

near Pondosa. MCR also proposes to discontinue trackage rights over a BNSF Railway Company<sup>2</sup> rail line between milepost 31.4 at Hambone and milepost 0.0 at Lookout Junction, a distance of approximately 31.4 miles in Siskiyou and Modoc Counties, CA.<sup>3</sup> The lines traverse United States Postal Service Zip Codes 96067, 96057, 96013, 96054, and 96056, and include a station at Burney.

The lines do not contain federally granted rights-of-way. Any documentation in MCR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(d). A final decision will be issued by October 14, 2005.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,200 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the lines, the lines may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 4, 2005. Each trail use request must be accompanied by a \$200 filing fee. See 49 CFR 1002.2(f)(27).<sup>4</sup>

All filings in response to this notice must refer to STB Docket No. AB-914X and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001, and (2) Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112. Replies to MCR's petition are due on or before August 4, 2005.

Persons seeking further information concerning abandonment or

discontinuance procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1539 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparations. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at: <http://www.stb.dot.gov>.

Decided: July 6, 2005.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 05-13666 Filed 7-14-05; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Senior Executive Service Performance Review Board

##### ACTION: Notice.

**SUMMARY:** The Surface Transportation Board (STB) publishes the names of the persons selected to serve on its Senior Executive Service Performance Review Board (PRB).

**FOR FURTHER INFORMATION CONTACT:** Ernest A. Cameron, Director of Human Resources (202) 565-1691.

**SUPPLEMENTARY INFORMATION:** Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating

authority relative to the performance of the senior executive.

The persons named below have been selected to serve on STB's PRB.

Craig M. Keats, Deputy General Council.

Leland L. Gardner, Director, Office of Economics, Environmental Analysis, and Administration.

David M. Konschnik, Director, Office of Proceedings.

Dan G. King, Director, Office of Congressional and Public Services.

Issued in Washington, DC, on July 11, 2005.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 05-13873 Filed 7-14-05; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

#### Notice of Allocation Availability (NOAA) Inviting Applications for the CY 2006 Allocation Round of the New Markets Tax Credit Program

**Announcement Type:** Initial announcement of tax credit allocation availability.

**Dates:** Electronic applications must be received by 5 p.m. ET on September 21, 2005. Paper applications must be postmarked on or before September 21, 2005 and received by 5 p.m. ET on September 30, 2005 (see Section IV.D. of this NOAA for more details).

Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOAA. Allocation applicants that are not yet certified as community development entities (CDEs) must submit an application for certification as a CDE that is postmarked on or before August 22, 2005 and received by 5 p.m. ET on August 30, 2005 (see Section III. of this NOAA for more details).

**Executive Summary:** This NOAA is issued in connection with the calendar year 2006 tax credit allocation round of the New Markets Tax Credit (NMTC) Program, as authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act). Through the NMTC Program, the Community Development Financial Institutions Fund (the Fund) provides authority to CDEs to offer an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate the provision of \$15 billion in private investment capital that, in turn, will facilitate economic and community development in Low-

<sup>2</sup> Effective January 20, 2005, the name of "The Burlington Northern Santa Fe Railway Company" was changed to "BNSF Railway Company."

<sup>3</sup> The Board issued an exemption for abandonment of the Hambone-Lookout Junction rail line in *Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Modoc and Siskiyou Counties, CA*, STB Docket No. AB-6 (Sub-No. 414X) (STB served May 21, 2004). However, an exemption was not sought in that proceeding for discontinuance of MCR's operations over that line pursuant to trackage rights.

<sup>4</sup> For the line where discontinuance rather than an abandonment is being sought, trail use/rail banking and public use conditions are not appropriate.

Income Communities. In this NOAA, the Fund addresses specifically how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC Allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

## I. Allocation Availability Description

### A. Programmatic Improvements

In the substantive review process for applications submitted under the third round of the NMTC Program, the Fund gave greater weight to the elements contained in each application's Business Strategy and Community Impact sections. The Fund will continue this same programmatic focus in this NOAA. In order to reflect this emphasis, the Fund has re-ordered the application sections and the corresponding NOAA sections (as described in Section V.A. below) as follows: Business Strategy, Community Impact, Management Capacity, and Capitalization Strategy.

The Fund has modified certain eligibility requirements relating to prior Allocates planning to apply for an additional allocation in this CY 2006 allocation round. These modifications generally require that Allocates demonstrate an increasing percentage of Qualified Equity Investment issuances and/or commitments based on the allocation round in which Allocates received their prior allocation(s). These requirements are more fully described in Section III.A.2. of this NOAA.

In the NOAA for the third allocation round, the Fund evaluated whether applicants were common enterprises that, in fact or effect, could be viewed as single entities. In this NOAA, the Fund clarifies that Allocates (or their Subsidiary Allocates) are also prohibited from forming common enterprises with other Allocates (or their Subsidiary Allocates) in the same allocation round after the submission of an allocation application to the Fund. This requirement is necessary since most Allocates do not form the Subsidiaries to which they will transfer their NMTC Allocation until after receiving a Notice of Allocation from the Fund.

