Key to "Reason for Delay"

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on January 13, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application number	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
14167–M	Trinityrail, Dallas, TX	4	02–28–2009
8723–M	Alaska Pacific Power Company, Anchorage, AK	1	02–28–2009
New Special Permit Applications			
14668–N	Lincoln Composites, Lincoln, NE	1	02–28–2009
14689–N	Trinity Industries, Inc., Dallas, TX	2, 3	02–28–2009
14733–N	GTM Technologies, Inc., San Francisco, CA	1, 3	03–31–2009

[FR Doc. E9–1010 Filed 1–21–09; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

New Markets Tax Credit Program

Funding Opportunity Title: Notice of Allocation Availability (NOAA) Inviting Applications for the CY 2009 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 April 8, 2009. Applications sent by mail, facsimile or other form will not be accepted. The Community Development Financial Institutions Fund (the Fund) will not accept applications in paper form, other than the assigned signature page and certain paper attachments (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 March 3, 2009 (see Section III of this NOAA for more details).

Executive Summary: This NOAA is issued in connection with the calendar year 2009 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 (Pub. L. 106–554) and amended by section 221 of the American Jobs Creation Act of 2004 (Pub. L. 108–357), section 101 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 108–357), and Division A, section 102 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432) (the Act). Through the NMTC Program, the Fund provides authority to CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in Low-Income Communities. Through this NOAA, the Fund announces the availability of $3.5 billion of NMTC authority authorized by the Act.

In this NOAA, the Fund specifically addresses 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 changes:*

1. *Allocation Amounts.* As described in Section IIA, the Fund anticipates that it will provide allocation awards of not more than $100 million per applicant. This current $100 million cap is a reduction from the 2008 round cap of $125 million. In the 2008 allocation round, 70 entities received allocations totaling $3.5 billion. The Fund reduced the cap this year to better ensure a wider distribution of awards to the most highly qualified applicants.

2. *Prior QEI Issuance Requirements.* In order to be eligible to apply for NMTC allocations in the 2009 round, as described in Section III.A.2(a), applicants that have received NMTC allocation awards in previous rounds are required to meet minimum Qualified Equity Investment (QEI) issuance thresholds with respect to their prior-year allocations. The CDFI Fund has adjusted some of these QEI requirements, in response to credit market conditions at the time of the publication of this NOAA.

B. *Program guidance and regulations:* This NOAA provides guidance for the application and allocation of NMTCs for the seventh 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, notices and other publications; and (iii) the application and related materials for this seventh 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, IRC § 45D or the IRS regulations.

II. Allocation Information

A. *Allocation amounts:* Pursuant to the Act, 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). Pursuant to this NOAA, the Fund anticipates that it will not issue more than $100 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 should the Fund deem it appropriate. In order to receive an allocation in excess of the $100 million cap, an applicant, at a minimum, will need to demonstrate that: (i) No part of its strategy can be successfully implemented without an allocation in excess of the applicable cap; 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 for the $3.5 billion in general NMTC allocation authority.

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 March 3, 2009. 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; however, it must register as a CDE on the Fund's Web site on or before 5 p.m. ET on March 3, 2009.

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 the request must be received by the Fund by 5 p.m. ET on April 8, 2009. 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* 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. For purposes of this section, the Fund will consider an Affiliate to be any entity that meets the definition of Affiliate as defined in the NMTC allocation application, or any entity otherwise identified as an Affiliate by the applicant in its NMTC allocation application materials. Prior awardees are eligible to apply under this NOAA, except as follows:

(a) *Prior Allocatees and Qualified Equity Investment (QEI) issuance requirements:* The following describes the QEI issuance requirements applicable to prior Allocatees, including those Allocatees that received allocations pursuant to special allocation authority under the Gulf Opportunity Zone Act of 2005 (''GO Zone Allocatees'').

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 is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has issued and received funds in-hand (the term ''funds in-hand'' does not include committed funding) from its investors for 95 percent of its QEIs relating to its CY 2001–2002 NMTC Allocation.

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 is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand from its investors for at least 80 percent of its QEIs relating to its CY 2003–2004 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 60 percent of its QEIs and that 100 percent of its total CY 2003–2004 NMTC Allocation has been exchanged for funds in-hand from investors, 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 is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand from its investors for at least 60 percent of its QEIs relating to its CY 2005 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 50 percent of its QEIs and that at least 80 percent of its total CY 2005 NMTC Allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior Allocatee in the fourth round of the NMTC Program (CY 2006) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand from its investors for at least 50 percent of its QEIs relating to its CY 2006 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 40 percent of its QEIs and that at least 80 percent of its total CY 2006 NMTC Allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior Allocatee (with the exception of a GO Zone Allocatee) in the fifth round of the NMTC Program (CY 2007) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand from its investors for at least 50 percent of its QEIs relating to its CY 2006 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 20 percent of its QEIs and that at least 60 percent of its total CY 2007 NMTC Allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior GO Zone Allocatee in the fifth round is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand

from its investors for at least 20 percent of its QEIs relating to its CY 2007 NMTC Allocation.

