



## NMTC Financing for Borrowers

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## 1. Intent and Purpose of NMTC Program



In 2000, Congress enacted new Section 45D of the Internal Revenue Code of 1986, as amended (the **“Code”**) to provide federal new markets tax credits (the **“NMTC Program”**) to encourage investment in “low-income communities” (**“Low-Income Communities”**) because they often do not have access to traditional financing. The NMTC Program is administered by the Community Development Financial Institutions Fund (the **“CDFI Fund,”** which is a division of the U.S. Treasury Department).

The NMTC Program is intended to increase various **community impacts**, as described below.

NMTC Financing can be used for real estate and non-real estate purposes.

Since 2000 federal new markets tax credit financings (**“NMTC Financings”**) has been provided to approximately 10,800 businesses and nonprofits and have created \$8 of private investment for every \$1 of NMTC Financing.

## 2. Benefits of NMTC Financing

The main economic benefit of NMTC Financing is the Forgivable Loan, which generally requires interest-only below market rates of 1.2% to 1.5% with no principal payments for 7 years. After the 7-year period, the Forgivable Loan is forgiven.

Additionally, at least 5 of the following nontraditional and favorable terms (**“5 Favorable Terms”**) to the borrower:



- below market interest rates;
- lower than standard origination fees;
- longer than standard period of interest-only payments;
- higher than standard loan to value period;
- more flexible borrower credit standards;
- nontraditional forms of collateral or unsecured;

- lower than standard debt service coverage ratios; and
- subordination.

### 3. Good Borrower and Projects

Each of the following are good types of borrowers (whether for-profit or nonprofit) and projects for NMTC Financing because they provide substantial community and economics to their local communities and their residents:

- manufacturing facilities/operations;
- healthcare facilities/operations;
- grocery stores and food banks/operations;
- charter and independent schools/operations;
- qualified mixed-use projects (if at least 20% of the gross revenue is from non-residential revenue);
- community facilities/operations; and
- renewable energy and recycling operations/operations.



#### 4. Legal Requirements

Compliance



There are many statutory and regulatory requirements as well as specific guidance provided by the IRS and the CDFI Fund (which administers the NMTC Program).

Generally, to the extent that a Borrower and/or project does not satisfy any of the legal requirements, the NMTC Financing can generally be structured to address all of the legal issues without adversely affecting the economic benefits of the NMTC Financing.

It is critical that these issues be addressed from the outset in order to avoid complications as the NMTC Financing proceeds to closing.

As discussed in more detail below, in order to obtain the Forgivable Loan, there are several legal requirements including, but not limited to, the following:

- the project or operations, as applicable, must be “predominantly” located in a **“Low-Income Census Tract”** or otherwise benefit **“Targeted Populations;”**
- there must be a gap in available financing (the so-called **“But For Test”** must be satisfied);
- the Borrower (which can be a for-profit or a nonprofit) must be a **“Qualified Active Low-Income Community Business;”**
- the Borrower’s trade or business (or the nonprofit’s purpose and operations) must be a **“Qualified Business;”** and
- the Borrower must satisfy the **“For-Profit Reasonable Expectations Test”** or the **“Nonprofit Reasonable Expectations Test,”** as applicable, during the 7-Year Compliance Period.



There are many rules that must be followed in order to qualify for and maintain a new markets tax credit financing.

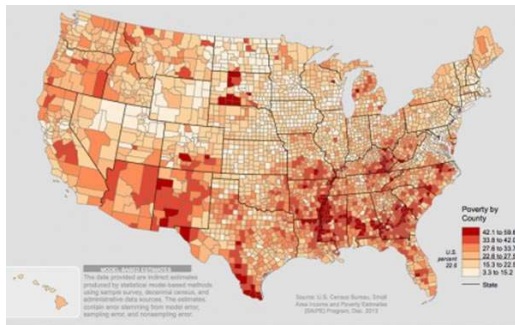
##### A. Low-Income Community

The Borrower or the project, as applicable, must be “predominantly” located in **“Low-Income Community,”** which is defined by U.S. Census data as a census tract with:

- a poverty rate of at least 20%, or



- either:



- in the case of a tract located in a metropolitan area, the median family income (“MFI”) for such tract does not exceed 80% of the greater of (x) the statewide MFI or (y) the metropolitan area MFI, or
- in the case of a tract not located in a metropolitan area, the MFI for such tract

does not exceed 80% of the statewide MFI.

- the NMTC Financing proceeds must be used for **“Permitted Uses”** and not for **“Prohibited Uses;”** and
- there cannot be a **“Recapture Event.”**

The requirement to be predominantly located in a Low-Income Census Tract only has to be satisfied on the date of the funding of the NMTC Financing. If the census tract subsequently is disqualified as a Low-Income Community, such fact does not matter as long as the Borrower or project, as applicable, remains in such census tract (or otherwise relocates to another Low-Income Community during the 7-Year Compliance Period).

## B. Targeted Populations Alternative Test

Alternatively, if a Borrower or a project is not predominantly located in a “Low-Income Community,” it can be **deemed** to be in a “Low-Income Community” if it otherwise benefits “Low-Income Persons” (as **“Targeted Populations”**) throughout the 7-Year Compliance Period (the **“Targeted Populations Alternative Test”**).

Therefore, if the Targeted Populations Alternative Test is used, Allocatees and Tax Credit Purchaser generally require that higher percentage(s) be used as an underwriting matter in order to reduce the risk of a **“Recapture Event.”**

Given this ongoing requirement, the vast majority of Tax Credit Purchasers and Allocatees will not participate in a NMTC Financing that relies on the Targeted Populations Alternative Test.

