NMTC Q&A Document:
Low-Income Communities and Targeted Populations

Purpose: The purpose of this document is to provide guidance with respect to how Community Development Entities (CDEs) may serve certain geographic areas and Targeted Populations under the New Markets Tax Credit (NMTC) Program.

Background:

The NMTC Program was enacted in December of 2000 through the Community Renewal and Tax Relief Act of 2000 (P.L. 106-554, 113 Stat. 2763). As originally enacted, the following geographic areas were deemed to be eligible "Low-Income Communities" (LICs) for purposes of the NMTC Program:

> (1) Any population census tract if : (a) the poverty rate for that tract is at least 20 percent, or (b) in the case of a tract not located within a metropolitan area, the median family income for the tract does not exceed 80 percent of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for the tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income;
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> (2) Certain "Targeted Areas" specifically designated by the Secretary as an LIC if: (a) the boundary of such area is continuous; (b) the area would satisfy the requirements listed in (1) above if it were a census tract; and (c) an inadequate access to investment capital exists in such area.

The American Jobs Creation Act of 2004 (P.L. 108-357, 118 Stat. 1418) amended the definition of LICs. Specifically, it removed the Secretary's authority to designate Targeted Areas, and instead created three new categories of LICs:

> (1) <u>High Out-Migration Rural County Census Tracts</u> – a population census tract within a county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period, if the median family income for the census tract does not exceed 85 percent of statewide median family income;
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> (2) <u>Low-Population/Empowerment Zone (EZ) Census Tracts</u> – a population census tract with a population of less than 2,000 if the tract is within an empowerment zone, and is contiguous to 1 or more LICs (not including other LICs in this category); and
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> (3) <u>Targeted Populations</u> – certain individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loans or equity investments.

On June 30, 2006, the IRS published Notice 2006-60 (2006-29 I.R.B. 82) providing guidance relating to how an entity meets the requirements to be a qualified active low-income community business (QALICB) when its activities involve Targeted Populations. On September 24, 2008, a notice of proposed rulemaking (NPRM) (REG-142339-05) was published in the **Federal Register** (73 FR 54990). Written and electronic comments responding to the proposed regulations were received and a public hearing was held on January 22, 2009. After consideration of all the comments, TD 9560 was published in the Federal Register (76 FR 75774) on December 5, 2011 finalizing the proposed regulations. As a consequence, Notice 2006-60 is obsolete for taxable years ending on or after December 5, 2011.

Frequently Asked Questions:

Q: *Are CDEs that are awarded NMTC allocations from the CDFI Fund required to get pre-approval from the CDFI Fund or the IRS before making investments in eligible LICs and/or in QALICBs whose activities involve Targeted Populations?*

A: No. Advanced approval is not required, nor will it be provided, by the CDFI Fund or the IRS. Allocatees should rely on IRS regulations and CDFI Fund guidance, including the specific terms and conditions of their allocation agreements, in determining the eligibility of potential investments. Allocatees should also maintain records, as appropriate, documenting compliance with the requirements of the CDFI Fund and the IRS.

Q: *Has the CDFI Fund posted a list of the census tracts in High Out-Migration Rural counties that qualify as LICs?*

A: Yes. There are 371 census tracts nationwide that qualify under this provision, a complete listing of which has been made available on the CDFI Fund's website:

http://www.cdfifund.gov/docs/nmtc/2007/NMTCCensusTracts.pdf

Q: *How do I locate the Low-Population/Empowerment Zone (EZ) census tracts?*

A: A list of qualifying Empowerment Zone communities is available on the Department of Housing and Urban Development's website at:

http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/index.cfm

To determine whether or not an EZ census tract is low-population (population of less than 2,000), and/or to determine whether the census tract is adjacent to a NMTC-eligible LIC, use the CDFI Fund's mapping program (CIMS). This system is available free of charge to all users that establish a "MyCDFIFund" account with the CDFI Fund. Please follow the instructions on the CDFI Fund's website (www.cdfifund.gov) for setting up a user account, and the instructions within CIMS for preparing a report and map showing the relevant characteristics of a specific census tract (i.e., total population; proximity to a NMTC eligible LIC).

Q: What's the definition of a Targeted Population?

A: There are two categories of eligible Targeted Populations under the NMTC Program:

(1) **Low-Income Targeted Population (LITP) –** The LITP is comprised of individuals, or an identifiable group of individuals including an Indian tribe, who are low-income persons. The term "low-income" means having an income, adjusted for family size, of not more than (A) for metropolitan areas, 80 percent of the area median family income; and (B) for non-metropolitan areas, the greater of 80 percent of the area median family income, or 80 percent of the statewide non-metropolitan area median family income.

