

(4) The maximum term of the guaranteed loan is seven years when the proceeds are used by the cooperative for working capital and;

(i) In all other cases the maximum term of the guaranteed loan is equal to the lesser of the following but not exceeding 40 years:

(ii) The justified useful life of the funded project assets,

(iii) The maximum term under any applicable State statute; or

(iv) The specified holding period for redemption as stated by the stock offering.

(5) All borrowers purchasing preferred stock or similar equity must provide documentation of the terms of the offering that includes compliance with State and Federal securities laws and financial information about the issuer of the preferred stock to both the lender and the Agency.

(6) Issuer(s) of preferred stock must be a cooperative organization and must be able to issue preferred stock to the public that, if required, complies with State and Federal securities laws.

(7) The lender will, at a minimum, obtain a valid lien on the preferred stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a default by a borrower. For the purpose of recovering losses from guaranteed loan defaults, lenders may take ownership of all equities purchased with such loans, including additional shares derived from reinvestment of dividends.

(8) Shares of preferred stock that are purchased with guaranteed loan funds cannot be converted to common or voting stock.

(9) In the absence of adequate provisions for investors' rights to early redemption of preferred stock or similar equity, a borrower must request from a cooperative or fund issuing such equities a contingent waiver of the holding or redemption period in advance of share purchases. This contingent waiver provides that in the event a default by a borrower on a B&I guaranteed loan, the borrower waives any ownership rights in the stock, and the lender and Agency will then have the right to redeem the stock.

(10) Guaranteed loans for the purchase of preferred stock must be prepaid in the event a cooperative that issued the stock exercises an early redemption. If the cooperative enters into bankruptcy, to the extent the cooperative can redeem the preferred stock, the Borrower is required to repay the guaranteed loan from the redemption of the stock.

(d) *Employee ownership succession.* The Agency may guarantee loans for conversions of businesses to either cooperatives or ESOP within five years from the date of initial transfer of stock.

(1) The maximum loan amount is \$600,000 and all applications will be processed in accordance with §§ 5001.301 through 5001.303, 5001.306, 5001.315, and 5001.318 of this part, as applicable.

(2) The maximum term is 10 years.

(3) The lender must, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a default by a borrower.

(4) The lender must complete a written credit evaluation of each stock purchase loan and a complete credit evaluation of the cooperative or ESOP prior to making its first stock purchase loan.

(5) If a cooperative is organized, each selling owner becomes a member with special control rights to protect their stake in the business while a succession plan is implemented. At the completion of the stock transfer, selling owners may retain their membership in the cooperative provided that their control rights are the same as all other members. Any special covenants that selling owners may have held must be extinguished upon completion of the transfer.

(6) If an ESOP is organized for transferring ownership to employees, selling owner(s) may not retain ownership in the business after five years from the date of the initial transfer of stock.

#### § 5001.141 New markets tax credits.

The New Markets Tax Credit (NMTC) program is administered by the U.S.

Department of the Treasury's (Treasury) Community Development Financial Institutions (CDFI) Fund with NMTC credits allocated to Treasury-certified Community Development Entities (CDEs) across the United States to make Qualified Equity Investments (QEIs) in low-income communities. NMTC related definitions and terms in this section are governed by section 45(D) of the Internal Revenue Code (26 U.S.C. 45D), and applicable Treasury regulations (26 CFR 1.45D-1). A CDE will generally establish a new subsidiary of a CDE (sub-CDE) for individual NMTC projects. Lenders and their borrowers with guaranteed loan Projects that include NMTC investments must comply with the provisions in this section. To be a lender for a guaranteed loan project that involves financing under the NMTC provisions, the lending entity must meet the applicable eligibility criteria in § 5001.130. The Agency will not waive its servicing rights to a guaranteed loan or be a party to any forbearance agreement in conjunction with a NMTC project.

(a) *Guaranteed Loans Directly to Qualified Active Low-Income Community Businesses (QALICB)*. (1) A lender that is CDE or sub-CDE under the direct control of a regulated lender or an approved non-regulated lender does not need to separately meet the requirements of § 5001.130 to make a guaranteed loan directly to a qualified active low-income community business (QALICB).

(2) The provisions of § 5001.127(f) notwithstanding, a lender that is a CDE or sub-CDE may have an ownership interest in the borrower provided that each condition specified in paragraphs (a)(2)(i) through (iii) of this section is met.

