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March 24, 2010

Ms. Jodie Harris
Associate Program Manager
Community Development Financial Institutions Fund
U.S. Department of the Treasury
601 13th Street, NW, Suite 200 South
Washington, D.C. 20005

RE: Proposed Collection; Comment Request- Bank Enterprise Award Program (BEA)

Dear Ms. Harris:

The American Bankers Association (ABA) welcomes the opportunity to provide comments on the Community Development Financial Institution Fund's (CDFI or Fund) request for comments regarding the proposed collection of information related to the use of the Bank Enterprise Award (BEA) reporting form, Schedule 2-C. The ABA brings together banks of all sizes and charters into one association. ABA works to enhance competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represents over 95 percent of the industry's \$13.3 trillion in assets and employ over 2 million men and women.

The BEA Program is a valuable asset to the insured financial institutions that participate and the distressed communities served. The ABA appreciates the CDFI's desire to improve the program to ensure a positive community effect. The ABA looks forward to working with the CDFI as it implements recent BEA changes including requirements related to the proposed program reporting form. The CDFI has specifically requested comments on the following: (a) whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility?

The ABA first recommends that the CDFI make clear, by way of regulatory amendment, whether an Awardee is required to use the actual received award amount on Qualifying Activities or an amount "equivalent" to the award amount. The ABA further recommends that the CDFI define the meaning of "equivalent." The CDFI uses the term "equivalent" in the Supplementary Information related to the request for comments, the 2009 BEA Program NOFA, and the Award Agreement.¹ However, the term is not found or defined in the actual regulations

¹ Federal Register/ Vol. 75, No. 17, 4450; Federal Register/ Vol. 74 No. 19, (IX) (E), 5788; Bank Enterprise Award Program General Award Terms and Conditions, Article VI, 6.9, 12 (Also see schedule 2-B of the Award Agreement).

governing the Bank Enterprise Award Program and is not defined in the Agreement or NOFA. Moreover, the Award Agreement, in Article I provides that if there is an inconsistency between the Agreement and the regulations, the regulations govern.² Appreciating the deference provided to agencies to interpret their regulations, the ABA recommends that this inconsistency, if only technical, be corrected by adding and defining the term “equivalent” in the regulations. Doing so would provide certainty for Awardees regarding how BEA Program funds should be recorded for accounting purposes. A definition will also make clear whether an Awardee’s use of its own capital towards identified qualifying activities prior to receipt of the Award (but following application) would count as using an amount equivalent to the Award.

As to the issue of the practical utility of the new reporting form, a number of BEA Awardees have participated in the BEA Program year after year. In doing so, Awardees may report BEA Qualifying Activity achieved in the previous Assessment Period as part of the application process. The ABA cautions that the additional reporting burden could serve to make the program less attractive and less of an incentive for past and future Awardees, diminishing the positive effect for targeted communities. To resolve the potential reporting burden, the ABA recommends that CDFI require Schedule 2-C reporting only for those applicants that do not file an application for an Award the following year. Applicants who received an Award for the year immediately preceding the new application should be permitted to report use of Award funds on that application. Awardees that do not file an application the following year would be required to complete Schedule 2-C by an identified due date.

The ABA further recommends that the CDFI make additional amendments to 12 C.F.R. 1806, related to an Awardee’s failure to fully use Award funds. In section 1806.14 of the regulations, the CDFI may waive any requirement of the provisions not required by law, if the Fund determines good cause exists. The Fund provides similar flexibility in the Award Agreement and in the 2009 Program NOFA.³ Due to the new requirement that Awardees use Program funds on Qualifying Activity, the CDFI should establish, through regulatory amendment, that failure to fully disburse Award funds on Qualifying Activities because of economic conditions is per se good cause. A determination of per se good cause due to economic conditions would be made by the Fund in consultation with the Federal Banking Agencies. Such a change would enhance BEA Program participation under the new requirements by eliminating concerns of sanctions should economic conditions prohibit full Award disbursement.

The accuracy of the Agency’s estimate of the burden of the collection of information.

