October 2, 2009

Sent Via Mail and E-Mail

Mr. Matt Josephs
NMTC Program Manager
Community Development Financial Institutions Fund
U.S. Department of Treasury
601 13th Street, N.W., Suite 200 South
Washington, DC 20005

Dear Matt:

As a six-time New Markets Tax Credit ("NMTC") Allocatee, ESIC New Markets Partners Limited Partnership and Enterprise Community Investment, Inc. (collectively "Enterprise") is pleased to participate in the NMTC industry and to provide the CDFI Fund our comments on the 2009 NMTC Allocation Application (the "Application"). Enterprise is a member of several NMTC industry groups, including the Novogradac NMTC Working Group, and has reviewed and signed the Working Group's letter on this same topic. While we generally support the views of that letter, we also wanted to add some additional comments on our own. We appreciate the opportunity to express these ideas, and appreciate the CDFI Fund's demonstrated efforts to continually examine the application process to determine if there are ways to improve it. We have summarized our comments below in order of the questions posed:

1. **Is the information that is currently collected by the Application necessary and appropriate for the Fund to consider for the purpose of making award decisions? Please consider each question and table in the Application. Are there questions or tables that are redundant and/or unnecessary? Should additional questions or tables be added to ensure collection of more relevant information?**

Question 11

This question asks the applicant to identify the percentage of its activities that will be directed to "major urban", "minor urban" or "non-metropolitan counties". Question 25 (b) and (c) then ask the applicant for the minimum and maximum percentage of allocation that it will commit to investing in non-metropolitan counties. There does not appear to be a correlation between Q11 and Q25, it is unclear how the answer to Q11 is used, and the terms "major urban" and "minor urban" do not appear to be meaningful to other programs within community development, therefore, we recommend deleting question 11.

Question 14

In question 14, an applicant is required to indicate a percentage of each type of QLICI activity in which the applicant intends to engage. We believe that the distinction between real estate and non-real estate QALICBs does not add value to the application process or the use of awarded allocations. Historically the definitions of real estate verses non-real estate QALICBs have been inconsistent between application, CIIS instructions and Compliance FAQ documents, and it can cause confusion when determining if an investment fits the Allocation Agreement, and how it should be reported in CIIS. We recommend that questions 14(a) and (b) be combined, so that the applicant can identify that they will make loans / investments to QALICBs in general as opposed to the choices in (b) (c) and (d). The distinction between a real estate and non-real estate QALICB can be difficult if the use of the QLICI is to fund a real estate project.

The TIP in question 14 allows that "Loans or investments made to special purpose entities that are principally owned by a non-real estate QALICB and that are set up specifically to lease property back to the QALICB such that the QALICB is the principal user of the property may be classified as either a "real estate QALICB" or a "non-real estate QALICB", at the discretion of the CDE." This TIP is problematic because often the special purpose entity is set up to be a QALICB because their parent company is not a QALICB, and therefore this TIP cannot be applied in many cases, and the CDE is limited to defining a real estate or non-real estate QALICB.

Question 16

Consistent with the Novogradac NMTC Working Group letter, we recommend that question 16 be reorganized to allow the applicant to describe the flexible rates and terms that apply to each product the applicant intends to offer, rather than describing each of the items in 16(a) separately. We agree that this change may cut down on redundancy and also allow the reader to connect the full benefits of the various product types.

Questions 19 and 20

We recommend that additional clarification be given to the information requested in 19(b) related to the applicant's delinquency/default rates. In many instances the CDE's peer group is other CDE's. Currently, we are not aware of any stated averages for the NMTC industry. We recommend the CDFI Fund provide clarification as to what stated industry averages a CDE could use.

Question 19 asks for information about the applicant or its Controlling Entity's track record in QLICI activities. Question 20 asks for information about the track record for engaging in non-QLICI activities that are similar to the proposed NMTC transactions. Question 20(c) asks the applicant to more fully describe the applicant or Controlling Entity's experience providing such activities (by reference non-QLICIs) to *Disadvantaged Businesses and Communities*. By definition "*Disadvantaged Businesses and Communities*" appear to be businesses that would qualify as QALICBs and low-income communities. Thus, making these activities QLICI-like, when question 20 is specifically about non-QLICI activity. This makes question 20(c) appear to be duplicative of question 19(c) and also causes 20(c) to exclude work such as low-income housing tax credit investment which is not a geography based program.

Question 27

Consistent with the Novogradac NMTC Working Group letter we recommend that question 27 be modified to not require the applicant to indicate a percentage of total QLICIs that will be used to finance activities in one or more of the eighteen geographic areas listed in 27(a) in order to provide more flexibility in the types of projects a CDE can invest. We believe that question 27(b) sufficiently requires a CDE to invest in particularly economically distressed or otherwise underserved communities by requiring an investment in one of the first three areas or a location characterized by two of the remaining items. We believe that there are many examples of high community impact projects that don't fit into one of the categories listed in 27(a) and based upon the CDE's response to question 27, which is generally higher than 75% in order to submit a competitive application, the CDE may feel precluded from investing in the project in order to be generally consistent with its application.

