Community Development Bankers Association
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March 1, 2021

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 fiscal year (FY) 2021–FY 2024 funding rounds

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 December 29, 2020 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 the community development banking sector, the voice and champion of CDFI banks and thrifts. CDBA represents Federal and State chartered banks, thrifts, and their holding companies that are certified by the CDFI Fund. CDBA members serve our nation's most distressed and credit-starved communities and are engines of economic inclusion throughout the United States.

Today there are 165 CDFI certified banks and thrifts and 125 certified bank holding companies. These mission-focused financial institutions are a specialized niche within the banking industry. CDFI banks are very important to the CDFI sector.

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 and reporting requirements. We fully appreciate the agency's efforts to continuously improve all of its programs. We look forward to working with the CDFI Fund to ensure its programs are responsive to the needs of communities and the institutions that serve them.

The NMTC supports complex projects that have great potential to benefit communities by bringing disparate funding sources together for projects that might not otherwise happen. To bring these 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 QALICBs.

GENERAL RECOMMENDATIONS:

- <u>OVERALL COMMUNITY DEVELOPMENT STRATEGY</u>: We recommend that applicants' overall community development strategy be considered. Many NMTC participants, such as CDFIs, use NMTC as a tool in concert with a larger community development strategy. Other CDEs simply target projects they believe will "look good" in their next NMTC application -- with no consideration for the longer term implications for a local community or impact outcomes. To determine the best use of scarce Federal subsidy, reviewers should have the broadest understanding of what the organization is trying to accomplish and how the NMTC program fits into that plan. Such context will provide reviewers with a better means for identifying the strongest applications. This is a smart use of Federal subsidy because it is coordinated with other interventions.

USE AWARD CAPS TO ALLOW A GREATER NUMBER OF NEW ENTRANTS TO NMTC: The NMTC Program is highly competitive. The scoring system has a strong bias towards CDEs with prior success. The scoring system creates a vicious cycle of rewarding the "usual suspects" and discouraging any newcomers. Like the CDFI Financial Assistance Program, we recommend a 3-year cap of $150 million on the maximum allocation any applicant can receive. This will allow new CDEs and their communities to benefit.

- FOCUS ON QALICB TYPES AND CHARACTERISTICS VERSUS PIPELINE TRANSACTIONS: We recommend the NMTC application and scoring place more emphasis on the types and characteristics of the projects that applicants seek to support and less emphasis on the details of pipeline transactions. The application current creates significant "busy work" for applicants to gather highly granular data on projects that it may -- or may not --ultimately fund. For all practical purposes, it takes nearly a year from when a CDE submits its NMTC application and the time it receives a Notice of Allocation Authority, finalizes its Allocation Agreement, and can close its first transaction. Many, if not most, projects evolve during that period as the sponsor looks to secure other financing, obtain permits and other local approvals, and carry out necessary pre-development activities. It is quite possible, if not likely, that a project will look quite different when it is ready to close on capital from when a CDE describes it in an application.

- ENHANCE POST AWARD FEEDBACK: The current post-award feedback scoring matrix is too opaque to be helpful to Applicants to understand why their application was – or was not – successful. Greater transparency is needed. Annually, the current scoring process results in non-discernable differentiation between successful and non-successful applicants as the vast majority of applicants fall in the two highest ranges. We recommend the CDFI Fund disclose greater detail by revealing the scores and reviewers' comments for each question within each Part.

- LOWER ALLOCATION AMOUNTS TO SPREAD THE WEALTH: With so many Applicants achieving the highest ratings, the CDFI Fund should ensure that every Applicant that scores in the highest tier receives an allocation. This can be achieved by lowering the individual amount of each allocation award.

- REGULATED ENTITIES: Regulated banks and credit unions potentially face greater barriers to participation in NMTC than non-regulated CDEs. The NMTC regulations are not clear about what constitutes a disqualifying condition that will result in a regulated CDE being disqualified from receiving an allocation based on a regulatory finding. A bank or credit union examination may result in a finding and required "cure." A spectrum of severity, and NMTC program relevance, can be encompassed under such terms as "memorandum of understanding" (MOU). In the event that these, or similar, circumstances are taken into consideration by the CDFI Fund for determining NMTC eligibility, it should be disclosed, so that CDFI banks can make informed decisions about whether to apply.

