

October 25, 2010

Sent Via E-Mail

Ms. Rosa Martinez
Acting 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 Rosa:

On behalf of the members of the NMTC Working Group, we would like to provide the CDFI Fund our comments on the 2010 NMTC Allocation Application (the "Application"). We appreciate the CDFI Fund's efforts to continually examine the application process to determine if there are ways to improve it. For your convenience, we have summarized our comments below in order of the questions posed in the Application:

COMMENTS ON SPECIFIC QUESTIONS IN THE APPLICATION

Question 3

Question 3 of the Applicant Information section provides in the second TIP that:

"An Applicant may only designate an organization as a Controlling Entity that meets the definition of Controlling Entity set forth in the Notice of Allocation Availability ("NOAA") and the Glossary of Terms and that currently controls the day-to-day management and operations (including investment decisions) of the Applicant."

Question 28 of the 2010 NMTC Allocation Application Q&A Document (May 20, 2010) (the "Application Q&A") states that the Controlling Entity must have, and is expected to maintain, the power to control the day-to-day management and operations (including investment decisions) of the Applicant and subsidiary entities such that it meets the definition pursuant to the NOAA, Glossary of Terms and related guidance [most notably the Allocation Agreement Q&A Document (January 2005)].

Question 25 of the Allocation Agreement Q&A Document (January 2005) (the "Allocation Agreement Q&A") provides that control [of an Allocatee over a subsidiary allocatee] includes the power to exercise directly or indirectly a controlling influence over the management policies or investment decisions of another entity, as determined by the Fund. The guidance then continues to explain management control in Questions 26 and 27 and investment control in Question 28.

Question 50 of the Compliance and Monitoring Frequently Asked Questions Document (May 2009) (the "Compliance and Monitoring FAQ") provides that control [of an Allocatee over a subsidiary

allocattee] includes the power to exercise directly or indirectly a controlling influence over the management policies or investment decisions of another entity, as determined by the Fund.

We recommend that the NMTC Allocation Application provide for either management or investment control, not both, consistent with the Compliance and Monitoring FAQ and 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.

Question 9

For community development entities (“CDEs”) that have a national service area, it is unclear why it must identify the 7 states with the largest amount of projected activities. At the time of application submission, a CDE may select the 7 states as a priority due to its current pipeline. However, geographic distribution may change as a result of project due diligence, a CDE’s best efforts to close deals in a timely manner to meet qualified equity investment (“QEI”) and qualified low-income community investment (“QLICI”) deadlines, or in response to changing investor underwriting requirements. For these reasons, we believe the CDFI Fund has wisely excluded these priority states from the Allocation Agreement. We are concerned that the publication of these priority states for national CDEs may set up unrealistic expectations in those states or in Congress as to where national CDE allocations will be invested.

We recommend that the CDFI Fund provide additional clarification about this data by adding the following disclaimer: "This CDE has a national service area in which it can invest in projects across the country. In its application it listed the seven states with the largest amount of projected activities. While the CDE projects to make large investments in these states, the states listed may not reflect the locations of the CDE's actual investments and the CDE is not required to make investments in these states."

Question 11

We believe that the choices given for the Applicant to indicate its predominant real estate financing activity are limiting and don’t fit every business strategy. We recommend that the CDFI Fund add an activity listed as “Other” that the Applicant can clarify if it has an activity that doesn’t fall into one of the categories currently provided.

Question 13

In our letter to the CDFI Fund on September 16, 2010, the NMTC Working Group recommended the CDFI Fund provide specific guidance regarding changes made to the Allocation Application Q&A document provisions which identify when a CDE may elect to treat an entity as a real estate or non-real estate QALICB and the effect on allocation agreements from prior allocation rounds. We believe that the benefit of these changes should be available to allocattees who may receive allocations in the 2010 allocation round as well as prior round allocattees and that if guidance is provided for the reasons explained in the letter and below, CDEs with existing allocation agreements will be able to more readily rely on the changes the CDFI Fund has made.

We recommend that the CDFI Fund send a letter to all allocattees adopting a single standard for (i) determining when a CDE may elect to treat a QALICB as a real estate QALICB or a non-real estate

QALICB, and (ii) determining when QLICs made to QALICBs whose principal business activity is the rental to others of real property are exempt from the restrictions in Section 3.3(h) of the Allocation Agreement.

