THE DE-GENTRIFICATION OF NEW MARKETS TAX CREDITS

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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.

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[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 the following: If tax credits are used as part of the solution to urban ills, gentrified projects for the wealthy are not consistent with Congressional intent or wise tax policy. The remedy is to close loopholes in the NMTC act that have allowed problematic use of governmental subsidies, and redirect those funds to ventures that more precisely benefit existing low income residents who are the object of the NMTC program. [14]

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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".

[14] Governmental corrections are only part of what is necessary to materially improve the quality of life among urban core residents. A larger component of urban revitalization is increasing private equity infusion from new sources. In a pending article, this author models a reconfigured substrata of the African American middle class that has peculiarly-crafted investment motivations (part profit, part philanthropic) that is aligned with self help investment techniques of prior generations and other ethnic groups that have successfully established economic enclaves (e.g. Cubans in Miami, West Indians and Koreans in Boston). I term them "Ethnivestors". The thesis is that such an investor group should receive tax credit subsidies over gentrified investors because Ethnivestors provide projects more likely to be in the long term best interests of the urban core community, thereby reducing long term governmental dependence by those communities. Ethnivestors can be accomplished through the race-neutral amendments proposed in this article. See *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.*

Consistent with this thesis, Part 1 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.

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 code[15] 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]

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[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.ncseonline.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 investor [23]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 investment[33]. In construing the requirement that "substantially all" of the QEI must be for low income community investments, the final regulations provide

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[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

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[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 programs[50] 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 law[52], 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]

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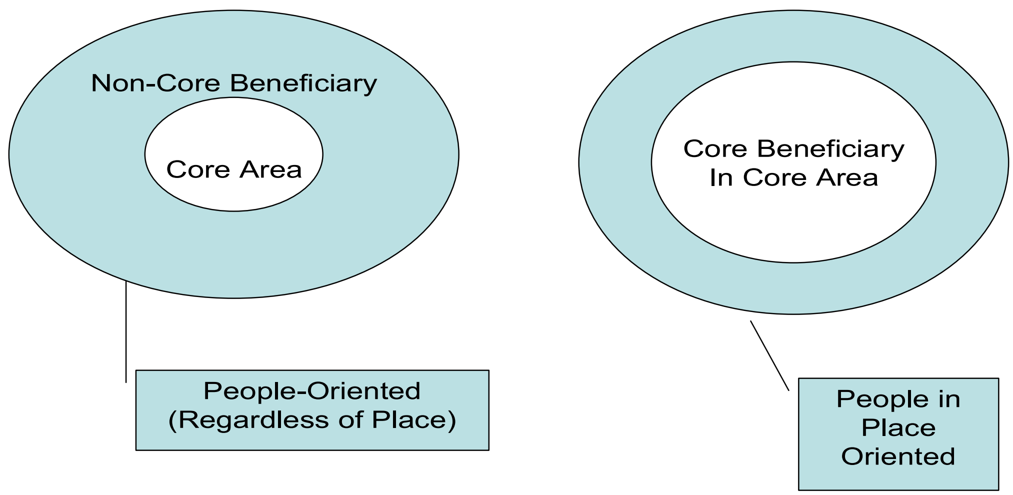
[49] Id. at 193.
[50] After fist and starts early in the Reagan administration, Congress passed legislation in 1987 and established 100 enterprise zones that remained largely ineffective due to a lack of tax incentives until spurred into action after the Los Angeles Riots of 1992 under the Clinton administration. 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 ills 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
TOTAL	**$5.3 billion**	**$2 billion (Rounded)**

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

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[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

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[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 Tem 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

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[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

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[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

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[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

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[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

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[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

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[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 applicants[104] 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.

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[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 Ethnivestor 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. Ethnivestors may be more attuned to the issues and provide a more culturally sensitive application to the CDFI. An Ethnivestor 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.