## C. Qualified Active Low-Income Community Business/Nonprofit

The Borrower must be a “qualified active low-income community business” (a **“QALICB”**), which is a corporation, partnership, limited liability company or tax-exempt entity, and has a trade or business (or, in the case of a nonprofit, any activity that furthers its charitable purpose), which is a **“Qualified Business.”**

Additionally, it must satisfy each of the 5 requirements during the term of the NMTC Financing.

- at least 50% of its total **gross income** must be derived from the active conduct of a “Qualified Business” within one or more “low-income communities” (the “**Gross Income Test**”);
- at least 40% of the use of its **tangible property** (whether owned or leased) must be within one or more LICs (the “**Tangible Property Test**”); and
- at least 40% of the **services performed by its employees** must be performed within one or more LICs (the “**Services Performed Test**”).



Alternatively, the Gross Income Test is also satisfied if 50% instead of 40% is used in either of the Tangible Property Test or Services Performed Test.

If the Borrower does not have employees, the Services Performed Test is satisfied if 85% instead of 40% is used in the Tangible Property Test.

During the term of the NMTC Financing, the Borrower must also have:



- less than 5% of the average aggregate unadjusted bases of its property can only be attributable to “**Collectibles**” (such as antiques) other than collectibles that are held primarily for sale to customers in the ordinary course of business; and
- less than 5% of the average of the aggregate unadjusted bases of its property can only be attributable to “**Nonqualified Financial Property**” (such as holding cash or cash equivalents, or owning debt, stock, and partnership

interests; however, reasonable working capital and construction reserves are permitted above this threshold).

Working capital and construction reserves are considered to be “reasonable” if they are reasonably expected to be expended within 12 months of the funding of the NMTC Financing.

If construction is anticipated to be longer than 12 months, there are ways in which to structure the financing to address this issue.

**Note:** If any of the percentage requirements discussed in paragraphs (d) through (j) are not satisfied, they can easily be satisfied by creating a so-called “portion of business,” which maintains separate books and records similar to a division. These books and records are used solely for the NMTC Financing and does not affect how the Borrower otherwise provides financial and tax reporting.

#### D. Qualified Business/Nonprofit

A **“Qualified Business”** includes any business that is not specifically exempted as described below.

A Qualified Business can include manufacturing, healthcare, grocery, education, qualified mixed-use, nonprofit, and renewable energy/recycling etc. and:

- if the Borrower is a for-profit business, it must be reasonably expected to generate revenues (as opposed to net income) within 3 years of the funding of the NMTC Financing; or



- if the Borrower is a nonprofit organization, it must be reasonably expected to engage in an activity that furthers one or more of its charitable purposes within 3 years of the funding of the NMTC Financing.

However, a Qualified Business does not include:

- **“Residential Rental Housing Property”** (unless part of a qualified mixed-use project, as previously discussed);
- farming;
- a business that consists “predominantly” (*i.e.*, more than 50%) of the development and holding of intangibles for the purpose of sale or licensing; or
- any of the following so-called **“Excluded Businesses:”** (a) a private or commercial golf course; (b) a country club; (c) a gambling facility; (d) a racetrack; (e) a hot tub facility; (f) a suntan facility; (g) a massage parlor; or (h) any store the principal purpose of which is the sale of alcoholic beverages for consumption off premises.



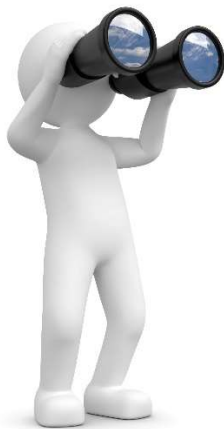
These prohibited businesses are similar to those prohibited by the federal tax-exempt bond rules. They also do not provide the types of community and economic impacts that satisfy the intent of the NMTC Program.

Additionally, if a Borrower leases a NMTC financed project, no tenant may be an Excluded Business (although the other types of businesses listed above may be tenants) (a **“Tenant Qualified Business”**). However, there are ways to structure the NMTC Financing to satisfy this prohibition.

As discussed above, NMTC Financing cannot be used for Residential Rental housing” unless such housing is part of a mixed-use project which generates at least 20% of its gross revenue from non-residential sources (such as retail and commercial etc.). Additionally, for underwriting purposes, the Tax Credit Purchaser and Allocatee require this percentage to be higher. However, there are ways to structure the NMTC Financing to satisfy this requirement, such as carving out any excess portion of the project so that this percentage requirement can be satisfied.

An annual NMTC Compliance Certification is required. Typical certifications can be found at the following Line:

### E. Reasonable Expectations Tests



If the Borrower is a for-profit business, it must be reasonably expected to **generate revenues** (as opposed to net income) within 3 years of the funding of the NMTC Financing (the **“For-Profit Reasonable Expectations Test”**).

If the Borrower is a **nonprofit** organization, it must be reasonably expected to engage in an activity that **furtheres one or more of its charitable purposes** within 3 years of the funding of the NMTC Financing (the **“Nonprofit Reasonable Expectations Test”**).

For Profit Reasonable Expectations Test, it is important to note that if such revenues are not generated within 3 years, that does not violate the For-Profit Reasonable Expectations Test, it is important to note that if such revenues are not generated within 3 years, that does not result in the failure of the For-Profit Reasonable Expectations Test because the test is that it must be “reasonably expected” to do so on the date of the funding of the NMTC Financing based on reasonable assumptions.

