



September 8, 2011

Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20004

Via Internet: www.regulations.gov

New Markets Tax Credit Non-Real Estate Investments

Notice of proposed rulemaking and notice of public hearing

Federal Register Docket ID: IRS-2011-0011-0001 (IRS REG-101826-11)

To: Whom It May Concern,

As the trade association representing the Small Business Investment Company industry, the National Association of Small Business Investment Companies (NASBIC) would like to submit the following comments in response to the proposed rule regarding the changes to the New Markets Tax Credit (NMTC) program that are intended to foster increased investment in non-real estate qualified active low-income community businesses. Specialized Small Business Investment Companies (SSBICs) should continue to automatically qualify as a Community Development Entity (CDE). Additionally, NASBIC feels that standard Small Business Investment Companies (SBICs), such as those in the existing Debenture SBIC program will greatly assist the NMTC program achieve its goals, and should also be classified as CDEs. There

are several legacy SSBICs, but the SBA ceased licensing new SSBICs over a decade ago. If classified as Community Development Entities (CDEs), SBICs could play a vital role in assisting the Internal Revenue Service (IRS) in its goal of fostering increased non-real estate CDE financing to small businesses located in low-income communities. Additionally, NASBIC feels that in order to foster increased investment in low-income communities while ensuring low-income businesses' financing needs are adequately met, any limit on the size of a CDE financing to a non-real estate qualified active low-income community business should be no less than \$1 million. Further, in order to provide certainty to CDEs that are aiming to invest in these non real-estate businesses and are seeking to provide their investors with the NMTC, the IRS should establish a minimum allocation of the Community Development Financial Institution (CDFI) fund for these non-real estate transactions.

Since its establishment by Congress in 1958, the Small Business Administration's (SBA) Small Business Investment Company (SBIC) program has been providing capital to small businesses that would otherwise lack the access from traditional bank source. Prohibited in investing in real-estate interests, foreign entities, or businesses that are adverse to public policy, SBICs are small, highly regulated private investment funds that invest capital exclusively in domestic small businesses.

SBICs are unlike most venture capital funds. Most classical venture funds concentrate their investments in northern California and the New York to Boston corridor (community development venture capital funds being the exception), investing almost exclusively in software, bio-tech, nano-tech, and other industries requiring extremely high levels of education and skills for their workforce, skills that may be scarce in low income areas. SBICs, on the other hand, commonly invest in existing small businesses located off outside of the standard venture footprint, in overlooked industry sectors, and across the technology spectrum. Because the SBIC program's mission is to stimulate the economy by focusing exclusively on domestic small businesses, they do not pass over good opportunities because they are not in the flashiest industries or locations. SBICs invest in deserving small businesses - everything from scaffolding companies in Ohio to providers of physical therapy services in Indiana to light fixture manufacturers in Pennsylvania to a packaging business in Arkansas. For example, two years ago

the SBIC Portfolio Company of the Year was awarded to a janitorial services company that created thousands of jobs, many of which went to people living on Indian reservations and other impoverished areas – jobs that pay above minimum wage, provide benefits, and are located in areas where jobs are scarce.

Most importantly to fitting in with the intent of the NMTC program, as of the end of 7/31/2011, Debenture SBICs have provided capital to 940 small companies in 2011.¹ The average investment size for the Debenture SBIC program for fiscal year 2011 as of 7/31/2011 is \$1,544,477.

The IRS, in its Proposed Rule, is seeking comment on the following question: "Will the proposed rules encourage venture capital investments in non-real estate businesses? If not, how can the proposed rules be modified to accomplish that goal?"

Given that SBICs have demonstrated their capability in investing in non-real estate businesses in low income communities, they have proven they already have the infrastructure in place that would allow them, if classified as CDEs, to provide a significant amount of capital to low-income non-real estate businesses. The benefits of SBICs have been recognized by banking regulators who have recognized SBICs as "promoting economic development" and automatically meeting the Community Reinvestment Act's "qualified investment" tests.² As highly regulated entities with a specific public policy purpose, the IRS can be sure of the type of fund that will be using the tax credits.

Since the NMTC program is seeking to encourage increased amount of financing in non-real estate businesses, the limit on size of loan or investment should be no less than \$1 million. According to the Proposed Rule, the Department of the Treasury and the IRS have discussed setting a limit at \$250,000 per investment or loan. We feel this would greatly limit the ability of qualified CDEs to provide non-real estate businesses with the amount of capital that will be

¹ United States. Small Business Administration. SBIC Program Overview. Washington: SBA, August 5, 2011.

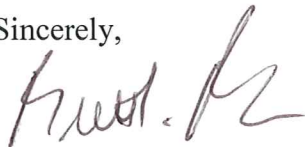
² "Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment, Notice." *Federal Register* 75 (11 March 2010): 11542-11680. Print.

adequate for them to truly progress as a company. If a CDE is stopped from providing more than \$250,000, this amount might be inadequate for many non-real estate businesses' needs and could leave these businesses starving for critical capital instead of focusing on growth. Small manufacturers would be an example of the type of small business that might be denied access to capital. If implemented as discussed, low-income small businesses may not be able to access capital in a way that will allow them to grow their operations and achieve stability and growth.

In May 2011, the CDFI fund announced the opening of the round to request a portion of the \$3.5 billion in tax credit authority available in 2011. Currently, no percentage of this amount is specifically allocated towards real-estate or non-real estate qualified active low-income community businesses. Low income areas were hit hard by the real estate crisis, but the jobs crisis is equally, if not more important. SBICs create jobs and grow employers. To assist the CDFI fund in its goal of having a greater percentage of this authority be used towards investing in non-real estate businesses, there should be a certain amount allocated specifically for this purpose. Since the Proposed Rule indicates that as of 2009, only 35% of participants in the NMTC program invested in non-real estate concerns, we recommend that in order to facilitate sustainable increased investment in these entities, at least 45% of the current and future tax credit authority be allocated for investments in non-real estate businesses.

We thank you for taking the time to review our comments, and would be happy to discuss any of these topics at further length.

Sincerely,



Brett T. Palmer
President