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The Community Development Coporation

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THE COMMUNITY DEVELOPMENT CORPORATION

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To every man his chance; to every man regardless of his birth, his shining golden opportunity—to every man the right to live, to work, to be himself and to become whatever thing his manhood and his vision can combine to make him—this is a promise of America.

Thomas Wolfe

INTRODUCTION

Inherent in the promise of America is the unequivocal belief in the value of freedom and an honest desire to see it exist for everyone. In the 60's, however, Americans have been poignantly reminded that the realities of freedom and opportunity do not exist for scores of individuals living in rural and urban poverty areas. This "promise of America" has not been kept.

Although this decade has produced several programs waging a "War on Poverty," especially under the auspices of the Economic Opportunity Act of 1964 and the Office of Economic Opportunity,¹ in 1969 the enemy is still with us. Millions of Americans live in substandard homes, receive a substandard education and are deprived of a chance to improve their socio-economic status. Programs operated by state and federal governments have proved insufficient and welfare handouts have done little to solve the problem.²

The orthodox approach to eliminate poverty has been to provide welfare-oriented programs.³ However, it is becoming more apparent that a successful program must include a comprehensive approach to economic development:⁴ one which offers education, jobs, ownership, and ultimately the dignity that makes man strive to realize his natural potential.⁵ A facility around which such a program could be structured is sorely needed. Emerging is the Community Development Corporation (CDC) which may provide the necessary vehicle for providing social and economic welfare.⁶

Structurally, the CDC is a two-tiered corporation. At its base it is a nonprofit corporation furnishing educational programs, health serv-

¹ 42 U.S.C. §§ 2701-2981 (1964), as amended, §§ 2701-2994 (Supp. III, 1965-67).

² See, e.g., R. Kennedy, *To Seek A Newer World 19-62* (1967); Faltermayer, *A Way Out of the Welfare Mess*, *Fortune*, July 1968, at 62; *Wall Street Journal*, Oct. 8, 1968, at 1, col. 1.

³ See Rottenberg, *Misplaced Emphasis in Wars on Poverty*, 31 *Law & Contemp. Prob.* 64 (1966); Cahn and Cahn, *The War on Poverty: A Civilian Perspective*, 73 *Yale L.J.* 1317 (1964).

⁴ See R. Kennedy, *supra* note 2; Alperovitz, *Are Community Corporations the Answer?*, *Boston Magazine*, June 1968, at 50; Kelso and Hetter, *Planning Economic Opportunity*, *Current*, April 1968, at 52. See also McKersee, *Vitalize Black Enterprise*, *Harv. Bus. Rev.*, Sept.-Oct. 1968, at 88.

⁵ See R. Kennedy, *supra* note 2; Faltermayer, *supra* note 2. McKersee, *supra* note 4.

⁶ See *Self-Determination Act of 1968*, S. 3875, S. 3876, H.R. 18709, 90th Cong., 2d Sess. (1968); Alperovitz, *supra* note 4.

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ices, social and recreational activities and all other community services which are presently nonexistent or inadequate in rural and urban poverty areas. At its second level, it functions as a business corporation, engaging in commercial and productive activity, which brings employment opportunities to the community and stimulates an effective exchange of dollars and ideas. The net revenues derived from these business activities are used to generate additional business activity and to underwrite the cost of the community services.

The hypothesis of this structure is simultaneous economic and social development at the community level. Jobs are created for residents of poverty areas, and property ownership encouraged. In addition, residents continue to receive the kinds of services that they are presently furnished by the OEO and other government agencies,⁷ but these are paid for, at least in part, by the community itself. Another result of economic and social interaction within the community, under the CDC's operation, is that residents are introduced to "community life involvement"—the habit of debating economic, social and civic questions in an organized group.

To convert this admirable and innovative concept into a practical and constructive reality is more difficult than to develop it in theory. Corporate law provides for "profit" corporations and "nonprofit" corporations. The problem is whether they can be integrated so that the legal structure allows for a two-tiered corporation. If this corporate structure is possible, the effect which a program encompassing a CDC will have on private business or on other social problems demands serious consideration.

The purpose of this article is to introduce the Community Development Corporation concept by presenting a model CDC as it might be organized under existing law, by demonstrating how a CDC program may be funded under Titles II and III of the Economic Opportunity Act of 1964, by analyzing a bill recently introduced in both Houses of Congress which specifically provides for a CDC program and, finally, by posing questions concerning the effects of such a program.

I. THE CDC MODEL

The model CDC presented in this section demonstrates that the CDC is a workable vehicle for promoting economic and social development at the community level. The artifacts used to construct this model were derived partially from the authors' personal experiences.⁸ The purpose of this model is to outline, component by component, the struc-

⁷ See authorities cited note 4 *supra*.

⁸ Most of this experience comes from their association with the Home Education Livelihood Program, Inc. (HELP), a nonprofit corporation located in New Mexico. As presently defined, HELP is a CDC; its aim has been economic as well as social development. HELP is the prototype of this model.

ture of a CDC and a CDC program. No attempt has been made to explain in detail the corporate law involved or to answer all questions that might arise. Where reference to a statute is necessary, the Model Non-Profit Corporation Act has been used. The model is flexible and can be expanded or contracted to accommodate the actual problems of a particular community and the corporation laws of each state.

A CDC should be organized as a nonprofit corporation,⁹ primarily because of its accessibility to capital. Governmental agencies and foundations, which are the major source of capital for organizations in this area, usually require that the recipient of grants be nonprofit organizations.¹⁰ At the same time, the nonprofit corporation provides the same kind of viable organization and the same degree of specialized management as a profit organization.¹¹ Both corporations have similar attributes, powers and obligations. The main difference is found in the requirement of a nonprofit corporation that no part of the income or profit of the corporation be distributable to its members, directors or officers.¹²

The membership¹³ of the corporation is the first component to be discussed. Simply stated, the members of the CDC should be residents of the community. This requirement, however, leads to a sensitive question: What constitutes a "community?" More specifically, what are the prerequisites for membership? The onus would be on the incorporators through the articles of incorporation to define the "community" and thus to specify the prerequisites. The criteria on which their delineation must be based are: (1) geographical area; (2) financial status of each individual to be included within the community; and (3) environment.

In urban areas, primary attention would be given to geographical area since this area generally includes only people meeting the second and third criteria. For example, Watts, Harlem or Roxbury include, for the most part, an indigenous, homogeneous group of people. In rural areas, however, the situation is generally the opposite. The poor

⁹ An exception to this rule is found in the Community Self-Determination Act of 1968, S. 3875, S. 3876, H.R. 18709, 90th Cong., 2d Sess. (1968), discussed on pp. 235-54 *infra*.

¹⁰ See, e.g., Economic Opportunity Act of 1964, 42 U.S.C. §§ 2790, 2862 (Supp. III, 1965-67); C.A.P. Guide, Part 1, at 42, item 4.4.1; Letter from Ford Foundation to HELF, Feb. 19, 1968.

¹¹ This assumes that qualified and dedicated persons are available and willing to expend time and effort to develop a CDC program.

¹² ABA-ALI Model Non-Profit Corp. Act § 2(c) (1964) [hereinafter cited as Model Non-Profit Corp. Act]. Indeed, profits of a funded organization, which is usually tax exempt, should not be distributed to any individuals, but should be reinvested in the services provided by that organization.

¹³ Since a nonprofit corporation normally does not have shareholders, the persons participating in its programs are called "members." Model Non-Profit Corp. Act §§ 2(f), 26.

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people in these areas are commonly dispersed, in relatively small groups, over an area which includes nonpoverty groups whose members should be excluded from the analytically defined "community." The scarcity of human, financial and other resources forecloses the possibility of a separate CDC for each poverty group; hence the community should be defined to span a large geographic area but to include only those people within it who fall below a certain income level. This scheme, in practice, usually identifies people of similar backgrounds suffering from similar effects of poverty.

The State of New Mexico is an example of a large geographical area which includes interspersed poverty pockets. In 19 of its 32 counties, more than one-third of the population, according to OEO definitions, is poverty stricken.¹⁴ A high proportion of these have Spanish surnames, leading to the conclusion that in New Mexico there is a close correlation between ethnic background and poverty. However, 19 CDC's would be inefficient and undesirable. One CDC could be formed for the whole state whose members could be designated according to an income level.

The second component of the CDC structure is its internal management—the board of directors and officers. The board's primary responsibility is to adopt projects which attend to the needs of the community.¹⁵

¹⁴ N. Ferran, *Planning For Economic Development of Rural Northern New Mexico, with Emphasis on Penasco Valley, Taos 18-20*, October, 1968 (unpublished dissertation submitted to the University of Oklahoma).

The O.E.O. has published "income poverty guidelines . . . for use in those O.E.O. programs where income criteria are used as admission standards":

O.E.O. Poverty Guidelines for FY 1968

Family Size	Non-Farm	Farm
1	\$1,600	\$1,100
2	2,000	1,400
3	2,500	1,700
4	3,200	2,200
5	3,800	2,600
6	4,200	3,000
7	4,700	3,300
8	5,300	3,700
9	5,800	4,000
10	6,300	4,400
11	6,800	4,700
12	7,300	5,100
13	7,800	5,400

Community Action Memorandum, No. 74 (O.E.O. Nov. 15, 1967).

¹⁵ The authors disagree on how the board would determine these needs. Mr. Sanchez feels that the residents of the community themselves should furnish the board with their needs. The residents would submit this information to the directors of the community centers, see p. 224 *infra*, who would, in turn, transmit this information to the CDC. Mr. Desiderio believes that the board itself could determine these needs since it would be composed of representatives of all walks of life, including residents of the community.

These needs are often personal to the members of the CDC and they should be adequately represented on the Board. Furthermore, since religious, civic and educational groups, plus the public at large can contribute to the success of a program, they should also be represented. It is therefore proposed that the Board consist of at least nine members of which one-third come from CDC membership, one-third from religious, civic and education groups, and one-third from the general public.¹⁶ The bylaws of the CDC would state that the board was to nominate sufficient people from each group. From these nominations the members of the CDC would then elect the board annually. The initial board would be named in the articles of incorporation.¹⁷

The officers of the CDC should include an executive director, a program director and several project directors.¹⁸ The executive director would have the responsibility for administering the total CDC program and for integrating all of the projects undertaken by the CDC into one program. The program director's responsibility would be to coordinate the community service projects. Each of the various projects—education, housing, economic development, etc.,—would be supervised by a project director. All project directors, except the economic development director, would be accountable to the program director. The program director and the economic development director would both report to the executive director. (See diagram on page 226.) The economic development director should be directly responsible to the executive director so that the program director would not be overburdened with both socially oriented and economic development projects.

The success of the community development program depends upon the quality and breadth of the projects. These projects should be designed to develop and utilize available human and natural resources. They should encompass educational training, child care centers, health services, recreational activities, housing, economic development and

¹⁶ There is no magic to these percentages. It is felt that a one-third division allows all groups to be adequately represented and, at the same time, does not give one group control. A similar division is found in the "community action board" or "governing board" of a community action agency. Economic Opportunity Act of 1964, 42 U.S.C. § 2791 (Supp. III, 1965-67), discussed on pp. 229-31 *infra*.

¹⁷ See, e.g., Model Non-Profit Corp. Act § 18. The Model Act also provides that "[t]hereafter, directors shall be elected or appointed in the manner . . . provided in the articles of incorporation or the by-laws." *Id.* The articles of CDC's formed in states following this rule should include a provision to the effect that the members of the CDC will elect the board. The text suggests that the board be elected annually. No reason exists for this except that this is the normal practice for most corporations.

¹⁸ For purposes of state corporate laws, these officers might have to be classified as president, vice-presidents, secretary and treasurer. Model Non-Profit Corp. Act § 23. The corporation would naturally have administrative and accounting departments which would answer to the executive director.

other activities deemed necessary. Most basic programs would include educational and economic development projects.

A. Educational Programs

In general, the educational component must be geared toward the reorientation of the total learning process. It should include (1) lessons in reading, writing and practical mathematics, (2) discussions about "community life involvement," (3) vocational training and (4) instruction concerning referral services.

Education in "community life involvement" involves "group therapy" sessions designed to determine individual and group problems and to offer possible solutions for them. The following topics are illustrative of the type that can be raised, discussed and acted upon: (1) change in the political structure of the community; (2) establishment of credit unions, agricultural, consumer and marketing cooperatives and housing improvement plans; (3) determination of recreational and social needs of the community; (4) information on finding and holding jobs; (5) preparation and use of a personal budget; (6) search for solutions to housing and family problems; and (7) assessment of employment and industrial needs of the community and of methods of initiating economic development projects.¹⁹ This type of learning process is in keeping with the idea of fostering a self-help orientation among the participants of the program.

"Vocational education" includes training in those skills which could be helpful to the person and his family, such as sewing, cooking, auto mechanics and home repair, and basic training in skills that can be used in employment.²⁰ "Education in referral services" refers to instruction on obtaining services—medical, social security and rehabilitative, to name a few—from other agencies which have been organized to furnish such services.

