New Markets Tax Credit Investments in Native Areas: Selected Case Studies and Best Practices

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Prepared for:
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Executive Summary

a. Overview

This Case Study Report is part of the Community Development Financial Institutions (CDFI) Fund's New Markets Tax Credit (NMTC) Native Initiative. The goal of the NMTC Native Initiative is to increase NMTC investments in Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaska Native Village Statistical Areas, collectively referred to as NMTC Native Areas. This Case Study Report presents findings, best practices, and recommendations derived from an online survey and subsequent interviews with participants in past NMTC investments in NMTC Native Areas.

b. Methodology and Selected Cases

The research team developed a list of NMTC projects that would potentially illustrate varied, successful, and replicable paradigms with specific, on-the-ground examples. The research team then worked closely with the CDFI Fund to curate a list of nine representative projects. Ultimately, the team conducted interviews with one Community Development Entity (CDE) for each project, and with Qualified Active Low-Income Community Businesses (QALICBs) for several projects.

c. Summary of Past NMTC Transactions in Native Areas

Overall, 225 Qualified Low-Income Community Investments (QLICIs) within 149 unique projects made by 51 CDEs took place in American Indian, Alaska Native and Native Hawaiian (AIANNH) lands within the United States between 2003 and 2020. NMTC investments across all these projects totaled $1.8 billion in 2021 dollars. NMTC investments on AIANNH lands make up 2.6% of all NMTC investments. Since 2017, there have been an average of 12 projects a year and $144 million in NMTC investment each year in AIANNH lands.

d. Findings, Best Practices, and Recommendations

The survey was developed as a precursor to the interview, wherein CDEs were given significantly more room to expand on their experience working on the NMTC transaction case at hand. Select survey findings include:

- Two-thirds (66%) of responding CDEs had over 10 years of experience lending/investing in Indian Country prior to the transaction.
- More than half (56%) of these CDEs stated that they encountered tribal cultural or legal matters that had to be addressed as part of the project process.
- About one fifth (22%) of CDEs had a pre-existing relationship with the tribe or project sponsor involved in the case project.

- Two-thirds (66%) of responding CDEs would request future allocations to finance other NMTC projects in Native Areas based on their experience with the case project.

A set of more robust findings from the interviews conducted are summarized below. Findings are accompanied by recommendations for future policy changes to address the identified challenges, and by best practices used in the past to address said challenges.

- Challenges for obtaining allocations in Native Areas and with Native CDEs include:
    - Native CDEs often have limited staff capacity to develop compelling applications and lack the financing track record to justify their allocation requests.
        - Recommendations for the CDFI Fund:
            - Provide additional training for tribes, Native individuals, and Native organizations related to financing and economic development planning and implementation;
            - Increase Native CDE participation in NMTC transactions;
            - Provide programmatic support for greater NMTC investment in Native Areas and Native CDEs; and
            - Provide funding to help Native CDEs access technical assistance in preparing for NMTC applications.
        - Recommendations for Native CDEs/CDFIs:
            - Seek to engage as secondary CDEs with tribes; investors and allocatee CDEs and the CDFI Fund should support this goal to serve as Secondary CDEs; and
            - Participate as a partner/collaborative lender to a Native QALICB.
    - NMTC reviewers often do not understand the unique challenges associated with attracting capital to Native Areas and consequently may not appreciate the critical role that NMTCs can play in these communities.
        - Recommendation: Train NMTC application reviewers about community economic development in Native Areas.
    - Outcomes on Native lands often center around essential human services, basic needs, or cultural initiatives that may not generate significant job numbers or easily quantifiable outcomes.
        - Recommendation: Give greater weight to qualitative project outcomes in NMTC allocation application.

    - Unrelated party financing requirements and the complexity of the NMTC Program pose barriers for tribally controlled CDEs in financing projects owned or controlled by the same tribe, limiting their ability to obtain competitive scores in the application process.
        - Recommendation: Provide more flexibility for Native CDEs in the definition of related entities.
    - Timing challenges, such as the project closing deadlines and limited lookback period, have made it harder to use NMTC capital for Native projects.
        - Recommendations:
            - Promote greater collaboration among federal agencies involved in Native Area transactions; and
            - Tribes that have not obtained Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act authority to issue commercial leases without Bureau of Indian Affairs (BIA) approval should consider doing so. If tribes use this authority, their policy guidelines for lease terms and conditions, and the requirements of leasehold mortgage provisions, should be made available to funders early in financing processes.
    - There is a limited timeframe to reimburse prior-incurred costs, which disadvantages Native projects, as projects in Native Areas often take longer to close an NMTC investment.
        - Recommendation: Extend the prior-incurred cost reimbursement period.
- Project viability challenges:
    - These often-rural projects have higher construction costs and difficulties attracting and keeping staff to work at facilities.
    - There are eligibility challenges with sprawling footprints that may extend beyond NMTC-eligible areas.
        - Best Practices:
            - Sponsors use conventional debt underwriting standards to ensure the project can meet basic lending and NMTC Program underwriting principles and criteria.
            - Utilize Targeted Populations as an alternative to census tract qualification.

- Land ownership issues complicate NMTC financing for tribal business development due to restrictions on land alienation and the need for leasehold mortgages.
    - Collateralizing NMTC projects in non-metropolitan areas can be challenging due to difficulties in defining rural land values and limited transaction data for accurate appraisals.
    - Land held in trust by the federal government cannot be used as collateral, leading to reliance on leasehold mortgages, other assets or leveraging non-real estate assets for loans.
        - Best Practice: Tribe facilitates access to leasehold mortgage security.
- Tribally sponsored projects may face difficulties meeting lenders' requirements for collateral because of the trust status of land, or the complexity of tribal finances resulting in difficulty offering tribal guarantees.
    - Best Practice: Tribal sponsors identify and develop processes for enforceable and adequately secured promissory notes and loan agreements.
- Uncertainty remains regarding the eligibility of tribal corporations as QALICBs, resulting in additional steps such as creating state law entities and lease agreements to navigate the issue.
    - Recommendation: Participants should work with Treasury/IRS to prioritize creating greater clarity regarding the eligibility of tribal corporations to be QALICBs.
- Sovereign immunity of tribes can hinder transactions from moving forward, as investors and CDEs require enforceable promissory notes.
    - Best Practice: Tribes consider limited waivers of sovereign immunity.
- Understanding the complexities of the NMTC Program and compliance issues can take time and resources due to the potential need for legal and accounting guidance, especially for tribes with limited exposure to the program and staff turnover; additionally, issues with local politics and leadership turnover can delay NMTC transactions.
    - Best Practice: Tribal sponsors and potential CDE applicants evaluate the cost and benefit of engaging NMTC experts.
- Tribal politics and leadership turnover may delay the closing of NMTC transactions in Native Areas.
    - Best Practices:
        - Cohesive tribal governance and economic development strategies; and

        - Determine acceptable practices regarding choice of venue and applicable law and establish these policies before working with third-party lenders.

- Effective outreach to partners requires a deep understanding of specific communities and learning about and acknowledging their unique experiences, perspectives, and complexities.
    - Recommendation: Lenders should take steps to facilitate better relationships with Native Entities.
- Interviewees shared that a Native set-aside for either Native organizations or projects within Native Areas could effectively increase NMTC investment in Native Areas.

I. Introduction

a. Project Overview

This report, titled "New Markets Tax Credit Investments in Native Areas: Selected Case Studies and Best Practices" (referred to as the Case Study Report), is a component of the Community Development Financial Institutions Fund's (CDFI Fund) New Markets Tax Credit Program Native Initiative (the NMTC Native Initiative). Big Water Consulting and its partners conducted the project on behalf of the CDFI Fund. The NMTC Native Initiative supports efforts by the CDFI Fund to explore opportunities to increase NMTC investment in *Federal Indian Reservations, Off-Reservation Trust Lands, Hawaiian Home Lands, and Alaska Native Village Statistical Areas* (collectively referred to as NMTC Native Areas). The primary goal of this initiative is to expand access to capital for Native communities via tax incentives the New Markets Tax Credit Program (NMTC Program) provides. The NMTC Native Initiative comprises several fundamental components, which include:

- This Case Study Report on the findings from case studies on selected New Market Tax Credit (NMTC) investments in Native Areas;
- A report titled "Community Economic Development in Indian Country: Market Research Report" (referred to as the Market Research Report), which reports on successfully implemented community economic development strategies that resulted in attracting capital to Native communities and challenges that Native entities face in accessing capital for community economic development;
- Technical workshops informing representatives of Native organizations about the purposes and mechanics of the NMTC Program;
- Individual training sessions with Native organizations seeking to learn more about specific elements of the NMTC Program and roles within NMTC-funded projects;
- An analysis of NMTC investment data describing the investments and activities of tribes and Native organizations in the NMTC Program; and
- A document titled "Self-Assessment Guide for Native Organizations" (referred to as the Self-Assessment Guide), a guide for tribal entities that seek to participate in the NMTC Program describing the various roles and the corresponding responsibilities related to the NMTC.

b. About the New Markets Tax Credit (NMTC) Program

The New Markets Tax Credit Program, established by Congress in December 2000, permits individual and corporate taxpayers to receive a non-refundable tax credit against federal income taxes for making equity investments in financial intermediaries known as Community Development Entities (CDEs). CDEs that receive the tax credit allocation authority under the program are domestic corporations or partnerships that provide loans, investments, or financial counseling in low-income urban and rural communities. The tax credit provided to the investor totals 39% of the cost of the investment and is claimed over a seven-year period. The CDEs in turn use the capital raised to make investments in low-income communities. CDEs must apply annually to the CDFI Fund to compete for New Markets Tax Credit Program allocation authority. Since the inception of the NMTC Program, the CDFI Fund has completed 18 allocation rounds and has made 1,461 awards totaling $71 billion in tax allocation authority. This includes $3 billion in Recovery Act Awards and $1 billion of special allocation authority used for the recovery and redevelopment of the Gulf Opportunity Zone.

To learn more about the New Markets Tax Credit Program, please visit www.cdfifund.gov/nmtc.

c. About the Community Development Financial Institutions Fund (CDFI Fund)

Since its creation in 1994, the CDFI Fund has awarded more than $5.5 billion to CDFIs, community development organizations, and financial institutions through:

- The Bank Enterprise Award Program;
- The Capital Magnet Fund;
- The CDFI Rapid Response Program;
- The Community Development Financial Institutions Program, including the Healthy Food Financing Initiative;
- The Economic Mobility Corps;
- The Financial Education and Counseling Pilot Program;
- The Native American CDFI Assistance Program; and
- The Small Dollar Loan Program.

In addition, the CDFI Fund has allocated more than $71 billion in tax credit allocation authority to Community Development Entities through the New Markets Tax Credit Program, and guaranteed bonds for over $2.1 billion through the CDFI Bond Guarantee Program.

To learn more about the CDFI Fund and its programs, please visit the CDFI Fund's website at www.cdfifund.gov.

d. Report Purpose and Contents

This report provides a comprehensive overview of the case studies conducted as part of the CDFI Fund's NMTC Program Native Initiative. The report:

- Outlines the methodology used for selecting and implementing the case studies;
- Summarizes CDFI Fund data that describes past NMTC transactions in Native Areas;

- Describes the projects selected to serve as case studies for this component of the Native Initiative;[1]
- Summarizes the results and findings from the online surveys and interviews that were conducted in furtherance of the case studies;
- Describes best practices for increasing the availability of NMTC capital in Native Areas; and
- Provides recommendations for increasing Native participation in the NMTC Program and promoting partnerships between Native Entities, Allocatees, and NMTC Investors.

By examining these case studies, the report seeks to identify common challenges and opportunities for expanding NMTC investment in Native Areas. The findings help inform strategies and recommendations to expand Native communities' access to capital through the NMTC Program.

In presenting the findings from the case studies, the report delves into a variety of factors affecting the deployment of NMTCs in Native Areas. It explores the challenges faced in obtaining and utilizing NMTC capital for projects within Native Areas, including project viability challenges, land-related concerns, and uncertainty surrounding the eligible roles of tribal corporations within NMTC transactions. The report also examines factors influencing the use of the NMTC Program and its complications within Native communities, such as sovereign immunity, tribal politics, and lender familiarity with Native Areas.

By highlighting these insights, the report aims to facilitate a better understanding of the challenges and opportunities that exist in utilizing the NMTC Program to benefit Native communities.

Furthermore, this report offers best practices and recommendations for increasing the availability of NMTC capital in NMTC Native Areas. Survey and interview respondents emphasized the best practices that were critical to the success of their participation in the NMTC Program, such as the importance of cohesive tribal governance and economic development strategies, tribal policies that support development financing, and the value of engaging with NMTC experts.

Additionally, the report suggests steps that Native Community Development Entities (CDEs) can take to increase their participation levels in NMTC transactions, as well as increase their competitiveness for NMTC allocation authority. The research team includes additional recommendations that propose policy or legislative changes, and are directed to either the CDFI Fund or Congress, to enhance tribal and Native enterprise understanding of, interest in, and competitiveness for NMTC financing. These recommendations address the specific challenges faced by Native communities as described by both the survey participants and the findings of the Market Research Report, and also draw from the prior experience of the research team.

[1] The word "project" will be used for the remainder of this report to mean a real estate, equipment, or working capital investment unless otherwise specified.

e. Report Structure

This report is divided into eight sections as described below:

- The executive summary provides a high-level overview of the purpose, findings, and recommendations within this report.
- "Section 1: Introduction" provides a more in-depth outline of this report and places it within the larger context of the CDFI Fund's NMTC Native Initiative.
- "Section 2: Methodology for Case Study Selection and Implementation" details how case studies were selected, and how the survey and interviews were conducted. Limitations to outreach and data collection are described in this section.
- "Section 3: Summary of Past NMTC Transactions in Native Areas" includes the amount invested over time, a map of transaction locations, information about the CDEs making NMTC investments, and the types of businesses involved. The section includes information that served as a foundation for the selection of case studies within this report.
- "Section 4: Description of Selected Case Study Projects" describes the case study projects in detail; it includes a table with selected high-level information surrounding the case study projects.
- "Section 5: Findings, Best Practices and Recommendations" describes the findings of both the online case study surveys and follow-up interviews, as well as relevant best practices and recommendations for addressing the key challenges identified in the survey and interview findings. The research team briefly summarizes quantitative survey findings but delves into a more profound discussion surrounding the themes that emerged over the course of interviews that exemplify the experiences of individuals and organizations involved in NMTC projects within NMTC Native Areas. Following each finding, the research team either describes an existing best practice or provides a recommendation for program improvements drawn from the case study findings and research team's experience with the NMTC Program.
- "Section 6: Conclusion" provides a brief summary of the results from the case studies. It also details the other project components that informed the findings, best practices, and recommendations identified in this report and their implications for increasing the investment of NMTC capital in Native Areas.

II. Methodology for Case Study Selection and Implementation

The case studies are intended to provide richer and more nuanced case-specific detail concerning NMTC investment in NMTC Native Areas that cannot be gleaned by data analysis. Understanding the impetus for these investments, as well as challenges and opportunities experienced by the participants in NMTC investments in Native Areas, can provide insights on making NMTC capital more accessible and better utilized in Native Areas. The research team reviewed transaction data concerning NMTC investments in NMTC Native Areas and Tribal Statistical Areas to identify a diverse set of projects that would illustrate a variety of successful approaches for using NMTC to address the capital needs of tribes.

By filtering the data set provided by the CDFI Fund, the research team developed a list of NMTC projects that would fulfill the task-specific goal of incorporating and examining a diverse range of projects. Based on discussions with the CDFI Fund, the research team initially refined the candidate list to eighteen case studies located on Native lands or tribally owned property.

Case study selection was based on the following characteristics:

- Project locations in the contiguous United States, Alaska, and Hawaii;
- Metropolitan and non-metropolitan areas;
- Size of tribal enrollment;
- Total project cost;
- Project business type or asset class;
- Project year; and
- The name of the Community Development Entity (CDE) that financed the project.

The first selection criterion for potential case studies was project location. This entailed choosing at least one project from each of the U.S. Department of Housing and Urban Development's Office of Native American Programs (HUD ONAP) regions, including one project from Hawaii and one from Alaska.[2] Additionally, the selection of projects sought to maintain a balance between projects located inside and outside of Metropolitan Statistical Areas (MSAs),[3] with the majority of projects situated outside of MSAs.

Another criterion used in case selection was tribal enrollment numbers. Projects located on reservations that are home to small tribes (less than 1,500 members), large tribes (more than 10,000 members), and mid-size tribes (between 1,500 and 10,000) were included in the initial selection. According to 2024 Indian Housing Block Grant (IHBG) data, the median size tribe had

[2] U.S. Department of Housing and Urban Development Office of Native American Programs. (2023). National Directory of Tribes and TDHEs by ONAP Regions. https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/map/nationalmap.

[3] Per the U.S. Census Bureau, a metropolitan statistical area (MSA) is a geographical region with a relatively high population density at its core and close economic ties throughout the region.

626 enrolled members, and the average tribe had 4,150 enrolled members.[4] Tribes of various sizes can have access to different levels of resources, and, in the initial analysis (described below), the data showed that larger tribes are more likely to receive NMTC allocations than smaller tribes.

The research team selected projects at different project cost levels, including projects with a total cost under $10 million, projects with a total cost between $10 million and $30 million, as well as projects with a total cost above $30 million. For reference, the median project cost within the dataset was $12.8 million.

