NOVOGRADAC & COMPANY LLP
CERTIFIED PUBLIC ACCOUNTANTS

April 15, 2015

Committee on Finance
Community Development & Infrastructure Tax Reform Working Group
219 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Co-Chairman Heller, Co-Chairman Bennet, and Members of the Working Group:

On behalf of the members of the New Markets Tax Credit ("NMTC") Working Group, we respectfully submit the following comments as you consider tax reform and how NMTCs may factor into your decisions. 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 and serving low-income populations around the country. Our group includes allocatees, nonprofit and for-profit community development entities ("CDEs"), consultants, investors, accountants and lawyers, all who work tirelessly to improve America's low-income communities.

As Congress considers tax reform, we understand all options must be considered. We are writing to encourage you to:

- Make the NMTC Program, under Internal Revenue Code Section 45D, an indefinite part of the Internal Revenue Code, which will allow it to continue to achieve the results highlighted below,

- Increase the annual credit authority and index it for inflation,

- Allow the NMTC to offset the alternative minimum tax ("AMT"), and

- Modify recapture rules to enable greater credit efficiency.

We appreciate this opportunity to comment on ways to further enhance the good being done by the NMTC Program, and we also appreciate the level of commitment, dedication and outreach that has been shown and continues to be shown by the U.S. Treasury's Community Development Financial Institutions ("CDFI") Fund, the Internal Revenue Service ("IRS") and the Treasury's Office of Tax Policy in implementing and managing the NMTC Program. The CDFI Fund, IRS and Treasury have proven to be capable managers of the NMTC Program. This is evidenced by the tremendous success the NMTC Program has enjoyed since its inception in 2000. Low-income communities across the country have benefitted from targeted investments of more than $31 billion. We applaud the various offices within Treasury that have worked with all those involved in these transactions to ensure that those dollars get into highly distressed communities as efficiently as possible.

NMTC Program's Success

In 2000, Congress created the New Markets Tax Credit Program, part of the Community Renewal Tax Relief Act of 2000, to encourage investment in low-income communities. This dynamic program generates billions of dollars in new private sector investments in low-income communities, serving low-income populations, and promotes economic improvements through the development of successful businesses in these communities. The NMTC provides tax incentives to investors to make investments in distressed communities that they wouldn't otherwise make.

Qualified CDEs apply to the CDFI Fund for an award of NMTCs. The CDE will then seek taxpayers to make qualifying equity investments ("QEIs") in the CDE. The CDE in turn is required to use substantially all of the qualifying equity investments to make qualified low-income community investments ("QLICIs") in/to qualified active low-income businesses ("QALICBs") located in low-income communities. The taxpayer is eligible to claim a tax credit equal to 5 percent of its equity investment in the CDE for each of the first three years and a 6 percent credit for each of the next four years (39 percent total).

The program is designed to allow the CDE to use its local knowledge and expertise to decide what businesses to invest in or lend to with the funds it raises with NMTCs. Most businesses located in low-income communities can't qualify for the amount of loans or equity needed to make the businesses sustainable in the long term. Typical businesses that have received loans or investments made possible by the NMTC Program include: community centers, health clinics, youth clubs, neighborhood centers offering free meals, clothing and legal assistance, lumber mills, fish processing plants, and charter schools. NMTC investment recipients have also included shopping centers, manufacturers, retail and grocery stores and micro-entrepreneurs.

In December 2014, using analytical support from Novogradac & Company LLP, an accounting firm that specializes in community development tax credits, the New Markets Tax Credit Coalition released an economic impact report on the NMTC. The report aggregated the economic impact of more than 3,800 NMTC projects closing between 2003 and 2012.

From 2003 to 2012, $63 billion in total project investment in NMTC-financed businesses, of which more than $31 billion was NMTC capital, directly and indirectly generated nearly $118 billion in economic activity, creating more than 744,267 jobs in low-income rural and urban communities, including 457,487 construction jobs and 286,781 full-time equivalent jobs in nearly every industry sector of the economy.

NMTC investments generate economic activity, providing a return on investment to the federal government. In 2012, NMTC-financed businesses generated $984 million in federal tax revenue, which more than covered the estimated $800 million cost of the credit in terms of lost tax revenue in 2012. By stabilizing and revitalizing local economies, the NMTC helps boost tax revenue for state and local governments. In 2012, NMTC investments nationwide generated $542 million in state and local tax revenue.

Beyond creating jobs and generating economic activity, the NMTC helps enhance community revitalization efforts by financing community facilities and other important quality-of-life amenities. Between 2003 and 2012, more than 1,200 NMTC projects involved community amenities like healthcare facilities, schools, nonprofit service providers and day care centers. A recent Urban Institute study examined the extent to which the NMTC helps communities add amenities, improve services and finance community facilities. The study found that 88 percent of NMTC projects brought direct or indirect quality-of-life improvements to their communities, including parks, playgrounds, shopping centers, health clinics and other amenities.

Since the program's inception, the knowledge, understanding and experience among participants in the NMTC Program has been continuously rising, as has the demand and competition for the NMTC among participants in the NMTC Program, including investors, lenders, CDEs and qualified businesses. The interaction of these and other factors has led to ever-greater efficiencies and effectiveness of the NMTC Program in delivering much-needed subsidies to qualified businesses. These factors have also helped direct a greater portion of the NMTC Program to the nation's most distressed low-income communities and to qualified businesses generating even greater community impacts.

