

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Guidance for Certification of Community Development Entities, New Markets Tax Credit Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Guidance for Certification of Community Development Entities, New Markets Tax Credit Program.

SUMMARY: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Public Law 106-554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC section 45D, New Markets Tax Credit. Section 45D requires the Secretary of the Treasury (Treasury) to establish a program that will provide an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate investment in new private capital that, in turn, will facilitate economic and community development in distressed communities. Section 121(f) of the Act, among other things, requires the Secretary to issue guidance on how entities may apply to receive allocations of New Markets Tax Credits (NMTCs), the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. The Secretary delegated such authority to the Under Secretary (Domestic Finance), who in turn delegated such authority to the Director of the Community Development Financial Institutions Fund (the Fund).

On April 20, 2001, the Fund issued guidance (which was published in the **Federal Register** on May 1, 2001 at 66 FR 21846) (the General Guidance) that provided general information on how an entity may apply to become certified as a "qualified community development entity" (CDE), how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. In addition, through the General Guidance, the Fund sought written comments from the public as to certain application and allocation issues.

This document (i) summarizes written public comments submitted to the Fund

pursuant to the General Guidance, specifically with respect to the Fund's certification of entities as CDEs, and (ii) provides, in accordance with IRC section 45D(c)(1)(C), specific guidance on how an entity may apply to become certified as a CDE. Effective immediately, this Guidance encourages entities to apply for CDE certification. This Guidance does not solicit applications for allocations of NMTCs.

As provided by IRC section 45D(i), Treasury is authorized to prescribe regulations relating to the NMTC Program. Treasury and the Internal Revenue Service (IRS) will promulgate regulations related to tax aspects of the NMTC Program. Following the promulgation of said IRS regulations, the Fund will publish a Notice of Allocation Availability (NOAA) that will provide additional, specific guidance on how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. As part of the NOAA, the Fund also will summarize written comments submitted by the public with respect to application and allocation issues presented in the General Guidance. The Fund anticipates that, pursuant to the NOAA, it will allocate to CDEs in calendar year 2002 the authority to issue to their investors up to the aggregate amount of \$2.5 billion in equity as to which NMTCs may be claimed (the authority will include the aggregated amounts of \$1 billion for calendar year 2001 and \$1.5 billion for calendar year 2002, as permitted under IRC sections 45D(f)(1) and 45D(f)(3)).

DATES: Effective immediately, the Fund will accept applications from entities seeking to be certified as CDEs. There is no deadline for the submission of CDE Certification Applications. The Fund will review CDE Certification Applications on an ongoing basis. However, for an Applicant CDE that also expects to submit a NMTC allocation application, please refer below to Part IV, CDE Certification, Section A, for further information.

ADDRESSES: CDE Certification Applications should be sent by mail or courier to: CDFI Fund Awards Manager, Bureau of Public Debt—Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. Applications will not be accepted at the Fund's offices. CDE Certification Applications and other NMTC Program information may be downloaded from the Fund's web site at <http://www.cdfifund.gov>. If

you would like CDE Certification Application materials to be sent to you, contact the Fund by telephone at (202) 622-8662; by e-mail to cdfihelp@cdfi.treas.gov; or by facsimile at (202) 622-8244. These are not toll free numbers.

FOR FURTHER INFORMATION: Information regarding the Fund and its programs may be downloaded from the Fund's web site at <http://www.cdfifund.gov>.

I. Definitions

(a) *Affiliate:* means any legal entity that Controls, is Controlled by, or is under common Control with the Applicant CDE.

(b) *Applicant CDE:* means any legal entity that is applying to the Fund to be certified as a CDE, either for itself or on behalf of its Subsidiaries.

(c) *CDE Certification Application:* means the application form, issued by the Fund, to be completed and submitted by an Applicant CDE in order to be certified as a CDE.

(d) *Community Development Entity or CDE:* see Qualified Community Development Entity, below.

(e) *Community Development Financial Institution or CDFI:* means an entity that has been certified by the Fund as meeting the criteria set forth in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702). For further details, refer to the CDFI Program regulations set forth at 12 CFR 1805.201.

