March 1, 2021

Mr. Christopher Allison
NMTC Program Manager
CDFI Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Comments on the CY 2021 NMTC Allocation

Dear Mr. Allison:

I am writing on behalf of the New Markets Tax Credit Coalition ("the Coalition") in response to the CDFI Fund's December 29, 2020 request for comments on the New Markets Tax Credit (NMTC) application.

Formed in 1998, the Coalition is a national membership organization that advocates in support of the NMTC Program. The Coalition's mission is to ensure that its members, including Community Development Entities (CDEs), investors, and other community development professionals, can effectively use the NMTC to encourage investment and advance economic revitalization efforts in low-income urban and rural communities across the country.

We appreciate the opportunity to comment on the NMTC application and stand ready to answer any follow-up questions or connect you with practitioners for additional examples and context.

Many of our recommendations are meant to help address the high barrier for entry into the NMTC program. The NMTC application requires a great deal of time, planning, and staff resources. Most applicants report they are spending hundreds of hours preparing and reviewing their application submissions.

In particular, there is great interest among NMTC practitioners in increasing the participation of minority and Native-led CDEs in the NMTC program. The Coalition is concerned that the application does not provide adequate avenues for new and emerging minority-led CDEs to participate in the Credit.

We urge the CDFI Fund to implement new policies and initiatives to increase the capacity and new and emerging CDEs led by people of color and their participation in the program. We also encourage the CDFI Fund to review its application scoring practices to ensure they promote racial equity and support financial institutions accountable to the communities of color they serve.

The Coalition, along with others, looks forward to ongoing discussions with the CDFI Fund on these important matters. Thank you for all the great work you do in support of America's low-income communities.

GENERAL COMMENTS ON THE APPLICATION

REDUCING RESPONDENT BURDEN BY CONSOLIDATING MATERIALS

To the extent possible, merge the NOAA, Application, and FAQs into one application document. Most FAQs belong in the application as a NOTE.

The application instructs applicants to consult the Glossary of Terms for the definition of specific terms and phrases used throughout the application. We recommend that the CDFI Fund develop and release a technology enhancement so that the definition of a term is displayed when the applicant hovers over the term within the electronic application instead of appending a separate Glossary of Terms.

These enhancements would reduce the burden of the collection and review of information for accuracy for applicants, and particularly for new applicants.

ISSUE: PRIOR CDE CERTIFICATION

The application requires the applicant to be certified as a CDE by the time the NOAA for the allocation round is published. This eligibility requirement is prohibitive for new applicants, and we recommend the removal of this requirement or that the CDFI Fund provides notice of the deadline to submit a CDE Certification Application prior to publication of the NOAA. The CDFI Fund should give 90 days of advanced notice for the release of the NOAA.

ISSUE: DESCRIBING MULTI-COMPONENT PROJECTS

A central theme of comments from Coalition members was that the Community Outcomes section provides insufficient space to describe the diverse range of outcomes they seek to achieve with an NMTC allocation. In particular, it is challenging to fit mixed-use and multi-component projects into the categories provided and the space allotted. More recommendations on this are included in the section on Question 26.

COMMENTS ON QUESTION 17 (PROJECTED NMTC INVESTMENTS)

ISSUE: ELIMINATION OF STRATEGY TO IDENTIFY POTENTIAL BORROWERS

We recommend against the elimination of "The *Applicant*'s strategy for identifying potential borrowers, investees, or other customers in *Low-Income Communities*" and propose keeping it as a standalone bullet for the following reasons:

- High-impact projects rarely "walk in the door." They require effort and intentionality to assess their readiness for NMTC financing. The application should encourage CDEs to deepen engagement and relationship building with community partners and stakeholders. Elimination of this part of the question would significantly disadvantage local CDEs work on the ground to identify the projects that fit within broader community development efforts.
- Elimination of this bullet point would increase the homogeneity in project sourcing.

- Responding to his bullet does not create an extra burden or cost for applicants. It helps the CDFI Fund better understand the relationships and networks of different CDEs within the NMTC program.

ISSUE: ADDED WORDING AROUND MINIMUM AND MAXIMUM DOLLAR AMOUNTS

We request that the proposed added wording around "minimum and maximum dollar amounts of proposed NMTC investments" in the draft question be clarified or removed. We are unsure of the intent or how CDEs should respond. CDEs' pipelines can include many times the amount of NMTC allocation requested. It is difficult to imagine how CDEs would provide meaningful data in answering this question.

