

August 12, 2011

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

Dear Ms. Harris:

On behalf of the members of the Community Development Bankers Association (CDBA), we are writing in response to the Notice for Public Comment published in the Federal Register on July 1, 2011 inviting comments on the Community Development Financial Institutions (CDFI) Bond Guarantee Program created by The Small Business Jobs Act of 2010 (Public Law 111-240).

CDBA is the national trade association of the community development bank (CDFI Bank) sector. We are the voice and champion of banks and thrifts and their parent Bank Holding Companies with a mission of serving low and moderate income communities.

We thank you for the opportunity to share our views and recommendations. We believe the CDFI Bond Guarantee Program ("CBGP") provides an exciting opportunity to expand the lending and reach of all Community Development Financial Institutions (CDFIs) into under served communities across the nation. Most importantly, the program will enable CDFIs to play a more active role than ever in facilitating job creation and economic revitalization in the places hardest hit by the current recession. We believe the program will support lending by, and investment in, CDFIs by providing a critical source of affordable, long-term patient capital.

General Comments and Recommendations:

By definition, CDFIs serve niche markets that cannot be served by standardized approaches or products provided by the traditional financial services industry. To maximize the effectiveness and impact of the CBGP, we strongly urge the CDFI Fund to ensure the new initiative capitalizes on the diversity of types of CDFIs and the strategies and products we collectively offer to reach a wide variety of under served markets. Our response and comments to the specific questions raised in the Notice for Public Comment can be found in Appendix A.

We support the recommendations articulated by our colleagues in the CDFI loan fund, credit union, venture capital and other segments of industry to make sure the CBGP also works for their sectors. We support the framework presented by Opportunity Finance Network (OFN) that recognizes multiple potential structures for the CBGP, 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 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 SPE would issue a bond backed by a pool at least \$100 million of loans to or other debt-like investments in CDFIs.

Recommendations: To the maximum extent feasible, the CDFI Fund's CBGP regulations should:

- (1) Fully utilize the broad flexibility granted by Congress to craft a program that serves all underserved people and economically distressed communities;**
- (2) Recognize that a broad range of CDFI types and CDFI-originated or -issued assets should be eligible for participation in the program; and**
- (3) Be consistent in the use of definitions, reporting requirements, and other program implementation features with the CDFI Fund's existing programs.**

CDFI Bank Priorities for the CBGP:

1. Bonds to Support CDFI Capitalization

Among the recommended structures outlined above, the members of the CDBA will find the greatest utility in a bond backed by pooled loans to and debt-like investments in CDFIs. Using the bond proceeds as a tool to strengthen the capital of all CDFIs is fully consistent with the purposes and goals of Congress in crafting the CBGP and the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.). We believe that the current CDFI CBGP's statutory definition of an eligible "loan" (i.e. any credit instrument that is extended under the Program for any eligible community or economic development purpose) should include a bond backed by pooled loans to or other debt-like investments in CDFIs.

In particular, among the different types of debt vehicles available to support CDFI bank holding companies (and, in turn, their insured depository subsidiaries) are instruments that can meet the regulatory definition of Tier 1 capital. Raising capital to meet the regulatory definition of Tier 1 capital is of paramount importance to CDFI banks and holding companies, especially given the recent demands of regulators to raise the minimum capital standards for all banks. One (\$1) dollar of core capital invested in a CDFI bank can leverage \$8 to \$10 dollars in insured deposits that will, in turn, be lent out to local borrowers who create jobs and economic opportunity in distressed communities.

Recommendation: Any CBGP regulations promulgated by the CDFI Fund should explicitly recognize bonds backed by pooled loans and to investments in CDFIs as an eligible use of bond proceeds. Such use should allow support for a variety of debt instruments crafted to the capital needs of different types of CDFIs (e.g. CDFI banks, bank holding companies, credit unions, loan funds, and others).

2. Community Trust Preferred Securities as an Eligible Use of Bond Proceeds

The current Tier 1 capital definition¹ includes one type of debt instrument – Trust Preferred

¹ The regulatory definition of Tier 1 capital as outlined in Appendix A to the Federal Reserves Regulation Y for BHCs (<http://www.fdic.gov/regulations/laws/rules/6000-1900.html#fdic6000appendixa>).

