

May 7, 2010

Mr. Scott Berman
Interim Chief Operating Officer
Community Development Financial Institutions Fund
U.S. Department of the Treasury
601 – 13th Street NW, Suite 200 South
Washington DC 20005

Re: Notice of Request for Comments (FR Doc. 2010-4786)

Dear Mr. Berman:

On behalf of the Community Development Bankers Association (CDBA) and the communities we serve, we write to comment on the Notice of Request for Comment on the Fund's Authorizing Statute published in the Federal Register on March 8, 2010. CDBA represents Federal and state chartered banks and thrifts that are certified by the Community Development Financial Institutions Fund ("Fund") as Community Development Financial Institutions (CDFIs). Our members serve as engines of economic inclusion throughout the United States.

In the fifteen years since the Fund was authorized, its programs have provided a foundation for the growth of the CDFI industry. Since the first funding rounds were announced in 1996, our sector has grown from a handful of institutions to 65 CDFI certified banks and thrifts. Today there are more than 800 CDFIs across a broad spectrum of institution types. We believe creation of the Fund marked one of the most critical milestones in the evolution of our industry.

As the Fund contemplates pursuing changes to its authorizing statute, it is important to note that the agency has been highly effective in promoting CDFIs and access to capital to the communities we serve. None of the recommendations contained herein should be interpreted by Congress or others as a statement or criticism that the CDFI Fund has done nothing less than an exemplary job. All of the comments should be viewed as refinements to reflect the dynamic and changing needs of the sector. We strongly support the Fund and we commend its leadership and staff for their outstanding service and dedication. Finally, we urge Congress to expand the appropriated resources of Fund to enable it to play this critical role.

The vast majority of recommendations to the questions outlined in the Notice are not recommendations for statutory changes (see Attachment A). In fact, we generally believe the authorizing statute is flexible and allows the Fund significant discretion to meet the needs of an ever-changing and growing industry. Our recommendations primarily focus on regulatory and internal processes that could improve the effectiveness of the CDFI Fund in serving the entire CDFI industry. Of particular note, we have recommended a series of amendments to

the Bank Enterprise Award (BEA) Program to respond to concerns raised by the Office of Management and Budget (OMB). We believe these changes can be made without any statutory amendments and still fully respond to OMB's concerns.

Our list of recommended statutory changes is modest and focuses on changes that will help make the program operate more effectively and respond to changing markets and an evolving CDFI industry. In summary:

- CDFI Advisory Board: Expand the CDFI Advisory Board to: (1) ensure representation of all major types of CDFIs; and (2) include representation for some or all of the Federal financial institution's regulatory agencies.
- Community Development Financial Institutions (CDFI) Program:
 - Amend the matching funds provision of the statute to: (1) provide greater flexibility with regard to the "form" of monies which CDFIs can use to meet the match requirement; and (2) give the Director of the CDFI Fund discretion to waive or amend the matching funds requirements in times of national economic distress or for geographies declared Federal disaster areas.
 - Allow CDFI bank participants of the Community Development Capital Initiative (CDCI) to use private funds raised as a requirement of participation in CDCI as matching funds under the CDFI Program.
 - Within the CDFI Program, elimination of the sanctions provision giving the Fund the option of requiring repayment of assistance if an awardee is found in non-compliance with its Assistance Agreement. This will allow CDFI banks to use Financial Assistance as Tier 1 equity capital.
 - Authorize the Fund to operate a Federal guarantee program to: (1) mitigate risk of loans originated by CDFIs; or (2) provide incentives for investors to provide equity investments in or loans to CDFIs.
- Liquidity Enhancement Program: Amend the Liquidity Enhancement Program by eliminating outdated provisions related to matching funds, limitations on award amounts, and prohibitions on awardees participating in other Fund initiatives. Ensure the use of award proceeds is flexible enough to allow for innovation to address a variety of liquidity management challenges.
- Bank Enterprise Award (BEA) Program:
 - Eliminate prohibitions on CDFI banks or their holding companies from receiving a BEA Program and CDFI Program awards in the same year.
 - Amend provisions that require BEA eligible census tracts to have a specified minimum population lest it impair the ability of banks working in rural communities from getting credit for otherwise eligible activities.

- o Eliminate the requirement that CDFIs receiving support from applicants demonstrate they are “integrally involved” in a BEA eligible distressed community. This requirement is duplicative of other program requirements and creates excess paperwork.

As the Fund embarks on the process of considering authorizing changes, we urge the agency and Congress to imagine the role CDFIs can play over the next decade or two. We invite the Fund to work with the industry to create a compelling vision of the next stage of development in promoting access to capital and an inclusive prosperity. We believe the Fund and Treasury Department can play a critical role in addressing long term CDFI industry challenges, including private sector capital formation and accessing permanent and affordable sources of liquidity. We believe, however, the Fund and Congress should build beyond the current array of programs. We urge you to work with us to explore how the Federal government can help build an infrastructure to enable CDFIs to grow and reach sustainable levels of scale and impact.

We sincerely appreciate the opportunity to comment on the Fund’s authorizing statute. We welcome the opportunity to work with the Treasury Department and the Fund to explore ideas and a renewed vision for our industry. We hope to work with you to build the infrastructure to set CDFIs onto the next trajectory of growth and progress toward creating a financial services sector that is inclusive of all Americans.

If you have any questions, please feel free to contact William Dana at (816) 483-1210 or Jeannine Jacokes at (202) 689-8935 ext 22.

Sincerely,



William Dana
Board Chairman



Jeannine Jacokes
Chief Executive & Policy Officer

CDFI Fund Seeks Comments on Authorizing Statute

A. Community Development Financial Institutions Fund

1. Community Development Advisory Board

Summary: The statute that authorized the CDFI Fund established the Community Development Advisory Board (Advisory Board), which consists of 15 members, nine of whom are private citizens appointed by the President. The role of the Advisory Board is to advise the CDFI Fund Director on the policies of the CDFI Fund (12 U.S.C. 4703(d)). The CDFI Fund invited comments and suggestions germane to the need for, purpose and selection criteria of the Advisory Board. The CDFI Fund is particularly interested in comments in the following areas:

(a) Is the current composition of the Advisory Board adequate to represent the needs of CDFIs?

CDBA recommends that the composition of the Advisory Board be changed or the number of private citizen slots expanded to ensure representation of all types of CDFIs on an on-going basis – banks, credit unions, loan funds, venture capital funds, and micro enterprise funds. We are particularly concerned about the historic lack of CDFI bank representatives on the Advisory Board.

(b) Are there other regulatory or government agencies that should be represented on the Advisory Board?

CDBA recommends that Federal banking regulatory agency representatives be added to the Advisory Board.

(c) Is the current national geographic representation and racial, ethnic and gender diversity requirement for Advisory Board membership adequate?

CDBA believes the Fund has generally done a good job in maintaining a fair balance of appointments with respect to national geographic representation and racial, ethnic and gender diversity. Some CDBA members, however, have noted that at times the Advisory Board has had insufficient representation from CDFIs on the west coast of the United States. We advise the Fund to be diligent in making sure there are adequate geographic representations at all times.

(d) Should there be term limits for the private citizens appointed to the Advisory Board?

CDBA believes there should be term limits on private citizen appointees to ensure the CDFI Fund has input from a variety of practitioners and fresh perspectives.

(e) Should there be baseline requirements related to the knowledge private citizens appointed to the Advisory Board have about CDFIs and/or community development finance?

The purpose of the Advisory Board should be to assist in facilitating the Fund promoting the CDFI industry as a means of creating greater access to capital in underserved communities. CDBA believes that all private citizens should be required to have significant direct and substantive experience and/or expertise working with CDFIs and/or community development finance.

(f) Is the requirement to meet at least annually sufficient?

Over the past two years, CDBA believes the Fund has made solid steps to enhance productive utilization of the expertise of Advisory Board appointees. We commend these efforts. If the Director of the Fund intends to continue to actively use the group to review and make recommendation on policy and program matters, the Advisory Board should meet more often (e.g. at least semi-annually, quarterly is recommended). If the Board will not be actively utilized in such matters, there is no need to meet more frequently than once a year.

(g) Currently the statute requires that two individuals who are officers of national consumer or public interest organizations (12 U.S.C. 4703(d)(2)(G)(iii)) be on the Advisory Board. Should this requirement be more specific regarding what types of organizations fulfills the requirement?

As noted above, the purpose of the Advisory Board should be to assist in facilitating the Fund's mission of promoting the CDFI industry as a means of creating greater access to capital in underserved communities. CDBA believes all private citizens or public interest organizations should be required to have direct and substantive experience and/or expertise working with CDFIs and/or community development finance. Having greater specificity with regard to the required or desired types of expertise needed would be helpful in maintaining the mission and purposes of the Fund.

B. Community Development Financial Institutions (CDFI) Awards

1. Definitions

The CDFI Fund is interested in comments regarding all definitions found in the authorizing statute, including the following questions:

Low Income: The statute that authorizes the CDFI Fund defines low-income as an income, adjusted for family size, of not more than 80 percent of the area median income for metropolitan areas and, for nonmetropolitan areas, the greater of 80 percent of the area median income or 80 percent of the statewide nonmetropolitan area median income (12 U.S.C. 4702(17)). The statute defines targeted population as individuals or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments (12 U.S.C. 4702(20)).

(a) Are the definitions for low-income and targeted population still viable? If not, what alternative definitions might be considered?

CDBA believes the definition of Low Income used by the Fund is adequate and does not recommend any changes. Our greatest concern is ensuring the Fund utilizes a Low Income definition that is consistent with the definition used by the Federal banking regulatory agencies. We support the recommendation of the CDFI Coalition that the Fund convene a working group of practitioners serving rural areas to consider alternative definitions. If this occurs, we recommend the Fund include rural CDFI banks in these discussions.

(b) Should other definitions be added to the statute to ensure that CDFI awards target areas of "high" economic distress? If so, what criteria should be utilized?

CDBA believes the definition of Low Income used by the Fund is adequate. We do not recommend any changes. We believe the current criteria do an effective job of targeting awards to areas of high distress. We are opposed to any proposals that would reinstitute priority factors for areas with the greatest distress (e.g. Hot Zones). As noted above, our greatest concern is ensuring the Fund utilizes a Low Income definition that is consistent with the definition used by the Federal banking regulatory agencies.

(c) The term "subsidiary" means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such service corporation; except that a CDFI that is a corporation shall not be considered to be a subsidiary of any insured depository institution or depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation. (12 U.S.C. 4702(19); 12 U.S.C. 1813(w)(4)). The term "affiliate" means any company that controls, is controlled by, or is under common control with another company (12 U.S.C. 4702(3); 12 U.S.C. 1841(k)).

(c) Are these definitions still viable? If not, what alternative definitions might be considered?

CDBA strongly supports Congress' original intent in requiring that, to be a CDFI, a bank and its holding company, affiliates and subsidiaries must demonstrate that they collectively have a primary mission of promoting community development. We believe the Fund and Congress should retain a strong commitment to this key principle to ensure only banks, thrifts, or affiliated entities with a strong mission focus are able to obtain certification status.

We do, however, urge the Fund to convene or facilitate a dialogue with the Federal Reserve and the Internal Revenue Service to resolve discrepancies in their definitions of "affiliate" and what circumstances constitute "control." A great challenge among CDFI banks with one or more affiliates is that the

definitions of the term used by the Federal Reserve and the Internal Revenue Service are inconsistent. This circumstance often creates significant operational issues pertaining to "control" – particularly in cases of non-profit affiliates in which the bank has no direct ownership.

(d) The Federal Housing Finance Agency (FHFA) has issued its final rule regarding CDFI eligibility for membership in the Federal Home Loan Bank System. In its final rule, the FHFA provided several financial definitions (e.g., net asset ratio, operating liquidity ratio, gross revenues, operating expenses, restricted assets, unrestricted cash and cash equivalents).

(d) Should the CDFI Fund adopt any or all of these definitions?

The final rule recently published by the Federal Housing Finance Agency (FHFA) was intended to clarify eligibility for non-depository CDFIs. CDBA believes that the Fund should actively seek input from non-depository CDFIs on the appropriateness of adopting the new FHFA definitions for non-depository institutions. For regulated CDFIs, the definitions outlined in the FHFA rule are inappropriate. If the CDFI seeks to adopt financial definitions for regulated CDFIs, we strongly recommend that you define these terms in a manner consistent with the Federal regulatory agencies

(e) Should the CDFI Fund align its definitions for consistency across all CDFI Fund programs?

To the greatest extent practicable, the Fund should always seek to maintain consistency in definitions across all of its programs. If the Fund has specific definitions that it believes are inconsistent and change is desired, CDBA recommends that the agency seek formal comment on the specific definitions.

In the case of regulated CDFIs, CDBA recommends that the Fund review the definitions in its programs and in the Community Investment Impact System (CIIS) to ensure consistency with the definitions used by the Federal financial institutions regulatory agencies.

2. Certification

The CDFI Fund's authorizing statute defines a community development financial institution as an entity that: (i) has a primary mission of promoting community development; (ii) serves an investment area or targeted population; (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; (iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State (12 U.S.C. 4702(5)). The CDFI Fund provides further clarification and guidance regarding CDFI certification in its regulations at 12 C.F.R. Part 1805.201.

The CDFI Fund invites and encourages comments and suggestions germane to the criteria and purpose of CDFI certification. The CDFI Fund is particularly interested in comments regarding:

(a) Is the criteria established for CDFI certification adequate to ensure that only highly qualified CDFIs obtain the certification? Should the CDFI Fund seek to only certify highly-qualified CDFIs?

Generally, the members of CDBA believe the Fund has done a good job over the last 15 years in ensuring that only highly qualified institutions are certified as CDFIs. As the industry grows and matures, however, we believe the needs and operations of CDFIs change. In prior correspondence submitted to the Fund, CDBA has recommended that the agency explore adopting certification criteria tailored to different institution types and asset sizes. CDBA's prior correspondence from September 2007, February 2008, and August 2008 to the Fund on certification standards for CDFI banks and thrifts is attached. See "ATTACHMENT B - Prior CDBA Correspondence on Certification."

(b) Are there types of CDFIs that are prohibited from certification because of the criteria? if so, what changes are needed?

CDBA does not believe there are specific types of eligible institutions that are unable to attain certification. Thus, no changes are recommended.

(c) Should the CDFI Fund more closely align its certification with the FHFA rule requiring a CDFI to submit with its application an independent audit conducted within the prior year, more recent quarterly statements (if available) and financial statements for two years prior to the audited statement?

As noted above, the recently issued FHFA rule was directed toward non-depository CDFIs. As such, CDBA believes that the Fund should actively seek input from non-depository CDFIs on the appropriateness of adopting the new FHFA reporting requirements for non-depository CDFIs. In the case of depository CDFIs, we recommend the Fund utilize call report or thrift financial report data submitted to the Federal regulatory agencies in lieu of the requirements outlined in this question. This information is widely available to the public through the websites of the Federal Deposit Insurance Corporation and National Credit Union Administration.

(d) Should CDFIs be re-certified on a regular basis and, if so, how often?

Periodic recertification is appropriate every three years to five years. We recommend that the Fund streamline the application process and requirements. As noted in our prior correspondence, CDBA strongly encourages you to utilize data already collected by applicants to the Fund's programs whenever feasible in lieu of additional data collection.

(e) Presently, the CDFI Fund only requires a CDFI to notify it of material events when applying for an award. Should such notification be required from all certified CDFIs on a regular basis (e.g., every year; every three years)?

CDBA believes the current process of requiring submission of a Material Events Form at the time of application for assistance or as part of a re-certification application is appropriate.

(f) Currently, CDFI certification review does not entail an assessment of an organization's underlying financial soundness. Should the CDFI Fund require any or all of the following financial documentation as a condition of certification?

