NCIF NATIONAL COMMUNITY INVESTMENT FUND

LEVERAGING CAPITAL FOR CHANGE™

August 15, 2011

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

By email: harrisj@cdfi.treas.gov

Dear Jodie:

Re: Comment on CDFI Bond Guarantee Program authorized by the Small Business Jobs Act of 2010 (PL111-240)

Thank you for the opportunity to comment on the CDFI Bond Guarantee Program (CBGP) which was authorized in section 1141 of the Small Business Jobs Act of 2010. We believe that this is a significant opportunity for the Treasury to capitalize and fund the growth of all types of CDFIs and hence foster flow of capital into low and moderate income communities creating high quality jobs. We would like to offer some comments to ensure that the program meets and exceeds your objectives.

About National Community Investment Fund ("NCIF"; www.ncif.org)
NCIF is a national non-profit private equity trust fund set up in 1996 to invest capital in CDFI banks around the country. It has $150 million of assets under management including $128 million in new markets tax credits allocations received under the NMTC Program. Over the years, it has lent to or invested capital in 44 financial institutions (banks and credit unions) that have generated approximately $5.05 billion in loans in LMI communities. Today NCIF is the largest investor in the CDFI banking community with investments in 20 banks out of a total of 85 certified CDFI banks. Apart from investing, NCIF helps these financial institutions raise deposits from mainstream and socially responsible investors. It also runs 'The NCIF Network' which is a national network of CDFI banks, Minority Depository Institutions ("MDI") and some low income credit unions. This network provides best practices to strengthen and grow the sector, thereby aligning NCIF's mission with that of the CDFI Fund. Finally, NCIF pioneered its Social Performance Metrics℠ that are now being used by some investors and other stakeholders for supporting CDFI and other banks.

As a social investor, NCIF has extensive knowledge of the needs of, and the work done by, the CDFI/MDI banks and their investors as well as expectations of regulators relating to "safety and soundness" and consumer protection. NCIF was a member of the Consumer Advisory Council of the Federal Reserve Board and the Minority Depository Institution Advisory Council of the Office of Thrift Supervision.

About CDFI Banks

CDFI banks serve the toughest markets in the country and are affected by the growing wave of foreclosures and deep recession in these areas. As is evident from Table 1 below, the median home lending by CDFI banks in low- and moderate-income areas (Development Lending Intensity-HMDA[1]) is 2.5-times that of the median home lending by all banks in the country (49.72% vs 16.38%); similarly the median number of branches located in these areas (Development Deposit Intensity[2]) is 5-times that of all banks (66.67% vs 14.55%). CDFI banks and mission-focused MDI banks continue to make responsible loans to consumers and small businesses despite the adverse impact that the crisis has had on their financial condition.

Table 1: FY2009 NCIF Social Performance Metrics for Bank Subsectors (Median)

	Peer Group	#	DLI-HMDA	DDI
1	CDFI Banks	85	49.72%	66.67%
2	All Domestic Banks	7,666	16.38%	14.55%
3	"Top-Ten" Banks by Assets	10	15.81%	30.97%
4	Banks ≤$2 Billion	7,312	16.49%	12.50%
5	Minority Depository Institutions	199	44.63%	53.33%

General Comments

Our specific responses to the Request for Comment are given in Appendix but we want to make some general comments. We support the recommendations being made by the CDFI loan funds, credit unions and venture capital fund and other segments to make sure that the CBGP works for their sectors. We also support the framework presented by the Opportunity Finance Network (OFN), the Financial Innovations Roundtable and the Community Development Bankers Association that recognizes multiple potential structures, including (1) a direct issue of at least $100 million by a single qualified issuer; (2) a pooled, asset-backed bond whereby several CDFIs would contribute borrower loan assets to a trust or a special purpose entity (SPE), comprised of a pool of eligible assets totaling at least $100 million; and (3) a bond backed by pooled loans to and investments in CDFIs whereby a trust or a SPE would issue a bond backed by a pool of at least $100 million of loans to or other debt like instruments.