(f) *Control:* means (i) Ownership, control, or power to vote more than 50 percent of the outstanding shares of any class of voting securities of any entity, directly or indirectly or acting through one or more other persons; (ii) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any other entity; or (iii) the power to exercise, directly or indirectly, a controlling influence over the management policies or investment decisions of another entity, as determined by the Fund.

(g) *Low-Income Community:* means, under IRC section 45D(e)(1), any population census tract if (A) the poverty rate for such tract is at least 20 percent, or (B)(i) in the case of a tract not located within a Metropolitan Area (as hereinafter defined), the median family income for such tract does not exceed 80 percent of statewide median family income, or (ii) in the case of a tract located within a Metropolitan Area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family

income or the Metropolitan Area median family income. With respect to IRC section 45D(e)(1)(B), possession-wide median family income shall be used (in lieu of statewide income) in assessing the status of census tracts located within a possession of the United States. Upon application by an entity for certification as a CDE, the Fund may designate under IRC section 45D(e)(2) an area within a census tract as a Low-Income Community if (A) the boundary of the area is continuous; (B) the area would otherwise meet the definition of a Low-Income Community under IRC section 45D(e)(1) if it were a census tract; and (C) there is inadequate access to investment capital in the area (as demonstrated by studies, surveys, or other analyses provided by the applicant). Under IRC section 45D(e)(3), in the case of an area that is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of determining poverty areas) shall be used for purposes of defining poverty rates and median family incomes.

(h) *Low-Income Persons*: means individuals having an income, adjusted for family size, of not more than (A) for non-Metropolitan Areas, 80 percent of the statewide median family income; and (B)(i) for Metropolitan Areas, the greater of (A) 80 percent of the statewide median family income or (ii) 80 percent of the Metropolitan Area median family income.

(i) *Metropolitan Area*: means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR 1949–1953 Comp., p. 758), as amended.

(j) *Qualified Community Development Entity or CDE*: means, under IRC section 45D(c)(1), any domestic corporation or partnership if (A) the primary mission of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons; (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the Fund as a CDE. SSBICs, as hereinafter defined, and CDFIs will be deemed to be CDEs in the manner hereinafter set forth.

(k) *Qualified Equity Investment*: means, under IRC section 45D(b)(1), any equity investment in a CDE if (A) such investment is acquired by the investor at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of such cash

is used by the CDE to make Qualified Low-Income Community Investments; and (C) the investment is designated by the CDE as a Qualified Equity Investment. Qualified Equity Investment also includes an equity investment purchased from a prior holder, to the extent provided in IRC section 45D(b)(4). Qualified Equity Investment does not include any equity investment issued by a CDE more than five years after the date the CDE receives a NMTC allocation. Under IRC section 45D(b)(6), “equity investment” means (A) any stock (other than nonqualified preferred stock as defined in IRC section 351(g)(2)) in a corporation and (B) any capital interest in a partnership.

(l) *Qualified Low-Income Community Investment*: means, under IRC section 45D(d)(1), (A) any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in IRC section 45D(d)(2)); (B) the purchase from a CDE of any loan made by such entity that is a Qualified Low-Income Community Investment; (C) financial counseling and other services to businesses located in, and residents of, Low-Income Communities; and (D) any equity investment in, or loan to, any CDE.

(m) *Specialized Small Business Investment Company or SSBIC*: is defined in IRC section 1044(c)(3).

(n) *Subsidiary*: means a legal entity that is owned or Controlled directly or indirectly by the Applicant CDE.

II. The NMTC Program: Background

By providing an incentive in the form of a tax credit over seven years, NMTCs are intended to stimulate the investment of \$15 billion in new private capital in CDEs that, in turn, will make investments in eligible businesses in distressed urban, rural, Native American and Native Hawaiian communities, thus facilitating economic and community development.

Through the NMTC Program, an entity may apply to the Fund to be certified as a CDE. Nonprofit entities and for-profit entities may be certified as CDEs by the Fund. Only CDEs that are for-profit entities are eligible to issue Qualified Equity Investments with respect to which investors will be entitled to claim NMTCs. A taxpayer (including, for example, individuals, corporations, partnerships, and investment funds) that makes a Qualified Equity Investment in a CDE that has received a NMTC allocation from the Fund may claim a five percent tax credit on the investment amount for each of the first three years after the date of the investment and a six percent tax credit for each of the next four years.

