

IMPACT

COMMUNITY CAPITAL LLC

April 8, 2013

By E-mail: cdfihelp@cdfi.treas.gov

CDFI Fund, U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220
Attn: Lisa M. Jones, Manager, CDFI Bond Guarantee Program

Re: Request for Public Comment

Dear Ms. Jones:

Impact Community Capital LLC submits this letter in response to the request for public comment on the interim rule (the “**Interim Rule**”) issued by the Department of the Treasury (“**Treasury**”) implementing the Community Development Financial Institutions Fund’s (“**CDFI**”) Bond Guarantee Program (“**Program**”) established through Section 1134 of the Small Business Jobs Act of 2010 (“**Act**”).

We recognize that the Program has the potential to provide an important and previously unavailable new source of capital that CDFIs can access to better serve their communities. With vast experience using a structured finance approach to financing a high volume of community and economic development projects, we are an industry leader in this arena and thus are uniquely situated and eager to participate in the Program. As such, this letter draws upon our years of financing experience and provides specifics in terms of how we believe the final rule should be drafted in order for the Program to take effect in a timely fashion and to maximize its potential.

In light of the Program’s expiration on September 30, 2014 and the limitation imposed by the Act of \$1 billion per fiscal year in authorized guarantees, we urge the CDFI Fund to promulgate a final rule as soon as possible within the 2013 fiscal year to ensure that the maximum amount of guaranteed Bonds are issued under the Program.

Summary of Comments

In this letter, we present our recommendations for how the CDFI Fund can most efficiently and effectively implement the Program through the final rule. We have organized our comments into the following topics: (i) Eligible Purpose and Refinance; (ii) Qualified Issuer and Eligible CDFI; (iii) Recourse; (iv) Evaluation of Qualified Issuer and Guarantee Applications; (v) Representations, Warranties, Covenants and Events of Default; (vi) Risk Retention and

Regulation AB Exclusion, (vii) Servicing and Subservicing and (viii) Agency Administrative Fee. To provide you with a better understanding of our perspective on the Program, we have also provided a brief summary of our expertise in the area of community development. We note that capitalized terms used and not otherwise defined herein have the meaning ascribed to such terms in the Interim Rule.

We hope to play a vital role in the Program and are eager to provide you with as much information as possible as you are preparing the final rule. At this time, we are not able to comment on the merits of every aspect of the Program, however, as several critical documents – including the form of legal agreements, Qualified Issuer and Guarantee Applications, the underwriting criteria for assessing the credit worthiness of Eligible CDFIs and Secondary Loan requirements – have not yet been made available for public review and comment. At the Program outreach sessions conducted earlier this year, we were informed that materials related to these Program components would be released in the coming weeks and months and that such materials would answer many of the outstanding questions regarding the mechanics of the Program. For example, we are concerned about the effect of the bankruptcy of a Qualified Issuer or an unaffiliated CDFI which receives a Bond Loan from such Qualified Issuer. We expect that the Program documents will contain sufficient legal protection for Program participants and the Bond Purchaser in the event of a bankruptcy or similar event affecting a Qualified Issuer or other Program participant. Once we have the opportunity to review such materials, we may have additional recommendations on the structure and mechanics of the Program. Nonetheless, we have provided in this letter as much information as possible about how we believe the Program should be structured to maximize its benefits to underserved communities. We respectfully request that interested parties be given an opportunity to comment on such critical documents prior to promulgation of the final rule or at least prior to implementation of the Program.

We appreciate the great amount of time and effort that the CDFI Fund has already devoted to preparing the Interim Rule and conducting the outreach sessions. We thank you in advance for your prompt efforts to prepare and implement the final rule. As you are drafting the final rule, we respectfully request that you take the following recommendations into consideration.

Impact Community Capital LLC and Affiliates

Impact Community Capital LLC (“**Impact**”) was founded by insurance companies exclusively to promote socially responsible investments in underserved communities. Impact focuses on financing affordable housing and a variety of community facilities to benefit lower and/or moderate income individuals, families and communities while also meeting insurer investment requirements for the prudent management of policyholder funds.

