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New Markets Tax Credits:
Unlocking Investment Potential

Abstract:

This edition of Insights describes the New Markets Tax Credit (NMTC) Program and the major considerations that confront bank investors when using the tax credits to develop and support community and economic development activities. The report examines the primary risks associated with use of NMTCs and discusses the methods that bank investors have used to structure and manage these credits effectively.

The information presented in this report was obtained from a variety of sources including national bankers, non-supervised financial intermediaries, investment fund advisers, and other parties who are actively using NMTCs to finance a diverse range of activities. This information represents our understanding of United States federal income tax laws and regulations, but does not constitute tax advice. Institutions should consult their own tax advisers about the tax treatments described in this report and the consequences that may apply to their own transactions.

Project summaries of two NMTC transactions are included in a case study appendix (Appendix A). A glossary of terms (Appendix B) will provide the reader with more details about the various elements of the NMTC program. The Resource Directory (Appendix C) contains sources of additional information on the NMTC program. A listing of bank and bank holding companies that have received NMTC allocations also is provided (Appendix D).

I. What Is the New Markets Tax Credit Program?

The New Markets Tax Credit (NMTC) Program was created in December 2000 by the Community Renewal Tax Relief Act of 2000.[1] The program seeks to leverage capital from investors to spur economic development in urban and rural low-income communities.

Within the Treasury Department, the Community Development Financial Institutions Fund (CDFI Fund) and the Internal Revenue Service (through Section 45D of the Internal Revenue Code)[2] jointly administer the program. A prospective recipient of new markets tax credits must be certified

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[1] Congress authorized $15 billion in NMTC allocations effective fiscal year 2002 through fiscal year 2007. In December 2005, Congress made a special allocation of an additional $1 billion in NMTCs under the Gulf Opportunity Zone Act. Allocations for each of the previous four rounds are: Round I, $2.5 billion, allocated 2003; Round II, $3.5 billion, allocated 2004; Round III, $2 billion, allocated 2005; Round IV, $4.1 billion, allocated 2006; and Round V, $3.9 billion, to be allocated 2007. The last two rounds include the special allocation of $1 billion - $600 million and $400 million, respectively – earmarked for the Gulf Coast areas affected by Hurricane Katrina. The CDFI Fund announced the Notice of Allocation Availability for the fifth round on December 4, 2006.

[2] The IRS has published "NMTC Program Income Tax Regulations" at 26 CFR 1.45D-1, and interpretative guidance to assist taxpayers claiming the tax credit(s) under IRC § 45D.

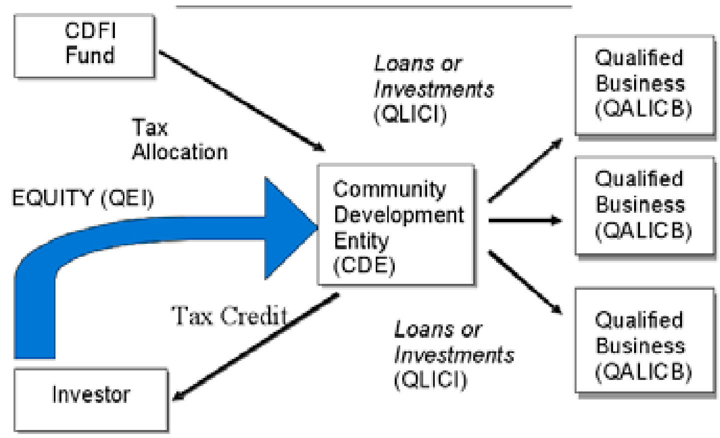
by the CDFI Fund as a qualified community development entity (CDE) before submitting an application for a tax credit allocation. An NMTC application is evaluated by the CDFI Fund on the basis of the CDE's business strategy, capitalization strategy, management capacity, and projected community impacts.

The NMTC process works as follows: The CDFI Fund allocates NMTCs to CDEs, which, in turn, offer them to investors in return for equity capital. The proceeds from investors are referred to as Qualified Equity Investments (QEIs). CDE allocatees and other parties, such as equity fund managers, market the availability of NMTCs to prospective investors at the institutional and individual level.

A CDE must place the credits with investors within five years of receiving the allocation.[3] The term of the credit is seven years. Investors claim a tax credit of 5 percent of the amount of the QEI for each of the first three years, and a credit of 6 percent for each of the last four years, amounting to a 39 percent credit over the term of the QEI (see Figure 1).[4]

Figure 1

New Markets Tax Credit Program



Using the QEI proceeds, a CDE makes its financial assistance available to eligible businesses known as Qualified Active Low-Income Community Businesses (QALICBs). "Substantially all" of the QEIs, defined as 85 percent, must be deployed by the recipient CDE within one year in Qualified Low-Income Community Investments (QLICIs).[5] The QLICIs comprise a host of financial and technical assistance to eligible businesses: investing in or lending to these business enterprises; investing in or lending to CDEs; purchasing loans from CDEs; and providing financial counseling and other services (FCOS) by the CDE to organizations, including nonprofit

[3] Receipt of investor commitments is not a prerequisite for receiving an NMTC allocation; an applicant for the credit allocation may provide documentation to the CDFI Fund that it has secured investor commitments - or obtained letter(s) of interest or intent - or demonstrate that it has a reasonable strategy for obtaining such commitments and deploying the funds raised with NMTCs.

[4] The QEI must remain invested in the CDE during the seven-year credit allowance period. The credits are claimed on the date of the investor(s)' QEI and the following six anniversary dates.

[5] The CDE is responsible for monitoring compliance by the businesses with the qualifying criteria throughout the seven-year NMTC compliance period. If the QLICIs made to qualifying businesses are repaid prior to the end of the compliance period, the capital must be reinvested, or redeployed. At the end of the seven-year period, redemption of the investment is permitted.

organizations, to assist with business plan development, financial analysis, financing, and similar activities.[6]

II. Why Are New Markets Tax Credits of Interest to Banks?

Banks have chosen to participate in the NMTC program for a number of reasons. These include attractive economic rates of return on investments; prospects for generating significant impacts in low-income areas, which frequently involve the use of partnerships with community-based organizations; opportunities to diversify into other credit products and services; and multiple ways to receive favorable Community Reinvestment Act (CRA) consideration.

Competitive investment yields

Depending on a bank's risk tolerance and tax credit appetite, different financing structures are available to accommodate investor interests. These financing structures are discussed in more depth in Section III. Industry participants report after-tax internal rates of return that have generally ranged between 5 percent and 20 percent annually depending on the financing structure used, with returns averaging between 8 percent and 10 percent.