The satisfaction of the For-Profit Reasonable Expectations Test must be illustrated in financial projections, which must support that all of the debt service payments of the NMTC Financing will be timely paid based on reasonable assumptions.

With respect to a Nonprofit Reasonable Expectations Test, it is important to note that if such engagement in an activity that furthers one or more of its charitable purposes does not occur within 3 years, that also does not result in the failure of the Nonprofit Reasonable Expectations Test because the test is that it must be “reasonably expected” to do so on the date of the funding of the NMTC Financing based on reasonable assumptions.

The Nonprofit Reasonable Expectations Test does not require an expectation that revenues be provided (as there is for for-profit Borrowers), and the nonprofit can operate at a projected and actual loss over the term of the NMTC Financing as long as it can show that its debt service payments will be timely paid in financial projections based on reasonable assumptions. Again, we provide such financial projections.



## F. Permitted Uses

NMTC Financing may only be used by a “Qualified Business” to:

- acquire, construct, renovate and expand bricks and mortar projects (including those relating to healthcare, education, manufacturing, retail, qualified mixed-use, cultural, community, and renewable energy etc.); and
- finance business and nonprofit operations (such as those in the nature, as described above), including the purchasing, refurbishing, retrofitting, or leasing of equipment, and/or funding working capital, inventory, and staffing etc.



However, there are ways to structure the NMTC Financing to address any uses that initially do not qualify.

## G. Prohibited Use

NMTC Financing may not be used to:



- generally, refinance or prepay existing debt;
- participate in any abusive transaction; or
- finance any activity that is not part of a Qualified Business.

Sometimes, Allocatees will permit a portion of the Forgivable Loan to pay off some debt provided that the borrower can show that the debt service payments are overly burdensome.

It is important to note that the proceeds of the NMTC Financing may result in the borrower otherwise being able to save its own funds to apply to these uses if proper structuring is in place.

## 4. Underwriting Requirements

The most significant underwriting requirements are:

- being **“Shovel Ready;”**
- providing or retaining **substantial community impacts** to residents in **“Low-Income Communities”** and **“Targeted Populations”** (such as **“Low-Income Persons,”** minorities, women and veterans); and
- having **strong local support.**



## A. Closing-Ready

To be **“Closing Ready,”** Borrower must show that:

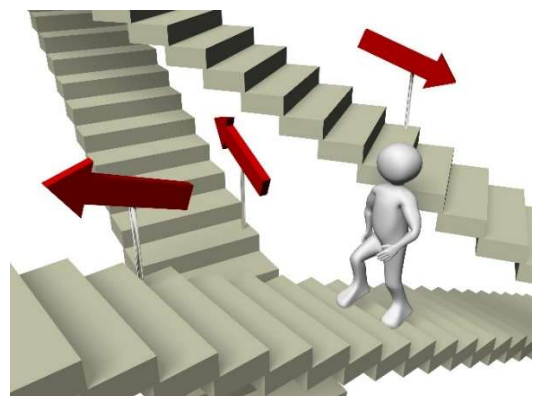


- all other sources of financing are otherwise committed (or close to being committed);
- all other conditions are satisfied (or close to being satisfied), such as having site control, zoning approvals, permits, and good title etc.;
- if the Borrower is a for-profit organization, satisfaction of the For-Profit Reasonable Expectations Test;
- if the Borrower is a nonprofit organization, satisfaction of the Nonprofit Reasonable Expectations Test; and
- substantial community impacts will be timely achieved.

Even if all of the other sources of financing are not otherwise committed, it is important that Borrowers apply for NMTC Financing proactively in order to be in Allocatee’s pipelines once any other sources of financing are secured. If prior expenditures are used in lieu of other sources of financing, then this is a moot point. In 2015, the CDFI Fund provided a special rule that permits borrowers to effectively use up to 24 months of their prior expenditures to unrelated parties provided that they are directly attributable to the borrower’s operations and are similar in size and scope to similarly situated borrowers

However, it is important to note that once a short-fall in financing is determined (a that a short-fall could occur), it is critical to get on the “radar screens” of Allocatees in order to be high-lighted in their annual Allocation Awards applications to the CDFI Fund or become part of their pipeline of proposed NMTC Financings.

Therefore, careful planning is needed to proceed with all sources of the capital stack concurrently with applying for NMTC Financing.



## B. Substantial Community Impacts

A Borrower must qualitatively and quantitatively provide support of substantial direct and indirect community and economic impacts to the residents of the “Low-Income Community” in

which the Borrower and/or project is predominantly located, surrounding communities and “Targeted Populations,” including “Low-Income Persons.”

Such community and economic impacts include any of the following:



- direct and indirect full-time and part-time job creation, job retention and/or construction jobs;
- jobs that provide living wages, healthcare benefits, retirement plans, life insurance, job training, and/or continuing education;
- consumer goods and services;
- community goods and services;
- below-market lease rates and favorable terms to non-profit, minority-owned or women-owned tenants;

- affordable housing (if part of a qualified mixed-use project);
- “green” type benefits (such as LEED certified or at least qualified to be LEED certified);
- minority impacts; and/or
- any other community benefits (such as renovating a historic structure or reducing blight).