In the NOAA, the Fund will address specifically how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

III. Comments Submitted by the Public on the General Guidance

On April 20, 2001, the Fund issued the General Guidance, which described, in general terms, certain aspects of the NMTC Program. The Fund has received numerous comments from organizations and individuals. The following is a discussion of the significant and most frequently commented upon issues related to CDE certification. In the NOAA or in guidance to be issued at a later date, the Fund will summarize written and electronic comments submitted by the public with respect to other application and allocation issues presented in the General Guidance.

A. *General CDE Eligibility Issues*: IRC section 45D(c)(1) defines a CDE as any domestic corporation or partnership if: (A) the primary mission of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons (Primary Mission Test); (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity (Accountability Test); and (C) the entity is certified by the Secretary as a CDE.

(1) One commenter suggested that the Fund clarify that an entity may apply for CDE certification even if the entity does not intend to apply for a NMTC allocation. IRC sections 45D(d)(1)(B) and 45D(d)(1)(D) permit CDEs receiving NMTC allocations to make Qualified Low-Income Community Investments by purchasing a qualifying loan from another CDE or by investing in another CDE. Therefore, an entity may apply for CDE certification regardless of whether such entity intends to apply for a NMTC allocation.

(2) Another commenter recommended that an organization certified as a CDE be allowed to transfer its CDE certification to its Subsidiary or Subsidiaries. IRC section 45D(c)(1) requires that, in order to be certified as a CDE, an entity must meet two tests: the Primary Mission Test and the Accountability Test. Each entity that applies for certification as a CDE must meet both tests regardless of its affiliation with other organizations. In order to make the CDE certification process as efficient as possible, the

Fund will permit an Applicant CDE to submit a single CDE Certification Application for itself and on behalf of its Subsidiaries. Each of the entities must satisfy the Primary Mission Test and the Accountability Test. The CDE Certification Application contains the specific requirements for such consolidated submissions.

(3) Another commenter suggested that the Fund should not require entities to be duly organized prior to submission of a CDE Certification Application. While the Fund recognizes that Applicant CDEs will have to expend resources in order to form a legal entity that is eligible to apply for CDE certification, the Fund is requiring that a CDE be a duly organized entity. Therefore, the Fund will not confer CDE certification to an entity that has not yet been legally established.

(4) One commenter stated that community development banks should receive automatic CDE certification. The Fund recognizes the important role that community development banks play in providing access to credit for Low-Income Persons and Low-Income Communities. However, IRC section 45D(c)(2) only allows for the automatic certification of SSBICs certified by the Small Business Administration, and CDFIs certified by the Fund. A community development bank applying for certification as a CDE will be required to meet the CDE certification criteria set forth in IRC section 45D, this Guidance, and the CDE Certification Application. A community development bank that is certified as a CDFI, however, will be deemed to meet the requirements for CDE certification.

(5) Two commenters requested clarification as to whether an entity organized as a business trust would be eligible for certification as a CDE if such an entity is taxable as a partnership. An entity may apply for certification as a CDE if it is treated either as a domestic corporation or a partnership for Federal income tax purposes.

(6) Several commenters suggested that an applicant whose business structure consists of an entity with a series of funds be deemed eligible for CDE certification as a single entity. The Fund has considered these comments, and has determined that, if an Applicant CDE represents that it is properly classified for Federal income tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If the Applicant CDE represents that it is properly classified for Federal income tax purposes as multiple partnerships or corporations, it may submit a single application on behalf of the entire series of funds, and each fund

must meet the Primary Mission Test and the Accountability Test.

(7) Two commenters requested that the Fund permit organizations that are governmentally controlled entities to qualify for CDE certification. Since the Act does not exclude governmentally controlled entities from being eligible for CDE certification, the Fund will permit governmentally controlled entities that are properly classified as domestic corporations or partnerships for Federal income tax purposes to apply for CDE certification.

B. Primary Mission Test: Pursuant to IRC section 45D(c)(1)(A), a CDE must have a primary mission of serving, or providing investment capital for, Low-Income Communities or Low-Income Persons.