Platform for additional tax credit investments

Commercial real estate projects that combine NMTCs with historic rehabilitation tax credits (HTCs) – often referred to as "twinned" deals - have been popular with some bank investors, because the blend of NMTC and HTC equity enhances the rates of return for investors in these projects and enables transactions that previously were considered unattractive to be financed. Both nonprofit and for-profit developers have effectively twinned NMTCs and HTCs to generate equity investments, with a number of national banks as major investors.

Demonstrable community impacts

Data obtained by the CDFI Fund for FY 2004 show that 92 percent of loans and investments under the NMTC program were made in geographic areas evidencing "higher" distress.[7] Additionally, all of the loans and investments were made at below-market rates and more flexible terms than those associated with conventional credit products. These features include equity and equity-equivalent terms and conditions, deeply subordinated debt, reduced origination fees, and higher-than-standard loan-to-value ratios.[8]

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[6] On October 4, 2006, the U.S. Small Business Administration (SBA) established the New Markets Tax Credit Pilot Loan Program, effective November 3, 2006. Under this program, certain CDEs may be able to purchase a participation interest in up to 90 percent of an SBAExpress or CommunityExpress Section 7(a) guaranteed business loan as part of their QLICI(s). Refer to FR 71 at 58658 and 58659.

[7] According to the CDFI Fund, which administers the NMTC program, approximately 39 percent of the Census Tracts in the United States, based on year 2000 census data, satisfy at least one of the Fund's threshold criteria: a project must generally be located in a census tract with: 1) a poverty rate of 20 percent or greater; or 2) a median family income at or below 80 percent of the area median family income. Areas with higher distress criteria include, but are not limited to, those having unemployment rates at least 1.5 times the national average; and/or areas that have been designated for economic development through other governmental programs, such as Brownfields, empowerment zones, and renewal communities.

[8] An analysis by the General Accountability Office (GAO) indicates that the NMTC program may be increasing investment in low-income communities by participating investors. Investors have invested more dollars in low-income communities as a result of the credit; in addition, GAO's report indicates that businesses may be shifting investment funds from other assets to invest in NMTCs, and individual investors may be using funds from new sources in NMTC investment opportunities. Refer to GAO-07-296 Tax Policy: New Markets Tax Credit Appears to Increase Investment by Investors in Low-Income Communities, but Opportunities Exist to Better Monitor Compliance, January 2007, at http://www.gao.gov/new.items/d07296.pdf.

As is the case with other tax credit programs, such as the HTCs and the Low-Income Housing Tax Credit Program, banks can form partnerships with community-based organizations and other developers to sponsor community revitalization activities using NMTCs.

Favorable CRA consideration

There are a number of ways by which banks can participate in NMTC activities, which may also help them meet their CRA obligations. The federal banking agencies have recognized that a financial institution's investment in, or loan to, a CDE in connection with the NMTC program would receive consideration as a qualified investment or a small business or community development loan, respectively, for CRA evaluation purposes.[9] Many bankers target their NMTC investments to projects primarily located in their footprint to help ensure that the activities benefit their assessment areas and receive favorable CRA consideration.[10] (See Table 1 for examples of CRA-eligible activities).

Revisions to the CRA regulations in 2005 have expanded the definition of "community development," which is applicable to banks of all sizes. Under the revised definition, the category of "activities that revitalize or stabilize" includes activities located in areas designated by the agencies as "distressed or underserved non-metropolitan middle-income geographies" and "designated disaster areas."[11]

The broader definition may enable banks to consider different approaches to NMTC program participation.[12]

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[9] See the CRA Interpretative Letter dated December 17, 2003, at http://www.ffiec.gov/cra/pdf/newmarketstaxcredit.pdf

[10] See also footnote 15 regarding bank community development (CD) activities outside a financial institution's assessment area(s).

[11] Refer to http://www.ffiec.gov/cra/examinations.htm for a list of distressed or underserved nonmetropolitan geographies.

[12] Refer to http://www.ffiec.gov/cra/qnadoc.htm for Interagency Questions and Answers Regarding Community Reinvestment, dated March 10, 2006, which specifically relate to the 2005 regulatory changes. The Interagency Questions and Answers published July 2001 also remain in effect.

Table 1

Examples of NMTC Activities That May Receive CRA Consideration

Lending Test	• A bank makes small business loans to qualifying businesses in its assessment area(s) under the NMTC program. • A bank purchases small business loans made by a CDE in its assessment area(s) to expand its commercial loan portfolio. • A bank invests in a CDE that will make commercial loans in various deteriorated neighborhoods in its assessment area(s).[13]
Investment Test	• A bank makes an equity investment in a CDFI/CDE that will make small business and community development loans to borrowers located in the bank's assessment area(s).[14] • A consortium of several banks provides an equity infusion to capitalize a CDE that does not directly serve some of the banks' assessment areas, although their assessment areas are located in the CDE's market territory.[15] • A bank funds its subsidiary community development corporation (CDC), which is certified as a CDE and receives an NMTC allocation. The CDE will use the investment to finance projects/businesses that provide jobs for low- and moderate-income (LMI) individuals in its assessment area(s). • A bank makes capital with near-equity features available to help finance start-up businesses housed in a business incubator in an economically depressed downtown neighborhood in its assessment area.
Service Test [16]	• Bank officers serve on the loan committee of a CDE in the bank's assessment area. • A bank provides technical assistance in financial analysis to CDE staff. The CDE is located in the bank's assessment area. • A bank-owned CDE provides financial counseling and business development training to eligible business owners in LMI neighborhoods throughout the bank's assessment area(s).

[13] The nature of an activity may make it eligible under more than one performance test, provided the activity is not considered twice. For example, if a bank makes an investment in a CDE that the CDE uses to make CD loans, the bank may receive consideration for the pro rata share of the CD loans made by the CDE. See Section 25.23(b)-1, Interagency Questions and Answers Regarding Community Reinvestment, 66 FR at 36635.

[14] See footnote 13.

[15] A bank may provide CD loans or services or qualified investments that support an organization or activity covering an area that is larger than, but includes, the bank's assessment area(s), even if there is no direct or immediate benefit to the assessment area(s), provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the bank's assessment area(s). An example of such an activity would be a fund that serves the entire state in which the bank's assessment area(s) is located, since the fund has the potential to benefit the assessment area(s). Refer to Section 25.12(i)-5, Interagency Questions and Answers Regarding Community Reinvestment, 66 FR at 36626 and 36627.

[16] In addition to meeting the definition of "community development," CD services also must be related to the provision of financial services. See Section 25.12(j)-1, Interagency Questions and Answers Regarding Community Reinvestment, 66 FR at 36627.

