

DEPARTMENT OF THE TREASURY**Community Development Financial Institutions Fund****Notice of Allocation Availability Inviting Applications for the New Markets Tax Credit Program**

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of allocation availability (NOAA) inviting applications for the New Markets Tax Credit Program.

SUMMARY: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Public Law 106-554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC section 45D, New Markets Tax Credit. Section 45D requires the Secretary of the Treasury (Treasury) to establish a program that will provide an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. Section 121(f) of the Act, among other things, requires the Secretary to issue guidance on how entities may apply to receive allocations of New Markets Tax Credits (NMTCs), the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. The Secretary delegated such authority to the Under Secretary (Domestic Finance), who in turn delegated such authority to the Director of the Community Development Financial Institutions Fund (the Fund).

On April 20, 2001, the Fund issued guidance (which was published in the **Federal Register** on May 1, 2001 at 66 FR 21846) (the General Guidance) that provided general information on: (i) how an entity may apply to become certified as a "qualified community development entity" (CDE); (ii) how a CDE may apply to receive an allocation of NMTCs; (iii) the competitive procedure through which such allocations will be made; and (iv) the actions that will be taken to ensure that proper allocations are made to appropriate entities. In addition, through the General Guidance, the Fund sought written comments from the public as to certain application and allocation issues.

On December 20, 2001, the Fund issued additional guidance in the

Federal Register (at 66 FR 65806) (CDE Certification Guidance) which (i) summarized written public comments submitted to the Fund pursuant to the General Guidance, with respect to the Fund's certification of entities as CDEs, and (ii) provided specific guidance on how an entity may apply to become certified as a CDE. On December 26, 2001, the Internal Revenue Service (IRS) published temporary regulations in the **Federal Register** (at 66 FR 66307) that provide guidance to taxpayers claiming NMTCs, including, but not limited to: (i) How the proceeds from Qualified Equity Investments must be used; (ii) what constitutes a Qualified Low-Income Community Investment; and (iii) what events will trigger a recapture of the NMTC.

This document (i) summarizes many, but not all, of the written public comments submitted to the Fund pursuant to the General Guidance, specifically with respect to application and allocation issues, and (ii) provides, in accordance with IRC section 45D(f), specific guidance on how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. More detailed application content requirements are found in the application packet related to this NOAA. In the event of any inconsistency between the contents of the application packet or this NOAA and the Act or the IRS temporary regulations for the NMTC Program, the provisions of the Act and the temporary regulations shall govern.

For calendar year 2002, the Fund expects to allocate to CDEs the authority to issue to their investors up to the aggregate amount of \$2.5 billion in equity as to which NMTCs may be claimed (the authority will include the aggregated amounts of \$1 billion for calendar year 2001 and \$1.5 billion for calendar year 2002, as permitted under IRC sections 45D(f)(1) and 45D(f)(3)). The Fund reserves the right to allocate said authority to any, all or none of the entities that submit an application in response to this NOAA, and in amounts determined by the Fund. This NOAA provides guidance for the application for and allocation of NMTCs for calendar year 2002. The Fund encourages all entities proposing to make Qualified Low-Income Community Investments, as hereinafter defined, to apply for an allocation of NMTCs.

DATES: Simultaneously with the publication of this NOAA, the Fund has made the calendar year 2002 NMTC Allocation Application available on its website at <http://www.cdfifund.gov>. The application is currently available in a read-only format. However, applicants are expected to submit completed applications electronically to the Fund using a web-based application. The Fund anticipates that this web-based application will be available on the Fund's website commencing no later than July 17, 2002. Applicants will need access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher and at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Electronic applications must be submitted solely by using the format made available at the Fund's website for the NMTC Program. The deadline for receipt of electronic applications is 5 p.m. ET on August 29, 2002. Applications received electronically after 5 p.m. ET on August 29, 2002 will not be accepted for consideration. Additional deadlines relating to the submission of signature forms and general supporting documentation will be further detailed in the electronic application.

The Fund expects applicants to submit NMTC allocation applications electronically. Submission of an electronic application will facilitate the processing and review of applications and the selection of allocatees; further, it will assist the Fund in the implementation of electronic reporting requirements for entities that receive NMTC allocations. If an applicant is unable to submit an electronic application, it must notify the Fund by 5 p.m. ET on August 9, 2002 for information on the procedures for submission of a paper application. The deadline for receipt of a paper application at the designated location is 5 p.m. ET on August 29, 2002. Paper applications received after that date and time will not be accepted for consideration and will be returned to the sender.