Though it is clear that many Awardees capture the required information anyway, either in anticipation of an application or participation in some other CDFI program, the time required to complete the form would vary depending on institution size, dedicated personnel, and available technology. The additional burden may be of particular concern for smaller banks, who may avoid the program due to the additional reporting and Award use requirements. It is worth noting that the changes made to the Program by way of the new regulations are considerable, and there are additional burdens to consider including the need for Awardees to become familiar with the new protocols governing performance goals and the distribution of Award funds.

² Bank Enterprise Award Program General Award Terms and Conditions, Article I, 1.

³ Schedule 2-B and Schedule 2-D of the Award Agreement; Federal Register/ Vol. 74 No. 19, (IX) (A), 5787.

Ways to enhance the quality, utility, and clarity of the information to be collected.

Schedule 2-C is relatively clear as to the kinds of information the CDFI seeks to discover. However, the ABA is concerned about the “Impact” category required by the form. “Impact” should be more broadly defined or greater flexibility should be provided in reporting. There is particular concern with reporting “impact” related to *Affordable Housing*, *Small Business*, and *Commercial Real Estate Development*.

Affordable Housing Development

Schedule 2-C specifically requests the number of units developed or rehabilitated. The ABA is concerned that Awardees may not be able to accurately reflect the effect of awarded funds if the project is not yet complete. Under such circumstances, the form should seek to capture the Award amount originated by the bank and the *planned or projected* community benefits. Opportunity for project completion impact could be captured on future applications or via an amended Schedule 2-C.

Small Business

When reporting small business impact, the Awardee is required to state the total number of full-time jobs created or maintained by the borrower. To report on this information, the Awardee must rely on data provided by the borrower. The form should reflect that the information provided is what was reported to the Awardee, so as to insulate the Awardee from any future liability or sanctions as to reported data. Furthermore, the form should clarify the meaning of the terms “full-time equivalent jobs” and “maintained,” to ensure standard reporting by all Awardees. Also, depending on when the Award funds are actually originated by the Awardee, “created” impact may be difficult to define. Again, in such cases, it would be appropriate to only identify originated funds and projected effects.

Commercial Real Estate

As indicated under the *Affordable Housing* discussion above, project completion may not coincide with reporting due dates, thus inaccurately capturing actual community benefits. The form should account for projects originated but not yet completed. Opportunity for project completion impact could be captured on future applications or via an amended Schedule 2-C.

Ways to minimize the burden of the collection of information on respondents, including through the use of technology.

The ABA recommends that the Fund consult with the Federal Banking Agencies to determine whether this information could be captured from information already provided on existing examination reports and whether the CDFI could gather such data directly from the banking agencies versus the Awardee. The Fund should further consider, for CDFIs, whether the requested information is otherwise reported through other CDFI reports.

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Actual or estimated costs associated with the new reporting form are difficult to ascertain in that banks participating in the Program already have staff and resources dedicated to application, reporting, and information collection. It will likely take at least the first reporting period under Schedule 2-C to fully understand the actual time and cost burdens associated with the new requirements.

Conclusion

The ABA continues to be supportive of the Bank Enterprise Award Program (BEA) and the benefits the Award funds provide for communities across the country. Community banks and insured deposit CDFIs successfully use the Program to leverage community development investments.

In response to concerns raised by the Office of Management and Budget (OMB), CDFI has implemented a number of changes that could negatively affect bank participation, and therefore reduce overall community benefit. The ABA recognizes the CDFI's efforts to minimize the effect of these new requirements, but would ask the CDFI to adopt the changes recommended in this comment. The ABA looks forward to working with the CDFI as it grows the BEA Program and appreciates the opportunity to submit comments regarding the new reporting form. Please contact Vincent Barnes at 202-663-5230, vbarnes@aba.com, for additional information, or to further discuss the above made recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Pigg". The signature is fluid and cursive, with a large initial "J" and a stylized "P".

Joseph Pigg
Vice President and Sr. Counsel
Housing and Real Estate Finance