ISSUE: MORE SPACE NEEDED IN QUESTION 17(C)

We request an increase in the number of characters for 17c to 10,000, assuming that the question about identifying potential borrowers is retained. This, combined with the second new bullet in 17c (including selection criteria and capital needs), will require more characters. We would also like to see this bullet expanded to allow the applicant to discuss how the pipeline projects fit into the strategy and goals for the use of the allocation. With the separation of the project summaries into the table, there is no place for this important discussion.

ISSUE: ADDITION OF QUESTION 17(D)

We disagree with the addition of 17(d). The proposed question implies a bias toward CDEs being the sole funder of their transactions unless the multi-CDE structure provides specific, quantifiable benefits to the borrower. There are broad benefits to multi-CDE projects that may not be quantifiable.

Successful community development efforts benefit from the strengths and perspectives of multiple community partners. When CDEs, investors, CDFIs, state and local governments, foundations, community leaders, and other stakeholders work together, the benefits are not always easily quantifiable. The addition of this question would discourage partnerships and communication between CDEs. It would encourage CDEs to compete more aggressively and secretively against each other to secure sole-rights to fund a project.

> Example 1: A large, $50 million project secures a CDE's final $30 million in allocation, but the project is delayed, and construction costs increase by $2 million. Typically, the borrower could find another CDE to fill that gap with additional allocation. However, the addition of this question would discourage third-party CDEs from participating in such a project.
>
> Example 2: Many CDEs recently needed to source more NMTC allocation than expected in projects because NMTC equity pricing has dropped. Projects' financing gaps have also increased during the Covid pandemic and the associated economic collapse.

COMMENTS ON NEW PROPOSED QUESTION 18 (DUE DILIGENCE)

This newly proposed question would create unnecessary and counterproductive burdens on respondents and borrowers seeking allocation. It would tilt the program toward borrowers with more resources.

- **Duplicative Question:** If the CDFI Fund would like more detail on the processes for project underwriting, this information belongs in Part 3. For example, the first part of the question asks for the applicant's processes of conducting financial/operational due diligence. This is similar to the newly added Question 29c, which is backward-looking. The process of conducting diligence is far more relevant to procedures and staff capacity than it is to the applicant's business strategy. We recommend instead modifying Question 29c to be both forward and backward-looking and eliminating this concept from Question 18. Shouldn't the track record of CDE investment performance (for example, default and delinquency rates) be more indicative of a CDE's ability to assess financial viability than the process and documentation?

- **Mismatch in timing:** The second part of the question asks for specific examples of diligence the applicant has conducted on a project within Table A5. Given the long lead time between the application deadline and the announcement of awards, applicants must identify projects early in their development cycles. Project information is often schematic, and therefore, much of the detailed due diligence cited in the proposed question is not yet available. The question fits awkwardly alongside the reality that "pipeline" projects included in NMTC applications are typically in their preliminary stages, 12 to 18 months away from being ready to close. As a result, the proposed new questions would pressure applicants to ask for substantially more diligence information earlier in the life cycle of pipeline projects than would be typical or appropriate. For example, construction cost estimates are often preliminary and not based on detailed contractor estimates at these early stages. Environmental investigations may not be fully complete and/or the project sponsor may still be in the process of obtaining site control. Market studies and/or tenant LOIs may not be sufficiently available for applicants to perform rigorous cash flow underwriting.

- Including this premature question regarding diligence would create an unnecessary burden on the Applicants and generate an additional cost for the sponsors of projects seeking NMTC funding, who would be forced to prematurely generate underwriting information for CDEs who do not yet have certainty that they will possess NMTC allocation that could fund the project.

- We are concerned these changes may bias readers towards Applicants who perform more "traditional" underwriting processes such as those utilized by mainstream financial institutions and disadvantage less traditional but highly competent CDEs. Many CDEs, including CDFIs, use a less "traditional" underwriting process to serve low-income and Black, Indigenous, and People of Color ("BIPOC") owned or controlled businesses and community-based organizations supporting these communities. The resulting dynamic would favor more QALICBs with more resources and would tilt the program toward conventional financing.

