



# Combining Federal Subsidies with the New Markets Tax Credit

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Elsewhere in this issue, we examine the "who" and "what" of the New Markets Tax Credit (NMTC) Program, the initiative that promises to bring new life and \$15 billion to distressed communities through the investment in new markets tax credits. One area of the NMTC Program with significant unanswered questions is: What tax subsidies can be combined with the NMTC?

A part of this question has been answered: the program does not allow the NMTC to be used with the low-income housing tax credit (LIHC), since the program's definition of a qualified business specifically excludes residential rental property. However, it does provide enormous opportunity for tax credit investors, developers and communities that are looking for ways to tap previously untapped markets and explore the potential for increasing after-tax returns, all while bringing business investment to long-neglected communities. Bank of America believes that the NMTC credit should not be available to projects supported by the low-income housing tax credit, nor the tax-exempt bond financing or the historic tax credit. However, to avoid discouraging investors, the bank, in its written comments to the IRS says, "only significant and defined subsidies that would be apparent to a prudent investor should be disqualifying."

Fannie Mae had a different view. In its comments, it noted that community development activities in distressed communities often require multiple sources of funds and multiple layers of subsidy to make financing work. It pointed out that the more difficult the development task and the more distressed the community, the greater the likelihood that the project will look for other subsidy sources including other federal tax benefits. The danger, the agency said, is that rules that impede multiple sources of subsidies will discourage investments supported by the new markets tax credits, causing them to drift away from tough development challenges. The agency recommends the IRS interpret the statutory provisions to focus on investors rather than on investments and look not to the structure of the deal but to the treatment of the credits on the investors' returns, reading the statute to preclude investors from taking two or more tax credits against the same investment dollars. Although the IRS' temporary regulations dated December 26, 2001 do not provide specific rules on double tax benefit issues, the IRS and the Treasury Department are requesting additional comments on what federal tax benefits should limit the new markets tax credit. For a copy of the IRS' temporary and proposed regulation and to learn more about the NMTC Program, visit Novogradac & Company LLP's web site at [www.newmarketscredits.com](http://www.newmarketscredits.com). ❖

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