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## CDFI Fund Panelists Address Hot Topics at NMTC Conference

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Representatives of the Community Development Financial Institutions (CDFI) Fund addressed new markets tax credit (NMTC) hot topics June 6 at the Novogradac 2019 New Markets Tax Credit Spring Conference in Washington, D.C.

Novogradac's Bob Ibanez moderated the panel, consisting of Christopher Allison, acting NMTC program manager; Trefor Henry, associate program manager in the office of certification, compliance monitoring and evaluation; and Greg Bischak, program manager in the office of financial strategies and research. Below are highlights of the panel discussion.

### **2019 NMTC Allocation Awards Round Opening**

Ibanez: We'd like to get your best sense of timing and so forth [of when the 2019 NMTC allocation round will open].

Allison: We are actively planning for the 2019 round. It will be this summer. It won't be in the next couple of weeks. So it'll probably be mid-to-late summer, but it won't be fall, which I heard someone say. You know, obviously there are things that are out of

our control. We have a clearance process. There's a process we have to follow, but our intention is mid-to-late summer.

### **2019 NMTC Allocation Awards Application Period**

Ibanez: As in the past, do you anticipate that there will be—it's typically been a window of about 60 days to apply.

Allison: Yes, that's been typical. We're not planning to deviate from that. I will say we made a fair amount of changes in 2018. We implemented two new tables in the application. We had gone through public comment on the application and included some of those comments. We were also implementing the application within our Awards Management Information System (AMIS), our new application, award and compliance reporting system. There was a lot of change last round. That took a significant

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amount of effort for our team. I know it took significant effort for the folks in this room. I just want to say, I appreciate you working with us on that. We've taken some of your feedback. We're planning to make some slight tweaks to the application, make guidance clearer and some of the minor technical issues that happened, resolving those. But otherwise, we're not planning any substantial changes to the application.

### 2019 NMTC Allocation Awards Announcements

Ibanez: And considering that I think last year, [the 2018 round] opened in the spring and now we're talking about the summer. It's probably reasonable to think about an award announcement in terms of the winter of 2020.

Do you have a sense of when

*Image: Courtesy of Thomas Van Veen, Documentary Associates Photography*  
**From left to right: Bob Ibanez, Christopher Allison, Trefor Henry and Greg Bischak.**

we might expect the next announcement, obviously sometime, I imagine in 2020?

Allison: Yes. We're looking at spring 2020.

### Equity QLICs in Opportunity Zones

Ibanez: What is the thinking at the CDFI Fund program office in terms of folks that might want to make equity QLICs [qualified low-income community investments] with respect to Opportunity Zones?

Allison: The amendment process is on a case-by-case basis. There's no contemplation right now of any sort of blanket amendment. The NMTC compliance and monitoring FAQs describe that process. It describes the criteria we're looking at in the amendments process. The CDFI Fund will consider the following in approving an amendment request: 1) any requests

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are consistent with the intent of the statute and the IRS regulations and furthers the goals of the program, 2) that it's consistent or not a substantial departure from the business strategy that was proposed in the successful application. And finally, that it's sufficiently narrow in scope that it doesn't disadvantage any of the other allocatees or applicants in that same allocation round. Again, we're not considering a blanket amendment. There is language in the NOAA about generally consistent related to the products that you're offering. I will step back and say as far as opportunity zones and the new markets program, if you're following the guidance, the IRS regulations for New Markets and you're following the guidance that's been released thus far on Opportunity Zones, that's where you should be looking to.

### GAO Report Recommendations Update

Ibanez: GAO came in and had some five recommendations, if you could update people on where we are with all of that.

Bischak: In 2014, the General Accountability Office (GAO) issued a report on the New Markets Tax Credits Program. It was subtitled, 'Better Controls are Necessary.' The report GAO-14-500. Over the course of the last five years, we've been trying to close out the five recommendations that they made in that. Four of the five recommendations are closed out, according to the G A O. The last focuses particularly on the depth of public subsidy and how subsidies may be combined with leverage structures, financing structures. It was one of the principal drivers of the initiation of the report. It also asked that the [Treasury] Secretary determine whether or not any additional guidance was going to be issued. Our piece of that answer is really about collecting data and our attempt here is to minimize the burden in the data collection process. We've prepared a memo to send to GAO. Here's the final set of data points we're considering...We're not asking anyone to calculate anything other than the various estimates of

their tax credits used, other forms of public subsidy to better understand for-profits, nonprofits, their forecast for the annual revenues, which are necessary to look at relative depth of subsidies used on a given project. We try to keep it simple and make sure that the burden is minimal.

### QALICB Disclosure Form

Bischak: As you know, we had a QALICB [qualified active low-income community business] disclosure form. GAO had a couple of questions. One, is it exhaustive and complete? And two, should the CDFI Fund be collecting the QALICB Disclosure Form to double check what people are reporting in CIIS as compared to what was presented to the recipient business of the QLICIs, in terms of the fees and the costs associated with the transaction? Basically, we have no new data points we have to collect. We simply reorganized the form. And the form itself has a different conceptual methodology because we want to start at the top with the qualified equity investment and look to where the QLICIS are going to fund the QALICB, what fees and charges may have been derived. I think the methodology that we're adopting—again, it goes out for public comment—we definitely want your input. We're particularly concerned about making sure that the definitions are mutually exclusive and the categories are as exhaustive as possible. That's not easy. In the process, we've revised our 14 existing data points that we have collecting these data. We have additional data points that have already been added to the allocation tracking system. I think there's clarity in the approach we've taken and you'll see it soon. Exactly when remains to be seen, based on the clearance process.