A prior Allocatee (with the exception of a Rural CDE Allocatee) in the sixth round of the NMTC Program (CY 2008) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand from its investors for at least 30 percent of its QEIs relating to its CY 2008 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 10 percent of its QEIs and that at least 30 percent of its total CY 2008 NMTC Allocation has been exchanged for funds in-hand from investors, or has been committed by its investors. A Rural CDE is not required to meet the above QEI issuance and commitment thresholds with regard to its 2008 NMTC allocation award.

In addition to the requirements described above, an entity is not eligible to receive a NMTC Allocation pursuant to this NOAA if an Affiliate of the applicant is a prior Allocatee and has not met the requirements for the issuance and/or commitment of QEIs as set forth above for the Allocatees in the prior allocation rounds of the NMTC Program.

Notwithstanding the above, if an applicant has received multiple NMTC allocation awards between the second round (CY 2003–2004) and the sixth round (CY 2008), the applicant shall be deemed to be eligible to apply for a NMTC Allocation pursuant to this NOAA if the applicant is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has issued and received funds in-hand from its investors for at least 60 percent of its QEIs relating to its cumulative allocation amounts from these prior NMTC Program rounds. Applicants that have received GO Zone allocations under the fifth round (CY 2007) may choose to exclude such allocations from this cumulative calculation, provided that the Allocatee has issued and received funds in-hand from its investors for at least 20 percent of its QEIs relating to its CY 2007 GO Zone allocation. Rural CDEs that received allocations under the sixth round (CY 2008) may choose to exclude such allocations from this cumulative calculation.

For purposes of this section of the NOAA, the Fund will only recognize as ''issued'' those QEIs that have been finalized 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 QEI that they issue to an investor in exchange for funds in-hand. For purposes of this section of the NOAA, ''committed'' QEIs 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 QEI; (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 June 17, 2011.

The applicant will be required, upon notification from the Fund, to submit adequate documentation to substantiate the required issuances of and commitments for QEIs.

Applicants should be aware that these QEI issuance requirements represent the minimum threshold requirements that must be met in order to submit an application for assistance under this NOAA. As stated in Section V.B.2 of this NOAA, the Fund reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process—including an applicant's track record of raising QEIs and/or deploying its QLICIs.

Prior Allocatees that require any action by the Fund (*e.g.*, certifying a subsidiary entity as a CDE; adding a subsidiary CDE to an Allocation Agreement; etc.) in order to meet the QEI issuance requirements above must submit their requests by no later than April 3, 2009 in order to guarantee that the Fund completes all necessary approvals prior to June 17, 2009. 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.

(b) *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an applicant if the applicant or any of its Affiliates 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 of the noncompliance, in the sole determination of the Fund. Further, if an Affiliate of the applicant 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 of the noncompliance, in the sole determination of the Fund.

(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 an Affiliate of the applicant is a prior Fund awardee or Allocatee under any Fund program and has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s) and the Fund has provided written notification of such determination. Such entities will be ineligible to apply for an award pursuant to this NOAA so long as the Applicant's, or its Affiliate's, prior award or allocation remains in default status or such other time period as specified by the Fund in writing.

(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 within the 12-month period prior to the application deadline of this NOFA.

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 an Affiliate of the applicant 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 within the 12-month period prior to the application deadline of this NOAA.

(f) *Undisbursed award funds:* 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 award funds (defined below) under said prior award(s), as of the applicable application deadline of this NOAA.

Furthermore, an entity is not eligible to apply for an award pursuant to this NOAA if an Affiliate of the applicant is a prior Fund Awardee under any Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOAA. In a case where an Affiliate of the applicant is a prior Fund Awardee under any Fund program and has a balance of undisbursed award funds under said prior award(s) as of the applicable 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 award funds.

For purposes of the calculation of undisbursed award funds for the BEA Program, only awards made to the Applicant (and any Affiliates) three to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included (''includable BEA awards''). Thus, for purposes of this NOAA, undisbursed BEA Program award funds are the amount of FYs 2004, 2005 and 2006 awards that remain undisbursed as of the application deadline of this NOAA.

For purposes of the calculation of undisbursed award funds for the CDFI Program and the Native Initiatives Funding Programs, only awards made to the Applicant (and any entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant, as determined by the Fund) two to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included (''includable CDFI/NI awards''). Thus, for purposes of this NOAA, undisbursed CDFI Program and Native Initiative (NI) awards are the amount of FYs 2004, 2005, 2006 and 2007 awards that remain undisbursed as of the application deadline of this NOAA.

