BANKING ON THE POOR

HOW CORPORATE AMERICA EXPLOITS STRUGGLING COMMUNITIES TO COLLECT NEW MARKETS TAX CREDITS

A REPORT FROM SEN. TOM COBURN, M.D.

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INTRODUCTION

Dear Taxpayer,

A billionaire's fantasy island, Emmy award winning producers, Goldman Sachs, Broadway music from Hollywood, Starbucks, and even dolphins benefited from a tax credit intended to help struggling communities and lower-income Americans seeking new opportunities.

Big banks collect millions of dollars in tax credits to help finance economic development projects, which have included doggie day cares, a sculpture in the desert, drive-in movie theaters, luxury hotels and fast food enterprises. While some of the projects are well intended, like health clinics, it is still difficult to measure if these tax expenditures are truly helping those seeking a hand up or simply subsidizing banks, corporations, and others who are already succeeding.

The federal New Markets Tax Credit program was created to steer taxpayers dollars into banks that would in turn funnel financial assistance to businesses and developers in low-income communities to help create jobs. Yet, virtually every neighborhood, from Beverly Hills to the Hamptons, could qualify for the program. The New Markets Tax Credit (NMTC) has subsidized wealthy investors in nearly 4,000 projects, including car washes, bowling allies, parking lots and breweries. Many of these are wasteful and not a federal priority – such as an ice skating rink and a car museum - while others are corporations in little need of taxpayers' handouts – such as chain restaurants like Subway and IHOP.

One of the program's projects is threatening not only to kill jobs but bankrupt an entire city. The cost to maintain the wellness center in Desert Hot Springs, California established with NMTC support has prompted across-the-board salary cuts and city officials are even considering elimination of the police department. This is not the impact the program was expected to have. Meanwhile, tens of thousands of dollars intended for the financially challenged clinic were spent to create a sculpture in the desert.

Another project in an area of Atlanta where condominiums sell for millions of dollars—hardly the type of neighborhood most Americans would consider below poverty—NMTCs are being used to expand the world's largest aquarium. With ticket prices costing nearly $65 for a 15 minute show, the real beneficiaries are Suntrust Bank, Wells Fargo and the Emmy award winning producers and Hollywood ensemble hired to develop the show, and of course the dolphins who live in the larger aquarium.

The program is duplicative of other federal economic development programs both in the tax code and other government agencies. There are at least 23 community development tax expenditures costing taxpayers over $10 billion annually and 80 overlapping discretionary programs costing $6.5 billion annually, 28 of which are specifically designed to spur growth in new markets. Because of this redundancy, many projects and corporations are double dipping on taxpayers—receiving multiple federal subsidies through other grant programs and tax giveaways.

As a spending program in the tax code, the New Markets Tax Credit lacks transparency. Due to confidentiality requirements, the federal government cannot disclose the recipients of these funds. Therefore, little is known about the banks, investors, and projects benefiting from the credit. Its complex design also complicates the ability to measure if it is helping those truly in need, who are ultimately the intended beneficiaries.

This report, *Banking on the Poor*, exposes how the NMTC is just another tax code giveaway with little available evidence to demonstrate its effectiveness or compare its impact to the numerous other federal initiatives with similar goals. This tax credit intended to benefit the poor is instead lining the pockets of the well-off, such as big banks and other private investors that claim more than $1 billion in NMTC annually. These include JP Morgan Chase, Bank of America, and Wells Fargo, among others. Because it is funded by taxing the labor of Americans, NMTC is essentially a reverse Robin Hood scheme paid for with the taxes collected from working Americans to provide pay outs to big banks and corporations in the hop that those it took the money from might benefit.

The report is not intended to demonize the entities receiving the funds or the projects they are supporting, but rather to provide some transparency for taxpayers to decide whether the program should be continued or ended. If Congress allows it to expire, taxpayers could save $1 billion a year. So the question to taxpayers and lawmakers alike is are the types of projects outlined in this report worth spending $1 billion on every year or would that money be better left in the pockets of taxpayers and invested privately.

The New Markets Tax Credit is just one among hundreds of handouts, credits, and deductions tucked into the code giving an unfair advantage to the well-connected and special interest groups. But because the tax code is so complex and is defended by an army of Washington lobbyists, Congress routinely chooses to simply extend these tax breaks with little debate or oversight. Later this year, I will release a thorough report breaking down the complexities of the tax code to shine a light on nearly every tax earmark and loophole so those Americans who are paying their fair share can see who is benefiting from their labors and policy makers can decide whether to extend billion dollar tax give away programs, like the New Markets Tax Credit, or instead stand for a more equitable tax code benefitting all Americans.

Sincerely,

Tom Coburn, M.D.

U.S. Senator

History and General Background

AFTER A DECADE OF economic growth and expansion, President Clinton and a Republican Congress purposed to spread the wealth to areas lagging behind the rest of the country. Their efforts culminated in December 2000, with passage of the Community Renewal Tax Relief Act, a bipartisan spending bill intended to jump-start economic activity in poor communities.

The legislation enacted nearly $26 billion in tax expenditures,[1] including the New Markets Tax Credit (NMTC), a tax incentive designed to "spur new or increased investments into operating businesses and real estate projects located in low-income communities."[2]

Administered by the Department of Treasury's Community Development Financial Institutions Fund (CDFI Fund), the New Markets Tax Credit provides federal tax credits to financing entities, such as banks, for investing in businesses located in qualified low-income areas. Most of the country, however, is considered a low-income community for purposes of the program. "As a result of the definition of qualified low-income communities, virtually all of the country's census tracts are potentially eligible for the NMTC," according to the nonpartisan Congressional Research Service.[3]

These credits are distributed through a complicated mechanism involving several different entities and numerous tax lawyers. First, Congress authorizes the total amount of tax credit allocations that may be awarded each year. Next, the Treasury's CDFI Fund doles out the allocation authority to Community Development Entities (CDEs). A CDE is an entity that acts as the middleman between the investors (often a bank or hedge-fund) and a low-income project that will receive financing through the CDE. As of July 2012, there were 5,780 certified Community Development Entities.[4]

Once a CDE has been allocated the tax credits to distribute, it seeks out investors to purchase those tax credits to help finance various local projects. The private investor, nearly 40 percent of which are banks or other regulated institutions, then claims a tax credit equal to 39 percent of their investment over seven years. In exchange for the tax credit, the investor makes investments in the CDE, and the CDE then uses these funds to make direct investments in, or offer below-market or more flexible loans to, low-income community businesses or projects.[5] According to the Government Accountability Office (GAO), in recent years private investors have claimed more than $1 billion in New Markets Tax Credits annually.[6]

Because of the complex structure of the tax credit and investments, as well as taxpayer privacy protections, there is very little transparency on the amount of tax credits individual investors are claiming at the project level. While Washington politicians tout the program's goal is to put more money into the hands of businesses in struggling communities, the real beneficiaries are Wall Street banks, the CDE's, and other large investment enterprises. Additionally, in many cases, investors that claim the credits are providing financing to questionable and wasteful projects with virtually no accountability to taxpayers.

It is important to distinguish between the various recipients of government assistance through the NMTC. : The direct government subsidy (the tax credit) is claimed by the private financing entity based on the amount of their investment.* Businesses and other projects, such as hotels, recreational centers, health spas, movie theaters, and fast food chains, receive low-interest loans from the lending entities claiming the NMTC.[7] While these local projects do not receive a financial subsidy directly from taxpayers, the qualifying projects and businesses benefitting from the New Markets program receive millions of dollars in private loans and equity investments from the banks that provide investment in order to claim the federal tax credit. According to the CDFI Fund's online database, nearly 4,000 projects received loans or equity investments through the NMTC program.[8]

Which of these neighborhoods qualifies for New Markets Tax Credits?

Intended to help economically struggling communities, "virtually all of the country's census tracts are potentially eligible" for the tax credit, according to the nonpartisan Congressional Research Service, so the answer is potentially all of them.

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*The CDFI Fund releases some limited data on projects that receive NMTC financing and the total amount of qualified investments invested. The CDFI Fund does not distinguish between leveraged and non-leveraged investments in its public data releases, and it is unclear if the Treasury Department knows definitively whether a project used the leveraged or non-leveraged structure. The Department does not provide the names of the private companies or individuals who receive the tax credits from the federal government. However, many of these companies publically release data about their involvement in the program and many create separate legal entities that can be CDEs. In those cases, the banks are then the NMTC allocator, tax credit recipient, and the lender. For Goldman Sachs examples, see: http://www.goldmansachs.com/what-we-do/investing-and-lending/urban-investments/case-studies/bradford.html, for Citibank, see: http://www.citibank.com/icg/sa/citicommunitycapital/community_dev.jsp

Cost and Current Status

FROM 2003 TO 2013, Congress authorized $40 billion in total NMTC allocation.[9] This $40 billion is awarded by the CDFI Fund to various CDEs across the country. As of July 2012, there were 5,780 certified Community Development Entities.[10] The CDEs seek out investors for certain projects, such as banks and other financial entities. These investors can claim the tax credit based on the amount of the investment they make into the CDE, which in turn invests in various local projects.

