Comment of the New Markets Tax Credit Coalition
On a Notice by the Rural Business-Cooperative Service, the Rural Housing Service, and the Rural Utilities Service on 09/05/2018 requesting comments on its OneRD Guaranteed Loan Platform proposal

October 22, 2018
The New Markets Tax Credit (NMTC) Coalition is a national membership organization founded in 1998 to advocate on behalf of the NMTC program. The Coalition has more than 150 members, including Community Development Entities (CDEs) and investors.

We write to respond to the request for comment on USDA Rural Development's development of a common platform to deliver four of their guaranteed loan programs. Specifically, we wish to comment on the following:

Lender Financing Trends or Needs to be Considered

1. The OneRD Guaranteed loan platform aims to enhance flexibility across all included programs to support financing via the New Markets Tax Credit (NMTC), investment tax credit (ITC), and other tax credit structures.

   a. Are there additional flexibilities that the Agency should consider to enhance financing opportunities through NMTC, ITC and other tax credit programs?

The NMTC is an important tool for revitalizing low-income urban areas, but it also plays a critical role in rural development. The CDFI Fund targets 20 percent of NMTC allocation awards to non-metropolitan counties, and the Coalition regularly publishes reports tracking the trends and impacts of these NMTC investments. Our 2017 report, "The New Markets Tax Credit: A Big Deal for Rural America," examined the aggregate impact of the program in rural economies. Many rural regions face unique obstacles to revitalization, including a lack of economic diversity and investors, the limited availability of credit, the seasonal nature of employment, and geographic isolation. There is evidence that the NMTC has a unique capacity to overcome these barriers and deliver capital to rural communities facing significant economic challenges.

In our report, we found that between 2003 and 2014:

- 817 businesses, community facilities, and other important revitalization projects were financed;
- $6.15 billion in NMTC allocation generated $11.6 billion in total project costs; and
- NMTC projects generated 49,940 full-time jobs and 21,706 construction jobs.

Given the NMTC's prominence in rural community development, the Coalition was pleased when USDA released a rule in 2016 to enable Business and Industry (B&I) Loan Guarantees to serve as a source of leverage in NMTC projects. Revisions to the rule in 2017 were helpful, but there are still some areas that create challenges for the pairing of the NMTC and the B&I program. Consequently, pairing of the two programs is still uncommon.

NMTC practitioners also have significant interest in using the Community Facilities (CF) Loan Guarantee as a source of leverage for NMTC-financed hospitals, schools, and other facilities. As it stands today, CF-guaranteed loans cannot be used as leverage, and projects pairing CF-guaranteed loans with the NMTC require complex and costly financing structures.

We encourage the USDA to allow the use of CF and other streamlined loan programs as leverage debt in NMTC transactions. We also urge USDA to fine-tune the B&I rules, which could then be (generally) replicated for the other loan guarantee programs.

Below are our recommendations and comments on the burdens faced by Qualified Active Low-Income Community Businesses (QLICBs) when using B&I guarantees as a source of leverage in NMTC transactions.

Burdens on QALICBs

Businesses financed by the NMTC face significant challenges securing conventional loans. Many – if not most – QALICBs will have difficulty meeting B&I's credit requirements (§ 4279.131). Below are a few specific examples.

The collateral requirements spelled out in § 4279.131(b) will be problematic for many NMTC projects. Few QALICBs would meet the requirement for the discounted value equaling the loan amount. Nor will many QALICBs meet the minimum 10 percent/20 percent tangible balance sheet equity requirement.

Inability to assign a value to guarantees (§ 4279.131(b)(iv)) will hamper some projects, as it is used on occasion to allow under-collateralized loans to proceed with the NMTC.

Prohibiting the use of appraisal surplus in calculating tangible equity (§ 4279.131(d)(2)) is also be problematic for many projects.

§ 4279.150 requires a feasibility study for all new businesses, an excessive and costly requirement for many of businesses seeking NMTC-financing. Similarly, requiring accountant-prepared financials (§ 4279.137) creates undue costs for small borrowers.

Requiring the investor fund entity to be established for a single, specific NMTC investment (§ 4279.116 (b)(1)(i)) eliminates the ability to create NMTC-supported loan funds or even paired deals. Loan funds are an increasingly common use of the NMTC.

Challenges for the Investment Fund

The requirement that the Investment Fund hold tangible balance sheet equity (§ 4279.116(b)(4)) is particularly problematic, in that the Investment Fund will not have tangible assets unless they allow the investment into the sub-CDE or cash/notes receivable from the sub-CDE to count as tangible.

Loan Term Requirements (§ 4279.126)

> § 4279.126(a): The length of the loan term must be the same for both the guaranteed and unguaranteed portions of the loan. The maximum repayment for loans for real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment or 15 years, whichever is less; and working capital repayment will not exceed 7 years. The term for a debt refinancing loan may be based on the collateral the lender will take to secure the loan."

The requirement in § 4279.126(a) (above) that the loan terms are equal in length creates issues since the B note is usually longer than the A note in NMTC projects.

> § 4279.126(e): There must be no “due-on-demand” clauses without cause. Regardless of any “due-on-demand” with cause provision in a lender's promissory note, the Agency must concur in any acceleration of the loan unless the basis for acceleration is monetary default.

Limiting acceleration or demands to “monetary default” excludes other possibilities, including bankruptcy, the sale of assets/collateral without approval, the loss of business licensing, failure to pay taxes (payroll, sales, property), fraud, gross negligence, or destruction or condemnation of collateral.

Other Issues:

> § 4279.116 (a)(2)(iv): In its guaranteed loan application, the lender provides an Agency-approved exit strategy when the NMTCs expire after the seventh year. The CDE's (or sub-CDE's) exit strategy must include a general plan to address the lender's equity in the project, and, if the lender will divest its equity interest, how this will be accomplished and the impact on the borrower.

Requiring a lender upfront to state its plan to allow for debt forgiveness could create NMTC compliance issues. Qualified Low-Income Community Investments must meet the “true debt” requirement under IRS rules.

Thank you for the opportunity to comment.