[1] Development Lending Intensity –HMDA ("DLI-HMDA") is the percentage of HMDA reported loans purchased or originated in LMI areas as a ratio of total HMDA reported loans purchased or sold by the institution during the year. HMDA data used in this analysis is as of 12/31/09.

[2] Development Deposit Intensity ("DDI") is the percentage of branches located in LMI areas as a ratio of total branches of the institution. Branch data provided by FDIC is as of 6/30/2009.

We would suggest that the CDFI Fund consider the following overriding principles:

1. The Fund fully utilizes the flexibility granted by the Congress to create a program that serves all underserved people and communities. Community and economic development and job creation is done at a very local level and while the effort will be to standardize product, maximum flexibility will be helpful. We believe that the markets and product structuring should be allowed to work within these broad principles.

2. Recognize that a broad range of CDFI types should be eligible for participation in the program. We would however suggest that the Fund consider a minimum period of 1-2 years for a new CDFI to be certified prior to becoming eligible for the CBGP.

3. Use the CBGP to create Liquidity and Capitalization: The program should be crafted to enable creation of liquidity and capitalization of CDFIs. As a result several kinds of debt and hybrid-debt products should be 'eligible' for the program. This includes senior debt and subordinated notes, existing and forward looking debt and hybrid instruments with capital like features etc. In the context of CDFI banks, this program should be used to provide a guarantee for trust preferred securities issued by them.

4. Be consistent with the use of definitions, reporting requirements and other program implementation features with the CDFI Fund's existing programs.

   However, given the long term nature of these bonds we recommend that the Fund work with the industry and create reporting standards that are outcome based and provide a longitudinal view of the social and financial performance of the industry. An example of such a standard would be the NCIF Social Performance Metrics SM that has already created a 15-year perspective (since 1996) on the lending and deposit intensities of all banks in the country. Building on these core methodologies will help strengthen the sector and leverage work already being done in the industry.

   Again, given the long term nature of the CBGP, standards for long term compliance should be strengthened – during the currency of the program the institution must (a) remain certified; and (b) meet minimum outcome based impact criteria (say, by the above metrics). If the institution fails the above two tests then it should be given a short period of 12 months to get recertified/meet the metric or be replaced.

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Recommendations: Our comments are focused on the needs of the CDFI Banks in the NCIF Network. These comments can also be replicated for the other sub-sectors of the CDFI community.

1. Making CBGP work to create liquidity for CDFI Banks: As noted above, CDFI Banks work in some of the most distressed markets in the country that have been disproportionately impacted by the recession. Stable long term funding is not available to the banks at a time when they are being asked to raise more capital. A pooled program where loans originated by CDFI banks can be sold to an SPE, wrapped with a US Treasury guarantee and sold to the Federal Financing Bank (FFB) will significantly increase the CDFI Banks' capacity to continue lending and creating jobs in these markets.

2. Making CBGP work to help capitalize the CDFI Banks: Current regulations allow bank holding companies to issue junior subordinated securities (Trust Preferred Securities or TPS) with a maturity of 30 years or more. Money so received can then be down-streamed to the banks as common equity. This has been one of the most invaluable sources of capital for the CDFI Banks (and smaller community banks in general) and has all but completely dried up in the current crisis. We encourage the CDFI Fund to make these TPS as eligible securities for the CBGP.

3. Making CBGP Program terms consistent with the Market Norms: NCIF will be willing to bring in all its market expertise, partners and knowledge to the CDFI Fund, the FFB and the Department of Treasury to ensure that the terms of the above securities are consistent with market norms.

We thank you for your consideration and look forward to talking to you more.

