February 6, 2012

Mr. Bob Ibanez
Manager, New Markets Tax Credit Program
CDFI Fund, Department of the Treasury
601 13th Street NW Suite 200 South
Washington, DC 20005

Sub: FR-Vol. 76, NO. 215

Dear Mr. Ibanez:

The National Community Investment Fund (NCIF) along with its partner, the Community Development Bankers Association would like to express our support for the comments provided by both the NMTC Coalition and the Community Development Financial Institutions Industry (as provided by IFF) regarding **FR-Vol. 76, NO. 215**, which seeks suggestions and comments germane to the mission, purpose and implementation of the NMTC Program.

We would like to offer additional commentary to ensure that the NMTC program continues to meet its objectives by maximizing its impact in economically distressed areas. These additional comments are being offered with the intention to increase the ability for certified CDFI Banks and mission-driven Minority Depository Institutions (MDIs) to participate in the NMTC program.

NCIF is a three-time allocatee in the NMTC program and is the largest investor in the CDFI Banking sector (with investments in 19 out of the 87 certified banks) and hence has both a solid understanding of the NMTC program and the needs of the CDFI and mission-driven MDI Banks.

CDFI Banks and mission-driven MDI Banks are long-lasting, anchor institutions that strongly contribute to the economic development of low income communities. They leverage equity investment eight to ten times with deposits, resulting in increased lending to small businesses, entrepreneurs, and families in low income communities. Yet their access to capital is significantly constrained. NCIF would like to submit these comments to support the program and the CDFI banking sector.

<u>About National Community Investment Fund ("NCIF"; www.ncif.org)</u>
NCIF is a national non-profit private equity trust fund set up in 1996 to invest capital in CDFI banks around the country. It has $150 million of assets under management including $128 million in NMTC allocations. Over the years, NCIF has lent to or invested capital in 44 financial institutions (banks and credit unions) that have generated approximately $5.4 billion in loans in LMI communities. Today NCIF is the largest investor in the CDFI banking community with investments in 19 banks out of a total of 85 certified CDFI banks; 15 of which are MDI institutions. Apart from

investing, NCIF helps these financial institutions raise deposits from mainstream and socially responsible investors. It also runs 'The NCIF Network' which is a national network of CDFI and MDI banks along with some low income credit unions. This network provides best practices to strengthen and grow the sector, thereby aligning NCIF's mission with that of the CDFI Fund. Finally, NCIF pioneered its Social Performance Metrics that are now being used by some investors and other stakeholders for supporting CDFI and other banks.

As a social investor, NCIF has extensive knowledge of the needs of, and the work done by, the CDFI/MDI banks and their investors as well as expectations of regulators relating to "safety and soundness" and consumer protection. Saurabh Narain, was a member of the Consumer Advisory Council of the Federal Reserve Board (2008-2010) and the Minority Depository Institution Advisory Council of the Office of Thrift Supervision (2009-2011).

About Community Development Bankers Association ("CDBA"; www.cdbanks.org)

CDBA is the national trade association of the CDFI Bank sector. We are the voice and champion of FDIC insured banks and thrifts with a mission of serving low and moderate income communities particularly in matters. Our membership is comprised solely of banks and thrifts U.S. Treasury Department certified as Community Development Financial Institutions (CDFI) and is the place where CDFI banks with a strong commitment to mission gather to share best practices.
We focus on educating Federal policy makers and key stakeholders about the important work of CDFI banks and their needs. Our members serve urban and rural communities that lack access to credit and are not adequately served by the traditional banking industry. Our members deliver credit and technical assistance to borrowers in a responsible manner that fits their needs and long term ability to repay. Our work helps low- and moderate income customers build wealth and assets and revitalize communities.

About CDFI & MDI Banks

CDBI banks serve the toughest markets in the country and are affected by the growing wave of foreclosures and deep recession in these areas. As is evident from Table 1 below, the median home lending by CDFI banks in low- and moderate-income areas (Development Lending Intensity-HMDA[1]) is over 3 times that of the median home lending by all banks in the country (54.22% vs 15.89%); similarly the median number of branches located in these areas (Development Deposit Intensity[2]) is 4-times that of all banks (66.67% vs 16.67%). Similarly, MDI banks have Development Lending and Development Deposit metrics that far surpass the scores for other peer groups. As this data indicates, CDFI banks and mission-focused MDI banks continue to direct the largest percentage of their lending and branch activities in the country's most distressed and underserved communities.

