

July 6, 2007

Sent Via Mail and E-Mail

Mr. Matt Josephs
NMTC Program Manager
Community Development Financial Institutions Fund
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Dear Matt:

Members of the New Markets Tax Credit Working Group have joined together to respectfully submit comments and recommendations for your consideration in response to the request for public comments dated May 22, 2007, regarding how, for purposes of the New Markets Tax Credit ("NMTC") Program, the Community Development Financial Institutions ("CDFI") Fund should ensure that non-metropolitan counties receive a proportional allocation of Qualified Equity Investments ("QEIs"). We have organized our comments in order of the questions provided within the request for your convenience. We believe that our recommendations will allow the CDFI Fund to create a system that will achieve the goal of the NMTC legislation regarding proportional allocations to non-metropolitan counties in the most efficient manner for the CDFI Fund and participants in the program. We appreciate the time and effort that the CDFI Fund has taken to request guidance from the public on many of the issues surrounding the new requirements of the NMTC Program.

Allocations of QEIs

We believe that the key principle behind this new rule is to ensure that a minimum portion of NMTC subsidized capital benefits low-income communities in non-metropolitan counties. In order to achieve this goal we believe that the CDFI Fund should endeavor to ensure that a desired proportion of qualified low-income community investments ("QLICs") are made to qualified active low-income community businesses ("QALICBs") operating in non-metropolitan counties. Where the QEI investor is located, where the CDE is headquartered, and the counties (metropolitan vs. non-metropolitan) that the community development entity ("CDE") is principally serving should not be used to determine whether NMTC subsidized capital is benefiting low-income communities in non-metropolitan counties.

We strongly believe that the priority should be based upon the location that QLICs will benefit rather than the location of CDEs. However, if the CDFI Fund does use an approach that awards a minimum amount of NMTC allocations to CDEs that are located in non-metropolitan counties, we recommend that the CDFI Fund state in the Notice of Allocation Availability ("NOAA") the minimum amount of NMTCs it intends to allocate to those CDEs. We believe that that the CDFI Fund should then ensure that this minimum amount is achieved by using the following four part approach. First, award NMTC allocations based on the existing methodology of giving allocations to the highest scoring applicants. Second, review whether at least the minimum

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percentage has been allocated to CDEs that are located in non-metropolitan counties. If the minimum allocation percentage has been achieved, no further steps are needed. Third, if the desired percentage stated in the NOAA isn't achieved, then the CDFI Fund should determine the amount of the non-metropolitan county shortfall and reduce the amount of CDE allocations determined in Step One ratably. Fourth, the CDFI Fund should allocate the additional allocation "freed-up" to the next highest scoring applications from CDEs that are located in non-metropolitan counties, until the "freed-up" allocation is fully allocated. In this manner, the minimum allocation to CDEs that are located in non-metropolitan counties would be achieved, and the integrity of the existing scoring process would be retained, as much as possible.

Proportionality

We recommend that the definition of "proportionality" be based upon the proportion of the U.S. population that resides in non-metropolitan counties (approximately 17.4%). We believe that the NMTC is designed to benefit residents of a community, and, as such, the appropriate allocation measure is using the proportionate number of residents residing in non-metropolitan counties. To the extent that a CDE is making a QLICI in a geographic area, it is important that information about the area be easily obtainable for verification purposes. For this reason, we recommend that the CDFI Fund use the non-metropolitan county definition because of the availability of information and ease of use. To maintain consistency in the application, we recommend changing question 11 in the 2007 NMTC Allocation Application to use the 3 terms metropolitan statistical area¹, non-metropolitan micropolitan statistical area², and non-metropolitan noncore counties.³

We further recommend that proportionality be measured by the total dollar amount of QLICIs made to QALICBs operating in non-metropolitan counties, including those made to QALICBs in non-metropolitan counties whose activities involve targeted populations. As stated above, we believe that the key principle behind this new rule is to ensure that a minimum portion of NMTC subsidized capital benefits low-income communities in non-metropolitan counties. The benefits that a low-income community receives from QLICIs are a function of the dollar value of the QLICI. If proportionality is based on number of transactions, then non-metropolitan communities may not receive low-income community benefits proportional to their actual population. Also, it would be difficult to administer and monitor an approach based on relative number of QLICIs.

¹ The United States Office of Management and Budget ("OMB") defines a metropolitan statistical area as a Core Based Statistical Area associated with at least one urbanized area that has a population of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

² OMB defines a non-metropolitan micropolitan statistical area as a Core Based Statistical Area associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000. The micropolitan statistical area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

³ Non-metropolitan noncore counties are all counties that are not included in metropolitan or non-metropolitan micropolitan statistical areas.

