NMTC WORKING GROUP
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March 10, 2017

Mr. Robert Ibanez
NMTC Program Manager
CDFI Fund, U.S. Department of the Treasury
1801 L Street, NW, 6th Floor
Washington, D.C. 20036

SENT VIA EMAIL: ibanezr@cdfi.treas.gov, nmtc@cdfi.treas.gov

Re: Notice and Request for Public Comment – New Markets Tax Credit Program Allocation Application

Dear Mr. Ibanez:

On behalf of the members of the New Markets Tax Credit ("NMTC") Working Group, we submit the following comments, considerations and recommendations regarding the NMTC Program Allocation Application submitted for public comment Jan. 5, 2017. We believe implementing these changes will improve an applicant's ability to effectively respond to questions and complete the tables, as well as allowing the CDFI Fund and its reviewers greater consistency in the reviews they perform.

The members of the NMTC Working Group are participants in the NMTC industry who work together to help resolve technical NMTC program issues and provide recommendations to make the NMTC program even more efficient in delivering benefits to qualified businesses located in low-income communities around the country. Our group includes more than 60 organizations that are allocatees, nonprofit and for-profit community development entities ("CDEs"), consultants, investors, accountants and lawyers.

We have organized our comments by responding first to the changes made in the new questions and tables followed by comments on other aspects of the application that have not changed from the 2015-2016 allocation application. Our comments reflect the work of our member organizations participating on numerous conference calls and reviewing drafts before being submitted. We would be happy to meet with you to discuss our comments in further detail.

Question 17 and the New Table A5

We recommend the CDFI Fund consider not changing Question 17. As proposed, the CDFI Fund will require applicants with a general pipeline of activities to provide a much shorter narrative response in Question 17 and instead provide more details about each pipeline project in the newly created Table A5. We make this recommendation for the following reasons:

A. The application already offers limited space for applicants to explain their mission, investment strategy, and generally, the "why and how" around their deal selection and approach. We believe Question 17 has served as the one narrative that gives an applicant the opportunity to elaborate on these factors. By reducing the character count by 8,000 characters in Question 17, the CDFI Fund would eliminate applicants' ability to describe context, need, linked investment strategies, or other key factors around their pipeline deals that differentiate one applicant from another. In Table A5, an applicant is only given 500 characters to describe a transaction. Similar to the unique ability of the NMTC program to allow investments in myriad types of transactions, Question 17 allowed applicants to describe their projects' in a similar number of ways. We believe an unintended consequence of trying to fit all transactions into a table will be pipeline descriptions that become more of a formulaic, rote exercise and there would be an unintentional incentive for applicants to simply select the "shiniest" pipeline deals that would look the best via a superficial description. We are also concerned that this dynamic would further disadvantage applicants with local service areas, who emphasize depth over breadth in their investment strategies.

B. One of the options in Table A5 is for applicants to state that a particular pipeline project is "Fully Underwritten." In the past three application rounds, the time elapsed between application release and award announcements has ranged from 10 to 13 months. We don't believe that it is generally possible for applicants to identify a high-quality pipeline transaction, fully underwrite it, document it in their NMTC application, wait 10 months for an award outcome, and then spend the three months (absolute minimum but typically longer) from the award date that it would take to close on QLICI financing for that project. No community development project that needs NMTC financing can be sufficiently ready for an applicant to declare it "Fully Underwritten" 14-plus months ahead of the time when the NMTC financing is actually needed. Because the "Fully Underwritten" option exists in the proposed Table A5, we fear that applicants might feel competitive pressure to represent that their pipeline is more fully underwritten than might be practical or possible and perhaps unintended bias on the part of reviewers toward applicants with "Fully Underwritten" examples. We believe that the previous version of Question 17 allowed applicants to more fully describe the underwriting status of each transaction and would be better than a drop down selection that included "fully underwritten." If you maintain the "fully underwritten" option, we recommend that you clarify what it means for a project to be fully underwritten so that all applicants use the same definition. For the reasons noted above, if it's left to the interpretation of the applicant, you will likely receive applications that are inconsistent in their use of the term "fully underwritten."

C. We believe the problem described above would be particularly challenging for applicants who undertake loan pools and serve smaller borrowers. Loan pool CDEs typically wait until they know they have received an NMTC award to invest the substantial time and cost to structure the fund's final terms. Only after those terms are known can a CDE truly underwrite a loan pool borrower. Despite this fact, the new proposed Q17/Table A5 format appears to require would-be loan pool CDEs to have a fully subscribed pipeline 14-plus months in advance of their first loan pool closing in order to fulfill the application requirements. We believe this will potentially discourage applicants from providing smaller dollar QLICI financing.