### C. Strong Local Support

A Borrower must be able to show that the NMTC Financing has and will receive strong local support. For example, this can be shown by:

- the project, equipment, or business or nonprofit operations, as applicable, being part of an economic development plan;
- letters of support from local officials, community leaders, and/or local businesses and nonprofits;
- receipt of governmental subsidies and private sources of capital; and/or project, equipment, or business or nonprofit operations, as applicable, being part of an economic development plan;



- receipt of governmental subsidies and private sources of capital;
- letters of support from local officials, community leaders, and/or local businesses and nonprofits; and/or
- expected subsequent catalytic investment in the “Low-Income Community” and surrounding areas as a direct or indirect result of the NMTC Financing.

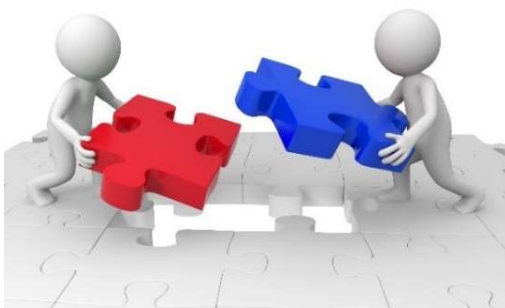
We provide an objective third party confirmation of local support (including interviews with local governmental officials and community stakeholders) and provide a persuasive and detailed+ narrative that the NMTC Financing will facilitate a true public/private partnership (including any indirect investment in the community based on our impact analysis).

#### **D. But-For Test**

Congress authorized the NMTC Program in order to reduce the cost of capital in Low-Income Communities outside of the traditional financial marketplace. Specifically, to provide new “financial” markets in economically distressed areas that either do not have significant access to traditional financing or such traditional financing has overly burdensome terms.

The NMTC industry uses the so-called **“But For Test,”** which supports that “but for” the NMTC Financing, the Borrower otherwise cannot obtain traditional financing or, if it can, the terms are overly burdensome and, therefore, the projected community impacts would not occur, be reduced and/or be delayed.

For example, but for the NMTC Financing:



- the project will not move forward or will be significantly delayed or reduced in scope;
- the community impacts will not be realized or will be significantly delayed or reduced in scope;
- the project would otherwise be located or related in a community that is not in a Low-Income Community;
- the project is at risk for not being financially sustainable (such as the terms of traditional financing being overly burdensome); or
- a combination of any of the aforementioned scenarios.

## 5. Competitive Advantages

The CDFI Fund has encouraged Allocatees to deploy certain percentage of their Allocations for certain purposes.

Sub-CDEs who commit to do so score better on their Allocation Applications and, if they so deploy, then score better on their subsequent Allocation Applications. Therefore, potential borrowers whose projects have any of these factors are more competitive in securing NMTC Financing.



We maintain an updated profile of each Allocatee for these factors.

There are several “primary” and “secondary” distress criteria that are used to determine whether a census tract is “Deeply Distressed;” “Highly Distressed;” “Non-Metropolitan” or “Qualified. Borrowers are at a more competitive the more distressed the census tract in which they are predominantly located.

### A. Qualified Low-Income Community

To qualify for NMTC Financing the first step is determining if a location is in a **“Qualified”** Low-Income Community. This requires that either (a) the poverty rate is greater than 20% or (b) the median family income rate does not exceed 80% (collectively, the **“Minimum Distress Criteria”**).

Although a location may be in a Qualified Low-Income Community, it is generally not competitive enough for NMTC Financing.

### B. Highly Distressed Low-Income Community

The CDFI Fund encourages Allocatees to deploy a percentage of their Allocations to “Highly Distressed” census tract.

A “Highly Distressed” census tract is the second highest level of distress. To be a **“Highly Distressed”** census tract it must satisfy the Minimum Criteria and any one of the following 4 alternative primary distress criteria:

- (a) “Non-Metropolitan Census Tract;”
- (b) a poverty rate greater than 30%;
- (c) a median family income rate not exceeding 50%;
- (d) an unemployment rate of at least 1.50X the national rate



If the Minimum Distress Criteria is not satisfied (*i.e.*, the poverty rate is 20% or less and the median family income rate exceeds 80%), it does not matter if the census tract is Non-Metropolitan or has an unemployment rate of at least 1.5X the national rate) because the census tract is not Qualified.

To date, 76% of Allocations have been deployed in Highly Distressed Low-Income Communities. In 2024, 85% of Allocations were deployed to Highly Distressed Low-Income Communities.



Additionally, a Highly Distressed census tract may also be Highly Distressed if it satisfies the Minimum Criteria at and least 2 of the following secondary distress criteria: (a) a poverty rate greater than 25%; (b) a median family income rate not exceeding 60%; (c) an unemployment rate of at least 1.25X the national rate; (d) being in a medically underserved area (if the borrower is a health care provider); or (e) being in a food desert (if the borrower provides healthy foods).

It is important to note that being in a Non-Metropolitan Census Tract is not only to be sufficient qualify a census tract as Highly Distressed (assuming the Minimum Criteria is satisfied) but also a specific distress criteria for which the CDFI Fund encourages and therefore is an additional competitive advantages to those located in Non-Metropolitan Census Tracts.



In 2024, 28% of Allocations were deployed in Non-Metropolitan Low-Income Communities

#### **D. Deeply Distressed Low-Income Community**

The CDFI Fund introduced a new and the very highest level of distress: “Deeply Distressed.” It encourages Allocatees to deploy a percentage of their Allocations to “Deeply Distressed” census tracts

A “Deeply Distressed” census tract is the highest level of distress. To be a **“Deeply Distressed”** census tract, at least one of the Deeply Distress “primary distress” criteria must be satisfied: (a) a poverty rate greater than 30%; (b) a median family income rate not exceeding 40%; or (c) an unemployment rate equal to or greater than 2.5X the national unemployment rate.