- (i) Net asset ratio to total assets of at least 20 percent, with net and total assets including restricted assets (net assets are calculated as the residual value of assets over liabilities);
- (ii) Positive net income (gross revenues less total expenses) measured on a three-year rolling average;
- (iii) Ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) of at least 30 percent, and loan loss reserves at a specified balance sheet account that reflects the amount reserved for loans expected to be uncollectible;
- (iv) Operating liquidity ratio of at least 1.0 for the four most recent quarters and for one or both of the two preceding years (numerator of the ratio includes unrestricted cash and cash equivalents and the denominator of the ratio is the average quarterly operating expense).

CDBA believes that any criteria adopted for certification should be tailored by CDFI type. Several of the requirements outlined above (e.g. Net Asset Ratio) are appropriate only for non-regulated, non-depository institutions. These terms and standards are wholly inappropriate for depositories and inconsistent with requirements of Federal banking regulatory agencies. If adopted for all CDFIs, the standards outlined above will further bias certification and the agency's grant programs toward non-depositories. The certification process should remain as a basic eligibility threshold rather than a statement about the viability of the financial institution. CDBA member banks are regulated entities. It is duplicative for the Fund to play a role in assessing viability.

(h) Should the CDFI Fund require certified CDFIs to annually submit current information on financial viability and other data necessary to assess the financial condition and social performance of the CDFI industry?

As a means of maintaining its status as a certified CDFI, CDBA believes it is appropriate for all CDFIs to submit financial data at least annually. In the case of CDFI banks and thrifts, CDBA strongly recommends that the Fund utilize call report or thrift financial report data submitted to the Federal regulatory agencies. This information is standardized and widely available to the public through the Federal Deposit Insurance Corporation. In the case of social impact

data, annual data submissions should be highly streamlined and should not exceed the data collection requirements of the CIIIS Institution Level Report.

3. Holding Companies, Subsidiaries and Affiliates

The CDFI Fund's authorizing statute provides conditions for CDFI qualification for a depository institution holding company, subsidiary or affiliate, establishing that a holding company may qualify as a CDFI if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements to be certified as a CDFI (12 U.S.C. 4702(5)(B) and (C)). The CDFI Fund invites and encourages comments and suggestions germane to this issue, specifically:

(a) Should a certified CDFI that is a holding company, or its subsidiary and affiliate, be allowed to apply for a CDFI Fund award if the depository institution is also applying during the same funding round?

The Fund has expressed an interest in increasing participation of depository CDFIs in the CDFI Program. We applaud this effort and welcome an amendment to allow both a CDFI bank holding company and any of its bank or non-bank subsidiaries or affiliates to apply in the same funding round. We strongly recommend that to increase participation in the CDFI Program, that Congress eliminate the statutory provision prohibiting CDFI Bank applicants from receiving an award from the CDFI Program and BEA within the same year.

(b) Should holding companies, subsidiaries and affiliates of depository institutions be extended separate CDFI certifications, regardless of whether the entities can collectively satisfy the certification requirements?

CDBA believes the current process of separately certifying banks and their bank holding companies is appropriate and should not be altered.

(c) Should all CDFI institution types be held to the "Conditions for Qualification of Holding Companies" set forth at 12 U.S.C. 4702(5)(B), as are depository institution holding companies?

CDBA believes the Fund should apply this standard consistently across all institution types. We understand and concur with Congressional intent in establishing the "Conditions for Qualification of Holding Companies" to limit eligibility to the Fund's programs to organizations that have a primary mission and track record of serving low income communities. Within the banking sector, we believe this requirement has been effective in ensuring only banks and thrifts with a strong community development focus are certified as CDFIs and are eligible for certain Federal benefits. We believe this screening tool would prove equally effective among other CDFI types.

4. Geographic and Institutional Diversity:

The CDFI Fund's authorizing statute states that the CDFI Fund "shall seek to fund a geographically diverse group of applicants, which shall include applicants from metropolitan, nonmetropolitan, and rural areas" (12 U.S.C. 4706(b)). The CDFI Fund invites and encourages comments and suggestions relating to geographic diversity, especially:

Geographic Diversity:

(a) Are CDFI awards adequately geographically diverse; if not, how should the CDFI Fund ensure geographic diversity?

CDBA believes the Fund has done an effective job in ensuring its award processes and results have achieved geographic diversity.

(c) How should the CDFI Fund define metropolitan area?

CDBA believes the current definition used to designate metropolitan areas is appropriate. We do not recommend an alternative definition. We do, however, support the recommendation of the CDFI Coalition that the Fund convene a working group of practitioners serving rural areas to consider alternative definitions. If this occurs, we recommend the Fund include rural CDFI banks in these discussions.

(d) How should the CDFI Fund define nonmetropolitan area?

CDBA believes the current definition used to designate non-metropolitan areas is appropriate. We do not recommend an alternative definition. Also see answer above under (c).

(e) How should the CDFI Fund define rural area?

CDBA believes the current definition used to designate non-metropolitan areas is appropriate for "rural" areas. We do not recommend an alternative definition. Also see answer above under (c).

(f) How should the CDFI Fund define underserved rural area?

CDBA believes the current definition used to designate non-metropolitan areas is appropriate for "underserved rural" areas. We do not recommend an alternative definition. Also see answer above under (c).

(g) Are there other underserved areas that should be considered for purposes of geographic diversity?

CDBA has no recommendations for defining "other underserved areas." We believe the Fund's current definitions and processes are flexible and effective in identifying a wide variety of under served areas.

B. Institutional Diversity

The CDFI Fund invites and encourages comments regarding institutional diversity as well, including:

(a) Should institutional diversity be a priority of the CDFI Fund?

CDBA members believe the Fund should seek to serve the entire spectrum of CDFI types. Institutional diversity should be a high priority.

(b) Should the CDFI Fund designate a specific amount of funding for regulated depository institutions separately from loan funds and venture capital funds? If so, what proportion of the funding should be designated for CDFI banks and CDFI credit unions?

CDBA members support making awards on the basis of merit. Thus, we believe set-asides within in any program can create unanticipated problems with ensuring Federal funds are awarded to institutions that can use the monies most effectively. As noted herein, we are concerned that the manner in which the current CDFI Program operates creates some unintended bias towards certain CDFI types over others (e.g. staff and external readers expertise, timing for raising matching funds, sector expertise in grant writing, statutory limitations of use of grants as Tier 1 capital, etc.). We recommend the Fund focus its efforts on addressing the issues that create the bias versus creating a set aside. We are open to working with the Fund to address these issues.

(d) If a special amount is not designated, what can the CDFI Fund do to achieve institutional diversity?

Achieving institutional diversity without the use of a set-aside will need to be a multi-pronged strategy:

- Enhance Fund Expertise: The Fund should hire staff with expertise in analyzing and understanding each distinct type of CDFIs and allow them to operate as a specialized team dedicated to building capacity of specific sectors. In addition, the Fund should ensure that it has a sufficient cadre of experts from the CDFI banking sector (and other under served sectors) to assist as readers in evaluating FA and TA applications.
- Tier 1 Equity and Sanctions: In the case of CDFI banks, amending the CDFI statute to eliminate in the sanctions provision of the CDFI Program giving the Fund the option of requiring repayment of assistance is an awardee is found in non-compliance with its Assistance Agreement. This will allow CDFI banks to use Financial Assistance as Tier 1 equity capital.
- Matching Funds Amendments:
 - Regulatory Changes:
 - Lengthen the “look back” period for raising matching funds. Most CDFI banks raise new capital on an episodic basis versus on-going every year. Hence, timing in receipt of new capital can be a factor that limits the availability of qualified matching funds under the narrow window for raising matching funds each funding round.

- Allow awardees to use their FA grants as a “looking forward” fund raising tool that can be used to raise private capital by matching dollars committed by the Fund.
 - Work with the banking regulatory agencies to explicitly state in regulation or guidelines that deposits, loans, and other financial support provided to CDFIs are eligible for consideration under the Community Reinvestment Act (CRA). Currently, the bank regulatory agencies clearly state in guidance materials that such consideration for minority owned banks. We urge the same consideration be extended for CDFIs.
- Capacity Building Initiatives:

CDFI banks need to enhance their communications expertise to better explain how their business model works and the value they provide in their communities. CDBA recommends creating a capacity building initiative to help CDFI sectors with historically low participation rates in the FA Program improve their communications skills. Regulated institutions often possess insufficient external communications and do not know how to effectively tell their story to a wide range of stakeholders.
 - Statutory Changes:
 - CDBA recommends deleting the requirement that matching funds be provided in the same “form” as the Federal monies requested. A broader set of sources of funds should be eligible as matching funds. To the maximum extent possible, the Fund should work to ensure its award monies are used to build CDFI equity capital.
 - In the case of participants in the Community Development Capital Initiative (CDCI), allow any private matching funds raised for the CDCI match to also be used as CDFI Financial Assistance match.

5. Financial Assistance

The Fund’s authorizing statute allows flexibility in the forms of assistance provided. These may include equity investments, deposits, credit union shares, loans, grants and technical assistance, with certain limitations (12 U.S.C. 4707(a)(1)). The statute also sets forth the permissible uses of CDFI financial assistance award proceeds which include, among others, certain commercial facilities, businesses, community facilities, affordable housing and basic financial services (12 U.S.C. 4707(b)(1)). The CDFI Fund welcomes comments on issues relating to the forms of financial assistance, qualifications, uses, and general structure, particularly with respect to the following questions:

As implemented through its Notices of Funds Availability (NOFA), which are issued for each funding round, the CDFI Fund has structured two categories for financial assistance applicants: "Core" and "Small and Emerging CDFI Assistance" (SECA) for applicants that were recently established or that have smaller assets compared to institutional type. Despite these two award categories, many CDFIs have grown and expanded their reach in recent years.

(a) Is there a point at which a CDFI should be considered to have "graduated" from and no longer be eligible for CDFI awards? If so, what should be the criteria (e.g., successful award history, asset size, national reach, etc.)?

CDBA does not support "graduating" CDFIs from award eligibility based on asset size, geographic scope, or award history. The focus should be on demonstrated capacity to serve underserved communities, leverage of private capital, and effective use of Federal monies. We recommend the Obama Administration focus its efforts on: (1) securing more money for the existing programs of the Fund; (2) opening CDFI access to other Federal resources (e.g. FHLB, SBA); (3) creating tax and other (e.g. CRA) incentives that promote direct investment in CDFIs; and (4) supporting liquidity enhancements that will enable CDFIs to recycle their lending capital to support new borrowers.

(b) If a CDFI were to "graduate" from CDFI award eligibility, should another program be developed for such an institution; if so, what type of financial assistance should those institutions receive?

See answer to immediately preceding question above.

(c) Under the CDFI Fund's authorizing statute, the CDFI Fund has the authority to make long-term, low-interest loans to CDFIs, dependent on matching funds. Is there a need for a loan product in addition to the CDFI financial and technical assistance awards and its lending authority? If so, please describe the product, e.g., terms and conditions, matching funds requirement, etc. Should funds be diverted from the CDFI awards to establish a loan pool?

CDBA strongly opposes the use of scarce equity dollars as part of a loan pool. Equity is the highest and best use of Federal resources. New equity capital enables CDFIs to leverage various forms of debt (e.g. loans, deposits) to support lending. The Fund should, however, explore expanding CDFI industry access to programs available to the greater financial services sector. These resources can be used to promote greater access to borrowed capital and promote liquidity.

(d) Is there a need for a CDFI federal loan guarantee and if so how would it be structured?

A loan guarantee program would be most helpful if used as a full or partial guarantee for third parties that: (1) purchase CDFI-originated assets; or (2) make

loans and investments into CDFIs. See discussion of Loan Acquisition Guarantee Facility and CDFI Institution Level Guarantee Facility below.

(e) Should a category be created specifically for CDFIs that serve a national market or are intermediaries? If so, what proportion of the appropriation should be allocated for such applicants?

CDBA believes creating a separate category, component, or set aside for national or intermediary CDFIs is not needed. With the exception of the SECA or Native American Components, all CDFIs should be required to compete for FA dollars on equal terms as other CDFIs.

(f) Are there changes the CDFI Fund could make to the financial and technical assistance awards that would make it more accessible or beneficial to certified CDFI banks?

The Fund needs to do a better job in ensuring institutional diversity with respect to CDFI FA and TA Component awardees. As noted above, the manner in which the FA Program operates creates an unintended bias against some types of applicants, including CDFI banks. See comments above under Institutional Diversity for specific suggestions for making the FA and TA awards more accessible for CDFI banks. See specific recommendations above. Finally, we recommend the Fund work with the Internal Revenue Service to exempt FA and TA awards exempt from taxation. This change will make the FA and TA Components more effective tools for CDFI Banks.

(g) Should the CDFI Fund provide a technical assistance award to an organization (i.e., a community development corporation) that proposes to create a new CDFI, even if that organization is not a CDFI itself?

Given the scarce resources of the Fund, CDBA believes that Federal monies are most effectively used by awardees that have the capacity and track record to effectively deploy resources within their Target Markets – rather than providing assistance to help non-eligible entities become or start CDFIs. As noted above, the Obama Administration should focus its efforts on increasing the resources for the Fund. At some point in the future, if there are sufficient resources that all qualified applicants are able to receive awards then it is appropriate to explore new programs that help seed start-up CDFIs in underserved areas.

(h) Should CDFIs be required to provide financial education to their customers; if so should there be a minimum level of education?

CDBA members oppose setting minimum standards for provision of financial education to customers. CDFIs serve a wide variety of different types of customers (e.g. individuals, nonprofits, developers) with varying degrees of capacity and need for financial education. On a practical level, specifying a minimum level of financial education or requiring every customer receive

financial education given the variety of CDFIs, customers, products, geographies, and community needs would be excruciatingly difficult if not impossible to achieve. Furthermore, proscribing a minimum level of financial education that CDFIs should provide works in direct contrast to the CDFI business model -- which focuses on flexibility and tailoring products and services to the needs of an individual customer.

6. Award Cap

The Fund's authorizing statute states that except for technical assistance, the Fund cannot provide more than \$5 million of assistance in total during any three-year period to a single CDFI, its subsidiaries and affiliates (12 U.S.C. 4707(d)). An exception is allowed for up to an additional \$3.75 million during the three-year period for a CDFI proposing to establish a subsidiary or affiliate for the purpose of serving an investment area or targeted population outside a State or metropolitan area presently served by the CDFI. The Fund seeks comments regarding whether awards should have a cap, specifically:

(a) Should CDFI Fund award amounts have a cap or should award amounts be based on merit and availability?

We believe that having an award cap per institution is appropriate as a means to ensure Federal monies have a broad reach by geography and institution types. Even during times when the award cap was temporarily waived by Congress, we believe the Fund illustrated good judgment in making sure monies were allocated across a broad group of applicants. If the Fund's appropriation were to grow significantly with more resources available, it might be appropriate to adopt a sliding scale with an award cap rising only as appropriations increase.

(b) Should subsidiaries and affiliates have a funding cap that is separate from their parent CDFI?

CDBA recommends that the Fund continue its current policy of applying the award cap across all affiliated entities of a CDFI. This is an appropriate means of ensuring Federal monies have a broad reach by geography and institution type.

(c) Should the CDFI Fund make an award to only one affiliated organization during the same funding round?

CDBA recommends that the CDFI Fund continue its current policy of making only one award per affiliated organizations during the same funding round of the CDFI Program. This is an appropriate means of ensuring Federal monies have a broad reach by geography and institution type. We would, however, strongly support eliminating the statutory ban on the award of CDFI Program and BEA Program monies within the same year.

(d) Is "\$5 million of assistance in total during any three-year period" too restrictive? If so, what are the alternatives, if any?

As noted above, we believe that having an award cap per institution is appropriate as a means to ensure Federal monies have a broad reach by geography and institution type. Currently, we do not support increasing the award cap above current statutory levels. As previously suggested, if the Fund's appropriation were to grow significantly, it might be appropriate to explore adopting a sliding scale with an award cap rising only as appropriations increase.

