

Phoenix Community Development and Investment Corporation  
**Lending Guidelines for Bioscience or Technology Industries**

**Purpose:**

To provide policy direction and establish lending guidelines when evaluating loans to businesses or for projects related to bioscience and technology.

**Statute & Regulation:**

To qualify for NMTCs, a CDE must invest substantially all of its qualifying equity in Qualified Businesses. Under federal statute and IRS regulations, a Qualified Business does not include “any trade or business consisting predominantly of the development or holding of intangibles for sale or license.” This is often referred to as the Intangibles Test.

The IRS issued the Final Regulations on December 28, 2004 and corrections to those regulations on January 28, 2005. Under the final regulations, before the corrections, a Qualified Business did not include a rental activity to the extent the lessee of the property failed the Intangibles Test. The corrections to the Final Regulations removed the regulatory requirement that the underlying tenant pass the Intangibles Test. The IRS included the limit on lessee businesses because they were concerned that CDEs could avoid the direct statutory prohibition on lending to businesses involving intangibles by simply structuring a lease. Some commentators have suggested that the existing anti-abuse language gives the IRS authority to disallow credits in such a situation. Other have argued that the legislative history to the NMTC specifically approves of such a structure.

**Proposed Lending Guidelines:**

These are possible scenarios that may occur when considering making loans for bioscience or technology projects:

1. A loan made directly to a company whose trade or business consists solely of the development or holding of intangibles for sale or license.

**Recommendation:** PCDIC should not consider making loans.

2. A loan is made directly to a company that generates its revenues from the manufacture of biomedical or technology products as well as the development or holding of intangibles for sale or license. Statutorily, the manufacturing activity must be the “predominant” business. One definition of “predominant” is “much greater”.

**Recommendation:** PCDIC will consider making loans as long as the business is projected to maintain revenues greater than 66% from non-licensing and intangible activity throughout the loan term.

3. A loan is made to a company that intends to use the loan to operate a hospital and/or related medical services such as cancer testing and treatment or providing diagnostic care.

**Recommendation:** PCDIC will consider funding loans.

4. A loan made to a developer or property owner who leases space to a bioscience or technology business whose primary business consists predominantly of the development or holding of intangibles for sale or license. While the corrections to the Regulations reflect that this scenario may be allowable, the original Final Regulations prohibited making loans to developers who leased spaced to businesses engaged in the development or holding of intangibles for sale or license.

**Recommendation:** In light of the recent change in Regulations, and the uncertainty in the area, staff recommends that PCDIC adopt a conservative approach by considering making loans only to such developers or property owners who reasonably project that they will lease to a tenant whose revenue generated from the development or holding of intangibles for sale or license is less than 40% of the total revenue generated from the business. This ratio must be projected to be maintained throughout the life of the loan. (Note: PCDIC would make loans to developers or property owners who lease to a tenant whose revenue is generated entirely from manufacturing activity.)

**Effective Date:** PCDIC Board approved March 30, 2005.