This NOAA also contains two additional clarifications with respect to the application review and selection process: (1) The Fund reserves the right to take prior NMTC Allocation performance into consideration in the case of applications submitted by entities that have, or whose affiliates have, received allocations of NMTCs in prior allocation rounds; and (2) the

Fund reserves the right to reject an application if it is incorrect in any material respect. These clarifications are more fully described in Section V.B. of this NOAA.

### B. Program Guidance and Regulations

This NOAA provides guidance for the application and allocation of NMTCs for the fourth round of the NMTC Program and should be read in conjunction with: (i) Guidance published by the Fund on how an entity may apply to become certified as a CDE (66 FR 65806, December 20, 2001); (ii) the final regulations issued by the Internal Revenue Service (26 CFR 1.45D-1, published on December 28, 2004) and related guidance; and (iii) the application and related materials for this fourth NMTC Program allocation round. All such materials may be found on the Fund's Web site at <http://www.cdfifund.gov>. The Fund encourages applicants to review these documents. Capitalized terms used but not defined in this NOAA shall have the respective meanings assigned to them in the allocation application, the Act or the IRS final regulations.

## II. Allocation Information

### A. Allocation Amounts

The Fund expects that it may allocate to CDEs the authority to issue to their investors up to the aggregate amount of \$3.5 billion in equity as to which NMTCs may be claimed, as permitted under IRC § 45D(f)(1)(D). The Fund anticipates that, under this NOAA, it will not issue more than \$150 million in tax credit allocation authority per applicant. The Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount if the Fund deems it appropriate. In order to receive an allocation in excess of \$150 million, an applicant will likely need to demonstrate, for example, that: (i) No part of its strategy can be successfully implemented without an allocation in excess of \$150 million; or (ii) its strategy will produce extraordinary community impact. The Fund reserves the right to allocate tax credit authority to any, all or none of the entities that submit an application in response to this NOAA, and in any amount it deems appropriate.

### B. Types of Awards

NMTC Program awards are made in the form of tax credit authority.

### C. Notice of Allocation and Allocation Agreement

Each Allocatee under this NOAA must sign a Notice of Allocation and an Allocation Agreement before the NMTC Allocation is effective. The Notice of Allocation and the Allocation Agreement contain the terms and conditions of the allocation. For further information, see Section VI. of this NOAA.

## III. Eligibility

A. *Eligible applicants:* IRC § 45D specifies certain eligibility requirements that each applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA:

1. *CDE certification:* For purposes of this NOAA, the Fund will not consider an application for an allocation of NMTCs unless: (a) The applicant is certified as a CDE at the time the Fund receives its NMTC Program allocation application; or (b) the applicant submits an application for certification as a CDE that is postmarked on or before August 22, 2005 and received by 5 p.m. ET on August 30, 2005. Applicants for certification may obtain a CDE certification application through the Fund's Web site at <http://www.cdfifund.gov>. Applications for CDE certification must be submitted as instructed in the application form. An applicant that is a community development financial institution (CDFI) or a specialized small business investment company (SSBIC) does not need to submit a CDE certification application, but must register as a CDE on the Fund's Web site on or before 5 p.m. ET on August 22, 2005. The Fund will not provide allocations of NMTCs to applicants that are not certified as CDEs. See Section IV.D.1.(c) of this NOAA for further requirements relating to postmarks.

If an applicant that has already been certified as a CDE wishes to change its designated CDE service area, it must submit its request for such a change to the Fund; and said request must be received by the Fund by 5 p.m. ET on September 21, 2005. The CDE service area change request must be sent from the applicant's authorized representative and include the applicable CDE control number, the revised service area designation, and an updated accountability chart that reflects representation from Low-Income Communities in the revised service area. The service area change request must be

sent by e-mail to [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov) or by facsimile to (202) 622-7754.

**2. Prior awardees or Allocatees:**

Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOAA. Prior awardees of any component of the Fund's Community Development Financial Institutions (CDFI) Program, Bank Enterprise Award (BEA) Program, the Native Initiatives, or any other Fund program and prior Allocatees under the NMTC Program are eligible to apply under this NOAA, except as follows:

**(a) Prior Allocatees and Qualified Equity Investment issuance**

**requirements:** A prior Allocatee in the first round of the NMTC Program (CY 2001–2002) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on December 31, 2005, it has: (i) Issued and received cash from its investors for at least 60 percent of its Qualified Equity Investments relating to its CY 2001–2002 NMTC Allocation; or (ii) issued and received cash from its investors for at least 50 percent of its Qualified Equity Investments and that at least 80 percent of its total CY 2001–2002 NMTC Allocation has been exchanged for cash from or has been committed by its investors. A prior Allocatee in the second round of the NMTC Program (CY 2003–2004) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on December 31, 2005, it has: (i) Issued and received cash from its investors for at least 50 percent of its Qualified Equity Investments relating to its CY 2003–2004 NMTC Allocation; or (ii) issued and received cash from its investors for at least 40 percent of its Qualified Equity Investments and that at least 80 percent of its total CY 2003–2004 NMTC Allocation has been exchanged for cash from or has been committed by its investors. A prior Allocatee in the third round of the NMTC Program (CY 2005) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on February 15, 2006, it has: (i) Issued and received cash from its investors for at least 50 percent of its Qualified Equity Investments relating to its CY 2005 NMTC Allocation; or (ii) issued and received cash from its investors for at least 20 percent of its Qualified Equity Investments and that at least 60 percent of its total CY 2005 NMTC Allocation has been exchanged for cash from or has been committed by its investors. Further, an entity is not eligible to

