

**Community
Development
Financial
Institutions
Fund**



**New Markets Tax Credit
CDE Certification
Question & Answer**

CDE Certification Q & A Document

Community Development Financial Institutions Fund

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General Application and Eligibility Questions

1) ***What is a Community Development Entity (CDE)?***

A CDE is any duly organized entity treated as a domestic corporation or partnership for federal income tax purposes that: (a) has a primary mission of serving, or providing investment capital for, Low Income Communities (LICs) or Low-Income Persons; (b) maintains accountability to residents of LICs through their representation on any governing board of the entity or any advisory board to the entity; and (c) has been certified as a CDE by the Community Development Financial Institutions Fund (the Fund) of the United States Department of the Treasury.

2) ***What benefits are there to becoming a CDE?***

An organization must be certified as a CDE in order to benefit from the New Markets Tax Credit (NMTC) Program. A CDE may participate in this program in two different ways: (a) it may apply to the Fund for an allocation of tax credits which, in turn, may be offered by the CDE to its investors in exchange for equity investments in the CDE; or (b) it may receive loans or investments from (and sell qualifying business loans to) other CDEs that have successfully competed for allocations of tax credits. Additional information about the NMTC Program may be found at the Fund's website at www.cdfifund.gov.

3) ***How does an entity apply to become a CDE?***

Organizations that have been certified by the Fund as Community Development Financial Institutions (CDFIs), and organizations that have been designated as Specialized Small Business Investment Companies (SSBICs) by the Small Business Administration, automatically qualify as CDEs. These organizations simply need to register with the Fund to receive their CDE designation. This registration may be completed entirely on-line at www.cdfifund.gov.

All other organizations must complete and submit to the Fund a CDE Certification Application. The CDE Certification Application cannot be submitted electronically. A copy of the CDE Certification Application may be downloaded from the Fund's website at www.cdfifund.gov.

4) ***What types of entities are eligible to apply for CDE certification?***

Any duly existing entity that is treated for federal income tax purposes as a domestic corporation or partnership may apply for certification as a CDE. For-profit and non-profit organizations may be certified as CDEs. The Fund cannot accept a CDE Certification Application from an applicant unless the Internal Revenue Service has assigned a valid Employer Identification Number (EIN) to the entity as of the date the Authorized Representative has signed the application.

5) ***Who should be listed as the Applicant CDE in the Applicant Information section?***

Any organization that wishes to apply for NMTC Allocations must be listed as the Applicant CDE in its CDE Certification Application (e.g., an Applicant for NMTC Allocations should not be listed as a Subsidiary Applicant in a CDE Certification Application).

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6) ***May an entity apply for certification as a CDE on behalf of itself and on behalf of Subsidiary organizations under a single CDE Certification Application?***

Yes. An Applicant CDE may apply for CDE certification: (a) solely on its own behalf; (b) on behalf of itself and one or more Subsidiary organizations in the same CDE Certification Application; or (c) in the case of an applicant that is itself already a certified CDE (e.g., a CDFI or SSBIC), solely on behalf of one or more Subsidiary organizations. The Fund's CDE Certification Application describes a streamlined process for Applicant CDEs wishing to certify multiple entities, but each entity seeking certification must separately meet the CDE eligibility requirements. The process for certifying multiple entities is described more fully in the Guidance for Certification of CDEs (66 Federal Register 65806, December 20, 2001) and in the CDE Certification Application. Both documents are currently available on the Fund's website.

7) ***Under what circumstances would an organization want to certify Subsidiary entities as CDEs?***

CDEs that apply for and receive an allocation of NMTCs from the Fund will be permitted, in certain circumstances, to transfer allocations to one or more Subsidiary organizations. The Fund will permit organizations to transfer tax credit allocations only to those Subsidiaries that are also certified CDEs. Permission to transfer a NMTC allocation must be requested in writing by the CDE receiving allocations and approved in advance by the Fund.

Non-profit organizations are not eligible to offer NMTCs to their investors, since NMTCs may only be provided in exchange for an equity investment in a for-profit CDE. A non-profit organization may therefore want to establish a for-profit Subsidiary entity as a CDE so that: (a) the for-profit Subsidiary CDE may apply directly to the Fund for an allocation of tax credits; or (b) the non-profit parent may apply to the Fund for an allocation of tax credits with the intention of transferring allocations to its for-profit Subsidiary CDE(s).

