

July 31, 2006

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

Dear Matt:

As participants in the New Markets Tax Credit (“NMTC”) industry, we, the undersigned, have joined together to provide the Community Development Financial Institutions Fund (the “CDFI Fund”) our recommendations regarding the forthcoming NMTC Allocation Agreement Q&A document (“Q&A document”). We believe that our suggestions for guidance will help clarify and eliminate confusion related to current questions in the NMTC program. In some cases, we have already submitted letters in regards to these issues requesting additional guidance and suggesting sample language. By providing guidance on these issues, we believe that the NMTC Program will be able to better serve its intended purpose, providing equity and loan investments to Qualified Active Low-Income Community Businesses (“QALICBs”), by lessening the current risk to investors due to the uncertainties of the NMTC program. We commend the CDFI Fund for its continuing efforts to improve and clarify guidance for the NMTC program in order to ensure its continuing success.

For your convenience, we have provided specific comments below to questions listed in the current Q&A document as well as some additional questions that we recommend be addressed by the CDFI Fund at its earliest convenience in the forthcoming Q&A document.

Question 4

We encourage you to update the response to question four now that four allocatees have been audited by the CDFI Fund. What are the site visit and desk audit policies that the CDFI Fund has developed? It would be beneficial to know what is covered in the audit, how often the site visits and desk audits are expected to occur, and what list of items the CDFI is inspecting during the course of the audits.

Question 11

Many allocatees are making two loans to the same borrower, often referred to as an “A” loan and a “B” loan. The A loan often has a “market rate” of interest and the B loan is significantly below the market rate of interest. The two loans are offered as part of a single plan of financing. If the two loans were blended together, the blended interest rate would be below the market rate of interest. The financing is separated into two loans for a variety of reasons, including so that the A loan can have payment terms similar to the loan made by the lender to the investment fund. By using the two loan structure, the B loan portion of the financing can have more favorable terms than a combined loan could have. Since the two loans would not be offered separately, we recommend that the two loans be considered one loan for purposes of determining whether the loans meet the requirements of Section 3.2(f) of the NMTC Allocation Agreement. For purposes of meeting the requirement contained in Section 3.2(f) that equity or loan products be flexible and non-traditional, we recommend that both loans be deemed to satisfy the flexible and non-traditional requirement. We recommend the same where in lieu of the B loan there is an equity investment.

We believe that any equity investment in a QALICB is a flexible financing product and is patient capital that is the hardest to obtain for a QALICB. Equity capital is essential in order for the QALICB to obtain other financing. As such, we believe that equity investments and debt with equity features should be deemed flexible products and satisfy the requirements of Section 3.2(f) and that no additional documentation is necessary to satisfy those requirements.

We suggest that a copy of a turn-down letter from a bank for a non-NMTC subsidized loan be considered sufficient evidence that the NMTC subsidized loan is flexible and non-traditional. In many situations a QALICB simply can not obtain financing and/or conventional lenders would never finance the QALICB as they don't offer a loan product for which the QALICB qualifies.

For the benefit of allocatees who will be providing loans at 25% lower rates, we request that the CDFI Fund update the response to Question 11 to provide guidance regarding how allocatees should document prevailing market rates. When two loans are made to the same borrower as described above, we recommend that the blended rate be used in satisfying the 25% lower rate requirement.

Question 15

Currently audits are required when activity has occurred, even if no QEI has been issued. Without further guidance, master allocatees are required to submit audited financials when the only activity during the year was the signing of the allocation agreement. This has presented an unnecessary administrative burden and financial cost on the master allocatees. In order to be consistent with the Institution Level Report requirements, we recommend that audited financials only be required after a CDE has

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July 31, 2006

issued a QEI. If the master allocatee has not issued a QEI but sub-allocated its NMTC allocation authority to one or more subsidiary CDEs, then only the subsidiary CDEs should be required to have audited financials submitted.

#### Question 16

We believe that audited financials should be allowed to be presented on an income tax basis. We believe that allocatees should have the option of submitting audited financials that are either in accordance with generally accepted accounting principles (“GAAP”) or on an income tax basis. Generally the cost of preparing and auditing income tax basis financials is less and would reduce initial and ongoing operating costs of the CDE. The CDFI Fund has previously told CDEs that income tax basis financials are allowed, but this interpretation has not been included in a Q&A document.

