

**TAX INCENTIVES FOR ECONOMIC
DEVELOPMENT AND FINANCING**

Scheduled for a Public Hearing
Before the
SENATE COMMITTEE ON FINANCE
on July 30, 2024

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The Senate Committee on Finance has scheduled a public hearing on July 30, 2024, titled “Tax Tools for Local Economic Development.” This document,¹ prepared by the staff of the Joint Committee on Taxation, describes present-law tax incentives for qualified opportunity zones, the new markets tax credit, the rehabilitation credit for certified historic structures, and present and prior law relating to tax-exempt financing.

¹ This document may be cited as follows: Joint Committee on Taxation, *Tax Incentives for Economic Development and Financing* (JCX-36-24), July 26, 2024. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Qualified Opportunity Zones

Background and scope

The qualified opportunity zone rules provide the tax benefits of deferral and exclusion to taxpayers who reinvest gain as equity in qualified opportunity funds, which are investment vehicles organized for the purpose of investing in qualified opportunity zones.² A qualified opportunity zone is a census tract that is a low-income community (“LIC”)³ (in certain cases, a census tract contiguous with a low-income community may also be a qualified opportunity zone) that has received a designation as a qualified opportunity zone by the State government of the State in which the tract is located. A qualified opportunity fund must invest at least 90 percent of its assets either (i) directly in qualified opportunity zone business property (“QOZBP”) or (ii) in a partnership or corporation that is a qualified opportunity zone business, which in turn owns QOZBP.

QOZBP consists of tangible property used in the trade or business of the qualified opportunity fund or the qualified opportunity zone business. Tangible property must also satisfy requirements relating to its acquisition, improvement, and use to qualify as QOZBP.

Detailed qualified opportunity fund investment data including aggregate investment amounts by year are provided from tax returns. The total (cumulative) stock dollar value of investments reported by qualified opportunity funds was \$84.7 billion as of 2022. Of the aggregate \$84.7 billion reported in 2022, approximately \$82.5 billion was reported on electronically filed tax returns. Among electronically filed returns, approximately \$5.1 billion cannot be directly matched to their respective census tracts, presumably due to data entry errors.⁴

Table 1 below presents a breakdown of qualified opportunity fund investment within all 50 States, the District of Columbia, and Puerto Rico, by census tract type.⁵ The data are from electronically filed returns of IRS Form 8996, *Qualified Opportunity Fund*, in tax year 2022. The first column shows the total investment amount, while the second through fourth columns show the percentage share of qualified opportunity fund investment across qualified opportunity zones that qualify as LICs, qualified opportunity zones that do not qualify as LICs (“Non-LICs”), and census tracts that do not qualify as qualified opportunity zones (“non-QOZs”), respectively.

² Secs. 1400Z-1, 1400Z-2, added by the Tax Cuts and Jobs Act, Pub. L. No. 115-97, sec. 13823, December 22, 2017.

³ The term “low-income community” is defined in section 45D(e).

⁴ The Joint Committee staff is exploring alternative methods for linking these unmatched qualified opportunity fund investments to their corresponding census tracts.

⁵ The other U.S. territories were excluded due to data limitations.

The penultimate column shows the share of investment in rural census tracts, and the final column shows investment per capita.⁶

Some States with large populations, such as California, Florida, New York, and Texas, attracted the greatest aggregate qualified opportunity fund investments through 2022. On a per capita basis, reported opportunity fund investments were greatest in the District of Columbia, Wyoming, Utah, and Arizona.

Under present law, 8,764 census tracts spanning all 50 States, the District of Colombia, and the U.S. territories are designated as qualified opportunity zones, 8,566 of which qualify as LICs and 198 of which qualify as non-LICs. These designations and their boundaries are not subject to change. The data in Table 1 show that approximately 94 percent of investment flowed to opportunity zones that are LICs.

⁶ Census classifies tracts as rural if they are not in a Metropolitan Statistical Area (MSA). An MSA consists of one or more counties that contain a city of 50,000 or more inhabitants, or contain a Census Bureau-defined urbanized area and have a total population of at least 100,000 (75,000 in New England).

Table 1: Qualified Opportunity Fund Investment by State

State	Investment (USD, millions)	Investment: LIC (percent)	Investment: Non-LIC (percent)	Investment: Non-QOZ (percent)	Investment: Rural (percent)	Investment per Capita (USD)
Total	77,172	93.5	5.5	0.9	8.5	238
Alabama	1,070	100.0	0.0	0.0	4.7	221
Alaska	140	98.9	1.1	0.0	25.3	190
Arizona	4,227	92.9	7.0	0.1	0.6	621
Arkansas	538	99.9	0.1	0.0	17.3	181
California	9,467	94.6	4.3	1.2	0.8	243
Colorado	2,681	98.2	1.8	0.1	15.2	493
Connecticut	477	95.6	4.4	0.1	0.1	133
Delaware	93	100.0	0.0	0.0	0.0	98
D.C.	1,467	100.0	0.0	0.0	0.0	2,181
Florida	6,085	99.6	0.0	0.4	0.8	300
Georgia	2,437	100.0	0.0	0.0	26.8	239
Hawaii	282	60.6	39.4	0.0	64.6	199
Idaho	130	99.8	0.2	0.0	22.7	78
Illinois	465	91.8	8.2	0.0	6.1	36
Indiana	1,012	98.0	1.8	0.2	5.7	153
Iowa	85	89.8	0.0	10.2	18.2	27
Kansas	214	98.4	1.6	0.0	15.4	74
Kentucky	357	99.0	1.0	0.0	33.6	81
Louisiana	493	75.3	12.7	12.0	12.0	106
Maine	190	99.8	0.2	0.0	30.8	143
Maryland	1,426	98.6	1.4	0.0	2.4	238
Massachusetts	885	98.4	0.7	0.9	1.0	130
Michigan	3,129	100.0	0.0	0.0	8.0	315
Minnesota	726	92.3	7.4	0.3	18.6	132
Mississippi	388	93.8	6.2	0.0	70.8	130
Missouri	1,122	99.2	0.6	0.2	9.0	185
Montana	304	100.0	0.0	0.0	93.2	295
Nebraska	467	76.6	23.4	0.0	40.8	247
Nevada	1,550	91.4	8.6	0.0	15.9	537
New Hampshire	64	100.0	0.0	0.0	71.8	48
New Jersey	2,336	94.0	3.7	2.3	0.0	261
New Mexico	289	97.9	0.6	1.5	14.2	138
New York	5,892	78.4	17.8	3.7	1.5	298
North Carolina	2,370	97.2	1.3	1.6	11.1	236
North Dakota	113	95.3	4.7	0.0	10.6	152
Ohio	2,275	99.1	0.5	0.4	6.5	196
Oklahoma	336	87.2	12.8	0.0	52.1	86
Oregon	1,600	93.3	6.7	0.0	9.6	398
Pennsylvania	1,519	91.0	8.0	1.0	1.5	119
Puerto Rico	415	56.3	43.7	0.0	6.0	120
Rhode Island	199	95.5	1.0	3.5	0.0	189
South Carolina	1,392	95.0	4.4	0.6	9.6	284
South Dakota	123	65.0	35.0	0.0	22.6	144
Tennessee	2,733	95.1	4.9	0.0	9.2	414
Texas	5,222	98.0	0.0	2.0	5.6	190
Utah	2,977	100.0	0.0	0.0	3.1	994
Vermont	80	95.5	4.5	0.0	48.3	127
Virginia	1,321	95.8	2.2	2.0	6.6	158
Washington	2,402	97.8	2.2	0.0	4.6	335
West Virginia	84	96.4	3.6	0.0	18.3	46
Wisconsin	530	99.6	0.0	0.4	9.6	92
Wyoming	995	5.1	94.9	0.0	97.7	1,706

Source: IRS data on investment in QOZ tracts from electronically filed 2022 Forms 8996, *Qualified Opportunity Fund*, comprising 91 percent of aggregate QOZ investment. Population and urban/rural classifications from the Census American Community Survey in 2017 (the year the Opportunity Zone rules were enacted). Calculations by JCT staff. Details may not add up to totals due to rounding.

