OPPORTUNITY FINANCE NETWORK

July 6, 2007

Mr. Matthew Josephs
NMTC Program Manager
CDFI Fund, U.S. Department of the Treasury
601 13th Street, NW, Suite 200 South
Washington, DC 20005

Re: Opportunity Finance Network comments on New Markets Tax Credit Program.

Dear Mr. Josephs:

Opportunity Finance Network[1] appreciates the chance to comment on the Department of Treasury's request for comments, New Markets Tax Credit Program (NMTC). We commend the CDFI Fund for its continued efforts to expand and improve the NMTC Program and to ensure that the credit reaches our nation's underserved rural communities. Since the inception of the credit, Opportunity Finance Network has 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, including rural communities. This opportunity to comment is an important step in that direction.

Opportunity Finance Network urges the CDFI Fund to publish a Final Rule in time to apply the new standard to the 2008 Allocation Applications. While this is a very short timeframe for this process, we believe it is essential to implement these changes as soon as possible.

This letter responds to four specific inquiries from the CDFI Fund regarding allocations of qualified equity investments (QEIs), proportionality, review process, and compliance. We encourage the CDFI Fund to be flexible while working with community development entities (CDEs) regarding rural targeting goals, and recommend the CDFI Fund review its current mapping system to ensure accuracy in rural areas. Finally, mission-focused transactions should always be the driving force behind any NMTC transaction. To that end, we offer suggestions for underwriting criteria.

Background

One fifth of America's population lives in rural areas and 14.3 percent of these residents are poor. While community development has expanded in urban areas, rural America has seen fewer opportunities, lower wages, and a decline in the traditional rural life. Median family income in rural areas is 25 percent less than in metropolitan areas, and the poverty rate for rural communities is 28 percent higher. Despite the

[1] Opportunity Finance Network, the national network of more than 160 financial institutions creates growth that is good for communities, investors, individuals, and the economy. Its members include Community Development Financial Institutions (CDFIs) and other opportunity finance institutions that work just outside the margins of conventional finance to bring those markets into the economic mainstream and to help the economic mainstream flow into those markets. CDFI financing has resulted in significant numbers of new jobs, jobs preserved, quality, affordable housing units, and new commercial and community facility space in all 50 states. Over the past 30 years, the Opportunity Finance industry has provided more than $23 billion in financing that would not otherwise have happened in markets that conventional finance would not otherwise reach.

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obvious need for economic investment in rural communities, recent reports on the NMTC indicate that rural communities are lagging behind urban areas in NMTC investment.

In response to this need, Members of Congress in the Tax Relief and Health Care Act of 2006 (PL-109-432) directed the Secretary of the Treasury to formulate regulations, "which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments."

Allocations

In its request for public comments, the CDFI Fund asks commentators to consider alternatives for ensuring that non-metropolitan areas receive a proportional allocation of QEIs. While the language in the Tax Relief bill uses the term, "non-metropolitan counties," the CDFI Fund defines metropolitan and non-metropolitan areas based on census tracks. The CDFI Fund should continue using census tracts to determine targets of a proportional allocation on NMTC investments to non-metropolitan areas.

The Tax Relief bill further directs Treasury to allocate QEIs to geographic areas; however, the CDFI Fund does not currently do this. Instead, the CDFI Fund allocates NMTCs to CDEs, many of which have wide service areas and the location of a CDE's headquarters is not necessarily indicative of its investors or where it intends to use the credits. The legislative intent of the language is to direct NMTC financing to rural communities. To fulfill this intent, the CDFI Fund needs to ensure that a proportional allocation of credits is issued to CDEs for QEIs to finance qualified low-income community investments (QLICIs) in low-income, non-metropolitan census tracts. The location of investors and the headquarters of the allocatees are far less important than the service areas, the dollar amount of the allocation authority, and the location of the QLICIs.

Proportionality

The CDFI Fund is also seeking comment on the appropriate definition of the term "proportional." As stated above, Congress intends for more NMTC dollars to reach our rural communities. A 2006 CDFI Fund report found that approximately 18 percent of the *projects* financed by the NMTC in 2004 were in rural communities and these projects represented only approximately nine percent of total NMTC *dollars* invested in QLICIs for that year. The percentage of QLICIs made in low-income communities should be based on the total dollar amounts of the QLICIs made by the CDEs, not on the percentage of total projects.

Opportunity Finance Network also recommends that the measure for non-metropolitan proportionality be based on the number of people living in the area. The CDFI Fund should follow the USDA Economic Research Service data drawn from the 2000 Census and use 21 percent to define the proportion of rural to non-rural markets. Most counties, whether metropolitan or non-metropolitan, contain a combination of urban and rural populations. According to the USDA's computer system that measures clusters of population, "rural areas consist of all territory located outside of organized areas and urban clusters. The U.S. rural population was 59 million (21 percent) in 2000."[2]

Review Process

The CDFI Fund asks commentators to consider what changes should be made to the allocation application review and decision-making process. Opportunity Finance Network does not believe there is a need for the CDFI Fund to advance lower scoring applicants to achieve the 21 percent proportionality.