Securities (TPS)² – that meets the CBGP’s statutory definition of an eligible “loan” and can satisfy the banking regulatory agencies’ desire for banks and their holding companies to bolster their capital levels. CDBA proposes that the CDFI Fund allow as an eligible loan under the CBGP a “Community” Trust Preferred Security (CTPS) to provide capital to CDFI bank holding companies. Our proposed CTPS is modeled after the TPS and is fully consistent with the Tier 1 regulatory capital definition set forth by the Federal Reserve. This instrument, however, features some modest – but important – refinements.

Our proposed refinements are to the TPS terms typically demanded by private sector investors (but not required or recommended by regulators). Private sector investors typically require cumulative interest/dividend payments and high priced rates of interest. Alternatively, we propose that CTPS eligible for bonding under the CDFI CBGP: (1) incorporate a noncumulative dividend; and (2) feature affordably priced interest payments consistent with what is offered on other government guaranteed debt instruments. Under a noncumulative instrument, if a CDFI bank or holding company is not sufficiently profitable to issue an interest payment, the amounts due will not accumulate and place a mounting financing burden that could impair bank or holding company soundness. We believe the two modest refinements will: (1) provide CDFI holding companies banks with a new tool to bolster capital and provide access to capital in distressed markets; and (2) help them mitigate safety and soundness concerns raised by the regulatory agencies for some TPS in the wake of the economic crisis³.

² A Trust Preferred Security (TPS) is a debt instrument that shares characteristics of both debt and equity. A Bank Holding Company (BHC) typically issues TPS by creating a trust that issues debt to a new entity. The trust, in turn, issues the TPS. The security is a hybrid security with characteristics of both subordinated debt and preferred stock in that it is long term (30 years or more). The security typically allows early redemption by the issuer, makes periodic fixed or variable interest payments, and matures at face value. Most of the proceeds of the security are then down streamed to the subsidiary bank as equity capital. TPS may be treated by the bank regulatory agencies as Tier 1 capital rather than as a liability if they have certain characteristics. For example, the security must allow for at least a five-year consecutive deferral period on distributions to preferred shareholders. In addition, the payments must be subordinated to all subordinated debt and have the longest feasible maturity (30 years or more). The amount of these instruments -- together with other cumulative preferred stock in the BHC – are included in Tier 1 capital and may constitute up to 25 percent of the sum of all core capital.

³ Challenges: During the recession, some traditional banks that have issued TPS and also experienced significant institutional stress due to the economic downturn saw their troubles compounded by some of the features this instrument. Among the principal challenges with the TPS are their: (1) high cost; and (2) cumulative nature. TPS rates are typically higher than ordinary senior debt or subordinated debt. Since TPS are subordinated to all of the issuer’s other debt and typically have features like early redemption and optional deferral of dividend/interest payments, private sector investors demand high interest rates. Furthermore, the cumulative nature of the dividend/interest payments can make it difficult to catch up on high cost payments if a bank must miss a payment during an unprofitable period. TPS operate like cumulative preferred stock in that if any dividends have been omitted in the past, they must be paid out at a future date. By contrast, a noncumulative instrument is one that does not require payment to the holder any unpaid or omitted dividends. If the bank cannot pay dividends in a given year, the investor does not have the right to claim any of those forgone dividends in the future. During the recession, some banks with TPS found themselves overwhelmed by the burden of making costly payments at a time when most of the banking industry was unprofitable. Furthermore, many TPS issues were also packaged into collateralized debt obligations by brokers and marketed to private investors as high yield and low risk. When adverse economic and market conditions made it necessary for banks to defer payments, it resulted in rating and valuation downgrades for the securities. As a consequence, in the Dodd-Frank Wall Street Reform and Consumer Protection Act, significantly restricted what institutions could issue TPS. The law did, however, create exceptions for Bank Holding Companies (BHCs) with less than \$15 billion in consolidated assets. All of the currently certified CDFI banks are covered by this exemption.