7. Matching Fund Requirements

The CDFI Fund's authorizing statute requires that financial assistance awards must be matched with funds from sources other than the federal government on the basis of not less than one dollar for each dollar provided by the CDFI Fund. It further states that the matching funds "shall be at least comparable in form and value to assistance provided by the Fund" (12 U.S.C. 4707(e)). Assistance cannot be provided until the CDFI has secured firm commitments for the matching funds. The CDFI Fund encourages comments and suggestions germane to match requirements established in the statute, specifically:

(a) Does the dollar-for-dollar matching funds requirement restrict a CDFI's ability to apply for a financial assistance award? If so, what should be the matching funds requirement?

As noted below, we recommend deleting the statutory requirement that matching funds be provided in the same "form" as the Federal monies requested. A broader set of sources of funds should be eligible as matching funds. If this statutory amendment is made, we believe it would reduce or eliminate barriers associated with raising the dollar-for-dollar match. To the maximum extent possible, the Fund should work to ensure its award monies are used to build CDFI equity capital.

(b) Should the matching funds continue to be restricted to comparable form and value or should any type and source of funding be allowed as matching funds?

We recommend deleting the requirement that matching funds be provided in the same "form" as the Federal monies requested. A broader set of sources of funds should be eligible as matching funds. To the maximum extent possible, the Fund should work to ensure its award monies are used to build CDFI equity capital.

(c) The statute provides certain exceptions to the matching funds requirement and provides the CDFI Fund the flexibility to reduce the match requirement by 50 percent in certain circumstances. Is this appropriate?

We recommend Congress grant the Fund Director general authority to waive or amend the matching funds requirements for all CDFIs based on national

economic indicators and/or for CDFIs in geographies declared Federal disaster areas.

(d) The statute allows the applicant to provide matching funds in a different form if the applicant has total assets of less than \$100,000; serves nonmetropolitan or rural areas; and is not requesting more than \$25,000 in assistance. Should this provision apply to all applicants? Should the asset size and assistance request be increased?

On a practical level, this provision is not applicable to any CDBA members. Thus, we decline to comment.

C. CDFI Training

The CDFI Fund's authorizing statute gives the CDFI Fund the authority to create a training program to increase the capacity and expertise of CDFIs and other members of the financial services industry to undertake community development finance activities (12 U.S.C. 4708). In August 2009, the CDFI Fund announced a new Capacity-Building Initiative to greatly expand technical assistance and training opportunities for CDFIs nationwide. Comments regarding this new initiative are welcome, specifically: (a) Will the Capacity-Building Initiative, as currently structured, provide the training that CDFIs need to deliver financial products and services to underserved communities nationwide?

(b) The first training products that will be offered by the Capacity-Building Initiative will include affordable housing and business lending, portfolio management, risk assessment, foreclosure prevention, training in CDFI business processes, and assistance with liquidity and capitalization challenges.

What other topics should this initiative provide in the future? (c) Are other technical assistance and training resources needed?

This set of questions is difficult to answer since the Fund has not yet announced its selected vendors and offerings for the Capacity Building Initiative. As noted above, however, enhancing the communications and understanding of the grant writing process for all types of philanthropy opportunities is an area where most CDFI banks could strengthen their capacity. Regulated institutions often possess insufficient external communications skills (e.g. knowing how to tell their story, branding and marketing to external stakeholders) capacity.

D. Capitalization Assistance to Enhance Liquidity

The CDFI Fund's authorizing statute created a Liquidity Enhancement Program (LEP) (12 U.S.C. 4712) that has never received an appropriation. In general, the statute authorized the CDFI Fund to provide assistance for the purpose of capitalizing organizations to purchase loans or otherwise enhance the liquidity of CDFIs if the primary purpose of the organization is to promote community

development. The statute currently requires that if funds are appropriated for LEP: (1) any assistance provided by the CDFI Fund would require matching funds on the basis of not less than dollar-for-dollar and would need to be comparable in form and value to the assistance provided by the CDFI Fund; (2) organizations receiving LEP assistance would not be able to receive other financial or technical assistance from the CDFI Fund; (3) awards could not be made for more than \$5 million to an organization or its subsidiaries or affiliates during any three year period; and (4) certain compliance information would be required.

CDFI Fund has requested comments and suggests on issues relating to LEP, particularly with respect to the following questions:

(a) Do CDFIs have a liquidity need?

Over the past 2 years, the liquidity crisis within the broader financial services sector has exacerbated and highlighted the long term challenges of the CDFI industry in managing portfolio liquidity. Specifically, unlike the traditional financial services industry, the CDFI field lacks the sufficient institutional infrastructure to manage liquidity. In 2004, the Aspen Institute published the first in a series of papers examining various for-profit and non-profits subsectors whom had reached a sufficient level of scale to become sustainable. Among its findings, the researchers observed *"[n]o field can go to scale without appropriate infrastructure, and this infrastructure must be consciously invested in and built."*

While the community development finance field has achieved some level of scale, its continued growth and ability to thrive will depend on the development of institutional infrastructure to address a number of key challenges – including liquidity management. Until the CDFI industry builds this infrastructure, its ability to move beyond the status of isolated, small-scale portfolio lenders is limited.

CDFIs face barriers to managing liquidity linked to the types of financial products offered and the way they do business. CDFI-originated loans are often tailored to the needs of individual borrowers -- a feature that distinguishes them from traditional lenders. Loans are often priced below-market on a risk-adjusted basis. Customization and below-market pricing is highly beneficial to borrowers, yet has hampered the ability of many CDFIs to take advantage of secondary markets and other portfolio liquidity management tools available to the broader financial services sector. This lack of access forces CDFI to operate largely as portfolio lenders. Coupled with the lack of sufficient equity capital to support new borrowing, portfolio "illiquidity" keeps the CDFI field small and its impact potential unrealized. To reach new levels of scale and sustainability, the field must find strategies to move loan assets (in whole or part) off of the balance sheets of CDFIs as a means of recycling capital to make new loans.

The traditional financial services industry has evolved to provide multiple infrastructure tools and institutions to manage portfolio liquidity. These developments include: (1) active (albeit temporarily dysfunctional) secondary

markets for mortgage, small business, higher education, consumer, and other types of loans; (2) access to affordable Federal agency borrowing windows (e.g. Federal Home Loan Banks, Federal Reserve); (3) loan syndication and participation networks; (4) formal and informal networks of correspondent lenders; (5) bankers' banks and corporate credit unions; (6) access to bond markets; (7) deposit insurance; and (8) deposit raising innovations (e.g. CDARS).

To fully respond to demand within communities and realize their social impact potential, the CDFI industry needs to explore multi-pronged strategies to manage portfolio liquidity. Where possible, the CDFI industry should strive to gain access to established tools and institutions. In other cases, it may need to build and grow infrastructure tools and institutions that are tailored to its unique needs. Enhancing liquidity will grow the scale and impact of the entire industry over the long term and will help CDFIs get capital to people and communities that need it most. The Fund can help by providing support for development of critical infrastructure tools and institutions to address these challenges.

(b) Would the LE Program, as structured, help address CDFIs' liquidity needs?

If the changes recommended herein are adopted, CDBA believes it will significantly address many industry liquidity challenges. The Liquidity Enhancement Program (LEP) needs to be updated to reflect current market conditions, as well as the evolution of the CDFI industry since the statute was created 15 years ago:

- The authorizing statute contains several barriers that should be removed to promote investment in institutions and tools that will help CDFIs manage liquidity. Unless these barriers are removed, the LEP will be severely limited in its ability to develop products, services and tools that are sensitive to the needs of the community development industry and the types of customers served. The authorizing statute should be amended to eliminate the requirement to: (1) raise matching funds; (2) the cap awards amounts; and (3) prohibit LEP awardees from participating in other Fund initiatives. See comments below for discussion of challenges.
- The authorizing statute's eligible use of funds should be flexible to support a wide range of liquidity management tools, strategies and business models. At this stage in the evolution of the CDFI industry, flexibility is needed to explore multi-pronged strategies to manage portfolio liquidity. Where possible, the CDFI industry should strive to gain access to established tools and institutions. In many cases, it may be necessary to build and grow infrastructure tools and institutions that are tailored to its unique needs. Enhancing liquidity will grow the scale and impact of the entire industry over the long term and will help CDFIs get capital to people and communities that need it most.

(c) Should the restrictions related to the award cap and/or matching funds be removed as a means to create larger impacts?

The LEP needs to be updated to reflect current market conditions, as well as the evolution of the CDFI industry since the statute was created 15 years ago.

- Eliminate Matching Funds: The matching funds requirement should be eliminated. Based on the realignment of the market that has taken place over the past two years, it will likely be many years before there will be sufficient equity capital available to meet the matching funds requirements. This lack of equity will hamper the growth of liquidity management institutions and their ability to grow to a large enough scale to make an impact on the CDFI industry and the communities they serve. The leverage of the LEP without an equity match will still be very significant. Receipt of Federal equity capital will enable Liquidity Management Fund (LMFs)¹ to leverage private market debt and other resources that otherwise would not be deployed to help communities.
- Eliminate Award Cap: The award cap should be eliminated to enable LMFs to leverage more debt and expand the scale of their activities to sufficient enough levels to serve many CDFIs, as well as be an effective conduit to large pools of investor capital.
- Restrictions on LEP Participants: The restriction prohibiting LEP awardees from participating in other Fund initiatives should be eliminated. The entities most likely to have the expertise, track record, and interest in developing products, services and tools that will meet the needs of the CDFI industry are those already working in the sector. To eliminate this group of institutions would be shortsighted; it will likely eliminate ideas and opportunities with the highest probably of success.

(d) What changes are needed to make this a viable initiative?

As noted above, the authorizing statute contains several barriers noted above that should be removed to promote investment in institutions and tools that will help CDFIs manage liquidity. The authorizing statute for LEP applicants should be amended to eliminate: (1) the requirement to raise matching funds; (2) the cap on award amounts; and (3) the prohibition on LEP awardees participating in other Fund initiatives.

The eligible use of funds for LEP should be flexible enough to support a wide range of liquidity management tools, strategies and business models. The authorizing statute states the Fund may provide assistance for the purpose of providing capital to organizations "to purchase loans or otherwise enhance the liquidity of CDFIs". If the phrase "*otherwise enhance the liquidity of CDFIs*" is interpreted broadly, the use of funds is flexible enough to allow innovation and

¹ Liquidity Management Funds (LMFs) are a general term used to describe organizations eligible to participate in the LEP (based on the statutory requirements described in 12 USC 4712 that have a primary purpose of promoting community development) and provide products and services that help CDFI manage liquidity. Including (1) purchase of loans or loan participations, or loan syndication; (2) sale of loans, asset-backed securities; (3) management of partnerships, limited liability companies; (3) origination of loans and investments in CDFIs; and (4) other activities deemed appropriate by the CDFI Fund.

experimentation with a variety of strategies, products and tools that can address liquidity challenges within a diverse industry. If this language is viewed more narrowly, an amendment is recommended to 12 USC 4712(f) ("Use of Proceeds") to accommodate a variety of strategies. At this stage in the evolution of the CDFI industry, flexibility is needed to explore multi-pronged strategies and tools to manage portfolio liquidity.

If the LEP's current statutory barriers (cited above) are removed and the use of funds is flexible, LEP will become a critical tool for solving a variety of liquidity challenges facing CDFIs. LEP capital could be used to support a variety of new and existing liquidity management tools, including:

Equity Capital for Liquidity Management Funds: Equity capital could be used to support the growth of existing and new CDFIs or others operating Liquidity Management Funds (LMFs) that help CDFIs manage liquidity by: (1) advancing loans or lines of credit to or facilitating placement of deposits in CDFIs to support relending; or (2) purchasing CDFI originated assets to hold in portfolio or sell to third parties (thus allowing CDFIs to recycle loan capital such as secondary markets, participation and syndication networks).

Loan Acquisition Guarantee Facility: Create a full or partial guarantee instrument for lenders and/or investors that purchase CDFI-originated assets screened by Fund-approved Liquidity Management Funds (LMFs). The facility could offer low cost, long term loans and lines of credit to LMFs to: (1) temporarily warehouse CDFI-originated assets for sale to investors; and (2) support lending and/or investing. This facility will help build industry infrastructure by supporting development of secondary markets, loan syndications or participation networks, and other liquidity management tools.

CDFI Institution Level Guarantee Facility: Create a full or partial guarantee instrument for third parties that make loans and investments into CDFIs. CDFI recipients will pay a guarantee fee to the Fund. Monies advanced with this guarantee should be eligible to be used as collateral for FHLB advances, making the FHLB financing accessible to a broad range of CDFIs authorized for FHLB membership under Housing and Economic Recovery Act of 2008 (HERA).

The models cited above are examples of the types of products, services, and tools that could help a variety of CDFI manage liquidity. Above all, we urge the Fund to encourage innovation through the LEP to test a variety of strategies to address liquidity challenges impacting various sectors of the industry.

(e) Are there other program ideas better suited to providing liquidity for CDFIs?

While outside the scope of the LEP and the questions raised in the Notice for Public Comment, one critical issue impacting CDFI Bank liquidity is treatment of deposits raised through the Certificate of Account Registry Service (CDARS). We strongly urge the Fund and Treasury to work with the Federal Deposit Insurance Corporation (FDIC) to support the exclusion from the statutory definition of brokered deposits of any "deposits received through a network on a reciprocal basis." Over the past several years, one such product, CDARS has enabled CDFI banks to significantly scale up their lending in low income communities. We strongly believe that CDARS Reciprocal deposits are an invaluable tool to help CDFI banks and thrifts manage liquidity to meet the needs of their communities. Currently CDARS are improperly categorized by the FDIC as brokered deposits. As a consequence, banks must pay additional premiums on those deposits and regulators have imposed limits on the amount of such deposits that some CDFI banks can accept.

E. Native American Initiatives

In its fiscal year 2001 appropriation and every fiscal year since, the CDFI Fund has been appropriated funds for the purpose of making financial assistance and technical assistance awards and to provide training designed to benefit Native American, Alaskan Native and Native Hawaiian communities (collectively referred to as "Native Communities"). While Native Initiatives awards have been through several iterations, the current award vehicle are Native American CDFI Assistance (NACA) awards through which the CDFI Fund provides financial and technical assistance awards to Native CDFIs. The CDFI Fund welcomes comments on issues relating to the Native Initiatives, particularly with respect to the following questions:

(a) Should the CDFI Fund seek statutory authority to make the NACA awards permanent?

As a general principal, CDBA Coalition opposes the creation of set asides. Given the unique and difficult challenges faced by Native American communities in addressing persistent and deep poverty, however, we support NACA as a component of the Fund's initiative. Congress has repeatedly provided annual appropriations for a Native American Program, which we believe will be continued into the future. We will defer to the comments submitted by Native organizations to questions in this section.

(b) What other services should the CDFI Fund provide to Native Communities?

See answer in (a) above.

(c) What improvements could be made to Native Initiatives and, in particular, to NACA awards?

As noted above, like the CDFI FA and TA programs, greater institutional diversity is needed. Native American CDFI banks have been unable to meaningfully

qualify for or receive assistance under this initiative. Please refer to the comments above regarding changes needed to the FA and TA Programs to make them more accessible to Native owned CDFI banks.

(d) Should there be a limit on the number of technical assistance grants an applicant can receive?

See answer in (a) above.

(e) Should the CDFI Fund provide "seed funding" financial assistance grants to noncertified, emerging Native CDFIs for the purpose of increasing lending in Native Communities?

See answer in (a) above.

(f) Many Native CDFIs have grown and expanded their reach in recent years. Is there a point where a Native CDFI should be seen as having "graduated" from NACA financial assistance and be required to compete for a CDFI financial and technical assistance award? Is so, what should be the criteria?

We do not have any specific recommendations at this time since no Native CDFI banks have been able to meaningfully access this program. As previously noted, CDBA does not believe CDFIs should "graduate" from the programs of the Fund.