[1] Development Lending Intensity –HMDA ("DLI-HMDA") is the percentage of HMDA reported loans purchased or originated in LMI areas as a ratio of total HMDA reported loans purchased or sold by the institution during the year. HMDA data used in this analysis is as of 12/31/10.
[2] Development Deposit Intensity ("DDI") is the percentage of branches located in LMI areas as a ratio of total branches of the institution. Branch data provided by FDIC is as of 6/30/2010.

Table 1: FY2010 NCIF Social Performance Metrics for Bank Subsectors (Median)

Peer Group	#	Median DLI-HMDA	Median DDI
CDFI Banks	85	54.22%	66.67%
Minority Depository Institutions (MDIs)	199	44.63%	50.00%
All Banks	7,666	15.89%	16.67%
"Top-Ten" Banks	10	14.97%	31.20%
< $2 BN Banks	7,312	15.94%	14.29%

Please do not hesitate to contact us if you have any clarifications.

Saurabh Narain
Chief Executive
National Community Investment Fund

Jeannine Jacokes
Community Development Bankers Association

Comments

Our specific responses to the Request for Comment are given below but we want to make some general comments. As stated above, we fully support the comments provided by the NMTC Coalition and further submit that the comments to achieve maximum impact in low income communities, the CDFI Fund must strive to better include CDFI and mission-driven MDI Banks in the program.

Q1. Low-Income Communities and Areas of Higher Distress - The NMTC Program statute requires that NMTC investments are made in low income communities, including target Populations, and through the application and regulation process regulations and the CDFI Fund areas experiencing greater economic distress, the CDFI Fund provides an opportunity for applicants to score more highly by committing to making investments in Areas of Higher Distress.

The CDFI Fund has relied upon decennial census data in determining whether census tracts meet these qualifications, and deems as eligible those census tracts, which meet the statutory criteria, provided that the decennial census data shows that the ''population for which poverty is determined'' is greater than zero.

a) *Should the CDFI Fund consider using different standards or methodologies for determining whether census tracts meet the statutory definition of low-income communities?*

We have no additional comment apart from emphasizing the comments made in the NMTC Coalition letter that it is important to remain current in its analysis of areas of distress.

b) *In the allocation award process, should the CDFI Fund increase the commitment percentage from 75 percent of investments made in Areas of Higher Distress in order to receive the highest scores for this sub-section of the Community Impact score? Should the CDFI Fund include additional distress indicators, alter or eliminate any existing indicators?*

We believe that the CDFI Fund may wish to put a minimum threshold of 75% in areas of high distress without adding additional points for increasing the percentage. Location of the project is only one indicator of community impact and applicants need to be able to differentiate themselves with non-quantitative factors as well.

Q2. Treatment of Certain Businesses The NMTC Program statute provides the definition of a Qualified Low-Income Community Business (QALICB), including certain types of businesses that cannot qualify based upon the nature of their operations (i.e., any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises).

(a) Are there certain other types of businesses that should be discouraged or barred from receiving NMTC investments? If so, what types of businesses, and what administrative means could be utilized to discourage such investments?

We have no additional comment apart from emphasizing the fact that the NMTC program has benefited from its flexibility that helps developers meet the needs of the local communities. No additional kinds of businesses should be barred structurally.

(b) Should the CDFI Fund provide additional opportunities in the allocation award process for applicants to score more highly by committing to invest in certain business types over others (e.g., small business or rural investment, operating businesses vs. real estate projects, etc.)?

We strongly recommend that the NMTC program to provide additional opportunities in the allocation award process by:

I. Giving CDFIs – and especially CDFI Banks - higher scores, especially in the Community Accountability section, for their inherent and mission-driven commitment to invest in businesses located in hard-to-serve low-income communities;
II. Giving bonus points or higher scores to CDFI controlled CDEs.

We also recommend that the higher scores only be given to CDFI institutions (including banks) that have been certified for at least two to three years. This 'seasoning' period ensures that institutions demonstrate their track record prior to receiving any preferential treatment. In addition, this 'seasoning' period limits the opportunity for opportunistic, non-mission oriented institutions to seek CDFI status with the explicit goal of seeking subsidy.

