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4-26-2010

## Community Development Capital Initiative: CDFI Subchapter S Corporation Senior Securities Summary of Terms of CDCI Senior Securities

United States: Department of the Treasury

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**Community Development  
Capital Initiative**

**CDFI Subchapter S Corporation  
Senior Securities**

*Summary of Terms of CDCI Senior Securities*

**Issuer:**

A qualifying financial institution (“QFI”) that has made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (a “S-Corp”) that is also (i) any U.S. bank or U.S. savings association not controlled by a Bank Holding Company (“BHC”) or Savings and Loan Holding Company (“SLHC”); (ii) any top-tier U.S. BHC that engages predominately in activities that are permitted for financial holding companies under relevant law, (iii) any top-tier U.S. SLHC which engages solely or predominately in activities that are permitted for financial holding companies under relevant law; or (iv) any U.S. bank or U.S. savings association that is a qualifying S-Corp subsidiary that is controlled by a BHC or SLHC that itself is a S-Corp and that does not engage solely or predominately in activities that are permitted for financial holding companies under relevant law; provided, that, in each case, (i) the QFI collectively with all of its affiliates satisfies the requirements of 12 C.F.R. 1805.200(b); (ii) the QFI or an affiliate thereof is a regulated community development financial institution (“CDFI”) currently certified by the Community Development Financial Institution Fund (the “Fund”) of the United States Department of the Treasury (“UST”) pursuant to 12 C.F.R. 1805.201(a) as having met the eligibility requirements of the Fund’s Community Development Financial Institutions Program (the QFI or, if the QFI itself is not currently certified by the Fund as a CDFI, any affiliate that is currently certified by the Fund as a CDFI, each, a “Certified Entity”); and (iii) shall not be any BHC, SLHC, bank or savings association controlled (within the meaning of 12 U.S.C. 1841(a)(2) and 12 C.F.R. 225(a)(i) in the case of BHCs and banks; and 12 U.S.C. 1467a (a)(2) and 12 C.F.R. 583.7 in the case of SLHCs and savings associations) by a foreign bank or company. For purposes of this program, “U.S. bank”, “U.S. savings association,” “U.S. BHC” and “U.S. SLHC” means a bank, savings association, BHC or SLHC organized under the laws of the United States or any State of the United States, the District of Columbia, any territory or possession of the United States, Puerto Rico, Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands. **UST will determine the eligibility and allocation of funds for each QFI after consultation with the appropriate federal banking agency.**

**Initial Holder:**

UST.

**Security:** Unsecured subordinated debentures (“CDCI Senior Securities”) that do not constitute a class of stock or represent equity ownership in the issuing QFI. Each debenture representing a CDCI Senior Security shall be in the principal amount of \$1,000.

**Size of Offering:** Each QFI may issue CDCI Senior Securities with an aggregate principal amount (the “Maximum Investment Amount”) equal to not more than five percent (5%) of (i), if the QFI is a Certified Entity the risk-weighted assets (“RWA”) of the QFI, or (ii), if the QFI is not a Certified Entity, the sum of the RWAs of each of the Certified Entities, in each case less the aggregate capital or, as the case may be, principal amount of any outstanding TARP assistance of the QFI.

Any QFI that, in applying to qualify for this program, is determined by its primary regulators to require additional capital in order to be a “viable” financial institution, shall be required to receive capital (“Private Capital”) from one or more private, non-government investors prior to or concurrently with any purchase of CDCI Senior Securities by UST, such that the sum of the Private Capital and the amount of CDCI Senior Securities issued by such QFI under this program shall be sufficient to establish the QFI’s “viability” on a pro-forma basis. Such QFI receiving Private Capital shall only be eligible to issue CDCI Senior Securities in an aggregate amount equal to, on a dollar-for-dollar basis, the amount of Private Capital it received; provided that the amount of CDCI Senior Securities issued shall not be greater than the Maximum Investment Amount; provided further that any Private Capital shall be subordinate to the CDCI Senior Securities, on terms satisfactory to UST.

