

**Office of Tourism, Trade
and Economic Development**

**Florida New Markets Development Program
Tax Credit Application**

The application period re-opens November 2, 2009.

**Applications will be reviewed in the order received
and will be processed while credits remain available.**

OFFICE OF TOURISM, TRADE AND ECONOMIC DEVELOPMENT

Created in 1996 by the Legislature, the Office of Tourism, Trade and Economic Development (OTTED), within the Executive Office of the Governor, assists the Governor, Lieutenant Governor, and Legislature to formulate policies and strategies designed to provide economic opportunities for all Floridians.

NEW MARKET DEVELOPMENT PROGRAM GUIDELINES

Section 288.9912, Florida Statutes, authorizes the New Market Development Program. The program encourages capital investment in low-income communities by allowing taxpayers to earn credits by investing in qualified Community Development Entities (CDEs) that make investments in active low-income community businesses. A person or entity that makes a qualified investment earns a vested tax credit equal to 39 percent of the purchase price of the qualified investment.

Qualified CDEs may apply to OTTED to have investments approved as qualified investments for Florida New Market Tax Credits. The following are the program guidelines and application forms.

APPLICATION PERIOD

Applicants may submit applications beginning on November 2, 2009 when the application period re-opens. Applications will be reviewed in the order received and will be processed while credits remain available.

ELIGIBILITY

Applicant must:

- Be certified by the Secretary of the United States Department of the Treasury as a qualified Community Development Entity;

And

- Have an effective, or be controlled by an entity that has an effective, allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to tax credits under 26 U.S.C. s. 45D and be authorized to serve businesses in Florida under the agreement;

Or

- Be Enterprise Florida, Inc., or an entity created by Enterprise Florida, Inc.

APPLICATION PROCESS

Applicants must submit a complete application and a nonrefundable \$1,000 application fee payable to Executive Office of the Governor.

OTTED will review applications in the order received and approve or deny an application within 30 days after receipt. Review will be based on the eligibility requirements and an applicant's plans to meet the program guidelines including the proposed use of proceeds and plans to develop relationships with community based organizations that serve low-income communities. If OTTED intends to deny the application, it will inform the applicant of the basis of the proposed denial. The applicant will have 15 days after it receives the notice to submit a revised application to OTTED, which will issue a final order approving or denying the revised application within 30 days after receipt.

OTTED will provide a copy of the final approval order to the applicant and the Department of Revenue. The notice will include the identity of the taxpayers who are eligible to claim the tax credits and the amount that may be claimed by each taxpayer. OTTED shall approve an application for part of the amount of the proposed investment if the amount of tax credits available is insufficient. All applications received on the same business day will be treated as received at the same time. If OTTED approves multiple applications received on the same day, and the amount of tax credits available is insufficient for all of the applications, the tax credits available to each applicant shall be in proportion to the proposed purchase price to the total purchase price of all of the proposed investments.

USE OF PROCEEDS

A qualified investment means an equity investment in, or a long-term debt security issued by, an approved applicant that is issued solely in exchange for cash. A long-term debt security means a debt instrument issued by a qualified community development entity at par value or a premium which has a maturity date of at least 7 years following the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date, except in instances of default. An approved applicant may not use the proceeds from qualified investments to make cash interest payments on a long-term debt security that is a qualified investment in excess of the entity's operating income as defined by the Internal Revenue Service in 26 C.F.R. 1.45D-1(e)(3)(iii) for 6 years following the issuance of the security.

Approved applicants must invest at least 85 percent of the purchase price in qualified low-income community investments within 12 months after the issuance of a qualified investment and maintain 85 percent of the purchase price in qualified low-income community investments until the last credit allowance date for a qualified investment. A credit allowance date is the date on which a qualified investment is made.

A qualified community business, including its affiliates, may not receive more than \$10 million in qualified low-income community investments under the program.

NEW MARKET TAX CREDITS

OTTED may approve a cumulative amount of qualified investments that results in the claim of up to \$97.5 million in tax credits during the existence of the program, up to \$20 million in tax credits in a single state fiscal year. However, the potential for a taxpayer to carry forward an unused tax credit will not be considered in calculating the annual limit.