Qualified Opportunity Zone and Infrastructure

The qualified opportunity zone rules require investors to hold equity in QOZBP, tangible property located in the qualified opportunity zone. As such, the rules may be used to finance investments in property such as real estate. However, the rules impose several restrictions that may make broader infrastructure projects less feasible.

For example, the requirement of an equity investment within the qualified opportunity zone may preclude infrastructure projects such as telecommunications lines or sewage facilities, that may need to span entire cities or counties, from being qualifying investments. The requirement of an equity investment by the qualified opportunity fund also means that infrastructure-type assets owned by the public sector or quasi-governmental agencies may not be qualifying structures.

An additional rule mandates that less than five percent of the average of the aggregate adjusted bases of the property of the qualified opportunity zone business be attributable to nonqualified financial property. This limits qualified opportunity funds from investing through debt; unlike new markets tax credit investments which have traditionally been made in the form of loans, financial intermediaries are effectively prohibited by the opportunity zone rules. Another rule requires that at least 50 percent of the total gross income of the qualified opportunity zone business be derived from the active conduct of business in the qualified opportunity zone. This requirement may exclude non-revenue generating public infrastructure. Finally, the requirement that investments be deployed within a certain timeframe may prevent using the benefit for infrastructure projects that are either too far into their development timeline or too early in the planning process.

While the qualified opportunity zone rules allow funds to invest in many different types of businesses, the most recent data suggest that most investments relate to real estate and construction. Table 2 below illustrates the types of businesses that funds have invested in.

Table 2: Cumulative Qualified Opportunity Zone Fund Investments by Industry, 2022

NAICS Code	Industry	QOF Investment (\$ millions)	QOF Investment (percentage of total)
53	Real Estate and Rental and Leasing	51,761.1	62.7%
51	Information	7,441.4	9.0%
23	Construction	7,054.2	8.5%
52	Finance and Insurance	5,740.0	7.0%
	Unclassified	3,447.9	4.2%
72	Accommodation and Food Services	1,999.5	2.4%
54	Professional, Scientific, and Technical Services	840.2	1.0%
55	Management of Companies and Enterprises	783.5	0.9%
31-33	Manufacturing	669.8	0.8%
56	Administrative and Support and Waste Management and Remediation Services	491.8	0.6%
62	Health Care and Social Assistance	427.3	0.5%
22	Utilities	365.7	0.4%
42	Wholesale Trade	322.9	0.4%
81	Other Services (except Public Administration)	287.5	0.3%
48-49	Transportation and Warehousing	251.1	0.3%
71	Arts, Entertainment, and Recreation	183.6	0.2%
11	Agriculture, Forestry, Fishing and Hunting	175.3	0.2%
44-45	Retail Trade	167.4	0.2%
61	Educational Services	106.8	0.1%
21	Mining, Quarrying, and Oil and Gas Extraction	24.5	0.0%
Total		82,547.0	100.0%

Source: IRS data on investment from electronically filed 2022 Forms 8996, *Qualified Opportunity Fund*, comprising 97 percent of aggregate QOZ investment. Sector designations are based on matching qualified opportunity zone businesses to their self-reported North American Industry Classification System (“NAICS”) code. Calculations by JCT staff. Rows may not sum exactly to the total due to rounding and exclusion of industries receiving negligible investment amounts.

B. New Markets Tax Credit

In general

The New Markets Tax Credit (“NMTC”) is a geographically based tax credit program. An investor may claim a tax credit for seven years for a qualified equity investment in a qualified community development entity (“CDE”).⁷ A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on any governing board of or any advisory board to the CDE; and (3) that is certified by the Secretary as being a qualified CDE.⁸

The qualified CDE designates equity investments as qualified equity investments, rendering the investor eligible to receive tax credits.⁹ The qualified CDE can only designate up to an amount allocated to it by the Community Development Financial Institutions Fund (“CDFI Fund”) within Treasury. The CDFI Fund allocates amounts to qualified CDEs through a competitive application process.

The amount of the credit is determined each year on the anniversary of the date of the initial investment.¹⁰ On that date, the amount of the NMTC is calculated to be five percent of the remaining qualified equity investment for the first three years and six percent of this amount for the next four years.¹¹ To continue to be eligible for tax credits, the taxpayer must continue to hold the qualified equity investment on the credit allowance date of each year. In other words, if the qualified equity investment ceases, or ceases to be qualified, the remaining tax credits are no longer allowed. The credits already claimed may also be recaptured if the CDE ceases to be qualified, if the proceeds of the investment cease to be used in a qualified manner, or if the taxpayer redeems its qualified equity investment.¹²

Regulated financial institutions provide most of the equity for NMTC transactions. Such institutions are separately required to invest in low-income census tracts under the Community Reinvestment Act of 1977 and accompanying regulations.¹³ Thus, in effect, the NMTC provides benefits to such institutions for investments they are already obligated to make.

⁷ Sec. 45D(a).

⁸ Sec. 45D(c)(1).

⁹ Sec. 45D(b)(1)(C).

¹⁰ Sec. 45D(a)(3).

¹¹ Sec. 45D(a)(2).

¹² Sec. 45D(g)(3).

¹³ Pub. L. No. 95-128, 91 Stat. 1147–48 (1977); 12 C.F.R. secs. 25, 228, 345.

Qualifying communities

The NMTC provisions require CDEs to serve or provide investment capital for low-income communities or low-income persons. Generally, a low-income community is defined as a population census tract with (1) a poverty rate of at least 20 percent or (2) for which the median family income does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income.¹⁴ Under limited circumstances, areas not within census tracts, census tracts with low populations, or census tracts within high migration communities may also meet the definition of a low-income community under the statute without meeting the two above criteria.¹⁵ Finally, as designated by Treasury regulations, one or more “targeted populations”—defined as individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments—may also be treated as low-income communities under the statute.¹⁶

Project structures

In a typical NMTC structure, an intermediary entity receives equity investments from investors and debt from other sources. The proceeds are then invested as an equity investment into a qualified CDE. The qualified CDE in turn makes a qualified low-income community investment in a qualified active low-income community business.

A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired directly from a CDE solely in exchange for cash.¹⁷ Substantially all—defined as at least 85 percent—of the investment proceeds must be used by the CDE to make qualified low-income community investments.¹⁸ For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified low-income community businesses; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.¹⁹

Although equity investments in qualified active low-income community businesses qualify under the NMTC rules, generally, such investments are in the form of loans. Equity

¹⁴ Sec. 45D(e)(1). For a census tract in a non-metropolitan area, only the statewide median family income applies. Sec. 45D(e)(1)(B)(i).

¹⁵ Sec. 45D(e)(3)–(5).

¹⁶ Treas. Reg. sec. 1.45D-1(d)(9); See sec. 45D(e)(2); 12 U.S.C. 4702(20).

¹⁷ Secs. 45D(b)(1)(A) and 45(b)(6). Qualified equity investments also include any equity investment purchased from other investors if the investment was a qualified equity investment in the hands of the prior holder. See sec. 45D(b)(4).

¹⁸ Sec. 45D(b)(1)(B); Treas. Reg. sec. 1.45D-1(c)(5)(i) (establishing the 85 percent threshold).

¹⁹ Sec. 45D(d)(1).

investors that own a majority interest in a low-income community business can have their NMTC credits recaptured if the business violates the rules for qualification.²⁰ However, Treasury regulations provide a “reasonable expectation” safe harbor for CDEs that lend to such a business; if the CDE “reasonably expects” that the rules are being satisfied, NMTC credits are not subject to recapture.²¹

A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of such business is used in a low-income community; (3) a substantial portion of the services performed for such business by its employees is performed in a low-income community; (4) less than five percent of the average of the aggregate unadjusted bases of the property of such business is attributable to certain collectibles; and (5) less than five percent of the average of the aggregate unadjusted bases of the property of such business is attributable to certain financial property.²²

Allocation amount

The maximum annual amount of NMTCs that the CDFI Fund can allocate per year is \$5 billion for calendar years 2020 through 2025.²³ No amount of unused allocation limitation may be carried to any calendar year after 2030.²⁴

Since its inception, Congress has extended and expanded the NMTC. As originally enacted in 2000, \$15 billion was authorized for the new markets tax credit program through 2007.²⁵ In 2005, an additional \$1 billion of credits was authorized for qualified areas affected by Hurricane Katrina over a period of three years.²⁶ In 2006, and again in 2008, the credit was increased and extended by one additional year, with \$3.5 billion allocated per year.²⁷ In 2009,

²⁰ See sec. 45D(g).

