

**EMPIRE STATE NEW MARKET CORPORATION**  
**New Markets Tax Credit**  
**PROJECT ELIGIBILITY WORKSHEET**

The federal New Markets Tax Credit (NMTC) Program is designed to foster private investment in business ventures and real estate development in low-income communities. Investors receive federal tax credits in return for making equity investments into certified Community Development Entities (CDEs), organizations certified by the Community Development Financial Institutions Fund (“CDFI Fund”), an arm of the U.S. Department of Treasury, to participate in the NMTC program. The CDEs then use the capital to fund qualified projects and businesses. Some \$39.4 billion in NMTC transactions have closed between the start of the program in 2002 and November 2015, according to the CDFI Fund.

Empire State New Market Corporation (ESNMC) is a subsidiary of the Empire State Development (ESD), and is a certified CDE which received an award of \$30 million of NMTC Allocation Authority (the award has been fully allocated) and applies for NMTC Allocation Authority on an annual basis. Project sponsors who are interested in soliciting an allocation of NMTCs, should ESNMC receive another award from the CDFI Fund, to help finance their projects should use this worksheet to determine basic eligibility under the NMTC program, and to determine whether their project fits with the ESNMC program strategies. ESNMC expects that there are a huge number of NMTC eligible projects in need of financing, and that many of those will have a profile that matches the ESNMC program strategy, with compelling reasons for NMTC financing. However, NMTCs represent a limited resource and ESNMC will have to carefully weigh each worthy project to ensure it meets with 1) its obligations under Federal and State law; 2) the strategic priorities of its parent company ESD, and; 3) its own NMTC programmatic goals.

ESNMC is committed to using the NMTC only for projects that meet at least one and preferably several of the following criteria: (a) create or retain quality jobs for low-income people in low-income communities (b) increase the provision of goods and services for low-income community residents which would otherwise not be available at the same price or quality (c) support minority and women-owned or controlled businesses (d) support environmentally sustainable outcomes; and (e) support efforts that otherwise benefit low-income community residents by leveraging further investment in their communities. Furthermore, ESNMC seeks geographic and programmatic diversity through its NMTC investments, which means that it will look to fund projects across the State of New York, including metropolitan and non-metropolitan areas.

Once the staff of ESNMC determines that a project meets the basic NMTC eligibility and ESNMC goals and objectives, ESNMC will request further due diligence information to proceed with underwriting of the project or business should it receive a NMTC award. ESNMC will package project information for review by our Investment Committee and the Advisory Board to determine if the project will receive a commitment for an allocation of NMTCs. ESNMC may also include the project in its NMTC Application to the CDFI Fund should it determine that it meets the application strategy.

**Please be advised that all NMTC projects must be approved by the Board of Directors of ESNMC, Board of Directors of Empire State Development and the Public Authorities Control Board. This process will take a minimum of three months once a commitment letter has been issued to a respective project. Project sponsors should be aware of this timeframe and build it into the project schedule.**

*Note: This questionnaire relates only to the eligibility of the transaction for the NMTC program. It is not a commitment to lend or an indication of terms.*

Please submit this form to Jonevan Hornsby: [jonevan.hornsby@esd.ny.gov](mailto:jonevan.hornsby@esd.ny.gov)

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**Please respond to all questions,  
using additional pages as necessary.**

**I) Project Description, Census Tract & Targeted Distressed Community Qualification**

- a) Project name:
  
- b) Project description (attach additional information):
  
- c) NMTC Allocation Requested:
  
- d) Project Timeline (expected start of construction/business opening and NMTC closing date):
  
- e) Borrowing entity:
  
- f) Sponsor:
  
- g) Property street address including ZIP code and Census Tract:
  
- h) Please check all items that apply to the project:

\_\_\_ 1) Census tract with poverty rates greater than 30 percent

\_\_\_ 2) Census tract that (a) if located within a non-Metropolitan Area, have a median family income that does not exceed 60 percent of statewide median family income; or (b) if located within a Metropolitan Area, have a median family income that does not exceed 60 percent of the greater of statewide median family income or the Metropolitan Area median family income;

\_\_\_ 3) Census tract with unemployment rates at least 1.5 times the national average;

\_\_\_ 4) Census tract with one of the following: (a) poverty rates greater than 25%; or (b) if located within a non-Metropolitan Area, median family income that does not exceed 70% of statewide median family income, or, if located within a Metropolitan Area, median family income that does not exceed 70% of the greater of the statewide median family income or the Metropolitan Area median family income; or (c) unemployment rates at least 1.25 times the national average.