SPECIFIC COMMENTS ON PROPOSED REVISIONS:

Part I: Business Strategy

- CDBA supports the revisions to Question 17(c); yet, recommends clarifying it to ask the Applicant to discuss its social investment criteria (i.e. types of QALICBS targets, desired outcomes, needs of its borrowers/investees, minimum and maximum dollar amounts of proposed NMTC investments, etc.).

- CDBA recommends deleting Question 17(d). As discussed above, as a practical matter, it is impossible for applicants to know 9+ months before receiving an allocation how many and which parties will be involved in financing a particular project – or whether the specific project will still be seeking allocation. The proposed pipeline is a "representative" sample of the types of projects that an Applicant may support – not a list of projects an Applicant is committed to financing.

- We support the new Question 18. CDFI banks are experienced regulated lenders, and the due diligence required of any project is substantial and well documented. We support efforts to ensure the long-term viability of QALICBs. We recommend revising the second bullet point to and allow new applicants to the program to discuss due diligence procedures in place for non-NMTC projects. We also note that underwriting is often an iterative process, and few if any examples of an initial attempt at underwriting can, or should be, considered complete.

- CDBA supports the new second bullet points in Question 20(b) and 21(c). We believe it is useful to make a distinction between the applicant and a controlling entity. It is also however appropriate to require applicants to discuss both organizations' track records in serving Disadvantaged Businesses and Communities. Such a requirement will help the reviewer understand the institutional experience with, and commitment to, these markets.

- CDBA recommends deleting the new third bullet in 20(b). We believe it creates more new work for the Applicant without a clear benefit. By asking for a description of the three largest sources of non-NMTC capital deployed, the question appears to aim to add context to applicant's purpose and capacity. However, if the Fund ultimately is trying to understand what the entity can do (or has done) with NMTCs that it cannot do otherwise, there are better ways of obtaining that information by narrowing the focus of Question 14(b); such as asking for a comparison of the proposed NMTC products to comparable products available in the market (from conventional, CDFI, and/or other lenders).

- CDBA supports allowing applicants to discuss relevant activity that occurred more than five years ago. For example, the timeline on projects varies, and recently financed projects may not yet be completed, making them impossible to evaluate. Further, some very active entities may have been precluded from initial new projects due to environmental circumstances beyond their control, while retaining the essential human resources and institutional memory to continue the work. Question 21 or 22(e) should be more inclusive of this range of relevant experience.

- CDBA supports the proposed changes in the new Question 24. Eliminating the responses from the Phase I review and eliminating the need to address relationships associated solely with leverage loans helps reduce burden on applicants. It is also helpful for the Applicant to be able to identify whether financial benefits are "solely due to the Applicant or its Affiliates serving as a leverage debt lender for a QLICI" and bypass answering "yes" to items (a)-(e).

Part II: Community Outcomes

- DBA supports efforts to increase the impact of community development focused programs in highly distressed areas. It is appropriate to incent support for projects in these areas by asking whether applicants will commit to a higher threshold for projects located in these areas as proposed in the new Question 25(a).

- CDBA opposes the mandate in the new Question 26(2) and (3) to address both temporary and permanent jobs when discussing the quality and accessibility of jobs associated with CDE-financed projects. Applicants should be required to address quality and accessibility for permanent positions only, and it should be optional to discuss the characteristics of temporary positions only if they so desire. We offer the following reasons:
    - Temporary jobs are primarily construction jobs. Many developers or general contractors rely on trade subcontractors to execute their projects. Depending upon the trade, subcontractors often rely on contract labor and do not employ a large numbers of full-time permanent workers. Thus, many trades do not provide workers' with benefits.
    - Typically, the QALICB is unlikely to be the actual developer or contractor of a project. Instead, the QALICB will be hiring a third party to carry out construction. It is unrealistic to ask the QALICB to require or encourage a third party to provide certain levels of wages and benefits, or to give priority to certain types of employees. It is also unrealistic for the QALICB to obtain that level of employee data from its general contractor.
    - Mandating or encouraging certain levels or types of compensation, as well as the hiring or training of certain types of individuals, will increase the time and cost necessary to carry out the NMTC-financed projects. This could prevent many high-impact projects from moving forward at all.
    - While many construction positions can reasonably be filled by seasonal, relatively lower-skilled workers, others require higher-level skills. It is unlikely that a QALICB will know the number and types of workers necessary to carry out its construction project. Its contractor may not know that until the project's financing and budget have been finalized.