²¹ Treas. Reg. sec. 1.45D-1(d)(iv)(6)(i).

²² Sec. 45D(2)(A). For purposes of this definition, “collectibles” include any work of art, any rug or antique, any metal or gem, any stamp or coin, any alcoholic beverage, or any other tangible personal property specified by the Secretary. Secs. 45D(d)(2)(A)(iv) and 408(m)(2). “Financial property” includes debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations, other than working capital and accounts or notes receivable acquired in the ordinary course of trade or business. Secs. 45D(d)(2)(A)(v), 1397C(e), and 1221(a)(4).

²³ Sec. 45D(f).

²⁴ Sec. 45D(f)(3).

²⁵ Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, sec. 121, December 21, 2000.

²⁶ Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, sec. 101, December 21, 2005.

²⁷ Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, sec. 102, December 20, 2006, and the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, sec. 302, October 3, 2008.

Congress increased the allocation amount for 2008 and 2009 from \$3.5 billion to \$5 billion.²⁸ Congress extended the credit by two years in 2010, by two more years in 2012, by one additional year in 2014, and by five additional years in 2015, in each instance allocating \$3.5 billion per year to the credit.²⁹ In 2019, Congress extended the credit for one year (through 2020), and in 2020, the credit was again extended for five additional years through 2025, allocating \$5 billion per year to the credit.³⁰

In 2023, bipartisan legislation was introduced in both the United States Senate and the House of Representatives which would permanently extend the NMTC. The legislation would allocate \$5 billion per year to the credit, adjusted annually for inflation. It would also exempt the credit from the alternative minimum tax.³¹

Allocation process

The CDFI Fund annually allocates NMTCs to CDEs under a competitive application process. CDEs, in turn, allocate NMTCs to equity investors.

Applications for NMTCs are reviewed in two phases.³² In Phase 1, applications are reviewed, scored, and ranked based on two criteria: business strategy and community

²⁸ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, sec. 1403, February 17, 2009.

²⁹ Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, sec. 733, 124 Stat. 3318, December 17, 2010; American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, sec. 305, 126 Stat. 2329, January 2, 2013; Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, sec. 115, December 19, 2014; and Protecting Americans From Tax Hikes (PATH) Act, Division Q of Pub. L. No. 114-113, sec. 141, December 18, 2015.

³⁰ Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, sec. 141, December 20, 2019 and Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, sec. 112, December 27, 2020.

³¹ The New Markets Tax Credit Extension Act of 2023, S. 234, 118th Cong. (introduced February 2, 2023) and H.R. 2539, 118th Cong. (introduced April 6, 2023).

³² For detailed information on the 2022 NMTC allocation application process, see Community Development Financial Institutions (CDFI) Fund, *CY 2022 New Markets Tax Credit Program: Allocation Application Review Process and General Characteristics of a Highly Ranked Application*, September 19, 2023, available at https://www.cdfifund.gov/sites/cdfi/files/2023-09/CY2022_NMTC_Program_ReviewProcess_FINAL_508_Compliant_9_19_23.pdf. (last visited May 29, 2024).

outcomes.³³ Additionally, consistent with statutorily indicated priorities,³⁴ during Phase 1 reviewers also consider whether applicants (i) demonstrated a track record of serving disadvantaged businesses or communities and (ii) committed to investing substantially all of the proceeds from qualified equity investments in unrelated entities; an applicant can earn five additional “priority points” for satisfying each of these criteria.³⁵ Applicants that meet minimum scoring thresholds in Phase 1 advance to Phase 2 review, where they are reviewed in descending order based on the score assigned in Phase 1.³⁶

In Phase 2, reviewers consider three factors not evaluated during Phase 1: management capacity, capitalization strategy, and information regarding previous awards.³⁷ Phase 2 also involves detailed financial and organizational diligence. Reviewers consider (i) any issues noted by the Phase 1 reviewers; (ii) the applicant’s capacity to deploy and monitor NMTC investments; (iii) the applicant’s track record of providing direct loans and/or equity investments; (iv) any notable relationships and how such relationships may create benefits for qualified active low-income community businesses or unaffiliated end-users; (v) the applicant’s existing pipeline of projects; (vi) the financial health and fee/compensation structure of the applicant; (vii) the distribution of benefits among the investor, CDE, and qualified active low-income community businesses; and (viii) the applicant’s track record of raising qualified equity investments. They also consider the consistency of the applicant’s past NMTC activities with prior allocations, if applicable.³⁸

³³ *Ibid.*, p. 1. In evaluating and scoring the applicant’s business strategy, the CDFI Fund looks to whether the CDE articulated with specificity its projected business activities and the products and services it intends to provide through its investments, as well as its prior performance. *Ibid.*, pp. 5–6. In evaluating community outcomes, the CDFI Fund considers the extent to which the CDE (1) targets “highly distressed communities,” (2) has “demonstrated that its planned investments are likely to result in significant community outcomes that would clearly benefit [l]ow-[i]ncome [p]ersons and/or residents of [low-income communities],” (3) has a “robust methodology” for tracking such community outcomes, (4) demonstrates an “effective process, including a significant role for [low-income community] representatives on its Advisory and/or Governing Board,” and (5) other community benefits, “as supported by a specific track record.” *Ibid.*, p. 7.

³⁴ See secs. 45D(f)(2)(A) and 45D(f)(2)(B).

³⁵ *CY 2022 New Markets Tax Credit Program: Allocation Application Review Process and General Characteristics of a Highly Ranked Application*, *supra* note 32, p. 2.

³⁶ *Ibid.*, p. 2. Specifically, the score used to rank the applicants for purpose of Phase 2 review includes the aggregate scores under the business strategy and community outcomes application sections, inclusive of half of the priority points. *Ibid.*

³⁷ *Ibid.*, p. 3.

³⁸ *Ibid.*

Award information

For the 2022 allocation application round,³⁹ the CDFI Fund awarded 102 CDEs \$5 billion in NMTCs from a total of 197 applications requesting \$14.8 billion.⁴⁰ Out of the total awarded, approximately \$4.0 billion (82 percent) of NMTC investment proceeds will likely be used to finance and support loans to or investments in operating businesses in low-income communities, and approximately \$877.5 million (18 percent) of NMTC investment proceeds will likely be used to finance and support real estate projects in low-income communities.⁴¹

Since inception of the credit through fiscal year 2022, the CDFI Fund awarded a total of \$76 billion.⁴² Since inception of the credit, the CDFI Fund has completed 19 allocation rounds and has made 1,563 awards.⁴³ As of September 30, 2023, allocation recipients raised \$63.6 billion in qualified equity investments and made \$66.6 billion in qualified low-income community investments.⁴⁴

³⁹ The CDFI Fund opened the calendar year 2022 round of the NMTC Program on November 18, 2022 and announced the awards on September 22, 2023. The CDFI Fund anticipates announcing the calendar year 2023 allocation awards in Fall 2024. Office of Inspector General, Department of the Treasury, *Audit of the Community Development Financial Institutions Fund's Financial Statements for Fiscal Years 2023* (OIG-24-024), January 29, 2024, available at <https://www.oversight.gov/sites/default/files/oig-reports/TOIG/OIG-24-024-Web-Copy-508.pdf> (last visited May 29, 2024).

⁴⁰ *Ibid.* As noted above, \$5 billion is the maximum that can be allocated per year under statute. See *supra* note 23 and accompanying text.

