

IMPACT

COMMUNITY CAPITAL LLC

August 15, 2011

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

CDFI Fund, U.S. Department of the Treasury
601 13th Street, NW
Suite 200 South
Washington, DC 20005
Attn: Jodie Harris, Policy Specialist

Re: Request for Public Comment

Dear Ms. Harris:

Impact Community Capital LLC submits this letter in response to the request for public comment by the Department of the Treasury (“Treasury”) on the CDFI Fund’s Community Development Financial Institutions (“CDFI”) Bond Guarantee Program (“Program”). The CDFI Fund is required by statute to promulgate program regulations (“Rules”) by September 27, 2011 to implement the Program that was enacted through the Small Business Jobs Act of 2010¹ (“Act”) on September 27, 2010.

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 multiple 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 Rules should be drafted in order for the Program to take effect in a timely fashion and to maximize its potential.

As further discussed below, in light of the limited duration of the Program, we urge the CDFI Fund to promulgate Rules as soon as possible to ensure that the maximum amount of guaranteed bonds or notes (herein, “securities”) are issued under the Program prior to its expiration on September 30, 2014. An initial set of Rules issued for the Program could be designed in a short-

¹ Pub. L. No. 111-240, §1134, §1703, 12 U.S.C. §4713 (2011).

form manner to only apply to the initial issuance of \$1 billion of securities under the Program prior to September 30, 2011. Subsequent securities issuances would be governed by a more robust set of Rules promulgated by the CDFI Fund after such initial issuance.

Summary of Comments

In this letter, we present our recommendations for how the CDFI Fund can most efficiently and effectively establish the Rules for the Program. We have organized our comments into the following topics: (i) Program Logistics; (ii) Transaction Parties; (iii) Eligible Collateral; (iv) Eligible Entities; (v) Use of Funds; (vi) Guarantee Provisions; (vii) Accountability; and (viii) Role of the Federal Financing Bank (“FFB”).

We appreciate the great amount of time and effort that will be devoted by the CDFI Fund to establish the Rules. We ask that you take the following recommendations into consideration as you are drafting the Rules. For your convenience, we have provided on Exhibit B a description of those particular items that we believe will need to be specifically addressed in the Rules.

We expect 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 Rules. As there are many variables involved in how to structure this Program, we are not able to comment at this time on the merits of every variation of the Program. However, we have provided in this letter as much information as possible about how we believe the Program should be established to maximize its benefits to underserved communities. We recognize that there are many other questions that will arise as you begin drafting Rules that will need to be addressed. Therefore, our hope is to meet with the CDFI Fund soon after it has reviewed our letter and as you begin the drafting process to further discuss with you specifics of the Program, before any final Rules are promulgated.

Impact Community Capital LLC and Affiliates

Impact Community Capital LLC (“Impact”) was founded by leading insurers 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 \$1.6 billion.

Impact is a certified CDFI by the State of California, 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.² These investments result in meaningful community improvements. To date, Impact has over \$1.6 billion 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 takes advantage of 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 true 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. Impact’s wholly owned affiliate, Impact Funding LLC, has securitized approximately \$500 million of affordable multifamily mortgages.

Need for Immediate “Prototype Rules”

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, it is critical to the success of the Program that Rules be promulgated as soon as possible and no later than the deadline set in the Act of September 27, 2011. We would suggest that the initial Rules under the Program which would apply to only the first year be drafted in a manner that relies heavily on the definitions and

² 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.

structural requirements already embedded in the Act and reserves additional flexibility for the CDFI Fund. A more simplistic set of initial Rules (the “Prototype Rules”) would facilitate the prompt initial issuance under the Program to ensure that no authorized guarantee amounts are wasted. Following the initial issuance, the Prototype Rules could be revised and amended by the CDFI Fund to apply to the remaining three years of the Program.

The key feature of the Prototype Rules would be to allow for the initial issuance by a qualified issuer of \$1 billion of guaranteed securities under the Program that would be issued but not immediately sold. In effect, the relending account would need to be set at 97% for this initial issuance under the Program and the 3% risk-share pool would not be immediately funded. These newly issued securities would remain in the possession of a trustee in accordance with the Prototype Rules. This could ensure that the full authorized amount under the Act for the Program is available for issuance this calendar year. At this early stage, the CDFI Fund would only need to identify a qualified issuer or a master issuer and a trustee. Following the amendment of the Prototype Rules, the qualified issuer and the CDFI Fund would identify and engage the other relevant transaction parties. This initial qualified issuer (and likely additional other qualified issuers) will then originate or aggregate eligible loans that conform to the requirements of the Rules. Such eligible loans would be contributed into the transaction in exchange for the proceeds of the guaranteed securities that would simultaneously be sold. We believe this set of Prototype Rules could get the Program up and running in order to have the most immediate community development and economic impact.

The description of the Program in the remainder of this comment letter describes our view of how the final Rules should be established for the Program.

