

New Markets Tax Credit Bulletin

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[New Markets Tax Credit Coalition submits Targeted Population ANPR Comments to the CDFI Fund](#)

July 8, 2005

Matt Josephs
NMTC Program Manager
Community Development Financial Institutions Fund
U.S. Department of the Treasury
601 13th Street, NW, Suite 200 South
Washington, DC 20005

Dear Matt:

On behalf of the New Markets Tax Credit (NMTC) Coalition, I am pleased to submit comments regarding the designation of 'Targeted Populations' under IRC section 45D(e)(2) as eligible low-income communities for the purposes of the NMTC program.

The Coalition appreciates the opportunity to submit comments on this advanced notice of proposed rulemaking. We strongly believe that the ability to serve Targeted Populations in addition to geographically defined low-income communities provides important flexibility to the NMTC program and enables Community Development Entities (CDEs) to more effectively stimulate investments that benefit low-income communities.

Where applicable the Coalition urges the CDFI Fund to reference the definitions and systems already in place for Community Development Financial Institutions (CDFIs) that target financial and technical services to one or more Targeted Populations.

The Coalition advocated for the expansion of the statutory definition of a low-income community to include Targeted Populations and in doing so we referenced the Riegle Community Development and Regulatory Improvement Act of 1994 under which the Fund was created and authorized to serve both low-income areas as well as targeted populations. Therefore, the Coalition supports maintaining, to the extent possible and practicable, consistency with the Fund's other programs and its Financial Assistance (FA) program in particular, which shares goals similar to the NMTC program.

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The Targeted Population language is intended to enable CDEs to more effectively serve low-income communities and individuals and the Coalition would oppose any interpretation of the statute that would diminish the current benefits of the Credit to low-income communities.

In addition to adjusting the CDE certification process and addressing the QALICB requirements, the Coalition recommends that the Fund amend the NMTC allocation application to ensure that CDEs applying for Credits to serve a Targeted Population have a strong business plan and can project measurable and significant economic benefits for the identified Targeted Population.

1. Definition of Targeted Population

In defining Other Targeted Populations for purposes of the NMTC, the Coalition recommends that the CDFI Fund adopt the definition that is currently being used for the FA program within the CDFI Fund.

The CDFI Fund has already determined that the following groups of individuals lack adequate access to loans and equity investments on a national level and therefore automatically qualify as Other Targeted Populations:

- Blacks or African-Americans;
- Native Americans or American Indians;
- Hispanics or Latinos;
- Alaska Natives residing in Alaska;
- Native Hawaiians residing in Hawaii; and,
- Other Pacific Islanders residing in other Pacific Islands.

While the Coalition is not advocating that this list be expanded to include additional populations we do recommend that the CDFI Fund allow CDEs, on a case-by-case basis, to request that an identified population be considered an Other Targeted Population. In such cases, it is up to the CDE to make the case that the identified population lacks adequate access to loans or equity investments. The CDFI Fund currently grants this allowance to

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CDFIs participating in the FA program and in doing so the Fund accepts a wide variety of materials and documentation as evidence. We encourage the Fund to continue this open and flexible policy.

For example, there is a case to be made that cooperative businesses, or a subsector of cooperative businesses, lack access to capital and therefore should be treated as an Other Targeted Population. A cooperative is a business organized, owned and controlled by the people who use its products or services. 'Co-ops' operate for the benefit of their member-owners and take advantage of economies of scale, combined buying power and strength in numbers to save money, return profits to their members, and retain wealth in the local community. If a CDE wanted to make the case that co-op businesses lack adequate access to loans or equity investments and therefore should be treated as a Targeted Population for purposes of the New Markets Tax Credit it would be up to the CDE to document this claim.

2. CDE Certification

The CDFI Fund requires entities applying for CDFI status to identify one or more Target Markets that the organization intends to serve. An organization's target market can include: (1) Investment Area; (2) Low-Income Targeted Population; (3) Other Targeted Population; or (4) a combination of all three Target Markets. We understand that a significant number of certified CDFIs have target markets which include both an investment area and a targeted population.

