



New Markets Tax Credit

Compliance and Monitoring Frequently Asked Questions

September 2011

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This document adds, revises and updates select questions from the May 2009 edition of the *New Markets Tax Credit, Compliance and Monitoring Frequently Asked Questions*. The questions in bold have been added or have been significantly modified from the last published document.

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NOTE: This document is intended to serve as public guidance for the subject matter contained herein. The CDFI Fund reserves the right, however, to modify this guidance at any time upon public notice. The examples contained in this guidance are not exhaustive in nature and the CDFI Fund has the discretion to consider additional factors when determining matters of compliance.

NMTC COMPLIANCE & MONITORING FREQUENTLY ASKED QUESTIONS

A. GENERAL COMPLIANCE QUESTIONS

1. Does the CDFI Fund impose an annual monitoring/compliance fee?

At this time, the Community Development Financial Institutions Fund (the CDFI Fund) has elected not to collect the annual monitoring/compliance fee outlined in Section 7.1 of the allocation agreement. If the CDFI Fund elects to impose a monitoring/compliance fee, it will provide advance notification to all allocatees.

2. Will the CDFI Fund share data submitted by allocatees with the IRS or any other entity or agency?

The CDFI Fund will, consistent with applicable law (including IRC § 6103), make allocatee reports available for public inspection after deleting any materials necessary to protect privacy or proprietary interests. The Internal Revenue Service (IRS) will be given access to the CDFI Fund's data to facilitate IRS's compliance program for IRC Section 45D.

3. When is compliance measured and for what period will the CDFI Fund measure compliance?

In general, compliance for most items under section 3.2 of the allocation agreement is triggered by the earlier of two events: 1) a specific date found in allocation agreement subsections 3.2(a-k); or 2) when an allocatee has made 100 percent of its Qualified Low-Income Community Investments (QLICs).

Once compliance is triggered by either event noted above, the CDFI Fund will begin its annual compliance checks, and will continue such checks until QEIs are redeemed. Though the CDFI Fund will not complete formal compliance checks prior to the triggering event nor after QEI redemptions begin to occur, allocatees are expected at all times to comply with the requirements set forth in the allocation agreement, even for QLICs whose terms extend beyond the seven-year time period the CDFI Fund conducts its formal compliance tests. Allocatees that fail to do so could, at a minimum, be found in default of the allocation agreement.

Notwithstanding the above, the CDFI Fund recognizes that the IRS regulations allow allocatees up to one year to invest QEI proceeds into QLICs, and also allow allocatees to retain principal repayments of QLICs for a prescribed period before being required to reinvest these proceeds into other QLICs. The CDFI Fund will take these allowances under consideration when conducting its compliance checks, so that allocatees will not be penalized for an eligible retention of funds.

Example 1: An allocatee receives a \$100 million allocation, issues \$100 million in QEIs and closes \$95 million in QLICIs in fiscal year 2008. The allocatee retains \$5 million for administrative costs and did not close any additional QLICIs after December 31, 2008. The CDFI Fund would conduct its initial compliance check on the \$95 million in QLICIs and it will continue monitoring compliance for six years thereafter.

Example 2: An allocatee with a September 30th fiscal year end receives a \$100 million allocation, issues a \$70 million QEI and closes a \$65 million QLICI in fiscal year 2008. The allocatee does not issue any additional QEIs prior to the September 30, 2008 compliance trigger date. On September 30, 2008, the CDFI Fund would conduct its initial compliance check on the \$65 million QLICI and it will continue monitoring compliance for six years thereafter.

In year five, the allocatee receives an additional QEI of \$25 million and fully invests those proceeds in a new QLICI. The CDFI Fund would now conduct its compliance test on combined QLICIs of \$90 million for the next two years.

B. ALLOCATION TRACKING SYSTEM (ATS)/QEIS

4. Can a Community Development Entity (CDE) that has received an allocation provide a QEI to another allocatee?

No. The IRS regulations specifically prohibit an allocatee that has received an allocation from directly providing a QEI to another allocatee. Additionally, an entity that invests in an allocatee and subsequently receives its own allocation cannot provide QEIs to other allocatees after the effective date of its allocation agreement.

For example, in June 2005, ABC Bank provided a QEI to Main Street CDE, a CY2002 NMTC allocatee. Subsequently, ABC Bank applied for and was awarded a CY2006 NMTC allocation. ABC Bank would not be allowed to provide additional QEIs to Main Street CDE or any other allocatee on or after the date of their award notification. This rule, however, would not preclude an affiliate of ABC Bank from providing QEIs to Main Street CDE, provided the affiliate has not received an allocation or sub-allocation of NMTCs.

5. How do I increase or decrease allocation amounts to a subsidiary that already has allocations transferred to it?

Allocatees that have transferred allocations to a subsidiary can increase or decrease the transfer amount to a subsidiary by clicking on the “Transfers” link in ATS. Once open, click on the “Edit” button adjacent to the appropriate subsidiary and you will now be able to increase or decrease the amount of the transfer in the “Transfer Amount” field at the bottom of the screen.

Please note that you cannot enter an amount that is less than the finalized QEI amounts under the subsidiary, nor can you enter an amount that exceeds the allocation amount less any finalized QEI amounts. For example, an allocatee with a \$50 million allocation transferred \$30 million to its only subsidiary and the subsidiary finalized \$15 million in QEIs. At any time, the allocatee may transfer or return up to \$15 million in allocation to itself and subsequently reallocate the CDFI Funds to another approved subsidiary.

Note: All allocation transfers must originate from the allocatee. ATS will not allow sub-allocatees to transfer any allocation amounts to other subsidiaries.

6. Can an allocatee amend a finalized QEI in ATS?

No. Only the CDFI Fund may amend a finalized QEI. All amendment requests must be submitted in writing by the Authorized Representative and include supporting documentation evidencing the receipt of QEI proceeds. QEI amendment requests should be forwarded to ccme@cdfi.treas.gov with the subject line, NMTC: Request to Update Finalized QEI Data, and should reference the following:

1. The Allocatee's Name
2. The Allocatee's EIN
3. The Allocatee's Award Control Number
4. The specific changes needed to be made

The CDFI Fund will attempt to process QEI amendment requests in a timely manner, however, it cannot guarantee this. Thus, it is imperative that allocatees review all QEI entries for accuracy prior to finalizing them. Please refer to the Users Manual in ATS for additional details.

7. I did not receive the QEI notification e-mail. How do I obtain a copy for our records?

If you did not receive the QEI notification e-mail after finalizing a QEI, please submit a request to CCME at ccme@cdfi.treas.gov. All e-mail notifications will be sent to the Authorized Representative indicated in the organization's myCDFIFund account. If the Authorized Representative has changed or his/her e-mail address has changed, please refer to the myCDFIFund Frequently Asked Questions document for guidance on how to update this information.

8. My CDE is 100 percent owned by an S Corporation that has numerous shareholders. Will ATS require us to enter each of the shareholders and their respective information as NMTC claimants?

If the individual shareholders claim the tax credit on their individual tax returns, each individual shareholder should be listed as a tax claimant in ATS and the required investor information (i.e. name, EIN and investor type) should be completed. This is necessary to assist the IRS in comparing ATS entries with IRS Form 8874 (New Markets Credit) that it receives from tax payers.

9. I received an error message when attempting to finalize to a QEI in ATS. What could be causing this problem?

The two most likely reasons an error message is displayed in ATS are: 1) you have been "timed out"; or 2) all fields are not complete. If there is no activity in ATS for 20 minutes, you will be logged out and an error message will be displayed. To correct this problem, simply log in and resume entering your QEI information. An error message may also be displayed if a field is left

blank. For example, if you are using a tiered investment structure with no debt, you will still need to enter “0” in the “Debt Contribution” field. Please ensure that all fields are complete to avoid this problem.

10. My CDE is employing a leveraged investment structure. What information is required in ATS regarding the debt provider?

