

CDE Certification Q & A Document

Community Development Financial Institutions Fund

1) *What is a Community Development Entity (CDE)?*

A CDE is any duly organized entity treated as a domestic corporation or partnership for federal income tax purposes that: (a) has a primary mission of serving, or providing investment capital for, Low-Income Communities or Low-Income Persons; (b) maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or any advisory board to the entity; and (c) has been certified as a CDE by the Community Development Financial Institutions Fund (the Fund) of the United States Department of the Treasury.

2) *What benefits are there to becoming a CDE?*

An organization must be certified as a CDE in order to benefit from the New Markets Tax Credit (NMTC) Program. A CDE may participate in this program in two different ways: (a) it may apply to the Fund for an allocation of tax credits which, in turn, may be offered by the CDE to its investors in exchange for equity investments in the CDE; or (b) it may receive loans or investments from (and sell qualifying business loans to) other CDEs that have successfully competed for allocations of tax credits. Additional information about the NMTC Program may be found at the Fund's website at www.cdfifund.gov.

3) *How does an entity apply to become a CDE?*

Organizations that have been certified by the Fund as Community Development Financial Institutions (CDFIs), and organizations that have been designated as Specialized Small Business Investment Companies (SSBICs) by the Small Business Administration, automatically qualify as CDEs. These organizations simply need to register with the Fund to receive their CDE designation. This registration may be completed entirely on-line at www.cdfifund.gov.

All other organizations must complete and submit to the Fund a CDE Certification Application. The CDE Certification Application cannot be submitted electronically. A copy of the CDE Certification Application may be downloaded from the Fund's website at www.cdfifund.gov.

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4) *What types of entities are eligible to apply for CDE certification?*

Any duly existing entity that is treated for federal income tax purposes as a domestic corporation or partnership may apply for certification as a CDE. For-profit and non-profit organizations may be certified as CDEs. The Fund cannot accept a CDE Certification Application from an applicant unless the Internal Revenue Service has assigned a valid Employer Identification Number (EIN) to the entity.

5) *May an entity apply for certification as a CDE on behalf of itself and on behalf of Subsidiary organizations under a single CDE Certification Application?*

Yes. An Applicant CDE may apply for CDE certification: (a) solely on its own behalf; (b) on behalf of itself and one or more Subsidiary organizations; or (c) in the case of an applicant that is itself already a certified CDE (e.g., a CDFI or SSBIC), solely on behalf of one or more Subsidiary organizations. The Fund's CDE Certification Application describes a streamlined process for Applicant CDEs wishing to certify multiple entities, but each entity seeking certification must separately meet the CDE eligibility requirements. The process for certifying multiple entities is described more fully in the Guidance for Certification of CDEs (66 Federal Register 65806, December 20, 2001) and in the CDE Certification Application. Both documents are currently available on the Fund's website.

6) *Under what circumstances would an organization want to certify Subsidiary entities as CDEs?*

CDEs that apply for and receive an allocation of NMTCs from the Fund will be permitted, in certain circumstances, to transfer allocations to one or more Subsidiary organizations. The Fund will permit organizations to transfer tax credit allocations only to those Subsidiaries that are also certified CDEs. Permission to transfer a NMTC allocation must be requested in writing by the CDE receiving allocations and approved in advance by the Fund.

Non-profit organizations are not eligible to offer NMTCs to their investors, since NMTCs may only be provided in exchange for an equity investment in a for-profit CDE. A non-profit organization may therefore want to establish a for-profit Subsidiary entity as a CDE so that: (a) the for-profit Subsidiary CDE may apply directly to the Fund for an allocation of tax credits; or (b) the non-profit parent may apply to the Fund for an allocation of tax credits with the intention of transferring allocations to its for-profit Subsidiary CDE(s).

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7) What criteria will the CDFI Fund use to determine CDE eligibility?

The criteria required by the Fund are more fully detailed in the Fund's Guidance for Certification of CDEs and in the CDE Certification Application. Briefly, each entity seeking designation as a CDE must meet the following requirements:

Primary Mission: A CDE must demonstrate a primary mission of serving, or providing investment capital for, Low-Income Communities or Low-Income Persons. There are two components to this requirement:

- (a) An applicant must provide organizational documents evidencing such a mission; and
- (b) An applicant must certify that a minimum of 60 percent of its activities are or will be directed towards serving Low-Income Persons or Low-Income Communities.

