April 10, 2023

Ms. Shannon McKay
Office Financial Strategies and Research Program Manager
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Comments on the Allocatee (CDE) Transaction Level Report Data Point Guidance for AMIS (December 2022)

Dear Ms. McKay:

On behalf of the members of the New Markets Tax Credit ("NMTC") Working Group, we submit the following comments, considerations, and recommendations in connection with the Comments on the Allocatee (CDE) Transaction Level Report Data Point Guidance for AMIS (December 2022) ("Proposed Guidance") document which we believe will increase the effectiveness and efficiency in which allocatees can report data to the CDFI Fund related to the use of their NMTC allocation.

The members of the NMTC Working Group are participants in the NMTC industry who work together to help resolve technical NMTC issues and provide recommendations to make the NMTC incentive even more efficient in delivering benefits to qualified businesses located in low-income communities around the country. Our group includes over 70 organizations that are allocatees, nonprofit and for-profit community development entities ("CDEs"), consultants, investors, accountants, and lawyers.

Global Comments

- We request that any changes made to the Allocatee (CDE) Transaction Level Report Data Point Guidance for AMIS (September 2021) document ("Current Guidance") do not become effective until six months after it is published, or later. By delaying the effective date, allocatees will be allowed adequate time to implement changes where necessary to better address the new/revised reporting fields.

- We request that any new fields being proposed, particularly the proposed new 'Jobs' fields, would not also become Multi-CDE reporting fields. The NMTC Allocation Application allows CDEs to develop their own customized definitions of "Quality Jobs" and "Accessible Jobs" based on the context of where/how they are investing. If all CDEs in a given transaction need to agree on a single definition of "Quality Jobs" and "Accessible Jobs" for multi-CDE reporting, it would potentially prevent CDEs from participating in certain multi-CDE transactions if their definitions of "Quality Jobs" and "Accessible Jobs" do not align. It would also create a significant additional burden on CDEs with respect to collecting the data itself and coordinating Transaction Level Report ("TLR") data points with partner CDEs on an annual basis.

- With respect to the following new additions to community outcome reporting, we request clarification as to whether these data points are required for all active investments or only for those investments that are originated after the effective date of any new TLR guidance. Making these new data points applicable to transactions that closed before the issuance of new guidance would be administratively burdensome for CDEs to begin collecting any new data that was not contemplated at the time of closing. This would also be needed for any other new data points not mentioned below.
    - Job Quality Measures
    - Identify Accessible Jobs Measure
    - Number of Accessible Jobs
    - Number of People Served by Commercial Goods or Services
    - Number of People Served by Community Goods or Services
    - Number of Households Served by Infrastructure Services
    - Identify Environmental Restoration and/or Sustainability Outcome Measure
    - Quantify Environmental Restoration and/or Sustainability Outcome

- We request the CDFI Fund allow the conditional requirement for the new Jobs related fields be expanded to include real estate purposes. Many of the new Jobs related fields are only required for projects with a Purpose = Business, however, the definition of Business and the options under "Type of Business Loan" might mean that the CDFI Fund will not capture quality or accessible job information about real estate projects, even if those projects were funding SPE's that were leasing back to an operating business.

- We request that CDEs that do not specifically focus on a particular impact be able to mark the item "N/A" as they may not be able to effectively track the information. That could be true with quality and accessibility of jobs for CDEs not focused on job creation, for example, or for CDEs not focused on environmentally sustainable outcomes but whose projects may have some ancillary environmental sustainability outcomes that are difficult for the qualified active community business ("QALICB") to monitor or track.
    - If the recommendation above to allow CDEs not specifically focused on a particular outcome to select "N/A" for that outcome is not accepted, then with regard to CDEs whose QALICBs focus on developing affordable for-sale housing, the definition should include homes built to Energy Star Standards or LEED certification standards, or built with solar panels or other design features that result in energy savings.

- We request that if the CDFI Fund is going to add new data points, it makes every effort to mirror Table D2 from the NMTC application. Also, we request that the CDFI Fund clarify which new data points will be added to the Annual Update fields.