Project industry category was also used as a selection criterion. The research team used a typology first developed by the Urban Institute to categorize NMTC projects.[5] At least one project was chosen from each of the most common categories identified. The selected categories included:

- Manufacturing and Food Processing;
- Health Care Services;
- Community Facilities or Tribal-Use Buildings;
- Energy, Water, Waste, and Sewage;
- Schools and Child Care; and
- Hotels; and Office and Professional Services.

These categories were selected based on the fact that at least five projects within the dataset containing all NMTC projects in Native Areas fell within each individual selected category.

Project completion date was included as a criterion to ensure that projects selected to serve as case studies reflected changes in the program as well as communities served over time. Projects were divided into three different time periods: 2003-2010, 2010 to 2015, and 2016 to 2020. These periods were selected so the research team could better understand and evaluate how the NMTC Program's evolution and policy changes have influenced its impact on community development in Native Areas.

Finally, potential projects were sorted based on the number of Community Development Entities (CDEs) involved in the project. This ensured that projects with multiple CDEs were represented as well as projects with a single CDE. Projects were selected to incorporate a diverse set of CDEs, with a mix of both Native CDEs and non-Native CDEs.

After this list of 18 projects was compiled, the research team shared this list and associated project-specific characteristics with the CDFI Fund, which subsequently selected nine projects

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[4] FY 2024 IHBG Formula Estimates. https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/ihbgformula

[5] For a list of all categories used, see: Theodos et al. (2021). Which Types of Projects Receive New Markets Tax Credit Funding. The Urban Institute. https://www.urban.org/sites/default/files/publication/103956/which-types-of-projects-receive-new-markets-tax-credit-funding_0.pdf

and three alternate projects that could be drawn from in case the research team had difficulty obtaining initial survey responses for any of the nine projects that were initially selected. The CDFI Fund selected the nine projects based on representativeness of the use of NMTCs in a particular region or sector (and/or representativeness of the business financed), and for which the CDFI Fund had no prior direct knowledge (e.g., via site visits). For projects that involved more than one CDE, the CDFI Fund selected the CDE with organizational characteristics that were not represented by CDEs for other single CDE projects.

Ultimately, one case was added to the sample to replace another case that was found not to be located on reservation land, not involving a tribal entity, and not specifically serving a Native population. The same selection criteria were used to choose a replacement case: a similar mixed-use commercial and municipal building transaction located on reservation land and involving a tribe.

Following the CDFI Fund's selection of the nine projects that would serve as the subjects for the case studies, the research team began the process of reaching out to the five key participants (the CDE, leverage lender, investor, Qualified Active Low-Income Community Businesses (QALICB), and tribe/tribal sponsor)[6] involved with each project to gather online survey responses and schedule follow-up interviews regarding the projects.

The research team initially administered an online survey to gather foundational background information about the project's participants, laying the groundwork for more in-depth exploration through subsequent interviews. The research team used the platform LimeSurvey to host the online survey, which allows for survey skip logic.[7] Outreach was done via phone and email, and attempts were made to contact the CDE, leverage lender, investor, QALICB, and tribe/tribal sponsor involved in each project.

The research team started by contacting the CDEs, with the hope that these key participants would be able to provide the critical - and potentially difficult to source - contact information for the other key participants involved with each project. Respondents were initially given two weeks to respond to the survey, but this period was extended another two weeks. At least one CDE responded for each transaction.

The research team was less successful in its efforts to obtain responses from other key participants within transactions, as described further in the Limitations section of this report below. Only two QALICBs responded to the QALICB survey. One investor responded to the survey for investors, and no tribal leaders or leverage lenders completed the surveys.

[6] Definitions of these terms and others are available in Appendix B: Glossary.

[7] Skip logic refers to a type of survey logic in which a respondent's answer to a question may determine the subsequent questions they are asked. In the case of these surveys, it was used to ensure respondents were only asked questions relevant to their experience, e.g., if they responded that they had not faced additional challenges related to NMTC regulations due to the project's location in a Native Area, they would not then be presented with a question asking them to elaborate on these challenges.

The surveys were formatted as below:

- CDE survey: 15 substantive questions and other questions asking CDEs to list other key participants within the transaction in question
- QALICB survey: 17 questions
- Investor survey: 16 questions
- Tribal leader survey: 10 questions
- Leverage lender survey: 7 questions.

The research team crafted distinct online survey instruments for each of the five roles in the NMTC projects. Each survey was designed to collect quantitative information about the key participants' level of pre-existing experience with NMTCs, challenges they faced utilizing NMTCs for the specific project of interest, availability of capital for the project, challenges related to the project's location in a Native Area, resources utilized for the project (including expert consultants and capital), and community outcomes associated with the project.

Upon completion of the brief online survey, respondents were prompted to schedule a follow-up interview with the research team. These interviews were designed to gather more extensive qualitative information regarding the responses to the survey and to understand better the respondents' experience using NMTCs for a project located in a Native Area. Interviews were conducted virtually via Zoom and lasted between 30 and 60 minutes each. The research team developed standard scripts for each role, gave the interviewees opportunities to elaborate on their responses. and, if they chose to do so, make additional points regarding the project and their experience with NMTCs and the NMTC Program. Interviews were recorded and transcribed for later reference.

a. Limitations

Two key obstacles prevented the research team from connecting with each of the five key participants for each project. First, many of the projects selected were over a decade old. Many of the key organizations had experienced staff turnover since the projects closed, creating a barrier to contacting sources familiar with the details of these specific projects. This turnover contributed to lower-than-expected response rates. Second, the Paperwork Reduction Act[8] limited the number of organizations that could be contacted to nine, meaning that, once meaningful contact was made with a key participant for that project, the research team could not replace the case with another.

After several attempts were made to gather a response from each key participant, the research team adjusted the outreach strategy by shifting their focus from obtaining a response from all of the key participants for each project, to gathering responses from just the CDE and tribe/tribal

[8] "A Guide to the Paperwork Reduction Act: Do I Need Clearance?" https://pra.digital.gov/do-i-need-clearance/

sponsor or QALICB. One project was added to the list after participants in another project could not be reached.

To provide additional context, interviews were also conducted with sources knowledgeable about the deployment of NMTCs in Native Areas who had not worked on one of the specific cases identified, typically because they were identified as a resource by one of the selected key participants. These knowledgeable sources included a consultant brought in on many NMTC deals in Native Areas because of their specific expertise, a lawyer well-versed in the NMTC Program, and a NMTC underwriter for a bank with significant experience involving NMTC transactions. The interviews with these sources did not follow a predetermined script but were more free-form.

Ultimately, the team conducted interviews with individuals from the CDE for each project, and with QALICBs for several projects. While lack of response from project sponsor representatives may have resulted in fewer alternative solutions to challenges that are uniquely tribal, the research team's workshop-based discussions with Native lenders including the Native CDFI Coalition, Native American Bank, and Citizen Potawatomi Community Development Corporation helped to mitigate this potential impact. Furthermore, the ultimate designs of some of the transactions illustrate measures to address such challenges, such as the pledge of revenue instead of real estate for the Navajo Tribal Utility Authority office discussed later in this report.

Coming after the completion of several key deliverables for the Native Initiative, this Case Study Report draws upon additional recent and relevant work to provide context and further documentation for this report's findings, best practices, and recommendations (discussed in Sections V). For example, this section incorporates relevant additional insights from the research team's analysis of NMTC investment data, and from the research conducted to prepare the Market Research Report. These findings are included in this report as additional context for the discussion of several key NMTC topics.

III. Summary of Past NMTC Transactions in Native Areas

This section provides an overview of the NMTC investments made in American Indian, Alaska Native, and Native Hawaiian (AIANNH) lands[9] within the United States between 2003 and 2020.[10] It focuses on the amount invested and types of investments made over time in these areas, highlighting the contributions of Qualified Low-Income Community Investments (QLICIs) in various projects. Additionally, this section explores the extent of the involvement of different Community Development Entities (CDEs) and the breakdown of Qualified Active Low-Income Community Businesses (QALICBs) by ownership structure, race, gender, and establishment age based on data reported by CDEs. The information presented in this section served as a foundation for further analysis and the selection of the case studies summarized in subsequent sections of this report.

a. Amount Invested and Investments Over Time

Overall, 225 Qualified Low-Income Community Investments (QLICIs) within 149 unique projects made by 51 CDEs took place in AIANNH lands within the United States between 2003 and 2020. NMTC investments across all these projects totaled $1.8 billion in 2021 dollars.[11] Across this time period, the median QLICI investment amount was $6.9 million, the median NMTC investment per project was $10.2 million, and the median total project cost was $12.8 million (all in 2021 dollars). NMTC investments on AIANNH lands make up 2.6% of all NMTC investments. Total project costs on AIANNH lands make up 2.4% of the total project costs for all NMTC projects during this period.

Since 2017, there have been an average of 12 projects a year and $144 million in NMTC investment each year in AIANNH lands. Figure 1 shows this general increase in the number of projects from 2003 to 2020. NMTC investment by year follows a similar pattern, peaking in 2011 at $267.9 million. This peak was not driven by a few outsized projects, but rather reflects an increase in both the amount of allocation deployed and the number of projects financed using NMTCs.

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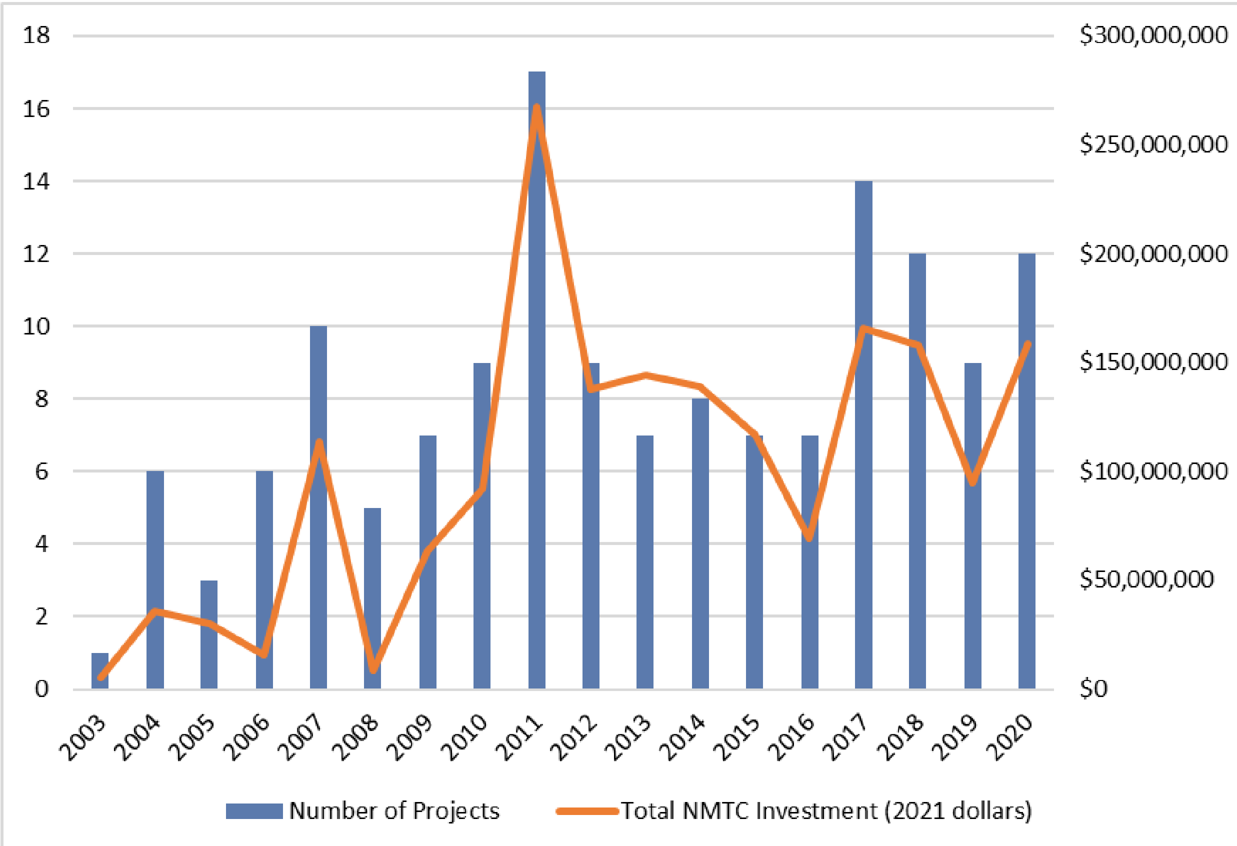
[9] American Indian/Alaska Native/Native Hawaiian (AIANNH) Areas refer to geographical regions in the United States that are designated for the Native indigenous populations, including American Indians, Alaska Natives, and Native Hawaiians. This includes the following legal entities: federally recognized American Indian reservations and off-reservation trust land areas, state-recognized American Indian reservations, and Hawaiian home lands (HHLs). The statistical entities included are Alaska Native village statistical areas (ANVSAs), Oklahoma tribal statistical areas (OTSAs), tribal designated statistical areas (TDSAs), and state designated tribal statistical areas (SDTSAs).

[10] CDEs that receive NMTC allocations are required to provide the CDFI Fund with annual reports, one of which is the transaction-level report on the investments made using the NMTC proceeds. Transaction level reports are submitted within 180 days of the CDE's fiscal year end date. At the time of this analysis, the transaction level report consisted of NMTC investments made in fiscal years ending 2020.

[11] All dollar amounts reported in this section were converted to 2021 dollars.

Figure 1 | Projects and NMTC Investment in AIANNH Lands by Year Closed

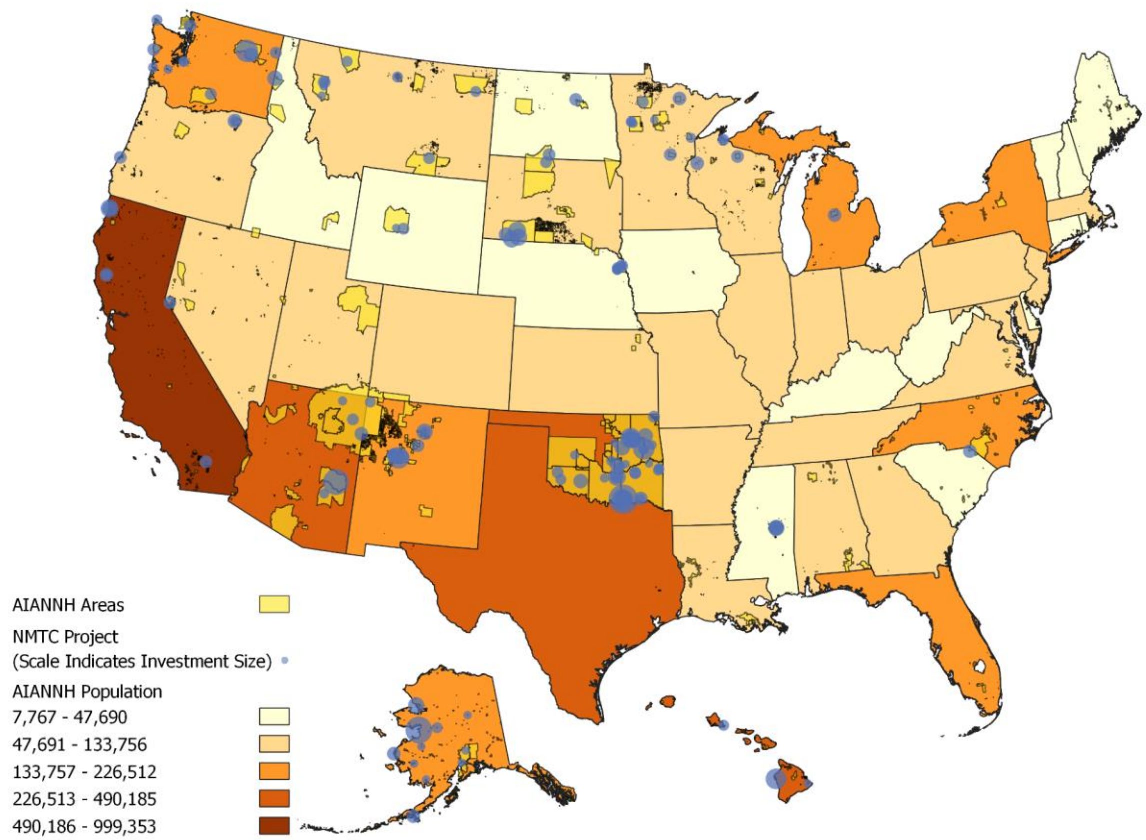


Source: CDFI Fund New Markets Tax Credits (NMTC) Investments Made in American Indian, Alaska Native, and Native Hawaiian (AIANNH) Areas, 2001 through 2020

b. Map of Transaction Locations

The map in Figure 2 below shows NMTC Projects, the location of AIANNH lands, and AIANNH population by state (AIANNH alone or in combination with one or more other races).

Figure 2 | NMTC Projects, AIANNH Lands, and AIANNH Population by State



Data sources: CDFI Fund New Markets Tax Credits (NMTC) Investments Made in American Indian, Alaska Native, and Native Hawaiian (AIANNH) Areas, 2001 through 2020; Population data from U.S. Census 2010 Decennial Census. TIGER/Line Shapefiles® obtained from U.S. Census Bureau include 2022 American Indian/Alaska Native/Native Hawaiian Area and 2022 State and Equivalent.