Tables C1 and C2

We recommend that the CDFI Fund clarify if applicants should be using indirect impacts calculated using IMPLAN or other economic indicators as described in question 30 or if it should only report direct impacts. It is currently unclear and if some applicants are including indirect data while others are not, it may be hard for a reviewer to know the difference, and to score the application objectively.

2. **Are the thresholds contained in Question 17 of the Application appropriate, given current economic conditions? If not, what should the criteria include? Should the Fund provide a range of flexible product commitments based on a discount of interest rates below market as defined by basis point reductions (or other product flexibilities) or continue to present commitment options in percentage terms?**

Given the current economic conditions, and the changes that occur in interest rates during the years between when the application is written, and when the allocation award is deployed Question 17 should require interest rates that are considered below market based on a certain amount of basis points. This will simplify the calculation and make the CDE more comfortable that it can actually provide the below market financing that it commits too. For example, a CDE that commits to funding loans at least 50% below market when market rates are at 4% would have to provide a loan at 2% (200 basis points below market), but if market rates rose to 6%, then the CDE loan would have to be at 3% (300 basis points below market), and this additional spread between market and NMTC loans could be difficult to achieve, because there is no additional subsidy created by the NMTC to make up that gap when rates are higher.

If CDEs are unable to meet the below market interest rate threshold, then they can meet multiple indicia of flexibility or non-traditional terms. We suggest that additional guidance and clarification be provided so that more CDEs could accurately implement some of those features. For example:

- Many NMTC loans have interest only payments for 7 years, which is longer than a standard construction loan, and represents a flexible term. Most NMTC loans also require a balloon payment on some or all of the loan balance in year 7. This balloon payment means that the balance is paid off sooner than in many permanent loan situations, which might have a 25 year amortization schedule, however, since the no principal payments were required for 7 years, CDEs often feel they are providing "longer than standard amortization periods" even though the balance is paid off sooner than other loans.

- "Loan loss reserve requirements that are less than standard". Typically loan loss reserves are held at the CDE and are an accounting function to properly reflect the collectability of receivables. Whether the CDE holds a higher or lower than standard loan loss reserve generally does not have an impact on the QALICB in any way, and so CDEs may be either falsely benefiting from checking this feature, or inadvertently missing out on this additional feature.
- "Lower than standard origination fees" is difficult to explain, because there is a wide range of fees, and it is unclear which "market fees" should be used for comparison. The NMTC industry does not publish fees for NMTC transactions, and because the NMTC fees are vastly different than fees in typical commercial lending, this feature is difficult to justify.

Inconsistency in the understanding of these terms may cause inconsistency in the applicants' responses. Additional guidance on the definitions of these terms may allow applicants to provide a better explanation of the features they plan to offer, and allow the scoring process to be more consistent.

3. A CDE is entitled to earn five ''priority points'' for committing to invest substantially all of its QEI proceeds in businesses in which persons unrelated to the CDE hold the majority equity interest (within the meaning of I.R.C. section 267(b) or 707(b)(1)). With respect to the timing of this test, the CDFI Fund has determined that it is to be applied after the initial investment is made, and for the life of the seven-year compliance period (though an exception is permitted if events unforeseen at the time of the initial investment cause the CDE to have to subsequently take a controlling interest in the business). Is it appropriate that this test is applied after the investment is made, or should the CDFI consider applying this test before the investment is made? If the test is to be applied before the investment is made, then how should the Fund treat circumstances whereby the receipt of the QEI and the investment in the business is essentially a simultaneous transaction, particularly when the CDE may not have any owners identified prior to the QEI closing?

Question 26(a) requires the Applicant to indicate whether it intends to use substantially all of its QEIs to make QLICIs in one or more businesses in which persons unrelated to the Applicant hold the majority equity interest. In the Application Q&A, the CDFI Fund indicates in the response to Question 38 that for purposes of determining if an entity is related (within the meaning of IRC § 267(b) and § 707(b)(1)), the test is conducted after the CDE makes the QLICI.

Consistent with other industry groups, we believe this test should be conducted before the CDE makes the QLICI. The current rules prevent a CDE from owning a non-managing interest in excess of 50% of the Qualified Active Low-Income Community Business ("QALICB"). This rule has perhaps inadvertently caused more CDEs to make loan QLICIs and caused the QALICBs to lose out on the patient capital and sometimes beneficial tax treatment that equity can provide. Performing the related party test before the CDE made the QLICI would still prevent a developer-Allocatee from investing in its own project, but would not prevent CDEs that were previously unrelated to the QALICB from providing valuable, flexible and patient NMTC investments in the form of equity.

