FREQUENTLY ASKED QUESTIONS

CERTIFICATION, COMPLIANCE MONITORING AND EVALUATION

NEW MARKETS TAX CREDIT

FREQUENTLY ASKED QUESTIONS
UPDATED MARCH 2019

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This document supersedes the April 2017 edition of the *New Markets Tax Credit (NMTC), Compliance and Monitoring Frequently Asked Questions* by adding, revising or updating select questions from that edition. The highlighted questions have been added or have been significantly modified from the published document of April 2017. Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the applicable Allocation Application, the applicable Allocation Agreement, the Act, and/or the NMTC Program Income Tax Regulations.

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NOTE: This document is intended to serve as public guidance for the subject matter contained herein. The CDFI Fund reserves the right, however, to modify this guidance at any time upon public notice. The examples contained in this guidance are not exhaustive in nature and the CDFI Fund has the discretion to consider additional factors when determining matters of compliance.

A. General Compliance Questions

1. Does the CDFI Fund impose an annual monitoring/compliance fee?

At this time, the Community Development Financial Institutions (CDFI) Fund has elected not to collect the annual monitoring/compliance fee outlined in Section 7.1 of the Allocation Agreement. If the CDFI Fund elects to impose a monitoring/compliance fee, it will provide advance notification to all Allocatees.

2. Will the CDFI Fund share data submitted by Allocatees with the Internal Revenue Service (IRS) or any other entity or agency?

The CDFI Fund will, consistent with applicable law (including Internal Revenue Code (IRC) § 6103), make Allocatee reports available for public inspection after deleting any materials necessary to protect privacy or proprietary interests. The IRS will be given access to the CDFI Fund's data to facilitate IRS's compliance program for IRC Section 45D.

3. When is compliance measured and for what period of time will the CDFI Fund measure compliance?

In general, compliance for most items under section 3.2 of the Allocation Agreement is triggered by the earlier of two events: 1) a specific date found in Allocation Agreement subsections 3.2 or 2) when an Allocatee has made 100 percent of its Qualified Low-Income Community Investments (QLICIs).

Once compliance is triggered by either event noted above, the CDFI Fund will begin its annual compliance checks, and will continue such checks until Qualified Equity Investments (QEIs) are redeemed. Though the CDFI Fund will not complete formal compliance checks prior to the triggering event nor after QEI redemptions begin to occur, Allocatees are expected at all times to comply with the requirements set forth in the Allocation Agreement. Allocatees that fail to do so could, at a minimum, be found in default of the Allocation Agreement.

Notwithstanding the above, the CDFI Fund recognizes that the IRS regulations allow Allocatees up to one year to invest QEI proceeds into QLICIs, and also allow Allocatees to retain principal repayments of QLICIs for a prescribed period before being required to reinvest these proceeds into other QLICIs. The CDFI Fund will take these allowances under consideration when conducting its compliance checks.

> Example 1: An Allocatee receives a $100 million allocation, issues $100 million in QEIs and closes $95 million in QLICIs in fiscal year 2012. The Allocatee retains $5 million for administrative costs and did not close any additional QLICIs after December 31, 2012. The CDFI Fund would

conduct its initial compliance check on the $95 million in QLICIs and it will continue monitoring compliance for six years thereafter.

Example 2: An Allocatee with a September 30th fiscal year end receives a $100 million allocation, issues a $70 million QEI and closes a $65 million QLICI in fiscal year 2012 and retains $5 million for administrative costs. The Allocatee does not issue any additional QEIs prior to the September 30, 2012, compliance trigger date. On September 30, 2012, the CDFI Fund would conduct its initial compliance check on the $65 million QLICI and it will continue monitoring compliance for six years thereafter.

In year five, the Allocatee receives an additional QEI of $25 million and fully invests those proceeds in a new QLICI. The CDFI Fund would now conduct its compliance test on combined QLICIs of $90 million until the 7th anniversary of the second QEI.

4. What happens if an Allocatee fails to meet the performance requirements outlined in the Allocation Agreement?

Failure to meet the requirements, including those requirements articulated in Schedule 1, of the Allocation Agreement are regarded as an Event of Default and therefore must be reported to the CDFI Fund as a Material Event. (Please refer to Question 39 of this document for additional details on Material Events.) Typically, the CDFI Fund provides a cure period of up to 90 days to remedy Events of Default. However, it is incumbent on the Allocatee to report in a timely manner (within 20 calendar days of the occurrence of such events) if it failed, or will fail, to meet any of the requirements of the Allocation Agreement. Failure to report a Material Event in a timely manner could impact an Allocatee's ability to apply for or receive a future allocation.

B. Allocation and QEI Tracking

5. How are allocation transfers and QEI reporting tracked in the AMIS environment?

As of May 25, 2018, the CDFI Fund transitioned Qualified Equity Investment (QEI) reporting from the Allocation Tracking System (ATS) to the Awards Management Information System (AMIS). AMIS will display a dedicated section titled “Allocations” for QEI reporting which will operate similarly to ATS, but with enhanced functionality, reliability, reporting capabilities and data transparency. All historical data entered into ATS has been transferred to the AMIS environment. For new QEIs, AMIS will require Allocatees to enter data to differentiate between the tax credit equity investor and the debt provider in a leveraged structure; identify each investor’s investment amount; and identify the relationship between the Allocatee and the investor.

To facilitate reporting, a user guide is available on the CDFI Fund’s website in the AMIS Training Materials section.

6. Can a Community Development Entity (CDE) that has received an allocation provide a QEI to another Allocatee?

No. The IRS regulations specifically prohibit an Allocatee that has received an allocation from directly providing a QEI to another Allocatee. Additionally, an entity that invests in an Allocatee and subsequently receives its own allocation cannot provide QEIs to other Allocatees after the effective date of its Allocation Agreement.

For example, in June 2010, ABC Bank provided a QEI to Main Street CDE, a calendar year (CY) 2007 NMTC Allocatee. Subsequently, ABC Bank applied for and was awarded a CY 2011 NMTC allocation. ABC Bank would not be allowed to provide additional QEIs to Main Street CDE or any other Allocatee on or after the date of their award notification. This rule, however, would not preclude an affiliate of ABC Bank from providing QEIs to Main Street CDE, provided the affiliate has not received an allocation or sub-allocation of NMTCs.

7. Can an Allocatee amend a finalized QEI in AMIS?

No. Only the CDFI Fund may amend a finalized QEI. All amendment requests must be submitted in writing by the Authorized Representative. QEI Amendments can be submitted via the CDFI Fund’s Awards Management Information System (AMIS) through a Service Request. The Service Request should reference the following:

1. The Allocatee's name
2. QEI Identifier
3. The Allocatee's Award Control Number
4. The specific changes needed to be made.

The CDFI Fund will typically process QEI amendment requests in five business days. However, more complex situations can extend the time necessary to implement corrections. To avoid delays, it is imperative that Allocatees review all QEI entries for accuracy prior to finalizing them.

8. I did not receive the QEI notification email. How do I obtain a copy for our records?

All future email notifications will be sent to the Authorized Representative indicated in the organization's account in AMIS and stored in the Allocations section in AMIS. If the Authorized Representative has changed or his/her email address has changed, please refer to the CDFI Fund's website for guidance on how to update this information. If you did not receive the QEI notification email after finalizing a QEI, please submit an inquiry via an AMIS Service Request. Of note, AMIS allows Allocatees to add a secondary contact to receive the QEI notifications.

9. My CDE is 100 percent owned by an S Corporation that has numerous shareholders. Will AMIS require the user to enter each of the shareholders and their respective information as NMTC claimants?

If the individual shareholders claim the tax credit on their individual tax returns, each individual shareholder should be listed as a tax claimant in AMIS and the required investor information (i.e. name, and investor type) should be completed. This is necessary to assist the IRS in comparing AMIS entries with IRS Form 8874 (New Markets Credit) that it receives from taxpayers.

The CDFI Fund does not collect Taxpayer Identification Number (TIN) if "Individual" is selected as the Investor Type.

C. Allocation Agreement

NOTE: The examples below describe the approach the CDFI Fund is taking with respect to monitoring compliance with Section 3.2 and 3.3 of the Allocation Agreement. The IRS may adopt a different approach with respect to monitoring compliance with IRC Section 45D.

10. Which activities are permissible with respect to financial counseling and other services (FCOS)?

FCOS is “advice” provided by the CDE relating to the organization or operation of a trade or business, including non-profit organizations. Possible FCOS activities include, but are not limited to, business plan development, assistance with business financials, assistance in securing financing, and assistance with general business operations. FCOS does not include “advice” provided to individuals, such as homeownership counseling or consumer counseling, that does not pertain to the operation of a trade or business.

The FCOS activity may be carried out by the CDE directly, or through third party agreements managed by the CDE. To the extent QEI proceeds are dedicated for FCOS, a portion of the monies must be spent, and counseling services provided, within one year of receipt of the QEI in order to qualify as a QLICI.

Any questions regarding the eligibility of FCOS activities should be addressed to the IRS.

11. How can a CDE take advantage of the provisions outlined in Treasury Directive (TD) 9600?

To encourage investments in non-real estate businesses for working capital and equipment, the IRS issued final regulations (TD 9600) that modify the reinvestment requirements under the NMTC Program. The revised regulations, provided in TD 9600, allow a CDE that makes a QLICI in Non-Real Estate Qualified Active Low-Income Business (QALICB) to invest certain returns of capital from those investments in unrelated certified CDFIs that are also CDEs at various points during the seven-year credit period.

If a CDE is availing itself of the IRS provisions for NMTC Non-Real Estate Investments (TD 9600), it must first designate the equity investment as a Non-Real Estate QEI in AMIS. The regulations outlined in TD 9600 are effective for equity investments in CDEs made on or after September 28, 2012, the date that TD 9600 was published in the Federal Register by the IRS.

Allocatees are responsible for ensuring compliance with the specific requirements of TD 9600 in order to avail themselves of those provisions. In particular, be aware that under TD 9600 the purpose of the capital or equity investment in, or loan to, the Non-Real QALICB must not be connected to the development, management, or leasing of real estate. Development of real estate includes construction of new facilities and rehabilitation/enhancement of existing facilities. A CDE's compliance with the provisions of TD 9600 will ultimately be determined by the IRS.

Additional guidance on TD 9600 can be found on the CDFI Fund's website.

12. What is the definition of Non-Real Estate QALICB for purposes of TD 9600?

Under TD 9600, a non-real estate qualified active low-income community business is any business whose predominant business activity (measured by more than 50 percent of the business' gross income) does not include the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate. The purpose of the capital or equity investment in, or loan to, the Non-Real QALICB must not be connected to the development, management, or leasing of real estate.

13. What is the definition of Real Estate QALICB versus Non-Real Estate QALICB for purposes of the Allocation Agreement?

For allocations received in and after the CY 2014 round, the CDFI Fund eliminated the distinction between Real Estate QALICB and Non-Real Estate QALICB. These are no longer defined terms in the Allocation Agreement. Thus Allocatees can make investments in, or loans to any QALICB, as long as this is designated as an eligible activity in its Allocation Agreement. "Real Estate Activities" was added to the Allocation Agreement as a new defined term. "Real Estate Activities" is the development (including construction of new facilities or rehabilitation/enhancement of existing facilities), acquisition, management or leasing of real estate by a business.