To make these educational services, as well as other services, accessible to the members of the CDC, centers must be established throughout the community. These centers serve as "sub-communities"

¹⁹ One organization that has a similar project is The East Central Citizens Organization (ECCO) of Columbus, Ohio. ECCO has been written about in numerous periodicals, magazines and newspapers. See, e.g., Kotzbauer, *The Meaning of ECCO*, *The WRFD Commentator*, Jan. 21, 1966, at 2; Ridgeway, *Missionaries in Darkest Ohio*, *The New Republic*, Feb. 5, 1966, at 9; *The Christian Science Monitor*, March 29, 1966, at 4, col. 1. The best study of ECCO appears in thirteen unpublished memoranda on "Community Foundation" written by Melton Kotler of the Institute for Policy Studies, Washington, D.C. See *Hearings on Problems of the Cities Before the Subcommittee on Executive Reorganization of the Senate Committee on Government Operation (1966)* (Statement of Milton Kotler).

²⁰ This training will be called "pre-vocational" training since it would be supplemented by on-the-job training. Ideally, the CDC would own its own businesses which would hire these trainees who would complete their education while on the job. See pp. 224-26 *infra*.

within the community. Each should be manned by a center director and a staff consisting of teachers, social workers and other qualified people needed to accomplish the purposes of each project. Besides serving as an outlet for services, these centers would function as an instrument to gauge the community's wants, desires and needs. Each center director would determine the problems of his sub-community and then transmit them to the program director. From this information, the program director would determine what projects should be devised for the community as a whole and for particular sub-communities.

B. *Economic Development*

A second essential phase of the CDC program involves economic development of the area. The objective of this phase is to introduce and fashion businesses in the community from which employment and ownership opportunities flow. In addition, the business facilities themselves are schools for advanced vocational training, because members supplement formal vocational training by on-the-job training. In just a short period, these businesses could exert a beneficial influence upon the economy of the community. To illustrate: With careful planning, each facility that commences operations in the community would generate direct employment opportunities. Such opportunities, in turn, would lead to employment in tertiary areas, such as services, construction, trades and allied industries. Increments in employment would necessarily be followed by increments in income. As a result, the tax base of the area would expand leading to an increase and improvement in government-supplied services. In rural areas, moreover, a community-strengthened economy would result in a reduction of rural to urban migration. This reduction would help alleviate some of the urban poverty problem.

To explore different business opportunities effectively, the economic development component of the CDC should include the following personnel: (1) a legal management specialist, (2) a marketing specialist, (3) an industrial development specialist, (4) specialists in specific areas, such as agriculture, manufacturing and real estate, and (5) a research staff, including an economist. This team, upon finding resources which indicate potential for attaining financial success, if utilized, would present the results of its study to the executive director who would go to the board of directors for a final decision of whether or not to develop the proposed business opportunity.

For legal reasons, the business facilities that are developed would be set up as a wholly owned subsidiary of the CDC.²¹ While allowing

²¹ Apart from legal considerations, a subsidiary might also be more practical, since a separate organization with a separate staff would be established; the service and economic components of the CDC might not be commingled.

investment in other companies,²² some corporate statutes limit the type of income-producing activities in which a nonprofit corporation can engage.²³ Indeed, there is the risk that a court might hold that the two corporations are in fact one, but unless creditors of the subsidiary were seeking repayment from the CDC, no reason exists for such a decision. The CDC would not be acting contrary to the purpose and intent of the statute; it would be complementing the law.

A second and more important argument for using a subsidiary corporation is prompted by Title II of the Economic Opportunity Act of 1964 and Section 501(c)(3) of the Internal Revenue Code of 1954. Under the Community Action Program (C.A.P.) Guide to Title II, a corporation must be tax-exempt before it can apply for a grant.²⁴ Under section 501(c)(3), a corporation "organized and operated exclusively for religious, charitable, . . . or educational purposes" can be exempt from taxation. However, whether a "charitable"²⁵ organization which plans to engage substantially in commercial activities is "organized and operated exclusively" for such purposes is presently an open question.²⁶ Although the authors do not believe that, under existing law, tax exemption and substantial commercial activity are mutually exclusive, the subsidiary route may save time, prove more convenient and avoid litigation.²⁷

The subsidiary would be capitalized by the CDC which would purchase all of its stock. The subsidiary's board would consist of directors or officers of the CDC, members of the CDC and members of the business community. The employment needs of the subsidiary, including some managerial positions, would be filled by members of the CDC who would have been trained in the education classes for the work

²² See, e.g., Model Non-Profit Corp. Act § 5(g).

²³ See, e.g., Model Non-Profit Corp. Act § 4. See also the Preface to the 1964 Edition of the Model Act as published by a Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association. The reason would not exist in states which have adopted provisions similar to Alternative Section 4 of the Model Act: "Corporations may be organized under this Act for any lawful purpose or purposes. . . ."

²⁴ C.A.P. Guide, Part I, at 42, item 4.4.1. As explained in the next section, Titles II and III of the Economic Opportunity Act are the major source of capital for CDC's. Thus, these rules must be complied with.

²⁵ "Charitable" is meant to include all the organizations described in Section 501(c)(3) of the Internal Revenue Code.

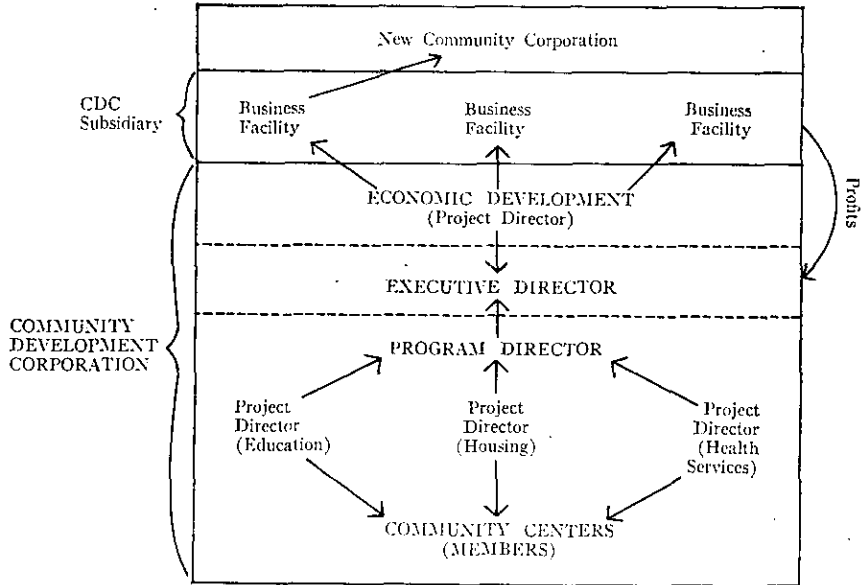
²⁶ See Treas. Reg. § 1.501(c)(3)-1 (1968); Eleasberg, *Charity and Commerce: Section 501(c)(3)—How much Unrelated Business Activity*, 21 Tax L. Rev. 53 (1965); Ragovin, *The Charitable Enigma: Commercialism*, U. So. Cal. 1965 Tax Inst. 61; Sugarman and Pomeroy, *Business Income of Exempt Organizations*, 46 Va. L. Rev. 424 (1960); Comment, *The Macaroni Monopoly: The Developing Concept of Unrelated Business Income of Exempt Organizations*, 81 Harv. L. Rev. 1280 (1968).

²⁷ When faced with this tax problem, HELP concluded that using a subsidiary would be simpler and less time consuming. Of course, the Commissioner of Internal Revenue could disregard the subsidiary and treat both corporations as one. The tax question would again be present.

involved, and who would also receive on-the-job training. Finally, any profits not reinvested by the subsidiary would be distributed to the CDC corporation for the purpose of financing its education program and other projects. Thus, after an initial grant, the program would become self-sustaining. And, although the CDC would be tax-exempt, its subsidiary would not. Thus, the subsidiary would not enjoy an unfair advantage over competing businesses resulting from the elimination of the tax cost.

Since one of the primary goals of the CDC program is community ownership,²⁸ the final step of the process would involve the transfer of these business facilities to the community. As each facility became self-sustaining, the assets would be "spun-off" to the community. The community would form its own corporation to purchase the assets being transferred. Payment for these assets would be in shares of the new corporation. The new corporation and the CDC subsidiary would also enter into an agreement under which the stock in the new corporation held by the subsidiary would be redeemed by the new corporation at a certain price over a certain period of time. This arrangement insures that the subsidiary would have some voice in the management of the business during the transitional period. Then the community would own the facility outright.

In diagram form, the model CDC program would appear as follows:



²⁸ See Community Self-Determination Act of 1968, S. 3875, S. 3876, H.R. 18709, 90th Cong., 2d Sess. (1968); 114 Cong. Rec. 147011 (daily ed. July 18, 1968) (remarks of Representative Goodell); Alperovitz, *supra* note 4; Kelso and Helter, *supra* note 4.

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The shareholders of the new corporation would be the members of the CDC. They could subscribe for stock at a given price: for example, five dollars a share. These shares would have voting rights and, to insure control by the community, would be restricted as to transfer. If additional capital were needed, bank loans would provide the funds, the business being sufficient collateral for this loan.

II. AVAILABILITY OF CAPITAL AND TITLES II AND III-B OF THE ECONOMIC OPPORTUNITY ACT OF 1964²⁹

To achieve some degree of success, the above model, like any other plan for the alleviation of poverty, requires a rather large amount of capital. A possible source of this capital is provided by the Economic Opportunity Act of 1964.³⁰ The primary purpose of this Act is

to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work and the opportunity to live in decency and dignity.³¹

It is the position of this paper that Titles II and III-B of this Act are the primary source of capital which a CDC needs.³²

Under Titles II and III-B, the CDC would qualify (1) if it were designated as a community action agency under Title II-A and B, (2) if its program were a research and pilot program under Title II-C or (3) if its program qualified as a program for migrant and seasonal farmworkers under Title III-B.³³

A. *The CDC as a Community Action Agency*

Title II is a rather complex and intricate statute which in general authorizes the creation of community action agencies and programs, describes their structure and functions, and provides for their financing. Its purposes are:

(a) To stimulate a better focusing of available resources to enable

²⁹ 42 U.S.C. §§ 2781-2837, 2861-2864 (Supp. III, 1965-67).

³⁰ 42 U.S.C. §§ 2701-2981 (1964), as amended, §§ 2701-2994 (Supp. III, 1965-67).

³¹ 42 U.S.C. § 2701 (Supp. III, 1965-67). For the fiscal year 1968, \$1,980,000,000 was appropriated for O.E.O. programs; \$950,000,000 for the purpose of carrying out Title II and \$27,000,000 for the purpose of carrying out Title III-B. 42 U.S.C. § 2702 (Supp. III, 1965-67).

³² Capital can also be acquired from agencies like the Departments of Labor and of Health, Education and Welfare. But this Act was enacted to finance programs like the CDC program and thus remains the primary source of capital for such programs.

³³ A fourth method is found in § 2808(b) which provides for the funding of a "limited purpose project or program" by "agencies outside designated community action agencies." 42 U.S.C. § 2808(b) (Supp. III, 1965-67). Since the model CDC has such a broad purpose and scope and since § 2808(b) is restricted to "limited" programs, it is felt that § 2808(b) would not offer sufficient funds to be effective.

low-income individuals to become fully self-sufficient. Its specific purposes are to promote—

- (1) a type of assistance which is more responsive to local needs and conditions;
- (2) a more efficient utilization of a range of services;
- (3) the greater use, subject to adequate evaluation, of new types of services and innovative approaches in attacking causes of poverty;
- (4) the development and implementation of all programs and projects to serve the poor or low-income areas with the maximum feasible participation of residents of the areas; and
- (5) the broadening of the resource base of programs directed to the elimination of poverty, so as to include the services of everyone.

(b) A further purpose of this title is to provide such educational and vocational training as to enable the poor living in rural areas to become self-sufficient therein.³⁴

The vehicle for carrying out the above purposes is characterized as a "community action agency." This "agency" may be defined as a state or political subdivision of a state,³⁵ or as a "public or private nonprofit agency or organization" which (1) has the power and will to perform the functions set forth in Section 2795 of the Act, and (2) is capable of administering a "community action program."³⁶

Section 2795 provides that the community action agency must have authority under its charter to receive and transfer various funds and contributions from public and private sources, and to delegate powers to other agencies subject to the power of its overall program responsibilities.³⁷

A "community action program" is a community based and operated program which (1) provides a range of services and activities having a measurable impact on causes of poverty in the community;

³⁴ 42 U.S.C. § 2781 (Supp. III, 1965-67), amending 42 U.S.C. § 2781 (1964). The 1964 version was worded more broadly: "The purpose of this part is to provide stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty through community action programs." See Appendix A.

³⁵ A political subdivision is "a unit of general local government for a specific geographic area within a state, normally a county, township, metropolitan or regional government, city, town or village . . ." Community Action Memo, No. 80, Part A (3) (O.E.O. Feb. 15, 1968).

³⁶ 42 U.S.C. § 2790(a) (Supp. III, 1965-67).

