

**REVITALIZING OUR URBAN CORE
WITHOUT MARGINALIZING
OUR CORE PEOPLE:**

**CLOSING TAX CREDIT LOOPHOLES FOR THE WEALTHY
WHILE GENERATING ETHNIC ENTREPRENEURIAL SELF HELP
ALTERNATIVES TO SUBSIDIZED GENTRIFICATION**

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“I am concerned and I am frustrated because I don’t know what the alternates are... It clearly isn’t racist; its economics. The real question you have to ask yourself is: Is this good or bad?”

Norman Rice, former Mayor of Seattle
On gentrification in that city.²

Introduction and Scope

Urban America is in a state of crisis. A huge pool of America’s resources is increasingly disconnected from mainstream society.³ That pool is within the core of major cities and particularly includes African American and Hispanic male youth.⁴ By way of illustration, more than half of all core city African American men do not finish high school. The correlation between drop-out rates, unemployment, and incarceration is profound. As of 2004, 72% of African American dropouts who are in their 20’s are unemployed, up from 65% in 2000.⁵ Incarceration levels are at historic highs and increasing, where by their mid-30’s, 6 in 10 of these high school drop outs have spent time in prison.⁶ That rate is *four times* higher than that of Black men in South Africa under the apartheid regime.⁷ Seventy five percent of African American males incarcerated in Baltimore Maryland did not graduate from high school.⁸ The infant mortality rate among all African Americans is more than twice the national average, and is much worse among the poor in the core of urban America.⁹ After the Katrina floodwaters have receded, some see an opportunity to buy low and sell high. But the muted voices of the poor cry to keep what they had.¹⁰ For them it was a Katrina moment.

² Blaine Harden, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/18/AR2006061800605> (accessed June 19, 2006).

³ Andrew Sum, *Challenges & Pol’y Options: Labor Market Conditions Among 16-24 Year-Old Young Adults in Maryland and the Baltimore PMSA*, Johns Hopkins University 2-3 (2001). The Sum study found that Black and Hispanic youth in Baltimore, Maryland, are twice as likely to fall within the ethnographic definition of “disconnected” than white youth. The term “disconnected” refers to a quantified tendency to be out-of-school and out-of-work.

⁴ Id.

⁵ Eric Eckholm, *Plight Deepens for Black Men, Studies Warn*, N.Y. TIMES A1 (March 20, 2006). Eckholm was relying on data from a panel of experts at Columbia, Princeton, and Harvard, who opined that the rate of disconnectedness is “far” greater for these African American males than comparable white and Hispanic men. One factor of many is the reduced market for unskilled labor.

⁶ Id.

⁷ Dash T. Douglas, *A House Divided: The Social and Economic Underdevelopment of American’s Inner Cities*, 10 U. FLA. J. L. & PUB. POL’Y 369, 381 (Spring 1999), citing Milton S. Eisenhower Foundation Report, *The Millennium Breach* 1(1998).

⁸ Sum, *supra* at n. 2. The findings were from 1998.

⁹ Center for Disease Control, <http://www.cdc.gov/omh/AMH/factsheets/infant.htm> (accessed June 13, 2006). The national average is 6.9 deaths per 1,000 live births, but 14.1 among African Americans. That is on par with the mortality of children from Bulgaria, Bosnia and Herzegovina, see study involving the World Health Organization and the World Bank (available at http://hdr.undp.org/reports/global/2003/indicator/indic_289.html) (accessed June 13, 2006).

¹⁰ Query whether those core residents will experience economic discrimination through a Reverse Reconstruction. The Civil War Reconstruction was designed to increase the quality of life for former slaves

For the urban core poor across the nation, it has been a Katrina erosion over the decades from a series of unnatural disasters.

Despite this crisis in urban America, could it be that over \$2 billion of US taxpayer dollars designed to alleviate that problem are being co-opted for the financially well-healed? With the aid of federal subsidies, are the wealthy gentrifying the low income areas and marginalizing the low income residents in the process? A long-time Portland Oregon resident observed: “The heart of the black community is gone.”¹¹ Seattle’s first and only African American mayor in the 1990’s observed the transition of well-educated and mostly white newcomers into the city’s Central District and said: “I am concerned and I am frustrated because I don’t know what the alternates are... It clearly isn’t racist; its economics. The real question you have to ask yourself is: Is this good or bad?”¹² More to the point of this article, is the federal law, through the new markets tax credit program actually subsidizing the gentrification?

The answer to the later question appears to be either an unequivocally “yes”, or adding a drop of vacillation: “It certainly appears that way”. Metaphorically speaking, the proof is in the plumbing. As will be detailed below the NMTC program has been used to subsidize the development of performing arts centers for opera, ballet, symphony orchestras, hotels, high priced condominiums, theatres, mixed use commercial developments, and even convention centers.¹³ This author opines that as a matter of tax credit policy, the needs of the desperate should trump the wants of financially well-healed, and that the NMTC funds were not misappropriated, just misapplied in many significant respects - a correctable error nonetheless.

The thesis of this article is designed to correct the error with a two-pronged, but multi-faceted rationale. The intent is narrow the scope of governmental subsidies while expanding the private sector equity through a community sense of personal responsibility. Thesis prong one: If tax credits are used as part of the solution to urban ills, gentrified projects are not consistent with Congressional intent or wise tax policy. The remedy is to close loopholes so existing residents are intended beneficiaries and truly the object of the tax subsidy project. Thesis prong two: The criteria used to close loopholes also provides an increased opportunity for all properly purposed investors, including a reconfigured substrata of the African American middle class. That subgroup has the resources and peculiarly-crafted investment motivations aligned with self help investment techniques of prior generations. I term them “Ethninvestors”. The use of Ethninvestors can be accomplished through the race-neutral amendments proposed in this article. Through these two components, the opportunity exists to increase efficiency of tax subsidies (loophole closure) while also increasing private equity infusion from new sources (Ethninvestors) for the long term benefit of urban core community, thereby reducing long term governmental dependence by those communities.

Those assertions are built on the following premises:

1. America without a healthy urban America

and their decedents. It remains to be seen whether the well educated financially well healed will be the beneficiaries of the Post Katrina reconstruction of New Orleans and other Gulf Coast communities.

¹¹ Harden, supra n. 2.

¹² Id. One in four of the anticipated job growth in the Seattle central city is high wage and highly skilled positions.

¹³ See the discussion in Part II regarding what I term “Problematic Purposed Projects”.

2. There is no healthy urban America without revitalizing the core of major cities from the current blight and despair.
3. There is no effective revitalization if the urban core businesses and residents are marginalized, perpetuating the social costs and wasting of a national resource of incalculable proportions.

Tax credits are subsidies, and in an alarming number of cases, NMTCs are in effect subsidization of gentrification, which in turn perpetuate the marginalization of low income residents. The remedy in part lies in both (1) closing the statutory and regulatory loopholes that allow subsidized gentrification, and (2) through proper modeling, establish a private sector revitalization of the urban core beyond gentrification without material marginalization of core residents. A reconfigured African American middle class should on its own collective volition be part of the revitalization through a revitalization of its own, fostering a reunion of sorts. While many initiatives exist to address the plight of urban America, the vehicle on stage in this article is the New Markets Tax Credit.

Consistent with the two-pronged thesis, this article is organized in two Sections. Section 1 addresses loophole closure within the existing NMTC statute and regulations. Section 2 concerns the Ethninvestor-private sector alternative model to gentrified subsidization. Each section has its component parts. Section 1 has a Part 1 that provides an overview of the regulatory structure of the tax credit, foundational definitions and intended operational scheme. This is to clarify that the intent of the legislation was to benefit the low income residents, not wealthy residents who come into low income areas. Part II provides a contextual framework for the competing models for how tax subsidies should be delivered to the urban community, i.e. models that allow for gentrified projects and those that do not. Part III contains proposed amendments to the legislation to close loopholes that have diverted funds away from the low income residents of target communities.

Section 2 provides contains a Part 1 that examines the historical development of ethnic enclaves in the United States, and how ethnic entrepreneurship gave rise to an ethnic enclave economy that can provide a valuable template for a modern day Ethninvestor. I maintain the NMTC target communities are also ethnic enclaves. Part II sets forth the conceptual precepts and then the Ethninvestor model, including various characteristics and investment motivations that make an Ethninvestor well suited for a NMTC transaction. Part III is the application of law and economic principles to further explore whether the Ethninvestor model may lead to increased utility and efficiency for the target residents and the Ethninvestor in a NMTC transaction beyond that of investor groups not similarly engaged in “social entrepreneurship”.¹⁴ Finally, Part IV is the application of the theoretical model to provide concrete illustrations of how the Ethninvestor more efficiently meets the congressional purpose of assisting low income residents without marginalizing them in the process. This discussion emphasizes the

¹⁴ This term is defined as the pursuit of innovative investment strategies, including profit-making ventures to serve a social mission, typically found in the nonprofit sector or within private hybrid business organizations mixing nonprofit and for-profit social purposes. This is called a “double bottom line”. Gail A. Lasprogata & Marya N. Cotton, *Contemplating ‘Enterprise’, The Business and Legal Challenges of Social Entrepreneurship*, 41 Am. Bus. L. J. 67, 69 (2003).

importance of small business modeling, and how the Ethninvestor should be able to seamlessly operate within the NMTC structure.

Section 1 – Part I.

(A) NMTC Background and Regulatory Structure

To stimulate the investment of private equity capital into low income urban and rural America, the 106th Congress in the waning years of the Clinton administration amended the internal revenue code¹⁵ to allow a tax credit in the amount of 39% of a taxpayer's equity investment over a 7-year period if that taxpayer invested in low income communities.¹⁶ And it is not an unfunded mandate. In hopes of generating \$15 billion of equity investments between 2002 and 2007, the federal treasury has authority to issue tax credit to investors equal to 39% of that sum (\$5.85 billion dollars).¹⁷ The credits are distributed by rounds based on the size of equity commitments by qualified investor groups. Already investments and corresponding tax credits are allocated through four of five anticipated rounds.¹⁸ The Treasury has delegated the responsibility for distribution and administration of the program to the Community Development Fund Institution ("CDFI").¹⁹

The focus of the NMTC is to benefit low-income communities by drawing equity capital into these target communities.²⁰ The "draw" is a tax credit. By reducing an investor's tax liability, the economic return on the investment in the low income area is increased akin to the successful Low Income Housing Tax Credit program.²¹ A byproduct of the equity investment is restored commerce within those communities.²²

¹⁵ On May 23, 2000, President Clinton and Speaker of the House Dennis Hastert publicly announced an agreed proposal that led to the introduction of the Community Renewal and New Markets Act of 2000. HR 4923, 106th Cong. (2000). What emerged from the conference deliberations of both chambers was the bill entitled The Community Renewal Tax Relief Act of 2000 ("CRTRA") H.R. 5662, 106th Cong. (2000). Despite its complexity and permutations, the bill was introduced December 14, 2000, and voted on and passed the same day. Robert W. Oast, Jr., *Incentives for Economic Development in Underserved Communities and for Affordable Housing: A Selective Look at the Legislative Initiatives in the 106th Congress*, 33 Urb. Law. 793, 795 Urban Lawyer (Summer 2001). The CRTRA was signed into law on December 21, 2000, tucked away into obscurity within the massive appropriations act. Title I of the Consolidated Appropriations Act of 2001, PUB. L. NO. 106-569, 114 Stat. 2944 (2000) Thus, it received little fan-fare or public attention beyond those already in the know. Actual legislative history is equally obscure.

¹⁶ I.R.C. § 45D(a)(2)(A-B) (2004). These sections specifically provide for a credit of 5% of the equity investment for the first 3 years, followed by a 6% credit for the remaining years.

¹⁷ I.R.C. § 45D(f)(1)(A-D).

¹⁸ The 2002 round equity amount was \$2.5 billion. The 2003 round amount was \$3.5 billion. For 2005, the amount was \$2 billion, and for 2006 the equity allocation was \$3.5 billion. The 2007 equity to be raised is \$3.5 billion. See the statutory authority of I.R.C. § 45D(f)(1)(A-D) and the 2003 Accountability Report of the US Department of Treasury, CDFI Fund at <http://www.cdfifund.gov/docs/2004/2003-annual-report.pdf>.

¹⁹ 26 C.F.R. pts. 1, 602 (2004). Original cite included—Fed Reg. Vol. 690, No. 248 (12-28-2004).

²⁰ Mulock, supra n. 12 at *Summary*. Available at http://www.nacsonline.org/NLE/CRSreports/Economics/econ-73.cfm?&CFID=179847&CFTOKEN=80276519#_1_1 (accessed Nov. 3, 2005).

²¹ The Low Income Housing Tax Credit provides an approximate 9 percent tax credit for new construction or rehabilitation expenditures for low income households over a 10-year period. See I.R.C. § 1437f.

²² Jennifer Forbes, *Using Economic Development Programs as Tools for Urban Revitalization: A comparison of Empowerment Zones and New Markets Tax Credits*, 2006 U. Ill. L. Rev. 177, 188 (2006), citing statements of Rep. Rangel, 145 Cong. Rec. E1761 (daily ed. Aug. 5, 1999).

The general NMTC transaction can be described as follows:

1. An investor²³ must invest a qualified equity investment (“QEI”) into a qualified community development entity (“CDE”).²⁴
2. The CDE must then take the investor’s QEI and invest those sums into a low income community project, either directly, or through a qualified community-based organization (“QCB”) or other approved entities that serve the low income area.²⁵
3. The credit is considered for the period commencing with the date the initial investment and each of the 6 anniversary dates thereafter.²⁶ The credit is 5% for the initial three years, and 6% for the remaining 4 years, equating to a 39% credit over the total of 7 years.²⁷

The anchor for the tax credit ship is the CDE.²⁸ The general scheme is that the CDE receives the investor taxpayer’s equity investment (“QEI”)²⁹ and redirects it (in the form of a qualified low income community investment to a low income community business (the QCB). It is the CDE that funnels the credits to the investors. A CDE must satisfy three requirements. First, its primary mission must be serving, or providing investment capital for *low-income communities or low-income persons*.³⁰ Second, a CDE must provide for low income resident representation “on any governing board of the entity *or* on any advisory board to the entity”.³¹ Third, the Director of the CDFI must formally certify the community development entity.³²

Since the tax credit is only provided to investors in exchange for a “qualified” equity investment, the basis of qualification is important to the scheme. The CDE must use substantially all of the cash for qualified low-income community investments to qualify as an equity investment³³. In construing the requirement that “substantially all” of the QEI must be for low income community investments, the final regulations provide

²³ Also termed the “taxpayer” since that person is the recipient of the tax credits.

²⁴ I.R.C. § 45D(a)(1).

²⁵ Reg. § 1.45D-1(d)(1)(i).

²⁶ I.R.C. § 45 (a)(3)(A-B).

²⁷ To illustrate the credit, assume an equity investment of \$100,000 in year 1. For year 1, 2, and 3, the credit is \$5,000 (5% of \$100,000) for a total of \$15,000. The 6% credit on the same 100,000 investment for the following four years is \$6,000 each of the remaining four years for a total of \$24,000. The combined credit is \$39,000 (\$15,000 plus \$24,000).

²⁸ A qualified CDE can be any domestic corporation or partnership. I.R.C. § 45D(6)(c)(1). An individual conducting business as a sole proprietor is excluded.

²⁹ Reg. § 1.45D-1(b).

³⁰ I.R.C. § 45D(c)(1)(A).

³¹ I.R.C. § 45D(c)(1)(B).

³² I.R.C. § 45D(6)(c)(1)(C).

³³ I.R.C. § 45D(b)(1)(B). The QEI must be paid to a qualified community development entity (“CDE”), I.R.C. § 45D(a)(1), acquired at its original issue (directly or through an underwriter) solely in exchange for cash, I.R.C. § 45D(b)(1)(A), and the CDE must designate the investment as such on its books and records. Reg. § 1.45D-1(c)(1)(iii). For a corporation, the type of authorized “equity investment” can include any stock, except certain preferred stock. Excluded is nonqualified preferred stock as defined in section 351(g)(2) of the I.R.C. The taxpayer investor can be a limited liability company or business trust, which is taxed as a partnership for federal tax purposes,

that 85% of the gross assets must be so directed, and that the requirement must be satisfied for each annual period in the 7 years available for the tax credit.³⁴

Procedurally, the program is administered through the Community Development Financial Institutions Fund (“CDFI”). The application process requires a mini-business plan prior to certification of acceptance into the program.³⁵ For an overview of the process and typical parties to a NMTC transaction see attached Table A.

(B) Definitions as Best Evidence of Congressional Intent to Primarily Benefit Low Income Residents Not High Income Residents in Low Income Areas

The magnitude of the NMTC distribution begets the question: Who are the real beneficiaries of the tax credit subsidy? It could be that Congress intended to benefit whoever desired into move to the low income areas, or rather the low income residents and its existing businesses, or those equity investors who receive the tax credit. The answer could be all of the above. The plan could be designed for some and not for others. And the plan in operation could be at variance with the original intent. This sub-part concerns the original intent by Congress. The next sub-part treats the program in operation.

Clearly, one intended beneficiary is the investor because she receives the tax credit. The NMTC mechanism allows investor groups of all types to provide the funds that serve the community. But the real issue is a matter of degree. Among those various potential recipients, who is designed as the “primary” beneficiary of that subsidy? What if an investor’s appetite for a high rate of return generates a project so expensive only the wealthy can afford it? A 10 story high priced condominium would be beyond the economic reach of a low income resident. That core resident is perhaps unwittingly reclassified from a primary beneficiary to a residual beneficiary, where benefits are at best trickled down from the condo owner. For such projects, those existing low income residents are left behind and financially unfed. If the primary beneficiary is the investor or wealthy new residents to the community, then the reduced benefit to the low income residents is of little consequence

The NMTC definitions provide sufficient, albeit imperfect, clarity as to the intended beneficiaries of the program through its definitions. Qualified investments, by definition, are designed to benefit a “low income community”.³⁶ Metropolitan low-income communities are defined as areas where the poverty rate is at least twenty percent of the statewide or area median family income, or where the median family income does not exceed eighty percent of that same state-wide or median income criterion.³⁷ The statute defines non-metropolitan areas as low-income communities if the median family income does not exceed eighty percent of the statewide median family income.³⁸ The

³⁴ Reg. § 1.45D-1(c)(5).

³⁵ Procedurally, an application is filed and reviewed by the CDFI based specified criteria, including the extent of past assistance to disadvantaged businesses or communities I.R.C. § 45D(f)(2)(A).

³⁶ Reg. § 1.45D-1(d)(1)(i) provide that the qualified equity investment is funneled through the CDE into a low income community project.

³⁷ New Markets Tax Credit, 26 U.S.C. §45D(e)(1)(A) (2000).

³⁸ Id. § 45D(e)(1)(B)(ii).

statute also incorporates targeted populations, as defined by the Riegle Community Development and Regulatory Improvement Act of 1994, into the definition of low-income communities.³⁹

Importantly, the low-income definition captures not only financial poverty, but also the lack of access to capital—a pervasive problem in perpetuating poverty.⁴⁰ It is therefore clear that NMTC program envisions primary assistance to a “target population”, and that target population is those who have suffered the effects of poverty. It is only that group within the community who has lacked historic access to capital. If Congress had intended to target the financially well healed, it would have expanded the definition, instead of limiting it to those who have a lacked access to capital.

Beyond definitions of the target population, other indicia of intended beneficiaries are from examining the role of each party to the transaction. The requirement that the CDE must have low income residents on advisory boards,⁴¹ that 85% of the gross assets of the CDE must be devoted to low income communities,⁴² and a mechanism is in place to funnel the equity funds into an active low income community business which derives its income or services from that community,⁴³ are all prime indications that Congress intended each party to the transaction is purposely designed as a mere conduit to the delivery of equity capital to existing low income community residents, not new entrants without the economic need.

³⁹ *Id.* See also, 12 U.S.C. 4702(2000) defining targeted populations as low-income or “otherwise lack[ing] adequate access to loans or equity investments.

⁴⁰ See generally Daniel M. Leibsohn, *Financial Services Innovation in Community Development*, 8-WTR JAHCDL 122 (1999) (describing the need for flexible, accessible capital in low-income communities).

⁴¹ I.R.C. § 45D(c)(1)(B).

⁴² Reg. § 1.45D-1(c)(5).

⁴³ I.R.C. § 45D(d)(2)(A)(i-iii).

Part II
PROGRAM IN OPERATION: GENTRIFICATION
AND PROBLEMATIC PURPOSED PROJECTS

“Observers [of the NMTC industry] suggest that it is commercial real estate development driven, which raises questions about whether it will foster gentrification in the absence of careful community planning”⁴⁴

If Congress truly intended the primary beneficiaries of the NMTC program to be the existing low income residents, the question becomes is the program in operation fulfilling that intent? If, as depicted in the previous section, an investor can receive the tax credit subsidy for building a 10-story condominium at purchase prices beyond the economic reach of low income residents, is the program too broad in operation? The model that permits the above-described project is, respectfully submitted, up-side-down. As advocated throughout this article, the type of project should be decided not based on what is most profitable to the investor, but what most meets the needs of the community. Thus, I attempt an analytical construct for a tax credit policy that prioritizes those low income residents, placing them in the front of the line with a chair at the tax planning table as full fledged participants in the NMTC program.⁴⁵

The answer in my view does not start with my above conclusion, but rather with an analysis of the type of model actually used by those who administer the program, the CDFI. Whether by design or fiat, the CDFI has at least two conceptual choices. As described below there is a “place-based” concept that targets people in a particular place, and a “pure people” concept, targeting people regardless of residency. Congress has historically offered various forms of subsidy from tax revenues to eliminate urban blight.⁴⁶ Enterprise zones and the NMTC program are both generally designed to reduce poverty in low income areas through economic growth.⁴⁷ But the methodology to accomplish that goal differs. The enterprise zones utilize a “place-based” policy, meaning the zones are designed to revitalize a place, i.e. the urban core communities, “in order to help local residents”.⁴⁸ The underlying theory is that “people cannot be separated from place, and ...an antipoverty strategy needs to treat individuals in the context of their

⁴⁴ Susan R. Jones, *Will New Markets tax Credits Enhance Community Economic Development*, 8 J. Small & Emerging Bus. L. 229, 237 (2004). Indeed, those observers who questioned whether commercial real estate projects were the apple of investor’s eye have an answer. According to CDFI’s own statistics, “61% of the NMTC proceeds will be used to finance and support real estate projects...” (available at <http://www.cdfifund.gov/awardees/2005/2005NMTC-FAQs.pdf>).

⁴⁵ This is not to say those who have significant financial resources from whatever residency source should be excluded from any role in urban revitalization. There are various private industry programs and other federal subsidies available for development in inner cities. But here elected federal representatives of the American taxpayers earmark public funds to be used to revitalize low income areas *and* residents of those areas, who are more in need of dialysis machines than movie theatres, qualitative grocery stores than Starbucks, and simply houses rather than opera houses. The model that follows is designed to more effectively use the NMTC subsidy to meet those needs.

⁴⁶ Harden, *supra* n. 2, at 5.

⁴⁷ Forbes, *supra* n. 22, at 177.

⁴⁸ *Id.* at 193.

community.”⁴⁹ The method of the empowerment zones and related programs⁵⁰ was to provide skill training and counseling to local residents so they would “also benefit from the revitalization of the area through employment opportunities and improved social structures.”⁵¹

The NMTC law⁵², unlike Enterprise Zone legislation, is less clear and has fallen into a conceptual conundrum. The stated purpose of the NMTC is consistent with the goal of primarily benefiting the core low income residents.⁵³ Notwithstanding the apparent congressional purpose, the NMTC program in operation appears to be designed to enhance economic development – but not necessarily for the local residents. This is a policy for economic growth of a geographic area, even if the growth benefits primarily those who came in from outside that area.⁵⁴ As one commentator observed, the NMTC program “does not focus on the economic well-being of local residents as one of its primary goals...no incentives exist to target jobs or services towards local, low income residents...Instead the program looks to improve the economic well-being of individuals extending far beyond the defined area.”⁵⁵ And most poignantly, NMTC scholars conclude that the NMTC has been focused on “*targeting a geographic space and not necessarily the needs of the people within that space*”.⁵⁶ Thus, the NMTC does not foretell economic mobility to low-income residents through job placement and fails to address other issues such as schools, job training, and housing that are key components in the attainment of long-term economic success.”⁵⁷ This falls within the “pure people-oriented” strategy which advocates assistance to people regardless of where they live, thereby increasing human capital and mobility since the benefits would follow them regardless of where they relocate.⁵⁸

⁴⁹ Id. at 193.

⁵⁰ After first and starts early in the Reagan administration, Congress passed legislation in 1987 and established 100 enterprise zones that remained largely ineffective due to a lack of tax incentives until spurred into action after the Los Angeles Riots of 1992 under the Clinton administration. Only then was emphasis placed on tax credits and coordinated federal resources through Social Services Block Grants. In 1993, Clinton signed legislation that established nine enterprise zones and ninety-five enterprise communities. Through a competitive bidding process additional rounds of zones were created in 1998 and 2001. See Forbes, supra n. 22, at 183.

⁵¹ Id. 194.

⁵² The law is codified in primarily two areas, statutorily in I.R.C. § 45D, and the accompanying Regulations, Reg. § 45D.

⁵³ The statute states its purpose is to provide a “qualified equity investment” I.R.C. § 45D(b) for “target populations,” I.R.C. § 45D(e)(2), within the “low income community”. (I.R.C. § 45D(e)(1). The regulations generally state the purpose of the federal subsidy (tax credit) is to be an incentive for investors to provide equity capital into projects designed to serve the “low income community” and “low income residents”. Reg. § 1.45D-1(d). As this article reveals, the bedeviling issues of purpose and fulfillment thereof are in the details.

⁵⁴ Forbes, supra n. 22, at 177.