Also, we feel the measurement of the unrelated entity requirement be on a per round aggregate allocation basis rather than a per QEI basis.

4. **The Application currently collects outcome information on the applicant's historic community impacts and projected economic development impacts in Table C1 and Table C2, respectively, and collects information on projected community development impacts in Question 30. Are there changes that should be made in the way projected economic development is currently measured? Are there other outcomes/impacts for which the Fund should be collecting information to ensure effective use of the NMTC? Should the Fund have a greater focus on community development outcomes/impacts? Alternatively, should the Fund focus exclusively on economic development outcomes/impacts?**

We believe that collecting community development and economic development information is critical to being able to demonstrate the effectiveness of the program, and should continue to be an important measure in the application scoring process. In order to make this more consistent, additional guidance should be provided about what types of measures should be used, and how this information should be reported. For example, should a CDE include both direct and indirect benefits? Should a CDE include all of the impacts for a project even if it only finances a part of that project? How should multiple CDEs investing in the same project report the impacts? These questions are difficult to answer universally, however, there is not enough space in the application for each applicant to adequately explain their own unique methodology, and for the reader to be able to compare and score the section objectively.

Table C1 and C2 could be expanded or clarified to include instructions on how to measure "# of clients served" – for example, would a community theater count the number of seats, or number of seats times the projected number of shows in a given year? Would a Boys and Girls Club report the capacity that it can hold or an estimated number of actual users; should this be estimated per week, per month or per year?

Clarification on the number of jobs created or maintained is also important. Definitions for "retained" verses "relocated" jobs can help determine more precise impacts. Also, it is important to note that not all jobs are created equal – 1,000 minimum wage jobs without benefits may or may not be more valuable to a community than 500 mid-level jobs with benefits, however in the charts the applicant is unable to distinguish the characteristics of the jobs and can only judge based on the number of jobs reported.

Question 30(b)(ii) currently asks the applicant to describe its methodologies and assumptions used for deriving the applicant's estimates for each separate impact that is selected in 30(a). These answers often become redundant because the methodologies and assumptions are often similar for multiple impacts. If question 30(b)(ii) was collapsed into one answer, this would create additional space that could be used to deepen the response about community impacts.

We would also suggest that Table C1 and C2 be updated to include data points relating to environmental sustainability which would be further explained in question 30 where the applicant is asked to quantify and describe how it will "Create environmentally sustainable outcomes". This focus is consistent with the pending "Green Act" being debated in Congress. Question 30 could go a step further to require applicants to suggest what percentage of their allocation would be used to fund QLICIs that will finance real estate projects built with green building standards such as Leadership in Energy and Environmental Design (LEED), Enterprise Green Communities™ Criteria, or equivalent established programs. Examples of measurable community development and economic development outcomes include savings on utility usage (electricity and water for example) which can provide financial savings throw lower usage rates and also environmental benefits through lower consumption. Improvements in air quality and the number of doctor visits or days missed from work or school due to asthma or other environment-triggered illnesses could also be measured.

5. **Do Question 56 and Table F1 of the Application capture all sources of compensation and profits that the applicant and its affiliates receive in connection with NMTC transactions? How can collection of this information be improved? How should the Fund use this information? For example, should the Fund make the applicant's stated fees a specific condition of the Allocation Agreement, and should the Fund set limits on fees in the Allocation Agreement?**

We do not feel that stated fees should be a specific condition of the Allocation Agreement. We believe that the requirement to be "generally consistent" in the allocation agreements is sufficient to ensure that applicants don't veer too far from the fees they described but allows for enough flexibility for an applicant to adjust to market and specific deal conditions and changing infrastructure needs. We further recommend that Table F1 be removed because it does not provide enough flexibility for applicants to quantify their fees – not all fees are calculated based on a percentage of the QEI, and therefore Table F1 is not accurately filled completed.

We also recommend that questions 55 and 56 be combined since most applicants are using fees to fund operations, and the responses would be more cohesive if this could be explained together. Consistent with the Novogradac letter, we further recommend that an Applicant be allowed to provide a longer response of 5,000 or 10,000 characters to both (a) and (b) of question 56 due to the complexity and flexibility associated with the way fees are structured in NMTC transactions.

6. **The Fund generally caps award amounts to any one organization in a given round. In the 2009 Application round, this cap was set at $125 million. Is this an appropriate amount? Should the Fund consider raising the cap significantly (*e.g.*, to $250 million), and prohibit a CDE that receives such a large allocation award from applying again for an established period of time?**

We agree with the idea of raising the cap significantly, and considering an option for applicants to apply for multi-year allocation awards, such that a successful applicant would not apply again during the "life" of that allocation award. For example, if an applicant would normally receive $125 million in a given year, and was given $250 million in 2010, then it would not apply again until 2012 assuming it would invest the required percentage of allocation in 2010 and 2011. The applicant should be able to state the minimum multi-year award that they would accept.

