

CDE Certification Q & A Document

Community Development Financial Institutions Fund

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General Application and Eligibility Questions

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 (LICs) or Low-Income Persons; (b) maintains accountability to residents of LICs 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.

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 as of the date the Authorized Representative has signed the application.

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

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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.

For certified CDEs that are themselves Subsidiary organizations, have received allocations and wish to get additional Subsidiary organizations certified in order to transfer allocations, they must apply as the Applicant CDE and indicate that they have Subsidiary Applicants.

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).

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:

Legal Entity: In order to be certified as a CDE, an Applicant CDE must be a domestic corporation or partnership for federal tax purposes and be duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or established.

Primary Mission: A CDE must demonstrate a primary mission of serving, or providing investment capital for, LICs 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 LICs.

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

- a) An applicant must indicate which LICs it serves or intends to serve; and

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- b) An applicant must show that a minimum of 20 percent of either its governing board or advisory board(s) is representative of the LICs that it has designated.

8) *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 in 2003 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) **by no later than the date identified in the 2003 Notice of Allocation Authority (NOAA)**. The 2003 NOAA will likely be published in the Federal Register in July of 2003, and it is currently anticipated that the NOAA will include a CDE Certification Application due date on or about **August 29, 2003**. CDFIs and SSBICs will be similarly required to register on-line as CDEs on or before the same date in order to be eligible to apply for an allocation of tax credits in 2003.

9) *If an organization that is not a certified CDFI is interested in obtaining certification as a CDFI as well as certification as a CDE, 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 2003 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.

10) *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 LICs or Low-Income Persons; and (b) it is in fact accountable to the LICs 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.

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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.

Questions Regarding Status as a Legal Entity

11) Can a sole proprietorship or single member LLC become a CDE?

In general, sole proprietorships and single member limited liability companies are not considered corporations or partnerships for federal tax purposes, so these entities would not meet the legal entity test.

12) Can a governmental entity become a CDE?

A governmental entity may apply for designation as a CDE, provided the entity is classified as a corporation or partnership for federal tax purposes and would meet the legal entity requirement. Such applications will be reviewed on a case-by-case basis.

13) The Fund requires that each entity applying for CDE certification provide documentation that it has been assigned an Employer Identification Number (EIN) from the IRS. How do I obtain an Employer Identification Number (EIN), or request verification of an already assigned EIN?

Organizations may apply for an EIN online, by telephone, by facsimile or through the mail. For detailed information on how to **apply for an EIN**, visit IRS' website at www.irs.treas.gov and read IRS Publication 1635, Understanding Your EIN. Organizations that already have an EIN may obtain **documentation verifying assignment of the EIN** by calling (800) 829-4933 (the Business and Specialty tax line). Only those individuals who are listed as key persons in the original IRS filing will be allowed to obtain this information (e.g., the members of an LLC, the partners in a partnership, etc.) The IRS will either: (1) fax verification of an EIN with minimal information; or (2) send a more comprehensive letter in the mail, which could take up to 10 days to receive. The Fund will accept the faxed documentation as verification of an EIN.

Questions Regarding Primary Mission

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

The Fund will accept signed and/or filed articles of incorporation, articles of organization, signed 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 approved documents. The Fund will not accept pamphlets, brochures or other general marketing materials.

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15) What is the definition of a LIC?

A LIC 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):

- a) The poverty rate for such census tract is at least 20 percent; or
- b) 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
 - 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 LICs, applicants may use the Fund's On-Line Help Desk (www.cdfifundhelp.gov) and click on the NMTC Program. The Fund is only accepting 2000 Census data.

Designation of Low-Income Communities

16) How do I determine if an address is in an eligible LIC census tract?