## E. Innovative Investments

Furthermore, the CDFI Fund encourages Allocatees to deploy a percentage of their Allocations for so-called **“Innovative Investments,”** which include, in relevant part, (a) “Non-Real Estate Activities;” (b) states identified by the CDFI Fund as having received fewer dollars of NMTC Financing historically (**“Identified States”**); and (c) QLICI Loans that are either (i) \$4 million or less or (ii) have a term of 60 months or less (each an **“Innovative QLICI Loan”**).

**“Non-Real Estate Activities”** are defined as working capital, inventory or equipment purchase. Those borrowers that financing Non-Real Estate Activities are at a competitive advantage to those who are financing real estate activities.

Additionally those located in a “Targeted State” are also at a competitive advantage. A Targeted State is one that has not received its pro rata share of the subsidy over the past few years.

Currently, the **Identified States** include:

Arizona  
 California  
 Colorado  
 Connecticut  
 Florida  
 Nevada  
 North Carolina  
 Texas  
 Virginia  
 West Virginia  
 U.S. territories



The vast majority of NMTC Financings involve the Forgivable Loan.

## 6. Recapture Events

The NMTCs are recognized by the Tax Credit Purchaser over the 7-Year Compliance Period as follows: 5% in each of the first 3 years, and 6% in the remaining 4 years.

Unlike other federal tax credit programs, if there is a “Recapture Event” during the 7-Year Compliance Period, then 100% of the NMTCs are:

- **“recaptured”** for all prior years (which means that the Tax Credit Purchaser must pay income taxes equal to such recaptured NMTCs as well as interest and penalties), and
- **“disallowed”** for all remaining years.

During the 7-Year Compliance Period, with respect to a Borrower, a **“Recapture Event”** include:



- the CDE ceases to be a “CDE;”
- if the Forgivable Loan is prepaid and not redeployed by the CDE within a certain period of time (such as in the case of a default);
- the QEI is redeemed or otherwise cashed out by the CDE; and
- if a principal purpose of a transaction or a series of transactions is to achieve a result that is inconsistent with the purposes of Section 45D and related Treasury Regulations if the IRS chooses to treat the transaction or series of transactions as causing a Recapture Event (the **“Anti-Abuse Recapture Event”**).

The Tax Credit Purchaser requires that the borrower and/or its affiliates guarantee the tax and economic consequences that occur as the result of any Recapture Event that it caused by the borrower as well as transactions subject to the Anti-Abuse Recapture Event.

It is important to note that NMTC Financings are carefully underwritten, the transaction documents are very specific as to the obligations of the borrower, many legal and accounting professionals have reviewed the transaction documents and structuring, there is ongoing compliance and monitoring to identify any potential risk of a Recapture Event, and there are remedial actions that can often be taken.



## 7. Financial, Tax and Compliance Reporting

The Forgivable Loan must be treated as “debt” on the books and records of the borrower and for all financial and tax reporting purposes.



If any existing and subsequent lender is not familiar with NMTC Financing, transaction participants will provide them insight into the mechanics of the NMTC Financing. Often, lenders will need to make an exception for the NMTC Financing to the extent it adversely affects any financial covenants or financial ratio requirements.

Additionally, during the 7-Year Compliance Period, the borrower will need to provide the Tax Credit Purchaser and Allocatee with (a) annual financial statements; (b) tax returns (c) annual budget; (d) quarterly financial statements;

(e) an **“Annual Certificate of Compliance;”** and (f) an **“Annual Community Impact Survey.”**

Borrowers include a note to their financial statements provides a discussion of how the Forgivable Loan is to be forgiven at the end of the 7-Year Compliance Period, which satisfies Generally Accepted Accounting Procedures.

## 8. State NMTC and Similar Programs

The following states have their own NMTC or similar programs that provide state tax credits or other subsidies: Alaska; Arkansas; Georgia; Illinois; Kentucky; Louisiana; Maine; Mississippi; Nebraska; Nevada; Ohio; and Utah. Additionally, there is proposed legislation for such programs in Indiana; Minnesota; and West Virginia.

## 9. Economics of NMTC Financing



Each year, “qualified community development entities” (**“CDEs,”** which are either for-profits or nonprofits) apply to the CDFI Fund for non-monetary allocation awards (**“Allocation Awards”**). If a CDE receives an Allocation Award, it is known as an **“Allocatee”** and executes an **“Allocation Agreement”** with the CDFI Fund.

Applicants complete an annual application, which includes detailed questions regarding the applicant’s (a) business strategy (such as financial projects to be offered and targeted types of borrowers and uses of the subsidy); (b) community outcomes (such prior and anticipated job creation, consumer/community goods and services and beneficiaries, minority impacts, and/or environmental impacts); (c) management capacity; and (d) capitalization strategy.

Potential for-profit and nonprofit borrowers apply to Allocatees for a “sub-allocation” (a **“Sub-Allocation”**) of a portion of their Allocation Awards.

Selection of borrowers and projects must be consistent with an Allocatee’s Allocation Agreement.

If an Allocatee provides a Sub-Allocation to a borrower, then an Allocatee will organize a new special purpose CDE (the **“Sub-CDE”**) for the particular NMTC Financing.







