COASTAL ENTERPRISES INC.

Creating opportunities for people and places since 1977

36 Water Street
P.O. Box 268
Wiscasset, Maine 04578

207.882.7552
877.340.2649
fax 207.882.7308
cei@ceimaine.org
www.ceimaine.org

August 31st, 2010

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Re: Docket ID OCC-2010-0011

Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1386

Robert E. Feldman
Executive Secretary
Attention: Comments,
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Re: RIN 3064-AD60

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2010-0019

Statement of Ronald L. Phillips, CEO
Coastal Enterprises, Inc.
Wiscasset, ME
August 31st, 2010

Improving CRA for Community Development, for Rural Community Development, and for Triple Bottom Line Investing: Economy, Equity, Environment

I want to first thank the Federal Reserve Board for hosting the series of hearings on improving the Community Reinvestment Act (CRA). The hearings come at a crucial time in the history of CRA not only for the need to update the regulations, but also, given recent adverse experiences in the capital markets facing this country, an even more urgent imperative to find ways to align capital with the needs of people and communities left out of the economic mainstream.

My remarks complement many ideas already proposed by national community development advocates, particularly Opportunity Finance Capital in Philadelphia; the CDFI Coalition and New Markets Tax Credit Coalition in Washington, D.C.; the Local Initiatives Support Corporation in New York, the National Community Reinvestment Coalition, and others. CEI is a member of these national organizations. Each of their testimonies, along with the testimony of Ellen Seidman, who serves on CEI's Board of Directors, offers points important to CEI's work, to wit, that *CRA has been a prime motivation for banks to invest in community development*, *but that a number of improvements must be made if it is to continue to make a difference in for underserved people and communities.*

As an enhancement to their submissions, I would like to provide some perspective and additional recommendations. My comments fall into two areas: : (1) First,I want to highlight several proposals that would ensure a more significant flow of capital to organizations like CEI; and (2) second, to recommend that the Federal Reserve conduct two additional hearings in 2011 – one on the impact of CRA and Rural Americans who constitute 20% of U.S. population; and the second on application of Triple Bottom Line Investment criteria of economy, equity, environment to community development as a qualifying CRA activity.

CEI Profile

CRA has been an important tool for CEI to leverage bank capital for community investing. Historically and currently in-state, regional and national banks have provided important liquidity for CEI lending to small businesses, affordable housing and community facilities, and investment (through our socially-responsible venture capital funds). Over our history several bankers have also served on our board, and their institutions have provided grants to support such operations as business counseling, including counseling for women business owners, first time homebuyer workshops and, most recently, foreclosure mitigation (CEI in fact now runs the largest foreclosure counseling program in Maine).

CEI is a 501(c)(3) private, non-profit community development corporation (CDC) and community development finance institution (CDFI). CEI's mission is *to help create economically and environmentally healthy communities in which all people, especially those with low incomes, can reach their full potential*. Based in Wiscasset, Maine, CEI ranks among the nation's leading rural community development corporations CDCs/CDFIs. With offices statewide, in partnership with other CDC/CDFIs, CEI also serves communities throughout rural New England, upstate New York, and is active throughout Rural America with its New Markets Tax Credit program (NMTC).

CEI's roots are in the civil rights movement and Equal Opportunity Act of the 1960s. In that period the federal government established a program to fund local CDCs to make investments in rural and urban communities left out of the economic mainstream. The "targeting" of investment capital to underserved minority and other communities continues to this day, with some 2,000 CDC/CDFIs investing in businesses, facilities like child or health care, schools, and also executing large-scale economic development transactions under the New Markets Tax Credit program, a financing tool CEI and several of its peers helped to found in 2000 at the end of the Clinton Administration.

CEI currently has 80 staff, a 19-member board of directors, and four major subsidiaries governed by 25 additional board/advisory members. Since its first major investment in 1979 in a fish processing cooperative in Boothbay Harbor, CEI has provided cumulatively over $560 million in financing to 2,050 enterprises with 23,266 jobs created and preserved; created or preserved 1,440 units of affordable housing; provided training/counseling to 31,802 individuals and small businesses; created/preserved 4,599 child care slots; and provided leadership on policy initiatives, including one

of the nation's most stringent laws regarding predatory mortgage lending. CEI has mobilized and leveraged nearly $2 billion in private and public capital.