Initially authorized to provide $15 billion in awards through 2007, Congress later extended and expanded the program, including a temporary increase in the annual allocation amount from $3.5 billion to $5 billion, while earmarking a portion of the amount for projects in areas affected by Hurricane Katrina. The program was extended again at the end of 2010, as Congress increased the total tax credit allocation amount to $33 billion, with the annual limit set at $3.5 billion.[11] Congress most recently extended the program at the end of 2012 to provide $3.5 billion in allocation authority for both 2012 and 2013.[12]

The program results in hundreds of millions of dollars in lost revenue to the federal treasury each year, as GAO's 2014 report found private investors are claiming more than $1 billion a year in NMTC.[13] According to the Joint Committee on Taxation, the NMTC program is expected to result in $5.1 billion in lost revenue from 2013-2017.[14]

The EXPIRE Act of 2014, passed by the Senate Finance Committee earlier this year, would extend the NMTC for two additional years, and allow another $3.5 billion in tax credit authority each year.[15]

Although Congress continues to reauthorize the program, the effort intended to enhance private sector business activity in struggling communities has largely become a cash cow for big banks and others in the financial industry, while the true economic value generated by the NMTC program remains in question.**

**There remains much debate surrounding the issue that the NMTC program may not spur new investment, but instead move existing or planned investments from location to a different one, in order for the credit to be claimed. This is discussed at length in the following paper. Michael Hicks and Dagney Faulk. 2012. An Estimate: The Effect of State-Level Add-on Legislation to the Federal New Market Tax Credit Program (Indiana: Ball State University, Center for Business and Economic Research). The topic is also discussed in this following paper. Tami Gurley-Calvez, Thomas J. Gilbert, Katherine Harper, Donald J. Marples, and Kevin Daly. 2009. "Do Tax incentives Affect Investment?: An Analysis of the New Markets Tax Credit," Public Finance Review (Volume 27, Number 4).

New Markets, Same Old Waste

While Wall Street banks and other financial corporations cut their tax bills by millions of dollars every year through the New Markets Tax Credit, many of the projects in which they invest may fall short of the program's goal – to bring economic opportunity to struggling communities.

The New Markets program prohibits the credit from being used for "the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, race track, or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off the premises."[16] Despite these restrictions, many questionable projects are still funded by NMTC.

The NMTC helped finance a Starbucks in Indianapolis, a bakery in New Bedford, Massachusetts, a baseball stadium in Kentucky, four bowling alleys, six car washes, four coffee shops, a day spa in Alaska, an IHOP in Milwaukee, four law firms, and at least two Mexican restaurants in Colorado and Wisconsin.[17] From fast food joints to parking garages and luxury hotels, the government subsidizes banks for investing nationwide chains or corporations with proven business models in little need of this government handout.

Another $17 million NMTC allocation paved the way for the residents of Pittsburgh to get a new Target store,[18] and a specialty tea shop in Columbus, Ohio received two NMTC allocations.[19]

NMTC projects also include:[20]

- Dog day care, and a dog rehabilitation, grooming, and wellness facility
- Starbucks
- Florist
- Gas stations and convenience stores
- Sporting goods stores
- Dance studio
- Charter schools
- Recording Studios
- Ice cream company
- Shopping Centers
- eBay consignment selling services
- Fitness Center
- Custom yacht dealer
- Funeral homes
- Limousine service
- Subway
- Churches
- YMCA gym
- Fast food restaurants
- Flea market
- Car and motorcycle dealerships
- Garbage collection and landfills
- RV Park
- Parking lots
- Dry cleaners
- CPA firms
- Brewery
- Laundromats
- Frozen custard shop
- Auto repair shops

Tax Credits for the Poor Wash Up on the Shore of a Billionaire's Fantasy Island

The beautiful Hawaiian island of Lanai, regarded as "a playground for the moneyed,"[21] was hit especially hard by the recent economic downturn. Just four years ago, "all major new construction" had "stopped and the island's largest employer" had "laid off or furloughed 20 percent of its work force and cut hours" for the remaining employees. Families on the island were "pushed to the edge."[22]

Today, Lanai "is booming."[23]

More people are coming to the island for work opportunities and fewer are leaving. Infrastructure is being upgraded with roads being paved, airport runways being lengthened, and new airlines being added "to improve access" to the island.[24]

There are plans to build an "ultraluxury hotel," return commercial agriculture, and establish a "sustainability laboratory that will help make the island 'the first economically viable 100%-green community,' as well as to improve educational opportunities for children, ensure quality health care and lower living costs."[25]

The community pool has been renovated and reopened. The park has a new swing set and basketball and volleyball courts.

"People are going back to work and people seem to have a lot less stress in their lives," said Diane Preza, a Lanai public school teacher, noting "It just seems the community has come alive. And people feel like there's hope."[26]

All the results of New Markets Tax Credits?

Nope.

All of these improvements and investments are being privately funded by billionaire Larry Ellison, the third-richest man in America,[27] who bought nearly the entire island for $300 million in 2012. Ellison's net worth is $49.4 billion.[28]

He owns "nearly everything on the island," reports The Wall Street Journal referring to Lanai as "Larry Ellison's Fantasy Island."[29] In July 2014, Ellison "purchased the historic Hotel Lanai for an undisclosed price" and became "the owner of every hotel room on the island."[30] One of the two grocery stores, the community center and pool, the water company, the movie theater, and half of the roads belong to him.[31] He also "owns the gas station, the car rental agency and the supermarket." He owns the Lanai City Grille as well as "two championship golf courses, about 500 cottages and luxury homes, a solar farm, and nearly every single one of the small shops and cafes that line Lanai City. He owns 88,000 acres of overgrown pineapple fields and arid, boulder-strewn hills, thick with red dust, as well as 50 miles of beaches."[32]

The remaining two percent of the 141-square mile island "is owned by the government or by longtime Lanai families."[33]

"It's easy to understand the improvement of the economy on Lanai when you watch the arrival at Manele Small Boat Harbor of one of five daily ferry round trips from Maui," reports Hawaii News Now. "The boat is packed with more than 100 people, including tourists bringing their golf clubs on day trips and lots of construction workers and other trades people. Electrician Kevin McNamara said business at Sturdevant electrical contractor on Lanai has increased 300-percent since Ellison" bought the island. "The amazing thing is we have to send the workers home every night because there's no longer housing. When he first bought the island, they would spend the night, spend the week," said McNamara. A new restaurant has opened, "hiring a staff of more than 30" people and "Smaller mom-and-pop operations" are benefitting from "a 20-percent increase in business" and are "hiring for more than 100 new jobs."

Billionaire Larry Ellison purchased the beautiful Hawaiian island of Lanai, regarded as "a playground for the moneyed," and is investing his resources to revitalize the tropical paradise.

Ellison himself is doing what the NMTC program was intended to do—creating economic opportunities. But instead of tapping government incentives and taxpayer funds, Ellison is investing his own personal wealth and relying on market forces to succeed.

"It's surreal to think that I own this beautiful island," reflected Ellison.[34] "It doesn't feel like anyone can own Lanai. What it feels like to me is this really cool 21st-century engineering project, where I get to work with the people of Lanai to create a prosperous and sustainable Eden in the Pacific."

As the island's economy blossoms with new projects and businesses resulting from the investments made by its billionaire owner, suddenly the New Markets Tax Credit washes up to do essentially what is already being done.

NMTC "was established by Congress in 2000 to spur new or increased investments into operating businesses and real estate projects located in low-income communities," according to the federal agency that administers the program.[35]

So it may be surprising that millions of dollars in NMTC financing could be coming to an island where such investments are already being made and new markets are already in the works.

But the Lanai Community Health Center is hoping to take advantage of NMTC financing to help build a new $8 million facility.[36]

There already is a health center on the island, but "the new health center is expected to be five times larger than the current facility."[37] The new center, which will be 6,800 square feet and include medical examination rooms as well as a "multipurpose room to hold joint programs with the art center," will be "far bigger" than the center's existing 1,000-square-foot building.[38]

The center has received millions of dollars in public funding from other state and federal government programs as well as $125,000 "from local businesses and the community."[39] In July, the Hawaii state government provided $500,000 for construction and the state legislature approved an additional $1.75 million.[40]

"Part of the project is also being funded with investors attracted by" the New Markets Tax Credit.[41] While the amount of NMTC assistance for this program is not publicly available, the center anticipated receiving $3 million in financing through the program.[42]

Although details remain elusive, Novogradac & Company, a Certified Public Accounting firm that specializes in constructing elaborate New Markets Tax Credits financing deals may be involved in structuring the financial arrangement. [43] Michael Novogradac, a managing partner at firm and board member of the New Markets Tax Credit Coalition, tweeted the announcement of the new center, "Health facility planned for the heart of Lanai -http://Mauinews.com http://shar.es/Z4pAU #NMTC."[44]

The current center employees 15 full-time workers and six to eight part-time workers, but Executive Director Diana Shaw expects this number to increase. "Of course we have to find people, but that's a whole other project," she said.[45]

Shaw notes "the project is helped by brisk construction elsewhere on the island" for Ellison's projects since "some contractors the health center is working with are already on the small, remote island."[46]

While a new health center would most likely benefit the island's 3,135 residents, this does not seem to be the right time or place to direct federal economic development assistance. Given that it is touted as a tropical and economic paradise, it is bewildering why the flourishing island would need the federal NMTC to access financing opportunities.

With the island's economy now booming, the New Markets Tax Credit program is unnecessarily sinking millions of dollars in federally subsidized financing into the billionaire's island.

The Flipper Tax Credit: Dolphins Dive for Tax Dollars

Dolphins and Hollywood producers are among the unlikely beneficiaries of tens of millions of dollars in NMTC investments intended to benefit struggling neighborhoods in Atlanta, Georgia.

Financing through two NMTC allocations totaling $40 million were sunk into the world's largest aquarium— The Atlanta Aquarium— to expand the AT&T Dolphin Tales exhibit.[47] A Community Development Entity owned by the city of Atlanta, Georgia, received the tax credit allocation, which was then sold to Wells Fargo and SunTrust banks for funding to complete the $120 million project.[48]

The AT&T Dolphin Tales exhibit "includes a soaring, naturally-lit entrance lobby featuring an expansive underwater dolphin viewing window"[49] leading into the theater, which is a "state-of-the-art enclosed facility designed as the perfect backdrop for a spectacular musical theatrical performance highlighting the strong emotional bond between dolphins and human."