A person or entity that makes a qualified investment earns a vested tax credit against taxes under s. 220.11 or s. 624.509 equal to 39 percent of the purchase price of the qualified investment. The holder of a qualified investment may claim the tax credit as follows after the credit allowance date:

- 7 percent of the purchase price against its tax liability in the tax year containing the third credit allowance date and 8 percent of the purchase price against its tax liability in the tax years containing the fourth through seventh credit allowance dates.
- A taxpayer may not claim a tax credit in excess of the taxpayer's tax liability. If the credit granted pursuant to this section is not fully used in any single year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers in the order provided in s. 220.02(8). Carryover credit amounts will be treated as unused credits for purposes of the transfer of unused credits.
- An insurance company that is subject to the insurance premium tax must apply the tax credit against the insurance premium tax. An insurer that claims a credit against premium tax liability earned by making a qualified investment is not required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming the tax credit.
- If the credit granted is not fully used in any single year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers.
- A tax credit earned under this the New Market Development Program may not be sold or transferred, except as provided (a) A partner, member, or shareholder of a partnership, limited liability company, S-corporation, or other "pass-through" entity may claim the tax credit pursuant to an agreement among the partners, members, or shareholders. Any change in the allocation of a tax credit under the agreement must be reported to OTTED and to the Department of Revenue. (b) Eligibility to claim a tax credit transfers to subsequent purchasers of a qualified investment. Such transfers must be reported to OTTED and to the Department of Revenue along with the identity, tax identification number, and tax credit amount allocated to a taxpayer. The notice of transfer also must state whether unused tax credits are being transferred and the amount of unused tax credits being transferred.

RECAPTURE

OTTED will direct the Department of Revenue, at any time before December 31, 2022, to recapture all or a portion of a tax credit authorized pursuant to the New Markets Development Program Act if one or more of the following occur:

- The Federal Government recaptures any portion of the federal new markets tax credit.
- The qualified community development entity redeems as defined in 26 C.F.R. 1.45D-1(e)(3)(i)-(iii) or makes a principal repayment on a qualified investment before the final allowance date.
- The applicant entity fails to invest at least 85 percent of the purchase price in qualified low-income community investments within 12 months after the issuance of a qualified investment;
- The applicant fails to maintain 85 percent of the purchase price in qualified low-income community investments until the last credit allowance date for a qualified investment. For the purpose of this bullet point, an investment includes principal recovered from an investment for 12 months after its recovery or principal recovered after the sixth credit allowance date. Principal held for longer than 12 months or recovered before the sixth credit allowance date is not an investment unless it is reinvested in a qualified low-income community investment.
- The applicant entity fails to provide OTTED with information, reports, or documentation required by the New Markets Development Program Act.
- OTTED determines that a taxpayer received tax credits to which the taxpayer was not entitled.
- OTTED may conduct examinations to verify compliance with the New Markets Development Program Act.

OTTED will provide notice to an approved applicant and the Department of Revenue of a proposed recapture of a tax credit. The approved applicant shall have 90 days following the receipt of the notice to cure a deficiency identified in the notice and avoid recapture. OTTED will issue a final order of recapture if the approved applicant fails to cure a deficiency within the 90-day period. The final order of recapture shall be provided to the entity, the department, and a taxpayer otherwise authorized to claim the tax credit. Recaptured funds shall be deposited into the General Revenue Fund.

DEFINITIONS

LOW-INCOME COMMUNITIES

Include any population census tract within the State of Florida where:

- The poverty rate is at least 20 percent; or
- In the case of a tract that is: (a) not located within a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income; or (b) located within a metropolitan area, the median family income does not exceed 80 percent of the greater of the statewide median family income or the metropolitan area median income.

