CENTURY HOUSING
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August 15, 2011

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CDFI Fund
U.S. Department of the Treasury
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Washington, DC 20005 Delivered via e-mail to *cdfihelp@cdfi.treas.gov*

RE: Small Business Jobs Act of 2010, CDFI Bond Guarantee Program

Dear Ms. Harris:

Thank you for the opportunity to comment on the implementation of the CDFI Bond Guarantee Program. Century Housing strongly supports the program and we urge the CDFI Fund to implement it soon.

Century Housing is a certified Community Development Financial Institution that has been providing capital to developers of affordable homes in the Southern California region for 16 years. During that time, we have assisted developers to produce over 16,000 homes. Century Housing was the first nonprofit CDFI to be admitted as a member of the Federal Home Loan Bank of San Francisco. Despite having a strong financial base, we are increasingly finding our access to the capital markets constrained. Our borrowers also tell us that they are finding it more difficult to raise the capital they need to continue building homes that close the gap between what average workers can earn and what housing costs in Southern California.

We were heartened to hear that Congress and the President had included the Bond Guarantee Program in the Small Business Jobs Act of 2010. The Bond Guarantee Program will allow Century Housing and other CDFIs to raise needed capital to support continued investment in housing and community development.

The following recommendations are most critical to Century Housing's successful participation in the CBGP:

Term of CDFI Borrowing

While other CDFI business models may benefit from long-term borrowing under this program, for Century Housing's lending products, borrowing at current 30-year rates provides little value. Our borrowers are typically seeking relatively short-term capital financing to be used in property purchase, predevelopment and construction activities associated with the development of affordable homes for lower income households. Long-term financing for this type of development is typically made up of Low-Income Housing Tax Credits, Private Activity Bonds, loans or grants from HUD programs, soft debt from state and local agencies (often with residual receipts repayment terms) and very little long-term hard debt.

For the Bond Guarantee Program to work well for Century and our borrowers, we would hope that the guarantee could be applied in one of two possible ways that do not seem to be well-described in the materials available to date:

Short-term borrowing/guarantee**:** In this alternative, CDFIs could apply for guarantees of at least $100 million for periods much shorter than the full 30 years permitted by the statute. That is, a CDFI like Century, which proposes to use the borrowed amount to capitalize a revolving loan fund making short-term loans (e.g., acquisition, predevelopment, and construction loans to housing developers) could receive a guarantee for 2-5 years. Because the terms of the guarantee would be short, the interest rate on the moneys borrowed would be considerably lower than 10-30 year interest rates would be in today's capital regime. The revolving loan fund could be recapitalized by a new guaranteed borrowing at the end of each term.

Long-term guarantee with short-term borrowing: Under this alternative, CDFIs could apply for guarantees of up to 30 years for an amount of at least $100 million, but might only borrow on a short-term basis, with the outstanding sum of borrowings not to exceed the total guarantee amount, but fluctuating in term and amount as demand warrants. This would function much like a line of credit, with funds flowing into a revolving loan fund in response to actual market demand, albeit for fixed terms.

Under either of these alternatives, a CDFI could adjust the amount borrowed to reflect actual changes in demand, and the interest rate cost of the funds would be lower than is available for a loan term of 30 years.

Definitions

The definition of "low income" needs to permit sufficient flexibility to adjust for the differences in income levels and housing and other costs of different geographic regions. Also, the definition of "low income" should be consistent with other public agency programs.

For consistency among programs, “low income” should follow the definition of the U.S. Department of Housing & Urban Development (HUD), for all states and metropolitan areas, in their Fiscal Year Income Limits, as published in the Federal Register and posted to the HUDUSER Website (http://www.huduser.org/portal/datasets/il.html).

For investments in Multifamily Tax Subsidy Projects (MTSPs), as defined in the Housing and Economic Recovery Act of 2008, the special Income Limits provided for those projects should be used, as published by HUD in the Federal Register and posted to the HUDUSER Website (http://www.huduser.org/portal/datasets/mtsp.html).

Use of income levels consistent with other program regulations, e.g., the Low Income Housing Tax Credit or Community Reinvestment Act, has some attractiveness, but in high cost metropolitan and most coastal areas, these levels are much too low to be practical.