NMTC supporters claim this project "added" hundreds of jobs.[50] Some of the jobs created were not in hard hit Atlanta neighbors, but Hollywood. "An original score was recorded by a 61-piece orchestra at

Sony Studios in Hollywood" and "Emmy-winning producers and directors, along with a team of talented individuals from TV, film and Broadway, developed the show."[51] And caring for animals—especially dolphins— is a highly skilled profession requiring years of education in marine mammal veterinary medicine and the aquarium's head veterinarian received compensation totaling $363,035 in 2010.[52]

"There's more impact here than just jobs," Tyrone Rachal, the president of Imagine Downtown Inc, argues. "This is an educational opportunity for families and children in a landlocked city who otherwise might not have the opportunity to learn about marine mammals."[53]

Yet, taxpayers who helped finance the exhibit still must pay a cover charge to see the exhibit. The cost per visitor, regardless of age, is $64.95.[54] This price may be an especially high financial barrier for lower-income families— the intended beneficiaries of this project and the NMTC program.

Lower income families—the intended beneficiaries of New Market Tax Credit—may be deterred from the Atlanta aquariums dolphin encounter by the high admission price of $64.95.

"This fast-paced program lasts 15-minutes and includes approximately 8 to 10-minutes of hands-on interaction with a dolphin."[55] The questionable use of NMTC funding an exhibit at an aquarium has been derided as a "classic bait and switch" operation that "conned" taxpayers. While the location of the project allowed it to technically qualify as a low-income area, nearby condominiums "are selling for as much as 2 million dollars... hardly what the government had in mind when they set the standard of 26% below poverty in order to qualify for the NMTC Program."[56]

The proponents of the project openly admit the tax assistance was not even needed but its availability allowed the popular aquarium to spend money on other projects. "The NMTCs used to support the dolphin exhibit" are "freeing up funds for further aquarium enhancements," notes Tyrone Rachal.[57]

"It's the gift that keeps on giving" Rachal said, admitting the aquarium "could have used conventional financing to develop the dolphin gallery" or relied "on revenue from tickets sales and parking to fund new attractions."[58]

The aquarium, which has attracted the interest in private investors, "would not disclose the monetary value of AT&T's sponsorship." It did disclose "several sponsors were under consideration for the naming rights of the exhibit."[59] Clearly, this project did not need federal financial assistance and is unlikely to have any noticeable benefit for lower-income Americans, who likely cannot even afford to take in the dolphin encounter.

Capital Peak Partners (CPP) helped negotiate the NMTC financing for the project. CPP is a firm that consults other organizations on NMTCs and has "structured and closed over $2 billion of NMTC loans."[60] CPP's new markets experience includes "renewable energy projects, community facilities, mixed use properties, for-sale housing, hotels, retail" and others.[61] The Reznick group, a top twenty accounting firm, also helped structure this NMTC deal.[62]

Monument to Waste Constructed with Tax Credits for a Wellness Center Whose Financial Health is in Critical Condition

A wellness center intended to provide health care to underserved populations is threatening to bankrupt the city of Desert Hot Springs, California. The center may even increase fees or cut services to stay afloat while spending tax assistance on gratuitous sculptures in the desert.

A sculpture in the desert was "paid for with leftover center funds from the U.S. Treasury's New Markets Tax Credit Program" by the Desert Hot Springs Health & Wellness Center, located just north of Palm Springs, California.[63]

A New Market Tax Credit financed the sculpture Dancing in the Wind, a reminder of tax dollars blowing in the wind that might have been better spent by a wellness center for the underserved that may have increase fees, reduce services, or even close its doors due to budget shortfalls.

The sculpture, "Dancing on the Wind," is "made from industrial materials to withstand strong wind conditions in the city while aging gracefully." On the top, "two figures stand on twin peaks — San Jacinto and San Gorgonio — reaching toward the heavens."[64]

"Air moves the piece, while gravity puts it back into place."[65]

The artist "prefers to leave his sculptures open to interpretation."[66]

"I'll leave you to tell me what it means," he said.[67]

Some taxpayers, while appreciating its artistic merits, may still interpret it as a symbol of government waste. The sculpture cost $65,000, according to a local report.[68] While this amount may be a fraction of the overall NMTC, it is enough to pay the salary of a registered nurse for an entire year to care for patients at the Center.[69]

The NMTC was intended to support the Desert Hot Springs Health & Wellness Center "preventive and dental healthcare opportunities to a medically underserved population."[70]

While creating jobs and expanding health care access is a noble goal, sculptures at a Wellness Center is not likely to do much to achieve either goal.

"This major art piece that we have here signifies where we want to go," Mayor Adam Sanchez stated regarding the sculpture. "It's all about health and wellness."

His statement about the taxpayer financed sculpture blowing in the wind may be more accurate than he realized, but for the wrong reasons. The health and wellness of both the city and the center are in critical condition.

Desert Hot Springs is nearing bankruptcy and the Wellness Center is running a deficit. The city cannot sustain the center, according to a financial analysis released in July 2014 by "a state-appointed employment arbitration panel."[71] As a result, the city may be forced to increase user fees or reduce services at the Wellness Center.[72]

"Closure of the" Health & Wellness Center (H&W Center) is "a cost saving option which has been advocated," according to the panel's report. "The City must seriously consider increasing the service fee for its use" and "alternatively, there is the option of some decrease in the amount of services provided," noted panel's report noted.[73]

"However well intentioned the creation of that facility was, and it is without a doubt beneficial to the community, the record makes clear that operation of the H&W Center's current panoply of services at the modest user fees charged is unsustainable," the panel concluded. The annual operation cost of the center in the 2012- 2013 fiscal year "was about $991,000," according to the city, which "revenues to fund it totaled only $811,000." Of this amount, "$700,000 came from the federal government."[74] Additionally, the city previously received a congressional earmark "in excess of $3 million" intended for the facility.[75]

"The longer the H&W Center remains a financial drain on the City's general fund, the greater the deficit will become and the prospect of municipal bankruptcy should not be taken lightly," the panel warned.[76]

Meanwhile the budget shortfall "prompted Desert Hot Springs leaders to launch across-the-board salary cuts" and "discussed whether it was financially prudent to eliminate the police department."[77]

New Markets Tax Credits are intended to create economic opportunities in communities. In this case, poor management of the assistance has had the reverse effect. The project it financed is bankrupting the city, cutting salaries, and possibly eliminating jobs and increasing local taxes. But the sculpture financed through federal assistance remains dancing in the wind, a reminder of tax dollars blowing in the wind that might have been better spent.

Laser-Lighted Water Fountains & Light Cubes in the Nation's Capital

Located in the nation's capital and blocks from the Nationals baseball stadium, Canal Park opened in November 2012 as a "recreation and green space" featuring a restaurant, photographs from local artists as well as "real-time images of visitors to the site"[78] on a "20-by-20-foot light cube."[79] The $26.5 million park project received several different streams of federal funding for its signature attraction, a "10,000-square-foot linear ice skating path."[80]

The skate park will add to several outdoor ice rinks already available for ice skaters in the area, including The National Gallery of Art Sculpture Garden rink, Georgetown's Washington Habour complex ice rink, and several ice rinks in the city's surrounding communities.[81]

In the summer months, the park also features two "laser lighted"[82] water fountains — "one will run year-around while the other contains a series of 40 jets for people to play in during the warmer months."[83] Adorning the path are three stainless steel sculptures, which "are twisted into curved lines that are meant to evoke the motion of water, a tribute to the park's history on the canal."[84]

The $26.5 million Canal Park project was partially funded by a $13.5 million contribution leveraged using NMTCs.[85] In 2000, $2.5 million was awarded to get the project started.[86]

While ice skaters pay $7 to use the Canal Park rink, little do they know they have already spent millions financing its construction.

New Markets, Old Cars

In June 2010, executives in Tacoma, Washington broke ground on a car museum to hold Harold and Nancy LeMay's vintage car collection.

The museum holds about 300 cars from Harold LeMay's collection of over 3,000 cars, which landed him in the Guinness Book of World Records. Nancy LeMay donated $15 million for the museum, which also houses "multimillion-dollar Ferraris, IndyCars and opulent classics from the 1930s and 40s."[87] [88] The classic car museum and U.S. Bancorp benefited from a complicated financing scheme, which allowed U.S. Bancorp to invest "a total of $34 million in cash or loans with development partners, to win $13.3 million in tax credits."[89]

Taxpayers pitched in more than just New Markets subsidies for the museum, which also received a $3.6 million loan agreement through the U.S. Department of Housing and Urban Development's Community Development Block Grant.[90] Local taxpayers helped out too, as the city of Tacoma provided $10.7 million for land and improvements and a $1 million planning grant,[91] while the state gave them another $11 million.[92]

Investors were concerned the company would not qualify for New Markets Tax Credits, and to ensure it did "U.S. Bancorp and its partners set up a related company in 2010 to acquire the assets from the museum and then lease back the property." The new company, America's Car Museum, qualified because a loophole in the rules allows galleries to get New Markets money by using affiliated corporations."[93]

Using a complicated subsidiary structure, U.S. Bancorp profited not only from the tax credit, but by charging large fees, siphoning even more money from the community project. Trammel Crow, a subsidiary of real-estate giant CB Richard Ellis, and U.S. Bancorp crafted the deal and "collected a total of $1.5 million in fees from the project."[94] **One supporter said the museum was shortchanged because the investors were "skimming off the top," and the "investors have been able to rake off these big fees."**[95]

A representative of the Veterans of Foreign Wars hall located "six blocks from the proposed museum, says the federal subsidy is a wasteful public gift to a wealthy family that can afford to finance most of the development."[96]

Holy Tax Boondoggle, Batman!