With its Treasury guarantee and Federal Financing Bank (FFBs) purchasing requirement, the CBGP creates a unique opportunity to craft an instrument that gets Tier 1 capital to CDFI bank holding companies (and, in turn, their bank subsidiaries) while minimizing any conflict between private investor interests and bank safety and soundness concerns. The proposed CTPS will require no action or amendment to existing regulations or examination practices of the banking regulatory agencies. Creation of CTPS will require: (1) the CDFI Fund's CBGP to allow (or not prohibit) this type of debt-like instrument as an eligible use of bond proceeds; (2) the FFB to be willing to buy a bond(s) backed by a pool of CTPS with more concessionary terms than are typically demanded by private investors; and (3) the Treasury Department to be willing to guarantee a bond back by a pool of CTPS.

We strongly urge the CDFI Fund and U.S. Treasury to incorporate the proposed CTPS as a loan for eligible community or economic development purposes provided that the issuing CDFI bank retains its certification status over the life of the bond. This instrument will allow CDFI bank holding companies and their bank subsidiaries to raise the type of core capital they need to expand their lending and services in low income communities – while mitigating the safety and soundness risks that have been found with some traditional TPS.

We believe the proposed CTPS instrument is fully consistent with Tier 1 regulatory requirements. We also believe our proposed refinements are designed to enable CDFI Banks to better reach and serve low income communities. The injection of lending capital into low income communities is acutely needed and will be absolutely critical in facilitating long term economic recovery in places most negatively impacted by the recession.

Recommendations:

- (4) Any CDFI Program regulations promulgated by the CDFI Fund should recognize or permit a CTPS type instruments as an eligible use of bond proceeds.**
- (5) We urge the FFB to work with CDBA and others to ensure that the terms of any pool of CTPS assets are structured in such a manner as to be appropriate for it to buy.**
- (6) We urge the US Treasury Department to work with CDBA and others to ensure that the terms of any pool of CTPS assets are structured in such a manner as to be appropriate for it to guarantee.**

Conclusion:

The members of CDBA believe the CDFI Bond Guarantee Program provides an exciting opportunity to expand their lending into under served communities across the nation. Now more than ever, this capital is needed to help struggling communities that are among the hardest hit during this economic recession. The CBGP will enable CDFIs to play a more active role than ever in facilitating job creation and economic revitalization both today and for decades to come. The CBGP can only accomplish this if it recognizes the need for flexibility to serve a diverse range of financing needs in under served markets, embraces a variety of different structures and strategies to serve the entire industry, and recognizes the need to provide both portfolio liquidity and capital investment into the CDFI industry.

We thank you for the opportunity to comment on this exciting new program. We look forward to working with you to ensure the program will serve the entire CDFI industry and the communities we collectively serve.

Sincerely,

The Membership of the Community Development Bankers Association

Albina Community Bank
Broadway Federal Bank
BankPlus
Carver Federal Savings Bank
Central Bank of Kansas City
City First Bank of D.C.
City National Bank of New Jersey
Community Bank of the Bay
Community Capital Bank of Virginia
First American International Bank
First Eagle Bank
Franklin National Bank
Guaranty Bank & Trust
International Bank of Chicago
Metro Bank
Mission Valley Bank
M&F Bank
Native American Bank
Neighborhood National Bank
One Pacific Coast Bank
OneUnited Bank
Pan American Bank
Park Midway Bank
Peoples State Bank
Southern Bancorp Bank
START Community Bank
United Bank of Alabama
University National Bank
Urban Partnership Bank

Appendix A

Community Development Bankers Association Comments on the CDFI Bond Guarantee Program

The CDFI Bond Guarantee Program (hereafter “CBGP”) was created by Congress in the Small Business Jobs Act of 2010 (Public Law 111-240) and signed into law by the President on September 27, 2010. On July 1, 2011, the Community Development Financial Institutions (CDFI) Fund of the U.S. Department of the Treasury published a Notice for Public Comment in the Federal Register requesting general comments on the CBGP. This document is a response by the members of the Community Development Bankers Association (CDBA) to the Notice. CDBA is the national trade association of the community development bank (CDFI Bank) sector. We are the voice and champion of banks and thrifts and their parent Bank Holding Companies with a mission of serving low and moderate income communities. Readers should note, the specific questions raised by the CDFI Fund in the Notice appear in **bold letters** followed by CDBA’s recommendations.