It is important to note the continuous support the NMTC Program has received from Congress since its inception. In the Tax Increase Prevention Act of 2014, the NMTC program was extended for another year, and there have been five previous authorized extensions. Senator Blunt and Representative Tiberi have introduced legislation (S. 591, H.R. 855) to make the NMTC permanent, increase allocation authority and provide for inflation adjustments, and allow the NMTC to offset alternative minimum tax liability. In addition to multiple extensions by Congress, the Obama administration has also proposed to expand the current NMTC Program from $3.5 billion to $5 billion in its most recent budget proposal. In the wake of Hurricane Katrina, the NMTC Program was expanded by $1 billion to encourage investment in low-income communities within the Gulf Opportunity Zone.

Make NMTC Permanent

We believe that one of the most effective ways to further improve the efficiency of the NMTC Program requires a statutory change – that is, make the credit permanent or, at a minimum, provide a long-term extension. The current trend of granting a short-term extension creates uncertainty in the industry. Uncertainty in any aspect, especially as it relates to the future of funding for the NMTC Program, limits the number of investors and potential CDEs willing to participate, and also limits the level of long-term investment that existing investors and CDEs are willing to make. Unless there is an extension of the NMTC, the elimination of an established relationship between public- and private-sector investment resources that the NMTC Program was originally designed to promote is inevitable.

Increase Annual NMTC Allocation Authority

Additionally, an increase in annual credit authority and indexing for inflation is essential to expand the low-income community impacts associated with NMTC investments. According to the CDFI Fund, the department within the U.S. Treasury responsible for monitoring and administering the NMTC Program, on average, each $1 of federal tax revenue forgone as a result of the NMTC is estimated to induce more than $8 of investments in low-income communities. Further, more than 75 percent of NMTC-financed projects are located in census tracts that meet one or more higher distress level criteria than are minimally required under the program rules.

Since the NMTC Program's inception and through the first 11 allocation rounds, the CDFI Fund has made 836 awards allocating a total of $40.1 billion in tax credit allocation authority to CDEs through a competitive application process. Through 2012, CDEs disbursed $31 billion in QEI proceeds to more than 2,000 QALICBs financing both real estate developments and operating businesses in low-income communities. NMTC investments have been located in metro and non-metro areas across all 50 states, the District of Columbia and Puerto Rico. The demand for NMTCs has far exceeded the amount of allocation available in each round. As of the last round of applications with the awards still pending, there were 263 applications requesting $19.9 billion of allocation. There is clearly a need for increased credit authority from the current $3.5 billion authorized. An increase in annual credit authority and indexing it for inflation would allow more low-income community investments and substantially increase the community impacts associated with NMTCs across the country.

Allow NMTCs to Offset AMT

Willingness by investors to participate in the NMTC Program would also be greatly enhanced if a long-term or permanent extension of the NMTC included a provision that would allow the NMTC to offset AMT.[1] A long-term extension of the NMTC with an AMT offset provision would put the NMTC Program on par with Low-Income Housing Tax Credits, Historic Tax Credits and certain Renewable Energy Tax Credits, and would increase investor demand for the NMTC. With more demand by investors, the pricing of NMTCs would rise and would lead to an even greater amount of subsidy reaching qualified businesses. In addition to higher credit pricing, if the NMTC Program were made permanent or received a long-term extension, CDEs and other NMTC Program participants would dedicate more resources to the NMTC Program and generate even greater efficiencies.

Modify NMTC Recapture Rules

Three events can trigger a recapture event of NMTCs: the CDE ceases to qualify as a community development entity; the substantially-all requirement is not satisfied; or the investment is redeemed by the investor. If there is a recapture event with respect to a QEI at any time during the seven-year credit period, all QEI investors are subject to recapture in the year the recapture event occurs. The investor must repay the government the aggregate amount of credits previously claimed by the taxpayer under section

[1] For further discussion of AMT implications, see §2.16 of Novogradac & Company New Markets Tax Credit Handbook, 2012.

45D, plus interest and penalties. While we believe tax credit recapture is an important component of the community development tax credits that contributes to their success, the overly stringent form of NMTC recapture inhibits its efficiency.

By having full recapture risk, plus interest penalties, for the full term of the investment, the NMTC Program has a level of compliance and transaction structuring unrivaled by other tax credit programs. This level of structuring and underwriting ensures that the goals of the NMTC Program are ultimately achieved, but at a cost that is incorporated into the overall price of the NMTC and the types of investments that investors are willing to make. A phased reduction in tax credit recapture risk during the term of the investment would certainly lower the discount of the NMTC applied by investors and broaden the types of investments that tax credit investors are willing to make, including non-real estate QALICBs.

Conclusion

In addition to providing for an extension, an increase in credit authority, allowing for an offset of AMT, and modifying the recapture rules to further improve the efficiency of the NMTC Program, we recognize that there are ways to make the NMTC work even better. Addressing technical matters is the central purpose of the NMTC Working Group and its members are dedicated to that goal. Since 2006, the NMTC Working Group has responded to requests from Treasury, the IRS, and the CDFI Fund with recommendations to enhance the NMTC Program's ability to deliver significant community impact to this nation's low-income communities. These comment letters reflect the work of more than 50 member organizations participating on numerous conference calls and countless drafting sessions over several years. All of the NMTC Working Group's comments regarding these issues, as well as many others, can be found on our website at www.nmtcworkinggroup.com. We would be happy to meet with you to discuss any of our comments in further detail.

THE NMTC WORKING GROUP

Very truly yours,

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