receive a NMTC Allocation pursuant to this NOAA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund) is a prior Allocatee and has not met the requirements for the issuance and/or commitment of Qualified Equity Investments as set forth above for the Allocatees in the prior allocation rounds of the NMTC Program. In addition, if an applicant has received an allocation in multiple allocation rounds of the NMTC Program, the applicant will have to meet the requirements for the issuance and/or commitment of Qualified Equity Investments as set forth above for each allocation received.

For purposes of this section of the NOAA, the Fund will only count as “issued” those Qualified Equity Investments that have been recorded in the Fund's Allocation Tracking System (ATS) by the deadlines specified above. Allocatees and their Subsidiary transferees, if any, are advised to access ATS to record each Qualified Equity Investment that they issue to an investor in exchange for cash. For purposes of this section of the NOAA, “committed” Qualified Equity Investments are only those Equity Investments that are evidenced by a written, signed document in which an investor: (i) Commits to make an investment in the Allocatee in a specified amount and on specified terms; (ii) has made an initial disbursement of the investment proceeds to the Allocatee, and such initial disbursement has been recorded in ATS as a Qualified Equity Investment; (iii) commits to disburse the remaining investment proceeds to the Allocatee based on specified amounts and payment dates; and (iv) commits to make the final disbursement to the Allocatee no later than December 31, 2008. The applicant will be required, upon notification from the Fund, to submit adequate documentation to substantiate the required issuances of and commitments for Quality Equity Investments.

In addition, all requests for amendments to Allocation Agreements needed for purposes of meeting the Qualified Equity Investment issuance requirements set forth above, including requests to have Subsidiary entities certified as CDEs and/or included in Allocation Agreements, must be received by October 14, 2005. Allocation Agreement amendment requests should be submitted by mail to the Fund's Grants Manager, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005 or by e-

mail to [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov) or [grantsmanagement@cdfi.treas.gov](mailto:grantsmanagement@cdfi.treas.gov) with the subject line: NMTC: Allocation Agreement Amendment Request. CDE certification requests should be submitted in accordance with the instructions provided in the CDE Certification Application. Requests for Allocation Agreement amendments and CDE certifications received after October 14, 2005 will not be processed until after December 31, 2005.

**(b) Failure to meet reporting requirements:** The Fund will not consider an application submitted by an applicant if the applicant, or an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund) is a prior Fund awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the application deadline of this NOAA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

**(c) Pending resolution of noncompliance:** If an applicant is a prior awardee or Allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund will consider the applicant's application under this NOAA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund will consider the applicant's application under this NOAA pending full resolution, in the sole determination of the Fund, of the noncompliance.

**(d) Default status:** The Fund will not consider an application submitted by an

applicant that is a prior Fund awardee or Allocatee under any Fund program if, as of the application deadline of this NOAA, the Fund has made a final determination that such applicant is in default of a previously executed assistance, allocation or award agreement(s) and the Fund has provided written notification of such determination to such applicant. Further, an entity is not eligible to apply for an allocation pursuant to this NOAA if, as of the application deadline of this NOAA, the Fund has made a final determination that another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund): (i) Is a prior Fund awardee or Allocatee under any Fund program; (ii) has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s); and (iii) the Fund has provided written notification of such determination to the defaulting entity.

(e) *Termination in default:* The Fund will not consider an application submitted by an applicant that is a prior Fund awardee or Allocatee under any Fund program if: (i) Within the 12-month period prior to the application deadline of this NOAA, the Fund has made a final determination that such applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); (ii) the Fund has provided written notification of such determination to such applicant; and (iii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in such applicant's 2004 or 2005 fiscal year. Further, an entity is not eligible to apply for an allocation pursuant to this NOAA if: (i) Within the 12-month period prior to the application deadline of this NOAA, the Fund has made a final determination that another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); (ii) the Fund has provided written notification of such determination to the defaulting entity; and (iii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in the defaulting entity's 2004 or 2005 fiscal year.

(f) *Undisbursed balances:* The Fund will not consider an application submitted by an applicant that is a prior Fund awardee under any Fund program if the applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the application deadline of this NOAA. Further, an entity is not eligible to apply for an award pursuant to this NOAA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOAA. In a case where another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOAA, the Fund will include the combined awards of the applicant and such affiliated entities when calculating the amount of undisbursed funds.

For purposes of this section, "undisbursed funds" is defined as: (i) In the case of a prior BEA Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the awardee; and (ii) in the case of a prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the awardee.

"Undisbursed funds" does not include (i) tax credit allocation authority made available through the NMTC Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the awardee by the application deadline of this NOAA; and (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund.