F. Bank Enterprise Award Program

The purpose of BEA is to provide an incentive for insured depository institutions to increase their activities in distressed communities and provide financial assistance to CDFIs. The CDFI Fund welcomes comments on issues relating to the eligibility of certain activities, qualifications and general program structure, particularly with respect to the following questions:

(1) Are the qualified activity definitions used for BEA still applicable; are there any new definitions that should be included (if so, please provide new definitions)?

CDBA members believe the current qualified activity definitions are appropriate. We do not have specific recommendations for changes that this time.

(2) An insured depository institution may apply for a BEA award based on its activities during an assessment period, which opens the program to all FDIC-insured banks and thrifts. The statute that authorized BEA (12 U.S.C. 1834a(j)(3)) states that an insured depository institution is defined by section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)), which does not include credit unions whose deposits are insured by the National Credit Union Administration. Currently, credit unions can only be qualified recipients of loans and deposits from BEA applicants ("CDFI Partners").

(a) Should only banks and thrifts certified by the CDFI Fund be eligible to apply for BEA?

The BEA Program is critical to supporting the work of CDFI banks in the LMI communities we serve. Without our CDFI banks, many of these neighborhoods and customers would not be served by traditional banks. Yet, CDBA members do not advocate limiting awards only to CDFI banks and thrifts. The traditional banking sector plays a critical role in supporting our work and that of other types of CDFIs through provision of a variety of forms of financial support (e.g. deposits, loans, grants).

(b) Should federally insured, certified CDFI credit unions be eligible for BEA?

When the BEA Program was originally created by Congress in 1991 and later incorporated in the Fund statute (1994), the program was intended to be used as a tool to work in concert with the Community Reinvestment Act (CRA). The Congressional record indicates that BEA was described by members of Congress as a "carrot" in contrast to the "stick" of CRA. As such, it was intended for use by financial institutions subject to CRA. Only if Congress determines that credit unions should be subject to CRA would it be appropriate and fair to open the BEA program to credit unions.

(c) Should only those applicants of a certain asset class (e.g., "small" banks with less than \$1.098 billion in assets) be permitted to apply for BEA?

CDBA members do not believe limiting awards to institutions under the above mentioned asset size is appropriate. First, all CDFI banks and thrifts should be eligible to participate in BEA regardless of asset size. The nature of the work they do in distressed communities is expensive. The BEA awards help pay for these costs. Second, limiting the asset size of applicants will reduce the amount of support provided to CDFIs by traditional banks and thrifts. Since the beginning of the BEA Program, it is the banks with the largest asset sizes and geographic footprints that have been the most active in making deposits into CDFI banks, thrifts and credit unions, as well as loans to non-depository CDFIs.

(d) Should there be a minimum funding level for awards (i.e., \$6,000)?

The members of CDBA do not believe it is necessary to establish a minimum award size. BEA is often used as a tool for regulated CDFIs to attract deposits and loan funds to solicit loans for relending from traditional banks. A minimum funding level may discourage this activity. We do, however, understand that it is not cost-effective the Fund to monitor these very small awards. While we do not believe the award minimums are needed, we will not strongly object to the proposed minimum \$6,000 award requirement if the Fund proposes it.

(3) The statute that authorized BEA states that insured depository institutions that meet the community development organization requirements shall not be less

than three times the amount of the percentage applicable for insured depository institutions that do not meet such requirements (12 U.S.C. 1834a(a)(5)). The statute does require that CDFI certified banks receive priority in determining award amounts and in funding awards. Should a new priority funding structure be created to specifically fund certified CDFIs before all other types of institutions?

As noted above, the traditional banks plays a critical role in supporting CDFI banks and other CDFIs (e.g. deposits, loans, grants). Rather than create institution type priorities or set asides, we believe the awards process for all of the Fund's programs should be based on merit. We do believe, however, the current structure of the BEA funding priorities does not adequately recognize or distinguish the merit associated with types of activities and financial service providers.

The BEA prioritizes CDFI Support Activities over Distressed Communities Activities. This priority: (1) creates an unhealthy dynamic and unnecessary antagonism between CDFI sectors when any programmatic changes are made to either set of activities; and (2) often results in the award of monies to some less impactful CDFI Support Activities over some highly meritorious Distressed Communities. To solve this problem, we recommend creating two separate BEA components (similar to the funding "components" used in the CDFI Program). One component would be for CDFI banks and thrifts and the other component for non-CDFI banks and thrifts. See further discussion below.

(4) The statute that authorized BEA states that loans and other assistance provided for low- and moderate-income persons in distressed communities, or enterprises integrally involved with such neighborhoods, are qualified activities (12 U.S.C. 1834a(a)(2)(A)).

(a) By applying the criteria of 12 U.S.C. 1834a(b)(3), approximately 2,700 census tracts fully meet the definition of a BEA distressed community. Should the definition of a BEA distressed community be revised and, if so, how?

Generally, we believe the current definition of a Distressed Community is effective in targeting resources to the most difficult to serve areas. In fact, for CDFI Banks, significant portions of those service areas meet this definition.

(b) Should the geographic requirement be eliminated? If so, why?

Revisiting the statutory provision that requires a minimum population size for a BEA qualifying census tract is needed to better serve rural areas. In some rural areas, there are also problems with small pockets of poverty located within large rural census tracts that impair the ability of BEA to be used. This provision should be revisited. Both of these issues have a negative impact on applicants in remote rural regions.

(c) Should the definition of “integrally involved” (set forth at 12 C.F.R. 1806.103(gg)) be changed? If so, how?

CDDBA recommends that the “integrally involved” standard and statutory language be eliminated. This standard is duplicative and creates unnecessary paperwork. All CDFIs are integrally involved in their communities by the nature of the work they do and the extent to which they target their lending to eligible Target Markets. We believe the CDFI certification process is effective in screening out entities that do not target most of their activities to eligible Target Markets. The additional paperwork associated with re-justifying this activity does not add value and duplicates the certification process.

(d) Should a Community Reinvestment Act rating be used by the CDF Fund in its evaluation of a depository institution’s commitment to serving low-income and underserved communities?

As CRA is implemented today, virtually all banks and thrifts receive Outstanding or Satisfactory ratings. If a bank achieves less than a Satisfactory CRA rating, they should be disqualified from applying and/or receiving Federal monies from any Fund program.

CRA could, however, become a more effective tool to enhance support among all banks for CDFIs. We strongly urge the Fund and Treasury to work with the banking regulatory agencies to explicitly state in regulation or guidelines that deposits, loans, and other financial support provided to CDFIs is eligible for consideration under the Community Reinvestment Act (CRA). Currently, the bank regulatory agencies clearly state that such consideration is granted for support provided to minority owned banks. We urge the same consideration be extended for CDFIs.

(5) The statute that authorized BEA specifies the types of qualifying activities and states that the award must be based on an increase in those activities over a period of time (12 U.S.C. 1834a(a)(2)). The current BEA structure bases award amounts solely on a formula and requires a demonstrated increase in activity, making BEA retroactive by design. How should the BEA be restructured, if at all? For example, should BEA have a leverage requirement; should awards be based on future or proposed community development activities, etc.?

As CDDBA members have articulated on numerous occasions, we believe the current structure of the BEA has been highly effective in helping our institutions make a long term commitment and establish on-going programs and services for the most highly distressed areas of our Target Markets. While some have criticized the “retroactive” structure of the program, we have supported it because it rewards actual performance as measured by the dollars at work on the street. Because our banks have a long term commitment to distressed communities, the BEA Program has enabled us to design products and services tailored to those markets. As such, we view the structure of the program as

similar to a reimbursable contract for service that only provides payment if a bank carries out the work it promised to do.

We are hesitant to endorse a "prospective" grant program because: (1) the selection process is highly subjective (i.e. CDFI FA Program) and often results in wasted time and effort; and (2) it would reward entities for work they propose to do versus what they actually do (the current BEA program prevents Federal monies from being wasted on awardees that propose to do something, but don't deliver results). While we strongly prefer the current program structure, CDBA members recognize that the Fund is under significant pressure from Office of Budget and Management (OMB) to convert the program from its current performance based (a.k.a. retrospective) structure to that of a traditional "prospective" grant program.

As an alternative to the current structure, we propose a revised program outlined below. We believe the proposal will address criticisms about the retrospective program structure and mitigate concerns about providing awards to large financial institutions. We believe the proposed alternative structure can be likely be implemented without statutory changes.

Alternative BEA Structure:

Create Two Components: We propose creating two components within the BEA Program, like the CDFI Program. One component will be restricted to certified CDFIs, and the other will be open to all other banks and thrifts.² We propose that funds be allocated between the two components in a manner consistent with the historic allocation of BEA awards among CDFI and non-CDFI awardees since regulatory program changes were made in 2004. We propose a historic rolling three year average be used in dividing the funds between the CDFI and non-CDFI components³

Address Current Retrospective Structure by a Return to Original Program Structure: To address concerns about the current retrospective program structure and preserve the statutory intent of disbursing Federal funds only for activities actually completed, CDBA recommends return to the original program structure used to launch the BEA Program in 1995. This structure was used for the first few funding rounds and was changed to reduce paperwork burden on applicants and Fund staff. To important modifications to the original structure are recommended: (1) obligation of awards prior to start of the Assessment Period (in 1995 awards were not obligated because there were sufficient funds for all applicants); and (2) creation of two components (discussed above). Both these changes can be made within the current statute and address concerns raised by OMB. See "ATTACHMENT C - 1995 BEA NOFA."

² The CDFI Fund's authorizing statute clearly contemplated that CDFI banks and thrifts should be treated differently under the BEA program as illustrated by the fact that they were explicitly allowed to earn three times as much credit for the same set of qualified activities.

³ On average over the past 3 years (2007-2009), 82% of BEA grants have been awarded to CDFIs. Over the past 6 years, (2004-2009), 72% of BEA grants have been awarded to CDFIs.

It is proposed that applicants under each component apply prior to the beginning of an assessment period.⁴ Applicants will provide Baseline Period data in their applications and a narrative discussion of proposed activities. This is a return to the program structure originally used to launch the BEA Program in 1995.

- The Fund will select a group of applicants to participate in the funding round for awards for each the CDFI and Non-CDFI Components up to a specified award cap.
- Awards monies will be obligated prior to or near the beginning of the Assessment Period. Disbursement will be conditioned on successful complete of the proposed activities after submission of final reports.
- After the Assessment Period is complete, participants will file final reports with documentation of actual completed transactions.
- After the Fund reviews the final report and determines that the proposed activities were completed, then award monies will be disbursed.
- If a bank completes less than the full amount of proposed activities, the award disbursement will be reduced proportionally and the remaining funds de-obligated
- Any unused, de-obligated award monies can be: (1) given to other component participants that "over-achieve" and complete more eligible activities than originally proposed; (2) transferred to the other component; and/or (3) rolled over to the next funding round.

Within each component, it is proposed that the Fund prioritize funding based on the statutorily proscribed activities (whereby providing financial support to CDFIs is first priority followed by Distressed Community activities). Dividing the appropriation into two separate groups will give the Fund greater flexibility to tailor and craft incentives within each component to the type of applicant and desired activities. For example, under the "non CDFI bank" component, the Fund might choose to give greater priority to banks that propose to provide below market or long term loans and deposits to CDFIs. Or, within the CDFI component, the Fund might choose to give greater priority to CDFI banks and thrifts engaged in small business or other lending that promotes job creation and retention during the economic recovery.

If the program structure outlined above is adopted, we recommend eliminating the recently adopted post award use requirements and data collection forms. Since the BEA Program structure will reflect that of a more traditional "prospective" grant program. By selecting applicants prior to execution of an activity, these new requirements are unnecessary.

The concept outlined above is intended to address the two main concerns raised about BEA.

⁴ The first few founding rounds of the BEA program used a pre-Assessment Period application process. This application was eliminated in the interests of reducing paperwork.

- The first criticism is that the retrospective program structure does not provide incentives for a bank to “do anything it hadn’t already done.” This criticism is addressed by requiring banks to apply to the program, and be selected prior to the Assessment Period and the proposed activities are undertaken.
- The second criticism is that the program “mostly helps big banks” is mitigated by: (1) allocating a large majority of the funds to the CDFI component; and (2) enabling the Fund to better tailor the incentives in the non-CDFI component in a manner that will encourage big banks to pass onto the benefits of the BEA Program to CDFIs.

As a means of “repositioning” and “rebranding” the program to gain new supporters, the Fund may wish to consider renaming it.

(6) The BEA regulations (12 C.F.R. Part 1806.201-305) outline the measuring and reporting of qualified activities, calculations for estimating award amounts including the selection process for awards, and award agreements, sanctions, and compliance.

(a) Should these sections be updated? If so, how?

Given the current structure of the program, CDBA members believe the current above mentioned items work effectively. We do not recommend any amendments. If the structure of the program is changed in a material way as described above, however, all of these elements will need to be revisited. In such circumstance, CDBA members are interested in engaging the Fund in a dialogue on how they should be redesigned.

(b) Are any changes needed to make the program work better?

As noted above, we strongly recommend the Fund work with the Internal Revenue Service to exempt BEA awards from taxation. If this change can be made through a regulatory change, we would strongly support it. If it is determined that such an exemption requires a statutory change, we recommend the Fund pursue a statutory amendment.

As a means of enhancing support among all banks for CDFIs, we strongly urge the Fund and Treasury to work with the banking regulatory agencies to explicitly state in regulation or guidelines that deposits, loans, and other financial support provided to CDFIs are eligible for consideration under the Community Reinvestment Act (CRA). Currently, the bank regulatory agencies clearly state in interagency guidance materials that such consideration is granted to minority-owned banks. We urge the same consideration be extended for CDFIs.

G. Small Business Capital Enhancement Program

The Riegle Community Development and Regulatory Improvement Act of 1994 included a Small Business Capital Enhancement (SBCE) Program (12 U.S.C. 4741), which has never received an appropriation. If funds were appropriated for this program: (1) the SBCE would be a complement to small business capital access programs (CAPs) implemented by certain States that assist financial institutions in providing access to needed debt capital; (2) any State would apply to the CDFI Fund for approval to be a participating State under the SBCE and to be eligible for reimbursement by the CDFI Fund if that State has an established CAP and funds available in the amount of at least \$1 for every two people residing in the State are available and committed for use; (3) the SBCE would provide matched funding to States to provide portfolio insurance for business loans based on a separate loss reserve fund for each financial institution; (4) loan terms would be at the discretion of the borrower and financial institution; (5) a participation agreement would be required from all parties and, upon receipt of agreement, the participating State would enroll the loan and make a matching contribution to the reserve fund (not less than the premium charges paid by the borrower and the financial institution); (6) the premium charges would not be permitted to be less than three percent or more than seven percent of the amount of the loan; (7) each State would be required to file a quarterly report with the CDFI Fund indicating the total amount of contributions, among other information; and (8) the CDFI Fund then would reimburse the State in an amount equal to 50 percent of the amount of contributions by the State to the reserve funds that are subject to reimbursement. The CDFI Fund welcomes comments on issues relating to the viability of such a program, especially with respect to the following questions:

(a) Is there a need for the SBCE?

CDBA does not view the SBCE as a priority for the Fund at this time. We believe the Fund's efforts should focus on activities that build the CDFI industry. The Small Business Capital Enhancement Program, however, has merit. If the Treasury Department is strongly interested in implementing this provision of the statute, we will be happy to work in partnership with you to make sure CDFIs play a significant or primary role in its delivery. At this time, however, we are very concerned about diverting the Fund's scarce funding and already stretched staff resources toward an initiative that is not focused on building the capacity of CDFIs.

(b) What changes should be made to the SBCE legislation to make it most effective?

We believe that CDFIs are the most effective vehicle for delivering business credit to low income communities. We believe CDFIs should receive priority in receipt of SBCE supported resources.

(c) Are the limits on reimbursement adequate to meet current need?

See comments above.

(d) Is there another program idea better suited to the needs of America's small businesses?

