

NCB Development Corp. Comment on IRS Proposed Regulations (REG-119436-01) on New Markets Tax Credit

Document Date: February 21, 2002

FROM: [jgray@ncbdc.org](mailto:jgray@ncbdc.org)  
IP: 63.106.30.66  
REGULATION:  
New Markets Tax Credit

NCB Development Corporation  
1725 Eye Street, NW Suite 600  
Washington, DC 20006  
February 21, 2002  
CC:ITA:RU (REG-119436-01)

Courier's Desk Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224-0002

Dear Madam/Sir:

Terry Simonette, the Chief Executive Officer of NCB Development Corporation, requests permission to testify at your March 14 hearing. In its 20 year history, NCB Development Corporation and its affiliate, the National Cooperative Bank, have been responsible for directing more than \$1 billion in loans and investments to low-income communities. Following is the outline of Mr. Simonette's testimony requested in the Notice of Proposed Rulemaking published in the Federal Register on December 26, 2001. 66 Federal Register 66376.

Outline of Proposed Testimony Terry Simonette. Brief discussion of NCB Development Corporation and our 20-year nationwide track record for making commercial loans in low-income communities. Services Test, importance of revising it to make sure that businesses based in low-income communities can sell their services outside of the low-income community and still qualify. Allowing the use of other Federal programs in tandem with the New Markets Tax Credit.

Only prohibit investment in a CDE by a CDE to the extent necessary to prevent double dipping. Recommend that the IRS provide a form for businesses to use in calculating the gross income, tangible assets and services provided tests.

If appropriate, Mr. Simonette would also like to address the following issues before the CDFI Fund:

Recommendation that greater priority be given to harder to do deals that investors, if given the choice, are likely to have less interest in. This includes un-collateralized products such as equity investments and business operating capital loans. Eligibility of other companies in a Delaware series if one loses its eligibility We appreciate the opportunity to testify. If you have questions about Mr. Simonette's testimony, you may telephone him at (202) 336-7681 or me at (202) 336-7642.

Thank you.

Cordially,  
/s/  
Jim Gray  
Vice President

FROM: [chart@ncbdc.org](mailto:chart@ncbdc.org)  
IP: 63.106.30.66  
REGULATION: New Markets Tax Credit  
CC: ITA:RU (REG- 119436-01)  
Room 5226 Internal Revenue Service POB 7604  
February 25, 2002

Dear Sir or Madam:

NCB Development Corporation appreciates the opportunity to provide comment on the temporary regulations for the New Markets Tax Credit (NMTC) program. In its 20-year history, NCB Development Corporation (NCBDC) and its affiliate, the National Cooperative Bank, have been responsible for directing more than \$i billion in loans and investments to low-income communities.

NCBDC is one of our nation's oldest and largest nonprofit originators of commercial loans in low-income communities. NCBDC was founded as a 501(c) (3) non-profit affiliate of the National Cooperative Bank in 1982. NCBDC's mission is to provide solutions that empower under-served communities to address the problems poverty creates in America. NCBDC'S solutions are based on the cooperative principles of self-help, democratic control, and open participation.

NCBDC targets community needs nationwide that have not been adequately addressed by traditional approaches. NCBDC focuses its resources on select problem areas including affordable assisted living, economic development, low and moderate-income housing, education, and health care for the poor and uninsured. In its 20-plus years of existence, NCBDC has grown from a provider of high-risk development finance to a multifaceted national organization engaged more broadly in pursuing solutions to some of the most urgent problems facing under-served communities today. First, we compliment the Administration, the Service and the CDFI Fund on the priority you have given to this important program. We see NMTCs as a highly valuable tool in our work to bring capital to low-income communities.

We are pleased to be one of the charter members of the New Markets Tax Credit Coalition. We participate actively in the Coalition and fully concur in its comment letter. We choose to comment separately in order to emphasize certain points we believe are particularly important. Give Further Consideration To The Definition Of The Services Test Section 45(d)(4)(i)(C) measures services performed by employees of qualified low-income community businesses.

This requirement will not allow service businesses located in low-income communities, employing low-income people, to qualify for a tax credit if they perform a substantial amount of their services outside of the low income area. In today's economy, with worker mobility at an all time high, the program would be best served by allowing the greatest degree of flexibility possible regarding the location of the services performed, so long as [low-income people are the primary beneficiaries. Job growth for low wage workers is concentrated in the service sector, the fastest growing sector of the economy. High growth geographic areas are also less likely to be low-income communities.

