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April 23, 2024

Mr. Christopher Allison
Program Manager, New Markets Tax Credit Program
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

RE: New Markets Tax Credit Program (NMTC Program) Allocation Application, for the calendar year (CY) 2024–FY 2026 funding rounds; OMB Number: 1559–0016

Dear Mr. Allison:

The members of the Community Development Bankers Association (CDBA) respectfully submit the enclosed comments on the Notice for Public Comment published on February 23, 2024 by the Community Development Financial Institutions (CDFI) Fund seeking comments on the application for the New Markets Tax Credit (NMTC).

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. The majority of our members are US Treasury-designated Community Development Financial Institutions (CDFIs). This means that they have a primary mission of promoting community development and target at least 60% of their total lending and activities to Low- and Moderate-Income (LMI) communities and customers that are underserved by traditional financial service providers. Today there are 196 CDFI certified banks and thrifts and 160 certified bank holding companies. Many of our members are also Minority Depository Institutions (MDIs). Collectively we refer to these banks as "mission-focused banks." These mission-focused financial institutions are a specialized niche within the banking industry. CDBA members serve our nation's most distressed and credit-starved communities and are engines of economic inclusion throughout the United States.

CDBA members appreciate the hard work of CDFI Fund staff to support the CDFI industry. CDBA thanks the CDFI Fund for the opportunity to comment on the NMTC application. We fully appreciate the agency's efforts to continuously improve all of its programs.

To bring NMTC projects to more communities, CDBA supports program updates that help reviewers identify applicants with the likeliest opportunity to effect positive impacts, and provide for a greater range of entities to participate, gain experience, and represent benefits for new communities. In this sense, CDBA supports updates that increase the ability of applicants to speak to their broad community development strategy, performance context and types and characteristics of Qualified Active Low-Income Community Businesses (QALICBs.)

We look forward to working with the CDFI Fund to ensure its programs are responsive to the needs of communities and the CDFI-certified institutions that serve them.

APPLICATION SCORING AND FEEDBACK

CDBA is concerned that the current application and scoring process does not adequately consider long-term community outcomes. We respectfully urge the CDFI Fund to make the following amendments to the NMTC application and scoring process discussed below.

Community Outcomes

Chief among the outcomes for the NMTC program is maximizing impact for communities. We believe consideration should be given to CDEs that will continuously reinvest in their communities. Pursuant to 12 CFR § 1805.100, we believe the NMTC scoring system should be realigned with the CDFI Fund's statutory purpose to *"promote economic revitalization and community development through investment in and assistance to Community Development Financial Institution (CDFIs)."*

Specifically, we recommend that CDEs that are CDFIs receive 10 additional bonus points under the Community Outcomes section. The additional points are justified by the CDFI business model which continuously reinvests in communities, which should result in more weight toward such an applicant's track record.

When NMTC was first implemented, non-CDFIs were permitted to participate in the program due to the concern that CDFIs did not have the capacity to fully deploy the annual allocation. Since then, the Program has been significantly oversubscribed and CDFIs have proven to be highly effective in deploying credits. However, according to the CDFI Fund's CY 2022 award book, only 36% of allocatees are certified CDFIs. In fact, in the last 10 rounds of allocation, CDFIs have never consisted of more than 42.5% of allocatees (CY 2018) and have even consisted of as low as 29.9% of all allocatees (CY 2013). The CDFI field has grown in size, scale and impact since 2000 when the program was created. They are stronger and create impact at greater scale; thus, they should receive additional weight in the selection process.

Application Feedback

The feedback applicants receive on their NMTC application is insufficient. Currently, each applicant is returned the aggregated score of their application and does not receive any information on their performance of individual sections. This "black box approach" leaves applicants unaware of their application's strengths and weaknesses.

To address this shortfall, we recommend that the Fund provide each application with not just a final aggregated score, but also an applicant's score for each individual section. For example, under the Business Strategy section of the application, 25 points are available with an additional 10 bonus points for sections B and E. The Business Strategy section includes 13 questions divided into five parts. We believe that debriefing report should include scores for each question.

In addition, we recommend that applicants have access to the reviewer's comments on each section of their application. Providing specific insight as to why an application was denied would come with no additional burden to the Fund as this information is already collected internally. More importantly, it will allow the applicant to return the following year with a more robust application.

Returning a more specified application score will greatly enhance an applicant's ability to bolster their application in the future. The CDFI Fund has an interest in helping CDEs develop stronger applications as a higher number of robust applications leads to better, more impactful projects in the low-income communities the Fund is statutorily committed to serving.

COMMENTS IN RESPONSE TO SPECIFIC PROPOSED CHANGES

Part I: Business Strategy

Question 18 – Additional Details on QALICB Due Diligence

Question 18 requests more information on QALICB investments than is currently required. The new question refers to applicant efforts to determine "QALICBs' ability to remain financially viable and operational." The volume of data required to be collected is challenging in the time available.