III. How Does the New Markets Tax Credit Program Work?

There are two different models that bank investors typically use when participating in the NMTC program. These models are differentiated by whether a bank wants to control its own portfolio of NMTC investments, or is satisfied with being a third-party investor. Additionally, there are two distinct financing structures that bank investors must consider when participating in the NMTC program.

Regardless of the model used, industry participants have observed that often banks must be direct lenders to qualifying businesses, such as providing traditional senior debt facilities for commercial real estate projects that are financed through the NMTC program.

Bank-operated CDE model

If a bank wants to manage and control its NMTC portfolio, it can establish a wholly-owned CDE and apply to the CDFI Fund for an allocation of NMTCs. Once the bank's CDE is certified and is successful in obtaining an NMTC allocation (the bank-owned CDE is now an allocatee), the bank investor can use the CDE subsidiary to invest directly in qualified businesses - or QALICBs - and manage the portfolio through its subsidiary CDE. By using this model, a bank investor controls the pipeline of QALICBs through the subsidiary CDE, ensuring the quality of underwriting performed. However, the bank CDE is also responsible for all of the tax compliance requirements of the NMTC program.

The advantages of forming bank-owned CDEs include creating an investment vehicle that satisfies the bank's tax credit appetite, strengthens its ability to provide flexible financing to commercial customers needing favorable rates and/or terms, and provides NMTC-enhanced credit products that can help banks leverage other resources and expertise for their community and economic development programs. Some national bankers commented that the investment of time and resources in structuring successful NMTC deals has resulted in the development of other important customer relationships, thereby leading to other credit opportunities.

Third-party model

Banks that prefer a more limited participation in the NMTC program may use the third-party investment model. This model assumes that the bank has an appetite for tax credits and is familiar with CDEs operating in its footprint that have NMTC allocations. In this case, the bank investor would conduct due diligence on the performance of the CDE and its demonstrated ability to manage its projects.

Although bankers stated they perform due diligence on the management capacity of the CDE(s) in which they invest, and the underlying business transactions that the CDE(s) finances, this model also allows the bank investor to benefit from the underwriting and compliance management expertise of the CDE. An example under this model would be a bank investor making an equity investment in a CDE sponsored by a financial intermediary, such as a CDFI.

Some banks have used both models, managing their individual NMTC portfolios through their subsidiary CDE allocatees and investing in third-party CDEs seeking to attract investors for their own NMTC portfolios.

Financing Structures

As mentioned in Section II, bank investors can avail themselves of different financing structures in the NMTC program depending upon their risk tolerance and appetite for tax credits.

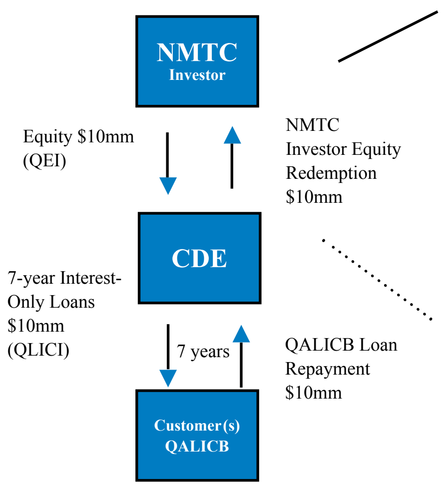
Non-leveraged structure

The non-leveraged structure (see Figure 2) may be attractive to bank investors who are familiar with equity financing vehicles, since all of the funding to the CDE is in the form of capital contributions. In turn, the CDE provides financing to the QALICBs, typically structured as either debt or a combination of debt and equity. The rates and terms on the NMTC-enhanced loans are generally more favorable than terms on a standard commercial loan in a bank's portfolio. The additional cash-equivalent value of the tax credits helps NMTC transactions meet investors' expected risk-adjusted returns.

Leveraged structure

An alternative NMTC financing structure, known as the leveraged structure, can accommodate bank investors who are comfortable using debt as an additional source of financing. In the leveraged structure (see Figure 3), the funding provided to the CDE is split between both debt and equity sources. Both the equity and debt capital provided are treated as an equity investment in the CDE, as a result of an Internal Revenue Service (IRS) Ruling issued in December 2003.[17] The use of debt financing does not interfere with the equity investor(s) receiving the full stream of tax credit benefits.

Figure 2
Example of NMTC Non-Leveraged Transaction



Transaction Summary

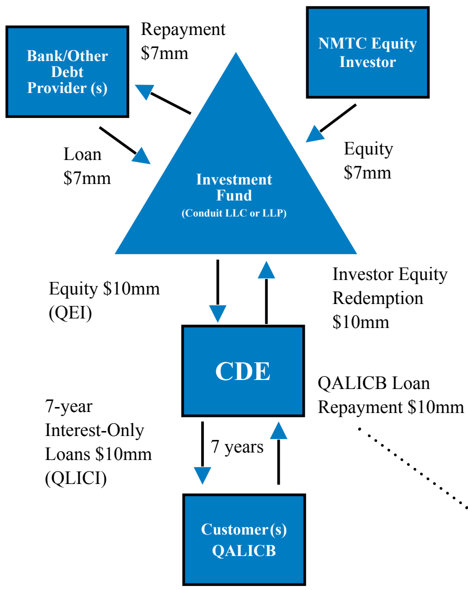
- The bank investor(s) provides $10 million in equity capital to the CDE in Year 1.
- The CDE provides $10 million in debt financing to the QALICB(s) structured as $7 million in senior debt and $3 million in subordinated debt.
- The loans are structured to mature in seven years, consistent with the schedule of tax credits to investors.
- The qualified business borrower makes interest-only payments during the term of the loans. The loans are repaid or refinanced at the end of the seven-year compliance period, at which time the CDE redeems the QEI.

Tax Credit Schedule for NMTC Investors

Year 1	$500,000	5%
Year 2	$500,000	5%
Year 3	$500,000	5%
Year 4	$600,000	6%
Year 5	$600,000	6%
Year 6	$600,000	6%
Year 7	$600,000	6%
	$3,900,000	39%

[17] Revenue Ruling 2003-20, under Section 45D of the Internal Revenue Code. Essentially, the leveraged structure has been deemed acceptable by the IRS, given certain assumptions. This ruling permitted more investors in the NMTC industry to select the leveraged structure. The concept of the leveraged transaction was addressed by the IRS ruling cited earlier in response to this question: "For purposes of determining the new markets tax credit allowable under Section 45D of the Internal Revenue Code, does the amount of the QEI made by a limited liability company (LLC), classified as a partnership, include cash from a non-recourse loan to the LLC that the LLC invests as equity in a qualified (certified) CDE?" Revenue Ruling 2003-20 stated: "Section 45D does not prohibit a taxpayer from using cash derived from borrowing, including non-recourse borrowing, to make a QEI in a qualified – or certified – CDE."