Review Process

We considered numerous approaches to implement the statute requiring that non-metropolitan counties receive a proportional allocation of QEIs. Many of the approaches that we considered could not assure that the goal of proportionate allocations to non-metropolitan counties would be achieved. Rather, these other approaches would likely result in either a significantly lesser or greater proportion of QEIs being allocated to non-metropolitan counties. We agreed on an approach that would allow the CDFI Fund to respect its existing principle of giving allocations to the highest scoring applications, while ensuring that proportionality is achieved. Our recommended approach is explained in detail in the following sections.

As stated below regarding compliance, we recommend applicants list a maximum percentage of its QLICs that it's willing to commit to QALICBs operating in non-metropolitan counties. We recommend the CDFI Fund select a percentage up to the maximum provided by the applicant. In this manner, the CDFI Fund would award the full allocation only to the highest scoring applications. By adjusting the percentage that each applicant must commit to invest in non-metropolitan counties, the CDFI Fund can generally ensure that the minimum proportionality is achieved.

In the example below, the CDFI Fund is allocating \$1 million of QEI authority. It has ranked and recommended allocation amounts for 5 applicants (Column A). The \$1 million of allocation authority is fully utilized by the top three applicants. Based upon its review and the maximum percentage listed by the applicant (Column C), the CDFI Fund will make a recommendation of a percentage of QLICs (Column E) that it will require the three applicants to make to QALICBs operating in non-metropolitan counties. In the example below, the CDFI Fund's recommendations result in 17.4% of the applicants' QLICs being invested in QALICBs operating in non-metropolitan counties (Column G). Based upon our recommendation of using the proportion of U.S. population that resides in non-metropolitan counties (approximately 17.4%), the CDFI Fund will have achieved proportionality in its allocation process using this method. By recommending that applicants provide a maximum percentage, the CDFI Fund has more flexibility in ensuring that it can achieve proportionality without having to skip higher scoring applicants.

	A	B	C	D	E	F	G
	QEI Allocation recommended by CDFI Fund	Q.56 - % of QEIs to be invested in QLICs	Maximum percentage of QLICs to be invested in non-metro counties (listed by applicant)	Dollar amount of QLICs to be invested in non-metro counties (A x B x C = D)	Percentage of QLICs to be invested in non-metro counties (to be listed in allocation agreement)	Dollar amount of QLICs to be invested in non-metro counties recommended by CDFI Fund (A x B x E = F)	Proportionality
1	\$ 350,000	97%	30.00%	\$ 101,850	15.00%	\$ 50,925	17.4%
2	\$ 350,000	95%	18.00%	\$ 59,850	10.00%	\$ 33,250	
3	\$ 300,000	98%	50.00%	\$ 147,000	30.50%	\$ 89,670	
4	\$ 275,000	100%	25.00%	\$ 68,750	10.00%	\$ 27,500	
5	\$ 250,000	92%	20.00%	\$ 46,000	20.00%	\$ 46,000	

If proportionality is not achieved by adjusting the non-metropolitan percentages, then we recommend the CDFI Fund ask the highest scoring applicants to commit to a higher percentage in order to achieve proportionality before considering lower scoring applicants. If proportionality is still not achieved, then the CDFI Fund should consider advancing lower scoring applicants. However, the CDFI Fund should only advance lower scoring applicants that have indicated a minimum commitment of QLICs to non-metropolitan counties. To determine which lower

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scoring applicants to advance, the CDFI Fund should request the next highest scoring applicants that have indicated a commitment to non-metropolitan counties to accept an allocation with the requirement that 100% of the QLICs are to be invested solely in QALICBs operating in non-metropolitan counties. The amount of allocation needed to achieve proportionality by advancing lower scoring applicants should be ratably reduced from the initially recommended amounts for the higher scoring applicants.

For example, assume that the CDFI Fund make its initial recommendations regarding allocation amounts and percentage of QLICs to be committed to non-metropolitan counties, and determines that proportionality isn't achieved among the 60 highest scoring applicants by \$50 million. The CDFI Fund would contact some of the 60 highest scoring applicants to request that they commit a higher portion of their allocation to non-metropolitan counties. If the applicants that are contacted are unwilling to commit to a higher percentage, then the CDFI Fund would then ratably reduce the allocation amounts of the 60 highest scoring applicants by \$50 million in order to allocate it to lower scoring applicants. The CDFI Fund would then consider the next highest scoring applicants. Assume that the next two applicants each requested a \$100 million allocation and are willing to commit up to 25% of their allocations to non-metropolitan counties. The CDFI Fund would contact each applicant. Assume that both agree to accept a \$25 million allocation that is required to be invested solely in non-metropolitan counties. The allocations made to the lower scoring applications achieve proportionality without having to deny allocations to the 60 highest scoring applications.