8) ***What criteria will the CDFI Fund use to determine CDE eligibility?***

The criteria required by the Fund are more fully detailed in the Fund's Guidance for Certification of CDEs and in the CDE Certification Application. Briefly, each entity seeking designation as a CDE must meet the following requirements:

Legal Entity: In order to be certified as a CDE, an Applicant CDE must be a domestic corporation or partnership for federal tax purposes and be duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or established.

Primary Mission: A CDE must demonstrate a primary mission of serving, or providing investment capital for, LICs or Low-Income Persons. There are two components to this requirement:

- a) An applicant must provide organizational documents evidencing such a mission; and
- b) An applicant must certify that a minimum of 60 percent of its activities are or will be directed towards serving Low-Income Persons or LICs.

Accountability: A CDE must demonstrate that it maintains accountability to the LICs that it serves or intends to serve. There are two components to this requirement:

- a) An applicant must indicate which LICs it serves or intends to serve; and

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b) An applicant must show that a minimum of 20 percent of either its governing board or advisory board(s) is representative of the LICs that it has designated.

9) ***Is there an application deadline for organizations seeking designation as CDEs?***

No. The Fund will accept CDE Certification Applications on a rolling basis. All CDE Certification Applications must be submitted to the Bureau of Public Debt (BPD, which has been contracted to handle intake of CDE Certification Applications on behalf of the Fund) **by no later than the date identified in the applicable Notice of Allocation Authority (NOAA)**. NOAAs are published in the [Federal Register](#). CDFIs and SSBICs will be similarly required to register on-line as CDEs on or before the same date in order to be eligible to apply for an allocation of tax credits in the applicable round.

10) ***If an organization that is not a certified CDFI is interested in obtaining certification as a CDFI as well as certification as a CDE, should it apply for CDFI certification, CDE certification, or both?***

Whereas certification as a CDFI automatically enables an entity to qualify for CDE certification, the converse does not hold true. An organization that is certified as a CDE does not automatically qualify for certification as a CDFI. Any organization wishing to become certified as a CDFI must separately complete a CDFI Certification Application (available on the Fund's website).

Since CDFI certification involves meeting several additional criteria than are required for CDE certification, it is anticipated that the CDFI certification approval process is likely to be more rigorous than the CDE certification approval process. Therefore, it may be advisable for an organization desiring designation as both a CDE and a CDFI to apply separately for CDE status, to better ensure that its CDE certification will be approved in time to apply for an allocation of NMTCs.

An organization that already has a CDFI Certification Application pending with the Fund also may want to separately complete the CDE Certification Application, particularly if the CDE certification deadline (for those applicants intending to apply for allocations) is approaching and the Fund has not yet made a determination regarding the organization's CDFI Certification Application.

11) ***For how long is the CDE designation valid, and what reporting requirements will the Fund impose on certified CDEs?***

A CDE's designation will last for the life of the organization, provided the CDE continues to comply with the NMTC Program requirements. Each CDE may be required, on an annual basis, to certify to the Fund that it continues to meet its primary mission and accountability requirements. Each CDE that is awarded an allocation of tax credits, and each CDE that receives an investment from another CDE that was awarded tax credit allocations, may be required to provide additional reports demonstrating that: (a) 60 percent of its activities (e.g., loans and investments) are directed to LICs or Low-Income Persons; and (b) it is in fact accountable to the LICs in which it has made investments. A CDE that is also a certified CDFI or SSBIC will be deemed to automatically meet these requirements, provided that it maintains its status as a certified CDFI or SSBIC.

The reporting requirements described above relate solely to the organization's status as a CDE. CDEs that are awarded allocations of tax credits, and CDEs that receive investments from other CDEs that were awarded tax credit allocations, may have additional reporting requirements relating to their specific uses of proceeds from tax credit allocations. These requirements will be detailed in subsequent documents to be released by the Treasury Department.

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Questions Regarding Status as a Legal Entity

12) ***Can a sole proprietorship or single member LLC become a CDE?***

In general, sole proprietorships and single member limited liability companies are not considered corporations or partnerships for federal tax purposes, so these entities would not meet the legal entity test.

