

# Recommendations and Best Practices



The CDFI Fund's  
New Markets Tax Credits Native Initiative

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October 17, 2023

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# New Markets Tax Credits

New Markets Tax Credits (NMTC) is a federal program that provides tax credits to investors who place capital in Community Development Entities, when that capital is invested in qualifying active low-income community businesses.

The NMTC Program was authorized under the Community Renewal and Tax Relief Act of 2000. Most recently, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provided \$5 billion in NMTC allocation authority for calendar years 2021 through 2025.

- In the 18 application rounds to date, the CDFI Fund has made 1,456 allocation awards totaling \$71 billion in tax credit authority.

# NMTC Activity in Native Areas

This Native Initiative is part of the CDFI Fund's strategy to improve access to capital in NMTC Native Areas:

- Federal Reservations
- Off-Reservation Trust Lands
- Hawaiian Home Lands
- Alaska Native Village Statistical Areas

Since inception, the NMTC program has generated more than \$66 billion of investments in low-income communities.

# Native Area Investments 2003 - 2020

225 Qualified Low-Income Community Investments (QLICs) took place in AIANNH lands within the United States between 2003 and 2020.

149 unique projects, made by 51 CDEs

NMTC investments across all these projects totaled \$1.8 billion in 2021 dollars.

The median

QLICI investment was \$6.9 million,

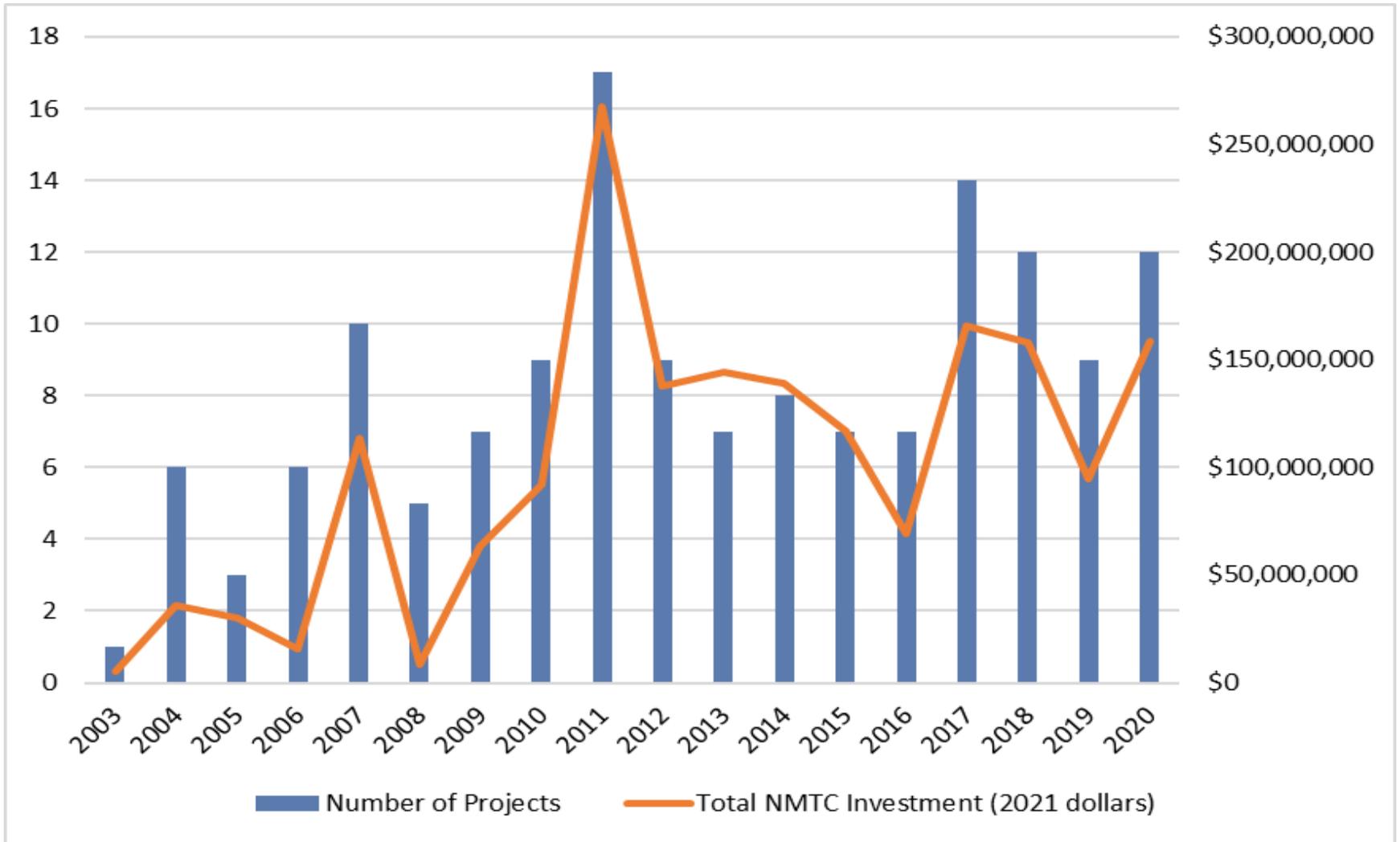
NMTC investment per project was \$10.2 million, and