We suggest that the CDFI Fund notify allocatees that the response to Question 32 in the 2010 Application Q&A document will govern future elections by the allocatees (even if allocation from an earlier round is being used) to treat QALICBs as real estate QALICBs or non-real estate QALICBs. We also suggest that the CDFI Fund clarify that the operating company, as the “principal user of the property”, does not need to be the sole user of the QALICB’s property. We propose the following statement:

An operating company is 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.

In addition, we suggest the CDFI Fund notify allocatees that Section 3.3(h) of their Allocation Agreement is amended to incorporate language consistent with the concepts set forth in the response to Question 32 in the 2010 Application Q&A document, as follows:

Effective as of the date of this letter, Section 3.3(h) of the Allocation Agreement is replaced in its entirety by the following:

- (h) The Allocatee may not use the proceeds of its Qualified Equity Investments to make loans to or investments in QALICBs whose principal business activity is the rental to others of real property unless the proceeds of the loan or investment are primarily used for: (1) costs in connection with new construction located on such property; (2) costs in connection with the substantial rehabilitation of such property; (3) costs in connection with the acquisition and substantial rehabilitation of such property; (4) acquisition costs in connection with new construction; or (5) take-out financing for a loan, equity investment, or other financing, the proceeds of which were used for items (1), (2), (3), and/or (4) of this paragraph. Except as provided in item (5) of this paragraph, the proceeds of such loans and investments may not be used to re-finance or otherwise pay off an existing loan on the property.

The restriction of this Section 3.3(h) does not apply to any loan to or investment in a special purpose entity **QALICB that is controlled by (the “first entity) that is controlled by** (within the meaning of 26 C.F.R. 1.45D-1(d)(6)(ii)(B)) or under common control with **another QALICB (the “second QALICB”) an operating company**, provided that: (1) the principal business activity of the **second QALICB operating company** is not the rental to others of real property; and (2) the **second QALICB operating company** will be the **primary user of all principal user** of the real property owned by the **first QALICB. QALICB. An operating company is 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.**

Question 16

Question 16 requires the Applicant to commit that 100% of its QLICs will have one of five levels of flexible or non-traditional terms. The current choices available to an Applicant related to debt with below market interest rates are interest rates that are a certain percentage below market. We believe that if an Applicant must commit to interest rates at a specific percentage below market, loan products subsidized with NMTCs may become financially infeasible as interest rates change over time.

To illustrate our concern, please consider this example. A CDE is able to offer market rate loans at a 30 Day LIBOR rate + 2%. In Year 1, the 30 Day LIBOR is 2%, so market rate loans would be 4%. The CDE uses the NMTC subsidy to offer a loan product that is 200 basis points below market. With the NMTC subsidy of 200 basis points, the CDE is able to make QLICs at 2%, which is 50% below market. This would satisfy a 50% below market requirement. In Year 3, the 30 Day LIBOR rate increases to 6% which causes the market rate to be 8%. The amount of NMTC subsidy will remain constant since it will not be affected by changing interest rates over time. Using the 200 basis points of NMTC subsidy, the CDE will be able to make QLICs at 6%, which is only 25% below market rates. In this scenario, the CDE will be unable to satisfy the 50% below market requirement over time due to the increase in the cost of funds.

We recommend that a specific amount of basis points below market be included as a threshold **in addition to** the options for percentages below market and indicia of flexible or non-traditional rates and terms in subsections (a) – (d) of question 16. We suggest that the amount of basis points below market be for subsection (a) debt with interest rates 300 basis points below market, subsection (b) debt with interest rates 250 basis points below market, subsection (c) debt with interest rates 200 basis points below market, and subsection (d) debt with interest rates 150 basis points below market. We believe that this will allow the Applicant to continue to provide below market loan products without the risk of changing interest rates causing a loan product to be infeasible or causing the allocatee to be in default of its NMTC Allocation Agreement.

Question 24

Question 24(a) requires the Applicant to indicate whether or not at least 50% of the Applicant's activities (financing or otherwise) over the past five years have been directed to Non-Metropolitan counties. Furthermore, if the Applicant indicates in Question 24(c) that it will commit to deploy a percentage of its QLICs in Non-Metropolitan counties, the Applicant, in Question 24(d), must describe its track record in providing or facilitating financing in Non-Metropolitan counties. In the 2010 NOAA, a Rural CDE is "one that has over the past five years dedicated at least 50 percent of its activities to Non-Metropolitan counties **and** has committed that at least 50 percent of its NMTC activities will be conducted in such areas."