To calculate total includable BEA/CDFI/NI awards: amounts that are undisbursed as of the application deadline of this NOAA cannot exceed five percent (5%) of the total includable awards. Please refer to an example of this calculation in the 2009 Allocation Application Q&A document, available on the Fund's Web site.

The ''undisbursed award funds'' calculation does not include: (i) Tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOAA; (iii) any award funds for an award that has been terminated, in writing, by the Fund or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the Fund with a complete disbursement request at least 30 business days prior to the application deadline of this NOAA.

(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 and all disbursement questions should be directed to the Fund's Financial Manager. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

Both the Compliance Manager and the Financial Manager may 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 April 6, 2009 (one day 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 April 6, 2009 until after the funding application deadline of April 8, 2009.

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.

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. However, the Subsidiary entities must be certified as CDEs by the Fund, and enjoined as parties to the Allocation Agreement at closing or by amendment to the Allocation Agreement after closing. Before the NMTC Allocation transfer may occur it must be pre-approved by the Fund, in its sole discretion.

The Fund strongly encourages a non-profit applicant to submit a CDE certification application to the Fund on behalf of the Subsidiary within 30 days after the non-profit applicant receives a Notice of Allocation from the Fund; as such Subsidiary must be certified as a CDE prior to entering into an Allocation Agreement with the Fund. A non-profit applicant that fails to certify one or more for-profit subsidiaries within 30 days of receiving a Notice of Allocation

from the Fund is subject to the Fund rescinding the award.

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 application 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 and/or managed as a common enterprise that, in fact or effect, may be viewed as a single entity; (ii) whether the applications submitted by separate entities contain significant narrative, textual or other similarities, and (iii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related, in fact or effect, they may be viewed as substantially identical applications. In such cases, the Fund reserves the right either to reject all applications received from all such entities; to select a single application as the only one that will be considered for an allocation; and, in the event that an Application is selected to receive an allocation award, to deem certain activities ineligible.

(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 QEI 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 must submit applications electronically under this NOAA, through the Fund Web site. Following the publication of this NOAA, the Fund will make the electronic allocation application available on its Web site at *http://www.cdfifund.gov.* Applications sent by mail, facsimile or other form will not be accepted. The Fund will not accept applications in paper form, other than the signed signature page and certain paper attachments, as specified below and in the application.

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, it's Controlling Entity. Electronic applications without a valid EIN are incomplete and cannot be transmitted to the Fund. 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 only submit applications under this NOAA electronically. Applications sent by facsimile or by e-mail will not be accepted. 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 will 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.

D. *Application submission dates and times:*

1. Application Deadlines

(a) *Electronic applications:* Must be received by 5 p.m. ET on April 8, 2009. Electronic applications cannot be transmitted or received after 5 p.m. ET on April 8, 2009. In addition, applicants that submit electronic applications must separately submit (by mail or other courier delivery service) a signature page, and all other required paper attachments. The signature page and additional documents must be postmarked on or before April 10, 2009. 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. If the signature page is not postmarked by the deadlines specified above, the application will be rejected. 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) *Postmark:* 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 a 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 December 28, 2004) and related guidance. Please see Section I, above, for the Programmatic Changes of this NOAA.

G. *Other Submission Requirements:*

1. *Addresses:* 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. The signature page or attachments will not be accepted at the Fund's offices in Washington, DC. Signature pages or attachments received in the Fund's offices will be rejected. 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 according 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) When 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 QEIs; 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 (QLICIs) 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 QEIs; (ii) has identified, or has a process for identifying, potential transactions; (iii) demonstrates a likelihood of issuing QEIs and making the related QLICIs 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 one 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 QLICIs in one or more businesses in which persons unrelated (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) to an applicant (or the applicant's subsidiary CDEs) hold the majority equity interest. Applicants may earn points for one 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 its QEIs 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 QEIs; (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, reviewers will consider the activities that have occurred to date with respect to the prior allocation(s).

4. *Capitalization Strategy* (25-point maximum): When 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 QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations, 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 QEIs 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 QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations. 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. 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.

1. *Phase 1:* 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.

2. *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 in Phase 2 as in Phase 1. The Fund will award allocations in the order of this ''Final Rank Score,'' 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. Most notably, in the case of applicants (or their Affiliates) that are prior year allocatees, the Fund will review the activities of the prior year allocatee to determine whether the entity has: (a) Effectively utilized its prior-year allocations; and (b) substantiated a need for additional allocation authority.

