

January 5, 2012

Sent Via Mail and E-Mail

Mr. Robert Ibanez  
NMTC Program Manager  
Community Development Financial Institutions Fund  
U.S. Department of Treasury  
601 13th Street, N.W., Suite 200 South  
Washington, DC 20005

RE: Census Data Implementation and Effects on NMTC Projects in Progress

Dear Bob:

On behalf of the members of the New Markets Tax Credit (“NMTC”) Working Group, we have prepared these comments for the purpose of providing the Community Development Financial Institutions Fund (the “CDFI Fund”) our recommendations for transitioning guidelines for NMTC transactions that have not closed prior to the release of the forthcoming 2010 U.S. census data as well as future census data updates. We realize that the 2010 census data is not available at this time but we believe it would be extremely helpful for NMTC Program participants to understand the process the CDFI Fund will implement well in advance of the data being made publicly available so that they can proceed with transactions with this understanding. Absent such guidance some community development entities will likely begin delaying their consideration of certain investments in and loans to qualified businesses until such time as the transition rules are better understood.

More particularly, as the release date of updated decennial census nears, businesses, lenders and investors will be forced to consider whether or not to proceed with potential NMTC transactions that may not close prior to the release date of the updated decennial census data that the CDFI Fund will use to determine whether census tracts qualify for NMTC purposes. The transition from previous decennial census data to the updated decennial census data creates potential problems for NMTC projects in progress that are in a qualified census tract currently but may not be qualified under the updated data.

Previously, before the release of the 2000 census data, the CDFI Fund issued guidance in the 2002 application materials on grandfathering NMTC projects that were not foreseen to close before the release of the 2000 census data. The CDFI Fund also recognized that the 2000 U.S. census data was not available in sufficient detail prior to the time that an applicant submitted its 2002 Allocation Application to the CDFI Fund, and that applicants were relying upon 1990 census data to identify transactions and obtain investor commitments. At the time, the CDFI Fund determined that a NMTC applicant may use the 1990 census data for any proposed Qualified Low-Income Community Investment (“QLICI”): (i) that was closed (meaning all parties were legally committed to funding the investment) by December 31, 2002; or (ii) that was specifically identified in Question #33 of its 2002 Allocation Application and closed by the applicant by December 31, 2003. If an applicant used 1990 census data for a QLICI, it was required to use 1990 census data for the entire period of the specified investment.

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We believe similar guidelines should be implemented to ensure that the transition to updated data doesn't cause a delay in NMTC investments reaching low-income communities. Our recommendations for transitioning data, including the grandfathering of any NMTC projects that will not close prior to the release of the updated data, are summarized here for your review.

We recommend that a transition period exist for transactions that have not closed involving qualified businesses located in census tracts that were qualified according to previously made available census data but have been deemed located in an unqualified tract due to the release of updated census data published by the CDFI Fund. The transition period would allow transactions to close using the data that was available before the release of the new data. In order to take advantage of the transition rules, the CDE would need to follow the recommended rules below:

A CDE may use the previous period's census tract data for any qualified low-income community investment ("QLICI") that is:

a) closed (meaning all parties are legally committed to funding the investment as evidenced by loan and/or equity documents) within 12 months of the month in which new census tract data is released by the CDFI Fund;

or

b) closed (meaning all parties are legally committed to funding the investment as evidenced by loan and/or equity documents) by December 31<sup>st</sup> of the year following the year in which new census tract data is released by the CDFI Fund if the qualified business is specifically identified in a transaction participant's NMTC Allocation Application.

If an applicant uses the previous period's census data for a QLICI, it may use such data for the entire period of the initial specified investment as well as any follow-on investment. Other than in such cases as outlined above, all QLICIs must be made using current census data as provided by the CDFI Fund.

We believe the grace period recommended above takes into consideration the average time frame for a NMTC transaction to close from start to finish. In addition, permitting follow-on investments to borrowers who remain located in a transitioning census tract will provide multiple benefits to CDEs and borrowers: signaling to other capital providers that the CDE still supports the company, ensuring a project can be completed through additional financing or preventing dilution of a CDE's prior equity investment, and allowing the CDE to provide new capital to QALICBs when needed to help those companies survive, maintain employee base and create new job opportunities.

We further believe that this transition period can be implemented for any update in the census data that the CDFI Fund uses, regardless if it's performed every ten years in conjunction with the decennial census or is updated more often using American Community Survey (ACS) data. We recommend that the transition period be consistent for each update to the census data to allow NMTC participants to actively plan which transactions they will pursue.

While the parties involved in NMTC transactions continue to share a common goal of creating an investment that will generate significant community impact in our nation's most distressed low-income

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communities, the forthcoming release of new census data makes it difficult for the parties to plan accordingly without any guidance on a transition period. Without such guidance, we believe that allocatees and investors may avoid high impact projects that are difficult to finance and take a long time to close for fear that the project will no longer qualify when updated census data is released. We believe these recommendations are necessary to preserve this common goal and to provide a smooth transition in implementing updated census data.

We are excited about the positive impact that the New Markets Tax Credit Program is continuing to have on the nation's low-income communities and low-income persons. We further agree, as the CDFI Fund has publicly stated, that there needs to be a transition period when updated census data is released. We appreciate the opportunity to submit our recommendations for transitioning guidelines that grandfather NMTC transactions that have not closed prior to the release of updated decennial census or ACS data. Thank you in advance for your time and consideration. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,  
Novogradac and Company LLP

by   
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by   
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Cc: Greg Bischak