

CONTACT  
Brad Elphick, CPA  
Novogradac & Company LLP  
678.867.2333  
[brad.elphick@novoco.com](mailto:brad.elphick@novoco.com)

CONTACT  
Michael Novogradac, CPA  
Novogradac & Company LLP  
415.356.8000  
[michael.novogradac@novoco.com](mailto:michael.novogradac@novoco.com)

**FOR IMMEDIATE RELEASE**

**NEW MARKETS TAX CREDIT PROFESSIONALS ASKS THE U.S. TREASURY TO  
REDEFINE ITS DEFINITION OF CONTROL**

**NMTC Working Group NMTC Working Group Foresees Little Interest in Equity  
Investments Under Present Measurement of Control in Reasonable Expectation  
Test**

**Atlanta, GA** — In an August 20 letter to Michael Mundaca, the Assistant Secretary of Treasury for Tax Policy, the NMTC Working Group recommends that the definition of “control” as contained in the Treasury Regulations for new markets tax credits (NMTCs) be revised to remove any measurement based upon value of ownership and to rely solely on voting and management rights as they relate to control.

Since its inception almost a decade ago, the NMTC program has seen a limited number of qualified low-income investments (QLICs) made as equity investments because of the way the Community Development Financial Institutions (CDFI) Fund interpreted when to measure whether a community development entity (CDE) and qualified affordable low-income community business (QALICB) were related, commonly referred to as the related party test. With a recent welcomed change to that interpretation comes a concern that those who invest in CDEs will lose the ability to rely on the reasonable expectations test and will have to ensure that the QALICB retains its qualified status for the entire compliance period, which creates an increased burden for the investor.

Therefore, the NMTC Working Group says, it’s unlikely many CDEs will make majority interest equity investments that may deem the CDE to have control of the QALICB. “If a CDE cannot rely on the reasonable expectation test, investors perceive the compliance risk as too great and most are unwilling to enter into such a transaction,” says Brad Elphick, a partner in the Atlanta office of Novogradac & Company LLP, who heads up the NMTC Working Group. “This outcome is unfortunate since equity investments are generally the most patient form of capital and would also reduce the burden of ensuring that the subsidy can remain at the qualified low-income community business (QALICB).”

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The issue is that investors prefer to use the reasonable expectations safe harbor so that a CDE can avoid a recapture of credits if during the compliance period the QALICB ceases to qualify as a QALICB for reasons outside its control. If a CDE is deemed to control the QALICB at the time the QLICI is made, or gains control at a later date during the compliance period, the CDE must ensure that the QALICB remains a QALICB for the remainder of the compliance period.

“Investors do not want to be subject to strict liability for recapture merely because they acquire a majority equity interest in the QALICB if they do not also have management or voting rights that would allow them to control QALICB status,” says Michael J. Novogradac, managing partner in Novogradac & Company’s San Francisco office and the NMTC working Group’s advisor on industry and governmental affairs. “As a result of the Regulations’ broad definition of control under the reasonable expectation test, investors in the current market are unlikely to allow the CDE to acquire a majority equity interest in a QALICB.”

In its letter, the NMTC Working Group concludes that by updating the definition of control to remove the reference to the value-based test and by clarifying that only voting and management rights that enable the CDE to control whether the QALICB retains its status as a QALICB should be considered, it’s likely that equity transactions could be structured in a manner that would attract investors by successfully addressing the issue of control and providing CDE’s with the ability to rely on the reasonable expectations test.

For more information on the NMTC Working Group, its goals and membership, and to view the letter the Working Group sent to the Treasury, please go to [www.nmtcworkinggroup.com](http://www.nmtcworkinggroup.com).

The NMTC Working Group was established by Novogradac & Company LLP to provide a platform for NMTC industry participants to work together to resolve technical and administrative New Markets Tax Credit program issues. Each month, members of the group participate in a conference call. Members participate in discussions and provide input regarding pending action items as agreed to by the members of the group. Novogradac & Company LLP also hosts a NMTC Working Group meeting at a scheduled time at each of its national NMTC conferences. Comments and suggestions are agreed to and submitted in writing directly to the IRS and the CDFI Fund based upon the group discussions.

Novogradac & Company LLP is a national certified public accounting and consulting firm whose headquarters are in San Francisco, Calif., with offices in metro Atlanta, Ga., Washington, D.C. and Kansas City, Mo., as well as in Austin, Texas, Boston, Mass., Dover, Columbus and Cleveland, Ohio, Portland, Ore., New York, N.Y. and Long Beach, Calif. The firm has consulted on thousands of affordable housing, community development and renewable energy projects and maintains client relationships with the leading tax credit sponsors in those industries. Novogradac & Company LLP is consistently ranked by *Accounting Today* and *Inside Public Accounting* as one of the top 100 accounting firms in the nation. For more information on Novogradac & Company LLP, please visit [www.novoco.com](http://www.novoco.com), send an email to [cpas@novoco.com](mailto:cpas@novoco.com), or call 415.356.8000.

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