Figure 3
Example of NMTC Leveraged Transaction



Transaction Summary

- The investment fund, the conduit LLC, obtains lender financing of $7 million and an equity contribution of $3 million.
- The investment fund, using those combined proceeds, provides a QEI to the CDE totaling $10 million in Year 1.
- The CDE provides $10 million in debt financing to the QALICBs, structured as $7 million in senior debt and $3 million in deeply subordinated debt.
- The loans are structured to mature in seven years, consistent with the schedule of tax credits available to investors.
- The CDE earns interest on the $10 million, although the investment fund LLC pays interest only on the $7 million debt financing portion to the LLC.
- The loans are repaid or refinanced at the end of the seven-year compliance period, at which time the CDE redeems the QEI.

Tax Credit Schedule for NMTC Investors		
Year 1	$500,000	5%
Year 2	$500,000	5%
Year 3	$500,000	5%
Year 4	$600,000	6%
Year 5	$600,000	6%
Year 6	$600,000	6%
Year 7	$600,000	6%
	$3,900,000	39%

The leveraged model generally consists of a two-tiered investment structure. Transactions using the leveraged structure typically have a "conduit" limited liability corporation (LLC), limited partnership (LP), or similar entity at the upper-tier level (the "investment fund") in which equity, debt, and even grant funds may be combined.[18] The aggregate amount of capital raised from all sources is invested in the CDE, which is the lower-tier entity. Some large bank participants have noted that it may be advantageous for CDEs using the leveraged structure if the debt and equity provider(s) are the same, since the risk/return analysis for the investor(s)/lender(s) may be less complicated and, consequently, the transaction may be easier to implement.

IV. What Are the Key Risks and Regulatory Issues Associated with the New Markets Tax Credit Program?

This section describes the primary risks that bank investors and other industry practitioners have identified in their use of NMTCs. The discussion focuses on the fundamental underwriting and due diligence issues that participants would typically address when evaluating NMTC investments.

[18] Only debt capital provided to the investment fund is considered to be a QEI. A direct loan made to the CDE is not eligible as a QEI.

Underwriting risks

CDE performance and management risk

Investors must perform front-end due diligence to ensure satisfaction with the management capacity, performance, and expertise of the CDE administering the tax credits. The strength of a CDE, based on its proven track record, management skills, and the pipeline of projects to be funded, can go a long way toward mitigating many of the risks of such investments. Given that equity capital is invested in economically distressed and disadvantaged communities, the bank should ensure that sufficient resources, particularly management and compliance resources, are focused on the long-term viability and success of its investment(s).

Liquidity risk

Because no secondary market exists for these investments, NMTCs are highly illiquid. Bank investors should enter the NMTC program with the understanding that the investment will most likely be held for the full seven-year compliance period; consequently, they should project taxable income for the duration of the investment term.

Tax compliance and recapture risks

NMTCs are subject to recapture during the compliance period if one of these events occurs:

- The CDE ceases to be a CDFI Fund-certified CDE, or
- "Substantially all" of the QEI proceeds are no longer continuously invested in Qualified Low-Income Community Investments (QLICIs). As previously noted, this criterion has been defined as having at least 85 percent of the investment deployed into these qualifying low-income community investments, or
- The CDE redeems the equity investment.

There is limited opportunity to cure a default that triggers the recapture provision, which results in a 100 percent recapture of the credit(s), plus interest and penalties, for the entire period.[19] To protect against recapture risk, some bank investors have sought guarantees from CDEs that indemnify them if the tax credits are recaptured for non-compliance.

Banks that form CDE subsidiaries are responsible for monitoring and ensuring ongoing compliance with the NMTC allocation agreement (refer to the Glossary in Appendix B). The CDE must continually meet the CDFI Fund's requirements for maintaining its CDE certification. Key requirements for maintaining CDE certification include: (1) directing at least 60 percent of its activities to LMI persons or areas and (2) maintaining accountability to low-income communities through their representation on the CDE's advisory board or the board of directors.

If the terms of the allocation agreement are not met or the CDE fails to meet other requirements, the CDFI Fund may terminate or reallocate any unused portion of the NMTC allocation. Investors in third-party CDEs should be comfortable that the entities in which they invest have adequate reporting and controls to ensure that these requirements will be met.

[19] A CDE that fails to meet the "substantially all" threshold during the seven-year holding period is given a six-month cure period that begins when the CDE becomes aware, or should have been aware, of its non-compliance with the "substantially all" requirement. There is only one six-month cure period permitted for each QEI during the seven-year compliance period. Refer to 26 CFR 1.45D-1(e)(6). See also the "NMTC Monthly Report," Novogradac & Company LLP, January 2005, at http://www.newmarketscredits.com

Refinancing risk

Bank investors in CDEs must be aware of the risks associated with the potential inability of qualified businesses (the QALICBs) to refinance their debt at the end of the seven-year compliance period to repay outstanding balances. Many NMTC loans are structured as non-amortizing, interest-only "balloon" mortgages, with seven-year terms consistent with the term of the compliance period. Consequently, these loans require appropriate underwriting to satisfy lender and investor risk management concerns.

Redemption and redeployment risk

As previously stated in the compliance and recapture section, NMTC participants do not want to run afoul of the "substantially all" test. In the event that capital is repaid to the CDE by the QALICB earlier than the seven-year compliance period, it must be reinvested, or redeployed, into other QALICBs. As such, prospective NMTC participants should analyze the debt and equity facilities used by the CDE in which they are considering investing, and determine the CDE's ability to redeploy capital if it is returned to the CDE for reuse.

To help reduce recapture risk, bankers emphasized that banks with subsidiary CDEs must develop a solid pipeline of deals in which to make loans and/or investments with at-risk capital. Another mitigation technique used by some NMTC participants is structuring loans with a seven-year term and prepayment penalties to discourage repayment of NMTC financing before the end of the compliance period.

Credit risk on underlying assets

When a bank is considering making an investment in a third-party CDE, it should become comfortable with the underwriting standards used by the CDE. Some bankers independently underwrite the individual credit facilities that were originated by the CDEs for their NMTC portfolios by analyzing the cash flow projections of the underlying qualified businesses.

Since NMTCs are used predominantly to finance commercial real estate transactions, prospective bank investors would conduct due diligence using standard elements of real estate financing, which include, but are not limited to, projected cash flows, construction cost estimates, engineering reports, appraisals, feasibility studies, and marketing plans.