General Comments and Recommendations:

By definition, CDFIs serve niche markets that cannot be served by standardized approaches or products. To maximize the effectiveness and impact of the CBGP, we strongly urge the CDFI Fund to ensure that the new initiative capitalizes on the diversity of types of CDFIs and the strategies and products we collectively offer to reach a wide variety of under served markets.

We support the recommendations articulated by our colleagues in the CDFI fund loan, credit union, venture capital and other segments of industry to make sure the CBGP also works for their sectors. CDBA representatives participated in a CDFI industry working group facilitated by Opportunity Finance Network (OFN), Financial Innovations Roundtable, and other industry leaders to explore options for making the CBGP an effective tool for serving people and places that otherwise would not have access to capital. A strong consensus was reached on many issues and recommendations. We support the framework (below) presented by OFN that recognizes multiple potential structures for the CBGP, 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 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 debt-like investments in, CDFIs whereby a trust or SPE would issue a bond backed by a pool at least \$100 million of loans to, or other debt-like investments in, CDFIs.

Recommendations: To the maximum extent feasible, the CDFI Fund’s CBGP regulations should:

- (7) Fully utilize the broad flexibility granted by Congress to craft a program that serves all underserved people and economically distressed communities;**
- (8) Recognize that a broad range of CDFI types and CDFI-originated or -issued assets should be eligible for participation in the program; and**
- (9) Be consistent in the use of definitions, reporting requirements, and other program implementation features with the CDFI Fund’s existing programs.**

Part 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 areas. The CDFI Fund is interested in comments regarding all definitions found in the Act as they related 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: To maximize the effectiveness and consistency of the CBGP with other CDFI Fund programs, we recommend that the CBGP utilize the "low income" geographies definition for Metropolitan Statistical Areas specified in the CDFI Fund's authorizing statute. Issuers should be permitted to target "low income" populations under the CBGP in a manner consistent with the CDFI Fund's other programs.

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

Recommendation: The CDFI Fund's authorizing statute does not define "rural areas" as a term. Hence, we recommend that the CBGP look to definitions of other Federal programs (e.g. U.S. Department of Agriculture) commonly used by CDFIs serving rural communities.

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

Recommendation: We recommend that the term "underserved" be defined to comprise all Target Markets (i.e. Investment Areas and Target Populations) as defined in the eligibility requirements of the CDFI Program regulations (12 CFR 1805.201).

(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. We do not recommend that a CDFI (or its designees(s)) restrict its activities to "only invest inside the CDFI Target Market that it was certified to serve." Above all, the CBGP should remain flexible and market-driven. A transaction that serves any eligible Target Market and is used for an "eligible community or economic development purpose" should be allowed to be included as part of a CDFI's bond issue.

Part 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. The CDFI Fund's CBGP should fully utilize the broad flexibility granted by Congress to craft a program that reaches all underserved people and economically distressed communities. This flexibility allows the CDFI CBGP to utilize 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 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 debt-like investments in CDFIs whereby a trust or SPE would issue a bond backed by a pool at least \$100 million of loans to or other debt-like investments in CDFIs. The examples above are an illustrative list. We urge the CDFI Fund to recognize these approaches in regulations, but to remain open to consider other potential structures that may emerge.

Bonds to Support CDFI Capitalization: Among the bond structures outlined above, the members of the CDBA will find the greatest utility in a bond backed by pooled loans to and debt-like investments in CDFIs. We strongly urge the CDFI Fund to explicitly recognize bonds backed by pools of loans to, and debt-like investments in, CDFIs as an eligible use of bond proceeds. Such provision should support a variety of debt instruments tailored to the unique needs of different types of regulated and non-regulated CDFIs. Using the bond proceeds as a tool to strengthen the capital of all CDFIs is fully consistent with the purposes and goals of Congress in crafting the CBGP and the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.). We believe that the CDFI CBGP's statutory definition of an eligible "loan" (i.e. any credit instrument that is extended under the Program for any eligible community or economic development purpose) should include a bond backed by pooled loans to or other debt-like investments in CDFIs.