The HUD Income Limits have the advantage of being adjusted to reflect the differences between incomes and housing prices in different markets, so while it is a centrally promulgated standard, it is tailored to local economic realities. In Los Angeles, for example, a “high cost” market area, the Income Limits state that, while the 2011 Median Family Income for a family of 4 is $64,000, the “low-income” limit for a family of 4 is defined as $68,300—106 percent of the Median Family Income. Using this national standard would also link this program to the most often used source of housing assistance under the nation’s largest subsidy program, Section 8 Housing Choice Vouchers.

Program Structure and Borrowing Mechanics

The Fund should exercise maximum flexibility in implementing the program. The program must allow a variety of borrowing structures in order to meet the capital needs of a diversity of CDFIs. In particular, given the range of needs for community and economic development activities, the Fund should assure that applicants may seek guarantees for borrowings of different terms to meet the needs of their communities. The Bond Guarantee Program must be flexible enough to accommodate aggregating loans from various originators (directly or indirectly), as well as single originators.

Program Eligibility

Though each guarantee and the underlying borrowing structure should be considered separately and on its own merits, the Fund must ensure that all issuers have a strong track record of meeting the needs of low income and disadvantaged communities, are mission-based, and can direct proceeds to appropriate community and economic development uses. Issuers should be selected based on their proposed strategy for deploying bond proceeds and their historical track record in meeting the needs of the communities and populations. Certified CDFIs or consortia of CDFIs with experience in their specific field

should all be able to successfully compete. However, while all currently certified CDFIs should be eligible to compete, only the financially strongest should be able to succeed.

This program is unlike the Financial Assistance Program—it is orders of magnitude larger, and has significantly different potential liabilities for the CDFIs who will be chosen to participate. The Risk Share Pool required in this program is larger than the maximum Financial Assistance Program award. The Fund should examine the financial capacity of applicant CDFIs carefully to assure that this program is within their ability to perform.

Regardless of structure, eligibility criteria should apply to the CDFIs receiving the guarantees themselves, not the end borrowers. It should be expected that some CDFI applicants under this program will not have pooled assets which the Fund can underwrite. In these cases, it will be the CDFI itself which is underwritten.

Use of Funds

As the intent of the Bond Guarantee Program is to provide new capital resources for CDFIs, its uses should support CDFIs in their financing activities, both existing strategies and new ones made possible by the Bond Guarantee Program. 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 Financial Assistance Program, which permits a wide range of activities, provides an excellent model for the Bond Guarantee Program to emulate. Any loan to a CDFI, and any loan made by a CDFI or its designate, is an eligible use of funds.

There should also be no prohibition against using the Bond Guarantee Program in conjunction with other government programs such as the New Markets Tax Credit, the Low Income Housing Tax Credit, HOME funds, or guarantee programs offered through the Small Business Administration or the U.S. Department of Agriculture.

Risk Assessment and Mitigation

CDFIs have a strong record of success at serving distressed markets with minimal losses and delinquencies. The Fund should rely on this unique expertise in selecting which CDFIs will receive guarantees. Underwriting criteria (e.g., leverage, cash flow coverage, asset quality), and risk mitigation techniques (e.g., required credit enhancement, liquidity requirements, interest rate protection) should be based on the specific risk profile of the planned use of proceeds and on the loss performance history of the participating CDFI, not on generic "industry standards." Historic loss and payment performance data from conventional financial markets are generally not reliable indicators of CDFIs' performance and should not be the basis for the Fund's risk assessment. CDFIs should be able to demonstrate a successful history of managing risk and mitigating losses, which are

inevitable in any investment enterprise, but especially in the community and economic development marketplace.

Additional Comments

Additional comments are included in the attached, keyed to the Request for Public Comment by section for reference purposes.

Thank you for your consideration of these recommendations.

Sincerely,

Tim O'Connell
Sr. Director, Policy & Advocacy

Responses are keyed to the Request for Public Comment, as published in 76 FR 38577 (2011-07-01).

1. Definitions

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

For consistency among programs, "low income" should follow the definition of the U.S. Department of Housing & Urban Development (HUD), for all states and metropolitan areas in their Fiscal Year Income Limits, as published in the Federal Register and posted to the HUDUSER.ORG Website (http://www.huduser.org/portal/datasets/il.html).

For investments in Multifamily Tax Subsidy Projects (MTSPs), as defined in the Housing and Economic Recovery Act of 2008, the special Income Limits provided for those projects should be used, as published by HUD in the Federal Register and posted to the HUDUSER.ORG Website (http://www.huduser.org/portal/datasets/mtsp.html).

