

Supporting Statement (REG-119436-01)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Taxpayers may claim a new markets tax credit under section 45D of the Internal Revenue Code on a credit allowance date in an amount equal to the applicable percentage of the taxpayer's qualified equity investment in a qualified community development entity (CDE). The credit allowance date for any qualified equity investment is the date on which the investment is initially made and each of the 6 anniversary dates thereafter. The applicable percentage is 5 percent for the first 3 credit allowance dates and 6 percent for the remaining credit allowance dates.

A CDE is any domestic corporation or partnership if the primary mission of the entity is serving or providing investment capital for low-income communities or low-income persons; 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 the entity is certified by the Secretary for purposes of section 45D as being a CDE.

The new markets tax credit may be claimed only for a qualified equity investment in a CDE. A qualified equity investment is any equity investment in a CDE for which the CDE has received an allocation from the Secretary, and among other things, the CDE uses substantially all of the cash from the investment to make qualified low-income community investments. Under a safe harbor, the substantially-all requirement is treated as met if at least 85 percent of the aggregate gross assets of the CDE are invested in qualified low-income community investments.

Qualified low-income community investments consist of: (1) any capital or equity investment in, or loan to, any qualified active low-income community business; (2) the purchase from another CDE of any loan made by such entity which is a qualified low-income community investment; (3) financial counseling and other services to businesses located in, and residents of, low-income communities; and (4) any equity investment in, or loan to, any CDE.

In general, a qualified active low-income community business is a corporation or a partnership if for the year: (1) at least 50 percent of

the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community; (2) a substantial portion of the use of the tangible property of the entity is within any low-income community; (3) a substantial portion of the services performed for the entity by its employees is performed in any low-income community; (4) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to certain collectibles; and (5) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to certain nonqualified financial property.

Section 1.45D-1(g)(2) provides that a CDE must provide notice to: (1) any taxpayer who acquires an equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets tax credit; and (2) each holder of a qualified equity investment, including all prior holders of that investment, that a recapture event has occurred. CDEs must comply with such reporting requirements to the Secretary as the Secretary may prescribe.

2. USE OF DATA

The information under § 1.45D-1(g)(2) is required by the IRS so that a taxpayer may claim a new markets tax credit; the IRS can determine the accuracy of the credit amount; a taxpayer can report recapture of the credit; and a CDE can report on its compliance with the requirements in section 45D and the regulations thereunder.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans at this time to offer electronic filing because of the low volume compared to the cost of electronic enabling.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

We have been unable to reduce the burden for small businesses.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Notices of proposed rulemakings (66 FR 66376) and (69 FR 11561) were published simultaneously with temporary regulations (66 FR 66307) and (69 FR 11507) in the Federal Register on December 26, 2001, and December 28, 2004, respectively. Public hearings were held March 14, 2002, and June 2, 2004.

In response to the **Federal Register Notice** dated **April 10, 2008 (73 FR 19588)**, we received no comments during the comment period regarding REG-119436-01.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.45D-1(g)(2)(i)(A) provides that a CDE must provide notice to any taxpayer who acquires an equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets tax credit. For the first proposed regulations (66 FR 66376), we estimated that 150 taxpayers (CDEs) would issue 1,500 notices to taxpayers to comply with this requirement. We also estimated that each taxpayer (CDE) would take 2.5 hours (10 notices at 15 minutes each) to comply with this requirement for a total burden estimate of 375 hours. We now estimate that 46 CDEs will issue 806 notices to taxpayers to comply with the requirement. We now estimate that each CDE will take 4.5 hours (18 notices at 15 minutes each) for a total burden estimate of 207 hours, which reduces the total burden estimate by 168 hours. These new estimates are based on the availability of more accurate information.

Section 1.45D-1(g)(2)(i)(B) provides that a CDE must provide notice to each holder of a qualified equity investment, including all prior holders of that investment, that a recapture event has occurred. For the first proposed regulations (66 FR 66376), we estimated that one taxpayer (CDE) would issue 10 notices of recapture to taxpayers to comply with this requirement. We also estimated that the taxpayer (CDE) would take 2.5 hours to comply with this requirement for a total burden estimate of 2.5 hours. These estimates remain unchanged.

Section 1.45D-1(g)(2)(ii) provides that each CDE must comply with such reporting requirements to the Secretary as the Secretary may prescribe. The burden for these reporting requirements is reflected in forms issued by the Treasury Department.

Thus, the total burden for this collection of information is 210 (207 hours plus 2.5 hours), which is reduction in total burden estimates by 168 hours.

The burden for taxpayers claiming the new markets tax credit is reflected on Form 8874, "New Markets Credit."

The burden for taxpayers subject to recapture of the new markets tax credit is reflected on the form taxpayers file for their Federal income tax returns.

Estimates of the annualized cost to respondents for the hour burdens associated with the information collection are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.