Given the volume and detail of information already required, we urge the CDFI Fund to provide applicants flexibility in documenting and analyzing "the likelihood of project completion related to the asset(s) financed with NMTC," and the "management team's ability to effectively undertake and manage the QALICB." This flexibility should apply at least within the first round after any changes are effective, and until the capacity of applicants to conduct and document this analysis are fully understood.

Question 19 – Innovative Investments

CDBA supports the CDFI Fund's 2021 addition of "Investing in Unrelated Minority-owned or Native American-owned or controlled CDEs that do not have NMTC Allocations" to the list of innovative uses of an NMTC allocation. While it has not been suggested that this change be adjusted, it is important to emphasize the value in this provision to increasing the participation of historically marginalized communities in the NMTC program as CDEs.

Part II: Community Outcomes

Question 25 – Expanded Examples of Areas Served

CDBA commends efforts to boost NMTC activity in areas historically underserved by the program, including Native communities and U.S. territories, as expressed Question 25. CDBA strongly supports the addition of "Health Professional Shortage Areas . . . to the extent QLICI activities will support health related Services." Other new areas include "Federal Native Areas," areas of "Deep Distress,"[1] "High Migration Rural Counties" and U.S. Territories. In principle, these are positive additions which should encourage expanded investments in areas of economic distress.

However, we echo concerns expressed by the New Markets Tax Credit Coalition (the Coalition). The definition of areas of "Deep Distress," which is focused on a closely filtered set of census tract, should be carefully reviewed. For example, while census tract data works well for the NMTC program as a whole, (as the overall number of tracts smooths the data,) analysis by the Coalition reveals that by narrowing the number of tracts to create the Deep Distress category, idiosyncrasies in the data become apparent.

[1] "Census tracts with poverty rates greater than 40%; OR Census tracts, if located within a Non-Metropolitan counties, with a median family income that does not exceed 40% of statewide median family income, or, if located within a Metropolitan Area, have a median family income that does not exceed 40% of the greater of the statewide median family income or the Metropolitan Area median family income; OR Census tracts with unemployment rates at least 2.5 times the national average."

For example, in the Coalition's analysis, Connecticut has the 7th lowest poverty rate in the nation (9.78%), but nearly one-third (32.6%) of its NMTC-eligible census tracts would qualify as Deep Distress. Conversely, Oklahoma has a poverty rate of 15.27%, but only 11.8% of NMTC-eligible tracts would be eligible as Deep Distress.

Census tract data and local area estimates of unemployment are blunt tools for determining the needs of rural communities, and we share concern that the focus on "Deep Distress" may risk incentivizing different outcomes than those desired. We encourage the CDFI Fund to carefully consider the NMTC's analysis, and revisit the question of <u>how</u> to achieve the desired outcome of incentivizing investment in areas of genuine "Deep Distress."

Question 26 – Measuring Community Development Outcomes

We share the Coalition's concern that the application's increased focus on metrics may unintentionally discourage applicants from financing community facilities. For example, it is more challenging to describe metrics for measuring social service outcomes than to outline job creation metrics. This is particularly true with multi-component community facility projects with co-located social services.

We believe the NMTC program must remain flexible and responsive to community needs. These needs vary widely, as do the projects that meet those needs. For some communities, priorities may include projects that produce outcomes with readily available metrics, such as investments that create manufacturing jobs. Other communities may have priorities that are more difficult to measure, such as renovations to a vacant building that will accommodate a range of services, such as daycare providers or grocery stores.

We join the Coalition in suggesting the CDFI Fund remove the metrics requirement for Community Goods and Services. We recommend instead that the CDFI Fund reintroduce a narrative section ("Other Community Outcomes") for applicants to describe new or innovative approaches to meeting community challenges that might not fit with narrow metric and benchmarks.

Question 27 (b) - Lack of Data Available on Needs of Native Communities

New phrasing in Question 27 of the draft application could unintentionally disadvantage applicants whose primary mission is to serve Native communities. This question refers to the applicant's use of data to demonstrate community needs. This language reads (Emphasis added):

> Describe . . . "How the Applicant *uses data* to demonstrate the needs of the communities in which the Applicant intends to invest."

Unfortunately, Native communities are often excluded from datasets in federally funded economic research. This is partially due to geographic boundaries of tribal Nations often not matching non-Tribal political boundaries such as counties and municipalities on which much research is based. For example, this deficit, and its effects, were highlighted by the CDFI Fund itself in a report commissioned August 2023 for the New Markets Tax Credit Program Native Initiative, *Community Economic Development in Indian Country*:

> "The lack of accurate, relevant, and precise subject-specific data undercuts the efforts of tribes and Native organizations to promote and sustain community economic development activities. This data is not only necessary for supporting internal community economic development

> planning efforts, but it is also essential for allowing lenders and investors to assess the opportunities and risks associated with bringing capital to Native lands." [2]

As a result, many Native communities have produced their own internal data describing economic challenges and opportunities, while others have partnered with research organizations to publish such reports. Other communities that have not produced such reports are still in the best position to accurately describe their economic situation in qualitative interviews.