- Requiring an explanation of the due diligence to examine the QALICB's ability to remain financially and operationally viable **after** the 7-year compliance period is neither appropriate from a business perspective nor relevant to the NMTC risk.

COMMENTS ON QUESTION 19 (INNOVATIVE USES)

ISSUE: INVESTING IN UNRELATED CDES THAT DO NOT HAVE NMTC ALLOCATIONS

Proposal: Change the criteria as shown below (additions highlighted)

> "Investing in Unrelated ***Minority-owned or Minority-controlled or Native American-owned or Native American-controlled*** CDEs that do not have NMTC Allocations;"

As stated previously, there are significant barriers to entry for participation in the NMTC program. One way emerging CDEs have established an NMTC track record is through a loan or investment from an existing CDE with NMTC Allocation. This change could have a near-term positive impact by encouraging established CDEs to build the track record of a minority or Native American-controlled CDE.

To maximize the potential impact of the proposed change to Question 19 described herein, the CDFI Fund should consider adjusting scoring instructions for Phase 1 reviewers and provide a note to Questions 13b and 19 indicating that CDEs do not need a track record of investing or lending to other CDEs in order to include this in their projected NMTC investments or to propose it as an innovative use in Question 19. We also recommend a higher character count for this question to accommodate a thorough description of an applicant's strategy for mentoring and supporting emerging CDEs.

OTHER INNOVATIVE USES

If the CDFI fund wants to encourage innovation, they should also allow CDEs to describe an innovative use of the NMTC that is not on the existing list. Over the years, NMTC practitioners have put the NMTC to use in projects they never thought possible through innovative financing models.

Absent the inclusion of an "Other Innovative Uses" question, we hope the CDFI Fund will open up a dialogue on additional innovation concepts, particularly given the unprecedented economic challenges posed by the Covid epidemic.

COMMENTS ON QUESTION 20 (PRIOR PERFORMANCE)

ISSUE: MEANING/INTENT OF NEW COMPONENT

We are unclear on the meaning/intent of the proposed new component of Question 20(b):

> "If Table B1 includes non-NMTC direct loans/investments deployed by the Applicant or Controlling Entity, describe the three largest sources of capital used for such loans/investments and the types of businesses financed."

The focus on capital sources seems to overlap with application Section 4 (Raising Capital). If the intent of the proposed new language is simply to require applicants to discuss in greater detail the three most prevalent types of loans/investments that are included in their non-QLICI activity, we request that the question ask this more directly.

ISSUE: SCOPE OF CONTROLLING ENTITY TRACK RECORD TO BE INCLUDED

In circumstances where the applicant's financing activity is controlled by and coordinated with a discrete division of the Controlling Entity, we request that applicants be allowed to focus on that division for the purposes of responding to Question 20 and populating B1. For applicants with large Controlling Entities with many divisions, subsidiaries, and product lines, the process of populating Table B1 is quite burdensome. It can include substantial activity that is not particularly relevant to the applicant's QLICI financing activities. This issue will be exacerbated if applicants are required to go into greater detail about the Controlling Entity's three largest lending/investment programs, even if those programs are not particularly germane to NMTC lending.

Example: Applicant ABC's Controlling Entity has a large amount of "QLICI-like" activity (e.g., traditional loans to businesses or real estate projects) that are not particularly relevant to NMTC activity. However, a meaningful subset of Applicant ABC's Controlling Entity's activity is community development loans/investments that are highly relevant to Applicant ABC's NMTC strategy. Additionally, these community development activities are concentrated within a division of the Controlling Entity responsible for staffing and operating Applicant ABC. In this hypothetical situation, Applicant ABC would be required to include a significant amount of non-relevant activity in Table B1 because applicants are required to report all eligible activity of their Controlling Entities. Applicant ABC would also need to devote substantial space in Q20 to describing the Controlling Entity's less relevant activities if they are technically QLICI-eligible and represent the largest overall volumes of activity.

This proposed change simplifies and improves documentation of the Controlling Entity's relevant track record in Question 20 and Table B1. It would refocus the question on the matter-at-hand: whether an Applicant and/or its Controlling Entity has a substantial track record of financing activities similar to its proposed QLICI activities. It would also provide applicants without a long history of NMTC lending with greater opportunities to present their analogous track records, lowering the significant barriers to entry for new industry participants.