13) ***Can a governmental entity become a CDE?***

A governmental entity may apply for designation as a CDE, provided the entity is classified as a corporation or partnership for federal tax purposes and would meet the legal entity requirement (which is subject to legal interpretation by the CDFI Fund).

14) ***The Fund requires that each entity applying for CDE certification provide documentation that it has been assigned an Employer Identification Number (EIN) from the IRS. How do I obtain an Employer Identification Number (EIN), or request verification of an already assigned EIN?***

Organizations may apply for an EIN online, by telephone, by facsimile or through the mail. For detailed information on how to **apply for an EIN**, visit IRS' website at www.irs.treas.gov and read IRS Publication 1635, Understanding Your EIN. Organizations that already have an EIN may obtain **documentation verifying assignment of the EIN** by calling (800) 829-4933 (the Business and Specialty tax line). Only those individuals who are listed as key persons in the original IRS filing will be allowed to obtain this information (e.g., the members of an LLC, the partners in a partnership, etc.) The IRS will either: (1) fax verification of an EIN with minimal information; or (2) send a more comprehensive letter in the mail, which could take up to 10 days to receive. The Fund will accept the faxed documentation as verification of an EIN.

Designation of Low-Income Communities

15) ***What is the definition of a LIC?***

A LIC is any population census tract that meets the following criteria (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

- a) The poverty rate for such census tract is at least 20 percent; or
- b) The Median Family Income (MFI) of such census tract does not exceed 80 percent of:
 - The statewide (or possession-wide) MFI, if the tract is not located within a Metropolitan Area, or
 - The greater of statewide (or possession-wide) MFI or the Metropolitan Area MFI, if the tract is located within a Metropolitan Area.

16) ***How do I determine if an address is in an eligible LIC census tract?***

To determine which census tracts qualify as eligible LICs, applicants may use the CDFI Fund's Information Mapping System (CIMS). You may access CIMS by registering and creating a myCDFIFund account via the CDFI Fund's website at www.cdfifund.gov. myCDFIFund is a free internet tool that the CDFI Fund provides its

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constituents. If you have never used myCDFIFund before, you will be required to register as a user and as an organization. If you are having difficulty registering, contact the Fund's IT Helpdesk at lthelpdek@cdfi.terras.gov or (202) 622-2455.

Once you have successfully registered, log into your myCDFIFund account. From your organization home page, select the "Mapping" link in the left-hand side menu bar. This link will take you to CIMS, which will enable you to geocode addresses and print reports of the results. If it is your first time using CIMS, we recommend that you complete the Tutorial before attempting to geocode addresses. The data provided through CIMS is based upon the 2000 Census.

17) ***What should I do if CIMS could not geocode an address?***

In very limited circumstances, CIMS may not recognize an address. Applicants experiencing problems with the CIMS geocoder may use the Census American Factfinder geocoder website as a geocoding alternative. Go to: <http://factfinder.census.gov/servlet/AGSGeoAddressServlet?lang=en&programYear=50&treeld=420>

- a) Click on the "Address Search" tab, enter your address data, and click "Go". American Factfinder will return that includes the address' 2000 tract number.
- b) Click on the line that starts with "Census Tract:" and click "Map It." A map will pop-up in a separate screen. Print this map and submit it with your CDE Certification Application.
- c) In order to determine whether the resulting census tract meets the NMTC requirements, return to the NMTC portion of CIMS. Click "File", "Import", "Enter Census Tracts", and type in the 11 digit FIPS code for the census tract into CIMS. Click "Submit Tract Selection", and CIMS will return a map of the tract. In the lower left corner, click "Reports" to access the LIC Worksheet for the census tract. Print and submit the LIC Worksheet, and your American Factfinder map, with your CDE Certification Application.

Note on Census Tract Numbers: The census tract numbers that are provided in the Census American Factfinder geocoder are not always six digits. The following examples will help applicants convert the number to six digits when entering the number on the Fund's website.