At this time, the CDFI Fund does not collect any information in ATS regarding the debt provider in a leveraged investment structure except the amount of debt it contributed to the tier 1 entity. If you indicated that the tier 1 investor is a pass through entity, you will be required to specify the amount of equity and debt that contributed to the tier 1 equity investment. Allocatees are advised to retain all pertinent information regarding debt providers and the QEI investment structure should the CDFI Fund or the IRS request such information.

11. Will the CDFI Fund use the “Committed Funds” information in ATS when conducting compliance or eligibility checks?

No. At this time, the “Committed Funds” field in ATS is for informational purposes only and will not be used when the CDFI Fund conducts any compliance or eligibility checks. “Committed Funds” are potential QEIs investments not captured by pending QEIs listed ATS.

C. ALLOCATION AGREEMENT

NOTE: The examples below describe the approach the CDFI Fund is taking with respect to monitoring compliance with Section 3.2 and 3.3 of the allocation agreement. The IRS may adopt a different approach with respect to monitoring compliance with IRC Section 45D.

Eligible Activities

12. Which activities are permissible with respect to Financial Counseling and Other Services (FCOS)?

FCOS is “advice” provided by the CDE relating to the organization or operation of a trade or business, including non-profit organizations. Possible FCOS activities include, but are not limited to, business plan development, assistance with business financials, assistance in securing financing, and assistance with general business operations. FCOS does not include “advice” provided to individuals, such as homeownership counseling or consumer counseling, that does not pertain to the operation of a trade or business.

The FCOS activity may be carried out by the CDE directly, or through third party agreements managed by the CDE. To the extent QEI proceeds are dedicated for FCOS, a portion of the monies must be spent, and counseling services provided, within one year of receipt of the QEI in order to qualify as a QLICI.

Any questions regarding the eligibility of FCOS activities should be addressed to the IRS at new.markets.tax.credit@irs.gov.

13. What is the definition of a “real estate QALICB” versus a “non-real estate QALICB”?

In general, loans or investments in businesses whose predominant business activity is the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management or leasing of real estate are considered “real estate QALICBs.”

Transactions with QALICBs whose predominant business activity includes all other types of business activities should be classified as non-real estate businesses regardless of: 1) how the business intends to use the proceeds of the transaction; or 2) whether the business intends to use any real estate owned by the business as collateral for a loan. For example, if an Allocatee provided a loan to a childcare provider for the purpose of purchasing the property where the childcare center would be housed, the Allocatee would categorize this loan as a “non-real estate” transaction. However, if the Applicant provided a loan to a real estate development company whose predominant business is the development of community facilities, for the purpose building a childcare center, this loan would be considered financing a real estate transaction - “real estate QALICB.”

Notwithstanding the above, loans or investments made to a special purpose entity that is controlled by or under common control with an operating company, and that was set up specifically to lease the property back to the operating company such that the operating company is the principal user of the property, may be classified as either a “real estate QALICB” or a “non-real estate QALICB”, at the discretion of the CDE. An operating company is considered the principal user of the QALICB’s property if it is the occupant of a majority (i.e., greater than 50%) of the rentable square footage of the QALICB’s property. The QALICB may lease the balance of its property to one or more third parties.

14. My CDE has received principal repayments on a QLICI and will reinvest those proceeds in a new QLICI. Is the new QLICI subject to the same requirements found in Section 3.2 of the Allocation agreement (i.e. Types of QLICIs, Service Area, etc.)?

Yes. To the extent a CDE re-invests repayments of principal as new QLICIs, the CDFI Fund will check compliance for all reported QLICIs against the requirements specified in the allocation agreement. For example, if an allocatee is required to invest 85 percent of its QLICIs in its approved service area, the CDFI Fund will measure compliance against all reported QLICIs that are currently outstanding, whether original investments or reinvestments, to ensure that 85 percent of its QLICIs are in the approved service area.

15. Is the 6-month cure period found under § 1.45D-1(e)(6) available to correct a CDEs or subsidiary-CDE’s failure to invest substantially all of its QEI proceeds?

Yes. The 6-month cure period found under § 1.45D-1(e)(6) is available to correct a CDE’s or subsidiary-CDE’s failure to invest substantially all of its QEI proceeds in QLICIs within the 12-month period as required by § 1.45D-1(c)(5)(iv). However, the 6-month cure period is not automatically added to the 12-month period. As the rule states, the 6-month cure period begins on the date the CDE becomes aware (or reasonably should have become aware) of the failure to invest substantially all of the QEI proceeds in a QLICI within the 12 month period.

16. If an allocatee is providing loans to or investments in other CDEs, how will the CDFI Fund monitor compliance with the provisions of Section 3.2? Will the CDFI Fund only consider the initial QLICI into the other CDEs, or will the CDFI Fund look through the CDEs to the ultimate QALICB recipients?

The CDFI Fund will look through to the ultimate QALICB recipient for the purpose of monitoring compliance with specific provisions of Section 3.2 of the allocation agreement, including compliance with the service area requirement, the better rates and terms requirement, and the areas of higher distress requirement.

Allocatees are required to provide the CDFI Fund with transaction level data via the CDFI Fund's Community Investment Impact System, even if an allocatee uses multiple layers of CDEs to execute its QLICIs. For example, to determine compliance with the service area provision in Section 3.2 for an allocatee that invests in other CDEs, the allocatee will submit census tract information of the ultimate QALICB recipient that receives the QLICI proceeds to determine if the QALICB recipient was located in the service area as defined in Sec. 3.2. The location of the CDE that received the initial loan or investment from the allocatee will not be considered.

17. How does the CDFI Fund define "Affordable Housing" for the purpose of meeting Section 3.2(k) of the allocation agreement?

1) An allocatee that finances rental housing units shall meet the requirements of Section 3.2(k) if the following criteria are met:

- a) 20 percent or more of total rental units financed with QLICIs are both rent restricted, as defined in IRC Section 42(g)(2)(C) and occupied by individuals whose household income as illustrated by HUD Handbook 4350.3 REV-1 (or subsequent versions), is less than or equal to 80 percent of the area median family income as determined and adjusted annually by HUD; **and**
- b) 20 percent or more of total rental units financed with QLICIs maintain their rent restrictions throughout the 7-year NMTC compliance period. Tenants should be certified as of the later of the date the QLICI is made or move-in. Maintenance of the rent restrictions for the 7-year NMTC compliance period shall be documented by certifying the initial household income of any tenant.

2) A allocatee that finances for-sale housing units shall meet the requirements of Section 3.2(k) if 20 percent or more of the total for-sale housing units financed are purchased and occupied by Low Income Persons with a 38 percent or less Debt-To-Income Ratio and are owner-occupied by individuals whose household incomes is 80 percent or less of the area's median family income as determined and adjusted annually by HUD at the time the units are sold to the initial homebuyer. For example, recurring debt payments should include, but not be limited to mortgage payments made up of PITI, credit card, automobile, student and other consumer loan payments.

18. What is the "Substantial Rehabilitation" threshold for purposes of meeting Section 3.3(h) of the allocation agreement?

In order to meet the substantial rehabilitation threshold, a CDE must show that the cost basis (as defined in 26 USC § 1012) of any improvements incurred during the taxable year the QLICI is made and during any 24-month period that begins in, ends with or straddles the taxable year in which the QLICI is made, equals or exceeds 25 percent of the adjusted basis (as defined in 26 USC § 1011(a)) of each building with respect to which the improvements are made as of the beginning of the applicable 24 month period.

Service Area

19. My CDE is making several investments in a real estate project over a period of time. At the time of the initial investment, the real estate project was deemed to be in an eligible NMTC census tract. Will future investments under the real estate project qualify if the tract is later deemed to not be an eligible NMTC census tract?