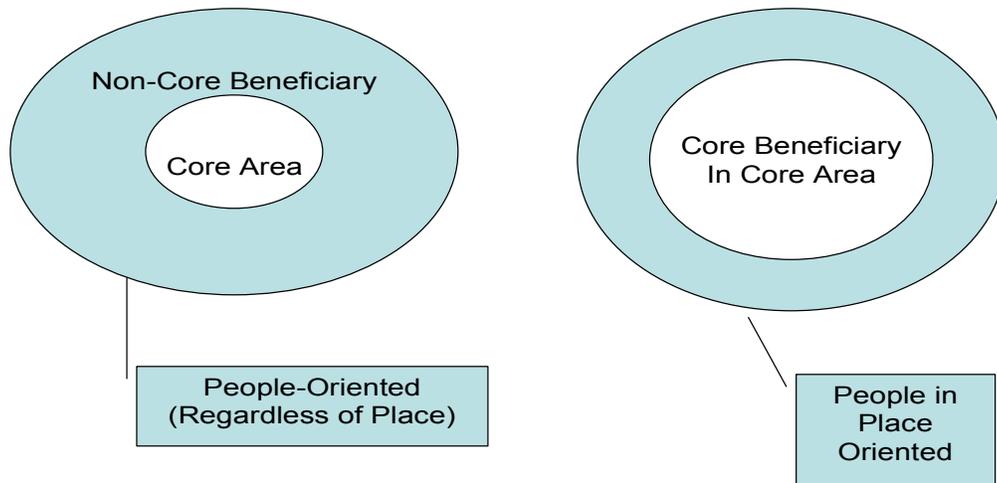
⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id at 194-195.

⁵⁸ Id at 195 citing Helen F. Ladd, *Spacially Targeted Economic Development Strategies: Do they Work?* 1 CITYSCAPE 193, 196 (1994).

The two opposing models are illustrated below:



The most fundamental difference between the two models, in my view, is in the intended beneficiaries. The People-Oriented model that targets the space but not the core residents of that space allows the intended beneficiaries to be anyone, regardless of the relationship to the low income community. If the NMTC program is flexible enough to allow projects that only high income people can afford, the intended beneficiaries become only those who can afford the projects developed, e.g. the earlier 10 story condominium illustration. As such, a model is in essence a subsidization of gentrification by another name, where the financially well healed can claim as its ‘new market’ a core urban area. I maintain that the People-Oriented model, therefore, is ill-conceived as a means to primarily benefit low income residents, as Congress intended.

The evidence of whether this model is operational in the NMTC program is shown by following the money. If the project’s goal is to primarily benefit financially well healed new entrants to the community, and the NMTC program endorses that focus, upscaling projects can be authorized. If on the other hand, the intended beneficiaries are the existing low income residents, then the only authorized projects are likely to be such projects as health care facilities for the ill most acute to the existing low income residents, affordable housing for the elderly and chronically financially distressed, innovative non-conforming loans and financial services for those who lack access to capital, and charter schools for local children. If the NMTC program allows both, it misses the mark – if the mark is indeed to assist the core low income residents. Scholarly discussion of the historic and recurring failure of urban redevelopment points to this same root cause, where the conceptual model of redevelopment planners does not start with low income residents as “clients” of the redevelopment. Instead, the focus is on luring

white citizenry back to the cities.⁵⁹ It does not take sophisticated empirical analysis to predict that a revitalization plan for an area that does not make those residents the “client” does not appear well designed to solve the problem.

To determine whether the CDFI authorizes the People-Oriented gentrification model, I examined descriptions of award winning projects. I also examined websites of CDEs that were given allocations. Many entities that have received allocations have not declared a precise project.⁶⁰ But of the identified projects in each round of NMTC awards, approximately \$2 billion of tax credit subsidy has been allocated to projects that appear to be designed primarily for those already with the very access to capital that the low income residents lack.⁶¹ It is worth reiterating that the “target population” for the tax subsidy program includes those who historically lacked access to capital.⁶² Many projects, particularly those with mixed use project types, include movie theatres, performing art centers for opera, symphony and ballet, hotels like the Marriott Inn with connected convention centers,⁶³ museums, upscale commercial office, retail outlets, and even tourist centers. I have designated these project types as “Problematic Purposed Projects” because they appear to be inconsistent with the Congressional intent to primarily benefit the low income target population as defined in the law.

There have been four rounds of allocation awards of NMTC funds.⁶⁴ A sampling of those problematic projects is described in amount and type segregated by round in the attached Table B. Listed below is a summary of the amount of tax credit subsidies provided to such projects to provide a sense of the cost to taxpayers for authorizing those types of projects.⁶⁵

Allocation Year	Problematic Project Equity Investment	Problematic Project Tax Credit Subsidy
2002	\$1.6 billion	\$624 million
2003	\$1.1 billion	\$429 million
2005	\$744 million	\$290.1 million
2006	\$1.9 billion	\$741 million
<u>TOTAL</u>	<u>\$5.3 billion</u>	<u>\$2 billion (Rounded)</u>

These amounts are subject to adjustments due to the lack of clarity among CDEs as to exactly how the funds would be used. Many project descriptions include a mix of

⁵⁹ Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing The Central City with Resident Control*, 27 U. MICH. J. L. REFORM 689, 743 (1994).

⁶⁰ This conclusion is derived from the author’s review of CDFI documents through four rounds of allocations.

⁶¹ The statistics are from the CDFI’s own profiles of the allocation award winners at <http://www.cdfi.gov> and the websites of the Allocatees with press releases concerning the projects.

⁶² I.R.C. § 45D(e)(1).

⁶³ For example, a NMTC subsidy of \$15, 263,157 was allocated in Round III (2005) for a project investment of \$106 million. The awardee was Louisville Development Bancorp, Inc. The purpose is the construction of a 617-room convention center and hotel, (The Marriott Louisville Downtown Convention Hotel). See <http://www.morethanabank.com/New%20Markets%20Tax%20Credit/winners.htm> and the CDFI allocate profiles at <http://www.cdfi.gov>.

⁶⁴ The Rounds were (1) in 2002-2003, (2) in 2003, (3) in 2004, and (4) in 2006.

⁶⁵ These findings are from the author’s review of the CDFI’s profiles of allocatees. See supra n. 60.

problematic and proper purposes, though the vast majority of project types and costs are associated with the problematic projects.⁶⁶

Are subsidized gentrification projects necessarily antithetical to assisting low income residents? Are “Problematic Purposed Projects” a natural and predictable byproduct of gentrification? Or conversely, are gentrified projects a primary benefit to low income residents? The answer appears to depend on how gentrification is defined and characterized. Two definitions of gentrification have come to the fore among scholarly literature. One that considers displacement of low income residents as included in the definition, and one that excludes displacement. Interestingly, those two definitions have their conceptual roots in the same two models discussed above for urban renewal through economic revitalization - the “People-Oriented regardless of Place model, and “People in Place” model. Scholarly debate on whether gentrification is an adverse or a positive influence on the core residents breaks down philosophically on the basis of which urban revitalization model is employed.

Like the People in Place model where the benefits inure to the core beneficiary in the core area, those who define gentrification as a displacement of low income residents employ the theory of unity between the place and the existing residents, so the benefits to the place must also include benefiting primarily the people already “in place”.⁶⁷ Under this view, the influx of new wealthy residents is viewed as adversely affecting those existing low income residents.⁶⁸

A contrary definition of gentrification excludes “displacement” as part of the definition, and instead refers to gentrification as a “process by which people of higher incomes move into lower income urban areas and seek to change its physical and social fabric to better meet *their* needs and preferences.”⁶⁹ The needs and preferences targeted are those of any persons, not just those who are existing residents in place. This is conceptually aligned with the People-Oriented model. That model targets anyone who can afford the market prices and it is their “needs and preferences” that are prioritized, not the poorer existing residents. The beneficiary under this definition can include anyone, including of course those new entrants to the community without having to tie the existing low income residents already in place. Under this theory, gentrification has a positive impact. This later theory does not ignore displacement but does not blame gentrification. The displacement culprit is the government, for its persistent failure to produce sufficient housing for the poor.⁷⁰

The flaw of this non-displacement view is the same as the Pure People model and other historic urban revitalization missteps discussed above. Just as urban revitalization

⁶⁶ The amount is subject to a potentially large upward adjustment since a significant number of the CDFI profiles did not specify any project types. The larger projects include the hotels, convention centers, opera houses, etc. beyond the types of projects I consider to be properly purposed. A downward adjustment is also likely since it cannot be determined from the published materials the percentage mix between the gentrified projects and those truly designed for low income residents. Many projects have a combination of both. It appears the greatest dollar volume will be to build the largest projects, which again appear to be problematic.

⁶⁷ John A. Powell & Marguerite L. Spencer, *Giving Them the Old ‘One-Two: Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOWARD L.J. 433-435 (2003).

⁶⁸ *Id.*

⁶⁹ J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOWARD L. R. 405 (2003).

⁷⁰ *Id.*

has lacked success for failing to prioritize the needs of the “client” urban residents over the wants of the wealthy who seek to rediscover this marketplace, gentrification definitions that exclude displacement similarly fail to prioritize the client – the low income resident. It is the client low income resident that suffers the displacement. And to reassign blame to the government for the cause of the displacement could at best only add to the burden of government rather than the private sector. To date, that formula has not proven successful. As stated earlier, the redevelopment plan for the community that conceptually does not prioritize the existing community residents is not well designed to revitalize the area.

One proponent of the non-displacement definition concludes that even if the target is low income residents in place, gentrification is a net gain for the low income residents.⁷¹ Under his analysis, urban residents currently have better employment opportunities in the suburbs, so increased investment in new shops and services within the urban community provides more jobs within the urban core. In his view, the increased level of high end jobs also increases the supply of support jobs for which low income residents can qualify.⁷² He also claims gentrification should improve retail and grocery shopping for low income people,⁷³ though he fails to detail how that would occur if the majority of low income residents cannot afford the products brought into the target community for the gentrifiers who have more leisure income to afford those products.

That theory also fails for two principal reasons. First gentrification depends on trickle down economics. Since Problematic Purposed Projects appear designed to benefit the financially well healed new entrants to the area, low income residents are merely incidental beneficiaries of the NMTC program. The benefits for low income benefits must therefore be residual in nature, a morphed trickle down of benefits from the wealthy newcomers to the area.

Trickle down economics has not been a user friendly model for those at the lower rung of the ladder. By definition, the trickle down theory “assumes that by helping directly already-wealthy person X we will in fact help disadvantaged person Y in a more sustainable manner than by helping person Y directly.”⁷⁴ Historical views by scholars of urban revitalization have well documented the failures of this theory in application.⁷⁵ The conclusion is described as follows: “The net result is that a neighborhood of poor people is replaced by office towers, luxury hotels, or retail centers. The former low-income residents displaced by the bulldozer or an equally effective increase in rents, must relocate into another area they can – perhaps – afford.”⁷⁶ This conclusion is arguably more normative than empirical. But the same can be said to a greater degree, with less empirical support, about the notion that greater investment will lead to significant job growth. As one study concluded the causal connection between capital investment and job growth among the low income residents is “untested and usually unproven”.⁷⁷ And without sophisticated statistical analysis, can’t we take the equivalent of judicial notice to

⁷¹ Id at 406.

⁷² Id at 419.

⁷³ Id at 420.

⁷⁴ Quinones, *supra* n. 59, at 724-751.

⁷⁵ Id at 741 and cited references therein.

⁷⁶ Id.

⁷⁷ Id at 746, citing Robert Mier, *Job Generation As a Road to Recovery in Social Justice and Local Development Policy* 34 (ROBERT MIER ED. 1993).

observe that if the federal subsidy is used for a \$500,000 condominium in New Orleans, the displaced low income resident of the 9th Ward who could have used an affordable home project instead, has little or nothing as a trickle down benefit? Isn't he certainly, something far less than an operational *primary* beneficiary? What is the quantified amount of tax benefits trickling down from a tax subsidy for a \$100 million Hilton Inn and Convention Center when that same 9th Ward used-to-be resident receives perhaps a \$10,000 - \$20,000 job? No amount of fringe benefits or other multiplied extensions of benefits would elevate him to primary beneficiary status. Conversely, there is ample empirical evidence that redevelopment project areas normally become "gentrifying markets" without material increase in the quality of life of the low income residents.⁷⁸ That notion is aligned with the author's definition of gentrification that is raised below.

A second reason gentrification does not have a positive impact on low income residents are because of marginalization or squeezing out of existing low income residents. To illustrate the process of marginalization, assume a low income resident is a renter, unable to afford to own a home. Assume the owner of the apartment building faces higher taxes and insurance costs due to increased property values from new construction or renovations to accommodate gentrifiers. The landlord also believes there is an increasing market of higher income potential renters. He is likely to increase the rent to meet the higher debt service and maintain or improve profitability. The low income renter has to pay the higher rent charged by a landlord. Assume too the low income existing resident has static income. Though she may not have to move out – yet – she nonetheless has been increasingly marginalized because she has less money for other living expenses due to the effect of gentrification. That rising rent scenario has been termed "secondary displacement" or "indirect displacement"⁷⁹ As one study concludes, paying higher rent without a corresponding increase in personal welfare is a negative effect of gentrification. This assumes that the gentrifier wants are different than the core residents needs. While certainly there are some harmonious projects, there appear to be an alarming number of circumstances where subsidized projects designed for gentrifiers appear incompatible with the core resident needs and therefore at variance with the goals of the NMTC legislation.

In sum, the likely failure of trickle down economics and the more likely marginalization of low income residents stand as detriments and unintended consequences of gentrification that dwarf the above-claimed benefits to the low income residents of the non-displacement definition of gentrification. Since I believe a definition should incorporate the elements that give the term its character, or give attribution to what it affects, I define gentrification more broadly than either of the previously described definitions.

This article views gentrification as having two definitional components. First there is an influx of new residents with resources significantly beyond the existing residents. Second, and most importantly, the potential infusion of new residents must motivate landlords and commercial owners to upscale properties to accommodate the accoutrements of opulence of the new residents. This definition establishes a causal connection to a sustained displacement or marginalization of existing urban low income residents. Under this definition, it is the conversion of resources, not merely the infusion

⁷⁸ Id at 748.

⁷⁹ Byrne, supra n. 69, at 414.

of people that is the cornerstone of gentrification.⁸⁰ New residents could conceivably go to the same video stores, churches, and grocery stores as the existing residents without causing a displacement or marginalization of those existing residents. Existing business owners could conceivably maintain affordable rents, menu prices, and the government could establish rent subsidies to minimize rising housing costs for the poor and elderly. It is only when landlords, owners of vacant and dilapidated housing, restaurant owners, and the like start what I will call “upscaling”, so that the life style of the new residents becomes entrenched to the economic and quality of life detriment of the existing residents that gentrification becomes operational.

The definition is also race neutral. No preference is provided based on race or ethnicity.⁸¹ Under this definition therefore, new residents with wealth, regardless of race or ethnicity, could bring resources to the community and feed into the existing cultural lifestyle, maintain affordable housing, contribute to the charitable causes that improve the living quality of life of the existing residential base, and gentrification still has not occurred. But if the new infusion of residents also brings with them facilities to accommodate a standard not affordable or desired or of primary benefit of the existing community, gentrification is in process.

Under this article’s gentrification definition, the failure to account for displacement allows the thwarting of congressional intent in passing the NMTC legislation and would ignore two fundamental principles that I assert are important in developing the revitalization model for tax credits: (1) prioritizing needs of the most needy over the wants of the wealthy and (2) identification of the intended versus incidental beneficiaries. If federal funds are intended to primarily meet the *needs* of poor urban residents, then the more such funds are used to instead accommodate the *wants* (accoutrements of opulence) of new entrants, there is a diversion of funds that pushes revitalization opportunities further away from those intended low income residents – hence a marginalization rather than mainstreaming of tax benefits.⁸²

Of course there is a continuum of project uses that may benefit the target populations and low income communities at *some* level. Low income residents could potentially enjoy an opera or a visit an art gallery if they could afford the prices of the pieces, or taking in a movie during leisure time. And certainly some target low income residents could benefit from commercial office space, if they could afford to rent an

⁸⁰ One definition of gentrification is “the displacement of low-income individuals *by young affluent homeowners* as they ‘discover’ downtown residential areas, renovate homes, and thereby raise rents.” Quinones, *supra* n. 59, at 748. The essence of gentrification, in my view, is the conversion of the area, which has more of a genesis with those who owned and made the property available, than those who decide to move in. The starting point is not therefore with the affluent, young or not, who buy the property. Rather it is those who increase the rents, or built the luxury condominiums who are more the proximate cause of the conversion.

⁸¹ Constitutional issues could be raised, but is beyond the scope of this article. A brief discussion of race neutrality in the article’s CDFI-required needs assessment is discussed *infra*, note 103.

⁸² *Id* at 414-415, citing Jacob L. Vignor, *Does Gentrification Harm the Poor?*, BROOKINGS-WHARTON PAPERS ON URB. AFF. 133, 167-168 (2002). It is important to note that gentrification is a group dynamic, descriptive of a group experience. So a single homeowner that benefits from appreciation on sale of the residence does not mean that gentrification is not occurring. It is rather a matter of degree. The extent of damages to the poor due to gentrification is beyond the scope of this article, as empirical proofs would be required. The issue treated in detail in other published materials. See Powell, *supra* n. 67.

office and had a job to make it reasonable to occupy it.⁸³ And a condominium would be wonderful if the low income target population could afford the mortgage. And some jobs could flow from the new commerce created in the area. But such uses are not well designed as *primarily* for a community and population with third world health care, chronic unemployment and over 50% drop out rates among its male youth, unprecedented incarceration of up to 6 of every 10, substandard and overpriced grocery stores, and a lack of access to the capital to change the circumstance. The salient issue is whether the people's tax dollars are used to meet the *needs* of the low income residents as earmarked by Congress. These Problematic Purposed Projects do not appear to meet that purpose.

Another unintended consequence of gentrified NMTC projects is no different fundamentally than what has been observed by urban demographers as the byproduct of other urban redevelopment programs – opportunity costs.⁸⁴ Those costs are substantial and have been enumerated in prior studies.⁸⁵ There are physical construction costs. This refers to actual construction that was ineffective at meeting resident needs, and thereby precluding construction that would have been better suited.⁸⁶ In theory it is akin to the property appraisal concepts of the failure to build based on the “highest and best use” for the site. Also prominent is the lost time and effort of governmental actors for misguided development projects. The staff time, including the huge resources associated with negotiating with private developers, creating and evaluating feasibility reports, holding public hearings and then analyzing and publishing materials therefrom are all costs for gentrified projects that miss the mark.⁸⁷ There are also costs from the nationalization of project types, where the cookie cutter format of office buildings, high-tech developments, hotel-convention centers complexes, inter alia, have replicated themselves as a matter of policy. That policy also replicated and compounds the error since in many cases, the construction would have occurred in any event and the subsidies were not needed.⁸⁸ The more obvious and devastating personal costs are to the low income residents themselves who suffer the inordinate risk of displacement or marginalization.⁸⁹

Will the gentrification and Problematic Purposed Projects develop in areas devastated by Hurricane Katrina? In the most recent of the four rounds of allocations, \$600 million is specifically allocated for use in such areas, defined as the Hurricane Katrina Gulf Opportunity Zone (“GO Zone”).⁹⁰ From the inception of the program, there have been over 230 entities created under the internal revenue code to receive the subsidy

⁸³ The office rents and condominium prices for a vast majority of the projects is unavailable as many projects have not released data or have yet to finalize plans in that regard. But from the data gathered to date, a multitude of projects are at least “problematic” and appear common sensical beyond the intended purpose of the NMTC program.

⁸⁴ See Quinones, *supra* n. 59, at 742-744.

⁸⁵ *Id.* at 724-751.

⁸⁶ *Id.* at 724.

⁸⁷ *Id.* at 742-743.

⁸⁸ *Id.* at 744.

⁸⁹ *Id.* at 750-751.

⁹⁰ See the CDFI website at www.cdfi.gov. The \$600 million of NMTC funds was authorized by the Gulf Opportunities Act of 2005 for recovery and redevelopment of what was termed the Hurricane Katrina Gulf Opportunity Zone (“GO Zone”).

to help the urban core. Less than a handful of those entities are African American owned.⁹¹ For cities like New Orleans where nearly 70% of the city and the vast majority of the displaced residents are African American, the entities receiving federal subsidies for reconstruction therefore do not include them.⁹² And though the majority of those entities with GO Zone awards have not identified specific projects,⁹³ many have included the same type of general descriptions that brought gentrified projects to other urban core residents in the prior 3 rounds.⁹⁴

For example, the Chevron NMTC Fund LLC received an allocation of \$50 million for the GO Zone.⁹⁵ The Chevron plan is to use the federal subsidies to help construct “hotels, office space, retail, light industrial and mixed-use buildings”⁹⁶ Who are they building the projects for? It is far from pure speculation to surmise that the hotels are not primarily for the displaced low income residents. I suspect they will not be asked in Homeland Security fashion to be permanent hotel guests. I suspect they may receive janitorial jobs that trickle down from the multi-million dollar developments. But is the bulk of the \$50 million likely to be used for affordable housing complex, replete with nearby grocery stores and health care facilities designed to meet the needs of the low income residents the subsidy was designed to assist?

Not all CDEs with Katrina GO allocations are problematic in purpose. A very few have described what I term Properly Purposed Projects like Capital Link, Inc.⁹⁷ They received a \$15 million allocation which they assert will be used to provide “Federally Qualified Health Centers” to the actual low income residents and the uninsured. That is a dramatically different purpose and intended beneficiary than a hotel project, which by very definition is designed for the wealthy owners of the facility. The low income residents who likely cannot afford the occupancy rates have at best residual benefits.

The focus of this article, however, is not confined to exposing misguided projects. The next Part also presents an analytical construct to proliferate projects truly designed for the low income communities and their corresponding target populations. Such projects already exist within the NMTC program. They primarily involve community healthcare facilities, financing for non-profit community based organizations, child care, social service centers, community development real estate projects, senior centers, providing below market nonconventional unsecured commercial loans, and affordable housing for truly low income residents. These project types are termed “Properly

⁹¹ Two Hundred thirty three CDEs have received allocations as of June 29, 2006 according to CDFI announcements on its website at www.cdfi.gov. The CDFI published Profiles describes 3 entities as being majority or 100% minority owned, although one of which is an LLC, and the general partner is actually the award winner that may not be a minority concern.

⁹² U.S. Census Bureau, U.S. Department of Housing and Urban Development. A study based on the Federal Emergency Management Agency data concluded that Katrina’s effects were “disproportionately borne by the region’s African American community, by people who rented their homes, and by the poor and unemployed.” Robert P. Stoker & Michael J. Rich, *Lessons and Limits: Tax Incentives and Rebuilding the Gulf Coast after Katrina 1* (Brookings Institut. 2006).

⁹³ The conclusion is based on the author’s review of CDFI profiles from the 2006 round that includes all GO Zone allocations.

⁹⁴ Id.

⁹⁵ See the CDFI website at www.cdfi.gov.

⁹⁶ Id. JPMorgan Chase & Co. also received \$50 million to develop commercial real estate ventures, presumably with a mix of other, but quite possibly lesser community-based facilities.

⁹⁷ See *Fourth Round-2006 New Markets Tax Credit Allocatees* at www.cdfi.gov.

Purposed Projects” because author believes are most precisely within the intent of Congress when the NMTC legislation was passed.

The NMTC legislation was also thoughtful enough to build into the program a monitoring and evaluation process.⁹⁸ There are various actions that the CDFI can take to ensure that the allocations are properly made to appropriate entities. Part III of this article attempts to assist in that effort as the CDFI assesses the impact of the new markets credits on low-income communities.

⁹⁸ Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States must report to Congress, pursuant to an audit, on the NMTC program, including all qualified community development entities that receive an allocation under the credit.

Part III

The Gentrification Alternative - The Properly Purposed Project Developed through Harmonious CDE and QCB Entities

As noted above, some commentators argue that gentrification is a net gain for low income residents. If that theory is true in all cases, then the use of NMTCs for such developments as opera houses, high priced condominiums, and convention centers would also benefit the urban poor. The reality, however, is more complicated. The extent of benefits to a low income community, some tangible, some intangible, are a matter of degree and difficult to quantify. And if it is just a matter of degree, then all projects have at least some level of indirect or residual benefit. Assuming that to be the case, the precise question is whether the NMTC federal funding scheme mandates that the tax subsidy is only for those projects that make low income urban residents the *primary* beneficiaries. And if Congress intended low income residents to be primary beneficiaries, and Problematic Purposed Projects as vehicles for gentrification create a mismatch, what regulatory amendments are necessary to match the program's operational reality with congressional intent? The answer to those questions starts with a conceptual model, a way of thoughtful problem solving, which is discussed in this section. Specific proposed amendments follow in Part IV.

Transactional End Sum Model

The NMTC purposes may well be served by first starting with identifying an achievable outcome, and then building the means to meet that end. A similar model already exists and has had significant measurable success in the Bill and Melinda Gates Foundation.⁹⁹ In the NMTC context, the desired outcome is two-fold: identify a need in the community and a specific project designed to meet that need. The starting point in my model is a list of priorities for the types of projects that the target community needs most. There is a plethora of statistical data on the extent of disparity between the urban core cities and the general population, subdivided by health, employment, and virtually every other category that the United States Census tracks.¹⁰⁰ Moreover, Congress is fully capable of establishing a commission to perform a needs assessment so that it can state at the end of the day: "These are the needs, and these are the types of projects we believe are designed to meet those needs".¹⁰¹ I term the needs list a "Mall of Needs" akin to a strip mall with various business types within it. The projects designed to meet those needs I term "Properly Purposed Projects". The Mall of Needs is based on the premise that the low income core urban residents would rather have quality grocery stores at

⁹⁹ A more detailed discussion of The Bill and Melinda Gates Foundation is set forth in Section 2 regarding social entrepreneurship.

¹⁰⁰ U.S. Census Bureau, U.S. Department of Commerce, Statistical Abstract of the United States: 2001, THE NATIONAL DATABOOK, Tables 660, 661, 662, 663 (2001) to name a few.

¹⁰¹ The substantive materials could be first established by Congress, subject to the target community's localization (top-to bottom) or first established by the communities (bottom-to-top).

affordable prices to feed their households than a Starbucks. They, I will assume, prefer qualitative health care clinics specializing in the types of illness that disproportionately affect core community residents (e.g. sickle cell, kidney failure) to an upscale commercial office building.¹⁰² It would be nice to have it all, but the priority assumed in this article is for the needs, subrogating the wants.¹⁰³

Currently, the NMTC program has thoughtfully created criteria by which to evaluate fund applicants¹⁰⁴ but it has not publicly released such a needs assessment. Nor has it published prioritized project types. That void allows latitude for gentrification projects that would not otherwise have been authorized if there was a template of needs and project types, and adherence to that standard in the certification process. If this paradigm shift occurs, it will be clear to NMTC applicants that the privilege attached to the credits only inures to those who meet criteria consistent with a Mall of Needs for low income residents rather than a Mall of Wants for gentrifiers.