  - To align with Table D2, which allows for selection of payor, please clarify who the payor of the various fees is. Without clarity on identification of the payor, there is risk for double counting fees and misalignment. For example, a CDE may engage a third party to support transaction closing. The third party is then paid from the "Upfront Fee to the CDE." The amounts paid to the third party would then be included under "Upfront Fees to Unaffiliate Third Parties" and "Upfront Fee to the CDE" because the payor of such fee was not identified.

Specific Comments on Data Points in Proposed Guidance

- Page 54 – "Dollar Amount Used to Finance Non-Real Estate Activities" – We request the CDFI Fund provide guidance on whether expenditures by an operating business QALICB to fit-out premises that the QALICB is leasing from a separate real estate business (whether affiliated or not with the QALICB) qualify as "Non-Real Estate Activities."

- Page 57 – "Projected Residual Value of QLICI that May be Obtained by the QALICB" – We request the CDFI Fund provide clarification on whether the residual value of the qualified low-income community investment ("QLICI") is to be obtained by the QALICB and/or QALICB Affiliate. This could greatly change the residual value projected from that of the B-Note (typically aligned with the NMTC equity) that could be forgiven after exercise of the put option and resulting in value at the QALICB versus a QALICB Affiliate that typically acquires the investment fund as a result of the put, which would be the entire QLICI, less the put fee.

- Page 61 – "Associated Project" – We request the CDFI Fund clarify whether the Conditional Requirement field is asking if the reporting CDE used funds from another CDE to make the QLICI? If yes, then should the QLICI Type = QALICB?

- Page 62 – "Total Project Cost Public Sources" – We request the CDFI Fund clarify that the intent of the new guidance is to provide the projected cost sources at "project completion" and not the actual sources in place at "closing". For instance, the Historic Tax Credit ("HTC") equity for a project is typically bridged by a direct bank loan at financial closing. While strict underwriting and risk mitigants are put in place, the HTC equity is not a guaranteed source until construction completion and a subsequent approval by the National Park Service. As a result, the sources at financial closing for a twinned NMTC/HTC investment are different from those at project completion.

- Page 63 – "Estimated Annual Net Operating Income" – We request the CDFI Fund provide clarification on whether this field is requesting that the reporting entity estimate the NOI of the Sponsor organization if the NMTC borrower is a real estate special purpose entity. Also:
  - What is the desired reporting time period for said estimate (e.g. – at project stabilization)? We believe this would be logical because because the facility is being constructed the first year or two of a real estate Special Purpose Entity's ("SPE") operations and not generating income during that period.
  - Does this field need to be reported as an estimate at the time of project close, or is it meant

to be reported on within a certain number of months following close? Should it use the average annual NOI?

- Page 64 – "Loan Loss Reserve Requirement" – We request this field be removed from the TLR entirely as this is no longer one of the indicia of flexible or non-traditional rates and terms under an awardee's allocation agreement and many CDEs are no longer measuring this variable.

- Page 66 – "Minority Owned or Controlled Business" – We request the language in this field is updated to read "…greater than 50%…" rather than "… at least 51%…"

- Page 66 – "Minority Owned or Controlled Business" – We suggest that this field be revised to require the reporting entity to report on the minority-controlled status of the parent entity if the borrower/investee is a real estate SPE.

- Page 66 – "Minority Owned or Controlled Business" – We believe that the separation of Native American-Owned and Minority Owned businesses creates potential for unintended negative outcomes. For example, if a business is owned equally by three partners—one Black, one Native American, and one Caucasian, our understanding is that the business would not qualify as either a Minority Owned Business or a Native American-Owned Business, despite the fact that this business's ownership composition clearly furthers the goals of the NMTC program in providing capital to historically underserved populations. We would request that the CDFI Fund consider amending its definitions to account for such situations or allowing CDEs to select more than one option. In addition to the example discussed above, a similar scenario could arise if a business is both minority owned and women controlled which would benefit from the option of selecting multiple options.

- Page 69 – "Business Description – Primary" – We request the CDFI Fund revise the definition of the "FOOD" business description to encompass only retail food operations. The inclusion of food wholesaling and bakeries, which can in some cases be industrial/manufacturing facilities, creates ambiguity and overlap.