(g) *Contact the Fund:* Accordingly, applicants that are prior awardees and/or Allocatees under any other Fund program are advised to: (i) Comply with the requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for

the disbursement of any outstanding balance of a prior award(s). All outstanding reports and compliance questions should be directed to the Compliance Manager by e-mail at [cme@cdfi.treas.gov](mailto:cme@cdfi.treas.gov) and all disbursement questions should be directed to the Grants Manager by e-mail at [grantsmanagement@cdfi.treas.gov](mailto:grantsmanagement@cdfi.treas.gov). Both the Compliance Manager and the Grants Manager can be reached by telephone at (202) 622-8226; by facsimile at (202) 622-6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of publication of this NOAA through September 19, 2005 (2 days before the application deadline). The Fund will not respond to applicants' reporting, compliance or disbursement phone calls or e-mail inquiries that are received after 5 p.m. ET on September 19, 2005 until after the funding application deadline of September 21, 2005.

3. *Entities that propose to transfer NMTCs to Subsidiaries:* Both for-profit and non-profit CDEs may apply to the Fund for allocations of NMTCs, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit applicant wishing to apply for a NMTC Allocation must demonstrate, prior to entering into an Allocation Agreement with the Fund, that: (i) It controls one or more Subsidiaries that are for-profit entities; and (ii) it intends to transfer the full amount of any NMTC Allocation it receives to said Subsidiary. The Subsidiary transferee should: (i) Submit a CDE certification application to the Fund within 30 days after the non-profit applicant receives a Notice of Allocation from the Fund; and (ii) must be certified as a CDE prior to entering into an Allocation Agreement with the Fund. The NMTC Allocation transfer must be pre-approved by the Fund, in its sole discretion, and will be a condition of the Allocation Agreement. A for-profit applicant that receives a NMTC Allocation may transfer such NMTC Allocation to its for-profit Subsidiary or Subsidiaries, provided that said Subsidiary transferees have been certified as CDEs and such transfer is pre-approved by the Fund, in its sole discretion. The transfer also will be a condition of the Allocation Agreement.

An applicant wishing to transfer all or a portion of its NMTC Allocation to a Subsidiary is not required to create the Subsidiary prior to submitting a NMTC allocation application to the Fund. Rather, the Fund will require each

applicant to indicate, in its NMTC allocation application, whether it intends to transfer all or a portion of its NMTC Allocation to a Subsidiary and its timeline for doing so. As stated above, in no circumstance will the Fund authorize such a transfer until the Fund has certified the Subsidiary transferee as a CDE.

4. *Entities that submit applications together with Affiliates; applications from common enterprises:* (a) As part of the allocation application review process, the Fund considers whether applicants are Affiliates, as such term is defined in the allocation application. If an applicant and its Affiliates wish to submit allocation applications, they must do so collectively, in one application; an applicant and its Affiliates may not submit separate allocation applications. If Affiliated entities submit multiple applications, the Fund reserves the right either to reject all such applications received or to select a single application as the only one that will be considered for an allocation.

For purposes of this NOAA, in addition to assessing whether applicants meet the definition of the term "Affiliate" found in the allocation application, the Fund will consider: (i) Whether the activities described in applications submitted by separate entities are, or will be, operated or managed as a common enterprise that, in fact or effect, could be viewed as a single entity; and (ii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related that, in fact or effect, they could be viewed as substantially identical applications. In such cases, the Fund reserves the right either to reject all applications received from all such entities or to select a single application as the only one that will be considered for an allocation.

(b) Furthermore, an applicant that receives an allocation in this allocation round (or its Subsidiary transferee) may not become an Affiliate of or member of a common enterprise (as defined above) with another applicant that receives an allocation in this allocation round (or its Subsidiary transferee) at any time after the submission of an allocation application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly Controlled solely because of common ownership by Qualified Equity Investment investors. This requirement will also be a term and condition of the Allocation Agreement (see Section VI.B. of this NOAA and additional application guidance materials on the

Fund's Web site at <http://www.cdfifund.gov> for more details).

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

6. *Entities that are BEA Program awardees:* An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC Allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC Allocation for the same investment in a CDE.

#### IV. Application and Submission Information

A. *Address to request application package:* Applicants may submit applications under this NOAA either electronically or in paper form. Shortly following the publication of this NOAA, the Fund will make available the electronic allocation application on its Web site at <http://www.cdfifund.gov>. The Fund will send application materials to applicants that are unable to download them from the Web site. To have application materials sent to you, contact the Fund by telephone at (202) 622-6355; by e-mail at [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov); or by facsimile at (202) 622-7754. These are not toll free numbers.

B. *Application content requirements:* Detailed application content requirements are found in the application related to this NOAA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation. Electronic applications must be submitted solely by using the format made available at the Fund's Web site. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service and assigned to the applicant and, if applicable, its Controlling Entity; electronic applications without a valid EIN are incomplete and cannot be transmitted to the Fund; paper applications submitted without a valid EIN will be rejected as incomplete and returned to the sender. For more information on obtaining an EIN, please contact the Internal Revenue Service at (800) 829-4933 or <http://www.irs.gov>. An applicant may not submit more than one application in response to this NOAA. In addition, as stated in Section III.A.4 of this NOAA, an applicant and its Affiliates must collectively submit only one allocation application; an applicant and its Affiliates may not submit separate allocation applications. Once an application is submitted, an applicant will not be allowed to change any element of its application.