For purposes of this NOAA, an application for an allocation of NMTCs will not be considered unless: (i) An applicant is certified as a CDE at the time the Fund receives its NMTC allocation application; or (ii) the Fund receives from an applicant an application for certification as a CDE no later than July 25, 2002. The Fund will not award allocations of NMTCs to applicants that are not certified as CDEs.

FOR FURTHER INFORMATION CONTACT: Applications and other information regarding the Fund and its programs

may be obtained from the Fund's website at <http://www.cdfifund.gov>. The Fund will post on its website answers to questions of general applicability regarding the NMTC Program. If you have any questions about the programmatic requirements or application procedures for this program, contact Linda Davenport, the Fund's NMTC Program Manager. The NMTC Program Manager may be reached by e-mail at cdfihelp@cdfi.treas.gov, by telephone at (202) 622-7373, by facsimile at (202) 622-8911, or by mail at CDFI Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. For questions regarding the tax aspects of the NMTC Program, contact Paul Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622-3040, by facsimile at (202) 622-4753, or by mail at 1111 Constitution Avenue, NW, Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers. Applicants are strongly encouraged to review the IRS temporary regulations for the NMTC Program. The IRS temporary regulations, the General Guidance, and the CDE Certification Guidance are available on the Fund's website at <http://www.cdfifund.gov>.

SUPPLEMENTARY INFORMATION:

I. Definitions

(a) *Affiliate* means any legal entity that Controls, is Controlled by, or is under common Control with an applicant.

(b) *Allocation Agreement* means an agreement between the Fund and a CDE relating to a NMTC allocation under IRC section 45D(f)(2).

(c) *Community Development Entity or CDE*: See Qualified Community Development Entity, below.

(d) *Community Development Financial Institution or CDFI* means an entity that has been certified by the Fund as meeting the criteria set forth in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702). For further details, refer to the CDFI Program regulations set forth at 12 CFR 1805.201.

(e) *Control* means (i) 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; (ii) 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 (iii) 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.

(f) *Controlling Entity* means an entity that Controls an applicant.

(g) *Low-Income Community* means, under IRC section 45D(e)(1), any population census tract if (A) the poverty rate for such tract is at least 20 percent, or (B)(i) in the case of a tract not located within a Metropolitan Area (as hereinafter defined), the median family income for such tract does not exceed 80 percent of statewide median family income, or (ii) in the case of a tract located within a Metropolitan Area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the Metropolitan Area median family income. With respect to IRC section 45D(e)(1)(B), possession-wide median family income shall be used (in lieu of statewide income) in assessing the status of census tracts located within a possession of the United States. Upon application by an entity for certification as a CDE, the Fund may designate under IRC section 45D(e)(2) an area within a census tract as a Low-Income Community if (A) the boundary of the area is continuous; (B) the area would otherwise meet the definition of a Low-Income Community under IRC section 45D(e)(1) if it were a census tract; and (C) there is inadequate access to investment capital in the area (as demonstrated by studies, surveys, or other analyses provided by the applicant). Under IRC section 45D(e)(3), in the case of an area that is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of determining poverty areas) shall be used for purposes of defining poverty rates and median family incomes.

(h) *Low-Income Persons* means individuals having an income of not more than (A) for non-Metropolitan Areas, 80 percent of the statewide median family income; and (B) for Metropolitan Areas, the greater of (i) 80 percent of the statewide median family income or (ii) 80 percent of the Metropolitan Area median family income.

(i) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR 1949-1953 Comp., p. 758), as amended.

(j) *Qualified Community Development Entity or CDE* means, under IRC section 45D(c)(1), any domestic corporation or partnership if (A) the primary mission

of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons; (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the Fund as a CDE. Specialized Small Business Investment Companies (SSBICs), as hereinafter defined, and CDFIs will be deemed to be CDEs in the manner set forth in the CDE Certification Guidance.