[A] community may be a city, county, multicity, or multicounty unit, an Indian reservation, or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed for a community action program.

42 U.S.C. § 2790(c) (Supp. III, 1965-67). See Appendix A.

³⁷ 42 U.S.C. § 2795(a) (Supp. III, 1965-67). Subsection (b) lists certain functions

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(2) organizes its component projects in a manner to carry out all the purposes of the Act; and (3) conforms to such other criteria as the Director may prescribe.³⁸ According to section 2808(a), the Director may also lend financial assistance to the community action agencies for the conduct of community action components.³⁹

When it is recalled that the model CDC set out above calls for the creation of a nonprofit corporation whose purposes are to provide services and economic opportunities to the poor by an innovated means, and whose powers—the powers of corporation—are consistent with this title, the model CDC qualifies as a community action agency, and its program can serve as a community action program. There is, however, a stumbling block between the premise and the conclusion.

As defined, a community action agency must be “a State or political subdivision of a State . . . or a . . . private nonprofit . . . organization which has been designated by a State or such a political subdivision. . . .”⁴⁰ Thus, local governing officials⁴¹ are given the right to determine what agency would be designated as a community action agency, including the power to decide whether a CDC should be so designated.⁴² In two instances only could the Director of the Office of Economic Opportunity be asked to designate the CDC as a community action agency: (1) if “the community action agency serving the community has failed, after having a reasonable opportunity to do so, to submit a satisfactory plan for a community action program . . . or to carry out such a plan in a satisfactory manner” and (2) if “neither the

which a community action agency would have. 42 U.S.C. § 2795(b) (Supp. III, 1965-67). The model either has or could have these functions. See Appendix A.

³⁸ 42 U.S.C. § 2790(a) (Supp. III, 1965-67).

³⁹ 42 U.S.C. § 2808(a) (Supp. III, 1965-67). See Appendix A.

⁴⁰ 42 U.S.C. § 2790(a) (Supp. III, 1965-67). See Appendix A.

⁴¹ Governing officials are defined as:

- (a) the governor and legislature of any of the 50 states, the commonwealth of Puerto Rico, or a self-governing territory, or
- (b) the top elected or duly appointed officials of a local political subdivision, of the District of Columbia, or a non-self-governing territory, who collectively possess the power to adopt and carry out local laws or ordinances. However, if the Attorney General or other chief legal officer of the political jurisdiction certifies in writing that the Governor, mayor or other chief executive official or a specific group of the officials described above possesses the power either (i) to plan, conduct, administer, and evaluate a community action agency, or (ii) to designate a separate public agency or private non-profit organization as a community action agency, then that official or group of officials may be considered the governing officials for the purpose. Community Action Memo No. 80, Part A (7) (O.E.O., Feb. 15, 1968).

⁴² Community Action Memo, No. 80, Part C (1) (O.E.O. Feb. 15, 1968). See 42 U.S.C. § 2790(d), (e) (Supp. III, 1965-67). Under § 2790(a), a political subdivision can elect not to be included in the program of a community action agency designated as such. If the local governing officials decide to “opt out,” then this political subdivision or a public or private nonprofit agency or organization designated by it can be recognized as the area’s community action agency. 42 U.S.C. § 2790(e) (Supp. III, 1965-67); see Community Action Memo No. 80, Part E (O.E.O. Feb. 15, 1968).

State nor any qualified political subdivision . . . is willing to be designated as the community action agency . . . or to designate a public or private nonprofit agency or organization to be so designated. . . ."⁴³ Thus, the funding of a CDC under Title II-B depends upon the actions of state and local politicians. They must either designate the CDC as their choice, or fail to designate any public or private subdivision, agency or body as a community action agency. In the latter situation, the CDC could then petition the Director for recognition.

A related problem must be mentioned. If a CDC were designated as a community action agency, it would have to have a "governing board," so constituted that one-third of the members are public officials (including the chief elected officials) or their representatives, at least one-third are representatives of the poor, and the remainder are representatives of major groups or interests in the community.⁴⁴ This board is empowered "to appoint persons to senior staff positions, to determine major personnel, fiscal, and program policies, to approve overall program plans and priorities, and to assure compliance with conditions of and approve proposals for financial assistance. . . ."⁴⁵

During the 90th Congress, when these provisions were enacted,⁴⁶ serious debate occurred concerning whether public officials would promote or hinder this aspect of the poverty program. Arguments in favor of these requirements were predicated upon the belief that many community action agencies were not receiving the active participation of responsible public officials in the decision-making process which affected their communities. The majority reasoned that:

Unless a community's governing structure endorses the community action program, there is little hope that the agency will be able to realize its vital potential for planning and coordination. This will happen only if the community action agency is viewed as an instrument of the community which it serves and not as the vehicle for implementing federally-established objectives.⁴⁷

On the other side, it was argued that although state and local governments should be involved, the majority was overreacting and turning the whole program over to City Hall. The minority's argument was that:

The bill fails most of all in its abandonment of the concept of

⁴³ 42 U.S.C. § 2790(d) (Supp. III, 1965-67).

⁴⁴ 42 U.S.C. § 2791(b) (Supp. III, 1965-67).

⁴⁵ 42 U.S.C. § 2791(e) (Supp. III, 1965-67).

⁴⁶ Pub. L. No. 90-222, § 104 (Dec. 23, 1967).

⁴⁷ H.R. Rep. No. 866, 90th Cong., 1st Sess., 13 U.S. Code Cong. & Adm. News 4771 (1968).

an independent community action program in which the poor themselves have an effective voice.

The . . . bill provides that "Community action agencies shall be a State or political subdivision of a State . . ." and all else that follows about participation of the poor is thereby rendered largely meaningless. In attempting to remedy the administrative vagaries and operating excesses of the program, the (bill) has reversed itself 180 degrees and turned the entire program over to City Hall politicians—not as a partner with the poor and with business, labor, and social organizations, but as the dominant and controlling power.

The consequences of this action are all too obvious. Where City Hall is unsympathetic to the needs of the poor or to this program, the community action program is dead without the decency of a burial; where City Hall seizes upon CAP as an instrument for political power, it becomes just that and nothing more; where City Hall is sympathetic to the needs of the poor and too scrupulous to use the program for political advantage, it will nevertheless dominate it to such an extent that effective participation of the poor (particularly when it becomes abrasive) cannot be realized. In short, CAP would be the creature of the dominant political organization.⁴⁸

Suffice it to say that the authors agree with the minority opinion. Therefore, neither does the model require the active participation of elected officials on the board of directors⁴⁹ or in any other capacity, nor does it forbid their participation. However, it is recognized that the acquisition of funds under this title requires that local officials become involved. They at least would have to be included on the CDC's board of directors.

B. *Pilot Programs*

Under Title II-C of the Act,

The Director may contract or provide financial assistance for pilot or demonstration projects conducted by . . . private agencies *which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or otherwise in furthering the purposes of this [title]. . .*⁵⁰ (Emphasis added.)

⁴⁸ H.R. Rep. No. 866, 90th Cong., 1st Sess. 13 U.S. Code Cong. & Adm. News 4814 (1968).

⁴⁹ See pp. 221-22 *supra*.

⁵⁰ 42 U.S.C. § 2825(a) (Supp. III, 1965-67).

Depending upon the size of the CDC program and the amount of money it would demand, this provision could be used to finance the program completely or to supplement any financing from other sources, such as a Title III-B grant discussed on the following pages. The CDC program, if anything, is a demonstration project using a new approach to overcome the effects of poverty.

To achieve a grant under this provision, the CDC would only have to submit a proposal demonstrating how its program is a "pilot program," to the appropriate community action agency or, if there is no such agency, to the local governing officials of the political subdivision.⁵¹ If the plan is disapproved by the agency or governing body, as the case may be, the Director is authorized to reconsider it.⁵² If he concludes that the plan is consistent with the purposes of Title II, the grant will be approved.⁵³

C. *Program for Migrant and Seasonal Farmers*

Before World War II, rural inhabitants were predominantly small farmers whose subsistence was based on a barter economy and home-produced goods and services. Since then, however, technological advances in agriculture have resulted in the creation of larger and better equipped farms which have displaced many small farmers and farm laborers. Many of these men and women have migrated into urban cities where there is no market for their agricultural skills. As a consequence, they have been driven into ghettos and slums, compounding their own and the community's social and economic problems. The others have been forced to become migrant and seasonal farmworkers, traveling from area to area and harvesting labor-intensive crops. This group of people has probably been the most neglected in our society. Their nomadic nature and exiguous wages impede their education, deprive them of health and community services and, in many instances, prevent them from receiving welfare benefits.⁵⁴

⁵¹ 42 U.S.C. § 2825(d) (Supp. III, 1965-67).

⁵² *Id.*

⁵³ *Id.* § 2825(b) prescribes that "[t]he Director shall establish an overall plan to govern the approval of pilot or demonstration projects. . . . The plan shall set forth specific objectives to be achieved and priorities among such objectives." 42 U.S.C. § 2825(b) (Supp. III, 1965-67). The director has not published such a plan. However, a plan can be acquired from the Director. A new plan is formulated each year. After studying the plan for 1968, the authors have concluded that the model CDC would fit neatly within it.

The section does specify that pilot projects must be developed to aid (1) elderly persons; (2) the poor in rural areas; and (3) addicts. Also, projects to encourage the participation of private industry must be established. 42 U.S.C. § 2825(e) (Supp. III, 1965-67).

⁵⁴ The welfare residency requirements are presently being attacked. Harrell v. Tobriner, 279 F. Supp. 22 (D.D.C. 1967), prob. juris. noted, sub. nom. Washington v. Harrell, 390 U.S. 1019 (1968).

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No longer is this segment of the population completely forgotten. "[T]o assist migrant and seasonal farmworkers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life in an increasingly complex and technological society,"⁵⁵ Title III-B of the Act authorizes "financial assistance to assist State and local agencies, private nonprofit institutions and cooperatives in developing and carrying out programs to fulfill the purpose of this part."⁵⁶ The programs may include projects or activities:

(1) to meet the immediate needs of migrant and seasonal farmworkers and their families, such as day care for children, education, health services, improved housing and sanitation . . . , legal advice and representation, and consumer training and counseling.

. . . .

(3) to equip unskilled migrant and seasonal farmworkers and members of their families as appropriate through education and training to meet the changing demands in agricultural employment brought about by technological advancement and to take advantage of opportunities available to improve their well-being and self-sufficiency by gaining regular or permanent employment or by participating in available Government training programs.⁵⁷

Without question, the model CDC satisfies the purpose and requirements of this title. Moreover, Title III-B does not contain any provision requiring active participation by state and local governing officials. The CDC would deal directly with the Director of the Office of Economic Opportunity.⁵⁸

An example of an organization which is presently working with a CDC type program and which has been funded by Titles II-C and III-B is the Home Education Livelihood Program, Inc. (HELP), a nonprofit corporation located in New Mexico.⁵⁹ HELP was incorporated in 1965, primarily for the purpose of providing adult education, health services, child care centers and self-help housing improvement practices

⁵⁵ 42 U.S.C. § 2861(a) (Supp. III, 1965-67).

⁵⁶ 42 U.S.C. § 2862(a) (Supp. III, 1965-67).

⁵⁷ 42 U.S.C. § 2862(b) (Supp. III, 1965-67).

⁵⁸ Title III-B includes only four sections. In all these sections, it is "The Director" who is addressed as the designating official. 42 U.S.C. §§ 2861-2864 (Supp. III, 1965-67). The only restrictions are that the Director (1) be assured "that the applicant will maintain its prior level of effort in similar activities" and (2) "shall establish necessary procedures or requirements to assure that programs under this [title] are carried on in coordination with other programs or activities providing assistance to the persons and groups served." 42 U.S.C. § 2863 (Supp. III, 1965-67).

⁵⁹ HELP has also received a large grant from the Ford Foundation.

for migrant and seasonal farmers. Thus, its initial financing came from a Title III-B grant.

A program encompassing these activities generated new interest among the farmworkers. These people, by means of the "community life involvement" process, began to discover opportunities for increasing their level of income. These opportunities were centered around the existing human and natural resources.

Realizing that these activities did not include a comprehensive economic development program and that the Title III-B grant was not large enough to support such a program, in 1967, HELP submitted to OEO a proposal for a pilot program under Title II-C.⁶⁰ A grant was approved on June 20, 1967, authorizing HELP to develop a comprehensive economic advancement program. The hypotheses on which HELP based its proposal, and on which it is carrying out its program, are:

1. that successful small village production enterprises can be established which can serve as sound economic bases for rural communities;
2. that significant improvement can be generated in the income levels of the economically disadvantaged in the small rural communities;
3. that social and cultural regeneration of the rural communities as well as economic regeneration will result; and
4. that the economic returns alone achieved through this project fully justify the investment.⁶¹

As a result of all its funding—Title III-B, Title II-C and Ford Foundation—HELP has set up a highly successful education program: a self-help housing project under which more than one hundred homes have been constructed or improved, three agricultural cooperatives through which small farmers can now market their produce in bulk without competing with each other, a manufacturing facility which is constructing boxes for the Defense Department and which presently employs more than twenty people, and furniture and craft shops through which the poor people of New Mexico can use their natural talents to supplement their income. HELP also plans to organize the cattle raisers and fruit growers in New Mexico so that they can market their products as commercial units. These gains have been made in a period of three years.