⁴¹ Information is provided in the 2022 NMTC Award Book, available at https://www.cdfifund.gov/sites/cdfi/files/2023-09/CY_2022_NMTC_Program_Award_Book_FINAL.pdf (last visited May 29, 2024).

⁴² *Audit of the Community Development Financial Institutions Fund's Financial Statements for Fiscal Years 2020 and 2013*, *supra* note 39, p. 51. 8.

⁴³ Community Development Financial Institutions (CDFI) Fund, *New Markets Tax Credit (NMTC) Public Data Release: FY 2003 to FY 2021 Summary Report*, August 2023, p. 4, available at https://www.cdfifund.gov/sites/cdfi/files/2023-08/2023_NMTC_Public_Data_Release_Summary_FY_2003_FY_2021_07132023_comments_incorporated_approved.pdf (summary statistics on allocations through calendar year 2021); *Audit of the Community Development Financial Institutions Fund's Financial Statements for Fiscal Years 2020 and 2013*, *supra* note 39, p. 51 (summary statistics on allocations for calendar year 2022).

⁴⁴ *Audit of the Community Development Financial Institutions Fund's Financial Statements for Fiscal Years 2020 and 2013*, *supra* note 39, p. 51–52. A lag in time exists between the allocation of credits and when the qualified equity investments are made. U.S. Department of the Treasury, CDFI Fund, Office of Financial Strategies and Research. The awards for the 2023 application cycle will be announced in fall 2024. See *supra* note 39. Since in recent years demand has exceeded available funding, it is likely that the full statutory limit of \$5 billion will be awarded in 2024. See *supra* note 40 and accompanying text.

Over the course of the NMTC program, qualified low-income community investments (QLICI) have been made across 21 different categories.⁴⁵ The majority of the investments (58%) are in real estate, health care, or manufacturing (see Table 3). Additionally, QLICIs have been made in all 50 states, as well as American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. The top five States or territories in terms of total dollars invested are California, New York, Ohio, Texas, and Louisiana (see Table 4).⁴⁶

Table 3: Qualified Low-Income Community Investments by NAICS Category

NAICS Category	QLICI Amount	% of total
Real Estate and Rental and Leasing	\$16,988,216,478	26%
Health Care and Social Assistance	\$12,343,058,026	19%
Manufacturing	\$9,235,559,216	14%
Educational Services	\$5,682,954,745	9%
Unclassified	\$4,313,649,026	6%
Construction	\$2,668,345,452	4%
Retail Trade	\$2,519,780,786	4%
Accommodation and Food Services	\$2,321,679,827	3%
Arts, Entertainment, and Recreation	\$1,986,812,773	3%
Other Services (except Public Administration)	\$1,338,973,132	2%
Wholesale Trade	\$1,255,654,402	2%
Agriculture, Forestry, Fishing and Hunting	\$1,242,477,545	2%
Utilities	\$902,991,654	1%
Professional, Scientific, and Technical Services	\$710,860,069	1%
Transportation and Warehousing	\$682,093,078	1%
Information	\$656,225,891	1%
Finance and Insurance	\$646,140,729	1%
Public Administration	\$451,844,182	1%
Administrative Support / Waste Management & Remediation	\$447,711,722	1%
Mining, Quarrying, and Oil and Gas Extraction	\$128,932,261	0%
Management of Companies and Enterprises	\$87,237,950	0%
Grand Total	\$66,611,198,944	100%

⁴⁵ The CDFI Fund classifies projects by industry according to North American Industry Classification System (“NAICS”) codes. For additional information on the codes, see U.S. Census Bureau, “North American Industry Classification System,” last revised June 13, 2024, available at <https://www.census.gov/naics>.

⁴⁶ The information in this paragraph as well as accompanying tables were prepared by the U.S. Department of the Treasury, CDFI Fund, Office of Financial Strategies and Research.

Table 4: Qualified Low-Income Community Investments by Jurisdiction

State	QLICI Amount	% of total	State	QLICI Amount	% of total
Alabama	\$1,236,792,723	2%	Montana	\$375,429,500	1%
Alaska	\$328,755,629	0%	Nebraska	\$493,621,197	1%
American Samoa	\$19,300,000	0%	Nevada	\$402,460,838	1%
Arizona	\$941,730,657	1%	New Hampshire	\$319,229,660	0%
Arkansas	\$680,348,164	1%	New Jersey	\$1,415,880,740	2%
California	\$5,799,116,343	9%	New Mexico	\$462,139,499	1%
Colorado	\$813,555,978	1%	New York	\$3,960,677,423	6%
Connecticut	\$469,248,313	1%	North Carolina	\$1,230,207,937	2%
Delaware	\$135,470,069	0%	North Dakota	\$120,530,892	0%
District of Columbia	\$1,234,658,485	2%	Ohio	\$3,571,959,273	5%
Florida	\$1,989,485,846	3%	Oklahoma	\$1,174,013,287	2%
Georgia	\$2,120,902,698	3%	Oregon	\$1,232,356,978	2%
Guam	\$23,900,000	0%	Pennsylvania	\$2,514,169,062	4%
Hawaii	\$262,883,246	0%	Puerto Rico	\$208,920,101	0%
Idaho	\$313,222,600	0%	Rhode Island	\$497,764,176	1%
Illinois	\$2,570,356,606	4%	South Carolina	\$1,075,911,214	2%
Indiana	\$1,054,728,342	2%	South Dakota	\$190,508,000	0%
Iowa	\$549,147,928	1%	Tennessee	\$1,283,844,070	2%
Kansas	\$348,147,973	1%	Texas	\$3,017,238,094	5%
Kentucky	\$1,188,953,695	2%	U.S. Virgin Islands	\$2,000,000	0%
Louisiana	\$2,859,971,264	4%	Utah	\$491,995,711	1%
Maine	\$453,382,312	1%	Vermont	\$298,020,951	0%
Maryland	\$1,344,634,208	2%	Virginia	\$935,513,693	1%
Massachusetts	\$2,521,351,010	4%	Washington	\$1,583,352,864	2%
Michigan	\$1,780,483,275	3%	West Virginia	\$255,043,433	0%
Minnesota	\$1,705,519,485	3%	Wisconsin	\$2,493,639,626	4%
Mississippi	\$1,488,407,815	2%	Wyoming	\$80,003,082	0%
Missouri	\$2,690,312,981	4%	Grand Total	\$66,611,198,946	100%

C. Rehabilitation Credit for Certified Historic Structures

A 20-percent tax credit is provided for qualified rehabilitation expenditures with respect to a certified historic structure that has been substantially rehabilitated, for which depreciation or amortization is allowable, and that meets other requirements to be a qualified rehabilitated building.⁴⁷ The credit is generally allowable ratably in each taxable year over the five-year period beginning in the taxable year in which the qualified rehabilitated building is placed in service, for amounts paid or incurred after December 31, 2017.⁴⁸

The basis of the property is reduced by the amount of the rehabilitation credit.⁴⁹

A certified historic structure means any building that is listed in the National Register, or that is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district.

For qualified rehabilitation expenditures to be eligible for the credit, the building must be substantially rehabilitated. A building is treated as having met the substantial rehabilitation requirement only if the rehabilitation expenditures during the 24-month period selected by the taxpayer and ending within the taxable year exceed the greater of (1) the adjusted basis of the building (and its structural components), or (2) \$5,000.⁵⁰ Generally, taxpayers are required to use straight-line depreciation in order for rehabilitation expenditures to be treated as qualified.⁵¹

Qualified rehabilitation expenditures with respect to residential property generally do not include any expenditure in connection with the rehabilitation of the portion of a building that is (or is expected to be) leased to a tax-exempt entity.⁵² In the case of nonresidential real property, qualified rehabilitation expenditures generally do not include any expenditure in connection with the rehabilitation of a building that is more than 50 percent leased to a tax-exempt entity in a

⁴⁷ Sec. 47. A qualified rehabilitated building is defined in section 47(c)(1).