In order to further clarify the use of the track record of the Applicant's Controlling Entity, we recommend revising the wording in the next NOAA to be:

A Rural CDE is one that **itself or its Controlling Entity** has over the past five years dedicated at least 50 percent of its activities to Non-Metropolitan counties and has committed that at least 50 percent of its NMTC activities will be conducted in such areas.

Furthermore, we believe that there are Applicants with a track record of investing in rural areas (as defined in Section 520 of the Housing Act of 1949) that may not be located within non-metropolitan counties. We recommend that the CDFI Fund allow those Applicants to include their track record of activities in metropolitan rural areas when answering 24(a) and (d). We recommend that the following changes be made to 24(a) and (d) to allow for the inclusion of such a track record:

24.

a. Have at least 50% of the *Applicant's* total activities (financing or otherwise) over the past five years been directed to *Non-metropolitan counties and/or rural areas (as defined in Section 520 of the Housing Act of 1949)*?

_____ yes _____ no

b. What is the minimum percentage of QLICIs that the *Applicant* anticipates will be deployed in *Non-metropolitan counties* as part of its ordinary course of business?

_____ %

c. What is the maximum percentage of QLICIs that the *Applicant* is willing to commit to deploy in *Non-metropolitan counties*?

_____ %

d. If the response to Q.24 (c) above is greater than zero percent, briefly describe the *Applicant's* five-year track record of providing or facilitating QLICI and non-QLICI related activities (e.g., rental housing) in *Non-metropolitan counties and/or rural areas (as defined in Section 520 of the Housing Act of 1949)*. Be sure to indicate, both in real dollars and as a percentage of the *Applicant's* overall activities, the amount of loans, investments or related activities the *Applicant* has undertaken in *Non-metropolitan counties and/or rural areas (as defined in Section 520 of the Housing Act of 1949)*; referencing the tables in Exhibit A as appropriate. (Maximum Response Length: 2,000 characters)

In addition, we believe that it is important for an Applicant to understand prior to submitting an application what will be expected of commitments made in the Allocation Application if it receives an allocation. For this reason, we believe it would be helpful if there was clarification regarding reinvestment requirements for QLICIs made in Non-Metropolitan counties that are used to satisfy the commitment made in Question 24. We believe that reinvestment requirements for QLICIs made in Non-Metropolitan counties should be the same as those outlined in Question 29 of the Compliance and Monitoring Frequently Asked Questions document dated May 2009. We recommend that the following question and answer be provided in the next update of the Application Q&A:

Question: Will I be required to maintain the percentage of QLICIs in Non-Metropolitan counties upon reinvestment?

Answer: (A) All allocatees must be able to demonstrate that they initially made QLICIs in the amount specified in their allocation agreements which will be a percentage within the range given in response to Questions 24(b) and (c).

Example: If an allocatee received QEIs totaling \$1 million, and is required in its allocation agreement to invest 20% of its QEIs as QLICIs in Non-Metropolitan counties, then it must be able to demonstrate that at least \$200,000 was initially invested as QLICIs in Non-Metropolitan counties.

(B) If an allocatee subsequently receives repayments of principal from 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 its allocation agreement – 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 20% of its QEIs as QLICIs in Non-Metropolitan counties. It makes a loan of \$200,000 to a QALICB in a Non-Metropolitan county and an \$800,000 loan to a QALICB in a Metropolitan county. In accordance with the terms of the loans, the QALICBs make 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 from all QLICIs (including those made in Non-Metropolitan counties) total less than \$150,000 – or 15% of the \$1 million in loans to the QALICBs. This amount of repayment is sufficiently minimal as to not trigger reinvestment requirements under the IRS regulations. The allocatee is in compliance with its Non-Metropolitan QLICI commitment.

(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 so that it meets the Non-Metropolitan QLICI commitment.

Example: An allocatee received QEIs totaling \$1 million, and is required in its allocation agreement to invest 20% of its QEIs as QLICIs in Non-Metropolitan counties. It makes a loan of \$200,000 to a QALICB in a Non-Metropolitan county and an \$800,000 loan to a QALICB in a Metropolitan county. The Non-Metropolitan QALICB repays the entirety of the loan after two years. The allocatee must reinvest the entire \$200,000 into Non-Metropolitan QLICIs within the timeframes required under IRS regulations in order to be compliant with the allocatee’s Non-Metropolitan commitment.