To determine if an address is in a qualifying census tract, applicants may currently use option #3 on the Fund's On-Line Help Desk (www.cdfifundhelp.gov) under the NMTC Program. Applicants may submit up to 100 addresses at a time, provided the addresses are all in the same State. Once all the addresses are added, click on "Submit." A map will show the census tracts containing the entered addresses in a yellow outline. (If you receive an error message rather than the map, see question #17 for how to resolve this.) If the census tract is colored, it is qualifying. To determine which addresses correlate to the census tracts, click on "Geocoded Data Report" (under the map). A separate screen will pop-up with the addresses and related census tract. If there is no census tract, the system did not recognize the address (see question #17 on how to resolve this). This report should be printed and included for certain board members under the Accountability section of the CDE Certification Application (see Application for more instructions). The report does not indicate whether the census tract qualifies. To determine if the census tract qualifies, click "Submit," check the "Low Income Community Worksheet" box and click "Submit" again. A separate screen will pop-up with only the qualifying census tract and the associated data.

17) What should I do if I am getting an error message when I try to geocode an address or a census tract is not appearing on the Geocoded Data Report next to an address?

In certain limited circumstances, the Fund's NMTC Program geocoder has been producing an error message or not recognizing addresses. The Fund's staff is working to update its Help Desk and fix the problem. In the meantime, applicants experiencing this problem may use the Census American Factfinder geocoder website for geocoding:

http://factfinder.census.gov/servlet/AGSGeoAddressServlet?_lang=en&_programYear=50&_treenId=420

Applicants may enter any problem addresses in the Factfinder geocoder, click "Go" and get a text box including the address' 2000 tract number. In lieu of the Geocoded Data Report needed for the CDE Certification Application requirements, applicants should click on the

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line that starts with “Census Tract:” and then click “Map It.” A map will pop-up in a separate screen, which should be printed to include in the CDE Certification Application.

In order to determine whether the entered address and resulting census tracts meet the NMTC requirements, return to the NMTC Program On-Line Help Desk site, www.cdfifundhelp.gov, and chose option 1. Drop down to the correct State, then drop down to the County. Enter the six-digit census tract number(s) in the box next to the County and click “Submit.” If the census tract (surrounded by a yellow outline) is colored, it qualifies. Then click “Submit,” check the “Low Income Community Worksheet” box and click “Submit” again. A data worksheet will pop-up in a separate screen, which should also be printed to include in the CDE Certification Application. The two printed documents above will confirm the qualification of the address for CDE Certification purposes.

Note on Census Tract Numbers: The census tract numbers that are provided in the Census American Factfinder geocoder are not always six digits. The following examples will help applicants convert the number to six digits when entering the number on the Fund’s website.

1 = 000100
12 = 001200
123 = 012300
1234 = 123400
1.2 = 000120
1.23 = 000123

18) Is it possible for the Fund to designate additional areas as qualifying LICs?

The Fund may designate, upon request from an applicant, one or more “target areas” within otherwise ineligible census tracts as LICs if:

- (a) the boundary of such an area is continuous, and the continuous boundary that delineates the portion of the census tract as a “LIC” is a pre-existing boundary (such as an established neighborhood, political or geographic boundary). A census block, or block group designation, is deemed by the Fund to qualify as a geographic boundary.
- (b) the area would satisfy the requirements of a LIC (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. For the purpose of demonstrating that a target area has unmet capital needs, it will be incumbent upon the applicant to provide statistics, reports or other lending/capital analysis specific to each particular target area that clearly shows that the target area has unmet capital needs as compared with the broader geographic area (e.g., MSA, statewide, or nationwide geographies). Income and poverty data cannot be used as a surrogate for data about unmet capital needs. That is, it is not enough to claim that an area has unmet capital needs simply by referring to the high poverty rate. Some type of lending or capital analysis must be provided.

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 requirement, an organization may need access to census data (such as census block group data) that is not available on the

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Fund's On-Line Help Desk. Such data may be retrieved through the Census Bureau's website at <http://www.census.gov/geo/www/>.

Applicants wishing to designate multiple target areas (whether defined by geographic boundaries, political boundaries or neighborhood boundaries) must demonstrate that each target area satisfies the above requirements – even if the multiple target areas identified are continuous. Thus, an applicant wishing to designate multiple census blocks may not aggregate the data, even if the blocks are continuous, unless the continuous area can otherwise be classified as a geographic, political or neighborhood boundary.