Collateral risks

Industry practitioners cited risks with collateral in the event of default. While the issues of collateralizing investments in NMTC transactions are similar for the bank-operated and the third-party model, the financing structure used will make a difference in collateral risks. In the non-leveraged structure, the bank investor will typically have a first priority lien on any real estate assets financed, as well as first priority assignment of leases and rents, through its ownership interest in the CDE. Likewise, through the CDE, the bank investor may have a first priority security interest in all other tangible assets associated with the real estate. Using this structure, the NMTC investor obtains a security interest in the CDE to which it provides the QEI. The collateral interest, therefore, is vested in the CDE.

Alternatively, bank investors may pursue different strategies to perfect their collateral position under the leveraged financing structure. As discussed previously, there is an upper-tier and lower-tier entity in the leveraged structure. A lender to the investment fund does not have a security interest in the underlying assets. Loans made to the investment fund's conduit LLC/LP are generally secured with the investment fund's assets, not with those of the CDE.

Mitigating actions that bank investors have taken as lenders in leveraged transactions include: (1) obtaining a priority interest in cash flow distributions; (2) establishing a priority interest in other proceeds received as a result of the investors' equity interest(s) in the investment fund; and (3) establishing the right to assume management control of the investment fund in the event problems arise.

Under both financing structures, guarantees provided by the CDE or other guarantors such as the developer can add an additional level of security to NMTC bank investors.

Accounting considerations

Investments in CDEs (under the unleveraged model) or in the investment funds of the conduit LLC/LP (under the leveraged model) could be accounted for under the cost or equity method of accounting, depending on the level of control the bank exercises over these entities.[20] If it is deemed that the bank's investment in the CDE or conduit LLC/LP results in the bank's exercising significant influence/control over that entity, the investment should be reported using the equity method of accounting. However, if the bank does not exert such level of control or influence to require consolidation, the cost method may be used.

Regulatory considerations

Legal authority under 12 USC 24 (Eleventh)

The National Bank Act, 12 USC 24 (Eleventh), and the OCC's "Part 24" rules implementing that section of the Act enable national banks to make equity investments in certain CDEs as well as in NMTC investment funds under the leveraged structure.[21] National banks seeking to make Part 24 NMTC investments must either request prior OCC approval or submit an after-the-fact notice to the OCC, depending on the bank's safety and soundness profile and the nature of the investment.[22] Bank holding companies, [23] state-chartered banks, [24] and thrift institutions [25] may make NMTC investments to the extent permitted for national banks under comparable welfare investment authorities.

V. Who Is in the New Markets Tax Credit Business Today?

According to statistics provided by the CDFI Fund in late 2004, corporate investors include banks, pension funds, and real estate and insurance companies, in addition to individual investors. Equity fund managers, syndicators, and financial and tax advisers also play critical roles within the NMTC industry in expanding the accessibility of the program to a broad array of institutional, individual and other investors. It is estimated that banks represent approximately 75 percent to 80 percent of the institutional investors participating in the NMTC program. In addition, 54 banks and bank holding companies have received $3.1 billion in NMTC allocations (see Appendix D), which represents approximately 23 percent of the number of allocatees and approximately 25 percent of the allocations made in the first four allocation rounds.

[20] See Financial Accounting Standards Board (FASB) Interpretation No. 46, at http://www.fasb.org/pdf/fin%2046.pdf

[21] See 12 CFR 24.6(c)(3). Refer to Community Developments, "Legal Authority for National Bank Investments in Subsidiary Community Development Entities and NMTCs," Summer 2004, found at http://www.occ.gov/cdd/legal_authority.html. [22] See 12 CFR 24.5. Recent statutory changes to the Part 24 authority require that such investments primarily serve low- or moderate-income areas or individuals. If a national bank is uncertain whether an investment will benefit primarily low- and moderate-income communities or individuals, the bank should contact the OCC's Community Affairs Department before making the investment to determine its eligibility under the new standards.

[23] See Regulation Y of the Federal Reserve Board, 12 CFR 225.

[24] See Federal Deposit Insurance Corporation regulations, 12 CFR 362.

[25] See Office of Thrift Supervision regulations, 12 CFR 559.

As previously noted in this report, CDFI Fund-certified CDEs are the primary vehicles used as intermediaries in the NMTC program. Certified CDEs include community development corporations, community loan funds, community development venture capital funds, new markets venture capital firms, and similar intermediaries. Community development financial institutions (CDFIs) are automatically eligible for certification as CDEs. Both nonprofit and for-profit CDEs may apply for a NMTC allocation, although a nonprofit corporation must form a for-profit affiliate to place the credits with investors. Nonprofit CDEs also may transfer their NMTC allocation to a for-profit affiliate with prior approval from the Fund. Even if they have not received an allocation, CDFIs and other intermediaries can participate in the NMTC program through the sale of loans to allocatees or by serving as brokers to attract allocatee funding to worthy projects.

A number of non-supervised financial intermediaries, particularly CDFIs, have received certification as CDEs. Bank-affiliated community development corporations and community development banks, which already have a community development focus, also serve as CDEs. Through the four allocation rounds to date, $12.1 billion in tax credit authority has been awarded to 233 CDEs. Of the 170 allocatees in the first three rounds, 51 CDEs, or approximately 30 percent, are CDFIs or CDFI affiliates, accounting for nearly $1.8 billion of the overall $8 billion in allocation authority through Round III.[26]

VI. How Does the Cost/Pricing Structure Work?

Cost considerations

There are a number of factors that affect the cost structure for banks that establish their own CDEs to manage the NMTC program obligations. The following discussion addresses several of the most significant cost components.

Use of specialized legal, tax, and compliance management resources by NMTC allocatees

Forming a CDE and administering an NMTC allocation pose significant operational challenges, including staffing, management, and monitoring and oversight obligations. Consequently, the cost structure for bank-sponsored CDEs is significantly higher than the costs incurred by banks that invest in third-party CDEs, and may prove cost-prohibitive for some smaller financial institutions to undertake.

Bankers emphasized the importance of establishing and/or investing in an NMTC infrastructure, comprising legal, accounting, and compliance management. The bankers recommended using their banks' existing lending and investment organizational structure to plan and implement their institutions' NMTC activities.

Bankers strongly recommend that financial institutions planning to form a CDE to administer their NMTC allocation(s) have dedicated compliance management staff. In some instances, banks have developed a de facto "redeployment infrastructure" to address prepayments and other circumstances that would trigger the reinvestment of capital. Some banks have relied on originations by their Community Development Lending group and referrals through the bank's relationship managers located in their multi-state footprint to generate additional credit opportunities.