Program Logistics and Overview

Ultimately, we envision the Rules for the Program providing for a flow program in a “shelf”-like manner. Final Rules should clarify and expressly permit one or more qualified issuers to sell guaranteed securities up to the maximum guarantee amount to allow the timing of security sales to match loan origination flow, not unlike a “shelf-registration” system (similar to Form S-3). Qualified issuers could “take down” off the shelf as necessary to match loan origination timing and market conditions. Such qualified issuer(s) may either be (i) an individual CDFI that has originated or aggregated \$100 million or more of eligible loans to collateralize the securities issuance or (ii) a “master issuer” that intends to aggregate loans from various CDFI originators. The qualified issuer, including any master issuer, would be approved by the CDFI Fund based on its capital distribution plan, capacity and capability to ultimately issue \$100 million or more of guaranteed securities within the year (i.e., there would be \$100 million on the “shelf”). As eligible loans are originated or aggregated, such eligible loans would be contributed into the transaction structure in exchange for the proceeds from the sale of guaranteed securities. The fully guaranteed amount could be issued on day one or over a series of offering dates during the fiscal year in which the guarantee is approved. This structure would permit qualified issuers to

issue fully-collateralized securities in increments as required by the purchaser. We believe that later in the Program the capital distribution plans for qualified issuers could provide for issuances of guaranteed securities that would not initially be fully-collateralized. Some qualified issuers may elect to take advantage of the relending account in which case the amount of eligible loans contributed would be 10% less than the guaranteed securities issuance amount. In addition, at the time of the sale of the guaranteed securities, the 3% risk-share pool would need to be fully funded and held by the master servicer for the benefit of the CDFI Fund.

As such, the Rules will need to clearly specify that qualified issuers that receive the guarantee approval may make loans directly, use proceeds to refinance existing loans on their balance sheet or purchase loans from CDFIs. The Rules should also specify that one or more CDFIs (with loans of any size) may sell into a collateral pool arranged by a master issuer. This flexibility in the number of CDFIs that can participate and the size of the eligible loans is a key means of ensuring the broadest impact from the Program across as many CDFIs as possible.

In order to ensure maximum flexibility in structuring transactions to accommodate either on-balance sheet treatment or the more typical "structured finance" transactions that have off-balance sheet accounting treatment, the definition of qualified issuer will need to be clearly defined to allow for issuance by one of the following (i) a CDFI itself, (ii) a special purpose entity ("SPE") that will be acting as the master issuer or (iii) an issuing entity (e.g., a common law trust) which will be formed by the master issuer or the "depositor" SPE and a trustee for the express purpose of holding eligible loans and issuing guaranteed securities. We believe the use of a master issuer as described herein will provide for the greatest impact of the Program as it will encourage Program participants to seek out CDFIs who may not have the means to access the Program directly but would be interested in selling newly-originated or seasoned eligible loans to a master issuer for inclusion in the Program.

If the Rules are drafted in that manner, they would allow for the legal isolation of the assets from the insolvency risk of the originator of the loans as is common in rated structured finance transactions. As described in the structure diagram on Exhibit A attached hereto, we envision that loans originated by CDFIs would be aggregated and sold to a master issuer that would either issue the guaranteed securities itself or would transfer them to the "depositor," which in turn would transfer them to the issuing entity. As described above, the Rules should be designed to account for a "depositor" and an "issuing entity" in order to allow for a two-step sale transfer where the "depositor" is only permitted to engage in the business of acquiring, owning and selling the assets and is restricted in various ways from entering into voluntary bankruptcy and other prohibited acts. In the second of the two steps, the depositor would sell the assets to the issuing entity. This two-step structure is intended to enhance the "true sale" and "bankruptcy remote" characteristics of the transaction. That is, the transaction is structured to ensure that the sale of assets to the depositor is a "true sale" rather than a financing device, which is necessary for the loan originator to transfer the assets off its balance sheet for accounting purposes and, combined with the second transfer by the depositor to the issuing entity, is an essential part of the required

protection from the claims of creditors, in order to avoid consolidation of the assets with the assets of the loan originator in the event of the bankruptcy of the loan originator. We believe that allowing the guaranteed securities to have the legal isolation characteristics that are typical in structured finance transactions will benefit the purchaser of the securities in a case where the related CDFI fails.

The “depositor” SPE would be a corporation or limited liability company and would be a subsidiary of the master issuer or otherwise affiliated with one or more of the CDFIs selling loans to the master issuer. The Rules should also permit the master issuer to be managed by a manager that has the expertise to assist in the underwriting, record keeping, data reporting, aggregation and securities issuance functions. In particular, the Rules should specify that certain of the Program Administrator functions could be delegated to the party serving in the role of the manager to the master issuer. Moreover, the master issuer could also be established with an advisory board (made up of CDFI members and a representative of the CDFI Fund) that would have access to key information and personnel.

The Rules defining qualified issuers should also limit them to entities that on their own or with a group of CDFIs have a reasonable ability to originate or aggregate \$100 million of eligible loans in a year based on their track record of origination and based on the experience and qualifications of the advisors and program administrators identified by the CDFIs in their capital distribution plan. This standard will afford smaller CDFIs the ability to partner with other CDFIs and to engage experienced assistance from entities that work with the type of structures described herein on a regular basis in order to access this Program that might otherwise be unavailable to them.

We also do not believe it would be appropriate for the Rules to specify a minimum net capital requirement for qualified issuers in light of the risk-share pool that is already required. In addition, if a CDFI is a designated primary servicer, and such CDFI fails to service its loans properly, then the master servicer will have the ability to step in as successor primary servicer or appoint a successor primary servicer.