3. *Outstanding Reports.* In the case of an applicant, or an Affiliate of the applicant, 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 its Affiliate's) failure to meet the reporting deadlines set forth in any assistance, award or Allocation Agreement(s) with the Fund during the entity's two complete fiscal years prior to the application deadline of this NOAA (generally FY 2007 and 2008).

C. *Allocations serving Non-Metropolitan counties.* As provided for under Section 102(b) of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432), the Fund shall ensure that non-metropolitan counties receive a proportional allocation of Qualified Equity Investments (QEIs) under the NMTC Program. To this end, the Fund will ensure that the proportion of allocatees that are Rural CDEs is, at a minimum, equal to the proportion of applicants in the Phase 2 review pool that are Rural CDEs; and ensure that at least 20 percent of the QLICIs to be made using QEI proceeds are invested in Non-Metropolitan counties. A Rural CDE is one that has over the past five years dedicated at least 50 percent of its activities to Non-Metropolitan counties and has committed that at least 50 percent of its NMTC activities will be conducted in such areas. Non-Metropolitan counties are counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 99–04 (Revised Statistical Definitions of Metropolitan Areas (MAs) and Guidance on Uses of MA Definitions) and applied using 2000 census data.

Applicants that meet the minimum scoring thresholds will be advanced to Phase 2 review and will be provided with ''preliminary'' awards, in descending order of Final Rank Score, until the $3.5 billion in allocation authority is expended. Once these ''preliminary'' award amounts are determined, the Fund will then analyze the allocatee pool to determine whether the two Non-Metropolitan proportionality objectives have been met.

The Fund will first examine the ''preliminary'' awards and allocatees to determine whether the percentage of allocatees that are Rural CDEs is, at a minimum, equal to the percentage of applicants in the Phase 2 review pool that are Rural CDEs. If this objective is not achieved, the Fund will provide awards to additional Rural CDEs from the Phase 2 pool, in descending order of their Final Rank Score, until the appropriate percentage balance is achieved. In order to accommodate the additional allocatees within the $3.5 billion allocation limitations, a formula reduction will be applied uniformly to the allocation amount for all allocatees in the pool.

The Fund will then ensure that the pool of allocatees will, in the aggregate, invest at least 20 percent of their QLICIs (as measured by dollar amount) in Non-Metropolitan counties. The Fund will first apply the ''minimum'' percentage of QLICIs that allocatees indicated in their applications would be targeted to Non-Metropolitan areas to the total allocation award amount of each allocatee (less whatever percentage the allocatee indicated would be retained for non-QLICI activities), and total these figures for all allocatees. If this aggregate total is greater than or equal to 20 percent of the QLICIs to be made by the allocatees, then the pool is considered balanced and the Fund will proceed with the allocation process. However, if the aggregate total is less than 20 percent of the QLICIs to be made by the allocatees, the Fund will consider requiring any or all of the Allocatees to direct up to the ''maximum'' percentage of QLICIs that they indicated would be targeted to Non-Metropolitan counties; taking into consideration their track record and ability to deploy dollars in Non-Metropolitan counties.

D. Questions: All outstanding reports or compliance questions should be directed to the Compliance Manager by e-mail at *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 April 6, 2009. The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. ET on April 6, 2009 until after the funding application deadline of April 8, 2009.

E. *Right of rejection:* 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 Affiliate of the applicant 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 an Affiliate of the applicant that 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 reserves the right to reject a NMTC allocation application if information (including administrative errors) comes to the attention of the Fund that adversely affects an applicant's eligibility for an award, 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 Affiliates of applicants) 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 Affiliates of applicants) 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 adversely affects the Allocatee's eligibility for an award, 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 Affiliate of an Allocatee, 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 or thereafter, 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 QEIs 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 Allocatee 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 an Affiliate of an Allocatee 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 QEIs 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 QEIs 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 an Affiliate of the Allocatee 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 QEIs 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 2007 or 2008 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 QEIs to investors. Furthermore, 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 Affiliate of the Allocatee 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 2007 or 2008 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 QEIs 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 are not 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 QEIs may be used, including the dollar amount of QLICIs that must be invested in Non-Metropolitan counties; (iv) the time period by which the applicant may obtain QEIs 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 the jurisdiction(s) in which it 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 QLICIs, 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 QEI raised through its NMTC Allocation to make QLICIs. 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 April 6, 2009. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. ET on April 6, 2009 until after the allocation application deadline of April 8, 2009. 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.* 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*, 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 Awards Manager by e-mail at *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.*

VIII. Information Sessions

In connection with this NOAA, the Fund may conduct multiple information sessions around the country at locations to be announced, as well as an information session that will be produced in Washington, DC and broadcast over the internet via Webcasting. For further information on these upcoming information sessions, 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.

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Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

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