⁴⁸ Sec. 47(b). The provision was modified by section 13402 of Pub. L. No 115-97 (enacted December 22, 2017) generally to repeal the prior-law credit for pre-1936 buildings, and to provide that the 20-percent credit for qualified rehabilitation expenditures in the case of a certified historic building is allowable ratably over a five-year period for amounts paid or incurred after December 31, 2017. A transition rule with respect to the credit allowable under prior law with respect to any building owned or leased (as provided under prior law) by the taxpayer at all times on or after January 1, 2018, provides that the 24-month period selected by the taxpayer (or the 60-month period selected by the taxpayer under the rule for phased rehabilitation) begins not later than the end of the 180-day period beginning on the date of enactment (December 22, 2017), and the amendments made by the provision apply to such expenditures paid or incurred after the end of the taxable year in which such 24-month (or 60-month) period ends.

⁴⁹ Sec. 50(c). The amount of the basis reduction is the full amount of the credit. See Treas. Reg. secs. 1.47-7(d) and 1.47-7(e), example 2.

⁵⁰ Sec. 47(c)(1)(B). A special rule for phased rehabilitation substitutes a 60-month period for the 24-month period. Sec. 47(c)(1)(B)(ii).

⁵¹ Sec. 47(c)(2)(B)(i).

⁵² Secs. 47(c)(2)(B)(v) and 168(h).

disqualified lease. In general, a disqualified lease includes a lease of tax-exempt-bond-financed property, a lease with a sale option (or its equivalent) to the tax-exempt entity, a lease with a term greater than 20 years, or a sale-leaseback arrangement involving a tax-exempt entity.⁵³ For this purpose, a tax-exempt entity generally includes the United States, a state or political subdivision, possession, or any agency or instrumentality of the foregoing (“governmental entity”).⁵⁴

A recapture rule applies if the credit property is disposed of, or otherwise ceases to be credit property with respect to the taxpayer, within a five-year recapture period after the property is placed in service.⁵⁵

The amount of rehabilitation credits claimed was approximately \$1.14 billion in 2021. Most rehabilitation credits are claimed by C corporations, with such entities claiming about 75 percent of credits between 2018 and 2021. Individuals claim virtually all of the remaining rehabilitation credits in any given year. Rehabilitation credit deals are often structured as partnerships, with individual or corporate partners claiming the benefit of the credits.

⁵³ Sec. 168(h)(1)(B).

⁵⁴ Sec. 168(h)(2). Certain exceptions also apply.

⁵⁵ Sec. 50(a).

D. Tax-Exempt Financing

Overview

Interest paid on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes.⁵⁶ Because of the income exclusion, investors generally are willing to accept a lower interest rate on tax-exempt bonds than they might otherwise accept on a taxable investment. This, in turn, lowers the borrowing costs for the beneficiaries of such financing.

Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (*e.g.*, private businesses or individuals). The exclusion from income for interest paid on State and local bonds does not apply to private activity bonds unless the bonds are issued for certain permitted purposes (“qualified private activity bonds”)⁵⁷ and other Code requirements are met.

Tax-exempt governmental bonds

Present law does not limit the types of facilities that can be financed with governmental bonds. Thus, State and local governments can issue tax-exempt, governmental bonds to finance a broad range of projects, including highways, railways, airports, and sewage facilities. However, while the types of projects eligible for governmental bond financing are not circumscribed, present law imposes restrictions on the parties that may benefit from such financing. For example, present law limits the amount of governmental bond proceeds that can be used by nongovernmental persons. Use of bond proceeds by nongovernmental persons in excess of amounts permitted by present law may result in such bonds being treated as taxable private activity bonds, rather than governmental bonds. The Code defines a private activity bond as any bond that satisfies (1) the private business use test and the private security or payment test (“the private business test”), or (2) “the private loan financing test.”⁵⁸ As noted above, private activity bonds are taxable unless issued as qualified private activity bonds.

Qualified private activity bonds

Qualified private activity bonds are tax-exempt private activity bonds issued to provide financing for specified privately used facilities. The definition of a qualified private activity

⁵⁶ See sec. 103.

⁵⁷ Sec. 103(b)(1).

⁵⁸ Sec. 141. For a more detailed description of the private activity bond tests, see Joint Committee on Taxation, *Overview of Selected Provisions Relating to the Financing of Surface Transportation Infrastructure* (JCX-97-15), June 23, 2015. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

bond includes an exempt facility, qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond.⁵⁹

Generally, qualified private activity bonds are subject to a number of eligibility restrictions that do not apply to governmental bonds. For example, the aggregate volume of most qualified private activity bonds is restricted by annual State volume limitations (the "State volume cap").⁶⁰ For calendar year 2024, the State volume cap, which is indexed for inflation, equals \$125 per resident of the State, or \$378,230,000, if greater.⁶¹

Qualified private activity bonds are subject to additional limitations under section 147, including a substantial user limit, a bond maturity restriction, a limit on financing land acquisition, a limit on financing existing property absent substantial rehabilitation, certain prohibited facilities, a public approval requirement, and a limit on financing issuance costs.

⁵⁹ Sec. 141(e).

⁶⁰ The following private activity bonds are not subject to the State volume cap: qualified 501(c)(3) bonds, exempt facility bonds for airports, docks and wharves, environmental enhancements for hydroelectric generating facilities, and exempt facility bonds for solid waste disposal facilities that are to be owned by a governmental unit. The State volume cap does not apply to 75 percent of exempt facility bonds issued for the following facilities: high-speed intercity rail facilities, qualified broadband projects, and qualified carbon dioxide capture facilities. In the case of a high-speed intercity rail facility or a qualified broadband project, however, 100 percent of the bonds are exempt from the volume cap if all of the property financed by the issue is to be owned by a government unit. Qualified veterans mortgage bonds, qualified public educational facility bonds, qualified green building and sustainable project design bonds, and qualified highway or surface freight transfer facility bonds also are not subject to the State volume cap, but the Code subjects such bonds to volume limitations specific to the category of bonds.

⁶¹ Rev. Proc. 2023-34, 2023-48 I.R.B. 1287, p. 1293, November 27, 2023.

Table 5: Long-Term Tax-Exempt Private Activity Bonds, by Bond Purpose and Type of Issue, 2020
[Money amounts are in millions of dollars]

Bond purpose	All issues [1]		New money issues		Refunding issues [2]	
	Number	Amount	Number	Amount	Number	Amount
	(1)	(2)	(3)	(4)	(5)	(6)
Total [3]	2,449	107,660	1,638	58,328	1,197	49,332
Airport	49	10,396	16	3,696	39	6,700
Docks and wharves	21	1,347	11	426	14	921
Water	8	357	d	d	d	d
Sewage	d	d	d	d	d	d
Solid waste disposal	44	2,683	31	1,790	16	893
Qualified residential rental facilities	778	20,833	696	17,082	106	3,751
Local furnishing of electricity and gas	d	d	0	0	d	d
Tax Reform Act transition property of 1986	7	1,571	0	0	7	1,571
New empowerment zone facility	d	d	0	0	d	d
Green building and sustainable design	7	81	0	0	7	81
Highway or surface freight transfer	7	2,462	d	d	d	d
Hydro-electric environmental facilities	d	d	0	0	d	d
Qualified mortgages	87	8,785	82	5,688	50	3,097
Veterans mortgages	d	d	d	d	d	d
Qualified small issues	199	142	121	93	79	49
Qualified student loans	13	959	9	556	7	403
Redevelopment	d	d	0	0	d	d
Qualified hospital facilities	170	19,672	82	8,887	130	10,785
Qualified Section 501(c)(3) nonhospital	1,033	36,019	583	18,390	711	17,629
Nongovernmental output property	d	d	0	0	d	d
All other tax-exempt bonds	34	1,670	6	28	29	1,642

d - Data deleted to avoid disclosure of information about specific bonds. However, the data are included in the appropriate totals.

[1] All issues include reissuances which generally, occur under Federal tax law when there are significant modifications to the terms of a bond so that the bond ceases to be the same bond for Federal tax purposes. A reissuance is a deemed exchange of the modified bond for the original bond.

[2] The data includes refunding of prior tax-exempt and taxable bonds, as well as currently and advanced refund of prior issues.

