

APA1
07/04

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. 281 Department or Agency: Department of Commerce

Rule No. 281-5-1

Rule Title: Alabama New Markets Tax Credit Program

X New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? No

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Linda P. Swann
Linda P. Swann, Assistant Secretary of Commerce
Date 9/13/12

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DEPARTMENT OF COMMERCE

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 281-5-1 Alabama New Markets Tax Credit Program

INTENDED ACTION: Adopt New Rules.

SUBSTANCE OF PROPOSED ACTION: The Department of Commerce proposes to adopt rules to carry out its duties under Alabama Act No.2012-483.

TIME PLACE, MANNER OF PRESENTING VIEWS: All interested parties may submit their views in writing to the Department of Commerce; 401 Adams Avenue, Suite 170; Montgomery, AL 36130; Attention: Secretary of Commerce 36130, at any time during the thirty-five (35) day period following the publication of the notice.

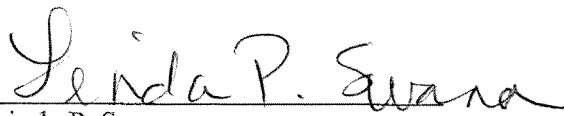
FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

November 6, 2012

CONTACT PERSON AT AGENCY:

Greg Canfield
Secretary of Commerce
401 Adams Avenue
Montgomery, AL 36130
(334) 242-0421

William A. McCrary
RSA Union Building
100 North Union Street, Suite 134
Montgomery, AL 36130-2631
(334) 242-7133


Linda P. Swann
Assistant Secretary of Commerce

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**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 412-22-3(f))**

Control No. 281 Department or Agency-77 Department of Commerce

Rule No: 281-5-1

Rule Title: New Markets Tax Credits

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**
These Rules are designed to specify procedures under which the Alabama Department of Commerce will perform its duties under Act No.2012-483 known as the New Markets Development Act. The Act allows up to \$20 million per year in tax credits, to be taken in years two through seven of a seven year period, against either state income tax, state financial institution excise tax and/or state premium tax. Proper administration of this program should stimulate investment in impoverished and low income communities.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:** **These Rules are designed to allow implementation of Act No.2012-483 known as the New Markets Development Act. The Act allows up to \$20 million per year in tax credits, to be taken in years two through seven of a seven year period, against either state income tax, state financial institution excise tax and/or state premium tax. The Act and rules should encourage investment in impoverished and low income communities. Since this investment represents new business activity no current tax revenues will be impacted.**
3. **EFFECT OF THIS RULE ON COMPETITION:** **All qualifying investors will have equal standing to seek the applicable tax credits.**
4. **EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:** **The effect on the cost of living in the geographic areas affected is unknown. However, business activity in those areas should be stimulated.**

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED: **It is expected that employment in the geographic areas affected will be increased.**
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE: **A nonrefundable fee of \$5,000 per application will be charged.**
7. THE SHORT TERM/LONG TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE: **Economic activity in impoverished and low income communities should increase. Investors will receive state income, financial institution excise and premium tax credits. Since this investment represents new business activity no current tax revenues will be impacted.**
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE INCLUDING QUALITATIVE / QUANTITATIVE BENEFITS AND BURDEN COMPARISON: **Investment, economic activity and employment in impoverished and low income areas is expected to be positively impacted. However, the exact economic impact cannot be quantified.**
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
N/A
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
N/A