(1) Several commenters suggested that Applicant CDEs be allowed to meet the Primary Mission Test by either indirectly or directly serving, or providing investment capital for, Low-Income Communities or Low-Income Persons. The Fund recognizes the merits of these comments and will permit Applicant CDEs to meet the Primary Mission Test either by directly serving Low-Income Communities or Low-Income Persons (e.g., by providing loans to Low-Income Persons or to individuals or businesses located in Low-Income Communities), or by indirectly serving Low-Income Communities or Low-Income Persons (e.g., by providing loans to or investments in other entities that will in turn provide assistance in Low-Income Communities or assistance to Low-Income Persons).

(2) One commenter requested that the Fund deem an Applicant CDE to have met the Primary Mission Test if the Applicant CDE is a nonprofit organization exempt from federal income tax under IRC § 501(c) or any other IRC provision, and the exempt purpose relates to serving Low-Income Communities or Low-Income Persons. However, the exempt purpose test required for tax-exempt status under the IRC is based on different underlying policies than the Primary Mission Test set forth in IRC section 45D(c)(1)(A). Therefore, all Applicant CDEs will be required to provide the documentation required to meet the Primary Mission Test.

(3) One commenter expressed concern about the basis for the Fund's requirement that an Applicant CDE demonstrate that at least 60 percent of its activities are dedicated to serving, or providing investment capital for, Low-Income Communities or Low-Income Persons. The Fund has determined that the 60 percent threshold is an appropriate standard: it is the standard

currently used by the Fund in certifying CDFIs and it provides the Fund with evidence that a significant portion of the Applicant CDE's activities are targeted to Low-Income Communities or Low-Income Persons.

C. Accountability Test: Pursuant to IRC section 45D(c)(1)(B), a CDE must maintain accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity.

(1) One commenter recommended that the definition of Low-Income Community be expanded to include census tracts in which the median family income does not exceed 80 percent of the national median family income. Because IRC section 45D(e) clearly defines Low-Income Community, the Fund will adhere to such definition, without modification.

(2) Several commenters recommended that the Fund permit Applicant CDEs greater flexibility to meet the Accountability Test. Specifically, the commenters suggested that an Applicant CDE be allowed to meet the Accountability Test by demonstrating that it maintains accountability to residents of Low-Income Communities or Low-Income Persons through the residents' representation not only on governing boards or advisory boards, but alternatively in focus groups and community meetings. The Fund has not accepted this comment because IRC section 45D(c)(1)(B) clearly requires CDEs to maintain "accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity."

(3) One commenter suggested that when evaluating a CDE Certification Application, the Fund should assess the extent to which representatives of Low-Income Communities exert meaningful influence over the policies and procedures of the Applicant CDE. The Fund is mindful of the need to create a mechanism for meaningful and substantive participation and influence in CDEs by representatives of Low-Income Communities and has developed evaluation criteria that will provide the Fund with information on the level of participation and influence held by representatives of Low-Income Communities who serve on advisory or governing boards of a CDE. This criterion is further described in the CDE Certification Application.

(4) Several commenters suggested that the Fund allow Applicant CDEs to demonstrate accountability to Low-Income Communities by representatives other than residents of such Low-

Income Communities (e.g., a clergy member, a small business owner, or a director of a community development corporation). The Fund recognizes that a person may be representative of a Low-Income Community because of the type of work that he or she performs in the Low-Income Community. The Fund provides specific guidance in the CDE Certification Application on the various ways in which an Applicant CDE can meet the Accountability Test through persons who are residents of Low-Income Communities or whose work or community development activities makes them accountable to such residents. However, the Fund seeks to encourage, as much as possible, Applicant CDEs to appoint some Low-Income Persons from Low-Income Communities to advisory and/or governing boards.

(5) Several commenters recommended that a CDE be permitted to meet the Accountability Test if it demonstrates that a majority of its governing or advisory board is accountable to residents of Low-Income Communities. The Fund has considered these comments and has determined that, for a CDE wishing to meet the Accountability Test through its governing board, the Fund will require that a minimum of 20 percent of the members of the governing board be representative of the Low-Income Community. For a CDE wishing to meet the Accountability Test through an advisory board or boards, a minimum of 20 percent of the members of each advisory board must be representative of a Low-Income Community.