(k) *Qualified Equity Investment* means, under IRC section 45D(b)(1), any equity investment in a CDE if (A) such investment is acquired by the investor at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of such cash is used by the CDE to make Qualified Low-Income Community Investments; and (C) the investment is designated by the CDE as a Qualified Equity Investment. Qualified Equity Investment also includes an equity investment purchased from a prior holder, to the extent provided in IRC section 45D(b)(4). Qualified Equity Investment does not include any equity investment issued by a CDE more than five years after the date the CDE receives a NMTC allocation. Under IRC 45D(b)(6), "equity investment" means (A) any stock (other than nonqualified preferred stock as defined in IRC section 351(g)(2)) in an entity that is a corporation and (B) any capital interest in an entity that is a partnership.

(l) *Qualified Low-Income Community Investment* means, under IRC section 45D(d)(1), (A) any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in IRC section 45D(d)(2)); (B) the purchase from a CDE of any loan made by such entity that is a Qualified Low-Income Community Investment; (C) financial counseling and other services to businesses located in, and residents of, Low-Income Communities; and (D) any equity investment in, or loan to, any CDE.

(m) *Specialized Small Business Investment Company or SSBIC* is defined in IRC section 1044(c)(3).

(n) *Subsidiary* means a legal entity that is owned or Controlled directly or indirectly by an applicant.

(o) *Unrelated*: means for purposes of IRC section 45D(f)(2), those persons who are not related within the meaning of IRC section 267(b) or IRC section 707(b)(1).

II. Background

By providing an incentive in the form of a tax credit over seven years, NMTCs are intended to stimulate the provision of \$15 billion of private investment capital in CDEs that, in turn, will make investments in eligible businesses in low-income urban and rural communities, thus facilitating economic and community development. The goal is to address limitations of financial markets by facilitating the flow of equity capital into areas not being adequately served by conventional lenders and investors. This can be achieved by deploying investments in products or services that: (a) Service creditworthy borrowers or investees not served by conventional sources of capital; (b) provide a catalyst for large-scale, self-generating flows of investments (for example, the increased provision of critical public services); or (c) serve borrowers or investees who may present greater risks than would be assumed by conventional providers of capital in order to generate benefits distributed broadly throughout the community.

Through the NMTC Program, an entity may apply to the Fund to be certified as a CDE. Nonprofit entities and for-profit entities may be certified as CDEs by the Fund. Both for-profit and non-profit entities may apply to the Fund for an allocation of NMTCs, but only CDEs that are for-profit entities are eligible to issue Qualified Equity Investments with respect to which investors will be entitled to claim NMTCs. A taxpayer that makes a Qualified Equity Investment in a CDE that has received a NMTC allocation from the Fund may claim a five percent tax credit on the investment amount as of the date on which the investment is initially made and on each of the next two anniversary dates and a six percent tax credit for each of the next four anniversary dates.

In this NOAA, the Fund addresses specifically how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. Applicants should consult the temporary regulations issued by the IRS for the NMTC Program to obtain guidance on tax issues related to the NMTC Program.

III. Comments Submitted by the Public on the General Guidance

On April 20, 2001, the Fund issued the General Guidance which described certain aspects of the NMTC Program. The Fund received numerous comments

from organizations and individuals. The Fund reviewed and considered all of the comments and in the CDE Certification Guidance published in the **Federal Register** on December 20, 2001, the Fund responded to the significant and most frequently commented upon issues related to CDE certification. In this NOAA, the Fund responds to the significant and most frequently commented upon issues related to other application and allocation issues presented in the General Guidance.

A. Business Strategy

Several commenters recommended that in evaluating applicants for NMTCs, the Fund should consider an applicant's ability to create products and services that it can successfully market to eligible investees under the NMTC Program. Specifically, the commenters suggested that the Fund consider the following items when evaluating an applicant's business investment strategy: (1) An applicant's experience in accurately assessing the demand for, and marketing of, its proposed investment products and services; (2) an applicant's experience in making investments in the proposed Low-Income Community in which it will deploy investments related to the NMTC Program, including how an applicant's prior investment activities will complement its proposed activities; and (3) the extent to which an applicant has already established a pipeline of identified or potential investees.