****Additional pages may be used if needed.**

ALABAMA DEPARTMENT OF COMMERCE

CHAPTER 281-5-1 ALABAMA NEW MARKETS DEVELOPMENT PROGRAM

281-5-1-.01 Definitions

- (1) "Act" or "Program" means the Alabama New Markets Development Act, Act Number 2012-483 of the State of Alabama, a copy of which should accompany these regulations.
- (2) "Applicant" means the Qualified Community Development Entity who submits an Application under the Act to have an equity investment or long-term debt security designated as a Qualified Equity Investment which is eligible for Tax Credits under the Act.
- (3) "Application" means an application under the New Markets Development Program pursuant to this chapter.
- (4) "CDFI Fund" means the Community Development Financial Institutions Fund of the United States Treasury Department.
- (5) "Department of Revenue" means the Alabama Department of Revenue.
- (6) "Department of Insurance" means the Alabama Department Insurance.
- (7) "Department" shall mean the Alabama Department of Commerce.
- (8) "Federal New Markets Tax Credit Program" means Section 45D of the Internal Revenue Code of 1986, as amended, and the regulations adopted there under, including 26 CFR Sec. 145D-1.
- (9) "Notice of Certification" is a written notice provided to an Applicant by the Department informing the Applicant of its decision and will include the amount of Qualified Equity Investment allocated to the Applicant contingent upon the Applicant's issuance of Qualified Equity Investments and receipt of a cash investment equal to the allocated amount of investment contained in such certification. The Notice of Certification shall also include, if known, the names of those taxpayers who are eligible to utilize the Tax Credits and the respective annual Tax Credit amounts and a utilization schedule.
- (10) "Notice of Reallocation" means a written notice issued by a Qualified Community Development Entity as described in Section 7(d) of the Act.
- (11) "Qualified Active Low-Income Community Business" has the same meaning given that term in Section 45D(d)(2) of the Internal Revenue Code of 1986, as amended, and the regulations adopted there under, including 26 CFR Sec. 1.45D-1.
- (12) "Secretary" means the Secretary of Commerce.
- (13) "State" means the State of Alabama.

Terms not specifically defined in this Chapter shall have the meaning set forth in the Act.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202 and Act No. 2012-483 of the State of Alabama

History: New Rule

Reg-281-5-1-.02 New Markets Development Program – Application and Certification

- (1) Only an Applicant that is certified as a Qualified Community Development Entity under the Federal New Markets Tax Credit Program and has entered into an allocation agreement with the CDFI Fund is eligible to apply for an allocation of Qualified Equity Investment authority under the Program.
- (2) Commerce shall begin accepting applications on August 31, 2012.
- (3) Applicants are encouraged to identify or name in the Application the Qualified Active Low-income Community Businesses in which they will invest, but at a minimum each Applicant must provide the amount of investment and the calendar year in which the investment will be issued and a detailed description of the types of Qualified Low Income Community Investments the Applicant will make, such description to be in form and substance acceptable to the Department. The Department encourages the Applicant to provide examples of other similar types of Qualified Active Low Income-Community Businesses in which the Applicant has previously invested under the Federal New Markets Tax Credit Program.
- (4) The Applicant should include the name, address, tax identification number of the entity, and evidence of the entity's certification as a Qualified Community Development Entity, identity of the investors which the Applicant anticipates will invest in the Applicant, a certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund, a description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security, and any other information and/or documentation required in the Act or otherwise required by the Secretary including, without limitation, information and/or documentation otherwise required by applicable law. In the case of any conflict between this chapter and the Act the provisions of the Act shall govern.
- (5) If Tax Credits are allocated to a partner, member or shareholder of a "pass-through" entity pursuant to Section 5 of the Act, the Applicant, or the successor holder of Qualified Equity Investment authority under paragraph 12 of this section, must notify Commerce of such allocation of Tax Credits, including the name and Employee Identification Number of any such ultimate user of the Tax Credits, prior to such taxpayer claiming Tax Credits on any tax return. A Qualified Community Development Entity shall notify Commerce of any subsequent allocation of Tax Credits pursuant to Section 5 of the Act and of any subsequent holder of a Qualified Equity Investment under Section 4 of the Act.
- (6) A nonrefundable Application fee of five thousand dollars (\$5,000) shall accompany each Application. The fee shall be paid in the form of a cashier's check or certified check drawn on the funds of a bank with a physical location within the State and payable to the

Alabama Department of Commerce. Applications shall be submitted by hand or certified mail to Alabama Department of Commerce, Alabama Center for Commerce, 401 Adams Avenue, Suite 670 Montgomery, Alabama 36104. Attention: Secretary of Commerce.