1 = 000100
12 = 001200
123 = 012300
1234 = 123400
1.2 = 000120
1.23 = 000123

18) ***Is it possible to designate additional areas as qualifying LICs?***

As originally enacted, the NMTC statute allowed the Treasury Department to designate portions of otherwise non-qualifying census tracts as Targeted Areas, provided certain eligibility requirements are met. However, per the American Jobs Creation Act of 2004 (HR 4520), signed into law on October 22, 2004, the Fund no longer has the authority to designate Target Areas based upon the criteria originally set forth in 26 USC 45D(e)(2). Instead, this legislation contained three revisions to the definition of LICs:

1. Targeted Populations. HR 4520 replaces the Target Area designation with a designation based on "Targeted Populations." This will permit CDEs to finance businesses that are not located LICs, provided that such

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businesses serve a Targeted Population. A Targeted Population is defined as "individuals, or an identified group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loan or equity investments."

2. Tracts with low-population. HR 4520 amends the definition of LICs to include census tracts with a population of less than 2,000 if such a tract (a) is within an empowerment zone, the designation of which is in effect under section 1391, and (b) is contiguous to 1 or more LICs.
3. Rural areas with high out-migration. HR 4520 allows census tracts located in high migration rural counties to satisfy the definition of a LIC provided that the median family income in such census tracts does not exceed 85% of the area median family income. A high migration rural county is any county that experiences a net out-migration of inhabitants from the county of at least 10 percent of the population of the county between 1980 and 2000 (the last 20-year period ending with the year in which the most recent census was conducted).

HR 4520 has immediate implementation. The Fund will be working in conjunction with IRS to provide additional guidance and/or regulations regarding administration of these new provisions.

Questions Regarding Accountability

- 19) ***What characteristics must board members possess in order to be deemed representative of LICs?***

In order to be deemed representative of LICs, board members must either: a) reside in a LIC in the Applicant CDE's service area; or b) otherwise represent the interests of residents of LICs in the Applicant CDE's service area.

Examples of individuals that represent the interests of residents of LICs include, but are not limited to:

- a) A small business owner whose business is located in a LIC, and whose business: (i) provides goods and services to community residents; or (ii) principally employs residents of LICs. For the purpose of this requirement, an owner shall include any individual with at least 50% ownership stake in the business, or any individual that has an ownership stake and controls, operates or manages the business;
- b) An employee or board member of a community-based or charitable organization principally serving the LICs. Employees or board members of an organization that serves Low-Income Persons (as opposed to LICs) may also qualify, but only if it can be demonstrated that the population served by that organization principally resides in LICs;
- c) A religious leader whose congregation is based in a LIC;
- d) An employee of a governmental agency or department that principally serves LICs, or a governmental employee whose daily job responsibilities principally serve LICs; and
- e) An elected official whose constituency is comprised principally of LICs or residents of LICs.

- 20) ***Can a board member that is a principal or staff person of the applicant or affiliate, or a principal or staff member of an investor, be deemed representative of LICs?***

No. Board members that are principals or staff members of the applicant or any of its affiliated entities or investors cannot be deemed representative of LICs. An applicant may, however, designate a board member that also serves

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on the board of an affiliated entity as representative of LICs, provided that the board member is representative of LICs through means other than his or her association with the affiliated entity.

- 21) ***Can a board member that is an employee of a bank, and whose principal responsibilities are with the community development department of the bank, be deemed representative of LICs?***

No. Because banks generally do not have a mission of primarily serving LICs, their employees cannot fulfill an entity's accountability requirement. If a bank has community development designation from the Office of Thrift Supervision or is a certified CDFI, then its employees would be considered representative of the LICs that the bank serves.

- 22) ***Can a board member that is a retiree—whose career was spent in the community or economic development fields—be deemed representative of LICs?***

No, unless he or she is currently active in promoting community or economic development in LICs in some other way (e.g., is a consultant; serves on the board of a relevant organization; etc.).

- 23) ***Can a board member that is an employee of a redevelopment or economic development authority (statewide or local level) be deemed representative of LICs?***

It has been the Fund's experience that redevelopment or economic development authorities can have many different functions, as some are focused on the economic rejuvenation of low-income areas, while others have more general objectives to incentivize any businesses to locate anywhere within a particular jurisdiction, without any particular focus on developing low-income areas. However, such individuals may qualify as representative of LICs if: (i) the service area of the authority (whether local or statewide) is comprised mostly of LICs; or (ii) the services and programs that the authority offers are mostly directed towards LICs in the authority's service area.

