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VIA ELECTRONIC SUBMISSION <nmtc@cdfi.treas.gov>

March 26, 2024

Christopher Allison
New Markets Tax Credit Program Manager
CDFI Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW Washington, DC 20220

RE: Formal Comment on New Markets Tax Credit (NMTC) Program Allocation Application for the Calendar Year 2024-2026 Funding Rounds (FR Doc. 2024-03707; OMB Number: 1559-0016)

Dear Mr. Allison and CDFI Fund leadership and colleagues:

The Native CDFI Network (NCN), the only national membership organization solely dedicated to serving and supporting Native community development financial institutions (CDFIs), welcomes this opportunity to provide comments to the CDFI Fund on the NMTC Program Allocation Application for the Calendar Year (CY) 2024-2026 Funding Rounds on behalf of our members and partners. Our comments are formally supported by the **XX** co-signatory organizations listed at the end of this document.

The following presents NCN and our partners' consensus priorities for Treasury and the CDFI Fund to streamline and strengthen the NMTC Program Allocation Application process to ensure Indian Country's equitable access to and usage of NMTC Program allocations:

- **Support Establishment of a 10% Set-Aside of NMTCs for Native Community Development Entities (CDEs):** We recognize that establishment of an Indian Country set-aside requires Congressional action, but Treasury and the CDFI Fund have a vital role to play in championing this warranted measure with Congress, which will generate a greater amount of sorely needed private investment in economic development projects on tribal lands. Unfortunately, for a myriad of reasons, few Native CDEs have participated in NMTCs despite their [proven benefits](#) for Native communities. For example, CY 2021 saw not a single Native CDE receive an NMTC award, and CY 2022 saw just two Native CDEs receive allocations out of a total of 102 allocatees. In addition, the NMTC Program has no built-in mechanism to ensure that NMTC investments reach Native communities or that Native entities are equipped with the capacity and expertise to successfully compete in the NMTC market as CDEs.

However, as a recent study¹ funded by the CDFI Fund illustrates, an Indian Country set-aside would provide newfound certainty to existing and prospective Native CDEs that developing an NMTC application – and investing in the building of the capacity needed to deploy an NMTC award – stands a good chance of paying off in the form of an NMTC award from the set-aside, which is bound to increase the number of Native CDE applicants for each new funding round as well as prompt a greater number of Native entities to secure CDE certification to gain application eligibility.

¹ Kevin Klingbeil et al. *New Markets Tax Credit Investments in Native Areas: Selected Case Studies and Best Practices*. Prepared for New Markets Tax Credit Program Native Initiative, CDFI Fund, U.S. Department of the Treasury. September 2023 (https://www.cdfifund.gov/sites/cdfi/files/2023-10/CDFI_NMTC_NI_Case_Study_Report_Final.pdf, accessed March 19, 2024).

In terms of structuring the set-aside, Congress and CDFI Fund could consider a *gradual* integration of the 10% Indian Country set-aside to ensure the set-aside amount is fully expended each calendar year. At the outset, this could be achieved by allocating NMTC awards first to applicant Native CDEs, then to applicant non-Native CDEs whose applications (1) seek to deploy NMTC allocations on tribal lands or to Native-controlled projects, and (2) feature Native CDEs as *secondary* CDEs (this secondary role allows the Native CDE to build its requisite NMTC track record by receiving an award from an allocatee and delivering it to the project as an intermediary, and also would compel the primary, non-Native CDE to mentor the Native CDE, building the latter's NMTC capacity and know-how). As the number of Native CDEs grows along with their capacity to deploy NMTC awards, their share of the Indian Country set-aside amount would increase until it reaches 100 percent of the set-aside. To ensure the success of the set-aside, the CDFI Fund would need to direct ample resources to Native CDEs "to support the administrative and compliance expectations associated with an allocation."² Native CDEs' participation either in a primary or secondary role is vital for the design and implementation of NMTC-supported projects in Indian Country given Native CDEs' cultural competencies and intimate understanding of tribal sovereignty, sovereign immunity, and leasehold mortgages on tribal trust land.

In lieu or in advance of Congress establishing an Indian Country set-aside, the CDFI Fund could amend the initial NMTC application scoring process to assign substantial priority points to Native CDEs that apply for allocations, which would enhance their ability to compete with more established, non-Native CDEs for NMTC awards.

- **Coordinate the Compatibility of Other Federal Funding Programs with NMTCs:** Federal agency leadership and staff frequently lack understanding of the distinct issues and needs of Native communities. One of the most pressing needs of Native communities is for federal agencies to work together to streamline and unify the guidelines and approval processes of the funding programs they administer. Artificial and unnecessary obstacles exist because agency funding and loan guarantee programs that serve the same purposes and the same Native populations are not approved or implemented in the same way and therefore become incompatible with one another in support of Indian Country projects that would achieve the federal policy goals those programs are designed to advance. For instance, most federal funding programs are incompatible with NMTCs because funds must be placed into the project through a financing structure that accommodates the capital of a private, third-party investor. The U.S. Department of Agriculture (USDA) offers a proven solution to address this challenge that should be replicated across the federal government: its Business & Industry Loan Guarantee Program. This simple, effective program recognizes the participation of a lender that is a qualified USDA lender (a federally regulated financial institution). That qualified lender's participation allows the USDA guarantee to attach to the loan at the optimum point in the NMTC transaction flow to make the funding most efficient and least expensive for the project. The CDFI Fund should engage other key federal agencies to align their funding programs with NMTCs based on the USDA model.
- **Level the NMTC Playing Field for Indian Country by Revising NMTC Regulations to Incorporate the Unique Circumstances of Native Communities in NMTC Selection Criteria:** Key to this effort should be the inclusion of *qualitative* outcomes as well as quantitative outcomes in evaluating funding applications. For instance, a tribal health clinic that could be funded through an NMTC award might be the only facility within 100 miles that provides emergency services. Its 2,000 patients per year are unlikely to compete successfully in a grant review when compared to much higher numbers in an urban setting, but this facility represents the only locally available option for rapid, life-saving treatment. Meanwhile, the competing urban project may be within a few miles of several comparable facilities. Similarly, the number of people served in a rural tribal area is likely to result in higher per-capita costs for services and higher per-square-foot costs for construction. Similarly, the costs per beneficiary may be higher and employment may be lower than urban projects offering similar services. For example, a clinic offering diagnostic imaging that serves a