To align with TD 9600, the CDFI Fund defined "Real Estate QALICB" for CY 2013 and CY 2012, as any QALICB whose predominant business activity (i.e., activity that generates more than 50 percent of the business' gross income) includes the development, management, or leasing of real estate. The CDFI Fund defines a Non-Real Estate QALICB as any QALICB that does not satisfy the definition of a Real Estate QALICB. Loans or investments made to a special purpose entity that is Controlled by or under common Control with a Non-Real Estate QALICB, and that was set up specifically to lease the property back to the Non-Real Estate QALICB such that the Non-Real Estate QALICB is the principal user of the property, must be classified as investments in a Real Estate QALICB.

For allocations received in the CY 2011 round or earlier, the definitions of “Real Estate QALICB” and “Non-Real Estate QALICB” is as follows:

> In general, loans or investments in businesses whose predominant business activity is the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management or leasing of real estate are considered “real estate QALICBs.”
>
> Transactions with QALICBs whose predominant business activity includes all other types of business activities should be classified as non-real estate businesses regardless of: 1) how the business intends to use the proceeds of the transaction; or 2) whether the business intends to use any real estate owned by the business as collateral for a loan. For example, if an Allocatee provided a loan to a childcare provider for the purpose of purchasing the property where the childcare center would be housed, the Allocatee would categorize this loan as a “non-real estate” transaction. However, if the Applicant provided a loan to a real estate development company whose predominant business is the development of community facilities, for the purpose building a childcare center, this loan would be considered financing a real estate transaction - “real estate QALICB.”
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> Notwithstanding the above, loans or investments made to a special purpose entity that is controlled by or under common control with an operating company, and that was set up specifically to lease the property back to the operating company such that the operating company is the principal user of the property, may be classified as either a “real estate QALICB” or a “non-real estate QALICB”, at the discretion of the CDE. An operating company is considered the principal user of the QALICB’s property if it is the occupant of a majority (i.e., greater than 50%) of the rentable square footage of the QALICB’s property. The QALICB may lease the balance of its property to one or more third parties.
>
> Operating company is any business whose predominant business activity (i.e. activity that generates more than 50 percent of the business’ gross income) does not include the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate.

Please note, these definitions as described above, pertain solely to the Allocation Agreement and do not affect eligibility for TD 9600.

14. My CDE has received principal repayments on a QLICI and will reinvest those proceeds in a new QLICI. Is the new QLICI subject to the same requirements found in Section 3.2 of the Allocation Agreement (i.e. Types of QLICIs, Service Area, etc.)?

Yes. To the extent a CDE reinvests repayments of principal as new QLICIs, the CDFI Fund will check compliance for all reported QLICIs against the requirements specified in the Allocation Agreement. For example, if an Allocatee is required to invest 85 percent of its QLICIs in its approved service area, the CDFI Fund will measure compliance against all reported QLICIs that are currently outstanding, whether original investments or reinvestments, to ensure that 85 percent of its QLICIs are in the approved service area.

15. Is the six-month cure period found under § 1.45D-1(e)(6) available to correct an Allocatee's or Subsidiary Allocatee's failure to invest substantially all of its QEI proceeds?

Yes. The six-month cure period found under § 1.45D-1(e)(6) is available to correct an Allocatee or Subsidiary Allocatee's failure to invest substantially all of its QEI proceeds in QLICIs within the 12-month period as required by § 1.45D-1(c)(5)(iv). However, the six-month cure period is not automatically added to the 12-month period. As the rule states, the six-month cure period begins on the date the CDE becomes aware (or reasonably should have become aware) of the failure to invest substantially all of the QEI proceeds in a QLICI within the 12 month period.

16. If an Allocatee is providing loans to or investments in other CDEs, how will the CDFI Fund monitor compliance with the provisions of Section 3.2? Will the CDFI Fund only consider the initial QLICI into the other CDEs, or will the CDFI Fund look through the CDEs to the ultimate QALICB recipients?

The CDFI Fund will look through to the ultimate QALICB recipient for the purpose of monitoring compliance with specific provisions of Section 3.2 of the Allocation Agreement, including compliance with the service area requirement, the better rates and terms requirement, and the areas of higher distress requirement.

Allocatees are required to provide the CDFI Fund with transaction level data via the CDFI Fund's Awards Management Information System (AMIS), even if an Allocatee uses multiple layers of CDEs to execute its QLICIs. For example, to determine compliance with the service area provision in Section 3.2 for an Allocatee that invests in other CDEs, the Allocatee will submit census tract information of the ultimate QALICB recipient that receives the QLICI proceeds to determine if the QALICB recipient was located in the service area as defined in Sec. 3.2. The location of the CDE that received the initial loan or investment from the Allocatee will not be considered.

17. How does the CDFI Fund view an Allocatee's use of QLICIs to finance housing units if Section 3.2(k) of the Allocation Agreement is listed as "Not Applicable"?

All Allocatees may use their QLICIs to develop/rehabilitate housing units so long as the project(s) fall within one or more of the Qualified Low-Income Community Investments listed in section 3.2(a) of the Allocation Agreement and otherwise meet the terms of the Allocation Agreement. For the CY 2015-2016 Round and prior rounds, section 3.2(k) of the Allocation Agreement only applies to an Allocatee if it is marked as "Applicable" in that Allocatee's Allocation Agreement. In cases where section 3.2(k) is marked "Not Applicable" in an Allocation Agreement it is the CDFI Fund's preference that, if an Allocatee uses its QLICIs to finance the development or rehabilitation of housing units, at least 20 percent of the aggregate housing units financed are affordable housing units.

Beginning with the CY 2017 Round, if an Allocatee uses its QLICIs to finance the development or rehabilitation of housing units, the Allocatee must ensure that at least 20 percent of the aggregate housing units that the Allocatee financed are affordable housing units. As such, section 3.2(k) applies to all Allocatees that use QLICIs to finance housing units.

In general, housing units includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, freestanding, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories.

18. How does the CDFI Fund define "affordable housing" for the purpose of meeting Section 3.2(k) of the Allocation Agreement?

1) An Allocatee that finances rental housing units shall meet the requirements of Section 3.2(k) if the following criteria are met:

a) 20 percent or more of total rental units financed with QLICIs are both (i) Rent Restricted (the maximum monthly rent should not exceed 30 percent of the adjusted income of a family whose annual income equals 80 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit) and (ii) occupied by individuals whose family income calculated in accordance with the U.S. Department of Housing and Urban Development

(HUD) Handbook 4350.3 REV-1 (or subsequent versions), is less than or equal to 80 percent of the area median family income as determined and adjusted annually by HUD; **and**

b) 20 percent or more of total rental units financed with QLICIs are Rent Restricted throughout the seven-year NMTC compliance period.

Tenants should be certified as of the later of the date the QLICI is made or at move-in. Units occupied by nonqualified student households (as determined under Low-Income Housing Tax Credit (LIHTC) guidelines) will not qualify as affordable units.

For QLICIs funded with pre-CY 2018 NMTC allocations, Allocatees must document maintenance of the Rent Restrictions for the seven year NMTC compliance period by certifying the initial household income of the initial qualifying tenant and documenting reasonable attempts to ensure that each subsequent tenant occupying the property during the seven year NMTC compliance period meets the income qualifications. Whether adequate reasonable attempts were made to comply with this provision will be determined by the CDFI Fund based on the specific circumstances of the property and factors including but not limited to the size and location of the project, lease-up strategy, tenant turnover rates, and market conditions.

For QLICIs funded with CY 2018 NMTC allocation and later rounds, Allocatees must document maintenance of the Rent Restrictions for the seven year NMTC compliance period by certifying the initial household income of the initial qualifying tenant and each subsequent qualifying tenant occupying the property during the seven year NMTC compliance period. QLICIs funded with CY 2018 NMTC allocation and later rounds must adhere strictly to this guidance

2) An Allocatee that finances for-sale housing units shall meet the requirements of Section 3.2(k) if 20 percent or more of the total for-sale housing units financed are purchased and occupied by Low Income Persons with a **38** percent or less **Debt-To-Income** Ratio and are owner-occupied by individuals whose household income is 80 percent or less of the area's median family income as determined and adjusted annually by HUD at the time the units are sold to the initial homebuyer. In evaluating the Debt-To-Income Ratio, debt payments include, but are not limited to, mortgage payments made up of principal, interest, taxes and insurance, credit card payments, automobile loan payments, as well as student loan and other consumer loan payments. In the event that an Allocatee cannot document that a buyer meets the stated "38 percent or less Debt-To-Income Ratio" the Allocatee must be able to substantiate that the purchase price of the home does not exceed 95 percent of the median purchase price for the area as used in the HOME Investment Partnership Program and as determined by HUD and the applicable participating jurisdiction for the year the home is purchased. The purchase price limits, as determined annually by

HUD, can be found at: https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/.

19. What is the "substantial rehabilitation" threshold for purposes of meeting Section 3.3(h) of the Allocation Agreement?

In order to meet the substantial rehabilitation threshold, a CDE must show that the cost basis (as defined in 26 USC § 1012) of any improvements made during any 24-month period that includes any portion of the taxable year in which the QLICI is made, equals or exceeds 25 percent of the adjusted basis (as defined in 26 USC § 1011(a)) of each building with respect to which the improvements are made as of the beginning of the applicable 24 month period.

In the event no substantial rehabilitation occurred, it is the CDFI Fund's expectation that an operating company that Controls or is under common Control with a QALICB whose principal business activity is the rental to others of real property must, as soon as it is feasible, occupy and be the primary user of the property in order for the Allocatee to be deemed in compliance with 3.3h.

20. How does the CDFI Fund evaluate 3.3(h)(iv) of the Allocation Agreement regarding the exception for acquisition costs in connection with new construction in cases where the QALICB's principal business activity is the rental to others of real property?

A QALICB whose principal business activity is the rental to others of real property can meet the exception outlined in Section 3.3(h)(iv) of the Allocation Agreement, provided that the construction cost is greater than or equal to 25 percent of the acquisition cost.

21. How does the CDFI Fund measure "innovative investments" for the purpose of meeting Section 3.2(l) of the Allocation Agreement?

Consistent with the other provisions of section 3.2, compliance for "innovative investments" is triggered by the earlier of two events: 1) a specific date found in section 3.2 of the Allocation Agreement, or 2) when an Allocatee has closed 100 percent of its QLICIs. An underlying objective of "innovative investments" is to encourage Allocatees to make QLICIs into operating business through the provision of short-term or small dollar investments than the typical NMTC investments. As such, the CDFI Fund will allow a transaction to meet multiple categories of innovative investment. For example, a QLICI of $1.5 million with a term of 50 months that financed working capital would satisfy the criteria for small dollar QLICIs, short-term QLICIs and financing of Non-Real Estate Activities.

The criteria for “innovative investments” are specific to the applicable allocation round. For example, in the CY 2013 round, “innovative investments” included investments in States or U.S. Island Areas that have received fewer dollars of QLICIs in proportion to their statewide populations residing in Low-Income Communities, including Alabama, Arkansas, Florida, Georgia, Idaho, Kansas, Nebraska, Nevada, Tennessee, Texas, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, and US Virgin Islands. In the CY 2014 round, “innovative investments” for underserved States or U.S. Island Areas did not include the state of Arkansas as it was supplanted by West Virginia.

22. How does the CDFI Fund measure “small dollar QLICIs” in meeting Section 3.2(l) of the Allocation Agreement?

A CDE making a small dollar QLICI in a QALICB will satisfy the innovative investments requirement if the following criteria are met:

(1) The QALICB has not received a QLICI in any amount within the past 24 months; or
(2) The QALICB has received QLICIs within the past 24 months which when combined with the CDE’s QLICI will not exceed the applicable maximum small dollar investment limit.