Regardless of how it is structured, the NMTC program entails the commitment of resources by bank investors to ensure compliance with NMTC program rules. One bank indicated that using third-party vendors to provide compliance management software programs and other resources

[26] Refer to the CDFI Coalition 2006 Progress Report at http://www.newmarketstaxcreditcoalition.org/ and the CDFI Fund at http://www.cdfifund.gov/docs/nmtc/2005/NMTC%2006-1-06.pdf for additional information on the data cited in this section.

can help smaller allocatees that do not have the organizational infrastructure noted above to manage and monitor legal, tax, and accounting matters. If a bank does not have sufficient in-house asset management resources, and compliance management responsibilities are outsourced, the associated costs would increase.

Transaction fees

Some bank allocatees have reported that high transaction fees, particularly syndication fees, have raised the cost of structuring NMTC transactions. Nevertheless, despite the high front-end costs, many investors have observed that the net equity capital raised through the sale of NMTCs, after deductions for legal, tax and related fees, is sizable and has been instrumental in making marginal deals feasible.[27]

Pricing considerations

Pricing on a NMTC investment will vary depending on whether a bank investor is using a subsidiary CDE or is investing in a third-party CDE. Pricing is determined internally, based on risk tolerances, when there is an identity of interest between a bank investor and its subsidiary CDE. Pricing is generally more performance-based when a bank investor is investing in a third-party CDE.

Specifically, at the CDE level, bank investors price their investments based on such factors as whether loans to QALICBs carry fixed or variable rates and whether they are non-amortizing, interest-only loans, or loans that involve principal reduction (e.g., redeployment risk).

Variables can also include whether debt facilities are structured and priced to offset the cash-equivalent value of the tax credits. Pricing of the expected returns would also consider whether the third-party CDE provides guarantees to the bank investor(s) and whether loans to QALICBs have terms that are coterminous with the seven-year compliance period, which may present refinancing risk when the loans mature.

The pricing of investments in third-party CDEs will sometimes involve performance-based fees, as well as the cash-equivalent value of the tax credits being offered to the bank investor by the CDE as allocatee.

Figure 4 is a representative example of how some of the variable factors are priced in a typical NMTC non-leveraged transaction. This example includes both senior and subordinated debt facilities.

[27] The New York Times, “Luring Business Developers into Low-Income Areas,” January 25, 2006.

Figure 4

Example of NMTC Return on Equity Calculation

$10,000,000	Assumes all capital invested at closing
$7,000,000	Interest-only @ (monthly) Libor + 300 bps senior loan. 7-year maturity/25-year amortization
$3,000,000	Subordinated loan for 40 years (principal & accrued interest due at maturity) at 0.5% annual simple interest
39.0%	Gross NMTC credits over 7 years
$7,000,000	Senior loan principal redemption
$4,081,700	Interest-only payments on senior loan (7,000,000 x .08330 x 7 yrs) Interest rate of (monthly) Libor = 5.83% + 300 bps = 8.330%
$3,900,000	Gross NMTC credits over 7 years
$14,981,700	Gross proceeds at redemption
-$10,000,000	Less original investment amount
$ 4,981,700	Net proceeds at redemption
÷ 7 years	Investment term
$711,671	Average annual net proceeds
÷$10,000,000	Original investment amount
7.12%	Estimated average annual ROE

Tax Credit Schedule for NMTC Investors		
Year 1	$500,000	5%
Year 2	$500,000	5%
Year 3	$500,000	5%
Year 4	$600,000	6%
Year 5	$600,000	6%
Year 6	$600,000	6%
Year 7	$600,000	6%
	$3,900,000	39%

Figure 4 uses the same equity amount, $10 million, illustrated in Figure 2. The $10 million of equity passing through the CDE to the QALICB(s) is split into a senior loan of $7 million and a subordinated loan of $3 million. The interest rate on the senior loan is fixed at a rate of (monthly) Libor plus 300 basis points (bps). The subordinated loan is structured with minimal interest: one-half of one percent annual simple interest, deferred and accrued over a 40-year amortization period. In this example, the estimated average annual ROE is 7.12 percent.

VII. What Barriers Have Constrained the Growth of New Markets Tax Credits?

Competition for allocations

The NMTC program has proved extremely popular with the financial services industry. However, a major constraint impeding the greater use of the NMTC program by some CDEs and their potential bank investors is the mounting competitive pressure for allocations from a limited funding source. In the four rounds to date, CDE applicants have requested approximately $107 billion in credit allocations versus the $12.1 billion in allocations awarded – almost 9 times oversubscribed. In view of the highly competitive environment for NMTCs, the Fund has advised applicants to submit strong justifications under the "Business/Capitalization Strategy" and "Community Impacts" sections of the application.

Recapture provisions

The recapture provisions of the NMTC program are the most stringent of the major federal tax credit programs, including the Low-Income Housing Tax Credit Program and the HTC program. As discussed in Section IV, 100 percent recapture of the credit(s), with interest and penalties, may occur through the end of the compliance period. In contrast, HTCs are claimed in the year the property is placed in service, and the amount of the credit recaptured is reduced by 20 percent each year of the five-year compliance period. The Low-Income Housing Tax Credit Program allows for one-third of the credit(s) to be recaptured prospectively through the end of year 15; the balance of the credits vests as they are claimed. As stated previously, investor risk tolerances play a major role in determining participation in the NMTC program.

Future of the program

As noted in Section I, the NMTC program was authorized for $15 billion in credit allocations through FY 2007, with an additional $1 billion special allocation, authorized in December 2005, to assist the reconstruction efforts in the Gulf Coast areas stricken by Hurricane Katrina. On December 20, 2006, President Bush signed The Tax Relief and Health Care Act of 2006, which provides a one-year extension of the NMTC program through 2008 and authorizes an additional $3.5 billion in credit allocation volume. The legislation also modifies the program regulations to ensure that non-metropolitan, or rural, counties receive a proportional allocation of QEIs from investors.

VIII. Conclusion

The NMTC program has been well-received by the financial services industry, as evidenced by banks and bank holding companies representing approximately 75 percent to 80 percent of the institutional investors that participate in the NMTC program and approximately 23 percent of NMTC allocatees through the previous four allocation rounds. NMTCs have become an important tool for banks to use in their efforts to promote economic development and community revitalization strategies in low-income markets. Moreover, NMTCs can help banks meet their CRA obligations

As prospective bank investors learn more about the NMTC program, typically they discover that the primary compliance and credit risks can be offset largely by establishing a strong relationship with an experienced CDE, or forming subsidiary CDE(s) that they manage themselves. The benefits of these partnerships and the impact that the NMTC program creates in low-income communities can be significant.