Accountability: A CDE must demonstrate that it maintains accountability to the Low-Income Communities that it serves or intends to serve. There are two components to this requirement:

- (a) An applicant must indicate which Low-Income Communities it serves or intends to serve; and
- (b) An applicant must show that a minimum of 20 percent of either its governing board or advisory board(s) is representative of the Low-Income Communities that it has designated.

8) What is the definition of a Low-Income Community?

A Low-Income Community is any population census tract that meets the following criteria (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

- The poverty rate for such census tract is at least 20 percent; or
- The Median Family Income (MFI) of such census tract does not exceed 80 percent of:
 - o The statewide (or possessionwide) MFI, if the tract is not located within a Metropolitan Area, or

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- o The greater of statewide (or possessionwide) MFI or the Metropolitan Area MFI, if the tract is located within a Metropolitan Area.

To determine which census tracts qualify as eligible Low-Income Communities, applicants may use the Fund's On-Line Help Desk (www.cdfifundhelp.gov). Currently, the 1990 census data is on the website. The Fund expects to have 2000 census data available on the website by August of 2002.

9) *Is it possible for the Fund to designate additional areas as qualifying Low-Income Communities?*

The Fund may designate, upon request from an applicant, one or more "target areas" within otherwise ineligible census tracts as Low-Income Communities if: (a) the boundary of such an area is continuous, and the continuous boundary that delineates the portion of the census tract as a "low-income community" is a pre-existing boundary (such as an established neighborhood, political or geographic boundary); b) the area would satisfy the requirements of a low-income community (either poverty rate or Median Family Income) if it were a census tract; and (c) an inadequate access to investment capital exists in the area, as demonstrated through studies, surveys or other analyses provided by the applicant.

It is incumbent upon the organization seeking designation of the target area to furnish the Fund with the information necessary to determine whether the target area satisfies each of the three requirements above. In order to comply with this, an organization may need access to census data (such as census block group data) that is not available on the Fund's On-Line Help Desk. Such data may be retrieved through the Census Bureau's website at <http://www.census.gov/geo/www/>.

A CDE seeking to designate a target area as a Low-Income Community may submit its request to the Fund at any time, though the Fund encourages those organizations that know that they are likely to serve target areas within census tracts to identify such areas at the time of initial application for certification as a CDE.

10) *What kind of documentation will the Fund accept from Applicant CDEs seeking to demonstrate a primary mission of serving Low-Income Communities or Low-Income Persons?*

The Fund will accept signed and/or filed articles of incorporation, articles of organization, partnership agreements, board resolutions, annual reports (to the extent there is a "letter from the board chairman" or other evidence of participation by the governing board) or similar board

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approved documents. The Fund will not accept pamphlets, brochures or other general marketing materials.

11) What characteristics must board members possess in order to be deemed representative of Low-Income Communities?

In order to be deemed representative of Low-Income Communities, board members must either: a) reside in a Low-Income Community in the Applicant CDE's service area; or b) otherwise represent the interests of residents of Low-Income Communities in the Applicant CDE's service area.

Examples of individuals that represent the interests of residents of Low-Income Communities include, but are not limited to:

- a) A small business owner whose business is located in a Low-Income Community, and whose business: (i) provides goods and services to community residents; or (ii) principally employs residents of Low-Income Communities. For the purpose of this requirement, an owner shall include any individual with at least 50% ownership stake in the business, or any individual that has an ownership stake and controls, operates or manages the business;
- b) An employee or board member of a community-based or charitable organization serving the Low-Income Communities. Employees or board members of an organization that serves Low-Income Persons (as opposed to Low-Income Communities) may also qualify, but only if it can be demonstrated that the population served by that organization principally resides in Low-Income Communities;
- c) A religious leader whose congregation is based in a Low-Income Community;
- d) An employee of a governmental agency or department that principally serves Low-Income Communities; and
- e) An elected official whose constituency is comprised principally of residents of Low-Income Communities.

12) Can a Board member that is a principal or staff person of the applicant or an affiliate be deemed representative of Low-Income Communities?

No. Board members that are principals or staff members of the applicant or any of its affiliated entities cannot be deemed representative of Low-

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Income Communities. An applicant may, however, designate a board member that also serves on the board of an affiliated entity as representative of Low-Income Communities, provided that the board member is representative of Low-Income Communities through means other than his or her association with the affiliated entity.

13) How do I demonstrate accountability to Low-Income Communities in my service area if I am serving a large geographic area (e.g., a state, a multi-state region or the entire nation)?