(i) The lender does not have an ownership interest in the borrower prior to the application.

(ii) The lender does not take a controlling interest in the borrower.

(iii) The lender does not provide equity or take an ownership interest in a borrower at a level that would result in the lender owning 20 percent or more interest in the borrower.

(3) Notwithstanding § 5001.115(f), a lender that is a CDE or sub-CDE taking an ownership interest in the borrower

does not constitute a conflict of interest. The Agency will mitigate the potential for a conflict of interest by requiring appropriate loan covenants establishing, at a minimum, limitations on dividends and distributions of earnings in the loan agreement between the lender and borrower. The Agency will also ensure that the lender limits any waivers of loan covenants and future modifications of loan documents in compliance with this part.

(4) Guaranteed loans made by a lender directly to a QALICB must meet all other program and project eligibility requirements as specified in this part.

(5) For purposes of calculating borrower equity in compliance with § 5001.105(d)(1), the CDE (or sub-CDE's) amount of the principal balance of the loan from NMTC investor funds that is subordinated to the guaranteed loan may be considered as equity.

(b) *Guaranteed loans to a NMTC leveraged equity structure*. Tax benefits to a NMTC investor are based on the total amount of funds utilized in the project. The tax benefit calculation includes the sum of the investor's cash investment plus loan proceeds from a leveraged lender into a NMTC investor fund entity. The investor fund entity is generally a new entity established to make a qualified equity investment (QEI) into one or more CDEs or sub-CDEs to support a qualified low-income community investment (QLICI) to a QALICB. The investor fund entity, through its investment, has ownership rights in the sub-CDE that will be making secured QLICI loans to the QALICB. The provisions of § 5001.127(g) notwithstanding, either a leveraged lender entity lending to an investor fund entity, or an investor fund entity such as an investor partnership or investor limited liability corporation, may be an eligible borrower for a specific NMTC project as specified in paragraph (b)(1) of this section. For purposes of this section only, the stated term "borrower" in paragraphs (b)(1) through (13) of this section applies to both a leveraged lender entity or an investor fund entity as the guaranteed loan borrower in the NMTC project. Paragraphs (b)(2) through (13) of this section identify modifications to this

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part that apply when the eligible borrower is a leveraged lender entity or investor fund entity in a NMTC project.

(1) To be an eligible borrower using the leveraged equity structure of a NMTC project each condition identified in paragraphs (b)(1)(i) through (v) of this section must be met.

(i) The investor fund entity must be established for a single specific NMTC investment.

(ii) The lender is not an affiliate of the borrower.

(iii) When the borrower is a leveraged lender entity it must relend one hundred percent of the guaranteed loan funds to an investor fund entity. In all cases one hundred percent of the guaranteed loan funds are or will be invested by the investment fund entity in one or more sub-CDEs that will then be loaned directly to a QALICB through a direct tracing method, and such guaranteed loan funds are, or will be, used by the QALICB in accordance with the eligibility requirements in subpart B of this part. The QALICB's project must be the ultimate use of one hundred percent of the guaranteed loan funds.

(iv) The QALICB must meet the requirements of an eligible borrower as found in § 5001.126.

(v) The sub-CDE operating agreement with the QALICB must include a provision that the guaranteed lender has approval rights with respect to any substantial loan servicing actions that may be taken by the sub-CDE regarding the collateral or repayment terms of their QLICI loans to the QALICB.

(2) The guaranteed loan amount and percentage of guarantee provisions found in §§ 5001.406 and 5001.407 of this part, respectively, apply to the QALICB and not to the investor fund entity or leveraged lender entity, who would actually be the borrower as defined under this part.

(3) For purposes of calculating borrower equity in compliance with § 5001.105(d)(1), the leveraged lender entity's note from the investor fund may be considered a tangible asset and when the lien associated with the sub-CDE's loan is subordinated, the principal balance of the sub-CDE's loan

made to the QALICB from NMTC investor funds may be considered as equity.

