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VIA EMAIL

Mr. Matthew Josephs
NMTC Program Manager
Community Development Financial Institutions Fund
601 13th St., N.W., Suite 200 South
Washington, DC 20005

Re: Comments to 2009 NMTC Allocation Application

Dear Mr. Josephs:

I am writing on behalf of the U.S. Green Building Council ("USGBC") regarding comments to the 2009 New Markets Tax Credit Application (the "Application"). With 20,000 member organizations and over 100,000 active volunteers including leading corporations and real estate developers, architects, engineers, builders, schools and universities, nonprofits, trade associations and government agencies at the federal, state and local levels, USGBC is the nation's foremost coalition of leaders from across the building industry working to advance buildings that are environmentally responsible, profitable, and healthy places to live and work. USGBC has a growing focus on integrating sustainable development with affordable housing and community development, and welcomes the opportunity to capitalize on the great potential the New Markets Tax Credit ("NMTC") program has to foster this initiative and help effectuate large scale environmental community impact.

The benefits of green building should be accessible to Low Income Communities.

As you know, the NMTC program is designed to attract private-sector capital to low income communities across the United States. According to a 2008 study conducted for the Federal Reserve Bank of San Francisco (Working Paper 2008-04), roughly 66 percent of all NMTC dollars invested through 2006 were made to real estate developers to finance the acquisition or rehabilitation of commercial, residential, and mixed-used real estate property. While NMTC-financed real estate projects represent critically needed community investment, they also have, as all real estate projects do, an environmental cost. Buildings in the United States are responsible for 39% of CO2 emissions, 40% of energy consumption, and 13% water consumption, making green building a source of significant economic and environmental opportunity. As a result, the highly competitive application process for NMTC allocations should follow the lead of

many other federal, state and local funding programs and incentivize green building principles along with other tangible measures of community impact, as sound social policy, as a way to contribute to the economic viability of projects and as a way to minimize the negative environmental impact of developing and operating buildings.

Inefficient buildings are costly for the environment as well as for building owners and tenants. McGraw-Hill Construction projects that the commercial and institutional green building market will double by 2013 from 10-12% of new construction starts to 20-25%. Similarly, the residential green building market is projected to double from 6-10% in 2008 to 12-20% by 2013. Green building is a growing trend across market sectors because there are tangible benefits associated with green design construction and management principles for both the owner and the occupants. It is critical that the CDFI Fund assure that these benefits accrue to Low Income Communities.

Buildings that are designed and constructed to green building standards provide significant benefits to Low-Income Communities.

Green buildings are designed and built using strategies aimed at improving performance across the metrics that matter most: location and linkages, indoor environmental quality, and energy and water efficiency. An integrated approach to these issues is key to achieving the most substantial benefits for the building owner, the occupants, and the overall community.

Location and Linkages

According to the National Environmental Health Association, land use planning/design decisions can have negative consequences on public health, ranging from obesity and chronic disease (e.g., heart disease, diabetes, cancer) to injuries related to traffic and pedestrian safety, and even psychological stress. Financing decisions should take into account the health and environmental consequences of the project location and site planning, while still ensuring high-impact economic investment in low income communities. Green building criteria reward location efficiencies, such as construction near transit lines and other community resources such as housing, parks, schools, jobs, and health care.

Location efficiencies also minimize dependency on automobiles, which contribute to neighborhood environmental pollutants and require additional funds from low income families to purchase, insure and maintain. According to the American Automobile Association's 2008 report on driving costs, it costs on the average of $6,320 annually to own and operate a small sedan in the U.S. The burden of transportation costs is especially heavy for low-income rural residents, because residents of rural areas drive approximately 17 percent more than residents of urban areas.

Indoor Environmental Quality

Americans spend on average 90% of their time indoors, where levels of pollutants may run two to five times—and occasionally more than 100 times—higher than outdoors, according to the U.S. Environmental Protection Agency. Many of the pollutants found indoors can cause health reactions in the estimated 17 million Americans who suffer from asthma and 40 million who have allergies, contributing to millions of days absent from work or school. According to the National Institutes of Health, asthma disproportionately affects children from lower income families and from specific racial and ethnic groups.

Green building criteria promote strategies that improve indoor air quality and the occupant's experience. These strategies include improved ventilation and air filtering, reducing the possibility of mold and other allergens, and minimizing toxic chemicals and adhesives in building materials and finishes. Many of these strategies have a positive impact on employee absenteeism and turnover, and benefit the construction workers installing the finishes as well.

Energy and Water Efficiency

Energy and utility costs can pose significant ongoing burdens for low income businesses as well as for low income families. In 2008, the Home Energy Affordability Gap for families earning 185% of the federal poverty level was $34 billion, nearly double the gap in 2002 when this data was first collected by the research firm of Fisher, Sheehan & Colton. Similar cost burdens affect low income business owners, and represent dollars that typically flow out of low income communities to pay utility companies located elsewhere.