#### Question 25

In a comment letter regarding the NMTC Allocation Application submitted on February 27, 2006 at the request of the CDFI Fund, we made the following recommendation:

*“We recommend that the NMTC Allocation Application provide for either management or investment control, not both, consistent with the 2005 Allocation Agreement Q&A. In addition, the requirement that the Controlling Entity currently control the Applicant retroactively imposes a requirement on Applicants who received allocations in prior rounds where this requirement did not apply. We request that the requirement not be applied retroactively.”*

We suggest that this recommendation be incorporated into the revised Q&A document.

#### Compliance Fees

The allocation agreement allows for the CDFI Fund to charge a compliance fee. Does the CDFI Fund intend to charge the fee? If so, will the fee be retroactive? If not, will allocation agreements that have already been executed be amended to omit the potential for the fee? The lack of clarity here provides confusion in the structuring of NMTC transactions, as CDEs do not know whether they should be structuring transactions to have sufficient cash flow to pay such a fee. We believe that if a fee is ever enacted, then the fee shouldn't be charged to any CDEs who received qualified equity investments before the fee was enacted.

### QLICIs made to CDFIs

In the allocation agreement, the allocatee may be required to keep a certain percentage of its QEI deployed as QLICIs above and beyond the statutory requirement of 85% for substantially all purposes. If the allocatee makes QLICIs to CDFIs that are CDEs, will the CDFIs receiving the QLICIs be required to deploy QLICIs at the statutory requirement of 85% or the higher amount agreed to in the allocation agreement? We recommend that the CDFIs not be required to deploy QLICIs at the higher percentage as it proposes a number of difficulties for the CDFIs that will receive a loan from the allocatee using the NMTC subsidy. The CDFIs will be severely limited in the amount of amortization they can require from their ultimate borrowers. Reducing or eliminating amortization will be a substantial deviation from nearly all CDFIs established underwriting criteria and will expose them to greater credit risk. Potential solutions to this issue either greatly enhance the complexity of the transaction and/or are not clearly acceptable by either the CDFI Fund or the Internal Revenue Service.

### Status as CDE – Cure Period

We suggest that a cure period exist for CDEs that fail the accountability test. The cure period would give the CDE the opportunity to add new board members to once again meet the test. We believe that the CDE should have six months from the date they discover that they fail the accountability test, or reasonably should have discovered that they failed the test. We believe that the allocation agreements currently in effect allow for a cure period by virtue of Section 6.8 which states that an allocatee “shall do all things reasonably necessary to preserve, renew and keep in full force and affect its existence as a CDE.” Because the allocatee must do what is “reasonably necessary”, we believe that further guidance is needed on whether this means that a cure period is allowed. This language is similar to the language for the cure period allowed when an investment fails the substantially test. We suggest that our recommendation of a cure period be incorporated into the revised Q&A document.

For investments in CDFIs that are also CDEs, we recommend that a special cure period exist for those CDFI CDEs that qualified as CDEs by virtue of their CDFI status. In a situation where the CDFI CDE loses its CDFI status, it should have one year to qualify as a CDE under the general CDE qualification rules.

### Equity QLICIs

If a CDE is making an equity investment in a QALICB, can the QLICI be used to refinance existing equity of the QALICB? Currently, allocatees are allowed to refinance existing debt if it meets certain requirements. However, the current guidance doesn't specifically mention if QLICIs can be used to refinance existing equity of the QALICB. We recommend that the QLICI be allowed to refinance equity that meets the same criteria that the debt must meet in order to be refinanced.

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Hot Zones

Do CDFI designated Housing Hot Zones qualify as a distressed area when an applicant has selected CDFI Hot Zones as an area in which it will make QLICIs? Currently the CDFI Fund doesn't specify which Hot Zones may be used to satisfy the investment requirements. We believe that Housing Hot Zones should qualify at least with respect to NMTC financed qualified businesses with a significant housing component.

Brownfields

We request that the CDFI Fund provide examples of Federal designations that qualify brownfields as "Federally designated Brownfields redevelopment areas".

Conclusion


We are excited about the positive impact that the NMTC Program is having on the nation's low-income communities and low-income persons and the potential for future success. We appreciate the opportunity to submit our suggestions for issues that should be included on the 2006-2007 Q&A document. We believe that further guidance on these issues is essential to sustain and increase the impact of the NMTC Program on low-income communities. Thank you in advance for your time and consideration.

Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,  
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Community Development Financial Institutions Fund  
July 31, 2006

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Enclosures

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