$3.6 Billion dollars has recently been announced as awarded by the Treasury to New Market Tax Credits allocates

Does your project qualify for New Market Tax Credits which might enable you to receive an equity contribution of 25% and a loan for 75% at a reduced rate?

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The New Markets Tax Credit ("NMTC") program is administered by Treasury Department's Community Development Financial Institutions ("CDFI") Fund. The program is designed to stimulate job creation, and encourage investment in and revitalization of low-income urban and rural communities ("LIC"). The primary financial benefit of the program is a substantial federal tax credit to the investor. As a result of the credit, the investor is willing to accept a lower rate of return which results in significantly lower borrowing costs to our clients. Additionally, our clients receive a gift of 25% - 33% equity contribution in their project. This means that after seven years our clients frequently do not have to repay this sizable equity contribution.

The program is available nationwide to qualified projects located within a target zone or an LIC. An LIC consists of a census tract where at least 20% of its population is at the poverty level or the area median income is not more than 80% of the statewide or metropolitan area median income. The Washington DC based Reed Smith typically represents Qualified Low Income Community Businesses in connection with NMTC transactions. Our clients' operations are located all across the country and span all areas of business including a meatpacking warehouse, Alzheimer's facility, biodiesel manufacturing plant, mixed-use facility including an ice arena, restaurants, hotel, banquet hall and residential, etc.

The CDFI Fund announced the NMTC 2011 allocation recipients on February 23, 2012. The total allocation totaled approximately $3.6 billion dollars in tax credits that was awarded to 70 community development entities (CDEs). The allocatees were selected from a competitive pool of 314 applicants. A list of allocation recipients and other pertinent information can be found at http://cdfifund.gov/news_events/CDFI-2012-01-Treasury-Announces-$3.6-Billion-in-New-Market-Tax-Credit-Awards-to-Revitalize.asp.

Here's a glimpse of how it works! The NMTC program provides a tax credit for a qualified equity investment ("QEI") in a CDE. So long as that CDE meets certain statutory investment and operating requirements, 39 percent of the investment made by an investor in the CDE may be credited over a period of seven years. Once certified as a CDE, the organization may apply for an allocation of tax credits or it may receive loans or investments from other CDEs that have successfully competed for allocations of tax credits. The CDE can offer the tax credit to investors in exchange for a Qualified Equity Investment (“QEI”) into the CDE. The CDE can then use the QEI proceeds to make a QLICI into a Qualified Low-Income Community Business.

To qualify as a QALICB, the corporation or partnership must be in the active conduct of a qualified business. There are certain limitations and restrictions to be designated as a QALICB. For example, if the project includes a resident component, more than 20% of the gross rental income must be derived for the commercial portion of the project. Other ineligible businesses include golf course, race track, country club, etc. The corporation or partnership must also have (for the taxable year):

- at least 50 percent of its total gross income derived from the active conduct of a “qualified business” within any Low-Income Community;
- at least 40 percent of its use of its tangible property is within any Low-Income Community;
- at least 40 percent of the services by its employees are performed in any Low-Income Community;
- less than 5 percent of the average of the aggregate unadjusted bases of its property is attributable to certain collectibles; and
- less than 5 percent of the average of the aggregate unadjusted bases of its property is attributable to certain nonqualified financial property.

Failure to meet the NMTC requirements during the seven year compliance period may result in recapture. If there is a recapture event with respect to the investment, then the tax imposed will be increased by the credit recapture amount in the taxable year recapture occurred. For example, a recapture event may occur if the CDE ceases to be a CDE or the QLICI is redeemed. If such a recapture event occurs during the applicable compliance period then all NMTCs arising from such investment are subject to recapture.

Key Points:

- Must identify if the project site in located within an LIC.
- Entities with a mission to make investments in an LIC apply to the CDFI fund for certification as a CDE.
- Subsequently the CDE may apply for an award of an NMTC allocation or it may receive loans or investments from other CDEs.
- If the CDE receives NMTCs, it can provide investors with a credit in exchange for an investment.
- The CDE can then use the proceeds to make QLICI in a qualified low income community business ("QALICB").
- The investment must be maintained for a minimum of seven years.
- Failure to comply during the NMTC seven year NMTC compliance period may result in recapture!