should the CDE be required to submit new certification materials to the Fund?

3. *QALICB Requirements.* Under IRC section 45D(d)(2)(A), a QALICB means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year (i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any Low-Income Community; (ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any Low-Income Community; (iii) a substantial portion of the services performed for such entity by its employees are performed in any Low-Income Community; (iv) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in IRC section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and (v) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in IRC section 1397C(e)). Under IRC section 45D(d)(3), with certain exceptions, a qualified business is any trade or business. The rental to others of real property is a qualified business only if, among other requirements, the real property is located in a Low-Income Community.

(a) As indicated above, IRC section 45D(e)(2) requires that regulations be issued to provide procedures for determining which entities are QALICBs with respect to Targeted Populations. Under what circumstances should an entity be determined to be a QALICB with respect to a Targeted Population? For example, should the determination be based on whether the owners, employees or customers of the entity (or some combination thereof) are members of a Targeted Population?

(b) How should the following requirements apply in determining whether an entity is a QALICB with respect to a Targeted Population: (1) The requirement of IRC section 45D(d)(2)(A)(i) under which at least 50 percent of the total gross income of a QALICB must be derived from the active conduct of a qualified business within a Low-Income Community; (2) the requirement of IRC section 45D(d)(2)(A)(ii) under which a substantial portion of the use of the tangible property of a QALICB (whether owned or leased) must be within a Low-Income Community; (3) the requirement of IRC section 45D(d)(2)(A)(iii) under which a substantial portion of the services performed for a QALICB by its employees must be performed in a Low-Income Community; and (4) the requirement of IRC section 45D(d)(3) under which the rental to others of real property is a qualified business only if the real property is located in a Low-Income Community?

Authority: American Jobs Creation Act of 2004, Pub. L. 108–357, Consolidated Appropriations Act of 2001, Pub. L. 106–554.

Dated: May 17, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 05–10223 Filed 5–23–05; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738 and 742

[Docket No. 011019257–5107–02]

RIN 0694–AC48

Proposed Rule: Imposition of License Requirement for Exports and Reexports of Missile Technology-Controlled Items Destined to Canada

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule with request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is proposing to amend the Export Administration Regulations (EAR) by imposing a license requirement for exports and reexports of items controlled for missile technology (MT) reasons to Canada. To date, the EAR have required a license for MT-controlled items to all destinations except Canada, and generally no license exceptions are available for MT-controlled items.

This rule is consistent with a recommendation made by the General Accounting Office (GAO (renamed the Government Accountability Office)) in a 2001 report that BIS either impose a license requirement for exports and reexports of MT-controlled items to Canada, based on section 6(l) of the Export Administration Act of 1979, as amended, or seek a statutory change. The effect of this rule is that all exports and reexports of MT-controlled items to any destination require a license, and generally no license exceptions are available, so that all exports and reexports of MT-controlled items subject to the EAR are subject to prior review.

DATES: Comments must be received on or before June 23, 2005.

ADDRESSES: You may submit comments, identified by RIN 0694–AC48, to BIS by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* (Follow the instructions for submitting comments.)
- E-mail: *mblaskov@bis.doc.gov.* Include ''RIN 0694–AC48'' in the subject line of the message.
- Fax: (202) 482–3355.
- Mail or Hand Delivery/Courier: U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AC48.

Send comments regarding the collection of information to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

Comments received on this rulemaking will be available at: *http://www.bis.doc.gov/foia.*

FOR FURTHER INFORMATION CONTACT: Steven Goldman, Director, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3825.

SUPPLEMENTARY INFORMATION:

Background

Consistent with a recommendation contained in a report of the General Accounting Office (GAO), the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) to impose a licensing requirement on exports to Canada of dual-use items listed on the Missile Technology Control Regime (MTCR) Annex.

The Export Administration Act (EAA) of 1979 was amended in 1991 to require a license for the export of dual-use MTCR controlled goods or technology to any country. However, when the Commerce Control List was revised and renumbered in August 1991 (56 FR 42824), the Canadian exemption from license requirements for MT-controlled items was not changed. The continuation of the exemption from the licensing requirements for exports to Canada was consistent with U.S. policy that had, since 1941, permitted the export without license of nearly all dual-use goods and technologies intended for consumption or use in Canada.

On May 31, 2001, the United States General Accounting Office (GAO (since renamed the Government Accountability Office)) issued a report entitled: ''Export Controls: Regulatory Change Needed to Comply with Missile Technology Licensing Requirements'' (GAO–01–530). That report recommended that BIS either amend the EAR to require a license for exports of dual-use MTCR items to Canada or seek a statutory change from Congress.

In the course of commenting on GAO's report, the Department of Commerce informed GAO that legislation that would replace the Export Administration Act of 1979 (EAA) was pending in the Congress and that the legislation did not contain a provision that would mandate licensing requirements for the export of MT-controlled items to Canada. At various times in the years 2000 to 2002, S. 149 and H.R. 2581, proposed legislation that would have reauthorized the EAA, were under consideration by the Congress. While S. 149 was approved by the Senate, the legislation to replace the Export Administration Act was not enacted. The Department of Commerce also noted in its comments that it had notified Congress of the Canadian exemption for MT-controlled items every year since 1991.

In light of GAO's recommendation, BIS published an ''Advance notice of proposed rulemaking'' on December 20, 2001 (66 FR 65666), soliciting public comments on the removal of the licensing exemption for export of MT items to Canada. BIS received seventeen comments in response, from Canadian and U.S.-based trade associations, Canadian and U.S.-based companies, a foreign airline, and the Government of Canada. All of the substantive