Figure 3, below, shows the locations of the cases chosen for this case study report.

Figure 3 | Case Study Project Locations

Source: Big Water Consulting, 2023

Figure 4, below, shows the Office of Native American Programs (ONAP)'s regions of the United States for the purposes of demonstrating in which ONAP region each case was located.

Figure 4 | Map of ONAP Regions

Source: National Directory of Tribes and TDHEs by ONAP Regions[12]

[12] https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/map/nationalmap

c. Number of CDEs Making Investments

There were fifty-one (51) CDEs that made investments in AIANNH lands between 2003 and 2020. Of those CDEs, 43% were only involved in one NMTC project in AIANNH lands during that time period. Just over half (51%) of these CDEs completed more than one but less than ten projects in AIANNH lands. Only three CDEs completed ten or more projects in AIANNH lands. Of the fifty-one (51) CDEs that have made investments in AIANNH lands, 90% were not Native-owned/controlled.[13] The research team ascertained this based on the knowledge of experts familiar with the CDEs and by contacting the CDEs to inquire about their Native-owned/controlled status.

Of the 149 projects conducted by these CDEs, 81% involved only a single CDE. Of these projects, 19% involved multiple CDEs.[14] This is similar to the breakdown in the full CDFI Fund NMTC public data, where 20% of all NMTC projects are flagged as multi-CDE projects and 80% are not.

d. Qualified Active Low-Income Community Business (QALICB) Characteristics

The QALICBs involved in investments in NMTC Areas on AIANNH (American Indian, Alaska Native, and Native Hawaiian) lands varied by ownership structure, ownership race and gender, and the age of the organization, with newer organizations being classified as startups.

Overall, there were seventy-three (73) projects in AIANNH lands that had for-profit QALICBs, with an average NMTC investment of $13.2 million. Forty-three (43) projects had nonprofit QALICBs with an average NMTC investment of $11.4 million. Twenty-three (23) projects had tribal QALICBs with an average NMTC investment of $9.8 million. For ten projects, the QALICB type was classified as "missing."[15]

Among the projects in AIANNH lands, 57% had Qualified Active Low-Income Community Businesses (QALICBs) that were classified as startups, meaning the date that the entity was established was two years or fewer before the year the deal closed. These projects with startup QALICBs had an average NMTC investment of $12.7 million. On the other hand, 19% had QALICBs that were not classified as startups, with an average investment of $9.8 million. The remaining 24% of QALICBs fell under the "missing" category due to undefined or conflicting years of establishment for Qualified Low-Income Community Investments (QLICIs) within the same project.

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[13] The NMTC Program Allocation Application defines a Native American-owned or Native American-controlled entity as “a for-profit entity, including an MDI, that has at least 51% of its equity ownership (or the equivalent in limited liability companies) interest being owned by individuals who are Native American” or “a not-for-profit entity with at least 51% of its Board of Directors (i.e. Governing Board) comprised of individuals who are Native American.” https://www.cdfifund.gov/sites/cdfi/files/2022-11/CY_2022_NMTC_Program_Application.pdf

[14] Transactions in the dataset involved between one and three CDEs.

[15] The "missing" category includes projects where the QALICB was undefined and projects with multiple QLICIs that defined QALICBs differently.

Eight percent of the projects had QALICBs that were identified as being more than 50% owned or controlled by women, with an average NMTC investment of $6.9 million. Additionally, 40% had QALICBs that were identified as being more than 50% owned or controlled by racial/ethnic minorities, with an average NMTC investment of $12.7 million.

Qualified Active Low-Income Community Businesses (QALICBs) separately reported the race of the owner/director of the QALICB to the CDFI Fund. Of these QALICBs, 3% had an Alaska Native owner/director, 32% had an American Indian owner/director, 4% had a white owner/director, and 38% were owned by corporations and had no specific race reported. Nearly a quarter (23%) of projects had "missing" data for the race or ethnicity of the QALICB owner or director.[16]

The information presented above played a crucial role in the selection of case studies for the project. As described in the previous section of this report, the case studies aim to delve deeper into specific investment projects on AIANNH (American Indian, Alaska Native, and Native Hawaiian) lands, providing valuable insights into their impact, success factors, and challenges. Case studies were selected by examining a range of projects across different regions, at different periods of time, involving a variety of different CDEs, business types, tribal enrollment numbers, and Native and non-Native project ownership.

Through this focused approach, the research team sought to capture the lessons learned and highlight best practices in a diverse and representative array of AIANNH lands.

[16] Many project sponsors use newly formed single-purpose QALICBs. The CDFI Fund's data doesn't distinguish between a newly formed special-purpose QALICB and a newly formed operating business sponsoring a project.

IV. Description of Selected Case Study Projects

Based on the criteria explained in the previous section, the research team narrowed the list of potential case studies to a final list of nine projects. These represented a diverse range of business types, geographical regions, and strategies for maximizing the usefulness of the NMTC Program.

Table 1, below, and the following project descriptions provide an overview of the selected case studies.

Table 1 | Overview of Case Study Projects

Project[17]	Year Closed	Region	Project Total QLICIs	Sector	Native CDE?
Choctaw Early Childhood and Elementary Education	2020	Eastern/ Woodlands Region	$15,000,000	Community - Schools and child care	No
Crain Manufacturing	2007	Southern Plains	$8,100,000	Other - Manufacturing and Food Processing	No
Makah Commercial Fishing Dock	2014	Northwest	$7,620,320	Other - Forest, agriculture, fishing, mining, and quarry	No
Maniilaq Nursing Home	2010	Alaska	$17,460,995	Health	Yes
Minnewaukan Public School District K-12 School	2012	Northern Plains	$10,864,000	Community - Schools and child care	No

[17] Project names were developed by the research team using project descriptions to aid in succinctly and accurately representing and referencing each project.

Table 1 Continued | Overview of Case Study Projects

Project	Year Closed	Region	Project Total QLICIs	Sector	Native CDE?
Navajo Tribal Utility Authority Administrative Building	2010	Southwest	$9,500,000	Other - Energy, water, waste, broadband and sewage	No
St. Croix Chippewa Indians Judicial Center	2017	Eastern/ Woodlands Region	$13,840,000	Mixed Use - Community Facilities and Retail	No
Wa She Shu Travel Plaza	2015	Southwest	$10,500,000	Retail	No
West Hawaii Community Health Center	2013	Hawaii	$21,807,500	Health	No

a. The **Choctaw Early Childhood and Education Center** project funded the construction of two new early childhood education centers and the expansion of an elementary school on the Choctaw Reservation (Pearl River and Standing Pine Early Childhood Education Centers and the Pearl River Elementary School).

    i. The early childhood centers each serve 50 children ages eight weeks to five years.

    ii. The expansion to the Pearl River Elementary School added 25 new classrooms serving 400 additional students, as well as a new library.

    iii. The expansion created 42 new full-time jobs.

    iv. Dakotas America was the Community Development Entity (CDE) associated with this investment and the Qualified Low-Income Community Investment (QLICI) was closed in 2020.

b. **Crain Manufacturing** was a Durant, OK-based manufacturer of trailer jacks and hitches. It was located in Choctaw territory, but not on tribally owned land.

    i. At its peak, Crain employed 40 people and generated annual sales of about $5 million. However, it was affected heavily by spiking steel prices in the late 2000s and had to close its doors.

ii. REI New Markets Investment, LLC was the CDE associated with this investment and the QLICI was closed in 2007.

c. The **Makah Commercial Fishing Dock** is crucial to the Makah Tribe's economy. Located on Neah Bay in Northwest Washington, fishing accounts for 50% of the tribe's economic activity. In 2013, the existing commercial dock collapsed, rendering it unusable. The tribe responded quickly and completed a new commercial dock within nine months, funded in part by New Markets Tax Credits.

    i. Ninety small businesses and Native fishing operations use the new dock and facilities, which employ 400 people and support the trade of $7-10 million worth of fish annually. Dock leasing, moorage, and fuel sales based around the commercial dock also support the tribe and its members.

    ii. Although the dock is not located on the Makah Reservation, it is on tribal property.

    iii. HEDC New Markets was the CDE associated with this investment and the QLICI was closed in 2014.

d. The **Maniilaq Nursing Home (Utuqqanaat Inaat, or "a place for Elders")** is located within the Maniilaq Health Center and opened in October 2011. It fills the "critical need for Elder care in low-income resident villages," and employs 20 full-time staff members. Operated by the Maniilaq Association, a consortium of 12 Northwest Alaskan tribes/villages, it is the region's first nursing home—before its construction, Elders had to travel 550 miles south to Anchorage to receive long-term care.

    i. Located in Kotzebue, AK, which is considered a "hub community" for the region, it is situated on Alaska Native Village Statistical Area and Alaska Native Claims Settlement Act land. This was a targeted population project specifically serving Native Elders qualifying as low-income.

    ii. The nursing home houses 18 Elders at any given time, all of whom have low incomes, and provides long-term, 24-hour care.

    iii. Alaska Growth Capital BIDCO, Inc., a Native CDE, is the CDE associated with this investment, and the QLICI was closed in 2010.

e. The **Minnewaukan Public School District** needed to replace and relocate one of its K-12 schools, which was at risk of flooding due to rising water levels of a nearby lake and was not meeting the space and facility needs of its students (over 90% are members of the Spirit Lake Tribe or Turtle Mountain Band of Chippewa Indians). When it was unable to use flood insurance as collateral on a conventional loan to construct a new school building, the school district used NMTC financing from Travois to construct a new building with classrooms, cafeteria, gym, computer lab, and library.

  i. In its first school year after opening, the school served 296 students and employed 60 teachers and staff. The new school building created 18 new full-time jobs.

  ii. The school is on property owned by the public school district and is not on tribal land, although it serves a largely Native student body and was built as a replacement for the school on tribal land.

  iii. Travois was the CDE associated with this investment, and the QLICI was closed in 2012.

f. The **Navajo Tribal Utility Authority** (NTUA) has several district offices on the Navajo Reservation, including an office in Chinle, Arizona. NTUA is a nonprofit enterprise of the Navajo Nation, providing utilities and communication services to the Navajo People of New Mexico and Arizona. The NMTC financed the renovation and construction of multiple NTUA administrative buildings, which, prior to these efforts, had been affected by mold, dim lighting, and other environmental concerns. The new building replaced a 40-year-old dilapidated building and consolidated administrative operations. NTUA serves an area that is the size of West Virginia but has a population of only 40,000, meaning that the average per-customer cost of delivering services is high.

  i. An estimated 14,000 households in this service area do not have access to infrastructure including electricity, indoor plumbing, or waste disposal, and more than half of NTUA's customers pay their bills at the office in person because of their lack of access to banking, internet, or postal services. Restoring this office building greatly reduces the amount of time and travel required for these families to pay their bills for NTUA services.

  ii. The construction of the new building created 8 new full-time jobs.

  iii. Stonehenge Community Development was the CDE associated with this investment, and the QLICI was closed in 2010.

g. The **St. Croix Chippewa Indian Tribe of Wisconsin** used NMTCs to construct a mixed-use judicial center, grocery store, market, RV park, and amphitheater on the St. Croix Reservation. The NMTC deal provided refinancing of existing gaming debt, loans for new economic development project construction, repurposing of the existing judicial building, and the development of a new judicial center. This mixed-use facility contains both governmental and retail space on the St. Croix Reservation.

  i. The center created 90 full-time jobs.

  ii. The transaction involved two CDEs: Forward Community Investments, Inc. and Bremer CDE, LLC. The QLICIs were closed in 2017.

h. The **Wa She Shu Travel Plaza** has a fuel station, convenience store, dining options, and overnight parking for trucks and RVs. The travel plaza is situated next to the western Nevada-based Washoe Tribe's Wa She Shu Casino.

    i. The travel plaza created 27 new full-time jobs, and brings in over $1 million annually in revenue for the tribe, while serving 1,550 tribal members annually.

    ii. Clearinghouse CDFI, acting as the CDE, combined federal and Nevada state NMTCs to fund this project, and revenue from a state of California program was used as collateral for the leverage loan. The QLICI was closed in 2015.

i. **West Hawaii Community Health Center** is a federally qualified health center established in 2006 on Hawaiian Home Lands property, which is subject to unique regulations. It provides integrated medical, dental, and behavioral health services to primarily low-income individuals and families in three clinic locations on the Big Island of Hawaii, with a part-time mobile dental clinic that serves homeless individuals five hours a week at a shelter in Kailua Kona.

    i. The new medical center building, the La'i'Opua Health Center, provides medical and dental care to approximately 4,300 patients a year. The center created 35 new permanent positions.

    ii. Three CDEs provided allocations: Nonprofit Finance Fund, Punawai 'O Pu'uhonua, LLC, and USBCDE, LLC.

V. Findings, Best Practices, and Recommendations

This section discusses the findings from the online survey and interviews with key participants in the nine case study projects, as well as interviews with other parties involved in previous NMTC transactions in Native Areas. It augments those findings with takeaways from other components of the NMTC Native Initiative, including the Market Research Report and (to a lesser extent) the Analysis of Summary Data. This section highlights themes and experiences shared by key participants that will provide guidance for CDEs investing or seeking to invest in Native Areas, recommendations for tribes and QALICBs, and insights into systemic challenges hindering greater utilization of the NMTC Program in Native Areas.

Following each of the key findings are either:

- A description of a practical solution, or best practice, developed by one or more NMTC participants that enabled them to overcome the specific challenge or obstacle summarized in that finding;
- A recommendation directed to the CDFI Fund or Congress for a policy or legislative change that would diminish or eliminate that challenge or obstacle; and/or
- Recommendations for how Native CDEs and potential CDEs, conventional lenders, and/or investors can facilitate greater investment in Native Areas and Native projects.

1. Online Surveys

Full responses to the CDE survey can be found in Appendix B to this report. The survey acted as a precursor to the interview, wherein CDEs were given significantly more opportunity to expand on their experience working on the specified NMTC project. Deeper analysis of the findings can be found in Subsection 2 of this section, which summarizes findings from the follow-up interviews. The online survey offered structure and guidance for these conversations, as well as the ability to aggregate quantitative data to the extent that the sample size of nine CDEs allowed.

The following are the key findings from the CDE survey:

- CDEs associated with the case study projects were most likely to specialize in deploying NMTC capital for not-for-profit or community facilities and/or health clinics. Among the respondents, 89% stated that these are areas of specialization for their organizations and 67% noted economic development and owner-occupied real estate as areas of specialization.
- Two-thirds of responding CDEs did not act in any other roles besides CDE for the case transaction. One-third of responding CDEs also acted as the leverage lender, and 11% served as the investor for the transaction.

- Two-thirds of responding CDEs had more than ten years of experience lending/investing in Native Areas prior to the case transaction.
- Nearly 80% of responding CDEs retain staff members or consultants to advise on projects in Native Areas.
- No CDE indicated that the amount of private or conventional (i.e., non-NMTC) capital available for the project exceeded the project's need. Fifty-six percent noted that project capital was available but not to the extent necessary, 22% stated that project capital was not available, and 22% found that the amount of capital available matched but did not exceed the project's need.
- More than half (56%) of these CDEs stated that they encountered tribal cultural or legal matters that had to be addressed as part of the project process.
- More than 20% of interviewed CDEs had a pre-existing relationship with the tribe or project sponsor involved in the case study project.
- More than half (56%) of the CDEs answered that NMTC regulations[18] (e.g., risk of recapture; the "substantially all" requirement; QALICB eligibility criteria) posed a greater challenge in attracting interest from a tax credit investor or closing the transaction for the case project than for projects outside of Native Areas. (Further discussion of this topic is available in Appendix B).
- The most common reasons CDEs gave for deciding to provide capital to the case study project were that the QALICB otherwise had limited or no access to capital, the CDEs had an organizational commitment to supporting Native projects, and the project was likely to generate significant community impacts/outcomes.
- Two-thirds of responding CDEs would request future allocations to finance other NMTC projects in Native Areas based on their experience with the project in question.

2. Interviews

As noted in the methodology section, the research team conducted a series of virtual interviews with representatives of the CDEs involved in each of the projects, as well as with representatives of several borrowers (tribal sponsors or QALICBs), tax credit investors in the transactions, and other individuals with experience working to provide NMTC capital to projects in Native Areas. The research team believes that the individuals interviewed represent a good cross-section of participants in Native NMTC transactions but recognizes that their experiences may not be wholly reflective of the experiences of all those involved in Native projects. Similarly, the

[18] 26 U.S. Code § 45D:
https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-375442294-332392142&term_occur=999&term_src=title:26:subtitle:A:chapter:1:subchapter:A:part:IV:subpart:D:section:45D

selected case study projects represent a sample of those closed in Native Areas and on behalf of Native populations, but they are by no means exhaustive of the types of transactions that have used NMTCs.

With those caveats, the following subsections describe the themes that emerged over the course of these interviews. They offer guidance for other CDEs interested in working in Native Areas, recommendations to tribes and QALICBs that are considering utilizing the program to fund projects in their communities, and insights into the challenges preventing greater NMTC use in Native Areas. They also include policy and programmatic recommendations for the CDFI Fund and Congress to address the identified challenges.

