American Bankers Association

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Mr. Scott Berman
Acting Chief Operating Officer
CDFI Fund, U.S. Department of the Treasury
601 13th Street, NW, Suite 200 South
Washington, DC 20005

RE: Community Development Financial Institutions Fund Request for Comment: Community Development Financial Institutions Fund, Community Development Financial and Technical Assistance Awards, Native Initiatives, and Bank Enterprise Awards

Dear Mr. Berman:

The American Bankers Association (ABA) welcomes the opportunity to provide comments on the Community Development Financial Institution Fund's (CDFI or Fund) review of its authorizing statute. The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

The work of the CDFI continues to strengthen communities of need via the Fund's programs, including initiatives like the Bank Enterprise Award Program that encourages regulated depository institutions to leverage capital for investments in America's underserved neighborhoods. In fiscal year 2009, insured depository institutions received approximately $22 million in award funds, but provided over one-half billion dollars in qualified loans, investments, financial services, and technical assistance in distressed communities.[1] The dollars invested are evidence of the CDFI's success since it was created by the Riegle Community Development and Regulatory Improvement Act of 1994, and is further evidence of the commitment of insured depository institutions to work with the CDFI in building neighborhoods around the United States, its territories, and the District of Columbia.

As part of its review commemorating fifteen years of service, the CDFI has requested specific comments on the ***Community Development Financial Institution Fund, Community Development Financial Institution Awards, CDFI Training, Capitalization to Enhance Liquidity, Native Initiatives, Bank Enterprise Awards, the Small Business Capital Enhancement Program***, and other comments in general, regarding the Fund and its authorizing statute. The ABA's response is as follows:

<u>Community Development Financial Institution Fund</u>

Community Advisory Board

In as much as the function of the Community Advisory Board is to advise the CDFI Administrator and the Fund on Fund policies, the ABA recommends that the Board reserve three

[1] CDFI Performance and Accountability Report- FY 2009, 26.

seats for the banking industry, each representing banks of different asset size. Alternatively, the two existing Board seats should include a mix of asset size. By including smaller and larger banks as part of the Advisory Board make-up, the CDFI increases the diversity of its input while also tapping into the capital and expertise of larger institutions, all to the benefit of communities served.

The ABA also believes that the Community Advisory Board would be more effective in its function if it contained geographic diversity and a larger compliment of practitioners. The Fund and certified institutions benefit when the CDFI is properly advised from a cross-section of geographical interest and by those who know and do the work of qualifying institutions in communities of need.

<u>Community Development Financial Institutions Awards</u>

Definitions

The CDFI seeks comments on various definitions in the Act, and inquires whether definitions should be consistent throughout all CDFI programs. A number of government agencies define low-income, with many adopting the 80 percent of median standard, which is an acceptable definition for the ABA. However, the ABA encourages definition consistency throughout all CDFI programs, which would make it easier for banks to anticipate program requirements. Definition and program predictability would reduce the reporting burden and increase bank participation. That said, the ABA recommends that the Fund continue its focus on targeting low-income families and individuals living in communities of need.

Certification

The safety and soundness of the CDFI system is paramount to the success of the Fund, and the ABA commends the CDFI on its efforts to strengthen Fund institutions. It is important that all Fund participants operate in a safe and sound manner. It is also important that all participants face a level playing field. Insured depository institutions are already subject to strict safety and soundness requirements and are regularly examined for compliance by the Federal banking regulators. As the Fund considers additional safety and soundness standards on CDFIs, depository institutions should not be examined or supervised by the Fund. Instead, as required under present law, the Fund should request necessary financial information from the banking regulators. See 12 USC 4707(h) and 12 USC 4745.

Holding Companies

The purpose of the Act "is to create a Community Development Financial Institutions Fund to promote economic revitalization and community development".[2] Currently the Fund enforces a rule which treats all entities under a holding company as part of the same institution, limiting Fund awards to separate entities of the same holding company. The ABA believes that this rule inhibits participation and the leveraging of resources, leaving millions if not billions of community development capital on the sidelines.

Ideally, certification for depository institution holding companies, subsidiaries, and affiliates should depend on whether the entity otherwise meets the requirements for CDFI designation, e.g.,

[2] 12 USC 4701 (b).

has a primary mission of promoting community development; serves an investment or targeted area; provides development services in conjunction with equity investments and loans, etc. (*see 12 USC 4702 (5)*), which would allow for lifting the collective restriction, and the creation of safe and sound insured CDFIs specifically designed to serve distressed and underserved areas.