(ii) How should the term "rural areas" be defined as such term is used in Section 114A(a)(2)? For example, is a rural community any census tract that is not located in a metropolitan statistical area (MSA)?

"Rural Areas" should include all areas not encompassed by Metropolitan Statistical Areas (MSAs) or HUD Metro FMR Areas (HMFAs) in the HUD Income Limits. HUD is required to consult with the Secretary of Agriculture prior to establishing Income Limits for rural areas, and those limits are available by County. An alternative would be the Counties Located in Non-Metro Areas as listed by the Federal Financial Institutions Examination Council (FFIEC) on their Website for HMDA reporting purposes (http://www.ffiec.gov/cra/censusproducts.htm#nonMSA).

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

The Housing and Economic Recovery Act of 2008, at Section 1129 regarding amendments to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 governing Government Sponsored Enterprises, defined "underserved markets" to include Manufactured Housing, Affordable Housing Preservation and Rural Markets for housing investments. The Small Business Administration (SBA) has determined that Empowerment Zones and Enterprise Communities; HUBZones; New businesses, e.g., firms in business for no more than two years; Businesses eligible for Patriot Express including Veteran-owned businesses; and/or Firms where more than 50 percent of their full-time workforce is low-income or resides in Low/Moderate-Income census tracts are "underserved markets" for purposes of their Community Advantage loan program.

For consistency, use of these definitions for housing and business loans should be adopted.

(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?

No. Many CDFIs have been certified to serve a narrowly defined Target Market, and limiting participating CDFIs to only those market areas will not provide sufficient coverage to assure that underserved markets are provided with equal access to investment. CDFIs and Qualified Issuers should be limited to make investments for the purposes envisioned by the Act, but limited geographically only to the states in which they are certified to serve.

2. The Use of Funds

(a) "Credit Instruments"

(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?

Yes. Being geographically located in a low-income or underserved rural area is insufficient. Loaning funds for development of housing serving those with greater than low/moderate-incomes or for commercial enterprises employing and/or serving high-income/wealth persons would not meet the intent of the Act. For example, loans to develop high-cost housing in lower income communities would contribute to gentrification and exclusion of the current residents from those neighborhoods.

The purpose of the loan should be limited to purposes which benefit low/moderate-income persons or underserved markets. Loans for housing purposes should be limited to homes which will be sold or rented to persons and families who are low/moderate-income, and commercial loans should be limited to businesses or developments that meet the SBA Community Advantage program definition of underserved markets.

(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?

Yes to all three alternatives. The criteria for eligible purposes should not be the mechanism utilized, but the outcome achieved. If the funds derived from the sale of the bonds or notes guaranteed are invested in projects meeting the criteria of the Act, the mechanism used should be irrelevant. Revolving loan funds, credit enhancements, loan loss reserves, etc. are all mechanisms commonly used in the investment marketplace and should be permitted uses of the funds guaranteed by this program. For example, the City of Los Angeles utilized funds as a "credit reserve" to induce private investment in a credit facility, resulting in a lower interest rate on the private investment, thus multiplying the value of the initial investment. Use of the funds guaranteed by this program in this manner could leverage the ability of CDFIs to invest in projects in their communities several fold.

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

No. Refinancing of existing debt may provide a significant reduction in the cost of operating on-going businesses or housing developments which benefit lower income persons through

employment or the provision of services or shelter. However, the capital made available from refinancing should be restricted to the purposes of the bond guarantee program. I.e., a CDFI should not be able to refinance loans extended to a third party for an eligible purpose and then invest the repaid funds for an ineligible purpose. That would defeat the intent of the Act.

It may in appropriate to limit the terms under which refinancing would be permitted to assure that the intended beneficiaries receive the value of the refinancing, and that refinancing is not undertaken to shift bad debts from a CDFI to the Treasury. E.g., any debts refinanced should meet minimum quality standards and be current.

(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?

Yes. Creating a "secondary market" for community development loans should be allowed. However, it may be appropriate to restrict these transactions to qualified loans originated after the effective date of the Act to assure that the intent of Congress in inducing additional new investment is achieved. As with (iii), above, the loans purchased should be required to meet minimum quality standards in order to assure that the guarantee program is not used as a method of shifting bad debts from CDFIs to Treasury.

(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?