Ibanez: With respect to the form, in the past that had not been collected. Have any conversations been had internally if that will be something that the Fund collects, at some point in the future?

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Bischak: It will, in fact, have an OMB [Office of Management and Budget] data collection or control number on it. So, it will be collected. It will undoubtedly be a PDF format. It'll be attached and submitted. That's the objective. First the form is provided the QALICB and then in your annual reporting cycle, you'll upload those forms.

### NMTC FAQs

Ibanez: Turning to the latest release back in March for the NMTC compliance FAQs that superseded the May 2017 [version]. If you could give folks a sense of the topics covered in the updated FAQs, are there any particular highlights you'd like to share?

Henry: There's probably three items worth mentioning in the FAQs, in terms of this latest version. We did try to address the issue of small-dollar QLICIs. One of the questions coming into us, some agreements have \$2 million, some agreements now will have \$4 million. How does that all work together? So, we worked with our legal team to put together a few examples in the FAQs to outline how we would look at this. If the QALICB has no QLICIs, then it's simple. You just use the established maximum threshold. If there are QLICIs there already, you have to make sure that you don't exceed the applicable maximum threshold. The FAQs go through some good examples of how to do that calculation. I think that language seems straightforward.

The other update that I think is worth mentioning is affordable housing. A few folks were asking what exactly is a housing unit? There's a definition that specifically says what housing units are and what they're not. Of note, dormitories are not. That's was a question we're getting a lot inquires about. Is a dormitory or student housing considered a housing unit? The other [related] question about that, is in terms of mortgages for the purchase of affordable housing. There was a concern about the specific requirement of a 38 percent debt-to-

income ratio for the buyer. There's concern that if the CDE doesn't have access to that information, how can they certify that it happens. We didn't eliminate the 38 percent debt-to-income ratio but we did say, if you can't make that declaration, at a minimum you can certify that the housing price does not exceed 95 percent of the median purchase price for homes in that particular community. The main reason we kept the 38 percent was to ensure that the buyer is protected, i.e., there isn't an exorbitant amount of income that is going to be used toward a mortgage payment.

The third update I think is worth saying: There's clarifying language for section 3.3J, which pertains to restrictions on paying off investors with QLICI proceeds. There was a slight change in the language between the 2015 and 2017 allocation agreements. It didn't explicitly specify that unaffiliated third-party lenders can be repaid using QLICI proceeds. We updated our guidance to address this clarification.

We try to have annual updates to our FAQs, but it's not always easy. We do try to tie it to the round especially if there's new things in the application or the allocation agreement that need to be clarified. Sometimes, it's just not possible or there aren't substantial changes we may just wait more than a year. In this particular case, we waited between the 2017 and 2019 versions, in part of the AMIS transition. We wanted to have information about what's going on with AMIS.

### Transition from CIIS to AMIS

Ibanez: How has the transition from CIIS [Community Investment Impact System] to AMIS gone from a compliance perspective?

Henry: We transitioned the Allocation Tracking System in May of last year. I think that went well. We were able to migrate the old QEIs into the new environment. We're able to successfully [migrate] the ILR [institution-level report], TLR [transaction-level

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report]. Both are also now in the AMIS environment. That's more recent, in addition to the QEI closeout and subsidy CDE dissolution. So, the good news is a lot of the functionality we had in CIIS is now in one central location where the data can speak to each other. The bad news is that it's a lot of data, so one of the issues we had when we did the initial migration is certain things are just "off". We had to go through this process where we had to re-migrate some of the legacy TLR information into the system. I think most of that has been completed. With the exception of the multi-CDE data points, everything should be in the system. People seem to like the new environment. You don't have to get up at 2 in the morning to submit your reports as most people were doing when CIIS was timing out. Those are positives of the system.

Bischak: Two things we know are high-priority enhancements to the system. Number one, the QEI distribution and disbursement reporting is done through the interface now and it's not the ideal way when you have multiple transactions or distributions to report. We want to create the upload capability.

That's a really important functionality. That's going to be in the Version 2.0 that's going to be released for this September round. We really are aiming to make sure that any change to the requirements gets out to you, we had hoped earlier. If we get it out to you in early August, that'll give you some time to update your software. We're going to try to get it out to you as soon as possible. The other thing is the error correction process. In CIIS, there used to be a formatted, three-tab template you could upload. Now we have a text file that's not as easy to use. The way that errors come back to you is not entirely clear or easy to use. We want to enhance the guidance to make that easier on people to minimize your burden.

In addition, we're still trying to fix a few things in the institutional level report. We almost have that done. There's a little bit of testing going on. Again, if there are problems, please make a service request and we'll be responding fairly quickly. ❖

*Responses have been edited for brevity and clarity.*

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