Green building criteria incorporate a wide variety of energy and water efficiency strategies: energy use monitoring; efficient design and construction; efficient appliances, systems and lighting; and the use of renewable and clean sources of energy, generated on-site or off-site. Water reduction is typically achieved through more efficient appliances, fixtures and fittings inside and water-wise landscaping outside.

Government agencies at the federal, state and local levels use third-party green building standards to provide minimum criteria for green building incentives.

According to a 2008 GAO report on HUD's green building efforts, "State and local governments use national and regional standards to provide the framework for how to use green building practices, to provide minimum criteria for green building incentives, and to establish eligibility requirements for receiving affordable housing funding." Although this GAO report focused on green affordable housing, the utility of a holistic green building standard for government funding programs is clear across all building types.

In 2000, USGBC created the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System. LEED is a consensus-based, internationally recognized green building certification system providing third-party verification that a building was designed and built using strategies aimed at improving performance across all the metrics that matter most. Nationwide, 36 states and almost 200 localities have adopted requirements or incentives that reference LEED standards. Additionally, at least twelve federal agencies have incorporated LEED and other green building requirements into their internal policies.

Congress has also begun to push federal programs to incorporate green building standards. The GREEN Act of 2009, passed in the House on May 7, 2009 (H.R.2336), requires HUD to provide incentives for projects that commit to achieving one of four different residential green standards. Additionally, the Housing and Economic Recovery Act of 2008 ("HERA") required states to incorporate energy efficiency incentives into their Qualified Allocation Plans for allocation of the Low Income Housing Tax Credit ("LIHTC"). As a result, many states now provide incentives for whole building certifications through LEED, Green Communities, or another appropriate local program. For example, Virginia's Qualified Allocation Plan provides 30 points to applicants that agree to build to the EarthCraft or LEED green building standards. In 2008, 32 out of 34 projects receiving LIHTC awards in Virginia committed to achieving one of these accepted green building standards.

While USGBC promotes and administers the LEED Green Building Rating System, it also recognizes that other several other green building systems and standards are important and often appropriate alternatives to LEED; accordingly, USGBC supports the use of other national and regional green building certification programs that incorporate the fundamental components of the LEED system: location, site, energy, water, materials, and indoor air quality, including third party verification to help assure that the anticipated benefits are achieved.

Green building practices provide long-term financial benefits and make an important contribution to the overall health and vitality of a community

The NMTC program supports real estate investments by outside developers as well as investments for expanding the existing operations of local businesses. Incorporating green building principles into both types of investment will provide lasting community benefits. These benefits will remain in the local community by increasing the long term value of the property and enabling businesses to control utility costs and operate more efficiently, thus increasing profitability year after year. Where NMTC allocations support construction projects involving green building techniques, employees will also gain skills and abilities that are increasingly necessary in the building industry to retain jobs and move up the job ladder.

A significant number of federal and other public agencies have adopted third party green building certification programs in their own internal policies as well as incentives in their grants programs. These practices are becoming increasingly common for economic, scientific, and social reasons. However, strong incentives are still needed to ensure these benefits and skills reach our nation's lowest income communities, including those targeted by the NMTC program.

COMMENTS TO NMTC APPLICATION

Because of the strong tie between benefits to Low-Income Communities and green building design, we request that the following additions be added to the Application:

Question 27

This question requires an Applicant to describe how it will target the use of its QLICIs to areas of higher distress than required under the basic rules of the program. As discussed above, projects that are located near public transit or in proximity to a range of community services provide both health and financial benefits to residents of Low-Income Communities. Accordingly, we recommend adding two new options under Question 27(a) where an Applicant indicates areas likely to be served:

> 19. __ [TRANSIT-ORIENTED DEVELOPMENTS] Areas designated for development by a local or regional authority for use as a transit-oriented development.
>
> 20. __ [SITES PROVIDING COMMUNITY CONNECTIVITY] Sites meeting the requirements for Option 2 (Community Connectivity) under Credit 2 (Sustainable Sites – Development Density and Community Connectivity) pursuant to the U.S. Green Building Council Green Building Rating System for New Construction and Major Renovation, which include previously developed sites that are (1) with within ½ mile of a residential zone or a neighborhood with an average density of 10 units per acre net, and (2) and within ½ mile of at least 10 Basic Services (as defined in Option 2) and with pedestrian access between the buildings on such site and the services.

Question 28/Table C-1

In Question 28 and the companion Table C-1, an Applicant must describe the particular efforts the Applicant made to providing benefits to Low-Income Persons and residents of Low-Income Communities in connection with its prior

QLICI type activities. We recommend adding environmentally sustainable outcomes to the track record analysis.

For example, we suggest adding a new column to Table C-1 requesting data for "percentage of projects achieving environmentally sustainable outcomes".

Similarly, we request that Question 28(b) be modified to include a reference to sustainability (new language in bold):

> (b) Describe, citing examples of projects that the Applicant has financed or otherwise facilitated in the past five years, what particular efforts were made to provide benefits (e.g. higher wage jobs; affordable housing; goods and services; **environmentally sustainable outcomes)** to Low-Income Persons and residents of Low Income Communities.