With the above-described transaction structure, the CDFI Fund could have ample control of the transaction in a variety of ways. The master issuer (or depositor SPE), the master servicer and the trustee would execute a pooling and servicing agreement to form the issuing entity under state law to issue the securities. The CDFI Fund could also be a party to that agreement where it could have contractual authority over the selection and replacement of the master servicer. Further, the CDFI Fund should also require that it have control rights akin to a “B-piece buyer” in a commercial mortgage-backed securities (“CMBS”) transaction, including playing an active role in monitoring the performance of each loan, making decisions on key asset issues and appointing and/or terminating the special servicer, if applicable.

It is also critical to the success of the Program to ensure that the guaranteed securities can be structured at the discretion of the qualified issuer and with attention to any requirements of the

purchaser. The Rules should make clear that there is flexibility in selecting the type of interest rate, the frequency of payments of principal and interest, term and other structural features. This flexibility will enhance the Program's reach and marketability of the securities, and will ultimately benefit the underlying borrowers with the lowest attainable interest rates.

The Rules should specify that, once issued, the guarantee is binding and not revocable by Treasury under any circumstances. To the extent that the CDFI Fund certifies a CDFI, the sole remedy of the Treasury should be against the CDFI directly, and the holders of the securities should not assume such risk. We believe that it is important for the CDFI Fund to retain the authority over the selection of qualified issuers to participate in the Program. We note, of course, that other functions in the description of Program Administrator should be delegated to market participants interested in providing those services.

Finally, we also believe that the Rules should include timing provisions that prohibit qualified issuers from issuing guaranteed securities unless they have fully complied with the Rules as of the date they submit their capital distribution plan to the CDFI Fund for approval under the Program. Assuming that a qualified issuer is in compliance with the Rules and is a CDFI in good standing (or is a master issuer who intends to aggregate loans from CDFI(s) in good standing), then there should be no limit on the frequency or dollar amount of guarantees awarded to such qualified issuer under the Program.

Transaction Parties

We suggest that the roles and standards for transaction parties should track those in structured finance transactions. In such transactions, loan servicing duties are divided among three types of servicers: the master servicer, primary servicer and special servicer.

It would make most sense for the Rules to provide that the master servicer approve primary servicers. In the interest of most efficiently establishing the Program, we believe that it would be prudent for the CDFI Fund to initially require that the Program have a single master servicer selected by the CDFI Fund to serve as the master servicer for each issuance in the first year of the Program. Thereafter, once an established pattern of securities issuances is completed and the protocols governing compliance, data gathering and reporting to the CDFI Fund have been established and tested, the CDFI Fund could select other master servicers for the Program. Each CDFI should be allowed to primary service its own loan(s) to the extent approved by the applicable master servicer.

As the investor will expect to see transaction parties with the names, roles and duties customary in structured finance transactions, the Rules should enumerate the following possible transaction parties with fee structures (e.g., upfront fees, fees paid on a monthly basis as a percentage of the outstanding asset balance or fees paid based on a schedule of fixed amount per service provided) mirroring the participants in similar structured finance transactions:

1. *Program Administrator*: Advises the master issuer. Performs the service of acting as a gatekeeper of eligible loans. The Rules should specify that there may be more than one program administrator to allow the duties of the program administrator to be split between two entities with expertise in different functions. In addition, the entity that assumes this role may also exercise such authority as the manager of the master issuer. The program administrator would have responsibility for reviewing eligibility criteria, developing and reviewing cashflow models and checking compliance issues.
2. *Master Servicer*: The master servicer manages the flow of payment and the information and is responsible for the ongoing interaction with the performing borrower. The master servicer is responsible for collecting the payments from the borrower, holding and making any disbursements from escrows and performing most routine loan administration functions. The master servicer is also responsible for collection and analyzing operating statements and other financial and property information from the borrower, as well as conducting periodic physical inspections. A master servicer could be contracted to make advance payments of principal and interest with respect to a loan (in advance of receiving such payments from the underlying borrower) in certain circumstances. A primary servicer may perform many of these responsibilities to the extent a sub-servicing arrangement with the master servicer is in place. In addition, the master servicer would hold the 3% risk-share pool for the benefit of the CDFI Fund. The Rules should specify that the master servicer have at least two master servicer "ratings" from a Nationally Recognized Statistical Rating Organization ("NRSRO") and that it be approved by the CDFI Fund.
3. *Primary Servicer*: Services the loans in a pool through maturity unless a loan in the pool is moved into special servicing as described below under *Special Servicer*. To the extent the master servicer does not do so, the primary servicer maintains direct borrower contact. The primary servicer may also be the CDFI loan originator. The concept of "accepted servicing standards" would be the baseline for servicer actions, duties and overall approach for the transaction structure.
4. *Special Servicer*: A specialist in dealing with defaulted loans. Upon the occurrence of certain specified events, primarily a default, the administration of a loan would be transferred to a special servicer, usually selected by the loan originator. Given the special nature of the Program, we suggest the CDFI Fund approve the selection of a special servicer. A borrower (and the CDFI Fund) will receive notification if its loan has been transferred to special servicing. Besides handling defaulted loans, the special servicer also has approval authority over material servicing actions, such as loan assumptions. Like the master servicer, the special servicer has a duty to the issuing entity and is subject to a serving standard. The servicing standard usually mandates that the special servicer must act to maximize the recovery on the loan to the securityholders (as a collective whole), and Treasury as guarantor, based on an analysis of collection alternatives. The

special servicer typically considers multiple alternatives as part of its analysis including loan modification, foreclosure, deed-in-lieu, negotiated payoff or sale of a defaulted loan. As mentioned above, the Rules should specify that the CDFI Fund will have the ability to direct the special servicer's actions with respect to defaulted loans, provided the servicing standard is maintained and that the CDFI Fund could appoint and/or terminate the special servicer. The Rules should also specify that the special servicer have at least two special servicer "ratings" from an NRSRO.

