NEW MARKETS TAX CREDIT COALITION

October 28, 2013

Greg Bischak
Program Manager for Financial Strategies and Research
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Greg:

I am writing on behalf of the New Markets Tax Credit Coalition ("The Coalition") in response to the Community Development Financial Institutions (CDFI) Fund's solicitation for comments on the Community Investment Impact System (CIIS) used to collect data from Community Development Entities (CDEs). The Coalition is a national membership organization made up of community development organizations, investors, public officials and experts in community development and community development finance. The Coalition has a long history with the New Markets Tax Credit (NMTC) that dates back to the original Clinton administration proposal in 1999.

In addition to addressing some of the questions presented in the Federal Register Notice (Vol. 78, No. 166 / Tuesday, August 27, 2013) we are offering recommendations that we believe will strengthen the CIIS reporting system and the quality of the data collected. While most of our comments concern the Transaction Level Report (TLR) we urge the Fund to ensure that the information requested and the definitions referenced in the Institution Level Report (ILR) and all other CDFI Fund materials are consistent.

Many of our comments include references to specific headings of the "FY 2013 Allocatee Transaction Level Report: Data Point Guidance" document. For example, *"(N-I: S)"* references the "Amortization Type" question on page 14 of the Data Point Guidance.

1. ***<u>The Coalition recommends that the CDFI Fund remove any reference to a Special Purpose Entity QALICB from CIIS and any other CDFI Fund or Treasury Department documents related to the NMTC.</u>***

On September 28th, 2012, the Internal Revenue Service (IRS) issued Treasury Decision (TD) 9600 which amended IRS regulations (26 CFR 1.45D-1) that govern the NMTC. The modified rule was intended to encourage NMTC investments in operating businesses by allowing a CDE that invests in a "non-real estate qualified active low income community business" (QALICB), as defined by the IRS in the modified rule, to reinvest principal returned during the 7-year NMTC compliance period into a certified and unrelated CDFI to avoid recapture.

The CDFI Fund responded to the IRS rule change when issuing CIIS 11.00 in August, 2013. CIIS 11.0, adds "Special Purpose Entity" to the list of QALICB types that an Allocatee can choose from when categorizing a QALIBC for purposes of a TLR. Previous versions of CIIS provided only two categories from which an Allocatee could choose – real estate QALICBs or non-real estate QALICB – and the definitions were based on the "predominant business activity' of the QALICB.

This new category of Special Purpose Entity QALICB included in CIIS 11.0 is defined as:

> "*Investee/borrower is a special purpose entity that is controlled by or under common control with a Non-Real Estate QALICB, and that was set up specifically to lease the property back to the Non-Real Estate QALICB such that the Non-Real Estate QALICB is the principal user of the property*."

This definition is based on the legal structure of the entity as opposed to "predominant business activity" of the business or even the principal user of the property.

The Coalition sees no reason to create a new category of QALICB to track when a special purpose entity is created by a CDE for purposes of structuring a Qualified Low Income Community Investment (QALICI) in a QALICB. However, we suggest that the Fund provide an Allocatee with guidance as to how a QLICI made to a Special Purpose Entity should be categorized and therefore we do not support reverting to previous policy that granted an Allocatee total discretion in categorizing these businesses.

In CIIS 10.0, and previous versions, Allocatees had the discretion to classify a QLICI made in a Special Purpose Entity as either a real estate QALICB or a non-real estate QALICB. Allocatees were given the following instructions:

> "*Loans and investments made to a special purposed entity that is controlled by or under common control with an operating company, and that was set up specifically to lease the property back to the operating company such that the operating company 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."*

The Coalition recommends that the CDFI Fund remove any reference to a Special Purpose Entity QALICB from CIIS and from any other CDFI Fund or Treasury Department documents related to the NMTC. In addition, when categorizing a QALICB for purposes of CIIS an Allocatee should be instructed to consider the "predominant business activity" of the business and if a QLICI is made to a Special Purpose Entity the Allocatee should consider the predominant business activity of the business entity that will be the end user/beneficiary of the QLICI.

2. ***<u>The Coalition encourages the Fund to consider the following recommendations to enhance the quality, utility, and clarity of the information to be collected;</u>***

- In order to minimize confusion, the Coalition encourages the Fund to clearly differentiate between: data points that relate to the nature of a business or QALICB that was financed; data points that describe the financing a business received; and data points that relate to or describe the end beneficiary or beneficiaries of a business that received NMTC financing. Information on the end beneficiary is very useful in understanding the impact of the program.
  - The "Business Description Primary" question in the TLR (*PRJ: W*) asks allocatees to categorize the QALICB, but then presents a list of choices that are better suited as

descriptions of the end beneficiary of a project. For example, suppose NMTC financing goes to a development LLC (the QALICB) that uses the financing to rehabilitate a building for a nonprofit service provider (the end beneficiary). The question should specify whether respondents are supposed to report industry of the QALICB or the end beneficiary.