- (7) Within 60 days after receipt of a completed Application, Commerce shall review the Application for eligibility and shall either grant or deny the Application in full or in part and inform the applicant of the grounds for any denial. If granted, this document will serve as Notice of Certification. The date of receipt shall be the date upon which Commerce marks the Application received. The date on which the application is granted or denied will be the date of the letter indicating such decision to the applicant.
- (8) If denied due to insufficient documentation, the Applicant will have 15 days from the notice of denial to complete and/or modify the Application and provide any additional information required by Commerce. If approved, the Application shall be considered complete as of the original date of submission. If the Applicant fails to provide the information or complete its original Application, the original Application shall remain denied and any subsequent allocation request shall be resubmitted in full. The 15-day time period will be determined by the date on the denial letter and the post-mark date of the letter containing the requested information.
- (9) If additional documentation submitted pursuant to paragraph (8) is provided to the Department within 15 business days and such documentation is deemed sufficient, the Department shall provide the applicant with a Notice of Certification within 30 days of the receipt of the additional information. The date on which the Application is granted or denied will be the date of the letter indicating such decision to the Applicant.
- (10) The Applicant must issue the Qualified Equity Investment in the amount certified within 90 days after receipt of a Notice of Certification.
- (11) A Qualified Community Development Entity whose own application and/or an affiliated entity's Application which is granted must provide to the Department all of the following within 30 days, as determined by the post-mark date, of the issuance of the Qualified Equity Investments.
 - (a) Evidence of issuance of Qualified Equity Investments required by paragraph (9). Such evidence must include a bank statement of the Applicant reflecting such investment equal to the certified amount, and any other evidence requested by the Secretary.
 - (b) The name, address, tax identification number, and copy of certification of each Qualified Community Development Entity in which the Applicant invested and the amount invested in each entity.
 - (c) The type of tax the credit allowed by the Act will offset.
 - (d) To the extent the purchaser is a Subchapter K Entity pursuant to §40-18-1(35), Code of Alabama 1975, the name and employee identification number of each owners/shareholders/member of the purchaser, and the allocation agreement determining the amount of credit assigned to each owner/shareholder/member of

the Applicant. The information supplied should be based on the issuance date required by paragraph (9).

- (e) All other information as required by Section 7 of "the Act" unknown to the Applicant as of the date of application.
- (12) An approved Applicant may assign all or a portion of its Qualified Equity Investment authority to one or more partners, members or shareholders of the Applicant, provided the applicant notifies Commerce of such transfer and such transferee Qualified Community Development Entity meets all of the requirements of a Qualified Community Development entity under the program. Such notice of transfer shall include the information set forth in the Application for all such transferees of Qualified Equity Investment authority.
- (13) Applicants that do not receive a cash investment or issuance of the Qualified Equity Investment equal to the allocation within 90 days after receipt of the notice of certification, as determined by the post-mark date of the certification, may not issue the Qualified Equity Investment, their respective certifications will lapse and they will be required to reapply to the Department for certification.
- (14) Lapsed certifications revert back to the Department and shall be reissued, first, pro rata to other Applicants whose Qualified Equity Investment allocations were reduced under Section 7(e) of the Act and, thereafter, in accordance with the Application process.
- (15) The Applicant shall provide to the Department any changes in allocations pursuant to Section 7(d) of the Act. In compliance with this rule, the Applicant will review any changes in allocation as of the anniversary date of the issuance of the Qualified Equity Investment and provide such changes in allocation to the Department within 30 days of the anniversary date of the issuance of the Qualified Equity Investment as required by paragraph (9). Such notice will include the name, employee identification number and amount of credit allocated for each owner/shareholder/member of the Applicant and will be required in each of the six years subsequent to the date of issuance of the Qualified Equity Investment.
- (16) Tax Credits claimed under this Act shall not be saleable or transferable. However, Tax Credits earned by a "Subchapter K entity" as defined by §40-18-1(35), Code of Alabama 1975 may be allocated to the partners, members or shareholders of that entity in accordance with Section 5 of the Act. Only the owners/shareholders/members owning an interest in the Applicant as of the anniversary date of the issuance of the Qualified Equity Investment will be allowed to deduct a credit pursuant to the Act.
- (17) Copies of all Notices of Certification and all other written notices issued by or received from Applicants by the Department affecting eligibility, allocation or reallocation of Tax Credits shall be sent by Commerce to the Department of Revenue or the Department of Insurance, as applicable, within 30 days after issuance or receipt.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202 and Act No. 2012-483 of the State of Alabama