\_\_\_ 5) As permitted by IRS and related CDFI Fund guidance materials, projects serving Targeted Populations to the extent that: (a) such projects are located in non-Metropolitan Areas; (b) such projects are at least 60% owned by members of eligible Targeted Populations; (c) at least 60% of the employees

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are members of eligible Targeted Populations; or (d) at least 60% of the customers are members of eligible Targeted Populations;

\_\_\_ 6) Federally designated Promise Zones, Impacted Coal Counties, Base Realignment and Closure areas, State Enterprise zone programs, or other similar state/local programs targeted towards particularly economically distressed communities.

\_\_\_ 7) U.S. Small Business Administration (SBA) designated HUB Zones, to the extent that the QLICIs will support businesses that obtain HUB Zone certification from the SBA;

\_\_\_ 8) Brownfield sites as defined under 42 U.S.C. 9601(39);

\_\_\_ 9) Areas encompassed by a HOPE VI redevelopment plan;

\_\_\_ 10) Federally designated as Native American or Alaskan Native areas, Hawaiian Homelands, or redevelopment areas by the appropriate Tribal or other authority;

\_\_\_ 11) Areas designated as distressed by the Appalachian Regional Commission or Delta Regional Authority;

\_\_\_ 12) Colonias areas as designated by the U.S. Department of Housing and Urban Development;

\_\_\_ 13) Federally designated medically underserved areas, to the extent that QLICI activities will support health related services;

\_\_\_ 14) State or local tax-increment financing districts, enterprise zone programs, or other similar state/local programs targeted towards particularly economically distressed communities;

\_\_\_ 15) Census tracts located in non-Metropolitan counties;

\_\_\_ 16) Counties for which the Federal Emergency Management Agency (FEMA) has: issued a “major disaster declaration” and made a determination that such County is eligible for both “individual and public assistance”; provided that the initial investment will be made within 36 months of the disaster declaration.

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• **Borrowing Entity Qualifications**

a) Are any of the following businesses conducted by the borrower or at the subject real estate by tenant or otherwise:

<u>Yes</u>	<u>No</u>	
___	___	Massage parlor
___	___	Hot tub facility
___	___	Suntan facility
___	___	Country club
___	___	Racetrack or other facility used for gambling
___	___	Store whose principal purpose is the sale of alcoholic beverages for consumption off premises
___	___	Development or holding of intangibles for sale
___	___	Private or commercial golf course

**Note: If you answered “Yes”, the project is ineligible for NMTC financing.**

**Borrowing Entity Qualifications (continued)**

b) If the project consists of rental property does any of the gross rental income of the borrowing entity come from the rental of residential property (apartments or live/work units or other dwelling units)?

\_\_\_ No \_\_\_ Yes (If yes, estimate the percentage of gross rental income from dwelling units for each building compared to total gross rental income from the building, from the borrower’s pro-forma or underwritten revenues: \_\_\_\_\_)

**Note: Gross Rental revenues from residential rental real estate can be no more than 80% of total gross rental revenues in order to qualify for NMTC.**

• **NMTC Structuring**

a) What legal structure is the borrowing entity (corporation/LLC/partnership)?

\_\_\_for-profit corporation \_\_\_nonprofit corporation \_\_\_LLC or Partnership

b) Please note that in many transactions, a guarantor is needed to support the NMTC financing. Is there an entity that can serve as guarantor? If so, please provide a brief description.