The applicable maximum small dollar investment limit is the amount stated in the Application submitted related to the Allocation under which the CDE is making the small dollar QLICI. However, if the QALICB has received previous QLICIs within the past 24 months, the applicable maximum small dollar investment limit is the amount stated in the Application for the Allocation under which the first QLICI to that QALICB within that 24 month period was made.

If a CDE receives principal repayments on a small dollar investment from the QALICB, that CDE or another CDE may make additional QLICIs to that QALICB provided that the total outstanding QLICI(s) to the QALICB do not exceed the applicable maximum small dollar investment limit.

Example #1: Applicable maximum small dollar investment limit

CDE 1 makes a $1M small dollar investment in a QALICB in January 2018 using a CY 2017 Allocation (maximum small dollar limit $2M). CDE 2 has a CY 2018 Allocation under which the maximum small dollar investment limit in the CY 2018 Application is $4M. However, until after January 2020, CDE 2 is restricted by CDE 1’s previous QLICI and therefore cannot get credit for a small dollar investment under 3.2(l) of their Allocation Agreement for any QLICI(s) to the QALICB that would exceed a total of $2M outstanding. After January 2020 (expiration of 24 month period), assuming CDE #1’s $1M small dollar investment in January 2018 was the only previous QLICI in that QALICB, CDE 2 can make QLICI(s) up to $4M in the QALICB.

Example #2: Sample permissible transactions (listing is not exhaustive of all permissible transactions)

CDE 1 makes a small dollar investment in January 2016 in QALICB of $1M using a CY 2015 Allocation, the maximum small dollar investment limit in the CY 2015 Application was $2M. All of the following transactions will satisfy the innovative investment requirements of 3.2(l):

- CDE 1 can make other small dollar investments in that same QALICB anytime through January 2018 of up to a total of $1M without exceeding the CY 2015 applicable maximum small dollar investment limit ($2M), or
- CDE 2 can make other small dollar investments in that same QALICB anytime through January 2018 of up to a total of $1M without exceeding the CY 2015 applicable maximum small dollar investment limit ($2M), or
- CDE 1 can make other small dollar investments into the QALICB after January 2018 up the applicable maximum small dollar investment limit in the Application for the Allocation under which CDE 1 is making the small dollar QLICI or
- CDE 2 can make other small dollar investments into the QALICB after January 2018 up the applicable maximum small dollar investment limit in the Application for the Allocation under which CDE 2 is making the small dollar QLICI.

CDEs are expected to monitor to ensure that the QALICB does not exceed the applicable maximum small dollar QLICI limit within a 24 month period. If a subsequent CDE ("CDE 2") makes a small dollar QLICI into a QALICB that causes the QALICB's total QLICIs within a 24 month period to exceed the applicable maximum small dollar investment limit for the previous QLICI in that QALICB; CDE 2 cannot receive innovative investment credit for the QLICI even if it otherwise satisfies the requirements.

23. My CDE is making several investments in a real estate project over a period of time. At the time of the initial investment, the real estate project was deemed to be in an eligible NMTC census tract. Will future investments under the real estate project qualify if the tract is later deemed to not be an eligible NMTC census tract?

Yes. The CDFI Fund would consider an investment to be made within a qualifying census tract as long as the census tract qualified at the time the initial investment related to the real estate project is closed (meaning an investment for which the Allocatee has distributed cash proceeds from the QEI to the QALICB). The Allocatee must maintain relevant maps from the CDFI Information Mapping System (CIMS) to demonstrate eligibility at the time of the initial QLICI disbursement and relevant documents to demonstrate that follow-on disbursements from the same QLICI can be directly tied to the original project at the same address.

24. If an Allocatee elects to transfer allocations to a Subsidiary Allocatee (i.e. a Subsidiary CDE listed in Section 3.2 of its Allocation Agreement), will the CDFI Fund monitor compliance with Section 3.2 separately by each subsidiary or on a consolidated basis for all Subsidiary Allocatees that are parties to the Allocation Agreement?

The CDFI Fund will monitor compliance on a consolidated basis for the total allocation amount. For example, if ABC Allocatee receives a $1 million allocation and is required to invest 100 percent of its QEIs as QLICIs, and 75 percent of its QLICIs in areas of severe economic distress, then ABC Allocatee must invest at least $750,000 into areas of severe economic distress. If ABC Allocatee sub-allocates $500,000 of its allocation to each of two Subsidiary Allocatees, each Subsidiary Allocatee does not have to separately invest 75 percent of its $500,000 sub-allocation amount into areas of severe economic distress. It would be permissible, for example, for one Subsidiary Allocatee to invest $500,000 into areas of severe economic distress and the other to only invest $250,000 in such areas. Provided that the total dollar amount of QLICIs invested in such areas meets or exceeds $750,000 on a consolidated basis, the Allocatee and its Subsidiary Allocatees would be deemed in compliance with the Allocation Agreement.

25. How does the “joint and several liability” provision of the Allocation Agreement apply to Allocatees that intend to sub-allocate tax credit authority to Subsidiary Allocatees?

As stated in the Allocation Agreement, the Allocatee and each of its Subsidiary Allocatees are jointly and severally liable for any event of default under Section 8.1 whether the Allocatee or any of its Subsidiary Allocatees incurs the default. If such an event of default occurs, the CDFI Fund may impose remedies jointly or severally upon the Allocatee and its Subsidiary Allocatees, except that the CDFI Fund will not terminate or reallocate any unused portion of the NMTC allocation with respect to any investment commitments related to a NMTC allocation made to a non-defaulting Allocatee or Subsidiary Allocatee, as determined by the CDFI Fund.

26. How will the CDFI Fund monitor compliance with the unrelated entity requirement in Section 3.2(d) of the Allocation Agreement?

Section 3.2(d) requires certain Allocatees to meet the IRS’s “substantially all” requirement by making investments in entities that are unrelated to the Allocatee. Allocatees will be required to indicate in the Transaction Level Report (TLR) whether each QLICI made was to a related or unrelated entity. This test is measured on an aggregate QEI basis.

Beginning in the CY 2015-2016 NMTC Application Round, an Allocatee that has committed to invest in Unrelated Entities will be in compliance with its Allocation Agreement only if persons Unrelated to the Allocatee and Subsidiary Allocatee (if the Subsidiary Allocatee makes the QLICI) will hold a majority equity interest in the QALICB after a QEI is made in the Allocatee or Subsidiary Allocatee, but before the Allocatee or Subsidiary Allocatee uses the proceeds of that QEI to make its initial QLICI in the QALICB. The Allocatee must determine whether such persons are related to the Allocatee and Subsidiary Allocatee (within the meaning of IRC §267(b) and §707(b)(1)) in consultation with its own tax advisors. The CDFI Fund will assess compliance with the Unrelated Entities requirement at the Allocatee and Subsidiary Allocatee level, if the Subsidiary Allocatee makes the QLICI. This requirement applies to all QLICIs made with allocations awarded in the CY 2015-2016 round.

An Allocatee (awarded in and prior to the CY 2014 round) that has committed to invest in Unrelated Entities will be in compliance with its Allocation Agreement only if persons unrelated to the Allocatee will hold a majority equity interest (as defined in IRC §45D(f)(2)(B)), and as determined subsequent to the receipt of a QEI, but prior to the Allocatee using the proceeds of that QEI to make the initial QLICI. The Allocatee must determine whether such persons are related to the Allocatee (within the meaning of IRC §267(b) and §707(b)(1)) in consultation with its own tax advisors. Furthermore, for such Allocatees, for all QLICIs made on or after April 15, 2010, the CDFI Fund will assess compliance with the Unrelated Entities requirement at either the Allocatee CDE or Subsidiary CDE level depending upon which entity receives the QEI investment and makes the corresponding QLICI.

CDFI Fund may review any subsequent changes in QALICB, Allocatee CDE, or Subsidiary Allocatee ownership resulting in common ownership between the Allocatee CDE (and/or Subsidiary Allocatee) and the QALICB on a case-by-case basis to determine whether a principal purpose of a transaction or a planned series of transactions is to achieve a result that is inconsistent with the purposes of this rule. The requirement of Section 3.2(d) does not apply if an Allocatee becomes related to a business due to financial difficulties of the business that were unforeseen at the time the QLICI was made to the business.

27. Section 3.2(f) of my CDE's Allocation Agreement states that "All of the Allocatee's QLICIs must (a) be equity or equity-equivalent financing, (b) have interest rates that are "X" percent lower than either the prevailing market rates for the particular product or lower than the Allocatee's current offerings for the particular product, or (c) satisfy at least five of the indicia of flexible or non-traditional rates and terms, as listed in Section 3.2(f)." How can my CDE demonstrate that it is satisfying this requirement?

The CDFI Fund generally monitors transactions on an investment-by-investment basis. Each QLICI made with QEI proceeds must: (1) be an equity investment, equity equivalent financing, or a loan with an interest rate that is at least "X" percent below a market comparable; or (2) have the corresponding number of concessionary terms (e.g., higher loan to value ratio; reduced fees; non-traditional collateral; etc.).

It is permissible for a CDE to combine separate QLICI transactions for the purposes of meeting this requirement, provided that these transactions are part of a simultaneous closing and: 1) 50 percent of the dollar value of the combined transactions is in the form of equity, equity equivalents, or the blended interest rate is at least “X” percent below market (see example 1); or 2) at least 50 percent of the dollar value of the combined transactions have concessionary terms (see example 2).

> **Example 1:** A CDE finances a $1 million transaction by providing two notes: Note A consisting of $750,000 market-rate loan and Note B consisting of $250,000 loan that may be purchased by the QALICB or affiliate for a nominal rate after seven years. If the blended interest rate on these combined products is “X” percent below the prevailing market rate, the CDE satisfies the requirements of Section 3.2(f) provided these transactions are part of a simultaneous closing.
>
> **Example 2:** A CDE finances a $1 million transaction by providing two notes: Note A consisting of $500,000 market-rate loan with Note B consisting of $500,000 below market rate loan. If Note B (consisting of 50 percent of the total transaction) has: a) an interest rate that is less than “X” percent below market; b) a loan to value ratio more favorable than market; c) origination fees that are lower than market; d) a debt service coverage that is lower than market; and e) interest-only payments for seven years; then the CDE satisfies the requirements of Section 3.2(f).
>
> **Example 3:** A CDE finances a $1 million transaction by providing Note A of $750,000 with a 4.0% (market rate) interest rate and Note B of $250,000 with a 2.4% interest rate. With a combined interest rate 3.6%, the CDE fails the requirements of Section 3.2(f) because less than 50 percent of the blended product offering meets the 50% below-market interest rate requirement.
>
> **Example 4:** A CDE finances a $1 million transaction by providing Note A consisting of $800,000 market rate loan with QLICI B consisting of $200,000 equity investment. The combined transaction has five concessionary features that include: a) interest rate that is less than “X” percent below market; b) loan to value ratio more favorable than market; c) origination fees lower than market; d) debt service coverage lower than market and e) interest-only payments for seven years. The CDE meets the requirements of section 3.2(f).

28. How does an Allocatee document “better rates and terms” for its QLICIs and how will the CDFI Fund determine compliance with the better rates and terms requirement of the Allocation Agreement?

To document better rates and terms to a QALICB that would not otherwise obtain financing in the market, the Allocatee may use documents from other financial institutions that demonstrate that: the QALICB did not meet its financial underwriting criteria and the loan was not approved; or that the loan was approved with certain conditions, rates and terms that would result in the project being economically unfeasible or unsustainable.