Box-office hits "The Avengers" and "The Dark Knight Rises" "were the biggest box-office draws" at the Capitol Theatre, a movie complex in Cleveland, Ohio, made possible because of New Markets Tax Credits.[97]

"The Capitol shows a mix of mainstream and independent films and has distinguished itself with special programming: a Sunday-morning classics series, a weekend midnight series, movie marathons and special events."[98] Meanwhile, parents can send their teenage children to these movies while they see "an edgy, NC-17 rated indie, a period piece in French and a true-crime documentary" or "have a cocktail, see a movie, then go to dinner afterward."[99]

Before the Capitol Theatre opened, specialty movie goers had to head east to the Cedar Lee, the Cleveland Institute of Art Cinematheque or the Cleveland Museum of Art to see an independent movie, foreign film or a documentary.[100]

The Capitol Theatre was financed with the support of "New Markets Tax Credits, Ohio's historic tax credits, a loan from city of Cleveland, and grants from the Cleveland Foundation and the Ohio Cultural Facilities Commission."[101]

The NFL Youth Center Intercepts New Markets

JP Morgan Chase invested "$1 million to leverage $4 million in New Markets Tax Credits"[102] in the National Football League (NFL) Youth Education Town legacy center in Indianapolis, Indiana, which was built in preparation for Super Bowl XLVI, held at the new Lucas Oil stadium.

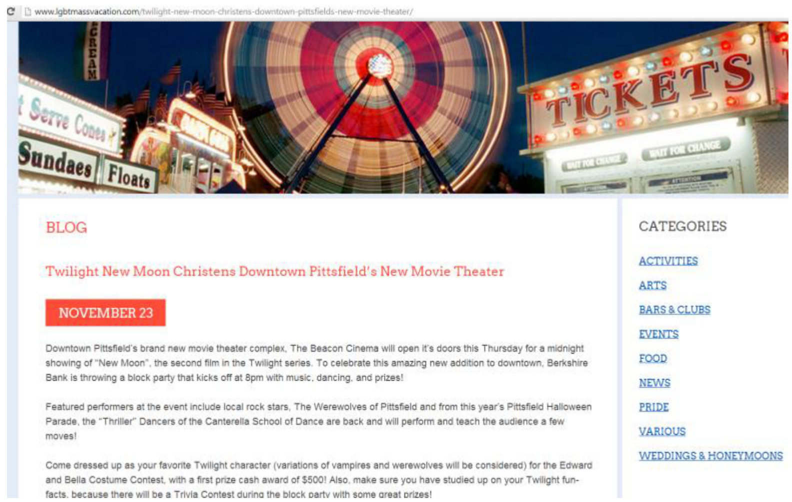
The Chase Near Eastside Legacy Center features a fitness center, basketball courts, locker rooms, a kitchen classroom, and an "NFL-quality practice field and track and a greenhouse."[103]

The center attracted other private investors including the Lily Endowment, United Way of Central Indiana, and the Lumina Foundation.[104] The city also spent "$187 million on infrastructure like bridges, sidewalks, streets and parks."[105] Even with the abundant availability of private and local funding for projects to prepare the city for the Super Bowl, the project was able to utilize federal NMTCs.

Twilight Tax Credits

The six-screen Beacon Cinema Complex opened in time for residents of Pittsfield, Massachusetts to see New Moon, the second movie in the teen Twilight Saga – a box office hit that brought in more than $700 million in profits.[106] The ribbon cutting ceremony for the movie theatre used 35mm film in place of ribbon to signify the theatre's "cutting of the cord" with old technology and embracing digital cinema.

The Colonial Theatre and the Beacon Cinema Complex were both financed through NMTCs. The restoration of the Colonial Theatre in 2006 cost $21 million—$16.7 million of which came through the NMTC.[107]



With the help of NMTC financing, the Beacon Cinema Complex opened in time for local residents to see the second Twilight move, New Moon, on all six screens.

The 823 seat theatre "is a rare architectural gem and one of the greatest acoustical houses in the world."108 In May 2012 the theatre hosted *Greater Tuna*, a "hilarious parody of small town morals and mores."[109] Other performances for the 2012 season include the *Puppetmaster of Lodz*, Sandy Hackett's Rat Pack Show, and the Chinese Golden Dragon Acrobats.[110]

The Pittsfield Beacon Cinema Complex also received historic tax credits, and other state funding grants.[111]

Return to Sender

The city of St. Louis offered $10 million in financing through federal New Markets Tax Credits to a Fortune 500 company, Peabody Energy Corporation, to keep their business where it is, rather than move 10 miles outside of downtown St. Louis. The tax credit would support about $2 million in financing to help renovate the office space for Peabody's local employees.[112]

Peabody chose in 2011 to stay at its location in downtown in St. Louis, and in a grand gesture decided to return those tax credits to the city to be used on other projects. Without the credits, Peabody will expand to "another three floors and will commit $25 million of its own money for building upgrades."[113]

The New Markets Tax Credit was designed to provide subsidies to projects that would not otherwise be economically feasible in low-income areas. Instead, offering $10 million to a Fortune 500 company was an act of corporate welfare that just sweetened a deal that would have been done anyway.[114] After Peabody returned the the federal assistance, the NMTC financing went toward the development of a two-mile long trolley in St. Louis (see next case study).

Streetcar Named No Desire

Clang, clang, clang goes the money for the trolley.

St. Louis received more than $35 million in federal funds for "an old-fashioned style trolley system," on which construction is set to begin in summer 2014.[115] The project received $15 million through two separate NMTC allocations.[116] It also received a $25 million in a federal Urban Circulator grant, a Surface Transportation Program (STP) grant, and a grant from the Congestion Mitigation & Air Quality Improvement (CMAQ) Program. The trolley's total cost of $43 million is almost completely paid for through federal funding.[117]

"Delmar Loop developer said he envisions colorful, retro-style trolleys powered with batteries and overhead wires...people are realizing there's another way to live with a smaller footprint and better lifestyle if you can use mass transit...some ways its back to the future. People look back at that longingly"[118] The Delmar loop gets its name from a streetcar that ran there from the late 1800s until 1966. Certain groups and individuals have been pushing since the 1990s to bring a trolley back to the area.[119] The developer is working on purchasing renovated vintage streetcars to be used for this trolley line.

But not everyone is on board the trolley. Elsie Glickert, a resident and former City Council members, calls the trolley project the "Folly Trolley" and "the Streetcar Named No Desire to Nowhere."[120] Local neighborhood residents share the concerns "on parking, congestion, proximity to residential neighborhoods, interference with emergency vehicles- and the cost."[121] The president of the Historical Society of University City says that she "find[s] it an unconscionable abuse of tax dollars to spend $40 million for a streetcar project."[122]

Dubbed The Streetcar Named No Desire to Nowhere by local residents, an old-fashioned trolley in St. Louis received $15 million in New Markets financing The Streetcar Named No Desire to Nowhere by local residents, an old-fashioned trolley in St. Louis received $15 million in New Markets financing.

For the Birds

In an effort to get rid of the birds that nest on the roof, Cleveland State University Wolstein Center is installing a solar panel roof through New Markets financing.*** Since the building opened in 1991, "thousands of gulls have been nesting in the pea gravel" and an estimated "700 eggs are laid up there each spring."[123] Joe Mosbrook, CSU's spokesman said "the university's facilities staff has tried to deter the birds with nets and grape juice—something gulls are believed to dislike.

Workers also have placed about 100 deterrents that look like spiders with long wires coming out of a center hub."[124]

Dovetail Solar and Wind is removing the gravel and covering "approximately 70% of the roof with solar panels."[125] Dovetail's regional sales manager in Warrensville Heights says that "there are literally thousands [of birds] and we have been dive-bombed when we were up there."[126] The project ran into trouble obtaining financing in 2012, but has since moved forward.[127]

Parked for Tax Credits

The Warburton parking garage in Yonkers, New York was given a boost from taxpayers with $3.5 million in New Markets Tax Credit equity partially financed through Goldman Sachs.[128] Of the 300 new parking spaces, 78 spaces will be reserved for residents of the Warburton Riverview Apartments, which utilized the Low Income Housing Tax Credits.[129]

The Yonkers community was short on parking spaces following a previous project completed in 2012, which also received federal funding.[130] The 2012 projected wiped out the parking spaces in order to build a river walk.[131] Community officials realized patrons still needed a place to park and used financing supported by New Markets Tax Credits to expand the parking garage.

Beer & Cheer for New Markets

With the financial aid of New Markets Tax Credits, the Duluth Heritage Sports Center brought two hockey rinks to the community[132] and the city's Clyde Park project turned an old manufacturing company into a "restaurant and brewery and an entertainment facility."[133] U.S. Bank claimed the New Markets Tax Credits for the Clyde Park project.[134]

From April to mid-September, one of the hockey rinks is covered in turf.[135] The National Football League and the Minnesota Vikings contributed $200,000 for artificial turf for the sports center,[136] suggesting the availability and interest of additional private financing.

***Bowen, William M, "Solar energy market needs certainty, policy enforcement to support investment," Crain's Cleveland Business, August 7, 2012, http://www.crainscleveland.com/article/20120807/BLOGS05/308079994/solar-energy-market-needs-certainty-policy-enforcement-to-support?template=printart

Corporate Welfare: Banking on the Poor

THE NMTC PROGRAM ALLOWS banks and other financial entities to claim a tax credit for investing in businesses in low-income areas. Over the last decade, a niche group of investors, such as banks and hedge funds, have worked with Community Development Entities and projects to maximize their return while maximizing the cost to taxpayers as well. As of 2007, nearly 40 percent of all NMTC claimants were banks or other regulated financial institutions.[137]

Many banks have set up their own CDEs in order to receive tax credit allocations from the Treasury, making them both the recipient of the tax credits and the lender. Many of the top CDEs receiving tax credit allocations are subsidiaries of major banks including Bank of America, JP Morgan Chase, Wachovia (now Wells Fargo), and SunTrust banks (see Appendix I). From 2003 to 2013, Bank of America's CDE was awarded $696 million in tax credit allocation authority,[138] while $450 million went to Chase Bank,[139] $488 million to Wachovia,[140] and $428 million to Sun Trust.[141] In the latest round of NMTC allocations alone, Chase announced it was awarded a $60 million allocation[142] and Sun Trust was awarded a $43 million allocation.[143]