No. CDFIs that are large enough to participate in the bond guarantee program are, for the most part, already regulated by other entities (e.g., banking regulators, state agencies) and have internal controls sufficiently restrictive to provide reasonable safety. In addition, any loans originated using funds made available by this program will be controlled by the applicable disclosure and truth-in-marketing regulations of their jurisdictions. Additional regulations or restrictions will only add cost and potentially discourage participation in the program.

(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.

The language of this section may discourage many CDFIs, especially those with smaller market areas or a tightly defined customer base, from participating in the program. In order to comply, a CDFI would either have to have a many borrowers/loans waiting for funding that could be closed quickly, or a few very large loans. If the language is interpreted to mean that 90 percent of the principal amount must be outstanding at the end of the year, it would

also bar CDFIs that provide short-term or revolving credit to borrowers (i.e., if borrowers repay loans received before the end of the year.) If an amount equal to 90 percent of the principal amount has been loaned within the one year period, the condition should be considered as having been met.

Funds should be defined as "used to make loans" as long as the loans close and are funded within the year, regardless of whether they remain outstanding. In addition, funds should be defined as "used to make loans" if formal loan commitments have been made by CDFIs to borrowers (i.e., the loan is underwritten and only specific conditions are being pending, e.g., project approval by other funders, final entitlements by government agencies, close of escrow, or completion of appraisals).

(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 114A(c)(1)?

If the intent of this section is to limit the use of bond proceeds for revolving loan funds to 10 percent of any issuance, then it is a problem. That would limit the availability of capital to small business and housing development to long-term financing, which is often not the type of financing needed in the communities served by CDFIs. In many communities, long-term "patient" capital is often available, while short-term capital is in short supply.

If, on the other hand, the difference between the provisions of Sections 114A(c)(1) and 114A(c)(2) is focused upon the proportion of the total outstanding balance of guaranteed bonds or notes that are held by the CDFI over time (after the first year), then these provisions would not be overly constraining.

The regulations should be structured to limit the "relending account" to a rolling average of no more than 10 percent of the principal amount (less risk share pool amount). This would allow use of the bond proceeds for revolving funds to provide credit to small businesses and other borrowers who have need for short-term capital, while still assuring that the bond proceeds are actually invested in the community for eligible community and economic development purposes.

(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?

Any eligible community or economic development purpose.

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

Yes.

(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?

No, sinking funds should be funded from the community and economic development loans.

(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?

No. This would increase the risk of default.

b. Should a larger risk-share pool be required?

Possibly. While requiring a larger risk pool would reduce the potential loss to the CDFI Fund/Federal Financing Bank, but, if the principal amount of the bond proceeds were fully deployed in community and economic development loans, this might also increase the risk of default.

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)?

None, other than requiring that the CDFI have some security interest in the assets of the borrower. Defining the provisions of this form of CC&R would be difficult in light of the range of community and economic development purposes for which the bond proceeds could be loaned. For long-term loans secured by real estate, requiring first lien positions may be appropriate in some circumstances (although junior positions may also be reasonable, e.g., when private activity bonds provide the bulk of the capital). However, for other types of financing, that may be infeasible or unreasonable.

The purpose of the bond guarantee program is to induce investment in underserved markets and activities not currently funded by the financial markets. Attempting to eliminate all risk of loss will defeat the purpose of the program.

A better approach which would help achieve the program goals would be to select the bond issuers based on a careful evaluation of the applicants, in terms of their long-term financial stability, loss record, capacity and strength.

(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?

Few independent CDFIs have sought, or could afford, independent credit ratings from major rating agencies, and ratings from those agencies have not been demonstrated to have strong predictive value in community and economic development investments. The Opportunity Finance Network CARS® rating system may be a viable alternative.

…

(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?

Bond issuers should be required to demonstrate that they are able to fund the required risk pool set aside at the time of application, and perhaps be required to provide a surety or escrow the full amount pending approval of the application.

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) How should the CDFI Fund define and determine "verifiable losses of principal, interest, and call premium"?

(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?

No. The issuer should be required to exercise its rights under the loan and whatever security agreements exist in regards to the loan and liquidate any assets received before calling upon the guarantee. FHA loan guarantee provisions may provide useful examples of how to verify and quantify losses.

…

(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?

Issuers should be limited to $100 million in the first year to encourage wide participation. In future years, if experience demonstrates that there are few issuers, then it may be appropriate to increase the limit. Issuers who have successfully invested the full amount of the capital should be able to apply for additional issues in future years, along with new issuers, but no issuer (including related entities, affiliates and subsidiaries) should be eligible to receive more than 20 percent of the total amount guaranteed.

