

Bob Ibanez  
Manager, New Markets Tax Credit Program  
CDFI Fund, Department of the Treasury  
601 13<sup>th</sup> Street NW Suite 200 South  
Washington, DC 20005

February 6, 2012

Dear Mr. Ibanez:

Opportunity Finance Network (OFN) appreciates the opportunity to comment on the New Markets Tax Credit (NMTC) program in response to the notice that appeared in the *Federal Register* on November 7, 2011. We helped to advocate for the passage of the law creating the NMTC in 2000, and in the decade since have been active advocates for its evolving implementation and for its reauthorization. The NMTC has proven to be an effective tool to channel private-sector financing into low-income and underserved communities—to connect new sources of capital with new markets. The comment letter submitted by the New Markets Tax Credit Coalition summarizes the impressive track record of NMTC investment.

To continue to meet its goal to attract private-sector investment to low-income communities, the Fund must follow two key principles in structuring and administering the NMTC:

- The NMTC should be directed to projects that need the subsidy the credit provides and that would otherwise not happen. Using the NMTC to substitute for other capital on deals that would happen with other financing does a disservice to the targeted communities and to the taxpayers who support the NMTC. Use of the limited resource for deals in which it is not a necessary catalyst diverts those resources away from markets in which private investment is sorely needed.
- Community Development Financial Institutions (CDFIs) are key players in communities targeted by the NMTC. The law authorizing the NMTC recognized their role in qualifying CDFIs as Community Development Entities (CDEs) eligible for the credit. In qualifying for CDFI Fund certification, CDFIs demonstrate a commitment to low-income markets and have institutional accountability to those markets. CDFIs are permanent institutions with a continuing interest in the markets where they work and invest in NMTC deals. Because CDFIs and their affiliate CDEs are ideal conduits for the NMTC, the allocation processes should recognize this role, reflect their status as permanent institutions accountable to their markets, and ensure that they are competitive applicants for NMTC resources. In addition, CDFIs should qualify as Qualified Active Low-Income Community Businesses (QALICBs).

The specific recommendations OFN includes in this letter are based on these principles. This letter does not address every question posed by the CDFI Fund. OFN is an active member of the New Markets Tax Credit Coalition and participated in the development of a group letter signed by a number of CDFIs, including OFN. We endorse the recommendations in letters from those



coalitions; the comments here reinforce particular aspects of those letters that OFN finds particularly important.

*QUESTION 1 (B) In the allocation award process, should the CDFI Fund increase the commitment percentage from 75 percent of investments made in Areas of Higher Distress in order to receive the highest scores for this sub-section of the Community Impact score? Should the CDFI Fund include additional distress indicators, alter or eliminate any existing indicators?*

Increasing the commitment percentage would not be the most effective way to direct NMTC investment to Areas of Higher Distress. A project in an Area of Higher Distress does not necessarily have higher impact than other qualified projects; increasing the committed percentage in Areas of Higher Distress risks discouraging investment in eligible and high impact projects solely because they are not located in Areas of Higher Distress.

Instead of a strictly geographic emphasis on high distress, OFN suggests two alternative methods to achieve the high distress classification.

- Qualify as “highly distressed” Qualified Low Income Community Investments (QALICIs) made by CDEs that are also CDFIs. CDFIs are mission-driven and mandated to serve low-income communities. The CDFI Fund and Congress recognized this status by qualifying certified CDFIs as CDEs automatically and by promulgating recent regulations that allow CDEs to invest recaptured proceeds in CDFIs for the remainder of a NMTC term.
- Qualify as “highly distressed” investments in which the QALICB is a nonprofit institution. Recent IRS regulations on targeted populations make the QALICB designation very difficult to use for many community services projects such as charter schools.

*Question 2(b). Should the CDFI Fund provide additional opportunities in the allocation award process for applicants to score more highly by committing to invest in certain business types over others (e.g., small business or rural investment, operating businesses vs. real estate projects, etc.)?*

The CDFI Fund should not prioritize certain kinds of businesses or projects. Instead, the CDFI Fund can direct the NMTC to the projects most deserving of the subsidy and provide additional opportunities to applicants committed to investing in those projects by:

- Allocating additional points for CDFIs and affiliated CDEs, particularly in the Community Accountability section, to reflect their inherent, mission-driven commitment to invest in businesses located in hard-to-serve low-income communities.
- Defining CDFIs as QALICBs. CDFIs are specifically required by statute to connect low-income communities with flexible, low-cost capital. To be certified by the CDFI Fund, an organization must submit an application demonstrating how it will meet the NMTC mission-test criteria—the same criteria that also must be met in order to be designated as a QALICB.