C. *Form of application submission:* Applicants may submit applications under this NOAA either electronically or in paper form. Applications sent by facsimile or by e-mail will not be accepted. In order to expedite application review, the Fund expects applicants to submit applications electronically (via an Internet-based application) in accordance with the instructions provided on the Fund's Web site. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further it will assist the Fund in the implementation of electronic reporting requirements.

1. *Electronic applications:* Electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form. Applicants need access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher, Windows 98 or higher (or other

system compatible with the above Explorer and Netscape software) and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. The Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application.

2. *Paper applications:* If an applicant is unable to submit an electronic application, it must submit to the Fund a request for a paper application using the NMTC Program Paper Application Submission Form, and the request must be received by 5 p.m. ET on September 7, 2005. The NMTC Program Paper Application Submission Form may be obtained from the Fund's Web site at <http://www.cdfifund.gov> or the form may be requested by e-mail to [paper\\_request@cdfi.treas.gov](mailto:paper_request@cdfi.treas.gov) or by facsimile to (202) 622-7754. The completed NMTC Program Paper Application Submission Form should be directed to the Fund's Chief Information Officer and must be sent by facsimile to (202) 622-7754.

*D. Application submission dates and times:*

1. *Application deadlines:*

(a) *Electronic applications* must be received by 5 p.m. ET on September 21, 2005. Electronic applications cannot be transmitted or received after 5 p.m. ET on September 21, 2005. In addition, applicants that submit electronic applications must separately submit (by mail or other courier delivery service) an original signature page, and all other required paper attachments. The original signature page and additional documents must be postmarked on or before September 26, 2005 and received by 5 p.m. ET on October 3, 2005. See application instructions, provided in the electronic application, for further detail. Applications and other required documents and other attachments postmarked or received after these dates and times will be rejected and returned to the sender. If the original signature page is not postmarked and received by the deadlines specified above, the application will be rejected and returned to the sender. See Section IV.D.1.(c) of this NOAA for further requirements relating to postmarks. Additional deadlines (if any) relating to the submission of general supporting documentation will be further detailed in the electronic application. Please note that the document submission

deadlines in this NOAA and/or the allocation application are strictly enforced.

(b) *Paper applications*, including the requisite original signature page, and all other required paper attachments must be postmarked on or before September 21, 2005 and received by 5 p.m. ET on September 30, 2005. Paper applications postmarked or received after these deadlines will not be accepted for consideration and will be returned to the sender.

(c) For purposes of this NOAA, the term "postmark" is defined by 26 CFR 301.7502-1. In general, the Fund will require that the postmarked document bear a postmark date that is on or before the applicable deadline. The document must be in an envelope or other appropriate wrapper, properly addressed as set forth in this NOAA and delivered by the United States Postal Service or any other private delivery service designated by the Secretary of the Treasury. For more information on designated delivery services, please see IRS Notice 2002-62, 2002-2 C.B. 574.

E. *Intergovernmental Review:* Not applicable.

F. *Funding Restrictions:* For allowable uses of investment proceeds related to an NMTC Allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D-1, published on December 28, 2004) and related guidance. Please see Section I., above, for the Programmatic Improvements of this NOAA.

G. *Other Submission Requirements:*

*Addresses:* Paper applications and the signature page and attachments for electronic applications must be sent as directed in the application materials to the Bureau of Public Debt, the application intake coordinator for the Fund. Paper applications and the signature page or attachments will not be accepted at the Fund's offices in Washington, DC. Paper applications and signature pages or attachments received in the Fund's offices will be rejected and returned to the sender. Except for the signature page and attachments, electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form.

**V. Application Review Information**

There are two parts to the substantive review process for each allocation application—Phase 1 and Phase 2. In Phase 1, the Fund will evaluate each application, assigning points and numeric scores with respect to the

criteria described below. In Phase 2, the Fund will rank applicants in accordance with the procedures set forth below.

A. *Criteria:*

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

Under the Business Strategy criterion, an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which: (i) Are designed to meet the needs of underserved markets; (ii) are flexible or non-traditional in form and on better terms than available in the marketplace; and (iii) focus on customers or partners that typically lack access to conventional sources of capital. An applicant will also score well to the extent that it: (i) Has a track record of successfully providing products and services similar to those it intends to use with the proceeds of Qualified Equity Investments; (ii) has identified, or has a process for identifying, potential transactions; (iii) demonstrates a likelihood of issuing Qualified Equity Investments and making the related Qualified Low-Income Community Investments in a time period that is significantly shorter than the 5-year period permitted under IRC § 45D(b)(1); and (iv) in the case of an applicant proposing to purchase loans from CDEs, the applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities.

