

Mr. Matthew Josephs  
New Markets Tax Credit Program Manager  
Community Development Financial Institutions Fund  
U.S. Department of Treasury  
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Washington, DC 20005  
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July 8, 2005

Dear Mr. Josephs:

The Advance Notice of Proposed Rulemaking (ANPR) published in the Federal Register on May 24, 2005 addresses many of the concerns the Community Development Financial Institution (CDFI) industry has faced when tasked with deploying New Markets Tax Credits. The CDFI Coalition welcomes the opportunity to comment on the proposal to alter the qualifying Low-Income Communities for the NMTC program. A summary below addresses each of the separate questions included in the request for comments in the ANPR.

### **1. Definition of Targeted Population**

*(a) Should these same populations (i.e. Blacks or African Americans; Native Americans or American Indians; Hispanics or Latinos; Alaska Natives residing in Alaska; and Native Hawaiians or other Pacific Islanders residing in Hawaii or other Pacific Islands) automatically qualify as Other Targeted Populations for the purposes of the NMTC program? Should any of these identified populations be removed, or additional populations be added? If so, what evidence exists to support your position?*

The designation of specific populations has worked well for the CDFI Fund grant programs and the extension of population targeting to the NMTC program will enable the tax credit to achieve greater community development impact for Low-Income Populations and “Other Targeted Populations” in need.

*(b) Is it appropriate for the CDFI Fund to designate certain populations to automatically qualify as Other Targeted Populations for the purposes of the NMTC Program without applying a further test to determine whether the person or persons specifically benefiting from a given NMTC transaction in fact lack adequate access to loans and equity investments?*

The CDFI Fund has already determined that the Other Targeted Populations lack adequate access to loans and equity investments on a national level and therefore should automatically qualify as Other Targeted Populations without any further test.

*(c) Assuming the CDFI Fund does designate certain populations to automatically qualify as Other Targeted Populations, should the CDFI Fund permit CDE applicants to request that the CDFI Fund designate additional populations as Other Targeted Populations? If so, what evidence should an applicant be required to provide to demonstrate the population lacks adequate access to loans and equity investments?*

The CDFI Fund should permit applicants to designate additional populations as “Other Targeted Populations.” In order for additional other Targeted Populations to qualify, a CDE must demonstrate the population lacks adequate access to loans or equity investments. The individual CDE justification should include potential examples where the Targeted Population faces demonstrable barriers to obtaining access to loans or equity investments.

## **2. CDE Certification**

*(a) Should CDEs wishing to serve Targeted Populations be required to identify a geographic service area as part of their CDE certification and NMTC Program allocation application materials?*

CDEs wishing to serve Targeted Populations should be required to identify a geographic service area as part of the CDE certification process. A service area, however, may be national in scope.

*(b) Should CDEs wishing to serve Targeted Populations be required to demonstrate that members of the designated targeted Population are directly represented on their Governing Board or Advisory Board? If the CDFI Fund should impose such a requirement, should the minimum threshold be 20 percent of the total number of board members, which is the percentage currently required in the CDFI Fund’s CDE certification guidance?*

The Governing Board of a CDE should be comprised of the minimum threshold of 20% of the total number of board members for each Targeted Population the CDE serves. If accountability is met through Targeted Population participation on an Advisory Board, the minimum threshold should be increased to at least 50% of the members from the Targeted Populations to ensure adequate accountability.

*(c) Assuming that a CDE is interested in serving both a geographic Low-Income Community and a Targeted Population, should it be sufficient for that CDE to simply demonstrate that 20 percent of its board membership is representative of either geographic Low-Income Communities or Targeted Populations—or should a CDE be required to separately demonstrate that at least 20 percent of its board is representative of residents of geographic Low-Income Communities and at least 20 percent of its board is representative of members of the Targeted Population?*

A CDE should be required to demonstrate at least 20 percent of its board is representative of the geographic region *and* of the Targeted Population.

*(d) If a CDE has already been certified by the CDFI Fund but now wishes to serve Targeted Populations, how should the CDE be required to demonstrate that it is accountable to those Targeted Populations? Should the CDE be required to submit new certification materials to the Fund?*

In order to change, a CDE must submit new materials (similar to the “Certification of Material Events” form required to be submitted to the Fund by certified CDFIs) detailing the new Targeted Populations in organizational mission and scope. Board membership composition will demonstrate sufficient accountability to the Targeted Population for the CDE certification process.

### **3. Qualified Active Low Income Community Business (QALICB) Requirements**

*(a) As indicated above, IRC section 45D(e)(2) requires that regulations be issued to provide procedures for determining which entities are QALICBs with respect to Targeted Populations. Under what circumstances should an entity be determined to be a QALICB with respect to a Targeted Population? For example, should the determination be based on whether the owners, employees or customers of the entity (or some combination thereof) are members of a Targeted Population?*

The threshold for qualifying as a QALICB should meet two of the following five criteria—

- the Targeted Populations comprise more than 50% of ownership;
- the Targeted Populations comprise at least 60% of all employees;
- at least 40% of a QALICB’s tangible property is used for the provision of services to the Targeted Population;
- at least 40% of the services of the QALICB are targeted towards the Targeted Population;
- or at least 60% of the gross income comes from sales or services to the target market.

The CDFI Coalition appreciates your attention to this important matter in expanding the New Markets Tax Credit program to all geographies and populations in need.

Thank you for the chance to comment. If you have any questions about this comment letter, please do not hesitate to contact me at (703)294-6970 or vasiloff@cdfi.org.

Sincerely,



Jennifer A. Vasiloff, Executive Director