5. *Trustee/Paying Agent*: Responsible for securities administration, which includes pool performance calculations, distribution calculations, distribution of payments to securityholders and the preparation of monthly distribution reports to securityholders. The Trustee/Paying Agent selected by the qualified issuer should be in the business of regularly providing such services in connection with the offering of CMBS and should also be an entity that is subject to supervision or examination by federal or state authority.
6. *Custodian*: Responsible for custody services of original documents evidencing the loans. The Custodian selected by the qualified issuer should be in the business of regularly providing such services in connection with the offering of CMBS and should also be an entity that is subject to supervision or examination by federal or state authority.

Eligible Collateral

In keeping with the Act's requirement that the subject loans be for eligible community or economic development purposes, the Rules should provide that, initially, only loans made in the following "Asset Classes" constitute "Eligible Collateral":

1. Housing;
2. Community Facilities (such as child care centers and community health centers); and
3. Charter Schools.

We feel that it is imperative that the Program be implemented as quickly and as efficiently as possible to have the maximum community and economic development impact and to ensure that as many securities issuances as possible are completed in the early life of, and prior to the close of, the Program. The above-listed Asset Classes are likely to be the least problematic in terms of defining any origination standards or underwriting guidelines that the CDFI Fund may choose to include in the Rules. In the same vein, the Rules should require that, initially, the Eligible Collateral be secured by a mortgage on real property in order to facilitate securities sales by following the already established CMBS market standards. Once the Program is established on the basis of this initial set of Asset Classes, the Program could be expanded to include the full range of loans that satisfy the policy goals of the CDFI Fund.

Term sheets describing in more detail the scope of these Asset Classes have been developed by the CDFI community. We would be happy to review them with you in detail and discuss with you in person why we believe it is important to initiate the Program with these Asset Classes.

In addition, Eligible Collateral should be defined to require that the CDFI provide market standard loan documentation and mortgage loan files to the custodian on or prior to the sale of the related securities. This requirement will encourage sound loan underwriting practices by CDFIs that will benefit the performance of the Eligible Collateral.

Eligible Entities

We do not think there needs to be minimum eligibility criteria for Program participation by a CDFI. All CDFIs should be allowed to apply. The CDFI Fund should also permit an entity not yet certified as a CDFI to apply for CDFI certification simultaneously with the submission of its capital distribution plan.

In the event that a CDFI participating in the program ceases to be a certified CDFI, we believe such CDFI should lose its privilege to participate in the Program on future issuances, but its Program loan(s) would remain a part of, and subject to, the Program.

If an issuer is deemed noncompliant, such issuer should be barred from Program participation until compliant. Moreover, the Act provides that the qualified issuer pay a fee of 10 basis points annually. We do not think any penalties should be imposed for failure to comply with such payment as this amount would automatically come out of the transaction's flow of funds on a monthly basis and paid directly to the CDFI Fund by either the master servicer or the trustee.

Use of Funds

The CDFI Fund asked if there should be any limitations on the types of loans that can be financed or refinanced with securities proceeds. In order to maximize the impact of the Program, we do not believe the Rules should include any limitations as to how a CDFI acquired the eligible loans that it intends to have serve as the collateral for the securities, as long as each such loan otherwise meets the eligibility requirements under the Program. As such, a CDFI should be permitted to sell into the transaction structure a newly originated eligible loan or a seasoned loan from its balance sheet. In addition, as described above, a qualified issuer should be expressly permitted to purchase newly originated or seasoned eligible loans from the originators of such loans. We also believe that allowing proceeds to be used to purchase eligible loans from a CDFI or to refinance existing loans on the balance sheet of CDFIs greatly furthers the ability of CDFIs to make additional loans that will benefit the communities that they serve. Moreover, the Act specifically permits proceeds to be used for refinancing of existing loans. Similarly, to maximize the potential reach of the Program, we think there should not be any uses of security proceeds excluded or deemed ineligible as long as the proceeds are used for community and economic development purposes. There should be no limits on the percentage of loans or notes refinanced

with security proceeds. It is also not necessary to require that the eligible loans included in the Program have been originated by CDFIs as long as the loans serve community and economic development purposes and otherwise satisfy the eligibility requirements established by the CDFI Fund. Further, the CDFI Fund should not set specific guidelines or prohibitions for the structure of the securities issued under the Program as those will be dictated by the purchaser of the securities.

However, Impact does not believe that the capitalization of (1) revolving loan funds, (2) credit enhancement of investments made by CDFIs and/or others or (3) loan loss reserves, debt service reserves and/or sinking funds in support of a guaranteed security should be included in the Rules as eligible purposes. Nor should a sinking fund, or any other reserve to allow for the payment of debt service, be permitted to be funded from the relending account as this would diminish the reach of the Program.

