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2. Use of Funds
(a) The Act defines a loan as any credit instrument that is extended under the CDFI Bond Guarantee Program for any eligible community or economic development purpose. Section 114A(b) of the Act states that the Secretary of the Treasury (the Secretary) shall guarantee payments on bonds or notes issued by a qualified issuer if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions (CDFIs) (1) For eligible community or economic development purposes; or (2) To refinance loans or notes issued for such purposes. The CDFI Fund invites and encourages comments and suggestions germane to the criteria and use of funds. The CDFI Fund is particularly interested in comments including the following :

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

There should not be any limitations on the type of loans that can be financed or refinanced with bond proceeds as long as they meet the basic criteria and policy goals that are established by the CDFI Fund and the requirements of the authorizing federal statutes. Dependent upon overall demand additional limitations can be applied in furtherance of the Program objectives (e.g. weighted scoring toward new projects vs. refinancing).

(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? (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? (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.

If an CDFI sells a loan to another CDFI that uses bond proceeds to purchase the loans then there may still be some requirements of the selling CDFI to insure the quality of the loans and the underlying assets that may secure the loans, if deemed necessary by the federal guaranteeing authority. The proceeds received should be bound by some obligation to fund additional community development activities as outlined by CDFI funding policies and the purposes outlined in bond indenture and supporting documents. All potential penalties will and should be outlined in the bond documents and loan agreements. Penalties would include among other things the right to have the bonds called early through extraordinary call provisions which would require that the debt be paid in full for non-compliance and other factors that are proved to be contrary to the intent of the bond issuance. For this reason the credit, collateral and reserve requirements have to be carefully evaluated on a deal by deal basis. The interest rate on the bonds will be based on market conditions however the underlying loans may have different credit and interest rate criteria. As part of the evaluation process the terms and interest structures of the underlying loans will be reviewed as part of the overall evaluation. For this reason consideration should be given to the use of a "pass-thru issuer" as an option that is not a CDFI, but issues bonds on behalf of CDFI's. The pass-thru issuer could be the interface between the bond guarantor and bond purchaser (FFB or the capital markets). With the use of a third party pass-thru issuer standard bond documents and credit criteria based on policy goals and federal guarantee mandates and criteria could be developed on behalf of the CDFI fund and the potential CDFI issuers/borrowers.

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

The CDFI Fund should require and develop restrictions, covenants and conditions (*e.g.*, net asset ratio requirement, first loss requirements, first lien position; over-collateralization) based upon the perceived risk of a given bond issuance. The criteria, restrictions and legal considerations should be developed based acceptable bond covenants and requirements that are satisfactory to the guarantor and bond purchaser (FFB and or capital markets) The three percent risk sharing pool could be funded from bond proceeds or set-aside in advance by the CDFI fund as permitted by statue. Based on a review of the proposed bond transaction additional collateral and/or reserve fund may be required on a case by case basis. The additional reserve requirements that could be required could be structured such that it would apply to the specific bond transaction in question and funded by bond proceeds within the limitations of the use of proceeds as defined and required by policy and statue. The flexibility to require additional

reserves above the three percent may be an important factor based the quality of the underlying assets of a given bond transaction.

3. Guarantee Provisions
(i) Should the CDFI Fund set specific guidelines or prohibitions for the structure of the bond (*e.g.*, callable, convertible, zero-coupon)? (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? (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?

Guidelines to fund certain asset classes and the creation of bond structures that are acceptable to the bond purchaser (s) and guarantor should be established and evaluated on an on-going basis consistent with market and economic conditions. There should probably be no required limitations on the number of bond issuances by a given CDFI as long as the policy goals of the CDFI Fund are being met. The quality of the bond issuance and the ability to meet the credit, collateral and cash-flow requirements to service the debt issuance should be a major factor. Again, dependent **upon overall demand additional limitations can be applied in furtherance of the Program objectives (e.g. weighted scoring toward distribution among multiple CDFIs).**

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? (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? (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?

(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? (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? (iii) Should the CDFI Fund pre-qualify servicers and make those groups known to CDFIs wishing to submit a capital distribution plan for consideration? (iv) Should a CDFI issuer be allowed to serve as its own servicer? (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?

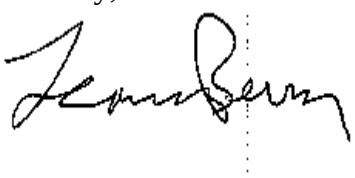
The use of an authorized "Pass-thru Issuer" entity to facilitate all of the bond issuance could help alleviate potential conflicts of interest that could occur if one or more CDFI's were the issuing authorities on behalf of themselves or other associated CDFI's. The Pass-thru Issuer could help establish the qualification criteria and help define and coordinate the activities of a Master Servicer who would be a part of the required bonding process of all bond issuance. The use of a Master Servicer would not preclude the qualified issuer from using its own servicer that would interface with the master servicer. A penalty should likely not be imposed on a CDFI that becomes no longer certified as long as the bonds are outstanding and the interest and debt serve is being paid unless federal statute requires an action to take place and/or such de-certification is considered an act of default. However even in an act of default legal remedies could be crafted to protect the bond purchasers while acceptable remedies were pursued to cure a default if the de-certification of a given CDFI required it. As an example a remedy may include the assignment of the underlying obligation to another eligible CDFI.

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

The CDFI Fund, bond purchaser and guarantor will require that any entity responsible for repaying the debt meet the establish criteria that is required for any bond issuance. An acceptable capital distribution plan, sufficient collateral and an approved use of proceeds that can be documented will be the minimum requirements for any CDFI that expects to qualify to receive bond proceeds based on any form of issuance. The CDFI Fund will have to establish a process to choose the best bond issuance proposal that satisfies its policy goals and legal and market consideration of a given bond issuance. A program administrator (Facilitator) acting on behalf of the CDFI fund could help establish the selection process and requirements and even possibly act as the pass-thru issuer that would interface directly with the CDFI and the purchaser of the bonds (FFB) to coordinate an efficient and cost effective bond transaction.

I hope you and your staff find these comments useful and constructive. The questions and policy considerations that have been outlined are very well thought out. I am sure based on your internal process and various sources of information and ideas that another meaningful and successful CBFI Fund Program will be implemented.

Sincerely,



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