However, the world is not ideal, and the ABA remains concerned about the impact on small CDFIs should the restriction be lifted. Therefore, the ABA recommends that the Fund study the implications of lifting the restriction, to determine the impact the action would have on all CDFIs, and the potential benefit to targeted communities. The Fund should also consider whether safeguards such as geographical and institutional diversity standards would be appropriate, and whether the Fund should further impose safety and soundness standards similar to those required by insured banks.

Geographic and Institutional Diversity

The majority of insured depository institutions in the United States are community banks, many of which serve small towns and rural communities. Additionally, rural areas often face the same challenges related to poverty and high unemployment as heavily populated metropolitan neighborhoods. New definitions adopted by the Fund should ensure that communities and their residents are not excluded because the identified geographic area is too small or too large. Also, the Fund should consider other definitional purposes for it programs, including categories directly impacting senior citizens and persons with disabilities who live in targeted rural and urban communities.

When considering institutional diversity, the ABA believes that the existing program structure effectively includes and encourages participation from different regions of the country. For this reason, the Fund should not seek to establish program preferences, unless one is specifically designed in the program itself, such as the Bank Enterprise Award Program (BEA). The purpose of the Act, to deploy capital into targeted communities to create revitalization and community and economic development, should be the primary function of CDFI awards, without establishing preferences.

Financial Assistance

Insured depository CDFIs have a number of tools to leverage capital for the purpose of developing communities. However, because deal and capitalization structures used by banks may not look like traditional proposals of non-banks, reviewers may overlook the value and impact of Financial Assistance (FA) applications of insured CDFIs. The ABA recommends that the Fund ensure that at least one-third of FA application reviewers are from insured banks or are insured-CDFIs.

That said, providing capital and technical assistance to build and buy homes, start small businesses, develop commercial facilities, and to begin savings, are all necessary to improve economies in targeted communities. However, many residents in underserved and distressed areas do not have access to education directly related to investments in stocks and bonds and other investment products often reserved for more sophisticated investors. These types of investments can be a useful tool for tackling issues of poverty. A purposeful focus in this area by the Fund would be an incentive to create CDFIs specifically designed to increase investments in equities, resulting in the development of wealth building strategies to reduce poverty.

The Fund also proposes to mandate financial education as a condition to receiving a CDFI award. The ABA strongly supports consumer financial education, and ABA member banks are committed to financial literacy initiatives targeted to teach adults and school aged children. However, any mandated financial education would require compliance verification and reporting, causing an additional regulatory burden on insured and non-insured CDFIs alike. The additional regulatory burden would have the result of discouraging participation in CDFI initiatives, particularly for insured banks. A more positive approach would be to create incentives, including financial incentives, to encourage financial education when allocating CDFI awards.

Award Caps

The primary mission of the Fund is to deploy capital into targeted communities to create revitalization and community and economic development. Award caps serve the opposite purpose by restricting otherwise successful CDFIs when there continues to be a community need. When a CDFI reaches an identified limit, the certified institution should be able to qualify for an exception based on designated criteria, such as the lack of other CDFIs in the area, the ability of other CDFIs to meet the community's needs, and the financial soundness of the CDFI applying for the exception.

Again, ideally, funding of parent companies, subsidiaries and affiliates should be awarded and accumulated separately, while also accounting for the safety and soundness of each. However, recognizing the risks of a single collective receiving a disproportionate allocation of award funding, the ABA recommends that prior to amending award calculation standards related to parents, subsidiaries and affiliates that the Fund study the implications of these actions to ensure that small CDFIs would not be disproportionately disadvantaged and that institutional diversity could be achieved.

Native Initiatives

Native American CDFI Assistance (NACA) awardees are limited in the number of awards and maximum amount they can receive in a program period and are further barred from receiving awards in other Financial Assistance (FA) programs. Furthermore, NACA has a much lower maximum of $750,000 for FA, while other FA programs are capped at $2 million. As a result, NACA awardees and the communities they serve are significantly disadvantaged. The NACA award maximum should either be raised to the level of other CDFI FA program levels, $2 million, or awardees should be eligible to participate in other CDFI FA awards up to $2 million, provided the non-NACA FA is used for approved activity in targeted Native communities.

Bank Enterprise Award Program

The Bank Enterprise Award Program (BEA) provides needed incentives that allow banks to plan in advance to make community investments for future Award qualification. The Program also has the added component of generating competition between banks. Should the BEA be eliminated, bank participation in CDFI programs would likely decline, removing over one-half billion dollars of qualifying CDFI investments.