Impact investments and investment commitments to provide financial opportunities to underserved communities currently exceed \$1.7 billion.

Impact's wholly owned affiliate, Impact Community Capital CDE, LLC is certified as a Community Development Entity by the Community Development Financial Institutions Fund, and its subsidiary Impact Investment Adviser LLC is a registered investment adviser.

Impact has had numerous accomplishments in financing community and economic development projects.

- Impact actively seeks socially responsible investments on behalf of its insurance company owners and investors.¹ These investments result in meaningful community improvements. To date, Impact has over \$1.7 billion invested or committed to invest in underserved communities.
- Responding to increasing demands for quality childcare facilities and dwindling public and charitable revenues, Impact financed construction and expansion of childcare and preschool centers in California. The childcare investment leveraged a \$40 million New Markets Tax Credit ("NMTC") allocation Impact received in 2002.
- Impact has also financed loans for qualifying primary healthcare facilities serving low and moderate income communities primarily in California.
- Impact committed equity risk capital for the development of predominantly affordable for-sale infill housing located near job centers and transit hubs, which are "smart growth" opportunities to create housing for moderate income families and individuals.
- Impact has made significant debt and equity investments to help expand small and medium sized businesses as well as in commercial real estate that create and support jobs in low and moderate income areas.
- Impact has significant experience originating and financing loans on a structured finance basis to finance long-term mortgages on affordable multifamily rental properties nationwide, whose units are affordable to persons and families with incomes at or below 60% Area Median Income. Impact's affiliate, Impact C.I.L., LLC has financed more than \$650 million of such mortgages and its wholly owned affiliate, Impact Funding LLC, has securitized approximately \$500 million thereof.

¹ Current investors include Allstate Insurance Company, Genworth Financial, Farmers Insurance Companies, Metropolitan Life Insurance Company, Nationwide Mutual Insurance Companies, Pacific Life Insurance Company, PMI Mortgage Insurance Company, Liberty Mutual Insurance Company (Safeco Insurance), State Farm Insurance Companies, Teachers Insurance & Annuity Association and 21st Century Insurance Company.

Eligible Purpose and Refinance

The Interim Rule proposed by the CDFI Fund requires that Bond Proceeds be used by a Qualified Issuer to finance Bond Loans or Refinance loans to Eligible CDFIs for Eligible Purposes. “Eligible Purpose” is defined in the Interim Rule as the allowable uses of Bond Proceeds and Bond Loan proceeds, which includes financing or Refinancing for certain community or economic development purposes.² “Refinancing” is defined in the Interim Rule as the use of Bond Proceeds to refinance an Eligible CDFI’s or Secondary Borrower’s existing loan, which must have been used for an Eligible Purpose.³ To maximize Program utilization, we urge the CDFI Fund to promulgate a final rule with expansive definitions of “Eligible Purpose” and “Refinancing”, such that these terms capture more than direct lending and foster a robust lending program. We request further clarification from the CDFI Fund as to whether the following would qualify as an Eligible Purpose: an Eligible CDFI using Bond Loan proceeds to refinance some or all of its existing debt, the proceeds of which have been utilized for Eligible Purposes.

In our view, allowing an Eligible CDFI to refinance existing debt would advance the stated goals of the Program by lowering the borrowing costs for such CDFI and/or recapitalizing the balance sheet of such CDFI, thereby positioning it to further expand its lending capacity. In addition, the Program would remain secured by loans used for Eligible Purposes. The end result would be an improved financial condition for the Eligible CDFI and overall ability to increase lending activities under the Program.

Qualified Issuer and Eligible CDFI

The final rule should permit an Eligible CDFI that is selected as a Qualified Issuer and intends to issue a \$100 million Bond to use the proceeds of such Bond issuance itself for Eligible Purposes. Allowing a singular entity which is an Eligible CDFI to utilize Bond Proceeds without requiring an intermediate Bond Loan would maximize Program efficiency and reduce unnecessary or duplicative issuance and administrative costs. As a condition to utilizing this streamlined structure for \$100 million Bond Issues, the CDFI Fund could require the Eligible CDFI, as Qualified Issuer, to submit its Qualified Issuer Application and Guarantee Application (including Capital Distribution Plan) simultaneously. This would give the CDFI Fund the ability to set appropriate parameters for the Bond Issue and use of Bond Proceeds. Permitting an experienced and sophisticated Eligible CDFI with a large portfolio of loans to utilize this streamlined structure would present a much lower risk profile to the Bond Purchaser than ten smaller Eligible CDFI’s, each with a \$10 million Bond Loan securing a \$100 million Bond Issue.