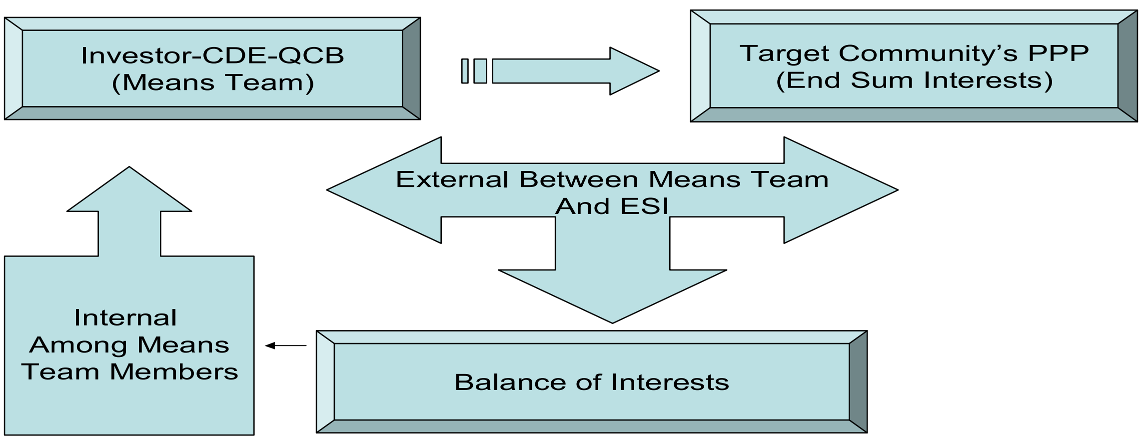
External balance refers to the need to carefully weigh interests of the collective Means Team against the interests of the target community. A conceptual model that allows too heavy a weighting of benefits to the Means Team, e.g. an investor that expects an unrealistic return on an investment rather 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 statue it 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 portion[111] of its property, or services from *within* the low income community.[112] The

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[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

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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

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[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,

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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

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[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.

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[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

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[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) <u>Safeguards Against Overleveraging the QCB</u>

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 that 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

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[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 QBC is a 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 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

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[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

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[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]

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[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 Your 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.

Conclusion

The NMTC program has laudably used tax credit incentives to stimulate increased equity investment to benefit low income residents. 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.[168]

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.

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.

A tax subsidy is a benefit paid for with taxpayers' dollars that comes with a price. That price for tax credit investors is the foregone opportunity to maximize profits. That quest is best suited for 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. The NMTC purpose is the revitalization of the low income community. Closing loopholes through amendments to the NMTC statute is recommended as a step in the right direction to accomplish that goal.