¹⁰² See Nancy Krieger, *Painting a Truer Picture of US Socioeconomic and Racial/Ethnic Health Inequalities: The Public Health Disparities Geocoding Project*, American Journal of Public Health, Vol. 95, No. 2, p. 312, 317 (2005), for findings that poor health among low income communities is attributable to, inter alia, inadequate “public goods (e.g. supermarkets, health clinics) and environmental pollution.” Segregation has also increased health disparities. According to the Krieger study, “Also pharmacies in segregated neighborhoods are less likely to have adequate medication supplies, and hospitals in these neighborhoods are more likely to close.” Id. at 330.

¹⁰³ Interjecting into the CDFI criteria cultural connectivity or sensitivity to the particular needs of a community based on ethnic traits could raise constitutional questions. Racial classifications imposed by the government are subject to strict scrutiny, and are only constitutional if narrowly drawn. *Grutter v Bollinger*, et al, 539 U.S. 306, 326 (2003). None of the amendments offered in this article (e.g. raising the minimum poverty rate) attempt to add a “racial” classification or preference. An Ethninvestor can be of any race that has cultural connectivity with the low income community. The low income community may have a mix of ethnic groups, including immigrant enclaves. Cultural sensitivity is not synonymous with a particular race. Under all proposed amendments, any investor, CDE or QCB can, for example, determine whether certain needs are unmet within the community. Ethninvestors may be more attuned to the issues and provide a more culturally sensitive application to the CDFI. An Ethninvestor may therefore be more likely to propose a Properly Purposed Project. But no governmentally imposed classification or preference is given because of race. If a needs assessment must be performed, but without proscribing a governmental preference or establishing a racial classification, it should be considered “race neutral” in this author’s view. The preferences should arise as a matter of course in the private marketplace of empirical research. In other words, if a regulation states: “The CDE shall perform a good-faith needs assessment based on statistical data publicly available,” and if there is no sickle cell treatment center for a community that has a high incidence of that disease, that need should be identified and included in the needs assessment. That does not necessarily mean that particular need must be the CDE’s designated project. But since the CDFI has a statutory duty to implement a program to assist low income residents in their community, the CDFI should be within its authority to at least require all applicants, regardless of race, to determine what is needed. If the project fails to meet *any* identified need in the community, then the applicant should be provided the opportunity to receive the subsidy. Even if proposed amendments are considered race conscious classifications, the language could be carefully crafted to be narrowly drawn to serve a compelling governmental purpose. Nonetheless, determining what is or is not a race-conscious governmental provision is debatable and beyond the scope of this article.

¹⁰⁴ The CDE applicant is evaluated on the following four categories: Business Strategy, Capitalization Strategy, Management Capacity, and Community Impact. Each category has a maximum of 25 points. There are additional “priority points” under the business strategy category if the applicant (1) already has a record of providing capital or technical assistance to disadvantaged businesses or communities or (2) intends to funnel substantially all of its cash investment to an unrelated low income businesses. Each applicant is then given a numeric score and ranked. See *Notice of Allocation Availability*, 69 FED. REG. 49951-49952 (August 12, 2004).

It is not enough to merely identify needs and conforming project types. It is also important to conceptually align the parties to the transaction. A business transactional approach is herein suggested because most fundamentally the program is about structuring transactions among various parties. Investors deliver a particular product (i.e. equity capital) to a particular location (i.e. low income areas) for particular beneficiaries (low income residents). As with any business transaction, each party has separate interests, and the success of the transaction depends on establishing a win-win environment for all those who participate in the transaction. That requires a comprehensive connecting of dots involving all the component parts and players in the program. A model that simply fulfills the investor's financial expectations but leaves the small business in ruins does not adequately incorporate and harmonize the interests of each part of the transaction. Nor does it most effectively meet the goal of the subsidy.

To harmonize the interests of each party to the transaction, this modeling involves two hybrid components: a "means-ends factor" and a "balancing of interests" factor. The means end factor is a process whereby the applicant is first provided the Mall of Needs and the list of Properly Purposed Project types.¹⁰⁵ Those combined items constitute the End Sum Interests. Only with that End Sum in focus is the transaction devised. The parties to the transaction, (the investor, CDE, and the QCB) comprise a "Means Team" because they collectively are the means by which the "end" is achieved. That end is the Properly Purposed Project for the target community. The concept is that if the Means Team is required to first focus on the End Sum Interests, there will be a natural weeding out of those parties that would otherwise attempt to establish gentrifier projects.

The second component of the transactional model is the balancing of interests. That component has two aspects – a balance internally among the Means Team, and externally between the Means Team and the target community. Internally, each team member should balance its own profit motive with the philanthropic motive of assisting the target community. If the CDE desires a rate of return at odds with the expectations or distribution of benefits to the small business (QCB), the discord could lead to severing the relationship. A failed venture also diminishes the value of the tax credit since the revitalization did not occur. To avoid a loss of benefits from the tax subsidy dollars, the CDFI should scrutinize the relationships for signs of incongruence.¹⁰⁶ Of course, projects can have a relative level of success without complete failure, and it is not necessarily an either/or proposition. But it is not a proper balance if the kind of projects that are authorized are conceptually upscaling without also reaching down to bring the community with it.

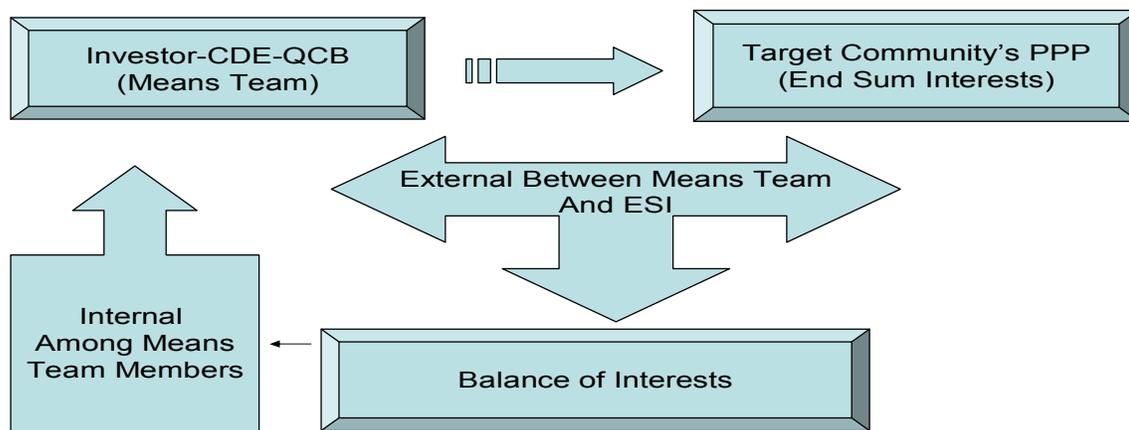
External balance refers to the need to carefully weigh interests of the collective Means Team against the interests of the target community. A conceptual model that allows too heavy a weighting of benefits to the Means Team, e.g. an investor that expects an unrealistic return on an investment rather than the community interests is more likely to produce a project deliverable that is a Problematic Purposed Project. A Means Team that intends to drain the resources of the small business that initially received the equity

¹⁰⁵ Assuming the list is preliminary and subject to fine tuning, it nonetheless provides a starting point for aligning and harmonizing the potential parties to the transaction.

¹⁰⁶ The CDFI can review operating agreements of LLCs, which is the popular entity of choice for many operations, scan for oppressive terms, or unrealistic projections of earned income, unusual debt loads by the smaller entities, or any other contractual terms that appear problematic.

funds and then immediately sell the property at the conclusion of the tax credit period is not properly balanced transaction between the respective interests of the community and the Means Team. Conversely if the model is too heavily weighted in favor of the community without sufficient financial attraction to the investor and other members of the Means Team, the equity supply could wither and die, without a nourishing vine to the community. A philosophical or investment disconnect between the Means Team and the target community is a prescription for potential failure. The balancing of interests is therefore vital to the “win-win” circumstance required to meet the congressional purpose. This transactional entity purpose model is therefore a hybrid approach between Means-Ends and Balance of Interests.

The model is graphically illustrated below.



The CDFI has a certification system that is rigorous in many respects. But if the balancing of interests and Properly Purposed Projects are to be systematically part of the NMTC program, amendments to existing publications and regulations should be considered. The published advice from the CDFI on how to become a CDE does not mandate how the CDE, QCB and the target community relationships should be structured.¹⁰⁷ There are numerous possibilities, as it should be. However, with flexibility comes the opportunity for abuse or circumvention of intended purposes, particularly if the purposes themselves are ambiguously stated. The IRS regulations exist to provide clarity and close unintended loopholes in determining tax liability and tax credits. They often include examples to elucidate its interpretation of the statutes. The NMTC statute is part of the internal revenue code, with regulations. Consistent with this article’s purpose of adding clarity and closing loopholes, the published materials and regulations should also provide models examples to guide investor taxpayers in clarifying the conditions

¹⁰⁷ The CDFI guidance on the CDE certification is found on its website at <http://www.cdfifund.gov>.

under which the tax credit is availing. This model could be part of a suggested set of ways in which the three parties to the “transaction” can conceptualize how they are to relate to each other to develop a project. The Regulations could also state that each applicant is expected to state how it intends to match the Mall of Needs with a Properly Purposed Project and how each party to the transaction will contribute to that end. As with other recommendations within this article, this model is designed to narrow the qualified entities and investment vehicles to more precisely accomplish the statutory goal.

Part IV Proposed Amendments to Close Loopholes

As noted in Part II, there are competing models for who are the intended beneficiaries of the NMTC program. One focuses on people in place within the target community, while the other benefits people regardless of the place of origin. This article maintains that the people to be primarily benefited fall within the former model so that the “target population” is comprised of low income residents in place within the low income community. The support for that conclusion includes careful analysis of the transactions and related definitions. Below are those transactional definitions, the how the structural process can be amended to close loopholes that have diverted funds away from the low income residents of target communities.

(1) The Equity Investment and its Correlation with Qualified Active Low Income Community Business (“QCB”)

The importance of qualifying an equity investment is previously discussed. But it is not enough to merely have a qualifying equity investment. The CDE must then invest that QEI into a community project. Though there are at least four different ways an investment can be structured (i.e. through loans, or loans in combination with cash, and to different types of entities), that investment must still be designed for low income residents within a low income community. One prime scenario is when an investment is made in an entity that provides financial services. The regulations provide that the services must specifically be to businesses located in and residents of low-income communities.¹⁰⁸ If the intent of the program was for the financially well healed there would have been no need for federally sponsored incentives to help them get back on their collective feet. The point is buttressed in the CDFI official announcements used to announce upcoming allocations. The criteria for awarding allocations includes the language: “an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which: (1) are *designed to meet the needs of underserved markets*... (3) focus on customers or partners that typically *lack access to conventional sources of capital*”¹⁰⁹ The gentrifiers do not typically lack that access to capital, but have likely thrived because of it.

A second confirmation that low income residents are the primary beneficiaries is gleaned from the statutory framework for involving businesses within the low income community. An investment can be made to a “qualified active low-income community business” (“QCB”).¹¹⁰ A QCB is defined as an entity that derives over 50% of its income from within the low income communities. It must also devote a substantial portion¹¹¹ of its property, or services from *within* the low income community.¹¹² The

¹⁰⁸ Reg. § 1.45D-1(d)(1)(iii).

¹⁰⁹ 69 Fed. Reg. 49951 (Aug. 12, 2004).

¹¹⁰ Reg. § 1.45D(d)(1)(A).

¹¹¹ The “substantial portion” test for tangible property or services is satisfied if 40% of the property (owned or leased) or services is within the low income community. Reg. § 1.45D(d)(1)(B).

¹¹² The specific QCB requirements tied to low income residents are that (1) at least 50% of the QCB’s total gross income for the year must be derived from the active conduct of a qualified business within any low-income community I.R.C. § 45D(d)(2)(A)(i); (2) A substantial portion of the use of its tangible property,

investment is only qualified if services are performed and income is from within the target community. So it follows that Congress intended the investment to flow to a small business that is an integral part of that community. Since the target population is by definition low income, the investment must *primarily* serve those low income residents. It is the nexus with the low income residents that provides the qualifying status, and should thus be the focus of the investment. That construction would weigh against an investment in a hotel-convention center complex, for example. It is difficult to conclude it is designed primarily for the low income residents when attendees and occupants are non-residents.

The loophole is that an investment in a low income community business is only one of the types of qualified investments. Other investments can occur without a *required* commitment to an enterprise like a QCB with the 50% community income, or other community services requirements.¹¹³ That type of connectivity with the target community should be required of all entities seeking to qualify for the subsidy. The convention center would not qualify if the majority of its income were derived from visitors attending a convention. An opera house would not qualify if the bulk of the revenue was from outside the community.

(2) CDE Mission Clarity

The current NMTC statute is ambiguous as to a CDE's intended beneficiaries. As noted in the background section of this article, there are three requirements that must be met for a CDE to be qualified under the NMTC program, two of which are vital to this discussion. First and most importantly, its primary mission must be serving, or providing investment capital for *low-income communities or low-income persons*.¹¹⁴ Arguably the conjunctive "or" allows a construction that could mean a project for the low-income "community" is broader than, and equal in status to, a project for low income "persons". In other words, a project for an opera house could benefit a broader category of residents within the "community" like new entrants, who are not low income. A doctor with income of \$400,000 annually who works at an inner city hospital could be within the low income community, but still not a low income resident. Conversely, if the only descriptive beneficiaries were "low income persons", it would far more difficult for the doctor to be a primary beneficiary of the subsidy.

To avoid ambiguity and to fulfill a goal of qualitative revitalization, this article recommends that the NMTC regulation simply delete "low income community". The benefit should be determined as of the date application for an allocation of funds from the CDFI is made. Under such a definition, the loophole is closed. Those persons not experiencing the adverse affects of a blighted condition would not have projects built primarily for their benefit. The CDFI could then clearly disallow an investment designed

whether owned or leased, must be within any low-income community, I.R.C. § 45D(d)(2)(A)(ii); A substantial portion of the services performed for the entity by its employees must be performed in a low-income community, I.R.C. § 45D(d)(2)(A)(iii). As to entity types, the QCB can be a corporation, (including a non-profit), a partnership, or a sole proprietor. Reg. § 1.45D-1(d)(4)(i)(ii).

¹¹³ An investment is still qualified even if it is a loan to another CDE, or purchase of a CDE loan. I.R.C. § 45D(d)(1)(B)&(D).

¹¹⁴ I.R.C. § 45D(c)(1)(A).

for a 10-story condominium unit where the minimum price for a one bedroom unit is \$400,000.¹¹⁵

(3) Demanding an Invitation to Your Own Party Through CDE Board Influence

The requirement that a CDE must maintain accountability to residents of low-income communities also provides options that weaken its effectiveness. The accountability standard is confined to low income resident representation “on any governing board of the entity *or* on any advisory board to the entity”.¹¹⁶ Again the conjunctive “or” allows for ambiguity or a broader interpretation that could weaken the participatory role of those residents. If a CDE has the flexibility to relegate low income persons from the target area to a mere advisory board, those residents can be marginalized by having only advisory powers. Though such funds are designed specifically for their benefit, the advisory powers are essentially no more than a muffled voice and virtually no representation on how these important federal funds are used. It should also be remembered that these same low income residents are taxpayers too and it is also their money at stake. Under the current regulatory language, a performing arts center could change its original diverse repertoire of performances to only ballet even if the majority of low income persons within the low income community vehemently object. If the advisory board language is stricken, the ambiguity and unintended consequences go away as well.

Allowing the target low income residents a true voice in project decision-making also allows a fair chance for eliminating conflicts with gentrifiers before they arise. If the target residents sign off on projects, the CDE and its investors will presumably only be able to construct projects the target population already considers acceptable. Thus gentrifiers are not put in the position of being at odds with the target community. It is entirely possible that the targeted low income community and gentrifiers actually agree on certain project types. This regulatory remedy has such potential to be curative, advisory board provisions should be afforded the same care in drafting as a nonprofit corporation’s its board of directors.¹¹⁷

Arguably the question of relative influence of an advisory or even a mandatory board such language could be left to the parties of each transaction under the “contractarian” theory. Under that theory the marketplace should be free to establish its own agreements and the NMTC statute and regulations should be relegated to a default role, applied only when the agreements of the parties to the transaction are silent on the relevant issue.¹¹⁸ The current NMTC regulations and statute appear to operate under that

¹¹⁵ Id.

¹¹⁶ I.R.C. § 45D(c)(1)(B). The third requirement is that the CDFI must certify the CDE. I.R.C. § 45D(6)(c)(1)(C).

¹¹⁷ Upon election or appointment to a board of director position, a low income community resident would be imbued with a fraction of management powers of the CDE, including but not limited to the right to participate in decisions pertaining to the CDE mission, overall policy direction, types of projects that are consistent with that mission. See the Virginia Nonstock Corporation Act, Code §§ 13.1-803 and *Stewart v. Lady*, 251 Va. 106, 110 (1996).

¹¹⁸ Also known as the nexus of contracts model, the theory is that a business organization is most fundamentally a “nexus of contracts” amongst those who generate goods and services, not a single entity

model. The CDE and the target residents are left to their own devices and relative influences on each other to determine just what role the low income community shall have in decision making for the CDE or the projects it undertakes. There is no statutory or regulatory mandate as to the extent of low income community participation.

But even when parties are left to their own devices, statutory and regulatory provisions have historically stepped in when parties use that contractual freedom to thwart the intent of the legislation or otherwise fail to do what is fair and equitable.¹¹⁹ One analogous circumstance is the Congressional action to curb abusive tax shelters. Promoters of certain types of transactions took advantage of existing tax laws to create losses far in excess of the economic reality of the transaction (i.e. losses on paper, but without any potential financial loss). The use of huge deductions significantly reduced taxable income far beyond congressional intent.¹²⁰ To close the loophole and stop the abuse Congress passed provisions both procedural and substantive.¹²¹ Included in the legislation was the creation of a concept of “*potentially* abusive tax shelters” where promoters of tax shelter transactions were required to keep lists of customers and register shelters with the internal revenue service.¹²²

The federal governmental interest in tax revenues particularly weighs against a pure contractarian model. An abuse of deductions or tax credits reduces the tax revenue otherwise owing to the Treasury. That results in less revenue available for public services, inter alia, which therefore shortchanges the taxpayers. The federal government has the obligation to direct tax dollars to an intended purpose. In the case of the NMTC program, if over \$2 billion of taxpayer funds are being used as incentives for the wealthy, rather than the low income residents that Congress intended as beneficiaries, that too is an abusive diversion of a federal tax dollars. It leaves fewer funds for the intended purpose of inducing greater private equity into target communities. The lost funds have multiple adverse affects because those subsidies are also designed to reduce public fund dependence by those low income communities. The subsidy is only a match to light private funds designed to increase the quality of life of the target populations. Thus, the co-opting of funds for a few who are without need increases the federal wasting of resources, diminishing the value of the taxpayer’s contribution to the Treasury.

Accordingly, certain disclosure requirements or restrictions could be infused into the NMTC regulation. Akin to the tax shelter concept of protecting against potentially abusive shelters, the comparable term in this context is the identification of Problematic Purposed Projects. Based on certain criteria that red flag a potential abusive project type,

created by statute. See Robert W. Hamilton & Jonathan R. Macey, *Cases and Materials on Corporations, including Partnerships and Limited Liability Companies* (9th ed., Thompson & West 2005) and David Rosenberg, *Venture Capital Limited Partnership: A Study in Freedom of Contract*, 2002 COLUM. BUS. L. REV. 363, 367 (2002).

¹¹⁹ To protect Kansas farmers from bogus investments (termed “a piece of blue sky”) the Kansas legislature passed a security statutory regulation. See Paul G. Mahoney, *the Origins of the Blue-Sky Laws: A test of Competing Hypotheses*, 46 J.L. ECON. 229 (2003).

¹²⁰ See discussion of abusive tax shelters in James J. Freeland, Daniel J. Lathrope, Stephen A. Lind & Richard B. Stephens, *Fundamentals of Federal Income Taxation* 498-499 (11TH ED., FOUNDATION PRESS 2000).

¹²¹ Substantively Congress disallowed the artificial losses by capping losses from certain income producing activity or a trade or business to the amount the taxpayer had at risk, e.g. where taxpayer may be personally liable. I.R.C. § 465(a)(1).

¹²² I.R.C. § 6112(a)(b).

the CDFI can be alerted to those CDEs that escaped detection during the application and allocation process. One such red flag is when a board of low income residents, be it advisory or governing, objects to a proposed gentrified upscale project. If, prior to construction of a real estate venture, the CDE was required to submit objections that reach a majority vote to the CDFI, the disclosures could assist auditors in an investigation as to whether the project in operation violates the spirit or letter of the regulations or statute.

Another disclosure requirement could be a mandatory Mall of Needs compilation by low income residents.¹²³ The Mall of Needs for a target community would be whatever the community determines to be of greatest need, e.g. affordable housing, charter schools, pre-school educational facilities, health care clinics for the diseases most untreated or in particularly acute susceptibility among the residents. With a baseline so established, a project proposal that varies materially from the established needs would be subject to a higher level of scrutiny. The threat of losing those credits through required disclosures, meaningful penalties and enforcement could be an effective deterrent against the creation of problematic projects.

Even if legislation was not passed to mandate low income residents on a board of directors, an advisory board with teeth is a viable alternative. The regulations are silent however on the following:

1. The number of advisory board members (or a corresponding percentage).
2. The criteria for selection of advisory board members.
3. The assurance that recommendations on material issues can be submitted to CDE decision-makers.
4. Good faith requirements on the CDE to consider advisory board recommendations.
5. Penalties to the CDE and remedies to the residents if the CDE fails to comply with provisions relating to the advisory board.

Since CDE and investor decisions are easily based on profit motives and investment return there is also skepticism as to whether any significant community input will actually occur.¹²⁴ The regulations should accordingly incorporate best practices models for corporate advisory boards into the NMTC CDE certification requirements, including those committed to principles of social entrepreneurship.

(4) The “Qualified Business” Exclusion of Project Types Outside Core Interest and Needs Assessment.

As will be discussed below, Congress specifically eliminated certain types of business ventures from being eligible or qualified for the NMTC subsidy. Expanding those exclusions is recommended in this article. When Congress defined a “qualified business” under the NMTC program, it excluded the establishment of residential rental units, i.e. housing projects.¹²⁵ Also specifically excluded are businesses that hold

¹²³ See Table C, Properly Purposed Projects.

¹²⁴ See Forbes, *supra* n. 22, at 198, and Dimitri Pappas, *A New Approach to a Familiar Problem: The New Markets Tax Credit*, 10 J. AFFORDABLE HOUSING & COMMUNITY DEV. 323, 325(2001).

¹²⁵ I.R.C. § 45D(2)(c)(3)(A), Reg. § 1.45D-1(d)(5)ii.

intangibles for sale or license,¹²⁶ or operate a golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack, or other gambling facility.¹²⁷ Also excluded are highly profitable farming operations.¹²⁸ In enumerating those exclusions Congress expressed its intent to eliminate certain types of projects that may fall outside the low income revitalization. If a type of business cannot be a qualified business it cannot be part of the chain of transactions that leads to a tax credit. So while rural low income communities are certainly planned beneficiaries of tax credit investments, Congress fashioned the law to protect against unintended beneficiaries such as farm businesses that already have assets in excess of a \$500,000.00.¹²⁹ That is obvious indicia of the intent to exclude those investors and CDE's who primarily see dollar signs over help signs for low income residents. Similarly, golf courses, gambling facilities, and country clubs are excluded as a matter of congressional urban tax policy. It was congressional judgment that golf courses and country clubs are not truly designed for the target population of low income residents.

Congressional judgment could also be used to eliminate other accoutrements of opulence – venues for opera, ballet, and symphonies, high priced condominiums, art galleries, hotels, and convention centers - all of which have received the NMTC federal subsidy.¹³⁰ To close the loophole for such Problematic Purposed Projects, this regulation can either simply add those project types to the list of prohibited businesses and/or put a fair market value ceiling on the project as it did with farming projects. The existing business operation exclusion could be amended to incorporate the following language:

“Any trade or business where, unless decided otherwise by a mandatory community board, the principal activity is a venue *for opera, ballet, symphony orchestras, art galleries, hotels, convention centers, mixed use condominiums, or substantially similar business operations where the aggregate fair market value of assets owned or leased for the project by the taxpayer at the close of the taxable year, or on average during the taxable year exceeds* _____.”¹³¹

Consistent with other regulatory amendments noted above, if such a prohibition was contained in the Regulations, the CDFI would have a clearer basis for auditing and eliminating such Problematic Purposed Projects. Since the CDFI is required to monitor whether its award allocations are used for projects consistent with the congressional goals, amendatory language should be a valuable asset in carrying out its oversight function.

¹²⁶ Reg. § 1.45D-1(d)(5)(iii)(A).

¹²⁷ Reg. § 1.45D-1(d)(5)(iii)(B).

¹²⁸ Id. The provision is that as of the close of the taxable year, the sum of the fair market value of the farming assets, and the taxpayer's aggregate value of leased assets exceeds \$500,000.

¹²⁹ Id.

¹³⁰ These findings are from the author's review of CDFI profiles through four rounds of allocations to CDEs.

¹³¹ The ceiling amounts are not incalculable. Congress already provided a ceiling for farming operations was \$500,000. It can just as easily exercise its judgment in other categories. The CDFI may have enough project history within various low income communities to establish fair market value amounts based on such factors as project size, target community income level, stated protect types and goals from the target low income residents through board of director statements, or otherwise.

(5) “Low-Income Community” Clarification to Match Intent to Primarily Benefit Low Income Residents

As previously stated, the NMTC mandates that a CDE must have a primary mission of serving or providing equity capital for “low income communities or low income persons”. Similar to the need for carefully drafted definitions of the entities that prevent unintended consequences, the definition of the low income community should also be narrowly drawn. As noted above, the definition of low income community could simply be synonymous with low income residents or be deleted entirely. Then there can be no doubt that the “community” truly means the existing low income residents of the community rather than the new financially well healed entrants to that community.