IRC section 45D(f)(2) provides Treasury with the authority to determine how entities shall apply for an allocation of NMTCs. The Fund agrees that an applicant's business investment strategy is a critical component of the evaluation criteria for NMTC allocations and has determined that it will evaluate an applicant's business investment strategy for making Qualified Low-Income Community Investments. In assessing an applicant's business investment strategy, the Fund will consider, among other things: (1) An applicant's proposed products, services, and investment criteria; (2) an applicant's (or its Controlling Entity's) prior performance in deploying investments or providing services; (3) an applicant's (or its Controlling Entity's) prior performance in providing capital or technical assistance to disadvantaged businesses or communities; (4) the quality and projected level of an applicant's pipeline of potential investments; and (5) the extent to which an applicant intends to make Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the entity hold a

majority equity interest. As described further under paragraph E below, applicants may receive priority points for each of items number 3 and 5 above.

Several commenters also recommended that in evaluating the track record of an applicant's prior investment activities, the Fund should consider: (1) The track record of an applicant's Affiliates in making investments in Low-Income Communities; (2) the type, volume, overall performance and impact of prior investments; (3) the historical financial performance of an applicant; and (4) quantitative as well as qualitative indicators.

In evaluating the track record of an applicant's investment activities, the Fund has determined that it will consider whether an applicant, and/or its Controlling Entity, has a track record of making successful investments that are similar to the investments an applicant contemplates making with the proceeds of Qualified Equity Investments. The Fund will require information on an applicant's and, if applicable, its Controlling Entity's investment portfolio, and the status and overall performance of the reported investment activities, including those investments which have been targeted to disadvantaged communities or businesses.

B. Capitalization Strategy

Two commenters suggested that the Fund not require applicants to indicate at the time of application the specific commitments of investors to whom an applicant plans to offer NMTCs. Another commenter recommended that the Fund focus on an applicant's track record for raising capital from the private sector. The Fund has considered these comments and has determined that information on an applicant's track record (or that of its Controlling Entity) of obtaining investors in the past and its present investor commitments as of the date of application submission are essential for purposes of evaluating allocation applications. An applicant's track record of raising capital from investors as well as the status of any current investor commitments provides the Fund with valuable information on whether an applicant can successfully raise capital in exchange for any NMTC allocations it receives. Therefore, the Fund will require, at the time of application, that applicants indicate their (or their Controlling Entity's) prior performance with raising capital from investors as well as the nature of investor commitments for NMTCs to date.

One commenter suggested that the Fund require that applicants provide an outline of their strategies for raising capital related to the NMTC Program. The Fund agrees with this comment and will require that all applicants submit a description of their strategy to raise capital from potential NMTC investors. The Fund will also request information on the experience of an applicant's staff, board members, and consultants with raising capital from investors, with or without the use of tax credit incentives, and how these individuals will be involved in the implementation of an applicant's capitalization strategy. Applicants will also be required to explain how an allocation of NMTCs fits into an applicant's entire capitalization plan. The Fund will also consider the extent to which an applicant intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC section 45D(b)(1)(B).

C. Management Capacity

Several commenters suggested that in evaluating an applicant's business strategy and capitalization strategy, the Fund should consider the experience of an applicant's management team, board of directors, and advisory board. The Fund agrees with this comment and will assess an applicant's management capacity by considering, among other things, the qualifications of an applicant's principals, its board members, its management team, and other essential staff and contractors, with specific focus on: Experience in deploying capital or technical assistance, including activities similar to those described in an applicant's business strategy; experience in raising capital; asset management and risk management experience; and experience with fulfilling compliance requirements of other governmental programs, including other tax programs. The Fund will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC program requirements.

D. Community Impact

Numerous commenters suggested that the Fund consider the level of community development impact demonstrated in an applicant's past and proposed investment activities. The commenters recommended that the Fund consider a number of community development impact criteria, including, but not limited to: Income levels of people served by prior investments; the location of prior investments; social impact criteria used in the underwriting

process; benefits to the local labor market and business owners; creation and retention of new jobs; effects on hourly wages and tax base of residents in the community; prevention of residential displacement; improvements to the provision of services to community residents; coordination with local government economic development plans; improvements in availability of affordable housing; reuse of blighted structures; impact of investments on historic properties; and the extent to which an applicant has sought the input of community members in the eligible Low-Income Community related to an applicant's proposed investment strategy.