Along with setting up their own CDE's, banks invest in other CDE's, which provide them with tax credits in return for an investment. Investors in the National Development Council, a CDE that has received $486 million in tax credit allocation authority[144] include Citibank, Citizens Bank, Deutsche Bank, Dudley Ventures, JPMorgan Chase, Key Bank, PNC Bank, Sun Trust, Wells Fargo, and U.S. Bank.[145] Enterprise Community Partners, another CDE, has worked with U.S. Bank, Bank of America, JP Morgan Chase, and others on over 55 developments.[146]

U.S. Bancorp Community Development Corporation, part of U.S. Bank, claims to be the "most active New Markets Tax Credit (NMTC) investor in the country."[147] **U.S. Bank has invested more than $4.1 billion in NMTC projects**[148] **and employs at least 24 individuals to work on the bank's NMTC investments.**[149] The 24 jobs at U.S. Bank exceed the number of permanent jobs created in low-income areas by some of the NMTC projects profiled in this report, one of which created only 33 temporary jobs. **It appears the NMTC may have been more effective in creating jobs for Wall Street bankers and tax lawyers than for those looking for work on Main Street.**

Although U.S. Bank claims to be the largest investor in NMTCs, other big banks are taking advantage of the program as well. JP Morgan Chase has received at least $480 million in NMTC allocations and has invested in "nearly $3.7 billion of NMTC authority allocated" to other CDEs.[150]

Despite the purpose of the tax credit being to leverage *private* investment, a new report by the Government Accountability Office (GAO) found a majority of NMTC projects utilize more than one source of public funding.[151] Further, GAO found that through a process of "twinning," investors are able to claim the New Markets Tax Credit on the equity raised through other federal funding sources—such as historic tax credits, Recovery Zone bonds and qualified school construction bonds. **In these cases, corporations and investors are claiming federal New Markets Tax Credits based on a value much higher than the amount of their own money invested in a project.**[152]

GAO's latest report shows just one example of how a bank can structure a NMTC investment to claim $1.2 million in NMTC, even after investing less than half the amount:

> *"Some evidence suggests that some investors may receive returns that are above-market returns and therefore more than the necessary subsidy required to attract the funds.* ***In a case study reported by the Urban Institute, an investor appeared to put in about $500,000 of NMTC equity to claim $1.2 million of NMTCs representing a return of about 26 percent compounded annually.*** *The NMTC was leveraged entirely with $2.5 million of federal and state [Historic Tax Credits] HTCs without use of a conventional leveraged loan in the NMTC structure. As a result, 83% of the qualified equity investment on which investors are claiming NMTCs is provided by other federal and state tax credit programs."*[153]

The "twinning" structure that allows banks to get an abnormally high rate of return was discussed at a 2007 conference on federal Historic Tax Credits,[154] and has since been used by several CDEs and banks.

New Markets are not only a great deal for big banks and hedge funds, but the increasing complexity of NMTC investments has benefited lawyers and accountants involved in the transactions. **From 2011 to 2012, fees charged by New Markets middlemen siphoned at least $619 million away from the investment intended for low-income businesses.**[155] GAO also pointed to evidence that in transactions with relatively low fees, the low fees may be offset by higher interest rates.[156] However, "a lack of transparency makes it hard to readily determine how much of the NMTC investment is being reduced and by what means."[157]

WARNING: "Complex issues can arise when using this innovative program, as such, it is important to consult with a tax advisor when getting into this area." – Novogradac New Markets Tax Credit Resource Center[158]

US Banks on New Markets Tax Credits

U.S. Bank and developer McCormack Baron Salazar (MBS) joined together to install solar panels on low-income housing communities throughout California, using the New Markets Tax Credits program to finance them.

With a combination of federal and state funding, the project created 33 temporary jobs158 for individuals who had graduated from a federally funded workforce training program.[159] The real beneficiaries of this project were the lawyers who designed the project's convoluted financing structure and U.S. Bank, which claimed New Markets Tax Credits for *more than their actual private investment*.

U.S. Bank, one of the nation's largest commercial banks and the largest NMTC investor, used a "twinned" tax credit financing structure, which allowed the financial giant to claim both the New Markets Tax Credits and the Section 1603 investment tax credits.[160] The bank contributed funding that equaled the amount of solar rebates the project was set to receive through California's Solar Initiative's Multi-family Affordable Solar Housing program, which allowed U.S. Bank to claim a tax credit on money that was ultimately provided by the *state* program – not their own private investment.

This "twinned" structure, which has increased in popularity in recent years and is highlighted in GAO's latest report,[161] **allows investors such as U.S. Bank to claim a federal tax credit on equity provided by other federal or state grants and tax credits, and evade rules intended to ensure the use of NMTC only for qualified low-income businesses. This runs contrary to the purpose of the**

New Markets Tax Credit, which is designed to incent *private sector* investment.

In addition to NMTC, the investment deal included the use of other federal tax credits and California's Multifamily Affordable Solar Housing (MASH) program incentives.[162]

Although NMTC and Low Income Housing Tax Credits (LIHTC) cannot be combined, the developer (MBS) was able to use federal LIHTC and federal HOPE VI grants to develop the affordable-housing communities that received the solar panels in 2010.[163]

US Banks on New Markets Tax Credits, Again

Using a creative web of financial transactions, the Crown Square mixed-use development in St. Louis was built using New Markets Tax Credits as well as other government subsidies, including federal and state historic tax credits, federal Community Development Block Grant funding, and a federal transportation grant.[164] Despite millions of dollars in government help, the area remains nearly empty.

The NMTC allocations were provided by Enterprise Community Investment and McCormack Baron Salazar, and the tax credits were claimed by U.S. Bank CDC.[165]

The Crown Square development is one portion of a larger redevelopment plan for the 14th Street Pedestrian Mall. Another component of the redevelopment "consists of 42 units of affordable housing financed through tax-exempt bonds (and related four percent Low Income Housing Tax Credit), historic tax credits and other subsidies."[166] Despite the $35 million that went into redeveloping the area, "many buildings in Crown Square remain ghostly vacant."[167] In 2012, two years after the project was completed, 60 percent of the commercial property was still unused.[168] The developers expected Crown Candy Kitchen to attract visitors to the area, but getting people to stay for longer than a lunch break has been difficult.[169]

While residents of St. Louis may not have benefited from redeveloping an area that remains largely empty, U.S. Bank was able to rake in the tax credits.

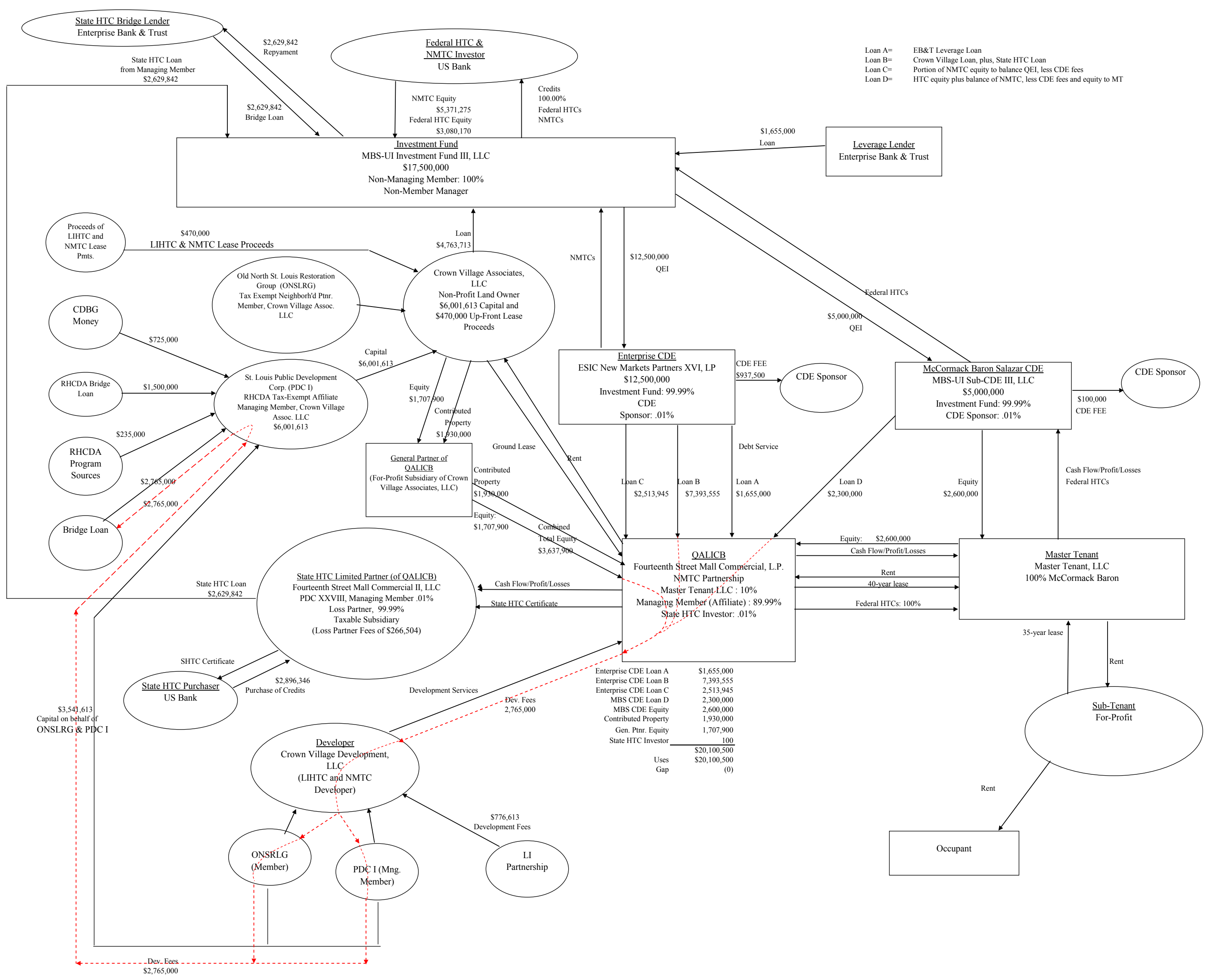
This picture on the next page, taken from a presentation on "twinning," displays the complicated financing structure that allowed U.S. Bank to maximize the amount of tax credits it could claim, while also maximizing the cost to taxpayers.[170] This complex arrangement is typical of many NMTC projects.