In the event the final rule does not permit this streamlined structure to be utilized, the requirements set forth in Section 1808.621 of the Interim Rule, restricting a Qualified Issuer’s Bond Loan to an affiliated Eligible CDFI, should not apply. The Qualified Issuer Application

² 12 CFR 1808.102(bb)

³ 12 CFR 1808.102(rr)

and Guarantee Application (including Capital Distribution Plan) would be submitted, evaluated and approved prior to the Qualified Issuer's extension of a Bond Loan to an affiliated Eligible CDFI, such that additional restrictions are not necessary and would only increase Program administrative costs for an affiliated Qualified Issuer and Eligible CDFI.

Recourse

The characterization of the Bond Loan as a general recourse obligation of the Eligible CDFI will severely limit access to and utilization of the program by the CDFI Community. Most CDFIs have existing credit agreements which limit their ability to accept new secured credit obligations and/or offer a general balance sheet pledge.

As a prudent lending alternative to the general recourse requirement set forth in the Interim Rule, we propose treating the Bond Loan as a specific recourse obligation of the Eligible CDFI (e.g. secured solely by the assets financed by the Bond Proceeds). Permitting an affiliate of an Eligible CDFI to be an Eligible CDFI will also provide a solution. If necessary, the Eligible CDFI could provide additional credit enhancement to provide the same level of credit support that a general recourse obligation would provide. Additional credit enhancement might be in the form of over-collateralization, letters of credit, additional reserves, parental support agreements or guarantees, third-party guarantees or liquidity requirements. In our view, permitting a pledge of financed assets and requiring credit enhancement, as necessary, would significantly expand CDFI participation without exposing the CDFI Fund or Treasury to increased or undue risk.

In addition, while the Interim Rule already provides that each Bond will be a nonrecourse obligation of the Qualified Issuer, we believe the CDFI Fund should go further and incorporate additional exculpatory language protecting the Qualified Issuer. For example, we propose that the Qualified Issuer be exempt from any liability in connection with a Bond Issue except in the event of fraudulent or grossly negligent behavior.

Evaluation of Qualified Issuer and Guarantee Applications

To maximize efficiency at the evaluation and selection phase of the Program's transaction parties, the final rule should expressly provide that Qualified Issuer and Guarantee Applications may be submitted to and reviewed by the CDFI Fund simultaneously. To the extent that the simultaneous review of Qualified Issuer and Guarantee Applications is not possible, due diligence review of the Qualified Issuer applicant should occur as part of the earlier Qualified Issuer evaluation and not in the subsequent Guarantee Application stage. As part of such review, the Qualified Issuer should be permitted to contract with third parties for certain services in order to satisfy the qualifications and requirements for the Qualified Issuer set forth in the final rule. Evaluation of the Guarantee Application should be limited to questions of deal structure and other specific considerations.

As part of the Guarantee Application process, a Guarantee applicant that submits an unsuccessful Guarantee Application should have the opportunity to review the CDFI Fund's decision and submit a revised application. For example, if a Guarantee applicant does not achieve the necessary minimum credit score, the applicant should be permitted to review its credit score and revise its applications, including providing additional collateral or credit enhancement to attempt to achieve the minimum score required for a successful Guarantee Application. If each Guarantee applicant was provided with only one opportunity to submit a successful Guarantee Application, this would require overcollateralization, raising overall Program costs and reducing Program utilization. Preparing and submitting a successful Guarantee Application also requires an accurate and complete understanding of the credit scoring methodology that will be utilized to evaluate Guarantee Applications. We encourage the CDFI Fund to elaborate on such methodology in the final rule and/or prior to implementation of the Program. We request further clarification on whether the credit scoring processes performed by the CDFI Fund and the Office of Management and Budget will be concurrent. In addition, we would like more information on what occurs if such agencies disagree on the credit score. In short, an iterative and interactive application process is necessary in order for the Guarantee applicant to understand the credit requirements and achieve a successful Guarantee application.