Another amendment to close loopholes in the definition of the low income community is to tighten the census tract criteria. Currently, a census tract with poverty rates of 20 percent qualifies as a “low income community” in a metropolitan area.¹³² If instead, the poverty rate with a census tract had a floor of 30 or 40 percent of the community, lower income residents would have to comprise a higher percentage of the tract to qualify.¹³³ As an additional safeguard, the CDFI could hire demographers with the type of expertise used to analyze the fairness of federal congressional districts, pinpointing the percentages of various groups within a district when redistricting issues arise, to examine questionable circumstances within a census tract. If, as one Federal Reserve Bank examiner stated,¹³⁴ there is a narrow segment of high poverty rates within an otherwise affluent area, this article suggests a case by case review to vary the general census tract criteria to avoid over inclusiveness. The NMTC statute could be amended to allow that flexibility in individual cases.

(6) Increased Accountability Through Recapture of the Credit

The forgoing proposed amendments to the NMTC law are designed to change behavior of certain investors and entities, i.e. discourage federally sponsored gentrification. When changing behavior is the goal of amended language, it is more likely to be effective as a remedy if the failure to change behavior has adverse consequences for noncompliance – in a word – accountability. The primary tool in the existing NMTC law is a recapture (i.e. a retroactive forfeiting) of the tax credit.¹³⁵

The recapture currently occurs when any of the three following events occur: (1) the CDE loses its status as such (2) the proceeds of the equity investment to the CDE are

¹³² I.R.C. § 45D(3)(e)(1)(A).

¹³³ Observers of the NMTC program in its infancy also recognized the issue. As a Federal Reserve Bank of Cleveland examiner stated: “Poverty rates take into consideration the number of individuals in a family, whereas median family income does not. While low or moderate-income tracts are more likely to have poverty rates over 20 percent, it is possible to have high poverty in a middle-income census tract. For that reason, New Markets funds may be invested in areas with high poverty rates that are not necessarily low – or moderate-income communities.” Connie Smith, *New Market Tax Credit Investments: An Examiner’s Perspective*, Community Investment Forum, THE FEDERAL RESERVE BANK OF CLEVELAND, p. 5. (2003).

¹³⁴ Id.

¹³⁵ I.R.C. § 45D(g).

improperly used outside of the required use for qualified investment purposes, or (3) the CDE redeems (takes back) the equity investment for other qualified use.¹³⁶ Thus, if a CDE no longer has as its *primary* mission serving low income persons or the low income community or the CDE fails to use a low income resident advisory board, it could lose its status and the tax credits would be recaptured. If the prior suggested amendments were incorporated in the statute so low income residents must be served primarily without community definitions expanding beyond them, and the boards truly allow decision making participation to those residents, then the recapture provides the accountability standards advocated in this article.

Similarly, if the qualified equity investment (QEI) is only allowed for the “qualified business” that eliminates the Problematic Purposed Projects, then only Properly Purposed Projects would be qualified businesses. Any investment in the hotels and convention centers, and other enumerated upscaling projects of gentrification would be non-qualified, and the tax credit recapture hammer would fall on the investor. Those provisions appear to be adequate deterrents to investing in outside of Properly Purposed Projects. To provide a catch all provision, like a default and termination clause in commercial contracts, the recapture clause could simply state the failure of the CDE to comply with provisions concerning Properly Purposed Projects and the target community’s needs assessment is cause for recapture of the tax credit (default) and unless cured within a specified time or by certain curing actions, the credit will be lost.

The recapture has teeth built into the statute and appears loophole free, assuming the proposed amendments are made. The recapture occurs at any time in any tax year upon the happening of any of the triggering events. The amount of the credit recaptured increases the investor’s tax, and no deduction is given for the recaptured interest.¹³⁷

(7) Safeguards Against Overleveraging the QCB

Since the QCB is the small business within the NMTC program that actually serves the target community,¹³⁸ its economic health is vital to efficient use of the federal tax credit subsidy and achieving the goal of revitalizing the community. Like most typical small businesses, QCBs are financed with a combination of debt and equity.¹³⁹ There are admittedly some positive aspects of incurring debt.¹⁴⁰ Proponents of debt financing as an incentive to efficiently manage the business have axioms that

¹³⁶ I.R.C. § 45D(g)(3)(A)(B)(C).

¹³⁷ The credit recapture amount is the decrease in credits allowed for all taxable years as if the NMTC had not been granted, plus interest. I.R.C. § 45D(g)(1)(A)(B).

¹³⁸ The QCB is required to derive over half of its income from and provide goods or services to the target community. Reg. § 1.45D(d)(1).

¹³⁹ As finance terms debt and equity are forms of “capital” used to fund the business enterprise. The principal distinction between the terms being that debt refers to borrowed funds, where fixed obligations must repaid with interest, while equity refers to amounts contributed by owners and investors (e.g. cash). Debt is a *fixed* claim against the business assets that must be repaid, while equity is a *residual* claim against the company where the equity owner has a claim on what is left over after the fixed debt obligations have been paid. See Hamilton & Macey, *supra* n. 118, at 313-314.

¹⁴⁰ See Michael C. Jensen, *Agency Costs of Free Cash Flow, Corporate Finance and Takeovers*, 76 Am. Econ. Rev. 323 (1986), n. 5 at 67.

essentially state that the challenge of producing sufficient cash flows or default motivates owners to work harder than counterparts in less leveraged firms.¹⁴¹

This theory has been criticized as an oversimplification since it should not be assumed that owners or managers are predictably going to respond to this risk by working harder.¹⁴² Indeed, proponents of debt incentives admit “the manager or owner’s fear of not meeting the debt service (falling through thin ice) does not always lead to superior performance; it may instead lead to a fatalistic sense that effort might be wasted in a futile cause.”¹⁴³

A prime illustration of the dangers of debt is found in the tantalizing quest for leverage. Leverage is the ability of a borrower to earn more on the borrowed funds than the cost of the borrowing.¹⁴⁴ Overleveraging at its core is the incurrence of debt beyond the capacity to pay it. Empirical studies reveal that higher goals (e.g. an overly ambitious high cost real estate development), typically result in the owners carrying higher levels of debt (“debt service”). To meet that debt service, higher cash flow production is required. Those cash flow demands can increase the risk of financial failure. And if goals are too difficult, perceived risks can in turn cause business owners to have a declining commitment to achieving those goals – a downward spiral where the next project or financial issue is met with greater reluctance to accept similar goals and a lesser commitment that those goals can be achieved.¹⁴⁵ There is a growing body of literature that psychological cycles of failure result from such unrealized goals.¹⁴⁶ A “falling through thin ice” syndrome is not uncommon.¹⁴⁷

This author’s review of financing structures reveals great potential for overleveraged QCBs. Many NMTC CDEs require multi-million dollar thresholds for project size to justify the high transactional fees to law firms, accountants, and consultants in structuring the transactions.¹⁴⁸ Based on a sampling of NMTC allocations established through the four rounds of awards to date, over 50% of the awards have been \$50 millions or greater, with some as high as \$150 million.¹⁴⁹ This author suspects most QCBs are not currently able to secure the requisite amount of equity financing to compete at that level, and must rely on debt to participate in the transaction. In many of the financing structures reviewed, the QCB is essentially a borrower rather than a full fledge

¹⁴¹ George G. Triantis, *Debt Financing and Motivation*, 31 U. Rich. L. Rev. 1323 (December 1997), citing Jensen, supra n. 140, at 323, and Frank H. Easterbrook, *High-Yield Debt as an Incentive Device*, 11 Int’l Rev. L. & Econ. 183 (1991).

¹⁴² Id.

¹⁴³ 31 U. RICH L. REV. 1328. Specifically, overleveraging creates a “crisis atmosphere”. Jensen, supra n. 140, at 323, n. 5 at 67.

¹⁴⁴ Hamilton & Macey, supra n. 118, at 339.

¹⁴⁵ 31 U. RICH L. REV. 1336.

¹⁴⁶ Id.

¹⁴⁷ Id. at 1333, citing Edwin A. Locke, *Toward a Theory of Task Motivation and Incentives*, 3 Org. Behavior and Human Performance, 157-89 (1968). Of course, aggressive goal setting does not always lead to financial ruin. The practice can stimulate planning and strategy development, and that higher levels of management performance can occur when the challenges are perceived as “just manageable.” Id. at 1335-36.

¹⁴⁸ Id. at 1334, citing Gilbert Brim, *Ambition: How We Manage Success and Failure throughout Our lives* 32 (1992).

¹⁴⁹ The author sampled all CDFI profiles from round two (2003-2004) and round three (2005). http://www.cdfi.gov/what_we_do/overview.asp. In 2005, 64% of the awards for over \$50 million, where in round two over 49% were in that range.

equity partner in the transaction. Some transactions have even placed the QCB in the position of receiving a 100% loan, and no cash or other equity at all.¹⁵⁰ If the CDE sets project size and cost goals beyond the capacity of the QCB, the QCB is likely to overly rely on debt financing. That results in the overleveraging and consequential growing likelihood of not meeting the goals of paying the debt service with related psychological downturns in motivation and performance. If the QCB is overleveraged the owners are more likely to perceive an inability to meet that debt service, and as a result a declining commitment to the project. The outcome could obviously be a business failure. Thus, a high debt structure could be anathema to the financial structure of a NMTC transaction.

If failure occurs due to overleveraging, the overall loss is not just an economic loss of an enterprise, but also the loss of the value of the individuals to the community (personally and professionally). These “negative externalities” include the destructive effect of the firm failure on the *future* motivation and production of that QCB owner.¹⁵¹ The NMTC target community also bears a loss of resource commitment.¹⁵² Thus, this potential loss of the QCB and the firm owners due to “motivational externalities” from overleveraging of debt should be discouraged “as a matter of public policy.”¹⁵³

As the NMTC program is a governmental program, funded with public dollars for a public benefit, it is therefore fair game for CDFI regulation. The CDFI can monitor debt ratios. It can publicly encourage NMTC applicants to carefully construct a financing model that does not jeopardize the QCB. The CDFI could even provide the ultimate incentive of including in its award criteria a review of the CDE’s proposed debt-equity mix. That would be consistent with also advising the applicants that favorable consideration would be given to Properly Purposed Projects over Problematic Purposed Projects. The underlying theory is that if the projects with the greatest benefit to the target community are smaller in financial scale, there should be fewer overleveraged transactions for the QCB. If the structure appears to be overleveraging the QCB, the CDE applicant should be viewed less favorably than a CDE applicant that builds a financing model that minimizes the financial thin ice that unduly puts the QCB at risk of failure.

Implications for Urban Tax Policy

The United States tax system raises revenues from its citizenry in large part on the fundamental principle that those with a greater ability to pay must pay more than those of lesser resources.¹⁵⁴ That is why progressive tax rates were established, requiring those with greater taxable income to be in higher marginal rates, paying a greater percentage of

¹⁵⁰ See the Clearinghouse NMTC, LLC transaction described *infra*, note 162.

¹⁵¹ *Id.* at 1328.

¹⁵² *Id.*

¹⁵³ *Id.* at 1329.

¹⁵⁴ See William A. Klein, Joseph Bankman & Daniel N. Shaviro, *Federal Income Taxation*, 6-7 (ASPEN PUBLISHERS 2003). This “ability to pay” theory could arguably mean a mere convenience in paying where those with more liquid assets (cash) pay more than those invested in illiquid assets. Under that theory, true wealth could more easily be disguised and misrepresented. The other notion is the ability to pay is more directly aligned with overall wealth and well-being. Under that theory, those with greater resources, liquid or illiquid, pay more because the resources are greater, though it may be inconvenient to retrieve it.

taxable income than those with lesser taxable income.¹⁵⁵ The corollary is that those in greater economic need are to pay less in federal income tax. If a federal subsidy is allowed to benefit those taxpayers who have the greater ability to pay, i.e. investors in gentrified projects who receive the tax credit subsidy, the real benefit flows not to those in greatest economic need, but those already with wealth and resources. And it is the average American taxpayer with lesser resources that picks up the tab for the gentrified multimillion dollar projects by paying for the billions of dollars in subsidy. That was not likely the intent of Congress when placing the NMTC legislation in the internal revenue code, and it is inconsistent with long standing principles of federal taxation.

Our tax system does not use the internal revenue code for the singular purpose of raising revenues for the public good. The Code is also a vehicle for encouraging certain congressionally approved behavior among taxpayers in accord with certain established values. Congress, for example, wanted to encourage home ownership. Homeowners receive a “subsidy” (i.e. deduction) for paying interest on home mortgages and for paying local property taxes on a home.¹⁵⁶ A renter could theoretically receive a deduction, but the value of renting was not considered as valuable an interest, and thus no deduction to encourage that activity.

Conversely, Congress has decided that it will not provide tax benefits through deductions to those who are involved in personal “consumption” expenditures, like a self employed groundskeeper who may deduct expenses for mowing activities for a golf course client, but not for mowing his own lawn.¹⁵⁷ Similar personal non-deductible consumption expenditures include the cost of gasoline to buy groceries for the household, or paying for the grooming of a pet, or paying interest on vacation loans or credit cards.¹⁵⁸ These are generally “wants” not needs. There are exceptions, but those are typically because Congress determined that though an item was personal, there was also a higher value in society placed on the item as a “need”, not merely a leisure or convenience activity generating the expenditure.

A tax credit is a benefit even greater than many deductions.¹⁵⁹ But if tax credits designed for low income residents instead flow to wealthy investors from gentrified projects the *primary* beneficiaries will not statutory target population, but rather those of greater leisure, for their consumptive convenience and wants. That is also inconsistent with federal tax policy, as formulated historically and as applied in this context.

And while it is arguable that the tax credit incentive could include gentrified projects to increase tax base and provide jobs, it is wiser policy to narrowly construe those items that draw down the federal treasury. It is well established that whether domestic programs are financed with direct expenditures or with tax expenditures in the

¹⁵⁵ The progressive income tax exists when the rates of taxation (percentage paid on certain ranges of income) rise as income rises. So the higher ones income the greater *proportion* of income is taxed. See Id.

¹⁵⁶ See I.R.C. §163(h) for the deduction for interest paid on a principal residence. The Tax Reform Act of 1986 eliminated deductions for interest paid on borrowed money for personal items such as vacations and automobiles. Real property taxes are a personal itemized deduction under I.R.C. §164(a)(1)

¹⁵⁷ For a discussion of the theory of consumption, see Marvin A. Chirelstein, *Federal Income Taxation*, 184-190 (10th ed., Foundation Press 2005).

¹⁵⁸ See I.R.C. §163(a)&(h).

¹⁵⁹ Tax credits receive a full dollar for dollar value reduction in tax liability whereas various itemized deductions that have certain percentage floors or ceilings that reduce the benefit. See I.R.C. § 67 for miscellaneous deductions and § 68 for deduction examples, and tax credits like the NMTC at I.R.C. § 45D.

form of exclusions, deductions, or credits, the effect on the federal budget is the same.¹⁶⁰ Every credit and deduction takes money out of the Treasury that would otherwise be used for roads, war efforts, and the handicapped. The more that funds are withdrawn, the greater the burden on the American taxpayer to provide additional replacement funding, and the greater the potential for a federal deficit, with the adverse economic consequences that could follow. Another reason for narrowing the availability of credits from a tax policy perspective is that tax credits add to the complexity of tax law and can undermine fairness in the distribution of tax burdens.¹⁶¹

Another rationale for narrowing the tax credit is the evidence that financially well healed entities would make the investment even without the subsidy. The evidence is found in analogous tax incentives offered by states and municipalities. Various state and local tax incentives (e.g. credits for employing local persons, exemptions, and abatements from property taxes), like federal tax credits, are governmental tax benefits given to induce the business to invest and do business in a particular venue. Economists, social scientists, and legal scholars have found only marginal links between a tax incentive and increased economic activity in the area by large corporations.¹⁶² After nearly 30 years of research, the conventional wisdom is that various other economic factors have more impact on the investment decision by multistate corporations than the economic value of the tax benefit.¹⁶³ A corporate executive has candidly admitted the tax benefits were merely “a little extra cream on top.”¹⁶⁴ Skepticism abounds as to whether state tax incentives lure the wealthy corporations with tax incentives is cost effective for the state.¹⁶⁵

The NMTC award winners for many of the gentrified Problematic Purposed Projects are banks, or subsidiaries of banks.¹⁶⁶ In light of the above research, isn't it also likely that the NMTC CDEs for problematic projects would also have made the investment in a multi-million dollar convention center without the tax credit? The same non-subsidy factors of other corporate executives, like quality of workforce, and regulatory environment may also be primary decision-making factors for the major CDE. If lesser cost effectiveness exists among the CDEs of Problematic Purposed Projects, then offering the subsidy to such entities should be eliminated or minimized. That would free up the funds for either a reallocation to Properly Purposed Projects or a reduction in the amount of subsidies. In either case, the efficiency of tax credits is increased.¹⁶⁷

¹⁶⁰ Adele Robinson, *Risky Credit: Tuition Tax Credits & Issues of Accountability & Equity*, 11 STAN. L. & POL'Y REV. 253, 254 (2000).

¹⁶¹ Id.

¹⁶² Peter D. Enrich, *Saving the States from Themselves: Commerce Clause Constraints on State Tax Incentives for Business*, 110 Harv. L. Rev. 377, 391 (1996).

¹⁶³ Much of the study is codified in a New York Legislative Commission report. The report concluded that the quality of labor, proximity to markets and supplies, access to utilities, regulatory environment, quality of education, and the availability of housing are aggregate factors that have greater impact on whether to invest in a particular city or region. See 51 Albany L. Rev. 393 (1987).

¹⁶⁴ Enrich, supra n. 162, at 392.

¹⁶⁵ See Jerome R. Hellerstein & Walter Hellerstein, *State and Local Taxation: Cases and Materials*, 28 (8th ED., THOMPSON & WEST 2005) for various cited articles.

¹⁶⁶ Supra n. 63. The Louisville Development Bancorp, Inc., that was allocated funds for building a Marriott hotel and convention center is just an example.

¹⁶⁷ Arguably, the non-subsidy factors are also primary for CDEs of Properly Purposed Projects. The reallocation to those CDEs is still wiser tax policy because the funds are more carefully directed to the meet

the purposes of the program. The only alternative would be to eliminate the tax credit, which is politically difficult to justify as an improvement in the quest to revitalize urban and rural low income communities.

SECTION 2

“I believe the federal government can play a positive role in helping African Americans achieve the goal of owning their own business... We’ve provided \$8 billion in new markets tax credits to boost investment and community development in low income areas.

President George W. Bush¹⁶⁸

My translation of the above presidential quote is that “the government is willing to allocate a tax credit jump start to investors in your business, but it is still your business to develop, in your community, for your community’s own residents. So it is a self-help program, with a jumper cable attached.” One problem is lack of knowledge. As stated by one scholar of the NMTCs, “It appears that the NMTC industry is in large part a closed financial network. The public does not seem to be aware of its existence.”¹⁶⁹ The public includes a substantial pool of financially able African Americans.

The financial network appears to have garnered over \$2 billion of tax subsidies allocated to the gentrifying projects. That begs the question, “If investors in gentrified projects should be excluded from the subsidy, what types of investors are better suited to bring equity investment into the urban core?”¹⁷⁰ Section 1 provided a race neutral model for selecting allocatees. In recommending closure of certain regulatory and statutory loopholes, Section 1 recommends only properly purposed investors be provided the opportunity for the subsidy. A Properly Purposed Project could be generated by any entity that focuses on the low income residents as the primary beneficiaries, regardless of the race or ethnicity of the investor or the entities that establish the project. No racial classification or preferences for any ethnic group were presented as governmentally-imposed requirements.

Yet there may be a further refinement of the investor profile that may bring more efficient use of the tax subsidy and reduce governmental dependence on such subsidies over the long term revitalization of the urban core. The thesis in this Section is that a carefully configured substratum of the African American middle class comprises one such group of NMTC investors, which I term “Ethninvestors”. These Ethninvestors are so termed because the ethnic and cultural connectivity with the target community is envisioned as part of framework of investment decision making.¹⁷¹ As such, the group

¹⁶⁸ Speech at the *Black Expo*, July 14, 2005 at the RCA Dome, Indianapolis, Indiana, <http://www.whitehouse.gov/news/releases/2005/07/20050714-4.html>

¹⁶⁹ Jones, *supra* n. 44.

¹⁷⁰ Even as of 1970, almost half (48%) of the total African American population (23 million or 11% of the US population) was concentrated in thirty cities, with over one-third in fifteen cities. Flournoy A. Coles, Jr., *Black Economic Development* (Nelson Hall 1975).

¹⁷¹ I use African Americans for modeling, not because they are the only ethnic group with an ethnic enclave in America, but because they are a long standing group disproportionately represented in the urban core for which a significant statistical sampling can be foreseen. The application, with nuances, would be the same for other historically disadvantaged groups in this country who for a variety of reasons, became clustered into economically depressed ethnic enclaves.

can establish various efficiency gains, more “bang for the tax credit buck” for the subsidy program, through ethnic self help techniques exercised historically in this country. Since the intended beneficiaries are predominately ethnic minorities in a segregated urban core,¹⁷² I claim Ethninvestors are more likely to be committed to the target community’s long term benefit after the 7 year tax credit expires than investors who are culturally disconnected from the intended beneficiaries of the credit¹⁷³ Longer term contributions from the private sector should reduce governmental dependence in the future for various reasons to be explained below.

The underlying premise of this inquiry is that a cultural connectivity between the investors, the community businesses and those core residents can translate into a comparative cultural advantage over those who are disconnected and that such symmetry can be in the long term best interests of that community; that ethnicity complements, not competes with economics because the motivation for investment combines the two, even if pure profit motives are sacrificed in creating the mix. As will be detailed in Part 1, this ethnic economics model is asserted now because it has occurred in the past among others historically excluded from mainstream economic society. The question now is can the past be replicated in the current NMTC environment.

The NMTC program does not have an indefinite legislative life so this is a propitious opportunity for such a reconfigured African American middle class on its own collective volition to be part of the revitalization of the urban core cities through a revitalization of its own, fostering a reunion of sorts with low income residents of common ethnicity.¹⁷⁴ The accepted definition of ethnicity for this article is “self-identification in a sociopolitical grouping that has both recognized public identity and a conservationist/activist orientation.”¹⁷⁵

The Ethninvestor model focuses on a segment of the African American middle class as a prototype. It bears emphasis that it is too simplistic and stereotypical to say all African Americans with financial resources have the same cultural perspective and investment motivation in urban America. Like any other American investors, African Americans will be influenced in varying degrees by other factors. The model determines first whether the potential Ethninvestor is excluded by various factors that result in being what I term the Economically Self-Saturated, Economic Satisfied, or Economically Stunted. Individuals who do not fall within those categories may be Economically Searching (i.e. searching for the investment that ties social entrepreneurship with the cultural mission for the investment).¹⁷⁶

¹⁷² The envisioned cities for this model are major cities with a high concentration of African Americans in the urban core. Examples include Chicago, with estimated African American population of 983,750, Los Angeles, (382,606), and New York City, 2,110,683. See US Census Bureau, *American Fact Finder*, http://factfinder.census.gov/servlet/ACSSAFFacts?_event=

¹⁷³ After the 7 year period, the QCB and the CDE are well advised to have a structure flexible enough to allocate income or loss with new investors without being tied to pro-rata interests.

¹⁷⁴ Another round of allocations is anticipated for 2007, with the expectation of raising \$3.5 billion, 39% of which would be allocated to selected investors. See I.R.C. § 45D(f)(1).

¹⁷⁵ Margaret D. LeCompte and Jean J. Schensul, *Designing & Conducting Ethnographic Research*. WALNUT CREEK, CA, ALTAMIRA PRESS, (1999), p. 24.

¹⁷⁶ The Self Saturated includes those so content with individualism that little motivational room remains for social entrepreneurship. The Stunted may have had such financial failures or internalized restraints from

Part 1 of this section examines the historical development of ethnic enclaves in the United States, and how ethnic entrepreneurship gave rise to an ethnic enclave economy that can provide a valuable template for a modern day Ethninvestor. I maintain the NMTC target communities are also ethnic enclaves. Part II sets forth the conceptual precepts and then the Ethninvestor model, including various characteristics and investment motivations that make an Ethninvestor well suited for a NMTC transaction. Part III is the application of economic principles to further explore whether the Ethninvestor model may lead to increased utility for the target residents and the Ethninvestor in a NMTC transaction beyond that of investor groups not similarly engaged in social entrepreneurship. Finally, Part IV is the application of the theoretical model to provide concrete illustrations of how the Ethninvestor more efficiently meets the congressional purpose of assisting low income residents without marginalizing them in the process. This discussion emphasizes the importance of small business modeling that incorporates the experiences of other ethnic enclave economies.

Part I The Ethninvestor for the Ethnic Enclave

One likely challenge to my comparative cultural advantage theory¹⁷⁷ is the rhetorical question, “What makes you think an African American is motivated any differently than any other investor whose first priority is to receive an adequate return to justify the investment?” The short answer is that a properly configured Ethninvestor should have a different definition of what is adequate based on a different risk and reward analysis. Before analyzing that issue, some historical context is first required because the experience of other immigrants provides valuable lessons and insight for the formation of the Ethninvestor.

When America’s primary immigrant influx at the turn of the twentieth century were primarily Caucasians, albeit from primarily vast regions of Europe, it was perhaps easier to conceptualize America as a melting pot of various ethnic groups that will assimilate into the majority culture.¹⁷⁸ The historically popular notion was that such immigrants would join the mainstream through the generations, and enjoy the bountiful fruits of America in rough proportion to the extent of assimilation, losing their distinctive group characteristics as a byproduct.¹⁷⁹ There is now a substantial body of empirical evidence that immigrant upward mobility has depended on *not* assimilating completely into the mainstream, but rather, maintaining a common cultural identity that “compensates for other disadvantages such as racial discrimination or a lack of sufficient start-up capital.”¹⁸⁰ Past immigrants have utilized their small businesses as culturally customized schools for future generations of entrepreneurs and financially independent professionals.¹⁸¹ Several case studies in Boston, Massachusetts, a premier modeling site,

external sources that investment may not occur at all. The Satisfied may have concluded they have already done enough.

¹⁷⁷ See the thesis statement in the Introduction, which codifies the notion that ethnicity can be an economic advantage in a community of co-ethnics compared to investors without the cultural connectivity.

¹⁷⁸ Marilyn Halter, *New Migrants in the Marketplace*, UNIVERSITY OF MASSACHUSETTS PRESS, (1995), p. 2.

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ Id. at 9.