A. Challenges Native or Tribally Focused CDEs Face in Obtaining NMTC Allocations

Several interviewees for both the Market Research Report and the case studies noted that Native-focused CDEs received few NMTC allocations in recent years. The Congressional Native American Caucus also has noted the lack of NMTC allocations awarded to CDEs whose primary mission is to serve Native Areas.[19] In the CY 2020 Application Round, the CDFI Fund awarded an NMTC allocation to Alaska Growth Capital BIDCO, Inc., an Anchorage-based Native owned/controlled CDE and CDFI. It was the first allocation secured by a Native CDFI or Native-owned/controlled CDE since 2017.[20]

The lack of awards has generated considerable resentment on the part of tribal members and their advocates. Some claimed that the CDFI Fund has not viewed the NMTC Program in terms of the government's responsibility to serve as a trustee for Native lands and indigenous populations.

Interviewees perceived several reasons for the dearth of allocations going to Native-oriented CDEs:

1. **Human Resource Constraints:** Several CDE representatives and NMTC consultants noted that many tribes do not have the staffing resources necessary to develop the most compelling applications or to deploy the requested allocation effectively and efficiently. The NMTC Program is inherently complex, from identifying eligible transactions to piecing together the necessary capital, to ensuring that the CDE and the QALICB comply with all program regulations. Even many of the larger and more sophisticated CDEs need to pay attorneys, accountants, and other financial consultants for assistance with their allocation applications, the development of their investment infrastructure, and the monitoring of program compliance.

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[19] "Lawmakers Call for Expanded NMTC Access for Native Communities," *Tax Notes*, September 28, 2020, https://www.taxnotes.com/research/federal/legislative-documents/congressional-tax-correspondence/lawmakers-call-for-expanded-nmtc-access-for-native-communities/2d088 (cited in Community Economic Development in Indian Country: Market Research Report, July 2023., p. 10).

[20] https://nativecdfi.net/blog/2021/09/03/native-cdfi-network-statement-on-new-market-tax-credit-allocations/

Many Native or Native-oriented CDEs and other financing entities have small staffs, in part because of their comparatively limited amount of assets under management (typically $10 million or less, according to CDEs and investors interviewed). Moreover, the bulk of these financing entities historically have tended to focus more on small/micro business financing and /or consumer financing. These organizations do not necessarily have the capacity in-house to underwrite and monitor the larger commercial, community facility, and real estate projects that receive the bulk of NMTC capital. In effect, the tribes with the fewest resources have the least ability to participate in a program intended to boost economic development in Low-Income Communities.[21]

- **Recommendation 1: Provide Ongoing Training to Tribes and Tribal CDEs about Development Financing.**

  As the research team found in the course of developing the Market Research Report and conducting the NMTC Technical Workshops, knowledge of and access to development finance varies widely across Native Areas. While some tribes have very sophisticated capital programs, other tribal governments have never used third-party loan capital for projects, relying almost exclusively on grant or government program capital in the past. The unfamiliarity with debt contributes to several of the other challenges described earlier.

  NMTC project underwriting involves not only the typical issues of collateral, cash flows, borrower credit history, and the like, but also the complexity of tax credits and the potential recapture thereof. For some tribes, the shift from entitlement or grant capital to entrepreneurship capital (i.e., underwriting against the risk of non-repayment) requires considerable education and training before the process can be fully and successfully institutionalized.

  This training can and should be provided by several entities, including Native organizations and coalitions, the CDFI Fund and other federal agencies, community and economic development trade associations, and consultants and investors within the NMTC industry. It is important that the training is culturally appropriate and competent for recipients. And while the ultimate goal is to prepare Native entities for participation in the NMTC Program, the training may be best structured by focusing first on the principles of community and economic

[21] Low-Income Community: (1) In general. The term “low-income community” means any population census tract if— (A) the poverty rate for such tract is at least 20%, or (B) (i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80% of statewide median family income, or (ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income. Subparagraph (B) shall be applied using possession wide median family income in the case of census tracts located within a possession of the United States. 26 USC § 45D(e)(1): https://www.law.cornell.edu/uscode/text/26/45D#e_1

development planning, access to third-party capital, project underwriting, and collaborative relationships as vehicles for capital access.

- **Recommendation 2: Provide Funding to Help Native CDEs Access Technical Assistance in Preparing for NMTC Applications.**

  Several workshop attendees and interviewees reported that they and other Native CDEs have hesitated to apply for NMTC allocation authority because managing an allocation requires them to incur the cost of developing and/or obtaining expertise with no guarantee of receiving subsequent awards. Native CDEs recognize that lack of scale and experience may result in less competitive applications until they have built a track record with repeated awards. At the same time, limited staff resources often prove to be a significant obstacle in preparing a competitive application. The CDFI Fund should consider making technical assistance funding available to Native CDEs so their staff members can attend NMTC industry conferences and workshops, access consulting services, and otherwise keep up with changes to the application process.

2. **Limited Track Record Financing NMTC-Type Projects:** Compared to other NMTC applicants, many Native CDEs often have a more limited track record financing NMTC-eligible or other community development activities. This results in part from their emphasis on consumer and small business financing. Relatively few Native CDEs (or potential CDEs) have significant experience making loans or equity investments of greater than $100,000; the typical consumer or micro-business loan usually is for less than $20,000. According to CDFI Fund and industry data,[22] many Native CDFIs have total portfolios of less than $5 million. Their business model, while significant and appropriate for the low-income communities they serve, does not necessarily lend itself to being competitive in the NMTC allocation process. A typical NMTC QLICI tends to be $5 million or more, and applicants generally receive allocations in amounts consistent with their recent deployment track record.

A related issue is that many tribes have a limited pipeline of NMTC-eligible transactions, given the nature of their activities. Again, this can make them less competitive relative to applicants with much larger pipelines.

- **Recommendation 1: Native CDEs Can Develop NMTC Experience by Participating in Transactions as a Secondary CDE.**

  In this scenario, the Native CDE (or potential CDE) works with one or more third party CDEs to include the Native CDE as a Secondary CDE for projects on

[22] According to CDFI Fund Snap Stats 2016, 87% of CDFI assets were held by banks and credit unions, 13% held by loan funds. Of the loan funds, the median size of total assets was $7,007,023. Oweesta.org surveyed the 2020 year-end financial reports of 28 Native CDFI revolving loan funds and one Native CDFI bank and reported average asset size of $8,061,065 and average portfolio size of $4,393,042.

Native Lands and/or benefiting Native populations. In this role, the Native CDE receives NMTC capital from an allocatee CDE and uses that capital to invest in a Native project. Such participation builds the Native CDE's track record and experience raising and deploying NMTC capital.

The Native CDE adds value to the transaction because of its knowledge of the project and local tribal and/or community dynamics. It presumably has strong experience lending on trust lands, and it has institutionalized practices for managing leasehold security, sovereign immunity, and other issues that might be obstacles for lenders or CDEs inexperienced in Native Area lending.

Non-Native CDEs can include making investments in Secondary (Native) CDEs in future applications. Allocatees can use up to 15% of their authority in a manner that was not described in their application to implement Secondary CDE transactions while continuing to meet the conditions of their Allocation Agreement with the CDFI Fund and the NMTC Allocation Application requirements.

Native CDEs desiring to build an NMTC track record should work with tribes and other sponsors of prospective NMTC projects to let them know about the Secondary CDE option. Having a Secondary CDE conversant in Native issues may make it easier for the project in question to attract financing from non-Native CDEs and investors. Such outreach also can help the Native CDE build relationships that can lead to future pipeline transactions. Native CDEs should also seek out allocatees and investors to build relationships.

- **Recommendation 2: Native CDEs Can Participate as a Partner/Collaborative Lender to a Native QALICB.**

  Native CDFIs/CDEs can work together through loan participation arrangements to provide capital at a meaningful scale to NMTC projects as leverage, source, or direct lenders. Native CDEs may not have enough capital to meet the entire loan need of the NMTC borrower but could participate with other CDEs or interested lenders to provide the required amount. In such a scenario, the Native CDE serving a Native Area by itself or with another Native CDE could take advantage of its network of Native CDFI relationships and work with NMTC experts to develop a source-lender participation program. The resulting participation structure provides:

  - The tribe or Native enterprise with better access to source loan capital because the lead Native CDE lender has the expertise to negotiate loan security and can provide security for additional non-Native capital through intercreditor agreements; and

- Increased NMTC lending opportunities for Native CDEs and prospective CDEs whose portfolio scale precludes them from making direct loans in amounts suitable for leverage debt.

Loan participation arrangements provide each Native lender with some exposure and track record, while managing the scale of its loan in the context of its portfolio. Loan participation arrangements also build relationships among Native CDEs and Investors, and they increase the expertise of non-Native CDEs, lenders, and investors in managing Native Area lending issues.

- **Recommendation 3: Native CDEs Can Provide Leverage and/or Source Loans to NMTC Project Sponsors**.

  The Native CDE could provide a loan to the tribe or tribal enterprise serving as the project sponsor, either as part of the NMTC structure (as a leverage lender) or outside of the NMTC structure (as a source lender). In the latter case, the borrower would use the loan proceeds as leverage debt within the NMTC transaction. In either scenario, the Native CDE is exposed to the NMTC transaction and develops experience in the structuring of NMTC-related financing.

Each of these approaches was addressed as part of the individual technical assistance sessions following the technical workshops conducted as part of the NMTC Native Initiative.

3. **Unrelated Entities Requirement:** The NMTC statute requires the CDFI Fund to give priority to applicant CDEs that commit to use 85% ("substantially all") of their allocation to finance unrelated entities. The CDFI Fund awards NMTC applicants five priority points in the application if they commit to financing unrelated entities,[23] making it very difficult to obtain a competitive score without providing that commitment. This commitment also becomes a condition of the Allocation Agreement, and Allocatee CDEs are measured on compliance with that condition.

   Some, if not most, Native CDEs and potential CDEs are created and controlled by affiliated tribes that expect to finance projects on their reservation if the CDE receives an NMTC allocation. The CDE's financing of that tribe's businesses or projects frequently constitutes a related party transaction, which precludes the CDE from obtaining the application's 5-point unrelated entity bonus.

   Many tribes do not find the cost and risk of an application worth it when the unrelated entity commitment prevents them from financing their own tribally sponsored projects,

[23] "New Markets Tax Credit: Frequently Asked Questions," CDFI Fund, U.S. Department of the Treasury, September 2020, https://www.cdfifund.gov/sites/cdfi/files/documents/nmtc-compliance-monitoring-faq-16sept2020-final.pdf

even though many of those projects would provide necessary community or commercial goods and services and would not be pursued by non-tribal businesses.

- **Recommendation: Provide More Flexibility for Native CDEs in the Definition of Related Entities.**

  The CDFI Fund, Internal Revenue Service, and the US Treasury Office of Tax Policy should research and determine if there are any flexibilities within the NMTC statute and IRS regulations to allow tribally controlled CDEs to finance NMTC-eligible projects without the QALICBs and CDEs being viewed as related parties.

  Tribal governments are multi-faceted organizations with discrete business units. The administrators of the NMTC Program should assess whether the CDFI Fund can treat these distinct businesses (e.g., CDE, cultural center, construction firm) as separate entities. If it is possible within the statutory framework to treat these separate functions as unrelated, then tribally controlled sponsors or QALICBs could be treated as unaffiliated third parties relative to a tribally controlled CDE. Such separation would allow the CDE to finance the QALICB without violating the related entity provision in the allocation agreement, thus enabling the CDE to claim the priority points in the application.

4. **Insufficient Understanding of Native Issues on the Part of NMTC Allocation Application Reviewers:** Several interviewees and technical workshop attendees feel that the application reviewers are insufficiently educated about the specific nature and severity of the challenges affecting Native Areas. As a result, they may not appreciate the social and economic dynamics in Native Areas or the importance of the projects being described for the tribes and their members.

   - **Recommendation: Train NMTC Application Reviewers about Community Economic Development in Native Areas.**

     The CDFI Fund should provide training for application reviewers about community economic development in Native Areas and seek out more reviewers with experience in Native Areas. (This suggestion was made in some of the interviews as well as in discussions conducted by the research team for the Market Research Report.)

5. **Perceived Limited Consideration of Qualitative Community Need/Outcomes:** Interviewees felt that the NMTC Allocation Application's emphasis on quantifying projected community outcomes puts many Native CDE applicants at a disadvantage. Many projects in these CDEs' pipelines do not generate easily quantifiable outcomes (a cultural or community center, for instance). The direct quantifiable outcomes also can seem small in comparison to those of projects in non-Native Areas.

These respondents indicated that in many cases, the outcomes associated with a Native project are more qualitative, indirect, or difficult to quantify. For example,

- Providing broadband to remote Alaska Native communities enables local residents to tap into remote learning opportunities, expand the market for local businesses, and generally obtain more exposure to the outside world; and

- Developing a community center provides an opportunity for tribal members to gather for the passing on of oral traditions, and the general strengthening of the tribe's social connections.

- Developing a child care center frees up parents to take on a job, work more hours, and/or pursue their own education. The center helps the children build academic and social skills while teaching them about their culture and heritage.

While the importance of remote learning and passing on oral traditions (among other outcomes) are not easily quantifiable, they are very important for the tribe's longer-term economic and social sustainability.

A common perception is that applicants must include job generation as a community outcome to be scored highly enough to receive an allocation. As illustrated in Part IV above, most of the CDEs involved in the case study projects included job figures in their project summaries, even if employment was not the project's primary focus. If job generation is selected as an outcome in an NMTC application, it must be quantified and compared to objective third-party metrics. While the CDFI Fund's guidance is clear that all community outcomes are viewed equally, this misperception by applicants means some CDEs are reluctant to invest in QALICBs that do not have or anticipate creating a significant number of high-quality, accessible jobs. Several of the CDEs interviewed commented that they likely would not include their selected case study project in a prospective NMTC application now because of the projects' lack of easily quantifiable outcomes.

- **Recommendation: Give Greater Weight to Qualitative Project Outcomes in the NMTC Allocation Application.**

  Virtually all the CDEs and QALICBs interviewed for the case studies noted the challenges of relying primarily on quantitative outcomes of Native projects when preparing NMTC applications. Many projects in a CDE's pipeline do not create significant numbers of jobs; in fact, some critical infrastructure projects may ultimately result in net job losses. Tribal community facility projects may not serve large numbers of people due to the low population density of tribes in rural areas. Compared to many of the non-Native NMTC projects highlighted in allocation applications, the quantitative outcomes of Native projects may seem meager.

Incorporating more distinct opportunities for applicants to discuss the qualitative outcomes of projects in Native Areas – the importance of providing reliable broadband access or the important cultural role of a community center, for instance – would allow Native CDEs to make a stronger case for the importance of projects for their tribes and communities. There is precedent for this approach; previous allocation applications included questions that allowed applicants to discuss outcomes not otherwise listed by the CDFI Fund as well as an opportunity to talk about longer-term, "spillover" benefits of specific projects. Such questions could provide an additional opportunity for the Native CDE to educate unfamiliar reviewers about the unique challenges affecting Native Areas, including the critical importance of cultural preservation.

B. Regulatory/Programmatic Challenges to Financing Native Projects

1. **Categorization of Native Projects:** The CDFI Fund has recently encouraged more NMTC financing in Native Areas by making several changes to the NMTC application. In the 2017 Round, it identified providing financing to Native Areas as a distinct activity under the "innovative investments" section of the application. In the 2021 Round, financing Native-controlled businesses became a distinct community outcome, one that is different from financing other Minority-controlled businesses. The CDFI Fund also included Allocatees investing in a Minority or Native CDE as a new category of "innovative investment" in the NMTC Program Application to encourage the Secondary CDE strategy described above.

   Ironically, some interviewees feel that the changes highlighted above may have resulted in less focus on Native projects among non-Native CDEs. When Native-owned/controlled projects were included within the "Financing Minority-Owned or Controlled Businesses" category, organizations felt comfortable selecting the outcome because of their general focus on serving disadvantaged communities of color. They did not fear the ramifications of not being able to close Native transactions because they could "replace" them with Black or Hispanic-controlled projects. By specifically calling out Native project financing, the CDFI Fund has forced CDEs to decide whether they will deliberately target projects in Native Areas (as opposed to considering those they may come across naturally). Unless they already have an infrastructure for identifying, vetting, and closing Native projects, organizations may hesitate to assume the risk associated with committing to finance Native deals. And without such a commitment, it often proves easier to focus on transactions that do not come with the built-in complications of those in Native Areas.

   - **Recommendation: Do not change the categorization of projects at this time.**

     While noting the potential unintended consequence of the deliberate targeting of Native projects, interviewees also noted the benefit of highlighting and separately tracking Native Area and Native Business investments. They believed that over time the CDFI Fund's emphasis on Native projects with separate categorization likely will result in greater Native investment. If other recommendations can be implemented, such as training in best practices, more lending opportunities, and secondary CDE involvement, interviewees believed that the aforementioned changes to the application should result in a net increase in investment in Native Areas and Native-owned/controlled businesses.

2. **Timing Challenges:** To be eligible to receive a subsequent allocation, Allocatees must use a certain amount of prior allocations to issue QEIs to investors and make QLICIs with the QEI proceeds by a certain date. Yet as described in more detail below, multiple factors beyond the control of the CDE can delay the closing of transactions in Native Areas. Due to unexpected delays in closing such a transaction, one of the interviewed CDEs missed the CDFI Fund's deadline for closing the required amount of prior allocation. It conceivably could have met the threshold by using its allocation for one or more non-Native projects but had committed to provide a portion of its allocation to the tribe/QALICB. As a result, the CDE was unable to obtain a new/additional allocation to finance several other high-impact Native projects in its pipeline.