- Page 70 – "NAICS" – We request the CDFI Fund provide clarification on how to avoid using the NAICS codes for Lessors of Real Estate if a primary Business Description is Mixed. Since the NAICS guidance was released in response to the request to avoid using the NAICS codes for Lessors of Real Estate there has been movement to determine a predominate business description (by square footage) in a multi-use project and select that business description and applicable NAICS code. However, there are still projects where this cannot be easily done and Mixed is the correct business description and the resulting NAICS code is Lessors of Real Estate.

- Page 72 – "Type of Jobs Reported" Section – We request Indirect Jobs be removed from this section and the TLR altogether since the NMTC Allocation Application explicitly prohibits CDEs from discussing these types of jobs.

- Page 73 – "Projected Jobs to Be Created – Construction" Section – We request the reporting methodology for both projected and actual construction jobs be clearly specified as Full-Time Equivalents ("FTE"s). Construction sites routinely have many individuals involved for short durations of time, and this creates substantial ambiguity in how construction jobs are quantified. It also creates challenges in multi-CDE transactions when individual CDEs disagree on FTEs versus "headcount" methodology. We also request that construction jobs counted include those that are allowed in the NMTC Application like construction jobs related to an expansion that includes equipment, for example.

- Page 74 – "Projected Permanent Jobs to Be Created at Tenant Businesses" Section – We request this section be revised to "Projected Permanent Jobs to Be Created or Retained at Tenant Businesses" to mirror the language in the previous section and provide clarity for CDEs reporting retained jobs at Tenant Businesses. In many cases, real estate projects facilitate relocation of existing businesses, which is a job retention impact.

- Page 74 – "Actual Full-time Equivalent (FTE) Jobs Created or Retained at Businesses Financed" Section – Regarding the new requirement that "This field must be reported within 36 months of origination," we request 1) that this language be removed entirely to prevent complexity by creating different reporting deadlines for specific jobs fields or 2) increasing the reporting deadline to 48 months and making the requirement consistent with all Actual Jobs reporting fields. The additional 12 months for reporting would be helpful for projects with longer construction periods and/or longer ramp-up periods. For example, health centers often take 3-4 years after construction completion to reach full capacity. We also request that the guidance specifically allows the CDE to update this field one time after the jobs are first reported if job create lags beyond the 48 months. This is currently available through a service request after actual jobs are created.

- Page 75 – "Actual Jobs Created (Construction)" Section - We request the reporting methodology for both projected and actual construction jobs be the FTE methodology for consistency in reporting and for the reasons discussed above.

- Page 75 – "Actual Jobs to Be Created at Tenant Businesses" Section - We request this section be revised to "Actual Jobs to Be Created or Retained at Tenant Businesses" to mirror the language in the previous section and provide clarity for CDEs reporting retained jobs at Tenant Businesses.

- Page 77 – "Job Quality Measures" Section – We request that the CDFI Fund add a data point for "Number of Quality Jobs", similar to "Number of Accessible Jobs" on page 79. We also request that allocatees be able to simply report the number of created and retained quality FTEs rather than using the specific categories listed as the latter creates reporting complexity. We also suggest that this field be EXCLUDED as a Multi-CDE field for the reasons discussed above.

- Page 77 – "Job Quality Measures" Section – This comment is only applicable if the above request is rejected. Under the "Livable Wage" portion, we request the language is updated to the following: "Classification based on third party method to analyze employee earnings necessary to meet a **household's** basic needs and maintain self-sufficiency based on regional data." This will align with the MIT Living Wage Calculator broadly used in the industry.

- Page 78 – "Identify Accessible Jobs Measure" Section – We request this section be removed entirely and CDEs only report on the number of created and retained accessible jobs at the project. If not removed, we request that a CDE should be allowed to select all measures that apply since they may be counting jobs from multiple categories.