Sincerely,

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Chief Executive
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Appendix
National Community Investment Fund
CDFI Bond Guarantee Program

Recommendations in Response to Specific Issues the CDFI Fund Identified in its July 1, 2011 Request for Public Comment

1. Definitions (a) Section 114A(a) of the Act provides certain definitions applicable to the CDFI Bond Guarantee Program. In particular, Section 114A(a)(2) of the Act defines eligible community or economic development purpose as any purpose described in section 108(b) [12 U.S.C. 4707(b)] and includes the provision of community or economic development in low-income or underserved rural areas. The CDFI Fund is interested in comments regarding all definitions found in the Act as they relate to the program, including the following:

(i) How should the term "low income" be defined as such term is used in Section 114A(a)(2)?

> Recommendation: The CDFI Fund should use a definition of low-income geographies based on Metropolitan Statistical Areas as defined in the CDFI Fund Authorizing Statute (7 CFR part 1805). Applicants to the program should be allowed to target low-income populations as well as low-income geographies.

(ii) How should the term "rural areas" be defined as such term is used in Section 114A(a)(2)?

> Recommendation: The CDFI Fund should use the definition of the US Department of Agriculture.

(iii) How should the term "underserved" be defined and/or measured?

> Recommendation: We recommend that the CDFI Fund be guided by its authorizing statute (12 CFR 1805.201) and related regulations regarding "investment areas" and "targeted populations" in defining "underserved."

(iv) Should "eligible community or economic development purpose" be defined to allow a CDFI or its designated Qualified Issuer to only invest inside the CDFI Fund Target Market that it was certified to serve?

> Recommendation: No. Given the use of technology and changes in the environment we do not recommend limiting the target market to investments in the CDFI Fund Target Market that the CDFI was certified to serve. Investments in any Target Market are desirable and should qualify as an "eligible community or economic purpose."

2. Use of Funds

(i) Should there be any limitations on the types of loans that can be financed or refinanced with the bond proceeds? Are there any uses of bond or note proceeds that should be excluded or deemed ineligible regardless of the fact that the use was in a low-income or underserved rural area?

> Recommendation: No. There should not be any limitations on the types of loans that can be financed or refinanced with the bond proceeds. The flexibility of the CDFI Fund's CDFI Financial Assistance Program which permits a wide range of activities provides an excellent model for the CBGP to emulate. Any loan to a CDFI, and any loan made by a CDFI, its designate or a SPE is an eligible use of funds.
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> In addition and as mentioned above, Trust Preferred Securities issued by CDFI Banks should be considered as eligible use for the CBGP. This will increase capitalization and impact by a factor of $8-$10 for every dollar of equity issued.
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> NCIF will be pleased to bring all its expertise and partnerships to the Fund to design the terms so that the security is markets friendly.

(ii) Should 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 Federally guaranteed bond, be included as eligible purposes?

> Recommendation: Yes. The capitalization of all the listed uses should be included as eligible purposes.

(iii) Should there be any limits on the percentage of loans or notes refinanced with the bond proceeds? If so, what should they be?

> Recommendation: No. Using bond proceeds for refinancing of all types is highly desirable. Rapid deployment per the capital distribution plan in the statute may be hampered if limiting factors are introduced in the program.

(iv) Should CDFIs be allowed to use bond proceeds to purchase loans from other CDFIs? If so, should the CDFI that sells the loans be required to invest a certain portion of the proceeds from the sale to support additional community development activities?

> Recommendation: Yes, CDFIs should be allowed to use bond proceeds to purchase loans from other CDFIs. Demand for financing in the communities served by CDFIs exceeds supply so there is no need to mandate a redeployment requirement.
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> In June 2011, NCIF had a strategic planning session which included several of our Network Banks and Industry Experts. There is a clear expressed need for more capital by these banks to help support LMI communities. Capital can be raised either by new issuance or by sale of eligible assets. Hence it is critical that the Fund provide the maximum flexibility to the CDFI Banks to originate these loans.

(v) Should the CDFI Fund place additional restrictions on the awardees' loan products, such as a cap on the interest rate, fees and/or late payment penalties or on the marketing and disclosure standards for the products? If so, what are the appropriate restrictions?

> Recommendation: No. Additional restrictions are not required and may in fact be counter to the program purpose. The Fund should ask for flexible indicia in determining the award and then allow the CDFI Banks to provide loans that are relevant in the local markets.