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.

# Totals and Trends



# Totals and Trends

- Since 2017, there have been an average of 12 projects a year and \$144 million in NMTC investment each year in AIANNH lands.
- 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.

# Goals of CDFI Fund Native Initiative

- Goals of the NMTC Native Initiative include:
  - Improving delivery of NMTC capital to Native Areas
  - Increasing participation of Native-owned/managed organizations in the NMTC program, through workshops and technical assistance
  - Sharing findings, recommendations, and best practices with NMTC industry participants, Native-serving organizations, and other stakeholders

# Findings, best practices, and recommendations on NMTC Investments in Native Areas

- These were derived from

An online survey and interviews with participants in past NMTC investments in NMTC Native Areas,

Comments in workshops, and

Discussions in individual technical assistance meetings.

# Methodology

- The research team developed a list of NMTC projects that would illustrate varied, successful, and replicable approaches with specific, on-the-ground examples.
- We worked closely with the CDFI Fund to curate a list of nine representative projects. 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.
- Surveys were a precursor to the interview.

# Survey Findings

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.

# Recommendations and Best Practices for NMTC Investments in Native Areas

## Recommendations

### Policy or Programmatic Approaches for:

- Congress
- CDFI Fund
- Tribes and Native Governing Organizations
- Native CDFIs, CDEs, and potential CDEs
- Native-serving Funders
- Non-Native Tax Credit Investors and Lenders

## Best Practices

### Specific Actions Targeted to Improve Access to and Delivery of NMTC Investments, by:

- Tribes and Native Governing Organizations
- Native CDFIs and CDEs
- Native-Serving Funders
- Non-Native Tax Credit Investors and Lenders
- Sponsors and owners of Native-serving projects or businesses

# Recommendations for Congress and IRS

**Finding: Several industry participants and Native organizations suggested program improvements for NMTC and other programs, whose implementation would require congressional action to change existing statutes and/or changes to IRS regulations or tax policy:**

Clarify that Native-chartered and Tribally-owned businesses, including portions-of-the-business of a tribal government, are eligible NMTC borrowers (QALICBs)

Consider whether tribally owned businesses should be excluded as a related party when a CDE is controlled by the same tribe

# Recommendations for Congress and IRS

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(Continued:)

If necessary under the statute, allow BIA-insured loan proceeds and other insured and loaned funds from federal programs to be used as NMTC leverage loans, so long as proceeds are ultimately delivered to an eligible Native borrower or an eligible activity on Native land

Some participants requested that Congress consider dedicating some NMTC allocation authority to be set aside for Native Areas, CDEs, businesses, or projects. This is not within the report authors' scope to recommend for or against.

# Recommendations for the CDFI Fund

**Finding: There is a perception that the conditions, challenges, and benefits of NMTC financing in Native Areas are generally not well understood, including by NMTC Allocation Application reviewers**

Include persons with Native Area lending experience in the pool of NMTC Allocation Application reviewers

Provide training to reviewers specifically addressing Native Areas

Consider qualitative and catalytic effects, such as development made possible by an infrastructure project, and cultural benefits such as those that result from museums or preservation of sacred sites, as community outcomes for Native Areas and Native-serving projects in NMTC Allocation Application scoring

## Recommendations for the CDFI Fund (cont'd)

**Finding: Sources of capital unique to Native Areas are frequently governmental. Differences in program regulations and the incompatibility of some sources with NMTCs might be overcome by greater collaboration among agencies.**

Initiate more Native-focused collaboration with other federal funding and guarantee agencies to improve program compatibility and unify regulatory requirements

Fund and/or participate in more training for tribes and Native organizations about economic and community development planning, funding, and implementation. For Native organizations that do not have this expertise or formal economic and community development plans, NMTCs are more difficult to access.