See "[ATTACHMENT D - Prior CDBA Correspondence on Small Business Lending](#)" submitted by CDBA on November 24, 2009 to Secretary Timothy Geithner and SBA Administrator Karen Mills in response to the Obama Administration's request for public comment on stimulating small business lending to aid economic recovery.



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September 21, 2007

Ms. Kimberly Reed
Director
Community Development Financial Institutions Fund
U.S. Department of Treasury
601 – 13th Street NW, Suite 200 South
Washington DC 20005

Dear Director Reed:

On behalf of the membership of the Community Development Bankers Association (CDBA), we are writing to recommend revisions to the Community Development Financial Institutions (CDFI) certification standards and review process.

An Evolving Industry:

The CDFI industry has grown and changed significantly over the past 12 years since the CDFI Certification requirements were adopted in 1995. While the certification application has evolved, the core certification tests and how they are applied has remained largely unchanged. We know far more about the CDFI industry today than we did a dozen years ago. Today there is more data available than ever before to enhance our understanding of the industry and the customers we serve. At this juncture, we believe it is appropriate for the CDFI Fund to revisit how it reviews applicants for certification and how to update its requirements to reflect the changing environment we operate within.

Sector Standards:

CDFIs comprise a broad range of institutional sectors that include regulated banks and credit unions and unregulated loan funds, venture capital funds, and others. We encourage the CDFI Fund to develop certification standards that are tailored by industry sector. Currently the CDFI Fund informally takes into consideration different types of information for different sector types when reviewing a certification or recertification application. We encourage you to continue to refine, formalize and expand this practice. We believe there are circumstances where the certification standards and requirements may need to be different for different sectors. We encourage you to explore certification requirements with the trade associations and individual institutions representing the various CDFI sectors to identify appropriate certification standards for each respective sector.

The Social Investment Forum reported in 2005 that CDFI Banks manage 52% of all of the \$20 billion in assets under management of the entire CDFI industry – despite constituting less than 9% of the total number of CDFIs. As such, CDFI banks are collectively responsible for generating the vast bulk of lending and services delivered by the industry. The role of CDFI banks is essential to generating broad impact among low income communities. Despite its important role, we believe the certification requirements are largely tailored to the needs and profile of nonprofit loan funds. We respect the contributions and role that loan funds have within the industry, but strongly believe that given their largely nonprofit tax status, scale of operation, and non-regulated operating environment, they should have certification requirements that are different than CDFIs operating within a for-profit and regulated business model.

Simplify and Streamline the Review Process:

A rapidly growing CDFI industry coupled with CDFI Fund resource constraints have resulted in a certification process that is unable to keep up with industry expansion. We strongly encourage the CDFI Fund to explore strategies to streamline the certification and recertification process.

1. Review Outsourcing: We encourage the CDFI Fund to consider outsourcing the certification review process to qualified organization(s) with proven expertise working with each respective CDFI sector type. We also recommend that the CDFI Fund consider incorporating a peer review component as a form of due diligence and to ensure that differences in the operating models of CDFIs are appreciated. With nearly 800 certified CDFIs and the CDFI Fund's stated objective of further expanding the field, the growth of the CDFI industry will continue to outpace the CDFI Fund's ability to continuously certify and recertify a growing pool of institutions. Outsourcing this task may enhance the efficiency and speed of the review process.
2. Recertification: Improving internal coordination of agency data collection efforts could significantly simplify the recertification review process and reduce paperwork for the agency and the industry. Currently, the CDFI Fund operates several programs (e.g. CDFI FA & TA, BEA, NACA) that require applicants to report information about lending and service provisions within their communities. CDFI Program awardees are further required to submit annual reports and provide detailed information on financial and social impact through CIIS. We strongly encourage the CDFI Fund to look holistically at the systems and data it already collects to reduce the duplicity of paperwork associated with recertification.
3. Certification/Recertification Audit: Because of the large volume of transactions of CDFI banks (and presumably some credit unions and larger loan funds), we recommend the CDFI Fund to explore the feasibility of utilizing an "audit" process similar to what is used by regulators for examining insured deposit institutions for compliance purposes. Under this scenario, the CDFI Fund – or its contractor(s) – would conduct a site visit and random sample tests on an applicants portfolio to determine the extent to which the banks serve Target Markets, as well as examine the non-quantifiable aspects of its service to its

Target Markets (e.g. outreach and marketing strategies, quality of technical assistance). Using such a random sample methodology would significantly reduce paperwork burden for large CDFIs. Site visits would provide an opportunity to evaluate more subjective elements of a CDFI's service to its customers and enhance the understanding of reviewers of the industry generally. If the CDFI Fund is interested in further discussing or pursuing this recommendation, CDBA would be pleased to work with you to develop specific suggestions on implementation.

Target Market Test:

CDBA strongly believes that CDFI banks must maintain a strong commitment to mission and serving their Target Markets. In no way are the members of CDBA urging the adoption of weak certification standards or that CDFI banks be permitted stray from a community development mission. As regulated insured depository institutions, CDFI banks are required by their respective bank regulatory agencies to operate profitability. More than any other type of CDFI, community development banks must balance a double bottom line. Unlike nonprofits, they do not enjoy the benefits of tax exempt status, rarely receive grants and contributions, and must pay taxes on their earnings. As a result, they have a more constrained ability to target their lending and services to low income markets than their non-profit CDFI counterparts.

When the CDFI certification standards were established, the CDFI Fund adopted a single 60% Target Market service requirements for all CDFIs. This standard was developed based on interviews with industry leaders about what portion "seemed right" rather than data on portfolio composition because no such data existed at that time. A single 60% standard was adopted because it seemed "fair" to use the same standard across the entire industry. We know, however, that the operating environment and business models of different types of CDFIs are very distinct. Hence, applying the single Target Market standard is too simplistic and is likely to discourage some banks with strong community development track records from applying to become CDFIs.

We strongly believe any new standard should ensure that CDFI Banks maintain a strong commitment to serving eligible Target Markets while recognizing the regulatory and for-profit orientation of the business model. Such a standard will ensure our nation retains a sustainable core of CDFI Banks with the ability to generate significant community development impact over the long haul. Given their ability to leverage deposits (which increases their scale of operation), even if a CDFI bank targets less of its total activities toward Target Markets, in the aggregate, it delivers a far greater volume of credit into underserved communities than its nonprofit loan fund counterparts. It is thus critical to maintain and expand CDFI Banks as a part of the CDFI industry rather than risk losing them due to pressure from their regulators to increase earnings.

A recent analysis by National Community Investment Fund (NCIF) examining Home Mortgage Disclosure Act (HMDA) data for 8,677 CDFI Banks, Minority Owned Banks, and traditional banks from 2001 to 2005 revealed some interesting findings. Using an index of the percentage of bank HMDA lending in low income census tracts (numerator) to total bank housing lending (denominator), NCIF developed a Development Lending

Intensity (DLI) score for each institution. Using a second index of the percentage of total branches located within Low and Moderate Income census tracts (numerator) to total bank branches to total branches (denominator), a Development Deposit Intensity score for each institution was developed. The 2005 analysis revealed the following results:

	Development Lending Intensity		Development Lending Intensity	
	Average	Median	Average	Median
All Banks and Thrifts	21.06%	15.3%	28.28%	14%
Urban Banks	20.90%	15.28%	27.77%	20%
Rural Banks	21.53%	15.76%	28.81%	0%
Certified CDFIs	62.00%	62.10%	73.16%	83%
FDIC Minority Banks	48.02%	47.54%	60.20%	66%

Not surprisingly, the DLI analysis demonstrated that the CDFI certified banks dedicated four times more than their non-CDFI bank counterparts to HMDA lending in low income census tracts based on the median scores for these market segments. Similarly, the DLI analysis showed that 83% of CDFI bank branches were located in low income census tracts compared to 14% for all banks and thrifts – nearly 6 times greater. On the DLI score, however, the range of scores for CDFI banks was between 20-100% -- with only a small number following below 40% (which is still 2.6 times higher than non-CDFI banks). The analysis also found that CDFI banks with a higher portion of their overall loan portfolio engaged in housing tended to have better DLI scores than CDFIs principally focused on non-housing product lines. Using this methodology, the authors of the study estimate that there may be as many as 200-300 eligible to become community development banks.

The principal limitation of the NCIF analysis, however, is that it only looks at housing data that is subject to HMDA reporting and is publicly available for the entire banking industry. With only a small portion of CDFI bank industry principally focused on HMDA lending, the analysis only captures a small portion of the activities of the sector. Additional analysis is needed on other product lines in which CDFI banks are more directly engaged including commercial real estate and small business lending to draw any firm conclusions.

The results of the NCIF analysis, however, raise some critical questions about how the Target Market test is applied to CDFI banks. The results suggest that a different standard and/or methodology for assessing CDFI bank service to its Target Markets may be appropriate. We strongly encourage the CDFI Fund to engage in and/or support further research that will help identify the characteristics that distinguish CDFI banks from traditional banks. The authorizing statute gives the CDFI Fund significant discretion in establishing its standards and methodologies for meeting the Target Market test. The statute simply states that a CDFI “*serves an Investment Area or Targeted Population*” but not does specify a specific proportion or that a numeric benchmark be used.

Again, CDBA and its members do not endorse weak certification standards. Instead, we urge the CDFI to develop a new, more sophisticated methodology (versus the 60% standard) that is informed by data which identifies the characteristics that distinguish CDFI banks from the traditional banking sector. In the long run, creating an operating environment that enables CDFI banks to be both sustainable and generate increasing volumes of community development loans and services is what benefits their low income customers and communities the most and achieves the purposes of the CDFI Fund's authorizing statute.

Encouraging Expansion of the CDFI Bank Sector:

We believe there is a significantly larger universe of community development banks than the current list of certified CDFI banks. In the United States, there are currently, 59 FDIC insured banks and thrifts in the United States. The number of FDIC insured institutions that are certified CDFIs has remained relatively consistent at 50-60 since 2000. We believe that the current CDFI certification requirements may unnecessarily limit the number of CDFI Banks and/or discourage community development focused banks from seeking certification.

As a means of expanding the universe of CDFI Banks, we seek to engage the CDFI Fund in exploring development of a "tiered" certification process that would be coupled with BEA Program incentives. This system is intended to encourage more banks to become CDFIs. Under such a system, banks would be designated as Class A CDFIs or Class B "pre-CDFIs". A Class A CDFI would be a bank that fully meets all of certification requirements. A Class B Pre-CDFI would be a bank that meets all of the certification requirements -- except the minimum Target Market threshold. To be designated a pre-CDFI, the bank would need to meet at least a minimum Class B threshold that would be slightly lower than the Class A standard and they would need to provide evidence of their intent is to increase their Target Marker service as a proportion of their overall activity to become a Class A CDFI.

Class A CDFIs would be eligible to fully participate in all of the CDFI Fund programs. As FDIC regulated institutions Class B pre-CDFIs would eligible to participate in the BEA Program as non-CDFI banks (thus receiving grants based on a 5% Award Percentage). If the CDFI Fund approves a bank to participate in the BEA as a pre-CDFI, the bank will be eligible to receive a new "Premium" Priority Factor applied to BEA eligible activities.¹ The premium will provide a slightly higher Priority Factor weighting to each eligible activity. At the end of the annual BEA reporting period, a pre-CDFI will automatically receive (subject to funding availability) the BEA award as calculated without the Premium. If the bank can demonstrate that it has increased its Target Market service activities relative to total activities, the bank will receive the award premium. Pre-CDFIs will be given three years to meet the Class A standard. Banks that fail to meet the Class A standards within three years would lose their eligibility for the Premium

¹ Since the 5% and 15% Award Percentage for non-CDFI and CDFI banks, respectively is statutory, the award percentage cannot be altered for Class B pre-CDFI banks. The Priority Factors, however, were created through regulation and are periodically adjusted to incent different activities. The agency has maximum discretion to change the weighting of Priority Factors since they were not mentioned (or even contemplated) in the authorizing statute.

Priority Factors. The Premium Priority Factors would need to be structured in a manner that provides an incentive banks to go through the certification process, as well as encourage banks to become fully certified as quickly as possible.

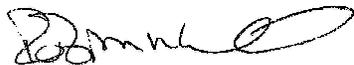
In summary, CDBA strongly believes that CDFI banks must maintain a strong commitment to mission and serving their Target Markets. We ask that the CDFI Fund:

- Simplify the certification and recertification process.
- Amend and tailor the certification process to CDFI industry sectors.
- Revisit the Target Market requirements and methodologies in such a manner that allows CDFI banks to better balance the profitability pressures of their regulators with their social missions.
- Use the certification process and BEA Program to encourage more banks to become CDFIs.

Thank you for consideration of our views. We are pleased to discuss any of these proposals further.

Sincerely,

Sincerely,



Robert M. McGill
Chairman



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February 25, 2008

Ms. Donna Gambrell
Director
Community Development Financial Institutions Fund
U.S. Department of the Treasury
601 – 13th Street NW, Suite 200 South
Washington DC 20005

Dear Director Gambrell:

On behalf of the members of the Community Development Bankers Association (CDBA), I am submitting comments in response to the Request for Public Comments published in the Federal Register on February 5, 2008. The Request is seeking input into the CDFI Fund's process and standards for CDFI Certification. I am also attaching a letter dated September 21, 2007 on certification that was previously sent by CDBA to the CDFI Fund. This correspondence addresses some of the questions raised in the Request for Public Comment and makes suggestions to improve the certification process. We ask that these suggestions be taken under consideration as you evaluate the certification process.

Importance of Certification to the CDFI Industry

In the decade-plus since the CDFI Fund began certifying entities as Community Development Financial Institutions (CDFIs), the CDFI certification has become an important symbol that defines and distinguishes CDFIs within the larger financial services industry. Beyond establishing basic eligibility for the CDFI Fund's programs, certification provides recognition, credibility and distinguishes the work of CDFIs from traditional lenders in a meaningful way. We applaud the foresight of the agency to develop a certification designation and strongly support its continued practice.

Collaborative Nature of the Certification Process

Generally, the industry has been pleased by the manner in which the CDFI Fund has historically administered the certification process. CDFI Fund staff has worked collaboratively with the industry and individual CDFIs to carefully consider the "whole picture," including a CDFI's business model, market, program goals, and other unique features of an organization and whom it serves. We believe the CDFI Fund has done an outstanding job in using reasoned and informed judgment when assessing whether the certification requirements have been met, rather than rigid standards. We urge you to continue to take such an approach.

Scope of Comments

In its September 21 letter, CDBA recommended that the CDFI Fund create certification standards that are tailored to the different CDFI business models (e.g. banks, credit union, loan funds, venture funds, etc.). As such, our comments below will reflect only how we believe the certification requirements should be applied to FDIC insured banks and thrifts. Except as specifically noted below, we have not opined on the appropriate certification standards for other CDFI business models. We believe the CDFI Fund should actively solicit comments from all types of CDFIs to develop standards that are appropriate to each business model.

Streamlined Process

We strongly urge the CDFI Fund to develop a certification process that is simple and streamlined – particularly in the case of organizations seeking recertification. In the case of regulated entities, most organizations already bear a significant burden with respect to Federal and/or state regulatory agency reporting. We ask that the CDFI Fund seek to minimize its reporting requirements and to the maximum extent feasible utilize information already submitted to the CDFI Fund and regulatory agencies for other purposes as part of the certification review.

1. Primary Mission:

Question (a): Should the primary mission criteria differ by organization type? If so, how?

The members of CDBA believe strongly that all CDFIs should have a primary mission of community development. We do not believe that different types of CDFIs should have different Primary Mission standards. We believe that the CDFI Fund has done a good job at applying the Primary Mission test in a manner that is flexible and takes into consideration the wide variety of different CDFI business models and communities served. We do not believe the CDFI Fund needs to revise the Primary Mission test or the manner in which it is applied.