Yes. The CDFI Fund would consider an investment to be made within a qualifying census tract as long as the census tract qualified at the time of the initial QLICI disbursement related to the real estate project. The allocatee must maintain relevant maps from the CDFI Fund Information and Mapping System (CIMS) to demonstrate eligibility at the time of the initial QLICI disbursement and relevant documents to demonstrate that follow-on investments can be directly tied to the original project at the same address.

Subsidiary Allocatees (Sub-Allocatees)/Transfer of Allocation

20. If an allocatee elects to transfer allocations to a sub-allocatee (i.e. a subsidiary CDE listed in Section 3.2 of its allocation agreement), will the CDFI Fund monitor compliance with Section 3.2 separately by each subsidiary or on a consolidated basis for all sub-allocatees that are parties to the allocation agreement?

The CDFI Fund will monitor compliance on a consolidated basis for the total allocation amount. For example, if ABC allocatee receives a \$1 million allocation and is required to invest 100 percent of its QEIs as QLICIs, and 80 percent of its QLICIs in areas of severe economic distress, then ABC allocatee must invest at least \$800,000 into areas of severe economic distress. If ABC allocatee sub-allocates \$500,000 of its allocation to each of two sub-allocatees, each sub-allocatee does not have to separately invest 80 percent of its \$500,000 sub-allocation amount (\$400,000) into areas of severe economic distress. It would be permissible, for example, for one subsidiary to invest \$500,000 into areas of severe economic distress and the other to only invest \$300,000 in such areas. Provided that the total dollar amount of QLICIs invested in such areas meets or exceeds \$800,000 on a consolidated basis, the allocatee and its sub-allocatees would be in compliance with the allocation agreement.

21. How does the “joint and several liability” provision of the allocation agreement apply to allocatees that intend to sub-allocate tax credit authority to subsidiary CDEs?

As stated in the allocation agreement, the allocatee and each of its sub-allocatees are jointly and severally liable for any event of default under Section 8.1 whether the allocatee or any of its sub-

allocates incurs the default. If such an event of default occurs, the CDFI Fund may impose remedies jointly or severally upon the allocatee and its sub-allocatees, except that the CDFI Fund will not terminate or reallocate any unused portion of the NMTC allocation with respect to any investment commitments related to a NMTC allocation made to a non-defaulting allocatee or sub-allocatee, as determined by the CDFI Fund.

Unrelated Entities

22. How will the CDFI Fund monitor compliance with the unrelated entity requirement in Section 3.2 of the allocation agreement?

This sub-section of Section 3.2 requires certain Allocatees to meet the IRS's "substantially all" requirement by making investments in entities that are unrelated to the Allocatee. Allocatees will be required to indicate in the transaction level report whether each QLICI made was to a related or unrelated entity. This test is measured on an aggregate QEI basis.

An Allocatee that has committed to invest in Unrelated Entities will be in compliance with its Allocation Agreement only if persons unrelated to the Allocatee will hold a majority equity interest (as defined in IRC §45D(f)(2)(B)), and as determined subsequent to the receipt of a QEI, but prior to the Allocatee using the proceeds of that QEI to make the initial QLICI. The CDE must determine whether such persons are related to the CDE (within the meaning of IRC §267(b) and §707(b)(1)) in consultation with its own tax advisors. For all QLICIs made on or after April 15, 2010, the CDFI Fund will assess compliance with the Unrelated Entities requirement at either the Allocatee CDE or Subsidiary CDE level depending upon which entity receives the QEI investment and makes the corresponding QLICI.

CDFI Fund may review any subsequent changes in QALICB, Allocatee CDE, or Subsidiary CDE ownership resulting in common ownership between the Allocatee CDE (or Subsidiary CDE) and the QALICB on a case-by-case basis to determine whether a principal purpose of a transaction or a planned series of transactions is to achieve a result that is inconsistent with the purposes of this rule. The requirement of Section 3.2(d) does not apply if an Allocatee becomes related to a business due to financial difficulties of the business that were unforeseen at the time the QLICI was made to the business.

Better Terms and Conditions/Flexible Products

23. Section 3.2(f) of my CDE's allocation agreement states that "All of the Allocatee's QLICIs must (a) be equity or equity-equivalent financing, (b) have interest rates that are "X" percent lower than either the prevailing market rates for the particular product or lower than the Allocatee's current offerings for the particular product, or (c) satisfy at least 5 of the indicia of flexible or non-traditional rates and terms, as listed in Section 3.2(f)." How can my CDE demonstrate that it is satisfying this requirement?

The CDFI Fund generally monitors transactions on an investment-by-investment basis. Each investment must: (1) be equity, an equity equivalent, or a loan with an interest rate that is at least

“X” percent below a market comparable; or (2) have the corresponding number of concessionary terms (e.g., higher loan to value ratio; reduced fees; non-traditional collateral; etc).

It is permissible for a CDE to combine separate investment transactions for the purposes of meeting this requirement, provided that these transactions are part of a simultaneous closing and: 1) 50 percent of the dollar value of the combined transactions is in the form of equity, equity equivalents, or the blended interest rate is at least “X” percent below market (see example 1); or 2) at least 50 percent of the dollar value of the combined transactions have concessionary terms (see example 2).

Example 1: A CDE finances a \$1 million transaction by combining a \$750,000 market-rate loan with a \$250,000 loan that may be purchased by the QALICB or affiliate for a nominal rate after seven years. If the blended interest rate on these combined products is “X” percent below the prevailing market rate, the CDE satisfies the requirements of Section 3.2(f) provided these transactions are part of a simultaneous closing.

Example 2: A CDE finances a \$1 million transaction by combining a \$500,000 market-rate loan with a \$500,000 below market rate loan. If \$500,000 (50 percent of the total transaction) has: a) an interest rate that is less than “X” percent below market; b) a loan to value ratio more favorable than market; c) origination fees that are lower than market; d) a debt service coverage that is lower than market; and e) interest-only payments for 7 years; then the CDE satisfies the requirements of Section 3.2(f).

Example 3: A CDE finances a \$1 million transaction by combining a \$750,000 market-rate loan with a \$250,000 loan that has an interest rate that is “X” percent below market. The CDE fails the requirements of Section 3.2(f) because less than 50 percent of the blended product offering meets the below-market interest rate requirement.

Example 4: A CDE finances a \$1 million transaction by combining an \$800,000 market rate loan with a \$200,000 equity investment. The combined transaction has 5 concessionary features that include: a) interest rate that is less than “X” percent below market; b) loan to value ratio more favorable than market; c) origination fees lower than market; d) debt service coverage lower than market and e) interest-only payments for 7 years. The CDE meets the requirements of section 3.2(f).

<p>24. How does an Allocatee document “better rates and terms” for its QLICIs and how will the CDFI Fund determine compliance with the better rates and terms requirement of the allocation agreement?</p>

If the Allocatee’s Controlling Entity, Affiliate(s) or QEI investor provides financial products similar to those offered by the Allocatee (or sub-Allocatee), the Allocatee may use the rates, terms and flexible features (LTV, DSCR, etc) of the non-NMTC product (for a similar real estate project and similar borrower) as a comparable for demonstrating that the QLICI meets the provisions of Section 3.2(f). Documentation may include the underwriting memorandum, or real estate project assessment reviewed and approved by the Allocatee's investment committee. Such documentation should detail the rates, terms and flexible features of the QLICI and document how non-NMTC rates, terms and features were adjusted for the NMTC product, borrower and real estate project.

If the Allocatee is basing its determination on market comparables, it must retain all documentation that can demonstrate what the comparable market rate was at the time of closing the QLICI. For example, if the CDE benchmarks its returns to a specified market indicator (e.g., 200 points over the 7-year Treasury rate), then the Allocatee must retain documentation demonstrating: 1) what the market indicator was on the day the transaction closed; and 2) that the interest rate offered by the Allocatee was sufficiently lower than the comparable market offering.