# Recommendations for Native Governing Bodies

The Market Research Report identified that historical lack of access to private entrepreneurial capital has, for some tribes, resulted in governance structures and policies that present challenges for non-Native lenders and investors, including tax credit investors as well as non-Native enterprises (e.g., manufacturers, retailers, and other private employers).

# Recommendations for Native Governing Bodies

## Steps taken by some tribes to address this include:

Establishing a strategic plan for economic and community development that includes key priorities and reflects/fosters political agreement about policies related to

- limited waivers of sovereign immunity for third-party debt,
  - tribal employment, and
  - access to land through leases and financing through leasehold mortgages.
- Creating an economic development entity able to implement long-term strategies, even when political changes occur in tribal governments.
  - Using HEARTH Act authorization for locally-approved leases that may be encumbered by leasehold mortgages.

# Recommendations for Native Governing Bodies

**Finding: Economic development depends on available land and infrastructure suitable for the proposed use, capital, and a ready and trained workforce. Many Native Areas have insufficient infrastructure to attract desired employers.**

- Infrastructure - Develop policies regarding necessary infrastructure investments, including how they will be paid for (e.g., by tribal investments or employer investments that can be reimbursed by systems development charges on future developments).
- Workforce -- Create collaborative relationships between workforce training and economic development partners to ensure local residents are able to access jobs created through the strategic plan.

# Recommendations for Native Governing Bodies

**Finding:** Some tribes describe general alignment with the strategic plan as important to success. Government elements include spending, land availability through leasing, workforce, and other planning or regulatory elements of government.

To do this, they create and implement clear laws or regulations to provide all new businesses with roadmaps, standards, and timelines for approvals of access to land, building permits, funding, and other development tools.

# Recommendations for Non-Native Lenders and Investors

**Finding: Investors and lenders should build cultural competency and relationships in each tribe or Native community. Each Native government or community is an individual cultural and political entity. Tribes are sovereign nations embedded in the United States, each with its own law and governance. While some issues are common to most Native Areas, others are certainly not homogenous.**

- Develop institutional cultural competency with Native experts in your institution and in the outside counsel you engage
- Develop reasonable and respectful expectations regarding tribal approval of projects and non-Native involvement, leasing of land via BIA approval or tribal HEARTH Act authority, and sovereignty issues such as limited waivers of sovereign immunity.

# Recommendations for Non-Native Lenders and Investors

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- Investor or lender representatives should be knowledgeable about and aware of institutionalized practices that can be discussed early in a relationship.
- Be clear about investor and lender needs and expectations while recognizing that Native counterparties may have different motivations and constraints than non-Native parties.

# Recommendations for Native CDEs or CDFIs Seeking to Participate in NMTC

**Finding:** Most Native-controlled CDFIs and CDEs lend relatively small amounts and have relatively smaller portfolios, compared to successful NMTC applicants.

NMTC transactions are generally \$5 million or more because smaller transactions are generally not cost-effective. To be competitive, an allocation applicant must have a track record demonstrating the ability to deploy at least \$15 million in financing in 1 – 5 years.

Scale is a challenge for many Native-controlled CDFIs/CDEs seeking an allocation.

# Recommendations for Native CDEs or CDFIs Seeking to Participate in NMTC

A solution is to use an incremental approach to building scale, through several different roles and strategies:

- Secondary CDE
- Direct, source, or leverage Lender
- Participation in the loan of another lender
- Native expert assistance for non-Native CDEs and lenders/investors

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# Recommendations for Native CDEs or CDFIs Seeking to Participate in NMTC (Continued)

## The Secondary CDE Role

A Secondary CDE is a CDE that does not have its own allocation.

It receives a capital deployment from an Allocatee CDE and redeploys that capital to a NMTC qualified borrower through a qualified transaction.

Deploying an NMTC investment builds the Secondary CDE's track record and experience, while providing Native competency for the Allocatee CDE.

Fees are negotiated between the two CDEs.

# Recommendations for Native CDEs or CDFIs Seeking to Participate in NMTC (Continued)

## Best Practices, Secondary CDE: The Non-Native CDE

Non-Native and Native CDEs with allocation should consider committing to a percentage of your award being deployed through Native Secondary CDEs. This innovative activity will not add points, but it may increase your award. The local Native Secondary CDE may also provide local, technical, or cultural knowledge that the allocatee CDE may not have.

Seek out Native CDEs affiliated with Native Area projects in your pipeline.

Negotiate this potential relationship and do any necessary underwriting of the CDE in advance. Discuss this goal with your investors.