⁶⁰ The proposal was entitled "HELP for Human Resources in Rural New Mexico."

⁶¹ These hypotheses were originally presented by Alex P. Mercure, State Program Director of HELP, in an untitled paper to the Consultation of Human Resources Development in Rural New Mexico at 15, Albuquerque, New Mexico, April 11-15, 1967.

III. THE COMMUNITY SELF-DETERMINATION ACT OF 1968

During 1968 a bill entitled the Community Self-Determination Act of 1968 was introduced into both Houses of Congress.⁶² The bill proposed the establishment of "a community self-determination program to aid the people of urban and rural communities in securing gainful employment, achieving the ownership and control of the resources of their community, expanding opportunity, stability, and self-determination, and making their maximum contribution to the strength and well-being of the Nation."⁶³ If enacted, the Act would provide for the creation of a CDC, almost identical to the model discussed earlier, and the fabrication of a comprehensive community development program.⁶⁴

This section will study the Community Self-Determination Act since it represents the most up-to-date thinking about community development and since it appears that it will, in some form, be enacted as law.⁶⁵ First, however, the National Community Corporation Certification Board, which would be the official supervising agency, will be introduced and certain terms will be defined.

A. *National Community Corporation Certification Board*⁶⁶

Under the bill, a new independent agency to be known as the "National Community Corporation Certification Board" would be established.⁶⁷ The Board would be composed of five members, appointed by the President with the advice and consent of the Senate.⁶⁸ Each member would serve a five-year term.⁶⁹ The Board would have three functions: First, it would be empowered to charter and dissolve community development corporations.⁷⁰ In so doing, it would consider, approve or reject any information submitted by a proposed CDC, make any determination of law or fact necessary,⁷¹ and conduct, supervise and certify certain referenda.⁷² Second, the Board would be authorized

⁶² S. 3875, S. 3876, H.R. 18709, 90th Cong., 2d Sess. (1968) [hereinafter cited as "section . . ."]

⁶³ Preamble.

⁶⁴ Section 3:

It is therefore the purpose of this Act to provide for the establishment of community development corporations, community development banks, and other supporting programs and provisions in order to mobilize the talents and resources of the people of this "nation within a nation" to help them play a more meaningful and rewarding role in building a better, stronger, and more confident America.

⁶⁵ This prediction is based on the fact that at least thirty Senators, representing both parties, and twelve Congressmen have sponsored the Act.

⁶⁶ Hereinafter cited as the "Board."

⁶⁷ Section 101.

⁶⁸ Section 102(a).

⁶⁹ Section 102(b).

⁷⁰ Section 103(a).

⁷¹ Id.

⁷² Section 103(b). Section 103(b) adds, "Arrangements shall be designed to encour-

to extend to every CDC certain financial and administrative support.⁷³ Finally, the Board would increase citizen awareness of the benefits of this title and encourage the establishment of corporations pursuant thereto.⁷⁴ This last function is extremely important because the very existence of each CDC depends upon whether the residents of the community know about, and have confidence in, the program.

To assist the Board, a "national advisory committee" would be established.⁷⁵ This committee would consist of twenty-five members, each of whom would be a shareholder in a different community development corporation.⁷⁶ Its purpose would be to "advise the Board with respect to policy matters arising in the administration of this title, . . . [to] exercise a continuing review of the operation of corporations organized under this title, and . . . [to] make such reports and recommendations to the Board as it may deem necessary and desirable."⁷⁷

B. Definitions

Since they will be referred to extensively, the following terms must be defined: "community," "development index" and "resident."

Under the bill, a "community" includes "the geographical area associated with a community development corporation."⁷⁸ This area must be "compact and contiguous"⁷⁹ and must have "no fewer than five thousand residents who are sixteen years of age or older and no more than three hundred thousand such residents."⁸⁰ It must be noted that the "floor" will probably be lowered, since many poverty areas have less than five thousand residents who are sixteen years of age or older.⁸¹

In addition to this population characterization, a community would also be defined as a "poverty area," which is an area having a "development index" of less than 90.⁸² The "development index" is the lesser of the two following ratios:

age maximum community participation consistent with a secret ballot . . ." These referenda are intended to insure that the residents want the particular CDC. The Board has thus been compared to the National Labor Relations Board since it would be concerned with proper community "representation." 114 Cong. Rec. H7012 (daily ed. July 18, 1968) (remarks of Representative Goodell). For the referendum requirements, see section 142.

⁷³ Sections 103(c), 140(b).

⁷⁴ Section 103(d).

⁷⁵ Section 104.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Section 4(b).

⁷⁹ Section 110(b). Under certain conditions, the community may include noncontiguous areas. Sections 110(b), 137.

⁸⁰ Section 110(b). "[D]eviations from these minimum and maximum limitations that are due to population growth shall not require the dissolution of the corporation." Id.

⁸¹ See 114 Cong. Rec. H9700 (daily ed. Oct. 9, 1968) (remarks of Representative Gonzales).

⁸² Section 138(d). "Attainment of a development index of ninety or above by a

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(1) . . . (i) [t]he percentage of the labor force unemployed on a national basis, or within the relevant standard metropolitan statistical area, whichever is lower, to (ii) the percentage of the labor force unemployed in the appropriate community area.

(2) . . . (i) [t]he median family income in the appropriate community area to (ii) the median family income on a national basis, or within the relevant standard metropolitan statistical area, whichever is greater.⁸³

A "resident" is defined as "a natural person who resides within the community area."⁸⁴ Under section 142(b), which describes a resident for referendum purposes, "[t]he payment by any person of rent or for water, gas, electricity or telephone services arising out of his occupancy of real property within the community for a period of thirty days preceding any referendum ordered by the Board pursuant to this title shall be prima facie evidence of residence within the community."

C. *Organization and Management of the CDC*

1. *In General.*—At the center of the bill's program is a "community development corporation," which is defined as:

a corporation established by the people of an urban or rural community to expand their economic and educational opportunities, increase their ownership of productive capital and property, improve their living conditions, enhance their personal dignity and independence, expand their opportunities for meaningful decision making, and secure the economic development, social well-being, and stability of their community, and which has been certified as a community development corporation by the Community Corporation Certification Board⁸⁵

Like the model CDC, this CDC is also a two-tiered corporation; it would furnish ordinary and necessary services and engage in commercial and productive activities. The main difference between the two is that the bill's CDC would be chartered as a "community development cor-

community after a corporation has received a final charter of incorporation . . . shall not be grounds for dissolution of the corporation." Section 138(d).

⁸³ Section 138(a). Subsection (b) is unique:

In order to slow the rate of migration to large cities, in the case of any community . . . which lies wholly without any standard metropolitan statistical area, the Board shall subtract a factor of five from the whole number determined pursuant to subsection (a) before determining the community's development index.

⁸⁴ Section 4(d).

⁸⁵ Section 4(a). Compare this definition with the model CDC, pp. 219-27 supra.

poration" under a federal law which would consolidate the ideas of state profit and nonprofit corporation statutes. From necessity, therefore, concepts new to modern corporate law have been devised. The discussion of this bill will concentrate on these new concepts.

2. *Formation.*—Since actual formation of a CDC⁸⁶ would involve rather complex and intricate procedures, only the more essential points involved in such formation will be discussed. This discussion will proceed on the assumption that only one group is applying for certification as a CDC in a particular community.⁸⁷

The first step toward certification would involve submitting to the Board "an application for a charter," which would include a letter of intent to submit such an application, articles of incorporation and an organization certificate.⁸⁸ This application would be filed by five or more incorporators.⁸⁹ The bill does not describe these incorporators, except to indicate that they must be natural persons.⁹⁰

The letter of intent itself is simple. Included must be the name of the proposed corporation, the geographical area of the community and the names and addresses of each of the incorporators.⁹¹ Within seven days after receipt of this letter, the Board would establish a temporary branch office in the community and would

for seven consecutive days thereafter, give prominent notice of such initial letter of intent, its contents, and the effect thereof to the residents of the community to which such letter refers. Such notice shall provide information with respect to the right to make and submit competing applications with respect to such area, or any other larger or smaller area that includes any part of the area with respect to which the initial letter of intent has been filed Such notice shall also provide information with respect to the address of the temporary branch office of the Board at which information and advice with respect to all applications may be obtained.⁹²

⁸⁶ Unless otherwise stated, all references to "CDC" will mean the CDC provided for by the bill.

⁸⁷ Under the bill, only one corporation can be formed in any one community. If more than one group applies for certification and each one qualifies, then the residents will decide by referendum which CDC would represent them. Provision is also made for combining corporations of separate communities. Sections 135-37.

⁸⁸ Section 130(a). There must also be submitted "such other documents as the Board may by rule or regulation hereafter prescribe."

⁸⁹ Section 130(a).

⁹⁰ *Id.* Unlike the board of directors and business management board, however, the incorporators would not have to be residents of the community. Sections 112(a), 113(b). This distinction is made probably to allow organizers from outside the community to organize a CDC in those cases in which the residents are not qualified to do so themselves.

⁹¹ Section 131(a). The letter must also include "any other information that the Board may require by rule or regulation."

⁹² Section 135(a). The purpose is "to insure maximum participation of the residents"

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This process would continue every ten days for the following sixty days.⁹³

In addition, during these sixty days, the Board would issue "pledge cards" to the incorporators.⁹⁴ These pledge cards, which are in the nature of subscription agreements for the purchase of stock,⁹⁵ would be signed by all residents, sixteen years or older, who desire to purchase stock in the proposed CDC.⁹⁶

At the end of this sixty-day period and during the ten days which follow, the articles of incorporation and the organization certificate would be filed.⁹⁷ Since these articles would contain the same information found in articles filed by any business or nonprofit corporation, they present no problem.⁹⁸ A certificate of organization, however, is new to corporate law. It must indicate:

(1) the population of the community with respect to which the corporation is proposed to be formed;

(2) the rate of unemployment for the most recent available calendar year in such community and the annual average rate of unemployment in such community for the immediately preceding three calendar years, as determined by appropriate statistics;

(3) the median family income for the most recent available calendar year in such community and the median family income for the immediately preceding three calendar years, as determined by appropriate statistics; and

(4) any other appropriate measure of economic development in such community as the Board by rule or regulation may require or as the incorporators may choose to provide.⁹⁹

With this information, the community's development index would be calculated.¹⁰⁰ A community with a development index of 90 or better would not qualify for a CDC.¹⁰¹ The incorporators must also attach to the certificate of organization pledge cards, signed by at least 5 percent of the residents, sixteen years or older.¹⁰² Failure to get

⁹³ Section 135(a).

⁹⁴ Section 135(b). This sixty-day period is termed the "organizational period" since the residents would be organized during this time. Articles of incorporation and the organization certificate could not be submitted during this period.

⁹⁵ Section 133(c).

⁹⁶ *Id.*

⁹⁷ Section 135(c).

⁹⁸ See section 132(a). Compare ALI-ABA Model Bus. Corp. Act § 44 (1966); ALI-ABA Model Non-Profit Corp. Act § 29 (1964).

⁹⁹ Section 133(a). The Board would help the incorporators accumulate this data. Section 133(b); see section 103(c).

¹⁰⁰ Section 138(a). See definitions of "community" and "development index," pp. 235-37 *supra*.

¹⁰¹ Section 138(d).

¹⁰² Section 133(c).

these signatures would cause the termination of the attempt at incorporation.¹⁰³

Upon receipt of all this information, the Board would issue a "conditional certificate of incorporation" to the incorporators¹⁰⁴ which would give the CDC corporate existence,¹⁰⁵ but not the authority to conduct business.¹⁰⁶ The conditional certificate would be "conclusive evidence that all conditions precedent required to be performed have been complied with. . . ."¹⁰⁷

During the next forty-five days, the conditionally chartered CDC would submit additional pledge cards, "signed by residents of the community . . . in such an amount as to be sufficient, when taken together with the validly executed pledge cards previously filed by such corporation, so as to indicate that at least 10 per centum of the residents [sixteen years or older] of the corporation's proposed community" have agreed to purchase stock in such corporation.¹⁰⁸ The corporation would also submit an affidavit indicating that at least five hundred of the residents had actually each paid in an aggregate amount of \$5,000.¹⁰⁹

After making a determination that the information filed satisfied the stated requirements,¹¹⁰ the Board would:

direct a referendum by secret ballot¹¹¹ . . . to determine whether the residents of such community [who are] eligible to vote, whether or not shareholders or subscribers [*sic*], desire that the corporation carry on the functions of a national community development corporation . . . *If a majority of those voting in such referendum vote in favor of such corporation carrying on such functions . . . the Board shall forthwith issue to such corporation a final certificate of incorporation . . .*¹¹² (Emphasis added.)

Corporations which fail to satisfy the requirements would be dissolved.¹¹³

Besides being extremely complex, this incorporation process would

¹⁰³ See section 135(e).