Question (b): Protecting Against Predatory Lending

(i) Should the CDFI Fund consider the types of Financial Products offered by an entity as relevant to the primary mission criteria? Specifically, should the CDFI Fund review, as part of the certification process, evidence of affordability of an entity's Financial Products to the intended customers?

(ii) How else might the CDFI Fund ensure that CDFI Certification is not given to entities that engage in what are commonly called “predatory lending practices” or include so-called “predatory lending terms” in their lending practices?

(iii) Should the CDFI Fund require entities to provide Financial Products at a cost that is at least comparable to market rates or at some minimum level of affordability to their Target Markets in order to satisfy the primary mission criteria? If yes, how should market rates or minimum levels of affordability be determined?

We understand the CDFI Fund's desire to insure that organizations engaged in predatory lending activities are not granted certification status. We strongly object, however, to proposals that would dictate the appropriate pricing strategies for CDFI banks and thrifts. When conducting a Community Reinvestment Act examination, the bank regulatory agencies already review the pricing of banks to ensure that pricing offered customers in low and moderate income areas are not substantially different than the pricing offered other customers. It should be noted that the regulatory agencies' CRA examinations do not seek to dictate appropriate product pricing structures or determine whether a product is "affordable" to customers. We believe the review already conducted by the regulatory agencies is more than sufficient to guard against predatory lenders.

As banking regulators and Congress have found, defining predatory lending products is a very complicated endeavor. Pricing is only one small element that distinguishes a predatory product from one appropriately priced to reflect risk. Other features include loan structure, prepayment penalties, "teaser" rates, and other characteristics. Similarly, defining a workable "suitability" standard has also proven vexing and highly controversial. Given the wide variety of missions, products, borrowers, and communities served by CDFIs, devising a "non-predatory" pricing standard or defining appropriate products for certification applicants is deeply troubling.

We recommend the CDFI Fund allow itself the discretion to revisit the certification of an organization at any time if it has evidence or reason to believe that it is offering predatory products. Any anti-predatory assessments should be made on a case-by-case basis, rather than penalizing the entire CDFI industry by adopting onerous standards. We believe that the CDFI Fund should use a "reasonable person" standard in evaluating whether an applicant is offering products that may be inappropriate or detrimental to the long term economic security of borrowers rather than establishing a set of proscriptive rules on pricing or product features. With respect to CDFI certified banks and thrifts, it is recommended that the CDFI Fund enhance its coordination with the regulatory agencies if it suspects a bank or thrift that is a certification applicant is engaged in questionable practices.

As socially responsible lenders dedicated to promoting economic opportunity and empowerment, CDFIs across the nation are deeply saddened and dismayed by the millions of families and individuals that have been taken advantage of by unscrupulous predatory lenders. The evidence is clear that low income communities and people served by CDFIs have disproportionately been impacted of these practices. CDFIs are on the front lines in many communities aiding consumers in getting out of predatory loans or helping them pick up the pieces. In communities targeted by predatory lenders, the good work of CDFIs and others over many years to revitalize and promote economic stability has been seriously eroded and will take years -- or even decades -- to restore.

2. Financing Entity Criteria

Question (a)(i) What minimum level of financing activity (i.e. number of transactions, dollar amount of transactions, years in operation, and/or financing) should the CDFI Fund consider to be acceptable to determine that an entity is

financing entity? (ii) How might this minimum level differ among organizational types?

We recommend the CDFI Fund retain its current practice of using the deposit insurance designation of the Federal Deposit Insurance Corporation for banks and thrifts as evidence that it is a financing entity.

Question (b) (i) Is three (3) months worth of financing capital a reasonable measure of an entity's ability to sustain its financing activities? Should the period of time be longer or shorter? (ii) What other measure(s) should the CDFI Fund use to determine that an entity can sustain its financing activities?

We believe the minimum financial capital proposal outlined should not be applicable to regulated banks and thrifts. The bank regulatory agencies are responsible for ensuring that regulated banks and thrifts have sufficient capital on hand to sustain their operations and lending activities.

(c) The CDFI Fund's definition of Financial Products includes Loan, Equity Investments, and similar financing activities (as determined by the CDFI Fund) including the purchase of loans originated by CDFIs and the provision of loan guarantees. Should the CDFI Fund expand this definition? If so, what other products should be included?

We encourage the CDFI Fund to retain maximum flexibility in the range of Financial Products that would meet the Financial Products definition. Markets will continually change and CDFIs will develop new products to meet community needs. As the industry seeks to achieve scale, access capital markets, enhance liquidity, develop more sophisticated balance sheet management strategies, and offer innovative products and services, we strongly encourage the CDFI Fund to support the evolution of the industry by remaining flexible and expansive in defining Financial Products.

3. Target Market

In order to be a certified CDFI, an entity must serve a Target Market consisting of one or more Investment Areas and/or Targeted Populations.

Question (a): Are the CDFI Fund's Target Market options (Investment Area, Low Income Target Population, and Other Target Populations) clear? If not, how can the CDFI Fund make the options more clear?

The CDFI Fund's Target Market options are clear. No additional guidance is recommended.

Question (b): Should a certification applicant be required to demonstrate a track record of serving the requested Target Market? If so, what is an appropriate minimum time frame to establish such a track record? Please provide reasons to support your response.

CDBA recommends that the CDFI Fund retain its current practice of requiring that organizations present information on the extent to which their activities have served eligible Target Markets over the three most recently completed years. In the case of organizations in operation for a shorter period of time, it is recommended that they provide data for as many years as is available.

Question (c): Should the CDFI Fund allow different types of organizations to meet the Target Market requirement at different benchmarks (i.e. percentage of activities directed toward Target Market could deviate from the required 60 percent level for certain types of organizations)? If so, what level of activity would be acceptable for specific organization types?

CDBA strongly believes that CDFI banks and thrifts must maintain a strong commitment to mission and serving their Target Markets. In our September 21 letter, we urged the CDFI to: (1) revisit the 60% Target Market service requirement for CDFI banks and thrifts; and (2) conduct additional analysis that will help identify the characteristics that distinguish them from traditional banks. The 2007 study by the National Community Investment Fund raises some critical questions about how the Target Market test is applied to CDFI banks and thrifts. The results suggest that a different standard and/or more sophisticated methodology for meeting the Target Market test may be more appropriate.

At this juncture, we cannot recommend specific numeric adjustments to the Target Market standard, but believe developing an alternative method to the 60% test is warranted. Any such recommendations need to be supported by additional analysis. We ask that the CDFI Fund conduct or support additional analysis of the CDFI bank and thrift sector to better understand how to properly balance social impact and financial sustainability. The members of CDBA will gladly participate in any study or analysis of this nature.

Question (d): Should certification applicants be required to have a physical presence in their Target Market (i.e. a branch, an office, local partner)? If so, what is an acceptable minimum level of presence?

While the retail bank and thrift business model works on the assumption that an institution is located in and serves a specific geographic area, determining what constitutes an adequate physical presence within an individual market can vary significantly depending on the nature of the market served (e.g. urban, rural). Maintaining a physical presence in every market served by a CDFI bank or thrift may be cost prohibitive and may not significantly improve the quality of service delivered to customers. In the future, it is also likely that innovations in information technology will create ways to serve customers located remotely. In the case of CDFIs that are insured banks and thrifts, CDBA recommends that the CDFI Fund require applicants to maintain a physical presence or provide other evidence of how its reaches or serves borrowers (e.g. partners, technology). It is recommended that the CDFI Fund maintain maximum flexibility as to what evidence may meet this standard. As long as a CDFI has an effective means of identifying, delivering its products and services, and monitoring

borrowers, the need to maintain a physical presence within a Target Market is purely an operational decision and should be left to practitioners.

4. Accountability

Question (a)(i) How many governing and/or advisory board members representing a Target Market should the CDFI require to determine that an entity is accountable to its Target Market? (ii) How should the geographic size, population density of the Target Market, and/or board type (governing versus advisory) factor into the number of representative board members necessary to demonstrate accountability to a Target Market?

Given the wide variety of CDFI business model types and the Target Markets they serve, prescribing the “right” number of board members or the portion that are “accountable” to the Target Market is difficult. A small neighborhood focused bank may have a greater need for local residents to serve on its Board, whereas a CDFI bank or thrift that has grown to serve an entire Metropolitan area or region may have a greater need to draw from a broader talent pool with a different set of skills. A bank holding company CDFI that controls banks in multiple cities or states may, again, have a different set of governance needs and challenges. The members of CDBA do not believe it is necessary to prescribe a particular number or portion of directors that should be designated as “ensuring accountability.” Board membership is only one of many strategies that CDFIs use to ensure accountability and it should be given an undue amount of weighting in the process. In fact, the CDFI Fund’s authorizing statute does not require board representation to meet the accountability standard. The statute requires that a CDFI *“maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeting population.”* [emphasis added]

Question (b): Should the CDFI Fund expand or restrict the ways that board members can be deemed to be representative of a Target Market?

As noted above, we believe it is impractical to develop a restrictive list of permissible ways for CDFIs to demonstrate that individual Board members provide accountability. We strongly encourage the CDFI Fund to maintain flexibility and allow certification applicants to present a wide range of information that demonstrates or justifies why they believe particular board members contribute to maintaining accountability.

Question (c)(i) Should the CDFI Fund continue to allow certification applicants to demonstrate accountability to Target Markets through “other mechanisms” (i.e. annual meetings, surveys)? (ii) If so, what additional types of mechanisms should be considered to demonstrate accountability?

The CDFI should allow certification applicants to continue to demonstrate accountability to Target Markets through “other mechanisms.” As noted above, given the variety of different CDFI business models and the communities they serve, we strongly encourage the CDFI Fund to maintain flexibility and allow certification applicants to present a wide range of information to demonstrate accountability.

5. Development Services Criteria:

Question (a): What minimum level of Development Services should be expected of a CDFI (i.e. is one-on-one counseling enough or should training be more formal and standardized)?

The members of CDBA believe that one-on-one counseling should absolutely be sufficient for satisfying the Development Service requirements. In fact, the most useful form of technical assistance delivered by CDFIs is one-on-one counseling because it is tailored to the individual needs of borrowers. By definition, CDFIs do not serve “cookie cutter” borrowers whose needs easily fit into formal or standardized training formats. Often the issues in which borrowers need guidance and advice are highly personal and involve sensitive information. Formalized training programs are appropriate in certain circumstances depending on the needs of the customers, but are not superior or preferable to one-on-one counseling.

Question (b) should the CDFI require an entity to provide Development Services that are linked to each Financial Product that it offers.

The members of CDBA believe it would be impractical and unnecessary for a CDFI to be required to develop a Development Service product for each Financial Product or borrower it serves. While most Development Services have either a direct or indirect link to a borrower’s ability to access Financial Products, the needs of each borrower are very individualized. For example, an individual may require significant credit counseling and a class on becoming a home owner before they are ready to purchase their first home. By contrast, an experienced housing developer knows how to manage credit, but only needs a piece of gap financing to make a project feasible. We strongly discourage the CDFI Fund from requiring certification applicants to provide Development Services linked to each Financial Product it offers.

Question (c): Should Development Services include broad efforts to increase financial education and literacy within an entity’s Target Market.

Mass-media or community-wide financial education and literacy training activities sponsored by a CDFI should be considered a Development Service if it is appropriate to the needs of borrowers in the applicable market and type Financial Products offered by the certification applicant.

6. Non-Governmental Entity Criteria:

Question (a) What minimum levels of government support for an entity’s operations (e.g. funding and capitalization) or governmental involvement in an entity’s lending or investment decisions (e.g. underwriting criteria or loan approval) should be considered acceptable for certification?

The members of CDBA encourage the CDFI Fund to maintain its past practices and standards with respect to ensuring that government entities do not control, through representation or otherwise, the decision making power of CDFIs. We believe that the

CDFI Fund's certification standards and application have been effective. We also believe that receipt of government funds for operations or capitalization does not constitute "control" provided the CDFI maintains independent decision making power.

Question (b): Should governmental "operations support" and government "involvement in lending and investment decisions" be considered separately or should evidence of both be required in order to deem an entity as having failed to satisfy the non-governmental entity criteria.

As discussed above, receipt of government funds for operations do not constitute control of a CDFI or its decision making process per se and should be considered separately from government involvement in lending and investment decisions. CDFIs should retain independent decision making authority particularly with respect to lending and investment decisions to ensure the transactions make good financial sense and a funding decision is not motivated by political considerations. If a governmental entity directs or has formal authority to influence the lending or investment decisions of a certification applicant, it should be deemed to fail the criteria.

7. CDFI Certification Application Process:

Question (a): Should an electronic, web-based CDFI certification application process be implemented and if so, should a paper application continue to be accepted?

We encourage the CDFI Fund to develop an electronic, web-based certification application on a trial basis only – but maintain the paper based application indefinitely. Several years ago (FY 2003) the CDFI Fund developed its own customized web-based Financial Assistance application. The system proved to be highly unwieldy and wrought with technical problems. The CDFI Fund quickly abandoned the electronic application. Our greatest caution in moving to an electronic application is that it not make the certification process too rigid and unable to take into consideration the many qualitative aspects of what CDFIs do and how they serve their communities.

Question (b)(i): Should CDFI certification status extend for a fixed period of time before it expires? If so, is three (3) years an appropriate decision?

Per our September 21 letter we have concerns about the CDFI Fund's capacity to manage the recertification of nearly 800 CDFIs on an ongoing basis given its limited staffing resources. The letter outlines some ideas or suggestions to help make the certification process more manageable. CDBA recommends that certification status should be granted for a fixed period of time only and believes that five years is a reasonable period of time for renewal.

Question (b) (ii): Should CDFI certification be continued indefinitely if the certified CDFI does not request an award from the CDFI Fund?

Regardless of whether or not a certified CDFI requests an award, they should be subject to periodic reviews of their status as a CDFI. As discussed above, the CDFI certification

has become an important symbol that defines and distinguishes CDFIs within the larger financial services industry.

Question (b)(iii): Is there any policy justification to designate different certification period for different types of organizations? If so, how long should certification periods be for specific types of organizations?

CDBA would urge that all types of CDFIs be treated uniformly with respect to the frequency of certification reviews.

Question (c): What should be the primary components of a recertification process?

We believe that the recertification process should be as streamlined as possible for organizations seeking renewals. Given the large volume of transactions that insured banks and thrifts engage in relative to other types of CDFIs, we recommend the CDFI Fund develop a sampling methodology to assess the extent to which a CDFI certified bank or thrift serves its target market. Furthermore, it is recommended that the CDFI Fund better integrate its programmatic and monitoring data collection systems with the certification process to reduce paper work. These ideas are more fully discussed on our September 21 letter.

We thank you for the opportunity to comment on the CDFI Fund's certification and recertification process. As noted, certification is an important symbol that defines and distinguishes CDFIs within the larger financial services industry and provides recognition and credibility to our work with all of our stakeholders.

If you have any questions or comments, please contact Jeannine Jacokes, Senior Policy Advisor, to CDBA at (202) 689-8935 ext. 22.

Sincerely,



Robert McKean
Board Chairman



1801 K Street, NW, Suite M-100 • Washington, DC 20006-1301
202/689-8935 x 21 - phone • 202/689-8938 - fax

August 14, 2008

Ms. Donna Gambrell
Director
Community Development Financial Institutions Fund
U.S. Department of Treasury
601 – 13th Street NW, Suite 200 South
Washington DC 20005

Dear Director Gambrell:

On behalf of the members of the Community Development Bankers Association (CDBA), we write to recommend revisions to the Community Development Financial Institutions (CDFI) Certification application published in the Federal Register on February 4, 2008.

On September 21, 2007 and February 25, 2008, CDBA submitted comment letters to the CDFI Fund recommending changes in the CDFI Certification requirements and process. We strongly encourage you to take the views outlined in these letters into consideration when promulgating new Certification regulations. We are concerned that the draft Certification application may not adequately capture the type of information needed to adopt some of the recommendations made by CDBA.

