



Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

NMTC Webinar- Question & Answer

1. Does it make sense to do a NMTC deal for a project of less than \$10 million?

Generally, the larger the transaction and allocation of NMTC authority the larger the incremental benefit to the investor. As the size of the transaction and allocation of NMTC authority decreases, there comes a point where transaction incremental costs and fees associated with NMTC (many of which are fixed regardless of transaction size) will be so high that the benefit of the NMTC will be eroded. Generally, we feel that real estate projects with total project costs and NMTC allocation of less than \$6 million should be carefully scrutinized to determine whether the benefit outweighs the cost, time and additional work.

2. The investor isn't paying these fees, correct?

Correct. As is typical in most tax credit and debt financed transactions, the borrower is responsible for payment of expenses associated with the transaction.

3. What events can cause recapture?

Failure of the owner to maintain its status as a QALICB or the tenant of the QALICB participating in an unauthorized "sin business" represents the greatest chance of recapture. Other examples of recapture triggers include failure of the CDE to use sufficient amounts of QEI as QLICs and if the transaction defaults monetarily, the CDE (s) could foreclose and then fail to redeploy the return of QLICI proceeds within 12 months.

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4. Do you know what transactions have taken place in WNY using NMTCs?

Some examples in Buffalo are the Electric Tower, The Asbury Church/Babeville Project, The Webb Building and the proposed A M & A Project.

5. Who determines the \$10-\$15 million limit per CDE?

The CDFI Fund does not place a limit on the amounts that CDEs may allocate to an individual project. Individual CDEs make the determination, on a project-to-project basis, regarding the amount of QLICs they will provide to the QAICBs. Typically a CDE will not use its entire allocation for one project but will instead spread it around to multiple projects in order to better serve a larger segment of the LIC it services. Also, the CDE has likely represented to the CDFI Fund in its allocation application the maximum amount it expects to allocate to a single project.

6. How are the fees paid by the owner treated for tax purposes?

Depending on what the fees are, the fees are capitalized to the basis of the building or are treated as deductible expenses of the QALICB. Often times fees are built in as increased interest on the QLICI loans and interest expense is deductible.

7. As a partner in a CDE with a \$50 million allocation, are we restricted to \$10-\$15 million to invest in any one project?

See #5

8. The NMTC program still has not been reauthorized for next year; do you expect that to happen?

Based on the fact that the CDFI Fund has already accepted applications for the 2010 Funding Round when the program has not yet been reauthorized, the success of the program and recent legislative activity and industry sentiment, we feel the NMTC program will in fact be reauthorized but it is difficult to say when that will occur.

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9. Can the project be sold during the 7 year period? Does bankruptcy cause recapture?

The loan documents from the CDEs will contain restrictions on the sale of the project, however, if the CDE permits a sale, there is no overriding statutory prohibition of a sale within the 7 year compliance period, but consideration with respect to the impact of such sale on the continuing availability of NMTC must be carefully determined.

10. When will the results of the Census 2010 data set change the NMTC eligible census tracts? Do you think Congress will pass legislation to extend the NMTC program (2010 Allocation round) by the end of this year?

We have received guidance, albeit it unofficial, from CDFI that CDFI will not be updating their CIMS Mapping System (which shows census tract eligibility) until 2013. See #8.

11. Please clarify the commercial residential split, 80-20 which way?

Section 168 defines residential rental property as any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units. This means that over 20% of the gross income from the property must be from commercial rents such that the property does not qualify as residential rental property.

12. How common are these transactions in NYS or across the country? What is the average total amount of grants in NYS?

NMTC transactions are common. In 2009, 99 CDEs has been selected to receive NMTC allocations representing 5 billion in equity. Allocation awards for CDEs ranged in size from 4 to 125 million with the average allocation of approximately 50 million. In 2009, 21 CDEs, with NY service areas were awarded allocations.

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