The Fund has considered these comments and will be evaluating the effect of the NMTC Program in many of the areas outlined above as part of the Fund's compliance and monitoring and evaluation processes. The Fund has also included in the allocation application a section which asks that applicants provide information on the role that community representatives and residents will play in the design, implementation or monitoring of the applicant's investment strategy for the use of a potential allocation of NMTCs. In addition, the allocation application requires applicants to provide information pertaining to the extent to which its products and services will benefit Low-Income Communities through the coordination or use of NMTCs in concert with existing Federal, state or local government or community economic development plans or programs which focus on Low-Income Communities (e.g., Empowerment Zones, Enterprise Communities, and Renewal Communities).

E. Statutory Priorities

IRC section 45D(f)(2) requires that, in making allocations of NMTCs, the Fund must give a priority to any entity with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities; or to any entity which intends to meet the requirement of IRC section 45D(b)(1)(B) by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the entity hold a majority equity interest.

One commenter suggested that the priorities should be implemented by assigning additional points for each category. A few commenters recommended that applicants meeting the requirements of both or either priority be awarded NMTC allocations before all other applicants. Several commenters suggested that more weight

should be given to the investment in unrelated entities priority over the investment track record priority. One commenter suggested that more weight should be given to those applicants with a track record of providing investments in Low-Income Communities. Another commenter also suggested that in evaluating newly formed entities that are CDEs, the record of the entity that controls the newly formed entity should be considered for purposes of determining priority treatment. Several commenters proposed that the Fund provide a priority to CDEs that commit to using NMTC allocations to attract most of their investments from unrelated sources. Another commenter suggested that a preference be given to those applicants with a demonstrated track record of successful compliance with other tax credit programs. Other commenters also recommended that the Fund give priority treatment in its allocation of NMTCs to SSBICs, New Markets Venture Capital (NMVC) Companies designated by the Small Business Administration, community development banks and bank holding companies.

A few commenters also proposed that the Fund give priority treatment for certain types of investment activities by CDEs, such as for: Business start-up or expansion costs; businesses located in historic commercial districts; rehabilitation projects; venture capital investments; and businesses that provide new services to underserved markets. One commenter also suggested that a priority should be given to CDEs that intend to make equity investments as opposed to loans to businesses in Low-Income Communities.

The Fund has considered these comments and will provide up to five (5) priority points to any applicant that meets either of the two statutory priority categories (for a total of up to ten (10) additional priority points). Applicants may obtain points in either, or both, categories. When evaluating the record of an applicant that is newly formed to determine its success in providing capital or technical assistance to disadvantaged businesses or communities, the Fund will also consider the track record of an applicant's Controlling Entity of providing such capital or technical assistance.

The Fund will not provide an automatic priority of NMTC allocations to applicants that are SSBICs, NMVC Companies, or community development banks or bank holding companies since such an organizational form or status is not uniquely qualified to fulfill the purposes of the NMTC Program.

Although the Fund will consider the nature of an applicant's proposed investment activities for purposes of evaluating the applicant's investment strategy, the Fund will not give separate preference or priority treatment to specific categories or types of investments by applicants. Similarly, the Fund will consider an applicant's track record with respect to compliance with other governmental programs in the course of its review of an application, but will not give separate preference or priority treatment to organizations based upon this analysis. The Fund has also decided not to give a priority to applicants that intend to use an allocation of NMTCs to attract investments from unrelated sources.

F. Insured Depository Institutions' Use of NMTCs With the Bank Enterprise Award Program

Several commenters suggested that the Fund allow applicants to benefit from both the NMTC Program and the Bank Enterprise Award (BEA) Program, a community development incentive program administered by the Fund, for making the same investments. Since the NMTC Program does not intend to provide the same set of investors with more than one direct benefit for the same financial investment in a CDE, the Fund will not allow an insured depository institution investor (and its Affiliates and Subsidiaries) to receive NMTCs in addition to a BEA Program award for the same investment in a CDE. Likewise, the Fund will not allow an insured depository institution investor (and its Affiliates and Subsidiaries) to receive a BEA Program award in addition to NMTCs for the same investment in a CDE.

G. Coordination of the NMTC Program and the Community Reinvestment Act

A few commenters recommended that the Fund coordinate the NMTC Program with the requirements of the Community Reinvestment Act (CRA) so that insured depository institutions receive CRA credit for making Qualified Equity Investments in CDEs for purposes of the NMTC Program. The extent to which NMTC related investments made by an insured depository institution could also count towards such institution's CRA requirements will depend on the statutory and regulatory provisions of CRA and the appropriate Federal banking agencies.