- CDBA supports defining a quality job as one that provides a living wage ***and/or*** employment benefits (Question 26(b)). An increasingly common definition, in use by CDFIs[1] and non-profit leaders[2], is to adopt a requirement to demonstrate *both*.

- CDBA believes that Question 26(3) is too restrictive. The question defines an accessible job as one that is targeted / available to "Low-Income Persons, residents of LICs, people with lower levels of formal education, *and* people who face other barriers to employment (e.g., longer term unemployed, displaced workers, ex-convicts, limited language proficiency, etc.)." The reality of the work environment is that certain types of positions simply are not going to be accessible to certain populations. (i.e. education facilities and health centers have required education, licensing, and professional certifications). We urge the CDFI Fund to rephrase this question to allow for an *"and/or"* option in this regard.

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[1] LISC: The Good Jobs Fund: www.lisc.org/new-markets-support-company/what-we-do/we-invest/business-lending

- CDBA supports incentivizing financing directed to historically disadvantaged and minority-controlled businesses to all Black, Indigenous, and People of Color (BIPOC). However, we believe that Question 26(7) should reflect a broader definition focused on ownership and control. Unless the CDFI Fund introduces an individual question focused on every category of historically disadvantaged or minority status (which we do not support), it risks the appearance of prioritizing one group at the others' expense. A single, expansive question is appropriate.

- CDBA believes the environmental outcome should be reinstated in Question 26. Incentivizing an environmentally positive outcome can bring great advantages to low-income communities, and begin to halt and reverse negative health impacts due to decades of neglect and disinvestment that have placed toxic, polluting sites and infrastructure often right in the middle of these communities.

- CDBA is concerned about eliminating the question about the extent to which projects catalyze additional private investment. We recommend adding a subpart to Question 27 that asks Applicants to discuss and document example(s) of specific spillover community investments or improvements occurring in the vicinity of projects financed (e.g., new development, reduced crime, increased property values or tax revenues). The CDFI Fund should not accept unverifiable IMPLAN estimates for this purpose. Inclusion of such a question would reward Applicants that have been able to use NMTC and other financing for catalytic purposes and have taken the effort to document those outcomes.

Part III: Management Capacity

- Question 18 makes the new Question 29(c) redundant. The CDFI Fund can also improve the efficiency of the application by striking the requirement to estimate the "percentage of work to be performed by consultants, internal staff, and/or board members." This estimation is necessarily imprecise, and is indirectly addressed by the applicant being asked to describe how it will manage the roles and responsibilities.

- We support the Fund's effort to understand better the nature and appropriateness of fees that the Applicant intends to charge (Question 34(b)). For this question to yield a meaningful response, the CDBA recommends the CDFI Fund publish an analysis of fees currently being charged by Allocatees for applicants to benchmark themselves. As Justice Louis Brandeis once said "sunlight is the best disinfectant." To the extent that the CDFI Fund is concerned that some CDEs are unduly profiting from a program intended to benefit distressed communities, the best solution is public disclosure.

Part V: Information Regarding Previous Awards

- CDBA suggests that the CDFI Fund restructure Question 44. The information is valuable, but only offering a free-form narrative here is onerous both for applicants and reviewers. Alternatively, the CDFI Fund could provide a table to help applicants organize, and reviewers digest, the essential information. The narrative could then more appropriately focus on a description of the project, its need for NMTCs, the sizing of the allocation, and the project's impacts to date. The table could include data on the QEI and QLICI amounts, any and all fees related to the QEI, and the source(s) of leverage debt for each of the three largest transactions.

We thank you for the opportunity to comment and look forward to working 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.

Sincerely,

Jeannine Jacokes
Chief Executive Officer