Among the different types of debt vehicles available to support CDFI bank holding companies (and, in turn, their insured depository subsidiaries) are instruments that can meet the regulatory definition of Tier 1 capital. In the case of CDFI bank holding companies, the current Tier 1 capital definition includes one type of debt instrument – Trust Preferred Securities (TPS)⁴ – that both meets the CBGP's statutory definition of an eligible "loan" and can satisfy the banking regulatory agencies' desire for banks and their holding companies to bolster their capital levels. CDBA proposes that the CDFI Fund allow as an eligible loan under the CBGP a "Community" Trust Preferred Security (CTPS) to provide capital to CDFI bank holding companies. Our proposed CTPS is modeled after the TPS and is fully consistent with the Tier 1 regulatory capital definition set forth by the Federal Reserve. This instrument, however, features some modest – but important – refinements.

Our proposed refinements are to the TPS terms typically demanded by private sector investors (but not required or recommended by regulators). Private sector investors

⁴ A Trust Preferred Security (TPS) is a debt instrument that shares characteristics of both debt and equity. A Bank Holding Company (BHC) typically issues TPS by creating a trust that issues debt to a new entity. The trust, in turn, issues the TPS. The security is a hybrid security with characteristics of both subordinated debt and preferred stock in that it is long term (30 years or more). The security typically allows early redemption by the issuer, makes periodic fixed or variable interest payments, and matures at face value. Most of the proceeds of the security are then down streamed to the subsidiary bank as equity capital. TPS may be treated by the bank regulatory agencies as Tier 1 capital rather than as a liability if they have certain characteristics. For example, the security must allow for at least a five-year consecutive deferral period on distributions to preferred shareholders. In addition, the payments must be subordinated to all subordinated debt and have the longest feasible maturity (30 years or more). The amount of these instruments -- together with other cumulative preferred stock in the BHC -- are included in Tier 1 capital and may constitute up to 25 percent of the sum of all core capital.

typically require cumulative dividend payments and high priced rates of interest. Alternatively, we propose that CTPS eligible for bonding under the CDFI CBGP: (1) incorporate a noncumulative dividend; and (2) feature affordably priced interest payments consistent with what is offered on other government guaranteed debt instruments. Under a noncumulative instrument, if a CDFI bank or holding company is not sufficiently profitable to issue an interest payment, the amounts due will not accumulate and place a mounting financing burden that could impair bank or holding company soundness. We believe the two modest refinements will: (1) provide CDFI holding companies banks with a new tool to bolster U.S. capital and provide access to credit in distressed markets; and (2) help mitigate safety and soundness concerns raised by the regulatory agencies for some TPS in the wake of the economic crisis.

With its Treasury guarantee and the FFB purchasing requirement, the CBGP creates a unique opportunity to craft an instrument that gets Tier 1 capital to CDFI bank holding companies (and, in turn, their bank subsidiaries) while minimizing any conflict between private investor interests and safety and soundness concerns. Creation of CTPS will require: (1) the CDFI Fund's CBGP to allow (or not prohibit) this type of debt-like instrument as an eligible use of bond proceeds; (2) the FFB to be willing to buy a bond(s) backed by a pool of CTPS with more concessionary terms than are typically demanded by private investors; and (3) the Treasury Department to be willing to guarantee a bond backed by a pool of CTPS.

In promulgating CBGP regulations, we strongly urge the CDFI Fund to allow structures such as the CTPS as a loan for eligible community or economic development purposes. This instrument will allow CDFI bank holding companies (and indirectly their bank subsidiaries) to raise the type of core capital they need to expand their lending and services in low income communities – while mitigating the safety and soundness risks that have been found with some traditional TPS. We also believe our proposed refinements are designed to enable CDFI banks to better reach and serve low income communities.

Bond to Support Direct Issuers & Pooled Asset Back Bonds to Support Lending:

In the case of structures involving CDFIs that are direct issuers or pooled loan asset back bonds originated by multiple CDFIs, consistency across CDFI Fund programs is as important as flexibility. The CBGP should seek to support the core lending activities of CDFIs. Thus, we recommend that all loans that are eligible under the CDFI Fund's other programs (CDFI Program, Bank Enterprise Awards, New Markets Tax Credits) be eligible to be financed or refinanced with bond proceeds. The CBGP should permit CDFIs to use other government program or private sector grants, tax credits, guarantees, or other forms of assistance in conjunction with loans included as part of a Bond issue. Using such enhancements serve only to strengthen the viability of loans and mitigate the risk to issuers and the FFB as bond holder.