(b) Section 114A(c)(1) states that a capital distribution plan meets the requirements of the subsection if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than the cost of issuance fee) are used to make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the one-year period beginning on the issuance date of such guaranteed bonds or notes. The CDFI Fund welcomes comments regarding this provision, specifically regarding what penalties the CDFI Fund should impose if an issuer is out of compliance.

> Recommendation: CDFIs make loans for eligible community or economic development purposes. In this context, the "not less than 90 percent" requirement should be deemed met upon receipt of bond proceeds by a CDFI. Under a pooled loans/investments to CDFI structure, the "not less than 90 percent" requirement would be met when funds are disbursed to the CDFIs participating in the pool.
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> Likewise, the "not less than 90 percent" requirement should count closed loans and investments, not funded disbursements. CDFIs often make capital available to small businesses and entities engaged in new construction or development in the form of revolving loans and deferred draw loans so that the borrowed funds are only supplied when needed.

(c) Section 114A(c)(2) states that not more than 10 percent of the principal amount of guaranteed bonds or notes –, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount—may be held in a relending account and may be available for new eligible community or economic development purposes.

(i) How should the CDFI Fund define "relending" account as stated in Section 114A(c)(2)? How should it differ from the loans made under Section 114(c)(1)?

> Recommendation: The purpose of the relending account is to allow CDFIs to collect and then relend unexpected principal prepayments and repayments of loans and investments with maturities that are shorter than the bond maturity. Additionally issuers often set aside cash accounts for liquidity management and for credit or risk share purposes. These cash reserves should not count as part of the relending account and in fact be included in the definition of deployment for purposes of the 90% deployment requirement.

(ii) If the capitalization of revolving loan funds is deemed an allowable use of funds under Section 114A(a)(4), what activities would be eligible under the relending account?

> Recommendation: Yes, as long as it is consistent with the program objectives.

(iii) If additional reserves are held, should they be permitted to be funded from the relending account?

> Recommendation: If a sinking fund or additional reserves are mandated, they should be excluded from the definition of the relending account and counted as deployed for purposes of the 90% deployment requirement.

(iv) 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?

> Recommendation: If a sinking fund or additional reserves are mandated, they should be excluded from the definition of the relending account and counted as deployed for purposes of the 90% deployment requirement.

(d) Section 114A(d) states that each qualified issuer shall, during the term of a guarantee provided under the CDFI Bond Guarantee Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants, of an amount equal to three percent of the guaranteed amount outstanding on the subject notes and bonds.

(i) 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, what steps should the CDFI Fund take to compensate for this risk?

a. Should the interest rate on the bonds be increased?
b. Should a larger risk-share pool be required?
c. Should the CDFI Fund require restrictions, covenants and conditions (*e.g.*, net asset ratio requirement, first loss requirements, first lien position; over-collateralization, replacement of troubled loans)?

> Recommendation: If the CDFI Fund determines that the risk of loss is greater than 3% and Congress has not appropriated funds for losses, the Fund should work with the qualified issuer or applicants to seek additional credit enhancement including over-collateralization, third party guarantees and/or bond insurance, increased interest rates on loans or investments made from the qualified issuer to CDFIs or end-borrowers. We urge the Fund to retain as much flexibility as is allowed by the Congress.

(ii) How should the CDFI Fund assess and compensate for different levels of risk among diverse proposals without unduly restricting the flexible use of funds for a range of community development purposes? For example:
a. Should the CDFI Fund take into account the participation of a risk sharing partner? What should be the parameters of any such risk-sharing?
b. Should the Fund take into account an independent, third-party credit rating from a major rating agency?