With respect to the relending account, relending should be for a term that does not exceed the term of the related securities.

The Program legislation includes a risk-share provision pursuant to which each qualified issuer shall establish a risk-share pool capitalized by contributions from CDFI participants in an amount equal to 3% of the guaranteed amount outstanding on the subject securities for the term of the guarantee provided under the Program. In the event that the CDFI Fund determines that there is a risk of loss to the government for which Congress has not provided an appropriation, losses should be covered solely from this risk-share pool. For example, the interest rate on the securities may need to increase to compensate for such risk, in which case the cost of funds to the ultimate loan borrower could increase. Or, other forms of liquid collateral or credit support may be employed to supplement the risk-share pool. Moreover, the CDFI Fund should not require restrictions, covenants or conditions (e.g., net asset ratio requirement, first loss requirements, first lien position, over-collateralization, replacement of troubled loans, etc.). Rather, the CDFI Fund should limit the Program to initially include first lien mortgage loans with the asset types discussed herein as a means of ensuring the quality of the assets and thereby mitigating the risk of loss.

Guarantee Provisions

As a general matter, the Rules should specify that guaranteed securities are exempt from registration under Section 3(a)(2) of the Securities Act of 1933 like Fannie Mae and Freddie Mac guaranteed securities.

Section 114A(b) of the Act states that the Secretary of the Treasury ("Secretary") shall guarantee "payments" on securities issued by a qualified issuer. We ask that the CDFI Fund clarify in the Rules that "payments" means "principal, interest and call premiums" as described in Section 114A(e)(1) of the Act. The guarantee should be evidenced by a written agreement between the

Secretary and the qualified issuer containing a clear provision that guarantees the timely payment of interest and the payment of principal when due.

The CDFI Fund should permit a call upon the guarantee prior to liquidation of the available collateral in the discretion of the CDFI Fund based on consultations with the master servicer or special servicer, as appropriate. To the extent that the master servicer did not believe that it was in the best interests of the holders of the securities and the CDFI Fund for the master servicer to make an advance on the unpaid principal, interest or other required amounts under the loan, then the CDFI Fund would authorize the call upon the guarantee. We believe this approach will operate to protect holders of the securities and the CDFI Fund. If a master servicer is unwilling to provide advancing, then we would recommend that the CDFI Fund permit the immediate call upon the guarantee prior to liquidation in order to ensure that the flow of payments to holders of the securities is not disrupted.

Accountability

As mentioned above, the master issuer (on behalf of the qualified issuer) should be responsible for providing market standard CMBS monthly reporting packages to the holders of the securities and the CDFI Fund. The Commercial Real Estate Finance Council ("CREFC") standard investor reporting package as modified for the specifics of the Program's Asset Classes should be utilized with respect to the exchange of data for the loan and properties and overall pool performance. This reporting package is well known in the market place and is well suited for multiple loan pools with diverse characteristics. In addition, in the last few months, the CREFC reporting package was put forth as the "market standard" in the recent proposed regulations for securitized transactions so the federal agencies have acknowledged it as a useful standard in drafting regulations.

In addition, each master servicer, primary servicer and special servicer should be required to provide standard and customary annual compliance statements in which they certify that they have adhered to the terms of the servicing agreement for the assets and that there have not been any breaches of such agreement. Such compliance statements would be accompanied by a report of an independent auditor with respect to the servicer's compliance with servicing aspects of the transactions-- i.e., the standard compliance USAP certification with which large established servicers are familiar. This will assist the CDFI Fund in monitoring the compliance of the qualified issuer with the Program requirements.

Role of the Federal Financing Bank

With respect to the sale of guaranteed securities, we believe that it would be prudent to defer a decision on whether to require the FFB to act as the sole purchaser of securities issued under the Program at least until the final outline of the Program is made clear through the drafting of the Rules. We recognize that there are certain distinct advantages to having the FFB available to the

Program as a committed investor. We also are aware of the potential benefits (and potentially higher transactions costs) to have access to a diverse, global source of private investors through the use of a traditional placement agent to access the capital markets. We also note that the Act does not prescribe a role for the FFB. We believe that it may therefore be prudent for the Rules to permit the qualified issuer to select whether to sell the guaranteed securities through the FFB or with the assistance of a traditional placement agent. We believe the investment banking community is well-situated to market the securities issued under the Program in the capital markets, but it would take a more thorough understanding of the final Rules and additional information about the requirements of the FFB before a final determination could be made.

To the extent that the FFB is designated in the Rules as the only permitted purchaser of the securities, then any particular requirements of the FFB that would affect the operation of the Program should be published in advance of the Rules. The CDFI community should have the opportunity to understand their role and requirements and offer comments. For example, we understand that the FFB may require specific prepayment penalty charges that would therefore need to be incorporated into the loan documents being used by the CDFIs.