If the Allocatee's Controlling Entity, Affiliate(s) or QEI investor provides financial products similar to those offered by the Allocatee (or Subsidiary Allocatee), the Allocatee may use the rates, terms and flexible features (LTV, DSCR, etc.) of the non-NMTC product (for a similar project and similar borrower) as a comparable for demonstrating that the QLICI meets the provisions of Section 3.2(f). Documentation may include the underwriting memorandum, or project assessment reviewed and approved by the Allocatee's investment committee. Such documentation should detail the rates, terms and flexible features of the QLICI and document how non-NMTC rates, terms and features were adjusted for the NMTC product, borrower and project.

If the Allocatee is basing its determination on market comparables, it must retain all documentation that can demonstrate what the comparable market rate was at the time of closing the QLICI. For example, if the CDE benchmarks its returns to a specified market indicator (e.g., 200 points over the 7-year Treasury rate), then the Allocatee must retain documentation demonstrating: 1) what the market indicator was on the day the transaction closed; and 2) that the interest rate offered by the Allocatee was sufficiently lower than the comparable market offering.

The CDFI Fund will require a CDE to identify, in its TLR, whether a transaction met the requirements for better rates and terms, as well as the applicable market comparable. The CDE must also maintain supporting documentation in its files, should the CDFI Fund request them. As stated above, documentation must reflect information relevant at the time the loan and/or investment was made.

29. What supporting documentation does an Allocatee need to retain in order to demonstrate compliance with investing in areas of higher distress as reflected in Section 3.2(h) Targeted Distressed Communities of the Allocation Agreement? What resources are available to determine if a census tract is in an approved Area of Higher Distress?

In addition to CIMS, which provides Non-Metropolitan status, poverty rates, Median Family Income (MFI) percentages and unemployment rates, the CDFI Fund provides several links on its website to assist Allocatees.

Allocatees are advised to retain all relevant information in support of its decision to invest in such areas. Supporting documentation for the areas of higher distress requirement may include: statistical indices of economic distress such as poverty rates, MFI or unemployment rates at the census tract level based upon the Census or American Communities Survey (ACS); materials from other government programs (e.g., HUD Renewal Communities; EPA Brownfields) demonstrating the area qualified for assistance under those programs; etc. Please visit the "Compliance Monitoring and Evaluation" section on the CDFI Fund's website for links to the following sites:

- Federally Designated Empowerment Zones, Enterprise Communities, or Renewal Communities
  NOTE: Beginning in the CY 2013 round, federally designated Empowerment Zones, Enterprise Communities, or Renewal Communities are no longer considered areas of higher distress due to the expiration of their designation on December 31, 2014.
- Brownfield Sites
- SBA Designated HUB Zones
  NOTE: Beginning with the CY 2006 round and thereafter, QLICIs made in HUB Zones can only qualify as an area of higher distress to the extent that the QLICIs will support businesses that obtain HUB Zone certification by the SBA. A listing of HUB Zone Certified Firms is available from the SBA.
- Medically Underserved Areas (Department of Health and Human Services)
- Appalachian Regional Commission Distressed Counties
- Delta Regional Authority Distressed Counties and Parishes
- Food Desert
- Promise Zone
- Federal Emergency Management Agency (FEMA) Disaster Declaration Areas
  NOTE: Affected counties are limited to those for which the Federal Emergency Management Agency (FEMA) has (a) issued a "major disaster declaration" and (b) made a determination that such County is eligible for both "individual and public assistance."
- Impacted Coal Counties
- Base Realignment and Closure (BRAC) Sites

30. How will the CDFI Fund measure compliance with meeting the requirement of Section 3.2(h) Targeted Distressed Communities for a QALICB with tangible property in several census tracts?

The CDFI Fund will determine compliance with the "Targeted Distressed Communities" by aggregating data at the QALICB level (e.g. the "project level" in AMIS). A QLICI into a QALICB with locations/assets across multiple census tracts will be considered a QLICI into a specific Targeted Distressed Community based on elements of the QALICB qualification criteria. For example, a QLICI into a QALICB that meets the criteria below:

A. At least 50% of the total gross income is from the active conduct of a qualified business in the eligible Targeted Distressed Community; and

B. At least 40% of the use of tangible property of the business is within the eligible Targeted Distressed Community; and
C. At least 40% of the services performed by the business' employees are performed in the eligible Targeted Distressed Community.

Alternatively, the requirement under A is considered met if the requirement under B or C is met at 50%. In instances where the QALICB has no employees, the CDE will satisfy requirement C by meeting the tangible property criteria (requirement B) at 85%.

CDEs must demonstrate and maintain records showing that the QLICI meets the criteria for being in the specific Targeted Distressed Community.

31. Is there a single source to determine the unemployment rate for a census tract?

Yes. The CDFI Fund utilizes the Census or ACS data when determining if a census tract's unemployment rate is 1.5 or 1.25 times greater than the national average. For example, Allocatees using the 2006-2010 ACS data, the national unemployment rate for the 50 states, the District of Columbia and Puerto Rico is 7.9 percent. For Allocatees using the 2011-2015 ACS data, the national unemployment rate for the 50 states, the District of Columbia and Puerto Rico is 8.3 percent. For census tracts located in the Island Areas of the United States (American Samoa, Guam, Northern Mariana Islands and the US Virgin Islands) the national unemployment rate is 9.3. (These two geographies have different bases, because the eligibility data for the Island Areas of the United States comes from a different Census survey). Unemployment data for individual census tracts can be found in CIMS.

32. Does a SBA designated HUB Zone qualify as an eligible area of higher distress and how does the CDFI Fund determine if a QLICI supports businesses that obtain HUB Zone certification?

A SBA designated HUB Zone qualifies as an eligible area of higher distress. However, for CY 2005 and subsequent allocation rounds, the project must be located in a SBA designated HUB Zone **and** the QLICIs must support businesses (see below) that obtain HUB Zone certification from the SBA. For allocations prior to the CY 2005 round, the project must at a minimum be located in a SBA designated HUB Zone to meet the area of higher distress criteria.

When completing the areas of higher distress section in AMIS, Allocatees should respond to this criteria based on the language found in its Allocation Agreement. Thus, Allocatees who received a CY 2005 or subsequent allocation should only respond "Yes" to a SBA HUB Zone if both requirements are met as detailed in the Allocation Agreement.

For the purposes of compliance, the CDFI Fund will consider that an investment "supports" a HUB Zone business if the QLICI meets one of the following criteria:

1. The QLICI is used to finance a QALICB that maintains an active HUB Zone business certification.
2. The QLICI is used to finance a QALICB where at least 50% of the dollar value of the contracts and sub-contracts related to the development, management or leasing of the QALICB go to businesses with active HUB Zone certifications.
3. The QLICI is used to finance a real estate QALICB where at least 50% of the rentable square footage is leased to businesses with an active HUB Zone Certification.

33. How does the CDFI Fund define activities that "support health related services" as it relates to QLICIs in federally designated medically underserved areas?

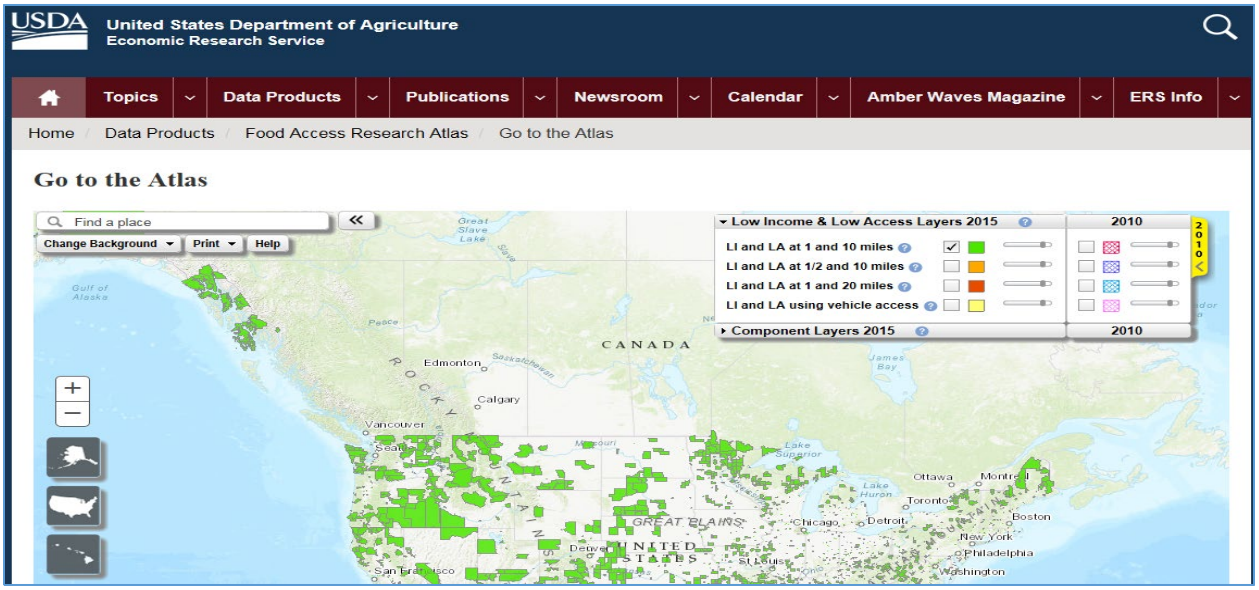
In order for an investment to meet the criterion of being in an area of higher distress due to its location in a medically underserved area (MUA), the QALICB must provide medical and health related services to communities or populations in the MUA, or increase access to medical and health related services in the MUA. For the purposes of compliance, the CDFI Fund will consider a QLICI to support health related services if the QLICI meets at least one of the following criteria:

1. The QLICI is used to finance a QALICB that provides direct medical and dental care, including screenings, diagnostic and preventive care, or support services that contribute directly to that care (e.g. referrals/case management, chronic disease management, transportation necessary for adequate patient care, etc.).
2. The QLICI is used to finance a QALICB that provides non-medical care such us mental health care, behavioral health care, substance abuse treatment (including assessments); physical and/or occupational therapy; or support services that contribute directly to that care (e.g. referrals/case management, chronic disease management, transportation necessary for adequate patient care, etc.).
3. The QLICI is used to finance real estate activities where at least 50% of the rentable square footage is leased to businesses providing health care services.

34. How will the CDFI Fund determine if a project is located in a Food Desert using USDA's Food Access Research Atlas?

Provided that a project is located in any of the four "Low Income and Low Access" criteria in the USDA's Food Access Research Atlas it would be deemed to be in an area of higher distress for the purposes of the NMTC program, to the extent QLICI activities will increase access to healthy food. Please note, USDA's Food Access Research Atlas has two layers, 2010 and 2015. Allocatees can continue to use

2010 Food Desert layer until November 1, 2018. QLICIs closed on or after November 1, 2018 must use 2015 Food Desert layer to determine if a QALICB is located in a food dessert.



35. How does the CDFI Fund define "other similar federal/state/local programs targeted towards particularly economically distressed communities"?

The program designation should be for a specific geographic area, as opposed to a population, preferably where the federal, state or local government has designated it for redevelopment via legislation. The CDFI Fund will not pre-approve such programs. Allocatees are advised to maintain all relevant information regarding these designations in its files in the event the CDFI Fund requests such documentation. Some examples of local areas that qualify for the designation include:

- A local Tax Increment Financing (TIF) district;
- An area affected by a major plant or facility closing resulting in permanent layoffs;
- State Enterprise zone programs;
- Federally designated Promise Zones;
- Impacted Coal Counties;
- Base Realignment and Closure areas;
- An area of unusually high commercial vacancy rates;
- An area designated for the establishment of a regional technology/business center.