A financial institution or corporation (a **“Tax Credit Purchaser”**) effectively and indirectly purchases the federal new market tax credits (the **“NMTCs”**) and the proceeds of the purchase price (the **“NMTC Purchase Price”**) are used to provide a forgivable loan (which is much more common) to a borrower.

Additionally, all legal and accounting fees as well as transaction costs are paid out of the Tax Credit Purchase Price.

The NMTC Financing must satisfy various requirements during the 7-year compliance period (the **“7-Year Compliance Period”**), which is discussed later.

Section 45D(c) of the Code requires, in relevant part, that the subsidy be provided as either “deb” or “equity” to the borrower in order to be a “qualified low-income community investment” (a **“QLICI”**).



### A. Forgivable Loan

When Congress passed Section 45D of the Code, it did not contemplate (a) how NMTC Financings would be structured due Tax Credit Purchasers’ risk assessment and (b) the time and costs of CDEs applying for Allocation Awards and ongoing costs during the 7-Year Compliance Period. Specifically, as discussed later, the Internal Revenue Service (the **“IRS”**) issued Treasury Regulations and two revenue rulings that permit the so-called **“Leverage Structure”**), as discussed below. Additionally, the CDFI Fund often provides guidance with respect to permitted transactions and special rules.



Thus, NMTC Financings must satisfy the requirements of (a) Section 45D of the Code (*i.e.*, Congress’s statute); (b) Treasury Regulations, (c) the Leverage Structure parameters (which is used in the vast majority of NMTC Financings); and (d) CDFI Fund guidance. To satisfy all of these requirements, NMTC Financings involve substantial legal and accounting fees to support several required tax opinions and underwriting requirements. Allocatees fees to cover prior costs in applying for Allocation Awards and ongoing compliance costs.



As a result of these substantial fees and costs, the vast majority of NMTC Financings are structured to be forgiven (a **“Forgivable Loan”**) at the end of the 7-Year Compliance Period, which is discussed later. Originally, the NMTC Financings were intended to be paid off or refinanced at the end of the 7-Year Compliance Period and merely provide at least 5 Favorable Terms.



At the end of the 7-Year Compliance Period, the forgiveness of the Forgivable Loan results in cancellation of indebtedness. However, (a) all of the transaction costs are amortizable; (b) whatever the borrower finances (such as real estate, equipment, and working capital) is depreciated or deducted; and (c) presumably the proceeds of the Forgivable Loan results in increased profitability. Therefore, NMTC Financings are generally tax neutral and subject only to timing issues. For nonprofits, cancellation of indebtedness income is a moot point from a tax perspective.

Based on current pricing and typical fees and costs, the net subsidy (*i.e.*, cash at close) is equal to:

(x) 20%

times

(y) the sum of the following **“Leverage Sources:”**

- (i) up to 2 years of prior incurred costs paid to unrelated parties; plus
- (ii) borrower’s available cash to run through the structure and back to the borrower on the closing date; and
- (iii) loans, grants or other subsidies that can be run through the structure.

## B. Forgivable Loan Leverage Structure

In 2003 and 2010, the IRS revenue rulings, which provide that a Tax Credit Purchaser does not have to fully fund the QEI on which the NMTCs are based. Specifically, the Tax Credit Purchaser organizes a wholly owned investment fund (the **“Investment Fund”**) to facilitate the Leverage Structure. The Leverage Sources are used to provide a “Leverage Loan.”

The Forgivable Loan Structure is illustrated in **Exhibit A**.

The Tax Credit Purchaser makes a capital contribution in the amount of the NMTC Purchase Price to the Investment Fund. Another party/other parties (the **“Leverage Lender(s)”**) provide **“Leverage Loan(s)”** to the Investment Fund. The Leverage Loan requires interest-only payments during the 7-Year Compliance Period. Using the proceeds of the NMTC Purchase Price and the Leverage Loan, the Investment Fund makes the QEI in the CDE.



The proceeds of the Leverage Loan(s) are ultimately used by the CDE to make a second loan to the borrower (the **“Other Loan”**) and the debt service payments thereof are run up through the structure to pay the Leverage Lender(s).

The NMTC Program requires that this Other Loan only require interest payments over 7 years and the interest rate is the weighted interest rates of the Leverage Loan(s).

### C. Other Subsidies Used with NMTC Financing



NMTC Financing can be used in connection with state NMTCs, historic tax credit financing, and other community and economic development programs (such as taxable bonds, some tax-exempt bonds, opportunity zone financing, and those provided by the USDA Programs and the CDFI Programs).

However, NMTC Financing cannot finance any square feet to the extent that low-income housing tax credits finance such square feet.

CRA works with clients to structure NMTC Financings to include these subsidies, some of which can be used as a source for the Leverage Loan.

### D. Forgivable Loan Unwind after 7-Year Compliance Period

Each of the Forgivable Loan and the Other Loan must be treated as “debt” for federal income tax purposes. This requires a multi-factor analysis. An intent to forgive is a significant factor to support that the Forgivable Loan is not “debt” but rather “equity” (which the Tax Credit Purchaser and Allocatee do not want) or a “grant” (which is not permitted by Section 45D of the Code).

In order to address this factor, the industry uses an unwind structure. This is facilitated pursuant to an “option agreement” or a “put and call agreement.”