Question 30

In Question 30(a), an Applicant is asked to describe what community impacts will be achieved by the Applicant's QLICIs. Subpart (8) asks whether the Applicant's QLICIs will create environmentally sustainable outcomes. Because "environmentally sustainable" is a broad concept, we recommend that a new subsection (d) be added to this question:

> (d) If the Applicant's activities, as described in the Business Strategy and the response to Question 30(a)(8) include using NMTC dollars to finance projects involving the development or operation of real estate that would result in environmentally sustainable outcomes, will the Applicant (1) commit to requiring 80% of its QALICBs receiving NMTC financing for real estate construction or substantial rehabilitation to comply with Green Building Standards, and (2) incorporate a system for verification sufficient to reasonably determine that such Green Building Standards have been complied with.
>
> Yes __ No __ N/A __
>
> (i) If no or N/A, please describe why Applicant is unable to (1) commit to requiring 80% of its QALICBs receiving NMTC financing for real estate construction or substantial rehabilitation to comply with Green Building Standards, and (2) incorporate a system for verification sufficient to reasonably determine that such Green Building Standards have been complied with.

We encourage the CDFI Fund to score a positive answer to this question favorably. For example, the 2008 Application currently provides a TIP indicating that an Applicant that checks "yes" in Question 30(c) (regarding affordable housing) will be scored more favorably unless a "no" or "N/A" response is otherwise consistent with the Applicant's description of projected activities, and this requirement may become a term of the Applicant's Allocation Agreement.

In addition, we recommend that the CDFI Fund insert the following definition to the **Glossary of Terms** included in the Application. This text is modeled on a similar definition in the GREEN Act (H.R.2336) and the Energy Efficiency Housing Act of 2009 (S.1379). In order to ensure a unified set of standards, in the event this legislation is signed into law, we would support revising this text to mirror the final language in that legislation.

> "**Green Building Standards**" shall mean any of the following standards or checklists, or successor checklists or standards as are in effect at the time of this Application:
>
> > (A) The certified level for the LEED for New Construction and Major Renovation rating system, the LEED for Homes rating system, the LEED for Core and Shell rating system, the LEED for Existing Buildings: Operation & Maintenance rating system.
> >
> > (B) The national Green Communities criteria checklist for residential construction that provides criteria for the design, development, and operation of affordable housing.
> >
> > (C) The Green Globes assessment and rating system of the Green Buildings Initiative.
> >
> > (D) For manufactured housing, Energy Star rating with respect to fixtures, appliances, and equipment in such housing.
> >
> > (E) The National Green Building Standard of the National Association of Home Builders.
> >
> > (F) Any other requirements, standards, checklists, or rating systems for green building that are reasonably demonstrated to adopt sustainable design principles to reduce the use of nonrenewable resources, encourage energy-efficient construction and rehabilitation and the use of renewable energy resources, minimize the impact of development on the environment, and improve indoor air quality substantially similar to one or more of those identified in subparagraphs (A)-(E), above.

As a supplement to adding Question 30(d) to the Application, we suggest that the CDFI Fund provide guidance in its Frequently Asked Questions document to provide guidance to Applicants regarding how the new subpart to Question 30 would be evaluated for compliance purposes:

> **Question**: If an Applicant checks "yes" in Question 30(d), how will the CDFI Fund determine if the projects financed will meet a Green Building Standard?
>
> **Answer**: An Applicant will be required to obtain and maintain documentation that its QLICIs in QALICBs receiving NMTC financing for real estate construction or substantial rehabilitation are being used to finance projects that will meet the requirements under the definition of a Green Building Standard provided in the Application's Glossary of Terms. If the Applicant selects the Green Building Standard in subparagraph (F), it will also need to obtain and maintain documentation sufficient to demonstrate that the sustainable design principles selected to reduce the use of nonrenewable resources, encourage energy-efficient construction and rehabilitation and the use of renewable energy resources, minimize the impact of development on the environment, and improve indoor air quality will be substantially similar to one or more of the Green Building Standards identified in subparagraphs (A)-(E), the defined term Green Building Standards

Incorporating Green Building Standards into the NMTC program would be consistent with the trend across the country to include sustainability as a consideration in evaluating community development projects. Nationwide, 36 states and over 200 localities have adopted requirements or incentives that reference LEED standards. Additionally, a number of federal agencies have incorporated LEED and other green building requirements into their internal policies; these agencies include Health and Human Services, the Department of the Interior, Department of Defense, U.S. Army, U.S. Air Force, U.S. Navy, the General Services Administration (including leased space), NASA, Department of State, Department of Agriculture, and the Environmental Protection Agency.

USGBC appreciates the opportunity to provide these suggestions to the Application. We would welcome any further questions you have about our comments. Thank you for your consideration.

Sincerely,

Casius Pealer
Manager, Affordable Housing