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NEW MARKETS TAX CREDITS

Key Changes to the New Draft Allocation Agreement

TOM FANTIN, CPA, NOVOGRADAC & COMPANY LLP

Q&A

Question: What key changes were made in the draft version of the Community Development Financial Institutions (CDFI) Fund's Allocation Agreement for the 2015-2016 new markets tax credit (NMTC) allocation round?

Answer: On Oct. 21, 2016, the CDFI Fund released a draft version of its allocation agreement for the 2015-2016 NMTC allocation round (the Draft Agreement). The CDFI Fund publishes this document for illustrative purposes and provides boilerplate provisions of the terms and conditions of the allocation agreement that must be entered into between the CDFI Fund and an allocation recipient (allocatee) under the NMTC program. These provisions are subject to further modification by the CDFI Fund.

The following is a summary of the key changes made to the draft agreement:

- The general terms and conditions of the draft agreement now give the CDFI Fund the right to engage in additional due diligence in the event that the CDFI Fund obtains information regarding fraud or mismanagement on the part of the controlling entity, if such fraud or mismanagement by the controlling entity would hinder the allocatee's ability to perform under the allocation agreement Section 3.2 (l) of the draft agreement: Innovative investments, includes the addition of qualified low-income community investments (QLICIs) made in federal Indian reservations, off-reservation trust lands, Hawaiian home lands and Alaska native village statistical areas. Also, Arkansas and Wyoming were added and Alabama and Nebraska were removed from the list of underserved states under this section.
- Section 3.2(h) of the draft agreement, which provides for eligible targeted to areas marked by the specific indicators of higher distress, was expanded to include impacted coal counties to the secondary criteria.
- Section 3.3 of the draft agreement–Restrictions on the use of NMTC allocation–was expanded to include the following new language under paragraph (j) regarding QLICI proceeds used to pay debt or equity providers:
  - ◇"The Allocatee shall not use the proceeds of a QEI to make a QLICI in a Qualified Active

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Low-Income Community Business (QALICB) where such QLICI proceeds are used, in whole or in part, to repay or refinance a debt or equity provider whose capital was used to fund the Qualified Equity Investment (QEI), or are used to repay or refinance any Affiliate of such a debt or equity provided, except where:

- the QLICI proceeds are used to repay or refinance documented reasonable expenditures that are directly attributable to the qualified business of the QALICB, and such expenditures were incurred no more than 24 months prior to the QLICI closing date; or
- no more than 5 percent of the total QLICI proceeds from the QEI are used to repay or refinance documented reasonable expenditures that are directly attributable to the qualified business of the QALICB.
- For purposes of this subsection, refinance includes transferring cash or property, directly or indirectly, to the debt or equity provider or an Affiliate of the debt or equity provider.

- Section 6.9 of the draft agreement was amended to increase the amount of time that the allocatee shall advise the CDFI Fund of material events from 20 calendar days to 30 calendar days of the occurrence of such events, as disclosed.
- Section 9.11 of the draft agreement, amendments, was revised requiring allocatees requesting amendments to use the Awards Management Information System (AMIS) rather than through emails to the CDFI Fund.

Navigating the allocation agreement can be challenging. As such, CDEs should be sure to consult with qualified advisors to ensure compliance.

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CONTACT

CORRESPONDENCE AND EDITORIAL SUBMISSIONS
Alex Ruiz
alex.ruiz@novoco.com
415.356.8088

ADVERTISING INQUIRIES
Carol Hough
carol.hough@novoco.com
415.356.8040

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