(6) One commenter proposed that the Fund allow a CDE that serves multiple geographic areas to satisfy the Accountability Test by establishing local advisory boards that are representative of Low-Income Communities. As proposed, these advisory boards would in turn report to a CDE with a regional or national service area. The Fund agrees with this comment, and provides specific guidance in the CDE Certification Application with respect to establishing multiple advisory boards.

D. Consolidated Applications for Related Entities: Several commenters suggested that the Fund allow a CDE that receives a NMTC allocation to transfer its allocation to its Affiliates or Subsidiaries. One commenter also suggested that the Fund develop a consolidated CDE Certification Application for multiple legal entities that are commonly controlled (i.e., parent and affiliated entities or entities under common control). The Fund has considered these comments and will

permit an entity and its Subsidiaries to apply for CDE certification in a single CDE Certification Application. A for-profit CDE that receives a NMTC allocation may transfer such NMTC allocation to its for-profit Subsidiary or Subsidiaries, provided that said transferees have been certified as CDEs and such transfer is pre-approved in writing by the Fund, in its sole discretion. A nonprofit CDE may apply for and receive a NMTC allocation but must transfer such NMTC allocation to its for-profit Subsidiary or Subsidiaries; said transferees must be certified as CDEs and such a transfer must be pre-approved in writing by the Fund, in its sole discretion.

IV. CDE Certification

A. Applications

As stated above, the Fund is currently accepting applications from entities wishing to be certified as CDEs. CDE Certification Applications will be reviewed on a rolling basis. However, any Applicant CDE interested in applying for a NMTC allocation must submit a CDE Certification Application prior to the deadline for the submission of an application for a NMTC allocation. The Fund anticipates that this deadline for submitting CDE Certification Applications will be 30 days prior to the deadline for submission of applications for NMTC allocations. Both deadlines will be published in the NOAA.

An Applicant CDE may be a for-profit or a nonprofit entity. An Applicant CDE may apply for certification for itself, or it may apply for itself and on behalf of one or more Subsidiaries under a single CDE Certification Application. The CDE Certification Application requires that the Applicant CDE provide, among other items, specific information relating to how it (and, if appropriate, each of its Subsidiaries) meets the Primary Mission Test and the Accountability Test. These requirements are discussed under Section B, Eligibility, below, and in the CDE Certification Application.

Entities that have been certified by the Fund as CDFIs and entities that have been designated by the SBA as SSBICs are deemed to meet the requirements for CDE certification and do not need to complete the CDE Certification Application. Each CDFI and SSBIC desiring CDE certification must indicate to the Fund its desire either (i) by registering on-line with the Fund through the Fund's website at <http://www.cdfifund.gov>, or (ii) by contacting the Fund (see ADDRESSES, above) to have registration documents sent to it.

Notwithstanding the preceding paragraph, Subsidiaries and Affiliates of CDFIs and SSBICs will not be deemed to meet the requirements of CDE certification without completing a CDE Certification Application. A CDFI or SSBIC wishing to apply for certification on behalf of one or more of its Subsidiaries must complete a CDE Certification Application for itself and all Subsidiaries it would like certified, and each Subsidiary must meet the Primary Mission Test and the Accountability Test.

B. Eligibility

(1) **Legal Entity Requirements:** IRC section 45D(c)(1) specifies the eligibility requirements that each entity must meet in order to be certified by the Fund as a CDE. The Fund will not confer CDE certification to an Applicant CDE unless the entity is a duly organized and validly existing legal entity under the laws of the jurisdiction in which it is incorporated or otherwise established. As described above, a CDE is any entity treated as a domestic corporation or partnership, for federal income tax purposes, if: (A) The primary mission of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons; (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the Fund as a CDE. CDFIs certified by the Fund and SSBICs certified by the SBA will be deemed to be CDEs. 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, in accordance with this paragraph. If such an applicant represents that it is properly classified for Federal income tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If the applicant represents that it is properly classified for Federal income tax purposes as multiple partnerships or corporations, then (1) it may submit a single application on behalf of the entire series of funds, and each fund must meet the Primary Mission Test and the Accountability Test; and (2) it may transfer any NMTC allocation it receives to one or more of its funds if the transfer is pre-approved by the Fund. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that the applicant and its related funds are properly classified as a single entity

or as multiple entities for Federal income tax purposes.