As a policy, people living in low-income communities should be given every opportunity to participate in and benefit from economic growth, wherever it may take place, and within a full range of economic sectors. We recommend a narrowly tailored change in the services test that will allow the credit to be used by more service businesses.

Specifically, we propose that the first sentence in the Services Test be revised to offer an alternative as follows (proposed new language is italicized): (C) Service performed. At least 40 percent of the services performed for such entity by its employees are performed in a low-income community or 40% of the employees of the qualified active low-income community business are residents of any low-income community. Allow Investments in a CDE By A CDE TO Receive Credits, But Not Double Credits We

recommend that section 45D(c)(4)(1)(B) be amended to clarify that an investment by a CDE in a CDE with an allocation is only prohibited to the extent that a qualified equity investment is used to acquire credits. This would accomplish the Treasury's policy objective of preventing double dipping, while allowing reasonable flexibility for CDEs to appropriately structure their investments.

**Multiple Investments By A Single Investor Should Each Have Their Own Credit Date** We understand that each qualified equity investment has its own credit date. We request clarification that an investor that makes multiple qualified equity investments over several years can receive a return on equity for each portion of equity invested after that portion has been invested for seven years. **Give Further Consideration To Creating Standardized Reporting Forms** We recommend that the Treasury develop simple standardized reporting forms that CDEs can submit annually as part of their tax return. We also recommend that Treasury develop simple standardized forms that CDEs can use in collecting compliance information from low-income community businesses in which they have investments. CDEs would be required to conduct due diligence and certify that the information is accurate.

The form would not create any presumption of compliance. By creating standardized forms, Treasury would create more certainty for investors and reduce compliance costs, making the NMTC program more accessible to small organizations that are stretched by the legal and accounting fees associated with administering a CDE. NCB Development Corporation understands that the request for comments was limited to issues raised in the Internal Revenue Service's temporary regulations, however, we also offer our comments on aspects of NMTC under the aegis of the Community Development Financial Institutions Fund. **Permit Other Government Subsidies To Be Used With NMTCs** We understand the statutory prohibition on the use of NMTCs with other federal tax subsidies and the policy decision not to allow NMTCs to be used with Bank Enterprise Awards (BEAs).

However, we believe NMTCs should be allowed to be used with other government subsidies of other kinds. The NMTC is an important, but shallow subsidy. Just as most of those who have successfully used the low-income housing tax credit by layering it with other subsidies, it will be important to use NMTCs in tandem with other government programs. We request clarification from the CDFI Fund that NMTCs can be used in combination with other state and federal subsidies, other than federal tax subsidies and BEAs. **Clarify That Noncompliance By One Company In A Delaware Series Will Not Affect Compliance with Other Companies In the Same Series.** The guidance issued by the CDFI Fund appears to encourage using a "series" form of corporate organization. We applaud that approach because it could save on the administrative costs of creating multiple corporations.

However, it is unclear whether noncompliance by a single member of a series would taint the certification status of the other parts of that series. For example, if one member of a series failed the "substantially all" test, would investors in the other companies in that series be affected by that noncompliance? We request clarification that investors in other companies in the same series would suffer no adverse consequences from the failure of one member of the series to comply. **Commit To Negotiating Timely Allocation Agreements**

We understand the need for allocation agreements and the limitation on making qualified equity investments before allocation agreements are in place. In order for the NMTC program to work, investors need assurance that the delays that occurred in negotiating closing agreements when the CDFI program started will not recur in the startup of the NMTC program. The best way to assure investors would be for the CDFI Fund to commit in your regulations to negotiating allocation agreements within sixty days of when the awards are announced, excluding any delays occasioned by CDEs receiving the allocations. We see the failure to execute allocation agreements in a timely manner as a potential threat to the success of the NMTC program. **Consider Giving Higher Priority To More Challenging Transactions** Because this is a new program and CDFI will be making two years worth of allocations at once, you already have plenty of challenge for the first year of this program. However, we are concerned that NMTC not become limited to transactions that are easiest to get done, namely community facilities and other real estate-based transactions. We have found that frequently the greatest benefit to low income communities comes from deals that are the least likely to be made by the private sector operating on its own. Therefore, we urge you

to consider giving higher priority to organizations proposing to make investments in business enterprises that may not be real estate based.

Thank you for the opportunity to comment.  
Cordially, Terry D. Simonette  
President & Chief Executive officer  
NCB Development Corporation  
1725 Eye Street, NW,  
Suite 600 Washington, DC 20006