> Recommendation: The CDFI Fund should evaluate each application based on its individual merits. The Fund should make use of expert resources in and outside the Federal government with experience in underwriting community and economic development transactions. The Fund should consider the historical loss data of the CDFI industry. Where available, it should look at performance history of CDFIs at the asset level. This data is significantly more valuable than any proxy developed from data available regarding conventional markets. However, over a period of time, the Fund may consider promoting industry standard social performance metrics rating tools to ensure ongoing consistency of impact and program implementation.
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> As part of the application process, applicants should be expected to quantify the risk in their proposal and demonstrate their ability to cover this risk.

(iii) Are there restrictions, covenants, conditions or other measures the CDFI Fund should not impose? Please provide specific examples, if possible.

> Recommendation: The CDFI Fund should retain flexibility in determining credit enhancements to mitigate risk.

(iv) Should the qualified issuer be allowed to set aside the three percent from the bond proceeds or should these funds be separate from the proceeds?

> Recommendation: The Fund should retain flexibility and allow for the risk-share pool to be funded from various mechanisms including but not limited to bond proceeds, third-party CDFI investors and internal cash flows.

3. Guarantee Provisions

(a) Section 114A(a)(3) defines a guarantee as a written agreement between the Secretary and a qualified issuer (or trustee) pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible CDFI. The CDFI Fund invites and encourages comments and suggestions relating to the guarantee provisions, especially:

(i) Should the CDFI Fund define and determine "verifiable losses of principal, interest, and call premium?

> Recommendation: Simply put, losses of principal, interest and call premium should be defined as failure of the issuer to make bond payments in amounts and on dates that are contractually mandated by the underlying bond documentation.

(ii) Should the CDFI Fund permit a call upon the guarantee at any point prior to the issuer liquidating the available assets? If so, under what condition should a call on the guarantee be permitted?

> Recommendation: Yes. If there is evidence that there is likely to be a default under the bond payments, the CDFI Fund should work with the issuer to cure the default. To the extent that the mitigation strategies are unsuccessful, the guarantee should be called.

(b) Section 114A(e)(1) indicates that the Treasury guarantee shall be for the full amount of a bond or note, including the amount of principal, interest, and call premiums not to exceed 30 years. The Treasury may not guarantee any amount less than $100 million per issuance. (i) Should the CDFI Fund set specific guidelines or prohibitions for the structure of the bond (*e.g.*, callable, convertible, zero-coupon)?

> Recommendation: The program is still being set up and hence and the CDFI Fund should allow for maximum flexibility to the issuers to create their programs. We have recommended along with several industry experts three initial bond structures i.e. direct issue of bonds, pooled asset-backed securities and pooled loans to CDFIs. Many other structures will evolve over time as the industry and the market participants gain experience

(ii) Should bonds that are used to fund certain asset classes be required to have specific terms or conditions? Should riskier asset classes or borrowers require additional enhancements?

> Recommendation: We recommend that the CDFI Fund allow the markets to determine the risk and terms/conditions associated with the bond issues as long as they meet the programmatic guidelines.

(c) Section 114A(e)(2) states limitations on the guarantees. (1) The Secretary shall issue not more than 10 guarantees in any calendar year under the program. (2) The Secretary may not guarantee any amount under the program equal to less than $100 million but the total of all such guarantees in any fiscal year may not exceed $1 billion.

(i) Can qualified issuers apply for multiple issuances? Should there be a limit per qualified issuer? If so, what should that limit be?

> Recommendation: The Fund should implement the CBGP in a manner that accommodates and reflects a broad cross section of the CDFI industry especially taking into account the impact and leverage of private sector dollars. Generally speaking multiple issuances within one application period should not be allowed to ensure that there is diversity of loan pools and reduction in risk.

4. Eligible Entities

(a) Section 114A(a)(1) defines an eligible entity as a CDFI (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or that has been granted by a qualified issuer, a loan under the program. The CDFI Fund welcomes comments on issues relating to eligible entities, particularly with respect to the following questions:

(i) Should the CDFI Fund require one qualified issuer (or appointed trustee) for all bonds and notes issued under the program?

> Recommendation: No. We discourage having one standard for all funds and should retain the flexibility provided by the Congress.