To document better rates and terms to a QALICB that would not otherwise obtain financing in the market, the Allocatee may use documents from other financial institutions that demonstrate that: the QALICB did not meet its financial underwriting criteria and the loan was not approved; or that the loan was approved with certain conditions, rates and terms that would result in the real estate project being economically unfeasible or unsustainable.

The CDFI Fund will require a CDE to identify, in its Transaction Level Report, whether a transaction met the requirements for better rates and terms, as well as the applicable market comparables. The CDE must also maintain supporting documentation in its files, should the CDFI Fund request them. As stated above, documentation must reflect information relevant at the time the loan and/or investment was made.

Areas of Higher Distress/Targeted Distressed Communities

25. What supporting documentation does an Allocatee need to retain in order to demonstrate compliance with investing in areas of higher distress as reflected in Section 3.2(h) Targeted Distressed Communities of the Allocation Agreement? What resources are available to determine if a census tract is in an approved Area of Higher Distress?

In addition to CIMS, which provides poverty rates, Median Family Income (MFI) percentages and unemployment rates, the CDFI Fund has provided several links on its website to assist allocatees. Please visit the “Compliance Monitoring and Evaluation” link for details.

Allocatees are advised to retain all relevant information in support of its decision to invest in such areas. Supporting documentation for the areas of higher distress requirement may include: statistical indices of economic distress such as poverty rates, median family income or unemployment rates at the census tract level based upon the 2000 census; materials from other government programs (e.g., HUD Renewal Communities; EPA Brownfields) demonstrating the area qualified for assistance under those programs; etc. Please visit the “Compliance Monitoring and Evaluation” section on the CDFI Fund’s website for links to the following sites:

- [Federally Designated Empowerment Zones, Enterprise Communities, or Renewal Communities](#)
- [Brownfield Sites](#)
- [SBA Designated HUB Zones](#)
- [Median Family Income and Poverty Rate Data](#)
- [Median Unemployment Rate Data](#)
- [Medically Underserved Areas \(Department of Health and Human Services\)](#)

26. How will the CDFI Fund measure compliance with meeting the requirement of Section 3.2(h) Targeted Distressed Communities for a QALICB with tangible property in several census tracts?

The CDFI Fund will determine compliance with the “Targeted Distressed Communities” measure for a QALICB with locations/assets across multiple census tracts using elements of the QALICB qualification criteria. CDEs must demonstrate and maintain records showing that the QALICB meets the criteria below with regard to each individual Targeted Distressed Community:

- At least 50% of the total gross income is from the active conduct of a qualified business in the eligible Targeted Distressed Community and
- At least 40% of the use of tangible property of the business is within the eligible Targeted Distressed Community; and
- At least 40% of the services performed by the business’ employees are performed in the eligible Targeted Distressed Community

27. Is a “Housing Hot Zone” an eligible Area of Higher Distress criteria?

Yes. Both Economic and Housing Hot Zones are considered eligible Areas of Higher Distress criteria under applicable allocation agreements - CY2002, CY2003, CY2005 and CY2006 rounds.

28. Is there a single source to determine the unemployment rate for a census tract?

Yes. The CDFI Fund utilizes the 2000 Census data when determining if a census tract’s unemployment rate is 1.5 times greater than the national average. The unemployment rate for the 2000 Census is 5.8 percent, thus to qualify as an eligible Area of Higher Distress criteria, the unemployment rate of the subject census tract must be equal to or greater than 8.7 percent.

Allocatees may find a census tract’s unemployment rate in Table DP-3 (Profiles of Selected Economic Characteristics) under the American FactFinder link on the U.S. Bureau of the Census’ website (www.census.gov). Allocatees may also use the CDFI Fund’s mapping system to determine the ratio of census tract unemployment to the national average by utilizing the CDFI link instead of the NMTC link in CIMS.

29. Does a SBA designated HUB Zone qualify as an eligible area of higher distress and how does the CDFI Fund determine if a QLICI supports businesses that obtain HUB Zone certification?

A SBA designated HUB Zone qualify as an eligible area of higher distress. However, for CY2005 and subsequent allocatees, the real estate project must be located in a SBA designated HUB Zone **and** the QLICIs must support businesses that obtain HUB Zone certification from the SBA. For allocatees prior to the CY2005 round, the real estate project must at a minimum be located in a SBA designated HUB Zone to meet the area of higher distress criteria.

When completing the areas of higher distress section in CIIS, allocatees should respond to this criteria based on the language found in its allocation agreement. Thus, allocatees who received a CY2005 or subsequent allocation should only respond “Yes” to a SBA HUB Zone if both requirements are met as detailed in the allocation agreement.

For the purposes of compliance, the CDFI Fund will consider that an investment “supports” a HUB Zone business if the QLICI meets one of the following criteria:

1. The QLICI is used to finance a non-real estate or real estate QALICB that maintains an active HUB Zone business certification.
2. The QLICI is used to finance a real estate QALICB where at least 50% of the dollar value of the contracts and sub-contracts related to the development, management or leasing of the real estate QALICB go to businesses with active HUB Zone certifications.
3. The QLICI is used to finance a real estate QALICB where at least 50% of the rentable square footage is leased to businesses with an active HUB Zone Certification at below market lease rates.

30. How does the CDFI Fund define “other similar state/local programs targeted towards particularly economically distressed communities”?

The program designation should be for a specific geographic area, as opposed to a population, preferably where the state or local government has designated it for redevelopment via legislation. The CDFI Fund will not pre-approve such programs. Allocatees are advised to maintain all relevant information regarding these designations in its files in the event the CDFI Fund requests such documentation. Some examples of local areas that qualify for the designation include:

- a local Tax Increment Financing (TIF) district
- an area affected by a major plant or facility closing resulting in permanent layoffs
- an area affected by Federal military base closings
- an area of unusually high commercial vacancy rates
- an area designated for the establishment of a regional technology/business center

Qualified Equity Investment Usage

31. All allocatees are required to invest substantially all (generally 85 percent) of their QEIs as QLICIs. Section 3.2(j) of the allocation agreement may require an allocatee to invest an even higher percentage of QEIs (e.g., 95 percent; 100 percent) as QLICIs, based on representations made by the allocatee in its allocation application. How does the CDFI Fund monitor compliance with Section 3.2(j) of the allocation agreement?

(A) All allocatees must be able to demonstrate that they initially made QLICIs in the amount specified in their allocation agreements.

Example: If an allocatee received QEIs totaling \$1 million, and is required in its allocation agreement to invest 100 percent of its QEIs as QLICIs, then it must be able to demonstrate that \$1 million was initially invested as QLICIs.

(B) If an allocatee subsequently receives repayments of principal from the QLICIs (e.g., amortizing loan payments), but consistent with applicable IRS regulations does not reinvest these proceeds into other QLICIs, then the allocatee will be treated as fulfilling the requirements of Section 3.2(j) – notwithstanding the fact that the allocatee is no longer “fully invested” at the initial percentage.

Example: An allocatee received QEIs totaling \$1 million, and is required in its allocation agreement to invest 100% of its QEIs as QLICIs. It makes a loan of \$1 million to a QALICB. In accordance with the terms of the loan, the QALICB makes interest-only payments for two years, and beginning in year 3, some small payments of principal along with the interest payments. At the end of the seven-year compliance period, the principal payments total less than \$150,000 – or 15% of the \$1 million loan to the QALICB. This amount of repayment is sufficiently minimal as to not trigger reinvestment requirements under the IRS regulations. The allocatee is in compliance with 3.2(j).

(C) If an allocatee subsequently receives repayments of principal from the QLICIs that are sufficient enough to trigger reinvestment requirements under the IRS regulations, the allocatee is required to reinvest those proceeds in the same percentage as is required in the allocation agreement.

Example: An allocatee received QEIs totaling \$1 million, and is required in its allocation agreement to invest 100 percent of its QEIs as QLICIs. It makes a loan of \$1 million to a QALICB. The QALICB repays the entirety of the loan after two years. The allocatee must reinvest the entire \$1 million into a QLIC within the timeframes required under IRS regulations in order to be compliant with Section 3.2(j).