QFIs currently participating in the UST Capital Purchase Program (“CPP”) that issued subordinated debentures to UST may apply to exchange the entirety of their existing CPP subordinated debentures for CDCI Senior Securities as set forth herein.<sup>1</sup> Additionally, such QFIs may, but shall not be required to, apply to issue CDCI Senior Securities to UST in an aggregate principal amount up to the positive difference, if any, between (i) (x), if the QFI is a Certified Entity, five percent (5%) of the RWA of the QFI or (y), if the QFI is not a Certified Entity, five percent (5%) of the sum of the RWAs of each of the Certified Entities and (ii) the aggregate of any outstanding (x) principal amount of subordinated debentures issued under CPP and (y) principal amount of CDCI Senior Securities; provided, however, with respect to either an exchange or new issuance, (i) the QFI has not breached any

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<sup>1</sup> Applications for exchanges of CPP subordinated debentures for CDCI Senior Securities shall be made on a different application form than applications for new issuances of CDCI Senior Securities. Applications solely to exchange CPP subordinated debentures for CDCI Senior Securities shall not be required to be reviewed by the primary regulators of the applying QFI.

representation, warranty or covenant set forth in the documents governing the CPP subordinated debentures or its sale to UST; and (ii) the QFI has paid to UST all accrued and unpaid interest then due on the CPP subordinated debentures.

RWA, for purposes hereunder, shall be as of the most recent fiscal quarter ended.

**Ranking:** Senior to the QFI's common stock (and any other class of equity, as applicable if a change in corporate form, relevant law or tax election permits other classes of equity). CDCI Senior Securities shall be expressly subordinated to (i), if issued by a bank or savings association, claims of depositors and the QFI's other debt obligations to its general and secured creditors and (ii), if issued by a BHC or SLHC, senior indebtedness of the QFI, in accordance with applicable BHC or SLHC regulations, unless, in the case of either (i) or (ii), such debt obligations are expressly made pari passu or subordinate to the CDCI Senior Securities.

**Regulatory Capital Status:** Tier 2 for a bank or savings association and Tier 1 for BHCs.

**Maturity:** The date (the "Maturity Date") that is (i), for a bank or savings association, thirteen (13) years from the date of the investment or (y), for a BHC or SLHC, thirty (30) years from the date of investment. On the Maturity Date, the QFI shall repay to UST the principal amount, together with all accrued and unpaid interest.

**Interest Rate:** CDCI Senior Securities will pay cumulative interest at a rate of three and one-tenth percent (3.1%) per annum until the eighth (8<sup>th</sup>) anniversary of the closing date of this investment and thereafter at a rate of thirteen and eight-tenths percent (13.8%) per annum.<sup>2</sup>

Interest shall be payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year. Interest on the CDCI Senior Securities shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

**Interest Deferral For Bank Holding Companies and Savings and Loan Holding** For a QFI that is a BHC or SLHC, interest on the CDCI Senior Securities may be deferred (the "Deferred Interest") for one or more periods of up to 20 consecutive quarters each (each, an "Interest Deferral Period"); provided, interest shall accrue on any Deferred Interest at the interest rate then in effect with respect to the CDCI Senior Securities. During any

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<sup>2</sup> CDCI Senior Securities have 3.1% and 13.8% interest rates which equate to after-tax effective rates (assuming a 35% tax rate) of 2% and 9%, respectively, the same rates applied to securities issued by other classes of institutions participating in the CDCI.

**Companies:** Interest Deferral Period, no dividends may be paid by the QFI on shares of equity, trust preferred securities or other capital instruments authorized under applicable law.

**Redemption:** The CDCI Senior Securities shall be redeemable at 100% of the issue price, plus any accrued and unpaid interest. All redemptions shall be subject to the approval of the QFI's primary federal bank regulator.

**Restrictions on Dividends and Redemptions:** For as long as any CDCI Senior Securities are outstanding, no dividends may be declared or paid by the QFI on any shares of equity, trust preferred securities or any other capital instruments it is authorized to issue under applicable law, nor may the QFI repurchase or redeem any shares of equity, trust preferred securities or other capital instruments authorized under applicable law (other than repurchases of common shares in connection with any benefit plan in the ordinary course of business consistent with past practice or relevant income tax laws), unless all accrued and unpaid interest for all past interest periods on the CDCI Senior Securities is paid in full.