Based on the above concerns, we would respectfully request the CDFI Fund consider keeping Question 17 with its current structure and character length and not adding the proposed Table A5. If the goal of adding Table A5 is to provide more easily searchable data for future information needs or to meet other objectives of the CDFI Fund, we would request the following edits:

A. Remove the Underwriting Status question;

B. Remove the Small Dollar and/or Revolving Loan Fund option.

C. Update the instructions to clarify that Construction and Acquisition uses are considered Real Estate-related activities while Leasehold Improvements, Equipment, Inventory and Working Capital were all considered Non-Real Estate activities; and

Clarify that pipeline examples that are part of a Small Dollar or Revolving Loan Fund are only to be discussed as one example showing the total amount of allocation that would be used for that fund, and not for each prospective borrower of that fund.

Question 33(e) and Table D2

We request the following changes and clarifications for the new question 33(e), Table D2, and in the Instructions for Table D2. Specifically:

A. We recommend making the following change to the third bullet in the Instructions for Table D2: "The Applicant must include any fee that will be charged to compensate an Unaffiliated Third-Party that will assist the Applicant in ~~managing~~ **operating** any aspect of its NMTC line of business."

B. We request clarification of the phrase "retention of the residual tax credit equity" in the Instructions for Table D2. For example, if the applicant or its affiliates intend to receive repayment of all or part of the "B Note" in a leverage-structure transaction, and then re-lend or reinvest proceeds into loans or equity investments that will remain on the applicant's or its affiliates' balance sheets, does this meet the CDFI Fund's intended definition of "retention of the residual tax credit equity?" If so, we would recommend making that more explicitly clear. If not, we recommend the CDFI Fund provide guidance or examples of retention of the residual tax credit equity.

C. We request clarification of whether the responses in the Type, Source (Payer) and Recipient (payee) columns will be limited to a prescribed set of options or will be open text fields. If there will only be a prescribed set of response options, we request an opportunity to comment on those options to ensure that the majority of situations are able to be accurately described.

We believe applicants may not respond uniformly to the requirement included in the phrase "The Applicant must not include routine transaction costs such as legal and accounting expenses that are not part of the Applicant's fee structure" in the instructions for Table D2. We recommend the CDFI Fund make it clear whether the following are considered "routine transaction costs:"

D. The CDE's recovery from the QALICB of the CDE's direct costs of obtaining audits and tax return preparation assistance from a CPA firm for a subsidiary CDE associated with an individual transaction.

E. The CDE's recovery from the QALICB of the CDE's direct costs for legal representation/document drafting for a specific transaction.

F. The CDE requiring the QALICB, Investment Fund, or other parties to pay fees to an attorney, accountant or other professional service provider that has been retained by the CDE to perform other services not described above such as placement, structuring, financial modeling, consulting, servicing, impact analysis, etc.

Question 18 – Innovative Uses of an NMTC Allocation

We believe the CDFI Fund's efforts to encourage and incentivize applicants to use NMTC Allocation in innovative ways that deepen the impact of the NMTC program on Low-Income Persons and Communities has ultimately benefitted those it intends to serve. However, Question 18 defines "innovation" in a fairly rigid way that we believe has some unintended consequences. We recommend the following changes to Question 18:

A. Non-Real Estate Activities

The CDFI Fund issued supplemental guidance about a recent change to the definition of non-Real Estate Activities in the Combined CY2015–CY2016 Allocation Agreement. The new guidance indicates no portion of any financial note provided by an Allocatee to a QALICB can be used for Real Estate Activities if it intends to be counted towards the Allocatee's commitment to non-Real Estate Innovative Activities. We believe this limitation severely burdens standard lending practices wherein a single lender will make loans to a borrower for both real estate and non-real estate purposes.

Furthermore, this narrow definition of non-Real Estate Activities will likely have several unintended consequences. These include:

1) applicants passing over projects that have a predominant amount of non-real estate expenditures and some limited real estate expenditures because of the inability to meet their commitment to non-Real Estate Innovative Activities;

2) applicants financing only the non-Real Estate portion of a project when they could otherwise have financed a larger project that would have been more impactful for low-income communities; or

3) the structuring of deals with multiple QALICB special purpose entities used for the real estate and non-real estate portions of the project which only serves to drive up transaction costs without generating as much additional community impacts.

We recommend the CDFI Fund revert back to the guidance and definition of non-Real Estate Activities that was in place before the supplemental guidance was released that allowed for QLICIs to fund transaction that included a portion of real estate expenditures and still count towards the Allocatee's commitment to non-Real Estate Innovative Activities.

B. Underserved States

We believe designating investments in underserved states as an innovative activity has had a direct impact in directing QLICIs to those states identified by the CDFI Fund. However, we also believe this has created some an unintended consequence of assigning too much "value" to a project merely due to its location in one of these identified states. We believe one of the benefits of the NMTC program is that it allows CDEs great flexibility in making decisions about projects that are in need of the NMTC subsidy to achieve feasibility. We believe that Allocatees that commit to invest in underserved states may be unintentionally encouraged to invest based upon location first and outcomes and need second. We would recommend that for purposes of evaluating an applicant's commitment, the CDFI Fund would only consider a maximum Identified State commitment up to a certain percentage of the applicant's total allocation. An applicant could commit to a higher level of deployment in these states, but it would not impact scoring or award size.