(b) *Priority Points:* In addition, as provided by IRC § 45D(f)(2), the Fund will ascribe additional points to entities that meet either or both of the statutory priorities. First, the Fund will give up to five (5) additional points to any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the

Fund will give five (5) additional points to any applicant that intends to satisfy the requirement of IRC § 45D(b)(1)(B) by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to an applicant (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) hold the majority equity interest. Applicants may earn points for either or both statutory priorities. Thus, applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an applicant itself or by its Controlling Entity (e.g., where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC Allocation must meet the requirements of IRC § 45D(b)(1)(B) by investing substantially all of the proceeds from the aggregate amount of its Qualified Equity Investments in unrelated businesses. The Fund will factor in an applicant's priority points when ranking applicants during Phase 2 of the review process, as described below.

**2. Community Impact** (25-point maximum). In assessing the impact on communities expected to result from the applicant's proposed investments, reviewers will consider, among other things, the degree to which the applicant is likely to achieve significant and measurable community development and economic impacts in its Low-Income Communities, and whether the applicant is working in particularly economically distressed markets and/or in concert with Federal, state or local government or community economic development initiatives (e.g., Empowerment Zones, Enterprise Communities, and Renewal Communities). An applicant will generally score well under this section to the extent that: (a) It articulates how its strategy is likely to produce significant and measurable community development and economic impacts that would not be achieved without NMTCs; and (b) it is working in particularly economically distressed or otherwise underserved communities and/or in concert with other Federal, State or local government or community economic development initiatives.

**3. Management Capacity** (25-point maximum). In assessing an applicant's management capacity, reviewers will

consider, among other things, the qualifications of the applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: experience in deploying capital or technical assistance, including activities similar to those described in the applicant's business strategy; experience in raising capital; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax programs; and the applicant's (or its Controlling Entity's) financial health. Reviewers will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements, and the level of involvement of community representatives and other stakeholders in the design, implementation or monitoring of an applicant's business plan and strategy. In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) that has received a NMTC Allocation from the Fund under a prior allocation round, reviewers will consider the activities that have occurred to date with respect to the prior allocation(s).

An applicant will generally score well under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the applicant with the proceeds of Qualified Equity Investments; (b) raising capital, particularly from for-profit investors; (c) asset and risk management; and (d) fulfilling government compliance requirements, particularly tax program compliance. An applicant will also score well to the extent it has policies and systems in place to ensure ongoing compliance with NMTC Program requirements, and to the extent that Low-Income Community stakeholders play an active role in designing or implementing its business plan. In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) that has received a NMTC Allocation from the Fund under a prior allocation round, the applicant will score well to the extent it can: (a) Demonstrate that substantial activities have occurred through its

prior allocation(s); and (b) substantiate a need for additional allocation authority.

**4. Capitalization Strategy** (25-point maximum). In assessing an applicant's capitalization strategy, reviewers will consider, among other things: the extent to which the applicant has secured investments, commitments to invest, or indications of interest in investments from investors, commensurate with its requested amount of tax credit allocations; the applicant's strategy for identifying additional investors, if necessary, including the applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the extent to which the applicant identifies how existing investors will leverage their investments in Low-Income Communities or how new investors will be brought into such investments; the distribution of the economic benefits of the tax credit; the extent to which the applicant intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC § 45D(b)(1)(B), including the extent to which the applicant has identified the financial resources outside of the NMTC investments necessary to support its operations or finance its activities; and the applicant's timeline for utilizing an NMTC Allocation.

An applicant will generally score well under this section to the extent that: (a) It has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of Qualified Equity Investments it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to end users; (d) it is likely to leverage other sources of funding in addition to NMTC investor dollars; and (e) it intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC § 45D(b)(1)(B). In the case of an applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the applicant or from affiliated entities, said applicant will score well to the extent that it will offer products with more favorable rates or terms than those currently offered by the investor and/or will target its activities to areas of greater economic distress than those currently targeted by the investor.

**B. Review and selection process:** All allocation applications will be reviewed



for eligibility and completeness. The Fund may consult with the IRS on the eligibility requirements under IRC § 45D. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected and returned to the sender. Once the application has been determined to be eligible and complete, the Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the allocation application.

*Phase 1:* Fund reviewers will evaluate and score each application in the first part of the review process. An applicant must exceed a minimum overall aggregate base score threshold and exceed a minimum aggregate section score threshold in each of the four application sections (Business Strategy, Community Impact, Management Capacity, and Capitalization Strategy) in order to advance from the first part of the substantive review process. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the four application sections), varies significantly from the median of the reviewers' total base scores or section scores for such application, the Fund may, in its sole discretion, obtain the comments and recommendations of an additional reviewer to determine whether the anomalous score should be replaced with the score of the additional reviewer.

*Phase 2:* Once the Fund has determined which applicants have met the required minimum overall aggregate base score and aggregate section score thresholds, the Fund will rank applicants on the basis of their combined scores in the Business Strategy and Community Impact sections of the application and will make adjustments to each applicant's priority points so that these points maintain the same relative weight in the ranking of applicant scores. The Fund will award allocations in the order of this ranking, subject to applicants' meeting all other eligibility requirements; provided, however, that the Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process.