LOW-INCOME COMMUNITY BUSINESSES

Include an entity that is considered for Federal tax purposes to be a corporation, including nonprofit corporation, or partnership located in the State of Florida that:

- Derives at least 50 percent of its total gross income from the active conduct of business within any low-income community for any taxable year;
- Uses a substantial portion of its tangible property whether owned or leased, within any low-income community for any taxable year;
- Performs a substantial portion of its services through its employees in a low-income community for any taxable year;
- Attributes less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity to collectibles, as defined in 26 U.S.C. s. 408(m)(2), other than collectibles that are held primarily for sale to customers in the ordinary course of the business for any taxable year;
- Attributes less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity to nonqualified financial property, as defined in 26 U.S.C. s.1397C(e), for any taxable year;
- Is reasonably expected by a qualified community development entity at the time of an investment to continue to satisfy the eligibility requirements of “low-income community business” for the duration of the investment;
- Does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; engage predominantly in the development or holding of intangibles for sale or license; operate a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack, gambling facility, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises; or engage principally in farming and owns or leases assets the sum of the aggregate unadjusted bases or the fair market value of which exceeds \$500,000; and
- Will create or retain jobs that pay an average wage of at least 115 percent of the federal poverty income guidelines for a family of four.

Eligible industries, businesses and activities include manufacturing facilities (except petroleum and coal products manufacturing); water, sewage and other systems (NAICS Sector 2213); construction (NAICS Sector 23, except oil and gas pipeline and related structures construction); wholesale trade (NAICS Sector 42); transportation and warehousing (NAICS 48, except 486-486990); warehousing and storage (NAICS Sector 493); information industries (NAICS Sector 51); financial and insurance services (NAICS Sector 52); professional, scientific and technical services (NAICS Sector 54); management services (NAICS Sector 55); administrative and support services (NAICS Sector 561); educational services (NAICS Sector 61); health care and social assistance (NAICS Sector 62); arts, entertainment and recreation (NAICS Sector 71 except as prohibited above in low income community businesses); electronic and precision equipment repair and maintenance (NAICS Sector 8112); and commercial and industrial machinery and equipment repair and maintenance (NAICS Sector 8113).

OTTED may waive limitations on eligible community businesses if it determines that the investment will have a positive impact on a community.

A business and investment will be treated as a qualified low income community business and investment for the duration of the investment if it is reasonably expected by an approved applicant at the time of an investment to continue to satisfy the eligibility requirements of “low-income community business and investment” for the duration of the investment. An approved applicant may rely on a sworn affidavit from a business that such business meets the requirements and definition of a qualified low income community business, absent an approved applicant’s prior knowledge that a business submitted a false affidavit.

REPORTING REQUIREMENTS

An approved applicant must provide OTTED with evidence of the receipt of the cash in exchange for the qualified investment within 30 business days after receipt and keep detailed records showing the use of proceeds from qualified investments to fund qualified low-income community investments.

Approved applicants that have issued a qualified investment will submit the following to OTTED within 30 days after each credit allowance date:

- A list of all qualified active low-income community businesses in which a qualified low-income community investment was made since the last credit allowance date. The list will also describe the type and amount of investment in each business and the address of the principal location of each business. The list must be verified by the chief executive officer of the community development entity.
- Bank records, wire transfer records, or similar documents that provide evidence of the qualified low-income community investments made since the last credit allowance date.
- A verified statement by the chief financial or accounting officer of the community development entity that no redemption or principal repayment was made with respect to the qualified investment since the previous credit allowance date.
- Information relating to the recapture of the federal new markets tax credit since the last credit allowance date.

ANNUAL REPORTING REQUIREMENTS

Approved applicants will submit a report to OTTED by April 30 after the end of each year which includes a credit allowance date. The report will include:

- A list of all qualified active low-income community businesses in which a qualified low-income community investment was made since the last credit allowance date.
- The entity’s annual financial statements for the preceding tax year, audited by an independent certified public accountant.
- The identity of the types of industries, identified by the North American Industry Classification System Code, in which qualified low-income community investments were made.
- The names of the counties in which the qualified active low-income businesses are located which received qualified low-income community investments.

- The number of jobs created and retained by qualified active low-income community businesses receiving qualified low-income community investments, including verification that the average wages paid meet or exceed 115 percent of the federal poverty income guidelines for a family of four.
- A description of the relationships that the entity has established with community-based organizations and local community development offices and organizations and a summary of the outcomes resulting from those relationships.