¹⁸² consistently found that those involved in ethnic enterprises not only later became owners of business themselves, but that future generations also entered the mainstream through professional occupations as owners, rather than paid staff. The studies revealed Greeks, Soviet Jews, Haitians, and British West Indian entrepreneurs all gaining in economic and social resources resulting from family enterprises built on ethnic foundations.¹⁸³

Cuban immigrants in Miami illustrate the establishment of successful ethnic enclaves. In the early 1990's, one half of the Miami Florida population was of Cuban origin, and a study found that there were profitable co-ethnic self employed owners with ethnically aligned employees, and "locational clusters" of ethnic entrepreneurs (e.g. "Little Havana") as discrete business districts.¹⁸⁴ The authors concluded that Miami's ethnically Cuban economy was "hyperefficient"¹⁸⁵ because of its "vertical and horizontal integration, ethnically sympathetic suppliers and consumers, pooled savings, and rigged markets".¹⁸⁶ The evolved term for this economic dynamic is the "ethnic enclave economy", consisting of two components: spacial clustering in a location and a critical mass of immigrant owned business firms that employ co ethnic workers to serve their own ethnic market and/or the general population.¹⁸⁷

Those ethnic immigrants were motivated for entrepreneurship within an ethnic enclave. By exploring their motivations, can we learn whether a newly configured African American group can become similarly motivated? An established theory attributable the Max Weber in 1930, (hereinafter the "Weber Theory") is that culturally-based entrepreneurship within the enclave is primarily a reaction to exclusion from the larger marketplace due to discrimination.¹⁸⁸ That is to say hostility from a host country is a driving force encouraging economic solidarity and increased entrepreneurship among the oppressed groups, and thus a self-help mechanism for survival and growth.¹⁸⁹ More specific study of the relationship between ethnicity and entrepreneurship brought a theory of "Middleman Minorities".¹⁹⁰ That is to say in a capitalist system, a certain class of

¹⁸² Id. at 5. There have been numerous case studies in Boston Massachusetts because of an immigration explosion in the late 1980's, resulting in the fifth largest influx of refugees and seventh largest total immigration increase in the US according to the 1990 census. Boston thus was diversifying faster than most of America without one single ethnic group dominating the increase. One such study by Ivan Light highlighted the "multiplier effect" of ethnic entrepreneurship. Id. at 9.

¹⁸³ Id. at 10.

¹⁸⁴ Id. at page 29 citing a published case study of Messrs Portes & Boch.

¹⁸⁵ The efficiency in the ethnic enclave economy is discussed in greater detail in the section on Application of Economic Principles.

¹⁸⁶ Id. at page 30 citing a published case study of Messrs Portes & Boch.

¹⁸⁷ Halter, supra n. 178, at 30, citing a published case study of Messrs Portes & Boch, (Portes 1981, 290-91).

¹⁸⁸ This theory was espoused by the acknowledged founder of entrepreneurship research Max Weber. His context in 1930 involved religious oppression among German Catholics by Protestants, rather than ethnically based hostilities. His examples include Poles who had a more rapid advance in Russia than in their own lands of Galicia. Also noted were Huguenots in France under Louis XIV, the Nonconformists and Quakers in England, and "last but not least," the Jews for two thousand years. Importantly, he noted the movement was into small businesses, as will be recommended in this article as well. Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, 43 (CHARLES SCRIBNER'S SONS 1930).

¹⁸⁹ Id.

¹⁹⁰ This theory is authored in large part in Edna Bonacich & Jonathan H. Turner, *A theory of Middleman Minorities*, 38 AMERICA SOCIOLOGICAL REVIEW 583-594 (OCTOBER 1972). Some recent examples include

minorities became a “go-between” group, filling a gap between the elite ruling class or host society and the poorer oppressed masses. They typically were not owners of large capital enterprises. Rather, through small business formations, they provided a conduit or negotiating function, passing goods and service as a broker, rent collector, labor contractor, distributor, or wholesaler from the host society elite to the masses.¹⁹¹ This fostered the notion of the “middle class” or the bourgeoisie among minorities, with particular application to the people of African descent in the United States.¹⁹²

There is application of the Weber theory to the African American experience. They too responded to racism and oppression to forge self help business activities and in fact thrived during the years of segregation when it could not depend on upward mobility from the host society.¹⁹³ There is now a substantial body of literature revealing that the first generations of the oppressed group in the hostile host environment provide the most prolific period of self help ethnic entrepreneurship.¹⁹⁴

Examples of historic African American enclaves emanates from Philadelphia, Pennsylvania and Atlanta, Georgia. In the late 1700s, freed slaves developed a critical mass of small businesses to survive economically, serving black and white clientele. In the early 1900s, the proliferation continued despite the fact African Americans were forced to primarily do business with each other for a period after the passage of *Plessey v Ferguson* in 1899 with its separate but equal doctrine.¹⁹⁵ By 1911, when segregation was still in its glory, Atlanta had approximately 2,000 black-owned establishments, representing over 100 business types. This included a bank, 3 insurance companies, 12 drug stores, 60 tailor shops, 83 barber shops, and 85 grocery stores.¹⁹⁶ It is important to observe that the forced self help entrepreneurship was 126 years before the City of Atlanta granted its first government contract to an African American owned enterprise.¹⁹⁷ In fact, it appears that in 1929, African Americans were the only ethnic minority group to compile its own national ethnically separated retail store census, and begged the United States Bureau of Census to do the same.¹⁹⁸

Weberian solidarity is also evidenced by industry type. With banking in particular, a hostile host society’s discrimination spurred African Americans to establish at least 134 banks between 1888 and 1934.¹⁹⁹ In contrast with modern times, as of 1986 when principles of assimilation and integration diluted the African American

Asians in East Africa, Japanese and Cubans in the United States, and Chinese in Southeast Asia, all of whom developed a Middleman group.

¹⁹¹ Id.

¹⁹² See John Sibley Butler, *Entrepreneurship and Self-Help Among Black Americans* 241-243 (S.U.N.Y. Press 2005).

¹⁹³ Id at 263.

¹⁹⁴ Id.

¹⁹⁵ See W.E.B. Dubois, *The Negro in Business* (1898) and Joseph Pierce, *Negro Business and Business Education* (1947) for illuminating text. More recent is Butler, supra n. 192, at 264, here he includes the systematic establishment of social organizations, religious and educational institutions, both public and private. In one case freedmen raised over \$200,000 in 1869 for a schoolhouse and teacher support. Id.

¹⁹⁶ Butler, supra n. 192, at 318.

¹⁹⁷ Id.

¹⁹⁸ Id. at 311.

¹⁹⁹ See Id. at 319, citing W.E.B. B. Du Bois, *Economic Co-operation Among Negroes* 111 (ATLANTA U. PRESS 1907).

interdependence, there were only 39 African American banks, with total assets of only 12.53% of the total from 60 years earlier.²⁰⁰ Twelve of the 25 banks on the *Black Enterprise Top 100* list were founded between 1895 and 1956, or during the days of official segregation.²⁰¹ And each of the top ten African American insurance companies was established during this proliferation of self-help entrepreneurship or no later than 1960.²⁰²

Obviously, a return to segregation is not advocated, but the economic evidence from that era leads to the following questions: If self help entrepreneurship had vitality when African Americans were more directly forced together, can a model be created for achieving the same result in the current environment? What role can the NMTC play with ethnic Middlemen of this day? To answer those questions we must describe the current environment in comparison to the years of forced segregation. From that process, we may assess which, if any, of the prior economic circumstances have current applicability. Indeed one similarity is that the ethnic enclaves of the current day may be as segregated today by ethnicity or class or both than before the Civil Rights movement of the 1960's – though not by law.²⁰³

There are however differing aspects of the modern ethnic enclaves that create daunting challenges to an Ethninvestor economic model. One major factor, tied to core city segregation, is the lack of commercial institutions. A study of Chicago's west side illuminates a circumstance occurring throughout the nation. In that predominately African American community, 75% of its viable commercial businesses were lost between 1960 and 1970, and by the 1980's, its Lawndale neighborhood had replacement entities that included 48 state lottery agents, 50 currency exchanges, and 99 licensed bars and liquor stores.²⁰⁴ Importantly and unfortunately, the community was left with only one bank and one supermarket for approximately 50,000 community residents.²⁰⁵

²⁰⁰ Id. citing the magazine *Black Enterprise*, June 1988, p. 206.

²⁰¹ Id.

²⁰² Id, noting particularly the North Carolina Mutual Life Insurance Company founded in 1898, Atlanta Life in 1905, Golden State Mutual Life insurance in 1925 (Los Angeles) and Booker T. Washington Insurance Company, (Birmingham Alabama) in 1932.

²⁰³ As of March 2002, there were \$36 million African Americans in the United States (13% of total), and over half, (52%) reside in the central city of a metropolitan area. U.S. Census Bureau, Economics and Statistical Administration, *The Black Population in the United States 2* (2003). Public school systems in major cities are prime indicia that the extent of segregation could not be much worse. In Washington DC, 94% of the children were African American or Hispanic. The percentages in other major cities are similar; 82% in St. Louis, 79% in Philadelphia and Cleveland, 84% in Detroit, and 89% in Baltimore. Jonathan Kozol, *Still Separate, Still Unequal: America's Educational Apartheid*, 311 Harper's Magazine 1864 (September 1, 2005). The causes of urban segregation in major cities is well documented, including white flight by the tens of thousands when 2.5 million rural African Americans came north for employment between 1940 and 1950 and a developing black middle class that left the core cities, creating a resource and role model void for those who remained. See Butler, supra n. 192, at 267-268. The disintegrated family structure is another oft-noted factor. See OFFICE OF PUBLIC PLANNING & RESEARCH, U.S. DEPT OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 29* (1965) (commonly referred to as the Moynihan Report) and Joseph F. Shelley, *Structural influences on the Problem of Race, Crime and Criminal Justice Discrimination*, 67 TUL. L. REV. 2273, 2280-81 (1993) who cautions about blaming the victim. A more thorough analysis is beyond the scope of this article.

²⁰⁴ Douglas S. Massey & Nancy A Denton, *American Apartheid, Segregation and the Making of the Underclass* 135 (Harvard U. Press 1993).

²⁰⁵ Id.

A related vestige of segregation that dampens urban entrepreneurial spirit is tied to failures in federal urban renewal efforts. In response to the blighted condition, government programs established urban renewal projects that not only rebuilt, but also displaced or removed people *and businesses* from prior locations. Thirty percent of African American businesses that also were swept away by renewal projects never reopened, and of those who did, 50 percent failed within the first five years.²⁰⁶ The more cognizant the African American middle class is of these negative risk factors in the urban core, the more difficult it is to hypothecate a positive investment strategy that incorporates that risk.

Integration also is a factor in the entrepreneurship mix. Scholars of ethnicity and economics contend that the effect of that 1960's integration meant migration out of core cities, and caused a phenomenon consistent with other first minority generations – that the earlier generations facing hostile societal exclusions responded with more self help entrepreneurship than succeeding generations who had lesser overt “crisis” of equality of opportunity.²⁰⁷ The sun-up to sun-down work in the business by parents brought a hope for a better life for offspring, achievable through education and professional occupations, which led to greater mobility from the urban core to the suburbs. “Like their ethnic counterparts”, states one scholar, “African Americans, when possible, followed the tradition of education, acquiring excellent occupations, and move away from the central city.”²⁰⁸ African American middle class entrepreneurs during the 1930s era produced 56% of the next generation's “Who's Who in Colored America” within the professional category.²⁰⁹

Yet unlike the experience of the segregated South, the migration north did not lead to the re-creation of the historic African American institutions. Those institutions provided “historical nurturing and served as launching pads for the adapting to the larger American society and more fully participating in it economically.”²¹⁰ Without that tradition, the scholar rhetorically asks, “What are the lessons and values passed on from former generations? What are the lessons or values which guide the offspring of the African American Middleman?”²¹¹ During the more successful periods of ethnic enclaves, African American businesses were at the “very center of communities during segregation” and “there was always a reality that business enterprise was the shoulders on which to build for future generations”.²¹² That magic has yet to be rekindled among African Americans in the modern urban core of major cities in America.

Perhaps most fundamentally challenging for the modern African American investor is identity ambivalence. There is the struggle to define oneself contextually in performance externally among white America, and then internally amongst other African Americans. Studies on race consciousness involves the extent to which persons of common race practice a “re-interpretation, re-invention, re-presentation, and re-definition of one's racialized identity within the dynamic context of being American [as if] in front

²⁰⁶ Arthur I. Blaustein & Geoffrey Faaux, *The Star-Spangled Hustle*, 71 (Doubleday Inc. 1972) and Butler supra n. 192, at 310.

²⁰⁷ Butler, supra n. 192, at 268.

²⁰⁸ Id.

²⁰⁹ Id. at 251-252.

²¹⁰ Id. at 271.

²¹¹ Id. At 270.

²¹² Id. at 311. See Dubois, supra n. 195.

of an audience, or public.”²¹³ An evolving model, which is both internal and external in establishing norms for African Americans, is that of a re-defined notion of “opportunity” beyond the civil rights legacy of equality of opportunity. Rather, “opportunity is a concept of enablement rather than possession; it refers to doing more than having.”²¹⁴ In the NMTC context, the well-suited African American investor must view the opportunity to invest in the urban core as enabling him or her to achieve goals beyond pecuniary gain (i.e. doing something for the community), rather than having more money – a possession. The investment is a re-invented view of investment to include social entrepreneurship similar to African Americans during the earlier ethnic enclave and other immigrant groups.

At the core is an issue of self-identification and solidarity. If a group is not self-identified, it cannot achieve solidarity on the issues otherwise thought to be common. This “putative solidarity” among African Americans is viewed by some leading scholars in the field as requiring a “hybrid” approach, a recognition that although African Americans are a mosaic in skin tones and ethnic origins, in this country there is a need for an overarching common identity in part because the label of “blackness” is still so imposed on them.²¹⁵ As will be discussed in the modeling part of this article, such a self identification is part of the criteria of the Ethninvestor in the NMTC transaction.

And finally, even if ethnic solidarity is part of the motivational mindset of the African American middle class, another challenge awaits – the fragility of staying there.²¹⁶ The two pillars of middle class status are income and wealth, the latter referring to net financial assets with liquidity.²¹⁷ The loss of either is likely to bring a fall from grace. Even when African Americans have similar incomes to white Americans within the middle class, (i.e. when households earn \$50,000-plus annually), African Americans have half (0.52) the net worth as their white counterparts.²¹⁸ Most African American

²¹³ John O. Calmore, *Whiteness as Audition and Blackness as Performance: Status Protest from the Margin*, 18 WASH. U. J.L. POL’Y 99, 109 (2005).

²¹⁴ *Id.* at 110, citing Iris Marion Young, *Justice and the Politics of Difference* 26 (1990).

²¹⁵ *Id.* at 121. Calmore illustrates the point of self-selected putative solidarity through the comments of Congressman Barack Obama. Obama is the proud product of an African-born father and mother who is white from the United States. Obama chooses to be called an African American and identify with the group struggles. In his words: “The reason that I’ve always been comfortable with that description is not a denial of my mother’s side of the family...rather, it’s just a belief that the term African-American is by definition a hybrid term. African-Americans are...mingled with African culture and Native American culture and European culture...If I was arrested for armed robbery and my mug shot was on the television screen, people wouldn’t be debating if I was African-American or not. I’d be a black man going to jail. Now if that’s true when bad things are happening, there’s no reason why I shouldn’t be proud of being a black man when good things are happening.” Calmore entitles his related discussion “Diaspora Identity and Black Performance – The Diversity Within: The Barack Obama Challenge.” *Id.* at 119-121.

²¹⁶ “Middle class” status, regardless of race or ethnicity, has comprehensively been defined as the confluence of not only income, but also education and occupation. Melvin L. Oliver & Thomas M. Shapiro, *Black Wealth, White Wealth: A New Perspective on Racial Inequality* 69 (ROUTLEDGE 1995). The common attributes include a college degree and either white collar employee status or self employment.

²¹⁷ *Id.* at 95.

²¹⁸ *Id.* at 101. Net worth refers to the net financial assets (NFAs) that are income-producing with liquidity, including securities like stocks and bonds, excluding therefore “paper equity” in home appreciation and depreciating assets like vehicles. *Id.* at 101. The stark reality is that nearly two-thirds (63.2 percent) of all African American households have no NFAs. *Id.* at 102. And among the African Americans that have assets and investments, 73% of the value of their wealth is in consumable assets, like vehicles and homes that lack the appreciation-liquidity attributes of NFAs. *Id.* at 105. Only 13 % of their wealth is devoted to

households attain middle class status through employment income, and only if both spouses are wage earners.²¹⁹ There is accordingly a dependence on an uninterrupted source of current *joint* earnings to maintain middle class status. The majority (62.5%) of their other pillar – wealth – is illiquid home equity.²²⁰ If either spouse loses a job, or is disabled, or if divorce severs the joint income, middle class status is jeopardized because there are little in reserves (liquid assets/wealth) to make up for the income loss. In fact, only 27% of the African American middle class have enough financial reserves to maintain that standard of living for one month, and less than one in five households can maintain the standard for three months.²²¹ It is therefore a precarious perch for most African Americans with current middle class status.

The financial pill for the fragility of the African American middle class is asset accumulation and wealth.²²² Increasing wealth is achieved, according to these theorists, through “entrepreneurship and business development...and networking to develop capital and economic opportunity.”²²³ Developing businesses requires access to capital, and once again the African American middle class has high hurdles. Generally, the baby boomer middle class of today who started families after World War II of today had two significant wealth building opportunities. One was inherited wealth passed to them from parents who were allowed to participate in a financially gentler era of the 1940s when wages and savings rates were higher, and housing costs were much lower.²²⁴ Two was the ability to use that wealth (nest egg) to amass substantial sums through appreciated value of homes and securities. They were beneficiaries of a tripling of value for housing units between 1970 and 1980.²²⁵

Today’s African American baby boomers that have now attained middle class status did not often have parents who were allowed to participate in the aforementioned equity building. Inherited wealth was not as forthcoming as a springboard for those purchases so they too could take advantage of that decade when real estate values tripled. Hence, they collectively have a meager wealth portfolio. With the lack of financial reserves through wealth, and thus an overdependence on earnings to support the middle class lifestyle, precious little extra cash is available for investment.

A related element of wealth building generally lost on the African American middle class is “cultural capital”. The term is defined as “the upbringing, education, and contacts that allowed children to get a good start in life and become financially successful

direct income-producing assets. Whites, conversely have just over one-half of their aggregate wealth in income-producing assets. These findings, and those noted in this paragraph were developed by the authors from a combination of sources including the US Census Bureau, and the Federal Reserve. The bulk of the analysis for wealth is drawn from a sample of the US population over 2 ½ years. See pages 55-58 of their book for additional data base information.

²¹⁹ Id at 95. A higher percentage of African Americans must have both spouses employed than white counterparts. One full-time breadwinner supports 67% of the white middle class, while 42% of African Americans have a single wage earner. Id at 95.

²²⁰ Id at 64. White middle class only tie up 43.3 % of their wealth in home equity.

²²¹ Id at 97. By contrast, the white middle class have a sufficient financial nest egg to maintain for 3 months.

²²² Id at 190.

²²³ Id.

²²⁴ Id at 64-65.

²²⁵ Id at 108.

and independent.”²²⁶ From among white America, many parents and grandparents of baby boomers had an opportunity to learn about stock markets, and an opportunity to buy homes in appreciating neighborhoods. Many were wise enough to pass along what they learned to future generations. The current African American middle class is not starting from the same point on the learning curve. The lack of exposure, experience, and cultural capital is evidenced in the current pattern of disproportionate consumer spending and the lack of wealth accumulation. African Americans make up about 13% of the population, and comprise over \$631 billion in annual earnings.²²⁷ However, only 50% of African American adults own their own homes, while 70% of white Americans own theirs.²²⁸ Approximately 30% of the African Americans that earn \$100,000 a year had less than \$5,000 in retirement savings.²²⁹ When white and black households were compared, whites saved almost 20% more each month for retirement.²³⁰ This is yet another of the multi-faceted underpinnings of the current state of anemic African American investment experience. And it is just another of the hurdles to be overcome if a true Ethninvestor class is to evolve to take advantage of the NMTC program.

Having laid bare some of the challenges facing African American entrepreneurship, the familiar axiom, “When there is a will there is a way” appears as an unwelcome default position for the potential African American entrepreneur. The question is how do we find the way? Is there a collective will among a segment of the African American middle class? There are certainly some who may assert that no such motivation exists.²³¹ But to conclude that all 30-plus million African Americans have a monolithic investment behavior is overbroad. Transfers of cultural capital and lessons learned from other ethnic economies can be incorporated into the model for the envisioned Ethninvestor in a NMTC transaction.

²²⁶ Id at 64.

²²⁷ See *infra*, n. 246.

²²⁸ National Urban League, *State of Black America 2004*.

²²⁹ USA TODAY (November 19, 2004) citing report of Ariel Mutual Funds/Charles Schwab 2003 Black Investor Survey.

²³⁰ Id.

²³¹ Neoclassical economics focuses on an individual’s self interest, often described as the pursuit of maximum economic rewards, though not necessarily so. See Oliver E. Williamson, *The Economic Institutions of Capitalism* 49 (1985). If all African Americans were painted so broadly, they would simply pursue wherever they could profit the most, regardless of the impact on African American ethnic enclaves.

Part II

Ethninvestor Criteria

Regarding Ethninvestor criteria, three cornerstone precepts that lay a foundation for the more specific modeling discussed thereafter: (1) One's perception of risk, (2) The degree to which social entrepreneurship is part of the risk analysis, and (3) An Ethninvestor's access to investment capital.

Risk Analysis

Established literature asserts that at the core of the analysis of risk is culture and perception that falls within that culture. According to a leading theorist, "Anything whatsoever that is perceived at all must pass by perceptual controls. In the sifting process something is admitted, something rejected, and something supplemental to make the event cognizable."²³² She concludes, "The process is largely cultural."²³³ She developed over two decades ago a paradigm of cultural constraints, fitting behaviors and outcomes into a grid with groups designated therein. The intent was to develop a way of identifying and segregating the causes for the "self-sustaining perceptual blinkers" and biases we all have, which gives rise to how we perceive our environment and how we view our role within it.²³⁴

Investing too is based on perception, including but not limited to the perception of risk before one's money is spent. The typical investor is attempting to increase her economic well being as a primary motivation for the endeavor – using her money to make more money. With that quest in mind, she prudently compares one opportunity for making money with other opportunities before deciding which vehicle best suits her. That decision requires a level of analysis of risk – what level of risk of losing my money do I take in that quest for more money. If the perceived risk is less for those culturally connected with the community in which the business operates, isn't that investor more likely to make the investment than one who perceives that same investment as a higher risk? Someone accustomed to driving in a major city may be more willing, for example, to bear that risk of accident on a very busy freeway on the Beltway around Washington DC than a visitor from rural Wyoming who has never driven on the Beltway. The Wyoming driver is predictably more likely to say, "No, thank you." to that degree of risk. Why? The perception of risk and the familiarity with the environment is different, the culture is different. Similarly, an investor who is unaccustomed to the experience of the existing urban core housing or commercial market is, like the Wyoming driver, likely to perceive the risk as higher than the urban businessperson or those culturally connected with that urban core.

Social Entrepreneurship

Equally important, the economic return may not be as high a priority if the investor's goal is to achieve a blend of economic returns and social benefits to the target community. This incorporates the burgeoning study of "social entrepreneurship."²³⁵ This

²³² Mary Douglas, *Essays in the Sociology of Perception* 1-2 (ROUTLEDGE & KEGAN PAUL LTD. 1982).

²³³ Id.

²³⁴ Id. There are differing theories concerning the factors that influence perception and behavior. Douglas identifies "economic determinists" for the typology that values and beliefs are secondary to and dependent on economic constraints. As a polar opposite there are those who contend the same values and beliefs are predicated on free will. Her model is a middle ground between those theories.

²³⁵ Lasprogata, *supra* n. 14, at 67.

term is defined as the pursuit of innovative investment strategies, including profit-making ventures to serve a social mission, typically found in the nonprofit sector or within private hybrid business organizations mixing nonprofit and for-profit social purposes.²³⁶ The dual purposes generate a “double bottom line”.²³⁷ The Bill and Melinda Gates Foundation apply the concept in controlling approximately \$60 billion toward its own charitable enterprises.²³⁸ The Foundation’s underlying goal is improving the lot of the world’s poor people without regard to their color, religion, or other differences.²³⁹ Its results-oriented approach led to the selection of projects they could actually envision a meaningful change in the world, such as improving global health through research, prevention and treatment for AIDS, tuberculosis, malaria and vaccine-preventable childhood diseases.²⁴⁰

The Gates Foundation leverages its investments to achieve that double bottom line. Its concept is to identify measurable and achievable outcomes.²⁴¹ The Gates observed that three million children a year were dying from vaccine-preventable diseases. According to the World Health Organization, the foundation has saved 670,000 children, and will save millions more in coming years.²⁴² The true genesis of this social entrepreneurship model was the Gates mindset to be “audacious”, where they “believe these things actually can be solved.”²⁴³ Bill Gates urged his foundation staff to think “outside the box”.²⁴⁴

It is that type of audaciousness that is required for an Ethninvestor model to effectively make a difference in the urban core communities. As will be discussed under the specific Ethninvestor model, the qualified investor must have a similar perspective to avoid the rigidity of externalities and let the group’s greater good be the guide. When social entrepreneurship is discussed in that section, these conceptual underpinnings are incorporated by reference.

Access to Capital

Finally, it is of little value to discuss a model for investors if it includes those with little or no money to invest. African Americans have \$631 billion dollars in earnings per year.²⁴⁵ Approximately 343,000 African American households earn between \$100,000 and \$124,000 annually, and 102,000 African American households earn \$200,000 or more.²⁴⁶ And then there are a few with Gorilla wealth. For example, Usher Raymond IV,

²³⁶ Id.

²³⁷ Id at 69.

²³⁸ Donald G. McNeil, Jr. & Rick Lyman, *Buffett’s Billions Will Aid Fight Against Disease*, 623 N.Y. TIMES A1 (June 27, 2006). So impressed was the world’s second wealthiest man, Warren Buffett (Chairman, Berkshire Hathaway, Inc), with the social entrepreneurship of the world’s wealthiest man, Bill Gates, that he donated \$31 million to the Bill and Melinda Gates foundation, which previously had assets of an approximate equal amount.

²³⁹ Id.

²⁴⁰ MORNING EDITION, “Gates Aims for Major Philanthropic Impact” (NPR June 27, 2006) (Radio broadcast) (available at <http://nl.newsbank.com/nl-search/we/Archives>).