In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund))

that has previously received an award or allocation from the Fund through any Fund program, the Fund will consider and will deduct points for the applicant's (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) failure to meet the reporting deadlines set forth in any assistance, award or Allocation Agreement(s) with the Fund during the applicant's two complete fiscal years prior to the application deadline of this NOAA (generally FY 2003 and 2004). All outstanding reports or compliance questions should be directed to the Compliance Manager by e-mail at [cme@cdfi.treas.gov](mailto:cme@cdfi.treas.gov); by telephone at (202) 622-8226; by facsimile at (202) 622-6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOAA through September 19, 2005. The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. ET on September 19, 2005 until after the funding application deadline of September 21, 2005.

The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund awardee, if such applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund Allocatee, if such applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of any applicant, if an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the Fund.

The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund Allocatee, if such applicant has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings and markets served) set forth in the

allocation application(s) related to such prior allocation(s). The Fund also reserves the right to reject any NMTC allocation application in the case of any applicant, if an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund Allocatee and has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy set forth in the allocation application(s) related to such prior allocation(s).

The Fund also reserves the right to reject a NMTC allocation application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application.

As a part of the substantive review process, the Fund may permit reviewer(s) to make telephone calls to applicants for the sole purpose of obtaining, clarifying or confirming application information. In no event shall such contact be construed to permit an applicant to change any element of its application. Reviewers will not contact applicants without the prior approval of the Fund. At this point in the process, an applicant may be required to submit additional information about its application in order to assist the Fund with its final evaluation process. Such requests must be responded to within the time parameters set by the Fund. The selecting official(s) will make a final allocation determination based on an applicant's file, including without limitation, eligibility under IRC § 45D, the reviewers' scores and the amount of allocation authority available. In the case of applicants (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund)) that are regulated by the Federal government or a State agency (or comparable entity), the Fund's selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal or State banking and other regulatory agencies. In the case of applicants (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant



(as determined by the Fund)) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the Fund reserves the right to consult with and take into consideration the views of the Small Business Administration.

The Fund reserves the right to conduct additional due diligence, as determined reasonable and appropriate by the Fund, in its sole discretion, related to the applicant and its officers, directors, owners, partners and key employees.

Each applicant will be informed of the Fund's award decision either through a Notice of Allocation if selected for an allocation (*see* Section VI.A. of this NOAA) or a declination letter, if not selected for an allocation, which may be for reasons of application incompleteness, ineligibility or substantive issues. All applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to obtain feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site.

There is no right to appeal the Fund's allocation decisions. The Fund's allocation decisions are final.

## **VI. Award Administration Information**

### **A. Notice of Allocation**

The Fund will signify its selection of an applicant as an Allocatee by delivering a signed Notice of Allocation to the applicant. The Notice of Allocation will contain the general terms and conditions underlying the Fund's provision of an NMTC Allocation including, but not limited to, the requirement that an Allocatee and the Fund enter into an Allocation Agreement. The applicant must execute the Notice of Allocation and return it to the Fund. By executing a Notice of Allocation, the Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, information (including administrative errors) comes to the attention of the Fund that either adversely affects the Allocatee's eligibility for an award, or adversely affects the Fund's evaluation or scoring of the Allocatee's application, or

indicates fraud or mismanagement on the part of the Allocatee, the Fund may, in its discretion and without advance notice to the Allocatee, terminate the Notice of Allocation or take such other actions as it deems appropriate. Moreover, by executing a Notice of Allocation, an Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, the Fund determines that the Allocatee is not in compliance with the terms of any prior assistance agreement, award agreement, and/or Allocation Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Allocatee, either terminate the Notice of Allocation or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind the allocation and the Notice of Allocation if the Allocatee fails to return the Notice of Allocation, signed by the authorized representative of the Allocatee, along with any other requested documentation, by the deadline set by the Fund.

**1. Failure to meet reporting requirements:** If an Allocatee, or an entity that Controls the Allocatee, is Controlled by the Allocatee or shares common management officials with the Allocatee (as determined by the Fund) is a prior Fund awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Allocation, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on an Allocatee's ability to issue Qualified Equity Investments to investors until said prior awardee or Allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior awardee or Allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

**2. Pending resolution of noncompliance:** If an applicant is a prior awardee or Allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation

Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior awardee or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

**3. Default status:** If, at any time prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Allocatee that is a prior Fund awardee or Allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the Allocatee, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, until said prior awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that another entity that Controls the Allocatee, is Controlled by the applicant or shares

common management officials with the Allocatee (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program, and is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, until said prior awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior awardee or Allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

4. *Termination in default:* If (i) within the 12-month period prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Allocatee that is a prior Fund awardee or Allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the Fund has provided written notification of such determination to such organization; and (iii) the final reporting period end date for the applicable terminated agreement falls in such organization's 2004 or 2005 fiscal year, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors. Further, if (i) within the 12-month period prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that another entity that Controls the Allocatee, is Controlled by the Allocatee or shares common management officials with the Allocatee (as determined by the Fund), is a prior Fund awardee or Allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the Fund has provided written notification of such determination to the defaulting entity; and (iii) the final reporting period end date for the applicable terminated agreement falls in such defaulting entity's 2004 or 2005 fiscal year, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to

issue Qualified Equity Investments to investors.

