

September 30, 2010

Greg Bialecki
Secretary
EOHED
One Ashburton Place
Boston, MA 02108

Tina Brooks
Undersecretary
DHCD
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Boston, MA 02114

Dear Greg and Tina:

We are writing to offer some initial thoughts about how to implement the new CDC –enabling law contained in the recently enacted Economic Development Legislation. The statute updates the CDC law by creating a new definition for the term Community Development Corporation, establishing for the first time a certification program for CDCs, and requiring DHCD to report to the Legislature annually about efforts within EOHED to support CDCs across the Commonwealth.

We think this law offers a terrific platform to strengthen the CDC sector so that it becomes even more effective at articulating and advancing community-identified priorities and partnering with state and local government to implement them. The statute will also foster a stronger partnership between EOHED and CDCs so that we may achieve greater progress on shared goals such as job creation, foreclosure prevention, homelessness reduction, and gateway city revitalization, among others. For MACDC, the implementation of this statute is absolutely central to our goal of **building a diverse network of locally accountable, adaptive and sustainable community development organizations that deliver tangible results.**

There is a long and proud tradition of targeting both public and private resources to CDCs in Massachusetts, and those efforts helped develop one of the strongest CDC networks in the entire country. Starting with passage of Chapter 40F in 1975, the state began targeting resources and benefits to CDCs and CDCs responded by delivering tangible results for our communities and families. Such policies were not unique. There have been similar efforts to systematically build and strengthen specific types of nonprofit organizations that policy makers deem as having particular value – Community Action Agencies, Community Health Centers, Charter Schools, Community Development Financial Institutions, Community Housing Development Organizations, Small Business Development Centers, Legal Service organizations, and others have all benefited from explicit, sustained and resourced efforts to support them. We think a similar effort is called for now – one that will help the CDC field steward current assets and past achievements while building for sustained and expanded impact in the years to come.

We are eager to work with you to ensure that the statute achieves this result.

This letter offers some thoughts about how best to implement the law in the following areas:

1. Developing more specific guidance and criteria for defining the term “community development corporation” within the framework established by the Legislature;
2. Developing a certification program that meaningfully achieves the Legislature’s desire for accountability and transparency without creating an unnecessary burden for either DHCD or the non profits who apply for certification;
3. Creating appropriate incentives for organizations to seek certification and benefits for those who are certified in order to advance the purposes of the statute; and
4. Marketing the new program to non profits that may be eligible to apply for certification, including organizations that have traditionally been considered CDCs as well as those who have not.

Before detailing our thoughts in these areas, however, we want to provide a bit of context. As you know, the ideas for the new legislation emerged from discussions within the Community Development Innovation Forum and followed months and years of dialogue among CDCs, public officials, investors, intermediaries and scholars. Through that process a strong consensus emerged with respect to the following points:

- the 1975 CDC definition was outdated;
- having a state definition was helpful for CDCs, investors, funders and policy makers;
- the new definition should be flexible and inclusive of the many different organizational models that have evolved over the past 40 years so that more groups could qualify than could do so in the past;
- the new definition should reflect the movement’s long-held values of community leadership, economic opportunity and inclusion;
- the state should certify which groups meet the definition;
- the state and other public and private funders/investors should target financial and capacity building resources to these organizations as a way to systematically build, strengthen and sustain the field over time; and
- the CDC field should be grounded in performance, competition, diversity, and accountability – both to the community and to funders and investors.

MACDC believes that these principles and the new legal framework can help the CDC sector build on its extraordinary record of achievement over the past 30+ years and more significantly over the past 7 years during which time our members generated almost \$1.7 Billion of economic investment and activity in our communities.

Recommendations

RECOMMENDATION #1: Provide further guidance to applicants regarding how DHCD will interpret the CDC Definition in the statute.

