

Section 6.12 of the CY 2012 Allocation Agreement FAQ

What does Section 6.12 of the CY 2012 Allocation Agreement require?

Section 6.12 reads, “Each time the Allocatee makes one or more Qualified Low-Income Community Investments (QLICIs) in the form of loan(s) to, or investment(s) in, a Qualified Active Low-Income Community Business (QALICB), it shall disclose to the QALICB, in a separate stand-alone document (hereinafter referred to as a “disclosure statement”), any and all direct and indirect New Markets Tax Credit (NMTC)-related transaction costs related to the QLICI(s) (e.g. legal, accounting, compliance), fees and compensation that the CDE is assessing the QALICB or otherwise requiring the QALICB to incur prior to, during, and at the conclusion of the seven-year NMTC term.

Is the CDFI Fund proscribing the format of the disclosure statement?

This FAQ includes a sample QALICB disclosure statement for illustration purposes only. **The CDFI Fund is not endorsing or requiring CDEs to adopt a specific disclosure statement format. However, CDEs are required to develop a disclosure statement format that provides the QALICB with the level of detail outlined in Section 6.12 of the CY 2012 Allocation Agreement.** The disclosure statement should be a stand-alone document presented in a short, easy to understand format approximately 1 page in length ideally.

The sample QALICB disclosure statement is based on a leverage model transaction commonly used by CDEs and includes fees and payments established at the outset of the transactions that are due at or about the end of the compliance period. The CDFI Fund is not endorsing this transaction structure. The CDFI Fund has no preference on transaction structures. Additionally, the sample QALICB disclosure statement reflects the typical types of costs that have been identified with NMTC transactions. The CDFI Fund is not endorsing or approving any specific costs and is not endorsing or approving any method of terminating QLICIs made by a CDE. The disclosure statement is provided for illustrative purposes only.

On what basis should the “costs” be disclosed in the disclosure statement to the QALICB?

The CDE should present the costs in dollar amounts and as a percentage of the total amount of the NMTCs generated similar to the sample QALICB disclosure statement in this FAQ. CDEs will be responsible for collecting complete direct and indirect transaction costs related to the QLICIs, including those paid to third parties (e.g. legal, accounting, audits, tax preparation, etc.).

What is the timing of providing the disclosure statement to the QALICB?

The CDE should provide the QALICB with a disclosure statement containing estimated costs at the later of (i) execution of the initial term sheet, or (ii) the execution of the initial term sheet of the last CDE in a multiple CDE transaction, recognizing that certain items will be subject to change up to the closing of the transaction. However, the CDE must provide the QALICB with a final copy of the disclosure statement at closing. The CDFI Fund encourages CDEs to avoid unrealistically low initial estimates of transaction cost.

How should the CDE document that the QALICB has received the disclosure statement?

The disclosure statement provided to the CDE at closing must be signed by a representative of the QALICB and retained by the CDE. The disclosure statement can be retained either in hard or electronic copy and should be available for review upon request from the CDFI Fund.

Is the disclosure required at the “project” level or transaction level?

The CDE is only required to make one disclosure for each set of QLICIs related to a project (e.g., a discrete set of activities by the QALICB).

I’m making a multi-CDE investment in a project. Can/Should the disclosure be coordinated among the CDEs involved in the multi-CDE investment?

Each CDE is responsible for providing a separate disclosure statement. If there are shared expenses (e.g., CDEs agreed to share counsel or financial modeling consulting) each CDE should disclose that portion of the fees that are attributed to its own QLICIs. For example, if your CDE agreed to share financial modeling expenses with one other CDE equally, each CDE would attribute 50% of the costs of modeling expense in the disclosure.

How should the Net Benefit be calculated with respect to an Equity QLICI?

One possible method to calculate the “Net Benefit to Project” with respect to an equity QLICI may be to determine the excess of (i) costs of an assumed market interest rate comparable as if the investment were made as a loan over (ii) a zero interest rate cost assigned to distributions made with respect to the equity investment.

Does the CDFI Fund have an example of a QALICB disclosure statement that meets the requirements of Allocation Agreement Section 6.12?

Yes, please find a sample disclosure statement on the following page. Please note this sample QALICB disclosure statement is provided for illustration purposes only. The CDFI Fund is not endorsing or requiring CDEs to adopt a specific disclosure statement format.

Sample QALICB Disclosure -Debt QLICI

Allocation Conversion Calculation	
Total QEI	\$12,700,000
NMTCs Available (39%)	\$4,953,000
Investment Price	\$0.78

Funding Item	Description	% of NMTCs	Gross Amt.	Cumulative Balance	Comment
NMTCs Available	Allocation Conversion (above)	100.00%	\$4,953,000	\$4,953,000	Total NMTCs to be claimed by Investor
Investor Gross Revenues	Investment Contributed Per Credit Offered (\$0.78)	(22.00%)	(\$1,089,660)	\$3,863,340	Discount taken by Investor to derive value of NMTCs
NMTC Dollars	Gross NMTC Subsidy Available to Project	78.00%	\$3,863,340	\$3,863,340	Initial Funds Available to the Project
Estimated Costs:	Investment Fund Fees	(3.95%)	(\$195,571)	\$3,667,769	Disclosed in the term sheet
	CDE Up Front Fees	(5.13%)	(\$254,000)	\$3,413,769	Paid at Closing
	Ongoing CDE Fees	(11.67%)	(\$577,850)	\$2,835,919	Asset Mgmt. Fees over 7 Years (\$82,550 annually)
	3rd Party Closing Costs	(6.06%)	(\$300,000)	\$2,535,919	Legal, Financial Modeling, Consultants, etc. Paid at Closing
	Other Ongoing 3rd Party Costs	(6.27%)	(\$310,471)	\$2,225,448	Audit, Tax, etc. over 8 Years
				\$2,225,448	Retained Tax Credit Subsidy
	Total Estimated Costs	(33.07%)	(\$1,637,892)	\$2,225,448	
	Estimated Net Benefit to Project before Interest Savings	44.93%	2,225,448	\$2,225,448	
Market Interest Rate Comparable		6.50%			See compliance FAQ #29 documenting better rates & terms
Gross Interest Rate Subsidy		31.36%	\$1,553,265	\$3,778,713	Estimated market interest expense (over 7 years)
Actual Interest Expense		(12.85%)	(\$636,701)	\$3,142,012	Estimated QLICI interest expense (over 7 years)
Interest Rate Savings Net Benefit Over Initial 7-year period		18.51%	\$916,564	\$3,142,012	
Total Estimated Net Benefit to Project		63.44%	\$3,142,012	\$3,142,012	

QALICB Representative Signature

Date