

May 10, 2012

The Honorable Pat Tiberi  
Chairman of the Subcommittee on Select Revenue Measures  
Ways and Means Committee Office  
1102 Longworth House Office Building  
Washington D.C. 20515

Re: Hearing on Certain Expiring Tax Provisions

Dear Chairman Tiberi and Members of the Subcommittee on Select Revenue Measures,

On behalf of the members of the New Markets Tax Credit (“NMTC”) Working Group, we submit the following comments regarding the recent hearing on certain tax provisions that either expired in 2011 or will expire in 2012 (also known as “Tax Extenders”). The members of the NMTC Working Group are participants in the NMTC industry who work together to help resolve technical NMTC Program issues and provide recommendations to make the NMTC Program even more efficient in delivering benefits to qualified businesses located in low-income communities around the country. Our group includes allocatees, nonprofit and for profit community development entities (“CDEs”), consultants, investors, accountants and lawyers.

We are writing to you to encourage the extension of the NMTC program under Internal Revenue Code §45D including increasing credit authority and allowing the NMTC to offset alternative minimum tax (“AMT”). We appreciate the opportunity to comment on ways to further enhance the good being done by the NMTC Program, and we also appreciate the level of commitment, dedication and outreach that has been shown and continues to be shown by the CDFI Fund, the Internal Revenue Service (“IRS”) and the Treasury’s Office of Tax Policy in implementing and managing the NMTC Program. The CDFI Fund, IRS and Treasury have proven to be capable managers of the NMTC Program. This is evidenced by the tremendous success the NMTC Program has enjoyed since its inception in 2000. Low-income communities across the country have benefitted from targeted investments of more than \$21 billion. We applaud the various offices within Treasury that have worked with all those involved in these transactions to ensure that those dollars get into highly distressed communities as efficiently as possible.

Since the program’s inception, the knowledge, understanding and experience among participants in the NMTC Program has been continuously rising, as has the demand and competition for the NMTC among participants in the NMTC Program, including investors, lenders, CDEs and qualified businesses. The interaction of these and other factors has led to ever greater efficiencies and effectiveness of the NMTC Program in delivering much needed subsidy to qualified businesses.<sup>1</sup> These factors have also helped direct a greater portion of the NMTC Program to the nation’s most distressed low-income communities and to qualified businesses generating even greater community impacts.

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<sup>1</sup> See “Reports Indicate that NMTC Program Improves with Age,” Novogradac Journal of Tax Credits, July 2011, Volume II, Issue VII.

It is important to note the continuous support the NMTC Program has received from Congress since its inception. In the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, the NMTC program was extended for two years. Since the most recent extension of the NMTC Program in 2010, the Obama administration has also proposed to expand the current NMTC Program from \$3.5 billion to \$5 billion in its most recent budget proposal. In the wake of Hurricane Katrina, the NMTC Program was expanded \$1 billion to encourage investment in low-income communities within the Gulf Opportunity Zone. During the recent downturn in the economy, Congress expanded the NMTC Program again from \$3.5 billion to \$5 billion in the 2009 American Recovery and Reinvestment Act to help spur more economic development.

We believe that one of the most effective ways to further improve the efficiency of the NMTC Program requires a statutory change – that is, make the credit permanent or, at a minimum, provide a long-term extension. The current trend of granting a short-term extension creates uncertainty in the industry. Uncertainty in any aspect, especially as it relates to the future of funding for the NMTC Program, limits the number of investors and potential CDEs willing to participate, and also limits the level of long-term investment that existing investors and CDEs are willing to make. Unless there is an extension of the NMTC, the elimination of an established relationship between public and private sector investment resources that the NMTC Program was originally designed to promote is inevitable.