(ii) Should the CDFI Fund permit an entity not yet certified as a CDFI to apply for CDFI certification simultaneous with submission of a capital distribution plan?

(iii) Should the CDFI Fund allow all existing CDFIs to apply, or should there be minimum eligibility criteria?

(iv) The Act states that a qualified issuer should have "appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes." How should the CDFI Fund determine that a qualified issuer meets these requirements?

> Recommendation: We recommend that the CDFI Fund achieves a robust and demonstrated impact commitment from the CDFIs. Hence at a minimum, a qualified issuer should be a certified CDFI prior to the CBGP application and preferable by a certified CDFI for 1-2 years. This ensures that they have a demonstrated mission. In the case of SPEs, the same criteria should be applied to the sponsor (s) or the participating CDFIs of the SPE.
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> All entities should be subject to impact commitment via outcomes based reporting using CDFI fund reporting mechanisms or industry standards like the NCIF Social Performance Metrics for banks.

(v) What penalties should be imposed in the event that a CDFI participating in the program ceases to be a certified CDFI? What remedies and cure periods should the CDFI Fund allow in the event of a lapse in CDFI certification?

> Recommendation: If CDFIs lose their certification while participating in a CBGP bond issue they should be given a cure period, of say 12 months, to recertify. If this does not happen then the issuer should have the ability to replace the CDFI participant that lost its certification.

(b) Section 114A(a)(5) defines a master servicer as an entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).

(i) Should the CDFI Fund require one servicer for all bonds and notes issued under the program?

> Recommendation: No, as discussed above, the Fund should not require only one servicer.

(ii) Should the CDFI Fund require the master servicer and servicers to have a track record of providing similar services? How should the CDFI Fund evaluate the capabilities of prospective servicers and master servicers?

> Recommendation: Yes, the CDFI Fund should ask the servicers to demonstrate their past experience in servicing such bond issues.

(iii) Should the CDFI Fund pre-qualify servicers and make those groups known to CDFIs wishing to submit a capital distribution plan for consideration?

> Recommendation: While some CDFIs may wish to become their own services, the Fund could pre-qualify Master Servicers and make them known to CDFIs prior to submission of an application. This should not be done at the risk of delaying the program implementation.

(iv) Should a CDFI issuer be allowed to serve as its own servicer?

> Recommendation: Yes, many CDFIs and CDFI banks have capacity to service their own loans.

(v) Should the master servicer be eligible to serve as a program administrator or servicer for a qualified issuer? If so, how should potential conflicts of interest be managed?

> Recommendation: No. The CDFI Fund should retain its role as the program administrator especially as it relates to certification, reporting and evaluating compliance with the intent of the program as mandated by the Congress. This is critical in ensuring that there is no conflict of interest.

(c) Section 114(a)(8) defines qualified issuers as a CDFI (or any entity designated to issue notes or bonds on behalf of such CDFI) that meets certain qualifications: (1) Have appropriate expertise, (2) have an acceptable capital distribution plan, and (3) be able to certify that the bond proceeds will be used for community development.
(i) How should a CDFI demonstrate its expertise?

> Recommendation: As a certified CDFI, it should demonstrate its expertise in loan origination either directly or via instituted partnerships. Past experience of loan origination, purchase or investments in CDFIs should be evaluated.
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> Mission orientation should be demonstrated via outcome based measurement systems.

(ii) Are there any institutions that should be prohibited from serving as qualified issuers?

> Recommendation: Entities that are set up solely to apply for the CBGP should not be eligible to apply. For newer entities a track record of at least two years of being a certified CDFI should be imposed to ensure mission alignment. The only entities exempt from these criteria are SPEs created by CDFIs that have the same track record.

(iii) Should the CDFI Fund establish minimum criteria for serving as a qualified issuer?

(iv) Should the CDFI Fund set a minimum asset size for CDFI participation as a qualified issuer?

(v) Should the CDFI Fund require the issuer to have a minimum net capital (real equity capital) and require a set amount of net capital be held for the term of the bond? If so, what is a reasonable level to require?