Stephanie Caputo was the primary author of this report. Also contributing were William Reeves, E. Matthew Quigley, and Barry Wides. Community Developments *Insights* reports differ from OCC advisory letters, bulletins, and regulations in that they do not reflect agency policy and should not be considered as definitive regulatory or supervisory guidance. Some of the information used in the preparation of this paper was obtained from publicly available sources that are considered reliable. However, the use of this information does not constitute an endorsement of its accuracy by the Office of the Comptroller of the Currency.

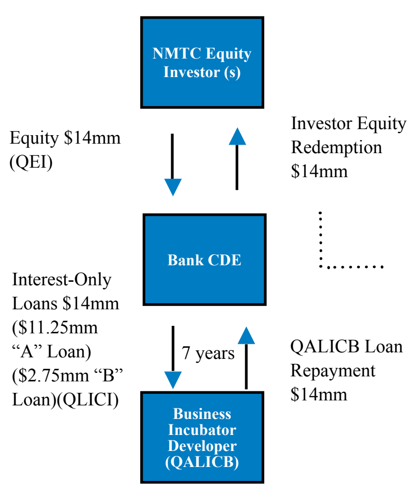
Appendix A

Case Study One: Non-leveraged Structure

Project size: Total project development cost of $17,000,000.

Tax credit project financing: A national bank-owned CDE used its NMTC allocation to provide $14,000,000 in financing to the QALICB, a nonprofit developer. The financing consists of an $11,250,000 senior loan (A) and a subordinated loan of $2,750,000 (B). There is developer cash equity of $1,500,000 plus a municipal grant of $1,500,000 to purchase the existing building. The CDE, using the NMTC-enhanced non-leveraged financing structure, was the only private lender involved.

Project overview: The project consists of the renovation of a former department store, vacant for more than 20 years, which is located in a downtown commercial district. The approximately 140,000 sq. ft. building will be renovated as a business incubator that will include space for a biotechnology/life sciences incubator. This project will add laboratory and custom-designed space to accommodate high-tech, biotechnology, and biomedical business start-ups and ultimately house as many as 65 start-up companies at one time. The tenants and incubator "graduates" have combined annual sales of $127,000,000 as of 2004 (the most recent year for which data are available). The businesses are projected to create direct employment opportunities for 775 persons by 2007.



Sources of Funds:	
Equity/Senior (A)	$11,250,000
Equity/Sub (B)	$2,750,000
Developer Equity	$1,500,000
City Grant	$1,500,000
Total Sources	$17,000,000
Uses of Funds:	
Construction	$14,000,000
Soft Costs	$2,500,000
Transaction Fees	$500,000
Total Uses	$17,000,000

Tax Credit Schedule for NMTC Investors		
Year 1	$700,000	5%
Year 2	$700,000	5%
Year 3	$700,000	5%
Year 4	$840,000	6%
Year 5	$840,000	6%
Year 6	$840,000	6%
Year 7	$840,000	6%
	$5,460,000[1]	39%

[1]Tax credits of $7.854mm (.39x $20.14mm)

Appendix A

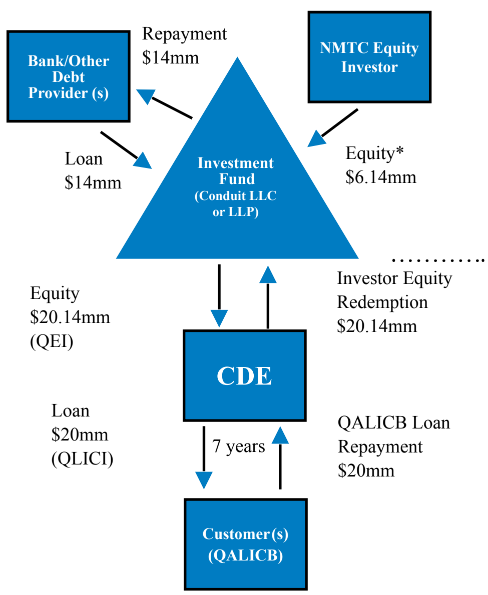
Case Study Two: Leveraged Structure

Project overview: The CDE will use the proceeds of the Fund's capitalization to make senior loans, secured by commercial real estate, to qualifying businesses (QALICBs).

Tax credit project financing: A CDE that received an NMTC allocation has obtained financial commitments from several banks and other institutional investors that are providing both equity and debt capital to the investment fund ("Fund"), which is a limited liability corporation. A national bank is serving as the lead bank. The bank has made its NMTC-enhanced equity investment under the Part 24 authority. Equity investments in the Fund will be made by the equity providers on a pro-rata basis as the qualified term loans to businesses are made. Each loan to the Fund made by the debt providers also will be funded on a pro-rata basis as the qualified loans are made. Debt capital to the Fund is structured for seven years, based on a 25-year amortization schedule.

The loans to qualifying businesses also have seven-year terms, with 25-year amortization periods.

Project Structure



Sources of Funds:	
Equity	$6,140,000
Debt	$14,000,000
Total Sources	$20,140,000
Uses of Funds	
Loans to OALICBs	$18,000,000
Administration	$2,140,000
Total Uses	$20,140,000

Tax Credit Schedule for NMTC Investors		
Year 1	$1,007,000	5%
Year 2	$1,007,000	5%
Year 3	$1,007,000	5%
Year 4	$1,208,400	6%
Year 5	$1,208,400	6%
Year 6	$1,208,400	6%
Year 7	$1,208,400	6%
	$7,854,600[1]	39%

[1]Tax credits of $7.854mm (.39x $20.14mm)

Appendix B

Glossary of Terms

Allocation Agreement - Executed by the CDFI Fund and the allocatee, and the subsidiary allocatee, as applicable. The agreement contains terms and conditions governing the uses of the NMTC allocation, including, but not limited to, delineating service area(s) and targeted population(s) that the allocatee will serve and the favorable underwriting terms and conditions that will be used in providing financial assistance. The agreement also specifies events of default and recapture and the remedies available to the CDFI Fund, including reporting to the IRS, which would make the determination as to whether an event of recapture has occurred.

Community Development Entity (CDE) – Any domestic corporation or partnership, for federal tax purposes, certified as a CDE by the Community Development Financial Institutions (CDFI) Fund pursuant to Internal Revenue Code (IRC) § 45D(c).

Gulf Opportunity (GO) Zone - That portion of the Hurricane Katrina disaster area determined to warrant assistance from the federal government resulting from Hurricane Katrina. The Hurricane Katrina disaster area is an area that has been declared a major disaster area before September 14, 2005, under section 401 of the Gulf Opportunity Zone Act of 2005 (Public L. 109-135), by reason of Hurricane Katrina.

