

CC:PA:LPD:PR (Notice 2006-60)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

August 31, 2006

To whom it may concern:

Opportunity Finance Network appreciates the opportunity to comment on the proposed guidance dealing with "Targeted Populations" in the New Markets Tax Credit (NMTC) Program (IRS Notice 2006-60).

As we expressed in our comment letter to the Community Development Financial Institutions Fund (CDFI Fund) of July 8, 2005, we are pleased to see the Treasury Department embracing this approach for the NMTC. We have, since the inception of the Credit, advocated for a strong mission focus, and throughout the legislative history of the NMTC, we have been proponents for including low-income and other underserved people as beneficiaries of the NMTC. This guidance is an important step in that direction.

Our comments are directed both to the IRS and to the CDFI Fund and include recommendations on how the guidance should relate to the NMTC Allocation Application as well as the Allocation Agreement. We agree generally with the comments submitted by the New Markets Tax Credit Coalition, and would like to emphasize the following recommendations:

- The Fund should treat Targeted Populations as consistently as possible with both the definitions for Targeted Populations in the Fund's other programs as well as distressed geographic communities.
- Provisions defining Qualified Low-Income Community Investments (QLICI) and Qualified Low-Income Community Businesses (QLICB) that serve Targeted Populations should recognize flexible definitions for "low income" but at the same time maintain a strong mission focus.

Consistency in Defining Targeted Populations

Certified Community Development Financial Institutions (CDFIs) are important stakeholders in the NMTC. To facilitate their participation, the Fund should, to the extent possible, use parallel definitions of Targeted Populations in both the NMTC and the CDFI Programs. We advocated the inclusion of "people-based" as well as "place-based" strategies in the enacting legislation, and pressed for the inclusion of African-American, Latino, and other minority populations as "Target Markets" in the CDFI Fund's CDFI programs. We would be pleased to see similar provisions in place for the NMTC.

For the NMTC program, the Fund should use the same groups of individuals as "Other Targeted Populations" as it has for the CDFI Program. CDEs should have the opportunity to request, on a case-by-case basis, that an identified group of individuals lacks access to loans or equity



investments with the burden on the CDE to prove to the satisfaction of the CDFI Fund that this is the case.

Similarly, the NMTC provides for "threshold" criteria for place-based targeting, and then permits CDEs to target deeper into distressed markets or into more highly-distressed markets. The regulations governing Targeted Populations should include comparable provisions for working with very low-income people and/or meeting higher thresholds. Our recommendations on definitions for various aspects of QLICI sans QALICs meeting targeting low-income and otherwise underserved individuals incorporate this principle.

QLICs and QALICBs Serving Targeted Populations

Opportunity Finance Network agrees with three key recommendations to help define qualified investments and qualified businesses offered by the New Markets Tax Credit Coalition: provisions in the three-part QALICB test; proxies for documenting low-income populations; and thresholds to measure "high distress."

The three-part QALICB test

Opportunity Finance Network supports requirements that the guidance puts in place for QALICBs with regard to low-income Targeted Populations. We echo several recommendations of the NMTC Coalition that are designed to strengthen the QALICB tests, guard against abuse, and meet the needs of investments supported by the NMTC.

First, the "Ownership Test" must accommodate nonprofit businesses that are not individually owned. Many nonprofit businesses include low-income individuals on the entity's governing board; these business entities should be able to satisfy the QALICB ownership test if at least 50 percent of the board¹ is comprised of individuals who are low income or members of the Targeted Population.

Second, the gross income test (which includes services, sales, rentals and other transactions) as well as the employee test, must accommodate start-up or expanding businesses looking to satisfy the QALICB requirement for Targeted Population. We would suggest that the same three-year "reasonable expectation" period that exists for investment in start-up businesses in the existing regulations be put in place for start-up QALICB with respect to satisfying the services or employee tests to Targeted Populations.

Finally, we agree with the NMTC Coalition's comments on the employee test: that the guidance be amended to require that at least 40 percent of the entity's employees² are individuals who are low-income persons for purposes of 45D(e)(2) and are members of a Targeted Group as defined by the Work Opportunity Tax Credit (WOTC); and that IRS further amend the employee test to

¹ In our comment letter to the CDFI Fund of July 8, 2005, Opportunity Finance Network (then the National Community Capital Association) suggested that at least 51% of the Board of a QLICB be members of a Targeted Population. We believe that the 50% recommendation here is sufficient.

² In the comment letter cited in #1, Opportunity Finance Network suggested that at least 60% of the employees of a QALICB be members of the Target Population. We believe that the 40% recommendation here is sufficient given the WOTC safeguards and provisions for deeper targeting outlined later in this letter.



require that a QALICB pay a wage that would increase the income of the low-income individual being hired.

Proxies for documenting QALICB requirements for Targeted Populations

Opportunity Finance Network concurs with the NMTC Coalition in recommending that the Fund consider accepting participation in other federal programs targeted specifically to low-income individuals and families as a proxy for meeting QALICB requirements for low-income Targeted Populations. This proxy would significantly ease the burden of compliance for CDEs and the administrative burden for the CDFI Fund and would be particularly useful to CDEs that invest in community facilities as QALICBs.