²⁴¹ Id.

²⁴² Id.

²⁴³ Id.

²⁴⁴ Id.

²⁴⁵ USA TODAY, November 19, 2004

²⁴⁶ US Census Bureau, *Statistical Abstract of the United States*: 2004-2005 Table 663 (124th Ed. 2004).

known worldwide musically in the rap genre as “Usher” established his own record company (Sony BMG) that paid him \$20 million in 12 years.²⁴⁷ In early 2005 he earned another \$20 million from his 64-city tour. Usher asserts that only 10% of his income is devoted to consumer spending, with the remainder invested in fixed income investments, blue-chip stock, real estate and business ventures. Included in the portfolio is a \$1 million investment in a bank. In February 2005 he became a minority owner of the Cleveland Cavaliers of the National Basketball Association with a \$9 million investment. In his words, “Wealth accumulation is at the top of the list.”²⁴⁸ There are more African Americans in America as there are people in Canada,²⁴⁹ and census data reveals a 46% increase in African American owned firms between 1987 and 1992 compared to a 26% increase in the larger society.²⁵⁰ The opportunity for investment in the NMTC program and other vehicles is within reach if the collective vision of a few extends to grasp it.

Specific Model

Generally, a host of influences affects a person’s economic investment goals and choices. Under the Douglas model, there are essentially two dimensions of control over an individual’s decision making. One influence module is the impact of forces outside oneself and outside of the small group of common believers. These are major principalities such as the government, corporations, and the larger institutional entities that regulate us in one fashion or another. We must have driver’s licenses, car notes, mortgages regulated by financial institutions, and employers who regulate employee behavior for assigned tasks. I term these forces “External Regulators”. As the chart below depicts, the lower left corner is the External Regulator’s low level of influence on a person. As the influence grows, that growth is measured vertically so the top left of the square reflects the highest extent of external regulation.

The other Douglas influence module is the group dynamic where people have commonality in areas they consider important. The group has a self defined pattern of allegiance, criteria for admission and varying levels of commitment to that group.²⁵¹ As I apply that module to African Americans, indicia of membership as a general group include the shared historical context of slavery and segregation, cultural aspects that are either self defining (e.g. speech, music, phrases of art), or ascribed to them in stereotypes that they commonly rail against, and of course skin pigment. For the specific purpose of the NMTC investing analysis, I view the group influence as embodying attributes of being self-motivated, with a non-traditional sense of social entrepreneurship where the investment goal is not only to make money as an individual, but as importantly, be committed to the betterment of the ethnic enclaves of the NMTC target community. The group dynamic is the “Ethninvestor” factor because of the role ethnicity plays in the investment analysis.²⁵² The extent of influence of this group factor is increased

²⁴⁷ Brett Pulley, *Diamonds, Cars and Confessions*, FORBES (May 9, 2005) (available at <http://forbes.com>).

²⁴⁸ Id.

²⁴⁹ There were more than 36 million African Americans in the US as of 2003, (supra n. 213) and 32 million people in Canada (See *Statistics Canada* available at http://www41.statcan.ca/3867/ceb3867_000_e.htm.)

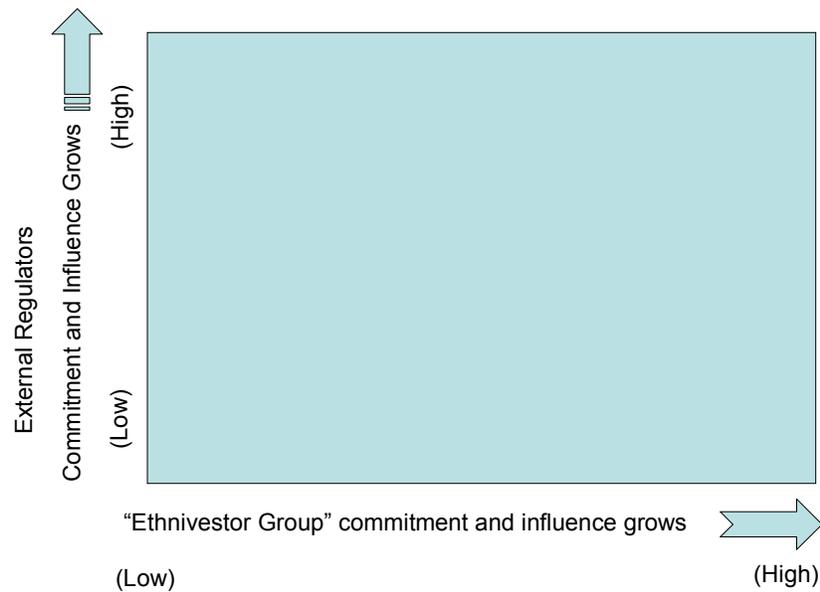
²⁵⁰ Butler, supra n. 192, at 325. The raw numbers show 424,165 to 620,912.

²⁵¹ Douglas, supra n. 232, at 2.

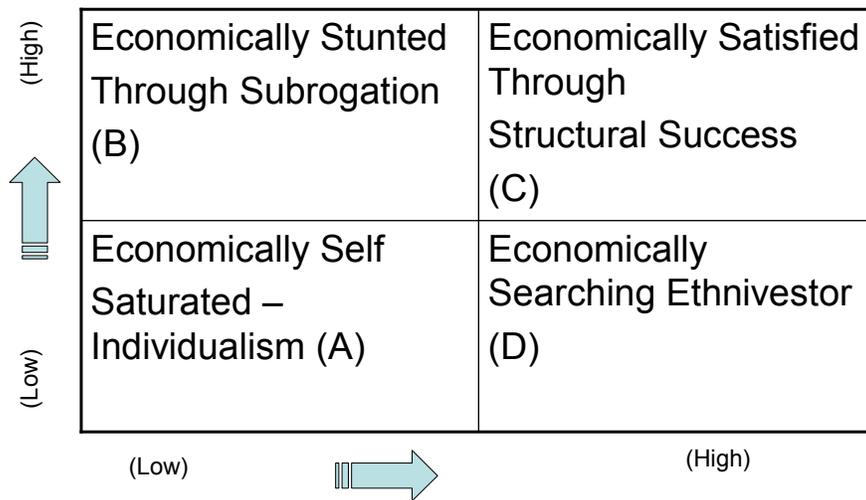
²⁵² The Douglas model used generic terms as part of the notion that the theory is applicable to innumerable circumstances. She termed the E.I.I. influence as a “Grid” and the Ethninvestor Group as “Group”. [Douglas, supra n. 232, at 4] Douglas asserts that this grid/group theory “predicts or explains which intellectual strategies are useful for survival in a particular pattern of social relations.” Id at p. 6. As

horizontally from left to right. So the greater the group's influence on the individual the further to the right that person falls.

From this initial construct, the range of interaction among these influence factors can be illustrated through four categories, depicted as boxes within quadrants on a grid. The grid is shown below.



applied to this article, the social patterns and strategies sought to be explained are for NMTC investors with allegiance to the purpose of assisting the low income residents of urban America.



Group A: The Economically Saturated

Investor Group A at the bottom left corner represents those with the least amount of influence from any group dynamic, be it external regulators (low vertically in the grid) or from within a common internal ethnic group influence (horizontally low at the lower left of the grid). Accordingly, Group A is highly individualistic, being without a significant influence from any group. They are less inclined to follow the group perspective and prefer to “do their own thing.” They are “saturated” by their individualistic goals, or simply put “self-saturated”. There is little room left to absorb the social entrepreneurial spirit to sacrifice profits for people. They are less likely to donate significantly to the NAACP or similar entities unless a corresponding personal benefit (return on investment) appears likely. Similarly, these persons are less likely to make personal sacrifices for, and would therefore have less tolerance for the working class masses as employees in a small business under a NMTC project. Saliently, this category of investor is least likely to have the Weber-modeled self help ethnic group solidarity for entrepreneurship in response to a hostile societal host. That self-help model brought the most successful periods of entrepreneurial success by African Americans in this country. For these reasons, Group A persons among the African American middle class do not meet the Ethninvestor criteria and are not the ideal candidates for the transactional entities on NMTC projects.²⁵³

Group B: The Economically Stunted Through Subordination

Group B from the African American middle class has high controls from external sources, (vertically high in the grid) but minimal influence from the ethnically inspired self help group (horizontally low – i.e. on the left of the grid). What prevents Group B from investing in Properly Purposed Projects is some source external to the investor that

²⁵³ The parties to the NMTC transaction are the CDE, the QCB, and the investor. The relationships and interrelationships are discussed in the Structure of the Credit section, the CDE, the QCB, and the investor.

has a high level of influence over investment decisions. For example, a career military person may be so ensconced in the culture of military thinking, that his only investment comfort is from whatever is available through the federal government's Department of Defense. There is the financial ability to invest, but not the perspective to go beyond the external regulators' investment choices.

The external source of subrogation may also be a lender. Studies indicate past financial failures among many African Americans has brought more pessimism than optimism about future investments, and hence a lesser degree of investment than the general white adult population.²⁵⁴ Lending practices of financial parasites and even legitimate financial firms have led to oppressive debt obligations on African American investors.²⁵⁵ Once the oppression is internalized (i.e. a secondary self subrogation), the debt leads to such a level of apprehension and discomfort that the potential investor becomes gun-shy and his or her investment in Properly Purposed Projects is stunted.

The source for an economic stunted African American investor may not be just from external sources. External sources can cause an internalization of investment doubt. The lack of securities investing provides an example. The apprehensiveness about investing in securities has been tied to several factors, including less exposure to capital markets, inexperience, and less disposable income which results in a more risk adverse investment strategy.²⁵⁶ Considering those factors in combination, African Americans within this quadrant have been more vulnerable to nefarious wrongdoers that have consciously targeted ethnic groups. More particularly, African Americans are among several ethnic groups who have been the target of "affinity fraud" schemes, where crafty sales pitches of nefarious wrongdoers consciously target ethnic groups that lack investment experience and appeal to their cultural values and beliefs. The practice has caused the Securities and Exchange Commission to pursue prosecutions for the millions of dollars scammed.²⁵⁷ African Americans, among other ethnic groups, also have fallen prey to "Ponzi" schemes which promise investors high rates of return, only to find the funds were used to simply pay earlier investors²⁵⁸. Subprime lending has also contributed to this investment malaise. Upper and middle income African Americans are twice as likely as low-income Caucasians to turn to subprime refinancing in the real estate

²⁵⁴ Isaac C. Hunt, *A Message on Investing*, 42 HOW. L. J. 387 (1999) citing a survey by Ariel Funds and Charles Schwab & Co. noting a lesser rate of investment in securities. It is contended here that those causes for apprehension also affect the investment risk analysis for other investments such as real estate. See note 141.

²⁵⁵ Id.

²⁵⁶ Id.

²⁵⁷ Lisa M. Fairfax, "With Friends Like These..." *Toward a More Efficacious Response to Affinity-Based Securities and Investment Fraud*, 36 GA. L. REV. 63, 74 (2001). This source notes that the SEC obtained a \$4 million disgorgement order against a schemer who targeted almost two thousand African American investors (The "Zurich scheme"). A similar action was brought against Hispanics who fraudulently raised \$1.5 million from over 200 members of the Houston Hispanic community. Immigrants from the Dominican Republic, people of Middle Eastern descent and German speaking Europeans were similarly targeted. See also Hunt, *supra* n. 254, at 389, citing Liz Skinner, *Affinity Fraud Scams Increasing*, HOUS. CHRON. 2 (Apr. 5, 1998).

²⁵⁸ Id at 389.

market.²⁵⁹ The lack of investing acumen has also left many African American middle class uncomfortable with their ability to manage debt.²⁶⁰ So while the sources of apprehension are externally oppressive, the internalization of doubt still results in a stunted investment perspective.

There may be many circumstances where it is difficult or impossible to ascertain the extent of the stunted perspective is due to wholly external sources or self-imposed restraints. The external and internal sources may be working in tandem. Whatever the relative mix of external and internal sources, the stunted perspective is real within a significant part of the African American middle class. Despite a collective \$671 Billion in annual earnings, and 100,000-plus African Americans make over \$200,000, much is squandered in consumer spending.²⁶¹ Some 30% of African Americans earning \$100,000 annually have retirement savings of below \$5,000.²⁶² The first comprehensive estimate of African American stock ownership revealed that of the net wealth accumulated by African Americans, only .09 percent was in corporate stocks.²⁶³ These figures suggest that many African Americans may currently fall into Group B investors and have not reached the investment maturity well suited for a NMTC project, though sufficient income otherwise exists. Such investors, already reeling from a history of bad investments or otherwise uncomfortable with investing, are likely to perceive a Properly Purposed Project as high risk and with great suspicion. For some, those prior failures may be so internalized that the fear of failure stunts any future investment activity that may be considered risky. The result is that the actor can become unduly passive dooming oneself to inaction.²⁶⁴

This “what’s-the-use?” attitude has been empirically shown in university student testing where three groups were subjected to two tests.²⁶⁵ The first test concerned the ability to turn off loud noises. One group could control the noise through a lever, another group could not control the noise at all, and a third group had no noise at all. The second test was to place them in settings where a simple act could eliminate the noise. The group that had the inability to control the noise at all in the first test was the most passive in the

²⁵⁹ There is a disproportional presence of subprime lending in African American communities, evidenced by a HUD analysis that over half of all mortgages in those communities were subprime, leaving a Black borrower five times more likely than white Americans to receive such a disadvantageous loan. Baher Azmy, *Squaring the Predatory Lending Circle: A Case for States as Laboratories of Experimentation*, 57 FLA. L. REV. 295, 328-329 (April 2005).

²⁶⁰ T John Simons, *Even Amid Boom Times, Some Insecurities Die Hard – Black Middle Class Gains Ground, But Still Finds its Situation Shaky*, WALL STREET JOURNAL A10 (December 10, 1998).

²⁶¹ Keith Reed, “State of Black America, Part Two: Our Financial Insecurity,” January 13, 2005, (<http://blackamericaweb.com>).

²⁶² USA TODAY (November 19, 2004).

²⁶³ Andrew F. Brimmer, *Income, Wealth, and Investment Behavior in the Black Community*, 78 AM. ECON. REV. 151, 154 (1988). This is not to say African Americans are doomed to investment failure. There are numerous encouraging signs, including the facts that African Americans are making more money than ever before, overall earning power is rising. Hunt *supra* n. 254 at 390.

²⁶⁴ 31 U. RICH L. REV. 1337, citing definitions of learned helplessness at 102 J. Experimental Psychol. 187, 187-93; Lyn Y. Abramson et al., *Learned Helplessness in Humans: Critique and Reformulation*, 87 J. ABNORMAL PSYCHOL. 49, 49-74 (1978).

²⁶⁵ Hiroto, *Locus of Control and Learned Helplessness*, 102 J. Experimental Psychol. 187, 187-93 (1974). See 31 U. Rich L. Rev. 1336, citing Edwin A. Locke & Gary P. Latham, *Work Motivation: The High Performance Cycle in Work Motivation*, 3 (U Kleinbeck et al. eds., 1990).

second test, even though it could have very easily accomplished the task.²⁶⁶ Similarly, bad investment experiences or an otherwise skittish investment perspective can lead to internal doubt, which in turn leads to a lack of effort to meet the demands of the situation. This leads to a perceived sense that the individual cannot control the circumstance and unduly generalizes the failure to new situations. The NMTC opportunity would be one such new situation. The profile of the Group B investor is one already disconnected from the ethnic common group and therefore unlikely to heed the call for entrepreneurial spirit for the cause ethnic enclave. So this investor type wallows in a pity party and self loathing, stunted from investing in such Properly Purposed Projects. Hence, Group B investors would not meet the Ethninvestor criteria.

Group C: The Economically Satisfied Through Structural Success

This group is identified as having a high external regulators (vertically high in the grid), and also a high internal ethnicity influence (horizontally far to the right). The group is more likely than Group A or Group B to meet Ethninvestor criteria because of a higher affinity with the ethnic group influence. The group is however less than ideal for Ethninvestor status because its investment goals have already been satisfied. Accordingly, there is no longer an appetite for additional investment, at least of the type to be found in Properly Purposed Projects under the NMTC program. To illustrate the typology, this group may include those who have already provided equity capital to Properly Purposed Projects in target communities. She may have already established and funded endowments for that community.

The group could also include the corporate executive that has the house, automobile, other luxuries of choice, and has contributed significantly to both the NAACP *and* the country club. By way of example only, there are a few African American CEOs and approximately 275 senior executives of Fortune 500 companies.²⁶⁷ And there are African American investment banks and asset management firms substantially in the black, literally and figuratively, with billions of dollars in assets under management.²⁶⁸ And as previously noted, over 100,000 African Americans earn more than \$200,000 annually. Apart from possibly a few high cost of living cities, for such folks, the living is easy – financially speaking. These are well healed people by any standard. Some of them may be satisfied just where they are, enjoying a peaceful relatively risk free existence after earning every penny and investing consistent with their social mission along the way.

So while Group B is unable to invest, and Group A is unwilling to invest, this group is ethnically influenced, but has concluded that its ethnically inspired investment mission has been accomplished.²⁶⁹

²⁶⁶ Id.

²⁶⁷ Cora Daniels, *Most Powerful Black Executives* (available at www.fortune.com/fortune/careers/articles/0,15114,368860,00.html?promoid=email).

²⁶⁸ Id.

²⁶⁹ No empirical studies have been located on this group dynamic. Future ethnographic research can provide a testing of the theory as will be discussed below.

Group D: The Economically Searching

This group is the most likely NMTC Ethninvestor because it has individuals with the highest level of motivation to invest based on ethnic solidarity akin to the Middlemen from prior generations (horizontally high on the far right of the grid), yet the lowest interference or dilution of that motivation by external regulators (vertically low at the far left of the grid). Thus corporate or governmental constraints, or even such traditional investment vehicles that abhor high risk ventures, would not likely stunt the potential ethnically-inspired investment.

If the investor links investment strategy solely to individualism, the greater good of the ethnic enclave will not induce the investment (“economically self saturated”). If the investor is overwrought by fear of failure, or the investing constraints of traditional corporate, governmental or financial institution culture, (“economically stunted”), such a transformative investment strategy is not likely to occur. If the investor has the ethnic identification to invest, but has already done enough after externally fulfilling experiences, the investment into ethnic enclave economy would not occur because the investment was already made (“economically satisfied”).

A high level of ethnic consciousness should also bring a higher sensitivity to current disparities that have been ineffectively addressed through status quo techniques. This group therefore is more likely to still be searching for aggressive and innovative methods to address those issues. It may take such an “audacious” approach in the mold of The Bill and Melinda Gates Foundation to embrace social entrepreneurship in the urban core. And this is the group that may incorporate those prior lessons of ethnic enclave investing in the tradition of the Weber theory over 70 years ago. This group may be best suited to form a new version of credit associations, utilization of small businesses to nurture employment for the underemployed African American males, and saliently, it may embrace, rather than marginalize the ethnic enclave economy. This investor therefore should be the personification of ethnically-inspired social entrepreneurship.

Since the thesis of this article involves providing an alternative to gentrification so that the urban residents are not marginalized, the scope of this article includes how the Ethninvestor can help accomplish that task. Various strategies are discussed in Part IV regarding the application of the Ethninvestor model to the NMTC transactional scheme.

Part III: Application of Economic Principles

Within the general rubric of law and economics, two camps are at theoretical war. Philosophical pundits in one corner are known as neo-classical economists with a fundamental premise that each *individual* will adjust his or her behavior to make rational choices to maximize whatever causes satisfaction, i.e. self interest.²⁷⁰ From that premise, two of the economic principles are that: (2) for a denial of a resource, an opportunity cost is incurred, which has consequences on wealth of the individual and/or society,²⁷¹ and (3) resources tend to gravitate toward their most valuable uses if the open market is allowed to operate without undue interference from the government. That is to say a negotiated price between two individuals without undue pressures from external sources such as government price fixing will achieve a more valuable output, through maximizing the self interest of the buyer. The value is the price the buyer paid. That buyer presumably sees a value greater than the seller's economic cost.²⁷² Under the neo-classical economic theory, efficiency refers to the allocation of resources to maximize value or wealth.²⁷³

In the other corner of legal economic theorists are groups that focus not so much on individual behaviors as on group dynamics that impact a greater goal of the society – curing an injustice. One such group is the “environmental justice” movement.²⁷⁴ In their view, an allocation of resources by maximizing an individual's satisfaction and utility through pure market forces is simply inapplicable where the goal is to achieve justice.²⁷⁵ The traditional economic model is inapplicable is because land use is not an unencumbered market where people are free to choose their desired outcomes. According to these theorists, social justice is the overarching important outcome, and governmental

²⁷⁰ Richard A. Posner, *Economic Analysis of Law* 3-5(6TH ED 2003). See also the writings of Gary S. Becker, *The Economics Approach to Human Behavior* 6-11(1976), Guido Calabresi, *Cost of Accidents: A Legal and Economic Analysis* (1960), and Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON 1 (1960). Importantly, the search for satisfaction is not necessarily always economic. It is a function of utility, and how one attempts to increase it through behavior that achieves a goal of high value. So one may maximize utility by choosing to pay a lesser price for ground chuck in the face of price increases for the steak previously preferred. Behavior was adjusted to meet a higher level of satisfaction – the actor's perception that it is better to buy a slightly lesser grade of beef for a better price. This “self-interest” is not argued to only include the negative connotation of selfishness. It could include a mix of personal happiness and pleasure. In the above example, the self interest in the ground beef purchase could have also been motivated by remembering that her spouse prefers ground chuck for the dish that was going to be prepared. Neoclassical economists therefore characterize satisfaction as “utility” to avoid broader commingled concepts of selfishness and self interest. Posner, *supra*.

²⁷¹ The opportunity cost is a benefit forgone by employing a resource in a manner that denies its use. One who attends college for four years has forgone the money he could have made as an employee over that period. A homemaker who could otherwise be employed outside the home has incurred an opportunity cost for the value of her labor, though no pecuniary equivalent is established. Under this theory even sex is an economic activity since it involves an expenditure of time and effort (resources) in the quest. Id.

²⁷² Id at 9-10.

²⁷³ Id. at 11.

²⁷⁴ Alice Kaswan, *Distributive Justice and the Environment*, 81 N.C. L. REV. 1031, 1035 (2003).

²⁷⁵ Id.

intervention may be required to achieve a more equal distribution of resources (i.e. distributive justice).²⁷⁶

Similarly, advocates of critical race theory embrace a discourse on the effect of discrimination by groups on groups of America's citizenry and criticize neo-classical economics as "methodological individualism [at] fundamental tension with the concept of race, intrinsically a group concept."²⁷⁷ These theorists consider it a fatal flaw of neo-classical economists to ignore the possibility that victims of discrimination could have psychic losses as part of the opportunity costs analysis and likewise ignore the transactional costs for racial discrimination in commercial transactions.²⁷⁸

What appears common to those adversaries of neoclassical economics is their prioritization of a social humanistic goal through an analysis of how *groups* impact other groups over the science of individual behaviors. One scholar characterized neo-classical law and economists as those who "seek to make law appear more, rather than less, scientific and thus avoid references to the humanities".²⁷⁹ Indeed, a prominent theorist of neoclassical economics, Judge Richard A. Posner boldly admits that the theories advocated are an abstraction, "but abstraction is the essence of scientific inquiry, and *economics aspires to be scientific*."²⁸⁰ The counter claim is that "Law is not, however, a natural science. Even though references to the natural and social sciences can be helpful, law involves human practices and experiences that are not fully explainable or understandable in scientific terms". For the law to be effective, it must address human need and fairness beyond profit motives.²⁸¹

The Ethninvestor model and tax policy implications are a blend of both worlds. On the one hand it is a design to prioritize a social goal – revitalization of urban core American to primarily benefit the low income residents, without increased marginalization. Yet the means of accomplishing that goal includes the infusion of neoclassical principles of opportunity cost and increasing market based behavior models so that over time the self help ethnic entrepreneurship (market based) diminishes the need for public funding for this purpose.

The Ethninvestor model has an implicit premise that a governmental incentive subsidy alone shall not revitalize urban America in a way that maximizes the wealth of underutilized resources. Neither can we depend on gentrified projects to do for that group what it may do for itself. Those underutilized resources are both a segment of the African American middle class (Ethninvestors) and the urban core residents that are otherwise being marginalized by gentrified projects. By incorporating an Ethninvestor blended

²⁷⁶ Id. at 1031, 1082. By way of example, one Camden New Jersey neighborhood became the site for various industrial facilities, including a sewage treatment plant, a trash-to-steam plant, a co-generating plant, and two contaminated Superfund sites suspected of releasing hazardous substances. Ninety one percent of the residents are persons of color, poor, and suffer a disproportionately high rate of asthma and other respiratory ailments. It is a pattern repeated across the country. Id. at 1033. Posner also discusses distributive justice but as an economic variable. *Infra*, note 316.

²⁷⁷ Robert E. Suggs, *Poisoning the Well: Law & Economics and Racial Inequality*, U. MARYLAND SCHOOL OF LAW, LEGAL STUDIES RESEARCH PAPER NO. 2005-37 (available at <http://ssrn.com/abstract=7006860>).

²⁷⁸ Robert E. Suggs, *Racial Discrimination in Business Transactions*, 42 HASTINGS L. J. 1257, 1284-87 (1991).

²⁷⁹ Robin Paul Malloy, *Framing The Market: Representations of Meaning and Value in Law, Markets, and Culture*, 51 BUFF. L. REV. 1, 17 (2003).

²⁸⁰ Posner, *supra* n. 270, at 17.

²⁸¹ Malloy, *supra* n. 279, at 18.

motivation of philanthropy and profit (social entrepreneurship) African American resources are made more productive, wealth is increased, and through the small business concentrations and school of entrepreneurship concepts, the resources of low income core residents are enhanced. The desired result is a more efficient market within the ethnic enclave.²⁸²

To explore the Ethninvestor model in economic terms we return to two important concepts of utility and efficiency.