² Michou Kokodoko and Caryn Mohr, "New Markets Tax Credit investments in Indian Country: Barriers and potential solutions," Center for Indian Country Development, Federal Reserve Bank of Minneapolis, April 14, 2023 (<https://www.minneapolisfed.org/article/2023/new-markets-tax-credit-investments-in-indian-country-barriers-and-potential-solutions>), accessed March 20, 2024).

smaller, rural population will have the same construction and equipment expenses as an urban clinic because it still needs X-ray and MRI machines, even though it will serve fewer patients. NMTC application reviewers might figure this out even without specific training, but fairness to Native-serving projects means these differences should be included in reviewer training. Altogether, these dynamics distinct to Indian Country should be synthesized into qualitative outcomes that are integrated and normalized in the application review process. This integration process should be undertaken with the input of tribal governments, who understand the nuances and impacts of NMTC-supported projects that are sited in Native Areas, particularly those that are culturally sensitive or feature comparatively low population density relative to urban-based NMTC allocation applications.

- **Provide Technical Assistance Funding to Native CDEs to Mitigate the Time and Cost Associated with Developing the NMTC Allocation Application:** The current NMTC allocation application is extraordinarily time-consuming and cost-prohibitive with no guarantee of success for Native CDEs. Based on data collected from Native and other CDEs, the average time to write an application is about 200 hours, which requires some Native CDEs to allocate significant staff time to develop the application and forces others to rely on consultants to do so. Consultants' fees vary substantially, as do the services they provide. Some charge flat fees as little as \$5,000 to review a draft application and as much as \$40,000 to \$60,000 to write an application. Others charge as much as 2.5 percent (constituting almost the entirety of the typical CDE fee paid at closing) as a fee for a successful application, or more if other services are provided as well. These dynamics foster a decidedly negative cost-benefit analysis that inhibits the growth in the number of Native CDEs seeking certification and then applying for an NMTC allocation. Providing ample, targeted funding for technical assistance support for Native CDEs to develop applications would begin to address this issue.
- **Neutralize the Track Record Obstacle Faced by Native CDEs:** The bread and butter of many Native CDFIs are small business loans, micro-loans to home-based businesses, or credit builder loans and the extension of other consumer debt to individuals. Consequently, some do not have track records as lenders of sufficient scale in retail, commercial, and industrial projects to be competitive for NMTC awards (or even pursue certification as a Native CDE in the first place). Currently, the NMTC Allocation Application features narrative questions and supporting tables requiring the applicant to demonstrate its lending history over the previous five years. An applicant whose lending history totals less than the NMTC allocation amount it is requesting is likely to receive a smaller award or no award at all, particularly if the track record is below about \$15 million. As one Native CDE representative put it, "Even if you have projects in the pipeline, if you don't have the needed track record, you won't get an allocation."³

The CDFI Fund should neutralize the track record obstacle for Native CDEs by allowing them to score track record points in the NMTC allocation application process by highlighting their institutional skills such as underwriting, closing, loan servicing, and portfolio management that are also applicable to NMTC transactions, instead of the CDFI Fund basing their track record score on dollars alone.

- **Expand "Targeted Population" Methodology to be More Inclusive of Indian Country:** "Targeted Population" is a method in the NMTC Program to qualify a project regardless of its census tract data if the project serves a majority of low-income people or people who historically have had limited access to capital, "such as Indian tribes." The CDFI Fund should fully codify this objective by amending the NMTC Allocation Application FAQ to confirm the current definition of Targeted Population by making clear that American Indians, Alaska Natives, and Native Hawaiians are Targeted Population persons, and projects serving them automatically qualify as Targeted Population projects.
- **Allow Native CDEs to Use NMTC Allocations for Projects Controlled by Tribes that Control Those CDEs:** The CDFI Fund should allow a Native CDE controlled by Tribe A to finance projects that are also controlled by Tribe A or in which Tribe A is a tenant of a Qualified Active Low-Income Community Business, which will incentivize tribes to support their

³ Ibid.

March 22, 2024

Native CDFIs in becoming certified CDEs and applying for NMTC allocations. Because of the current prohibition, tribes are discouraged from doing so due to the related entity scoring issue.

- **Develop and Administer a Targeted Training Program for CDFI Fund Staff, Other Federal Agencies, and NMTC Private Investment Partners about Indian Country:** Co-designed with existing Native CDEs and leading national Native organizations, this program would train federal and private investment stakeholders about the complexities of project development and financing on tribal lands and in Native communities. According to the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis, “Partners structuring NMTC deals in tribal areas often have limited understanding of economic development in Indian Country, [which] includes limited understanding of how to work in ways that honor tribal sovereignty.”⁴ Such a program also would serve to deepen relationships between them and Native CDE leadership and staff.

Thank you for your consideration of these comments on the NMTC Program Allocation Application for the Calendar Year 2024-2026 Funding Rounds. Please let us know if you have any questions or wish to discuss our comments further.

Sincerely,



Pete Upton
CEO and Board Chair
Native CDFI Network

ORGANIZATIONAL CO-SIGNATORIES:

[TBD]

⁴ Ibid.