36. All Allocatees are required to invest substantially all (generally 85 percent) of their QEIs as QLICIs. Section 3.2(j) of the Allocation Agreement may require an Allocatee to invest an even higher percentage of QEIs (e.g., 95 percent; 100 percent) as QLICIs, based on representations made by the Allocatee in its Allocation Application. How does the CDFI Fund monitor compliance with Section 3.2(j) of the Allocation Agreement?

(A) All Allocatees must be able to demonstrate that they initially made QLICIs in the amount specified in their Allocation Agreements.

> **Example**: If an Allocatee received QEIs totaling $1 million, and is required in its Allocation Agreement to invest 100 percent of its QEIs as QLICIs, then it must be able to demonstrate that $1 million was initially invested as QLICIs.

(B) If an Allocatee subsequently receives repayments of principal from the QLICIs (e.g., amortizing loan payments), but consistent with applicable IRS regulations does not reinvest these proceeds into other QLICIs, then the Allocatee will be treated as fulfilling the requirements of Section 3.2(j) – notwithstanding the fact that the Allocatee is no longer "fully invested" at the initial percentage.

> **Example:** An Allocatee received QEIs totaling $1 million, and is required in its Allocation Agreement to invest 100% of its QEIs as QLICIs. It makes a loan of $1 million to a QALICB. In accordance with the terms of the loan, the QALICB makes interest-only payments for two years, and beginning in year three, some small payments of principal along with the interest payments. At the end of the seven-year compliance period, the principal payments total less than $150,000 – or 15% of the $1 million loan to the QALICB. This amount of repayment is sufficiently minimal as to not trigger reinvestment requirements under the IRS regulations. The Allocatee is in compliance with 3.2(j).

(C) If an Allocatee subsequently receives repayments of principal from the QLICIs that are sufficient enough to trigger reinvestment requirements under the IRS regulations, the Allocatee is required to reinvest those proceeds in the same percentage as is required in the Allocation Agreement.

> **Example**: An Allocatee received QEIs totaling $1 million, and is required in its Allocation Agreement to invest 100 percent of its QEIs as QLICIs. It makes a loan of $1 million to a QALICB. The QALICB repays the entirety of the loan after two years. The Allocatee must reinvest the entire $1 million into a QLICI within the timeframes required under IRS regulations in order to be compliant with Section 3.2(j).

NOTE: Consistent with IRS regulations regarding reinvestment, the CDFI Fund will not require Allocatees to reinvest principal repayments that are received in year seven of the compliance period.

37. Does Section 3.3(h) of my Allocation Agreement (prohibitions on real estate refinancing), allow for the "take-out" of both debt and equity?

Yes. Section 3.3(h), which is applicable to all Allocatees that received allocations in the CY 2005 and later rounds, generally prohibits Allocatees from using QEI proceeds to re-finance loans that were made to businesses whose principal activity is the rental to others of real property. As provided for in Section 3.3(h), this general prohibition does not apply in the case of financing that is used to "take-out" debt or equity that was used to finance certain eligible prior construction or acquisition activities.

38. Can takeout financing apply to an amortizing loan under Section 3.3(h)(v) of the Allocation Agreement?

Yes. The intent of 3.3(h)(v) of the Allocation Agreement is to prevent the refinancing of permanent loans solely to reduce financing costs to the QALICB. The structure (amortizing or interest-only) of the underlying loan to be taken out is immaterial. The Allocatee must determine whether the take out financing for the underlying loan fits the intent of section 3.3(h)(v) – namely, to prevent the refinancing of permanent loans.

39. Section 6.9 of the Allocation Agreement requires CDEs to report Material Events to the CDFI Fund within 20 days of the occurrence. How do I report a material event to the CDFI Fund?

A Material Events form can be found on the CDFI Fund's website. Allocatee should use this form to identify the nature of the event. The CDFI Fund will then determine whether or not it is material and affects the CDE's ability to remain certified as a CDE, or remain compliant with its Allocation Agreement. Material Events forms are submitted via an AMIS Service Request.

40. What is a Material Event?

The CDFI Fund defines a "Material Event" as an occurrence that affects an organization's strategic direction, mission, or business operation and, thereby, its status as a certified CDFI or CDE, and/or its compliance with the terms and conditions of its Allocation Agreement. The list below provides examples of Material Events that must be reported to the CDFI Fund within 20 calendar days of the occurrence of such event.

Please note these examples may not apply to all covered entities and this list may not be exhaustive. If you have a question about whether something constitutes a Material Event, it is best to report the event and allow the CDFI Fund to make that determination. The Material Event Form can be submitted via the CDFI Fund's AMIS as a document attachment to a Service Request.

a. An Event of Default, as that term is defined in Section 8.1 of the Allocation Agreement, or any event which upon notice or lapse of time, or both, would constitute an Event of Default. This includes failure to meet the requirements articulated in Schedule 1 and Section 3.2 of the Allocation Agreement.
b. A merger, acquisition, or consolidation with another entity.
c. A change in the Controlling Entity identified in any Allocation Agreement or the Controlling Entity no longer has any ownership or management interest in the Allocatee and/or shall no longer have Control over the day-to-day management and operations (including investment decisions) of the Allocatee.
d. A change in the organization's legal status (e.g., dissolution or liquidation of the organization, bankruptcy proceedings, receivership, etc.). The filing of any bankruptcy proceeding for the appointment of a conservator for the Allocatee or any of its Affiliates, including the Controlling Entity.
e. An event which materially changes the strategic direction, mission, or business of the organization such that the organization no longer meets one or more CDFI or CDE certification requirement such as no longer providing loans or equity investments.
f. Changes in business strategy that might have influenced the merits of awarding the application to the extent that such changes result in the allocation use being generally inconsistent with the strategies (including, but not limited to, the proposed product offerings and markets served) set forth in the Allocation Application.
g. An event that results in a change in control of the organization (e.g., control by, controlling relationships, loss of control - as such term is defined Allocation Agreement - by any entity that is a party thereto).
h. An event in the composition of the organization's Board of Directors (or other governing body) such that the percentage of the governing or advisory board members representing the organization's Service Area is diminished below the required percentage.
i. A proceeding, including any enforcement action, instituted against the Allocatee, Affiliate of an Allocatee, including the Controlling Entity, by or before any court, governmental or administrative body or agency, which proceeding or its outcome could have a material adverse effect upon the financial condition or business operations of the Allocatee;
j. A material adverse change in the condition, financial or otherwise, or operations of the Allocatee that would impair the Allocatee's ability to carry out the authorized uses of the allocation;

k. The debarment, suspension, exclusion or disqualification, by the Department of Treasury, or any other Federal department or agency, of any individual or entity (or principal thereof) that received any portion of the allocation in a procurement or non-procurement transaction, as defined in 31 C.F.R. §19.970.

l. The receipt of an Adverse Opinion, Qualified Opinion, or Disclaimer of Opinion in audited financial statements of the Allocatee.

41. What are the restrictions on the use of Bond Proceeds under the CDFI Bond Guarantee Program in NMTC related activities?

Bond Proceeds may only be combined with NMTC derived equity (i.e., leveraged loan) to make a QEI in a CDE or to refinance a QLICI at the beginning of the seven-year NMTC compliance period under the following circumstances.

If an Eligible CDFI uses Bond Loan proceeds to finance a leveraged loan in a NMTC transaction, the Eligible CDFI must provide either or both:

(1) Additional collateral in the form of Other Pledged Loans or Cash Collateral;
(2) A payment guarantee or similar credit enhancement; and/or
(3) Other assurances that are approved by Treasury.

The additional collateral, credit enhancement, and/or assurances must remain in force during the entire seven-year NMTC compliance period and comply with the Secondary Loan Requirements.

Further, Bond Proceeds may not be used to refinance a leveraged loan during the seven-year NMTC compliance period. Bond Proceeds may be used to refinance a QLICI after the seven-year NMTC compliance period has ended so long as all other programmatic requirements are met.

Allocatees are encouraged to review the latest Notice of Guarantee Availability (NOGA) for additional details.

42. What are the restrictions on the use of QLICI proceeds to repay or refinance any debt or equity provider, or an Affiliate of any debt or equity provider, whose capital was used, directly or indirectly, to fund a QEI?

Beginning with the CY 2015-2016 round, any debt or equity provider, or Affiliate of any debt or equity provider, whose capital was used, directly or indirectly, to fund a QEI, may receive QLICI proceeds to repay or refinance reasonable expenditures that are incurred by the debt or equity provider (or Affiliate) and that are directly attributable to the qualified business of the QALICB only if the expenditures (i) were incurred no more than 24 months prior to the date on which the QLICI transaction closes, or (ii) represent no more than 5 percent of the total QLICI proceeds from the QEI. These rules only apply to a debt or equity provider (or Affiliate) whose capital was used, directly or indirectly, to fund a QEI and **do not** apply to QLICI proceeds used to repay or refinance a debt provider to the QALICB, if such debt provider (or its Affiliate) has not itself incurred expenditures in connection with the business of the QALICB and did not (directly or indirectly) fund a QEI.

Reasonable expenditures are those incurred for a legitimate business purpose that occur during the normal course of operation, and must be similar in amount and scope when compared to expenditures by a similar entity for a similar project under similar circumstances. Refinance includes transferring cash or property directly or indirectly to the debt or equity provider or Affiliate of the debt or equity provider.

Of note, the IRS has not issued guidance on what costs can be repaid or refinanced with QLICI proceeds under IRC §45D. Until such guidance is issued, the CDFI Fund supports the use of the above parameters for transactions involving the repayment or refinancing of expenditures. CDEs must be able to document that the past expenditure and the corresponding payment occurred within the specified timeframes.

The following example is offered for additional clarity.

Example:

Entity A is a debt or equity provider, or Affiliate of a debt or equity provider, whose capital was used, directly or indirectly, to fund a QEI the proceeds of which were used to make a QLICI. Within 24 months prior to the closing of the QLICI transaction, Entity A expends $1,000,000 to obtain development permits, begin construction, acquire or install equipment, and acquire other property related to the project; all of which represent reasonable expenditures directly attributable to the qualified business of the QALICB, and for which Entity A has retained documentation (i.e. invoices, receipts, proof of payment, etc.). More than 24 months prior to the closing of the QLICI, Entity A expends $700,000 of documented, reasonable expenditures directly attributable to the qualified business of the QALICB. The QALICB receives $10,000,000 in total QLICIs from the QEI funded by Entity A.

24-month provision

Out of $10,000,000 in total QLICIs, up to $1,000,000 of the QLICI proceeds can be used to repay Entity A for the documented expenditures which occurred within 24 months of the closing of the QLICI or repay an Affiliate of Entity A whose capital was used directly or indirectly to fund the QEI (e.g. a leverage loan). The remaining QLICI proceeds

($9,000,000) could be used for additional expenditures such as operating needs, working capital needs, equipment, additional construction expenditures, or other needs related to the project or business of the QALICB.

OR

5 percent provision

The QALICB may use up to 5 percent of QLICI proceeds to reimburse documented, reasonable expenditures that are directly attributable to the qualified business of the QALICB regardless of when those expenditures were incurred. In this scenario, if the total QLICIs to the QALICB were $10,000,000, the QALICB could use up to $500,000 to reimburse Entity A for expenditures that were incurred at any time prior to the QLICI closing.