Utility

Under traditional neoclassical configuration, “utility” refers to “the value of an uncertain cost or benefit as distinct from a certain one” and satisfaction garnered from the behavior.²⁸³ The Posner utility configuration is also expansive enough to incorporate the concept of group. The label used is “utilitarianism”, which is aggregating utility across persons, treating them as “cells in the overall social organism rather than as individuals”. As will be discussed below, the Ethninvestor and the Gentrifier investor have a different sense of utility, both in terms how they define value/satisfaction, and how they view utilitarianism in their investment decision making.²⁸⁴

The Posner principle of value as a component of utility is that you value consistent with what you are willing to risk.²⁸⁵ Importantly, there is no prescription that one *must* value pure pecuniary profit to the exclusion of all other motives. Therefore one can still be motivated by non-financial purposes even if it makes the investment financially risky. In the Ethninvestor context, it could easily be perceived as a lower pecuniary risk to build a mixed use condominium unit with restaurants and high end units. Value is conceived through the buyers - gentrifiers who could afford to pay at a price beyond the developer’s cost of producing the resource. It would be more risky to invest in a needs-inspired small business (Property Purchased Projects) that assist primarily the target poor people within the community. For an Ethninvestor who values the higher risk for the greater good of the ethnic enclave, the value and satisfaction components of utility are found by investing in such Properly Purposed Projects. The social entrepreneurial motivation, though utilitarian in nature is nonetheless his “value” and utility.²⁸⁶

²⁸² Arguably, if purely market forces were in operation without governmental regulation or incentives, the Ethninvestor should come to the aid of the community it has the greatest cultural connectivity. The issue of whether the pure market based scheme to revitalize the urban community is superior to a federal program is a fight for another day. Since Congress has provided such an incentive, this author considers it more valuable to propose a framework that combines private forces with the reality of the NMTC incentive.

²⁸³ There are two components to utility that is demonstrated through the classic Posner illustration of a person having a choice between \$1 million outright, or rather a 10% chance of receiving \$10 million. One form of utility is a measure of one’s appetite for risk to determine what that person values most. Do you take a low risk (\$1 million) or do you increase the risk to achieve the greater reward? The risk adverse person would take the \$1 million. This is the value or expected benefit component of utility because the person valued the \$1 million now more than the increased opportunity later. The second concept of utility is philosophical, meaning an approximation of happiness and satisfaction. Posner, *supra* n. 270, at 11.

²⁸⁴ *Id.* at 12.

²⁸⁵ See definition of utility, *supra* n. 288.

²⁸⁶ In the Posner hypothetical of the person with the choice of \$1 million now or 10% of \$10 million, the person taking the \$1 million was terms more “risk adverse”. If say the interest rate he received compensated him for the higher risk, where his total return was greater than if he merely invested the \$1

Conversely the non-Ethninvestor (termed Gentrifier investor) would most likely invest, if at all, based on maximizing a *financial* or pecuniary return on that investment. The gentrifier investor²⁸⁷ would have a different utility - maximizing profit - because that is what he or she values. The uncertain commodity the gentrifier desires is increased wealth from a new market – the low income community. The certain item used for comparison is whatever other investment he could have made in older markets.

Efficiency

Another component of utility is diminishing marginal utility. The concept is that a commodity means less to someone who already has a lot of it, e.g. second million dollars to a millionaire is not as satisfying as the first. In economic terminology, those who already have attained utility (value and satisfaction) from a certain item will likely attribute less value to getting more of the same. Thus, the utility diminishes as he attains more of same of whatever he had.²⁸⁸ There is also a reciprocal aspect in that while utility diminishes for one party of a voluntary transaction there may be a corresponding increase in utility for the other party to the transaction. Simplistically stated by example, those who have “a loss of a dollar hurts the millionaire less than the gain of a dollar pleases the pauper”.²⁸⁹ In the Ethninvestor context, the Ethninvestor will retain more utility when investing in the ethnic enclaves than the Gentrifier investor if the NMTC program prioritizes Congressional goals of helping those in greatest need among the target community. An Ethninvestor who invests in part to help those target residents should have a correspondingly higher amount of satisfaction and value because it is tied to betterments of humanity, not just pecuniary rewards. If the Properly Purposed Project

million on receipt, the risk adverse choice would not “maximize” his *pecuniary* self interest. The important concept is that as long as his concept of value was to be risk adverse, he maximized his self interest, because he essentially defined self interest consistent with that value. Thus, simply making the most money possible is not always value and thus is not always the definition of utility. In the NMTC Ethninvestor context, the Mall of Needs type of investments may not generate a maximum financial return, but that is acceptable if it fits within his concept of value to incorporate non-pecuniary goals like revitalization of the ethnic enclave and its core citizenry.

²⁸⁷ The gentrifier investor includes those of the same mind who own the CDE or the QCB.

²⁸⁸ Posner, supra n. 270, at 10.

²⁸⁹ Posner is quick to caution that this does not mean redistributing substantial wealth from higher-to lower income people will increase total utility. Posner’s controversial assumption is that “people who work hard to make money and succeed in making it are, on average, those who value money the most, having given up other things such as leisure to get it.” Posner, supra n. 270, at 470. Posner cites no empirical proofs for that assumption. It could just as easily be that those who have substantial wealth have it because of inheritance or they were provided greater opportunities to make money from the labor of others. If a partner in a law firm bills out his own labor at \$300 an hour, he could have gross revenues of \$2,400 if he bills and collects on 8 hours of work that day. But if he also derives 50% of the billable time for three associates in his office (say each bills at \$200 per hour for 8 hours that day) his take for the day is an additional \$2,400. Thus, he has *doubled* his income, not because he worked harder, but because he was in the position to profit from the labor of others – others who may have outworked the partner, or been just as talented, but not yet blessed with the leveraging opportunity. The Posner model appears to give no effect to the value of privilege, class, legacy, or inheritance, but would rather posit only the possibility that the difference is due to hard work and personal sacrifice as an “opportunity cost” of the wealthy. Just as easily, the opportunity costs would be far greater for an associate who deserved to be partner but was denied because she was a woman, or because he was African American, or gay. This again points up the notion that neoclassical economics is not designed to solve social justice issues, because it fails to explain or measure the opportunity costs of those who have been victims of such things as discrimination, legacy, and inheritance.

were mandated under the program, the Gentrifier investor's satisfaction and value would diminish more quickly because the financial returns would be more difficult to achieve.

Under neoclassical theory there is an important correlation between "utility" and "efficiency". Efficiency is the allocation of resources in which utility and value is maximized.²⁹⁰ If indeed utility and value is not confined to pecuniary notions of wealth, then the non-pecuniary value is also part of increased efficiency. It follows that if one invests consistent with those values, utility should increase, or be reduced at a lesser rate, if the purposes of that investment are fulfilled. In the NMTC context, if Properly Purposed Projects are the only statutorily authorized ventures, the Ethninvestor is likely to achieve greater satisfaction and value from the investment because his investment behavior is aligned with the projects authorized and purposes of the NMTC program. It follows that the greater the value and satisfaction, the greater the utility and value. That allocation of a resource, the investment in the Properly Purposed Project, is therefore more likely to bring greater efficiency in an economic sense than a Gentrifier investment in a Problematic Purposed Project that falls outside permitted project goals. A gentrified investor who seeks primarily individual profit would find more frustration than satisfaction if he (1) suffers in financial returns, (2) has to remain invested in the target community beyond the tax credit haven, or (3) is unwilling to hire target residents or incorporate target community ideas of proper projects, when he really is only interested in profitability. The lesser satisfaction and value is a lesser utility. The lesser utility is a lesser efficiency.

To buttress the point, I return to the studies of the Cuban ethnic enclaves in the early 1990s. Researchers concluded that when those of Cuban descent established locational clusters of ethnic enterprises, hired people from within the ethnic enclave, pooled their savings in rotating credit associations, and developed sympathetic suppliers and customer bases, a vertical and horizontal integration occurred (i.e. an ethnic enclave economy) that became "hyper-efficient".²⁹¹ Part of the key findings was that these businesses employ co-ethnic workers to "serve their own ethnic market and/or the general population". Importantly, the ethnic enterprises had such a caring perspective about those co-ethnics that the business becomes a school of sorts for entrepreneurship for those co-ethnics hired within the ethnic enclave.²⁹² The Ethninvestor model provides for African American investors a combination of economic resources and an ethnic sense of solidarity to utilize those gaming strategies of other successful immigrants and African Americans prior to the integration era, when the self help entrepreneurship was forced by externalities of discrimination or economic exclusion.

²⁹⁰ Posner, *supra* n. 270, at 11-12. Again, Posner prefers to shy away from applying efficiency to doing good for a society and groups within it. In his words, efficiency "has limitations as an ethical criterion of social decision-making." *Id.* at page 12. The relevant question is whose limitations? Why not modify an economic theory to have as its goal, the curing of a social ill, rather than an explanation of an individual's self interest. If that creates a "humanitarian" aspect, so be it, since it is humans as a group we hope to cope with over our earthly existence. Isn't that the higher priority of a civilized society - peaceful coexistence - where all people are treated fairly? I would call economic theories that incorporate such motivations "econo-realism". If instead the primary purpose of an economic theory is the explanation, prediction, and intervention of principles that only promote an individual's self interest, does that theory advance or retard our movement to be a more civilized society?

²⁹¹ Halter *supra* n. 178, at 29-30, citing a published case study of Messrs Portes & Boch.

²⁹² *Id.* at 30, citing a published case study of Messrs Portes & Boch, (Portes 1981, 290-91).

One could assert that for such a model to be viable there must be an analysis of opportunity costs, and that true efficiency cannot occur if the forgone costs exceed the benefit.²⁹³ The Ethninvestor pays a financial price when investing in a Properly Purposed Project, a health clinic due to the disproportionate need for sickle cell or kidney dialysis treatment. Assume the same money could have been invested in some other manner with a greater financial return. There is an opportunity cost to the Ethninvestor because of the greater return forgone if monetary return was what he valued. But since the value, satisfaction, and therefore utility includes the social aspects of the entrepreneurship there is a minimal sense of loss, if at all. Therefore, there is no material social loss to society, but instead a private rearrangement of resources from the Ethninvestor to the target resident within the ethnic enclave. So while validating the general principle of diminishing marginal utility, the Ethninvestor has less of it because of the match between the reasons for investing with the results of a Properly Purposed Project.

Application of Utility and Efficiency

The charts below graphically illustrate how efficiencies vary between the Ethninvestor and the Gentrifier. In Chart A, the Ethninvestor utility is measured on the vertical pole on the left of the chart. That utility includes all those Ethninvestor characteristics that motivated the investment behavior, including the desire for increased well being for target residents, despite lesser financial returns to the Ethninvestor. The Target Resident²⁹⁴ who receives the benefit of the Properly Purposed Project has utility measured on the right vertical pole. That utility incorporates enhanced employment opportunities, greater access to role models, and whatever other residual benefits flow from having a Properly Purposed Project.

Across the bottom horizontally left to right is the increase in Properly Purposed Projects. The horizontal line titled EU tracts the increase or decrease in the Ethninvestor utility as each project is built with investor funds. The horizontal line titled TRU tracts the increase or decrease target resident utility as each project is built. The horizontal line titled "B" is the baseline to indicate the lower existing utility of the target resident prior to each of the development of each of the three projects. Since the Ethninvestor motivations includes a blend of financial profit and social well being for the ethnic enclave, the measured increase or decrease in utility as projects are built should also be measured against those variables.

Obviously it is difficult to quantify the extent of intangible benefits. It should be sufficient to employ the neoclassical assumption that the investor is rational in determining what opportunity costs he is willing to forgo, much like someone who pays more for an antique vase than any other bidder in an auction. The value is measured by what he is willing to pay. We assume the total of social and profits forgone are included in his analysis of what to pay. Appraisers have developed methods to separate from a price paid for a business the intangible assets such as copyrights, patents, and accounts receivable from the hard assets of plant and machinery. I have every faith that appraisers can formulate models for separating other forms of intangible assets as well. But to

²⁹³ Under Posner, the opportunity cost springs from the bedrock assumption that a rational actor seeks to maximize self interest, and that a social cost diminishes wealth in society, while a private cost merely rearranges that wealth. See discussion, *supra* n. 270. at 17.

²⁹⁴ The Target Resident is consistent with the NMTC statutory definition of "target population" found within I.R.C. § 45D.

satisfy the economists' scientific urges, the conceptual model is that there is a baseline representing the extent of resident utility existing prior to the enhancement from the Properly Purposed Project. As noted, that baseline is horizontal line B.

Area A represents the total increase in utility for the Target Resident, i.e. the amount of increased utility between where he was in utility prior to the project compared to where he was after each project. Notice that there should be some increased utility after each project assuming it provides the benefits contemplated in the needs assessment for the target population. Area B depicts the Ethninvestor utility, which includes both the extent of value and satisfaction received from seeing increased well being in Target Residents and the financial return on the investment. In this graph, the amount of satisfaction the Ethninvestor receives from the social enhancement to the Target Resident is assumed to be less than the satisfaction received by the Target Resident. This is based on the reciprocal notion embedded in the concept of diminishing marginal utility that a pauper will value receipt of say a \$10,000 dollar job from a well-healed Ethninvestor more than that Ethninvestor's satisfaction from the increased incremental income and thanksgiving for the joy or return from the pauper/Resident Assistant. That could obviously be reversed where a wealthy person values most his gift through seeing the joy it brings. That is the essence of philanthropy. For purposes of illustration however I posit the circumstance where the combined benefits in utility to the Ethninvestor are less than the utility to the Target Resident. The point remains the same -as long as the Ethninvestor's total utility is a net plus to him, (i.e. the investment benefits, both social and financial, exceed the forgone opportunity costs of time, alternate investments, etc) there is increased efficiency.

If the Ethninvestor loses faith in the project or cares less about enhancing the ethnic enclave and its residents, the utility drops. This would be evidenced by a selling the investment because in his formulation the marginal utility decline reached a critical net loss level. Even in the success model, there is some assumed leveling of utility for the Ethninvestor after the third project. The assumption is that after a certain number of investments, more of the same bring a diminished marginal utility. Yet as long as substantial part of the value of the investment is viewed as the social entrepreneurial benefit, the investment can continue to be an added efficiency to the enclave and the Ethninvestor.

Chart A

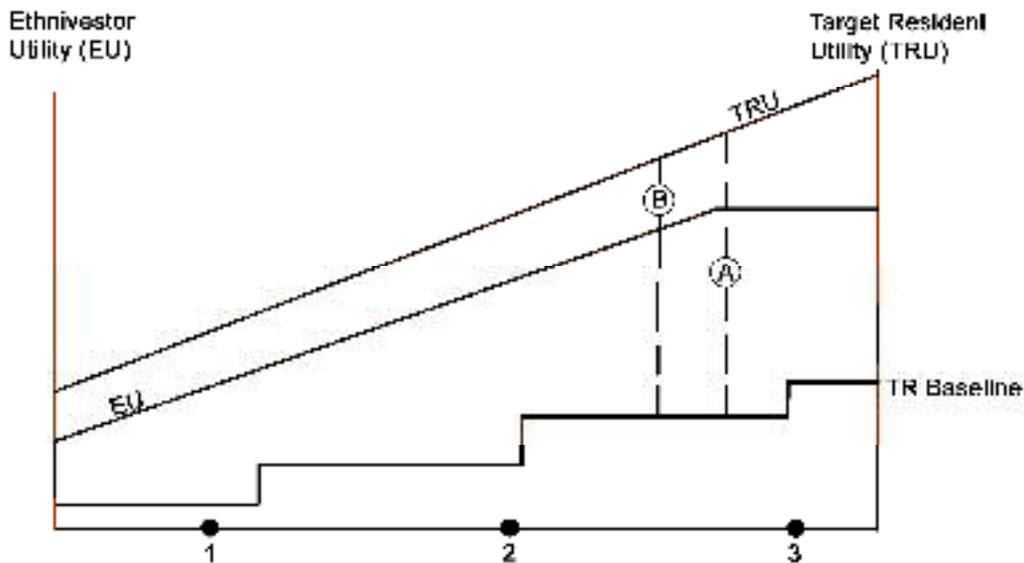
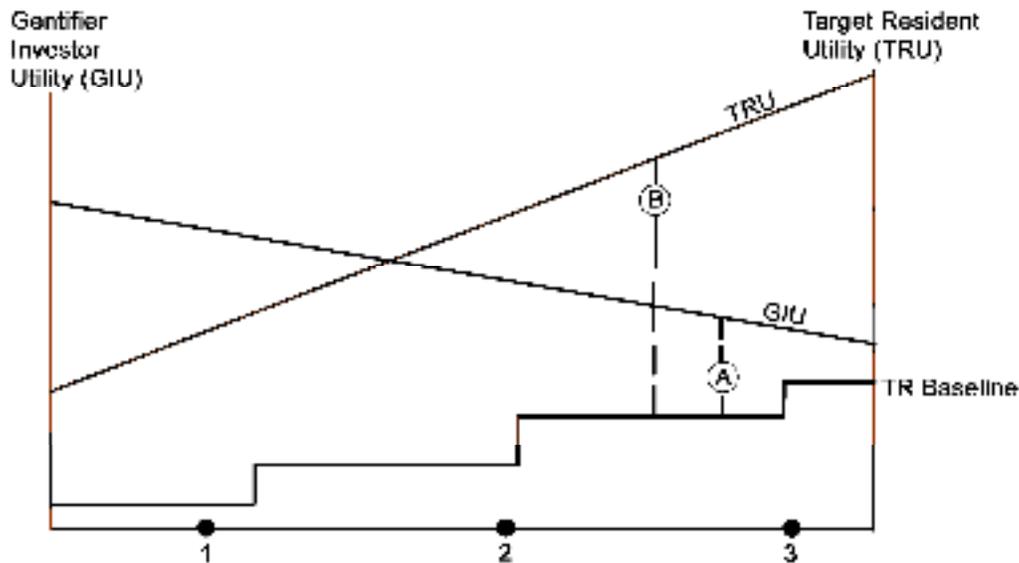


Chart B represents the tracing of utility and efficiency for the Gentrifier Investor. (“G.I.”) The guideposts are the same as for the Ethninvestor in Chart A. But instead of parallel benefits between the G.I. and the Target Resident, the respective utility to the parties grow further apart over time. The Target Resident may receive roughly the same sense of satisfaction, though highly questionable if the investor does not have a personal commitment to the well being of the target community. Even assuming efficiency equivalence there is a probable loss of utility and efficiency from the G.I. An investor that defines maximization of self interest in purely individual financial terms without a corresponding value for the non-financial benefits to the target resident and ethnic enclave would likely grow increasingly dissatisfied with the investment. That again assumes the MMTC statute and regulations require a Properly Purposed Project designed for long term benefits to the existing target community and residents. Under those circumstances the G.I. investor is likely to bring lesser efficiency in an economic sense and greater social costs because utility seepage occurs from the transfer of resources. As to personal utility, he could have invested in some other venture that was not hindered by social returns. The commodity of time and related resource losses are greater than the return.

Chart B



In a more macro view of utility and efficiency, there are opportunity costs that span various entities in a Gentrified project, governmental as well as private. As described in Section 1, Part III of this article, opportunity costs of gentrified NMTC projects are substantial, and no different fundamentally than what has been observed as the byproduct of other gentrified urban redevelopment programs.²⁹⁵

Despite attempts to explain behavior in economic terms, the issue should still be raised: Does the neo-economic theory advocate or reject the use of utilitarian ideals to help achieve social justice? If Posner is the voice box for neoclassical economics, the answer appears to be that achieving social justice is not a goal, only an incidental byproduct in route to finding an individual's self interest. Posner finds the notion of the "sacrifice of innocents for the sake of the greater good...deeply disquieting".²⁹⁶ Yet, Posner readily admits that societal decisions of what is just and legal does not always hinge on economics, as when we make illegal private forms of discrimination based on race or sex. In his words, "...there is more to justice than economics..."²⁹⁷ On that point perhaps all scholars can agree.

But the Posner abhorrence for sacrificing oneself for the greater good of a group may be ameliorated by his concept of "utilitarianism". On the one hand Posner ties utility to wealth. In response to his own rhetorical question of how utilitarianism can be defended, he stated: "One answer is that the things that make wealth possible – not only or mainly luxury goods, but leisure, comfort, modern medicine, and opportunities for self-expression and self-realization – are major ingredients of most people's happiness, so that wealth maximization is instrumental to utility maximization. This answer ties

²⁹⁵ Quinones, supra n. 59, at 724-751.

²⁹⁶ Posner supra n. 270, at 27. Posner has various definitions of justice. Distributive justice appears as the one he referenced in the text quotation. Even that term he defines as "the proper degree of *economic* equality."

²⁹⁷ Id. at 28.

efficiency to utilitarianism.”²⁹⁸ It may be the case that “most people’s” happiness is tied to self. But the Ethninvestor model is a narrow class where pecuniary self-sacrifice may be part of the investment motivation in the NMTC program. The scales of influence tip toward the greater socioeconomic goal of revitalizing urban America without marginalizing its urban low income residents. It modifies the neoclassical economic concept of utility and efficiency to incorporate such a goal.

The modification is not entirely inconsistent with the Posner utility model at its root. Posner has chastised critics of neo-classical economics for improperly viewing economics as being just about the money. Posner admitted the confusion could easily occur. His bedrock assumption is that a person is a “rational maximizer of his self-interest”.²⁹⁹ This could lead a reasonable thinker to equate self interest with increased “wealth” in pecuniary terms. To avoid that assumption, Posner prefers to use a more precise term “utility” to describe a broader concept of “self interest”. Utility is broad enough a term to include, as Posner states, “a rational utility maximizer in *all* areas of life, not just in his ‘economic affairs’.” Posner considers this assumption as “central” to his entire neo-classical design.³⁰⁰

Thus, an Ethninvestor’s motivation falls within traditional utility theory. The goal is not just about money, but a combination of social and financial goals. It is still maximizing self interest because self interest is broader than mere financial gain. More precisely, an Ethninvestor has a mix of motivations, both philanthropic and profit driven is how he envisions “value” and “satisfaction” for the utility of the investment behavior. Regardless of whether it fits neatly into neoclassical definitions of utility, this Ethninvestor model should be viewed as a viable theoretical construct for increasing private equity funds from a previously under-committed source for a socially just goal. The Ethninvestor includes in his *individual* investing behavior the notion that the greater good is part of his satisfaction and value.

²⁹⁸ Id. at 16.

²⁹⁹ Posner supra n. 82, at 4.

³⁰⁰ Id.

Part IV Application of Ethninvestor Model

There are various outcomes that can be envisioned from infusion of the Ethninvestor into the NMTC transactions. Like the Bill and Melinda Gates Foundation, the outcomes need to be achievable and measurable. The prior Section of this article calls for empirical analysis of the model, but the theoretical basis is nonetheless grounded in prior research, just applied to different circumstances.

Reduced Barriers of Entry

One threshold task prior to examining specific Ethninvestor criteria is to establish a more investment compatible environment under the NMTC program. There appears to be less than five African American owned CDEs among all the Allocates granted in the several years of the program's existence.³⁰¹ One barrier to more African American CDEs is the same that hinders minority entrepreneurship in general – a lack of access to capital. The current NMTC program has allowed the large scale projects in the range of \$100 million and beyond. The majority of them are within the listing of Problematic Purposed Projects described earlier. Without the money for large scale projects, minority group CDE participation is practically non-existent. Practically all of the Problematic Purposed Projects are among the most expensive to build, in large part, it seems because the purpose is to satisfy those accustomed to more expensive life styles – the gentrifiers rather than the basic needs of the low income target population. The types of projects the target community/ethnic enclaves appear to need the most are not the most expensive. Rather, the Properly Purposed Projects,³⁰² designed for such items as nonconventional financing for small business start ups, health care facilities, and affordable housing are among the lesser cost projects. If a needs assessment of the statutory “target population” were primary when formulating the project, and part of the CDFI prioritized criteria, there is likely to be even smaller sized projects that can accommodate small business capitalization. The smaller projects should open the investment opportunity to those with a comparative cultural advantages discussed above. That would be a component to the strategy that may help return these current NMTC target communities to bustling ethnic enclaves economies which people like W.E.B. Dubois considered at the very center of the community. Various other attributes of the Ethninvestor common to the self help heyday would have to exist as well, and will be discussed below.

Another method of reducing barriers of entry for an Ethninvestor is to reduce the transactional costs for a NMTC transaction. One important byproduct of the small business Properly Purposed Projects is that it cures an existing barrier of entry for Ethninvestors in NMTC projects. Currently, the transactional costs and professional fees for a NMTC transaction is problematically high,³⁰³ and in many cases prohibitive of the

³⁰¹ Two hundred thirty three CDEs have received allocations as of June 29, 2006 according to CDFI announcements on its website at www.cdfi.gov. The CDFI has published profiles of the CDEs that received awards. Three appear on that list as list as “minority owned or minority controlled”.

³⁰² A more expansive description of such projects is noted in Table C. These were termed a “Mall of Needs” as a conceptual analogy to a physical strip mall of what items the community needs most.

³⁰³ These are professional fees, typically top heavy with billed legal, accounting, and financial consulting fees. The complicated structures to meet investor risk and reward expectations have been “vastly time consuming” causing investors to incur a “disproportionate amount of transaction costs” to close the deals. Brad Elphick, *NMTC Issues and Concerns Determine How Investors are Putting Together Deals*, NMTC

types of cases that a target community wants and deserves.³⁰⁴ The costs are high because the transactions are highly complex. The transactions are complex because they are attempting to meet gentrified goals, (i.e. a substantial return on the investment of problematic purposed projects). Some projects have hundreds of millions of dollars in construction costs.³⁰⁵ If the goals were aligned with the best interests of the target community, absent gentrified goals, the projects would not have to be as expensive. The transactions could be simplified to meet the more basic needs of the target community, and therefore the transactional costs would decrease proportionally.

Reduced Marginalization Through Small Business Modeling

The Ethninvestor model attempts to incorporate the successful self help criteria that were historically successful for African American ethnic enclaves and others prior to the Civil Rights focus on integration in the 1960s. That model includes small business formations, hiring within the ethnic business class, and using the business as a training ground to grow entrepreneurial education and experience from within.

As to small business formations, the Ethninvestor investment motives are aligned to the Weber model of self help formations in response to hostility from the host society because of its strong ethnic influence of decision making (horizontally evidenced to the far right of the grid). A lack of access to capital has been a major hurdle to establishment of the enterprises among the low income communities. The ethnic response historically was to establish an ethnic economy where revolving credit associations formed to provide the capital for its own businesses. The credit association is a collection of funds that are then distributed to one business owner, and upon re-pooling of additional funds, rotated to the next business.³⁰⁶ Consistent with the Weber model, those credit associations were a self help response to the host society's hostility (discriminatory lending practices).³⁰⁷

The credit association strategy is essentially a finance technique with modern application. Venture capitalists created pooled funds for different tiers of investor types.