The difference in definitions between the NMTC's definition of a low-income individual and Federal poverty guidelines means that participants in a number of federal poverty programs are highly likely to meet NMTC definitions and guidelines.

The following list of Federal programs that target low-income individuals and families and populations consistent with the objectives of the NMTC includes programs that many CDEs, particularly those with nonprofit parents, are familiar with and utilize in providing services to the low-income communities and populations they serve. We do not intend this list to be a complete list of Federal proxies, but rather an illustrative list of those focusing on families with incomes between 100% and 200% of the national poverty rate:

- Department of Agriculture: National School Lunch Program (42 USC 1751 et seq.)
- Department of Agriculture: Food Stamp Program (7 USC 2011 et seq.)
- Health and Human Services: Community Health Centers (42 USC 254b)
- Health and Human Services: Medicaid (42 USC 1396a)
- Health and Human Services: Child Care and Development Block Grant (42 USC 9858).
- Department of Treasury: Worker Opportunity Tax Credit (IRC Sec. 51)

Thresholds to measure "high distress" for QALICBs that benefit a Targeted Population

The current process asks applicants for credits to indicate what percentage of their total QLICs will be used to finance activities that are in one or more areas of economic distress as defined by the Fund. In keeping with the principle to treat CDEs serving Targeted Populations in an equitable manner, the Fund should develop a set of criteria designed for CDEs that plan to invest in QALICBs that target benefits to "high distress" Targeted Populations. These thresholds need to ensure that CDEs using the Targeted Populations allowance will be able to compete successfully in the allocation process with CDEs that are strictly targeting their QLICs to census tracts with high levels of economic distress.

Opportunity Finance Network agrees with the NMTC Coalition that there are two ways by which a QALICB benefiting Targeted Populations can demonstrate that they are exceeding the baseline targeting requirements and reaching a higher economic distress benchmark: either by benefiting a greater percentage of low-income individuals or by benefiting individuals with a higher level of poverty.

We suggest that a QALICB demonstrate they are targeting higher distress by meeting one of the following tests:



- At least 60% of the entities total gross income for any taxable year is derived from sales, rentals, services, or other transactions with individuals who are low-income persons for purposes of Sec. 45hD(e)(2);
- At least 50% of the entities employees are individuals who are low-income persons for purposes of Sec. 45D(e)(2); or
- At least 60% of the entity is owned by individuals who are low-income persons for purposes of Sec. 45D(e)(2).

A CDE could also get credit for targeting deeper distress if a QALICB could show that it was targeting more economically disadvantaged members of the Targeted Population and exceeding the baseline definition of low-income persons as provided in regulations.

Allocatees with Signed or Pending Agreements

The guidance indicates that taxpayers can apply the Targeted Population guidance and the QALICB requirements for low-income Targeted Populations to all QLICs made on or after October 22, 2004 (the date that the American Jobs Creation Act of 2004 was signed into law). Opportunity Finance Network encourages the IRS and the Fund to look favorably on allocatee CDEs that wish to modify their Allocation Agreements to serve Targeted Populations, following the appropriate procedures for amending agreements.

The NMTC's Mission Focus

Of course, no criteria for serving low-income populations can be successful without efforts to refocus the NMTC on its core mission and tighten underwriting criteria. As we urged the Fund in our comment letter of February 2006, the Fund must tighten its underwriting criteria to ensure that mission-focused transactions are its driving force.

The criteria used by Wachovia Bank in making NMTC investments³ provide practical and effective screens that should be used by the Fund in targeting deals and recipients of the NMTC:

- The CDE has a track record of putting its own capital at risk in the market in which it would use a NMTC allocation, or a similar market. Using this criterion would help measure an applicant CDE's commitment to bringing capital to qualified communities and building a permanent, rather than short-term, deal-related, presence there.
- The CDE has a track record of "trailblazing" projects that are the first to bring new investment into opportunities that others miss and would likely use its NMTC allocation for the same kinds of projects. This criterion would allocate NMTCs to CDEs that have proven ability to enter the New Markets for which the program is named.
- The CDE's projects would create jobs to be filled by residents of the low-income community and/or provide space for locally-owned, minority- or women-owned businesses or nonprofit tenants, demonstrating true commitment to the residents of the community.

³ Please note that I serve on Wachovia Bank's NMTC Advisory Board.



Wachovia bases its assessment with 50% weight on the community impact of a potential investment, 20% on geographic market distress, 10% on deal size and complexity, and 10% on the deal's rates of return. (The remaining 10% takes into account Wachovia's existing relationship with the applicant.

Conclusion

Opportunity Finance Network commends the Internal Revenue Service and the CDFI Fund for including Targeted Populations as NMTC markets, and for preserving Congress's intent in doing so. For this change to be successful, Treasury must keep the NMTC focused on meeting the needs of the emerging domestic markets the program was intended to reach.

We thank you for the opportunity to comment. Please do not hesitate to contact me at 215.320.4304 or mpinsky@opportunityfinance.net if you have questions or would like additional information.

Sincerely,

Mark Pinsky
President and CEO