In summary, of the $1,700,000 in documented, reasonable expenditures directly attributable to the qualified business of the QALICB incurred by Entity A, the QALICB may elect to either reimburse the full amount of reasonable expenditures incurred within 24 months of the QLICI closing date ($1,000,000) or reimburse up to 5 percent of the QLICI proceeds ($500,000) of reasonable expenditures incurred at any time prior to the QLICI closing date. It may not do both.

43. How will the CDFI Fund monitor the restriction on the use of QLICI proceeds to directly or indirectly repay or refinance any debt or equity provider, or Affiliate to any debt or equity provider, whose capital was used, directly or indirectly, to fund the QEI required under the CY 2015-2016 NMTC Application?

CDEs must include such covenants in financing agreements with QALICBs as may be necessary to reflect this restriction. The agreements containing such covenants must be available for inspection by the CDFI Fund. In addition, the CDE should collect information as may be necessary and maintain documentation to trace the use of QLICI proceeds by the QALICB at the time the initial QLICI is made and at least annually thereafter. In situations where the QALICB will directly or indirectly repay or refinance any debt or equity provider or Affiliate of any debt or equity provider, whose capital was used, directly or indirectly, to fund a QEI under the 24-month or 5 percent exception rules, the CDE should maintain documentation demonstrating that the reimbursements can be directly traced to actual expenditures by the debt or equity provider (or their Affiliate) and are directly attributable to the qualified business of the QALICB. This documentation must be available for inspection by the CDFI Fund. Documentation to support compliance with this restriction must be retained for the entire period of the QLICI in the QALICB plus three years or the seven-year compliance period plus three years, whichever is shorter.

44. Can a QALICB use QLICI proceeds to repay or refinance any debt or equity provider, or Affiliate of any debt or equity provider, and to monetize an asset owned by, contributed, sold, or otherwise transferred to the QALICB (or an Affiliate of a QALICB) including but not limited to the accreted value of an asset?

Beginning with the CY 2015-2016 round, a QALICB is only permitted to use QLICI proceeds to repay or refinance a debt or equity provider (or Affiliate of a debt or equity provider) whose capital was used directly or indirectly to fund the QEI subject to the provisions outlined in Question 44 of this document. The QALICB may use QLICI proceeds to repay or refinance expenditures incurred by the debt or equity provider (or their Affiliate) for the acquisition of any asset contributed, sold, or otherwise transferred to the QALICB to the extent such asset represents a reasonable expenditure directly attributable to the qualified business of the QALICB. The amount that can be repaid or refinanced for such an asset is limited to the asset's original cost and not to any accreted value obtained by appraisal or other valuation methods. Such transactions remain subject to the 24 month rule or 5 percent rule indicated in Question 44 above.

Example: Limitation to actual costs of acquisition

> Entity B is a debt or equity provider, or Affiliate of a debt or equity provider, whose capital was used, directly or indirectly, to fund a QEI the proceeds of which were used to make a QLICI. Entity B acquired property for $700,000 less than 24 months prior to the QLICI closing that represents a reasonable expenditure directly attributable to the qualified business of the QALICB, the current appraised value of the property is $1,000,000. More than 24 months prior to the closing of the QLICI, Entity B acquired equipment for $500,000 (currently appraised at $600,000), which represents a reasonable expenditure directly attributable to the qualified business of the QALICB. The QALICB receives $10,000,000 in total QLICIs from the QEI funded by Entity B.
>
> The QLICIs proceeds could only be used to reimburse up to the original cost of acquisition (not the appraised value) of both the property and equipment ($700,000 + $500,000 = $1,200,000) subject to the 24 month or 5 percent limitations. The QALICB may elect to either reimburse the full amount of reasonable expenditures incurred within 24 months of the QLICI closing date ($700,000) or reimburse reasonable expenditures that represent up to 5 percent of the QLICI proceeds incurred at any time prior to the QLICI closing date ($500,000). It may not do both.

The prohibition on the use of QLICI proceeds to repay or refinance any debt or equity provider, or an Affiliate of any debt or equity provider, whose capital was used, directly or indirectly, to fund a QEI does not apply to allocation awards made prior to the CY2015-2016 round. Question 44 and 45 of this document supplement Question 46.

D. Reporting and Financial Statements

45. Which organizations are required to submit audited financial statements to the CDFI Fund?

Only Allocatees are required to submit audited financial statements to the CDFI Fund. Submission of an audited financial statement will be required beginning with the first fiscal year in which the Allocatee issues a QEI. Effective June 30, 2011, Subsidiary Allocatees are no longer required to have audited financial statements produced for the CDFI Fund. However, the CDFI Fund reserves the right to request audited financial statements of a Subsidiary Allocatee, if audited financial statements are produced.

46. Will the CDFI Fund accept the audit of an Allocatee's controlling entity, or parent company, if the Allocatee is not separately audited?

Yes. The CDFI Fund will accept the audit of a CDE's controlling entity or parent company if the CDE's activities are fully detailed in a schedule of assets, liabilities, income and expenses of the parent's financial statements. If the audit does not provide these details, the CDFI Fund may require the Allocatee to submit an audit that includes such information.

47. Is a Tax Basis financial statement acceptable in lieu of GAAP prepared financial statement?

Yes. The CDFI Fund will accept financial statements prepared on a tax basis. However, Allocatees are required to utilize the same basis of accounting from year to year. In the event an Allocatee who prepares cash basis financial statements one year and then is required to use GAAP the next, the CDFI Fund will require that the prior years' statements be adjusted to GAAP and the statements be audited. Thus, while the CDFI Fund may accept tax basis financial statements for the first reporting period, it may require subsequent financial statements to be GAAP.

48. How will the CDFI Fund treat an audit that has an opinion other than "unqualified"?

The CDFI Fund would view such an occurrence as a Material Event under Section 6.9(b) of the Allocation Agreement and it must be reported to the CDFI Fund. If the CDFI Fund determines that the underlying reasons are significant, it may elect to find the Allocatee in default under Section 8.1 of the Allocation Agreement and may impose one or more of the remedies outlined in Section 8.3.

49. How will an Allocatee fulfill its reporting requirements as outlined in Section 6.5 of the Allocation Agreement?

An Allocatee will submit its Institution and Transaction Level Reports and its QEIs through AMIS. This internet-based system is hosted by the CDFI Fund and accessible to the Allocatee via their AMIS account. Audited financial statements should be uploaded into AMIS using instructions found in the Allocatee ILR Instructions guide. Allocatees are also required to report on QEIs that have reached the end of the seven-year tax credit compliance period using the QEI "Closeout Report" portal available in AMIS. Guidance documents are available on the CDFI Fund's website:

- Institution Level Report Instructions
- Transaction Level Report Instructions
- QEI Closeout Report Instructions

50. What is the QEI "Closeout Report"?

The CDFI Fund has deployed through AMIS, an electronic portal to assist in aggregating information regarding an Allocatee's use of QEI proceeds and additional information on the status of the QLICI and QALICB at the end of the tax credit compliance period.

Effective April 2015, Allocatees are required to report on QEIs that have reached the end of the seven-year tax credit compliance period. The QEI Closeout Report must be completed after the TLR and Institution Level Report (ILR) have been submitted. The information entered into the TLR and ILR will then be used to prepopulate the QEI Closeout Report.

The QEI Closeout Report should be completed within 30 days of the Allocatee submitting the annual TLR. Additional guidance is available on the CDFI Fund's website.

Note: Given the technical difficulties that Allocatees experienced with the QEI Closeout Report system, the CDFI Fund is waiving the QEI Closeout Reporting requirement for the FY2015 and FY2016 reporting periods. If applicable, Allocatees must complete QEI Closeout Reports for their FY2017 reporting period and later reporting periods using AMIS.

51. Are Allocatees that have yet to issue a QEI required to submit ILRs and TLRs?

No. Submission of the ILR will be required beginning with the fiscal year in which the Allocatee or Subsidiary Allocatee issues its first QEI. If the first QEI is made by a Subsidiary Allocatee then the

Allocatee will need to submit the ILR for the fiscal year in which the QEI was made. These reports will be required for each fiscal year thereafter, until the Allocation Agreement is terminated.

Submission of the TLR will be required beginning with the fiscal year in which the Allocatee or Subsidiary Allocatee makes its first QLICI. If the first QLICI is made by a sub-Allocatee then both the Subsidiary Allocatee and the Allocatee will need to submit reports for the fiscal year in which the QLICI was made. This report will be required for each fiscal year thereafter, until the Allocation Agreement is terminated.

52. What if the Allocatee and the sub-Allocatee have differing fiscal year end dates?

All reporting due dates are driven by the Allocatee's fiscal year end date. ILR and TLR reports due dates are always determined by the fiscal year of the Allocatee regardless if any or all of the allocation has been transferred to a Subsidiary Allocatee.

53. Will there be any penalties for late reporting?

Failure to submit required reports by the required deadline may result in default of the Allocation Agreement and penalization through the scoring of future applications to the CDFI Fund. Potential remedies include termination or reallocation of any unused allocations. A default finding might make the Allocatee ineligible to apply for future funding or allocation from the CDFI Fund. Section 8.3 of the Allocation Agreement lists the remedies available to the CDFI Fund when an Allocatee defaults under the terms of the agreement. An Allocatee should also refer to the applicable Notice of Allocation Availability (NOAA) for eligibility requirements.

54. What happens when a Subsidiary Allocatee has completed the seven-year NMTC compliance period?

Once a Subsidiary Allocatee completes the seven-year NMTC compliance period, it may be removed as a party to the Allocation Agreement upon notification to the CDFI Fund. Should the Allocatee choose to dissolve the Subsidiary Allocatee or should the Subsidiary Allocatee choose to become decertified as a CDE, the Allocatee's Authorized Representative must notify the CDFI Fund via the "Sub-CDE Dissolution" portal available in AMIS. In the event that a Subsidiary Allocatee completes its compliance period, exits the NMTC transaction and the Allocatee no longer controls the Subsidiary Allocatee, the CDFI Fund will rescind the CDE certification status of the Subsidiary Allocatee. Additional instructions regarding Sub-CDE dissolution is available on the CDFI Fund's website.

By submitting the notice of dissolution via AMIS, the CDFI Fund and Allocatee mutually acknowledges dis-enjoinment to the applicable Allocation Agreement(s). Notwithstanding the preceding, the Allocatee will continue to bear responsibility for any additional reporting associated with the dissolved, decertified or dis-enjoined Subsidiary Allocatee and any information regarding Events of Default, as set forth in the termination section of the applicable Allocation Agreement(s).

55. What happens after an Allocatee completes its seven-year compliance period after issuance of its last QEI?

After the seven-year compliance period, the CDFI Fund will no longer require the submission of audited financial statements, ILR, and TLR. Per section 9.13 of the Allocation Agreement, the Allocation Agreement will automatically terminate two years after the seven-year credit period (as defined in 26 C.F.R. Part 1.45D-1(c)(5)(i)) after the Allocatee issues its last QEI related to its NMTC allocation. An Allocatee wishing to terminate the Allocation Agreement prior to that time should submit a request via the CDFI Fund's AMIS. The request should include name of the Allocatee, allocation control number, date of the Allocation Agreement and the ending date of the final seven-year tax credit period.