NOTE: Consistent with IRS regulations regarding reinvestment, the CDFI Fund will not require allocatees to reinvest principal repayments that are received in year 7 of the compliance period.

Restrictions on Use of Allocation

32. Does Section 3.3(h) of my allocation agreement (prohibitions on real estate refinancing), allow for the “take-out” of both debt and equity?

Yes. Section 3.3(h), which is applicable to all allocatees that received allocations in the CY2005 and later rounds, generally prohibits allocatees from using QEI proceeds to re-finance loans that were made to businesses whose principal activity is the rental to others of real property. As provided for in Section 3.3(h), this general prohibition does not apply in the case of financing that is used to “take-out” debt or equity that was used to finance certain eligible prior construction or acquisition activities.

33. Can takeout financing apply to an amortizing loan under Section 3.3(h)(v) of the allocation agreement?

Yes. The intent of 3.3(h)(v) of the Allocation Agreement is to prevent the refinancing of permanent loans solely to reduce financing costs to the QALICB. The structure (amortizing or interest-only) of the underlying loan to be taken out is immaterial. The allocatee must determine whether the take out financing for the underlying loan fits the intent of section 3.3(h)(v) – namely, to prevent the refinancing of permanent loans.

Material Events

34. Section 6.9 of the allocation agreement requires CDEs to report Material Events to the CDFI Fund within 20 days of the occurrence. How do I report a material event to the CDFI Fund?

An updated Material Events form can be found on the CDFI Fund's website at <http://www.cdfifund.gov/docs/certification/cdfi/Material%20Events%20Form.pdf>. Allocatee should use this form to identify the nature of the material event, so that the CDFI Fund can determine whether or not it will affect the CDE's ability to remain certified as a CDE or to administer its allocation award.

35. What is a Material Event?

The CDFI Fund defines a "Material Event" as an occurrence that affects an organization's strategic direction, mission, or business operation and, thereby, its status as a certified Community Development Financial Institution (CDFI) or Community Development Entity (CDE), and/or its compliance with the terms and conditions Allocation. The list below provides examples of Material Events that should be reported to the CDFI Fund on the Certification of Material Event Form. Please note these examples may not apply to all covered entities and this list may not be exhaustive:

- An Event of Default, as that term is defined in Section 8.1 of the allocation agreement, or any event which upon notice or lapse of time, or both, would constitute an Event of Default;
- A merger, acquisition, or consolidation with another entity
- A change in the organization's legal status (e.g., dissolution or liquidation of the organization, bankruptcy, receivership, etc.)
- An event which materially changes the strategic direction, mission, or business of the organization such that the organization no longer meets a certification requirement (e.g., no longer providing Financial Products or Development Services.)
- Changes in business strategy that might have influenced the merits of awarding the application (e.g. benefits passed to QALICB, changes in fees charged to various parties, changes in QEI structure, changes in product offering, changes in project selection.)
- An event which materially changes the organization's tax and/or corporate structure (e.g., changing from for-profit to non-profit status)
- An event that results in a change in control of the organization (e.g., control by, controlling relationships, loss of control - as such term is defined Allocation agreement - by any entity that is a party thereto)

- An event in the composition of the organization's Board of Directors (or other governing body) such that the percentage of the governing or advisory board members representing the organization's Service Area is diminished or altered.
- Relocation of the organization's primary office to another state which alters the organization's ability to serve or be accountable to its Service Area (based on its most recent certification prior to the relocation)
- A proceeding instituted against the allocatee in, by or before any court, governmental or administrative body or agency, which proceeding or its outcome could have a material adverse effect upon the operations, assets or properties of the allocatee as it relates to any allocation agreement;
- A proceeding instituted against a regulated affiliate of an allocatee, by or before any court, governmental or administrative body or agency, which proceeding or its outcome could have a material adverse effect upon the operations, assets or properties of the allocatee as it relates to any allocation agreement;
- A material adverse change in the condition, financial or otherwise, or operations of the allocatee that would impair the allocatee's ability to carry out the authorized uses of the allocation;
- The debarment, suspension, exclusion or disqualification, by the Department of Treasury, or any other Federal department or agency, of any individual or entity (or principal thereof) that received any portion of the assistance/allocation in a procurement or nonprocurement transaction, as defined in 31 C.F.R. §19.970.

D. REPORTING AND FINANCIAL STATEMENTS

36. Which organizations are required to submit audited financial statements to the CDFI Fund?

Only allocatees are required to submit audited financial statements to the CDFI Fund. Submission of an audited financial statement will be required beginning with the first fiscal year in which the allocatee issues a QEI. Effective June 30, 2011, a subsidiary-CDE that has issued QEIs is no longer required to have audited financial statements produced for the CDFI Fund.

37. Will the CDFI Fund accept the audit of an allocatee's controlling entity, or parent company, if the allocatee is not separately audited?

Yes. The CDFI Fund will accept the audit of a CDE's controlling entity or parent company if the CDE's activities are fully detailed in a schedule of assets, liabilities, income and expenses of the parent's financial statements. If the audit does not provide these details, the CDFI Fund will require the allocatee to submit an audit that includes such information.

38. Is a Tax Basis financial statement acceptable in lieu of generally accepted accounting principles (GAAP) prepared financial statement?

Yes. The CDFI Fund will accept financial statements prepared on a tax basis. However, allocatees are required to utilize the same basis of accounting from year to year. In the event an allocatee who prepares cash basis financial statements one year and then is required to use GAAP the next, the CDFI Fund will require that the prior years' statements be adjusted to GAAP

and the statements be audited. Thus, while the CDFI Fund may accept tax basis financial statements for the first reporting period, it may require subsequent financial statements to be GAAP.

39. How will the CDFI Fund treat an audit that has an opinion other than “unqualified”?

The CDFI Fund would view such an occurrence as a Material Event under Section 6.9(b) of the Allocation agreement and it must be reported to the CDFI Fund. If the CDFI Fund determines that the underlying reasons are significant, it may elect to find the allocatee in default under Section 8.1 of the allocation agreement and may impose one or more of the remedies outlined in Section 8.3.

40. How will an allocatee fulfill its reporting requirements as outlined in Section 6.5 of the allocation agreement?

An allocatee will submit its Institution and Transaction Level Reports through CIIS and its QEI data through the Allocation Tracking System (ATS). Both are Internet based systems hosted by the CDFI Fund and accessible to the allocatee via its myCDFIFund account. An Allocatee can fax or mail its audited financial statements or send it them as an attachment to its CIIS submission.

41. How does a Recovery Act allocatee fulfill its quarterly reporting requirements?

Recipients of NMTC allocation awards through the American Recovery and Reinvestment Act (Recovery Act) are required to submit a Quarterly New Markets Report (QNMR) to the CDFI Fund no later than ten (10) days after the end of each calendar quarter beginning September 30, 2009 and continuing every calendar quarter for the term of the allocation agreements.

The QNMR Excel workbook must be submitted electronically through email to the CDFI Fund. Instructions for completing the QNMR and FAQs are available on the CDFI Fund’s Recovery Act webpage at <http://www.cdfifund.gov/recovery>. The QNMR Excel Workbook should be saved as the allocatee’s name and emailed as an attachment to QNMRSubmissions@cdfi.treas.gov no later than the 10th calendar day of each quarter, 11:59pm, PT. After the QNMR is submitted to the CDFI Fund, the CDFI Fund will review the data and send any questions to the Allocatee. Please note that the instructions for the QNMR state that reports should be submitted through the CDFI Fund’s Community Investment Impact System. However, quarterly reporting will remain in Excel workbook format until further notice.

42. Are allocatees that have yet to issue a QEI required to submit Institution and Transaction Level Reports?

No. Submission of the Institution Level Report will be required beginning with the fiscal year in which the allocatee or sub-allocatee(s) issues its first QEI. If the first QEI is made by a sub-allocatee then the allocatee will need to submit the Institution Level Report for the fiscal year in which the QEI was made. These reports will be required for each fiscal year thereafter, until the allocation agreement is terminated.