(vi) Should qualified issuers be required to obtain an independent, third-party credit rating from a major rating agency?

> Recommendation: No. The Fund should not establish minimum asset or capital criteria at an early stage of the program as long as the bond program risk requirements are met. The Fund should not require minimum ratings from an independent third party for the issuance of the bond. However, the Fund should consider social performance metrics to ensure that there is robustness in impact creation. Tools that have become industry standards like the NCIF Social Performance Metrics SM should be gradually introduced in the evaluation process.

5. Capital Distribution Plan
(a) Section 114A(a)(8)(B)(ii)(II) states that a qualified issuer shall provide to the Secretary: (aa) an acceptable statement of the proposed sources and uses of the funds and (bb) a capital distribution plan that meets the requirements of subsection (c)(1). The CDFI Fund seeks comments relating to the capital distribution plan requirement, specifically:
(i) What elements should be required in an acceptable statement of proposed sources and uses of the funds? How should the CDFI Fund measure acceptability?
(ii) What elements should be required in a capital distribution plan? Are there examples of such plans, Federal or otherwise, upon which the CDFI Fund should model the CDFI Bond Guarantee Program's capital distribution plan requirements and application materials?
(iii) Should the CDFI Fund require specific intended uses of all the bond proceeds in the capital distribution plan or should the qualified issuers just be required to demonstrate an intended pipeline of underlying assets?

> Recommendation: To retain flexibility in the program implementation, the Fund should ask the applicants to demonstrate the pipeline and business plan for origination of the loans and investments.

(iv) Should the CDFI Fund set minimum underwriting criteria for borrowers? Should applicants be required to demonstrate satisfaction of those criteria in the capital distribution plan?

> Recommendation: No. CDFI banks have specialized in lending to and investing in businesses that do not meet the criteria imposed by the mainstream financial institutions. Hence the CDFI Fund should not set any minimum underwriting criteria for end-borrowers, rather it should allow for these flexible standards to generate the maximum impact.

6. Accountability of Qualified Issuers
(a) The CDFI Fund welcomes comments on how to monitor the use of proceeds and financial performance of qualified issuers, particularly with respect to the following questions:
(a) What tests should the CDFI Fund use to evaluate if 90 percent of bond proceeds have been invested in qualified loans? Should reports be required from the qualified issuer more frequently than on an annual basis?

> Recommendation: This has been discussed elsewhere. All risk share, credit and liquidity reserves should count as deployed assets for purposes of the 90% deployment test.

(c) What types of tests should the CDFI Fund use to evaluate satisfaction of the low-income or rural requirement set forth in Section 114A(a)(2)?

> Recommendation: As discussed above, the Fund should use its statute for determining low income and rural requirements.

(d) What support, if any, would applicants and awardees like to receive from the CDFI Fund after having issued a bond?

Recommendation: The CDFI Fund should provide training and research & development associated with the program implementation.

(e) What specific industry standards for impact measures (businesses financed, units of affordable housing developed, etc.) should the CDFI Fund adopt for evaluating and monitoring loans financed or refinanced with proceeds of the guaranteed notes or bonds?

Recommendation: We recommend that the Fund create a standardized system of reporting given the long term nature of the program and leverage the work being done by (and perhaps outsource to) the industry to create these standards. The reporting requirements should be simple and outcomes based to create proxies for impact measurement.

For example, the Fund can collect information on:

1. All loans originated and purchased during the year by loan type (home lending, commercial real estate, small business, personal etc). This should be geocoded to determine the lending intensity in low and moderate income communities by the issuer;
2. Investments in different borrowers located in LMI communities;
3. Number of housing units, community facilities set up by the issuer;
4. Number of businesses financed by type;
5. Borrowers located in major urban, minor urban and rural areas;
6. Number of female or minority clients and borrowers;
7. Jobs created or retained, including quality of jobs.

Given that some of the issuance structures will be off-balance sheet in SPEs technically not controlled by the CDFI, the Fund should also ask for information on the above categories.