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- **Identification of Financing Sources**

Financial Structure:

- a) What other sources of financing are being considered for the project? Provide specific information on all sources, including source name and dollar amounts. (**Attach sources and uses, letters of commitment/term sheets, pro-formas, etc.**)

- **“But For” New Market Tax Credits**

The NMTC program includes a provision that projects financed would not otherwise occur without the benefit of the NMTC financing subsidy. Please detail the following:

- a) How is the NMTC subsidy essential to the project’s success? (**detail how the project would not move forward or could not provide the degree of services/community impacts without the benefits of the credits**)
- b) What community benefits or community impacts will the tax credits bring to the project? (**include specifics for increased community impacts or improved credit underwriting**)

- **Description of Community Impact**

A major component of the NMTC Program is to provide financing that will generate significant impacts to benefit Low-Income Communities and Low-Income Persons. Please address the following questions and provide any supplemental information that would be helpful in evaluating the community impact of the project.

- a) What community benefits is the project likely to generate?
- b) What is the developer’s track record history / involvement in this community or similar types of communities?
- c) What is the public commitment to/support of the project?
- d) Does the project have explicit government subsidies as a part of its capital or operating plan (i.e., grants or tax abatements) that demonstrate the commitment of the governmental unit?
- e) Is the project likely to catalyze additional investment in the community? Please describe and quantify.
- f) Is the project creating net new jobs in the area that can be filled by local residents?
- g) Number of permanent jobs likely to be created and retained (please break out):
- h) Please describe benefits provided to employees, wages paid including whether the wages are expected to be “living wages”. If possible, please attach a spreadsheet listing the positions

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expected to be retained and created, the number of employees for each position type and wage levels for each position type.

- i) Please describe and quantify how many jobs will be accessible to low-income people and residents of low-income communities.
- j) Please describe any training programs and efforts to build skill levels and create career-path jobs for low-income people.
- k) Is the project likely to purchase from local suppliers or generate increased economic activity among local businesses? If so, describe the impact.
- l) Will the project provide vital community services to residents of the low-income community (grocery store where one doesn't exist, day care for workers in the area, cultural venue, etc.)? Please quantify the level of services provided or people served.
- m) What enhanced or additional goods or services will be available to the community (daycare slots, patients served, etc)?
- n) Does the project provide space for locally owned, minority or women-owned businesses or non-profit tenants? Is there an explicit set-aside for such tenants?
- o) Is the project part of a larger redevelopment plan? Please describe and list the plan.
- p) Please provide any other information that will help ESNMC evaluate the project and its impact on the local low-income community.

**VII. Project Readiness**

List all Local, State and Federal permits/approvals that are required for the project and their current status:

- a) Attach letters from Local Planning/Zoning officials stating that the project is compatible to all local ordinances.
- b) Has a Phase I or II Environmental Assessment Been Completed?
- c) Is the project located on or adjacent to a Brownfield?
- d) Has the SEQRA process been initiated? If yes, what is the status?
- e) Are Green construction techniques being employed?

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**Certification of Borrower/Applicant and Recipient**

The undersigned does/do solemnly affirm that to the best of my/our knowledge, information and belief, all statements in this Application, including all schedules, appendices and additional information submitted in connection herewith, are true and accurate. I/we hereby authorize ESNMC to order credit reports or other financial background information on the Borrower/Applicant, and any individual or entity proposed as a guarantor, as may be necessary to provide the assistance requested.

Borrower/Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_  
\_\_\_\_\_

Beneficiary/Recipient Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_  
\_\_\_\_\_

The project is  is not  located in an Economic Development Zone, Enterprise Community, or Empowerment Zone.

Name of zone/community: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**No Conflict of Interest**

Except as otherwise fully disclosed herein and accepted by the parties hereto, the Borrower/Applicant affirms under penalty of perjury that no elected official or any Related Parties (as defined below) to an elected official has any financial interest, direct or indirect, in the Borrower/Applicant or in any of the Borrower/Applicant's equity owners, or has received or will receive any financial benefit, either directly or indirectly, from the Borrower/Applicant or its Related Parties.