COMMENTS ON QUESTIONS 20 AND 21 (TRACK RECORD)

These questions do not allow applicants to discuss the experience of individuals in targeting Disadvantaged Businesses or Disadvantaged Communities in order to establish a successful track record of providing products and services; instead, applicants are advised to discuss individual qualifications in the Management Capacity section of the application which is not scored. Many Coalition members have recommended that that the CDFI Fund remove this restriction so that new applicants can highlight the relevant deployment experience of staff, principals, board members, and other management individuals. This change would support new applicants that do not have a record of prior NMTC loans or

investments or non-NMTC loans or investments relevant to the proposed NMTC activities but that have demonstrated a strong, successful track record beyond that of the applicant or controlling entity.

Other Coalition members suggested that this change would create additional complexity as it could potentially require the submission of a material events form if there is staff roll-over after an allocation is received. There was also a concern that a CDE could simply bring in a single person at the last minute to boost their capacity at the surface level in the application rather than the CDE having the true institutional experience and 'commitment' to this endeavor.

The Coalition does not wish to create additional complexity, and we did not reach a consensus on this issue. However, we do hope that the CDFI Fund will consider the difficulties faced by new CDEs led and managed by teams with significant experience serving Disadvantaged Businesses and Communities, but without an organizational track record.

COMMENTS ON QUESTION 24 (NOTABLE RELATIONSHIPS)

We request a revision of this question below that we believe would capture a greater range of potential conflicts of interest, appearances of conflicts of interest, and/or impacts on the amount of NMTC benefit reaching the QALICB.

SUGGESTED REVISION TO PREAMBLE (ADD HIGHLIGHTED TEXT)

> Describe any potential situations in which the *applicant,* its *Affiliates* (including the *Controlling Entity*) or its personnel (including governing or advisory board members, consultants, etc.) involved in identifying NMTC investments or making investment decisions on behalf of the *applicant* will also receive financial benefits, describing the amount from the QALICBs, Investment Fund, CDE or Sub-CDE financed with the applicant's award or QLICIs, *affiliates of such QALICBs, and/or other participants in the transactions resulting in Applicant's QLICIs*.

SUGGESTED REVISION TO 24(D) (ADD HIGHLIGHTED TEXT)

> Will the *applicant*, its *Affiliates,* or its personnel (including governing or advisory board members, consultants, etc.) provide professional services (project development, real estate agent, property manager, general contractor, etc.) or capital outside of the *QLICI* for the *QALICB*, ***affiliates of the QALICB and/or other participants in the transactions resulting in Applicant's QLICIs. Describe fees for such professional services.***

ISSUE: CLARIFY NOTES FOR Q24

The new notes regarding Q24 are unclear. The first note indicates that Q24 will not be evaluated and scored in Phase I; however, the next note indicates that the "Applicant will be evaluated favorably…" It would be helpful to clarify whether and when (Phase 1 or Phase 2) this evaluation will occur.

Q24 Notes pasted below for reference (emphasis added):
NOTE: *Question #24 will not be evaluated and scored in Phase I of Allocation Application reviews.* Therefore, this question will not be used to determine

whether an Applicant scored highly enough to receive consideration for an NMTC Allocation.

NOTE: If the Applicant describes instances where the Applicant, Affiliates, or personnel will receive financial benefits from the QALICBs financed, the *applicant will be evaluated favorably* if it demonstrates that these relationships would provide clear benefits (e.g. cost savings, lower lease rates, or fees) for unaffiliated end-users (e.g., QALICBs, tenant businesses, or residents) in Low-Income Communities (LICs).

COMMENTS ON QUESTION 26 (COMMUNITY OUTCOMES)

ISSUE: REMOVAL OF HEALTHY FOODS FINANCING

The application removes healthy foods financing the list of community outcomes. Coalition members had different reactions to this change.