NCIF will be willing to provide industry knowledge in helping the Fund build on its existing reporting systems for the same.

(f) Should achievement of some standards or outcome measures be mandatory?

Recommendation: We believe that the Fund should move in the direction of mandating minimum outcome standards that are measured and complied with on a regular basis. It may be that in the initial stages this may be impractical but this will be helpful in the long run to ensure that critical impact is created.

(g) Are the approval criteria for qualified issuers as listed in Section 114A(a)(8)(B) adequate? If not, what else should be included?

Recommendation: Yes

7. Prohibited Uses
(a) Section 114A(b)(5) provides certain prohibitions on use of funds including, "political activities, lobbying, outreach, counseling services, or travel expenses." The CDFI Fund encourages comments and suggestions germane to prohibited uses established in the Act, specifically as to whether there are other prohibited uses that the CDFI Fund should include.

Recommendation: None at this stage, apart from reliance on ongoing certification.

8. Servicing of Transactions
(a) Section 114A(f) states that, in general, to maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified program administrators, bond servicers, and a master servicer. This section further outlines the duties of the program administrator, servicers, and the master servicer. Comments regarding the servicing of transactions are welcome, specifically:

(i) The Act lists certain duties of a program administrator. Should there be other requirements?
(ii) The duties of a program administrator suggest that the CDFI Fund will serve as the program administrator for all issuances. Should the CDFI Fund require that each qualified issuer have a designated program administrator as suggested in section 114A(a)(7)?

Recommendation: At an early stage of the program, the CDFI Fund should retain all the program administrator roles. However it should seek partnerships with industry experts to determine what roles, if any, need to be outsourced.

(iii) If so, should the servicer be eligible to serve as a program administrator for a qualified issuer?

Recommendation: At an early stage of the program, the CDFI Fund should retain all the program administrator roles. However it should seek partnerships with industry experts to determine what roles, if any, need to be outsourced.

(iv) Who should be responsible for resolving troubled loans?

Recommendation: At an early stage of the program, the CDFI Fund should retain all the program administrator roles. However it should seek partnerships with industry experts to determine what roles, if any, need to be outsourced.

(v) On what basis should servicers be compensated?

> Recommendation: At an early stage of the program, the CDFI Fund should retain all the program administrator roles. However it should seek partnerships with industry experts to determine what roles, if any, need to be outsourced.

(vi) Are there any duties not listed that should be included in sections 114A(f)(2) through 114A(f)(4)? Are there any prohibitions or limitations that should be applied?

> Recommendation: At an early stage of the program, the CDFI Fund should retain all the program administrator roles. However it should seek partnerships with industry experts to determine what roles, if any, need to be outsourced.

9. General Compliance

The CDFI Fund welcomes comments on general compliance issues related to monitoring the guarantee portfolio, particularly with respect to the following questions:

(i) What types of compliance measures should be required by the CDFI Fund? Should the CDFI Fund mandate specific reports to be collected and reviewed by the servicer and ultimately the master servicer? If so, please provide examples.

(ii) The Act states that "repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1)." How should the CDFI Fund enforce this requirement?

(iii) What penalties should the CDFI Fund impose if a qualified issuer is deemed noncompliant?

(iv) The Act provides that the qualified issuer pay a fee of 10 basis points annually. What penalties should be imposed for failure to comply?

> Recommendation: As discussed above, if there is a likelihood of a certification or a payment default then the CDFI Fund should seek to work with the CDFI participant to cure the default, failing which it should be replaced. Compliance should be sought in the form of reporting on the institutions, overall financial and social health as well on the basis of the evaluation of the portfolio to meet the "90%" test and the test of eligible uses. We recommend that the CDFI Fund work with the industry to create consistent standards for reporting and compliance given the long term nature of the program.

10. General Comments

The CDFI Fund is also interested in receiving any general comments and suggestions regarding the structure of the CDFI Bond Guarantee Program that are not addressed above.