CONTACT INFORMATION

Karl Blischke

Office of Tourism, Trade and Economic Development
Suite 1902, The Capitol
Tallahassee, FL 32399

Email: Karl.Blischke@eog.myflorida.com

Phone: (850) 487-2568

APPLICATION INSTRUCTIONS

OTTED intends these instructions to guide an Applicant in preparing and submitting its Application. For clarity, where reasonably possible the instructions take the active voice and imperative form, addressed to an Applicant. When a sentence lacks a subject, the Applicant is the intended actor. For example, "Prepare the Application..." means "The Applicant shall prepare the Application." In these instructions, the terms "you" or "your" refers to the Applicant.

Prepare the Application using this form, supplemented with the additional information requested in this form. Use 8.5" x 11" sized white paper and a minimum of twelve-point font size. In a three-ring notebook, organize the Application materials behind sequentially numbered tabbed sections as follows:

- TAB 1 Contact Information. In a form substantially similar to Exhibit A hereto, indicate your contact information. You may duplicate the contact fields as necessary for all persons whom you wish to receive notices in relation to the Application.

- TAB 2 Transmittal Letter. In a form substantially similar to Exhibit B hereto, communicate the specified information. Your duly authorized Chief Executive Officer shall sign the letter in blue ink.

- TAB 3 Proposed Investment. Description of the proposed amount, structure, and purchaser of an equity investment or long-term debt security.

- TAB 4 Use of Proceeds. Detailed explanation of the proposed use of the proceeds from a proposed qualified investment.

- TAB 5 Community Relationships. Description of plans for the development of relationships with community-based organizations, local community development offices and organizations, and economic development organizations. Explain steps taken to implement the plans to develop these relationships.

- TAB 6 Tax Credit Claims. Name and tax identification number of any taxpayer authorized to claim a tax credit earned as a result of the purchase of the proposed qualified investment.

- TAB 7 Allocation Agreement. Copy of an allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund with respect to tax credits under 26 U.S.C. s. 45D, which authorizes the entity to serve businesses in Florida.¹

¹ Not required of Enterprise Florida Inc. or an entity created by Enterprise Florida, Inc.

TAB 8 CDE Certification. Proof of certification as a qualified Community Development Entity under 26 U.S.C. s. 45D. ²

TAB 9 Other Information. Include here, with full explanation, any qualifications or exceptions you take to the representations and certifications contained in the form Transmittal Letter (Exhibit B hereto). Disclose here the name of any Applicant officer, director, board member, or employee who is also an employee of the State of Florida or any of its agencies or boards. If you claim any exemptions from the public records law, provide the specific statutory authority for such exemption and specifically identify those portions of the Application that you claim are exempt.

OTTED WILL REVIEW ALL DATA SUBMITTED AND RESERVES THE RIGHT TO REQUEST ADDITIONAL INFORMATION AND TO MAKE INDEPENDENT INQUIRIES TO VERIFY THE INFORMATION AND TO OBTAIN ADDITIONAL INFORMATION IF NECESSARY AND APPROPRIATE. RESERVATION OF THIS RIGHT DOES NOT RELIEVE YOU OF THE DUTY TO SUBMIT A COMPLETE APPLICATION.

SUBMITTING THE APPLICATION

Applicants may submit applications beginning on November 2, 2009 when the application period re-opens. Applications will be reviewed in the order received and will be processed while credits remain available.

Submit one (1) electronic copy, one (1) original and two (2) copies of the Application in loose-leaf three rings binders contained in a sealed package. On the outside of the package, clearly mark "APPLICATION FOR FLORIDA NEW MARKETS DEVELOPMENT PROGRAM."

Applicants must submit a nonrefundable \$1,000 application fee payable to Executive Office of the Governor.

Submit the package to:

**Governor's Office of Tourism, Trade, & Economic Development
Suite 1902, The Capitol
Tallahassee, Florida 32399-0001
Karl.Blischke@eog.myflorida.com**

² Not required of Enterprise Florida Inc. or an entity created by Enterprise Florida, Inc.

OTTED will review applications in the order received and approve or deny an application within 30 days after receipt. Review will be based on the eligibility requirements and applicant's plans to meet the program guidelines including the proposed use of proceeds and plans to develop relationships with community based organizations that serve low-income communities.

If OTTED intends to deny the application, it will inform the applicant of the basis of the proposed denial. The applicant will have 15 days after it receives the notice to submit a revised application to OTTED, which will issue a final order approving or denying the revised application within 30 days after receipt.