History: New Rule

Reg-281-5-1.03 New Markets Development Program – Policy and Reporting

- (1) (a) The Department may not certify qualified equity investments that can result in the utilization of more than \$20 million in tax credits in any tax year.

(b) For purposes of paragraph (1), tax year shall mean any calendar year.

(c) A Tax Credit is deemed to be utilized in each of years two through seven subsequent to the issuance of the qualified equity investment on the anniversary date of such investment. The Department shall not authorize Tax Credits in excess of twenty million dollars (\$20,000,000) in any calendar year.
- (2) Ten million dollars (\$10,000,000) shall be the maximum amount of Qualified Low-Income Community Investments made by a Qualified Community Development Entity and its affiliates outstanding to a Qualified Active Low-Income Community Business. Any amounts returned or repaid by such Qualified Active Low-Income Community Business may be reinvested in such Qualified Active Low-Income Community Business and not be counted twice towards the \$10,000,000 limit.
- (3) Periodic amounts received during a calendar year as repayment of principal on a loan that is a Qualified Low-Income Community Investment are treated as continuously invested in a Qualified Low-Income Community Investment if the amounts are reinvested in another Qualified Low-income Community Investment by the end of the following calendar year.
- (4) Qualified Community Development Entities that issue Qualified Equity Investments shall submit a report within the first five business days after the first anniversary of the initial credit allowance date that provides proof that at least 85 percent of its cash purchase price was used to make Qualified Low-Income Community Investments in Qualified Active Low-Income Community Businesses located in Alabama. Such report shall include (a) a bank statement of such Qualified Community Development Entity evidencing each Qualified Low-Income Community Investment and (b) evidence that such business was a Qualified Active Low-Income Community Business at the time of such Qualified Low-Income Community Investment.
- (5) Thereafter, the Qualified Community Development Entity shall submit an annual report within 45 days of the beginning of the calendar year during the compliance period on a form provided by Commerce. No annual report shall be due prior to the first anniversary of the initial credit allowance date. The form shall be remitted to Commerce both in electronic and hard copy formats. The report will include but is not limited to the following: (a) number of employment positions created and retained as a result of qualified low-income community investments; and (b) average annual salary of positions described in subparagraph (a) of this paragraph.
- (6) The Qualified Community Development Entity is not required to provide the annual report set forth in paragraph 5 of this section for Qualified Low-Income Community Investments that have been redeemed or repaid in a prior year.

- (7) The Qualified Community Development Entity must also submit the report set forth in Section 9 of the act on or before the 30th day prior to the third and sixth anniversaries of the issuance of each Qualified Equity Investment.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202 and Act No. 2012-483 of the State of Alabama

History: New Rule

81-5-1-.04 Recapture of Tax Credits

Upon written notice from the Department, the Department Revenue or the Department of Insurance as appropriate shall recapture any and all Tax Credits under the circumstances, in the amounts and using the procedures outlined in Section 8 of the Act.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202 and Act No. 2012-483 of the State of Alabama