Under the statute, DHCD must develop more specific guidance and criteria for how the term “community development corporation” will be defined within the framework established by the Legislature. In so doing, we think DHCD ought to take a flexible approach that recognizes the diversity of organizations doing this work in Massachusetts and emphasizes function over form. That diversity is appropriate because of the many different types of communities we have – urban,

rural and suburban – across the state. We also need to acknowledge that organizations evolve out of different histories and contexts that shape their structure. This is not a one size fits all field. Also, we believe that many organizations are likely to qualify for the CDC designation as well as other designations such as CHDO or CDFI. The CDC designation is not meant to be exclusive of others.

The statute provides for three key elements in the definition:

Section 86(a) [the corporation] focuses a substantial majority of the corporations efforts on serving 1 or more specific neighborhoods or municipalities, a region of the commonwealth or a constituency that is economically disadvantaged.

We believe that this language allows for an organization to have a flexible definition of its service area so that it need not be focused exclusively on a single neighborhood or town. It specifically allows for organizations that serve regions and does not require that the place being served be low income or disadvantaged so long as the people it serves are. Organizations that are not placed based at all may also qualify if they serve a constituency that is economically disadvantaged. We think this language does exclude national organizations that do not focus a “substantial majority” of their efforts here in Massachusetts as well as organizations that have neither a geographic focus nor a focus on disadvantaged constituencies. We think DHCD should require applicants to identify the areas that they serve, including whether they have a primary geographic focus area and a secondary focus area. Organizations that are not placed based should be required to identify their constituency, describe how it is economic disadvantaged and document that a substantial majority of their efforts are directed at that constituency.

Section 86(b) [the corporation] has as [its] purpose to engage local residents and businesses to work together to undertake community development programs, projects and activities which develop and improve urban, rural and suburban communities in sustainable ways that create and expand economic opportunities for low and moderate income people.

We believe that this paragraph contains three key points.

1. The corporation has to engage local residents and businesses in this work. Applicants should be required to describe how they support such engagement.
2. The corporation must undertake “community development programs, projects and activities.” What does this include? We think DHCD should take a relatively expansive view of this language, but should not include everything that can possibly be done for low income people and communities. We think the term should include:
 - a. physical development, including affordable housing development and commercial real estate development, and preservation;
 - b. community planning with respect to physical and economic development;
 - c. business and economic development;
 - d. asset development programs that focus on building the economic capacity of low and moderate income families and individuals, such as homeownership programs, foreclosure prevention, savings programs, job creation, job training, and financial education;

We think DHCD should also consider the terms used in the CDBG program and the CDFI program to look for great clarity about what types of activities constitute “community

development.” We think that programs focused exclusively on health care, education, arts and culture are certainly important for the community but do not constitute “community development” unless they are integrated with programs like those identified in the list above.

We acknowledge that there is a substantial gray area here and are interested in working with you and others to reach some conclusions about what should be included. Some of the things that may fall in this gray area include services for homeless and special needs populations, youth development, and community safety programs. Again, while all of these activities are important we need to determine whether organizations that engage exclusively in such programs are appropriately considered CDCs. MACDC has not reached a definitive position on this question yet.

3. The corporation must “expand economic opportunities for low and moderate income people.” We think this language appropriately focuses the definition on organizations who work to provide economic opportunity for low and moderate income people. In other words, organizations that seek to benefit the community at large, without any focus on low and moderate income people, are not CDCs (even though they may be wonderful organizations) Organizations that serve low and moderate income people, but do not work directly to expand their economic opportunity are also not CDCs (e.g. organizations that provide health care or recreational opportunities.)

Section 86(c) [the corporation] demonstrates to the department of housing and community development that the corporations constituency, including low and moderate income people, is meaningfully represented on the board of directors of the corporation; provided, however, that in making this determination, the department shall consider the following criteria: (1) the percentage, if any, of the board that is elected by the general membership; (2) the percentage of the board members that are residents of the service area; (3) the percentage of board members that are people of low or moderate income; (4) the racial and ethnic composition of the board in comparison to the racial and ethnic composition of the community being served; (5) other mechanisms, including committees, membership meetings, that the organization uses to ensure that their constituency has a meaningful role in the governance and direction of the organization; and (6) other criteria as determined by the department.