EXHIBIT A CONTACT INFORMATION

Include behind Tab 1 of the Application. You may add more application contacts by duplicating the contact fields as necessary.

**Controlling Entity
(if applicable):**

Applicant FEIN:

Applicant Name:

Physical Address1:

Physical Address2:

Mailing Address1:

Mailing Address2:

Web Address (URL):

Contact Name:

Contact Title:

Contact Phone:

Contact Email:

Contact Fax:

EXHIBIT B TRANSMITTAL LETTER

Include behind Tab 2 of the Application.

[Date]

[Contact]
[Applicant]
[Address]
[City, State Zip]

Governor's Office of Tourism, Trade, & Economic Development
Suite 1902, The Capitol
Tallahassee, Florida 32399-0001

Re: Application for the Florida New Markets Development Program

The undersigned ("Applicant") submits this application ("Application") pursuant to Section 288.9912, Florida Statutes, the New Market Development Program.

The Applicant submitted one (1) electronic copy to Karl.Blichke@MyFlorida.com. Our Application, submitted in the original, and two (2) copies, bound in loose-leaf form in three-ring notebooks, consists of the following tabbed sections:

Tab 1	Contact Information
Tab 2	Transmittal Letter (this letter)
Tab 3	Proposed Investment
Tab 4	Use of Proceeds
Tab 5	Community Relationships
Tab 6	Tax Credit Claims
Tab 7	Allocation Agreement
Tab 8	CDE Certification
Tab 9	Other Information

Applicant understands that article 1, section 24, of the Florida Constitution guarantees every person access to all public records, and that section 119.011, F.S., provides a broad definition of public record. As such, the Application is a public record unless exempt by law. If Applicant claims any part of the Application is exempt from the public records law, Applicant has explained the basis for the claimed exemption in the material included behind Tab 9, and Applicant has clearly marked all documents it claims are exempt.

Applicant certifies that it has read and understands the New Market Development Program Act. If approved, Applicant will invest only in qualified businesses as described in the New Market Development Act and within the industries designated by OTTED. Applicant will not invest in a qualified active low-income community business unless the business will create or retain jobs that pay an average wage of at least 115 percent of the federal poverty income guidelines for a family of four. (Check one box and initial):

Yes No (initial here: _____)

Applicant certifies that it has entered into, or is controlled by an entity that has entered into, an allocation agreement with the Community Development Financial Institutions Fund, which authorizes the applicant to serve businesses in Florida and that the allocation agreement remains in effect.

Yes No (initial here: _____)

Applicant understands that the award of financial assistance under the Program is also subject to Chapter 112, F.S., which governs ethics and conflicts of interest. Except as otherwise disclosed and explained in the material included behind Tab 9, Applicant hereby certifies that none of its officers, directors, employees, or agents is employed by the State of Florida or any of its agencies or boards (check one box and initial):

Yes Yes, with qualification in Tab 9

Does not certify (initial here: _____)

Applicant hereby certifies that, within the past three (3) years, neither it nor any affiliate has been placed on the convicted vendor list pursuant to section 287.133, F.S., or on the discriminatory vendor list pursuant to section 287.134, F.S., and further certifies that, except as otherwise disclosed and explained in the material included behind Tab 9, neither the Applicant nor its affiliates, directors, officers, or employees have been or are currently under investigation by any governmental authority and have not been convicted or had a civil judgment rendered against them in any jurisdiction for any act involving or relating to a federal, state, local, or other public contract (check one box and initial):

Yes Yes, with qualification in Tab 9

Does not certify (initial here: _____)

Applicant understands that all information it provides, and representations it makes, are material and important and will be relied upon by OTTED in evaluating the Application, in determining whether to approve or deny the Application. Applicant understands and agrees that any misstatement shall be treated as fraudulent concealment from OTTED of the true facts relating to submission of the Application. A misrepresentation shall be grounds for rejecting the Application and shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes. Applicant hereby certifies that all information included in the Application is true and correct (check one box and initial):

Yes No (initial here: _____)

The undersigned warrants that he or she is duly authorized to submit the Application on behalf of Applicant and to bind Applicant to its terms.

Sincerely,

(Applicant Name)

By: _____
(Signature)

(Type or Print Name)

As: _____ Chief Executive Officer

Date: _____