¹⁰⁴ Section 135(e). The Board would have twenty days in which to determine whether the application meets the requirements of the bill. Section 135(e).

¹⁰⁵ Section 135(f).

¹⁰⁶ See section 132(a)(6).

¹⁰⁷ Section 135(f).

¹⁰⁸ Section 136(a).

¹⁰⁹ *Id.*

¹¹⁰ The Board would have twenty days, after the forty-five day period, in which to make this determination. Section 136(c).

¹¹¹ The rules concerning referendum appear in section 142.

¹¹² Section 137(a). See section 140. One other requirement is that the community would have to have a development index of less than 90. Section 138(d).

¹¹³ See section 139.

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be very time-consuming. It would take approximately six months from the filing of the letter of intent to the final certificate of incorporation.¹¹⁴ This figure does not take into consideration additional time required if more than one group were asking for certification or if the results of the referendum were contested.¹¹⁵ However, these requirements were not adopted arbitrarily. The basis of this bill is a self-determination policy; each of these formation steps is consistent with this policy. But query whether a "true" self-determination program requires at least six months before it can commence. A system whereby the incorporators submit their articles and pledge cards, followed by an investigation by the Board to determine whether the information submitted is accurate, would be sufficient. Here, the burden is placed on the incorporators to organize the residents before taking any formal action.

3. *Management.*—The management of the CDC would be represented on two boards: the board of directors and the business management board.¹¹⁶ As in all corporations, the affairs of the CDC would be managed by a board of directors.¹¹⁷ The CDC board would be composed of at least nine members, plus two additional directors for every 10,000 shareholders in excess of 25,000,¹¹⁸ who would be residents of the community and shareholders of the CDC.¹¹⁹ The bylaws would indicate the manner of election and their terms of office.¹²⁰

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Notice period	7 days
Organization period	60 days
Filing of articles and certificate of organization	10 days
Board determines whether conditional certificate should be issued	20 days
Post conditional certification period	45 days
Board determines whether corporation should receive final charter	20 days
	<hr/> 162 days

¹¹⁵ See sections 136(b), 137(b), 137(e), 142.

¹¹⁶ Sections 112, 113.

¹¹⁷ Section 112(a).

¹¹⁸ Section 112(b).

¹¹⁹ Section 112(a). Other qualifications may be prescribed by the articles of incorporation.

¹²⁰ Section 112(d). A director's term could not exceed two years. Shareholder balloting is discussed on pp. 244-46 *infra*.

The bylaws would be extremely important. Besides stipulating the normal rules and regulations, they would:

specify objective, equitable and nondiscriminatory criteria regarding the availability of, and access to, the programs, services, benefits, and opportunities resulting from the activities of the corporation: *Provided, however,* That a shareholder of the corporation and his immediate family, as defined by such bylaws, may receive preferential or exclusive treatment. The bylaws shall provide that any person aggrieved by the failure of the corporation to distribute benefits in accordance with the objective, nondiscriminatory, and equitable criteria provided therein shall have a right to appeal to the Board . . .

Section 116(c).

The business management board is also new to corporate law. It can best be described as a "committee in charge of business" since it would manage the property and assets of the CDC.¹²¹ This board, all of whom would also be residents of the community and shareholders of the CDC,¹²² would be comprised of nine members, elected by the board of directors.¹²³ Only three persons could be members of both boards simultaneously.¹²⁴

In effect, the bill states that a self-help program can be achieved only if the residents of each community control and manage the CDC. But usually these people are not qualified to manage businesses or to determine policy. For this reason, the bill has included within its program several management "additives." First, the National Board would assist CDC's "in obtaining and utilizing advice and counsel on organizational procedures and legal requirements imposed by this title, socio-economic data with respect to the area within which such corporation is located, and other information or research that may be of interest to such corporations"¹²⁵ Second, Section 401 of the Equal Opportunity Act¹²⁶ would be amended to provide that the Administrator of the Small Business Administration would be authorized to grant CDC's up to 90 percent of the cost of "business counseling, management training, and legal and other related services, with special emphasis on management training, using the resources of private business"¹²⁷ Third, the bill intends that private industry, through tax incentives, provides management training to the residents of the community.¹²⁸ Finally, certain management decisions are stipulated: when and how dividends should be distributed,¹²⁹ and the uses to which

¹²¹ Section 113(a). The most important of these assets would be stock in subsidiary corporations.

¹²² Section 113(b).

¹²³ Section 113(a):

At the meeting of the board of directors, at which the first members of the business management board are elected, the members of the business management board shall be divided into three classes, each class to be equal in number, the term of office of members of the first class to expire one year after their election, that of the second class to expire two years after their election, and that of the third class to expire three years after their election. At the first meeting of the board of directors after the term of a class of members of the business management board has expired, the number of the class whose term has expired shall be elected to hold office until the third succeeding meeting of directors held to elect members of the business management board.

¹²⁴ Section 113(a). The bill also provides that officers would be appointed by the directors. See section 114.

¹²⁵ Section 103(c).

¹²⁶ 42 U.S.C. § 2901 (Supp. III, 1967).

¹²⁷ Sections 501, 503. This would be accomplished by redesignation of §§ 407 and 408 of the Economic Opportunity Act of 1964 (42 U.S.C. §§ 2906(c), 2907) as §§ 408 and 409, and by addition of a new § 407. See Appendix B.

¹²⁸ See pp. 249-52 *infra*.

¹²⁹ See pp. 243-46 *infra*.

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income could be put.¹³⁰ In addition, the decisions as to how capital would be raised and businesses acquired are made easier.¹³¹

4. *Organization, Income and Ownership.*—The CDC would function on two levels. At the ground level, it would provide the adult education classes, day care centers, health services and other necessary services; at its upper level, it would be a holding company, owning the subsidiary corporations throughout the community.¹³² In this sense, the CDC and its program would be similar, if not identical, to the model CDC and its program. However, there would be differences resulting not only from the law incorporating the CDC, but also from related incentive laws.

Like the model, the CDC would operate its businesses through a subsidiary or subsidiaries.¹³³ The first difference concerns the income earned by the subsidiaries. Again like the model program, it is intended that the income earned by a CDC subsidiary would be distributed to the CDC to finance its operation. To prevent this income from being reduced by taxes—thus increasing the chances of needing direct federal aid—certain tax relief would be extended. First, while the community's development index is below 100, the subsidiary would be taxed at lower rates and have a larger surtax exemption. As the index increased, the tax rate would increase also, and the amount of surtax exemption would decrease until the normal corporate rates and exemption were reached.¹³⁴ For instance, a CDC subsidiary with income of \$25,000 would have a tax liability of \$5,500 if the community's development index were 100 or over; that would be the same amount that any corporation would pay.¹³⁵ The tax would be \$3,000 if the development index were between 90 and 100;¹³⁶ \$1,500 if the index were between 80 and 90,¹³⁷ and nothing if the index were below 80. Secondly, Section 243(a) of the Internal Revenue Code, dealing with dividends received by a corporation, would be amended to provide that all dividends re-

¹³⁰ See pp. 243-46 *infra*.

¹³¹ See pp. 246-52 *infra*.

¹³² Presumably, the CDC could conduct its businesses through one subsidiary or many subsidiaries. A distinction is not made in the bill. However, the bill does force the CDC to place all its financial transactions into one or many subsidiaries. See section 201, § 1942.

¹³³ The term "community development corporation subsidiary" would be defined in a new Section 1390 of the Internal Revenue Code as "any corporation all or part of the stock of which is owned by a community development corporation . . . provided that all of the shares of stock of such corporation not owned by . . . one or more trusts qualified under section 401(a). Section 402(b). See pp. 249-51 *infra* for a discussion of the extent to which the CDC must use subsidiaries.

¹³⁴ Section 402(b) would add a Subchapter U to the Internal Revenue Code. See Appendix B.

¹³⁵ \$25,000 taxed at 22 percent.

¹³⁶ \$25,000 taxed at 12 percent.

¹³⁷ \$25,000 taxed at 6 percent.

ceived by a CDC would be tax exempt.¹³⁸ However, if a CDC were to earn income from sources other than dividends, it would pay taxes at ordinary tax rates.¹³⁹ Finally, the CDC and its subsidiaries would be excluded from the tax provisions allowing only one surtax exemption to a controlled group of corporations.¹⁴⁰ To prevent direct financial benefit to the shareholders while the CDC and its subsidiaries were being extended tax "breaks," the CDC would be prohibited from distributing any dividends until the community had a development index of 100 or better for five consecutive years, and then only if the Secretary of the Treasury were informed that the CDC was to be treated as a normal business corporation for tax purposes.¹⁴¹

A second difference from the model is that a restriction is placed on the uses to which income earned by the CDC could be put. The business management board would have to allocate all income received by the CDC as follows: (1) no less than 20 percent, nor more than 80 percent would be set aside "for any purpose or purposes that the board of directors shall think conducive to the development and implementation of programs designed by the board to expand the economic and educational opportunities available in the community"; and (2) the remainder of the income would be accumulated, distributed or used in expanding business operations.¹⁴²

The third difference concerns membership and voting rights in the CDC. Under the bill the members would be shareholders, who had to be residents of the community who were natural persons, sixteen

¹³⁸ Section 403. Section 243(a) of the Internal Revenue Code provides:

. . . In the case of a corporation, there shall be allowed as a deduction an amount equal to the following percentages of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter:

(1) 85 percent, in the case of dividends other than dividends described in paragraph (2) or (3);

(2) 100 percent, in the case of dividends received by a small business investment company operating under the Small Business Investment Act of 1958; and

(3) 100 percent, in the case of qualifying dividends (as defined in subsection (b)(1)).

Section 403 of the bill would add a paragraph (4) to Section 243 of the Code:

"(4) 100 percent, in the case of dividends received by a community development corporation. . ."

¹³⁹ See pp. 249-51 *infra*.

¹⁴⁰ Section 401. Under Section 1561 of the Internal Revenue Code, a controlled group of corporations is allowed one surtax exemption divided by the number of corporations. Section 1563 of the Code includes a parent-subsidiary controlled group within the definition of "controlled group of corporations." Section 403 of the bill would amend § 1563 to exclude the CDC and CDC subsidiary from this definition.

¹⁴¹ Section 120. Dividends could be distributed only up to one-half of unrestricted earned surplus. The amount received by each shareholder would depend upon the length of time he had been a shareholder. A shareholder of less than one year could not receive any dividends.

¹⁴² Section 119.

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years of age or older.¹⁴³ The shares which they could own would have a par value and redemption value of five dollars¹⁴⁴ and would be restricted as to transfer.¹⁴⁵ Shares could be issued only if "consideration expressed in dollars" equal in amount to five dollars a share were paid in full.¹⁴⁶ The consideration could be in money or in labor or services actually performed for the corporation.¹⁴⁷ Any money collected by the incorporators or the conditionally chartered CDC for shares would be placed in an escrow account with a state or national bank.¹⁴⁸ When the CDC received its final charter, the money would be released, and the CDC would have unrestricted use of it.¹⁴⁹

Shareholders would have the right to vote for directors,¹⁵⁰ for amendments to the articles of incorporation,¹⁵¹ for bylaws,¹⁵² for any purpose specified in the articles or bylaws¹⁵³ or for any purpose the subject of a special meeting called by the president.¹⁵⁴ But instead of having one vote for each share owned, each shareholder would have one vote.¹⁵⁵ Furthermore, the actual voting procedures would be different. The shareholders of a CDC would have four ways in which to cast their ballots: (1) by secret ballot cast at a specified time and at locations dispersed throughout the community; (2) by meetings of shareholders where only those present could vote; (3) by meetings of shareholders where those present plus certain certified proxies would be counted; or (4) by meetings of shareholders held at different locations throughout the community.¹⁵⁶ At their first balloting, the shareholders would elect the initial board of directors and adopt the bylaws.¹⁵⁷ One

¹⁴³ Section 117. There is an exception:

[A] nonresident natural person who, directly or indirectly through a corporation, association, or partnership, operates or owns any interest in any enterprise located in whole or in part within the corporation's community may be permitted to purchase shares in such corporation by vote of two-thirds of the shareholders voting at a meeting of shareholders, which vote shall also determine the number of shares such nonresident can purchase.

¹⁴⁴ Sections 117(a), 118.

¹⁴⁵ Section 118.

¹⁴⁶ Section 117(c).

¹⁴⁷ *Id.* Consideration in form of labor or services has been termed "sweat equity." 114 Cong. Rec. H7012 (daily ed. July 18, 1968) (remarks of Representative Goodell). "Sweat equity" would be allowed so that residents, who could not afford the \$5, could work for their shares.

¹⁴⁸ Section 134(a): "To provide for the safekeeping of the proceeds. . ."

¹⁴⁹ Section 134(a). The funds would also be released if the CDC were dissolved and they had to be returned to the residents.

¹⁵⁰ Section 112(c), (d).

¹⁵¹ Section 122(a).

¹⁵² Section 116(d).

¹⁵³ Sections 110, 116.

¹⁵⁴ Section 111(c).

¹⁵⁵ Section 111(b).