* * *

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
Assistant General Counsel, Law, Ethics and Regulation
1500 Pennsylvania Avenue, NW
Washington DC 20220

United States Department of the Treasury
Mr. Benson F. Roberts, Senior Policy Analyst, Financial Institutions
1500 Pennsylvania Avenue, NW
Washington DC 20220

EXHIBIT A

**CDFI GUARANTEED BOND TRUST 2011-A
STRUCTURE DIAGRAM**

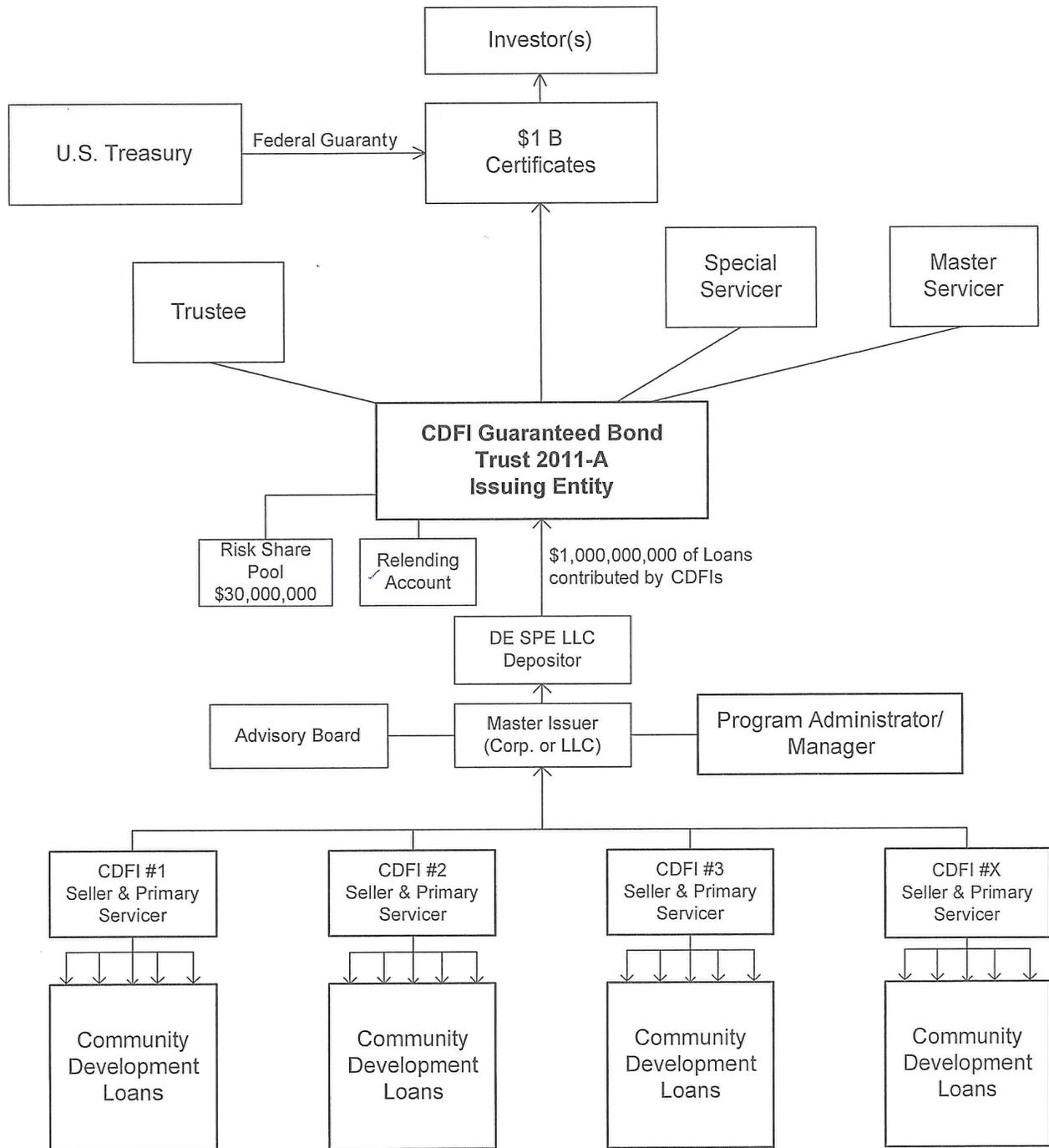


EXHIBIT B

DESCRIPTION OF SPECIFIC REGULATORY ITEMS

Program Logistics

Establish the Program with Shelf Registration Features

- Clarify and expressly permit one or more qualified issuers to sell guaranteed bonds or notes (herein, “securities”) up to the maximum guarantee amount to allow the timing of security sales to match loan origination flow, like a “shelf-registration” system (similar to Form S-3).
- Qualified issuers would then sell the guaranteed securities in smaller increments than their fully guaranteed allotment (i.e., “take down” off the shelf) as necessary to match loan origination timing and market conditions.
- A qualified issuer may either be (i) an individual CDFI that has originated or aggregated \$100 million or more of eligible loans to collateralize the securities issuance or (ii) a “master issuer” that intends to aggregate loans from various CDFI originators.
- The individual CDFI qualified issuer, including a master issuer, would be approved by the CDFI Fund based on its capital distribution plan, capacity and capability to ultimately issue \$100 million or more of guaranteed securities within the applicable year (i.e., there would be \$100 million on the “shelf”).
- Eligible loans originated or aggregated may be contributed into the transaction structure in exchange for the proceeds from the sale of guaranteed securities.
- The fully guaranteed amount may be issued on day one or over a series of offering dates during the year in which the guarantee is approved.
- Initially, only fully-collateralized guaranteed securities may be issued.