**Good Standing**

Except as otherwise fully disclosed herein and accepted by the parties hereto, the Borrower/Applicant affirms under penalty of perjury that:

- (A) At no time during the past five years has the Borrower/Applicant or any of the Borrower/Applicant's affiliates, principal owners or officers: (1) been debarred from entering into any government contract; (2) been found non-responsible on any government contract; (3) been declared in default and/or terminated for cause of any government contract; (4) been determined to be ineligible to bid or propose on any contract; (5) been suspended from bidding or entering into any government contract; (6) received an overall unsatisfactory performance rating from any government agency on any contract; (7) been subject to any judgments, injunctions or liens including but not limited to, judgments based on taxes owed, fines and penalties assessed by any governmental agency, or elected official against Borrower/Applicant ; (8) been investigated by any governmental agency including, but not limited to, federal, state and local regulatory agencies; (9) been convicted of a misdemeanor and/or found in violation of any administrative, statutory or regulatory provisions; (10) been the subject of any felony, misdemeanor, or administrative charges; (11) been subject to any sanctions imposed as a result of judicial or administrative disciplinary proceedings; (12) failed to file any federal, state or city tax returns; (13) (to the extent the entity is a charity or not-for-profit organization) failed to file and all required forms with any government entity regulating the entity; (14) received a grant of immunity for any business-related conduct constituting a crime under local, State or Federal law; (15) agreed to a voluntary exclusion from bidding/contracting; (16) received a violation of

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State Labor Law deemed willful; (17) received a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status; (18) received a rejection of a low bid on a local, State or Federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract; (19) received a consent order with the New York State Department of Environmental Conservation or a Federal, State or local government enforcement determination involving a violation of Federal, State or local government laws; or (20) received an occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful;

- (B) At no time within the last seven years has the Borrower/Applicant or any of the Borrower/Applicant 's affiliates, principal owners or officers been involved in any bankruptcy proceeding (whether or not closed);
- (C) At no time within the last ten years has the Borrower/Applicant's or any of the Borrower/Applicant 's Affiliates, principal owners or officers been convicted of a felony, and/or any crime related to truthfulness and/or business conduct; and
- (D) That neither the Borrower/Applicant nor any of the Borrower/Applicant Related Parties paid any third party or agent, either directly or indirectly, to aid in the securing of this Agreement.

**Funds Used Solely For NMTC Transaction Purposes**

The Borrower/Applicant affirms under penalty of perjury that all funds to be expended pursuant to the terms of the New Market Tax Credit Program to be awarded in accordance with the terms of the accompanying application are to be used solely and directly for the purposes specified in the accompanying application. The Borrower/Applicant further swears and affirms that all such funds will be used solely in the manner described in the application.

**Definitions**

As used herein in this Exhibit:

- (1) "Affiliate" means any person or entity that directly or indirectly controls or is controlled by or is under common control or ownership with the specified party.
- (2) "Borrower" or "Applicant" means the party or parties designated to receive funds or their employees and Affiliates.
- (3) "Related Party" means: (i) the party's spouse, (ii) natural or adopted descendants of the party or of the spouse, (iii) any sibling of the party or of the spouse, (iv) the son-in-law, daughter-in-law, brother-in-law, sister-in-law, father-in-law, or mother-in-law of any of the foregoing, (v) any person sharing the home of any of the foregoing, (vi) any staff member, employee, director, officer or agent of the party, and (vii) Affiliates or subcontractors of the party.

**Disclosure (use additional sheets, if necessary; if "none", please so indicate below)**

- (A) Conflict of Interest (see "I.")

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(B) Good Standing (see "II(A)-(D)")

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The undersigned: recognizes that this Certification is submitted for the express purpose of assisting the State of New York or its agencies and political subdivisions to make a determination regarding the award of a New Markets Tax Credit Allocation; acknowledges that the State of New York or its agencies and political subdivisions may in its discretion, by means which it chooses, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.45, and may also be punishable by a fine or up to \$10,000 or imprisonment of up to five years under 18 U.S.C. Section 1001; and states that the information submitted in this Certification and any attached pages is true, accurate and complete.

\_\_\_\_\_  
Name of Borrower/Applicant

\_\_\_\_\_  
Signature of Officer/Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
Typed Copy of Signature

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Title

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public