Goldman's Sachs and Magic Johnson Team Up

One Santa Fe, a $160 million development project in Los Angeles, received loans financed by New Markets Tax Credits, federal Low Income Housing Tax Credits, tax-exempt bonds issued by the California Housing Finance Agency and guaranteed by the U.S. Department of Housing and Urban Development, and loans from the city of Los Angeles Housing Department.[171]

The project is also receiving funding from former L.A. Lakers basketball superstar, Magic Johnson, whose business development venture has "approximately $18.5 billion in assets under management."[172 173]

When finished, One Santa Fe will be a six-story building with 438 housing units, 78,000 square feet of retail and commercial space, including a 15,000-square-foot grocery store, and a 3,000-square-foot



This flow chart, taken from a presentation on "twinning" displays the complicated financing structure that allows banks and investors to combine other sources of public funding in order to maximize the amount of the tax credit they claim.

L.A. Lakers basketball superstar. Magic Johnson, teamed up with Goldman Sachs to help fund a $160 million development in Los Angeles that received New Markets Tax Credits, federal Low Income Housing Tax Credits, and millions of dollars in funds from other public sources.

space to be used rent-free by one or more community organizations that are involved with the arts.[174] It will also include a 47,400-square-foot plaza and 802 parking spaces.[175] Eighty-eight of the housing units will be subsidized and are aimed at artists. The studios will start at 431 square feet.[176]

The project, "designed by famed Los Angeles architect Michael Maltzan...is currently planned to feature an outdoor terrace that provides views of downtown and the river, along with a grocery store, additional retail, an art gallery, [and] a multi-use theater and a garden on the ground floor."[177]

Goldman Sachs, a major investor and consultant in the project was "very proud to be involved in One Santa Fe as it serves as a model for mixed-income and transit-oriented development in emerging urban markets. This project was conceived over five years ago and has at last become a reality thanks to the long-standing commitment and determination of a strong group of public and private partners who were dedicated to revitalizing the Arts District with this significant mixed-use project."[178]

Children's Museum Refinances Debt

Although New Markets Tax Credits are supposed to be used for economic development, in 2011, the Madison Children's Museum refinanced its debt through a NMTC investment. U.S. Bank claimed a New Markets Tax Credit by working with the museum to help reduce its debt by about $1 million, allowing the museum to "free up cash flow."[179] The museum project was initially funded through private donations and a $1.5 million loan taken out in 2009.[180]

Although NMTC is intended to spur development in low-income areas and provide financing for projects that would not other be possible, this NMTC investment simply allowed the museum to lower its debt interest rate while giving U.S. Bank a generous tax break.

Sachs' Studio

My Image Studios (MIST) in Harlem, New York, a commercial arts center was built through the help of a $21 million New Markets Tax Credit allocation.[181] The federal tax credits were claimed by Goldman Sachs.[182] The project official hoped to obtain stimulus funding, but when that fell through, the project instead used NMTC.[183]

The 13,000 square-foot building features three theatres for "multicultural music, dance, independent films, spoken word and theatrical performances" as well as a restaurant and bar.[184]

The New York Times reports "My Image was a hard sell when the owners sought assistance because of the various endeavors involved"[185] and "one bank suggested that they use the 20,000 square-foot space for something a bit more sensible, say renting it to a drugstore."[186] In the end, MIST was able to convince BRP Community Development to allocate $21 million in federal NMTCs, which allowed the commercial arts center to move forward.[187]

Advocates of the NMTC claim the program helps spur investment in distressed areas that cannot otherwise access private capital. However, this example highlights another project, like a drugstore, could have drawn private capital, development, and new jobs to that location. It was only the specific project that failed to gather support from private investors, and as a result turned to federal stimulus funding and then NMTCs to finance the project.

Five Star Hotels

New Markets Tax Credits' corporate welfare extends beyond private investors and into many of the local projects financed through the program. Leveraged loans provided by investors receiving NMTC have been used to prop up business developments to make room for major companies such as Starbucks, Target, and IHOP. In other cases, the credits have been used to finance expansions for private sector businesses, such as Chobani Yogurt, or to renovate luxury hotels.

The Big Splash Hotel and Water Park | French Lick, Indiana

The program is propping up hundreds of hotels across the country and in a five year span, nearly $1 billion in New Markets Tax Credit allocation authority was awarded for the construction or renovation of over 100 hotels across the country.[188] The hotels include an Embassy Suites, a Sheraton, the Big Splash hotel and waterpark in Indiana, as well as the historic hotels Blackstone Marriott in Chicago, the Skirvin Hilton in Oklahoma City, the Chancellor Hilton in Fayetteville, Arkansas, and The Nines in Portland, Oregon.

In February 2011, Bloomberg reported on these occurrences of investors using the New Markets Tax Credit "to help build more than 300 upscale projects, including hotels…on streets far from poverty" that have benefited "some of the world's biggest financial companies, including Goldman Sachs Group, Inc., U.S. Bancorp, JPMorgan Chase and Prudential" costing taxpayers $10.1 billion.[189]

Cliff Kellogg, "a former senior policy adviser at the Treasury Department who helped design New Markets" said that "building high-end commercial projects goes against the intent of the New Markets program…things like luxury hotels are entirely contrary to what we set out to do."[190] Prudential, the second largest U.S. life insurer, "invested $9.3 million and made $30.4 million in loans…[but] collected $15.6 million in credits" for the Blackstone Hotel renovation.[191]

Top Gun Tax Credit

The San Diego hotel where Top Gun pilot Maverick serenaded Charlie with “You’ve Lost that Loving Feeling,”[192] received a makeover at taxpayers’ expense.[193]

Taxpayers aren’t feeling the love after losing millions of dollars in revenue to New Markets Tax Credits that were purchased by US Bancorp from Clearinghouse CDFI and Borders Community Capital Company.[194]

The Lafayette Hotel & Suites, which also features an “Olympic-sized pool designed by “Tarzan” actor Johnny Weissmuller, received a $25 million New Market Tax Credit allocation, federal historic tax credits, a Section 1603 cash grant, and rebates for fuel cells.[195] The state of California also kicked in an energy rebate through the California Center for Sustainable Energy Self-Generation Incentive Program.[196]

Hotel developers used the ClearEdge Power’s fuel cells technology in order to qualify for renewable energy tax credits as well as preserve the historical structure of the building so that it also qualified for a federal historic tax credit.[197]

ClearEdge also boasted “by complying with historic preservation guidelines and helping The Lafayette Hotel became the first Energy Star historic hotel in the region. The ClearEdge system also served as one of the supporting measure[s] for the hotel’s application for the New Market Tax Credit and Historic Rehabilitation Tax Credit programs that partially financed the renovation project.”[198]

Chicago’s Historic Blackstone Hotel

The Blackstone Hotel in Chicago, owned by Marriott, reopened in 2008 after $116 million in renovations of which $15.6 million was financed through NMTC.[199] The historic hotel “has lured sports legends, royalty, presidents, and movie stars since 1910, and its exquisitely renovated neoclassical Beaux-Arts architecture lends this legendary landmark and air of distinction and magnificence.”[200] Some of its prominent guests include Spencer Tracy, Katharine Hepburn, Betty Davis, Tennessee Williams as well as members of the Rockefeller and Vanderbilt families.[201]

The area has a poverty rate among families of 3.9 percent[202] and hotel rooms with a view of Lake Michigan can cost up to $699 per night.[203] With nightly lodging costing more than twice a week’s pay at an Illinois minimum wage job a night, the area’s lower-income residents would likely be unable to enjoy a stay at the hotel.

The Blackstone Hotel | Chicago, Illinois

Meanwhile, the government aid is giving a financial advantage to the owners of the Blackstone Hotel to compete with other lodging establishments already operating in the area. There are more than 70 hotels in the area, including the Wheeler Mansion, the Hilton Chicago, and Ivy Boutique Hotel[xii] Drive another five minutes and the number of lodging options includes nearly 50 hotels and inns.[xiii]

Portland, Oregon's The Nines

Since the opening of The Nines, the lavish hotel and convention center has had a tough time staying afloat. The 331-room hotel in downtown Portland was financed through $16.9 million in loans from the city, as well as historic tax credits and New Markets Tax Credits through financial giants JP Morgan Chase and Prudential.[204] Prudential raked in $27.3 million in New Markets Tax Credits through The Nines and the Blackstone hotel projects.[205]

The hotel was expected to rent rooms for $250 per night but The Nines now rents rooms for $99 forcing competitors to offer steep discounts on their own rooms "starting a downward spiral that slashed their revenues by 20 to 40 percent."[206]

In March of 2009 the developer of The Nines hotel stopped making loan payments and "hasn't paid the city a dime since, even as the economy and hotel business has strengthened."[207]

Jeff Manning, a writer for the Oregonian, says "The Nines sets off the same debate of political favoritism and unintended consequences as Oregon's generous Business Energy Tax Credits and the U.S. Energy Department's backing of failed solar operation, Solyndra."[208]

New Markets for Commercial Real Estate

In Cleveland, "the largest open air mall in the country" was built with the help of New Markets Tax Credits.[209] The $90 million project used $30 million in low-interest loans that were subsidized by the New Markets program.[210]

That investment will allow the investors to claim $12.48 million in tax credits.[211] Tenants include Target, Wal-Mart, Home Depot, Staples, Marshalls, Old Navy, Radio Shack, Starbucks, Chipotle, Applebees, and IHOP.[212]

One representative of the United Food and Commercial Workers, Local 880 which represents workers at area supermarkets said that "public funds are being used in this project, and this is not a good use of taxpayer money."[213]

In 2010, GAO reported about 65 percent of NMTC loans and investments went toward commercial real estate projects, like this outdoor mall, and only 22 percent of NMTC investments went toward financing low-income businesses.[214] GAO found NMTC investments in commercial real estate were likely popular because it is more profitable and "can often be more easily paired with other federal, state, and local tax incentives."[215]

Goldman Sachs and Greek Yogurt

Chobani, a Greek yogurt company, expanded its plant in New Berlin, New York, and received "$18 million in federal New Markets Tax Credits to help with the purchase and installation of new machinery and equipment to meet consumer demand."[216] Goldman Sachs claimed the tax credits,[217] the state of New York also "chipped in $16 million in state incentives for the Chobani expansion."[218]

In addition to expanding its New Berlin plant, Chobani also built a facility in Twins Falls, Idaho.