H. Limits on Annual Allocations

Several commenters recommended that the Fund not set any specific limits on the NMTC allocation amount that

will be available to any one applicant. Instead, the commenters suggested that the Fund should focus on ensuring that CDEs receiving NMTC allocations are diverse in terms of geography, entity type, size, and type of business investees. Conversely, some commenters proposed that the Fund limit an allocation award to a single CDE and its Affiliates to no more than 10 percent of the total amount of NMTCs available per year. Other commenters suggested that limits on allocation awards be based on an applicant's track record of total investments or level of proposed investment activities. The Fund has not decided at this time on a maximum allocation amount per applicant. In making final allocation decisions the Fund reserves the right to set such a maximum award amount if the Fund deems it appropriate.

IV. Eligibility

IRC section 45D specifies the eligibility requirements that each applicant must meet in order to be eligible to apply for an allocation of NMTCs. For purposes of this NOAA, an application for an allocation of NMTCs will not be considered unless: (i) An applicant is certified as a CDE at the time the Fund receives its NMTC allocation application; or (ii) the Fund receives from an applicant an application for certification as a CDE no later than July 25, 2002. The Fund will not provide allocations of NMTCs to applicants that are not certified as CDEs.

Both for-profit and non-profit CDEs may apply to the Fund for an allocation of NMTCs, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit applicant wishing to apply for NMTC allocations will need to demonstrate, prior to entering into an Allocation Agreement with the Fund, that: (1) It controls one or more Subsidiaries that are for-profit entities; and (2) it intends to transfer all allocations of NMTCs it receives to those Subsidiary entities. The transferee must be certified as a CDE and such transfer must be pre-approved by the Fund and incorporated into the Allocation Agreement, in its sole discretion. A for-profit applicant that receives a NMTC allocation may transfer such NMTC allocation to its for-profit Subsidiary or Subsidiaries, provided that said transferees have been certified as CDEs and such transfer is pre-approved by the Fund and incorporated into the Allocation Agreement, in its sole discretion.

An applicant wishing to transfer allocations to a Subsidiary or Subsidiaries is not required to establish

these organizations prior to submitting an application for an allocation of NMTCs to the Fund. Rather, the Fund will require an applicant to indicate, in its application for NMTCs, whether it intends to transfer any of its allocations to a Subsidiary entity and its timeline for doing so. As stated above, in no circumstance will the Fund authorize such a transfer until such time as the Fund has certified the Subsidiary entity as a CDE. An applicant and its Subsidiaries may collectively submit only one application for allocations per year under the NMTC Program.

An applicant whose business structure consists of an entity with a series of funds may apply for CDE certification and an allocation of NMTCs as a single entity, or as multiple entities. If such an applicant represents that it is properly classified for Federal income tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an applicant represents that it is properly classified for Federal income tax purposes as multiple partnerships or corporations, then it may submit a single application on behalf of the entire series of funds, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an applicant and its related funds are properly classified as a single entity or as multiple entities for Federal income tax purposes. Regardless of whether the series of funds applies as a single partnership or corporation or as multiple partnerships or corporations, an applicant may not transfer any NMTC allocations it receives to one or more of its funds unless the transfer is pre-approved by the Fund and incorporated into the Allocation Agreement, in its sole discretion.

An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive NMTCs in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to NMTCs for the same investment in a CDE.

V. Application Packet

An applicant under this NOAA must submit the materials described in the application packet, which is available at the Fund's website at <http://www.cdfifund.gov>.

VI. Evaluation

All applications for allocations of NMTCs will be reviewed for eligibility

and completeness. If determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in this NOAA and the allocation application.

In the first part of the substantive review, each Fund reviewer will evaluate the following application elements:

1. *Business Strategy* (25-point maximum plus up to 5 points for each of the two statutory priority items). In assessing an applicant's business strategy, reviewers will consider, among other things: an applicant's products, services and investment criteria; the prior performance of the applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds from Qualified Equity Investments; an applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of an applicant's pipeline of potential investments; and the extent to which an applicant intends to make Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the entity hold a majority equity interest.

