

NEW MARKETS TAX CREDIT WORKING GROUP, BRAD ELPHICK

Proposal and Comment Information

Title: Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations, R-1887

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Submitter Information

Organization Name: New Markets Tax Credit Working Group

Organization Type: Organization

Name: Brad Elphick

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Comments attached from the Novogradac NMTC Working Group on Regulatory Capital Rule: Proposed Revisions to the Risk-Based Capital Framework for Category I and II Banking Organizations and Modifications to the Standardized Approach for Credit Risk



June 18, 2026

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Submitted via [Regulations.gov](https://www.regulations.gov), [federalreserve.gov/apps/proposals](https://www.federalreserve.gov/apps/proposals), comments@FDIC.gov

Re: Regulatory Capital Rule: Proposed Revisions to the Risk-Based Capital Framework for Category I and II Banking Organizations and Modifications to the Standardized Approach for Credit Risk

Dear Sir/Madam:

On behalf of the New Markets Tax Credit (“NMTC”) Working Group, we respectfully submit these comment on the notices of proposed rulemaking (NPRs) issued by the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (jointly, the Agencies). The NPRs consist of (i) proposed revisions to the risk-based capital framework for Category I and II banking organizations (Basel III proposed regulations) and (ii) proposed modifications to the standardized approach for credit risk applicable to other banking organizations (the Standardized Approach Proposed Regulations, and together with the Basel III proposed regulations, the Proposals). The goal of the NMTC Working Group is to help strengthen the effectiveness and administration of the NMTC program so it can continue delivering meaningful benefits to qualified businesses in low-income communities across the country. The NMTC Working Group is composed of more than 120 organizations from across the industry, including allocatees, nonprofit and for-profit community development entities (“CDEs”), consultants, investors, accountants, and lawyers, who collaborate to address technical program issues and identify practical opportunities for improvement.



On March 19, 2026, the Agencies published the proposed regulations as the final phase of the financial regulatory reforms initiated by the international Basel Committee on Banking Supervision in response to the global financial crisis. The proposed regulations follow the Agencies' July 2023 notice of proposed rulemaking (2023 Proposal), which was withdrawn after widespread opposition from members of Congress, the banking industry, the clean energy community and several Federal Reserve Governors.

While the proposed regulations will have a far-reaching impact on banking and finance in general, they do not propose to change the bank capital treatment of the NMTC, a crucial and highly successful federal community development finance incentive for low-income communities nationwide. Ever since its enactment in 2000 under Internal Revenue Code (IRC) section 45D, and with the incentive provided by the Community Reinvestment Act, banks have made billions of dollars of investments in NMTCs, providing impactful private investment in low-income communities nationwide. Since 2003, the NMTC has provided \$91 billion in total allocation authority, more than \$80 billion in qualified equity investment (QEI) and has created or retained nearly 1 million jobs, according to the U.S. Department of the Treasury. The more than \$80 billion in QEI investment has generated nearly \$140 billion in total investment in distressed urban, suburban and rural communities through more than 8,000 projects, which include nearly 5,000 federally qualified health care centers, nonprofits, and community facilities constructed or improved, as well as more than 2,000 investments to expand domestic manufacturing business in both urban and rural areas, according to the NMTC Coalition. It has also supported the construction of more than 268.3 million square feet of commercial real estate, of which 92.6 million square feet was for manufacturing facilities, 108.6 million square feet was for office buildings, and 67.1 million square feet was retail space, according to Treasury. In July 2025, Congress voiced its continued support for increased NMTC investment by permanently extending it at \$5 billion in annual NMTC allocation authority.

Under the Basel-based capital framework, equity exposures generally are risk-weighted under the simple risk-weight approach (SRWA). An equity exposure qualifying as a community development investment under Section 24 (Eleventh) of the National Bank Act receives a 100% risk weight. The proposed regulations maintain this same risk rating for NMTCs and other public welfare equity investments. We believe that the decision to maintain this risk rating is not appropriately addressing the low risk profile and the public policy objectives of incentivizing public welfare investments that were made permanent by Congress last year. By contrast, the SRWA assigns only a 20% risk weight to equity exposures to public sector entities (PSEs), reflecting the public purpose, governmental involvement, and historically observed credit performance of those exposures.

In recognition of the strong performance of NMTCs, and the importance of supporting robust community development investment in low-income communities, **the NMTC Working Group urges the Agencies to change the 100% risk weight for NMTC equity investments to as low as 20% but no more than 50%.** This threshold is consistent with what is available to other similar investments, more accurately reflects the risks of NMTC investments, and would encourage investment in community development for low-income communities. The current proposed risk weight of 100% for NMTC equity investments fails to incorporate both the low risk of NMTC equity investments and the underlying policy incentives. Lending is generally perceived as a safer activity than equity investment due to lending's repayment priority over

equity, and this perception is reflected in the overall risk ratings contained in the proposed regulations. However, NMTC equity exposures are uniquely secure, as evidenced by the program's nonexistent recapture rates and generally shorter risk duration. The current 100% risk weight treats tax-credit-driven, public-purpose investments as if they were ordinary private equity exposures, even though their economics and risk drivers are fundamentally linked to federal tax credits and statutory compliance. Furthermore, due to accounting rules rather than determining the amount of at-risk capital, banks that consolidate their NMTC investments must apply the 100% risk-weight to both their equity investment and the other sources of capital that were leveraged to make the QEI into a CDE, even though the NMTC equity exposure is only a portion of that investment, further overestimating the risk.