Compliance

We recommend that the CDFI Fund require each applicant to specify in their NMTC Allocation Application a maximum percentage of its QLICs that it's willing to commit to QALICBs operating in non-metropolitan counties. We recommend that the applicant provide a percentage rather than a dollar value so that the percentage of the allocation that will be committed to non-metropolitan counties doesn't change based upon the allocation amount awarded by the CDFI Fund. For example, an applicant requests a \$100 million allocation and is willing to commit \$25 million to non-metropolitan counties based upon a \$100 million allocation. If the applicant is required to commit to a dollar amount rather than a percentage, and is only awarded a \$25 million allocation, it could be required to invest all of its allocation in non-metropolitan counties. We have provided a sample question below:

Percentage of QLICs to be invested in non-metropolitan counties

Is the Applicant willing to commit to making a percentage of its QLICs to QALICBs operating in non-metropolitan counties?

Yes ____ No ____

If yes, what is the maximum percentage the *Applicant* would be willing to commit?

____%

Describe how this amount was determined: (Maximum Response Length: 3,500 characters)

In addition to the sample question above, we recommend that non-metropolitan counties be identified as a fourth geographic area of high distress in question 29(a) of the 2007 NMTC Allocation Application. Also, we recommend revising question 29(b) so that it includes non-

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metropolitan counties in the top tier of qualifying areas of higher distress. We have included our recommended revisions to question 29(a) and (b) below:

29(a)

4. ____ [NON-METROPOLITAN COUNTIES] Counties not designated as a metropolitan statistical area in accordance with OMB Bulletin No. 04-03 (Update of Statistical Area Definitions and Additional Guidance on Their Uses) and based on 2000 Census data.

29(b)

Will the *Applicant* commit to providing at least 75% of its *QLICIs* (in terms of aggregate dollar amounts) in areas that are either: (1) characterized by at least one of items 1-4 on the above list for each *QLICI*; or (2) characterized by at least two of items 5-16 on the above list for each *QLICI*; or 3) characterized by item 17 on the above list for each *QLICI*?

____ Yes ____ No

If awarded an allocation and the applicant is required to make *QLICIs* in non-metropolitan counties, the CDFI Fund should list in Schedule 1 of the NMTC Allocation Agreement the exact percentage that the allocatee will be held responsible for. We have provided sample wording for the allocation agreement below:

Schedule 1

Section 3.2(k): QUALIFIED EQUITY INVESTMENT USAGE IN NON-METROPOLITAN COUNTIES

Percentage of *QLICIs* to be invested in *QALICBs* operating in non-metropolitan counties: XX %

The Allocatee shall make XX% of its *QLICIs* to *QALICBs* operating in non-metropolitan counties, which may include *QALICBs* whose activities involve Targeted Populations.

ARTICLE III THE NMTC ALLOCATION

3.2(h) If applicable, at such time that the Allocatee has made 100 percent of its *QLICIs* or September 30, 200X, whichever date is earlier, and until the Allocatee redeems its first Qualified Equity Investment related to its NMTC Allocation, the Allocatee shall have made at least 75 percent of the total dollar amount of its *QLICIs* in areas that are (1) characterized by at least one of items (i) – (iv) on the list below for each *QLICI*, (2) characterized by at least two of items (v) – (xvi) on the list below for each *QLICI*, or (3) characterized by item (xvii) on the list below as of the date the Allocatee closed the *QLICI* transaction:

(iv) Counties designated as non-metropolitan in accordance with OMB Bulletin No. 04-03 (Update of Statistical Area

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Definitions and Additional Guidance on Their Uses) and based
on 2000 Census data.

Furthermore, to the extent that the Allocatee makes QLICIs in the form of loans to or investments in CDEs ("Recipient CDEs"), the Allocatee shall require that the Recipient CDE makes loans to or investments in QALICBs in areas that are (1) characterized by at least one of items (i) – (iv) on the list above for each loan or investment, (2) characterized by at least two of items (v) – (xvi) on the list above for each loan or investment, or (3) characterized by item (xvii) on the list above for each loan or investment .


3.2 (k) If applicable, at such time that the Allocatee has made 100 percent of its QLICIs or September 30, 200X, whichever date is earlier, and until the Allocatee redeems its first Qualified Equity Investment related to its NMTC Allocation, the Allocatee shall use at least the designated percent of its QLICIs (in terms of the aggregate dollar amount of the QLICIs), as listed in Schedule 1 to this Allocation Agreement, to make QLICIs in non-metropolitan counties.

We further recommend that the same guidance provided in question 27 of the Compliance and Monitoring Frequently Asked Questions (November 2006) regarding QEI usage as defined in section 3.2 (j) of the allocation agreement be provided for QEI usage in non-metropolitan counties.


Conclusion

We look forward to continue working with the CDFI Fund as it strives to ensure the success of the NMTC Program. It is with that shared goal in mind that we thank you in advance for your time and efforts when considering our comments above regarding allocating QEIs for the benefit of non-metropolitan counties. As participants in the industry, we have experienced the tremendous benefits NMTCs can provide to distressed communities nationwide and more specifically, those is non-metropolitan counties. If you have any questions regarding any of the recommendations or comments made above, please feel free to contact us.

Yours very truly,
Novogradac and Company LLP


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along with the undersigned

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