IRS Comment Letters
Illinois Facilities Fund Comment on Proposed Regulations
(REG-119436-01) Regarding New Markets Tax Credit

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CC: M&SP:RU (REG-119436-01)
Room 5226
Internal Revenue Service
POB 7604
Ben Franklin Station
Washington, D.C. 20044

Dear Sir or Madam:

The Illinois Facilities Fund (IFF) is a statewide nonprofit community development financial institution providing below-market real estate loans, facilities and management consulting to and advocacy for Illinois' nonprofit corporations serving low-income populations. The IFF makes loans with below-market rates (generally between 5% and 8%), conducts its underwriting based on an understanding of nonprofit-financial needs and offers free technical assistance to ensure project success. The IFF further reduces the cost of its borrowers loans by eliminating most costs and fees usually associated with real estate financing. This letter serves as a response to the Internal Revenue Service's (IRS) Advance notice of proposed rulemaking.

The IFF is enthusiastic about the opportunity presented by the NMTC to have a program that is completely aligned with the strategy of real estate investing as a focused effort to improve disinvested neighborhoods. This focus on physical investment in low-income communities is the hallmark of the new markets tax credit and should be maintained in its implementation. Some special exceptions could be made when non-asset based companies have a proven record of serving low income residents through employment or support and training.

Timing:

The regulations should reflect the time required to undertake real estate development, balanced by the complexity of multiple-goal projects in these neighborhoods. This requires an understanding that projects often take a long time to come together, and there is risk that they won't happen at all, even after substantial work has been done.

Given the timing and nature of real estate investments, it is important that "investments" includes cash actually disbursed and contractual commitments to a project. Therefore, once a contractual commitment for a project is made, the cash should be deemed spent and the timing of the investment triggered. Grace periods should be built in from the time a CDE receives a qualified equity investment and the time that the CDE makes a qualified low-income community investment. A 12 month grace period is reasonable. After a project is ready to go and a tax credit allocation has been made to an investor, cash should be committed quickly – 30 days.

Qualified Costs:

In order to successfully plan and execute a real estate project, the property holders often need considerable assistance in financial management, fundraising for capital investments and facilities development or renovation project management. Because this technical assistance can be

determinative of the success of the completion of the real estate project, and therefore the return on investment, these services should be considered "financial counseling and other services", whose value is included in any calculation of the amount of cash invested in a qualified low-income investment.

Issuance costs and management fees should be kept to a minimum – maximum 5%. All other amounts should be treated as "substantially all." Reserves of between 10 and 13% should be included in this "substantially all" calculation.

Qualified Project:

To maximize the amount and effectiveness of cash invested in qualified low-income communities, the determination regarding whether a business is qualified should be made before the investment. In keeping with the centerpiece of the new market tax credit, a rigorous test should be established to ensure that a "substantial portion" of a qualifying business takes place in a qualified low-income community. Emphasis should be placed, and priority given, to businesses having property in, creating jobs or otherwise effecting growth in the economic activity in qualified low-income communities. In the spirit of the NMTC, the statutory requirements should be exceeded in determining gross income from and services to the low-income community. Particular emphasis or priority should be placed on businesses located in low-income communities with local employees or service recipients.

Newly formed entities should have a performance period before qualifying as qualified for an investment. The performance period should be one to three years, sufficient to establish and document an effect on the economic life of a community.

CDEs should be given a 12 month grace period to identify and make legally binding commitments to new qualified investment, in the event that a CDE falls below the 85% investment threshold or another recapture event occurs. This grace period reflects the time-intensive nature of real estate development and will maximize the ability of the new markets tax credit to catalyze new capital investments and increased property values in low-income communities. Finally, repayments of principal and interest should be reinvested into qualified low-income community investments for the first five years of the term of a new markets tax credit. During the last 12 to 24 months of a new market tax credit, the "substantially all" test should be reduced to relieve a CDE from the obligation of reinvesting interest payments as the investment term nears termination.

Other Federal Subsidies:

Any limitations on the new markets tax credit for investments that are subsidized, directly or indirectly, by other Federal tax policies should be directed toward the taxpayer holding the new markets tax credit and not the CDE making the qualified investments.

Thank you for consideration of these comments. I am available to discuss any of these comments and can be reached at 312-629-0060.

Sincerely yours,

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President