[3] A given bond issue or reissuance can include more than one purpose and can include both new money and refunding proceeds. Thus, the summation of number of issues by purpose or by type of issue will sometimes exceed the total number of issues. However, the money amounts add to the totals.

NOTE: Detail may not add to totals because of rounding.

SOURCE: IRS, Statistics of Income Division, Tax-Exempt Bonds, August 2023.

Rules governing private activity bonds for selected exempt facilities

Exempt facility bonds are often used to finance infrastructure projects. To qualify as an exempt facility bond, 95 percent of the net proceeds must be used to finance an eligible facility.⁶² Facilities eligible for this financing include the following:

- Airports,
- Ports (docks and wharves),
- Mass commuting facilities,
- Facilities for the furnishing of water,
- Sewage facilities,
- Solid waste disposal facilities,
- Qualified residential rental projects,
- Facilities for the local furnishing of electric energy or gas,
- Local district heating or cooling facilities,
- Qualified hazardous waste facilities,
- High-speed intercity rail facilities,
- Environmental enhancements of hydro-electric generating facilities,
- Qualified public educational facilities,
- Qualified green building and sustainable design projects,
- Qualified highway or surface freight transfer facilities,
- Qualified broadband projects, and
- Qualified carbon dioxide capture facilities.⁶³

Airports

Exempt facility bonds may be issued to finance airports. Exempt facility bonds for airports are not subject to the State volume cap. However, all tax-exempt-bond-financed airport property must be governmentally owned. Property eligible for this financing includes land, terminals, runways, public parking facilities, and related equipment. Airplanes are not eligible for tax-exempt financing. Additionally, certain real property facilities (and related equipment) are excluded from this financing: (1) hotels and other lodging facilities; (2) retail facilities (including food and beverage facilities) located in a terminal, if the facilities are in excess of a size necessary to serve passengers and employees at the airport; (3) office buildings for

⁶² Sec. 142(a).

⁶³ Sec. 142(a)(1)-(17).

individuals who are not employees of a governmental unit or of the public airport operating authority; and (4) industrial parks or manufacturing facilities.

Port facilities

Exempt facility bonds may be issued to finance port (“dock and wharf”) facilities and related storage and training facilities. Facilities that are specifically ineligible for financing with airport bonds may not be financed with port bonds. Further, ships and other vessels are not eligible for private activity tax-exempt bond financing. All property financed with these bonds must be governmentally owned. Exempt facility bonds issued for ports are not subject to the State volume cap.

Mass commuting facilities

Exempt facility bond financing for mass commuting facilities is subject to restrictions similar to those that apply to such bonds for airports and port facilities. All property financed with these bonds must be governmentally owned. Further, “rolling stock” (*e.g.*, buses and rail cars) is not eligible for financing with exempt facility bonds. Exempt facility bonds issued for mass commuting facilities are subject to the volume cap.

High-speed intercity rail facilities

The definition of an exempt facility bond includes bonds issued to finance high-speed intercity rail facilities.⁶⁴ A facility qualifies as a high-speed intercity rail facility if it is a facility (other than rolling stock) for fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas.⁶⁵ The facilities must use vehicles that are reasonably expected to be capable of attaining a maximum speed in excess of 150 miles per hour between scheduled stops, and the facilities must be made available to members of the general public as passengers.

Unlike other bond-financed transportation facilities, high-speed intercity rail facilities may be privately owned. However, if the bonds are to be issued for a nongovernmental owner of the facility, such owner must irrevocably elect not to claim depreciation or credits with respect to the property financed by the net proceeds of the issue.⁶⁶

Seventy-five percent of the principal amount of the bonds issued for high-speed rail facilities is exempt from the volume cap.⁶⁷ If all the property to be financed by the net proceeds

⁶⁴ Secs. 142(a)(11) and 142(i).

⁶⁵ A metropolitan statistical area for this purpose is defined by reference to section 143(k)(2)(B). Under that provision, the term “metropolitan statistical area” includes the area defined as such by the Secretary of Commerce.

⁶⁶ Sec. 142(i)(2).

⁶⁷ Sec. 146(g)(4).

of the issue is to be owned by a governmental unit, then such bonds are completely exempt from the volume cap.

Qualified highway or surface freight transfer facility bonds

Present law authorizes the issuance of tax-exempt private activity bonds to finance qualified highway or surface freight transfer facilities. A qualified highway facility or surface freight transfer facility is: (1) a surface transportation project which receives Federal assistance under title 23 of the United States Code; (2) an international bridge or tunnel project (for which an international entity authorized under Federal or State law is responsible) which receives Federal assistance under title 23 of the United States Code; or (3) any facility for the transfer of freight from truck to rail or rail to truck which receives Federal assistance under title 23 or title 49 of the United States Code.

Qualified highway or surface freight transfer facility bonds are not subject to the State volume limitations. Rather, the Secretary of Transportation is authorized to allocate a total of \$30 billion of issuance authority to qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate.⁶⁸

The qualified highway or surface freight transfer facility bond provision was enacted in 2005 as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”).⁶⁹ The Infrastructure Investment and Jobs Act increased the limit on issuance authority from \$15 billion to \$30 billion for bonds issued after November 15, 2021.⁷⁰ As reflected below, as of June 12, 2024, the Department of Transportation has made allocations of approximately \$24.28 billion of the \$30 billion it is authorized to allocate. Of the \$24.28 billion that has been allocated, approximately \$17.35 billion of bonds have been issued.⁷¹

Bonds Issued (In Thousands of Dollars)

Capital Beltway HOT Lanes, VA	\$589,000
North Tarrant Express, TX	\$400,000
IH 635 Managed Lanes (LBJ Freeway), TX	\$615,000
Denver RTD Eagle Project (East Corridor & Gold Line), CO	\$397,835
CenterPoint Intermodal Center, Joliet, IL	\$150,000

⁶⁸ See sec. 142(m)(2)(A).

⁶⁹ Section 11143 of Pub. L. No. 109-59.

⁷⁰ Section 80403 of Pub. L. No. 117-58.

⁷¹ U.S. Department of Transportation, Build America Bureau, Private Activity Bonds, available at <https://www.transportation.gov/buildamerica/financing/private-activity-bonds> (updated June 12, 2024), and Private Activity Bonds – Allocations, available at <https://www.transportation.gov/buildamerica/financing/private-activity-bonds-pabs/private-activity-bonds-allocations> (last accessed June 13, 2024).

CenterPoint Intermodal Center, Joliet, IL	\$75,000
Downtown Tunnel/Midtown Tunnel/MLK Extension, Norfolk, VA	\$675,004
I-95 HOV/HOT Lanes, Northern VA	\$241,950
Ohio River Bridges East End Crossing, IN	\$676,805
North Tarrant Express Segments 3A & 3B, Fort Worth, TX	\$274,030
Goethals Bridge, Staten Island, NY	\$460,915
U.S. 36 Managed Lanes/BRT Phase 2, Denver Metro Area, CO	\$20,360
I-69 Section 5, Bloomington to Martinsville, IN	\$243,845
Rapid Bridge Replacement Program, PA	\$721,485
Portsmouth Bypass, OH	\$227,355
I-77 Managed Lanes, NC	\$100,000
CenterPoint Intermodal Center, Joliet, IL	\$100,000
SH-288, TX	\$272,635
CenterPoint Intermodal Center, Joliet, IL	\$130,000
Purple Line, MD	\$313,035
I-395 Express Lanes, VA	\$232,995
Transform 66, VA	\$737,000
AAF-Brightline Phase I, FL	\$600,000
Central 70, CO	\$114,660
I-75 Modernization Segment 3	\$610,300
AAF-Brightline Phase 2, FL	\$1,150,000
AAF-Brightline Phase 2, FL	\$950,000
Fredericksburg Express Lanes Extension, VA	\$262,000
North Tarrant Expressway 3C, TX	\$653,865
Gilcrease Expressway West Turnpike Project, OK	\$125,000
CenterPoint Intermodal Center, Joliet, IL	\$150,000
Brightline West Passenger Rail, NV/CA	\$1,000,000
NY State Thruway System Service Areas, NY	\$269,455
Fargo-Moorhead Flood Diversion, ND	\$273,395
I-495 Express Lanes Extension (Project NEXT), VA	\$112,105
Purple Line Light Rail Transit, MD	\$643,455