(4) The loan terms found in § 5001.402 of this part apply to both the borrower and the QALICB. The maturity and related payment schedule of the lender's guaranteed loan to the borrower must be no longer than the maturity and related payment schedule of the sub-CDE's loan to the QALICB. An Agency approved unequal or escalating schedule of principal and interest payments can be used for a NMTC loan. The lender may require additional principal repayment by a co-borrower, such as an owner or principal participant of the QALICB. The provisions of § 5001.402(b)(3) notwithstanding, the Agency may consider interest-only payments by a borrower pursuant to an interest-only term not to exceed seven years on a loan made under an NMTC structure if the lender requires:

(i) A debt repayment reserve fund or sinking fund in an amount at least equal to the guaranteed loan's principal amortization that would have otherwise applied to the loan if equally amortized payments were collected during the seven year term; and

(ii) Such reserve funds or sinking funds are applied to the guaranteed loan as an additional payment of principal at the end of such interest-only term.

(5) Except for the collateral provisions, § 5001.202(b)(4), § 5001.202(b) of this part applies to both the lender's guaranteed loan to the borrower and the sub-CDE's loan to the QALICB. The collateral provisions found in § 5001.202(b)(4) of this part apply only to the sub-CDE's loan to the QALICB.

(6) The personal, partnership and corporate guarantee provisions of § 5001.204 of this part apply when the guaranteed loan borrower is a leveraged lender entity in a NMTC project. Guaranteed loans made directly to an investor fund entity as the borrower do not require a personal, partnership, or corporate guarantee from the investor fund entity's owner, who is the NMTC tax credit investor and considered a passive investor. The Agency shall obtain the personal, partnership or corporate guarantee from the QALICB ownership for a guaranteed loan to an investor fund entity in compliance with

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§5001.204, subject to the eligibility requirements of the NMTC program. The Agency may require additional personal, partnership or corporate guarantees if warranted by an Agency evaluation of potential financial risk.

(7) The insurance provisions of §5001.205(d) of this part apply only to the QALICB and the sub-CDE's secured loan to the QALICB.

(8) The financial report provisions of Section 5001.504 of this part apply to both the borrower and the QALICB.

(9) The application requirements found in subpart D to this part, as applicable, apply to both the borrower and the QALICB, including the application analysis and evaluation components of §5001.303. The Agency also requires submission of the loan terms and documents between the sub-CDE and QALICB. As part of the application completed by the lender, the documentation must include comparable industry information and a summary of the NMTC project's funding path and an explanation of the relationships between all parties in the NMTC transaction (an accompanying schematic is encouraged for complicated transactions).

(10) The environmental responsibilities specified in §5001.207 of this part apply to the NMTC project.

(11) For any application that the Agency assigns a priority score, when assigning the priority score to a NMTC loan application, the Agency will score the project based on the entire NMTC structure and the QALICB's project as the ultimate use of guaranteed loan funds.

(12) The lender is responsible for ensuring that the NMTC project complies with the planning, performing, development and project monitoring provisions in §5001.205 of this part and the lender is also responsible for ensuring the NMTC project complies with all applicable Treasury NMTC requirements.

(13) Sections 5001.401 through 5001.408 of this part apply to both the borrower and the QALICB in a NMTC transaction.

[85 FR 42518, July 14, 2020, as amended at 86 FR 70356, Dec. 10, 2021; 87 FR 7367, Feb. 9, 2022]

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**Subpart C—Origination Provisions**

**§ 5001.201 General origination requirements.**

The lender is responsible for originating a guaranteed loan in accordance with the requirements of this part and in accordance with its internal origination policies and procedures to the extent they do not conflict with the requirements of this part. For each application, the lender must prepare a credit evaluation that is consistent with Agency standards found in this part. The Agency reserves the right to review the lender's credit evaluation and request additional information. Lender approval does not constitute Agency approval.

**§ 5001.202 Lender's credit evaluation**

For each application, the lender must prepare a credit evaluation that is consistent with Agency standards found in this part.

(a) *Lender's evaluation guidelines.* The lender must conduct a credit evaluation using credit documentation procedures and underwriting processes that are consistent with generally accepted prudent lending practices for commercial, public and project financing and also consistent with the lender's own policies, procedures, and lending practices. The underwriting process must include a review of each loan for which a loan guarantee is being sought under this part. Applications involving affiliated entities must include a global credit evaluation and if applicable a global historical and projected debt service coverage analysis. Applications involving guarantor(s) must also include a global debt service coverage analysis of the guarantor(s) including the cash flow of the guarantor(s). In addition, the lender must review all applicable contracts, management agreements, and leases to determine they will not adversely affect either the borrower's repayment ability or the value of the collateral securing the guaranteed loan. The lender's evaluation must address any financial or other credit weaknesses of the borrower and project and discuss risk mitigation requirements imposed by the lender.