Recommendations

To the extent that CEI has achieved a level of impact on creating opportunities for underserved and low income people and places in the regions we operate, much more can be done if certain changes are made in CRA regulations. These are:

1. **Conduct periodic interagency community needs and capacity analyses for the largest 50-100 metro areas, and for the remaining portion of each of the 50 states .**This analysis would provide the basis for CRA assessment, and would ensure that the assessment is based on the actual needs of communities. Including the balance of state as well as the metro areas would ensure that more rural and disinvested areas that are not "CRA hot spots" would also receive attention. In Maine's case, for example, Portland is metro area #99 but the rest of Maine is not considered as a CRA assessment area for CRA purposes. This would be extremely valuable to attract CRA-driven capital to rural communities currently not embraced by CRA.

2. **With expanded needs assessment to measure activity against, create a new Community Development (CD) test that goes beyond investment and includes CD lending.** The new CD test would cover all CD activities primarily benefitting low- and moderate-income families and communities, including multifamily housing, commercial and economic development activities that revitalize low- and moderate-income areas, community service facilities, construction and
rehabilitation of single-family homes, and support for CD organizations such as CDFIs and CDCs. This would encourage financial institutions to support the range of community development projects that bring hope and opportunity to underserved people and places. Currently, CD loans are considered within the lending test, which leads to a disproportionate emphasis on mortgage lending. In the communities we serve, comprehensive CD has impact far beyond just a home mortgage benefiting LMI activities, from charter schools to loans to job creating businesses, to value-added natural resource enterprises in rural communities. The CD test should include not only all forms of credit activity and enhancements, but also support for non-profit organizations as part of bank partnership tests. While investment alone has been key to CEI's finance model (CEI has raised millions of dollars from banking institutions for its socially-responsible small business venture capital funds) the lending test, especially tied to the expanded, more comprehensive definition of community development, in fact is by far the larger activity and shouldn't just be an "extra" credit in the scheme and continuum of community development finance.

Revise CRA assessment areas based on the needs analyses recommended above. This would allow CD activities in all communities to be fully recognized, not just the major metropolitan areas. This is a change that would particularly benefit rural regions – so that money center banks in particular can support worthy projects in non-assessment areas. As a CDFI that does small business lending as well as housing development and financing, CEI is looking to encourage comprehensive community economic lending investment as **well as housing.** In instance upon instance CEI has been shut out of supportive capital flows from major banks like Citi, Deutsche, JP Morgan Chase, Wachovia/Wells, HSBC *because we do not fall into their assessment areas*. In our view projects in their current areas would not suffer as the banks would still need to command a satisfactory rating, and justify why projects beyond their current assessment should be supported. However for rural communities which, as we'll discuss below, are short changed from access to capital, there needs to be a much greater rationalization for concentrating banking capital in narrower geographic regions,

especially when the whole nature of financial services has changed beyond such geographic limits, a now antiquated methodology to the once primary determinant of CRA.

3. **Affirm that New Markets Tax Credit (NMTC) projects explicitly meet CRA objectives, especially under an expanded definition of community development**; and further, **Favorable CRA consideration should be afforded to bank investments made in CDEs even if the CDE is headquartered in or has a service area different from the bank investor's CRA assessment area.** CRA regulations need to state explicitly that an investment in a Community Development Entity (CDE) as certified by the Community Development Financial Institutions (CDFI) Fund will be eligible for CRA credit. CEI is a founding member of the NMTC Coalition, a 150-member strong organization that initiated the credit program which became law in 2000, and has worked to ensure its successful deployment. From their CRA testimony the following concepts were offered:

> *The NMTC Coalition's 2010 Progress Report released in July 2010 noted that regulated financial institutions are the most common source of NMTC investment, with 88.6% of the CDEs reporting they had secured all or some of their Qualified Equity Investments from this type of investor. CDEs are accountable to the low income areas they serve, and CDEs have the lending expertise necessary to serve low income community borrowers well. Since the program began CDEs have loaned and invested more than $17 billion in our nation's distressed communities. By increasing CDEs' capital base through bank investments that generate CRA credit, CDEs can leverage those funds and will be able to lend and invest more, to attract additional outside capital, and to bring even more private sector financing to the table. CDEs would benefit immediately from the investment encouraged by the CRA to leverage their expertise and financial capital with the types of loans, deposits and investments that banks subject to CRA can provide….. CDEs target their investments to places where the poverty rate is at least 20 percent, or where the median family income does not exceed 80 percent of statewide median family income.*

4. **Affirm that CDFIs, which serve at least 60% LMI people and communities, in and of themselves, satisfy CRA credit**. This one change – regardless of the financial institution's assessment area or even expanded credit opportunities – would go a long way in ensuring CDFIs have access to capital for worthy projects. There's precedent for this. SBICs, for example, are named in the CRA as qualifying activities. These are investment organizations, aimed at spurring venture-type capital for small businesses. CDFIs on the other hand are <u>far broader and specifically "mission-driven</u>" organizations. Their staff, board, charter and by-laws combine to ensure a high impact on creating economic opportunity in multiple ways at the local/state/multi-state and/or national levels.

Additional Recommendations

There are two additional recommendations I would like to offer to the Federal Reserve Bank Board of Governors and other regulatory institutions responsible for bank oversight. These are:

(1) To conduct hearings on the impact of CRA on Rural America - to formulate a set of recommendations on how the financial community can benefit 20% of the nonmetro population of the U.S; and

(2) To conduct hearings on the impact of CRA on Triple Bottom Line Investing – Economy, Equity and Environment – to advance understanding and practice of sound environmental stewardship, climate change mitigation, and benefits to LMI communities.

Rural America Makes up 20% of the Nonmetro Population

CEI's accomplishments to date are due in no small part to the partnerships it has had with the banking community. However we believe there's a major flaw in CRA with respect to benefiting rural communities where arguably 20 percent of the nonmetro population resides – over 60 million Americans! Does CRA-driven capital flow in proportion to the concentration of assets among large banks? This research together with solutions to steering more capital, resources and technical knowledge to rural development is needed, and a CRA directed in this fashion could be very useful.

By all indications Rural America's demographic profiles carries with it greater incidences of poverty, less secondary school achievement let alone post-secondary; more of an aging population; the loss of traditional jobs in textiles, shoes, natural resources; out migration; quality of housing stock, and the like. Yet funds don't always follow in proportion to the need, or by some measure that ensures greater parity. Among private foundations, which grant some $43 billion annually, some estimate that less than 1.5 percent of philanthropy goes to Rural America. Several years ago Sen. Baucus of Montana challenged foundations to double their giving. Fortunately, some like Annie E. Casey or Kresge, have sought to focus some resources on rural. But even the Kellogg Foundation, a traditional funder, has shifted priorties to regions rather than rural per se.

Definitions of rural vary, so the first step in determining rural is to understand its particular characteristics and needs, not so much to compete with urban/suburban, as in many ways the interaction of the varied regions of the U.S. are very important. The USDA's Economic Research Service http://www.ers.usda.gov/Data/RuralDefinitions/ has ample studies and recommendations on rural definition, and I refer you to that agency and related public policy documents such as the Carsey Institute of the University of New Hampshire for more specific profiles of rural populations and communities http://www.carseyinstitute.unh.edu/policy/rural-urban.html

CRA Credit for Triple Bottom Line – Economy, Equity, Environment – Investing (CRA – TBL)

Several pioneering CDFIs, including CEI, CDCs and national intermediary community development groups have started to make Triple Bottom Line investments. By TBL we mean the following:

> ***Economy –*** Generates a viable financial return, either by maintaining or creating profits, return on investment, or a tangible asset.
>
> ***Equity*** – Provides an opportunity for disadvantaged groups to access information, housing, financial resources, or livelihoods/employment.
>
> ***Environment*** – Benefits or lessens impact on the natural world by improving stewardship of natural resources, or reducing energy use, waste, pollution, or materials use.