(2) *Primary Mission Test*: To comply with the Primary Mission Test, an entity (a) must provide organizational documents that, in the opinion of the Fund, clearly evidence a mission of serving or providing investment capital for Low-Income Communities or Low-Income Persons; and (b) must be able to demonstrate that at least 60 percent of its activities are dedicated to serving Low-Income Communities or Low-Income Persons. An Applicant CDE may meet the Primary Mission Test either by directly serving Low-Income Communities or Low-Income Persons (e.g., by providing loans to Low-Income Persons or to individuals or businesses located in Low-Income Communities), or by indirectly serving Low-Income Communities or Low-Income Persons (e.g., by providing loans or investments to other entities that will in turn provide assistance in Low-Income Communities or assistance to Low-Income Persons). The Fund reserves the right to modify or revise the requirements of the Primary Mission Test if it determines, in its sole discretion, that an Applicant CDE has demonstrated that it meets the Primary Mission Test in a manner other than set forth herein, but that meets the intent and purpose of IRC section 45D(c)(1)(A).

(3) *Accountability Test*: To comply with the Accountability Test, an entity must demonstrate that it maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity. The Fund seeks to encourage, as much as possible, Applicant CDEs to appoint some Low-Income Persons from Low-Income Communities to advisory and/or

governing boards. In the case of a limited partnership, the Accountability Test may be met if residents of Low-Income Communities are represented on the governing or advisory board of the entity's managing general partner or other controlling entity (such as a nonprofit CDFI). For an entity wishing to meet the Accountability Test through its governing board, a minimum of 20 percent of the members of the governing board must be representative of the Low-Income Community. For an entity wishing to meet the Accountability Test through an advisory board or boards, a minimum of 20 percent of the members of each advisory board must be representative of the Low-Income Community. A CDE is not limited in the number of Low-Income Communities that it may serve or propose to serve. A CDE that serves multiple geographic areas will need to demonstrate that it is accountable to the various geographic areas that it serves. The Fund reserves the right to modify or revise the requirements of the Accountability Test if it determines, in its sole discretion, that an Applicant CDE has demonstrated that it meets the Accountability Test in a manner other than set forth herein, but that meets the intent and purpose of IRC section 45D(c)(1)(B).

V. Evaluation of CDE Certification Applications

The Fund will evaluate each CDE Certification Application to determine whether the Applicant CDE (and, if appropriate, each of its Subsidiaries) meets the eligibility requirements outlined above. Those entities that, in the sole determination of the Fund, satisfy the certification requirements shall be certified by the Fund as CDEs.

VI. Certification Monitoring

A CDE certification will continue until it is revoked or terminated by the Fund. To maintain its CDE certification, a CDE must attest annually (or so often as the Fund may deem necessary) that the CDE (and, if appropriate, each of its Subsidiaries) continues to meet the Primary Mission Test and the Accountability Test. The Fund reserves the right to review and verify said attestation and will revoke or terminate the CDE certification if the Fund, in its sole discretion, determines that the entity no longer meets CDE certification requirements. The Fund may revoke or terminate the CDE certification of any entity that receives designation as a CDE based on its status as a CDFI or SSBIC if it ceases to be designated as a CDFI or SSBIC.

A CDE that is awarded a NMTC allocation and/or is a recipient of a Qualified Low-Income Community Investment from another CDE that has been awarded a NMTC allocation will also be required to demonstrate, on an annual basis (or so often as the Fund may deem necessary), that at least 60 percent of its activities are directed to Low-Income Communities or Low-Income Persons. This is in addition to any other reporting requirements imposed by the IRS or the Fund. Such other reporting requirements will be described more fully in IRS regulations and/or in the NOAA or subsequent guidance to be issued by the Fund.

Authority: Consolidated Appropriations Act of 2001, Pub. L. 106-554; 31 U.S.C. 321.

Dated: December 17, 2001.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

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