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

Table A

NMTC Summary Graphic*

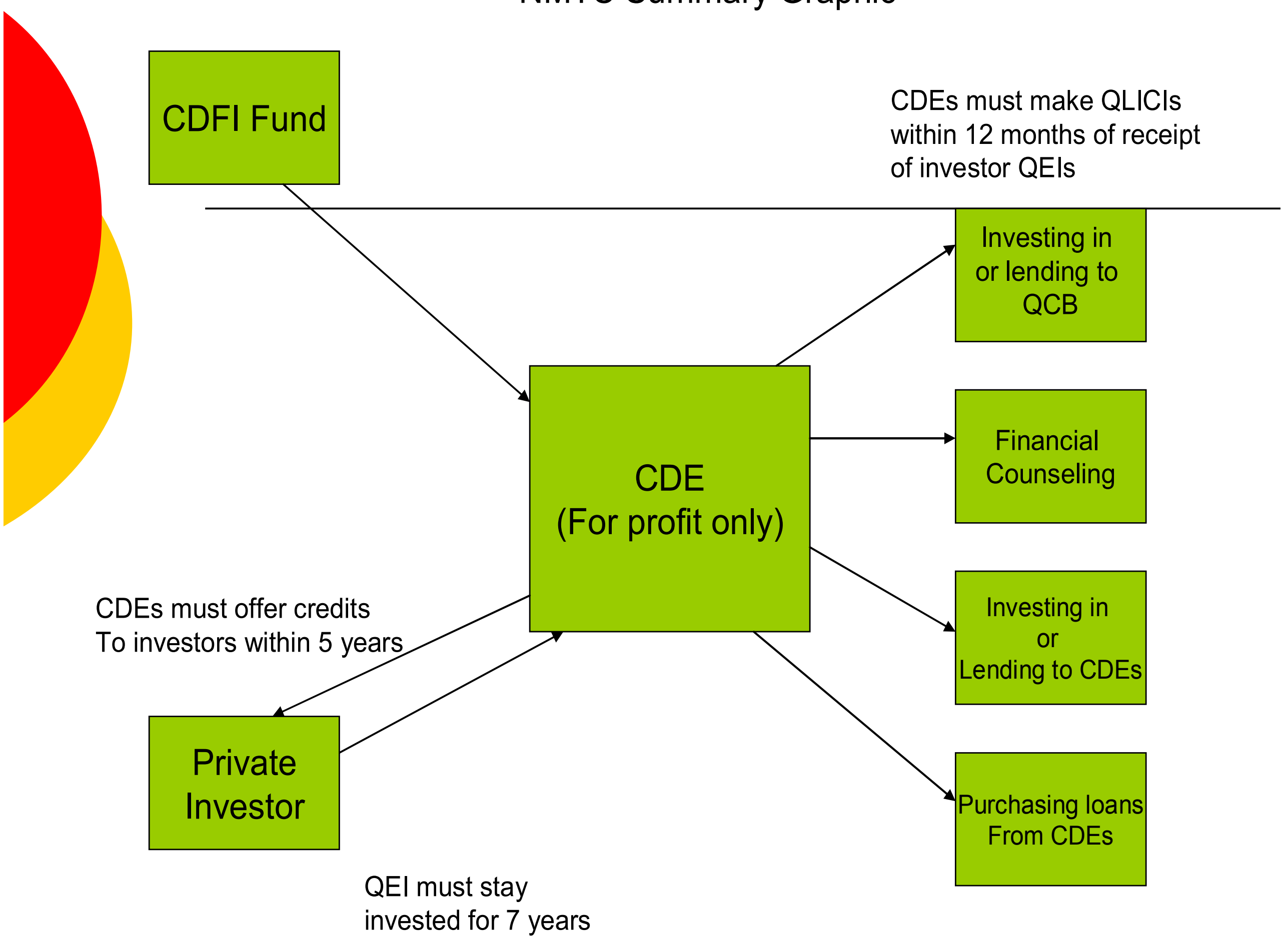

*Figure taken from CDFI Fund NMTC Information Session Handout

<u>TABLE B</u>

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	Received 6th largest allocation. 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. 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. 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. Professional Building: Upper floor offices and ground floor retail. Historic Tennessee Theatre: Rehabilitation of the 'Official State Theatre of Tennessee,' a 1928 movie palace in downtown Knoxville. American Tobacco Historic District: Rehabilitation…into a mixed-use complex, and 4,000-seat theatre.	$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	ICCF Project-Grand Rapids: 5,000 square feet of commercial space. 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. Pere Marquette Depot: $3.8 million building will be the regional tourism bureau center. 1 South Division-Grand Rapids: 40,000 square feet of retail space and 149 public parking spaces. 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. 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.	$60	$23.4	2005
Historic Rehabilitation Fund I	Rehabilitation of the old Portland Armory for the Portland Center Stage. “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.”	$24	$9.36	2003
Johnson Community Development Company	$4 million to fund a newly constructed office building, Deer Valley Corporate Center. Assist The Stockyards Restaurant, a virtual living museum and local landmark that commemorates and celebrates Arizona’s cattle industry. Loans have funded improvements for…world headquarters for a medical systems company.	$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)	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. 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. Rehab of former industrial buildings in Milwaukee suburb: high quality office building…500,000 square-feet of office and parking space.	$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]