We think this language gives DHCD a fair amount of flexibility but we feel strongly that CDCs must be genuinely accountable to and governed by community residents and constituents. Therefore, we think DHCD should not be “too flexible” when reviewing applicants against this criteria. In finding the right balance, we urge you to avoid rigid rules or arbitrary requirements as we have sometimes seen in the way HUD manages the CHDO program. For example, when looking at representation by low and moderate income we think you should consider all of the following types of people: residents of affordable housing and other participants in any means-tested CDC program, residents of LMI neighborhoods (using a flexible definition of neighborhood to include census tracts, census blocks or zip codes), people who self-certify as being of low or moderate income. We also think that any person who was a low or moderate income person within the past five years should be considered an LMI person. This deals with the case where a person increases their income after joining the board. We also think representatives of organizations that serve low income people can help satisfy this requirement. We do not think you should require formal income testing of board members as that would be inappropriately intrusive for volunteers and could discourage participation. Finally, we think you might consider the idea of proportionality so that suburban groups might be held to a different standard than urban groups.

With the exception of item “a” below, we think that DHCD should focus on the actual members of the board of directors rather than the process for their appointment or the language of their by-laws. Please do not impose any requirements for specific language in organizational by laws – focus on function and results over form and process.

We think DHCD should consider offering some more specific guidance to applicants by stating that:

- a. Organizations which elect 100% of their board from an open community membership should be presumed to have met the “meaningful representation” requirement unless the board is severely lacking in representation from LMI people and/or people of color. This would essentially grandfather in those CDCs who were organized under Chapter 40F.
- b. All currently certified CHDOs should be automatically eligible for certification.
- c. Other organizations should have at least 51% of their board comprised of “constituents” defined by income, race, ethnicity and/or residency (or possibly age if the group is focused on elders or youth.)
- d. We think the CHDO and/or CAA thresholds for low income representation might be appropriately applied to the CDC definition, so long as DHCD adopts the approach suggested above for identifying LMI people and recognizes differences between urban, rural and suburban populations.
- e. Other organizations that do not meet any of these criteria can still meet the requirement if they can demonstrate why their board provides “meaningful representation” as required by the statute. In these cases, applicants should be able to “make their case.”

RECOMMENDATION #2: Develop a certification program that meaningfully achieves the Legislature’s desire for accountability and transparency without creating an unnecessary burden for either DHCD or the non profits who apply for certification.

We believe that the certification process needs to balance the need for information, data and paperwork with the need to minimize the administrative burden on both DHCD and the applicants. In finding this balance, DHCD should correlate the complexity of the process with the level of benefits attached to certification. In other words, the more financial and other benefits that the state intends to offer to CDCs, the more rigorous and detailed the application process can be. However, a complicated and time consuming process that yields minimal benefits will serve as a powerful disincentive for groups to apply and would undermine the entire program.

With that in mind and with the benefits as yet undetermined (although we offer our thoughts below) we suggest the following:

1. All local and state certified CHDOs who apply for certification should be automatically certified as CDCs so long as they provide the information and documentation required. While the CHDO definition and the CDC definition are not identical, they are close enough that we do not think it is necessary to force those organizations or DHCD to undertake a new process from scratch.
2. We think DHCD should rely as much as possible on existing/standard documents to determine whether a group qualifies, such as:

- a. IRS FORM 990
 - b. Annual Audit
 - c. Articles of Incorporation
 - d. By-laws
 - e. List of Board Members, with identifying information (LMI status, race/ethnicity, address, # of meetings attended within the past year, etc)
 - f. Annual reports, newsletters, etc
 - g. MACDC GOALs report submissions (we are happy to share our GOALs data so you can quickly determine what types of activities a particular organization undertakes)
3. DHCD should develop an application form (on-line perhaps) that allows applicants to answer some basic questions and provide explanations for any unusual or mitigating characteristics. Applicants should be able to “tell their story” as to why they meet the requirements of the statute.
 4. DHCD should “recertify” once every four years, except that DHCD should consider some form or “interim” certification for agencies that are less than 2 years old or for other organizations that “barely” meet the requirements that would require them to recertify annually. DHCD could require some information to be filed annually (e.g. board list) but it should not require recertification each year.
 5. DHCD should consider some requirement for at least a minimal level of activity so that organizations that “exist” on paper cannot be certified unless they are actively engaged in some type of community development activity. The MACDC Goals survey may be an easy way to confirm the level of activity of each organization.
 6. DHCD should avoid rigid requirements that elevate form and process over function and results. CDCs should not be required to have specific language in their by laws or articles of incorporation.
 7. The new statute clearly allows for more than one CDC to serve a particular geographic area. The statute allows for organizations to have overlapping service areas and also recognizes that different CDCs may offer different programs and services, thus making overlapping service areas more likely. The purpose of this statute is not to manage the number of CDCs or to regulate where they serve. We believe that the “market” should determine that. (The market in this context includes the economic market place, but also public policy, philanthropy, local residents and all the factors that determine the viability of a particular CDC.)
 8. Faith based organizations that meet the criteria in the statute should be included so long as they offer their programs on a non-discriminatory basis.

RECOMMENDATION #3: EOHED and DHCD should create incentives for organizations to seek certification and benefits for those who are certified.

Of course, the first two recommendations and the entire statute will not mean very much unless there are tangible benefits associated with being a certified CDC. If there are not benefits, very few groups will bother to apply. And even if some groups are certified, the statute will have done little to build and strengthen these organizations, despite the Legislature’s clear objective.

We think the CDC enabling statute and the CDC certification program should help the Commonwealth achieve its goal for expanded economic opportunity and equity. We think it should help the Commonwealth create great communities where people from different economic and ethnic backgrounds can live together and find opportunities and fulfillment. We think the program

should help create an infrastructure for civic engagement, community problem solving and long-term stewardship of community assets. In other words, the program should be designed to help create a better Commonwealth. And we think CDCs – properly supported and funded – can help achieve that vision.

At the same time, we want to make one point very clear. We do not think all CDCs should be entitled to resources simply because they are a “certified CDC.” We think CDCs should be held accountable for high levels of performance. We think funds should be distributed to CDCs through competitive processes. We think the benefits and resources provided should help CDCs to succeed, not prop up failing organizations.

We have identified a preliminary list of benefits and resources that EOHED could provide to certified CDCs. We are also considering other ideas that will require legislative action, such as new funding programs and tax credits. However, this letter is confined to policies that EOHED could implement without legislation.

- A. EOHED should provide extra points to CDCs in funding applications for housing and community development resources, including affordable housing development funds (i.e. by providing 6-8 points in the QAP for CDC applications), CDBG dollars, small business development funding, foreclosure counseling funds, etc. A small number of additional points will enable high quality CDC programs and projects to be funded without distorting decision making or allocating resources to low performers. By targeting resources in this way, DHCD will get the immediate program results sought in the RFP, as well as help to build longer term community capacity.
- B. EOHED should set explicit goals and/or set-asides that ensure certified CDCs are able to access housing and community development funding sources – similar to the 15% set-aside for CHDOs within the federal HOME program. These goals could be for both agency sponsored programs and loan programs operated by quasi public agencies within EOHED. Goals and set asides should be set at ambitious levels that express the state’s desire to support CDCs, without setting them so high (or so rigidly) that they distort decision making or incentivize the funding of projects that are not worthy.
- C. EOHED should provide financing terms and structures for CDC sponsored transactions that favorably reflect the social and economic benefits which inure to the Commonwealth from their projects and that support the long-term financial sustainability of the CDC. Such language is already included in the Growth Capital Corporation statute and could be applied to other agencies as well. In this context, developer fees and cash flow are seen not merely as expenses to be minimized, but investments in high performing organizations that can put those resources to use for further community improvement.
- D. DHCD and its quasi-public partners should establish a “CDC Housing Preservation Program” to ensure the long term financial and physical health of the more than 12,000 rental apartments currently owned by CDCs.
- E. The Division of Banks should issue a letter indicating that banks, credit unions and mortgage companies will automatically receive CRA credit for partnerships, investments and donations to CDCs under the Massachusetts CRA law.

