TD 9600 Frequently Asked Questions

1. What is TD 9600?

To encourage investments in non-real estate businesses for working capital and equipment, the Internal Revenue Service (IRS) issued final regulations (Treasury Decision (TD) 9600) that modify the reinvestment requirements under the New Markets Tax Credit (NMTC) Program. The revised regulations provided in TD 9600 allow a Community Development Entity (CDE) that makes a Qualified Low-Income Community Investment (QLICI) in Non-Real Estate Qualified Active Low-Income Community Business(es) (QALICBs) to invest certain returns of capital from those investments in unrelated certified Community Development Financial Institutions (CDFIs) that are also CDEs at various points during the 7-year credit period.

2. When does TD 9600 become effective?

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.

3. Who does TD 9600 affect immediately?

Effective September 28, 2012, all CDEs with available allocation authority (i.e., the authority has not been designated as Qualified Equity Investments (QEIs)), may be able to take advantage of the provisions in TD 9600. No CDE is required to take advantage of the provisions outlined in TD 9600. Allocatees who wish to take advantage of the provisions of TD 9600 must have "Investments in, or loans to, Non-Real Estate QALICBs" as an eligible activity in Section 3.2(a) of their allocation agreement.

Any CDE that received an allocation in the 2008, 2009, 2010 and/or 2011 rounds of the NMTC Program that does not have "Investments in, or loans to, Non-Real Estate QALICBs" as an eligible activity in Section 3.2(a) of its allocation agreement and would like to take advantage of the provisions outlined in TD 9600, must submit an allocation agreement amendment request by e-mail to the CDFI Fund's Office of Certification, Compliance Monitoring, and Evaluation (CCME) at ccme@cdfi.treas.gov with the subject line "NMTC Allocation Agreement Amendment Request" or by mail to: CDFI Fund, Office of Certification, Compliance Monitoring and Evaluation, 1500 Pennsylvania Avenue NW, Washington, DC 20220. At a minimum, the amendment request must include: a) the name and control number of the Allocatee; b) the portion(s) of the allocation agreement that need to be modified; c) the reason(s) why the Allocatee is making the request; and d) an explanation of how the proposed modifications are consistent with what the Allocatee proposed in its application to the CDFI Fund, and will help to further the goals of the NMTC Program.

4. How do I designate an equity investment as a "non-real estate qualified equity investment"?

Allocatees that would like to take advantage of the provisions outlined in TD 9600 must designate the equity investment as a Non-Real Estate QEI. Allocatees that have a NMTC allocation in the CY 2012 round or later will be able to designate the equity investment as a Non-Real Estate QEI directly in the CDFI Fund's Allocation Tracking System (ATS).

Allocatees that have an allocation prior to the CY 2012 round must first designate an equity investment as a QEI in ATS. Then, they must e-mail CCME to request that this QEI be recorded in the ATS as a Non-Real Estate QEI. This request must be submitted by the Authorized Representative within 60 days of the QEI issuance to ccme@cdfi.treas.gov with the subject line "NMTC: Request to Designate QEI [QEI Identifier] as a Non-Real Estate QEI." The request should include the Allocatee's name, the Allocatee's Award Control Number, and the QEI identification number. Alternatively, the Allocatee can also forward the QEI confirmation email generated by ATS with the subject Line "NMTC: Request to Designate QEI [QEI Identifier] as a Non-Real Estate QEI".

5. In light of TD 9600, how do the definitions of "Real Estate QALICB" and "Non-Real Estate QALICB" appear in the 2012 Allocation Agreement?

In the CY 2012 Allocation Agreement, the CDFI Fund defines a Real Estate Qualified Active Low-Income Community Business (Real Estate QALICB) as any QALICB whose predominant business activity (i.e., activity that generates more than 50 percent of the business' gross income) includes the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate.

The CDFI Fund defines a Non-Real Estate Qualified Active Low-Income Community Business (Non-Real Estate QALICB) as any QALICB that does not satisfy the definition of a Real Estate QALICB.

6. How will the updated definitions of "Real Estate QALICB" and "Non-Real Estate QALICB" in the 2012 Allocation Agreement affect CIIS reporting?

Current reporting in CIIS 10.0 will not be affected by the updated definitions of "Real Estate QALICB" and "Non-Real Estate QALICB" in the 2012 allocation agreement. CDEs can continue to rely on the definitions of these terms that appear in FY 2012 Allocatee Transaction Level Report Data Point Guidance for CIIS 10.0.