   - **Recommendation 1: Promote Greater Collaboration Among Federal Agencies Involved in Native Area Transactions.**

     For investors and CDEs, the greatest uncertainty (and thus the greatest risk) associated with projects in Native Areas is the timing of land/lease approvals from the Bureau of Indian Affairs (BIA). The ability or willingness of the United States Department of Agriculture (USDA) and other public agencies to allow their funds to be used in NMTC transactions also can be problematic. In some cases, the delays result from insufficient understanding of the NMTC Program or incompatible regulations. The CDFI Fund could convene representatives from the various federal agencies to identify ways to streamline relevant approval processes. For example, the BIA might establish a policy for streamlining approval of leasehold mortgages for tribally sponsored NMTC projects, and the USDA might approve the use of some of its loan program funds to be used as leverage debt in NMTC transactions.

   - **Recommendation 2: Tribes that have not obtained HEARTH Act authority[24] to issue commercial leases without BIA approval should consider doing so.**

     If tribes use this authority, their policy guidelines for lease terms and conditions and the requirements of leasehold mortgage provisions should be made available to funders early in financing processes. This may help streamline the approval process.

[24] The HEARTH Act is described more fully in the subsection related to land issues in Native Areas (Subsection D).

3. **Limited Timeframe to Reimburse Prior-Incurred Costs:** Starting with the 2015-2016 Application Round, Applicant CDEs have been required to commit that if Qualified Low-Income Community Investment (QLICI) proceeds are used to repay or refinance any prior expenses:

    i. The QLICI proceeds are used to repay documented reasonable expenditures that are directly attributable to the qualified business of the QALICB, and such reasonable expenditures were made no more than 24 months prior to the QLICI closing date; or

    ii. No more than 5% of the QLICI proceeds are used to repay or refinance prior investment in the QALICB.

    The CDFI Fund's decision to limit the time prior to NMTC closing during which expenditures incurred can be reimbursed, sometimes called the "lookback period,"[25] to 24 months has made it difficult for some otherwise eligible Native projects to benefit from the NMTC Program. Projects in Native Areas often take longer to close an NMTC investment than projects elsewhere in the country, largely due to the various external approvals the sponsor must obtain (from BIA, USDA, and/or other agencies). It is not uncommon for sponsors to allocate considerable expenditures on a project as much as five years prior to closing, simply because of approvals that can take 12 months or more to obtain. (This is especially common for projects in Hawaiian Home Lands.) Many of these costs are incurred well before the start of the 24-month NMTC "lookback" window.

    Predevelopment project funding is challenging to obtain in many areas, but can prove especially nettlesome in Native Areas because of difficulty collateralizing the subject property (subsequent sections address this further). Many Native Area projects therefore rely heavily on grants to cover predevelopment costs. Yet each grant may cover only a few costs, or a single step of predevelopment. Only when that step is complete can the sponsor apply for another grant for the next step. This funding pattern draws out the time needed to get a project to a stage where it can close on third-party financing. Whereas projects in areas with greater access to predevelopment capital typically can move to closing within two years, Native projects often take 3–5-years.

    The current NMTC Program regulations allow NMTC capital to finance already incurred project costs, provided they were incurred within 24 months of closing. In effect, the project sponsor/QALICB receives loan proceeds that reimburse its expenditures. Since expenses incurred prior to the start of the 24-month window cannot be

[25] New Markets Tax Credit Compliance Monitoring and Evaluation Frequently Asked Questions. updated December 2022, FAQ #42: https://www.cdfifund.gov/sites/cdfi/files/2022-12/NMTC_Compliance_Monitoring_FAQ_2022_Final_0.pdf

covered/reimbursed by an NMTC investment,[26] the benefits of NMTC financing cannot be optimized in projects with a longer predevelopment period.

- **Recommendation 1: Extend the Prior-Incurred Cost Reimbursement Period.**

  Seek public comment about a) extending the cost reimbursement period for which incurred costs on Native projects can be reimbursed with a NMTC investment, and b) whether there is consensus that this can reduce difficulties for otherwise eligible projects located in Native Areas. Such an extension may be warranted given the special circumstances surrounding project approvals and the extent to which Native Area projects rely on grant funding instead of private predevelopment capital.

- **Recommendation 2: Work with Other Agencies to Make Other Sources of Capital for Native Areas More Compatible with the NMTC Program.**

  To the extent possible under Agency statutory constraints, encourage lending and guarantor agencies to make their programs more compatible with NMTC financing structures, particularly with the leverage loan. For instance, a guarantor agency could recognize the Sub-CDE as an eligible lender so that a guarantee could attach to a QLICI. This would allow the guaranteed loan to remain in place after the NMTC wind-up, which tends to create a significant economic benefit for the sponsor.

  Alternatively, an Agency could allow a low-cost or guaranteed loan to be used in the leverage loan position and be assumable by the sponsor at NMTC wind-up; this would allow the sponsor to benefit from the terms of that loan for its maximum possible duration.

  Collaboration among lending or guaranteeing agencies to homogenize their requirements pertaining to NMTCs would improve capital efficiency and reduce complexity.

C. Project Viability Challenges

Interviewees from both the case studies and the Market Research Report identified common obstacles and themes that might appear unrelated in a cursory review but that arise out of the similar characteristics of remote, low-population areas. They are:

- Inability to finance adequate infrastructure based on user fees or special assessments because low-income people in sparsely populated areas cannot afford the fees necessary

[26] New Markets Tax Credit Compliance Monitoring and Evaluation Frequently Asked Questions. updated December 2022, FAQ #44

to amortize many of the infrastructure project's costs.[27] Communities in which there is a higher concentration of development can impose permit fees or systems development charges on new projects in order to be reimbursed for the cost of development, or to build a fund for anticipated future development costs, for infrastructure such as water, roads, power, and wastewater treatment. Most cities have ordinances that schedule fees to be imposed based upon a user's impact on infrastructure systems. Low concentrations of development in rural areas also means systems development charges will not accumulate quickly enough, or in high enough amounts, to support the cost of needed infrastructure.

- Projects in non-metro areas frequently have increased costs of transportation of materials, temporary location of certain skilled workers, mobilization of major equipment, and other categories.
- Projects in sparsely populated areas may not have enough patronage revenue to support the necessary cost of the facility, such as a health care facility that must have expensive imaging equipment and surgical suites but serves fewer patients than a similarly equipped urban facility.
- Some operating costs may be higher because of the need for higher wages to attract skilled professionals, temporary housing costs, and related expenses.

These issues may not all be present in all the projects, but they can combine to render projects infeasible without subsidy. This makes these projects candidates for NMTCs, but can be important obstacles to the rest of the financing needed for the project.

1. Infrastructure

Interviewees from both the case studies and the Market Research Report described how many NMTC projects in Native Areas tend to focus on the development or enhancement of basic infrastructure. Tribal communities often suffer from inadequate access to so-called horizontal infrastructure, such as roads, broadband, water, and wastewater treatment. The NMTC-subsidized capital can help make the development of such infrastructure economically feasible in low-income areas where ratepayers alone cannot provide enough revenue to meet the necessary debt service. This infrastructure helps address immediate needs and has the potential for long-term social and economic benefits.

So-called vertical infrastructure includes facilities that deliver community services, including education and health care. Health care facilities often employ many full-time individuals who can be hired from within the tribe. The tribal lands typically qualify as medically under-served and are often surrounded by similarly under-served rural

[27] See discussion of infrastructure in Community Economic Development in Indian Country: Market Research Report, Section 4, Essentials of Community Economic Development.

communities. A new or expanded health care facility can help address the unmet medical needs not only of the tribe's members, but also of other rural residents.

2. Rural Location Construction Cost Premium

Native and other rural projects often experience higher costs than similar types of projects in more urban areas. The remoteness and relative inaccessibility of many Native Areas leads to higher construction expenses; it costs more to get machinery, labor, and materials to these areas. At the same time, even non-infrastructure projects may require the development of some infrastructure like roads, sewers, or rail spurs to be viable. The Wa She Shu Travel Plaza in Nevada, for instance, necessitated the construction of on- and off-ramps to Route 375. These higher project costs can make it more difficult to obtain necessary project financing because project revenues are derived from goods or services provided and the market price for those goods or services. Projects become unaffordable when debt service costs are added for expensive infrastructure that does not contribute directly to generating business revenue.

3. Rural Location Operating Cost Premium

Remoteness can also increase operating costs, including the cost of retaining qualified professional staff. The projects' geographic remoteness can also hamper operators' ability to find and retain staff. Rural communities frequently suffer from a shortage of health care providers (and are designated as "health professional shortage areas" by the Federal Department of Health and Human Services). NMTC financing does not necessarily address the challenge of attracting and keeping medical professionals, but reduced occupancy costs created by real estate subsidies improve net operating income, making more cash available for staff.

4. Low-Population Census Tract Issues

Some Native and rural infrastructure projects can struggle to meet NMTC eligibility criteria because they are located in census tracts that have enough middle- or upper-income residents to push their poverty and median income figures over the NMTC thresholds. The NMTC Program offers a solution for this problem. Projects that serve, employ, or are owned by low-income persons may qualify based on the Targeted Population provisions.[28] Alaska Growth Capital (AGC) BIDCO has financed multiple broadband projects to bring higher-speed internet access to Alaskan Native communities. Connecting these communities to the provider's existing network has involved laying cable across multiple geographies – both land and water. Not only has Alaska Growth Capital (AGC) BIDCO had to determine which census tracts encompass the ocean areas,

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[28] Final Regulations for Targeted Populations, Internal Revenue Service: https://www.cdfifund.gov/sites/cdfi/files/documents/nmtc_irs-federal-register-120511.pdf

but it also ensured that its NMTC capital went to areas that are within NMTC-eligible tracts or the project can be documented as serving Targeted Population.

- **Best Practice: Sponsors Must Use Conventional Debt Underwriting Standards to Ensure the Project Can Meet Basic Lending and NMTC Program Underwriting Principles and Criteria.**

  NMTC financing is generally delivered in Qualified Low-Income Community Investment(s) (QLICIs) that are structured as debt. Since grants are not an eligible form of QLICI, they must be either debt or equity. Nonprofit QALICBs cannot accept equity because they are not owned by shareholders, and many tribal sponsors decline to have non-tribal shareholders or equity partners in their for-profit ventures. CDEs and their tax credit equity investors have the regulatory benefit of the so-called Reasonable Expectations Test if the CDE holds less than 30% equity in the QALICB.[29] The Reasonable Expectations Test is an important element of an NMTC closing because it may be used to protect the investor from recapture of the value of the tax credits by the IRS, in some circumstances.

  For these and other business reasons, most QLICIs are structured as debt and not equity. This means the transactions must meet IRS requirements to be characterized as debt, which include conventional underwriting standards. Thus, project sponsors will be asked to provide construction, financial, property title and related information, and tenant information if applicable, just as they would for a conventional lender.

  Before engaging with a lender, the sponsor should evaluate the project's operating costs and likely revenue stream to determine whether its revenue supports at least a 1.25 Debt Service Coverage Ratio.[30] If it does not, consider other resources that might be brought to bear for the project. Create a financing strategy that is likely to result in successful operations and creditworthiness, and gain preliminary internal approval for that strategy.

  Identify assets or resources that can help secure the requested loan. These could be leasehold mortgages or pledges of revenue. Such security is essential to assure a lender that resources are available to resolve its debt if the business or activity should have a revenue shortfall. Another alternative, though usually not preferred

[29] IRC Section 45D(d)(2) sets forth the tests for the borrower to be a QALICB; generally, if any of these tests is not satisfied during the compliance period, the borrower will fail to be a QALICB. Section 1.45D-1(d)(6)(i) of the Treasury Regulations (Treas. Reg.) sets forth an exception to this general rule (the reasonable expectations test) and, subject to certain control prohibitions, generally provides that if the CDE reasonably expects that the borrower will remain a QALICB during the period the QLICI remains outstanding, the borrower will be treated as a QALICB even if the borrower later fails the QALICB status tests.

[30] Debt Service Coverage Ratio: A measurement used to decide whether a person, company, or country can afford to pay back a loan, calculated by dividing the income that is available by the total amount of payments owed each year for the loan. https://dictionary.cambridge.org/us/dictionary/english/debt-coverage-ratio

or in some cases even acceptable to a tribe, is a general guarantee of the loan principal.

Avoid burdening projects with excessive off-site infrastructure costs. Consider adopting a Systems Development Charges Reimbursement methodology that apportions infrastructure costs based on a specific project's projected burdens on infrastructure, not on overall community infrastructure needs. In such cases, costs for infrastructure can be advanced by the project if possible, or if not possible by the tribe, and reimbursed from the systems development charges paid by future projects. Such a plan would likely require an ordinance or statute specifying the methodology.

Determine if the project is located in an NMTC Qualifying Census Tract, or Distressed Census Tract, or that it will serve a Targeted Population and that service can be documented.

- **Best Practice: Utilize Targeted Populations as an Alternative to Census Tract Qualification.**

  Per the NMTC Program Allocation Application and as defined in 12 U.S.C. 4702(20) and 12 C.F.R. 1805.201, the term "Targeted Population," means individuals, or an identifiable group of individuals, including an Indian Tribe, who A. are Low-Income Persons; or B. otherwise lack adequate access to loans or investments.[31] When a census tract does not in itself qualify for use of NMTCs, the project may still qualify if it is:

  - At least 50% owned by low-income persons;
  - At least 40% of the projects' employees are low-income persons at the time of hire; or
  - At least 50% of the projects' gross income is derived from sales, rentals, services, or other transactions to customers who are low-income persons,[32] as in the case of the Maniilaq Nursing Home.

D. Land Issues

In discussions with Community Development Entities (CDEs), interviewees noted numerous land-related obstacles to obtaining financing. NMTC and other financing for tribal business creation and economic development efforts is made more complicated because the tribe is the landlord and, in many cases, cannot consent to alienation of the land, so the only mortgage-type security available is a leasehold mortgage. Bureau of Indian Affairs (BIA) regulations generally limit commercial leases to twenty-five years with extensions or renewals, whereas the Helping

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[31] NMTC Program 2022 Allocation Application. https://www.cdfifund.gov/sites/cdfi/files/2022-11/CY_2022_NMTC_Program_Application.pdf
[32] Ibid.

Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act allows for 75-year terms.[33, 34, 35]

Sponsors of projects on Hawaiian Home Lands have to navigate a different process. An interviewee described how sponsors seeking to finance a project within these lands must submit a homestead development plan to the Department of Hawaiian Home Lands. Department officials must approve the project as benefiting Native Hawaiian organizations and communities and then approve a sub-lease to the actual project/Qualified Active Low-Income Community Business (QALICB). In effect, an entity such as the West Hawaii Community Health Center, a nonprofit whose purpose is to serve Native Hawaiians, is treated as a guest on the Hawaiian Home Lands, subject to a costly and months-long approval process.

The complexity of land ownership structures is another land-related challenge making it difficult to use reservation land as mortgage collateral, and insufficient commercial codes can create uncertain circumstances for loan defaults.[36] Tribes in rural areas may have difficulty establishing adequate water, wastewater, power, transportation, and other infrastructure to support industrial development.

Not all territory within Native lands is held in trust for tribes, however, as most reservations are a patchwork of trust and fee lands. Crain Manufacturing, a non-tribal entity operating in Choctaw territory, owned the land on which its facility was located. Similarly, the Makah Pier in Neah Bay, WA serves and benefits the Makah Tribe, but it is not technically located on Makah-owned land. About 90% of the students at the Minnewaukan Public School in North Dakota are members of local tribes, but the school itself is owned and operated by the Minnewaukan Public School District. Each interviewee noted that projects located on fee simple land as opposed to tribal trust land typically move forward much more quickly, simply because there is no need to obtain the approval of the public trustees of the land. In the case of the Minnewaukan Public School, the Minnewaukan Public School District already had a well-established process for borrowing money for capital improvements. It also had assets (including designated tax revenues) that it could pledge as collateral.

The requirement for Bureau of Indian Affairs (BIA) or similar agency approval injects a degree of uncertainty into the NMTC closing process that can dissuade investors and Community Development Entities (CDEs) from financing Native projects. Even when the approval is relatively smooth, the wait can add months to the closing process. Coupled with the need for the various attorneys in the transaction to review the various tribal and agency documents, the

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33 "Business Leasing on Indian Lands Handbook," Bureau of Indian Affairs, September 30, 2021, https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/52%20IAM%2014-H_Business%20Leasing%20Handbook_FINAL_signed_w.footer_508.pdf.

34 "Indian Affairs approves three Tribal Nations' HEARTH Act regs," Bureau of Indian Affairs, U.S. Department of the Interior, February 25, 2022, https://www.bia.gov/news/indian-affairs-approves-three-tribal-nations-hearth-act-regs.

35 Community Economic Development in Indian Country: Market Research Report, p. 23.

36 Community Economic Development in Indian Country: Market Research Report, p. 19.

process could, in some cases, add up to 10% to the overall project cost. CDEs providing financing to projects on tribal trust lands and Hawaiian Home Lands should add time to the closing process for these issues, or verify that they have been addressed prior to closing.