There are multiple strategies for implementing this process – including using a portion of the current year authorized allocation for multi-year awards, or using a portion of the current year plus a portion of future years' authorization. Both methods have benefits and risks, an it is important to point out that the current one-year authorization of the program can make this more complicated, because allocating from future as-yet-unauthorized rounds could be problematic.

Larger allocation awards can also help improve the efficiency of the NMTC program. Currently, many allocatees feel they must limit their investment in an individual project to $10 - $15 million in allocation, in order to have a diverse portfolio and to have more community impact to report in the application process in order to demonstrate a strong track record. If a transaction requires $20 million in allocation, and it uses 2 CDEs, then transaction costs for closing the deal, as well as on-going monitoring and accounting for the deal are increased. For example, if an average participant's legal costs are $50,000 for closing, then 2 CDEs would generate $100,000 in legal bills. If an average CDE charges $50,000 per year for asset management fees and incurs $10,000 per year for audit and tax return preparation, then 2 CDEs would generate $120,000 in on-going fees an expenses each year during the compliance period. Based on this simplistic example, one CDE providing $20 million in allocation could save the project close to $470,000 from closing through the compliance period. If allocatees had a larger allocation, they might be more willing to do larger deals and the savings to the industry would be significant. Continuing with the example above, approximately $3.7 million in transaction costs could be saved if 1 CDE uses $200 million of its own allocation to do 8 deals, rather than 2 CDEs each using $100 million of their own allocation to do the same 8 deals. This $3.7 million in savings directly benefits the QALICB and low-income community. These numbers are merely estimates, but we hope they are illustrative of the magnitude of the issue. Other efficiencies could also be achieved in terms of work hours spent by multiple groups on the same transaction.

7. **Currently, the Fund uses economic distress factors from the most recent decennial census to qualify eligible census tracts and to verify, when applicable, that awardees are serving ‘‘severely’’ distressed communities. Are there other public sources of data on economic indicators (*e.g.*, American Community Survey three- and five-year estimates for poverty rate, area median income, and unemployment rate) that are updated more frequently and readily available that the Fund should accept?**

Consistent with the Novogradac letter, we recommend that the CDFI Fund identify other public sources of data on economic indicators that are updated more frequently. We agree that if other sources are identified, they should be consistent and easily accessible to ensure that CDEs are using consistent and reliable data to ensure the qualification of their projects.

In addition, we propose adding another category to the list of severely distressed areas in 27(a) that relates to areas significantly impacted by foreclosures. HUD’s Neighborhood Stabilization Program (NSP) provides grants to address the problems associated with homes that have been foreclosed upon and are creating economic problems for their communities. NMTC financing could also be used to address these issues, however because most CDEs have committed to only invest in severely-distressed areas, it can be difficult to qualify a QALICB such as a developer that has scattered sites in multiple census tracts. HUD has created a mapping tool which, according to their website (http://www.huduser.org/nspgis/nsp.html) provides a threshold that helps HUD determine whether applications for NSP2 grants are targeting neighborhoods with a need for the funds. The qualifying threshold for the competition is an average index score of 18 for the total proposed target geography, which results in approximately 30 percent of all Census Tracts potentially eligible to be NSP2 target geography. We have not overlaid the NMTC qualified census tracts with the NSP2 qualified census tracts to determine how many of those tracts are already considered severely distressed under the current rules, however, we feel that HUD’s mapping tool could be a good way to establish that a census tract is highly distressed because of its foreclosure rate, and therefore could benefit from NMTC financing. We recommend that this distress criteria only be applicable to QLICIs that are addressing foreclosure related issues.

Any changes that impact the qualification of projects would need to be phased in, or offer some type of “grandfather” clause, because NMTC transactions can take months if not years to achieve a financial closing. We would not intend that these changes to the qualifying areas negatively impact projects that are actively being worked on and qualify today and might not qualify under the newly implemented changes.

<u>Other Comments</u>

We recognize that any changes to the application process could also impact the on-going monitoring of the NMTC program, including impacting current and future Frequently Asked Question documents. We are happy to provide additional comments on our experience with the program, including reporting for the Community Investment Impact System and how those reports can be used to monitor the outcome of successful applicant’s deployment of allocation.

Conclusion

We appreciate the opportunity to submit our comments on the 2009 NMTC Allocation Application, and are excited to continue working in this industry which is providing so much benefit to low income people and communities across the country. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Sincerely,

Joseph A. Wesolowski

Joseph A. Wesolowski
Senior Vice President