A market analysis report by Citigroup Global Markets showed the Chobani had $1 billion in annual sales and has 53 percent of the Greek yogurt market.[219] The rapid expansion and success of the company in order to meet consumer demand demonstrates Chobani does not need federal handouts to

Duplication and Double Dipping

> ***The Office of Management and Budget also admitted the goal of the NMTC overlaps several other tax credits and numerous programs administered by the Departments of Housing and Urban Development and Commerce.***

In a Februrary 2012 report, the Government Accountability Office "identified 23 community development tax expenditures available in fiscal year 2010...five ($1.5 billion) targeted economically distressed areas, and nine ($8.7 billion) supported specific activities such as rehabilitating structures for business use."[220] Each of the tax expenditures overlaps at least one other tax expenditure.[221]

In addition, more than 80 similar programs funded through the Departments of Commerce, Housing and Urban Development, and Agriculutre as well as Small Business Administration target "economic development," according to a March 2011 report.[222] These 80 programs, of which 28 are specifically designed to spur growth in new markets, received a combined $6.5 billion in federal funding in 2010.[223]

The Office of Management and Budget also admitted the goal of the NMTC overlaps several other tax credits and numerous programs administered by the Departments of Housing and Urban Development and Commerce.[224]

Along with the duplication of government programs and tax expenditures, businesses have combined the NMTC with other sources of federal funding for specific projects, such as the historic preservation tax credit, renewable energy tax incentives, Brownfield Economic Development Grants, Department of Transportation funding, stimulus funding, earmarks, and HUD funding. Several states also offer their own NMTC programs that can be combined with federal new markets tax credits and other sources of federal and state funding.

GAO's latest report on the NMTC program revealed:

- 62 percent of NMTC projects received other public funding in 2010-2012 (funds from federal, state or local public sources);
- 33 percent of NMTC projects received other federal funding; and
- 21 percent of NMTC projects received funding from multiple other government programs.[225]

With so many programs that are making billions of dollars available, NMTC is not serving a unique role and has instead become just another form of corporate welfare. The intent of the program was to encourage private investments in low-income projects that would not happen without this incentive. Instead, the alarming number of projects using multiple sources of government funding—double dipping—displays that the federal government is not equipped to determine which projects truly need help and which are simply trying to snag more money out of the government grab bag.

Treasury regulations prohibit combining Low Income Housing Tax Credits with NMTCs. However, the restriction can be circumvented by using the credits in separate transactions or for different sections of a project, such as a shopping center with apartments above the shops like those mentioned in the "Corporate Welfare" section of this report.[226]

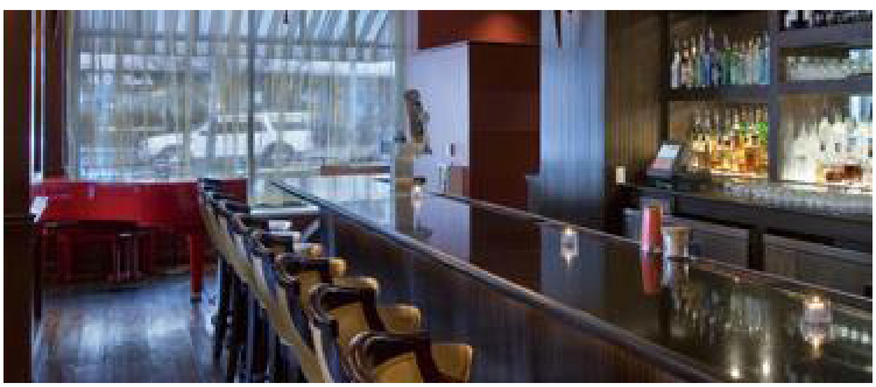
The Skirvin Hilton in Oklahoma City

Located in downtown Oklahoma City, the historic Skirvin Hilton Hotel was renovated in 2007, financed in part with a $23 million New Markets Tax Credits loan.

The luxury hotel, known for its signature Red Piano Lounge, "has been synonymous with elegance and innovation hosting oil barons, dignitaries, political leaders and presidents."[227]

With some rooms costing more than $300 per night, it is unlikely any of the area's less-fortunate residents will be able to spend the night at the Skirvin. Yet part of their tax bill went to pay for the $55 million project, which received at least $18 million in government funding.[228] In addition to NMTC loans, the hotel collected federal and state historic tax credits, a Section 108 Department of Housing and Urban Development (HUD) loan, a federal Economic Development Initiative grant, and a Brownfield loan.[229]

Two subsidiaries of Cleveland's Evergreen Cooperatives, Evergreen Cooperative Laundry and Ohio



The historic Skirvin Hotel, located in downtown Oklahoma CIty, known for its red piano lounge, was renovated in 2007, financed in part with New Markets Tax Credit financing.

Solar Cooperate utilized New Markets Tax Credits in combination with other sources of federal funding.[230]

According to a profile on the project, it was a rare success the NMTC was used for this for-profit laundry business, "Securing the NMTC also represented quite a coup for Evergreen, given the tight credit market in which the deal was transacted, the startup nature of the business, and the fact that NMTCs are rarely allocated to commercial entities."[231]

Another subsidiary of Cleveland's Evergreen Cooperatives, Green City Growers, opened a greenhouse which "is currently producing Bibb lettuce, green leaf lettuce, gourmet lettuces and basil," with the help of New Markets.[232] The produce will be sold to grocery stores, institutions, distributors, and consumers, who will have the option of buying locally rather than purchasing produce shipped from California or elsewhere.

The total project cost $23 million and secured $4.7 million in New Markets Tax Credit equity, $2 million in HUD Brownfield Economic Development Initiative Grant, and brought in $8 million in HUD Section 108 funding.[233] The greenhouse also received grants from the city.[234]

In this case, Cleveland city officials highlighted the project as a great example of how the city can combine HUD 108 and New Market Tax Credits. In a presentation, city officials noted that most of the city is an eligible area for NMTC and that "HUD 108 has allowed many urban communities to fund larger NMTC projects."[235]

Ethanol Company Benefits From NMTC, Then Files for Bankruptcy

In 2006, Otter Tail Ag Enterprises, LLC, received $20 million in New Markets Tax Credit investments to help build an ethanol plan in Fergus Falls, Minnesota.[236] Three years later, the company filed for bankruptcy and the plant was acquired by another company during the bankruptcy court proceedings.[237]

The plant began producing ethanol in March 2008 and generated 110 million gallons of ethanol over the two years.[238] But by 2009, the company Ottertail Ag Enterprises was in financial trouble, recording an operating loss of $22 million for the first three quarters of FY 2009.[239] The plant filed for Chapter 11 bankruptcy in October 2009.[240] Green Plains Renewable Energy, the only bidder, then bought Otter Tail Ag Enterprises LLC plant for $55 million.[241]

The plant also received AgSTAR financing from the EPA, waste treatment bonds, and county bonds.[242]

Bella Energy's Solar Panels

Despite the county's low energy prices, in 2012, NMTCs were used to install solar panels on the top of the Salt Palace Convention Center in Salt Lake City, Utah.[243] The solar panels ended up costing more than the amount in energy savings. For a cost of $6.6 million the solar panels will save Salt Lake County $2.4 million after 25 years.[244]

According to the Department of Energy's Technical Assistance blog, the project was not about reducing energy costs for the residents of Utah, it was about promoting renewable energy.[245] And for the goal of promoting renewable energy, the project also received "four separate components of federal grants, including stimulus funds and $1.9 million in county energy bonds"[246] and a federal Solar Investment Tax Credit.[247]

Due to scarce financial resources for the project and because "power prices in Utah tend to be extremely low" the project found that government funding would be the only way to get the project done.[248]

George Washington Wyndham Hotel

The historic George Washington Wyndham Hotel in Winchester, Virginia, another beneficiary of the New Market Tax Credit program completed $20.5 million in renovations in April 2008.[249] The hotel also benefitted from about $10 million in state and federal historic tax credits, partial real estate tax exemption, and an Economic Development Administration business development grant.[250]

With help from the NMTC, the hotel boasts of completely renovated guestrooms and suites with flat-screen plasma TVs, "lovely hardwood furniture, crisp 100% cotton bedding, and marble surfaces in the bathroom" that give the hotel a "boutique hotel experience."[251] Guests of the hotel can also enjoy a meal "made with the freshest local ingredients" or sample creamy homemade ice cream at their restaurant, The Dancing Goat, or listen to live music at the Half Note.[252]

Luxury Lafayette Place Lofts

The luxury Lafayette apartments are targeted for "moderate to upper income 'Urban Pioneer' singles and couples"[253] and feature "exposed brick walls, vintage hardwood floors, open

floor plans, historic large pane windows, granite countertops, upgraded stainless steel appliances, and brushed nickel fixtures."[254] To create the new complex, a former Sears department store in Michigan was converted into a joint venture residential building that included a market and an Anytime Fitness Center.[255]

The $19.8 million project received multiple sources of government funding, including through New Markets Tax Credits in partnership with U.S. Bank. The developer also received federal historic tax credit equity, funding through Neighborhood Stabilization Program 2 Loan, state of Michigan Brownfield Tax Credit equity, and state of Michigan Historic Tax Credit equity.[256]

Evaluating the New Market Tax Credits

THE TREASURY DEPARTMENT PROVIDES sporadic data and total NMTC allocation amounts online. The Department has, however, largely failed to establish a set of criteria for determining and measuring the program's ability to meet the true economic needs of low-income communities.

