



A Little-Known Federal Tax Credit That Could Help Finance Capital Projects

by Ira Michael Shepard
ACCT General Counsel

Established by Congress in 2000, a somewhat obscure federal tax credit program known as the New Markets Tax Credit (NMTC) Program is a significant and mostly overlooked source of below-market and subsidized funding for community college infrastructure projects. The projects potentially covered by NMTC include auditoriums, classrooms, faculty or administrative offices, bookstores, eating facilities, day care centers, or virtually any new commercial real estate infrastructure construction related to a community college's mission. The Treasury Department recently announced that \$5 billion in tax credits were approved under the

program for 2009. To date, more than \$14 billion of private-sector capital has been invested into urban and rural communities nationwide through the NMTC program. Planning should start immediately to qualify in 2010.

Our country's severe economic downturn, now going into its third year, exacerbated by the ever-increasing drop in tax revenue and the fight over precious public funding dollars at the state and local levels, has led to the increasing depletion of funding for infrastructure projects at community colleges. Tax-exempt bond issues are also out of the reach for most community colleges without independent

bonding authority. Higher education bonds in most states have become an exclusive financing mechanism for four-year state schools, and four-year institutions have also been successful in obtaining the lion's share of the dollars available under the new stimulus subsidies for Build America Bonds. The resulting lack of funding alternatives, coupled with the expanding demands of increasing enrollment at community colleges, underscores the need for new funding sources. The NMTC program is a golden egg waiting to be plucked from the nest.

NMTC facilitates the flow of significant infrastructure debt and equity funding



"I don't suppose you remembered the tax-deduction forms that I asked you to bring last year, did you?"

New Markets Tax Credit Program

The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to 5 percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is 6 percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.

Throughout the life of the NMTC Program, the Fund is authorized to allocate to CDEs the authority to issue to their investors up to the aggregate amount of \$23 billion in equity as to which NMTCs can be claimed, including \$1 billion of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone.

To date, the Fund has made 396 awards totaling \$21 billion in allocation authority.

Source: Community Development Financial Institutions Fund, U.S. Department of the Treasury. "New Markets Tax Credits Program." Accessed December 3, 2009. Retrieved from http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5.

for projects located in low-income communities, which traditionally have had poor access to debt and equity capital. Forty percent of all census tracts qualify as low-income communities, and the vast majority of our nation's urban and rural community colleges are housed in areas that qualify for development under this program. While private-sector NMTC investments for infrastructure projects have existed for some time, they are just being discovered by higher education institutions. Because of the location of virtually all of our nation's community colleges, the program is tailor-made for community colleges.

NMTC: How it Works

The NMTC program grants private investors a credit against their federal income taxes for making "qualified equity investments" in Community Development Entities (CDEs). The program provides private investors who invest in such projects with a tax credit against their federal tax liability, equal to 39 percent of their "qualified equity investment." Many of our nation's large banks have created CDEs so that they can take advantage of this tax credit program for themselves and for corporate taxpayers interested in making investments that qualify for the tax credit. In order to receive the tax credit, "all or substantially all" of the taxpayer's investment in the CDE must be invested by the CDE as debt or equity in a Qualified Active Low-Income Community Business (QALICB) located in the low-income community. The QALICB can be an affiliate of the community college set up exclusively by college leaders to develop the infrastructure project—which, as noted, can include classrooms, auditoriums, eating

facilities, faculty or administrative offices, or any other infrastructure related to the community college's mission.

Loans from the CDE to the QALICB are typically made at below-market interest rates, with interest-only payments for the first seven years. More importantly, the program allows the equity investment to the CDE to effectively act as a subsidy to the QALICB in amounts that could be as high as 25 to 30 percent of the overall project costs. For example, a \$20 million classroom, bookstore, or auditorium project could see an effective subsidy amount of as much as \$6 million. These projects generally range in size from a minimum of \$10 million to those with price tags in the hundreds of millions.

ACCT's General Counsel is available to provide further guidance to individual community colleges seeking more information about this program, including higher education institutions that have successfully completed infrastructure projects under the NMTC program in the past.



Ira Michael Shepard is managing partner with the law firm Saul Ewing, LLP, in Washington, D.C., and ACCT's general counsel. He wrote this

article with the able assistance of George Nagle, a partner at Saul Ewing specializing in tax credit transactions, who has successfully completed a number of NMTC infrastructure projects for higher education QALICBs. The projects have included bookstores, auditoriums, classrooms, administrative offices, student residences, day-care centers, and other commercial real estate community projects.