The Fund advises entities that serve a large geographic area to appoint at least one person that is accountable to Low-Income Communities throughout the service area to its board or advisory board. For example, an organization serving the entire nation may want to appoint a staff person or a board member from a nationwide community development organization primarily serving Low-Income Communities to its board.

An organization without at least one person on its governing board or advisory board(s) that can reasonably be deemed to be representative of Low-Income Communities throughout the organization's service area may still be certified as a CDE, provided that the Fund determines that at least 20% of its governing board or advisory board(s) is representative of a cross-section (e.g., urban and rural) of Low-Income Communities in its service area. Determinations regarding what constitutes a cross-section of a particular service area will be made on a case-by-case basis by the Fund. Organizations, particularly those serving multi-state geographies, may wish to establish multiple advisory boards in order to meet this requirement.

14) Is there an application deadline for organizations seeking designation as CDEs?

No. The Fund will accept CDE Certification Applications on a rolling basis. However, an organization wishing to apply for an allocation of NMTCs that has not yet been certified as a CDE must submit its CDE Certification Application to the Bureau of Public Debt (BPD, which has been contracted to handle intake of CDE Certification Applications on behalf of the Fund) **no later than 5:00 pm Eastern Time on July 25, 2002** in order to be eligible to apply for an allocation of NMTCs in 2002. CDFIs and SSBICs will be similarly required to register on-line as CDEs on or before 5:00 pm Eastern Time on July 25, 2002 in order to be eligible to apply for an allocation of tax credits in 2002.

15) If an organization that is not a certified CDFI is interested in obtaining certification as a CDFI as well as certification as a CDE,

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should it apply for CDFI certification, CDE certification, or both?

Whereas certification as a CDFI automatically enables an entity to qualify for CDE certification, the converse does not hold true. An organization that is certified as a CDE does not automatically qualify for certification as a CDFI. Any organization wishing to become certified as a CDFI must separately complete a CDFI Certification Application (available on the Fund's website).

Since CDFI certification involves meeting several additional criteria than are required for CDE certification, it is anticipated that the CDFI certification approval process is likely to be more time consuming than the CDE certification approval process. Therefore, it may be advisable for an organization desiring designation as both a CDE and a CDFI to apply separately for CDE status, to better ensure that its CDE certification will be approved in time to apply for an allocation of NMTCs.

An organization that already has a CDFI Certification Application pending with the Fund also may want to separately complete the CDE Certification Application, particularly if the July 25, 2002 deadline for CDE certification (for those applicants intending to apply for allocations) is approaching and the Fund has not yet made a determination regarding the organization's CDFI Certification Application.

16) For how long is the CDE designation valid, and what reporting requirements will the Fund impose on certified CDEs?

A CDE's designation will last for the life of the organization, provided the CDE continues to comply with the NMTC Program requirements. Each CDE will be required, on an annual basis, to certify to the Fund that it continues to meet its primary mission and accountability requirements. Each CDE that is awarded an allocation of tax credits, and each CDE that receives an investment from another CDE that was awarded tax credit allocations, may be required to provide additional reports demonstrating that: (a) 60 percent of its activities (e.g., loans and investments) are directed to Low-Income Communities or Low-Income Persons; and (b) it is in fact accountable to the Low-Income Communities in which it has made investments. A CDE that is also a certified CDFI or SSBIC will be deemed to automatically meet these requirements, provided that it maintains its status as a certified CDFI or SSBIC.

The reporting requirements described above relate solely to the organization's status as a CDE. CDEs that are awarded allocations of tax credits, and CDEs that receive investments from other CDEs that were awarded tax credit allocations, may have additional reporting requirements relating to their specific uses of proceeds from tax credit allocations. These requirements will be detailed in subsequent documents to be released by the Treasury Department.

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More detailed application content requirements are found in the NMTC Allocation Application and NOAA (67 Federal Register 40112, June 11, 2002). In the event of any inconsistency between the contents of this Q & A document, the NOAA, the General Guidance (66 Federal Register 21846, May 1, 2001), the CDE Certification Guidance (66 Federal Register 65806, December 20, 2001), the Allocation Application, the statute that created the NMTC Program (Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000) (the “Act”), or the IRS Temporary and Proposed Income Tax Regulations (66 Federal Register 66307, December 26, 2001), the provisions of the Act and the Temporary and Proposed Income Tax Regulations shall govern.

All terms and phrases that are Capitalized in this document are defined in the Glossary of Terms contained in the CDE Certification Application.

If you have any NMTC Program allocation or application questions, please contact the Fund at 202-622-7373. If you have any tax-related questions, please consult your attorney or contact the IRS at 202-622-3040.