E. CDFI Fund's Information and Mapping System

56.	**Can Allocatees rely on data from the CDFI Fund's Information Mapping System (CIMS) for the purpose of determining whether transactions are located in NMTC eligible low-income communities?**

Both the CDFI Fund and the IRS will treat as eligible any otherwise qualifying QLICI that is made in a census tract identified in CIMS as being in a NMTC eligible low-income community-provided that the census tract in question was identified as eligible in CIMS at the time the QLICI was closed. Closed shall be defined as an investment for which the Allocatee has distributed cash proceeds from a qualified equity investment to the QALICB or CDE.

It is the CDE's responsibility to determine the location of the facility or project that is funded with a NMTC investment is within a particular census tract. Using an address to geocode the location of the project is one method of determining whether that investment is located in an eligible census tract. **For NMTC compliance purposes, it is the physical location of the facility or project that is of importance.** As such, if the actual location of the facility or project is not accurately represented by the address of the business that the CDE is using for geocoding purposes, the CDE should use another method to determine the census tract of the NMTC investment. There are several other ways for a CDE to determine the location of an investment in a particular census tract including visually confirming that the investment is located in an eligible tract using the street grid, using latitude and longitude coordinates of the investment, or other means that establish and document the census tract where the investment will take place.

CIMS utilizes U.S. Bureau of the Census data; however, slight variations may arise. While other data sources or mapping systems may produce differing results than CIMS, the CDFI Fund and the IRS will guarantee as being eligible only those qualifying areas identified in CIMS. The CDFI Fund will not pre-approve any tracts as eligible that are not already identified as eligible in CIMS. CDEs that wish to make investments in such census tracts do so at their own risk and are advised to maintain relevant reports and maps, as necessary, to demonstrate to the CDFI Fund and/or to the IRS that a census tract was in fact eligible at the time of investment.

57.	**CIMS indicated that an address is not valid. How do I geocode an address that CIMS cannot validate?**

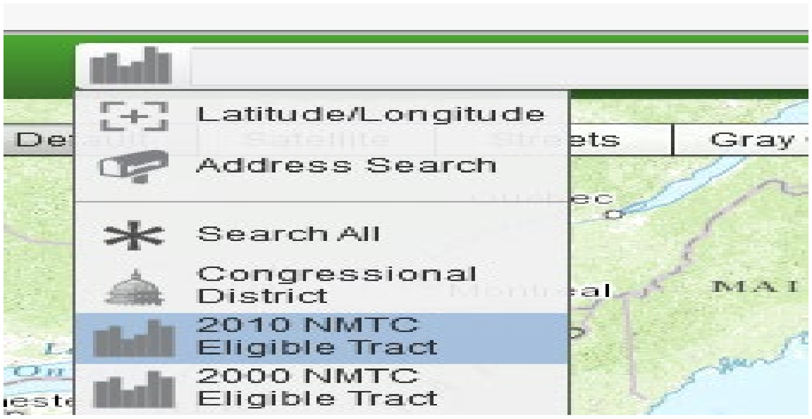
The CDFI Fund offers the following guidance for obtaining a Federal Information Processing Standard (FIPS) code and/or maps for addresses that cannot be validated in CIMS:

1. Log on to CIMS (through AMIS or the public interface).

2. Select the NMTC link.

If you know the FIPS code:

1. To the left of the search bar, make sure the option for “2010 NMTC Eligible Tract” is selected.



2. Enter the 11-digit FIPS code.
3. Depress the “Search” button. 

If you do not know the FIPS code:

Using the Map Search Feature located in the top navigation menu, choose the appropriate criteria.

1. Choose either “County” or “State.”
2. Type the county or state name.
3. Selected the correct county or state from the provided list.
4. After the map is displayed, use the left navigator and zoom feature to establish the project’s location, using the street grid or other map features as a guide.
5. Click on the map to identify the census tract. The FIPS Code will be displayed in the pop-up box. The 11-digit FIPS Code number is comprised of a 2-digit state number, a 3-digit county number and the 6-digit census tract number.
6. Print and retain this document for your files.

For more information on CIMS or AMIS, contact the CDFI Fund's IT Help Desk by email at IThelpdesk@cdfi.treas.gov or by phone at (202) 653-0300. A CIMS guidance manual is also available.

58. Why do I get a different census tract location when I map the same address at a later date? How will the CDFI Fund handle such differences?

The address geo-coding system used by CIMS is updated periodically to provide more accurate street address locations. As such, some addresses that were mapped prior to a system upgrade may no longer appear in the same census tract. In the event of such an occurrence, the CDFI Fund will accept the previously mapped results provided that the CDE maintains documentation (e.g., CIMS maps) demonstrating the location was previously in an eligible census tract.

59. What data should be used to determine qualifying census tracts?

As of October 31, 2017, Allocatees are able to use the 2011-2015 American Community Survey (ACS) eligibility data to determine if QLICIs are located in NMTC-eligible Low-Income Communities. This data is currently available in CIMS. More details on this transition are provided in the New Markets Tax Credit 2011-2015 American Community Survey Census Transition FAQs available on the CDFI Fund's website.

CDEs with NMTC allocations under the calendar year (CY) 2017 round of the NMTC Program or prior rounds should use the following guidance regarding the data used to qualify potential investments made in the 50 states, the District of Columbia and Puerto Rico.

> QLICIs closed (meaning an investment for which the CDE has distributed cash proceeds from a Qualified Equity Investment (QEI) to a Qualified Active Low Income Community Business (QALICB)) before October 31, 2017 must use 2006-2010 ACS data applied to the 2010 census tracts for determining Low-Income Community eligibility.
>
> QLICIs closed between October 31, 2017 and October 31, 2018 may use either 2006-2010 ACS data or 2011-2015 ACS Low-Income Community eligibility data applied to the 2010 census tracts for determining Low-Income Community eligibility.
>
> QLICIs closed on or after November 1, 2018 must use 2011-2015 ACS Low-Income Community eligibility data applied to the 2010 census tracts for determining Low-Income Community eligibility.

Of note, the Island Areas of the United States (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands) were not covered by 2011-2015 ACS and therefore data from the 2010 Census is used. This new eligibility data has been added to the "New Markets Tax Credit Low-Income Community Census Tracts - American Community Survey 2011-2015" file on the CDFI Fund's website.

F. CDE Certification

60. Am I required to notify the CDFI Fund if a certified CDE has been dissolved?

Yes. The CDFI Fund considers the dissolution of a certified CDE as a material event to the extent that it finalized a QEI or is enjoined to an active Allocation Agreement. The CDFI Fund has deployed an electronic portal in AMIS to assist Allocatees in reporting on the dissolution of a Subsidiary Allocatee or the termination of NMTC activities for a Subsidiary Allocatee. In circumstances where the CDE is a Subsidiary Allocatee and has submitted a request for the CDFI Fund to acknowledge its dissolution, submission of dissolution notification via the Sub-CDE Dissolution Report portal is acceptable in lieu of the submission of a Material Event form. A user guide is available on the CDFI Fund's website.

If the dissolved CDE was not an Allocatee or Subsidiary Allocatee, the Authorized Representative must contact the Office of Certification, Compliance Monitoring and Evaluation via the CDFI Fund's AMIS and provide the name, certification control number of the dissolved CDE.

61. How will an Allocatee maintain their CDE Certification status?

An Allocatee will be required to certify on an annual basis that they continue to meet the CDFI Fund's CDE certification requirements. The certification will be completed electronically at the time the Allocatee submits its reports. If the Allocatee has transferred any portion of its allocation to a Subsidiary Allocatee, the Allocatee will be required to certify on behalf of the Subsidiary Allocatee as well.

Should the Allocatee (or any of its Subsidiary Allocatees) no longer meet the CDE certification requirements at any time, it must inform the CDFI Fund of such a Material Event as required under Section 6.9 of the Allocation Agreement. If the CDFI Fund determines that an Allocatee (or any of its Subsidiary Allocatees) can no longer meet the CDE certification requirements, it will be found in default and an event of recapture declared.

62. Does the CDE certification have an expiration date?

A CDE's designation will last for the life of the organization, provided the CDE continues to comply with the NMTC Program requirements. The CDFI Fund may require each CDE, on an annual basis, to certify to the CDFI Fund that it continues to meet its primary mission and accountability requirements.

An entity that is a certified CDFI or Small Business Investment Company (SSBIC) will be deemed to automatically meet the requirements for CDE certification and will be certified as a CDE on the basis of its CDFI or SSBIC certification. However, once so certified, the CDE's certification is no longer dependent on its CDFI or SSBIC certification, but rather is dependent on continuously meeting the qualifications for certification as a CDE, as described above.

If a CDFI is decertified for failure to demonstrate that it meets the criteria of legal entity, primary mission, and/or accountability, and upon the determination by CDFI Fund staff that the failure to demonstrate these CDFI certification criteria affects the entity's ability to meet corresponding criteria required for its CDE certification, the CDFI Fund will notify the CDE of that determination and provide a period of 60 days to submit a new application for CDE certification.

Unless and until the CDFI Fund has made a final determination of the CDE's continued compliance with CDE certification requirements under the NMTC Program, the CDE certification remains in full force and effect. Under these circumstances, the entity will be decertified as a CDE only if: (1) it fails to submit a new application for CDE certification within the 60-day time period prescribed by the CDFI Fund; or (2) the new application for CDE certification is determined by the CDFI Fund not to demonstrate that the entity meets the criteria for CDE certification.

Should a CDE desire to relinquish its certification, it should provide a written notice via a Service Request in AMIS.

63. If a CDE loses its status as a CDE, will it be offered an opportunity for a cure period?

Yes. The loss of CDE certification is an Event of Default and the Allocation Agreement provides for a cure period, not to exceed 90 days. Loss of CDE certification is also an event of recapture.

G. Amendments – Section 9.11

64. Can an Allocatee request an amendment to its Allocation Agreement?

Yes. An Allocatee may request an amendment to its Allocation Agreement by submitting a request to the CDFI Fund. The request, at a minimum must:

1. Identify the name and control number of the Allocatee;
2. Identify the portion(s) of the Allocation Agreement that need to be modified;
3. State the reasons why the Allocatee is making the request; and
4. Explain the extent to which the proposed modifications are consistent with what the Allocatee had proposed in its initial application to the CDFI Fund, and will help to further the goals of the NMTC Program.

The request can be submitted via the CDFI Fund's AMIS. Justification for approving an amendment to an Allocation Agreement includes but is not limited to a determination that the amendment request is:

1. Consistent with the intent of the NMTC Program statute and regulations and furthers the goals of the NMTC Program;
2. Consistent with (or not a substantive departure from) the business strategy proposed in the initial application for an allocation; and
3. Sufficiently narrow in scope that it does not disadvantage other Allocatees or other applicants from the same allocation round.

While an amendment request can be submitted at any time, it must be submitted no later than 90 calendar days before the Allocatee needs the determination. The amendment can be submitted via the CDFI Fund's AMIS. Once processed, the Allocatee will receive a letter amendment which will need to be counter-executed and returned to the CDFI Fund.

65. How can Allocatees add additional Subsidiary Allocatees to Section 3.2?

Step 1: If the proposed entities have not yet been certified as CDEs, the Allocatee MUST first submit a CDE certification application on behalf of the non-certified entities. Without the CDE Certification, the Allocatee will NOT be able to add these Subsidiaries to its Allocation Agreement. The Allocatee must submit its CDE Certification application for the certification of Subsidiaries through the CDFI Fund's AMIS. **Please be aware that obtaining a certification decision could take up to 90 days.**

Step 2: Once the Subsidiaries have been certified, the Allocatee must submit a complete amendment package to the CDFI Fund. Please note that all Subsidiaries must be Certified CDEs prior to the submission of the amendment package; the CDFI Fund will not process requests while certification is pending. The enjoinment request can be submitted via the CDFI Fund's Awards Management Information System (AMIS) through a Service Request. A complete amendment package includes the following documents:

- Request Letter: a letter signed by the registered Authorized Representative of the Allocatee including the name of the Allocatee, the control number of the Allocation Agreement to be amended, and the names and control numbers of each of the certified Subsidiaries to be added.