- Page 79 – "Number of Accessible Jobs" Section – We request the reporting methodology use the FTE methodology and the reporting deadline (i.e., 36-48 months after origination) be applied for consistency in reporting. We also request that the guidance specifically allows the CDE to update this field one time after the jobs are first reported if job create lags beyond the 48 months. This is currently available through a service request after actual jobs are created.

- Page 79 – "Square Feet of Real Estate – Manufacturing" Section – We request this section be revised to "Square Feet of Real Estate – Industrial/Manufacturing" to match language in NMTC application.

- Page 82 – "Number of People Served by Commercial Goods or Services" Section – We request 1) this section be removed entirely due to reporting complexity and lack of available reliable Borrower data (for example, many commercial businesses do not have data available about the number of individual patrons they serve). 2) If not removed, please extend the reporting deadline to 48 months, and specify how to count the number of people served. Also, we request that a CDE can report zero if the project does not include these services. We also suggest that this field be EXCLUDED as a Multi-CDE field.

- Page 83 – "Number of People Served by Community Goods or Services" Section - We request 1) this section be removed entirely due to reporting complexity and differences in CDE methodologies (for example, individual visits/encounters versus unique individuals served). 2) If not removed, please extend the reporting deadline to 48 months given the time period required for ramp-up to full stabilization often observed at community facility projects. Also, please specify how to count the number of people served. For example, if the service is medical related, do you count the number of visits or the number of individual patients that use the service? One patient may visit multiple times a year. Also, we request that a CDE can report zero if the project does not include these services. We also suggest that this field be EXCLUDED as a Multi-CDE field.

- Page 83 – "Number of Households Served by Infrastructure Services" Section – If the QLICI funds are used to develop a real estate project and some of the funds are used for the cost to develop infrastructure for the project, the number of households served should be the number of households using/benefitting from the infrastructure. If the funds support development of infrastructure that is used by a particular facility and its users, or by a group of homes/households, that would be the correct response (i.e., number of users/people served or number of homes served). Since this is the only new question about infrastructure services, "N/A" should be an eligible response if a response will be required under all circumstances.

- Page 84 - Two new datapoints about Environmental Sustainability are being added, (1) to identify the measure and (2) to quantify it. We request the CDFI Fund allow "N/A" as an eligible response to the first datapoint and the second datapoint should be conditionally required based on the response to the first datapoint.

- With respect to the proposed revisions to fields related to fees and transaction costs (starting on page 88), the revisions change the information reported from fees collected by the Allocatee or affiliates and charged to investors, borrowers and third parties to fees and transaction costs paid to investors, Allocatees, and unaffiliated third parties, presumably only those paid by the QALICB or a QALICB affiliate. We request clarification on:
    - which fees and transaction costs paid to investors or third-parties should be reported by the Allocatee (e.g., only those fees incurred on behalf of the Allocatee or all fees paid by the borrower to effectuate the transaction);
    - how fees and transaction costs should be reported in multi-CDE transactions (e.g., how to report the borrower's audit and tax expenses);
    - whether these revisions should be applied retroactively to all active investments or only those that are originated after 12/31/2022, or how to revise information reported in previously certified TLRs if the response no longer aligns with the revised data point;
    - for Upfront Transaction Costs, what is considered a transaction cost (for example, whether due diligence items, like economic studies and/or site visit costs, should be included);
    - the definition of what is considered "transaction costs" for Back-end Transaction Costs and whether the data point could be included in the QEI Closeout Report in lieu of the TLR;
    - whether the QEI Proceeds Retained field should include amounts withheld for Loan Loss Reserves of future QLICIs that count towards the substantially all percentage;
    - how to report fees for Upfront/Ongoing Fees that are reserved in full from QLICI proceeds but then are paid over time; and
    - whether fees and expenses paid from QLICI interest are included in "Ongoing Transaction Costs (e.g., interest received that is used to pay audit and tax expenses of the sub-CDE.)

We are excited about the positive impact that the New Markets Tax Credit incentive is having on the nation's low-income communities and low-income persons. We appreciate the opportunity to submit our comments on the proposed TLR guidance. Thank you in advance for your time and consideration. 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

Brad Elphick

cc: Christopher Allison, NMTC Program Manager