The ABA appreciates the concerns raised by the Office of Management and Budget (OMB) and the resulting challenges the Fund faces in administering the BEA. However, the program, as presently structured, provides a mathematical and objective construct the Fund can use in determining an award. But for BEA, many insured depositories would not have increased or targeted their lending and investment strategies as prescribed by the program. In fact, some small banks, particularly minority-owned institutions, plan their annual budgets around BEA qualifying activity and subsequent awards.

Substituting the existing program with an alternative would not effectively leverage capital presently deployed by banks. Presuming that a maximum award in a given allocation round is approximately $700,000, a bank may finance only two to three deals. However, to receive that amount under the present program construct, a bank must demonstrate an increase in lending and investment activity over the prior year, which for FY 2009 equaled $292.3 million for awardee banks.[3] This is compared to the $22 million in issued awards. Banks made FY 2009 investments during one of the most difficult economic climates in history in approximately 4,000 census tracts. While most lending around the country was contracting, insured depositories targeting distressed communities, as part of the BEA, were increasing investments and lending. This is evidence that but for the program, the increased activity in BEA designated census tracts would not have occurred.

To accommodate OMB concerns, the Fund has changed the BEA to now require that award allocations be used for qualifying activity and that recipients report award use. While the new use and reporting features are a substantive change from original BEA intent, the Fund's ability to objectively identify genuine increases in investing and lending in targeted areas remains intact. Any additional changes amending the core structure that incents bank activity would essentially be trading $292.3 million in lending and investments within communities of need, for $22 million.

The BEA was created to incent *banks* that might not otherwise participate in or increase community investments, and as a mechanism to bring additional capital into communities of need. While the Fund should ensure the retention of insured banks in the program, regardless of CDFI certification, credit unions should remain ineligible. Credit unions by their charter are specially designated entities created to serve a specific purpose, similar to the purpose of CDFIs. As a result of their congressional mandate, credit unions receive a number of government benefits, including tax benefits that give them a competitive advantage over insured depository institutions. Allowing credit unions to participate in the BEA would provide them an additional award for the same lending and investment activity Congress has mandated and incentivized them to conduct.

The bank incentive component of the BEA is also the reason why ABA opposes placing asset size limits on participants. Limits by asset size ultimately limit increased investments, resulting in diminished impact. To address the concern that small banks might be excluded, the fund could create an institution diversity mechanism within the BEA, while ensuring maximum community investments.

The Fund also seeks comment on whether it should use CRA ratings to determine a bank's commitment to serving low-income areas. Though ninety-eight percent of all insured depository institutions have a CRA rating of satisfactory or better, using CRA as a BEA rating measure is not recommended.[4] The BEA Program is presently about increased levels of qualifying activity

[3] CDFI Performance and Accountability Report, FY 2009, 26.

[4] 2009 Data: Federal Financial Institutions Examination Council (FFIEC) website, http://www.ffiec.gov/craratings/default.aspx.

over the baseline and assessment periods, which may not necessarily coincide with the CRA exam period. Few institutions undergo examination on an annual basis. This is particularly true for community banks, limiting the usefulness of the CRA rating as an evaluative tool. The Fund's existing measurement of increased activity is a more accurate determinate of community commitment, informing the Fund in actual dollars of a bank's investments in qualifying activities.

The Fund has also requested comment on the definition of "distressed community." According to 12 USC 1834a (b), which defines "qualified distressed community," qualifying neighborhoods or communities must meet both the minimum area requirements *and* the eligibility requirements. Approximately 2,700 census tracts fully meet the definition.[5] In that targeting distressed communities is a major component of the BEA, the Fund should consider revising the definition of distressed community, to include more areas in need of capital assistance. In the alternative, definitions of low-income in the New Markets Tax Credit Program or the CDFI program definition of investment area should be included. This would also serve the earlier endorsed goal of better coordinating definitions.

Conclusion

The ABA commends the Fund for its review of the Riegle Community Development and Regulatory Improvement Act of 1994, the CDFI authorizing statute. Over the last fifteen years, the CDFI and its partnership with insured depository institutions have ensured the growth of businesses, the creation of jobs, and the building of homes, when capital would not have otherwise been made available. To continue this success, the ABA recommends, going forward, that the fund identify ways to expand bank participation in CDFI programs and preserve the structure of the BEA. Insured financial institutions are able to effectively leverage capital resulting in increased economic development in communities of need, which meets the purpose of the Fund's authorizing statute. The ABA appreciates this opportunity to provide comment. If there are any questions or a need for additional information, please contact Vincent Barnes at 202-663-5230 or vbarnes@aba.com. You may also contact Joe Pigg at 202-663-5480 or jpigg@aba.com.

Sincerely,

Robert R. Davis

[5] Federal Register Vol. 75, No. 44, March 8, 2010 (F) (4) (a) 10565.