For CIIS 11.0 (FY 2013 reporting), the CDFI Fund plans to introduce updated definitions of "Real Estate QALICB" and "Non-Real Estate QALICB" in the QALICB Type field (PRJ: BE in CIIS 10.0). The values in QALICB Type will be edited to reflect the revised definitions of "Real Estate QALICB" and "Non-Real Estate QALICB" outlined in Question 5. The CDFI Fund also plans to add a new "Special Purpose Entity QALICB" value in this field to allow for separate reporting of these types of investments.

7. What (if any) additional changes will be made to CIIS 11.0 based on TD 9600?

In addition to the changes to the QALICB Type field outlined in Question 6, the CDFI Fund anticipates that changes will be made in CIIS 11.0 to the Purpose field (N-I: G in CIIS 10.0). In the Purpose field, the values of "Business" and "Microenterprise" will be revised to remove references to real estate based activities as eligible purposes in those categories. CDEs that report loans/investments for the first time in CIIS 11.0 will be report under these revised fields. If a CDE has previously reported on a loan/investment prior the changes in CIIS 11.0, it is not required to adjust the data reported in QALICB Type or Purpose to correspond with the revised guidance for these fields in CIIS 11.0.

8. How will the updated definitions of "Real Estate QALICB" and "Non-Real Estate QALICB" in the 2012 Allocation Agreement and CIIS 11.0 affect how compliance is measured with pre-2012 allocation agreements?

For Allocatees that received an allocation in the CY 2011 round or earlier, the definitions of "Real Estate QALICB" and "Non-Real Estate QALICB" remain as outlined in the September 2011 NMTC Compliance & Monitoring FAQ, Question 13:

> *"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."*

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."

As referenced in Question 6, the CDFI Fund anticipates making modifications to CIIS 11.0 so that loans or investments made to a Special Purpose Entity that is controlled by or under common control with a Non-Real Estate business, and that was set up specifically to lease the property back to the Non-Real Estate business such that the Non-Real Estate business is the principal user of the property will be reported separately from "Real Estate QALICBs" and "Non-Real Estate QALICBs."

All CDEs reporting on a loan/investment for the first time in CIIS 11.0 will use these new criteria for categorizing QALICB Type. For allocations from the CY 2011 round or earlier, an investee/borrower that is a "Special Purpose Entity QALICB" may be classified as either a Real Estate or a Non-Real Estate QALICB by the CDFI Fund for the purposes of measuring a CDE's compliance with its respective allocation agreement.

9. How will the updated definitions of "Real Estate QALICB" and "Non-Real Estate QALICB" in the 2012 Allocation Agreement and CIIS 11.0 affect how compliance is measured for CDEs with a 2012 Allocation Agreement (or later)?

Based on the new definitions of "Real Estate QALICB" and "Non-Real Estate QALICB," loans/investments made into a special purpose entity that is controlled by or under common control with a Non-Real Estate business, and that was set up specifically to lease the property back to the Non-Real Estate business such that the Non-Real Estate business is the principal user of the property will be considered a Real Estate QALICB for the purposes of measuring compliance with the 2012 allocation agreement. However, such an investment should be reported as a "Special Purpose Entity QALICB" in CIIS.

Despite the fact that investments in Special Purpose Entity QALICBs will be deemed Real Estate QALICBs for the purpose of measuring compliance with the 2012 allocation agreement, the CDFI Fund will continue to view investments made to Special Purpose Entity QALICBs as investments assisting Non-Real Estate businesses and report them to the public as such.

10. If you wish to take advantage of the provisions outlined in TD 9600, how should you report your investments in the CDFI Fund's Community Investment Impact System (CIIS)?

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 ATS (see Question 4). QLICIs made with the proceeds of a Non-Real Estate QEI must be recorded in CIIS as an investment in a QALICB Type of "Non-Real Estate QALICB." The Purpose of the financial note must be either "Business" or "Microenterprise." CIIS 11.0 will also be updated to capture any payment of, or for, capital, equity or principal in a qualifying entity (i.e. a certified CDFI) in the Institution Level Report (ILR).

Please note that CDEs 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 (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate. A CDE's compliance with the provisions of TD 9600 will ultimately be determined by the IRS.