History: New Rule

281-5-1-.05 Expenses and Plan Administration

The Program shall be administered by the Secretary or his or her designee. These rules shall be interpreted by the Secretary and his decision as to any interpretations shall be final. The Secretary may grant waivers and/or make exceptions from this chapter for particular situations where the purposes of the Act would be served by any such waiver or interpretation. The Department may make expenditures as it deems reasonable for which the Program was created. In addition, the Department may retain a sufficient amount of the Application fees collected to offset its internal expenses and overhead in administering the Program.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202 and Act No. 2012-483 of the State of Alabama

History: New Rule

**ALABAMA NEW MARKETS DEVELOPMENT PROGRAM
TAX CREDIT APPLICATION**

1. CDE NAME:		2. CDE EIN:			
3. MAILING ADDRESS:		4. CITY:		5. STATE:	6. ZIP:
7. TELEPHONE:		8. FAX:		9. EMAIL:	
10. ATTACH EVIDENCE OF THE APPLICANT'S CERTIFICATION AS A QUALIFIED COMMUNITY DEVELOPMENT ENTITY BY THE FEDERAL NMTC PROGRAM. APPLICANT MUST BE CERTIFIED TO CONTINUE THIS APPLICATION.					
11. ATTACH A COPY OF ANY ALLOCATION AGREEMENT EXECUTED BY APPLICANT CDE AND THE CDFI FUND THAT INCLUDES THE STATE OF ALABAMA IN ITS SERVICE AREA.					
12. AUTHORIZED EXECUTIVE OFFICER—NAME AND TITLE:					
13. CERTIFICATION: I, _____, DO HEREBY CERTIFY AS THE AUTHORIZED EXECUTIVE OFFICER OF APPLICANT CDE THAT THE ALLOCATION AGREEMENT ATTACHED HERETO REMAINS IN EFFECT AND HAS NOT BEEN REVOKED OR CANCELLED BY THE CDFI FUND. BY: _____ NAME: _____ TITLE: _____					
14. PURCHASE OF QEI: \$			15. AMOUNT OF QEI (\$240,096,038.42 MAX): \$		
16. ATTACH DESCRIPTION OF PROPOSED STRUCTURE OF THE QEI OR LONG-TERM DEBT SECURITY.					
17. ANTICIPATED AMOUNT OF APPLICABLE TAX CREDITS REQUESTED: \$					
18. TAXPAYER(S) ELIGIBLE TO UTILIZE ALABAMA NMTC EARNED BY HOLDER OF QEI OR LONG-TERM DEBT SECURITY PURSUANT TO SECTION 5 OF NEW MARKETS DEVELOPMENT PROGRAM ACT (If applicable, i.e. pass-through entity*): (attach additional sheets if necessary) ELIGIBLE TAXPAYER: _____ EIN: _____ <small>*If ultimate user of Alabama NMTC is unknown, Applicant (if application is approved) commits to notify the Department of name(s) and EIN(s) of the ultimate user(s) prior to such taxpayers claiming Alabama NMTCs on any tax returns.</small>					
19. PROPOSED USE OF PROCEEDS: CHECK AND COMPLETE ONE OF THE FOLLOWING* <input type="checkbox"/> A. Identify name and location of Alabama QALICB(s) and amount of Alabama QLICs. <input type="checkbox"/> B. Attach a business plan discussing how the applicant will invest 85% of the amounts identified in Item 15 in Alabama QLICs within twelve months of the initial credit allowance date. <input type="checkbox"/> C. Attach examples of the types of QALICBs in which the applicant has previously invested under the Federal NMTC Program. <small>*The taxpayer is not required to identify the use of proceeds, but the Alabama NMTCs earned are subject to recapture if the issuer fails to invest at least 85% of a QEI in Alabama QLICs within twelve months of the initial credit allowance date.</small>					
20. INCLUDE NONREFUNDABLE APPLICATION FEE OF \$5,000 WITH THIS APPLICATION.					
TAXPAYER SIGNATURE:		PRINT NAME:		TITLE:	DATE: