New Markets Tax Credit
Allocation Agreement Q&A Document
(January 2005)

General Compliance Questions

1. ***Will the Fund share data submitted by allocatee's with the IRS or any other entity or agency?***

   The Fund will, consistent with applicable law (including IRC § 6103), make allocatee reports available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

   The IRS will be given access to the Fund's data so that it may inform IRS's own compliance program for IRC Section 45D.

2. ***If the Fund finds an allocatee in default of any of the provisions within the allocation agreement, will the allocatee have an opportunity to appeal the decision? What are the Fund's potential remedies if the Fund determines that the allocatee is in default?***

   The Fund will provide allocatees with notification of the Fund's determination of an event of default of the allocation agreement. If the Fund finds the allocatee in default there will be no opportunity to appeal. Potential remedies include a termination or reallocation of any unused allocations or barring the allocatee from applying in future allocation rounds. Section 8.3 of the allocation agreement lists the remedies available to the Fund when an allocatee defaults under the terms of the agreement. Since the allocatee may not appeal the Fund's default decision, the Fund strongly recommends that allocatees maintain prudent oversight of their allocation agreement requirements and consider requesting any needed amendments in advance of potential instances of default.

3. ***How does the "joint and several liability" provision of the allocation agreement apply to allocatees that intend to sub-allocate tax credit authority to subsidiary Community Development Entities (CDE)?***

   As stated in the allocation agreement, the allocatee and each of its subsidiary allocatees are jointly and severally liable for any event of default under Section 8.1 whether the allocatee or any of its subsidiary allocatees incurs the default. If such an event of default occurs, the Fund may impose remedies jointly or severally upon the allocatee and its subsidiary allocatees, except that the Fund will not terminate or reallocate any unused portion of the NMTC allocation with respect to any investment commitments related to a NMTC allocation made to a non-defaulting allocatee or subsidiary allocatee, as determined by the Fund.

4. ***Will the Fund be conducting site visits and/or desk audits of allocatees? What will be the frequency of these occurrences? What documents will the allocatee need to retain and for how long a period?***

   Yes, the Fund will be conducting site visits and/or desk audits. The Fund is currently developing its site visit and desk audit policies, which will include selection factors and criteria for the frequency of visits. Allocatees should maintain

documentation that will support compliance with the terms and conditions of the allocation agreement, particularly Sections 3.2 and 3.3. Further guidance will be provided as it is approved and adopted by the Fund.

5. ***Given the prohibition on claiming both a NMTC and receiving a BEA award for the same investment, what will the Fund's course of action be if an allocatee's bank investor is also a BEA applicant, and the bank lists its Qualified Equity Investment (QEI) in the allocatee (a CDFI/CDE allocatee) as a BEA eligible transaction?***

   Most likely, the Fund will discover this at the time of the BEA application review and will prohibit the bank from claiming a BEA award for the investment. The Fund also reserves the right to declare the bank in default of its BEA award agreement, should it discover at a later time that an award was inappropriately made.

6. ***Can allocatees rely on data from the CDFI Fund's Information and Mapping System (CIMS) for the purposes of determining whether transactions are located in NMTC eligible low-income communities?***

   Yes. Both the CDFI Fund and the Internal Revenue Service will treat as eligible any otherwise qualifying QLICI that is made in a census tract identified under CIMS as being made in a NMTC eligible low-income community – provided that the census tract in question was identified as eligible in CIMS at the time the QLICI was closed. Closed shall be defined as an investment for which the allocatee has distributed cash proceeds from a qualified equity investment to the qualified low-income business or CDE. Allocatees are advised to maintain relevant CIMS geocoded data reports and maps, as necessary, to demonstrate to the Fund and/or to the IRS that a census tract was in fact eligible at the time of investment.

7. ***Is the CIMS data subject to change? If so, can allocatees continue to rely on the CIMS data?***

   Yes, the CIMS data is subject to future changes. As stated above, allocatees can rely on current CIMS data to make investments. In the event that the data is updated or modified, as it will likely be once the Fund incorporates OMB Bulletin 04-03 (which re-defined Metropolitan Statistical Areas), allocatees should retain the CIMS geocoded data reports and maps demonstrating that the census tract met the NMTC low-income criteria at the time of investment.

8. ***As a result of operational upgrades made to CIMS in February of 2004, approximately 500 census tracts that had previously been identified as NMTC-eligible were deemed to be no longer eligible. Will the Fund be providing a transition period so that allocatees that made investments in those census tracts, or had intended to make investments in those census tracts, will be held harmless for these transactions?***

   Yes. First and second round NMTC allocatees shall be permitted to make QLICIs in these census tracts, provided that the investment: 1) otherwise qualifies as a QLICI; and 2) is made by the allocatee on or before July 31, 2005 or is a follow-on investment to a QLICI that was made by the allocatee on or before July 31, 2005. In the case of a follow-on investment, it is incumbent upon the allocatee to maintain records (e.g., subscription agreements, loan documents, disbursement schedules) to demonstrate that the follow-on investment is directly tied to the initial QLICI.
   A list of the approximately 500 census tracts that qualify for this special dispensation can be found on the Fund's website at www.cdfifund.gov.

Questions Regarding Sections 3.2 (Uses of NMTC Allocation)

9. ***If an allocatee is providing loans to or investments in other CDEs, how will the Fund monitor compliance with the provisions of Section 3.2? Will the Fund only consider the initial Qualified Low-Income Community Investment (QLICI) into the other CDEs, or will the Fund look through the CDEs to the end Qualified Active Low-Income Community Business (QALICB) recipients?***

   The Fund will look through to the end QALICB recipient for the purposes of monitoring specific provisions under Section 3. 2 of the allocation agreement including compliance with the service area requirement, the better rates and terms requirement, and the areas of higher distress requirement. Allocatees are required to provide the Fund with transaction level data via the Fund's Community Investment Impact System (CIIS), even if an allocatee uses multiple layers of CDEs to execute its QLICIs. For example, to determine compliance with the service area provision in Section 3.2 for an allocatee that invests in other CDEs, the allocatee will submit census tract information of the end QALICB recipient that receives the QLICI proceeds to determine if the QALICB recipient was located in the service area as defined in Sec. 3.2. The location of the recipient CDE (or CDEs) is of no bearing.

10. ***If an allocatee elects to transfer allocations to a subsidiary allocatee (i.e. a subsidiary CDE listed in Section 3.2 of its allocation agreement), will the Fund monitor compliance with Section 3.2 separately by each subsidiary or on a consolidated basis for all subsidiary allocatees that are parties to the allocation agreement?***

    The Fund will monitor compliance on a consolidated basis for the total allocation amount. For example, if ABC allocatee receives a $1 million allocation and under Section 3.2 of its allocation agreement, the required QLICI investment percentage is 60%, then ABC allocatee must invest at least $510,000 (60% of the minimum dollar amount of QLICIs) into areas of severe economic distress. If ABC allocatee sub-allocates $500,000 to each of two subsidiary CDEs, and each subsidiary CDE invests $425,000 in eligible QLICIs, each subsidiary CDE does not have to separately invest 60% of its sub-allocation amount ($255,000) into areas with severe economic distress. It would be permissible, for example, for one subsidiary to invest $300,000 into areas of severe economic distress and the other to only invest $210,000 in such areas. Provided that the total dollar amount of QLICIs invested in such areas meets or exceeds $510,000 on a consolidated basis, the allocatee and its subsidiary allocatees would be in compliance with Section 3.2.

    NOTE: The above example describes the approach the Fund is taking with respect to monitoring compliance with Section 3.2 of the allocation agreement. This does not mean that the IRS will adopt the same approach with respect to monitoring compliance with IRC Section 45D.

11. ***How will the Fund determine compliance with the better rates and terms requirement of the allocation agreement and/or the investing in areas of higher distress requirement? For a transaction to meet either of these thresholds, does it have to meet each of the criteria listed in each respective section or just one? Additionally, is there any particular supporting documentation that allocatees should retain?***

    The Fund will collect this information via the transaction level report in CIIS. Allocatees will report on these two sections as a unique data point for each

transaction. Each transaction does not need to meet all of the criteria listed. Meeting one is sufficient. Supporting documentation must reflect information relevant at the time the loan and/or investment was made.

Supporting documentation for the better rates and terms requirement may include: materials (including published materials from local regulated financial institutions within the allocatee's service area or market) demonstrating prevailing rates or terms at the time the loan or investment was made, which may be compared against the allocatee's QLICI investments; and loan documents on comparable loans that the allocatee has made prior to receiving an allocation, which may be compared against similar documents for the allocatee's QLICI investments; etc.

Supporting documentation for the areas of higher distress requirement may include statistical indices of economic distress such as poverty rates, median family income or unemployment rates at the census tract level (with the exception of CDFI Fund approved Target Areas, which may use block-group or equivalent data) according to the most recent decennial census. See the Fund's website for further information.

12. How will the Fund monitor compliance with the unrelated entity requirement in Section 3.2 of the allocation agreement?

This sub-section of Section 3.2 requires certain allocatees to meet the IRS's "substantially all" requirement by making investments in entities that are unrelated to the allocatee. Allocatees will be required to indicate in the transaction level report whether each QLICI made was to a related or unrelated entity. At no time can the percentage of QLICIs made to related entities exceed 15% of the allocatee's total allocation amount.

Questions Regarding Section 6.5 (Reporting)

13. How will an allocatee fulfill its reporting requirements as outlined in Section 6.5 of the allocation agreement?

Allocatees will submit its Institution and Transaction Level Reports through CIIS and its QEI notices through the Allocation Tracking System (ATS). Both are Internet based systems hosted by the Fund and accessible to the allocatee via its myCDFIFund account. ATS, which is accessible on a real-time basis, will permit allocatees to report on QEI data as required under Section 6.5(a). Allocatees will submit Institution and Transaction Level Reports through CIIS. Allocatees can fax or mail the audited financial statements or send it as an attachment to its Institution Level Report in CIIS.

14. When are reports due to the Fund?

The allocatee must submit its audited financial statement within 180 days of its fiscal year end. The Institution and Transaction Level Reports must be submitted electronically within 180 days of the allocatee's fiscal year end date and QEI data must be reported to the Fund via ATS within 60 days of the investment receipt date.

15. Which organizations are required to submit audited financial statements to the Fund?

Only allocatees are required to submit audited financial statements to the Fund. Submission of an audited financial statement will be required beginning with the first

fiscal year in which the allocatee executes its allocation agreement. For example, if an allocatee with a FYE date of 12/31/04 executed its allocation agreement on August 31, 2004, it would be required to submit an audited financial statement for the period ending 12/31/04. Audited financial statements will be required for each fiscal year thereafter, until the allocation agreement is terminated.

A subsidiary allocatee that has received a transfer of allocation (sub-allocatee) must have an audit performed for the fiscal year in which it issued a QEI and each year thereafter until the termination of the allocation agreement. It will not have to submit these audits to the Fund.

In lieu of the Fund collecting the sub-allocatee's audited financial statement, the Fund will require the allocatee to annually certify in the Institution Level Report that the sub-allocatee has obtained an "unqualified" opinion on its most recently completed audited financial statement. Please note that the sub-allocatee will only be required to have an audit performed for the fiscal year in which it issued a QEI and each year thereafter until the termination of the allocation agreement.

16. Are allocatees that have yet to issue a QEI required to submit Institution and Transaction Level Reports?

No. Submission of the Institution Level Report will be required beginning with the fiscal year in which the allocatee or subsidiary allocatee(s) issues its first QEI. If the first QEI is made by a subsidiary allocatee then both the subsidiary allocatee and the allocatee will need to submit the Institution Level Report for the fiscal year in which the QEI was made. These reports will be required for each fiscal year thereafter, until the allocation agreement is terminated.

Submission of the Transaction Level Report will be required beginning with the fiscal year in which the allocatee or subsidiary allocatee(s) makes its first Qualified Low-Income Community Investment (QLICI). If the first QLICI is made by a subsidiary allocatee then both the subsidiary allocatee and the allocatee will need to submit reports for the fiscal year in which the QLICI was made. This report will be required for each fiscal year thereafter, until the allocation agreement is terminated.

17. What if the allocatee and the subsidiary allocatee have differing fiscal year end dates?

All reporting due dates are driven by the allocatee's fiscal year end date. The examples provided below clarify the reporting requirements if the allocatee and the sub-allocatee have different fiscal year end dates:

<u>Audit reporting requirements with differing fiscal year end dates</u>

Example 1:	Sub-allocatee fiscal year end date	06/30/04
	Allocatee fiscal year end date	12/31/04
	Allocation Agreement Date	08/31/04
	Sub-allocatee QEI issuance date	09/30/04

Under this example, the allocatee would be required to submit an audited financial statement to the Fund for the fiscal year ending 12/31/04. The sub-allocatee would be required to obtain an audit for the fiscal year ending 6/30/05 as it issued a QEI in that fiscal year though it would not have to submit the audit to the Fund. The allocatee would then be required to certify in its FY 2005 Institution Level Report whether or not the sub-allocatee received an "unqualified" opinion on its most recently completed audited financial statement.

Example 2:	Allocatee fiscal year end date	06/30/04
	Sub-allocatee fiscal year end date	12/31/04
	Allocation Agreement Date	08/31/04
	Sub-allocatee QEI issuance date	09/30/04

Under this example, the allocatee would be required to submit an audited financial statement to the Fund for the fiscal year ending 06/30/05. The sub-allocatee would be required to obtain an audit for the fiscal year ending 12/31/04 as it issued a QEI in that fiscal year though it would not have to submit the audit to the Fund. The allocatee would then be required to certify in its FY 2005 Institution Level Report whether or not the sub-allocatee received an "unqualified" opinion on its most recently completed audited financial statement.

Note: CIIS reports due dates are always determined by the fiscal year of the allocatee regardless if any or all of the allocation has been transferred to a subsidiary-allocatee.

18. Will there be any penalties for late reporting?

Failure to submit required reports by the required deadline may result in default of the allocation agreement. Potential remedies include termination or reallocation of any unused allocations. A default finding would also make the allocatee ineligible to apply for any future CDFI Program funding rounds. Section 8.3 of the allocation agreement lists the remedies available to the Fund when an allocatee defaults under the terms of the agreement.

Questions Regarding Section 6.8 (CDE Certification)

19. How will an allocatee maintain their CDE Certification status?

An allocatee will be required to certify on an annual basis that they continue to meet the Fund's CDE certification requirements. The certification will be completed electronically via CIIS at the time the allocatee submits its reports. If the allocatee has transferred any portion of its allocation to a subsidiary, the allocatee will be required to certify on behalf of the subsidiary as well.

Should the allocatee (or any of its subsidiary allocatees) no longer meet the CDE certification requirements at any time, it must inform the Fund of such material event as required under Section 6.9 of the allocation agreement.

20. Are sole proprietorships and single member limited liability companies eligible for CDE certification?

In order to be certified as a CDE, an entity must be a domestic corporation or partnership for federal tax purposes. Since sole proprietorships and single member limited liability companies (LLC) generally are not considered corporations or partnerships for federal tax purposes, they cannot be certified as a CDE. Any entity that is established as a sole proprietorship or single member LLC must take the required steps to become taxable as a partnership or corporation under federal law prior to executing an allocation agreement and/or prior to an allocatee adding such entity as a subsidiary allocatee to its allocation agreement in Section 3.2.