Question 26

Question 26(c) requires the Applicant to describe if it or any of its Affiliates will be lessees at projects developed with the QLICIs. Often times, when CDEs invest in projects that combine the NMTC with federal historic tax credits, a lease pass-through structure is used that enables the QALICB to “pass through” the historic tax credits to its tenant rather than to its owners. This structure generally requires that the CDE own 100% of the “master tenant” entity, which leases all of the property from the QALICB.

The CDE does not actually use the QALICB property, and instead, through the master tenant, leases all of the property to third party subtenants. Furthermore, the CDE does not manage the master tenant (rather the master tenant is typically managed by an affiliate of the project sponsor – typically the same entity that is the managing member of the QALICB). Furthermore, in some instances to facilitate the proper tax treatment for the federal historic credits, the master tenant entity becomes a member of the QALICB. The structure is in place solely to facilitate the pass through of all of the federal historic tax credits to the CDE's investor. We are concerned that reviewers may not understand a 2,000 character response on the pass-through lease structure that is used for NMTC transactions twinned with historic tax credits in which the CDE will be the 100% owner of the Master Tenant, a lessee of the QALICB and the Master Tenant may be a member of the QALICB. We recommend that the following question and answer be provided in the next update of the Application Q&A:

Question: If an Applicant intends to combine historic tax credits with NMTCs and use a pass-through lease structure in which the CDE will be the 100% owner of the Master Tenant, and therefore a lessee of the QALICB and/or a member of the QALICB, does the Applicant need to describe this relationship as a response to Question 26(c)?

Answer: No. Question 26(c) is not intended to capture information about relationships that require the Applicant, or its Affiliates, to be the lessee or member solely to enable the pass-through of federal historic tax credits through a master tenant.

Question 27

We recommend making the fourth item in question 27 into three individual items. We have included our recommended revisions to question 27 below:

- 27.
4. ___ [25% POVERTY] Census tract with poverty rates greater than 25%.
 5. ___ [70% MEDIAN FAMILY INCOME] Census tract located within a non-Metropolitan Area, median family income that does not exceed 70% of statewide median family income, or, if located within a Metropolitan Area, median family income that does not exceed 70% of the greater of the statewide median family income or the Metropolitan Area median family income.
 6. ___ [1.25 UNEMPLOYMENT RATE] Census tract with unemployment rates at least 1.25 times the national average.

Question 29

The Community Impact section requires an Applicant to determine and use a methodology to quantify the community impact that its proposed activities will have. This information has been collected in nearly every application round. By requiring such information, the industry has developed methodologies to accurately collect the information to be reported to the CDFI Fund. The current data points are consistent with the data required for many popular economic development measurement tools, such as IMPLAN.

We believe the most important change the CDFI Fund can make in the collection of data is for the CDFI Fund to define standards for compiling the data that is acceptable and which provides the CDFI Fund the best information for determining its scores on the Community Impact section of the Application. These standards would help Applicants more properly calculate community impact and the CDFI Fund would receive applications with community impact calculations that were more comparable. Also, there is no guidance as to which data to collect when a NMTC loan finances a portion of a project or when multiple CDEs finance a project. There are so many different methodologies out there that it is hard to compare data between projects. By providing a standard methodology to collect data, there will be a clear understanding of the information that is needed and the expectations on the amount of community impact to be generated. A standard methodology would also help the CDFI Fund determine if the projects being funded with NMTCs are deriving the expected community impact described in the application. In the LIHTC industry, most state allocating agencies have guidelines for the market studies they require. These guidelines ensure that they have comparable data included in each market study. Otherwise, developers would submit studies prepared using various methodologies. We believe that similar guidelines could be given for the methodology to use to collect economic and community impact data.