A CDE seeking to designate a target area as a LIC 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. Applicants that are already CDEs but wish to amend their CDE certification to include a target area should mail the information required above to:

CDFI Fund
601 13th Street NW
Suite 200 South
Washington, DC 20005
ATTN: NMTC Program Manager

Questions Regarding Accountability

19) *What characteristics must board members possess in order to be deemed representative of LICs?*

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

Examples of individuals that represent the interests of residents of LICs include, but are not limited to:

- a) A small business owner whose business is located in a LIC, and whose business: (i) provides goods and services to community residents; or (ii) principally employs residents of LICs. 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 principally serving the LICs. Employees or board members of an organization that serves Low-Income Persons (as opposed to LICs) may also qualify, but only if it can be demonstrated that the population served by that organization principally resides in LICs;
- c) A religious leader whose congregation is based in a LIC;
- d) An employee of a governmental agency or department that principally serves LICs; and
- e) An elected official whose constituency is comprised principally of residents of LICs.

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20) Can a board member that is a principal or staff person of the applicant or affiliate, or a principal or staff member of an investor, be deemed representative of LICs?

No. Board members that are principals or staff members of the applicant or any of its affiliated entities or investors cannot be deemed representative of LICs. An applicant may, however, designate a board member that also serves on the board of an affiliated entity as representative of LICs, provided that the board member is representative of LICs through means other than his or her association with the affiliated entity.

21) Can a board member that is an employee of a bank, and whose principal responsibilities are with the community development department of the bank, be deemed representative of LICs?

No. Because banks generally do not have a mission of primarily serving LICs, their employees cannot fulfill an entity's accountability requirement. If a bank has community development designation from the Office of Thrift Supervision or is a certified CDFI, then its employees would be considered representative of the LICs that the bank serves.

22) Can a board member that is a retiree—whose career was spent in the community or economic development fields—be deemed representative of LICs?

No, unless he or she is currently active in promoting community or economic development in LICs in some other way (e.g., is a consultant; serves on the board of a relevant organization; etc.).

23) Can a board member that is an employee of a redevelopment or economic development authority (statewide or local level) be deemed representative of LICs?

Such individuals may qualify as representative of LICs if: (i) the service area of the authority (whether local or statewide) is comprised mostly of LICs; or (ii) the services and programs that the authority offers are mostly directed towards LICs in the authority's service area.

24) How do I demonstrate accountability to LICs 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 LICs throughout the service area to its board or advisory board. For example, an organization serving the entire nation may want to appoint to its board a staff person or a board member from a nationwide community development organization primarily serving LICs.

An organization without at least one person on its governing board or advisory board(s) that can reasonably be deemed to be representative of LICs 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 LICs 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.

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25) How does a certified CDE amend its service area?

If an organization intending to apply in 2003 for an allocation of NMTCs has already been certified as a CDE and needs to change its designated CDE service area, it must submit its request for such a change **by no later than 5:00 p.m. ET on September 30, 2003**. The CDE service area change request must be sent from the applicant's authorized representative and include the applicable CDE control number, the revised service area designation, and an updated accountability chart that reflects representation from low-income communities in the revised service area. The service area change request must be sent by e-mail to cdfihelp@cdfi.treas.gov or by facsimile to (202) 622-8911.

If an organization that is an allocatee wishes to amend its service area, it should follow the same procedures above. The Fund may, in its sole discretion, amend the allocatee's Allocation Agreement and CDE certification documents as necessary to broaden its service area to include any area that was not identified at the time of the NMTC Allocation and/or initial certification as a CDE. The Fund will review such requests on a case-by-case basis to ensure that the CDE is appropriately accountable to Low-Income Communities in its amended service area. All other CDEs may amend their service areas at any time throughout the year.

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More detailed application content requirements are found in the NMTC Allocation Application and NOAA. In the event of any inconsistency between the contents of this Q & A document, the NOAA, the General Guidance, 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, CDE Certification or Allocation 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.