The following discussion is derived from the work of the Triple Bottom Line Collaborative and Investment Coalition of 17 CDFIs who have deliberated on this topic. CEI was a co-founder of both the TBL Collaborative and Investment Coalition. The following ideas proposed by CEI for a CRA that emphasizes TBL impacts are inspired by the collective thinking of these organizations and the staff of Rapoza Associates, a public interest government relations firm that works with these groups to advance federal policies in support of TBL investing.

While several pioneering community development groups have started to make TBL investments, Federal resources for this type of comprehensive investment are slow to follow. The private sector seems to be stepping up at least in part for public relations purposes, if not for economic

opportunities in the emerging "green economy." A TBL CRA focus is timely, urgent, and more so, a moral imperative of financing institutions to take seriously and begin the long road for reengineering the way we do business on planet earth.

To date, absent from the global warming debate is the impact of climate change legislation on economically distressed urban and rural communities. Studies show that low income communities are plagued disproportionately by poor environmental conditions. A July 2008 report by the Environmental Justice and Climate Change Initiative and Redefining Progress states that heat-related deaths among African Americans occur at a 150 - 200% greater rate than for non-Hispanic whites. The report also finds that asthma, which has a strong correlation to air pollution, affects African Americans at a 36% higher rate of incidence than non-Hispanic whites. So, not only are these communities and their residents suffering from the effects of economic distress, they are also hard hit by environmental impacts. In our view, the application of CD practices, resources and policies can help implement desired changes for underserved people and communities, whether energy costs in a housing project; production of a renewable energy product or change in business practice; or the provision of more locally-grown and processed nutritious and healthy foods to schools, retail markets, farmers markets, and the like.

There are a number of federal programs that provide financing for sustainable development, and there are also federal programs that provide intermediary organizations with grants to provide technical and financial assistance to businesses and communities. There are few, if any, programs that provide financing to intermediary organizations to invest in "green" lending and business activities. In CEI's view an expanded CRA for TBL would be an innovation and much applauded addition to receiving CRA credit.

There is mounting evidence that "green" industries represent a new opportunity for growth in the U.S. economy; now is the time to harness the power of federal policy and leverage private capital to revitalize economically distressed urban and rural communities with CRA financing designed to drive environmentally friendly investments to businesses and residents of underserved communities. Some banks like Bank of America have already announced targeting billions to this sector. The guiding principles of TBL investors are the integration of community development concerns – economic development and poverty alleviation – with a third focus on energy efficiency and environmental issues including sustainable management of resources.

A CRA TBL credit would provide much needed capital and also bring many more players to the field. CDFIs and other community development entities have the capability to drive investment to underserved areas and to ensure those investments provide an environmental benefit to the local business and community. CEI alone has made loans and investments mobilizing some $15 million for 40 small businesses employing some 1,000 Mainers representing diverse products and services in the environmental sector. Examples include such Maine companies as: Tom's of Maine (natural personal care products); Moulded Fibre Technologies (packaging materials from recycled newspapers); Mad Gabs (natural lib lubes); Intelligent Controls (high precision measuring devices for leakage in underground storage tanks and electric transmissions, and other applications); Maine Return Recycle Reuse, Inc.; Remediation Services; Air Purification Equipment Manufacturing; environment, conservation and wildlife organizations.

APPENDIX:
Examples of qualifying CRA - TBLI
(from various federal agency definitions as noted)
Prepared by Rapoza Associates
Washington, DC
For the CDFI Triple Bottom Line Collaborative
2010
Definitions

TITLE 42 > CHAPTER 85 > SUBCHAPTER I > Part A > § 7411
§ 7411. Standards of performance for new stationary sources

(a) Definitions
For purposes of this section:
(1) The term "**standard of performance**" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.
42 USC 7479 - Sec. 7479. Definitions

(3) The term "**best available control technology**" means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant.

In no event shall application of "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 or 7412 of this title.

Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990.