¹⁵⁶ Section 111(b). See Appendix B.

¹⁵⁷ Section 111(a).

provision of the bylaws would indicate which of the balloting methods was to be used in future elections.¹⁵⁸ The articles of incorporation would specify which methods would be employed for the initial balloting.¹⁵⁹

D. *Availability of Capital*

The Self-Determination Act would also provide the means with which capital could be raised. Unlike Titles II and III of the Economic Opportunity Act, however, the federal government would not be the major source of this capital. What has been developed is an intricate but symmetrical scheme in which the government, the community residents, a community development bank and interested financiers would participate.

Since a CDC would be a stock company, funds would necessarily come from the sale of stock. As noted earlier, each resident of the community, if he wished to participate, would purchase at least one share of stock at five dollars.¹⁶⁰ In addition, under section 140 of the bill, the Board would match this contribution by granting to each CDC "an amount equal to the amount . . . paid in on subscriptions of stock in the corporation as of the date on which the final certificate of incorporation is issued by the Board . . ." Thus, a CDC in a community with 50,000 residents over sixteen years of age could commence operations with \$500,000.¹⁶¹

Recognizing that this means of financing would not produce sufficient capital for many CDC's to engage in both service and business activities, the bill introduces an additional fund-raising device. Although the device is original, the idea on which it is grounded—debt financing—is not. A CDC could borrow the needed funds from a local bank, pledging contracts for future businesses as security.¹⁶² But local banks, justifiably or not, have been unwilling to extend credit to ghetto residents and to underwrite ghetto business. To overcome this unwillingness, the bill would allow for the creation of "community development banks" (CDB).¹⁶³

A CDB could be formed by a CDC in a community having a population of 25,000 or more.¹⁶⁴ It would be empowered "to make

¹⁵⁸ Section 116(b).

¹⁵⁹ Section 111(a).

¹⁶⁰ Section 117.

¹⁶¹ This illustration assumes that all residents would purchase one share.

¹⁶² See Section 110(a)(8).

¹⁶³ Section 201. Section 201 would amend the national banking laws, Title 12 of the United States Code, by adding "a Chapter 19, National Community Development Banks." All cities will therefore refer to sections in the proposed chapter. Under Title III of the bill, Section 300, a U.S. Community Development Bank would also be formed. The U.S.C.D.B. is intended as an intermediate credit bank similar to a federal home loan bank.

¹⁶⁴ Section 201, § 1910. Communities with a population of less than 25,000 could be served by the U.S.C.D.B.

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loans and extend credit" to (1) "any stockholder of a community development corporation," (2) certain small businesses located within the community, (3) subsidiaries of a CDC, (4) businesses which have agreed to sell their facilities to a CDC and (5) certain other cooperatives, trusts and nonprofit organizations.¹⁶⁵ The bill emphasizes one point: "That the committee will give special consideration to resident stockholders seeking financing for ventures of an experimental or unorthodox nature, which if successful would yield significant benefits to the community and its people. . . ."¹⁶⁶ Important for our purposes is the fact that the CDB could be the source of funds which a CDC would need.¹⁶⁷

This arrangement leads to a final question: Where would the CDB acquire sufficient capital to satisfy the needs of the community?

As in the case of the CDC, the initial capital would stem from the sale of stock. Under the bill, a CDB must receive a minimum of \$50,000 in capital.¹⁶⁸ This capital could be raised from the issuance of three classes of stock:

(a) Class A stock . . . issued to and held by the Secretary of the Treasury Class A stock shall be nonvoting and no dividends shall be paid thereon.

(b) Class B stock . . . issued in series and amounts approved by the Comptroller [of the Treasury], [which] may be sold or transferred to any person or organization (other than the United States) subject to the approval of the issuing bank. Such stock shall be issued only at par and shall be nonvoting. Any bank may pay dividends of not to exceed 6 per centum per annum on class B stock Dividends on class B stock shall not be cumulative.

(c) Class C stock . . . issued only to community development corporations Such stock shall be issued at its fair book value not exceeding par, . . . and no dividends shall be paid on it. Each community development corporation holding one or more shares of class C stock shall be entitled to one vote for each full share so held.¹⁶⁹

A second source of funds would be deposits.¹⁷⁰ The residents of the community would probably store any savings in the CDB. Granted,

¹⁶⁵ Section 201, § 1942.

¹⁶⁶ Section 201, § 1942(e).

¹⁶⁷ The CDC could not borrow these funds directly; a subsidiary would be the borrower. A serious question arises as to how these funds will get into the CDC. The use of a subsidiary for this purpose is criticized on pp. 249-51 *infra*.

¹⁶⁸ Section 201, § 1921.

¹⁶⁹ Section 201, § 1922.

¹⁷⁰ Section 201, § 1941(g).

this would be a very small amount; however, larger sums could be deposited by religious, educational and governmental organizations. These organizations could thus be helpful without offering "handouts."

The third method of financing would involve the sale of debt securities.¹⁷¹ A CDB would be authorized to issue debt securities in an amount which does not "exceed an amount equal to twenty times [its] . . . unimpaired capital and surplus . . ."¹⁷² Given only the minimum capital of \$50,000, a bank could raise \$1,000,000. Most CDB's would probably be capitalized at an amount which would be substantially greater than the minimum.

The lack of risk involved would make these debt securities attractive. Under the bill, a "National Community Development Bank Guaranty Fund, of which the Board of Governors of the Federal Reserve System . . . [would be] appointed trustee," would be established.¹⁷³ As stated by Congressman Goodell:

This fund would be capitalized from the excess earnings of the twelve Federal Reserve banks, as was the Federal Deposit Insurance Corporation in 1933. The Federal Reserve surplus would be deposited into the fund each year and invested in long-term U.S. Treasury securities.

The amount of the Federal Reserve surplus added to the fund each year would be sufficient, when carried forward at compound interest, to cover the aggregate income bond obligations of all CDB's at maturity on a 1 to 4 basis. If a CDB's financial position precluded immediate satisfaction of its obligations to bondholders when due, the CDB could call in capital from the fund, just as the World Bank can call in subscriptions from member nations to meet emergencies. This right would assure private creditors of prompt payment of obligations when due.

Assuming CDB's issue an aggregate \$2 billion in income bonds in 1969, and that the Treasury securities held by the fund bear four percent interest compounded quarterly over twenty years, some \$236 million of the Federal Reserve System's excess earnings would suffice to produce \$500 million in capital—1 to 4 coverage—in 1989. The estimated Federal Reserve excess earnings for fiscal 1969 is in excess of \$2 billion, of which the amount put into the fund would be approximately one-eighth. The entire \$2 billion, if similarly used, would cover aggregate CDB income bonds of about \$17.7 billions.

¹⁷¹ Section 201, § 1927.

¹⁷² *Id.*

¹⁷³ Section 201, § 1927(b), (c), (d).

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In case the aggregate amount of CDB obligations exceeded the amount that the Federal Reserve surplus could legally cover, and assuming Congress did not appropriate additional funds to extend the coverage, priorities would be established to insure that the bonds of the CDB's located in the poorest areas would be covered before those of more affluent areas.¹⁷⁴

The symmetry in the financing of both the CDC and the CDB deserves notice. The CDC would be financed by sale of stock to residents of the community, a grant from the Federal government equal in amount to the paid-in capital and long-term loans from the CDB. The CDB, in turn, would be funded by sale of stock to the CDC, the federal government and the public, deposits by the residents of the community and religious, educational and governmental organizations, and sale of debt securities to the general public. The community, the federal and local governments, universities, churches and the public would each complement the other to form the financial design. Only a relatively small amount of the money would come from direct government aid.¹⁷⁵

E. *Business Opportunities*

The final element, which the program under the model does not assure, is business opportunities. Opportunities must be available if jobs are to be created, ownership introduced and money circulated. The Self-Determination Act proposes a tax incentive plan which could inject business opportunity into the community. The CDC and its subsidiaries will be discussed first so that the relationship between them and private industry can be fully understood.

The CDC would be essentially a holding company. It would own all, or most, of the stock in the corporations which actually ran the businesses. Under the general purposes and powers section, the CDC would not be given explicit authority to engage in commercial activities.¹⁷⁶ It is given the authority, however, to invest in other corporations.¹⁷⁷ Under the provisions allowing a CDB to finance a CDC's ventures, a CDB could not lend directly to a CDC. A CDC subsidiary

¹⁷⁴ 114 Cong. Rec. H7014 (daily ed. July 18, 1968).

¹⁷⁵ The cost of this new CDC program to the federal government for the fiscal years 1970, 1971 and 1972 has been estimated at 1 to 1.5 billion dollars for each year. 114 Cong. Rec. H7019-20 (daily ed. July 18, 1968) (remarks of Representative Riegle).

¹⁷⁶ Section 110(a). This section comes closest to granting this authority in paragraph (11): ". . . conduct its business, carry on its operations. . . ." In fairness, it must be mentioned that the general powers section of the bill is very similar to the "General Powers" section of the ALI-ABA Model Bus. Corp. Act § 4 (1966). However, that Act is a "business" corporation statute.

¹⁷⁷ Section 110(7).

would have to be the borrower.¹⁷⁸ Under the tax provisions of the bill, tax relief for income earned from business operations is extended only to a CDC subsidiary.¹⁷⁹ This restriction would force a CDC to use a subsidiary or subsidiaries, even if it were empowered to engage directly in business activities. This system is carrying the idea of separation of functions to the extreme. The CDC, the prime organization, would not be able to borrow directly from the CDB. A subsidiary must be used.

Even more serious are the tax discrepancies. If the CDC were to earn the income, it would pay taxes at ordinary rates. But if the subsidiary were to earn the income, it would pay taxes at reduced rates and the dividends which it distributed to the CDC would be tax free. If a new law were being developed for a new kind of corporation, it would seem that this corporation should not be forced to pyramid its operations. Under present law, a nonprofit corporation can use subsidiaries to accomplish its purposes.

Under the bill's incentive plan, two situations are possible, each producing the same result. First, businesses which can be purchased could already be located in the community when the CDC commences operations. For instance, the supermarket or housing unit which could be purchased by the CDC may already be in the community. Second, business could be brought into the community. Since community ownership is an objective of the CDC program, the question arises: will the private owners sell out to the CDC, or will private industry come into the community with the intention of selling out? Moreover, what would prevent each facility from failing after the private owner divested himself of its ownership? The above questions can be condensed into one policy question: Should the law provide incentives that are broad enough to induce private business to bring industry into the community, to train the people in employment and management skills, and then to transfer ownership to the community? Naturally the bill has answered this question in the affirmative. A new concept is introduced, the "turnkey contract," which is a contract between the owner of a business and a CDC "providing for the sale to the community development corporation of any plant, installation, store, facility, or other real property," and for "managerial, technical, promotional, and training expertise and assistance" that must be furnished to the community.¹⁸⁰ Industries which enter into such contracts would receive extremely broad tax benefits. The bill is therefore enticing private

¹⁷⁸ Section 201, § 1942.

¹⁷⁹ Section 402. The CDC is given a dividend-received deduction for all distributions from the subsidiary, section 403.

¹⁸⁰ Sections 4(c), 404.

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industry by means of the tax dollar to introduce business activity into the community, to train the people and then to sell out.

At the center of this plan are four tax incentive provisions. One is the accelerated depreciation on "turnkey facilities," which include any plant, installation, store, facility or other real property which is the subject of a turnkey contract.¹⁸¹ These facilities could be written off over a period extending from 36 to 60 months, depending upon the development index of the community.¹⁸² The industry which is a party to the turnkey contract could elect this benefit in lieu of the depreciation deduction allowed under Section 167 of the Internal Revenue Code.¹⁸³

The second benefit would involve another new concept to the tax laws: the "Human Investment Credit for Turnkey Facilities."¹⁸⁴ This concept is very similar to the investment credit¹⁸⁵ in that the amount of the credit would "be equal to ten percent of the wages" paid by a business to any "individual who is an . . . employee of an individual or organization operating a turnkey facility, and who is a . . . stockholder in the community development corporation, which is a party to the turnkey contract . . ." ¹⁸⁶ Thus, any business which is a party to a turnkey contract will receive as a credit against its tax liability 10 percent of the amount of wages paid to its employees who are members of a CDC. Under these conditions, few industries would hesitate to hire the "hardcore unemployed."

The third benefit is "analogous to [the tax] provisions which defer capital gain on homes where the proceeds of such are reinvested in new homes."¹⁸⁷ When a turnkey facility is sold to a CDC subsidiary, any gain would normally be taxable at capital gains rates. However, under the bill, the gain would be recognized only to the extent that the amount realized¹⁸⁸ exceeded:

- (1) the amount of taxpayer's investment in other turn-

¹⁸¹ Sections 4(b), 404. Section 404 would actually allow the facilities to be "amortized." This would be accomplished by addition of a Section 183 to the Internal Revenue Code.

¹⁸² Section 404. See Appendix B.

¹⁸³ Section 404.

¹⁸⁴ Section 406. This would be accomplished by additions to Section 40 of the Internal Revenue Code. See Appendix B.