NMTC risk drivers are inherently linked to federal tax credit requirements and subsequent compliance with federal law. NMTC equity investments' risk profile is more closely aligned with a government exposure than a traditional equity investment. In Question 83 of the Basel III proposed regulations, the Agencies expressly identified "certain tax equity financing transactions" as a distinct category that could warrant specific risk-weight treatment, acknowledging that tax equity exposures do not fit neatly within the general equity buckets.

This mischaracterization has consequences for private capital investment in distressed communities. Higher capital charges dampen financial institutions' willingness and capacity to provide NMTC equity at the scale needed to meet the community development goals established by Congress in making the incentive permanent. The Agencies have acknowledged that risk-weight calibrations can affect credit availability and borrower costs. Assigning an unnecessarily high-risk weight to NMTC investments raises the cost of capital and chills participation in a market that is essential to delivering private investment for low-income areas in urban, suburban, and rural communities. A 20% risk weight better calibrates capital requirements to the actual risk of NMTC exposures, which are backed by statutory compliance and credit enhancements, as evidenced by the program's zero recapture history.

The strong performance history, government compliance, and public benefit of the NMTC justify a risk weight of 20%, but in no event should it be set higher than 50%, in line with that of other qualifying investments. Clarifying risk weights that more appropriately fit the risk profile of NMTC investments will ensure that banks can play their appropriate role in supporting this community development finance incentive.

The Current Risk Rating for NMTC Equity Investment Does Not Accurately Measure the Risks of the Investment Given Non-existent Recapture Rates and Risk Characteristics

The tax benefits associated with NMTC investments provide both a return on and a return of the investors' capital over a 7-year compliance period, of which tax credits are virtually the sole source of the investors' return. Investors do not expect, and generally do not receive, significant operating cash flow or substantial disposition proceeds to realize a sufficient return. If an investor elects to unwind its NMTC

investment following the NMTC compliance period, the investor recognizes a gain on their negative capital account because, unlike the low-income housing tax credit, the NMTC reduces their capital account balance. Accordingly, though an equity investment in form and substance, a NMTC investment more closely resembles a fixed-income investment (where the income takes the form of a highly predictable stream of tax benefits) than a traditional private equity investment where variable cash flow and speculative capital appreciation constitute the investors' return. NMTC investment returns are much lower than private equity returns, reflecting their much lower risk.

Risks of NMTC Recapture are Extraordinarily Low

Only three events cause NMTC recapture: 1) failure of the CDE to remain a certified CDE, 2) return of the QEI to the investor, and 3) not investing substantially all of the QEI into a qualified active low-income community business (QALICB).

CDEs are the entities that receive NMTC allocation authority from the U.S. Treasury Department's Community Development Financial Institutions Fund (CDFI Fund) and the entities that receive QEIs from NMTC investors. In turn, CDEs make qualified low-income community investments (QLICIs) into QALICBs. QALICB losses, bankruptcy, foreclosure, or delinquency of loans made to them, in of themselves, do not trigger NMTC recapture and thus should not be a factor in considering the risk weighting for NMTC equity. If there is any return of QLICI proceeds during the first 6 years of the 7-year compliance period, the CDE may need to reinvest those proceeds to continue meeting the substantially all requirement and avoid recapture. These "workouts" focus on ensuring there is no risk to the bank investor's ability to claim NMTCs, further reinforcing its low-risk nature and justifying the request to lower the risk weighting.

Recapture Rates are Non-existent

NMTC recapture rates further support the security of the investment. According to our review of data from the IRS's Statistics of Income (SOI) Tax Stats - Corporation Income Tax Returns Line Item Estimates (Publication 5108), an annual report issued by the IRS that contains estimates of frequencies and amounts of taxpayer entries on the applicable lines of the forms and schedules filed as part of corporation tax returns, we could not document a single incidence of NMTC recapture during tax years 2008-2022, a recapture rate even better than the extraordinarily low LIHTC recapture rate, which averaged only 0.08% for tax years 2008-2022, peaking at 0.17% in 2009.¹ As the predominant risk of NMTC investments is the risk of recapture, plainly the risks of such investments are miniscule and the risk rating for NMTC investment should reflect as much.

¹ IRS, *SOI Tax Stats - Corporation Income Tax Returns Line Item Estimates (Publication 5108)*, <https://www.irs.gov/statistics/soi-tax-stats-corporation-income-tax-returns-line-item-estimates-publication-5108>

Conclusion

Banks covered under the Basel III Category I and II proposed regulations comprise virtually all of the annual NMTC equity investment market and thus are crucial to private community development investment in low-income communities. We urge the agencies to carefully consider the impact of bank capital requirements that may unnecessarily limit or harm the incentive to invest in NMTC and community development in low-income communities.

We hope that you find these comments, considerations, and recommendations helpful as you finalize the Proposed Regulations. Thank you in advance for your time and consideration. Please do not hesitate to contact me if you have any questions regarding our comments or if we can be of further assistance. We would be happy to discuss our comments in further detail.

Yours very truly,

Novogradac and Company LLP

by



Brad Elphick