Question 29(b) was a new addition to the Application and requires the Applicant to indicate a percentage of its investments that will result in one of six outcomes. We believe that the intent of the question is admirable in requiring the Applicant to make more targeted investments but monitoring the outcome would be extremely burdensome for the low-income person, the Applicant, and the CDFI Fund. Therefore, we recommend that question 29(b) be removed or indicate that it will not become a specific part of the Applicant's Allocation Agreement if it receives an award. Our specific concerns are that four of the six outcomes include low-income persons as part of the requirement. The definition of a low-income person requires measurement of an individual's income adjusted for family size. This requires that the income of the individual and members of the individual's household be verified in order to ensure they are a low-income person. This is very burdensome and time consuming for all parties to verify unless it is already part of their standard procedures to do so. In addition to the burden placed on the low-income person and the Applicant, we believe it would become very difficult for the CDFI Fund to monitor in its CIIS program. Unless the CDFI Fund defined a less burdensome method for determining if a person is low-income, we do not believe it should be part of the requirements.

Question 33

We recommend that a standard definition for delinquency be provided for Question 33(c) so that all Applicants can respond in the same manner. For example, a 90-day or 120-day past due definition would be reasonable. Also, prior round Allocatees do not have an established database for their CDE peer group to compare delinquency and/or default rates. Due to the lack of information, should CDEs always respond with their delinquency and default rates so that the CDFI Fund can collect the data to be able to provide information to this peer group? We recommend that the CDFI Fund publish this data if it's already available.

Question 45

We recommend that the CDFI Fund clarify whether an applicant is required to answer yes to the question "Will the Applicant receive any QEIs from Affiliates?" if the applicant or an affiliate is also the managing member of the investment fund. Many CDEs (directly or through an affiliate) act as the non-member manager or managing member of the investment fund that makes the QEI into the CDE with an ownership percentage that is generally less than one percent. This is usually done as an accommodation

to the tax credit investor and/or to simplify the reporting requirements. We believe that an applicant shouldn't check yes in this situation since it is only making a nominal capital contribution to the investment partnership. However, without further clarification, it's likely that CDE's are taking different approaches in answering this question which may confuse a reviewer as to the relationship and role of the applicant or its affiliates.

Question 48

We recommend that stated fees not be a specific condition of the Allocation Agreement. We further recommend that Table F1 be removed because it does not provide enough flexibility for applicants to quantify their fees. We believe the goal should be to gain an understanding of the applicant's fee structure so the CDFI Fund can review it for reasonableness. One of the things that make the NMTC industry so successful is the flexibility of the program to fund so many different types of projects. With this wide range of transactions come just as many structuring options to ensure as much benefit reaches the low-income community. In many NMTC transactions, the applicant and its affiliates are taking on significant risk, especially when you consider that the penalty for non-compliance is total recapture.

If the CDFI Fund chooses to set limits on the fees or make them a specific condition of the Allocation Agreement, we believe that it will discourage applicants from finding transactions that are more difficult to structure. It is often found that the most difficult transactions are not only the ones that don't have any other chance of penciling out without NMTCs but are also those that provide the most community impact. We believe that the generally consistent language in the allocation agreements is sufficient to ensure that applicants don't veer too far from the fees they described but allow for enough flexibility for an applicant to fund any transaction it may come across.

We further recommend that an Applicant be allowed to provide a longer response of 5,000 or 10,000 characters to both (a) and (b) of question 48 due to the complexity and flexibility associated with the way fees are structured in NMTC transactions. With only 3,000 characters to fully describe the justification for a fee structure of an applicant, a reviewer may not be able to fully understand the reasoning and it could adversely affect the Applicant's score. This becomes increasingly difficult for Applicant's that have multiple product lines with different fee structures.

Table A1

We request further clarification on the data that can be included in Table A1. An Applicant may elect to use the track record of its Controlling Entity. However, it is unclear if the track record of the Applicant can be included in the Controlling Entity's track record when the Applicant is a subsidiary of the Controlling Entity. We recommend that the track record of both entities be allowed to be inputted into Table A1. To facilitate the collection and distinction of this information, we recommend the table be expanded and include new lines 5-8 requesting the same information as lines 1-4 but for the Controlling Entity. The combined track record would then be summed together at the bottom. Allowing the Applicant to provide information about both entities will allow reviewers to distinguish the activities of the Applicant, which tend to be NMTC related and the Controlling entity which may not be NMTC related.