Some strongly opposed the elimination of the Healthy Foods Financing option and proposed to add "food banks and pantries" as example projects for the following reasons:

- By eliminating healthy foods as a category in Q25A and including healthy foods concepts in the already-crowded Commercial and Community Goods questions, the application would reduce the quality, utility, and clarity of the information collected related to healthy foods.
- Applicants with a holistic, healthy foods-focused strategy (for example, both retail access and nonprofit-based food distribution) would be forced to either 1) split up their impact discussions into Commercial and Community Goods components even if they don't have an adequately concentrated track record in either category; or 2) forego their healthy food-focused activities to avoid taking a competitive risk in the application process.
- With so many Americans facing food insecurity (an estimated 50 million per Feeding America), the NMTC is an important financing tool to support both traditional grocery/retail projects and also food banks, food pantries, and other providers of no-or-low-cost food to LIPs. Access to healthy foods is foundational for community development. The elimination of these questions would disincentivize CDEs from financing projects that address a problem that plagues nearly 1 out of every 6 Americans.
- Healthy foods financing has been an incredibly important part of the response to Covid. Ensuring safe access to fresh foods during a pandemic is a top priority for many communities and their overwhelmed food banks and emergency assistance organizations.

Other CDEs commented that the inclusion of healthy foods financing as its own category is arbitrary and that it belongs in community goods and services (along with an expanded character count).

And finally, some CDEs supported the elimination of health foods financing as a category because it disadvantages CDEs who (1) finance multi-component social service projects that include food pantries (2) lack a strong track record of financing healthy foods projects. These CDEs would like the opportunity

to describe how they hope to include a focus on food insecurity as part of a larger array of supportive services for low-income communities.

The Coalition's research shows a recent increase in the number of multi-component projects, hubs for social service delivery, and other innovative uses of the NMTC that create a broad range of positive community outcomes. W**e urge the CDFI Fund to consider how applicants might better describe projects that generate a diverse array of community impacts**. We believe these sorts of innovative, multi-faceted projects will continue to grow in popularity. As Americans continue to age, accessibility will be increasingly important, and co-location is one way to tackle that problem.

We recommend retaining the Healthy Foods question (for CDEs with a strong track record specific to healthy foods) and allowing CDEs with a "one-off" project or a multi-component project to use the Community Goods and Services Community Outcomes to describe that project.

ISSUE: DIRECT AND INDIRECT COMMUNITY OUTCOMES

Question 26 question asks Applicants to describe community outcomes that are a direct result of an Applicant's loans or investments referenced in Exhibit A (Projected Activities) and Exhibit B (Track Record). We understand that this change is meant to allow the CDFI Fund to collect and publish consistent data. For example, applicants would provide direct jobs (rather than induced or indirect jobs).

We recommend that the CDFI Fund also provide a separate space for applicants to describe clear and well-supported outcomes that are an indirect result of the applicant's reinvestment of fee revenue or increased investment or lending capacity if it were to receive an allocation award. This change would provide space for applicants to describe how they intend to leverage the requested allocation award to expand access to financial services in low-income communities.

ISSUE: DEFINITION OF AFFORDABLE HOUSING

Some Coalition members suggested broadening the wording of this impact question ("percent of affordable units") to clarify that CDEs can support a diverse array of housing investments that contribute to holistic community development, including workforce housing, "naturally occurring affordable housing" at 80-100% of AMI, etc. These types of housing units may not always meet the strict definition of "affordable" in the context of the NMTC Application, unquestionably contribute to the creation of stable, healthy, mixed-income neighborhoods.

We did not reach a consensus on this issue. However, we recommend the CDFI Fund explore how applicants might describe these sorts of activities.

ISSUE: REMOVAL OF FLEXIBLE LEASE RATES

We recommend against the elimination of the Flexible Lease Rates impact in Q25A. For many NMTC projects, the tenants are the chief benefit for NMTC financing. Setting aside low-cost space for tenants such as nonprofits, social service providers, local entrepreneurs, and minority-owned businesses is an important part of the NMTC program. Lowering the fixed costs for a tenant can save it thousands of

dollars per year in the form of lower rents, higher-than-market tenant improvement allowances, and shared spaces like commercial kitchen spaces. This is particularly the case in urban areas without affordable commercial space. Reducing operating costs allows these businesses and organizations to provide more impactful outcomes, such as job creation or direct services.

We suggest modifying this question to allow for a broader discussion on supporting small businesses by providing space and supportive services. This is also an area where the NMTC application can encourage CDEs to focus on projects that support minority-led or owned tenants who will create jobs and build wealth in NMTC financed projects.