- **Best Practice: Tribe Facilitates Access to Leasehold Mortgage Security.**

  Some tribes have Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act authorization.[37] This allows them to enter into commercial or residential leases of lands held in trust by the Bureau of Indian Affairs (BIA) without the need for the BIA's individual review and approval. Other tribes must take each transaction to the BIA for approval. In concept, tribes with HEARTH Act authority are able to act more quickly, though internal tribal governance and decision-making may render the approval process as slow and unpredictable (or even more so) than the BIA approval process.

  When obtaining HEARTH Act authorization is feasible and appropriate, tribes should do so and streamline their internal review process and develop specific policies regarding risk management, key business terms, and leasehold mortgagee protection provisions.

  Tribes that elect not to pursue HEARTH Act authority should prepare guidelines for non-tribal participants that inform them of the process, timeframes, and requirements for tribal and BIA approval of a leasehold mortgage.

E. Project Collateral

Case study interviewees noted that some tribes or tribally sponsored projects have difficulty meeting lenders' requirements for collateral, such as a first position trust deed on land, because of either the trust status of land and/or the inability of tribes to offer guarantees. Since most NMTC transactions involve the financing of real estate development, lenders typically rely on the financed property as the primary source of collateral. To the extent additional security is needed, the lender will try to take a lien on other assets of the sponsor/Qualified Active Low-Income Community Business (QALICB) and/or rely on any available guarantees.

Collateralizing developments in non-metropolitan areas can be challenging simply because of the difficulty of defining rural land values. The relative paucity of transactions in sparsely populated areas makes it challenging to obtain accurate appraisals, and relatively low economic activity likely impairs the value of real estate as collateral because redeployment of the premises to another owner or occupant is less certain than it is in a more robust commercial market. CDEs and investors consequently look to augment any underlying real estate with other assets to help protect themselves against capital loss.

Tax credit investors generally determine their return on their NMTC equity investment based on the "price" they pay for the tax credits - i.e., the amount of equity they invest for the value of the

[37] Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), 126 Stat 1150, Pub. L. 112–151 (July 30, 2012). https://www.congress.gov/112/plaws/publ151/PLAW-112publ151.pdf

credits received. Most tax credit investors ultimately sell, or "put" their equity interest to the QALICB or one of its affiliates. As a result, the collateral issue is most acute for the leverage lender(s) in the NMTC structure because its debt is unlikely to be fully amortized during the seven-year compliance period. This means the leverage lender must underwrite the project and its sponsor to be creditworthy and able to pay or refinance the leverage debt at the end of the compliance period.[38]

While each transaction presents different underwriting facts or sources of funds for leverage debt, the overall summary is that to obtain third-party capital, project sponsors must have a sustained revenue stream sufficient to pay off the loan, whether that revenue comes from the project, the tribe itself, or some other business venture in control of the tribe. The typical workaround has involved the tribe and/or the project sponsor providing the leverage loan and assuming the risk of repayment. Some capital available to tribes cannot be used for leverage debt. Other solutions might include a master-lease of the facility by the tribe, which sub-leases to the operating business/sponsor. In that scenario, the tribe's capacity to make the master lease payments becomes the credit underwriting question.

One interviewee who served as an underwriter for a large bank for several years noted that, in her experience, there are few leverage lenders to tribes who require repayment. Most of the leverage debt comes from unsecured tribal capital. Project underwriting consequently involves taking a very close look at a tribe's balance sheet and financial experience.

If the tribe cannot provide the leverage debt, the most likely source(s) of such financing tends to be CDFI or other bank loans backed by various public guarantees. One attorney who has helped close dozens of Native NMTC transactions noted the creativity with which people have secured their leverage loans. Several entities have taken advantage of U.S Department of Agriculture (USDA) guarantees.

For example, Clearinghouse CDFI took advantage of the Washoe Tribe's standing as both a California and Nevada tribe to make a leverage loan in the Wa She Shu Travel Plaza transaction. It collateralized its $5.4 million leverage loan with a lien against future revenues the Washoe were due from the Reserve Sharing Trust Fund, a California program that uses some of the earnings from gaming tribes to subsidize tribes not involved in the gaming industry. The Navajo Tribal Utility Authority provides utilities to most of the Navajo Nation and has an effective monopoly. This created a secure and predictable revenue stream that could be pledged as security, similar to the way in which proceeds from infrastructure fees can be pledged to bondholders in a revenue bond transaction. Both of these are innovative solutions for the leverage loan.

- **Best Practice: Tribal Sponsors Should Identify and Develop Processes for Enforceable and Adequately Secured Promissory Notes and Loan Agreements.**

[38] See: GAO-10-334 New Markets Tax Credits, pp 15 - 19, January 2010

Each tribe's statutes and practices may be different. For instance, some tribes require legislative or tribal council approval for contracts or borrowings in excess of set thresholds. Tribes may have different thresholds for which approval is required. Some may vest general authority with the executive to act, provided the action is within the approved budget.

It is critical for tribal governments and their project sponsors to inform and provide guidance to the CDE, lender and investor early in the transaction negotiation process, so the capital provider team understands the steps and timing necessary for an enforceable agreement.

F. Uncertainty Surrounding Tribal Corporations

There remains uncertainty within the NMTC industry regarding the eligibility of tribal corporations as Qualified Active Low-Income Community Businesses (QALICBs). While some do not see an issue, many NMTC attorneys have opted to eliminate any doubt by requiring sponsors of Native projects to create limited liability companies or other entities organized under the respective state law. Not only does the process undermine tribal sovereignty, but it also adds additional time and costs to the transaction. In addition to creating and incorporating the state law entity, attorneys may need to negotiate an agreement/structure in which the tribal entity leases from the QALICBs to achieve the desired outcomes. In the case of the Makah Tribe's commercial fishing dock project, for instance, the tribal entity leased from the special-purpose entity created to be the QALICB. The tribe used the revenues from the pier to make the lease payments, which in turn were passed through to the CDE and the leveraged investment fund.

- **Recommendation: Participants Should Work with Treasury/IRS to Prioritize Creating Greater Clarity Regarding the Eligibility of Tribal Corporations to be QALICBs.**

  The IRS - and the CDFI Fund, to the extent it is willing and able - should work to clarify whether and in what circumstances tribal corporations can be eligible QALICBs. Once the IRS has ruled, the CDFI Fund should publicize that ruling in printed guidance.

G. Sovereign Immunity

Tribes and tribal nations are sovereign governments subject to their own sets of laws and dispute resolution processes.[39] Investors and many Community Development Entities (CDEs) are uncomfortable financing projects within Native lands that are subject primarily to tribal or Native laws, requiring instead that any conflicts be resolved under existing state law and judicial systems. This typically requires the project sponsors and the supporting tribe to waive their sovereign immunity with respect to the specific transaction and agree to be subject to state law.

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[39] Market Research Report, p. 28

Such an outcome, while common, creates resentment among many tribal members. For example, representatives from the Navajo Nation wanted any issues associated with the Navajo Tribal Utility Authority project to be resolved in the Navajo Nation's tribal courts, not state courts in New Mexico; the Nation finally acquiesced after extensive internal debate. One interviewee who works at a CDE that has financed several Native projects acknowledged that the limited waiver of sovereign immunity "flies immediately in the tribe's face" and can have a negative impact on the tribe's sense of identity. The interviewee recognized the unwillingness of lenders and investors to be subject to legal systems with which they are unfamiliar. Another interviewee similarly described the inherent sensitivity of the issue. The interviewee emphasized the importance of being respectful to the tribe while still meeting the lending thresholds of fundamentally conservative bank investors.

Negotiating the limited waiver of sovereign immunity can take time and add both costs and delays to a project in a Native Area. For many interviewees, the process underscores the importance of ensuring that the project has strong support within the tribe and clearly addresses an identified need. That helps justify the means of reaching the desired end. Interviewees also emphasized the importance of building trust and understanding with key tribal members and program staff through open and ongoing dialogue and education about the project and the NMTC process.

- **Best Practice: Tribes Consider Limited Waivers of Sovereign Immunity.**

  Sovereign immunity is a critical issue for most tribes because respect for their sovereignty acknowledges their status as a governmental entity separate from that of the United States. Such sovereignty is foundational to their identity as tribes and sovereign nations. Yet, a lender needs to be able to recoup its debt, and if it is unable to bring suit to collect on a defaulted loan, it has no way of enforcing its promissory note. This can dissuade lenders from working in Native Areas and severely limit these areas' access to outside capital.

  The solution is for the tribe to select specific assets and revenues that may be subject to collection, and then to craft a limited waiver of sovereign immunity that applies only to those specified assets and revenue the tribe is willing to place at risk for purposes of the project or activity. Ideally, the tribal government will adopt policies in advance that guide its risk management, negotiation, and implementation of transactions involving outside financing.

H. Understanding NMTC Regulations and CDE Requirements

Interviewees for this report and the Market Research Report noted that NMTC transactions tend to be complicated, with multiple sources of capital common in transactions. As a federal tax credit program, it carries potentially severe financial penalties if one or more of the parties violates program regulations. Even the most efficient closing processes take months to perform due diligence, obtain legal opinions, and negotiate the approvals necessary to satisfy the various parties.

The intricacies and logistics of the NMTC - and the accompanying IRS regulations - have generated an entire sub-industry of accounting, legal, and other specialists. Even the most frequent users of or participants in the program often rely on outside experts to help them negotiate specific transactions. It is not surprising, therefore, that tribes with comparatively little exposure to the program frequently take longer to understand the program's nomenclature, regulations, and compliance issues.

Staff turnover within tribes and their economic development departments can widen the knowledge gap. With smaller entities in particular, as well as those with limited engagement in the program, the loss of a key staff member or two can eliminate much of the institutional memory and knowledge about the NMTC Program. Such a scenario played out with the Washoe Tribe of Nevada and California. The new director of the Washoe Development Corporation, who had no previous experience in the NMTC Program, had to educate herself and others about not only the program's nuances, but also the particular methods employed or approaches taken in the structuring and closing of the Wa She Shu Travel Plaza. She described the recent unwinding of the transaction at the end of its 7-year compliance period as "hellacious," largely due to a lack of institutional memory or clear documentation around how the transaction had been structured by previous leadership and the reasoning for their decisions.

Similarly, there has been considerable confusion about the exit fees associated with the Maniilaq Health Center project in Alaska. These experiences are far from unique. Several other interviewees noted the wide variation in staff capacity among tribal economic development officials and NMTC Program sponsors. In many cases, projects are driven largely by outsiders, with the tribal members being relative bystanders in the process. Key tribal officials were presented with documents to sign but they did not have an in-depth understanding of the rationale and ramifications associated with some of the agreements.

- **Best Practice: Tribal Sponsors and Potential CDE Applicants Should Evaluate the Cost and Benefit of Engaging NMTC Experts.**

  Because most Qualified Active Low-Income Community Businesses (QALICBs) and project sponsors are one-time users of the NMTC Program, they frequently come to the process with little (if any) experience closing NMTC transactions and face a steep learning curve.

  These realities underscore the potential benefit of taking advantage of outside NMTC expertise. Several experienced project consultants, attorneys, and accountants active in the NMTC field have particular expertise in helping to shepherd Native-sponsored projects to completion. Engaging legal counsel that is familiar with both the NMTC Program and some of the nuances of tribal law proves especially helpful in negotiating issues of sovereign immunity and lender loan security. Project consultants can prove invaluable in helping sponsors structure transactions and identify CDEs and leverage lenders to finance them. It should also be noted that fees charged and scope of services provided by these experts and consultants span a wide range. Some Native CDFIs and

CDEs have experience with the NMTC Program and can be resources themselves or in making referrals.

Native CDEs and potential CDEs considering applying for their own certification and/or allocation would be well-served to interview qualified service providers to form their optimal team of advisors.

I. Tribal Politics

Several of the Community Development Entity (CDE) staff members interviewed in the case studies noted the importance of face-to-face connections when working with Native communities, as well as the value of working with someone familiar with the community and Native Area. Facilitating understanding among all of the parties involved, including new leadership, is important to keep the project moving forward and meeting the various deadlines involved.

Changes in tribal leadership – through elections or other transitions – can delay the closing of NMTC transactions in Native Areas. The new leadership may not understand the NMTC Program and the steps necessary to attract investment capital. They may not be as supportive of these steps – or even the project itself – as the previous administration. The need to work through such internal politics delayed several of the case study projects. Timing is important to the NMTC process at every step, from meeting application deadlines to the seasonal nature of construction projects, and changes in governance can lead to a lack of synchronization between parties.

Tribal approval processes are not homogenous. Some have centralized project approvals, others require local community approval before the project will be considered, or approval by an entire Tribal Council or legislature.

The CDE for the Makah commercial fishing dock project has not experienced any significant local political differences in its Native and non-Native transactions. Several interviewees noted that a project's location on tribal or Native lands may actually speed up some of the permitting and other approvals required for closing because these approvals are in the control of the tribe. The authority for such approvals tends to be more centralized within a tribal sovereign nation than in a non-tribal jurisdiction.

- **Best Practice 1: Cohesive Tribal Governance and Economic Development Strategies.**

  Tribal project sponsors need to address the context in which a project or activity is proposed to demonstrate the need for the proposed community outcomes. Context may include political support for a comprehensive economic and community development plan, studies or assessments that demonstrate the need to be filled by the project, or a shared vision among several agencies or departments within tribal government. Regardless of the mechanics of establishing a shared vision in support of the project, that vision is an important predicate because many tribes (and non-tribal governments) take too much time to come to agreement about the need for, scope, design, and goals of a project if those issues are examined for the first time when project approval is requested.

In his keynote comments for the first NMTC Native Initiative Technical Workshop, Chairman John A. Barrett of the Citizen Potawatomi Nation discussed this as both a strategic-level and tactical-level issue for tribal governments looking to promote economic development. He explained the importance of reviewing projects in the context of an economic and community development strategy that has political approval, as he experienced first-hand the political dysfunction that can cause difficulty not only in making decisions but also in implementing them.

Chairman Barrett indicated that his solution 30 years ago was to create a constitutional government, with a clear separation of authority among the Legislative, Executive, and Judicial branches within the Citizen Potawatomi Nation. This structure solidified the roles and responsibilities of each branch and prevented overlapping authority that had created conflicting or unpredictable outcomes. He credits this governing structure as the fundamental step that enabled Citizen Potawatomi Nation to grow. The tribe now has more than $2 billion in assets, employs more than 2,500 people (the most of any entity in its region), and generates more than $600 million in economic activity each year. Citizen Potawatomi Nation owns and operates several businesses, including medical clinics, banks, grocery stores, other retailers, entertainment venues, a water treatment plant, and manufacturing facilities. It operates the largest non-depository Native-owned CDFI in the country.

This record of economic and community development results from a cohesive strategy that has been systematically implemented. Among the key components of the Citizen Potawatomi structure are:

1. Stable and reliable government decision-making processes
2. Institutionalized core financial management skills and practices, such as legislative and executive agreement about the circumstances under which limited waivers of sovereign immunity are to be granted, appropriate HEARTH Act authorizations, and risk management
3. Political agreement on the following goals and principles of a long-term economic development strategy:
    a. A diverse economy made up of employers requiring entry-level, unskilled, skilled, and professional workers in retail, commercial, manufacturing, and service businesses;
    b. Access to appropriate workforce training;
    c. Adequate infrastructure;

d. Availability of capital for business growth and individual credit needs;

e. A concentration of qualified resident workers and consumers to support local businesses, supported by adequate housing stock and community amenities (schools, grocery, pharmacy, medical, recreation, etc.);

f. Availability of a variety of goods and services to attract visitors; and

g. An economy in which capital revolves twice or more locally before going outside.

This strategy combines *preparedness* for capital with *prioritization* in the use of capital.

Such governing practices must be institutionalized so that they are clear, widely understood, and replicable. Ideally, the responsible governing body (legislative or executive) should publish them in adopted economic and community development plans, third-party leasing policies or guidelines, policies regarding limited waiver of sovereign immunity, and similar related documents.

- **Best Practice 2: Determine Acceptable Practices Regarding Choice of Venue and Applicable Law; Establish These Policies Before Working with Third-Party Lenders.**

  Some non-tribal capital providers (lenders, NMTC participants, or grant providers) will be unfamiliar with tribal courts or laws. Their comfort about having an enforceable contract likely will depend upon their understanding of how the contract would be interpreted and enforced. Non-tribal capital providers are typically more comfortable with transactions governed under non-tribal law, in a court with which they have experience. Tribes that are willing to consent to transactions being subject to federal jurisdiction and applicable state laws generally find it easier to attract outside capital. Some tribes require exhaustion of tribal remedies before federal jurisdiction is available. It is quite helpful to non-tribal capital providers, developers, and project sponsors for tribes to resolve these issues internally before a project or financial relationship is presented, and to be able to inform non-tribal participants of the tribe's expectations.

J. Lender Familiarity with Native Areas

There are relatively few non-Native CDEs that have consistently received allocations and have deliberately focused on serving Native Areas and Indian Country at large. Clearinghouse CDFI, Dakotas America, Rural Enterprises of Oklahoma (REI), Travois, and Ecotrust were among the CDEs that interviewees mentioned in this category. Many CDEs do not have Native Areas within their market footprints, lack the experience identifying and closing transactions in these areas, and/or do not have the capacity or willingness to negotiate Native-specific issues. One longtime consultant for various tribes considers one of their missions to increase the number of CDEs willing to take on Native transactions.