To ensure that even 'seasoned' CDFIs maintain their mission focus, we recommend that the CDFI Fund more actively monitor the activity of certified CDFIs to ensure that the institution continue directing a majority of their products and services to low income communities. The Fund can use its own CIIS data or other industry standard methodologies like the NCIF Social Performance Metrics for determining this.

(c) Are there specific administrative or regulatory changes that would facilitate the financing of specific types of businesses while preserving public policy objectives and safeguards?

Award Bonus Points to 'Seasoned' CDFI Banks, 'Seasoned' CDFIs in general and CDFI Controlled CDEs

Yes, we recommend allocating a higher score or bonus points to 'seasoned' CDFIs and CDFI controlled CDEs due to their inherent and mission driven commitment to invest in businesses located in hard-to-serve low-income communities, including those located in rural areas.

Expand the Definition of QALICB to Include 'Seasoned' CDFI banks and 'Seasoned' CDFIs, in general

When a non-CDFI CDE wants to use its NMTC-derived capital to invest in a CDFI CDE, it cannot underwrite the CDFI since it is a financial institution and hence does not meet the definition of a QALICB. Consequently, every project financed by a CDFI must be independently confirmed as a QALICB that is NMTC-eligible – a costly and duplicative requirement given that mission-driven, certified CDFIs must lend to projects benefiting low income places and populations. By treating CDFIs as QALICBs, the Fund would remove a layer of concern for investors and create an incentive for non-CDFI CDEs to invest in CDFIs that are currently unable to use NMTC equity proceeds.

In addition, by allowing CDFI Banks to qualify as QALICBs, the CDFI Fund can maximize the leverage of the NMTC programs finite resources.

Each CDFI Bank is able to leverage NMTC equity up to ten times with customer deposits. As a result, $1 of equity invested becomes $11 of loanable funds directed towards small businesses, nonprofits and individuals in LMI communities. This inherent leverage in the case of CDFI Banks helps in creating a "safe harbor" for the CDFI Fund since the question of 85% of the funds being deployed in investment areas becomes moot - it is now a multiple.

Q3. Community Accountability - The CDFI Fund has requested comments on the current standards used to measure and monitor the community accountability of CDEs. Specifically:

a) Should the CDFI Fund increase the community accountability standards for an entity to qualify as a CDE?

Yes. We supports the NMTC Coalition recommendation that that the CDFI Fund increase the percentage of Low-Income Community Representatives required on a CDE's board (governing or advisory) from 20% to 40% in order to encourage additional community engagement. We suggest that any changes made to the community accountability requirements of a CDE be made in the CDE certification application rather than through the NMTC allocation application. We recommend that any changes to this requirement be applied prospectively, or applied along with reasonable transition period in place to provide existing CDEs with time to adjust their boards as needed.

b) *Should CDE community accountability standards differ for CDEs depending on whether they use governing or advisory boards to demonstrate accountability?*

National CDFI/CDEs, like NCIF, have advisory boards or governing boards that have a national perspective. It will be expensive, impractical and unnecessary to have local advisory board members since the location of the projects can change.

c) *Should the CDE be required to have Low-Income Community Representatives approve of investments made by the CDE?*

The NMTC allocation agreement is a contract between the Federal Government and the CDE allocatee which clearly assigns the CDE with the responsibility to approve QLICIs. Therefore, a CDE's governing board or other officers should maintain final approval of all NMTC investment decisions and be held accountable by the CDFI Fund and investors. We believes that Low-Income Community Representatives on a CDE's board, whether governing or advisory, should have input on all investment under consideration and the potential community impacts of such investments to ensure that investments meet the goals set forth in the CDE's allocation application and is in accordance with the allocation agreement. However, while a CDE can elect to have Low Income Representatives serve on its governing board a CDEs should ***not*** be required to do so.

d) *Should CDE activities be required to be coordinated with community stakeholders? If so, how should this coordination be conducted and demonstrated?*

Regulating coordination with community stakeholders can be incredibly difficult. The best test to determine if a CDE is coordinating its activities with community stakeholder should be its certification and seasoning as a CDFI. As mission-driven entities, CDFIs are committed to serving low-income communities and coordinating their activities with community stakeholders.