As illustrated in **Exhibit B**, the end of the 7-Year Compliance Period, (a) the Tax Credit Purchaser has the option to “put” (*i.e.*, sell) its 100% ownership interest in the Investment Fund (which owns 99.99% of the Sub-CDE) for a nominal amount (such as \$1,000 plus exit taxes and legal fees) to one of the borrower’s affiliates (which usually acts as the Leverage Lender or otherwise exists or is created for this purpose) and (b) the Allocatee has the right to redeem its 0.01% managing member interest in the Sub-CDE for a nominal amount (such as \$100).



If the Leverage Lender is an affiliate of the borrower, then Other Loan is generally assigned to the Leverage Lender in which case the Other Loan is effectively forgiven.

This forgiveness of debt should not result in cancellation of debt income if the Leverage Structure is properly structured for the closing of the NMTC Financing.

If the Leverage Lender is an unrelated party, then Other Loan is generally assigned to the Leverage Lender in which case the Leverage Loan and the Other Loan are restructured after which the borrower will start to pay the remaining outstanding debt based on the terms of the Leverage Loan or refinance such debt.

How do borrowers get comfortable that the Tax Credit Purchaser will “put” its 100% limited interest in its Investment Fund?

The Tax Credit Purchaser:

- generally, receives a 9% to 12% internal rate of return on the NMTCs;
- receives credit under the Community Reinvestment Act (which encourages certain insured depository institutions to help meet



the credit needs of the communities in which they are chartered, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institutions);

- receives significant goodwill by providing funds that are used to assist local business and nonprofits that provide substantial community impacts; and
- would be “black-balled” or “cancelled” in the NMTC marketplace because it nullified the intended benefit of the NMTC Financing in the form of the Forgivable Loan.

How do borrowers get comfortable that an Allocatee will redeem its .01% managing member interest in the Sub-CDE?

The Allocatee:



- receives its upfront Sub-Allocation Fee of the Tax Credit Purchase Price;
- receives ongoing asset management, monitoring, and overhead reimbursement out of the Tax Credit Purchase Price; and
- has furthered its mission of serving, or providing investment capital, to Low-Income Communities resulting in significant community impacts.

A few Allocatees (approximately 15%) require a percentage of the Forgivable Loan to be paid back or the discretion to do so if community impacts are not achieved (generally up to 25%), which they then redeploy to another borrower in an economically distressed community. However, it is important to note that any such requirement is stated in the term sheet and then in the NMTC Financing documents.

CRA identifies, profiles and solicits Allocatees and Tax Credit Purchasers for optimal nontraditional and favorable terms and flexible underwriting requirements based on our clients' needs, nature of their operations, uses of the subsidy, and types of community impacts that will result.

CRA maintains profiles of all Tax Credit Purchasers and Allocatees, which we (a) update each year based on the Allocatees' commitments in their Allocation Agreements commitments and (b) periodically update for specific demand for particular types of borrowers and projects at any point in time.



CRA is a gateway of creditability when we represent our clients to Tax Credit Purchasers and Allocatees.

Please see Section 10 hereof for a description of our Placement and Closing Services.

## E. Alternative Loan Products

There are alternative NMTC products encourage by the CDFI Fund. These include (a) QLICI loans that are either (a) \$4 million or less or (b) have a term of 60 months or less (each an **“Innovative QLIC Loan”**).

Each of the products include at least 5 Favorable Terms but are not forgiven.

## 10. Placement, Closing and Project Management Services

CRA works closely with all of our clients to ensure that they have the best chance to obtain NMTC Financing in an efficient and effective manner.

### A. Placement and Closing Services

On behalf of our clients, we quarterback the entire process of securing the best economic terms of NMTC Financing.



**Our fees are contingent on the funding of the NMTC Financing.**

Thus, we do not charge a retainer, charge hourly rates or require reimbursement for our expenses. If our client chooses not to proceed for whatever reason (even upon receipt of term sheets), our clients have no financial obligation to us.

We have practiced in law and accounting, which is beneficial in connection with the borrower's particular facts and circumstances.

We facilitate all aspects of the placement and closing of NMTC Financing by providing many services, including:

- (a) provide our proprietary comprehensive NMTC intake form to Client and assist Client in completing such form;
- (b) work with legal counsel, structure and restructure the overall financing to satisfy all legal, tax, and structuring requirements;
- (c) perform a “distress analysis” to identify applicable primary and secondary distress criteria of each census tract;
- (d) working with Client, prepare financing projections for the terms of the NMTC Financing;
- (e) assist Client with the quantification and qualification of direct and indirect community and economic impacts and compare to third party verification or statistical data, as applicable, and reconcile and explain any differences;







- (f) assist Client to confirm strong local support for the NMTC Financing and possible catalytic subsequent economic and community development as a result of the NMTC Financing;
- (g) identify and solicit Allocatees for: (i) maximum “sub-allocation” of their Allocation Awards to Client; (ii) maximum forgiveness of the Forgiven NMTC Loan; (iii) optimal economic terms; (iv) optional flexible financial underwriting criteria; and (v) low “sub-allocation” fees;
- (h) identify and solicit Allocatees to include the NMTC Financing in their annual applications to the CDFI Fund for an Allocation Award;
- (i) identify and solicit Tax Credit Purchasers for: (i) optimal NMTC pricing; (ii) other optimal financing terms; and (iii) optimal flexible financial underwriting criteria;
- (j) working with legal counsel, negotiate all commitment letters provided by Allocatees, Tax Credit Purchasers;
- (k) provide an efficient timeline with benchmarks through the closing date of the NMTC Financing;
- (l) facilitate each closing by collecting due diligence materials and creating a drop box; and
- (m) manage the closing and funding.