We recommend that the Fund similarly allow entities applying for CDE certification status to identify and serve a qualified low-income geographic area(s), a Low-Income Targeted Population(s), an Other Targeted Population(s), or a combination thereof.

However, we recommend that there be a separate, additional certification for CDEs wishing to serve a Targeted Population(s) and this separate application should be modeled after the CDFI certification process in that it would require a CDE to demonstrate a track record in serving the Targeted Population.

Whereas the existing CDE certification process requires an applicant organization to show that 60 percent of its activities are or will be directed to serving low-income persons or low-income communities, we recommend that a CDE applying for certification to serve a Targeted Population be required to demonstrate that its parent has a demonstrated track

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record in serving such a population(s). In addition, the supplemental certification application should require an applicant organization to provide a detailed plan as to how NMTC resources would be used to serve the identified Targeted Population.

The Coalition suggests this additional certification procedure in order to ensure that applicants proposing to take advantage of the Targeted Population flexibility have experience in serving the identified Targeted Population and a plan for deploying NMTC resources to benefit that population.

We also recommend that CDEs interested in serving both a geographic low-income community and a Targeted Population be required to demonstrate that 20 percent of its governing board or advisory board membership is representative of the low-income communities being served – both the geographic area and the targeted population. We suggest that both the low-income community as well as the Targeted Population should be represented on the governing board or advisory board. However, as long as there is a representative cross section of the low-income community and the Targeted Populations on the governing board or advisory board we see no need to require that more than 20 percent of the governing board or advisory board represent the interests of a low-income community.

The Fund currently permits a CDE to amend its CDE certification if it wishes to expand or change its service area and we recommend that similarly a CDE be permitted to amend its certification if it plans to serve a Targeted Population. We would encourage the Fund to implement a streamlined process to accommodate CDEs wishing to broaden their target markets to include a Targeted Population. This process should require that an existing CDE wanting to serve a Targeted Population be required to demonstrate that its parent has a track record in serving such a population(s) and provide a detailed plan as to how it will use NMTC resources to serve a Targeted Population.

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

The inclusion of a Targeted Population in the definition of a low-income community requires some modification in how the QALICB requirements are interpreted and applied. Rather than a geographically based measure, the Targeted Population allowance will require CDEs to look carefully at how the business' activities benefit a Targeted

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Population.

The Coalition suggests that the best way to ensure that a business is in fact benefiting the intended Targeted Population is to look at a business' gross income, ownership, use of tangible property, and employment. Therefore, we recommend that a business entity serving a Targeted Population should be required to meet at least two of the following tests in order to be considered a QALICB for purposes of the NMTC:

- 1) At least 50 percent of the gross income is generated from sales or services by or to a Targeted Population;
- 2) At least 51 percent of the ownership is held by members of a Targeted Population;
- 3) At least 40 percent of the use of tangible property is used for products or services by or to a Targeted Population; and
- 4) At least 40 percent of the employees are members of a Targeted Population.

For purposes of the definition of a Targeted Population, we recommend that the Fund maintain the current definition of 'low-income' as defined in 12 U.S.C. 4702(17), which means having an income, adjusted for family size, of not more than (A) for metropolitan areas, 80 percent of the area median income; and (B) for nonmetropolitan areas, the greater of (i) 80 percent of the area median income; or (ii) 80 percent of the statewide nonmetropolitan area median income.

The Coalition would like to work with the Fund to determine how a CDE would document the income of a Targeted Population, including the possibility of looking at where individuals reside.

We recommend that the same requirements apply in the case of the rental to others of real property. A business can be deemed a QALICB if it can meet at least two of the four tests above with regard to its renter or renters.

The current regulations, as they apply to QALICBs, provide flexibility for new and expanding businesses that are not yet providing services or producing products. The regulations allow businesses three years to meet the QALICB requirements and the Coalition recommends that this flexibility be applied to new and expanding businesses with

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regard to Targeted Populations.

Thank you for the opportunity to comment regarding the designation of Targeted Populations as eligible low-income communities for the purposes of the NMTC program.

As the CDFI Fund considers the implementation of rules regarding Targeted Populations, we would appreciate the opportunity to meet with you to discuss our proposals in more detail.

Sincerely,

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