# Recommendations for Native CDEs or CDFIs Seeking to Participate in NMTC (Continued)

## Best Practices, Secondary CDE: The Native CDE

Seek out CDEs that invest in Native Areas, ask to be considered as a Secondary CDE.

Introduce yourself to investors and make the same request.

Identify Native Area projects in your Service Area and ask the Native sponsors to request that you be used as a Secondary CDE when they are identifying CDE partners.

# Recommendations for Native CDEs or CDFIs Seeking to Participate in NMTC (Continued)

## Leverage Lender

Makes a loan to Investment Fund, has a pledge of its partnership interest in CDE as security, no direct property security, subject to 7-year standstill.

## Source Lender

Makes a loan to Sponsor; Sponsor uses proceeds to make Leverage Loan; receives an assignment of Sponsor's loan documents; may receive other security or guarantees.

## Direct Lender

Makes a loan to Sponsor secured by trust deed or leasehold mortgage on the property or other assets. Sponsor uses proceeds to make Leverage Loan.

# Recommendations for Native CDEs or CDFIs Seeking to Participate in NMTC (Continued)

## Participating Lender

A CDFI, CDE, or potential CDE desiring to build track record and experience but that does not have large enough lending limits to be a sole leverage, source, or direct lender may *participate* in the loan made by another lender or join as a member of a lender group.

# Recommendations and Best Practices Summary

All participants should work together to standardize lending practices for Native Areas, while recognizing that each Native government's sovereignty and culture will mean some differences will exist.

Standardization of the following will help streamline access to capital:

- NMTC provisions in leases including leasehold mortgage provisions,
- use of HEARTH Act leasing authority when appropriate for a particular tribe,
- established practices for project approval and use of limited waivers of sovereign immunity

# Recommendations and Best Practices Summary (Cont'd)

Cultural and legal competency are prerequisites to successful non-Native lending and investment in Native Areas.

CDEs, Lenders, and Investors desiring to bring capital to Native Areas should:

- work with knowledgeable partners to institutionalize expectations, standards, and requirements, while recognizing that some requirements will be negotiated with individual tribes whose specific governance practices must be respected
- use competent outside counsel to manage Indian Law issues.
- include internal Native Area lending expertise that can be called upon by any lender or investor representative working with Native sponsors.

# Recommendations and Best Practices Summary (Cont'd)

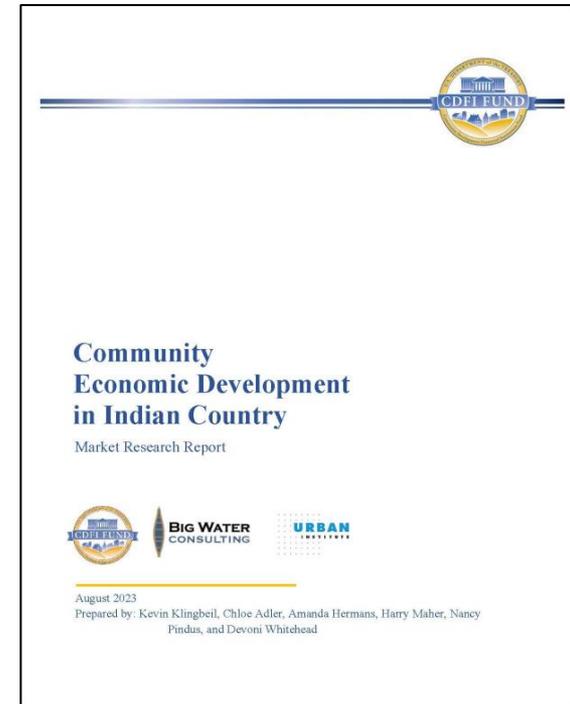
Lack of standardization and common understanding of NMTC funding structures among various federal funding agencies is a significant challenge that limits tribal and Native entities' optimization of applicable funding.

- Best practices include initiatives for regulatory standardization, cross-training, and listening sessions to identify opportunities for streamlining.
- The CDFI Fund has opportunities to make the allocation application process more relevant to the conditions frequently found in Native Areas. Making more capacity-building and skills training available would improve Native access to NMTCs.

# NMTC Program Native Initiative Reports and Other Materials

Available Project Materials:

1. Community Economic Development in Indian Country: Market Research Report
2. NMTC Technical Workshop Training Materials
3. Self-Assessment Guide for Native Organizations
4. New Markets Tax Credits in Native Areas: Selected Case Studies and Best Practices



Visit the following CDFI Fund web page to download the published materials:

<https://www.cdfifund.gov/programs-training/training-ta/nmtc-program-native-initiative>