- 24) ***Can a board member that is an elected official or an individual working for an elected official be deemed representative of LICs?***

An elected official would only be considered a LIC representative if: (i) 50% or more of the census tracts comprising the voting jurisdiction of the elected official qualify as LICs; or (ii) 50% or more of the population of the voting jurisdiction of the elected official resides in LIC qualifying census tracts. You can access LIC eligibility data and certain population information using CIMS, the Fund's on-line mapping system (visit www.cdffund.gov).

- 25) ***Can a board member that is an employee or board member of a non-affiliated community-based or charitable organization be deemed representative of LICs if the mission of that organization does not clearly indicate that it primarily serves LICs?***

If the organization's mission statement does not clearly indicate that the majority of its activities are targeted toward LICs, as geographically defined by the NMTC program, then you must find another way to demonstrate that indeed the majority of the organization's activities are targeted toward LICs. In the past, applicants in this situation have provided a letter from the employing which states that the organization's activities are primarily focused towards those portions of its targeted population that are residents of LICs. This letter must come from another employee of employing organization who is not also the identified board member of the applicant.

- 26) ***How do I demonstrate accountability to LICs in my service area if I am serving a large geographic area (e.g., a state, a multi-state region or the entire nation)?***

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The Fund advises entities that serve a large geographic area to appoint at least one person that is accountable to LICs throughout the service area to its board or advisory board. For example, an organization serving the entire nation should appoint to its board a staff person or a board member from a nationwide community development organization primarily serving LICs.

An organization without at least one person on its governing board or advisory board(s) that can reasonably be deemed to be representative of LICs throughout the organization's service area may still be certified as a CDE, provided that the Fund determines that at least 20% of its governing board or advisory board(s) is representative of a cross-section (e.g., urban and rural) of LICs in its service area. Determinations regarding what constitutes a cross-section of a particular service area will be made on a case-by-case basis by the Fund. Organizations, particularly those serving multi-state geographies, may wish to establish multiple advisory boards in order to meet this requirement.

27) ***How does a certified CDE amend its service area?***

Amendments to CDE certification service areas should be sent by e-mail to cdfihelp@cdfi.treas.gov or by facsimile to (202) 622-7754. Requests must be sent from the applicant's Authorized Representative and include the organization's name, its CDE control number, its old service area, the revised service area designation, and an updated accountability chart that reflects representation from low-income communities in the revised service area. The CDFI Fund accepts CDE certification service area amendment requests on an ongoing basis. However, if an entity would like its request to be considered in conjunction with a NMTC Allocation Application, the request must be submitted by the CDE Certification Application deadline for the applicable NMTC Allocation round.

If an organization that is an allocatee wishes to amend its service area, an amendment to your CDE certification service area has no effect on your Allocation Award service area. If it is your desire to amend your Allocation Award service area, you must submit a separate request to gmc@cdfi.treas.gov, in accordance with the procedure outlined in the Allocation Agreement Q&A document available on the Fund's website at www.cdfifund.gov. The Fund's Grants Management and Legal Departments will process all such requests, and will provide separate notification. The Fund may, in its sole discretion, amend the allocatee's Allocation Agreement and CDE certification documents as necessary to broaden its service area to include any area that was not identified at the time of the NMTC Allocation and/or initial certification as a CDE. The Fund will review such requests on a case-by-case basis to ensure that the CDE is appropriately accountable to Low-Income Communities in its amended service area. All other CDEs may amend their service areas at any time throughout the year.

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More detailed application content requirements are found in the NMTC Allocation Application and NOAA. In the event of any inconsistency between the contents of this Q & A document, the NOAA, the General Guidance, the CDE Certification Guidance (66 Federal Register 65806, December 20, 2001), the Allocation Application, the statute that created the NMTC Program (Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000) (the "Act"), or the IRS Temporary and Proposed Income Tax Regulations (66 Federal Register 66307, December 26, 2001), the provisions of the Act and the Temporary and Proposed Income Tax Regulations shall govern.

All terms and phrases that are Capitalized in this document are defined in the Glossary of Terms contained in the CDE Certification Application.

If you have any NMTC Program, CDE Certification or Allocation Application questions, please contact the Fund at 202-622-6355. If you have any tax-related questions, please consult your attorney or contact the IRS at 202-622-3040.