



## NMTC Working Group Update: Certification, Compliance Monitoring and Evaluation FAQ

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The Community Development Financial Institutions (CDFI) Fund issued updated New Markets Tax Credit Certification, Compliance Monitoring and Evaluation Frequently Asked Questions (FAQ) in December 2015. The document included three FAQs related to the new restrictions included in the 2015 Notice of Allocation Availability (NOAA). Questions 42 through 44 of the FAQ address the restrictions on when payments or reimbursements are made from qualified low-income community investment (QLICI) proceeds by a qualified active low-income community business (QALICB) to any debt or equity provider whose capital is used to fund the associated qualified equity investment (QEI).

The NMTC Working Group developed a letter of comments and recommendations in response to those questions. The letter begins with a general comment regarding the inconsistent use of terminology between the NOAA and the questions, and the confusion created about their meaning and the CDFI Fund's intent. While the language in the NOAA is considered the primary source, the language in the questions is very important to the interpretation of the NOAA. Without future revisions to the questions

to make the language consistent, the NMTC Working Group believes that CDEs will struggle getting comfortable about aspects of transactions they are considering investing in with allocation from this round.

In addition to the general recommendation described above, the NMTC Working Group also provided some specific recommendations to the questions. Some of these recommendations included:

FAQ 42 is unclear as to whether it prohibits the reimbursement of costs outside of the 24-month window if costs within the 24-month window were reimbursed with QLICI proceeds that are used, directly or indirectly, to fund the associated QEI. The NMTC Working Group believes the intent of the new restrictions was to only apply to QLICI proceeds that are used directly or indirectly to fund a QEI and that new restrictions in the NOAA do not apply if the CDE can provide documentation that traces the use of QLICI proceeds by the QALICB and show they do not directly or indirectly fund a QEI unless they meet the exceptions allowed in the NOAA and FAQ 42. The concept of tracing is made clear in the guidance in FAQ 43, where CDEs are required to trace the use of

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QLICI proceeds. Language was proposed by the NMTC Working Group to make this clearer.

FAQ 43 requires that the CDE be able to, “trace the use of QLICI proceeds to use by the QALICB at the time of the initial QLICI is made and at least annually thereafter.” Due to the widespread use of a related-party junior leverage lender or similar structure, which makes advances to the investment fund to repay principal on the senior leverage loan, the NMTC Working Group recommended additional guidance that so long as the junior leverage loan advances are not readily traceable to QLICI proceeds, the amortization of the senior leverage loan from junior leverage loan advances would be consistent with the new guidance.

In FAQ 44, the CDFI Fund stated that “...Question 44 supplements and is not in conflict with the CY 2015 NOAA or Question 42 of this document.” While question 44 is obviously after questions 42 and 43, the NMTC Working Group believes that FAQ 44 is meant to clarify or restate the general rule included in the NOAA and that FAQ 42 is an exception to the general rule. Therefore, the NMTC Working Group recommended clarification that FAQ 44 is not in conflict with the

NOAA and that FAQs 42 and 43 supplement FAQ 44, as the general restriction in FAQ 44 can apply even if the exceptions in FAQ 42 do not.

The NMTC Working Group submitted the comment letter to CDFI Fund Director Annie Donovan. This comment letter is available at [www.nmtcworkinggroup.com](http://www.nmtcworkinggroup.com) along with all of the NMTC Working Group’s other publicly available comment letters and recommended practices. ❖

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*Are you an allocatee, investor, lender or QALICB? Would you like to be part of our group and get the inside track on issues affecting the NMTC program? Are you a professional working with NMTC industry participants? Do you have questions about technical program issues with which you are dealing? Do you have a great community impact project struggling with a technical issue and can't move forward until the issue is resolved? Join the NMTC Working Group and add your issues to the agenda and be part of a strong and active voice in the NMTC industry. The NMTC Working Group also considers input from nonmembers when drafting comment letters, recommended practices and other content. For more information about becoming a member or simply submitting input on a NMTC topic, please contact Brad Elphick at [brad.elphick@novoco.com](mailto:brad.elphick@novoco.com).*

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*This article first appeared in the June 2016 issue of the Novogradac Journal of Tax Credits.*

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ISSN 2152-646X