Additionally, we recommend increasing the percent of community stakeholder requirement for the board or advisory board of a CDE from 20 percent to more than 50 percent, or the majority of members. NMTC legislation clearly states that community representation is an important mechanism to ensure that the use of the NMTCs is primarily directed to benefiting the community. By increasing community stakeholder representation within the board or advisory board of a CDE, the potential for the NMTC benefits to be channeled to the appropriate community stakeholders is increased.

e) *Should the CDFI Fund implement measures to increase the transparency of CDE activities?*

As mentioned previously, we recommend that the CDFI Fund more actively monitor the activity of certified CDFIs to ensure that there is an ongoing mission focus for these institutions.

f) If a CDE has a Controlling Entity, should the CDFI Fund require that the Controlling Entity of the CDE also meet community accountability requirements? If so, what requirements should be applied?

We recommend that controlling entities be required to meet community accountability requirements through the structure of the community advisory committee or similar body, made up of potential investees and representatives of low-income communities. As such, we also recommend that the highest scores for community accountability should be reserved for cases in which both the CDEs and their Controlling Entity both meet community accountability requirements.

g) Should CDE community accountability requirements differ for allocatee CDEs and non-allocatee CDEs?

We have no additional comment but suggest that we have consistent standards.

h) Are there other ways in which CDEs can enhance their accountability to the Low-Income Communities in their respective service areas?

We recommend that priority points be awarded to 'seasoned' CDFIs and mission-driven MDIs and other CDEs that can demonstrate accountability to their low-income communities throughout their corporate structure and including their parents. Given that a high level of community accountability is inherent within the mission and statutory requirements of the CDFI certification process—as well as within maintaining CDFI certification—we recommend that the highest scores for community accountability be reserved for CDFI CDEs.

4. Transaction Costs - The CDFI Fund has requested comments on whether additional rules, restrictions, and requirements should be imposed related to fees and expenses charged by CDEs.

Specifically:

(a) Should there be greater disclosure of (and perhaps limitations on) the fees and other sources of compensation and profits that NMTC applicants propose and NMTC allocatees and their affiliates charge to or receive from the borrowers, investors or other parties involved in NMTC transactions?

(b) Should such information be made available by applicants and allocatees directly or through the CDFI Fund to the public or remain excluded from disclosure as proprietary business information?

(c) *Should the CDFI Fund provide an opportunity for CDEs that commit to limit fee and other forms of compensation to earn a higher score in the allocation award process? If so, please provide specific standards that could be used.*

(d) Are there specific administrative or regulatory changes that would reduce transaction costs while preserving public policy objectives and safeguards?

We have no additional comment. We would strongly support the Fund to evaluate the costs being charged by the CDEs and other NMTC professionals associated with the program, with the intention of managing them.

A CDFI's mission to serve Low-Income Communities also translates to a commitment to ensuring as low transaction costs as possible. CDFIs are required to balance fees with social impact and overall benefit to the communities they serve; the result is often transaction fees that are among the most reasonable required by CDEs. Additionally, fees retained by CDFIs are further recycled for fulfillment of the mission. Analysis can also be focused on fees paid to external professionals who are not necessarily vested in the success of the program.

Providing a preferential treatment to CDFI Banks (and other CDFIs)as a QALICB will also enable them to efficiently deploy credits to investees or borrowers of all sizes and types, without the addition of expenses associated with verifying the qualifications of the project, and without many of the legal hurdles related to meeting the requirements of the IRS code for real estate investments.

5. Evaluation of Financial Products - The CDFI Fund provides an opportunity for allocation applicants to earn a higher score in the Business Strategy section if the CDE commits to provide equity, equity equivalent financing, debt with below-market interest rates, or debt with certain flexible terms. The CDFI Fund welcomes comments on the CDFI Fund's evaluation of the quality of an applicant's financial products. Specifically:

(a) Should the CDFI Fund use a defined Effective Annual Percentage Rate (EAPR) for purposes of the application and compliance measurement? Should the CDFI Fund alter the flexible rates and terms question to base the scoring preference on a basis point reduction from a market benchmark determined by the CDE (or a standard metric such as LIBOR) instead of a percentage? Should the benchmarks be raised?

(b) Are there specific administrative or regulatory changes that would facilitate the provision of specific financial products while preserving public policy objectives and safeguards?

We have would like to emphasize the value of the NMTC program and its potential to capitalize the CDFI Banking and mission-driven MDI sector. In the current market this capital is just not available and NCIF remains one of the few CDFIs that is solely focused on this sector.