TITLE 33 > CHAPTER 26 > SUBCHAPTER III > § 1311
§ 1311. Effluent limitations
(b)(2)

(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which
(i) shall require application of the **best available technology** economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314 (b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314 (b)(2) of this title, or
(ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter A > PART IV > Subpart E > § 48
§ 48. Energy credit

(a) Energy credit
(1) In general
For purposes of section 46, except as provided in paragraphs (1)(B) and (2)(B) of subsection (c), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.
(2) Energy percentage
(A) In general
The energy percentage is—
(i) 30 percent in the case of—
(I) qualified fuel cell property,
(II) energy property described in paragraph (3)(A)(i) but only with respect to periods ending before January 1, 2009, and
(III) energy property described in paragraph (3)(A)(ii), and
(ii) in the case of any energy property to which clause (i) does not apply, 10 percent.
(B) Coordination with rehabilitation credit
The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.
(3) **Energy property**
For purposes of this subpart, the term “energy property” means any property—
(A) which is—
(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,
(ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2009,

(iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613 (e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage, or
(iv) qualified fuel cell property or qualified microturbine property,
(B)
(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,
(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and
(D) which meets the performance and quality standards (if any) which—
(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and
(ii) are in effect at the time of the acquisition of the property.
The term "energy property" shall not include any property which is public utility property (as defined in section 46 (f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990). Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter A > PART IV > Subpart D > § 45
§ 45. Electricity produced from certain renewable resources, etc.
(c) Resources
For purposes of this section:
(1) In general
The term "**qualified energy resources**" means—
(A) wind,
(B) closed-loop biomass,
(C) open-loop biomass,
(D) geothermal energy,
(E) solar energy,
(F) small irrigation power,
(G) municipal solid waste, and
(H) qualified hydropower production.
(2) Closed-loop biomass
The term "closed-loop biomass" means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.
(3) Open-loop biomass
(A) In general
The term "open-loop biomass" means—
(i) any agricultural livestock waste nutrients, or
(ii) any solid, nonhazardous, cellulosic waste material or any lignin material which is derived from—
(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,
(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood

wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or
(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.
Such term shall not include closed-loop biomass or biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.
(B) Agricultural livestock waste nutrients
(i) In general The term "agricultural livestock waste nutrients" means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.
(ii) Agricultural livestock The term "agricultural livestock" includes bovine, swine, poultry, and sheep.
(4) Geothermal energy
The term "geothermal energy" means energy derived from a geothermal deposit (within the meaning of section 613 (e)(2)).
(5) Small irrigation power
The term "small irrigation power" means power—
(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and
(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.
(6) Municipal solid waste
The term "municipal solid waste" has the meaning given the term "solid waste" under section 2(27) [1] of the Solid Waste Disposal Act (42 U.S.C. 6903).
(7) Refined coal
(A) In general
The term "refined coal" means a fuel which—
(i) is a liquid, gaseous, or solid fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock,
(ii) is sold by the taxpayer with the reasonable expectation that it will be used for [2] purpose of producing steam,
(iii) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction, and
(iv) is produced in such a manner as to result in an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal.
(B) Qualified emission reduction
The term "qualified emission reduction" means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.
(8) Qualified hydropower production
(A) In general
The term "qualified hydropower production" means—

(i) in the case of any hydroelectric dam which was placed in service on or before the date of the enactment of this paragraph, the incremental hydropower production for the taxable year, and
(ii) in the case of any nonhydroelectric dam described in subparagraph (C), the hydropower production from the facility for the taxable year.
(B) Determination of incremental hydropower production
(i) In general For purposes of subparagraph (A), incremental hydropower production for any taxable year shall be equal to the percentage of average annual hydropower production at the facility attributable to the efficiency improvements or additions of capacity placed in service after the date of the enactment of this paragraph, determined by using the same water flow information used to determine an historic average annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Federal Energy Regulatory Commission.
(ii) Operational changes disregarded For purposes of clause (i), the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.
(C) Nonhydroelectric dam
For purposes of subparagraph (A), a facility is described in this subparagraph if—
(i) the facility is licensed by the Federal Energy Regulatory Commission and meets all other applicable environmental, licensing, and regulatory requirements,
(ii) the facility was placed in service before the date of the enactment of this paragraph and did not produce hydroelectric power on the date of the enactment of this paragraph, and
(iii) turbines or other generating devices are to be added to the facility after such date to produce hydroelectric power, but only if there is not any enlargement of the diversion structure, or construction or enlargement of a bypass channel, or the impoundment or any withholding of any additional water from the natural stream channel.
(9) Indian coal
(A) In general
The term “Indian coal” means coal which is produced from coal reserves which, on June 14, 2005—
(i) were owned by an Indian tribe, or
(ii) were held in trust by the United States for the benefit of an Indian tribe or its members.
(B) Indian tribe
For purposes of this paragraph, the term “Indian tribe” has the meaning given such term by section 7871 (c)(3)(E)(ii).