ISSUE: REMOVAL OF SUSTAINABILITY OUTCOMES

ELIMINATION OF ENVIRONMENTALLY SUSTAINABLE OUTCOMES

We recommend against the elimination of Environmentally Sustainable Outcomes in Q25A. We advise keeping this question for the following reasons:

- Low-income communities face disproportionate impacts from pollution, climate change, and other environmental hazards. The CDFI Fund and NMTC Program should be encouraging CDEs to address these injustices through their investments.
- There is no other place in the application or AMIS to discuss environmental sustainability, so the CDFI Fund would not have the ability to compile and track this information. The Biden Administration's recent Executive Order on Climate Change asks agencies – including Treasury – to collect data on the extent to which economic development initiatives support climate mitigation for historically disadvantaged populations.

CONTENT OF ENVIRONMENTAL SUSTAINABILITY OUTCOMES QUESTION

We propose modifying the following components of the question:

- Eliminate "Quantify (e.g., amount of reduced energy or water use by QALICB, amount of reduced energy costs by end-users, etc.)" because it is too burdensome for CDEs and borrowers to collect.
- Consider simplifying the question to focus more explicitly on environmental benefits for low-income communities and populations. We suggest, "Quantify and describe the extent to which applicant's planned QLICIs will result in environmental remediation, energy-saving design features, and/or renewable energy use or production, and how they will benefit residents of Low-Income Communities or Low-Income Persons). Energy-saving design features should directly benefit low-income populations."
- Consider including stormwater management as a type of impact in this narrative, given the prevalence of flooding in low-income communities and the need for green building/infrastructure to mitigate these impacts.

- We also recommend considering support for regional economic development efforts that create jobs and opportunities in communities transitioning from reliance on fossil fuel production. This recommendation would also align the application with the Biden Administration's recent Executive Order prioritizing revitalization of coal-producing communities and other regions disproportionately impacted by the transition away from fossil fuels.

ISSUE: MORE CLARITY ON THIRD-PARTY METRICS

Recommendation: Provide further clarifications regarding third-party metrics and methodologies. Revise the character limit and the scoring system for Q26a.

We have appreciated the comments that the Fund has provided on application calls and FAQs regarding these topics. To further expand the industry knowledge of these important issues, to ensure fair evaluation, and to maximize positive community outcomes, we have the following recommendations:

When possible, the Fund should provide specific sources and metrics for third-party metrics for particular types of projects and community outcomes. While certain pipeline projects are unique, many fit into similar project types with similar community outcomes. It would be beneficial for the Fund to provide a list of metrics and sources that they have reviewed that best address their concerns regarding the validation of metrics. Otherwise, applicants are left to their own devices to pick the metrics for a given pipeline project that paints the "best" picture for their project.

Many community development activities are not easily quantified but can be outlined thoroughly through qualitative descriptions. The CDFI Fund removed several options from the list of Community Outcomes (Environmental Sustainability, Healthy Foods Financing, etc). If these outcomes were removed because of the difficulty in defining their respective metrics, we urge the CDFI Fund to reconsider.

ISSUE: CHARACTER COUNT FOR Q26A

Recommendation: The Fund should consider modifying the character count for the answers in Q26a to a range of characters tied to the number of proposed pipeline projects and the number of community outcomes selected.

Applicants face difficulty in properly addressing Q26a when their pipeline contains multiple projects with disparate purposes. For example, an Applicant with two industrial pipeline projects producing two types of products has much more character room to address the required topics, including third-party metrics, under "Commercial Goods and Services," than an Applicant with a pipeline that includes a health clinic, healthy food project, homeless facility, at-risk youth project, and job training facility writing about "Community Goods and Services," with different impacts and third party metrics for each.

Another example is that of the multi-service community organization. This type of organization provides a range of services (it may provide legal services, childcare, case management, and job training, all in the same facility) and has a range of different impacts.

Thus, because of less character count, an Applicant discussing the "Community Goods and Services" of a multi-service community organization will be at a disadvantage to Applicants discussing the "Community Goods and Services" of an FQHC. The application should not penalize CDEs for financing multi-service community organizations. These organizations provide a one-stop-shop for a variety of services that might otherwise be inaccessible.