In the changes to Q&A #29 dated February 5, 2008 and continued in Q&A #30 dated May 20, 2010, the CDFI Fund made certain changes to clarify the data to be provided in Exhibit A. In so doing, certain wording changes were made from the previous Q&A document that appear to require a different

analysis than previously required. In particular, the CDFI Fund has deleted a sentence that provided: “You do not need to demonstrate that the activities quantified in these annual columns were provided to businesses **that also meet the criteria of a QALICB.**” (emphasis added). Please clarify that an Applicant does not need to verify that previous real estate businesses financed were actually QALICBs; this would be an exceedingly difficult task for any Applicant who is including QLICI-like (but not QLICI) activities as the Applicant would have to verify whether the business held too much nonqualified financial property, who its subtenants were, etc. Similarly, in the following paragraph, the sentence that previously stated “When completing a given table, Applicants should report on the totality of historical activities requested in the table – not just the portion of those activities **that meet the definition of a QLICI.**” (emphasis added). This has been changed to provide: “When completing a given table, Applicants should report on the totality of historical activities that could potentially qualify as NMTC investments requested in the table – not just the portion of those activities that were undertaken in NMTC-eligible low-income communities.” Again, the rewording of this Answer suggests that an Applicant has to verify that the QLICI requirements are met.

Table E1

We recommend that the CDFI Fund modify Table E1 to allow the applicant to indicate if a single investor's commitment is for both debt and equity. Currently, the table requires the applicant to choose between debt, equity and a grant.

ADDITIONAL COMMENTS

Scoring Process and Preferences

We believe that the CDFI Fund should provide more information related to the scoring process and its preferences in the Application or NOAA. For example, if Applicants know that they will score an additional two points for committing 20% of their QEIs to be invested in small business operations, Applicants can make a more informed decision regarding commitments it makes in the Application. We believe that this quantitative information would allow Applicants to better understand the CDFI Fund's allocation priorities and respond appropriately. The CDFI Fund would be able to set clear policy objectives to steer allocations so that CDEs will increase the amount of QLICIs that support activities that have not traditionally received large scale financing from NMTC investment proceeds. Although the CDFI Fund has provided TIPs in the Application they do not adequately explain the CDFI Fund's priorities. However, many applicants have tried to infer what the CDFI Fund's priorities are based upon the questions they ask or add in subsequent application rounds. For example, many CDEs have committed to providing at least 20% of the rental or for-sale housing units developed or rehabilitated as a result of their investments as affordable housing units in response to question 29(c). We further believe that activities that have not traditionally received large scale financing from NMTC investment proceeds is due to statutory reasons. Due to the complexity of the regulations for the NMTC program, the rules favor certain types of investments from a risk perspective. We believe that risk is a major factor in any investor's decision. So the decision to invest more in other activities will not be accomplished until the perceived risk is reduced through statutory changes rather than creating priorities through the application process.

We also recommend a debriefing letter that includes the score received for each section and overall rankings be sent to each Applicant rather than only being sent to Applicants that don't receive an allocation. We believe that by revealing more details regarding the scoring process to Applicants the

administration of the review process will remain manageable for the CDFI Fund while also providing more detailed information to the Applicants that will allow them to focus their overall business strategy and application content on the priorities of the CDFI Fund.

Economic Indicators

We recommend that the CDFI Fund identify other public sources of data on economic indicators that are updated more frequently. The Federal Financial Institutions Examination Council's ("FFIEC") website offers a Geocoding System (<http://www.ffiec.gov/Geocode/default.aspx>) that is used for Community Reinvestment Act and/or Home Mortgage Disclosure Act data, and it includes demographic information based on the decennial census and the last three calendar years. Specific demographic information includes income, house, and population data. Because this data is updated annually, it provides a real-time assessment of the census tract and a more accurate reflection its demographics. By using more recently updated economic information, CDEs would be able to target areas that are either beginning to slide into a distressed state or are becoming even more highly distressed and invest in projects that may potentially stop the deterioration of a census tract. Also, it would detract from CDEs making investments in census tracts that were originally in a distressed market but have since recovered and are able to attract capital without NMTCs.

We recognize that this is one data source that is easily available but there may be many others. We recommend that the CDFI Fund only choose one data source if it does change which information to use. We would strongly caution against making multiple sources available. If the CDFI Fund chooses a data source that changes more often, such as annually, we recommend defining a point at which the applicant has to begin using the new data when it changes. Otherwise it will cause uncertainty during the underwriting process if it straddles two years of data. The CDFI Fund should set a certain period after which the data becomes available that it is effective for all transactions. By doing so, we believe it will reduce anxiety in the underwriting process and in making the determination of whether to start working on a transaction that may be located in a qualifying census tract today but could be unqualified before the underwriting is complete due to the availability of new data.