21. Does the CDE certification have an expiration date?

In general, a CDE certification designation will last for the life of the organization provided the CDE continues to comply with and meet the Fund's NMTC Program requirements. The exception is those CDEs that obtained certification through self-certification as a CDFI or a SSBIC. Unlike CDE certification, CDFI certification is valid for only a defined time period. Therefore, an allocatee must either submit an application for re-certification as a CDFI or submit an application for CDE certification. The application must be submitted at the latest, 90 calendar days before the expiration date of the CDE's current CDFI certification. If the Fund receives a re-cert application from the allocatee prior to the expiration date of its CDFI certification, the allocatee will maintain its status as a certified CDE until such time as the Fund completes the certification review.

The Fund will periodically check the SBA's list of approved SSBICs. Should the allocatee no longer be a SSBIC, the Fund will notify the allocatee and allow the allocatee a set time period in which to submit a CDE certification application. This does not preclude the allocatee from informing the Fund, as required by the allocation agreement, of any loss of SSBIC designation prior to the Fund's review and notification.

Questions Regarding Section 9.11 (Amendments)

22. Can an allocatee amend their allocation agreement?

Yes. Allocatees may amend their allocation agreements by submitting written requests to the Fund's Grants Manager. The request, at a minimum must: a) identify the name and control number of the allocatee; b) identify the portion(s) of the allocation agreement that need to be modified; c) state the reasons why the allocatee is making the request; and d) explain the extent to which the proposed modifications are consistent with what the allocatee had proposed in its initial application to the Fund, and will help to further the goals of the New Markets Tax Credit Program. The request can be submitted by mail to the Fund's Grants Manager, Community Development Financial Institutions Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005 or by email to cdfihelp@cdfi.treas.gov or gmc@cdfi.treas.gov with subject line: NMTC: Allocation Agreement Amendment Request. Justification for approving an amendment to an allocation agreement must be based upon a determination that the amendment is: a) consistent with the intent of the NMTC Program statute and regulations and furthers the goals of the NMTC Program; b) consistent with (or not a substantive departure from) the business strategy proposed in the initial application for an allocation; and c) sufficiently narrow in scope that it does not disadvantage other allocatees or other applicants from the same allocation round.

While an amendment request can be submitted at any time, it must be submitted no later than 90 calendar days before the allocatee's fiscal year end if a determination is desired prior to the end of the allocatee's fiscal year reporting period.

23. How can allocatees add additional subsidiary CDEs to Section 3.2?

Allocatees wishing to add additional subsidiaries for the purposes of a transfer of allocations should submit a CDE certification application for the subsidiary CDE as

soon as possible as instructed on the Fund's website. In order for the Fund to expedite its review of the certification application and to alert the Fund that the allocatee would like to amend its allocation agreement, the allocatee should send a written request to the Fund's Grants Manager. Include the name and award number of the allocatee and the name(s) of the subsidiary CDE (if available, include the CDE Certification Application Control Number of the subsidiary) to be added to the allocation agreement. The request can be submitted by mail to the Fund's Grants Manager, Community Development Financial Institutions Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005 or by email to cdfihelp@cdfi.treas.gov or gmc@cdfi.treas.gov with subject line: NMTC: Allocation Agreement Amendment Request. Upon certification of these CDEs, the Fund's Legal office will work with the allocatee to obtain the appropriate documents required to amend the allocation agreement. The allocatee MUST be listed as the Applicant CDE in the CDE Certification Application; do not list the additional subsidiary entities as the applicant CDE. If the application does not list the allocatee as the Applicant CDE as instructed, the Fund's databases will not link the subsidiaries to the allocatee, and the allocatee will NOT be able to add these subsidiaries to its allocation agreement, and therefore, the allocatee will NOT be able to transfer any portion of its Allocation Award to such subsidiary entities.

NOTE: the above process does not apply to allocatees certified and established as a single entity under the Delaware Series Model. All activities within ATS and all data submitted within the institution and transaction level reports should be reported as if conducted by the Master series.

Questions Regarding Section 2.6 (Control of subsidiary allocatees)

24. Are New Markets Tax Credit Program (NMTC) allocation recipients (allocatees) permitted to transfer their tax credit authority to other entities?

Yes. Allocatees may transfer all or a portion of their allocation authority to subsidiary entities (subsidiary allocatees), provided that each such subsidiary: a) has been certified as a qualified community development entity (CDE) by the CDFI Fund; b) is included as a party to an allocation agreement, either at the time of initial execution or through a subsequent amendment; and c) is "controlled" (as defined in the allocation agreement) by the allocatee at all times throughout the term of the allocation agreement.

25. How does the CDFI Fund define "Control," for the purpose of demonstrating that an allocatee controls a subsidiary entity?

The CDFI Fund defines "Control" as:

(a) Ownership, control or power to vote more than 50 percent of the outstanding shares of any class of Voting Securities of any entity, directly or indirectly or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any other entity; or

(c) Power to exercise, directly or indirectly, a controlling influence over the management policies or investment decisions of another entity, as determined by the Fund.

An allocatee demonstrates Control of a subsidiary entity by meeting any one of these three criteria. An allocatee does not have to satisfy all three criteria in order to be deemed to Control a subsidiary entity. (See Question 28 for additional requirements applicable to 2005 round allocatees).

26. What does the CDFI Fund deem to be a "controlling influence over the management policies" of another entity?

In order to demonstrate a controlling influence over the management policies of a subsidiary allocatee, the allocatee must be, at a minimum:

(a) Identified in all appropriate organizational documents as the managing entity of the subsidiary allocatee (e.g., the general partner, managing partner, managing member or similar managing entity of the subsidiary allocatee);

(b) At all times in principal control over the day-to-day operations of the subsidiary allocatee, and no other parties (including investors) may impose unreasonable limitations on the rights and privileges of the allocatee to carry out such general management functions or undermine the allocatee's control over the management of the subsidiary allocatee. The allocatee may enter into contracts with other entities to perform general management functions (e.g., underwriting transactions; compliance and monitoring), but the allocatee must retain the authority to remove the contracted parties with or without cause. Some indicia of management control include, but are not limited to, the authority to:

(i) Make all material decisions affecting the business and affairs of the entity;
(ii) Act for and bind the entity and to operate and administer the business;
(iii) Make strategic, governance, and *contract decisions;*
(iv) Establish all policies governing operations of the entity;
(v) Acquire and dispose of interests in real or personal property;
(vi) Establish and maintain bank accounts;
(vii) Employ and terminate all officers, employees, consultants, and agents of the entity; and
(viii) Exercise responsibility for business development, raising capital, underwriting, portfolio monitoring, reporting and compliance.

The existence of any one of these indicia, by itself, will not necessarily meet the management control test. Instead, when making a control determination the CDFI Fund will evaluate the totality of all of the facts and circumstances in each particular matter, including the existence of the factors listed above.

Please also note that certain factors which may amount to an unreasonable limitation on an allocatee's management control, include, but are not limited to:

(i) The prohibition of the sale, disposition or transfer of any assets of the entity;
(ii) The prohibition of entering into contracts valued above an unreasonably low threshold (e.g., $5,000); and
(iii) The hiring of agents or other entities controlled by investors in the allocatee or its subsidiary entities.

The existence of any one of these factors could result in a determination that the allocatee does not have management control over its subsidiary entity.

27. How does the CDFI Fund view investor rights to remove the allocatee as the managing entity of the subsidiary allocatee?

The CDFI Fund is aware that many operating agreements for subsidiary entities may afford investors with the right to remove a managing entity for malfeasance or negligence. However, if such removal rights include: (a) the right to remove the managing entity without cause or (b) the right to remove the managing entity for violation of any provision of the operating agreement or any misconduct or breach of contractual obligations which does not have a material adverse effect on the business of the entity, the CDFI Fund could determine that the allocatee does not have management control over its subsidiary entity. In addition, if the investor decides to exercise its removal rights and, as a result, the allocatee no longer has any control over its subsidiary entity, the CDFI Fund may determine that such occurrence is an event of default under the terms of the allocation agreement and the CDFI Fund has the discretion to impose any or all of the remedies contained in the allocation agreement.

NOTE: Events of default are set forth in Section 8.1 of the allocation agreement. The remedies available to the CDFI Fund upon the occurrence of an event of default are set forth in Section 8.3 of the Allocation Agreement. Events of recapture are set forth in 26 USC § 45D(g) and Section 8.2 of the allocation agreement and include instances in which: (a) the allocatee ceases to be a certified CDE; (b) the proceeds of a qualified equity investment (QEI) cease to be used as required by 26 USC 45D(b)(1)(B); and (c) a QEI is redeemed by the allocatee. The CDFI Fund also has the right to approve all successors of the allocatee's interests as a party to the allocation agreement (see Section 9.4 of the allocation agreement).

28. What does the CDFI Fund deem to be a "controlling influence over the investment decisions" of another entity?

In order to demonstrate a controlling influence over the investment decisions of a subsidiary allocatee, the allocatee must, at a minimum, have the authority to propose potential NMTC investments and the authority to approve all proposed transactions involving the use of NMTC proceeds. In other words, at no time can a qualified low-income community investment (QLICI) be made without the authorization of the allocatee. This rule applies to initial NMTC investments as well as re-investments of NMTC proceeds that occur during the seven-year investment period. The allocatee's approval authority may be either explicit (e.g., the operating agreement clearly states the approval rights) or implicit (e.g., the final investment decision authority rests with an investment committee, the majority of whose members are appointed by the allocatee and are not affiliated with the investor).

An allocatee may share its control of the investment decisions of a subsidiary entity with an investor (e.g., both parties have the right to veto a proposed investment transaction), provided that the investor does not exercise undue influence over the decision-making authority of the allocatee. The CDFI Fund would likely determine that undue influence exists in situations where, for example: (a) the allocatee is required to decide on an investment proposed by the investor within an unreasonable amount of time (i.e., less than 30 days); or (b) the investor can stop the payment of management fees or other contractual payments to the allocatee if the allocatee does not approve an investment proposed by the investor.

NOTE*:* Beginning with the 2005 round allocatees, the CDFI Fund will require that in order for an allocatee to transfer its allocation authority to a subsidiary allocatee, the allocatee must demonstrate, at a minimum, that it exercises and will maintain a controlling influence over the investment decisions of its subsidiary allocatee. Allocatees in the 2001-2002 round and the 2003-2004 round of the NMTC Program may continue to transfer their allocation authority to a subsidiary allocatee if the allocatee can demonstrate control of the subsidiary allocatee using any of the three criteria set forth above in Question 25.

29. Will the CDFI Fund continue to review operating agreements submitted by allocatees to determine whether they "control" subsidiary allocatees?

Recently, the CDFI Fund has required allocatees to submit operating agreements for proposed subsidiary allocatees for review by the CDFI Fund prior to approving such subsidiary allocatees for inclusion in allocation agreements. As of the date of this guidance, the CDFI Fund will no longer require allocatees, as a matter of course, to submit such documentation in advance of executing or amending allocation agreements. The CDFI Fund reserves the right, however, to request such documentation from allocatees at any time, and will likely do so as part of its compliance and monitoring procedures. Allocatees may also be required to submit certifications confirming their control of subsidiary allocatees as part of annual reporting requirements. Allocatees are therefore advised to follow the guidelines contained in this document to ensure that they maintain sufficient control over their subsidiary allocatees.

The CDFI Fund will also require that allocatees obtain legal opinions which confirm that they control their subsidiary allocatees both at the time of initial closing of the allocation agreement and at the time of any subsequent amendments.

In addition, as of the date of this guidance, the CDFI Fund will no longer review operating agreements submitted voluntarily by allocatees or investors that wish to obtain determinations concerning a control issue from the CDFI Fund.

NOTE*: This document is intended to serve as public guidance for the subject matter contained herein. The CDFI Fund reserves the right, however, to modify this guidance at any time upon public notice. The examples contained in this guidance are not exhaustive in nature and the CDFI Fund has the discretion to consider additional factors when determining the extent to which an allocatee demonstrates control over its subsidiary allocatees.*