RHLS
Regional Housing Legal Services

Main Office
2 South Easton Road
Glenside, Pennsylvania 19038-7615
Tel (215) 572-7300
Fax (215) 572-0262

Central Pennsylvania Office
118 LOCUST STREET
HARRISBURG, PA 17101-1414

Western Pennsylvania Office
425 SIXTH AVENUE, SUITE 980
PITTSBURGH, PA 15219

FAX COVER SHEET

TO: Bob Ibanez **ORGANIZATION:** Treasury Dept

RECEIVER'S FAX NUMBER: (202) 622-7754

FROM: Mark Schwartz, Esq

DOCUMENT: Public Comment NMTC **DATE:** 2-6-12

We are transmitting 4 **pages including this cover sheet. If you do not receive all of the pages please inform** ________________.

Original of the transmitted document will be sent by:

____ **Mail** ____ **Overnight** ____ **Hand** ____ **Will not be sent**

Comments:

a:fax-cvr.sht-2

RHLS
Regional Housing Legal Services

Main Office
2 South Easton Road
Glenside, Pennsylvania 19038-7615
Tel (215) 572-7300
Fax (215) 572-0262

Central Pennsylvania Office
118 LOCUST STREET
HARRISBURG, PA 17101-1414

Western Pennsylvania Office
710 FIFTH AVENUE, SUITE 1000
PITTSBURGH, PA 15219

February 6, 2012

New Markets Tax Credit Program
CDFI Fund
U.S. Department of the Treasury
601 13th Street NW, Suite 200 South
Washington, DC 20005
c/o Bob Ibanez, Manager

Re: Request for Public Comment regarding the New Markets Tax Credit Program

Dear Ladies and Gentlemen:

We appreciate this opportunity to provide comments and suggestions on the New Markets Tax Credit Program.

Regional Housing Legal Services is a nonprofit law firm with unique expertise in affordable, sustainable housing and its related components — community and economic development, utility matters and preservation of home ownership. Based on our experience in bringing development and opportunities to low income communities in Pennsylvania, including creating and closing projects involving both Low Income Housing Tax Credits and New Markets Tax Credits, we offer the following suggestions for improving the ability of the New Markets Tax Credits Program to direct capital to low income communities and the residents of those communities.

Risk of Recapture

Perhaps the single clarification which would do the most to enhance the ability of the New Markets Tax Credit Program to attract investments in a greater range of projects would be to appropriately limit the risk of recapture. The investment community currently believes that a recapture event, no matter the magnitude of the recapture event or the timing of the recapture event during the term of the compliance period, will trigger recapture of all of the new markets tax credits, plus substantial interest penalties. While this draconian structure may insure compliance with the program guidelines, it decreases the types of investments investors are willing to make and increases the transaction cost of any New Markets deal, making the New Markets Tax Credits Program ultimately less available to the communities that need it most.

Our recommendation is that the recapture risk be clearly defined and limited in a way that is proportional (i) to the amount of the investment that caused the recapture and (ii) to the timing of the recapture event in relation to the term of the compliance period. This sensible clarification will preserve the enforcement mechanism created by the recapture requirement while greatly encouraging more and more varied investments at lower transaction costs.

Distribution of Allocations

The New Markets Tax Credit Program can make possible large projects with large and radiating economic impacts on low income communities, and often the relatively high transactions costs of the New Markets Tax Credits Program limits its usefulness to smaller projects. Recent allocations, however, have been too small to enable most allocatees to be the single source of New Markets Tax Credits for a large project (even where one allocatee might have a large enough allocation, allocatees are leery of not faring well in future rounds of allocations if they put all of their eggs into one basket). For instance, approximately one-quarter to two-fifths of the allocations awarded from 2006-2009 were $70,000,000.00 or higher, while in 2010 only 6 % of the allocations were $70,000,000.00 or higher. Similarly, over two-thirds of the 2010 allocations were $40,000,000.00 or lower, while in the previous four years allocations of $40,000,000.00 or less made up on average only just over one-third of all allocations. In 2010 the largest allocation was $77,000,000, while in the previous four years allocations were routinely over $100,000,000.00, and went as high as $143,000,000.00. With these recent smaller allocations, a larger project must assemble New Markets Tax Credits from multiple allocatees, which dramatically increases the transaction costs of the project and lessens the efficiency and impact of the New Markets Tax Credit Program.

Our recommendation is that the CDFI Fund enable a more effective and efficient leveraging of the capital provided by the New Markets Tax Credit Program by (i) awarding allocations large enough to enable single-source New Market Tax Credits for larger projects, and (ii) clarifying that using an allocation to support one or a small number of larger projects, rather than distributing smaller amounts amount multiple projects, will not negatively impact an allocatee's future allocations.

Financial Counseling and Other Services

Under the New Markets Tax Credit Program, a Qualified Low Income Community Investment ("QLICI") may be "financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in and residents of, low-income communities" ("FCOS"). FCOS investments have been rare, however, leaving an important component of the New Markets Tax Credit Program underutilized and thereby undermining the ultimate goal of the program.

We believe that FCOS investments are rare because the current regulations do not provide clear enough guidance to assure investors that the Treasury Department will view their investment in FCOS as a QLICI. The statutory language specifically instructs the Treasury Department to promulgate regulations defining the types of services which qualify as FCOS, but the regulation simply describes FCOS as "advice relating to the organization or operation of a trade or business," leaving potential investors and allocatees without clear guidelines. Moreover, the broad language of both the statute and the regulations conflict with the narrow guidance provided by the CDFI Fund in its "Compliance and Monitoring Frequently Asked Questions," (the "FAQ") which lists only business plan development, assistance with business financials, assistance in securing financing, and assistance with general business operations. We believe the Treasury Department should clarify that FCOS includes the broad range of services needed to bring capital to the communities and individuals targeted by the New Market Tax Credit Program, including but not limited to planning, operations, administration, marketing, financing, budgeting, legal services, consulting, accounting, information technology, etc.

Additionally, the current regulations impose limits not contemplated by the statute and which hinder the effectiveness of the statutory provision, by (1) requiring that FCOS be provided by the CDE; and (2) requiring that FCOS to individuals be related to the organization or operation of a trade or business." While the CDFI Fund attempts to soften these limitations somewhat, by stating in the FAQ (1) that CDEs may carry out FCOS activity through third party agreements managed by the CDE, and (2) that non-profit organizations are considered to be a "trade or business," these non-statutory limitations should be removed to enable investors and allocatees to provide capital for FCOS as intended by the statute.

Thank you for this opportunity to submit our comments, and please do not hesitate to contact us if you have any questions regarding our comments.

Sincerely,

Mark Schwartz, Esq.
Executive Director