In evaluating the business strategy criterion an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which: (a) Are designed to meet the needs of underserved markets; (b) are flexible or non-traditional in form; and (c) focus on customers or partners that typically lack access to conventional sources of capital. An applicant will also score well to the extent that it: (1) Has a track record of successfully providing products and services similar to those it intends to use with the proceeds of Qualified Equity Investments, generally and in Low-Income Communities in particular; (2) has identified, or has a process for identifying, potential transactions; and (3) intends to invest in unrelated businesses.

In addition, as provided by IRC section 45D(f)(2), the Fund will give up to five (5) additional points to any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities; and five (5) additional points to any applicant that intends to satisfy the requirement of IRC section 45D(b)(1)(B) by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to an applicant (within the meaning of IRC

section 267(b) or IRC section 707(b)(1)) hold the majority equity interest.

Applicants may earn points in either or both categories. Thus, applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an applicant itself or by an entity Controlling an applicant (e.g., where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An applicant that receives additional points for intending to make investments in unrelated businesses and obtains an allocation of NMTCs must meet the requirements of IRC section 45D(b)(1)(B) by investing substantially all of the proceeds from the aggregate amount of its Qualified Equity Investments in unrelated businesses.

2. *Capitalization Strategy* (25-point maximum). In assessing an applicant's capitalization strategy, reviewers will consider, among other things: the extent to which an applicant has secured investments, commitments to invest, or indications of interest in investments from investors, commensurate with its requested amount of tax credit allocations; an applicant's strategy for identifying additional investors, if necessary, including an applicant's (or its Controlling Entity's) prior performance with raising equity from investors; the extent to which an applicant intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC section 45D(b)(1)(B), including the extent to which an applicant has identified the financial resources outside of the NMTC investments necessary to support its operations or finance its activities; and an applicant's timeline for utilizing an NMTC allocation.

An applicant will generally score well under this section to the extent that: (a) It has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of Qualified Equity Investments it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it is likely to leverage other sources of funding in addition to NMTC investor dollars; and (d) it intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level

that exceeds the requirements of IRC section 45D(b)(1)(B).

3. *Management Capacity* (25-point maximum). In assessing an applicant's management capacity, reviewers will consider, among other things, the qualifications of an applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: experience in deploying capital or technical assistance, including activities similar to those described in an applicant's business strategy; experience in raising capital; asset management and risk management experience; and experience with fulfilling compliance requirements of other governmental programs, including other tax programs. Reviewers will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC program requirements.

An applicant will generally score well under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the applicant with the proceeds of Qualified Equity Investments; (b) raising capital, particularly from for-profit investors; (c) asset and risk management; and (d) fulfilling government compliance requirements, particularly tax program compliance. An applicant will also score well to the extent to which it has policies and systems in place to ensure ongoing compliance with NMTC Program requirements.

4. *Community Impact* (25-point maximum). In assessing the impact on communities expected to result from an applicant's proposed investments, reviewers will consider, among other things: the level of involvement of community representatives and residents in the design, implementation or monitoring of an applicant's business plan and strategy; whether an applicant is working in economically distressed markets; the degree to which an applicant will target its investments to localities with plans in place to enhance community development impact; and coordination with Federal, state or local government or community economic development plans (e.g., Empowerment Zones, Enterprise Communities, and Renewal Communities).

An applicant will generally score well under this section to the extent that: (a) Its Low-Income Community representatives play an active role in designing or implementing its business plan; (b) it is working in particularly economically distressed or otherwise

underserved communities; (c) it is working in concert with Federal, state or local government or community economic development plans; (d) it shows demonstrable community development and economic impacts that would not be achieved without NMTCs; and (e) it can indicate why the same result could not be achieved at a lower cost using other sources, including federal programs.

Fund reviewers will evaluate and score each application. The Fund will consider the applicant's total score from each reviewer and will award allocations to the most highly qualified applicants; provided, however, that (1) the Fund has not decided at this time on a maximum allocation amount per applicant and the Fund, in its sole discretion, reserves the right to set such a maximum award amount if the Fund deems it appropriate; and (2) the Fund reserves the right to reject an application that receives scores that are exceptionally weak in any one or more of the four application evaluation criteria outlined above and detailed more fully in the application materials.