¹⁸⁵ A taxpayer is presently allowed as a credit against tax 7 percent of the cost on any new "qualified investment" in property. Sections 38, 46, 48 of the Internal Revenue Code.

Under section 405 of the bill, a party to a turnkey contract would be exempt from the investment credit provisions of Section 47 of the Internal Revenue Code for any sale of a turnkey facility to a CDC.

¹⁸⁶ Section 406.

¹⁸⁷ 114 Cong. Rec. H7017, 18 (daily ed. July 18, 1968) (remarks of Representative Curtis).

¹⁸⁸ Amount realized is "the sum of any money received plus the fair market value of the property (other than money) received." Int. Rev. Code of 1954, § 1001(b).

key facilities made within a period beginning 12 months before the date of such sale and ending 12 months after the date of such sale; plus

(2) the amount of the taxpayer's investment in class B stock of any Community Development Bank made within a period beginning 12 months before the date of such sale and ending 12 months after the date of such sale.¹⁸⁹

The taxpayer's basis in other facilities or investments would be reduced to reflect this non-recognition.¹⁹⁰ The obvious purpose of this benefit is to entice private industry into retaining its investment in the community.¹⁹¹

The fourth benefit is novel, to say the least. Its purpose is to encourage private industry "to continue to assist the management of the turnkey facility even after its divestiture of . . . ownership."¹⁹² The bill provides:

(1) General Rule.—If a turnkey facility as defined in section 52 is sold by a taxpayer to a community development corporation subsidiary, such selling taxpayer shall be allowed as a credit against the tax imposed by this subtitle an amount equal to 15 percent of any taxable income received by a community development corporation subsidiary (whether or not such income was recognized and whether or not such community development corporation subsidiary was the purchaser from the taxpayer) from operation of the turnkey facility for the tax year of the sale and for each of 5 tax years next succeeding, provided that no credit shall be allowed in respect of taxable income of such facility realized more than 60 months after the date of such sale or after the facility ceases to be owned by a community development corporation subsidiary.¹⁹³

Of course, this credit cannot exceed the taxpayer's tax liability for that year.

Two questions arise from such broad tax incentives: (1) Should the tax laws be used so extensively to help cure a social illness when a tax credit after divestiture is involved? (2) Will these incentives accomplish their purpose? It is not within the scope of this article to discuss the first question. Suffice it to say that the general belief is

¹⁸⁹ Section 408. This would be accomplished by adding a new Section 1039 to the Internal Revenue Code.

¹⁹⁰ Section 408.

¹⁹¹ 114 Cong. Rec. H7011, 16 (daily ed. July 18, 1968) (remarks of Representative Goodell).

¹⁹² *Id.*

¹⁹³ Section 409. This would be a new Section 40 of the Internal Revenue Code.

that the tax laws should and must be used in areas that involve our social and economic well-being. The second question presents a serious problem, however, for it is asking whether these tax incentives will work. More perplexing is the fact that there is no answer at this time.

What can be presented is a rather simple analysis of the benefits, which, at the end, only illustrates that a more comprehensive study must be made. For purposes of this analysis, the life of a turnkey facility will be separated into two periods: (1) the period from the commencement of business to the facility's sale to a CDC subsidiary and (2) the period after such sale. Based on this division, three alternatives arise concerning the taxable positions of a facility: (1) the facility had taxable income both before and after sale; (2) the facility had no taxable income during either period; and (3) the facility had taxable income after, but not before, the sale.¹⁹⁴

The first alternative is unrealistic. If industry were aware that profits were to be made by locating in ghetto areas, plants would be set up in such areas. Tax incentives would not be needed. The second alternative would also be unusual, since industry would probably not divest itself of the facility until it was self-sustaining. The third alternative is probably the most realistic. Since it raises the same question as the second, the third will be considered.

It should be remembered that the purpose of the tax provisions is to entice and perhaps even to "bribe" private industry into locating in the community, training its residents and then selling out. Thus the answer to the main question—will these provisions accomplish their purpose?—depends upon the answer to one other question: Will the deductions and credits which the industry gets before the sale, which will be subtracted from taxable income from other sources, and the 15 percent credit after the sale be sufficient to recoup the actual dollars expended in setting up and operating the facility? It should be kept in mind that this amount relates only to return of costs and not to any profit from the operation.

The answer to this question would probably be that these extremely broad tax benefits would not be enough to "bribe" private industry. In the end, management would wonder whether it had the obligation to locate facilities in a ghetto or rural area. The better view is to look at these incentives as an indirect subsidy in order to make "the medicine a little easier to swallow." If that be the case, the specific provisions proposed are too complex. An amendment to the Internal Revenue Code which allowed all individuals or organizations who became a party to a turnkey contract an unlimited net operating loss carryback or

¹⁹⁴ The fourth alternative, taxable income before but not after the sale, was thought possible but totally improbable.

carryover deduction for the actual losses suffered would accomplish the above purpose.

IV. CRITIQUE

The opening paragraph of this article discussed freedom in the sense that all men should have a chance to realize their full potential. Without this opportunity, full freedom is lacking. Today, in all too many instances, the poor can see no hope for advancement. With their perspective in mind, the Community Development Corporation is a new remedial approach to poverty. It is a self-help program which will encourage community life involvement and stimulate economic development with a minimum of governmental aid or interference.

Throughout this paper, the discussion has concentrated upon the mechanics of establishing and financing CDC's and CDC programs. Questions which are inherent in the scheme have been purposely avoided so as not to distract from the basic presentation of the program. There are, however, relevant and problematical areas of inquiry in need of assessment. These must be studied, and the problems resolved before the CDC concept is adopted as a national policy.

One of the most important questions that must be asked of the CDC is whether it will be accepted by the American public. If it is construed as another handout program which creates nothing more than lethargy and resentment, it will not succeed. The broad critique of the present welfare system is that it constitutes a "free" handout, that it does nothing to develop and nurture incentive among the poor. This defect is attributed to the fact that the poor are not required to "perform for their pay."

One response to this objection would be to require repayment of all monies expended by the federal government in support of a CDC. But this device might be self-defeating. Repayment might cause the CDC financial trouble which could be solved only by more government aid. Thus, some "short-term charity" may be more profitable in the long run. If repayment is desirable, the terms of the loan require careful consideration. In line with these inquiries is the question of how long the CDC should continue to receive financial support. A definite cutoff period could be established, say three years; or, instead of a fixed period, a better approach might be to base the decision upon the chances for survival of the new projects and their eventual pecuniary success. However, evaluation of a program's potential might be difficult.

A second series of questions concerns whether a CDC program would serve the best interests of the nation as a whole. Under this general inquiry two specific issues arise. The first addresses itself to the competitive effect which such a program would have on other

businesses. The second deals with the philosophy of the program, and its effect on other communities.

Some years ago the question of competition arose with respect to tax-exempt organizations. Exempt organizations engaged in commercial activities were making a profit but were not paying any taxes. As a result, their dollars were worth more than dollars employed by private business and, theoretically, they were in a better competitive position.¹⁹⁵ Congress answered with legislation¹⁹⁶ which now taxes profits from certain commercial activities of tax-exempt organizations.¹⁹⁷ Although the competitive situation which may stem from CDC activity is not identical, it is analogous. CDC's and their subsidiaries could be given tax relief; they would receive financial assistance and management training; a capital market might be made available for them; and business opportunities could be assured. These advantages would discourage competing businesses from entering the community. For example, if a CDC were to buy or form a large food market in the community, it is likely that a "neighborhood" store located in the community would fail. It is doubtful whether a large chain store would enter, or even attempt to open an outlet in the community, knowing that most residents, because of prices and loyalty, would patronize their store. Moreover, the ramifications to similar businesses in other areas who have lost business to a CDC subsidiary could be substantial. If a CDC subsidiary and a private business outside the community were both bidding on a government contract to construct boxes for defense purposes and the CDC subsidiary "underbid the other business," as it could do only because it was a CDC subsidiary, this result could not help but have an adverse effect on the other business. If private businesses fail as a result of CDC competition, employees would lose jobs, a result creating the exact sickness which is sought to be cured.¹⁹⁸

As has been mentioned often, the CDC program intends to create cohesive communities which would be self-governing bodies, similar to the town meeting or Israeli kibbutz traditions. Since economic development is of primary importance to the CDC program, self-sufficient economic enterprises and, consequently, employment of community members are envisioned. If these goals are achieved, the result will be a self-governing, self-sustaining community. This outcome is admirable, but it raises the spectre of a new "middle class" ghetto community

¹⁹⁵ See H.R. Rep. No. 2319, 81st Cong., 2d Sess. (1950), 1950-2 Cum. Bull. 380, 408; *Samuel Freedland Foundation v. United States*, 144 F. Supp. 74 (D.N.J. 1956). But see Comment, *Presenting the Operation of Untaxed Business by Tax-Exempt Organizations*, 32 U. Chi. L. Rev. 581 (1965).

¹⁹⁶ Revenue Act of 1950, ch. 994, 64 Stat. 909 (1950).

¹⁹⁷ Int. Rev. Code of 1954, §§ 511-13.

¹⁹⁸ Cf. Harbrecht, *The New Economy*, 38 U. Det. L.J. 615, 621-22 (1961).

that is equal but separate. This arrangement is seemingly opposed to the "melting pot" ideal whereby the peoples of all ghettos are to become "assimilated into the mainstream of American life" and form one nation, not "nations within a nation."¹⁹⁹ On the other hand, it can be argued that this type of program will result in integration, since the people of the ghettos would be prepared to migrate into other communities and the ghetto would become an acceptable place to enter for all people.

What is being suggested is that, before the Community Development Corporation concept is adopted as the national policy to fight poverty, answers to the above questions be studied, and the possible consequences evaluated. If that study shows that the CDC concept and approach are acceptable, there remains the decision concerning which program would be more efficient: the program formulated by the proposed Community Self-Determination Act or the one established in conjunction with the model CDC.

Probably the most striking features of the Act are those dealing with capital and business opportunities. The remaining provisions deal predominantly with the incorporation of a federal CDC which could employ the capital and incentive provisions with a minimum of governmental aid. The CDC would be adequately financed mainly because of the Community Development Bank that could be created. In addition, the Act has what appears to be a workable incentive plan to induce industry to locate within poverty stricken communities. Although the breadth of the tax incentives employed by the Act is questionable, the idea that some incentive is needed is not. Without business opportunities, there would be no economic development and thus no CDC program. Without tax incentives, there probably would be no business opportunities.

On the negative side, the fact that the Act would involve a national program might present problems. Although the Act would in effect produce a broadly based democratic organization, it would also have the potential of generating an unbending bureaucratic structure, perhaps precluding any immediate effects of relief to the community. Each CDC must be designed to answer the particular problems of the community which it is to serve. In a word, it must be flexible. For example, in some rural areas, where the population is dispersed, it might be more effective to place control of the CDC solely in the hands of the executive director. Only he could comprehend the problems of all the people within his community. In this instance, a CDC resembling the model CDC would be more efficient and beneficial because it has a more author-

¹⁹⁹ The Community Self-Determination Act states that the ghettos are "nations within a nation." Section 3. The question being developed is whether a CDC program will also foster such a situation.

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itative structure than the Act's CDC, which is more democratic and is subject to more outside influence. In urban areas, however, people live in a much more congested setting and thus their problems are more homogeneous. In this case, a more democratic structure would prove more effective. Exposure of the people to policy-making decisions would be beneficial, and at the same time the problems of all the people could be approached in the same manner. The Act's CDC would fit neatly into this type of community, but it should be noted that the model CDC can also be shaped to have a democratic structure and thus meet the needs of urban communities.

In sum, it would seem that a decentralized program would be more effective since it could serve more communities. A program based on the model could be constructed so as to meet the problems of any community, rural or urban. The formation of community development banks and needed tax incentives for private industry could be provided by separate laws.

**APPENDIX A: IMPORTANT SECTIONS OF THE
ECONOMIC OPPORTUNITIES ACT OF 1964**

§ 2781. Congressional statement of purpose.

(a) . . . Its basic purpose is to stimulate a better focusing of all available local, State, private and Federal resources upon the goal of enabling low-income families and low-income individuals of all ages, in rural and urban areas, to attain the skills, knowledge, and motivations and secure the opportunities needed for them to become fully self-sufficient. Its specific purposes are to promote, as methods of achieving a better focusing of resources on the goal of individual and family self-sufficiency—

(1) the strengthening of community capabilities for planning and coordinating Federal, State, and other assistance related to the elimination of poverty, so that this assistance, through the efforts of local officials, organizations, and affected citizens, can be made more responsive to local needs and conditions;

(2) the better organization of a range of services related to the needs of the poor, so that these services may be made more effective and efficient in helping families and individuals to overcome particular problems in a way that takes account of, and supports their progress in overcoming, related problems;

(3) the greater use, subject to adequate evaluation of new types of services and innovative approaches in attacking causes of poverty, so as to develop increasingly effective methods of employing available resources;

(4) the development and implementation of all programs and projects designed to serve the poor or low-income areas with the maximum feasible participation of residents of the areas and members of the groups served,

so as to best stimulate and take full advantage of capabilities for self advancement and assure that those programs and projects are otherwise meaningful to and widely utilized by their intended beneficiaries; and

(5) the broadening of the resource base of programs directed to the elimination of poverty, so as to secure, in addition to the services and assistance of public officials, private, religious, charitable, and neighborhood organizations, and individual citizens, a more active role for business, labor, and professional groups able to provide employment opportunities or otherwise influence the quantity and quality of services of concern to the poor.