Find statewide non-metropolitan area median income here: http://www.cdfifund.gov/docs/nmtc/2012/StateFamilyIncomeRef.pdf

(2) **GO Zone Targeted Population (GZTP) –** The GZTP is comprised of individuals, or an identifiable group of individuals, including an Indian tribe, who otherwise lack adequate access to loans or equity investment and that were displaced from their principal residences and/or lost their principal source of employment as a result of Hurricane Katrina. In order to meet this definition, an individual's principal residence or principal source of employment, as applicable, must have been located in a population census tract within the GO Zone that contains one or more areas designated by FEMA as flooded, having sustained extensive damage, or having sustained catastrophic damage as a result of Hurricane Katrina.

Q: What are the requirements with respect to serving Targeted Populations?

A: IRS guidance specifies how an entity serving Targeted Populations can meet the requirements to be a QALICB. In general, the entity may be able to satisfy the requirements if: (i) at least 50% of its total gross income for any taxable year is derived from sales, rentals, services, or other transactions with members of the Targeted Population; or (ii) at least 40% of its employees are members of the Targeted Population; or (iii) at least 50% of the entity is owned by members of the Targeted Population. The determination of whether an owner is a low-income person is made at the time the qualified low-income community investment is made or at the time the ownership interest is acquired by the owner, whichever is later.

IRS guidance includes certain other limitations with respect to serving Targeted Populations. Among these limitations:

(1) **With respect to serving the LITP**, the QALICB must generally be located in a census tract for which the median family income does not exceed 120% of the applicable area median family income; though exceptions are provided for low-population census tracts in non-metropolitan areas, and for low-population census tracts zoned for commercial or industrial use.

(2) **With respect to serving the GZTP**, only those CDEs with a significant mission of recovery and redevelopment in the GO Zone that received a special allocation of NMTCs pursuant to the GO Zone Act of 2005 may serve this population. In addition:

   a. The QALICB must be located in a census tract within the GO Zone that that contains one or more areas designated by FEMA as flooded, having sustained extensive damage, or having sustained catastrophic damage as a result of Hurricane Katrina;

   b. The QALICB must generally be located in a census tract for which the median family income does not exceed 200% of the applicable area median family income; though exceptions are provided for low-population census tracts in non-metropolitan areas, and for low-population census tracts zoned for commercial or industrial use.

Please refer to the IRS regulations for more detailed information on how an entity serving Go Zone Targeted Populations meets the requirements to be a QALICB.

Q: What measures of income can be used to determine an individual's income for purposes of meeting the definition of "low-income person" in the regulations?

A: The regulations allow an individual's income to be determined using household income as measured by the U.S. Census Bureau, household income as determined under section 8 of the Housing Act of 1937, as amended (reported by the Department of Housing and Urban Development (HUD)), adjusted gross income under section 62 as reported on Internal Revenue Service Form 1040. Adjusted gross income must include the adjusted gross income of any member of the individual's family (as defined in section 267(c)(4)) if the family member resides with the individual, regardless of whether the family member files a separate return.

Q: How do I locate census tracts that are potentially eligible for investments serving Targeted Populations?

A: Users may rely on CIMS data to determine whether a census tract has a median family income at or below 120% of the applicable median family income (or at or below 200%, in the case of a GZTP). When a user geocodes an address in CIMS, it will generate a detail report called the "Low-Income Community Worksheet." On that report, there is a column called "Percentage of Benchmarked Median Family Income." That figure is the ratio of the median family income of the census tract to the appropriate benchmark median family income. If that figure is 1.2 or less (or 2.0 or less, in the case of the GZTP), the census tract is eligible for a Targeted Populations investment.

Additionally, with respect to the GZTP, the CDFI Fund has made available on its website a list of all census tracts within the GO Zone that that contain one or more areas designated by FEMA as flooded, having sustained extensive damage, or having sustained catastrophic damage as a result of Hurricane Katrina. This document is titled, "Census Tracts Containing Parcels of Land Flooded or Severely Damaged by Hurricane Katrina," and can be found at:

http://www.cdfifund.gov/docs/2006/nmtc/katrinaSeverlyDamagedTracts.pdf

Q: *Do I need to seek any special CDE certification status to serve Targeted Populations?*

A: No. All certified CDEs may serve Targeted Populations within their approved service areas in a manner consistent with the requirements of the IRS and CDFI Fund. It is not necessary for a CDE (or an entity seeking certification as a CDE) to request a special certification designation in order to serve a Targeted Population; nor is it required that a CDE (or an entity seeking certification as a CDE) appoint members of the Targeted Population to its governing board or advisory boards -- provided that the CDE maintains accountability to residents of LICs within its approved service area.