We urge the CDFI Fund to expand its definition of "data" to include internal Tribal data as well as qualitative data provided by Tribes to CDEs as part of the application process. In order to ensure a more holistic understanding of what constitutes "data" for Native-serving CDEs, we propose the following alternative language (Change in italics):

> "How the Applicant uses data *including qualitative and quantitative data provided by a Tribal organization or through interviews in Native communities* to demonstrate the needs of the communities in which the Applicant intends to invest."

We further request that the application FAQ makes it clear that such Tribal data are sufficient to respond to the question and that application reviewers are given instructions to grant equal weight to the holistic definition of data we propose in this letter. These changes would help ensure equal access for applicants dedicated to serving Native communities.

Question 27 (b) – Examples of Low-Income Community Involvement in Past Investment Decisions

Question 27 (b) will require applicants to review past projects and determine the extent of Low-Income Community Involvement during early stages of past investment decisions.

Given the narrow definition of Community Involvement, we urge the CDFI Fund to be more flexible in its evaluation until the impacts of this change are fully understood, and the full range of ways in which projects engage with low-income communities can be viewed holistically. A too narrow approach to evaluation engagement may unintentionally exclude legitimate examples of stakeholder engagement.

Question 28 (b) – Restriction of Organization Table (Table C2) to Certain Personnel

Question 28 (b) limits an applicant's personnel that may be identified in Table C2 to "personnel to individuals in leadership positions that will have a direct role managing the requested allocation."

Restricting table C2 only to "leadership" will be a disadvantage to smaller CDFIs where non-leadership staff have a significant role in compliance and management of the allocation. This restriction may not accurately reflect the capacity of smaller CDFIs, making it appear they have less capacity than in reality.

We urge the CDFI Fund to allow applicants the option to describe their organization capacity by including non-leadership staff members who handle the ongoing servicing and application process, as long as they have a direct role.

Questions 29 (a) and (b), 30 and 31, Exhibit E – Limitation of Characters

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[2] "Community Economic Development in Indian Country", CDFI Fund, Urban Institute, and Big Water Consulting, August, 2023, www.cdfifund.gov

The revised application proposes limiting the characters available to answer narratives in Questions 29, 30 and 31. It also reconfigures Tables E2 and E3 from the current application into a single table. Narrative space is valued by applicants as an opportunity to highlight important context, impact and other information that might not be captured elsewhere. We strongly urge the CDFI to retain the current space limits in the current application, and not reduce the character count limits on any of the current questions. We also request that the CDFI Fund restore narrative space lost in the consolidated table E, by allowing for a narrative section to support Applicant's answers to Q 35 ("Track Record of Raising Capital.")

Question 36 (a) – Investor Letters for CDEs with Past Allocations

We request clarification on the circumstances in which a CDE with a past allocation would be required to provide investor letters. The notes for Q36(a) suggest that an applicant must submit documentation demonstrating proof of the interest of the equity investors and debt providers if it intends to secure investments from partnership entities that will leverage non-Equity Investments (e.g., debt, grant dollars) from outside of the partnership to increase the tax credit yield for members of the partnership. Please confirm that such documentation is only required pursuant to Q37(a), if an applicant received QEIs from investors in amounts less than the Allocation request in Question 1 between January 1, 2019, and the release date for the NMTC Allocation Application (specified in the NMTC Application FAQ document).

Table A5

We suggest adding "Childcare" as a business type.

Glossary – Revisions to the Definition of Disadvantaged Business

The CDFI Fund proposes modifying the definition of Disadvantaged Business to no longer include "a business that has inadequate access to investment capital." This is a dramatic change that would significantly restrict the scope of what constitutes a Disadvantaged Business, adversely affecting CDEs/CDFIs committed to supplying capital to businesses lacking sufficient access to financing. We strongly urge the CDFI Fund to reconsider this proposal. If the CDFI Fund believes the old definition is too broad, we join the NMTC Coalition in suggesting the following revision: "a business that has inadequate access to conventional investment capital."

We also suggest increasing the maximum revenue level. Very few NMTC-financed businesses have revenue under $100,000. Even through a loan pool structure, the depth of the NMTC subsidy is rarely adequate to support businesses of that size. A better definition would be "A business with annual revenues that do not exceed $500,000 at the time the loan or investment was closed."

We also urge the CDFI to delay implementation of the definition change, and grandfather the original language into the CY 2024 allocation application, to allow CDEs that focus their efforts on small business sufficient time to modify their strategies and remain competitive.

Conclusion

We thank you for the opportunity to comment and look forward to continuing to work with you on these important matters. If you have questions, please contact Jeannine Jacokes, Chief Executive Officer, at 202-689-8935 ext. 222 or jacokesj@pcgloanfund.org, or Brian Blake, Chief Public Policy Officer, ext. 225 at blakeb@pcgloanfund.org.

Sincerely,

Jeannine Jacokes
Chief Executive Officer