**Further Restrictions on Dividend Increases:** For so long as any CDCI Senior Securities are outstanding, no increase in regularly paid common dividends per share shall be permitted; provided that no increase in common dividends may be made as a result of any dividend paid in common shares, any stock split or similar transaction. Notwithstanding the foregoing, an increase in dividends shall be permitted where such increase is solely proportionate to the increase in taxable income of the QFI and such increased dividends are distributed to shareholders in order to fund their individual tax payments on such allocable taxable income ("Tax Distribution"). UST (and subsequent investors who purchase the CDCI Senior Securities) shall have the right to challenge the amount of the proposed Tax Distributions to the extent it believes they exceed the amount necessary for the QFI shareholders to pay their allocable share of income taxes.

**Additional Restrictions on Dividends and Repurchases:** From and after the eighth (8<sup>th</sup>) anniversary of the closing date of this investment, the QFI shall be prohibited from paying common dividends or repurchasing any equity securities or trust preferred securities without UST's consent, unless the CDCI Senior Securities are (x) redeemed in whole or (y) no longer held by UST or any of its affiliates. These restrictions are in addition to the restrictions on repurchases of equity set forth above under "Restrictions on Dividends and Repurchases."

**Remedies Upon  
Event of Default:**

Principal and accrued interest may only become immediately due and payable (i.e., accelerated) upon the occurrence of an Event of Default.

**Voting Rights:**

The CDCI Senior Securities shall be non-voting, other than class voting rights on (i) any authorization or issuance of any equity securities, mutual capital certificates, or other capital instruments authorized under state law which purport to rank senior to the CDCI Senior Securities, (ii) any amendment or waiver to the rights of CDCI Senior Securities, or (iii) any merger, exchange or similar transaction which would adversely affect the rights of the CDCI Senior Securities.

If interest on the CDCI Senior Securities is not paid in full for eight (8) interest periods, whether or not consecutive, the holders of the CDCI Senior Securities will have the right to elect two (2) directors. The right to elect directors will end when all accrued and unpaid interest has been paid in full for four (4) consecutive interest periods.

**Closing Conditions:**

The obligation of UST to purchase or otherwise acquire any CDCI Senior Securities shall be subject to the satisfaction of customary closing conditions, including, among other things, (i) the QFI having not breached any representation, warranty or covenant set forth in the documents governing any obligations of such QFI then outstanding under the Troubled Asset Relief Program (“TARP Obligations”), including any CPP subordinated debentures, as determined by UST; (ii) all amounts then due and payable under any of the QFI’s TARP Obligations have been paid in full; and (iii) with respect to any CDCI Senior Securities not acquired through the exchange of outstanding CPP subordinated debentures, (x) receipt of approval from the QFI’s appropriate federal banking agency for the issuance of the CDCI Senior Securities and (y) the satisfaction of any conditions for such issuance imposed by such appropriate federal banking agency in connection with granting such approval.

**Transfer of  
Proceeds to**

**Certified Entities:**

Each QFI that is not a Certified Entity shall be required to immediately transfer any proceeds it receives in connection with the sale of the CDCI Senior Securities to its related Certified Entities as capital contributions.<sup>3</sup>

**CDFI Covenants:**

Each QFI shall covenant that (i) the Fund has not withdrawn or qualified its certification that the Certified Entities meet the requirements of 12 C.F.R. 1805.200(b) and 12 C.F.R. 1805.201(b)(1)-(6), (ii) it and all of its

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<sup>3</sup> QFIs shall not be required to transfer any funds to any Certified Entity in connection with an exchange of CPP subordinated debentures for CDCI Senior Securities.

affiliates collectively meet the eligibility requirements of 12 C.F.R. 1805, (iii) each Certified Entity's primary mission is promoting community development, as may be determined by UST from time to time based on the criteria set forth in 12 C.F.R. 1805.201(b)(1), (iv) each Certified Entity's predominant business activity is the provision, in arms-length transactions, of "Financial Products", "Development Services" and/or other similar financing, (v) each Certified Entity serves a "Target Market" by serving one or more "Investment Areas" and/or "Targeted Populations" as may be determined by UST from time to time substantially in the manner set forth in 12 C.F.R. 1805.201(b)(3), (vi) each Certified Entity directly, through an affiliate, or through a contract with another provider, provides "Development Services" in conjunction with its "Financial Products", (vii) each Certified Entity maintains accountability to residents of its "Investment Area(s)" or "Targeted Population(s)" through representation on its governing board or directors or otherwise and (viii) each Certified Entity is not an agency or instrumentality of the United States, or any State or political subdivision thereof, as described in 12 C.F.R. 1805.201(b)(6). The terms "Financial Products", "Development Services", "Target Market", "Investment Areas" and "Targeted Populations" are used herein in the same manner as such terms are used in 12 C.F.R. 105.201(b).

