The Community Partners
Financial Group

July 2, 2001

Jeffery C. Burg
Acting Director
Community Development Financial
Institutions Fund
Department of the Treasury
601 13th Street, NW
Washington, DC 20005

Re: New Market Tax Credit Program - Comments to Proposed Rule

Dear Mr. Burg:

The Community Partners, LLC was established to raise debt and equity in order to invest in affordable housing and economic development projects located in America's distressed, neglected and emerging urban communities. Urban America, LP was established to become America's preeminent vehicle for fiscally and socially prudent investment in inner city commercial real estate. Each organization intends to participate in the New Market Tax Credit Program by using the New Market Tax Credits ("NMTCs") to finance commercial real estate projects in qualified low-income communities. The following comments to the proposed rule for the New Market Tax Credit program are based upon issues that we believe will affect our ability to use the program to acquire and develop commercial real estate projects.

1. Question 1(a) - *Allocation Preference Policy.* In order to ensure that the allocation of credits under the NMTC program is allocated by competent for-profit organizations that have documented experience in the communities targeted for investment, and further, in order to ensure that the monies are used to increase the pool of individuals who own businesses in these areas, the credits should be allocated in accordance with the preference categories identified in the legislation. The CDFI Fund should make awards to organizations that meet one or both of these criteria before providing an allocation to any other applicant. In this way the goals of the legislation will be accomplished. In order to administer such a preference policy, once organizations have been selected as being worthy of the receipt of an allocation of credits, additional preference points should be awarded to those entities that have satisfied one or both of the preference categories.

962 Wayne Avenue, Suite 700 • Silver Spring, MD 20910 • voice 301.585.7999 • fax 301.585.2995 • E-mail Info@Comm-Partners.com

2. Question 1(b) - *Factors for Consideration.* When considering the first preference category, the CDFI Fund should consider (i) the experience of the principals and key employees of the applicant with regard to investing in low-income communities, (ii) the experience and track record of the applicant in investing in disadvantaged businesses, (iii) the aggregate dollar amount of investment of the applicant in disadvantaged businesses, and (iv) the aggregate dollar amount of investment of the applicant into low-income communities.

3. Question 1(c) - *Weighting of Preference Categories.* More weight should be given to the first preference category, which requires that the applicant demonstrate a successful record providing capital or technical assistance to disadvantaged businesses, than to the second category. This category is the most important factor in determining the success of the NMTC program. Without experienced, for-profit organizations that have demonstrated their ability to identify and invest in disadvantaged businesses in low-income communities, then the program will not succeed. As a consequence of the importance of this factor to the program, twice as much weight should be given to this factor relative to the second preference category.

   Notwithstanding the fact that the first category is the most important, an applicant should be able to receive preference points under both preference categories. A secondary goal of the NMTC program is to expand the pool of businesses that serve disadvantaged communities. To the extent that the CDE is able to invest in entities in which it controls as defined by IRC Sections 267(b) and 707(b), then the pool of entrepreneurs in these communities who have actual control over the enterprises and can create additional entrepreneurs will be restricted.

4. Question 2 - *Limitations on Annual NMTC Allocations.* There should be no absolute limit on the allocation of NMTCs to a CDE. However, allocations should be based upon the comprehensive investment plans submitted by the CDE and the reasonableness of their request as determined by the likelihood of success of the plan. A factor to be considered in determining the reasonableness of the request are actual signed agreements with existing entities who will use the equity to continue their business operations. To the extent that a CDE fails to utilize the NMTCs allocated to it in any given period, then it should be required that the NMTCs be returned to the CDFI Fund for allocation to other CDEs.

5. Question 3(a) - *Factors Used to Evaluate Community Development Impact.* Factors that should be used when determining the community development impact of an applicant's prior activities should include (i) the absolute dollar amount of the investment, (ii) the number of families affected by the investment, (iii) the number of individuals affected by the investment, and (iv) letters of recommendation from public officials regarding the effect of the investment in the community. Which regard to social underwriting criteria of its investment

policies, the CDFI Fund should consider the extent to which the underwriting criteria targeted the investment towards those individuals who are the intended benefactors of the NMTC program. Such indicators include the location of the investments, the median income of the census tract in which the investments are located, and the median income of the majority of population served by the investments.

6. Question 3(b) - *Determining Successful Use of Capital.* The CDFI Fund should base its assessment of how successfully capital was provided by an applicant, by assessing the ability of the applicant to fulfill the stated goals of its investment plan, which such plan should be in accordance with the NMTC program guidelines. In addition, the CDFI Fund should assess the economic viability of the entity in which the applicant invested and it should evaluate the current financial condition of that entity.

7. Question 3(c) - *Information Regarding Success of NMTC.* The CDFI Fund should request the following information to determine the effectiveness of the NMTC program: (i) rates of return to investors for qualified equity investments, (ii) economic viability of the ongoing concern, and (iii) the number of clients served within the targeted community.

8. Other Issues – *Qualified Equity Investment Fund Entities.* As the legislation is written, taxpayers must make a qualified equity investment into a CDE that has received a NMTC allocation in order to receive the credit. One interpretation of this provision would preclude a CDE from (i) establishing separate fund entities that it controlled, (ii) allocating to each separate fund a portion of its NMTC allocation and (iii) selling interests in the separate funds to potential investors. This structure would allow CDEs to function like the tax credit syndication community by creating separate NMTC funds based upon certain investment criteria, such as product type, geographic location, etc., which would help to attract investors with specific investment criteria. CDEs should be allowed to sell NMTCs to taxpayers through these fund entities, so that the taxpayers would own shares in the fund entities and would receive the benefit of the NMTCs associated with the fund entities, rather than requiring the taxpayers to invest directly into the CDE.

Sincerely,

Bradley C. Jefferies
Chief Executive Officer

BCJ/axs