The most responsive non-CDFI allocatees have developed screens to use in assessing the worthiness of potential NMTC investments. These criteria help determine the impact of the project and its need for the NMTC subsidy. Such criteria could be incorporated into the CDFI Fund's allocation process, and include:

- The CDE has a track record of putting its own capital at risk in the market in which it would use a NMTC allocation, or a similar market. Using this criterion would help measure an applicant CDE's commitment to bringing capital to qualified communities and building a permanent, rather than short-term, deal-related, presence there.
- The CDE has a track record of "trailblazing" projects that are the first to bring new investment into opportunities that others miss and would likely use its NMTC allocation for the same kinds of projects. This criterion would allocate NMTCs to CDEs that have proven ability to enter the new markets for which the program is named.
- The CDE's projects would create jobs to be filled by residents of the low-income community and/or provide space for locally owned, minority- or women-owned businesses or nonprofit tenants, demonstrating true commitment to the residents of the community.

*Question 2(c) Are there specific administrative or regulatory changes that would facilitate the financing of specific types of businesses while preserving public policy objectives and safeguards?*

As an intermediary CDFI, OFN invests in other CDFIs but has had limited success using the NMTC for such investments. Because of the statutory and regulatory obligations for CDFIs to be mission-focused, OFN supports the expansion of NMTC regulations to limit tracing requirements under certain conditions.<sup>1</sup> The group letter from collaborating CDFIs contains extensive recommendations detailing this potential change.

*3. Community Accountability - The CDFI Fund has requested comments on the current standards used to measure and monitor the community accountability of CDEs.*

OFN has long supported tightening the community accountability standards for CDEs. As one way to do so, we recommend increasing the percent of community stakeholder requirement for the board or advisory board of a CDE from 20 to more than 50%, or a majority of members.

The Fund should award priority points to CDFIs or other CDEs that can demonstrate accountability to their low-income communities throughout their corporate structure and including their parents. Given that a high level of community accountability is inherent within the mission and statutory requirements of the CDFI certification process—as well as within

---

<sup>1</sup> The conditions would include a second CDE is also a being a certified CDFI or a subsidiary of a certified CDFI; and funds totaling at least 85 percent of the related QEI are segregated in a fund created solely for investing in, or lending to, qualified active low-income community businesses, or for providing financial counseling and other services in low-income communities. See the groups CDFI response to Question 2(c), including the addendum to the letter, for additional detail.



maintaining CDFI certification—we recommend that the highest scores for community accountability be reserved for CDFI CDEs.

The Fund should not make additional distinctions in community accountability requirements for allocatee and non-allocatee CDEs or for the use of governing or advisory boards to meet the requirements.

*Question 5 (b) Are there specific administrative or regulatory changes that would facilitate the provision of specific financial products while preserving public policy objectives and safeguards?*

The NMTC program relies on outside reviewers to evaluate applications. Because the review process is removed from the applicant's community and its context, evaluating the quality of products is dependent on the quality and training of the reviewers. The Fund should provide increased training to reviewers and select them based on their knowledge and ability to fully understand local conditions and the intent of the proposed allocatee, and to incorporate that information into their review.

In addition to increasing the capacity of its reviewers, the CDFI Fund should increase transparency in the review process. Increased transparency will allow applicants to understand how their products have been evaluated and valued, support future successful applications, and enhance the clarity of Fund processes in allocating taxpayer subsidy. In particular, we recommend that the CDFI Fund provide a debriefing that includes:

- Combined scores from the reviewers on each section of the application and
- A complete listing of all reviewer comments referenced to the section to which each of them apply.

### **Conclusion**

The New Markets Tax Credit has been a valuable and innovative tool to channel investment into underserved communities. Facilitating the participation of CDFIs and other mission-driven organizations in the allocation and use of the NMTC will enhance its reach and ensure it finances the projects most in need of its limited subsidy.

Thank you for the opportunity to comment.

Sincerely,

Mark Pinsky  
President and CEO