By this definition, any allocatee providing capital to these CDFI banks will be meeting or exceeding the highly flexible standards, relative to many other applicants. Permanent, anchor institutions are created or supported that result in long term economic development in LMI communities. We would strongly recommend that preference be given to such activities of a CDFI/CDE.

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Administrative or Regulatory Changes in the Review Process
The public policy objective of the NMTC program is to bring capital into low-income communities. Evaluating the quality of products is dependent on the quality and training of the reviewers—specifically, their knowledge and ability to fully understand local conditions and the intent of the proposed allocate, and incorporate that into their review.

Today the process is at the mercy of the outside reviewers assigned to particular applications. Reviewers typically have limited knowledge of the applicant. The application has also become removed from the actual work of the applicants, not taking into account their own strategies, conditions in their local communities, and their need to plan. All that is evaluated is the application, removed from the context of the organization or the community and its characteristics.

In addition to improving quality and training of the reviewers, we recommend a significant increase in transparency within the scoring of awardees and non-awardees. Increased transparency will allow applicants to understand how their products have been evaluated and valued, which would allow for applicants to make the necessary adjustments in their strategy, financial products and applications so that they may increase their likelihood of being awarded tax credits. In particular we recommend that the CDFI Fund provide:

1. All applicants with their combined scores from the reviewers on each section of the application and
2. A complete listing of all reviewer comments referenced to the section to which each of them apply.

Changing How the Program Defines Benefit
The allocation application and many in the industry assess the benefit of NMTC loans based on a simple assessment of the amount of equity retained by the QALICB, with greater amounts of equity (or higher "B" and "C pieces") being understood as more beneficial. This method fails to recognize differences amongst QALICBs and CDEs. Keeping in mind the NMTC program goal to benefit low income places, a more nuanced view is called for. For example there is a very big difference in the impact of the "equity" piece associated with the NMTC program.

- Equity retained by a for profit real estate developer doing a one off project in a low income place only benefits that low income place to the degree it is necessary to getting the deal done.
- Equity retained by a service provider in a low income community, even beyond what is necessary to surpass the 'but-for' hurdle, is likely to lead to additional benefits to that low income community by way of expanded services or lower costs, for example.
- Permanent equity into CDFI Banks and other CDFIs promotes financial institutions that are vested in the long term development of the communities.

Therefore, the understanding that a higher "B" or "C" piece is, in and of itself, a better outcome for the program and for low income communities is inaccurate.

Equity retained by CDFI banks/CDEs (which is an alternative to equity being retained by QALICBs) is generally considered a fee, with higher fees (or higher "B pieces") being understood as less beneficial. Similarly, this "B" or "C" piece could also be invested into CDFI Banks helping create permanent and locally focused financial institutions in LMI communities.

Equity retained by CDEs with for profit parent companies should rightly be understood as a fee given those dollars are more likely to benefit goals other than additional investment in low income communities.

Equity retained by CDEs with parent companies that have missions to serve low income places, like CDFIs, should be understood to provide an ongoing benefit to these communities, thus amplifying program impact rather than diminishing it.

6. Use of Other Federally Subsidized Financing in Conjunction with NMTCs – Some CDEs and NMTC investors are using federal financing tools (e.g., historic tax credits, Section 108 loan guarantees) to finance NMTC transactions. In some cases these federal financing tools have been used in addition to the Qualified Equity Investment (QEI), as part of a leveraged debt transaction, and in other cases at the project-level where a CDE uses NMTC financing and other federal financing products to complete a project. Currently, the only restriction against commingling of federal funds is that NMTCs may not be used in conjunction with Low Income Housing Tax Credits.

(a) Should there be any additional restrictions in the allocation award process regarding the use of NMTCs with other sources of federally subsidized financing? If so, are there certain types of federal financing that should be disallowed? Should it matter whether the financing is made as part of the QEI investment (e.g., through the leveraged debt structure) or at the project level?

We have no additional comment.

(b) Assuming that it is appropriate for any other source of federally-subsidized financing to be used in conjunction with NMTC investments, would it be prudent for the CDFI Fund to limit, as part of the allocation process, the overall amount of QEI dollars or project level investments that may be supported with other sources of federal financing?

We have no additional comment.

(c) Are there specific administrative or regulatory changes that could facilitate the coordination of other federally subsidized financing in conjunction with NMTCs while preserving public policy objectives and safeguards

We have no additional comment.