#### *B. Allocation Agreement*

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

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

If an Allocatee identifies Subsidiary transferees, the Fund reserves the right

to require an Allocatee to provide supporting documentation evidencing that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary transferees. The Fund reserves the right, in its sole discretion, to rescind its Notice of Allocation if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

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

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

The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

#### **VII. Agency Contacts**

The Fund will provide programmatic and information technology support related to the allocation application between the hours of 9 a.m. and 5 p.m. ET through September 19, 2005. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. ET on September 19, 2005 until after the allocation application deadline of

September 21, 2005. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at <http://www.cdfifund.gov>. The Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program.

**A. Information technology support:** Technical support can be obtained by calling (202) 622-2455 or by e-mail at [ithelpdesk@cdfi.treas.gov](mailto:ithelpdesk@cdfi.treas.gov). People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the Fund's Web site should call (202) 622-2455 for assistance. These are not toll free numbers.

**B. Programmatic support:** If you have any questions about the programmatic requirements of this NOAA, contact the Fund's NMTC Program Manager by e-mail at [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov), by telephone at (202) 622-6355, by facsimile at (202) 622-7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

**C. Administrative support:** If you have any questions regarding the administrative requirements of this NOAA, contact the Fund's Grants Manager by e-mail at [grantsmanagement@cdfi.treas.gov](mailto:grantsmanagement@cdfi.treas.gov), by telephone at (202) 622-8226, by facsimile at (202) 622-6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

**D. IRS support:** For questions regarding the tax aspects of the NMTC Program, contact Branch Five, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622-3040, by facsimile at (202) 622-4753, or by mail at 1111 Constitution Avenue, NW., Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers.

**E. Legal counsel support:** If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled "How to Request a Legal Review," found on the Fund's Web site at <http://www.cdfifund.gov>. Requests for legal reviews must be received by the Fund no later than October 14, 2005.

## VIII. Information Sessions

In connection with this NOAA, the Fund intends to broadcast a no fee, interactive video teleconference information session on August 4, 2005, from 1 p.m. to 5 p.m. ET. Registration is required, as the video teleconference information session will be broadcast to secured Federal facilities. The video

teleconference information session will be produced in Washington, DC, and will be downlinked via satellite to local Department of Housing and Urban Development offices in certain cities. For further information on the video teleconference information session, locations, or to register, please visit the Fund's Web site at <http://www.cdfifund.gov> or call the Fund at (202) 622-9046.

**Authority:** 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D-1.

Dated: July 5, 2005.

**Owen M. Jones,**

*Acting Director, Community Development Financial Institutions Fund.*

[FR Doc. 05-13591 Filed 7-14-05; 8:45 am]

**BILLING CODE 4810-70-P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### Privacy Act of 1974, as Amended; System of Records

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of systems of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Office of Thrift Supervision (OTS), Treasury, is publishing its Privacy Act systems of records.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A-130, the OTS has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records.

Other changes throughout the document are editorial in nature and consist principally of changes to system locations and system manager addresses and or titles in several systems of records. Editorial changes were also made to Appendix A.

#### Systems Covered by This Notice

This notice covers all systems of records adopted by OTS up to May 2, 2005. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: July 7, 2005.

**Nicholas Williams,**

*Deputy Assistant Secretary for Headquarters Operations.*

#### Table of Contents

OTS .001—Confidential Individual Information System

OTS .002—Correspondence/Correspondence

#### Tracking

OTS .003—Consumer Complaint

OTS .004—Criminal Referral Database

OTS .005—Employee Counseling Service

OTS .006—Employee Locator File

OTS .008—Employee Training Database

OTS .011—Positions/Budget

OTS .012—Payroll/Personnel Systems & Payroll Records.

### Office of Thrift Supervision

#### TREASURY/OTS .001

##### SYSTEM NAME:

Confidential Individual Information System—Treasury/OTS.

##### SYSTEM LOCATION:

Enforcement Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Computerized records of Suspicious Activity Reports (SAR), with status updates, are managed by FinCEN pursuant to a contractual agreement, and are stored at the Internal Revenue Service's Computing Center in Detroit, Michigan. Authorized personnel at the Federal financial regulatory agencies have on-line access to the computerized database managed by FinCEN through individual work stations that are linked to the database central computer.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Directors, officers, employees, agents, borrowers, and persons participating in the conduct of the affairs of entities regulated by the OTS who have been involved in suspected criminal activity or suspicious financial transactions and referred to law enforcement officials; and other individuals who have been involved in irregularities, violations of law, or unsafe or unsound practices referenced in documents received by OTS in the exercising of its supervisory functions.

These records also contain information concerning individuals who have filed notices of intention to acquire control of a savings association; controlling persons of companies that have applications to acquire control of a savings association; and organizers of savings associations who have sought Federal Savings and Loan Insurance Corporation (FSLIC) or Saving Association Insurance Fund (SAIF) insurance of accounts or Federal charters.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Application information and inter-agency and intra-agency correspondence, memoranda and reports. The SAR contains information identifying the financial institution involved, the suspected person, the type