At a minimum, we suggest expanding the character count for 26A5 (Community Goods and Services) This covers such a vast array of projects and outcomes that it is impossible to describe impacts in the space provided adequately. The Fund's proposed elimination of healthy foods financing as a category would increase the difficulty in answering this question sufficiently with the characters allotted (see our comment on the proposed elimination of healthy foods for more on this).

ISSUE: ADD BACK IN THE "OTHER" CATEGORY

A central theme of Comments from Coalition members was that the Community Outcomes section provides insufficient space to describe the diverse range of outcomes they seek to achieve with an NMTC allocation. Adding an "Other" category to the question would provide CDEs whose activities do not fit into any specific category with the flexibility to discuss the particular impacts that each CDE strives to make in the low-income communities in which they serve.

COMMENTS ON QUESTION 27 (COMMUNITY ACCOUNTABILITY AND INVOLVEMENT) AND THE PROPOSED ELIMINATION OF FORMER QUESTION 27 (ADDITIONAL INVESTMENT)

Deleted Question in the Proposed application
Additional Investment Discuss the extent to which the *applicant's* proposed *QLICIs* described in the Business Strategy section are expected to stimulate additional private investment above and beyond the *QLICI*-related financing in *Low-Income Communities*. Please provide specific examples of the *applicant's* (or *Controlling Entity's*) past investments that have spurred additional non-NMTC related private investment in *LIC*s. (Maximum Response Length: 5,000 characters)

We oppose eliminating "additional investment" as we are concerned that the change would reduce meaningful discussion about the context in which an Applicant's NMTC investments occur. For example, many NMTC real estate deals are the first movers into a neighborhood or community that has not seen economic activity for years or decades. These NMTC real estate projects catalyze additional investment by bringing in tenants that reactivate the surrounding community.

COMMENTS ON QUESTION 33 (FINANCIAL HEALTH)

ISSUE: NEW QUESTION 33E

New Question 33(E)

(e) If the Applicant identified a Controlling Entity in Question #3, please indicate if the Controlling Entity will provide financial support to address any operating deficit (e.g. full support, partial support) and under what circumstances. (Maximum Response Length: 2,000 characters)

This question will be cumbersome for applicants to answer. For example, indemnities required by investors can vary. The Controlling Entity is usually the entity with employees, so there may be no cause for the Controlling Entity to provide financial support outside of an extremely unlikely lawsuit or the triggering of indemnity.

COMMENTS ON QUESTION 34B (FEE STRUCTURE)

We suggest that:

- The instructions clarify that applicants should include any fees the applicant, its affiliates, or third-parties charge that are contingent or conditional. For example, if Applicants impose penalties on QALICBs if the NMTC closing occurs after a specific date, these fees should be described and justified.
- The guidance more clearly states that fees imposed after the NMTC compliance period are also included in the question's scope. Transactions do not automatically unwind at Year 7, and CDEs can impose fees or cause a portion of the net-NMTC benefit to be repaid after Year 7.
- In circumstances where the CDE or third-parties charge exit fees and/or retains all or a portion of the tax credit equity (the B note), we suggest asking applicants to clarify how they use such retained proceeds (e.g., distributions/profit/compensation, redeployment of the capital to additional QALICBs, etc.). This would improve the CDFI Fund's understanding of how much credit equity is recycled to benefit low-income communities and how much creates other economic benefits for the CDE, its affiliates, or principals.
- We suggest the highlighted additions on the first bullet on page 43 of the redlined 20/21 CDFI application:
    - Be sure to provide a brief description of any and all fees, payments, loans, or other remuneration (type, usage), whether paid or directed to the CDE, a CDE affiliate, or other third parties, and the timing of such fees in relation to the QEI including prior to, at QEI or QLIC close, or after closing, during compliance period or after compliance period. For example, indicate whether the fee is to be charged when the applicant commits to an NMTC investment; retained from Investment Fund proceeds, paid from the QEI proceeds, paid from QLICI proceeds, retained from the tax credit equity at the end of the NMTC compliance period.

GLOSSARY:

ISSUE: DEFINITION OF DISADVANTAGED BUSINESS

We recommend reverting to the original definition of "Disadvantaged Business" as:

> "A business that is (a) located in a Low-Income Community; or (b) owned by a Low-Income Person; or (c) impaired in its ability to compete in the economic mainstream by inadequate access to investment capital because of personal or business factors or historic barriers (e.g. businesses that are owned by minorities, veterans, or ex-convicts and rural businesses and communities) excluding them from capital as compared to others in the same or similar line of business which are not so disadvantaged."