(d) **Qualified facilities**
For purposes of this section:
(1) Wind facility
In the case of a facility using wind to produce electricity, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2009.
(2) Closed-loop biomass facility
(A) In general
In the case of a facility using closed-loop biomass to produce electricity, the term “qualified facility” means any facility—

(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2009, or
(ii) owned by the taxpayer which before January 1, 2009, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.
(B) Special rules
In the case of a qualified facility described in subparagraph (A)(ii)—
(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this clause, and
(ii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.
(3) Open-loop biomass facilities
(A) In general
In the case of a facility using open-loop biomass to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which—
(i) in the case of a facility using agricultural livestock waste nutrients—
(I) is originally placed in service after the date of the enactment of this subclause and before January 1, 2009, and
(II) the nameplate capacity rating of which is not less than 150 kilowatts, and
(ii) in the case of any other facility, is originally placed in service before January 1, 2009.
(B) Credit eligibility
In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.
(4) Geothermal or solar energy facility
In the case of a facility using geothermal or solar energy to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2009 (January 1, 2006, in the case of a facility using solar energy). Such term shall not include any property described in section 48 (a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.
(5) Small irrigation power facility
In the case of a facility using small irrigation power to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2009.
(6) Landfill gas facilities
In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2009.
(7) Trash combustion facilities
In the case of a facility which burns municipal solid waste to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2009. Such term shall

include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.
(8) Refined coal production facility
In the case of a facility that produces refined coal, the term “refined coal production facility” means a facility which is placed in service after the date of the enactment of this paragraph and before January 1, 2009.
(9) Qualified hydropower facility
In the case of a facility producing qualified hydroelectric production described in subsection (c)(8), the term “qualified facility” means—
(A) in the case of any facility producing incremental hydropower production, such facility but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in subsection (c)(8)(B) placed in service after the date of the enactment of this paragraph and before January 1, 2009, and
(B) any other facility placed in service after the date of the enactment of this paragraph and before January 1, 2009.
(C) Credit period.— In the case of a qualified facility described in subparagraph (A), the 10-year period referred to in subsection (a) shall be treated as beginning on the date the efficiency improvements or additions to capacity are placed in service.
(10) Indian coal production facility
In the case of a facility that produces Indian coal, the term “Indian coal production facility” means a facility which is placed in service before January 1, 2009.

<u>26 USC § 54D</u>
§ 54D. Qualified energy conservation bonds.

(f) **Qualified conservation purpose**. For purposes of this section--
(1) In general. The term "qualified conservation purpose" means any of the following:
(A) Capital expenditures incurred for purposes of--
(i) reducing energy consumption in publicly-owned buildings by at least 20 percent,
(ii) implementing green community programs (including the use of loans, grants, or other repayment mechanisms to implement such programs),
(iii) rural development involving the production of electricity from renewable energy resources, or
(iv) any qualified facility (as determined under section 45(d) [26 USCS § 45(d)] without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date).
(B) Expenditures with respect to research facilities, and research grants, to support research in--
(i) development of cellulosic ethanol or other nonfossil fuels,
(ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,
(iii) increasing the efficiency of existing technologies for producing nonfossil fuels,
(iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or
(v) technologies to reduce energy use in buildings.

(C) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

(D) Demonstration projects designed to promote the commercialization of--

(i) green building technology,

(ii) conversion of agricultural waste for use in the production of fuel or otherwise,

(iii) advanced battery manufacturing technologies,

(iv) technologies to reduce peak use of electricity, or

(v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

(E) Public education campaigns to promote energy efficiency.