Similarly, there are relatively few large national or regional banks that have a track record of actively investing in Native Areas through the NMTC Program. CDEs providing NMTCs in Native Areas identified Wells Fargo and US Bank are the two largest and most active Native NMTC investors. Wells Fargo has become comfortable with these transactions largely because it has a Native lending group within the bank. Even with that experience, the bank utilizes outside counsel to navigate tribal governance and lien issues – a requirement that adds transaction costs to the project.

Despite the additional transaction costs, neither bank prices its tax credit for higher income from Native projects. US Bank may give such projects a somewhat higher priority internally because of their ability to address needs in severely distressed communities. Wells Fargo also gives Native projects extra points in its internal selection scoring system, in large part because the projects enable the bank to meet its rural and minority business commitments. Wells Fargo has even offered slightly better pricing to Native projects as a way of building its brand in Native Areas and generating positive public relations.

Project approvals and other key decisions may not be as predictable to non-tribal lenders working in Native Areas because Native governments frequently add cultural impacts into their analysis. While tribal governments work towards economic growth, they are also focused on preserving tribal culture, identity, sovereignty, population, and land, creating a unique balance of priorities that is distinct from other rural communities. All components of community economic development in Native Areas are also considered through a cultural lens by tribal actors, helping to explain some of the economic decisions made by tribal governments. For example, many tribes might make an active choice to avoid developing or exploiting their natural resources, such as minerals, water, or forests, for economic gain. They may choose to site a project in a less favorable location because of cultural values related to an alternative site. While natural resources are a common economic resource for most rural areas, land itself, in its unspoiled state, often holds significant historical, cultural, and spiritual meaning for tribes. Therefore, the appropriate choice for a tribe might be to preserve the land rather than site a project in a particular location, or develop its resources for economic growth. Tribes might also decide to invest resources into acquiring more land, especially land of historic significance, rather than investing in other economic ventures.[40]

Those interested in partnering on projects in Native Areas can benefit from enhanced cultural understanding. When surveyed, Native American nonprofit leaders stressed the desire for funders and foundations to have already conducted background research before establishing relationships, so that connections are cultivated based on deepened understanding of the specific community.[41] Outreach to Native tribes needs to be consistent and thorough while

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[40] Community Economic Development in Indian Country: Market Research Report, p. 90.

[41] Ellie Buteau, Hannah Martin, and Katarina Malmgren, "Overlooked (Part Two): Foundation Support for Native American Leaders and Communities," Center for Effective Philanthropy, 2021, http://cep.org/wp-content/uploads/2021/07/CEP_Overlooked_Native_American.pdf. (Cited in Community Economic Development in Indian Country: Market Research Report, p. 91.

acknowledging the wide perspectives and unique experiences and complexities of each tribe and community.

- **Recommendation: Lenders Serving Native Areas Can Take Steps to Facilitate Better Relationships with Native Entities.**

  The discussion above focuses on steps tribal governments and project sponsors can take to improve their access to outside capital. Yet capital provision is a two-way street, and the findings from the Market Research Report, case studies, and the Technical Workshops completed within the scope of the NMTC Native Initiative project clearly demonstrate that lenders themselves can benefit from adjustments to their practices with improved transaction efficiency and tribal relationships. Developing such practices and relationships can help the financial institutions better address the capital needs of under-served parts of their market, generate additional business, and enhance their Community Reinvestment Act activities.

  Each of the country's 574 federally recognized tribes is a distinct government. Each represents a people with its own history and culture. While many tribes may have similarities, and there are a few common characteristics and issues such as BIA relationships and sovereign immunity, the tribes are far from homogeneous.

  Just as lenders develop general expertise in dealing with other groups of borrowers – there are common underwriting practices within specific asset classes such as manufacturing or multifamily housing, for instance – they can develop elements of general expertise with respect to tribes. To the extent that expertise can be institutionalized into common practices, it is likely to result in streamlined transactions. At the same time, the unique aspects of each tribe require an investment in relationship building that lenders should not ignore or undervalue.

  There are a limited number of non-tribal CDEs and investors that consistently work with tribes in the NMTC Program. Expanding the number of such entities – and thus expanding the availability of NMTC capital for Native projects – requires that these currently active lenders and investors institutionalize and highlight their effective practices. They need to be able to describe their underwriting and loan security needs succinctly, with appropriate respect for the larger context of dealing with a sovereign government. The most effective CDEs and investors:

  1. Recognize that there are cultural and governmental issues, not just contractual issues, which require an investment of time and respect if the lender is to work successfully with a tribe.

  2. State their expectations clearly and early in a transaction to build trust and assure a smooth closing.

3. Do not assume that a method or contractual outcome that worked for one tribe will be completely transferable to another tribe. Inquire early in the relationship about approval and other processes, agree on steps and timelines.

4. Invest in tribal specialists whose expertise can support their colleagues' lending to tribes.

5. Institutionalize lending practices to streamline:

    a. standard documents for leasehold security on trust lands,

    b. acceptable waivers of sovereign immunity for various types of contracts,

    c. underwriting tribal governments with their unique distribution of revenues among grants, tribal businesses, gaming, and other sources;

    d. approvals of venue and choice-of-law provisions;

    e. form and extent of tribal guarantees;

    f. alternative security, such as pledges of discrete revenue streams in lieu of real property security;

    g. travel authorization for personnel working with tribes to make site visits; and

    h. authority for local bankers to consider creative solutions, such as master tenancy in lieu of tribal guarantees.

K. NMTC Native Set-Aside

In the interviews conducted as part of the case studies and during preparation of the Market Research Report, as well as in discussions taking place during the Technical Workshops and the Individual Training Sessions, participants discussed the various challenges and barriers to increasing NMTC investments in Native Areas with allocations provided to Native-owned/controlled CDEs and Native-serving CDEs. Interviewees noted that a Native set-aside could serve as one step toward ensuring that a minimum amount of NMTC investments are directed to Native Areas each year. A set-aside refers to the statutory dedication of a specific amount of NMTC allocation to projects within Native Areas and/or involving Native organizations.

Interviewees acknowledged that a Native set-aside had been addressed and requested in the past by Native and Native-serving organizations. They noted that another example of a type of NMTC set-aside already exists with respect to non-metropolitan counties (also known as the

Rural Set-Aside).[42] They also recognized that the specific details of and goals for any Native set-aside would need to be discussed and resolved by tribal and non-tribal Native-serving organizations prior to consideration and adoption by Congress. This would ensure that the impacts of the changes in statutory language are appropriately targeted in terms of geography, the key tribal and non-tribal participants in projects, and other desired outcomes, such as improved access to capital for tribes, expanding relationships with third-party lenders, and improving the capacity of Native-owned/controlled CDFIs and CDEs.

Since only Congress can make changes to statutory language though the legislative process, these findings are provided to ensure that the research team serves as faithful reporters of the information and opinions shared with them by interviewees understanding that this report and other project deliverables will likely be shared with and viewed by a wider audience.

Several interviewees for this project and other Native organizations have requested that Congress create a Native set-aside within the NMTC Program, and the research team has included this recommendation to report their input. However, it would not be appropriate for the research team to opine that Congress create a set aside.

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[42] The language of the statute does not actually set aside a specific amount of allocation, rather it requires that "non-metropolitan counties receive a proportional allocation of qualified equity investments." 26 U.S. Code § 45D(i): https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-375442294-332392142&term_occur=999&term_src=title:26:subtitle:A:chapter:1:subchapter:A:part:IV:subpart:D:section:45D

VI. Conclusion

Overall, this report uses case study analysis (along with conversations with other knowledgeable sources) to examine the use of NMTC financing in Native Area projects, while describing challenges and obstacles that were overcome in those projects. The solutions present best practices and recommendations that can be applied to other Native Area projects. Interviewees also discussed policy obstacles, and in several cases, made recommendations about how policies might be revisited to improve availability, relevance, or efficiency of NMTCs for Native-owned/controlled projects, and those in Native Areas.

The NMTC Program has provided a total of 225 Qualified Low-Income Community Investments (QLICIs) and $1.8 billion in NMTC investment across 149 unique projects from 2003 to 2020 in Native Areas. By continuing to address the identified challenges and adopting the recommended strategies, stakeholders can unlock greater opportunities for economic development and improved quality of life in Native Areas. This report serves as a valuable resource for NMTC policymakers, community leaders, and stakeholders to help increase NMTC investment in Native Areas across the United States.

Appendix A: Case Study Survey and Interview Guide

The following pages show the questions asked in the online survey and interviews with representatives of the CDEs associated with the case studies. The bulk of survey and interview responses received were from CDE representatives as opposed to other key participants.

a. Survey Script: CDE

1. How did your CDE become aware of this project? (Was your CDE already connected to the QALICB or project sponsor or were you connected for the first time at the beginning of this project?)
2. How easy (or challenging) was it to attract leverage debt for this project? Please describe your experience.
3. How much capital had the QALICB raised independent of the NMTC transaction? How much of a gap needed to be filled by NMTCs?
4. Did you encounter any challenges with closing the project due to its location in <NMTC Native Area>? (e.g., land ownership, mortgage, foreclosure, and land leasing laws/ordinances; sovereign immunity; Tribal Employment Rights Ordinance/Office)
5. How did closing this deal in Native Areas differ from closing an NMTC project outside of Native Areas?
6. (If applicable based on answer to survey question #3) How did closing NMTC financing with this project compare to closing non-NMTC projects in Native Areas?
7. (If applicable based on answer to survey question #3) Have there been post-closing challenges with this project that have been different from non-NMTC projects in Native areas?
8. Have there been post-closing challenges with this project that have been different from projects in non-Native areas? <If applicable, you responded that there were Tribal cultural or Tribal legal matters that had to be addressed during the NMTC process. What were the issues and how efficiently and effectively were they addressed?>
9. In your experience, have the community outcomes associated with this project differed from those associated with projects in non-Native areas? If so, please explain.
10. Based on the lessons you learned in this project, what advice would you have for tribes or other project sponsors planning to fund a similar project using NMTCs? (Lessons may include NMTC legal structure, improving financial benefits to the project or tribe, serving more tribal members, etc.)
11. Based on the lessons you learned in this project, what advice do you have for other CDEs interested in financing projects located in Native Areas?

12. Would you provide NMTC financing to projects located in Native Areas again? <Why/Why not>? What would you do differently?

b. Follow-Up Survey Interview Script: CDE

Thank you for joining us today! Before we get started, do we have your permission to record this Zoom call for our internal reference? The recording will not be shared with the Fund, it will just aid us as we draft the report based on these case studies.

1. How easy (or challenging) was it to attract leverage debt for this project? Please describe your experience.
2. How much capital had the QALICB raised independent of the NMTC transaction? How much of a gap needed to be filled by NMTCs?
3. Did you encounter any challenges with closing the project due to its location in <NMTC Native Area>? (e.g., land ownership, mortgage, foreclosure, and land leasing laws/ordinances; sovereign immunity; Tribal Employment Rights Ordinance/Office)
4. How did closing this deal in Native Areas differ from closing an NMTC project outside of Native Areas?
5. (If applicable based on answer to survey question #3) How did closing NMTC financing with this project compare to closing non-NMTC projects in Native Areas?
6. (If applicable based on answer to survey question #3) Have there been post-closing challenges with this project that have been different from non-NMTC projects in Native areas?
7. Have there been post-closing challenges with this project that have been different from projects in non-Native areas? <If applicable, you responded that there were Tribal cultural or Tribal legal matters that had to be addressed during the NMTC process. What were the issues and how efficiently and effectively were they addressed?>
8. In your experience, have the community outcomes associated with this project differed from those associated with projects in non-Native areas? If so, please explain.
9. Based on the lessons you learned in this project, what advice would you have for tribes or other project sponsors planning to fund a similar project using NMTCs? (Lessons may include NMTC legal structure, improving financial benefits to the project or tribe, serving more tribal members, etc.)
10. Based on the lessons you learned in this project, what advice do you have for other CDEs interested in financing projects located in Native Areas?
11. Would you provide NMTC financing to projects located in Native Areas again? <Why/Why not>? What would you do differently?

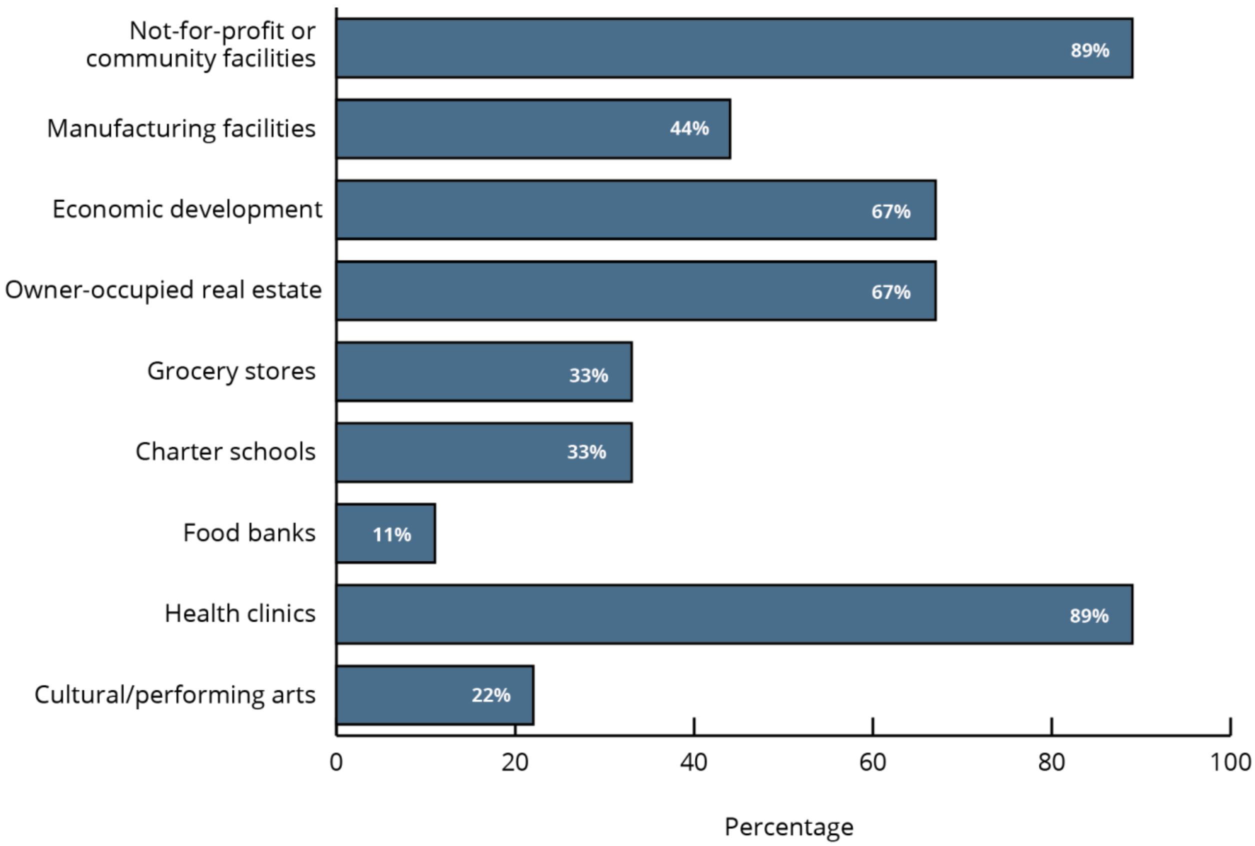
12. We also hope to reach out to the other entities that played roles or benefitted from this deal to conduct separate surveys. Are you able to provide the contact information for those other entities?

Role	Name and Title	Email Address	Phone Number
Investor			
Leverage Lender (If CDE was Leverage Lender, please write N/A)			
QALICB			
Tribal Leader			

Appendix B: CDE Survey Results

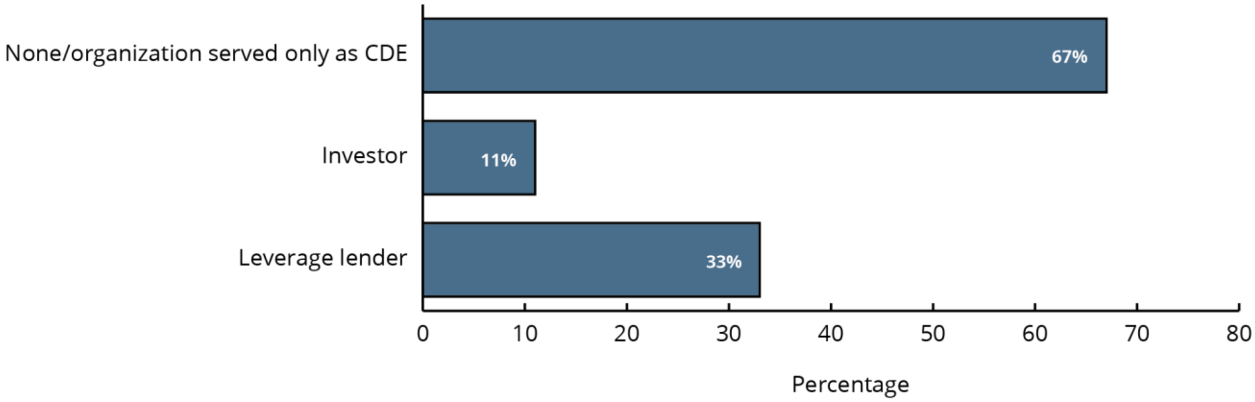
In total, nine separate CDEs responded to the survey of CDEs. Their responses are described in the following tables and graphs. Some questions allowed respondents to select multiple answers, meaning that percentages for some will add up to more than 100%.