Submission of the Transaction Level Report will be required beginning with the fiscal year in which the allocatee or sub-allocatee(s) makes its first QLICI. If the first QLICI is made by a sub-allocatee then both the sub-allocatee and the allocatee will need to submit reports for the fiscal year in which the QLICI was made. This report will be required for each fiscal year thereafter, until the allocation agreement is terminated.

43. What if the allocatee and the sub-allocatee have differing fiscal year end dates?

All reporting due dates are driven by the allocatee's fiscal year end date. CIIS reports due dates are always determined by the fiscal year of the allocatee regardless if any or all of the allocation has been transferred to a subsidiary-allocatee.

44. Will there be any penalties for late reporting?

Failure to submit required reports by the required deadline may result in default of the allocation agreement and penalization through the scoring of future applications to the CDFI Fund. Potential remedies include termination or reallocation of any unused allocations. A default finding would also make the allocatee ineligible to apply for future funding or allocation from the CDFI Fund. Section 8.3 of the allocation agreement lists the remedies available to the CDFI Fund when an allocatee defaults under the terms of the agreement.

45. What happens if a QLICI is charged-off or its value has been reduced to zero as a result of bankruptcy or similar event?

The allocatee should consult with CIIS Help Desk (703-373-1516 or ciishelp@kearneyco.com) and the CDFI Fund to ensure that the historic information regarding a charged-off QLICI is properly captured within the CIIS system. In addition, the allocatee should provide written notice of such occurrences and any supplemental information requested by the CDFI Fund to the CDFI Fund's Office of Certification, Compliance Monitoring and Evaluation.

46. What happens when a subsidiary-CDE has completed the 7 year NMTC compliance period?

The CDFI Fund is developing formal guidance on this issue that it will issue at a later date.

47. What happens after an allocatee completes its 7 year compliance period after issuance of its last QEI?

The CDFI Fund is in the process of establishing a formal closeout policy. In the interim, after the seven-year compliance period, the CDFI Fund will no longer require the submission of audited financial statements, Institution Level and Transaction Level Reports.

E. CIMS (MAPPING)

48. Can allocatees rely on data from the CDFI Fund’s Information and Mapping System (CIMS) for the purposes of determining whether transactions are located in NMTC eligible low-income communities?

Both the CDFI Fund and the IRS will treat as eligible any otherwise qualifying QLICI that is made in a census tract identified under CIMS as being made in a NMTC eligible low-income community – provided that the census tract in question was identified as eligible in CIMS at the time the QLICI was closed. Closed shall be defined as an investment for which the allocatee has distributed cash proceeds from a qualified equity investment to the QALICB or CDE.

CIMS utilizes U.S. Bureau of the Census data, however, slight variations may arise. While other data sources or mapping systems may produce differing results than CIMS, the CDFI Fund and the IRS will guarantee as being eligible only those qualifying areas identified in CIMS. The CDFI Fund will not pre-approve any tracts as eligible that are not already identified as eligible in CIMS. CDEs that wish to make investments in such census tracts do so at their own risk and are advised to maintain relevant reports and maps, as necessary, to demonstrate to the CDFI Fund and/or to the IRS that a census tract was in fact eligible at the time of investment.

CIMS data is subject to future changes. Once the Census Bureau completes its data release of the five-year American Community Survey for 2006-2010 the CIMS data system will be updated. As stated above, allocatees can rely on current CIMS data to make investments. In the event that the data is updated or modified, allocatees should retain the CIMS geocoded data reports and maps demonstrating that the census tract met the NMTC low-income criteria at the time of investment.

49. CIMS indicated that an address is not valid. How do I geocode an address that CIMS cannot validate?

The CDFI Fund offers the following guidance for obtaining a FIPS code and/or maps for addresses that cannot be validated in CIMS:

- Log on to your myCDFIFund account.
- Click on the “Mapping” link.
- Open the “NMTC Low-Income Community” link.

If you know the FIPS code:

- Click on the “File” link
- Click “Import”
- Click “Enter Census Tract” and then enter the 11-digit FIPS code
- Depress the “Submit Tract Selection” button.

If you do not know the FIPS code:

- Click on “Tools”
- Click “Zoom To”
- Click either “County, MSA or State” and select the applicable county, MSA or state.
- Enable all “Labels” and “Layers” by checking all boxes under each link.

- Use the “Zoom In” or “Rectangular Zoom In” feature to locate targeted site.
- Once the targeted site is located, click the “i” button.
- Position pointer over designated census tract and left click.
- The FIPS Code will be displayed as the “Unit ID.” The 11-digit FIPS Code number is comprised of a 2-digit state number, a 3-digit county number and the 6-digit census tract number.
- Click on the “Reports” link.
- Open the “Low-Income Community Worksheet.”
- Print and retain this document for your files.

Please contact the CIIS Help Desk if you have additional questions at (703) 373-1516 or E-Mail: ciishelp@kearneyco.com

50. As a result of operational upgrades made to CIMS in February of 2004, approximately 500 census tracts that had previously been identified as NMTC-eligible were deemed to be no longer eligible. Will the CDFI Fund be providing a transition period so that allocatees that made investments in those census tracts, or had intended to make investments in those census tracts, will be held harmless for these transactions?

Yes. CY2002 and CY2003 NMTC allocatees shall be permitted to make QLICIs in these census tracts, provided that the investment: 1) otherwise qualifies as a QLICI; and 2) is made by the allocatee on or before July 31, 2005, or is a follow-on investment to a QLICI that was made by the allocatee on or before July 31, 2005. In the case of a follow-on investment, it is incumbent upon the allocatee to maintain records (e.g., subscription agreements, loan documents, disbursement schedules) to demonstrate that the follow-on investment is directly tied to the initial QLICI. A list of the approximately 500 census tracts that qualify for this special dispensation can be found on the CDFI Fund’s website at www.cdfifund.gov.

51. Why do I get a different census tract location when I map the same address at a later date? How will the CDFI Fund handle such differences?

The CDFI Fund updates the address geo-coding system to provide more accurate street address locations. As such, some addresses that were mapped prior to a system upgrade may no longer appear in the same census tract. In the event of such an occurrence, the CDFI Fund will accept the previously mapped results provided that the CDE maintains documentation (viz., CIMS, FFIEC, or U.S. Bureau of the Census) demonstrating the location was previously in an eligible census tract.

52. Can 2010 census data be used to determine qualifying census tracts?

Currently, allocatees are still required to use 2000 U.S. census data to determine investment qualifications. Once the Census Bureau completes its data release of the five-year American Community Survey for 2006-2010 the CIMS data system will be updated. The CDFI Fund in conjunction with the IRS will then provide guidance as to how CDEs can continue to use 2000 census data for proposed QLICI, while also incorporating the results of the 2010 Census.

F. CDE CERTIFICATION

53. Am I required to notify the CDFI Fund if a certified CDE has been dissolved?

Yes. The Authorized Representative must contact the Office of Certification, Compliance Monitoring and Evaluation at ccme@cdfi.treas.gov and provide the Name, Control Number and EIN of the dissolved CDE. The CDFI Fund would consider the dissolution of a certified CDE as a material event to the extent that it finalized a QEI. The Allocatee should consult with CIIS Help Desk and the CDFI Fund to ensure that the historic QLICI information of the Sub-CDE is properly captured within the CIIS system

54. How will an allocatee maintain their CDE Certification status?

An allocatee will be required to certify on an annual basis that they continue to meet the CDFI Fund's CDE certification requirements. The certification will be completed electronically via CIIS at the time the allocatee submits its reports. If the allocatee has transferred any portion of its allocation to a subsidiary, the allocatee will be required to certify on behalf of the subsidiary as well.