- The CDFI Fund should make sure definitions of data points are consistent in all phases of NMTC application and reporting. For example, there is inconsistency between the way that "Special Purpose Entity" is defined in the TLR (*PRJ: BE*) and the FY 2013 allocation application.
- The "Business Description Primary" question (*PJR: W*) might also include follow-up questions to some of these categories. For example, if a CDE categorizes the business as "MIXED USE", we recommend a follow-up question or questions to help clarify the nature of the project.
- Many data points require CDEs to assess how transactions compare to an economic benchmark. However, the CDFI Fund does not provide a standardized method or source for determining these benchmarks. For example, CDEs are asked to report whether a financial note had a "below market interest rate at origination" (*N-I: AI*), but are then given broad discretion in how they determine the comparable market interest rate. The Fund should provide more clarity in how CDEs should determine these economic indicators, including more specific information on the applicable time period to use as a baseline for comparison, as many of these benchmarks change over the course of time.
- The CDFI Fund should narrow the number of jobs reporting categories (*PRJ: AB-AI*) to reflect categories of jobs used in economic impact modeling. We recommend the following three categories: "direct construction", "direct Full-time Equivalent (FTE)", and "indirect FTE". Direct FTE jobs are the jobs created at a NMTC-financed business. The indirect jobs category would be voluntary, and would include jobs created in industries up or down the supply chain of a NMTC-financed business.
- Allocatees submit reports to CIIS after the conclusion of their fiscal year, and this is helpful in that it allows them to align CIIS reporting with their own fiscal calendar. However, allocatees' fiscal years vary. When the Fund releases public data, the Fund should be sure to account for the disparity in allocatees' fiscal calendars and ensure that their public releases relate to a fixed period of time.
- For Multi-CDE projects that use the "Collaborate Approach", more clarity should be provided on how CDEs might report discrete project impacts. Also, the Fund should provide guidance on how CDEs might report Multi-CDE projects when the CDEs involved have different reporting periods.
- Question 36 of the "New Markets Tax Credit Compliance and Monitoring FAQ September 2011" document states, "…Effective June 30, 2011, a subsidiary-CDE that has issued QEIs is no longer required to have audited financial statements produced for the CDFI Fund." In the Institutional Level Report, consider removing item #3 under the "Assurances" section to align with the removal of the requirement for the allocatee to perform and submit the audits for the sub-CDEs.
- One of the goals of the NMTC is to provide qualified businesses with patient flexible capital that is otherwise not available in the traditional market. Collecting accurate data on NMTC financing products is important and yet challenging. Some of the flexible financing options offered by CDEs do not fit neatly into a box and unfortunately are too easily lost or overlooked. For example, a CDE can report that they are providing loans with a "longer than standard amortization period" but checking that box does not tell the full story if the CDE structured the note as a 7-year interest only loan with no amortization or principal payments during the seven-

year term. We recommend that the Fund seek input from CDEs on the best way to measure non-traditional or flexible forms of financing like the above example.

3. ***<u>The Coalition encourages the Fund to evaluate data points and determine whether the collection of information is necessary for the proper evaluation of the effectiveness and impact of the CDFI Fund's programs, including whether the information shall have practical utility in describing the program's impact to the public;</u>***

In the CDFI Fund's publication, "Explanation of Rationale for Collecting Data", the Fund identifies five types of performance and results data points that are captured in CIIS: institutional sustainability; appropriateness of products and services offered; target markets served; leverage of private sector resources; and community development impact.

- The Fund should undertake an analysis of each data point and score it based on its usefulness in each of these five categories. It should then streamline the reporting process by eliminating data points that do not score highly. The Coalition believes that extra priority should be given to data points that measure value for the end beneficiaries of NMTC financing. In particular, the Fund should prioritize data points that measure the impact for low income community residents, facilities, and businesses.

4. ***<u>The Coalition urges the CDFI Fund to reassess the burden of the collection of information;</u>***

According to the Federal Register Notice requesting comments on CIIS, the CDFI Fund estimates that NMTC allocatees spend an average of 65 hours on reporting. This significantly underestimates the time required for allocatees to collect, analyze, verify, and report through CIIS. There are more than 200 separate fields in the Transaction Level Report alone. Many of these fields require time-intensive collection and analysis. For example, jobs estimates might require complex economic impact modeling.

- The CDFI Fund should streamline the reporting process by giving priority to data points that are useful in measuring the effectiveness of the program while eliminating data points that are not. In the previous question, we describe a possible streamlining process.

CIIS reporting is a year-round process. When the Fund changes to CIIS procedures and instructions, adds data points, or otherwise alters the reporting process, allocatees need enough time to adopt new strategies for data collection and analysis. For example, if an allocatee's CIIS report is due to report in November but the Fund makes changes to CIIS in October, an allocatee might be forced to go back and re-measure data points that it had been collecting over the past year.

- When making changes to CIIS, the Fund should provide sufficient time for allocatees to adjust to the new system and modify their collection procedures.

5. ***<u>The Coalition suggests that the CDFI Fund take the following steps to minimize the burden of the collection of information through the use of technology.</u>***

The CDFI Fund website provides detailed instructions and a sample Excel file for reporting (example: “Allocatee TLR - Sample Excel File”). The Fund has included PPT training presentations, but these are dated.

- The Fund should consider recording and posting a comprehensive training webinar with audio visual instructions for uploading data to CIIS.
- The Fund should provide allocatees with suggested online resources for calculating baseline economic benchmarks.
- The Fund should provide public access to their mapping and geocoding system.

The NMTC Coalition appreciates the opportunity to submit comments and contribute to the CDFI Fund’s ongoing efforts to measure impact of the New Markets Tax Credit to grow businesses and support revitalization efforts in low-income communities across the country.

Sincerely,

Robert A. Rapoza
New Markets Tax Credit Coalition