CRA has conducted substantial research to identify manufacturers, healthcare providers and nonprofits in the United States to determine (a) each primary and secondary economic distress criteria of their locations to determine the degree to whether they are located in highly distressed census tracts; (b) estimated current employee, patients or patrons; (c) estimated revenue; and (d) degree of importance to their local communities and/or targeted populations.

Additionally, CRA has maintained long-term relationships and experience with the vast majority of Allocatees and Tax Credit Purchasers, attend industry, participate in lobbying efforts, and monitor economic terms and market demand.

## B. Project Management Services

We also provide customary post-closing services between the closing date through the unwind of the NMTC Financing, which will occur soon after the 7th anniversary date thereafter, which shall include:

- (a) assist our client in connection with any disbursement request to the CDE(s);
- (b) draft all financial and compliance certificates (whether annual, semi-annual or quarterly);
- (c) timely request our client for due diligence materials required be submitted by the NMTC Financing documents or as otherwise may be requested by the CDE(s);
- (d) work with our client for other typical post-closing matters (such as requesting any required consent of the CDE, the Tax Credit Purchaser, or any other their affiliates and any questions by existing or subsequent lenders);
- (e) assist our client with any post-closing issues; and
- (f) assist our client in connection with the unwind of the NMTC Financing.

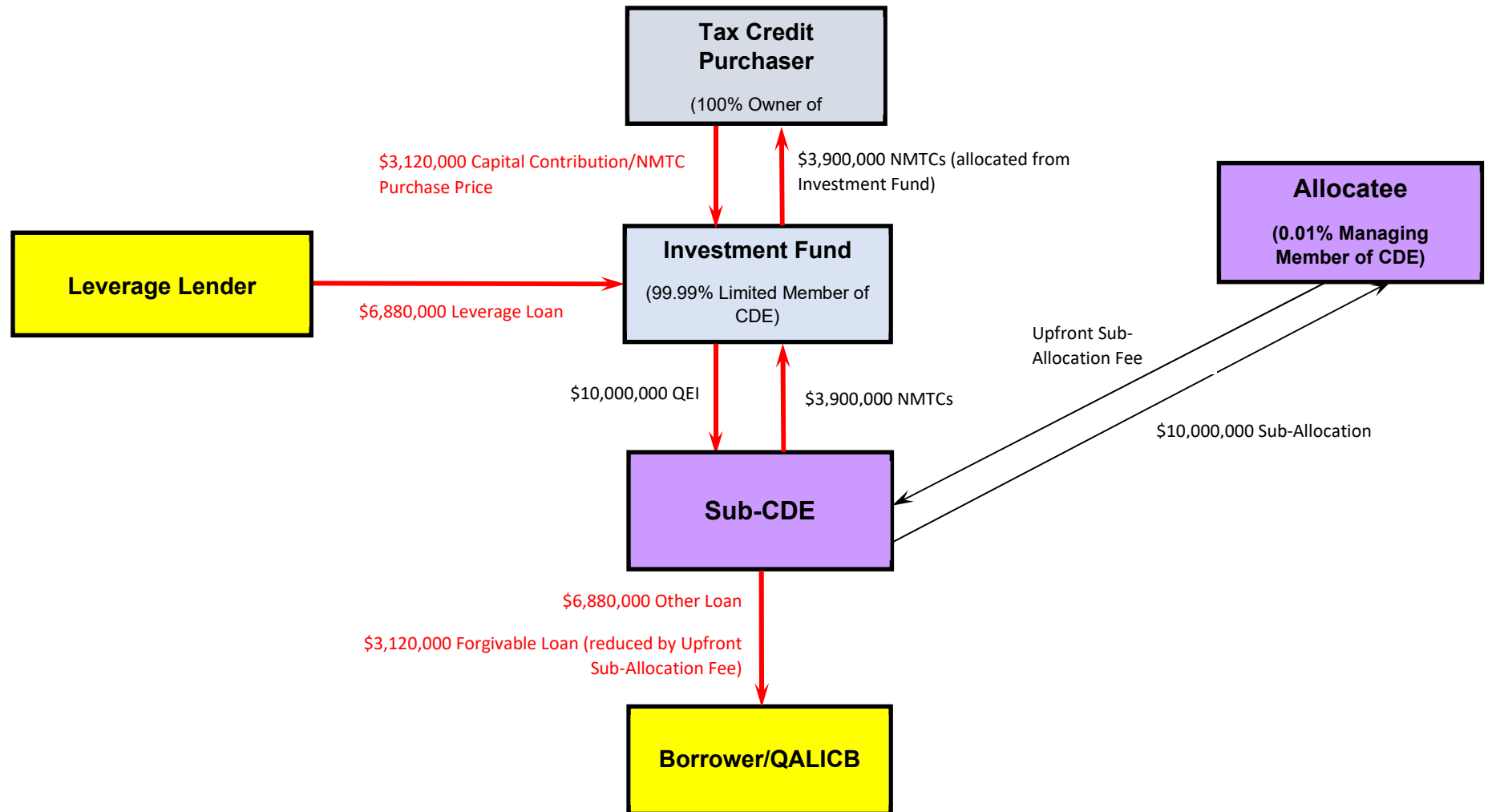


If you have any questions or comments regarding the NMTC Program, please feel free to call me at 312.881.0966 or email me at [Scott@crassociates-llc.com](mailto:Scott@crassociates-llc.com).

*Scott R. Sunagel*

# Exhibit A

## Leverage Structure



## Exhibit B

### Unwind