- Certification Letter(s): copies of the certification received by Allocatee from the CDFI Fund confirming the CDE certification and control number of each of the Subsidiaries to be added.

- Draft Legal Opinion: The legal opinion format should be similar to that used when the original Allocation Agreement was executed but may be limited solely to the new Subsidiaries. The legal opinion should also contain language confirming that the Allocatee Controls the Subsidiaries including having a controlling influence over the investment decisions of the Subsidiaries. For more information concerning this provision, please refer to applicable section of this document.

Once processed, the Allocatee will receive a letter amendment which will need to be counter-executed and returned to the CDFI Fund along with the final legal opinion. Upon receipt of these counter-executed documents, the CDFI Fund will enter an Effective Date for the amendment and return a copy to the Allocatee. **Please be aware that enjoining a certified CDE to an Allocation Agreement could take up to 30 days.**

66. Can a CDE amend the Service Area stipulated in the Allocation Agreement?

Allocatee and their Subsidiary Allocatees are required to make substantially all of their QLICIs in areas for which they are certified to serve and are deemed accountable to, as specified in the applicable Allocation Agreement. Before an Allocatee can request an amendment to the Service Area identified in Section 3.2(b) of the Allocation Agreement, the Allocatee must first amend its CDE certification service area. The Allocation Agreement reflects the Service Area of the Allocatee only and not the Subsidiary Allocatees.

Requests to amend an Allocatee's CDE certification service areas must be submitted through the CDFI Fund's AMIS system, which is available on the CDFI Fund website. The CDFI Fund accepts CDE certification service area amendment requests on an ongoing basis.

After receiving notification that the CDE's certification service area has been successfully amended, an Allocatee may request a Service Area amendment to their Allocation Agreement through the process described in this document. Please note that approval of a change to a CDE's certification service area is no guarantee that it will also be approved as an addition to the Service Area listed in Section 3.2 (b) of the Allocation Agreement.

H. Control of Subsidiary Allocatees – Section 2.6

67. Are New Markets Tax Credit Program (NMTC) allocation recipients (Allocatees) permitted to transfer their tax credit authority to other entities?

Yes. Allocatees may transfer all or a portion of their allocation authority to subsidiary entities (Subsidiary Allocatees), provided that each such subsidiary:

i. Has been certified as a qualified CDE by the CDFI Fund;
ii. Is enjoined as a Subsidiary Allocatee to an Allocation Agreement, either at the time of initial execution or through a subsequent amendment; and is "controlled" (as defined in the Allocation Agreement) by the Allocatee at all times throughout the term of the Allocation Agreement.

68. How does the CDFI Fund define "Control," for the purpose of demonstrating that an Allocatee controls a subsidiary entity?

The CDFI Fund defines "Control" as:

(a) 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; or
(b) 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
(c) Power to exercise, directly or indirectly, a controlling influence over the management policies or investment decisions of another entity, as determined by the CDFI Fund.

An Allocatee demonstrates Control of a subsidiary entity by meeting any one of these three criteria. An Allocatee does not have to satisfy all three criteria in order to be deemed to Control a subsidiary entity.

Notwithstanding the above, beginning with the CY 2005 Allocatees, the CDFI Fund requires that in order for an Allocatee to transfer its allocation authority to a Subsidiary Allocatee, the Allocatee must demonstrate, at a minimum, that it exercises and will maintain a controlling influence over the investment decisions of the Subsidiary Allocatee.

69. If an Allocatee designated a Controlling Entity in its NMTC Allocation Application for the purpose of demonstrating a track record, is the Controlling Entity required to maintain control during the entire seven-year NMTC compliance period? If so, how does the Allocatee demonstrate control by its Controlling Entity?

Beginning with the CY 2013 round, the entity that is designated as the Controlling Entity in the Allocatee's NMTC Allocation Application must continue to serve in that capacity throughout the term of the Allocation Agreement with the CDFI Fund, unless otherwise approved in writing by the CDFI Fund. To conform to the CDFI Fund's definition of a Controlling Entity as provided for in the application materials, it is required that the Controlling Entity continuously maintain a controlling influence over the management policies, and day-to-day management and operations (including investment decisions) of the Allocatee, as determined by the CDFI Fund.

The requirement of the Allocatee to maintain the same Controlling Entity does not apply in situations where there is a merger, acquisition, bankruptcy or similar legal action. However, the Allocatee must notify the CDFI Fund of any change to the designated Controlling Entity via a Material Event submission.

In the event an Allocatee requests a change in the designated Controlling Entity not rooted in a merger, acquisition, bankruptcy or similar legal action, the CDFI Fund will evaluate the requested change on a case-by-case basis. The CDFI Fund will consider the Allocatee's ability to operate and manage the allocation as described in the NMTC Allocation Application and the Allocation Agreement without the Controlling Entity.

70. What does the CDFI Fund deem to be a "controlling influence over the management policies" of another entity?

In order to demonstrate a controlling influence over the management policies of a Sub-Allocatee, the Allocatee must be, at a minimum:

a) Identified in all appropriate organizational documents as the managing entity of the Subsidiary Allocatee (e.g., the general partner, managing partner, managing member or similar managing entity of the Subsidiary Allocatee);
b) At all times in principal control over the day-to-day operations of the Subsidiary Allocatee, and no other parties (including investors) may impose unreasonable limitations on the rights and privileges of the Allocatee to carry out such general management functions or undermine the Allocatee's control over the management of the Subsidiary Allocatee. The Allocatee may enter into contracts with other entities to perform general management functions (e.g., underwriting transactions; compliance and monitoring), but the Allocatee must retain the authority to remove

the contracted parties with or without cause. Some indicia of management control include, but not limited, the authority to:

i. Make all material decisions affecting the business and affairs of the entity;
ii. Act for and bind the entity and to operate and administer the business;
iii. Make strategic, governance, and contract decisions*;*
iv. Establish all policies governing operations of the entity;
v. Acquire and dispose of interests in real or personal property;
vi. Establish and maintain bank accounts;
vii. Employ and terminate all officers, employees, consultants, and agents of the entity; and
viii. Exercise responsibility for business development, raising capital, underwriting, portfolio monitoring, reporting and compliance.

The existence of any one of these indicia, by itself, will not necessarily meet the management control test. Instead, when making a control determination the CDFI Fund will evaluate the totality of all of the facts and circumstances in each particular matter, including the existence of the factors listed above.

Please also note that certain factors which may amount to an unreasonable limitation on an Allocatee's management control, include, but are not limited to:

i. The prohibition of the sale, disposition or transfer of any assets of the entity;
ii. The prohibition of entering into contracts valued above an unreasonably low threshold (e.g., $5,000); and
iii. The hiring of agents or other entities controlled by investors in the Allocatee or its subsidiary entities.

The existence of any one of these factors could result in a determination that the Allocatee does not have management control over its subsidiary entity.

71. What does the CDFI Fund deem to be a "controlling influence over the investment decisions" of another entity?

In order to demonstrate a <u>controlling influence over the investment decisions</u> of a Subsidiary Allocatee, the Allocatee must, at a minimum, have the authority to propose potential NMTC investments and the authority to approve all proposed transactions involving the use of NMTC proceeds. In other words, at no time can a QLICI be made without the authorization of the Allocatee. This rule applies to initial NMTC investments as well as re-investments of NMTC proceeds that occur during the seven-year compliance period. The Allocatee's approval authority may be either explicit (e.g., the operating agreement clearly states the approval rights) or implicit (e.g., the final investment decision authority rests with an investment committee, the majority of whose members are appointed by the Allocatee and are not affiliated with the investor).

An Allocatee may share its control of the investment decisions of a subsidiary entity with an investor (e.g., both parties have the right to veto a proposed investment transaction), provided that the investor does not exercise undue influence over the decision-making authority of the Allocatee. The CDFI Fund would likely determine that undue influence exists in situations where, for example: (a) the Allocatee is required to decide on an investment proposed by the investor within an unreasonable amount of time (i.e., less than 30 days); or (b) the investor can stop the payment of management fees or other contractual payments to the Allocatee if the Allocatee does not approve an investment proposed by the investor.

72. Will the CDFI Fund review operating agreements submitted by Allocatees to determine whether they "control" Subsidiary Allocatees?

The CDFI Fund no longer requires Allocatees, as a matter of course, to submit such documentation in advance of executing or amending Allocation Agreements. The CDFI Fund reserves the right, however, to request such documentation from Allocatees at any time, and will likely do so as part of its compliance and monitoring procedures. Allocatees may also be required to submit certifications confirming their control of Subsidiary Allocatee as part of annual reporting requirements. Allocatees are therefore advised to follow the guidelines contained in this document to ensure that they maintain sufficient control over their Subsidiary Allocatee.

The CDFI Fund will also require that Allocatees obtain legal opinions which confirm that they control their Subsidiary Allocatees both at the time of initial closing of the Allocation Agreement and at the time of any subsequent amendments.

The CDFI Fund will not review operating agreements submitted voluntarily by Allocatees or investors that wish to obtain control determinations from the CDFI Fund.

NOTE: The CDFI Fund has the discretion to consider additional factors when determining the extent to which an Allocatee demonstrates control over its Subsidiary Allocatees.

73. How does the CDFI Fund view investor rights to remove the Allocatee as the managing entity of the Subsidiary Allocatee?

The CDFI Fund is aware that many operating agreements for Subsidiary Allocatees may afford investors with the right to remove a managing entity for malfeasance or negligence. However, if such removal rights include: (a) the right to remove the managing entity without cause or (b) the right to remove the managing entity for violation of any provision of the operating agreement or any misconduct or breach of contractual obligations which does not have a material adverse effect on the business of the entity, the CDFI Fund could determine that the Allocatee does not have management control over its Subsidiary Allocatee. In addition, if the investor decides to exercise its removal rights and, as a result, the Allocatee no longer has any control over its Subsidiary Allocatee, the CDFI Fund may determine that such occurrence is an event of default under the terms of the Allocation Agreement and the CDFI Fund has the discretion to impose any or all of the remedies contained in the Allocation Agreement.

NOTE: The CDFI Fund has the right to approve all successors of the Allocatee's interests as a party to the Allocation Agreement (see Section 9.4 of the Allocation Agreement).

I. Contacting the CDFI Fund's Certification & Compliance Unit

74.	How to contact the CDFI Fund's Office of Certification, Compliance Monitoring and Evaluation?

Helpline	(202) 653-0423
Email:	ccme@cdfi.treas.gov
Fax:	(202) 508-0086
Mail:	U.S. Department of the Treasury Community Development Financial Institutions Fund Attention: CCME 1500 Pennsylvania Avenue, NW Washington, DC 20220

In addition, the CDFI Fund's AMIS has a Service Request function that allows users to make general inquiries and/or request specific changes. This function facilitates smooth communication between Allocatees and CDFI Fund staff. Allocatees can track issues or requests that have been submitted to the CDFI Fund and their resolutions in a central area. For AMIS IT support, please contact AMIS@cdfi.treas.gov or (202) 653-0422.