- F. DHCD should establish a flexible funding program for housing oriented CDCs and CHDOs that is modeled after MHP's Production Support Program by using a combination of federal HOME dollars and state resources.
- G. EOHED (and its agencies) should offer and/or fund robust technical assistance, capacity building and professional development programs for CDCs, CDC board members and CDC employees. Your strong commitment to the Mel King Institute is a good example of how this can be done.
- H. EOHED should convene an internal task force to develop and monitor policy ideas and programs that help advance the purposes of this statute. The task force should include representatives from all the quasi public agencies under EOHED as well as key agency staff.

We believe that these incentives will help to ensure a strong and viable CDC sector throughout the state while simultaneously allowing the state to achieve the specific goals and outcomes it seeks within particular programs. The incentives should be large enough to be meaningful, but not so large that “bad” CDC projects are funded at the expense of “good” projects sponsored by others. Rather, since these incentives would be in the context of *highly competitive* funding programs, the incentives will enable high quality projects and programs sponsored by CDCs to have a better chance of being funded. This in turn allows the state to secure a win-win outcome – a highly effective program and project that meets the state's immediate objectives and a stronger community based institution that can work over the long term to advance and steward community improvements.

We offer one final thought for your consideration. We believe that truly effective and transformative community development is all about making connections across silos and working comprehensively to improve communities. . We think the state should imbue this thinking in its RFPs so that each particular program not only meets its own objectives for (say) housing production, business development, or homeownership counseling, but also advances broader and long term community improvement. CDCs do this by building long term civic infrastructure that promotes resident engagement, stewards community assets, and incorporates individual programs and projects into broader and more comprehensive strategies for community improvement. CDCs also recycle their proceeds and fees back into the community. We think such benefits should be valued in tangible ways and that targeting resources to CDCs does that in an efficient, transparent and meaningful way.

RECOMMENDATION #4: DHCD should partner with MACDC to market the new program to non profits that may be eligible to apply for certification, including organizations that have traditionally been considered CDCs as well as those who have not.

This statute and the new CDC definition represent a significant shift in the history of the CDC field here in Massachusetts. Many groups that have existed for years as “non CDCs” will soon be eligible to become CDCs. This will require substantial outreach and education to ensure that all eligible organizations are aware of the process and the benefits of becoming certified. MACDC would like to work with DHCD in this regard. We propose to work with DHCD to develop informational materials, a web site, and to hold informational meetings in regions across the state. As part of this, we think it is vital that both of you in your leadership roles frequently promote the CDC certification program yourselves so that nonprofits and others understand that this is a priority for the Administration.

As part of this process, we recommend that you convene one or two focus groups or meetings with CDCs, other non profits, quasi public agencies, intermediaries and other stakeholders to get input in this process. This will begin to educate people on the changes that are coming and engage them in thinking how to make this program successful.

Finally, we urge you to move this process forward relatively quickly since you the new law requires you report back to the legislature about the progress you are making on December 15th. We think the certification process should be established by January 1, 2011. We should set a goal of having at least 50 groups certified by June 30, 2011.

Thirty-five years ago, Mel King, Michael Dukakis and many others used the original CDC-enabling statute to build one of the strongest community development fields in the country. The legacy of their wisdom and investments can be seen in neighborhoods across the Commonwealth. Where would we be without their vision and foresight? Today, we have a new opportunity to build on their legacy and create our own by fostering the community development infrastructure that we need for the 21st Century.

Once again, thank you for your support throughout the legislative process to make this law a reality. We are excited to work with you in the coming weeks to implement this law and make it a huge success.

Sincerely,

Charles H. Rucks
Chair
MACDC

Joseph Kriesberg
President & CEO
MACDC

cc. Sandra Hawes
Deborah Goddard
Maureen Flynn