In addition to reviews outlined in our previous letters, we strongly urge you to adopt the following recommendations when you amend the Certification application and any regulatory changes:

1. General Recommendations

Recommendation: Create a Streamlined Application for Recertifying CDFIs

A streamlined Re-Certification application should be available to those that have previously obtained CDFI Certification status and have successfully operated as CDFIs. We believe the data collection requirements of the draft Certification application are redundant, therefore unnecessary for existing CDFIs – particularly those that have applied and/or report transaction level data under the Bank Enterprise Award Program or any component of the CDFI Program. As noted in our September 2007 letter, a rapidly growing CDFI industry coupled with CDFI Fund's resource constraints have resulted in a Certification and Re-Certification process that has been unable to keep up with industry expansion. We recognize that the CDFI Fund has addressed some of its personnel shortages, but we believe the scope of the effort needed to Recertify 800+ CDFIs and certify new CDFIs, will continue to far outstrip the capacity of the agency to respond in a timely fashion. We believe a streamlined Re-Certification application could help address these concerns.

Recommendation: Create Certification and Recertification application(s) tailored by CDFI business model type

We are concerned that the proposed Certification application is tailored principally to the needs of small and mid-sized non-regulated CDFIs versus regulated CDFIs (banks, thrifts and credit unions) engaged in larger volumes of activity. The loan volume of regulated institutions versus nonprofit loan funds is much larger. Creation of different applications and data collection requirements tailored to CDFIs using different business models (e.g. banks, credit unions, loan funds, venture funds) and that operate at different scales may be most appropriate to achieve the purposes of the CDFI Fund's authorizing statute.

2. Legal Entity Recommendations:

We recommend eliminating duplication in data collection related to organizational documents as discussed below:

Petitioners: The proposed application asks Certification petitioners to select from a list of organizational documents (e.g. bylaws, articles of incorporation) which evidence a primary mission of community development and attach copies of such documents in their applications. We recommend the CDFI Fund: (a) clarify the minimum number of documents that petitioners need to submit; (b) allow all supporting documentation to be sent in electronic media; and (c) eliminate the requirement that petitioners resubmit organizational documents that were previously submitted in connection with a prior Certification or funding application. If amendments have been made to a Recertifying CDFI's organizational documents since the last time they were Certified or Re-Certified, only the amendments should be submitted. If no changes have been made, petitioners should sign a statement that they have made no material changes to their organizational documents.

Subsidiaries & Affiliates: The proposed application asks petitioners to submit full copies of organizational documents for all subsidiaries and affiliates. In the case of petitioners that have been previously Certified, we recommend that resubmission of this information be eliminated. If amendments have been made to the organizational documents of an affiliate or subsidiary of a Recertifying CDFI, only the amendments should be submitted. If no changes have been made, petitioners should sign a statement that they have made no material changes to their organizational documents.

Regulators: The draft application asks regulated petitioners to indicate their Federal or State regulator. Most CDFI banks have multiple bank regulators depending on the nature of their charter and scope of activities. The application should clarify whether banks should list all regulators or only their primary regulator.

3. Primary Mission Test Recommendations:

Product Table: We strongly urge you to eliminate the proposed new Product Table from the application. Certification and Re-Certification applications and regulations must allow CDFIs to be market-driven and respond to opportunity. The Product Table offers a very static picture of the products offered by a CDFI at the time it submits its application

and is highly likely to be quickly outdated. Such a data collection requirement in the Certification application could make CDFIs feel that they cannot change their product mix lest they risk losing their status as a Certified CDFI. We believe the Product Table adds unnecessary paperwork and reporting burden without direct relevance to the purposes articulated in the CDFI Fund's authorizing statute.

Non-Community Development Activities: We recommend that greater clarity or guidance be provided on how the CDFI Fund will consider the activities of subsidiaries or affiliates that do not have an explicit community development focus (e.g. serving non-domestic markets, promoting environmental or other causes, offering products and services outside of the Target Market, such as consulting, private banking, selling non-banking products).

4. Target Market Test Recommendations:

The Target Market test presents great challenges for regulated CDFIs engaged in originating loans on a broader scale than the majority of CDFIs that are unregulated loan funds. As CDFIs grow the volume of transactions in which they engage, the complexity of collecting data expands exponentially. A new Re-Certification application and amended regulations should not inhibit CDFIs' ability to retain their Certification status or discourage new regulated entities from seeking Certification because the data collection process is too cumbersome or costly.

60% Test: As noted in our September 2007 and February 2008 letters, CDBA strongly believes that all CDFIs must maintain a strong commitment to mission and serving their Target Markets. We have previously recommended that the CDFI Fund: (1) revisit the 60% Target Market service requirement for CDFI banks and thrifts; and (2) conduct additional analysis that will help identify the characteristics that distinguish them from traditional banks. The 2007 study by the National Community Investment Fund raises some critical questions about how the Target Market test is applied to CDFI banks and thrifts and its results suggest that a different standard and/or more sophisticated methodology for meeting the Target Market test may be more appropriate. A new standard or process may translate into a need to collect different types of data than may be covered by the proposed application.

Target Market Designation: CDFIs need to be market driven and have the flexibility to respond to changing demand within their communities, as well as be able to grow and have greater impact. We believe the manner in which the CDFI Fund implements the Target Market requirements needs to be dynamic – rather than static. We are concerned that the long standing requirement that petitioners pre-select Investment Area(s) may have the unintended effect of inhibiting the ability of CDFIs to grow and serve needy geographies or populations beyond those initially designated as their Target Market(s) lest they risk losing their Certification status. We recommend that after a CDFI has been Certified, any transaction they originate or services they provide that are located in a geographic unit that meets the CDFI Fund's Investment Area criteria or serves a Low Income Targeted Population or Other Targeted Population, be considered "safe harbor" activities. Safe harbor activities would count favorably toward meeting the Target Market test.

Target Market Maps: If the CDFI Fund wishes to continue to require petitioners to produce Target Market maps for all Investment Areas served, we recommended that significant investments be made to improve the information technology infrastructure of the mapping features of the myCDFI website. The current site is highly user unfriendly, slow, unreliable, and has not kept pace with GIS software available commercially.

Target Market Table: We have the following questions and/or recommend the following clarifications to the draft Target Market Table:

- What type of activity should be reported? Is the CDFI Fund seeking: (1) total number and dollar amount of loans originated; (b) total number and dollar amount of loans outstanding for loans originated during the reporting periods; (c) total number and dollar amount of loans outstanding in the entire portfolio; and (d) or something else? Please note, we strongly discourage the CDFI Fund from determining Certification based on the whole portfolio of loans outstanding since it will create significant paperwork and information systems problems for older loans originated prior many CDFIs having systems to track and geo-code transactions using the CDFI's Fund's criteria.
- The Target Market Table asks petitioners to report "Estimated Values." What does this mean (e.g. estimated value of collateral pledged as security to loans, the dollar amount of loans originated, the dollar amount of loan outstanding)? Please note, we strongly discourage the CDFI Fund from requiring CDFIs to track and report the value of pledged collateral as part of the Certification process.
- The Target Market Table asks insured depository institutions to report "deposits/shares." What should be reported and how are deposits counted? Total funds on deposit accepted from a designated Investment Area? If so, this could create unintended barriers to regulated CDFIs using deposits raised from outside of its Target Market(s) (where the money is), but deployed inside a Target Market(s) (where is the money is needed). Asking for the location of bank branches located within an Investment Area or that are convenient to Low Income or Other Target Populations may be a reasonable alternative to capture service provided to eligible Target Markets.
- The Target market Table asks petitioners to report "DS." Does this stand for "Development Services?" If so, what should be reported? Number of customers?
- The application asks petitioners that designate Investment Area(s) to provide a narrative for each designated Target Market. Is this narrative necessary? In the interests of reducing paperwork and streamlining the Certification process, could it be eliminated? Submission of a narrative is duplicative since the economic distress of a particular geography is already established by the fact it meets the Investment Area criteria.
- The draft Target Market table suggests that a Certification petitioner report data based on its most recently completed fiscal year and its year-to-date activity. Historically, a petitioner was asked to report data based on its three most recently completed fiscal years. The Target Market test was determined based on whether at least 60% of the petitioner's activities averaged over three years were targeted to eligible Target Markets. Given that demand can significantly shift in any given fiscal year, could petitioners be given the option of meeting the Target Market test based on either method?

- Could loans to CDFIs or deposits made into CDFI credit unions be counted toward the 60% threshold?

5. Financing Entity Test Recommendation:

The members of CDBA believe the draft application's Financing Entity Test requirements for banks, thrifts, and depository institution holding companies seeking Certification or Re-Certification are acceptable. No changes are recommended.

6. Development Services Test Recommendation:

The members of CDBA believe the draft application's Development Service Test requirements for banks, thrifts, and depository institution holding companies seeking Certification or Re-Certification are acceptable. While no changes are recommended, we have concerns about the practical challenges faced by CDFIs in collecting data or estimating the number of customers that receive technical assistance. One-on-one counseling is the cornerstone of our Development Service activities because they are tailored to the unique needs of each customer. Delivery of such a service, however, is often very informal, making data collection or estimation of the number of customers served challenging.

7. Accountability Test Recommendation:

The members of CDBA do not have any specific concerns about the data collection requirements in the Accountability section of the proposed application. We do, however, have great concern about the minimum standards that may be set concerning the number or portion of Board members that must be residents and/or otherwise located in designated Investment Area(s) and/or representatives of Low Income or Other Target Populations. As CDFIs grow, their governance and expertise needs change. They may be serving larger geographies and/or targeting an evolving mix of neighborhoods. The Accountability Test needs to remain highly flexible and assess the needs of the community and what is needed for each CDFI to maintain sustainability. It is important to note that CDFI banks and thrifts must also satisfy the expectations of regulators regarding the governance and accountability of their boards of directors. These standards differ from the CDFI Fund's requirements and impose limitations on the flexibility of CDFI banks and thrifts to elect Board members that represent target or low income markets.

8. Non-Government Entity Test Recommendation:

The members of CDBA believe the draft application's Non-Government Entity Test requirements for banks, thrifts, and depository institution holding companies seeking Certification or Re-Certification are acceptable. No changes are recommended.

Thank you for consideration of our views. We are pleased to discuss any of these proposals further.

Sincerely,

A handwritten signature in black ink, appearing to read "R. McKean". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Robert McKean, Chairman
On behalf of the Board of Directors of CDBA

cc: Ms. Linda Davenport
Mr. Christopher Stever

10-19-95
Vol. 60 No. 202

Thursday
October 19, 1995

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54126 Federal Register / Vol. 60, No. 202 / Thursday, October 19, 1995 / Rules and Regulations**§ 1805.906 Conflict of interest requirements.**

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Development Investments) available to an Insider unless it meets the following restrictions:

- (i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;
- (ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;
- (iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and
- (iv) For credit of \$10,000 or more, the Awardee shall provide written notice to the Fund at least 30 days prior to initial disbursement and shall receive written approval from the Fund prior to any disbursement.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Development Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.907 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms as are defined in 31 U.S.C. 1352.

§ 1805.908 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Awardees and Insiders.

§ 1805.909 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.910 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.911 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

PART 1806—BANK ENTERPRISE AWARD PROGRAM**Subpart A—General Provisions**

Sec.

- 1806.100 Purpose.
- 1806.101 Summary.
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- 1806.300 Award Agreement; sanctions.
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- 1806.305 Retention of records.

Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104-19, 109 Stat. 237 (12 U.S.C. 4703 note).

Subpart A—General Provisions**§ 1806.100 Purpose.**

The purpose of the Bank Enterprise Award program is to encourage insured depository institutions to make Equity Investments and engage in Eligible Development Activities.

§ 1806.101 Summary.

(a) Under the Bank Enterprise Awards Program, the Fund makes awards to selected Applicants that:

- (1) Invest in Community Development Financial Institutions;
- (2) Increase lending activities within Distressed Communities; or
- (3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria. Applicants are selected to participate in the program through a competitive application process. Generally, awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

- (1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);
- (2) Received assistance from the Community Development Financial Institutions Program within the preceding 12-month period; or
- (3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and loans provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

(c) *CDFI certification.* Any entity receiving a CDFI certification under § 1805.201 of this chapter within two years of the filing an application for a Bank Enterprise Award shall qualify as a CDFI for the purposes of this part. If an Applicant is proposing to make an

Equity Investment in an entity that has not been certified as a CDFI, the application submitted by the Applicant under this part shall include a letter from the entity requesting certification and the information described in § 1805.701(b) of this chapter.

§ 1806.103 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.);

(b) *Agricultural Loan* means a new origination (including refinancing) of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);

(c) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(e) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability (NOFA) in which an Applicant will carry out Qualified Activities;

(f) *Award Agreement* means a contract between the Fund and an Awardee pursuant to § 1806.300;

(g) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(h) *Bank Enterprise Award* means an award made to an Applicant pursuant to this part;

(i) *Bank Enterprise Award Program* means the program authorized by section 114 of the Act and implemented under this part;

(j) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(k) *Business Loan* means a new origination (including refinancing) of a loan used for commercial or industrial activities (other than an Agricultural Loan, Commercial Real Estate Loan, Multi-Family Loan or Single Family Loan);

(l) *Commercial Real Estate Loan* means a new origination (including refinancing) of a loan (other than a Multi-Family Loan or a Single Family Loan) used to finance:

(1) Construction and land development; or

(2) Commercial real estate in amounts of more than one million dollars and which is secured by real estate;

(m) *Community Development Financial Institution* (or *CDFI*) means an entity certified under § 1805.201 of this chapter and that meets the eligibility requirements under § 1805.200 of this chapter;

(n) *Consumer Loan* means a new origination (including refinancing) of a loan to one or more individuals for household, family, or other personal expenditures;

(o) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200;

(p) *Eligible Development Activities* means activities described in § 1806.201(b)(4) that are carried out by the Applicant or its Subsidiary;

(q) *Equity Investment* means new financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a stock purchase, a grant (excluding grants used to support operating costs), or a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency);

(r) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, and other services as may be specified by the Fund;

(s) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) of the Act (12 U.S.C. 4703(a));

(t) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund);

(u) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporation, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(v) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the

Secretary of Housing and Urban Development with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

(w) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949-1953 Comp., p. 758), as amended;

(x) *Multi-Family Loan* means a new origination (including refinancing) of a loan secured by a five- or more family residential property;

(y) *Qualified Activities* means Equity Investments and Eligible Development Activities;

(z) *Resident* means an individual domiciled in a Distressed Community;

(aa) *Single Family Loan* means a new origination (including refinancing) of a loan secured by a one-to-four family residential property;

(bb) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation; and

(cc) *Unit of General Local Government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State or Commonwealth of the United States, or general purpose subdivision thereof, and the District of Columbia.

§ 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notice of granted waivers in the *Federal Register*.

§ 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control

number 1505-0153 (expires September 30, 1998).

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out Eligible Development Activities, or Equity Investments that support efforts of a CDFI in a Distressed Community, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the minimum area eligibility requirements contained in this paragraph.

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(iii)(A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) Is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as determined by the U.S. Bureau of the Census in the 1990 decennial census; and

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* Upon request, the Fund will provide a prospective Applicant with data to help it identify areas eligible to

be a Distressed Community. A prospective Applicant may contact the Fund prior to filing an application to determine if an area meets the minimum area eligibility requirements.

§ 1806.201 Qualified Activities.

(a) *Equity Investment.* An Applicant may receive a Bank Enterprise Award for making an Equity Investment during an Assessment Period.

(b) *Eligible Development Activities.*—
(1) *General.* An Applicant may receive a Bank Enterprise Award for carrying out Eligible Development Activities during an Assessment Period.

(2) *Service.* The Eligible Development Activities listed in paragraphs (b)(4)(i) through (vii) of this section must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(i) Undertaken in the Distressed Community; or

(ii) Provided to Low- and Moderate-Income Residents or enterprises integrally involved in the Distressed Community.

(3) *Priority factors.* Each Eligible Development Activity is assigned a priority factor. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity.