As a part of the substantive review process, applicants may receive a telephone interview by Fund reviewer(s) for the purpose of obtaining, clarifying or confirming application information. At this point in the process, an applicant may be required to submit additional information about its application in order to assist the Fund with its final evaluation process. The selecting official(s) will make a final allocation determination based on an applicant's file, including without limitation, the reviewers' scores and the amount of allocation authority available. In the case of an applicant (and any of its Affiliates) that has previously received financial or technical assistance from the Fund under the CDFI Program, the Fund will consider an applicant's and its Affiliates' level of success in meeting their performance goals, financial soundness covenants (if applicable), and other requirements contained in their existing assistance agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of a previous Fund awardee, if such awardee or its Affiliates have failed to comply with the terms and conditions of their previous or existing assistance or award agreement(s) with the Fund. The Fund's allocation award decisions are final.

In the case of CDEs regulated by the Federal government, the Fund's selecting official(s) reserve(s) the right to take into consideration the views of the appropriate Federal banking and other regulatory agencies. In the case of

applicants that are also SSBICs or NMVC Companies, the Fund reserves the right to consult with the SBA.

The Fund reserves the right to change these evaluation procedures, if the Fund deems it appropriate.

VII. Use of 1990 Census Data

The Fund recognizes that since the 2000 U.S. census data may not be available in sufficient detail prior to the time that an applicant submits its allocation application to the Fund, some applicants may obtain investor commitments for potential NMTC investments in Low-Income Communities using 1990 census data. The Fund has decided that an applicant may use 1990 census data for any proposed Qualified Low-Income Community Investment: (i) That is closed (meaning all parties are legally committed to funding the investment) by the applicant by December 31, 2002; or (ii) that is specifically identified in its allocation application and is closed by the applicant by December 31, 2003. If an applicant uses 1990 census data for a Qualified Low-Income Community Investment, it must use 1990 census data for the entire period of the specified investment. Other than in such cases as outlined above, all Qualified Low-Income Community Investments must be made using 2000 census data.

VIII. Allocation Agreement

Each applicant that is selected to receive a NMTC allocation must enter into an Allocation Agreement with the Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC allocation which may include, but not be limited to, the following: (i) The amount of the awarded NMTC allocation; (ii) the approved uses of the awarded NMTC allocation (e.g., loans or equity investments to Qualified Active Low-Income Businesses or loan or equity investments to other CDEs); (iii) the approved service area(s) in which the proceeds of Qualified Equity Investments may be used; (iv) the CDE's schedule for obtaining Qualified Equity Investments from investors; and (v) reporting requirements for all CDEs receiving NMTC allocations. If a CDE has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the CDE hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said CDE agrees that it will invest substantially all of said proceeds in businesses in which persons

unrelated to the CDE hold a majority equity interest.

In addition to entering into an Allocation Agreement, each applicant selected to receive a NMTC allocation must furnish to the Fund an opinion from its legal counsel, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an applicant: (i) is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

IX. Monitoring

The Fund will collect information, on at least an annual basis, from all CDEs that are awarded NMTC allocations and/or are recipients of Qualified Low-Income Community Investments, including such audited financial statements and opinions of counsel as the Fund deems necessary or desirable, in its sole discretion. The Fund will use such information to monitor each CDE's compliance with the Fund's requirements for certification as a CDE and to monitor compliance with the provisions of its Allocation Agreement, which will include, among other information, whether the CDE has used substantially all of the proceeds of each Qualified Equity Investment raised through its NMTC allocation to make Qualified Low-Income Community Investments. The Fund may provide such information to the IRS in a manner consistent with IRC section 6103. The Fund will use such information to assess the impact of the NMTC Program in Low-Income Communities. The Allocation Agreement shall further describe the CDE's reporting requirements.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC allocations. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

X. Information Sessions

In connection with this NOAA, the Fund will conduct Information Sessions

to disseminate information to organizations contemplating applying for, and other organizations interested in learning about, the NMTC Program. The Fund will provide additional information on the dates and locations

of the Information Sessions on the Fund's website at <http://www.cdfifund.gov>.

Authority: Consolidated Appropriations Act of 2001, Pub. L. 106-554; 31 U.S.C. 321.

Dated: June 5, 2002.

Tony T. Brown,
Director, Community Development Financial Institutions Fund.

[FR Doc. 02-14570 Filed 6-10-02; 8:45 am]

BILLING CODE 4810-70-P