(6) It is further declared to be the purpose of this subchapter and the policy of the Office of Economic Opportunity to provide for basic education, health care, vocational training, and employment opportunities in rural America to enable the poor living in rural areas to remain in such areas and become self-sufficient therein. . . .

§ 2790. Designation of community action agencies.

(a) Political subdivisions, public and private nonprofit agencies and organizations.

A community action agency shall be a State or political subdivision of a State (having elected or duly appointed governing officials); or a combination of such political subdivisions, or a public or private nonprofit agency or organization which has been designated by a State or such a political subdivision, or combination of such subdivisions, which—

(1) has the power and authority and will perform the functions set forth in section 2795, . . . including the power to enter into contracts with public and private nonprofit agencies and organizations to assist in fulfilling the purposes of this subchapter, and

(2) is determined to be capable of planning, conducting, administering and evaluating a community action program and is currently designated as a community action agency by the Director.

A "community action program" is a community based and operated program—

(1) which includes or is designated to include a sufficient number of projects or components to provide, in sum, a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;

(2) which has been developed, and which organizes, and combines its component projects and activities, in a manner appropriate to carry out all the purposes of this subchapter;

(3) which conforms to such other supplementary criteria as the Director may prescribe consistent with the purposes and provisions of this subchapter.

§ 2795. Specific powers and functions of community action agencies.

(a) In order to carry out its overall responsibility for planning, coordinating, evaluating, and administering a community action program a community action agency must have authority under its charter or applicable law to receive and administer funds under this subchapter, funds and contributions

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from private or local public sources which may be used in support of a community action program, and funds under any Federal or State assistance program pursuant to which a public or private nonprofit agency (as the case may be) organized in accordance with this part [Title II-A] could act as grantee, contractor, or sponsor of projects appropriate for inclusion in a community action program. A community action agency must also be empowered to transfer funds so received, and to delegate powers to other agencies, subject to the powers of its governing board and its overall program responsibilities. This power to transfer funds and delegate powers must include the power to make transfers and delegations covering component projects in all cases where this will contribute to efficiency and effectiveness or otherwise further program objectives.

§ 2808. General provisions for financial assistance.

(a) Component activities.

The Director may provide financial assistance to community action agencies for the planning, conduct, administration and evaluation of community action programs and components. Those components may involve, without limitation, other activities and supporting facilities designed to assist participants including the elderly poor—

(1) to secure and retain meaningful employment;

(2) to attain an adequate education;

(3) to make better use of available income;

(4) to provide and maintain adequate housing and a suitable living environment;

(7) to obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing, and employment-related assistance;

(8) to remove obstacles and solve personal and family problems which block the achievement of self-sufficiency;

(9) to achieve greater participation in the affairs of the community;

and

(10) to make more frequent and effective use of other programs related to the purposes of this subchapter.

He may also provide financial assistance to other public or private nonprofit agencies to aid them in planning for the establishment of a community action agency.

APPENDIX B: IMPORTANT SECTIONS OF THE
SELF-DETERMINATION ACT OF 1968

SHAREHOLDER BALLOTING SEC. 111

(b) At the initial balloting, the shareholders of the corporation shall, subject to section 116(b), adopt a bylaw so as to provide that subsequent balloting shall be by—

(1) secret ballot cast during a specified period of time and at specified balloting locations disbursed evenly throughout the community at which any shareholder upon production of a certificate representing his share or shares in the corporation shall be entitled to receive and cast a form of ballot that shall contain each matter to be submitted to a shareholder vote;

(2) meetings of shareholders held at one place within the community, to be determined by the board of directors, at which each matter to be submitted to the shareholders for a vote shall be submitted to a vote of the shareholders actually present at such meeting. Voting by proxy shall in no event be permitted;

(3) meetings of shareholders held at one place within the community, to be determined by the board of directors, at which each matter to be submitted to the shareholders for a vote shall be submitted to a vote of those actually present or represented at such meeting. A shareholder may vote either in person or by proxy executed in writing by the shareholder: *Provided, however,* That votes cast by proxy shall not be counted unless expressly executed with respect to the particular matter submitted to the shareholders on which the proxy is cast. No such proxy shall be valid after thirty days from the date of its execution; or

(4) meetings of shareholders held on the same day and at the same hour in various locations disbursed evenly throughout the community, and with each matter to be submitted to the shareholder for a vote shall be submitted to a vote of the shareholders present at such meeting. Voting by proxy may or may not be permitted: *Provided, however,* That if permitted it shall be permitted only to the extent provided by subsection 3 herein.

SEC. 402(b) would add the following sections to the Internal Revenue Code:

“SEC. 1390. DEFINITION OF COMMUNITY DEVELOPMENT CORPORATION SUBSIDIARY.

“The term ‘community development corporation subsidiary’ for purposes of this title shall mean any corporation all or part of the stock of which is owned by a community development corporation certified as such by the Community Corporation Certification Board pursuant to title I of the Community Self-Determination Act of 1968, provided that all of the shares of stock of such corporation not owned by one or more such community development corporations are owned by one or more trusts qualified under section 401(a).

“SEC. 1391. TAX IMPOSED.

“(a) COMMUNITY DEVELOPMENT CORPORATION SUBSIDIARIES IN GENERAL.—A tax is hereby imposed for each taxable year on the taxable income of every community development corporation subsidiary. The tax shall consist of a normal tax computed under subsection (b) and a surtax computed under subsection (c).

(b) NORMAL TAX.—The normal tax is equal to the following percentage of the taxable income:

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“(1) In the case of a development index of 100 or over, 22 percent.

“(2) In the case of a development index of 90 or over but less than 100, 12 percent on the first \$50,000 and 22 percent on amounts in excess of \$50,000.

“(3) In the case of a development index of 80 or over but less than 90, 6 percent on the first \$50,000, 12 percent on the next \$50,000 and 22 percent on amounts in excess of \$100,000.

“(4) In the case of a development index below 80, zero percent on the first \$50,000, 6 percent on the next \$50,000, 12 percent on the next \$50,000 and 22 percent on amounts in excess of \$150,000.

“(c) SURTAX.—The surtax is equal to 26 percent of the amount by which the taxable income exceeds the surtax exemption for the taxable year.

“(d) SURTAX EXEMPTION.—For purposes of this subtitle, the surtax exemption for any taxable year is \$25,000, if the development index is 100 or over, \$50,000 if the development index is 90 or over but less than 100, \$100,000 if the development index is 80 or over but less than 90, and \$200,000 if the development index is below 80.

“(e) DEVELOPMENT INDEX.—The term ‘development index’ shall have the meaning assigned to it by section 138 of the Community Self-Determination Act of 1968 and the applicable development index for the purpose of determining the rate of tax shall be the factor last determined for the community under said Act prior to the end of the taxable year of the community development corporation subsidiary. In the absence of such determination the development index shall be assumed to be 100.”

SEC. 404 would add a new Section 183 to the Internal Revenue Code. New section 183(d) would provide:

The period over which the amortization deduction provided for by this section shall be allowed shall be computed with respect to the development index . . . of the area associated with the Community Development Corporation which is a party to the turnkey contract governing the turnkey facility, as follows:

If the development index is:	The allowable period shall be:
90 to 99.99	60 months
80 to 89.99	48 months
Less than 80	36 months

. . .

SEC. 406. HUMAN INVESTMENT CREDIT FOR TURNKEY FACILITIES.

(a) Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting after section 40 the following new section:

“SEC. 41. HUMAN INVESTMENT CREDIT FOR TURNKEY FACILITIES.

“(a) GENERAL RULE.—There shall be allowed, as a credit against the tax imposed by this chapter, the amount determined under subpart C of this part.

“(b) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart C.”

(b) Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by adding at the end thereof the following new subpart:

“Subpart C—Rules for Computing Human Investment Credit for Turnkey Facilities

“Sec. 51. Amount of credit.

“Sec. 52. Definitions; special rules.

“SEC. 51. AMOUNT OF CREDIT.

“(a) DETERMINATION OF AMOUNT.—

“(1) GENERAL RULE.—The amount of the credit allowed by section 41 for the taxable year shall be equal to 10 percent of the wages (as defined in section 3401(a)) of qualified employees (as defined in section 52(c)).

“(2) LIMITATION BASED ON AMOUNT OF TAX.—Notwithstanding paragraph (1), the credit allowed by section 41 for the taxable year shall not exceed—

“(A) so much of the liability for tax for the taxable year as does not exceed \$25,000, plus

“(B) 50 percent of so much of the liability for tax for the taxable year as exceeds \$25,000.

“(3) LIABILITY FOR TAX.—For purposes of paragraph (2), the liability for tax for the taxable year shall be the tax imposed by this chapter for such years, reduced by the sum of the credits allowable under—

“(A) section 33 (relating to foreign tax credit),

“(B) section 35 (relating to partially tax-exempt interest),

“(C) section 37 (relating to retirement income),

“(D) section 38 (relating to investment in certain depreciable property), and

“(E) section 40 (relating to sustained profitability of turnkey project).

For purposes of this paragraph, any tax imposed for the taxable year by section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), or section 1378 (relating to tax on certain capital gains of subchapter S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by this chapter for such year.

“(4) MARRIED INDIVIDUALS.—In the case of a husband or wife who files a separate return, the amount specified under subparagraphs (A) and (B) of paragraph (2) shall be \$12,500 in lieu of \$25,000. This paragraph shall not apply if the spouse of the taxpayer has paid no wages of qualified employees for, and has no unused credit carryback or carryover to, the

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taxable year of such spouse which ends within or with the taxpayer's taxable year.

“(5) **AFFILIATED GROUPS.**—In the case of an affiliated group the \$25,000 amount specified under subparagraphs (A) and (B) of paragraph (2) shall be reduced for each member of the group by apportioning \$25,000 among the members of such group in such manner as the Secretary or his delegate shall by regulations prescribe. For purposes of the preceding sentence, the term ‘affiliated group’ has the meaning assigned to such term by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

“(b) **CARRYBACK AND CARRYOVER OF UNUSED CREDIT.**—

“(1) **ALLOWANCE OF CREDIT.**—If the amount of the credit determined under subsection (a)(1) for any taxable year exceeds the limitation provided by subsection (a)(2) for such taxable year (hereinafter in this subsection referred to as ‘unused credit year’), such excess shall be—

“(A) a human investment credit carryback to each of the 3 taxable years preceding the unused credit year, and

“(B) a human investment credit carryover to each of the 7 taxable years following the unused credit year, and shall be added to the amount allowable as a credit by section 41 for such years, except that such excess may be a carryback only to a taxable year beginning after December 31, 1966. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 10 taxable years to which (by reason of subparagraphs (A) and (B)) such credit may be carried, and then to each of the other 9 taxable years to the extent that, because of the limitation contained in paragraph (2), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

“(2) **LIMITATION.**—The amount of the unused credit which may be added under paragraph (1) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by subsection (a)(2) for such taxable year exceeds the sum of—

“(A) the credit allowable under subsection (a)(1) for such taxable year, and

“(B) the amounts which, by reason of this subsection, are added to the amount allowable for such taxable year and attributable to taxable years preceding the unused credit year.”

SEC. 503. Title IV of the Economic Opportunity Act of 1964, as amended, is amended by designating sections 407 and 408 as sections 408 and 409, respectively, and adding new section 407 as follows:

“AID TO COMMUNITY DEVELOPMENT CORPORATIONS

“. . . (a) The purpose of this section is to provide financial assistance to Community Development Corporations for projects designed to provide necessary technical and management assistance and training.

“(b) The Administrator of the Small Business Administration is authorized to make grants to Community Development Corporations equal to 90

per centum of the costs of projects approved by him, including without limitation—

“(1) the identification and development of new business opportunities, joint ventures, and turnkey agreements;

“(2) market surveys and feasibility studies;

“(3) organization planning and research, including analysis of capital structure and requirements, costs and taxes, labor force availability, site evaluation, local government relations, and available governmental assistance;

“(4) plant or facility design, layout, and operation;

“(5) marketing and promotional assistance;

“(6) business counseling, management training, and legal and other related services, with special emphasis on management training using the resources of private business, and of sufficient scope and duration to develop management expertise within the Corporation;

“(7) encouragement of subcontracting to Community Development Corporations by established businesses, and cooperative efforts to train and upgrade Corporation personnel.

“(c) From the proceeds of a grant made pursuant to this section, a Community Development Corporation may, with the approval of the Administrator, contract for the specified assistance with any person, organization, firm, company, educational institution, foundation, association, or governmental agency

“(d) Notwithstanding any other provision of law, the Small Business Administration and any other agency of the Federal Government may enter into contracts with Community Development Corporations under this section on a reimbursable basis. . . .”