Washington, DC Smart Street Lighting, DC	\$144,485
Brightline Florida Passenger Rail Expansion, FL	\$485,000
Major Bridge P3 Initiative-Package 1, PA	\$1,759,135
North Tarrant Expressway 1&2 Ultimate Capacity, TX	\$397,315
Subtotal.....	\$17,354,419

Allocations (In Thousands of Dollars)

I-10 Calcasieu River Bridge, LA	\$2,000,000
SR 400 Express Lanes, GA	\$2,000,000
Puerto Rico Toll Roads Monetization, PR	\$424,000
Brightline West Passenger Rail (additional), NV/CA	\$2,500,000
Subtotal.....	\$6,924,000

Grand Total.....\$24,278,419

Public works facilities

Exempt facility bonds may be issued to finance various types of public works facilities, including facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, local district heating or cooling facilities, and qualified hazardous waste facilities.⁷² The foregoing facilities generally may be privately owned. Exempt facility bonds issued to finance such facilities are subject to the State volume cap, with the exception of solid waste disposal facilities that are to be owned by a governmental unit.

Qualified carbon dioxide capture facilities

Exempt facility bonds may be issued to finance qualified carbon dioxide capture facilities.⁷³ The term “qualified carbon dioxide capture facility” is defined to mean (1) the eligible components of an industrial carbon dioxide facility,⁷⁴ and (2) a direct air capture facility as defined in section 45Q(e)(1). The State volume cap does not apply to 75 percent of exempt

⁷² Sec. 142(a)(4), (5), (6), (9), and (10).

⁷³ Sec. 142(o).

⁷⁴ The term “eligible component” means equipment that is installed in an industrial carbon dioxide facility that satisfies certain requirements and which is (1) used for the purpose of capture, treatment and purification, compression, transportation, or on-site storage of carbon dioxide produced by the industrial carbon dioxide facility, or (2) integral or functionally related and subordinate to a process which converts a solid or liquid product from coal, petroleum residue, biomass, or other materials which are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon dioxide and hydrogen for direct use or subsequent chemical or physical conversion.

facility bonds issued for qualified carbon dioxide capture facilities.⁷⁵ The sale of carbon dioxide produced by a qualified carbon dioxide capture facility that is owned by a government unit does not constitute private business use.

Qualified redevelopment bonds

In general

“Qualified redevelopment bonds” are bonds issued as part of an issue 95 percent or more of the net proceeds of which are to be used for one or more “redevelopment purposes” in any designated blighted area. In addition, such bonds must be issued pursuant to a (1) State law which authorizes the issuance of the bonds for redevelopment purposes in blighted areas, and (2) a redevelopment plan approved by the governing body of a local general purpose governmental unit prior to the bond issuance. The blighted area must be within the local government’s jurisdiction. The payment of the principal and interest on the bond issue must be secured primarily by general taxes imposed by a general purpose governmental unit; or increases in real property tax revenues (attributable to increases in assessed value) due to the carrying out of the redevelopment if such increases are reserved exclusively for debt service on the issue (and similar issues), to the extent that the increases do not exceed such debt service. Each interest in real property in the redevelopment area that was acquired by the governmental unit with proceeds of the issue and transferred to a non-governmental person must be transferred at fair market value.

Redevelopment purposes

Redevelopment purposes refers to the following measures taken in designated blighted property within an affected area: (1) the acquisition of real property in the affected area by a governmental unit possessing eminent domain, (2) the clearing and preparation of the acquired land for redevelopment, (3) the rehabilitation of real property so acquired, or (4) the relocation of residents of the real property. Redevelopment purposes do not include new construction or enlargements of existing buildings.

Blighted area

Blighted areas are areas determined to be blighted by the local governmental unit due to the substantial presence of factors such as excessive vacant land where buildings were previously located, abandoned or vacant buildings, substandard structures, vacancies, and delinquencies in payment of real property taxes.

The assessed property values of the designated areas, when designated and when added to existing designated blighted areas within the governing jurisdiction, must not exceed 20 percent of all assessed property value within the jurisdiction. However, any previously designated blighted area is only taken into account in the percentage computation if it has or will have a qualified redevelopment bond (or similar bond) outstanding for that area.

⁷⁵ Sec. 146(g)(6).

Any designated blighted area must be contiguous, compact and equal to or greater than 100 acres. The 100-acre minimum is lowered to 10 acres if 25 percent or less of the financed area is to be provided to one person. All related persons are treated as one person under this exception. An area provided to a developer on a short-term interim basis shall not be treated as provided to such developer.

Small issue bonds for manufacturing and farming

Qualified small issue bonds (commonly referred to as “industrial development bonds” or “small issue IDBs”) are tax-exempt qualified private activity bonds issued by State and local governments to finance private business manufacturing facilities (including certain directly related and ancillary facilities) or the acquisition of land and equipment by certain farmers.

Manufacturing

A manufacturing facility is any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property). Manufacturing facilities include facilities that are directly related and ancillary to a manufacturing facility (as described in the previous sentence) if (1) such facilities are located on the same site as the manufacturing facility, and (2) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

Qualified small issue bonds are subject to limits on the amount of financing that may be provided, both for a single borrowing and in the aggregate. In general, no more than \$1 million of small issue bond financing may be outstanding at any time for property of a business (including related parties) located in the same municipality or county. Generally, this \$1 million limit may be increased to \$10 million if, in addition to outstanding bonds, all other capital expenditures of the business (including related parties) in the same municipality or county are counted toward the limit over a six-year period that begins three years before the issue date of the bonds and ends three years after such date. Outstanding aggregate borrowing is limited to \$40 million per borrower (including related parties) regardless of where the property is located. The Code permits up to \$10 million of capital expenditures to be disregarded, in effect increasing from \$10 million to \$20 million the maximum allowable amount of total capital expenditures by an eligible business in the same municipality or county.

The American Recovery and Reinvestment Act of 2009 (“ARRA”) made certain temporary adjustments to section 144(a) that expanded the availability of qualified small issue bonds to facilities creating intangible property and modified the related facilities eligible for treatment as part of a manufacturing facility.⁷⁶ For bonds issued after the date of enactment of ARRA and before January 1, 2011, the definition of manufacturing facilities was expanded to mean any facility that is used in the manufacturing, creation, or production of tangible property or intangible property (within the meaning of section 197(d)(1)(C)(iii)). For this purpose, intangible property means any patent, copyright, formula, process, design, knowhow, format, or other similar item. This includes among other items, the creation of computer software, and intellectual property associated bio-tech and pharmaceuticals. In lieu of the directly related and

⁷⁶ Pub. L. No. 111-5, Division B, sec. 1301, February 17, 2009.

ancillary test otherwise applicable (described above), a special rule for bonds issued after the date of enactment and before January 1, 2011, provides that facilities that are functionally related and subordinate to the manufacturing facility are treated as a manufacturing facility. Functionally related and subordinate facilities must be located on the same site as the manufacturing facility.

Farming

In general, qualified private activity bonds, including qualified small issue bonds, may not be issued for the acquisition of land to be used for farming purposes⁷⁷ or for the acquisition of used property.⁷⁸ Under exceptions to these general rules, qualified small issue bonds can be used for the acquisition of land and used property by first-time farmers for farming purposes, subject to certain limitations. The amount of proceeds that can be used for the acquisition of land by a first-time farmer is limited to a specified amount of \$450,000, indexed for inflation for calendar years after 2008.⁷⁹ Used equipment to be used for farming purposes on any land satisfying the requirements for acquisition by a first-time farmer is also eligible for a qualified small issue bond up to a limit of \$62,500. Additionally, there is a \$250,000 limit on the amount of net proceeds of a qualified small issue bond used to provide depreciable farm property.