Provide for an Expansive Definition of Qualified Issuer

- Clearly define qualified issuer to allow for issuance by one of the following (i) a CDFI itself, (ii) a special purpose entity (“SPE”) that will be acting as the master issuer (i.e., an entity that will aggregate eligible loans from one or more CDFIs) or (iii) an issuing entity (e.g., a common law trust) which will be formed by the master issuer or the depositor SPE and a trustee for the express purpose of holding eligible loans and issuing guaranteed securities.

Provide for Flexibility in Transaction Structures

- Loans originated by CDFIs may be aggregated and sold to a master issuer that would either issue the guaranteed securities itself or would transfer them to a “depositor,” which in turn would transfer them to another SPE—the “issuing entity”. See the structure diagram on Exhibit A for one potential structure. Please note that we would be interested in meeting with you to provide more detail on the benefits of various transaction structures and the importance for maintaining flexibility in the Rules.
- The master issuer would be a corporation or limited liability company that was formed for the purpose of originating and/or aggregating eligible loans under the Program and facilitating the issuance of securities under the Program. It may be formed and owned by one or more CDFIs from which it intends to purchase eligible loans or the master issuer may be unaffiliated with any such CDFIs in terms of its ownership but would be “designated by one or more CDFI’s” under the Act as the qualified issuer that it intends to use for the issuance of securities. The capital distribution plan of the master issuer would specify the relationship of the master issuer to one or more CDFIs.
- The master issuer may be managed by a manager that has the expertise to assist in the underwriting, record keeping, aggregation and securities issuance functions. Certain of the Program Administrator functions may be delegated to the party serving in the role of the manager of the master issuer and the master issuer could also be established with an advisory board (made up of CDFI members and a representative of the CDFI Fund).
- To enhance the “true sale” and “bankruptcy remote” characteristics of the transaction, provide for a “master issuer,” “depositor” and an “issuing entity” in order to allow for a two-step sale transfer where the “depositor” is only permitted to engage in the business of acquiring, owning and selling the assets and is restricted in various ways from entering into voluntary bankruptcy and other prohibited acts. The “depositor” SPE would be a corporation or limited liability company and would be a subsidiary of the master issuer or otherwise affiliated with one or more of the CDFIs selling loans to the master issuer.
- Qualified issuers should have the additional requirement that they be limited to entities that on their own or with a group of CDFIs have a demonstrated capacity and ability to originate or aggregate \$100 million of eligible loans in a year based on their track record of origination and based on the experience and qualifications of the advisors and program administrators identified by the CDFIs in their capital distribution plan.
- If a CDFI fails to primary service its loans properly, the master servicer may step in as successor servicer.

Expressly Provide for Flexibility in Payment Terms of Securities

- Guaranteed securities should be structured at the discretion of the qualified issuer with flexibility in selecting the type of interest rate, the frequency of payments of principal and interest, term and other structural features.

Requirement for Participation in the Program

- Prohibit qualified issuers from issuing guaranteed securities unless they have fully complied with the Rules as of the date they submit their capital distribution plan to the CDFI Fund for approval under the Program.
- Assuming that a qualified issuer is in compliance with the Rules and is a CDFI in good standing (or is a master issuer who intends to aggregate loans from CDFI(s) in good standing), then there should be no limit on the frequency or dollar amount of guarantees awarded to such qualified issuer under the Program.

Transaction Parties

- Enumerate the following transaction parties and expressly provide for flexibility with fee structures (e.g., upfront fees, fees paid on a monthly basis as a percentage of the outstanding asset balance or fees paid based on a schedule of fixed amount per service provided) mirroring the participants in similar structured finance transactions.
- *Program Administrator*: Advises the master issuer. Performs the service of acting as a gatekeeper of eligible loans. There may be more than one program administrator to allow the duties of the program administrator to be split between two entities with expertise in different functions. In addition, the entity that assumes this role may also exercise such authority as the manager of the master issuer. The program administrator would have responsibility for reviewing eligibility criteria, developing and reviewing cashflow models and checking compliance issues.
- *Master Servicer*: The master servicer manages the flow of payment and the information and is responsible for the ongoing interaction with the performing borrower. The master servicer is responsible for collecting the payments from the borrower, holding and making any disbursements from escrows and performing most routine loan administration functions. The master servicer is also responsible for collection and analyzing operating statements and other financial and property information from the borrower, as well as conducting periodic physical inspections. A master servicer could be contracted to make advance payments of principal and interest with respect to a loan (in advance of receiving such payments from the underlying borrower) in certain circumstances. A primary servicer may perform many of these responsibilities to the extent a sub-servicing arrangement with the master servicer is in place. The master servicer should have at least two “ratings” from a Nationally Recognized Statistical

Rating Organization (“NRSRO”) and be approved by the CDFI Fund. In addition, the master servicer would hold the 3% risk-share pool for the benefit of the CDFI Fund. The master servicer should have to approve individual loan servicers.

