

## CDFI Fund Invites Comments on NMTC Allocation Application

By Alex Ruiz, Managing Editor, Novogradac & Company LLP

On August 3, the Community Development Financial Institutions (CDFI) Fund invited comments from the public concerning the New Markets Tax Credit (NMTC) program allocation application. The CDFI Fund requested comments concerning the application, the application review process, and 10 specific questions about topics related to the application, such as award caps, threshold requirements and minority-entity participation in the program.

### Specific Information Sought

The complete text of the questions can be found in the August 3 *Federal Register* notice, which can be downloaded from [www.newmarketscredits.com](http://www.newmarketscredits.com). The following is a summary of the 10 questions included in the notice.

First, the CDFI Fund asks if the information that is currently collected by the application is necessary and appropriate for consideration for the purpose of making award decisions. Commenters are asked to consider each of the application's questions and tables. The CDFI Fund asks if there are questions or tables that are redundant and/or unnecessary or if additional questions or tables should be added to ensure collection of more relevant information.

Second, the notice asks if the thresholds contained in Question 17 of the application are appropriate, given current economic conditions. If not, the CDFI Fund asks what the criteria should include and if the CDFI Fund should provide a range of flexible product commitments based on a discount of interest rates below market as defined by basis point reductions (or other product flexibilities) or continue to present commitment options in percentage terms.

The third question notes that a community development entity (CDE) is entitled to earn five "priority points" for committing to invest substantially all of its qualified equity investment (QEI) proceeds in businesses in which persons unrelated to the CDE hold the majority equity interest (within the meaning of I.R.C. section 267(b) or 707(b)(1)). The notice says that with respect to the timing of this test, the CDFI Fund has determined that it is to be applied after the initial investment is made, and for the life of the seven-year compliance period (though an exception is permitted if events unforeseen at the time of the initial investment cause the CDE to have to take a controlling interest in the business). The CDFI Fund then asks if it is appropriate that this test is applied after the investment is made, or whether the CDFI Fund should consider applying this test before the investment is made. If the test is to be applied before the investment is made, then the notice asks how the CDFI Fund should treat circumstances in which the receipt of the QEI and the investment in the business are essentially a simultaneous transaction, particularly when the CDE may not have identified any owners prior to the QEI closing.

In the fourth question, the CDFI Fund asks if there are changes that should be made in the way projected economic development is measured. The notice notes that the application currently collects in Table C1 and Table C2 outcome information on the applicant's historic community impacts and projected economic development impacts, respectively, and in Question 30 collects information on projected community development impacts. The notice asks if there are other outcomes/impacts for which the CDFI Fund should be collecting information to ensure effective use of the NMTC. For instance, should the CDFI Fund have a greater

# CDFI Fund Invites Comments

(continued from page 1)

focus on community development outcomes/impacts? Or, alternatively, should the CDFI Fund focus exclusively on economic development outcomes/impacts?

The fifth question asks if Question 56 and Table F1 of the NMTC application capture all sources of compensation and profits that the applicant and its affiliates receive in connection with NMTC transactions. The CDFI fund asks how collection of this information could be improved and how program participants think the CDFI Fund should use this information.

The sixth question notes that in any given application round, the CDFI Fund requires applicants that have received awards in previous rounds to demonstrate that they have been able to raise minimum threshold amounts of QEIs from their prior awards. The notice asks if these current minimum threshold requirements are sufficient or if the CDFI Fund should consider using different measurements, such as the amount of QEIs that have been deployed as investments in low-income communities.

Question seven relates to award cap amounts.

The CDFI Fund generally caps award amounts to any one organization in a given round. In the 2009 application round, this cap was set at \$125 million. The notice asks if program participants think this is an appropriate amount.

The eighth question addresses the April 2009 Government Accountability Office report, "New Markets Tax Credit: Minority Entities Are Less Successful in Obtaining Awards than Non-Minority Entities." The notice asks if there are actions that the CDFI Fund should take in order to increase the number of minority CDE applicants and allocatees. (For more information on the report, please refer to the article in the July 2009 *New Markets Tax Credit Report*.)

Next, the CDFI Fund asks if there are changes that can be made to the application process, or elsewhere, that commenters believe will increase the amount of qualified low-income community investments (QLICs) that support activities that have not traditionally received large scale financing from NMTC investment proceeds.

(continued on page 3)

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# CDFI Fund Invites Comments

(continued from page 2)

And finally, the CDFI Fund asks if there are public sources of data other than the economic distress factors from the most recent decennial census that it currently uses, that should be used to qualify eligible census tracts and to verify, when applicable, that awardees are serving “severely” distressed communities.

## NMTC Working Group to Submit Comments

The NMTC Working Group has provided comments on the NMTC allocation application every year for several years. The Group will be submitting comments to the CDFI Fund in response to this invitation as well. To read copies of previous comment letters, go to [www.nmtc-workinggroup.com](http://www.nmtc-workinggroup.com) and click on the Comment Letters button. To read more about the group’s response to this comment invitation, please see the related article on page 6.

## Details on Submitting Comments

Written comments will be accepted through October 2, 2009. Comments should be directed to: Matthew Josephs, NMTC Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, D.C. 20005; by e-mail to [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov); or by fax to (202) 622-7754.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund web site at [www.cdfifund.gov](http://www.cdfifund.gov). ❖

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