In the alternative, we recommend a modified definition of "Disadvantaged Business" as: "A business that is (a) located in a Low-Income Community; or (b) owned by a Low-Income Person; or (c) a business whose ability to compete in the economic mainstream is impaired by inadequate access to investment capital because of personal or business factors or historic barriers excluding them from capital as compared to others in the same or similar line of business which are not so disadvantaged."*

RATIONALE: For many CDFIs, their primary financing activity is providing flexible capital to small and micro-businesses. While many of these businesses are located in Low-Income Communities or owned by Low-Income Persons, they lack access to flexible capital from traditional lenders. Many of these businesses are excluded from mainstream capital sources because of personal barriers (such as credit history, educational levels, or employment experience) or business factors (such as track record, profitability, collateral, leverage, etc.). In addition, many of these businesses are owned by individuals who have been historically excluded from traditional lending because of prejudice, bias, or discrimination stemming from race, ethnicity, gender identity, physical disadvantage, incarceration records, limited language proficiency, or other similar causes. Some businesses that have diminished opportunities due to these other factors may not be located in a Low-Income Community or owned by a Low-Income Person but still struggle to compete on a level field. The proposed change to the definition of "Disadvantaged Business" will eliminate these businesses who lack access to capital but need the intervention of CDFIs and so should be included. Furthermore, the CDFIs' responses on Table B regarding their loan/equity investment volumes to Disadvantaged Businesses and Communities will drop significantly and may result in lower review scores per past debrief letters.

*This definition is based upon the Small Business Administration's definition of "economically disadvantaged individuals" and "socially disadvantaged individuals" (13 CFR 124.103, 124.104).

ISSUE: NEW DEFINITION OF A CONTROLLING ENTITY

From the Proposed Application, Page 84:

Controlling Entity: A Controlling Entity is an Entity that Controls the CDE and has:

a. **For for-profit CDEs: ownership, control, or power to vote more than 50 percent of the outstanding shares of any class of voting securities of the CDE at the time of application and throughout the term of the Allocation Agreement (if the CDE is selected to receive an Allocation)**
b. **For not-for-profit CDEs: control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar**

	functions) of the CDE at the time of application and throughout the term of the Allocation Agreement (if the CDE is selected to receive an Allocation)
c.	**Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the CDE, including Control over the appointment and removal of the CDE's Executive management team (e.g. CEO, COO, CFO); and**
d.	**Approval authority over the management policies and investment decisions of the CDE.**

Clarification is needed on the new "Controlling Entity" definition. It isn't clear whether one is to chose A or B and then C AND D or C OR D.

As written, a CDE would need C "AND" D; however, if the CDFI Fund intends it to be C "and/or" D, if a CDE meets A or B as applicable, this could be a major difference. For instance, a Controlling entity may have ownership, control, or power to vote more than 50%, and control in any manner the election of directors, including executive management, but NOT have approval authority over management policies and investment decisions of the CDE. This fact pattern is common for corporate entities that have subsidiaries where the parent company is a nonprofit organization that does a broad range of activities, and the subsidiary was created to spearhead all financial services such as NMTC or other QLICI-like investments.

We also urge the CDFI Fund to consider how it might to grandfather-in the new definition. For example, would existing allocatees who met the old definition fall out of compliance with Section 6.13 of the allocation agreement, which requires an allocatee to maintain its Controlling Entity?

ISSUE: DEFINITION OF ENFORCEMENT ACTION

An Enforcement Action is currently defined as "an action or administrative order taken by a federal regulator or agency when a regulated financial institution is found to be in an unsatisfactory condition." We recommend that this definition be amended to read "a formal action or administrative order...." This amendment would increase transparency for new applicants that are federally regulated financial institutions by making clear the requirement is to disclose information on formal, publicly available enforcement orders, not informal agreements with federal regulators that have the potential to negatively affect an application score.

CONCLUSION

Thank you again for the opportunity to comment on the New Markets Tax Credit program.

Robert Rapoza, on behalf of the New Markets Tax Credit Coalition