Common Enterprise

Based on (i) the CDFI Fund's broad definitions of "Affiliate"¹ and "Control"², (ii) the provision in the NOAA and Application Q&A that states that an Applicant that receives an allocation in the current

¹ The Glossary of Terms of the 2010 New Markets Tax Credit Allocation Application provides that an Affiliate is defined as:

Any legal entity that *Controls*, is *Controlled* by, or is under common *Control* with, the *Applicant*.

² The Glossary of Terms of the 2010 New Markets Tax Credit Allocation Application provides that Control is defined as:

- (1) 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;
- (2) 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
- (3) Power to exercise, directly or indirectly, a controlling influence over the management policies or investment decisions of another entity, as determined by the Fund.

round is prohibited from becoming an Affiliate or member of a common enterprise with another Applicant that receives an allocation in this round at any time after the submission of the allocation application, and (iii) the fact that the allocation application provides that “The term “Applicant” refers to the CDE applying for a NMTC Allocation as well as any other Subsidiary entities, whether already formed or in the process of formation, which may receive a transfer of all or a part of a NMTC Allocation from the Applicant,” we believe that many entities applying in the next allocation application round may inappropriately be considered Affiliates of, or members of a common enterprise with, other Applicants and therefore would not be eligible to apply.

There is an exception in the NOAA and in Application Q&A question 16, which states:

This prohibition, however, will not apply when an investor: (i) makes QEIs in multiple Allocatees (or Subsidiary Allocatees) from the same allocation round; (ii) was not an Affiliate of any of the Allocatees (or Subsidiary Allocatees) prior to making the QEIs; and (iii) obtains Control of such Allocatees or (Subsidiary Allocatees) solely through common ownership and/or control of their investment decisions after the QEI is made.

Our concerns regarding this language and its effect on Applicants are as follows:

1. If an investor and an allocatee each plan to apply in the next application round, and the investor has previously invested in the allocatee (or any of its subsidiary entities), then the exception will not apply. The exception does not apply because the investor doesn't meet the requirement of clause (ii), because the investor would be deemed an Affiliate (by virtue of either its ownership or control rights in connection with its prior investment) before making the QEI. As such, their applications will be in jeopardy of being thrown out by the CDFI Fund because they will technically be Affiliates and/or members of a common enterprise.
2. If an investor gives one or more commitment letters to other Applicant(s), and if the investor is also an Applicant in the same round, the investor may be subject to disqualification due to investor committing to becoming an Affiliate of, or part of a common enterprise with, the other Applicant(s) when the investments are made.
3. If an investor gives commitment letters to more than one Applicant (irrespective of whether the investor is also an allocatee), and that investor has invested in either of those Applicants or their subsidiaries in the past, all Applicants with a commitment letter from the investor may be subject to disqualification, due to the investor being an Affiliate based on one or more prior QEIs and committing to becoming an Affiliate and/or a member of a common enterprise when they invest.

We suggest changing the wording of the applicable paragraphs in the NOAA and in Application Q&A question 16 to the following:

This prohibition, however, will not apply when an investor: (i) makes QEIs in **one or more** Allocatees (or Subsidiary Allocatees) from the same allocation round **or any prior rounds**; (ii) was not an Affiliate of, **or a member of a common enterprise with**, any of the Allocatees (or Subsidiary Allocatees) prior to making the QEIs **except if said status arises solely from making or having made QEIs on the terms as described in clause (iii) hereof**; and (iii) **has and/or** obtains Control of such Allocatees or (Subsidiary

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Allocatees) solely through common ownership and/or control of their **management and/or** investment decisions **related to QEIs described in clause (i) hereof**.

Absent these changes, the above limitations will likely severely impede (i) the ability of many qualified Applicants who have also made investments or plan to make investments in other allocatees to apply in future application rounds and (ii) the ability of many other Applicants to obtain investor commitments for their applications.

Conclusion:

We are excited about the positive impact that the New Markets Tax Credit Program is having on the nation's low-income communities and low-income persons. We appreciate the opportunity to submit our comments on the 2010 NMTC Allocation Application. 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,
Novogradac and Company LLP

A handwritten signature in black ink, appearing to read "Brad Elphick", written in a cursive style.

by
Brad Elphick