Monthly Report, Vol III, Issue VIII, Novograda & Company LLP 2 (2004). One CDE official stated other allocates "are needing as much as 10-14% of their QEI to cover fees." Confidential comments from author's survey.

³⁰⁴ In New York City, nearly 75% of the public school enrollments are African American and Hispanic and generally noncompetitive with suburban schools. In 1970, when a significant percentage of students in that school system were white, 400 doctors were present to address health care needs of those school children. But 1993, the number of doctors was down to 23, mostly part time – mostly affecting the city's poorest neighborhoods where health issues were most extreme. See Kozol, *supra* n. 203. Needless to say, educational health care choices and improvements are being demanded in New York and similarly situated major cities. Some NMTC projects have been charter schools. Some have been health care facilities. None require the \$100 million allocations that give rise to convention center/hotel complexes, and that drive transactional costs to problematic levels.

³⁰⁵ See the Louisville, Kentucky Marriott hotel and convention center example, *supra* n. 63.

³⁰⁶ *Id.* at 12. One of the many fertile Boston studies observed that among Kiroean and West Indian enclaves, the men contributed to the pool, but the women were the bankers, who handled and managed the funds. *Id.* at 12.

³⁰⁷ The United States Department of Treasury has found disproportionate predatory lending practices or simply the failure to loan to minorities who have similar lending credit risks as non-minorities. U.S. Department of the Treasury and U.S. Department of Housing and Urban Development, "Curbing Predatory Home Mortgage Lending: A Joint Report," June 2000. See also predatory lending discussion *supra* n. 278.

One form of entity that has utilized pooled funds is a limited partnership with a corporate general partner. Such a model is used by one of the few minority firm participants in the NMTC program.³⁰⁸

Increased Co-ethnic Employment

The Ethninvestor model also reduces the marginalization by increasing employment among co-ethnics, including the chronically underemployed African American male youth. Leading scholars in ethnic economic research concluded that those who are employed in the ethnic economy are more likely than others to become self employed.³⁰⁹ Those small businesses therefore became a self help defacto “school for entrepreneurs” though different ethnic groups had varied patterns, niche business types, “all stem from the initial exposure to the ethnic economy...springboards to future rewards, both economic and social... [i.e. a multiplier effect]”.³¹⁰ This model increases the employment opportunities for those underemployed within the NMTC target population beyond a trickle down gentrification.³¹¹ The trickle down theory embodies the notion that greater investment will lead to significant job growth. As one study concluded the causal connection between capital investment and job growth among the low income residents is “untested and usually unproven”.³¹² Conversely, there is ample empirical evidence that redevelopment project areas normally become “gentrifying markets” without material increase in the quality of life of the low income residents.³¹³ To be effective at employing that chronically underemployed group realistically requires meeting them where they are in the employment spectrum. It does little good to offer jobs requiring a graduate degree in economics to those who are struggling with high school graduation requirements. It is of greater value to establish the types of businesses where those unemployed youth can be nurtured from those culturally connected role models in their own “school for entrepreneurs” in the tradition of other ethnic enclave economies.

Long Term Commitment to Target Community

Another criterion for the Ethninvestor is willingness for long term commitment to the target community, beyond the 7 year tax credit. The desire for long term commitment rather than mere short term gain is advocated as criteria for the Ethninvestor because it should provide longer term benefits for the target community, and thus a more qualitative use of the federal subsidy funds. While a NMTC project has tax credits spread over 7 years, if the CDE fails to establish a permanent economic base after the 7 years, those left after the tax credit exodus are potentially left flailing as they were prior to the NMTC project. That would represent an inefficient use of taxpayer dollars. Accordingly, the

³⁰⁸ One of the Round IV allocates was a limited liability limited partnership with a corporate general partner. A minority firm organized as a limited liability company was part of the LLLP. See CDE Profiles available at <http://www.cdfi.gov>.

³⁰⁹ Halter, supra n. 178, at 9-10.

³¹⁰ Halter, supra n. 178, at 9-10.

³¹¹ The trickle down theory as applied to NMTC transactions is discussed in greater detail, supra in Section I, Part II.

³¹² Id at 746, citing Mier, supra n. 77, at 34.

³¹³ Quinones, supra n. 59, at 748. A multitude of commentators suggest even more broadly that “we know very little about the success of community redevelopment efforts...After several years in operation, the federal government still cannot even determine with any certainty whether past programs have succeeded; their design have the government little incentive to evaluate performance.” Pappas, supra n. 124, at 337. The author opines that the NMTCs provide an opportunity for “drastic improvement” but considers important the need to hold allocates and the Treasury accountable so results can be measured. Id.

Ethninvestor model is conceptually not just a tool for current earnings or short term investment, but a platform - a spring board for future generations of those residents to rise to a more qualitative life over the long term. In essence, the model is to have investors with a goal beyond a short term return on investment, to grow the target community. The result should aid in the quest to establish current and future generations from within rather than being marginalized by those from outside. The outside gentrification model has as a more likely byproduct of small benefits to the target residents trickled down from the gentrified wealthy who build problematic purposed projects. The long term commitment should flow from the Ethninvestor's investment motivation to serve the social entrepreneurial mission, to gain the type of solidarity African Americans of the prior generations exhibited.

To facilitate an Ethninvestor's long term commitment, the type of entity for the CDE and a QCB should be highly flexible. The entities should be flexible enough to increase continuity between entities both during volatile periods during the 7 year credit period, and after the credit period when the entities continue the business activity. The volatile transactional potential exists because there have only been questionable monitoring of the successes and failures of such ventures.³¹⁴ So there is very little empirical of the success or failures under this program from which to establish a best practices guide or roadmap as to the best designed and effective business types under this NMTC scheme. It is like a stock market with no Morningstar, a bond without Moody's. Regarding continued business activity after the 7-year credit haven, the CDE could become an equity owner in the QCB during the 7-year credit period and thereafter. Thus, retaining flexibility and continuity between entities can provide increased options for structuring future relationships between the CDE and QCB, both of which may be well stocked with Ethninvestors during or after the 7-year tax credit period.³¹⁵

When structuring for long term commitments in a volatile or uncertain marketplace, some entity types have advantages over others.³¹⁶ Limited liability companies generally provide greater ability of the LLC to negotiate and contract the relative liability rights between partners over the more rigid requirements of corporations.³¹⁷

More challenging may be the need to have an organized business synergy that serves the local ethnic needs and/or the general public. It is certainly conceivable that, like Miami entrepreneurs of Cuban descent, an Ethninvestor-based CDE and QCB team can develop strategic plans that evidence vertical and horizontal integration, culturally aligned suppliers and consumers and pooled savings, cross-pollinating markets where related markets become co-referral sources. There is also no prohibition in the NMTC

³¹⁴ Several commentators have observed that very little is known about the success rates of the program. Dimitri Pappas, *supra* n. 124, at 326.

³¹⁵ Under specified conditions, the CDE may gain majority control, through voting or management rights. See Reg. § 1.45D-1(d) (6); 69 FED. REG. 77633 (December 28, 2004).

³¹⁶ For a discussion of the LLC advantages over other business entities, see 95 MICH L REV. 393,446 (1996). An LLC model is often particularly well suited for CDE and the QCD relationship, including the flexibility of sharing profits, losses, and even partners within the transactions.

³¹⁷ Consideration should be also given to a modified venture capital limited partnership model, with a corporate general partner. See Joseph W. Bartlett, *Equity Finance, Venture Capital, Buyouts, Restructurings and Reorganizations* 7 (VOL. 1, 2nd ed. 1995).

statue or Regulations against rotating credit associations akin to those used in other ethnic enclave economies in this country.

Empirical Ethnographic Design Modeling

Scientific testing of the Ethninvestor model is recommended though beyond the scope of this article. Ethnography is a scientific approach to discover *what* people actually do, what role, if any, culture and ethnicity have to with those actions, and the reasons for those actions before interpretations are drawn from our professional or academic discipline.³¹⁸ Commonly used research methods for ethnographies include data collection through focus group interviews, audio and video recordings, and elicitation techniques.³¹⁹ Definitions on such terms as culture and ethnicity should be clarified.³²⁰ The inquiries could for example survey two groups of African Americans: One group that fits the proposed profile of an Ethninvestor and another group that does not. The questions would be designed to reveal the likelihood of investing in what is proposed as Properly Purposed Projects based on the Mall of Needs criteria. If those fitting the Ethninvestor profile have a highly correlated answer to match the projected investment behaviors in Properly Purposed Projects then the results are indicia of validity for the model. If, on the other hand, the non-Ethninvestor profiles show a propensity for investing in those same proper projects, then the results are indicia that the Ethninvestor model is flawed.

Criterion should include what the would-be investor considers her opportunity costs and the value of the ethnic group relative to regulator influences. Data can also be collected through interviews or hypothetical examinations from developers to determine the point at which the investor considered the opportunity costs to be greater than the utility of the investment. Groups of the Target Residents that are part of communities affected by NMTC projects could also be examined to ascertain whether the projects added to their quality of life. That may provide a basis of comparison for the small business model in the Ethninvestor construct to test the notion of a modern day ethnic enclave economy. Have the Properly Purposed Projects already provided empirical evidence that target residents are indeed co-ethnically employed where the Ethninvestor-based employer operates a defacto school of entrepreneurship? Are target residents experiencing an enhanced well being from ethnic role models that passes along positive modeling for their offspring? Can a body of evidence be developed on the rate of decrease in the Target Resident's dependence on public funds under the Ethninvestor and Gentrifier models? These are but a few of the questions that are part of a larger ethnography study.

³¹⁸ LeCompte, n. 175, at 1.

³¹⁹ Id. at 127.

³²⁰ See the definition for ethnicity used in this article in the text associated with note 85.

Conclusion

The NMTC program has laudable goals of providing federally funded subsidies as incentives for equity investment to assist targeted low income residents and their community. The subsidy was created to ameliorate a crisis in America – a crisis that affects us all. Unintended loopholes have morphed properly purposed projects into more problematic venues for opera, ballet, symphony orchestras, hotel and convention center complexes, and high priced condominiums, in two words - subsidized gentrification. This has occurred in part due to a lack of conceptual clarity on a *required* relationship between Means Team and End Project, where each participant in the NMTC transaction is merely a conduit for delivery of a product primarily designed for the low income residents, rather than the financially well healed migrants to that community. The lack of conceptual clarity led to statutory ambiguity as to the precise intended beneficiaries of the program. And as a result, the NMTC program continues to incur staggering opportunity costs and a wasting of resources within the community and the dollars earmarked to assist them.³²¹

Various amendments are proposed to provide the CDFI with additional transactional controls. Principal recommendations include narrowing the type of projects authorized so only those well designed to meet established needs of the community receive the subsidy. A model that first establishes the two-pronged outcome (End Sum Interests, i.e. a Mall of Needs assessment, and a project to meet those needs) should systematically weed out the Problematic Purposed Projects. There should also be increased accountability in capital structure to minimize potential overleveraging of the QCBs. That should also increase long term equity commitments and business operations beyond the 7 year tax credit haven. A model for revitalization should incorporate long term activity and this model is consistent with long term planning.

But this article does not merely complain about federal government failures. Instead it offers an alternative of greater long term support from the private sector to play a greater role in solving the urban crisis. Through the modeling an Ethninvestor from the African American middle class, I hope seeds have been planted for future self help techniques using cultural connectivity as an asset not a demerit. They need not start from scratch. Rather, lessons can be learned from the entrepreneurship of prior generations and other immigrants who also faced hostility and exclusion, and who nonetheless formed vertically and horizontally hyper-efficient ethnic economies, armed with such devices as rotating credit unions and internal institution-building. These middle class functionaries of ethnic enclave economies established a trusting nurturing role within their respective small businesses for their otherwise marginalized co-ethnics. Modern day Ethninvestors who learn those lessons can help redirect billions of federal tax dollars to the intended beneficiaries.

This analysis also seeks to incorporate traditional and more contemporary concepts of law and economics. The intent is that an Ethninvestor's cultural connectivity with an ethnic enclave will increase the economic utility of both the investor and the target residents at a rate greater than investors who do not share that connectivity. The target resident's utility can be increased in several ways, including a greater likelihood of long term employment among the community's underemployed. Ethninvestors, more

³²¹ See discussion of opportunity costs imposed on low income residents from failed trickle down urban redevelopment, which is in effect gentrification, at Part II.

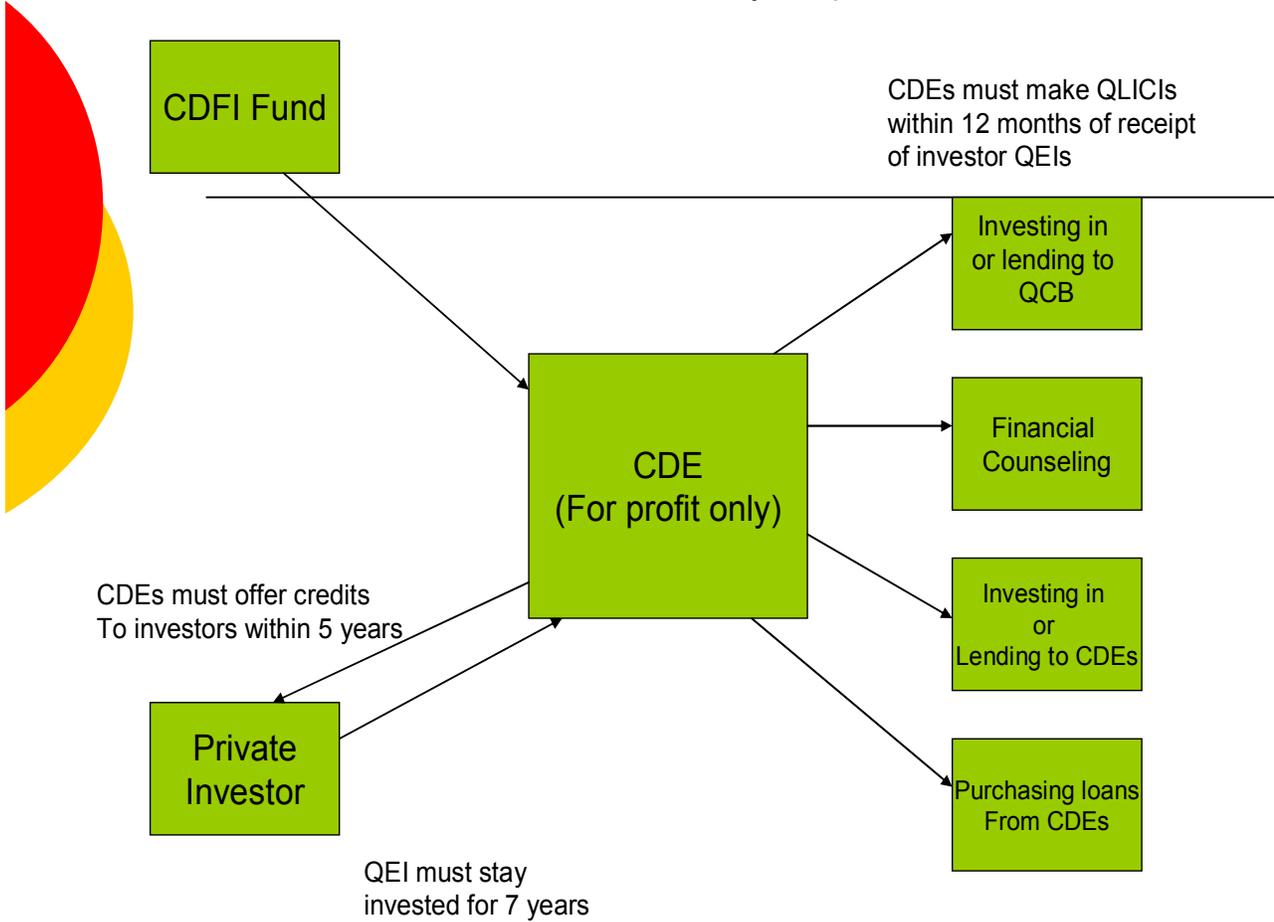
likely committed to the community long term, can increase role modeling, and enhance use of the small business as a defacto school of entrepreneurship. Then, like the Atlanta of old where African American businesses thrived without City contracts, modern Ethninvestor-based businesses do their part to revitalize the community.

These may be unprecedented ways to meet the urban crisis, but the crisis is reaching unprecedented levels. The status quo brings more of the same, and more of the same does not solve the urban core issues sought to be remedied through the NMTC program. If the federal government is to provide tax subsidies to influence investment behavior in urban America, it is wiser tax policy to retain fundamental tax principles, and refuse to provide tax benefits for the consumptive wants of gentrifiers, when needs of crisis proportions remain unmet. That diversion of funds and dilution of purpose only adds to the marginalization and ultimate cost to our society in lost social capital.

We are to be reminded that the tax subsidy is a benefit paid for with taxpayer's dollars that comes with a price. That price may be the foregone opportunity of a maximized rate of return in a purely private transaction with purely private funds in play. But the NMTC program involves public funds that therefore should tie primarily to a public purpose. That purpose is the revitalization of the low income community without marginalizing the low income residents.

Table A

NMTC Summary Graphic*



*Figure taken from CDFI Fund NMTC Information Session Handout

TABLE B

REPRESENTATIVE SAMPLE OF PROBLEMATIC PURPOSED PROJECTS

CDE	Proposed Use	Problematic Project Equity Investment (In Millions)	Problematic Project Tax Credit Subsidy (In Millions)	Allocation Award Year
National Trust Community Investment Corporation	<p>Received 6th largest allocation.</p> <p>Center for the Arts: Transform the abandoned factory into museum space for its world-class contemporary art collection. Following a \$30 million rehabilitation, this 292,000 square-foot industrial steel, concrete and glass structure is now home to one of the world's foremost collections of works by major artists of the 1960s and 1970s, including Andy Warhol, Joseph Beuys, Walter De Maria and Donald Judd.</p> <p>Hippodrome Performing Arts Center: Restore three historic landmark buildings. The distinctive exterior cornice and marquee of the original Hippodrome Theater will be recreated. The 2,250-seat center anticipates hosting 200 events a year, including the Baltimore Symphony Orchestra and touring Broadway production.</p> <p>Portland Telegram Building: Includes restoration of the façade and clock tower and renovation of 33,000 square-feet of space for retail and office use.</p> <p>Professional Building: Upper floor offices and ground floor retail.</p> <p>Historic Tennessee Theatre: Rehabilitation of the 'Official State Theatre of Tennessee,' a 1928 movie palace in downtown Knoxville.</p> <p>American Tobacco Historic District: Rehabilitation...into a mixed-use complex, and 4,000-seat theatre.</p>	\$127	\$49.53	2002
123 New Market Investors, LLC	226-room hotel in downtown Washington, D.C.	\$13	\$5.07	2002
Louisville Development Bancorp, Inc.	Redevelopment of Broadway Cinemas...development of the Marriott Convention Hotel...development of Residence Inn Downtown...construction of a new headquarters building for CW Johnson Xpress.	\$8	\$3.12	2005

CDE	Proposed Use	Problematic Project Equity Investment (In Millions)	Problematic Project Tax Credit Subsidy (In Millions)	Allocation Award Year
Phoenix Community Development and Investment Corporation	A biotechnology campus.	\$170	\$66.3	2002
Michigan Magnet Fund	<p>ICCF Project-Grand Rapids: 5,000 square feet of commercial space.</p> <p>Lot 9-Kalamazoo: 113,000 square feet mixed-use building comprised of 10,000 square feet retail, 48,606 Class A Office and 16,800 square feet of residential housing.</p> <p>Pere Marquette Depot: \$3.8 million building will be the regional tourism bureau center.</p> <p>1 South Division-Grand Rapids: 40,000 square feet of retail space and 149 public parking spaces.</p> <p>Stadium Project-Lansing: Mixed-use development with first floor retail/office use consisting of 25,000 square feet...36 urban rental units...\$800-\$1,200 per month.</p> <p>500 Block-Flint: \$11 million 30,000 square foot restaurant and entertainment complex. Eight loft apartments...1,500 sq. ft. to 3,000 sq. ft.</p>	\$60	\$23.4	2005
Historic Rehabilitation Fund I	<p>Rehabilitation of the old Portland Armory for the Portland Center Stage.</p> <p>"Intent is to transform Portland's historic, but unused, Armory building into a world-class performing arts center. This allows Portland Center Stage to move out of its current home into a performance space better suited to its goal of becoming a top American regional theater company."</p>	\$24	\$9.36	2003
Johnson Community Development Company	<p>\$4 million to fund a newly constructed office building, Deer Valley Corporate Center.</p> <p>Assist The Stockyards Restaurant, a virtual living museum and local landmark that commemorates and celebrates Arizona's cattle industry.</p> <p>Loans have funded improvements for...world headquarters for a medical systems company.</p>	\$52	\$20.28	2003
Seattle Community Investments	60,000 square feet of retail space and 100 apartment units on a four-acre site...transforming High Point from a blighted concentration of low-income people into a new, ecologically sustainable, mixed-income community.	\$20	\$7.8	2006

CDE	Proposed Use	Problematic Project Equity Investment (In Millions)	Problematic Project Tax Credit Subsidy (In Millions)	Allocation Award Year
Urban Research Park CDE, LLC	Research parks...universities, colleges, hospitals, medical schools, and research parks.	\$50	\$19.5	2006
Affirmative New Markets, LLC	Bring "real life" to a community. Boston Medical Center to rehabilitate an historic building on its campus...to house its information Technology Group.	\$12	\$4.68	2003
The Association for Theater-Based Community Development	The purchase and rehabilitation of theaters	\$6	\$2.34	2002
Border Communities Capital Company, LLC	Office, industrial, tourist, commercial and residential development projects	\$50	\$19.5	2002
Cahaba Community Development, LLC	Lofts...retail and office space, a multi-story parking structure.	\$40	\$15.6	2002
Campus Partners for Community Urban Development	Large mixed-use facility (including retail, office and residential components as well as parking facilities)	\$35	\$13.65	2002
Clearinghouse CDFI	\$15 million shopping and cultural center in San Diego called Market Creek Plaza. Amphitheater for special events.	\$56	\$10.14	2002
Local Initiatives Support Corporation (LISC)	<p>60,000 square-foot mixed-use real estate projects...saves historic mill...by rehabilitating and expanding the existing structure into residential and commercial space. The project will house art galleries...wine bar/coffee shop...also include 36 residential lofts.</p> <p>Another project: third floor ballroom will be used...for studio, office and performance space for itself and other puppet artists...project begun 16 years ago when HOBT renovated the Avalon Theatre.</p> <p>Rehab of former industrial buildings in Milwaukee suburb: high quality office building...500,000 square-feet of office and parking space.</p>	\$10.8	\$4.21	2002

CDE	Proposed Use	Problematic Project Equity Investment (In Millions)	Problematic Project Tax Credit Subsidy (In Millions)	Allocation Award Year
MHIC, LLC	Retail and office space, theaters and performing arts centers. New 20,000 square-foot, 4-story office condominium building. High quality and attractive commercial space and housing. Performance center, office and retail space. Lofts.	\$25	\$9.75	2002
Greater Jamaica Local Development Company, Inc.	14-story office building...office space, ground floor retail.	\$21	\$8.19	2002
Impact Community Capital CDE, LLC	Commercial real estate projects. 40% of its activities will be targeted to suburban areas.	\$40	\$15.6	2002
Phoenix Community Development and Investment Corporation	Retail development and hotel projects...mixed-use commercial facilities...a biotechnology campus.	\$170	\$66.3	2002
REI New Markets Investment, LLC	30,000 square-foot state-of-the-art manufacturing plant at the Presbyterian Health Foundation (PHF) Research Park. Cytovance Biologics, Inc. is a biopharmaceutical contract manufacturing company specializing in the production of therapeutic proteins and antibodies from mammalian cell culture.	\$80	\$31.2	2002
Southeast Indiana Community Development	Hotel...theater...medical arts center	\$3	\$1.17	2002
Coastal Enterprises, Inc.	GMRI marine research/education laboratory. First-class commercial/office space.	\$64	\$24.96	2003
Harbor Bankshares Corporation	The housing and business infrastructure relating to the development of an \$800 million bio-tech park. A commercial loan fund to finance large scale mixed-use projects.	\$50	\$19.5	2003
Hospitality Fund I	Restore historic retail center of Portland's downtown for mixed-use...Premium hotel rooms.	\$72.5	\$28.28	2003

CDE	Proposed Use	Problematic Project Equity Investment (In Millions)	Problematic Project Tax Credit Subsidy (In Millions)	Allocation Award Year
Massachusetts Housing Investment Corporation	Office and retail space, theatres and performing arts centers.	\$90	\$35.1	2003
Northeast Ohio Development Fund, LLC	Enhance or improve upon the current activity of the Cleveland-Cuyahoga County Port Authority.	\$47	\$18.33	2003
Prestamos, CDFI, LLC	Community retail projects, commercial/industrial development...equity funding for companies in the life sciences and technology industry.	\$15	\$5.85	2003
Southside Development Enterprises, LLC	\$15 million will go toward attracting national retailers to the former Mid City Shopping Center...attract office and commercial development to ...Business Park.	\$21	\$8.19	2003
Wisconsin Community Development Legacy Fund, Inc.	Finance construction of a nine-story office building.	\$100	\$39	2003
Biotech Research Center, LLC	Help finance development of a 300,000 square foot life sciences research facility next to the new University of Hawaii medical school.	\$28	\$10.92	2005
Local Initiatives Support Corporation	\$65 million for mixed-use property that includes commercial space and 36 loft apartments. Sophisticated office complex...with 500,000 square feet of office and parking spaces...Many of the tenants will be in the high tech or medical services sectors.	\$90	\$35.1	2005

TABLE C

PROPERLY PURPOSED PROJECT DESCRIPTIONS

Below is a sampling of project descriptions that are considered well designed for target community needs determinations and thus Properly Purposed Projects. The term Properly Purposed Projects is also an apt label.

- “Community healthcare centers”
- “Small Business Development”
- “Nontraditional financing to support businesses located in low income areas”
- “Child care, Head Start and other non-profit facilities”
- “Real estate financing to small businesses, non-profit community centers, day care centers, charter schools, food distributors, health and social service centers...”
- “Projects ...designed to be more affordable to end users, so that businesses can remain in the low income communities”
- “Facilities - enhance access for charter schools in distressed areas”
- “Economic development to Hispanic Latino communities...originate debt investments in ...nonprofit community organizations.”
- “Working capital loans to community based housing developers, and operators of community facilities, ...and senior centers”

[Source: Round Two CDFI Profiles]