“First-time farmer” means any individual if such individual (including their spouse and minor children) has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated and has not received financing under the exception permitting the acquisition of land by a first-time farmer in an amount which, when added to the financing to be provided, exceeds the applicable annual limit (\$649,400 for calendar year 2024).⁸⁰ “Substantial farmland” means any parcel of land unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located.

Indian tribal governments

Indian tribal governments⁸¹ may issue tax-exempt bonds in several types of circumstances if they meet requirements applicable to bonds issued by States and local governments as well as certain other rules applicable only to Indian tribal governments.⁸² Indian

⁷⁷ Sec. 147(c)(1)(B).

⁷⁸ Sec. 147(d).

⁷⁹ Sec. 147(c)(2)

⁸⁰ Sec. 147(c)(2)(C).

⁸¹ The term “Indian tribe” is defined as “any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” Sec. 7871(c)(3)(E)(ii).

⁸² For additional information regarding the issuance of tax-exempt bonds by Indian tribal governments, see Joint Committee on Taxation, *Overview of the Federal Tax Provisions and Analysis of Selected Issues Relating to*

tribal governments may issue tax-exempt bonds for governmental purposes, subject to the requirement that substantially all of the proceeds of the issue are used in an essential governmental function.⁸³ Indian tribal governments may not issue tax-exempt private activity bonds except for the purpose of financing manufacturing facilities that meet certain requirements.⁸⁴

The Code provides that Indian tribal governments may also issue a third type of tax-exempt bond called “Tribal economic development bonds” to finance projects and facilities (but not certain gambling facilities) if the bonds would be tax-exempt if issued by a State or local government.⁸⁵ The essential government function restriction does not apply for governmental bonds, and Indian tribal governments are treated as a State for purposes of issuing qualified private activity bonds. Added to the Code in 2009, tribal economic development bonds are subject to an allocated national limitation of \$2 billion.⁸⁶ As of May 2, 2023, the amount of remaining available national volume cap is \$0.⁸⁷

Expired or repealed provisions

The authority to issue new tax credit bonds and direct-pay bonds was prospectively repealed by Public Law 115-97. The authority to issue two other types of tax credit bonds, recovery zone economic development bonds and Build America Bonds, expired on January 1, 2011. In addition, the exclusion from gross income for a bond issued to advance refund another tax-exempt bond was prospectively repealed by Public Law 115-97, as described below.

Tax credit bonds and direct-pay bonds

In general

Tax credit bonds provide tax credits to investors to replace a prescribed portion of the interest cost. The borrowing subsidy generally is measured by reference to the credit rate set by the Treasury Department. Tax-credit bonds include qualified tax credit bonds, which have

Native American Tribes and Their Members (JCX-8-20), February 28, 2020, pp. 15-22. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

⁸³ Sec. 7871(c)(1).

⁸⁴ Sec. 7871(c)(2) and (3).

⁸⁵ Sec. 7871(f).

⁸⁶ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, sec. 1402(a), Division B, February 17, 2009.

⁸⁷ Internal Revenue Service, *Published Volume Cap for Tribal Economic Development Bonds* (April 17, 2024) available at <https://www.irs.gov/tax-exempt-bonds/published-volume-cap-limit-for-tribal-economic-development-bonds>.

certain common general requirements, and include new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds (“QZABs”), and qualified school construction bonds.

An issuer could elect to issue certain tax credit bonds as “direct-pay bonds.” Instead of a credit to the holder, with a “direct-pay bond” the Federal government pays the issuer a percentage of the interest on the bonds. The following tax credit bonds were permitted to be issued as direct-pay bonds: new clean renewable energy bonds, qualified energy conservation bonds, and qualified school construction bonds. QZABs could be issued as direct-pay bonds, but such an election was not available regarding any allocation of the national zone academy bond allocation after 2010 or any carryforward of such allocations.

As noted above, the authority to issue new tax credit bonds and direct-pay bonds was prospectively repealed by Public Law 115-97 (*i.e.*, for bonds issued after December 31, 2017).

Build America Bonds

The Build America Bonds program, part of the American Recovery and Reinvestment Act of 2009 (“ARRA”⁸⁸), provided a subsidy to State and local governments to finance capital projects, including the development of infrastructure. As noted above, the authority to issue bonds under the program expired December 31, 2010.

Under the Build America Bonds program, an issuer could elect to have an otherwise tax-exempt bond, issued prior to January 1, 2011, treated as a “Build America Bond.”⁸⁹ In general, Build America Bonds are taxable governmental bonds whose interest is subsidized by the Federal government by means of a tax credit to the holder (“tax credit Build America Bonds”) or, in the case of certain qualified bonds, a direct payment to the issuer (“direct-pay Build America Bonds”).⁹⁰

Although the authority existed to issue Build America Bonds that provided for a tax credit to the bond holder, most Build America Bonds were issued as direct-pay Build America Bonds. Under a special rule, in lieu of the tax credit to the holder, the issuer is allowed a refundable credit equal to 35 percent of each interest payment made under such bond.⁹¹

⁸⁸ Pub. L. No. 111-5.

⁸⁹ Sec. 54AA (as in effect prior to its repeal by sec. 13404(a) of Pub. L. No. 115-97).

⁹⁰ Tax-credit Build America Bonds could be issued to finance any governmental purpose for which tax-exempt governmental bonds (excluding private activity bonds under section 141) could be issued under section 103. The eligible uses of proceeds and types of financings for direct-pay Build America Bonds are more limited than for tax-credit Build America Bonds. Direct-pay Build America Bonds could be issued to finance only capital expenditures that could have been financed with tax-exempt governmental bonds.

⁹¹ Sec. 54AA(g)(1) (as in effect prior to its repeal by sec. 13404(a) of Pub. L. No. 115-97).

Sequestration and direct-pay bonds

As noted above, issuers could elect to issue certain tax credit bonds, including Build America Bonds, as direct-pay bonds under section 6431. Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, sequestration applies to direct-pay bonds. For such bonds, refund payments and refund offset transactions processed are subject to a percentage reduction (5.9 percent for fiscal year 2020). Bonds subject to sequestration include Build America Bonds, qualified school construction bonds, QZABs, new clean renewable energy bonds, and qualified energy conservation bonds for which the issuer elected to receive a direct credit subsidy pursuant to section 6431.⁹²

Advance Refundings

A refunding bond is a bond that is used to pay principal, interest, or redemption price on a prior bond issue (the refunded bond). Different rules apply to current as opposed to advance refunded bonds. A current refunding occurs when the refunded bond is redeemed within 90 days of issuance of the refunding bond. An advance refunding occurs when the refunding bond is issued more than 90 days before the redemption of the refunded bond. In an advance refunding, two issues of tax-exempt bonds remain outstanding simultaneously for more than 90 days to finance the same project or activity.⁹³

Prior to Public Law 115-97, the exclusion from gross income for State and local bonds applied to current refundings and, in certain limited circumstances, to advance refundings. For example, governmental bonds and qualified 501(c)(3) bonds generally could be advance refunded one time.⁹⁴ Public Law 115-97 repealed the exclusion from gross income for interest on a bond issued to advance refund another tax-exempt bond, effective for refunding bonds issued after December 31, 2017.

⁹² Additional information, including a summary of prior-year sequestration reduction rates, is available on the IRS's website, available at <https://www.irs.gov/tax-exempt-bonds/effect-of-sequestration-on-state-local-government-filers-of-form-8038-cp>.

⁹³ See S. Rep. No. 99-313, p. 828 (1986).

⁹⁴ Sec. 149(d)(3) (as in effect prior to Public Law 115-97). In addition, prior to Public Law 115-97, private activity bonds other than qualified 501(c)(3) bonds could not be advance refunded. Sec. 149(d)(2) (as in effect prior to Public Law 115-97). Furthermore, in the case of an advance refunding bond that results in interest savings, the refunded bond was required to be redeemed on the first call date 90 days after the issuance of the refunding bond that results in debt service savings. Sec. 149(d)(3)(A)(iii) and (B) (as in effect prior to Public Law 115-97); Treas. Reg. sec. 1.149(d)-1(f)(3).