*42 USC 6371 - **§** 6371. Definitions*

(13) The term "**energy audit**" means a determination of the energy consumption characteristics of a building which –

(A) identifies the type, size, and rate of energy consumption of such building and the major energy using systems of such building;

(B) determines appropriate energy conservation maintenance and operating procedures; and

(C) indicates the need, if any, for the acquisition and installation of energy conservation measures.

TITLE 42 > CHAPTER 103 > SUBCHAPTER I > § 9601

§ 9601. Definitions

(39) Brownfield site.—

(A) In general.— The term "**brownfield site**" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(B) Exclusions.— The term "brownfield site" does not include—

(i) a facility that is the subject of a planned or ongoing removal action under this subchapter;

(ii) a facility that is listed on the National Priorities List or is proposed for listing;

(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this chapter;

(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321) [33 U.S.C. § 1251 et seq.], the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(v) a facility that—

(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924 (u), 6928 (h)); and

(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(vi) a land disposal unit with respect to which—
(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and
(II) closure requirements have been specified in a closure plan or permit;
(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;
(viii) a portion of a facility—
(I) at which there has been a release of polychlorinated biphenyls; and
(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or
(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26.
(C) Site-by-site determinations.— Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 9604 (k) of this title to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.
(D) Additional areas.— For the purposes of section 9604 (k) of this title, the term "brownfield site" includes a site that—
(i) meets the definition of "brownfield site" under subparagraphs (A) through (C); and
(ii)
(I) is contaminated by a controlled substance (as defined in section 802 of title 21);
(II)
(aa) is contaminated by petroleum or a petroleum product excluded from the definition of "hazardous substance" under this section; and
(bb) is a site determined by the Administrator or the State, as appropriate, to be—
(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and
(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and
(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b (h)); or
(III) is mine-scarred land.

42 USC 6371 - Sec. 6371. Definitions

(13) The term "**energy audit**" means a determination of the energy consumption characteristics of a building which –
(A) identifies the type, size, and rate of energy consumption of such building and the major energy using systems of such building;
(B) determines appropriate energy conservation maintenance and operating procedures; and

(C) indicates the need, if any, for the acquisition and installation of energy conservation measures.

26 USC § 179D. Energy efficient commercial buildings deduction.

(c) Definitions. For purposes of this section--

(1) Energy efficient commercial building property. The term "energy efficient commercial building property" means property--

(A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

(B) which is installed on or in any building which is--

(i) located in the United States, and

(ii) within the scope of Standard 90.1-2001,

(C) which is installed as part of--

(i) the interior lighting systems,

(ii) the heating, cooling, ventilation, and hot water systems, or

(iii) the building envelope, and

(D) which is certified in accordance with subsection (d)(6) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of **Standard 90.1-2001** using methods of calculation under subsection (d)(2).

(2) Standard 90.1-2001. The term "Standard 90.1-2001" means Standard 90.1-2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003).

29 U.S.C. 2916, Section 171

(e) Energy Efficiency and Renewable Energy Worker Training Program.--

(B) Eligibility.--For purposes of providing assistance and services under the program established under this subsection—

(i) target populations of eligible individuals to be given priority for training and other services shall include—

(I) workers impacted by national energy and environmental policy;

(II) individuals in need of updated training related to the energy efficiency and renewable energy industries;

(III) veterans, or past and present members of reserve components of the Armed Forces;

(IV) unemployed individuals;

(V) individuals, including at-risk youth, seeking employment pathways out of poverty and into economic self-sufficiency; and

(VI) formerly incarcerated, adjudicated, nonviolent offenders; and

(ii) energy efficiency and renewable energy industries eligible to participate in a program under this subsection include--

(I) the energy-efficient building, construction, and retrofits industries;

(II) the renewable electric power industry;

(III) the energy efficient and advanced drive train vehicle industry;

(IV) the biofuels industry;

(V) the deconstruction and materials use industries;

(VI) the energy efficiency assessment industry serving the residential, commercial, or industrial sectors;

(VII) manufacturers that produce sustainable products using environmentally sustainable processes and materials.