(4) *Eligible Development Activities.* Eligible Development Activities are listed in this paragraph with their corresponding priority factors:

(i) Consumer Loans (priority factor=1.2);

(ii) Commercial Real Estate Loans (priority factor=1.6);

(iii) Single Family Loans (priority factor=1.4);

(iv) Multi-Family Loans (priority factor=1.6);

(v) Business Loans and Agricultural Loans of \$100,000 or less (priority factor=1.9);

(vi) Business Loans and Agricultural Loans of more than \$100,000 through \$250,000 (priority factor=1.8);

(vii) Business Loans of more than \$250,000 through \$1,000,000 and Agricultural Loans of more than \$250,000 through \$500,000 (priority factor=1.7);

(viii) Deposit liabilities in the form of savings or other demand or time accounts accepted from Residents at offices located within the Distressed Community (priority factor=1.0);

(ix) Financial Services provided to Low- and Moderate-Income persons in the Distressed Community or provided to enterprises integrally involved in the Distressed Community (priority factor=1.2);

(x) Provision of technical assistance to Residents in managing their personal finances through consumer education programs (either sponsored or offered by the Applicant) (priority factor=1.4);

(xi) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community (priority factor=1.4);

(xii) Provision of technical assistance to, or servicing the loans of, Low- and Moderate-Income home owners and home owners located in the Distressed Community (priority factor=1.4); and

(xiii) Grants used to support the operating costs of, new origination (including refinancing) of loans to, or technical assistance provided to:

(A) A CDFI that supports efforts in the Distressed Community (priority factor=2.2); and

(B) Any other CDFI (priority factor=2.0).

§ 1806.202 Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline and Assessment Periods will be used in determining award amounts. Applicants shall report their activities in all categories of Qualified Activities for the Baseline and Assessment Periods. The dates of the Baseline Period and the Assessment Periods will be published in the NOFA for each funding round.

(b) *Value.* The Fund will assess the value of:

(1) Equity Investments, loans and grants at the original amount of such investments, loans or grants;

(2) Deposit liabilities at the face dollar amount of monies deposited; and

(3) Financial Services and technical assistance based on the administrative costs of providing such services.

(c) *Reporting.* An Applicant shall report Qualified Activities:

(1) That were carried out during the Baseline Period; and

(2) Proposed to be carried out during the Assessment Period.

§ 1806.203 Estimated award amounts.

Award amounts will be determined at the sole discretion of the Fund and estimated as described in this section.

(a) *Equity Investments.* The estimated award amount for an Equity Investment will be equal to 15 percent (or such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment

between the Baseline and Assessment Periods.

(b) *Eligible Development Activities.* The estimated award amount for Eligible Development Activities will be calculated as follows:

(1) *Step 1.* For each type of Eligible Development Activity, subtract the value in the Baseline Period from the estimated value for the Assessment Period to yield a remainder;

(2) *Step 2.* Multiply the remainder for each Eligible Development Activity by the assigned priority factor to yield a weighted value for each activity;

(3) *Step 3.* Add the weighted values for deposit liabilities and Financial Services to yield a service score;

(4) *Step 4.* Add the weighted values for all other categories of Eligible Development Activities to yield a development score. If the development score is negative, an Applicant will be ineligible to receive a Bank Enterprise Award. If the development score is positive, go to Step 5;

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score. (The Act prohibits an Applicant from receiving more assistance for its deposit taking activities than for other Qualified Activities.);

(6) *Step 6.* Add the service score (or adjusted service score if applicable) and the development score to yield a total score; and

(7) *Step 7.* If the Applicant is:
(i) A CDFI, multiply the total score by 15 percent to yield an estimated award amount; or

(ii) Not a CDFI, multiply the total score by 5 percent to yield an estimated award amount.

§ 1806.204 Selection process.

(a) *Availability of funds.* All awards are subject to the availability of funds. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

(b) *Priority of categories.*—(1) *General.* The Fund will rank an Applicant's estimated award amount for Qualified Activities according to the following priority categories:

(i) *First priority.* Equity Investments that support efforts of CDFIs in the Distressed Community;

(ii) *Second priority.* Other Equity Investments; and

(iii) *Third priority.* Eligible Development Activities.

(2) *Ranking among categories.* All Applicants in the first priority category

will be selected as Awardees before Applicants in the second priority category, and Applicants in the second priority category will be selected as Awardees before Applicants in the third priority category. Selections within each priority category will be based on the relative rankings within such category, subject to the availability of funds.

(3) *Combined awards.* If an Applicant receives an award for more than one priority category described in paragraph (b)(1) of this section, the award amounts will be combined into a single Bank Enterprise Award.

(c) *Ranking Equity Investments.* Estimated awards for Equity Investments will be ranked within each applicable priority category based on the extent to which an Applicant proposes to reduce the percentage used to calculate its award amount (e.g., an Applicant that chooses to reduce its award to 13 percent will be ranked higher than an Applicant that reduces its award to 14 percent). For Applicants that propose the same percentage, estimated awards will be ranked by the ratio of the proposed Equity Investment to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(d) *Ranking Eligible Development Activities.* Estimated awards for Eligible Development Activities will be ranked by the ratio of the total score to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of the submission of an application. If the ratios of two Applicants are the same, the estimated awards will be ranked based on the degree of the poverty of each Applicant's Distressed Community.

§ 1806.205 Actual award amounts.

(a) *General.* The Fund will assess an Applicant's success in achieving the Qualified Activities projected in its application. The extent of such success will be measured based on the activities that were actually carried out during the Assessment Period. Subject to § 1806.204, the actual award amount that an Awardee shall receive will be equal to the estimated award previously calculated and (if necessary) adjusted pursuant to this section.

(b) *Substantial achievement.* If an Awardee carries out 90 percent or more of its projected activities, it will be deemed to have substantially achieved those activities. Such Awardee will receive the full estimated award amount.

(c) *Partial achievement.*—(1) *General.* If an Awardee carries out less than 90 percent but at least 75 percent of its projected Qualified Activities, it will be deemed to have partially achieved those activities. In such cases the Fund may, in its sole discretion, provide a partial award based upon (among other things) the Awardee's satisfactory explanation for its failure to substantially achieve the activities projected in its application. Any estimated award amount will be adjusted on a pro rata basis to reflect the activities actually performed.

(2) *Adverse change in condition.* In the case of an adverse change in national or regional economic conditions, the Fund may adjust the percentages used to define partial achievement.

(d) *Non-achievement.* If an Awardee does not satisfy the conditions necessary for substantial or partial achievement, it will be ineligible to receive any award amount.

(e) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) Using the calculation and selection process contained in this part—

(i) To increase an award amount of an Awardee for achievement in excess of the projected Qualified Activities; or
(ii) To select Applicants not previously selected;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

§ 1806.206 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability.* An Applicant shall submit an application for a Bank Enterprise Award in accordance with this section and the applicable NOFA published by the Fund in the **Federal Register**. The NOFA will advise potential Applicants on how to obtain an application packet and will establish submission deadlines. The NOFA also will establish any other requirements or restrictions applicable for the funding round including any restrictions on award amounts. After receipt of an application, the Fund may request clarifying or technical information on materials submitted as part of such application.

(b) *Application contents.* Each application must contain the information required in the application packet, which may include:

(1) A completed Bank Enterprise Award Rating and Calculations worksheet;

(2) A narrative description of each of the Qualified Activities expected to be performed in the Assessment Period;

(3) If applicable, a completed Distressed Community Designation worksheet and a map and narrative description of the Distressed Community;

(4) If applicable, a narrative description of each CDFI that the Applicant proposes to provide an Equity Investment in and the amount, terms, and conditions of the investment;

(5) The asset size of the Applicant, as reported in its most recent Report of Condition or Thrift Financial Report to its Appropriate Federal Banking Agency;

(6) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter; and

(7) Certifications that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

Subpart C—Terms and Conditions of Assistance

§ 1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Shall comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the Award and pursue any other available legal remedies.

(c) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.301 Records, reports and audits of Awardees.

(a) At the end of an Assessment Period, each Awardee shall submit to the Fund:

(1) *Worksheet.* A Bank Enterprise Award worksheet that reports the Qualified Activities actually carried out during the Assessment Period;

(2) *Estimate of benefits.* An estimate of the benefits generated within the Distressed Community by the Qualified Activities that were carried out during the Assessment Period, as measured by the:

(i) Number of jobs created or retained;

(ii) Type of new financial and technical assistance services available;

(iii) Number and type of businesses created and retained;

(iv) Number of home owners assisted;

(v) Number of affordable housing units financed;

(vi) Number and type of new deposit accounts opened at offices located within the Distressed Community; and

(vii) Other measures deemed appropriate by the Awardee that convey the nature or extent of the benefits created by the Qualified Activities; and

(3) *Certification.* A certification that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period.

(b) *Additional information.* At the request of the Fund, the Applicant shall make available any records necessary to assess the validity of the information provided to the Fund.

§ 1806.302 Compliance with government requirements.
In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, state and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

§ 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United

States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilitates and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, DC 20503.



November 24, 2009

The Honorable Timothy Geithner
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington DC 20220

The Honorable Karen Mills
Administrator
U.S. Small Business Administration
409 3rd Street, SW
Washington DC 20416

Dear Secretary Geithner and Administrator Mills:

On behalf of the members of the Community Development Bankers Association (CDBA), we commend you for your efforts to bring attention to the critical issues faced by small business amidst this economic recession and credit crunch. In particular, we are grateful for your interest in ensuring that businesses in low income communities have access to the resources they need to create jobs and opportunities for residents. Community Development Financial Institutions (CDFIs) are focused on serving these markets and are eager to expand our participation in the programs of the U.S. Department of Treasury and Small Business Administration (SBA) as a means of creating jobs and promoting economic recovery.

CDBA is the national trade association of the CDFI Bank sector. CDFI banks are FDIC-insured banks and thrifts that have a primary mission of promoting community development. Our members serve urban and rural communities that lack access to credit and are not adequately served by the traditional banking industry. Our members deliver credit and technical assistance to borrowers in a responsible manner that fits their needs and long term ability to repay. Our work helps low- and moderate income customers build wealth and assets and revitalize communities. Today there are approximately 64 banks and thrifts across the nation that are certified by the U.S. Treasury Department's CDFI Fund as targeting 60% or greater of their total business activity to low income communities and people.

The following are our recommendations for facilitating access to credit for small businesses and facilitating job creation in low income communities.

Treasury Department Support for CDFIs

TARP for CDFI Banks & Thrifts: Treasury should move expeditiously to launch the recently announced TARP program for CDFI Banks, thrifts and credit unions.

Recommended provisions:

- Investment amount of up to 5% risk weighted assets
- Capital must be provided in the form of Tier 1 equity
- Pricing at 2% per annum for at least 8 years with no warrants
- Treasury must provide clear guidance to regulators about the Obama Administration's intent to maximize participation in program and ensure the vast majority of CDFI banks and thrifts are approved.
- CDFI banks and thrifts already approved for the Capital Purchase Program (CPP) should be allowed to refinance their CPP investments under the new program.

See full recommendations for this initiative attached.

TARP for CDFI Loan Funds: Treasury should work with the CDFI industry to develop mechanisms to allow TARP monies to be utilized by CDFI loan funds to address credit needs in low income communities. Loan funds are important partners for CDFI banks, thrifts and credit unions in many communities and their work should be supported.

CDFI Funding: Congress should increase financial support for CDFIs through increased appropriations and continue to waive the matching funds requirements for the CDFI Program through FY 2011. We propose that Congress provide an emergency "jobs" supplemental appropriations to FY 2010 funding. The new monies could be put to work expeditiously adding new funds to the pool of applications submitted under the FY 2010 funding rounds for the CDFI Financing Assistance and Bank Enterprise Award Programs.

New Markets Tax Credits: Extend the NMTC with \$5 billion in annual allocation authority, modify regulations to facilitate greater financing of operating businesses, and provide AMT relief for NMTC investors. It is critical that the NMTC is extended and the \$5 billion allocation level maintained in order to sustain vital investment that have been made in low income communities thanks to the NMTC. Furthermore, it is important to revise the regulations covering the NMTC to enable this tool to better make investments in operating businesses for machinery and equipment, working capital and lines of credit by providing a safe harbor for NMTC Qualified Low Income Community Investments (QLICs) made for these purposes. Several options to do this have been provided to Treasury by the New Markets Tax Credit Coalition. Finally, we recommend that the IRC be amended to allow NMTC investments to offset the Alternative Minimum Tax (AMT) as is currently the case with investments in Low Income Housing Tax Credits, Historic Tax Credits, and Renewable Energy Tax Credits.

Regulatory Challenges Impairing Small Business Lending

Brokered Deposits: CDFI bank liquidity is being squeezed and the ability to originate business loans is reduced as bank examiners put pressure on CDFI banks to cease or divest of Certificate of Deposit Account Registry Service (CDARS) deposits. Despite acknowledgement by the Federal Deposit Insurance Corporation (FDIC) that CDARS behave similar to core deposits, this product is technically still classified as a brokered deposit. Congress and/or the FDIC need to clarify that CDARS deposits are not brokered.

Regulatory Burdens: As noted by House Financial Services Chairman Barney Frank in his October 29, 2009 letter to the heads of the bank and credit union regulatory agencies, one of the greatest challenges being faced by small financial institutions in keeping credit flowing within their communities is “increasingly stringent directives from regulators that can preclude banks from doing just that.” Chairman Frank’s letter outlined challenges created by field examiners with regard to capital requirements, asset valuation, and other issues. We wholeheartedly support the observations in the letter. We, too, urge the regulatory agencies to apply a “measured approach” to examinations as a means of creating a more stable operating environment that will enable banks and credit unions to continue to lend in their communities.

Small Business Administration Initiatives

The following recommendations are directed at ensuring Small Business Administration (SBA) programs continue to promote access to capital and economic recovery.

- Extend the American Recovery and Reinvestment Act (ARRA) of 2009 provisions that provide a 90% guarantee and eliminate borrower fees for the Small Business Administration’s (SBA) 7(a) loan program.
- Congress should approve an increase in the maximum loan size for SBA’s 7(a) and 504 loan programs. Small business capital needs have increased over the years and the SBA’s loan programs have not kept pace. An increase in maximum loan size from \$2 million to \$5 million is recommended.
- The SBA 7(a) Program should be temporarily amended to allow refinancing of commercial real estate loans to business borrowers that are current on their payments, but where the properties are expected to appraise at loan-to-value ratios of greater than 65%.
- SBA 7(a) loans should be allowed on commercial properties in cases where:
 - A business borrower occupies less than 51% of the facility; and

- There are non-profit tenants (e.g. child care centers, health facilities, charter schools) and government funds provide the major source of repayment on the loan.
- Continue to encourage the SBA's secondary market through initiatives that encourage investors to continue to maintain a healthy wholesale market for the guaranteed portion of SBA loans. These markets are currently functioning. To reduce the risk of a future collapse, the SBA or Treasury should create a portfolio purchase program to instill lender confidence in the secondary markets.
- Increase the maximum loan size from \$35,000 to \$100,000 for the SBA's America's Recovery Capital (ARC) Loan Program. This program is important for helping small businesses in low income communities weather the economic downturn.
- Increase support for the SBA's Small Business Development Centers. During difficult economic times, businesses need clear, relevant advice and technical assistance. This is particularly important for new businesses in economically challenged neighborhoods. Utilization of business best practices clearly improves small business success rates.

We sincerely thank you for the opportunity to participate in the November 18, 2009 Small Business Lending Forum and offer comments on how CDFIs can continue to promote jobs and economic opportunity in low income communities. We believe that CDFIs can and do play a critical role in promoting economic stability and we look forward to the opportunity to continue the dialogue with the Treasury Department and Small Business Administration.

Thank you for consideration of our views.

Sincerely,



William M. Dana, Jr.
CDBA Board Chairman



Jeannine S. Jacokes
Chief Executive and Policy Officer