Should the allocatee (or any of its sub-allocatees) no longer meet the CDE certification requirements at any time, it must inform the CDFI Fund of such material event as required under Section 6.9 of the allocation agreement. If the CDFI Fund determines that an allocatee can no longer meet the CDE certification requirements, it will be found in default and an event of recapture declared.

55. Does the CDE certification have an expiration date?

In general, a CDE certification designation will not expire provided that the CDE continues to comply with the CDFI Fund's NMTC Program requirements. However, CDEs that obtained certification through self-certification as a CDFI or a Specialized Small Business Investment Company (SSBIC) may need to take additional steps to maintain their CDE certification status. Unlike CDE certification, CDFI certification is valid for only a defined time period. Therefore, an allocatee must either submit an application for re-certification as a CDFI or submit an application for CDE certification. The application must be submitted at the latest, 90 calendar days before the expiration date of the CDE's current CDFI certification. If the CDFI Fund receives a re-cert application from the allocatee prior to the expiration date of its CDFI certification, the allocatee will maintain its status as a certified CDE until such time as the CDFI Fund completes the certification review.

The CDFI Fund will periodically check the SBA's list of approved SSBICs. Should the allocatee no longer be a SSBIC, the CDFI Fund will notify the allocatee and allow the allocatee a set time period in which to submit a CDE certification application. This does not preclude the allocatee from informing the CDFI Fund, as required by the allocation agreement, of any loss of SSBIC designation prior to the CDFI Fund's review and notification.

56. If a CDE loses its status as a CDE, will it be offered an opportunity for a cure period?

Yes. The CDFI Fund will give the CDE an opportunity – not to exceed 90 days - to cure its non-compliance with its CDE certification requirements prior to removing its CDE designation and, if applicable, reporting this event to the IRS.

G. AMENDMENTS – SECTION 9.11

57. Can an allocatee amend its allocation agreement?

Yes. Allocatees may amend their allocation agreements by submitting written requests on the CDE's letterhead to the CDFI Fund. The request, at a minimum must: a) identify the name and control number of the allocatee; b) identify the portion(s) of the allocation agreement that need to be modified; c) state the reasons why the allocatee is making the request; and d) explain the extent to which the proposed modifications are consistent with what the allocatee had proposed in its initial application to the CDFI Fund, and will help to further the goals of the New Markets Tax Credit Program. The request can be submitted by e-mail to ccme@cdfi.treas.gov with subject line; NMTC: Allocation Agreement Amendment Request. The request can also be submitted by mail to the Office of Certification, Compliance Monitoring and Evaluation, Community Development Financial Institutions Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005.

Justification for approving an amendment to an allocation agreement includes but is not limited to a determination that the amendment request is: a) consistent with the intent of the NMTC Program statute and regulations and furthers the goals of the NMTC Program; b) consistent with (or not a substantive departure from) the business strategy proposed in the initial application for an allocation; and c) sufficiently narrow in scope that it does not disadvantage other allocatees or other applicants from the same allocation round.

While an amendment request can be submitted at any time, it must be submitted no later than 90 calendar days before the Allocatee needs the determination.

58. How can allocatees add additional subsidiary CDEs to Section 3.2?

Step 1: If the proposed subsidiary allocatees have not yet been certified as CDEs, the allocatee must first submit a CDE certification application on behalf of the non-certified subsidiary entities. Without certification, the CDFI Fund's databases will not link the subsidiaries to the allocatee, and the allocatee will NOT be able to add these subsidiaries to its allocation agreement.

Applicants should submit the forms as instructed in the CDE Certification Application, which include:

- CDE Form 1 – Applicant CDE Information Form (Allocatee);
- CDE Form 1a – Subsidiary Applicant Information Form (for each non-certified entity);

- CDE Form 1b – Subsidiary Applicant Primary Mission Certification (for each applicable non-certified entity);
- CDE Form 2 – Service Area and Accountability Form (for each non-certified entity);
- CDE Form 3 – Low Income Community Representative Form (for each LIC rep of each non-certified entity); and
- CDE Form 4 – Authorized Representative Certification Form (Allocatee).

Failure to provide all of the appropriate forms will delay certification and completion of the allocation agreement. The CDE certification application must be submitted to the Bureau of Public Debt (BPD), in accordance with the submission instructions provided in the CDE certification application. **Please be aware that obtaining a certification decision could take up to 90 days.**

Step 2: Once subsidiary allocatees have been certified, the allocatee must submit a complete amendment package to the CDFI Fund via email, fax, or mail to the address listed in the last question of document. **Please note that all Subsidiaries must be Certified CDEs prior to the submission of the amendment package; the CDFI Fund will not process requests while certification is pending.** A complete amendment package includes the following documents:

1. Request Letter: a letter signed by the registered Authorized Representative of the Allocatee including the name of the Allocatee, the control number of the Allocation Agreement to be amended, and the names and control numbers of each of the certified Subsidiaries to be added.
2. Certification Letter(s): copies of the certification received by Allocatee from the CDFI Fund confirming the CDE certification and control number of each of the Subsidiaries to be added.
3. Draft Legal Opinion: The legal opinion format should be similar to that used when the original Allocation Agreement was executed but may be limited solely to the new Subsidiaries. The legal opinion should also contain language confirming that the Allocatee Controls the Subsidiaries including having a controlling influence over the investment decisions of the Subsidiaries. For more information concerning this provision, please refer to applicable section of this document.

Email is the preferred method for submitting requests; however, CCME will accept amendment requests via fax and in hardcopy via mail. The email, with the subject line, “NMTC Allocation Agreement Amendment Request – Adding Subsidiary CDEs” should be directed to ccme@cdfi.treas.gov. Once processed, the Allocatee will receive a letter amendment which will need to be counter-executed and returned to the CDFI Fund along with the final legal opinion. Upon receipt of these counter-executed documents, the CDFI Fund will enter an Effective Date for the amendment and return a copy to the Allocatee. Please be aware that enjoining a certified subsidiary CDE to an allocation agreement could take up to 30 days.

NOTE: the above process does not apply to allocatees certified and established as a single entity under the Delaware Series Model. All activities within ATS and all data submitted within the institution and transaction level reports should be reported as if conducted by the Master series.

59. Can a CDE amend the Service Area stipulated in the allocation agreement?

In general, the CDFI Fund expects CDEs to make QLICIs in areas for which they are certified to serve and are deemed accountable to. Before a CDE can request an amendment to the Service Area identified in Section 3.2 (b) of the allocation agreement, the CDE must first amend its CDE certification service area. Amendments to CDE certification service areas should be sent by e-mail to ccme@cfdi.treas.gov or by facsimile to (202) 622-7754. Requests must be sent from the Allocatee's Authorized Representative and include the Allocatee's name, its CDE Certification control number, its current service area, the revised service area request, and an updated accountability chart that reflects representation from low-income communities in the revised service area (refer to [CDE Application Forms 2 & 3](#)). If the CDE's current service area consists of a local service area (e.g. city, county or metropolitan statistical area (MSA)) and is seeking to expand to a nearby city, county or MSA, such that the amended service area shall not constitute a state-wide service area, the CDE must provide the name and code of the counties to be included in the amended service area. The name(s) and Certification control number(s) of subsidiaries requiring an identical service area amendment should also be provided. The CDFI Fund accepts CDE certification service area amendment requests on an ongoing basis. Please note that approval of a change to a CDE's certification service area is no guarantee that it will also be approved as an addition to the Service Area listed in Section 3.2 (b) of the allocation agreement.

H. CONTROL OF SUBSIDIARY ALLOCATEES (SUB-ALLOCATEES) – SECTION 2.6

60. Are New Markets Tax Credit Program (NMTC) allocation recipients (allocatees) permitted to transfer their tax credit authority to other entities?