[2] www.ers.usda.gov/Briefing/Rurality/WhatisRural/

The Allocation Application process will need to be structured to provide sufficient incentive to ensure that the CDFI Fund can meet the proportional threshold it establishes for non-metropolitan areas, however.

We suggest that there are two ways that the CDF Fund could accomplish this. First, the CDFI Fund could add non-metropolitan areas to its high-distress areas. The current process asks applicants to indicate what percentage of their total QLICIs will be used to finance activities that are in one or more areas of economic distress as defined by the CDFI Fund. By adding rural areas to this, a higher priority can be targeted to this underserved market.

The second possibility for the NMTC is that the CDFI Fund could establish the following three priority categories in the Allocation Application. By meeting the eligibility requirements in *at least one* of the three categories, an applicant would receive a maximum of five priority points:

- Substantially all of the applicant's service area and the service areas of its controlling entity are non-metropolitan;
- The applicant commits at least 40% of its allocation to finance QLICIs in non-metropolitan census tracts, or the applicant commits at least 20% of its allocation to making loans or investments in, or purchasing qualified loans from CDEs that are headquartered in a non-metropolitan census tract;
- The applicant's track record for making successful investments in rural areas.

A CDE that receives points under one of the priority categories and is awarded NMTCs should be held to this commitment in its Allocation Application.

Compliance

Opportunity Finance Network strongly recommends that the CDFI Fund require that applicants specify in the applications the percentage of their QEI proceeds that they will use to make investments in non-metropolitan areas and then be held to those percentages as a condition of their allocation agreements. We urge the CDFI Fund to draft its next Allocation Application in a way that effectively documents a CDE's business plan for rural areas as well as its track record in rural development where applicable. In order to serve rural areas effectively, the CDFI Fund must strongly enforce allocation agreements.

CDE applicants that commit to making investments in rural communities should be required to identify specific, measurable, and enforceable goals in the application. Applicants should understand that they will be held to their rural targeting goals set forth in the Allocation Application.

While OFN believes that allocatees should be held to the rural targeting goals as set out in the application, we also recognize the need to provide the CDE with flexibility in other areas as it works to meet these goals. We recognize that the deal flow in rural areas is slower and it is more difficult to close a project in a rural area than in an urban area. It may be that a CDE will need additional time to work through their rural allocation as their urban deals close at a faster pace. We recommend that the CDFI Fund consider this when enforcing the allocation agreements.

Tracking

Opportunity Finance Network recommends that a chart be added to the Allocation Application to record an applicant's track record for working in non-metropolitan census tracts. This chart will allow a CDE that requests priority points on the basis that substantially all of its service area is non-metropolitan to document its track record of lending and investing in non-metropolitan census tracts. The non-metropolitan track record chart could be modeled after the chart in the current application that documents an applicant's track record in low-income communities.

CDEs serving low-density rural communities have complained that address inquiries are sometimes not recognized in the current CDFI mapping system. If a CDE is unable to confirm a project's eligibility through the CDFI website, it leaves them unable to confirm the project's eligibility with the investor. The CDFI Funds needs to refine the existing mapping system to pick up these rural addresses or identify specific documentation that the IRS will accept in lieu of appearing on the mapping system.

The NMTC's Mission Focus

The NMTC Program must continue to focus on its core mission and tighten underwriting criteria. As we urged the CDFI Fund in our comment letter of February 2006, the CDFI 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 investments[3] provide practical and effective screens that should be used by the CDFI 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.

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 is pleased that the CDFI Fund is addressing how to reach rural communities with the NMTC. We encourage the CDFI Fund to issue its Proposed Rule and Final Rule as soon as possible to allow these changes to apply to the 2008 allocation round. We ask that the Final Rule:

- Continue using the census tracts to determine targets of a proportional allocation for NMTC investments to non-metropolitan areas;
- Ensure that non-metropolitan areas secure a greater share of the NMTC dollars for QLICIs;
- Follow the USDA Economic Research Service data drawn from the 2000 Census and use 21 percent of the U.S. population as its definition of proportional;
- Add rural communities to areas of high distress or provide up to five priority points for rural activity in the Allocation Application;

[3] Please note that Mark Pinsky serves on Wachovia Bank's NMTC Advisory Board.

- Require that applicants specify the percentage of QEI proceeds that they will use to make investments in non-metropolitan areas and then hold them accountable in their Allocation Agreements;
- Add a chart to track the applicant's track record for working in non-metropolitan areas to the Allocation Application and revise the current mapping system to better recognize rural addresses.
- Tighten underwriting criteria to ensure that mission–focused transactions are the driving force in NMTC projects.

Opportunity Finance Network thanks you for the opportunity to comment and we look forward to working in partnership with the CDFI Fund as it implements changes to the NMTC. Supporting rural communities benefits all Americans and we are confident that these changes will bring significant resources to our nation's rural communities. If you have questions or concerns about these comments, please do not hesitate to contact me at 215.320.4304 or mpinsky@opportunityfinance.net.

Sincerely,

Mark Pinsky

Mark Pinsky
President and CEO