Each QFI shall also deliver to UST (x) on the date that is 180 days after the closing date of this investment, and (y) annually at the end of each fiscal year of such QFI (i) reports and other documents sufficient to evidence each Certified Entity's status as a CDFI including documentation evidencing its ongoing compliance with the Fund's requirements for CDFIs and (ii) a certification that such QFI and each Certified Entity remains in compliance with the foregoing covenants. Additionally, each QFI shall be required to notify UST immediately of any breach of the foregoing covenants.

Remedies for breaches of the foregoing covenants shall be set forth in the definitive documentation for the CDCI Senior Securities.

**Access and  
Information:**

So long as UST or any of its affiliates holds CDCI Senior Securities having a face amount of at least ten percent (10%) of its initial investment, each QFI shall permit UST and its agents, consultants, contractors and advisors (x), acting through the QFI's appropriate federal banking agency, or otherwise to the extent necessary to manage, evaluate or transfer UST's investment, to examine its corporate books and make copies thereof and to discuss the affairs, finances and accounts of such QFI with the principal officers of such QFI, upon reasonable notice and at such reasonable times and as often as UST may reasonably request and (y) to review any information material to UST's investment provided by such QFI to its appropriate federal banking agency.

At any time that any CDCI Senior Securities are outstanding, each QFI shall deliver to UST (i) annually at the end of each fiscal year of such QFI, an audited (to the extent available) consolidated balance sheet of such QFI as of such fiscal year, and audited consolidated statements of income, retained earnings and cash flows of such QFI for such year, prepared in accordance with GAAP and setting forth in each case in comparative form the figures for the previous fiscal year; and (ii) copies of any quarterly reports provided to other equity holders of such QFI or the QFI's management. Additionally, to the extent a QFI receives an assessment on its internal controls from its auditors at any time during any period in which UST or any of its affiliates holds CDCI Senior Securities, a copy of such assessment shall also be delivered to UST.

On an annual basis during any period in which UST or any of its affiliates holds CDCI Senior Securities, each QFI shall be required to complete and deliver to UST a survey, in a form specified by UST, describing, among other things, how it has utilized the capital it received in connection with the issuance of the CDCI Senior Securities and the effects of such capital on the operations and status of the QFI.

**Events of Default:** For a QFI that is a BHC or SLHC, the bankruptcy of the QFI, the receivership of a major bank subsidiary of the QFI or, to the extent any Interest Deferral Period has occurred, the failure by the QFI to pay any related Deferred Interest (and any interest thereon) on or before the first day immediately following the last day of such Interest Deferral Period.

For a QFI that is a bank or savings association, placement of the QFI into receivership or conservatorship.

**Transparency,  
Executive  
Compensation and  
Employ American  
Workers Act:**

Each QFI and its subsidiaries shall take all necessary action to ensure that it and its executive officers, respectively, are in compliance with (i) all UST guidelines regarding transparency, reporting and monitoring; (ii) Section 111 of the EESA, as implemented by the TARP Standards for Compensation and Corporate Governance set forth in 31 C.F.R. Part 30, all rules, regulations and guidance issued thereunder; (iii) the provisions of the Employ American Workers Act (Section 1611 of Division A, Title XVI of the American Recovery and Reinvestment Act of 2009), Public Law No. 111-5, effective as of February 17, 2009; and (iv) in the case of (ii) and (iii), all rules, regulations and guidance issued thereunder.

**Affiliate  
Transactions:**

For as long as UST or any of its affiliates holds any debt or equity securities (including the CDCI Senior Securities) of the QFI, the QFI and



its subsidiaries will not enter into a transaction with related persons (within the meaning of Item 404 under the SEC's Regulation S-K) unless such transaction is (i) on terms no less favorable to the QFI and its subsidiaries than could be obtained from an unaffiliated third party, and (ii) has been approved by the board of directors of the QFI but only if the board of directors maintains written documentation supporting its determination that the transaction meets the requirements of (i) of this paragraph.

**Warrant:**

Subject to the requirements of Section 113(d)(3)(A) of the Emergency Economic Stabilization Act, QFIs participating in this program shall not be required to issue warrants to UST.