In the private credit markets, the process for structuring a credit transaction is dynamic with significant two-way communication between lender and borrower resulting in an optimal credit structure. To ensure high program utilization, broad access for CDFI's and minimal taxpayer risk, the Program must provide for similar dialogue with the Guarantee applicant that will result in the best possible credit structure. We hope that the CDFI Fund will provide additional information on the Guarantee Application evaluation process and an opportunity to comment on such information in advance of promulgating a final rule.

Representations, Warranties, Covenants and Events of Default

We urge the CDFI Fund to permit customary and fair negotiations of the representations, warranties and covenants to be provided by an Eligible CDFI, with respect to each Bond Loan, or a Secondary Borrower, with respect to a Secondary Loan. The final rule might require certain representations, warranties and covenants, as a general matter, but the transaction parties should be permitted to negotiate such representations, warranties and covenants with the same flexibility as in a private credit transaction.

Similarly, the final rule should not enumerate mandatory events of default under a Bond Loan or Secondary Loan transaction. Instead, the final rule should permit the Eligible CDFI and/or Secondary Borrower to negotiate specific events of default that are tailored to the particular transaction and parties involved. At the very least, the CDFI Fund should incorporate standard grace and cure periods into the Event of Default provisions in the final rule.

Permitting customary negotiations and preserving flexibility in Bond Loan and Secondary Loan transactions has the potential to reduce Program costs and ensure maximum participation by the CDFI community and qualified Secondary Borrowers.

Risk Retention and Regulation AB Exclusion

As you know, the Interim Rule contemplates a Risk-Share Pool to cover any default of principal and interest payments due to the Bond Purchaser in the event that an Eligible CDFI defaults in the payment of debt service on its Bond Loan. Accordingly, we do not think it was the CDFI Fund's intent to subject the Program to additional credit risk retention requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**") or the requirements under Regulation AB. Nonetheless, out of an abundance of caution, and as previously commented to the agencies that promulgated the credit risk retention rules under Dodd-Frank, the final rule (and the related risk-retention regulations) should expressly acknowledge that Bonds issued as part of the Program are not asset-backed securities and therefore are exempt from credit risk retention requirements and the requirements under Regulation AB.

Servicing and Subservicing

We note that the Interim Rule provides a description of the role of the Servicer (which may be the same entity as the Qualified Issuer) and the selection of such entity. Given the broad scope of activities to be performed by the Servicer, we believe that the final rule should permit the use of eligible subservicers to perform certain functions on behalf of the Servicer. Permitting Servicers to engage subservicers is typical in the servicing industry and enables Servicers to enlist subservicers with unique and specialized qualifications to deal with certain asset classes. In our view, there is little risk associated with eligible subservicers, especially if the Servicer remains liable for the acts and omissions of the subservicer.

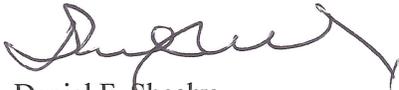
Agency Administrative Fee

The Qualified Issuer is required to pay to the CDFI Fund annually an Agency Administrative Fee equal to 10 basis points (0.1 percent) of the amount of the unpaid principal of the Bond(s). The final rule should clarify that the Qualified Issuer remits Agency Administrative Fees on behalf of the Eligible CDFI's, but that such fees are ultimately the sole responsibility of the Eligible CDFI's (i.e. the Qualified Issuer is not guaranteeing payment of the Agency Administrative Fee).

* * *

Thank you for your consideration of our comments. We would be pleased to have the opportunity to discuss these matters further with you and your staff. If you have any comments or questions, please feel free to contact me at (415) 981-1074; ext. 30 or dsheehy@impactcapital.net.

Sincerely,



Daniel F. Sheehy
President and Chief Executive Officer

cc: United States Department of the Treasury
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