- *Primary Servicer:* Services the loans in a pool through maturity unless a loan in the pool is moved into special servicing as described below under Special Servicer. To the extent the master servicer does not do so, the primary servicer maintains direct borrower contact. The primary servicer may also be the CDFI loan originator. The concept of “accepted servicing standards” would be the baseline for servicer actions, duties and overall approach for the transaction structure.
- *Special Servicer:* A specialist in dealing with defaulted loans. Upon the occurrence of certain specified events, primarily a default, the administration of a loan would be transferred to a special servicer, usually selected by the loan originator. A borrower (and the CDFI Fund) will receive notification if its loan has been transferred to special servicing. Besides handling defaulted loans, the special servicer also has approval authority over material servicing actions, such as loan assumptions. Like the master servicer, the special servicer has a duty to the issuing entity and is subject to a serving standard. The servicing standard usually mandates that the special servicer must act to maximize the recovery on the loan to the securityholders (as a collective whole), and Treasury as guarantor, based on an analysis of collection alternatives. The special servicer typically considers multiple alternatives as part of its analysis including loan modification, foreclosure, deed-in-lieu, negotiated payoff or sale of a defaulted loan. The CDFI Fund will have the ability to direct the special servicer’s actions with respect to defaulted loans, provided the servicing standard is maintained and that the CDFI Fund could appoint and/or terminate the special servicer. The special servicer should have at least two special servicer “ratings” from an NRSRO.
- *Trustee/Paying Agent:* Responsible for securities administration, which includes pool performance calculations, distribution calculations, distribution of payments to securityholders and the preparation of monthly distribution reports to securityholders. The Trustee/Paying Agent selected by the qualified issuer should be in the business of regularly providing such services in connection with the offering of CMBS and should also be an entity that is subject to supervision or examination by federal or state authority.
- *Custodian:* Responsible for custody services of original documents evidencing the loans. The Custodian selected by the qualified issuer should be in the business of regularly providing such services in connection with the offering of CMBS and should also be an entity that is subject to supervision or examination by federal or state authority.

Eligible Collateral

- Initially, only loans made in the following “Asset Classes” constitute “Eligible Collateral”:
 - Housing;
 - Community Facilities (such as child care centers and community health centers);
 - and
 - Charter Schools.
- Limit the Program to include first lien mortgage loans with, initially, the above asset types.
- CDFI should provide market standard loan documentation and mortgage loan files to the custodian on or prior to the sale of the related securities.

Eligible Entities

- Permit an entity not yet certified as a CDFI to apply for CDFI certification simultaneously with the submission of its capital distribution plan.
- In the event that a CDFI participating in the program ceases to be a certified CDFI, such CDFI would lose its privilege to participate in the Program on future issuances, but its loan(s) would remain a part of the Program.
- If an issuer is deemed noncompliant, such issuer should be barred from Program participation until compliant.

Use of Funds

- Expressly provide and encourage CDFIs or master issuers to purchase and aggregate eligible loans from one or more CDFIs or other loan originators.
- Provide that qualified issuers that receive the guarantee approval may make loans directly, use proceeds to refinance existing loans on their balance sheet or purchase newly originated or seasoned loans from the balance sheet of one or more CDFIs or other loan originators.
- There should be no limits on the percentage of loans or notes refinanced with security proceeds.

- Specify that eligible loans do not need to be originated by CDFIs as long as the loans serve community and economic development purposes and otherwise satisfy the eligibility requirements established by the CDFI Fund.
- Do not include capitalization of (1) revolving loan funds, (2) credit enhancement of investments made by CDFIs and/or others or (3) loan loss reserves, debt service reserves and/or sinking funds in support of a guaranteed security as eligible purposes. A sinking fund or any other reserve to allow for the payment of debt service should not be permitted to be funded from the relending account.
- With respect to the relending account, relending should be for a term that does not exceed the term of the related securities.
- In the event that the CDFI Fund determines that there is a risk of loss to the government for which Congress has not provided an appropriation, losses should be covered solely from this risk-share pool.

Guarantee Provisions

- Expressly state that guaranteed securities are exempt from registration under Section 3(a)(2) of the Securities Act of 1933 like Fannie Mae and Freddie Mac guaranteed securities.
- “Payments” should mean “principal, interest and call premiums” as described in Section 114A(e)(1) of the Act.
- The guarantee should be evidenced by a written agreement between the Secretary and a qualified issuer containing a clear provision that guarantees the timely payment of interest and the payment of principal when due.
- The CDFI Fund should permit a call upon the guarantee prior to liquidation of the available collateral in the discretion of the CDFI Fund based on consultations with the master servicer. To the extent that the master servicer did not believe that it was in the best interests of the holders of the securities and the CDFI Fund for the master servicer to make an advance on the unpaid principal, interest or other required amounts under the loan, then the CDFI Fund would authorize the call upon the guarantee.
- Once issued, the guarantee should be binding and not revocable by Treasury under any circumstances.

Accountability

- The master servicer (on behalf of the qualified issuer) should be responsible for providing market standard CMBS monthly reporting packages to the holders of securities and the CDFI Fund. The CREFC standard investor reporting package as modified for the specifics of the Program's Asset Classes should be utilized with respect to the exchange of data for the loan and properties and overall pool performance.
- Each master servicer, primary servicer and special servicer should be required to provide standard and customary annual compliance statements in which they certify that they have adhered to the terms of the servicing agreement for the assets and that there have not been any breaches of such agreement. Such compliance statements should be accompanied by a report of an independent auditor with respect to the servicer's compliance with servicing aspects of the transactions-- i.e., the USAP certification with which large established servicers are familiar.