Question 25(a) and 25(c)

In the most recent (CY 2015) application round, the CDFI Fund issued Supplemental Q&A guidance that appears to be having an unintentional effect on CDEs' ability to finance mixed-use or other projects that incorporated a residential component. Specifically, the Q&A document ("QUESTIONS & ANSWERS FROM CONFERENCE CALLS HELD OCTOBER 27TH AND 29TH, 2015") stated that applicants may only check the box in Question 25c if they also write a narrative on Housing Units in Question 25(a). Separately, the CDFI Fund has formally and informally conveyed to applicants that their score in the important 25(a) narrative is not based on the sheer number or range of impacts that are described, but rather on the quality of each individual impact. When applicants reconcile these two sets of guidance, many that do not have a strong emphasis or strong historical track record of providing NMTC financing to housing-related projects, opted not to provide a Housing Units narrative for fear that it would reduce their overall score in Question 25(a) and render their applications non-competitive. In turn, this meant that these same CDEs did not "check the box" for Question 25(c) and are thus precluded from financing mixed-use or housing projects. Thus, CDEs who are not already very strong in the housing sector are blocked from becoming active in that sector and sponsors of mixed-use or housing-related NMTC projects have found themselves confronted with a far smaller universe of CDEs that could conceivably finance their project.

We believe many CDEs are generalists that will consider a wide range of project types as long as they support impactful community development initiatives. If they cannot consider a project that includes any form of housing, even if that housing is limited and incidental, their missions and impacts are constrained. If CDEs were allowed to "check the box" in 25(c) without being required to write the Housing Units narrative, it would afford them critical flexibility, and would also still achieve the CDFI Fund's stated policy objectives regarding NMTC-financed housing: the affordability restrictions set forth in Section 3.2(k) of the Allocation Agreement would still apply.

Question 25(a)(6) – Community Goods or Services to Low-Income Communities

We recommend the CDFI Fund expand the narrative for "Community Goods or Services to Low-Income Communities" from 5,000 characters to at least 10,000 characters or split this section into multiple impact narratives to account for the diversity and complexity of the types of impacts this category contains. This recommendation would address disparities between the character limitations applicants have to discuss various types of impacts and allow additional room in Community Goods or Services to accommodate the diverse array of impacts, their nuanced nature and recent directives about measuring effectiveness of providers.

Currently, the application provides 15,000 characters for the discussion of jobs-related community outcomes between the creation/retention, quality and accessible narratives. While guidance in multiple locations specifies that scoring is not based simply on the number of outcomes selected, the existence of 15,000 characters for description of jobs-related outcomes allows applicants to explain these more fully and in more detail. We believe this has the unintended effect of signaling to applicants that job creation is a higher priority than the other types of community outcomes. Likewise, applicants whose investment strategies emphasize food-oriented retail can use the combined 10,000 total character limit of the "Commercial Goods and Services" and "Healthy Food Financing" narratives to elaborate on their community impacts in much more detail than is possible for applicants describing their Community Goods or Services impacts.

Second, the Community Goods or Services category encompasses many types of community outcomes that each has their own unique characteristics. For example, a single applicant may have in its pipeline a community health center, a child care facility, a school, and a job training facility. Such an applicant would need to discuss the varied impacts from each of these projects along with its track record of similar projects in only 5,000 characters.

Finally, in the 2015 application round, the CDFI Fund added the requirement that applicants responding to the Community Goods or Services category must address how they will evaluate the effectiveness of the community service providers — a unique and additional requirement that does not apply to the other types of community impacts in Question 25. A 5,000 character narrative is simply not long enough to allow an applicant that invests deeply and meaningfully in Community Goods and Services to provide a full description of their impacts in this category.

Scoring Process

We believe that the CDFI Fund should provide more information related to the scoring process and its preferences in the Application or NOAA. We believe that this quantitative information would allow applicants to better understand the CDFI Fund's allocation priorities and respond appropriately. Although the CDFI Fund has provided TIPs in the Application they do not adequately explain the CDFI Fund's priorities. However, many applicants have tried to infer what the CDFI Fund's priorities are based upon the questions they ask or add in subsequent application rounds.

We also recommend a debriefing letter that includes the score received for each section and overall rankings be sent to each applicant rather than only being sent to applicants that don't receive an allocation. We believe that by revealing more details regarding the scoring process to applicants the administration of the review process will remain manageable for the CDFI Fund while also providing more detailed information to the applicants that will allow them to focus their overall business strategy and application content on the priorities of the CDFI Fund.

Conclusion

We appreciate the opportunity to comment on the NMTC Program Allocation Application, and we also appreciate the level of commitment, dedication and outreach that has been shown and continues to be shown by the CDFI Fund in implementing and managing the NMTC program. We believe that the following comments, considerations and recommendations if pursued and adopted, will increase the effectiveness and efficiency of the NMTC application process. 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 Brad Elphick

Brad Elphick