Yes. Allocatees may transfer all or a portion of their allocation authority to subsidiary entities (sub-allocatees), provided that each such subsidiary: a) has been certified as a qualified CDE by the CDFI Fund; b) is included as a party to an allocation agreement, either at the time of initial execution or through a subsequent amendment; and c) is "controlled" (as defined in the allocation agreement) by the allocatee at all times throughout the term of the allocation agreement.

61. How does the CDFI Fund define "Control," for the purpose of demonstrating that an allocatee controls a subsidiary entity?

The CDFI Fund defines "Control" as:

- (a) Ownership, control or power to vote more than 50 percent of the outstanding shares of any class of Voting Securities of any entity, directly or indirectly or acting through one or more other persons; or
- (b) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any other entity; or

- (c) Power to exercise, directly or indirectly, a controlling influence over the management policies or investment decisions of another entity, as determined by the CDFI Fund.

An allocatee demonstrates Control of a subsidiary entity by meeting any one of these three criteria. An allocatee does not have to satisfy all three criteria in order to be deemed to Control a subsidiary entity.

Notwithstanding the above, beginning with the CY2005 allocatees, the CDFI Fund requires that in order for an allocatee to transfer its allocation authority to a subsidiary allocatee, the allocatee must demonstrate, at a minimum, that it exercises and will maintain a controlling influence over the investment decisions of the subsidiary allocatee.

62. If an allocatee included a Controlling Entity in its NMTC Allocation Application for the purpose of demonstrating a track record, is the Controlling Entity required to maintain control during the entire 7-year NMTC compliance period? If so, how does the Allocatee demonstrate control by its Controlling Entity?

The entity that is designated as the *Controlling Entity* in an Allocatee's NMTC Allocation Application must continue in that capacity throughout the term of the Allocation Agreement with the CDFI Fund. To conform to the CDFI Fund's definition of a *Controlling Entity* as provided for in the application materials, it is required to continuously have a controlling influence over the management policies, and day-to-day management and operations (including investment decisions) of the Allocatee, as determined by the CDFI Fund.

63. What does the CDFI Fund deem to be a "controlling influence over the management policies" of another entity?

In order to demonstrate a controlling influence over the management policies of a sub-allocatee, the allocatee must be, at a minimum:

- (a) Identified in all appropriate organizational documents as the managing entity of the sub-allocatee (e.g., the general partner, managing partner, managing member or similar managing entity of the sub-allocatee);
- (b) At all times in principal control over the day-to-day operations of the sub-allocatee, and no other parties (including investors) may impose unreasonable limitations on the rights and privileges of the allocatee to carry out such general management functions or undermine the allocatee's control over the management of the sub-allocatee. The allocatee may enter into contracts with other entities to perform general management functions (e.g., underwriting transactions; compliance and monitoring), but the allocatee must retain the authority to remove the contracted parties with or without cause. Some indicia of management control include, but not limited, the authority to:
 - (i) Make all material decisions affecting the business and affairs of the entity;
 - (ii) Act for and bind the entity and to operate and administer the business;
 - (iii) Make strategic, governance, and *contract decisions*;
 - (iv) Establish all policies governing operations of the entity;
 - (v) Acquire and dispose of interests in real or personal property;
 - (vi) Establish and maintain bank accounts;

- (vii) Employ and terminate all officers, employees, consultants, and agents of the entity; and
- (viii) Exercise responsibility for business development, raising capital, underwriting, portfolio monitoring, reporting and compliance.

The existence of any one of these indicia, by itself, will not necessarily meet the management control test. Instead, when making a control determination the CDFI Fund will evaluate the totality of all of the facts and circumstances in each particular matter, including the existence of the factors listed above.

Please also note that certain factors which may amount to an unreasonable limitation on an allocatee's management control, include, but are not limited to:

- (i) The prohibition of the sale, disposition or transfer of any assets of the entity;
- (ii) The prohibition of entering into contracts valued above an unreasonably low threshold (e.g., \$5,000); and
- (iii) The hiring of agents or other entities controlled by investors in the allocatee or its subsidiary entities.

The existence of any one of these factors could result in a determination that the allocatee does not have management control over its subsidiary entity.

64. What does the CDFI Fund deem to be a “controlling influence over the investment decisions” of another entity?

In order to demonstrate a controlling influence over the investment decisions of a sub-allocatee, the allocatee must, at a minimum, have the authority to propose potential NMTC investments and the authority to approve all proposed transactions involving the use of NMTC proceeds. In other words, at no time can a QLICI be made without the authorization of the allocatee. This rule applies to initial NMTC investments as well as re-investments of NMTC proceeds that occur during the seven-year compliance period. The allocatee's approval authority may be either explicit (e.g., the operating agreement clearly states the approval rights) or implicit (e.g., the final investment decision authority rests with an investment committee, the majority of whose members are appointed by the allocatee and are not affiliated with the investor).

An allocatee may share its control of the investment decisions of a subsidiary entity with an investor (e.g., both parties have the right to veto a proposed investment transaction), provided that the investor does not exercise undue influence over the decision-making authority of the allocatee. The CDFI Fund would likely determine that undue influence exists in situations where, for example: (a) the allocatee is required to decide on an investment proposed by the investor within an unreasonable amount of time (i.e., less than 30 days); or (b) the investor can stop the payment of management fees or other contractual payments to the allocatee if the allocatee does not approve an investment proposed by the investor.

65. Will the CDFI Fund review operating agreements submitted by allocatees to determine whether they “control” subsidiary allocatees?

The CDFI Fund no longer requires allocatees, as a matter of course, to submit such documentation in advance of executing or amending allocation agreements. The CDFI Fund

reserves the right, however, to request such documentation from allocatees at any time, and will likely do so as part of its compliance and monitoring procedures. Allocatees may also be required to submit certifications confirming their control of sub-allocatees as part of annual reporting requirements. Allocatees are therefore advised to follow the guidelines contained in this document to ensure that they maintain sufficient control over their sub-allocatees.

The CDFI Fund will also require that allocatees obtain legal opinions which confirm that they control their sub-allocatees both at the time of initial closing of the allocation agreement and at the time of any subsequent amendments.

The CDFI Fund will not review operating agreements submitted voluntarily by allocatees or investors that wish to obtain determinations concerning a control issue from the CDFI Fund.

NOTE: The CDFI Fund has the discretion to consider additional factors when determining the extent to which an allocatee demonstrates control over its subsidiary allocatees.

66. How does the CDFI Fund view investor rights to remove the allocatee as the managing entity of the subsidiary allocatee?

The CDFI Fund is aware that many operating agreements for subsidiary entities may afford investors with the right to remove a managing entity for malfeasance or negligence. However, if such removal rights include: (a) the right to remove the managing entity without cause or (b) the right to remove the managing entity for violation of any provision of the operating agreement or any misconduct or breach of contractual obligations which does not have a material adverse effect on the business of the entity, the CDFI Fund could determine that the allocatee does not have management control over its subsidiary entity. In addition, if the investor decides to exercise its removal rights and, as a result, the allocatee no longer has any control over its subsidiary entity, the CDFI Fund may determine that such occurrence is an event of default under the terms of the allocation agreement and the CDFI Fund has the discretion to impose any or all of the remedies contained in the allocation agreement.

NOTE: The CDFI Fund has the right to approve all successors of the allocatee's interests as a party to the allocation agreement (see Section 9.4 of the allocation agreement).

I. CONTACTING THE CDFI FUND'S COMPLIANCE UNIT

67. How to contact the CDFI Fund's Office of Certification, Compliance Monitoring and Evaluation?

Helpline (202) 622-6330

Email: ccme@cdfi.treas.gov

Fax: (202) 622-7754

Mail: CDFI Fund
Attention: CCME
601 13th Street, NW
Suite 200 South
Washington, D.C. 20005

NOTE: This document is intended to serve as public guidance for the subject matter contained herein. The CDFI Fund reserves the right, however, to modify this guidance at any time upon public notice. The examples contained in this guidance are not exhaustive in nature and the CDFI Fund has the discretion to consider additional factors when determining matters of compliance.