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?

No. Only a very few CDFIs are so situated as to be able to issue even $100 million in debt, and limiting the program to one or even a few of those entities would concentrate the benefit of the program in too few areas. Designing the program to permit multiple entities to compete and participate would encourage innovation and distribution of the benefits, both geographically and among program types.

(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?

No. The CDFI Fund Program resources are already stretched thin, as the delay in implementing this program demonstrates. Adding new CDFI certification effort to the existing workload would only add further delay.

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

All certified CDFIs should be allowed to apply.

(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?

There should be minimum eligibility criteria. Each applicant should be evaluated on its expertise, capacity and experience, with minimum standards. For example, it may be appropriate to require that CDFIs evidence their ability to implement the program goals by demonstrating that they have successfully originated at least $100 million in new loans in the prior 10 years. Or, a minimum debt-to-net-worth ratio may be required. In addition, CDFIs

could be required to post an amount equal to the 3 percent Risk Pool at the time of application to demonstrate their financial capacity.

…

(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?

No. To the extent that the Federal Finance Bank requires a servicer, selecting a single servicer for the entire program would prevent CDFI participants from servicing their own loans, which would add additional costs and complexity to 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?

Yes. Just as CDFI participants should have to demonstrate expertise and capacity as lenders, any servicer should be required to show their capacity in servicing community development loans.

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

As long as CDFI applicants are not limited to using one of the pre-qualified servicers, this may be useful for CDFIs who do not have the capacity to service their own loans or existing relationships with servicers.

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

Yes. CDFIs large enough to participate in the minimum $100 million sized share of this program will most likely have sufficient capacity and experience to service their own loans.

…

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

No. Only a few CDFIs have sought independent ratings from major rating agencies, primarily because of the cost. The CARS® rating system created by the Opportunity Finance Network may be a reasonable substitute. Since the Federal Finance Bank will be the source of funding, there is really no purpose in imposing this cost on CDFIs.

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?

In addition to meeting the purpose of the Act, applications should be compared to the purpose under which the CDIFI was awarded certification.

(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?

This might be modeled on the application requirements for the Capital Magnet Fund and/or the Financial Assistance Program application requirements.

(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?

Like other sectors of the economy, community and economic development demands shift rapidly, and CDFIs must maintain flexibility in responding to their borrowers' needs. Demonstrating the intended community and economic developmentuse of the funds, along with annual reporting, is sufficient. This is especially true of CDFIs that propose to operate a revolving loan fund for short-term borrowers.

(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?

No. Each CDFI will have developed underwriting criteria for its market and products, and will have a history of accomplishments based on those criteria. Using the CDFI's track record should be sufficient to predict whether the borrowers will be successful in implementing the goals of the program. However, historic data on loan success should weight loans similar to the type for with the bond proceeds will be utilized more heavily than for unrelated loan types. I.e., if a CDFI proposes to originate small business loans, then their experience with single-family mortgages in the past should be less important than their experience with previously originated small business loans.

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)[*sic*] 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?

See the response to 2. (b), above.

No. Annual reports are sufficient, consistent with other CDFI programs. Additional reporting would only add unnecessary administrative cost and complexity.

…

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.

No. CDFIs organized as charitable tax exempt entities pursuant to Internal Revenue Code Section 501(c)(3) are already prohibited from political activities. While lobbying by such entities is permitted, most Federal funding programs also prohibit the use of such funds for that purpose. While it is disappointing that CDFI lenders engaged in lending will not be able to expend any of the funds derived from this program for counseling services, outreach to prospective borrowers or travel expenses, these limitations will assure that the maximum amount of the funding will be invested in loans for community and economic development. The CDFI Fund may wish to clarify how it expects the ultimate recipients (i.e., those who borrow from Qualified Issuers) to be monitored for compliance with this provision.

In order to assure consistency, the CDFI Fund may want to promulgate standard language for inclusion in loan covenants regarding this and other restrictions imposed by the Act.

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?

No.

(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)?

No. The CDFI Fund should perform this function for all issuances. Additional administrators would only add unnecessary complexity and cost.

…

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

The Qualified Issuer CDFI, or, if the CDFI is no longer in business, another entity assigned by the trustee or Federal Finance Bank.

(v) On what basis should servicers be compensated?

Through the use of fees imposed at the time of loan closing.

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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.

No. The annual reports referenced in 6., above, are adequate.

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