Additionally, an increase in annual credit authority is essential to expand the low-income community impacts associated with NMTC investments. In the report “New Markets Tax Credit Program: Promoting Investment in Distressed Communities” published on October 20, 2008 by the CDFI Fund, the department within the US Treasury responsible for monitoring and administering the NMTC Program, indicated that on average, each \$1 of federal tax revenue forgone as a result of the NMTC is estimated to induce more than \$14 of investments in low-income communities. Further, over 75% of NMTC-financed projects are located in census tracts that meet one or more higher distress level criteria than are minimally required under the program rules. Since the NMTC Program’s inception and through the 2010 allocation round, the CDFI Fund has made 594 awards allocating a total of \$29.5 billion in tax credit authority to CDEs through a competitive application process. This \$29.5 billion includes \$3 billion in Recovery Act Awards and \$1 billion of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone. Through the fiscal year 2010 reporting period, CDEs disbursed almost \$21 billion in QEI proceeds to over three thousand qualified active low-income community businesses (“QALICBs”) financing both real estate developments and operating businesses in low-income communities. NMTC investments have been located in metro and non-metro areas across all 50 states, the District of Columbia, and Puerto Rico. In the most recent allocation round, the demand for the NMTCs was up approximately 26 percent. There were 314 applications received requesting \$26.7 billion of allocation. There is clearly a need for increased credit authority from the current \$3.5 billion. An increase in annual credit authority would allow more low-income community investments and substantially increase the community impacts associated with NMTCs.

Willingness by investors to participate in the NMTC Program would also be greatly enhanced if a long-term or permanent extension of the NMTC included a provision that would allow the NMTC to offset AMT.<sup>2</sup> A long-term extension of the NMTC with an AMT offset provision would put the NMTC Program on par with Low-Income Housing Tax Credits, Historic Tax Credits and certain Renewable Energy Tax Credits, and would increase the demand by investors for the NMTC. With more demand by investors, the pricing of NMTCs would rise and would lead to an even greater amount of subsidy reaching qualified businesses. In addition to higher credit pricing, if the NMTC Program were made permanent or

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<sup>2</sup> For further discussion of AMT implications, see §2.16 of Novogradac & Company New Markets Tax Credit Handbook, 2011.

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received a long-term extension, CDEs and other NMTC Program participants would dedicate more resources to the NMTC Program and generate even greater efficiencies. Due to the economic downturn, the financing of qualified businesses has become increasingly complicated, requiring industry participants to become progressively more creative in transaction structuring while simultaneously ensuring that as much subsidy from the NMTCs as possible reaches QALICBs.

In addition to providing for an extension, an increase in credit authority, and allowing for an offset of AMT to further improve the efficiency of the NMTC Program, we recognize that there are ways to make the NMTC work even better. Addressing technical matters is the central purpose of the NMTC Working Group and its members are dedicated to that goal. Since 2006, the NMTC Working Group has responded to requests from Treasury, the IRS, and the CDFI Fund with recommendations to enhance the NMTC Program's ability to deliver significant community impact to this nation's low-income communities. These comment letters reflect the work of 50 member organizations participating on numerous conference calls and countless drafting sessions over several years. We trust you will find our comments useful and instructive. All of the NMTC Working Group's comments regarding these issues, as well as many others, can be found on our website at [www.nmtcworkinggroup.com](http://www.nmtcworkinggroup.com). We would be happy to meet with you to discuss our comments in further detail.

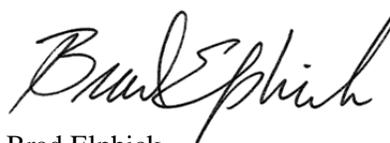
As discussed in detail above, we respectfully request that the Subcommittee on Select Revenue Measures consider the long-term or permanent extension of the NMTC program including an increase in annual credit authority and allowing for an offset of AMT. Thank you in advance for your time and careful consideration of these issues.

Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,  
NOVOGRADAC & COMPANY LLP

by   
Michael J. Novogradac

NOVOGRADAC & COMPANY LLP

by   
Brad Elphick

cc: The Honorable Dave Camp  
Chairman of the Ways and Means Committee