In a series of ongoing reports over the last decade, GAO studied the New Markets Tax Credit extensively, evaluating its effectiveness and providing recommendations for programmatic improvements. GAO has recommended better data collection for program integrity monitoring, the addition of audits to its compliance structure, and even converting the subsidy from tax credit into a grant program.

In the first review over 10 years ago, GAO already took note of management challenges, "Even so, the agencies have not established schedules or documented plans for ensuring that compliance monitoring processes will be in place when needed."[257]

In a 2007 report, GAO followed up on Treasury's implementation of compliance monitoring, acknowledging that although the CDFI Fund had developed a process, it did "not cover the full range of NMTC transactions, focusing instead on transactions that were readily available, and may not support the best decisions about enforcement in the future." GAO also found the IRS was not collecting the data needed to verify and identify program participants.[258]

In a third review in 2010, GAO reiterated that the IRS and CDFI Fund were not collecting the data needed to measure the subsidy directed to businesses, the information on fees charged and financial transactions when the companies sell the credits, or how much equity is left as the investment for the project.[259] In addition, it was unclear whether the projects actually needed the NMTC or if they could have used alternative sources of financing.[260]

aGAO's most recent report, released in August 2014, included several recommendations for the CDFI Fund to "limit the risk of unnecessary duplication at the project level in funding or assistance from government programs and to limit above market rates of return, i.e. returns that are not commensurate with the NMTC investor's risk," and clarify if NMTC can be combined with other government funding to be used as leverage for claiming new markets tax credits.[261]

These four GAO reports demonstrate over the lifetime of the New Markets Tax Credit, the CDFI has not collected the necessary data for congressional oversight of the program. Not enough information exists to ensure the tax credit is effectively creating jobs in low-income communities.

Recommendations and Options for Reform

THE NEW MARKETS TAX Credit is poorly designed, duplicative of more than 100 similar federal programs and tax credits, and has become a goodie bag for big banks and corporate America at the expense of the taxpayers. There is little evidence it has succeeded in its intended purpose of creating new markets in distressed areas to foster economic opportunities.

Congress should let the New Markets Tax Credit expire and focus its efforts on creating a fair and equitable tax code that will generate economic growth and opportunity for every American, not just the well connected. Will McBride, chief economist at The Tax Foundation "listed the New Markets Tax Credit as among the tax extenders that should be allowed to expire, describing it and many of the green energy tax items as programs used primarily by special interests."[262]

If Congress does extend the credit, a number of reforms could be considered, including increased data collection and transparency requirements. Recipients of New Markets Tax Credits should be included in USA Spending, as the program is spending through the tax code and these entities receive a direct government subsidy. Further, as GAO's latest report reveals, insufficient data collection by the Treasury Department means taxpayers, lawmakers, and even program beneficiaries do not have access to important details about the program's effectiveness, including how much fees, transactions costs, and interest rates reduce the amount of the investment made into low-income communities.

The New Markets Tax Credit is not a permanent provision of the tax code, yet Congress routinely reauthorizes the program. Congress should no longer provide these tax credits to some of the country's biggest banks and corporations and allow the tax credit to expire. Without further authorizations from Congress, existing NMTC projects would move forward, and the previous years' allocations will continue to fund new projects while the available credit winds down.

Appendix I

Major Recipients of New Markets Tax Credits[263]

Private investors are claiming more than $1 billion a year in NMTC,[264] and as of 2007, nearly 40 percent of all NMTC claimants were banks or other regulated financial institutions.[265]

These five banks are among the top recipients of the tax credit.

(1) U.S. Bank[266]

(2) Goldman Sachs[267]

(3) JP Morgan Chase[268]

(4) Bank of America[269]

(5) Wells Fargo[270]

Major CDE's Receiving Tax Credit Allocations

(1) Local Initiatives Support Corporation (New York, NY)- $753 million in allocations from 2002-2013[271]

(2) Banc of America CDE (Washington, DC)- $696 million in allocations from 2003-2013[272]

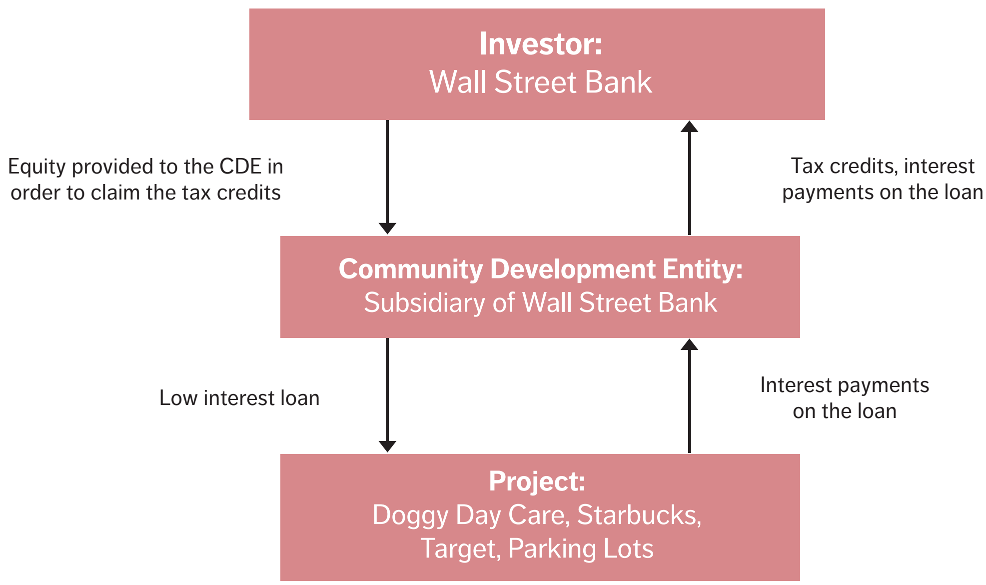
(3) Chase New Markets Corporation and Chase CDE (New York, NY)- $540 million from 2005-2013[273]

(4) Wachovia CDE (Charlotte, NC)- $488 million in allocations from 2002-2007[274]

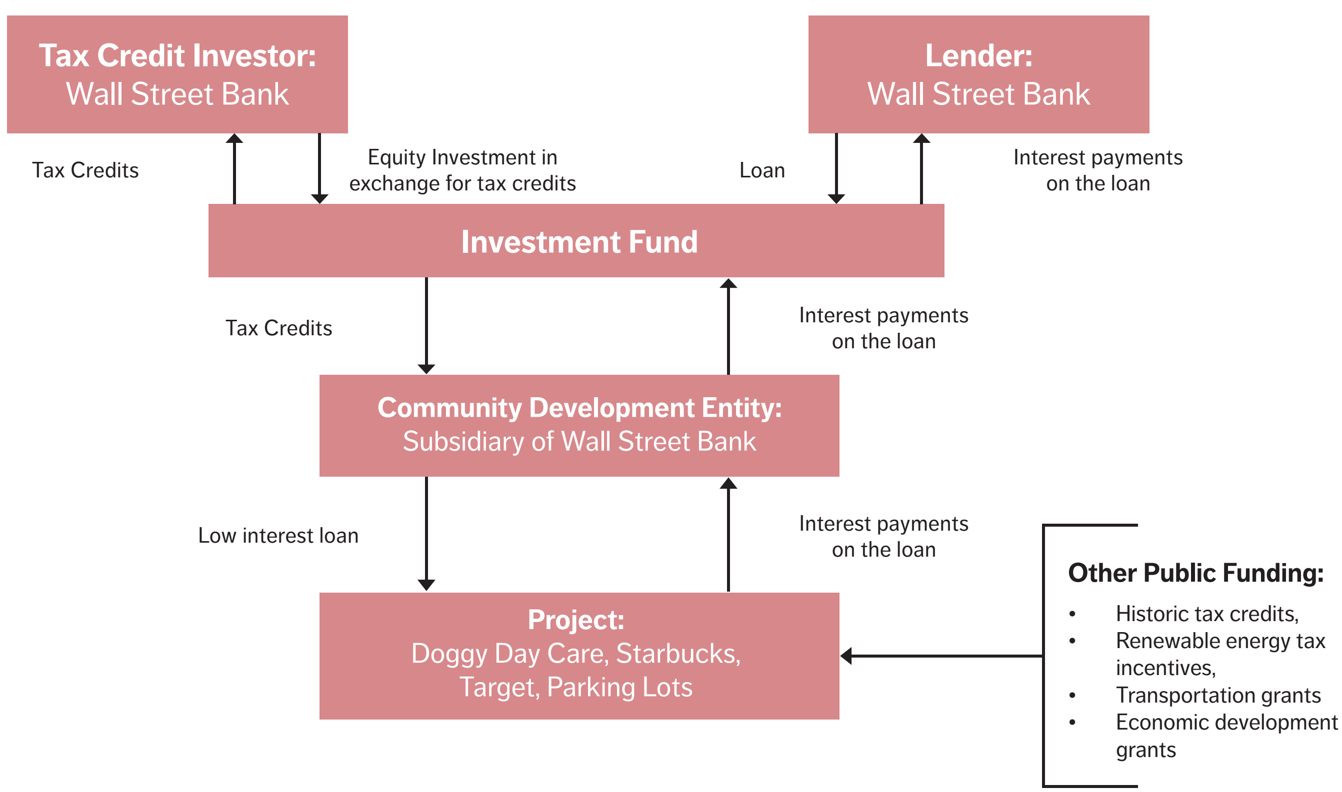
(5) Sun Trust CDE (Atlanta, GA)- $428 million in allocations from 2005-2013[275]

Appendix II

Basic New Markets Tax Credits Investment Structure



Leveraged New Markets Tax Credits Investment Structure



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