NMTC Allocation – An allocation of tax credit authority pursuant to the NMTC Program. A CDE that receives an NMTC allocation is an allocatee. If applicable, an allocatee may transfer all or part of its NMTC allocation to a subsidiary allocatee(s).

Qualified Active Low-Income Community Business (QALICB) – Any corporation (including a nonprofit corporation), partnership, or other business that meets the requirements set forth in IRC § 45D(d)(2) and 26 CFR 1.45D-1(d)(4).

Qualified Equity Investment (QEI) – An equity investment in a CDE that meets the requirements of IRC § 45D(b) and 26 CFR 1.45D-1(c).

Qualified Low-Income Community Investment (QLICI) – This term has the same meaning as set forth in IRC § 45D(d) and 26 CFR 1.45D-1(d). Generally, QLICIs comprise loans to, or investments in, QALICBs and other CDEs; additionally, they may include loan purchases and the provision of financial counseling and other services.

Non-leveraged Model – The basic financing structure, in which the NMTC investor provides a QEI to a CDE which, in turn, makes QLICIs to QALICBs.

Leveraged Model – A more complex financing structure - resulting from the Internal Revenue Service (IRS) Revenue Ruling 2003-20 - that permits the QEI from an NMTC partnership entity, or investment fund, to include cash from a nonrecourse loan (debt) in addition to equity capital, thereby “leveraging” the NMTC investment.

Service Area – The geographic area that encompasses the low-income communities in which the allocatee is authorized to make QLICIs using the proceeds of QEIs.

Targeted Population – As defined in 12 USC 4702(20) and related CDFI Fund and IRS guidance documents. Refers to individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loans or equity investments.

Appendix C

Resource Directory

Community Development Financial Institutions Fund at
http://www.cdfifund.gov

CDFI Coalition at
http://www.cdfi.org

New Markets Tax Credit Coalition at
http://www.newmarketstaxcreditcoalition.org

Novogradac & Company LLP, New Markets Tax Credit Resource Center at
http://www.novoco.com/NMTC/index.shtml

OCC Fact Sheet on New Markets Tax Credits at
http://www.occ.gov/cdd/Fact_Sheet_NMTC.pdf

OCC Part 24 public welfare investment authority information at
http://www.occ.gov/cdd/commonpart24.htm#DDA

Appendix D

New Markets Tax Credit Allocations

Bank and Bank Holding Co. Allocatees

	Allocatee	Affiliation	Allocation	
Round I	ASB Community Development Corp	American Savings Bank	$2,000,000	
	CBSI Development Fund, Inc.	Community Bank of Southern Indiana	$3,000,000	
	Central Ohio Loan Services, Inc.	First National Bank of Waverly	$6,000,000	
	CF Banc Corporation	City First Bank of DC, N.A.	$73,000,000	
	Citizens Tri-County Development Corporation	Citizens Tri-County Bank	$1,000,000	
	CNC Development Foundation, Inc.	Citizens National Bank of Paintsville	$2,000,000	
	Community Development New Markets I, LLC	Key Bank, N.A.	$150,000,000	
	Community Trust Community Development Corporation	Community Trust Bank, N.A.	$7,000,000	
	First State Development Corp	First State Bank (TN)	$7,000,000	
	Liberty Bank and Trust Company	Same	$50,000,000	
	Neighborhood Bancorp	Neighborhood National Bank	$5,000,000	
	North Coast Community Development Corporation	Lorain National Bank	$9,000,000	
	Wachovia Community Development Enterprises, LLC	Wachovia Bank, N.A.	$150,000,000	

	West Virginia Community Development Loan Fund, Inc.	First State Bank (WV)	$150,000,000	
Total				**$615,000,000**
Round II	Banc of America CDE, LLC	Bank of America, N.A.	$150,000,000	
	Commercial Federal Community Development Corp.	Commercial Federal Bank	$23,000,000	
	D.C.C.D. Corporation	Decatur County Bank	$2,250,000	
	GreenPoint New Markets, L.P.	GreenPoint Bank	$85,000,000	
	Harbor Bankshares Corporation	Harbor Bank	$50,000,000	
	Independence Community Commercial Reinvestment Corp.	Independence Community Bank	$113,000,000	
	Louisville Development Bancorp, Inc.	Louisville Development Bank	$62,500,000	
	Oak Hill Banks Community Development Corp.	Oak Hill Banks	$20,000,000	
	Peoples Economic Development Corporation	Peoples National Bank of McLeansboro	$7,000,000	
	Pinnacle Community Development, Inc.	Pinnacle National Bank	$6,000,000	
	Rockland Trust Community Development, LLC	Rockland Trust Company	$30,000,000	
	Shorebank Enterprise Pacific	ShoreBank Corrporation	$8,000,000	
	The Mechanics Bank Community Development Corporation	The Mechanics Bank	$26,000,000	
	Zions Community Investment Corp	Zions Bank, N.A.	$100,000,000	
Total				**$682,750,000**
Round III	Chase Community Development Corporation	JP Morgan Chase Bank, N.A.	$75,000,000	
	Louisville Development Bancorp, Inc.	Louisville Development Bank	$8,000,000	
	NAB Bank	New Asia Bank	$5,000,000	

	NYCB Community Development Corp	New York Community Bank	$42,000,000	
	Sun Trust Community Development Enterprises, LLC	Sun Trust Bank	$75,000,000	
	Wachovia Community Development Enterprises, LLC	Wachovia Bank, N.A.	$90,000,000	
Total				**$295,000,000**
Rou nd IV	**Banc of America**	**Bank of America**	**$143,000,000**	
	Carver Community Development Corporation	Carver Federal Savings	$59,000,000	
	Chase New Markets Corporation	JP Morgan Chase Bank, N.A.	$50,000,000	
	Citibank NMTC Corporation	Citibank, N.A.	$100,000,000	
	City First New Markets Fund II, LLC	City First Bank of DC, N.A.	$90,000,000	
	Hibernia Community Renewal Fund, LLC	Hibernia Bank, N.A.	$100,000,000	
	Liberty Bank and Trust Company	Same	$60,000,000	
	National City New Market Fund, LLC	National City Bank	$125,000,000	
	PNC Community Partners, Inc.	PNC Bank, N.A.	$75,000,000	
	Rockland Trust Community Development Corporation II	Rockland Trust Company	$45,000,000	
	Shorebank Enterprise Pacific	ShoreBank Corporation	$35,000,000	
	Sovereign Community Development Company	Sovereign Bank	$94,000,000	
	USBCDE, LLC	U.S. Bank, N.A.	$135,000,000	
	Wachovia Community Development Enterprises, LLC	Wachovia Bank, N.A.	$143,000,000	
Total				**$1,254,000,000**
Grand Total				**$3,141,000,000**