Figure 5 | SQ (Survey Question) 1 Does your entity specialize in deploying NMTC capital in any of the following areas?



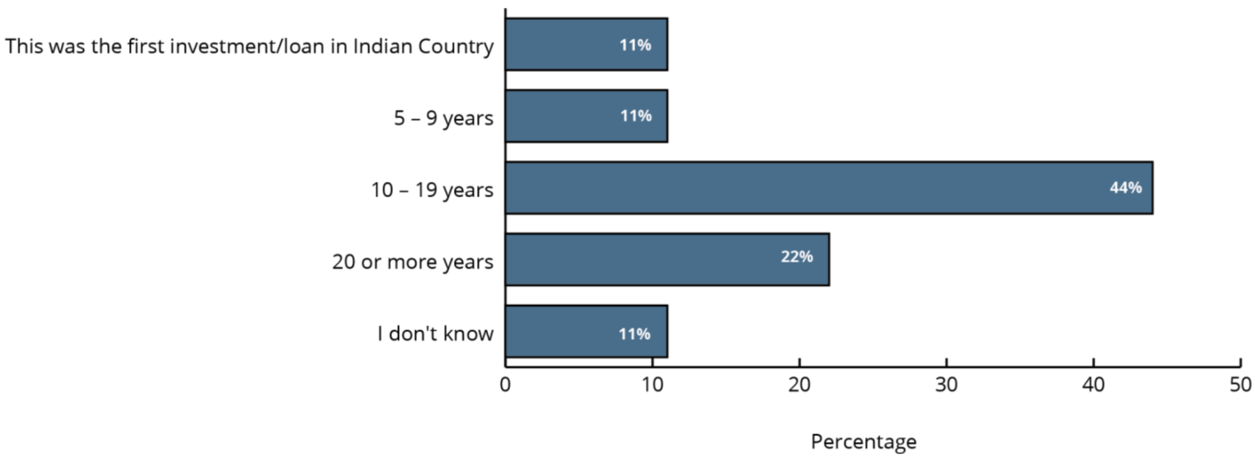
n (number of responses) = 9

Figure 6 | SQ2 In addition to your role as CDE in this project, what other role(s), if any, did your organization play for this project?



n = 9

Figure 7 | SQ3 Prior to this transaction, how long had your institution been lending/investing in Indian Country?

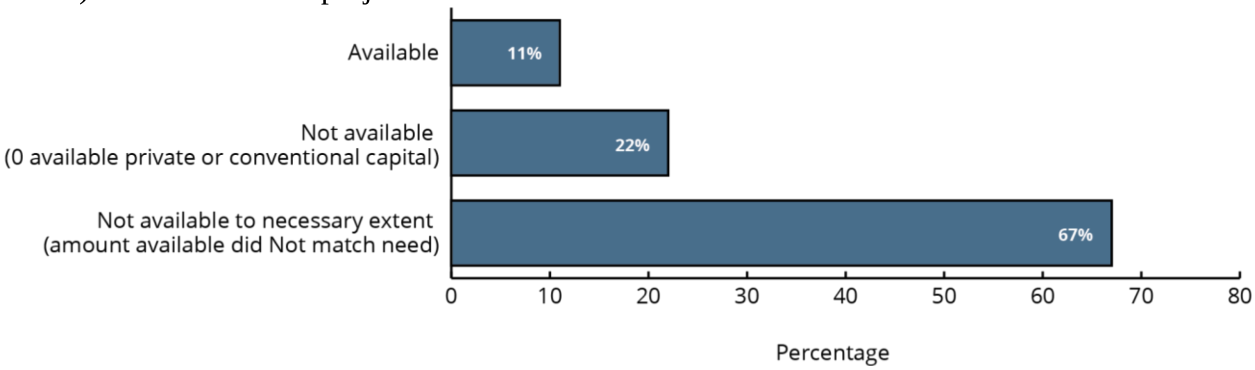


n = 9

Table 2 | SQ4 Does your entity retain staff members or consultants with experience lending/investing in Native Areas?

	Yes	No	I don't know
Does your entity retain staff members or consultants with experience lending/investing in Native Areas?	78%	11%	11%

Figure 8 | SQ5 To what extent was private or conventional capital (from private lenders or banks) available for this project?

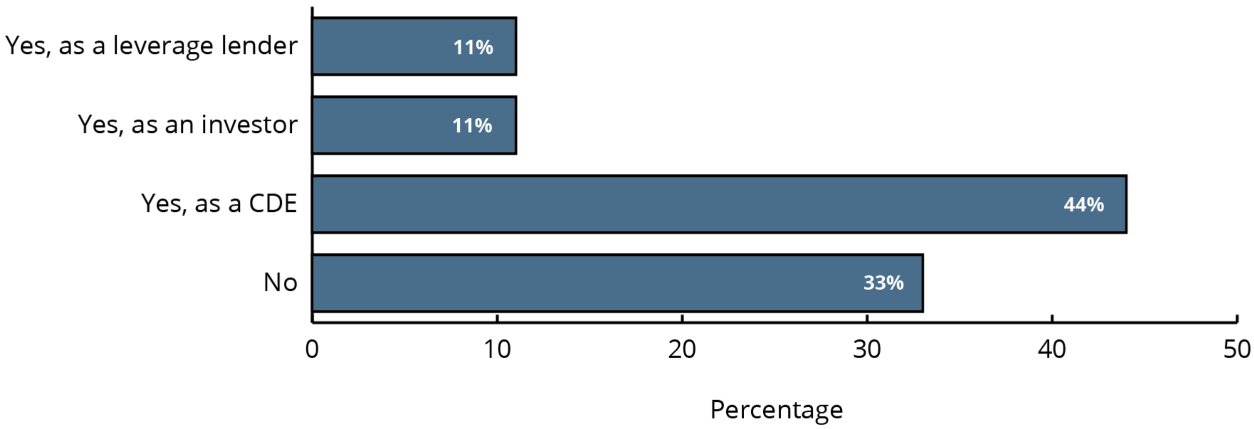


n = 9

Table 3 | SQ6 Did you encounter any Tribal cultural or Tribal legal matters that had to be addressed during the NMTC process?

	Yes	**No**	**I don't know**
Did you encounter any Tribal cultural or Tribal legal matters that had to be addressed during the NMTC process?	56%	33%	11%

Figure 9 | SQ7 Had your entity invested in Native Areas as a part of an NMTC transaction prior to this transaction?



n = 9

Table 4 | SQ8 Did your entity have any pre-existing relationship with the Tribe or the project sponsor?

	Yes	**No**	**I don't know**
Did your entity have any pre-existing relationship with the Tribe or the project sponsor?	22%	67%	11%

Table 5 | SQ9 Compared with other transactions you have financed outside of Native Areas, did any NMTC regulations (e.g., risk of recapture; the "substantially all" requirement; QALICB criteria) pose a concern or challenge in attracting interest from a tax credit investor or closing the transaction?

	Yes	**No**	**I don't know**
Compared with other transactions you have financed outside of Native Areas, did any NMTC regulations (e.g., risk of recapture; the "substantially all" requirement; QALICB criteria) pose a concern or challenge in attracting interest from a tax credit investor or closing the transaction?	56%	33%	11%

The CDEs that responded "yes" to the question of whether NMTC regulations posed a concern in attracting interest or closing a transaction were subsequently asked to explain the circumstances.

"If the project failed and resulted in foreclosure, timely redeployment created significant concerns, as the investor would naturally require prompt redeployment to avoid recapture of the tax credits. In order to comply with the Native requirements of [our] Allocation Agreement, [we] would need to redeploy back into a Native project. If one was Not readily available, [we] would be forced to choose between failing to redeploy (in hopes a Native project would surface) or redeploying in violation of the Native requirements of [our] allocation agreement."

"It is always a challenge to obtain NMTC allocation. It is always a challenge to identify and close with an NMTC investor. This question seems to assume that our main line of business is to finance projects outside Native Areas. We completely specialize in financing projects that serve Indigenous communities. Is the purpose of this question to determine whether investors have a higher perception of risk of projects that serve Native communities? Because if so, then I would say the answer is 1. But when the CDE is one that is 100% focused on serving Native communities (Travois, Chickasaw Nation CDE, etc.) then we are able to help them overcome those concerns. We are able to bring our experience of working with Tribes to help overcome

these negative perceptions. As we have discussed in our previous conversations, the best way to overcome the barriers to using NMTCs in Native Areas is for the CDFI Fund to allocate NMTCs to CDEs whose primary mission is to serve Native communities. This is what the CDE used to do almost every year between 2006 and 2017. Then the CDFI Fund stopped allocating to CDEs with this primary mission. It shifted to a strategy of thinking about Native communities as a carve-out or sub-category of National CDEs' allocations. This strategy has Not been effective. As we have discussed before, please pass along our feedback that there are numerous CDEs that are 100% focused on Native communities. These CDEs… have the capacity to deploy NMTCs right now. I don't believe that further investigation or training is required to recognize this. Allocations need to be made to these CDEs. Then the issue of access will be addressed."

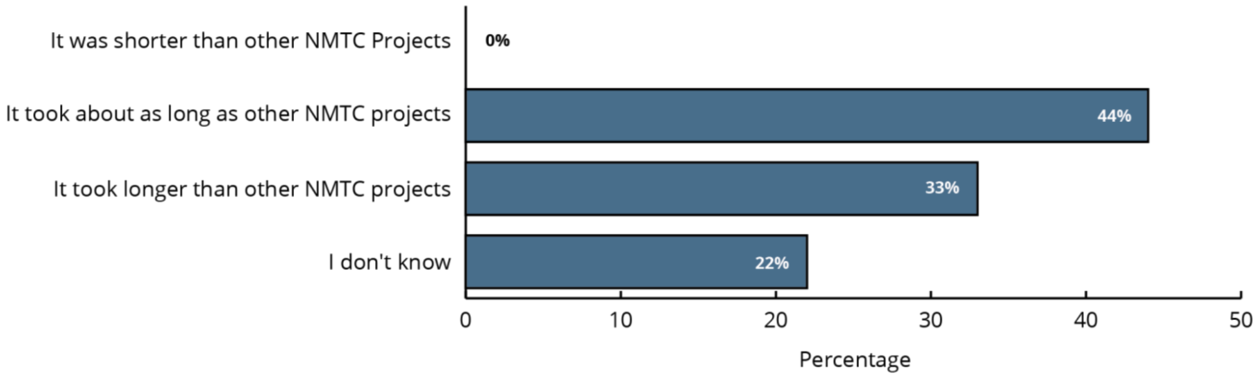
"This was a Targeted Population transaction and as a result we collected the tax returns for the 12 LIC residents of the eldercare facility for the 7-year compliance period."

"QALICB criteria is a challenge for Native deals. It leads to complicated structuring that may be out of the scope of the tribe to maintain due to staff capacity or turnover. It requires additional oversight on the part of CDEs and investor."

Table 6 | SQ10 Compared with other transactions you have financed outside of Native Areas, did your entity require any atypical or additional fees, guarantees, or special covenants for this project as a condition of investment due to its location within a Native Area?

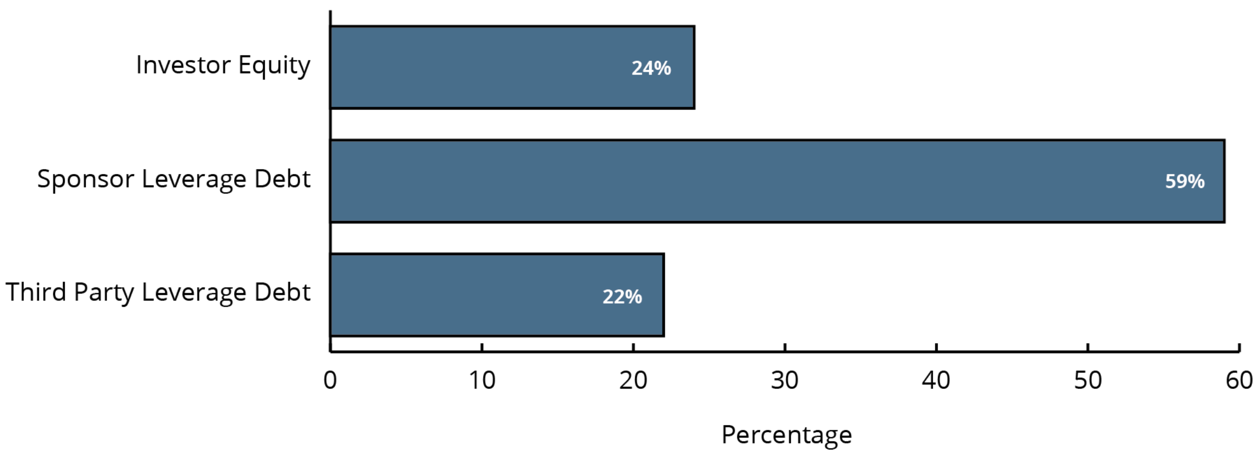
	Yes	**No**	**I don't know**
Compared with other transactions you have financed outside of Native Areas, did your entity require any atypical or additional fees, guarantees, or special covenants for this project as a condition of investment due to its location within a Native Area?	56%	33%	11%

Figure 10 | SQ11 Did the QEI closing process take longer, shorter, or the same amount of time as the process associated with NMTC projects outside of Native Areas?



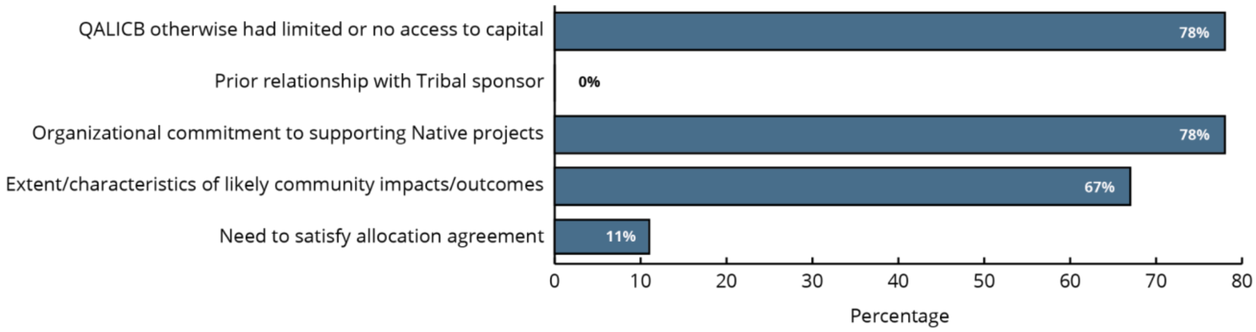
n = 9

Figure 11 | SQ12 Please provide the approximate proportion of capital types in the QEI that financed this transaction. *The following are averages taken across the nine CDE responses.*



n = 8

Figure 12 | SQ13 Why did your organization decide to provide capital to this project?



n = 9

Figure 13 | SQ14 To what extent did your organization use specialized expertise for this project (e.g., subject matter experts, individuals, or organizations familiar with working in Native communities)?

n = 8

Table 7 | SQ15 Given your experience with NMTCs in financing a project in a Native Area, would your entity request future allocations to finance other NMTC projects in Native Areas?

	Yes	**No**	**Maybe**
Given your experience with NMTCs in financing a project in a Native Area, would your entity request future allocations to finance other NMTC projects in Native Areas?	67%	0%	33%

Appendix C: Glossary

CDE: Any domestic corporation or partnership if:

1. The primary mission of the entity is serving, or providing investment capital for, *Low-Income Communities* or *Low- Income Persons*;
2. The entity maintains accountability to residents of *Low- Income Communities* through their representation on any governing board of the entity or on any advisory board to the entity; and
3. The entity is certified by the CDFI Fund as a *CDE*. *Specialized Small Business Investment Companies (SSBICs)* and *Community Development Financial Institutions (CDFIs*) are deemed to be *CDEs* in the manner set forth in Guidance published by the CDFI Fund (66 Federal Register 65806, December 20, 2001).

Investor: Provider of NMTC equity into an NMTC project through a Qualified Equity Investment.

Leverage Lender: Provider of leverage debt through a loan to the entity that makes a Qualified Equity Investment

NMTC: New Markets Tax Credit. The credit provides an incentive for investment in low-income communities. The US Department of the Treasury competitively allocates tax credit authority to intermediaries that select investment projects. Investors receive a tax credit against their federal income tax.[43]

NMTC Program: The program through which NMTCs are administered. The NMTC Program incentivizes community development and economic growth through the use of tax credits that attract private investment to distressed communities.[44]

QALICB: Qualified Active Low-Income Community Business/Borrower. Any corporation (including a nonprofit corporation) or partnership if, for any taxable year:

1. At least 50% of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community;
2. A substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community;
3. A substantial portion of the services performed for such entity by its employees are performed in any low-income community;

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[43] Tax Policy Center: https://www.taxpolicycenter.org/briefing-book/what-new-markets-tax-credit-and-how-does-it-work

[44] CDFI Fund New Markets Tax Credit Program: https://www.cdfifund.gov/programs-training/programs/new-markets-tax-credit

4. Less than 5%of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in IRC §408 (m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and
5. Less than 5% of the average of the aggregate unadjusted bases of the property of such an entity (as defined in IRC §1397C(e)) is attributable to nonqualified financial property.

Tribe/Tribal Sponsor: The tribe or tribal corporation involved in the transaction/on whose land or property the transaction takes place.