(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. All of the activities noted above should be recognized as eligible uses of Bond proceeds.

(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. We urge the CDFI Fund to refrain from limiting the portion of the bond proceeds that can be used to support refinancing. In fact, the CDFI CBGP presents a unique opportunity for CDFIs to offer long-term mortgage or other take-out financing options tailored to the needs of its borrowers. In the aftermath of the economic meltdown, some traditional sources of mortgage or long term financing are no longer available. For example, many New Market Tax Credit projects were structured based on the assumption that traditional banks and others would provide take out financing at the end of seven (7) years when the tax credits expire and projects have stabilized. Today, many of the assumed long term financing sources are no longer available; thus, forcing CDFIs to hold the projects in portfolio indefinitely, thus tying up loan capital that could otherwise be used for new deals. Furthermore, permitting refinancing activity under the CBGP will also significantly increase the amount of capital in the overall market by allowing CDFIs to recycle capital available for new lending. This type of activity is critically important to the healthy growth and development of secondary markets for community development loans. If lenders know that there is a secondary market that provides liquidity, they are more likely to engage in lending.

(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 low income communities is high. CDFIs can help each other respond to demand through loan participations and syndications. The CBGP should not prohibit such activity; rather it should encourage it. Loan participations and syndications are a helpful liquidity enhancement tool that all CDFIs can benefit from. Loan participation and loan syndications are a common vehicle for CDFI loan sales/purchases. They are important tools for CDFIs to: (1) finance deals that are too large or too risky to do alone; (2) help manage portfolio liquidity; and (3) help manage portfolio concentration risk.

A May 2011 CDFI industry survey by Partners for the Common Good (PCG) found that 62.1% of 200 CDFIs surveyed reported they were “definitely interested” and 48.8% “maybe interested” in selling loans to other CDFIs. Furthermore, an additional 22.1% were “definitely interested” and 32% “maybe interested” in buying loans from other CDFIs. Since this proposed type of activity involves a CDFI-to-CDFI transfer of assets, for simplicity in implementation, it is recommended that any CDFI that sells a loan to another CDFI for inclusion in a bond should only be required to maintain their status as a CDFI. The 2011 PCG survey also found that 75% of all CDFIs reported engaging in at least one loan participation transaction within the past three years. Nearly 40% of all CDFIs reported engaging in 2-6 loan participations on average per year with an additional 16% reporting an average of 7-20+ per year. Participation transactions are an important form of pre-secondary market liquidity for transactions that are not standardized enough for a pooled securitization issue.

(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. The CDFI Fund's CBGP should seek to support the core lending activities of CDFIs. By definition, CDFI serve unique market niches that are nonstandard and difficult for others to serve. Flexibility is needed to do our work. We strongly discourage the CDFI Fund from adopting restrictions on loan products, pricing, fees or other aspects of our lending transactions. Such restrictions could significantly impair our ability to tailor products to meet the needs of borrowers. In the case of CDFI banks, we are already required by the banking regulatory agencies to provide standardized disclosures for various types of loan products. In the case of insured depository CDFIs, the CDFI Fund should rely on and defer to the requirements of the financial institutions regulatory agencies rather than imposing new or additional requirements.

(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: Certified CDFIs already primarily make loans for an “eligible community or economic development purposes.” The 90% requirement should be considered to be met upon receipt of the bond proceeds by the CDFI issuer or CDFI recipient (in the case of pooled loans to, or debt-like investments in CDFIs). Further, this 90% requirement should be applied to loans closed (versus loan proceeds disbursed) to allow CDFIs to continue to structure loans that meet borrowers needs. – rather than forcing borrowers to draw down loan proceeds to meet an arbitrary program requirement.

(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: Congress created the relending account to allow CDFIs to originate, collect and then relend unexpected principal prepayments and repayments of loans and investments with maturities shorter than the bond maturity. Congress also created the 90% deployment test to ensure that the vast majority of bond proceeds are directed to under served borrowers. While both provisions are important, the CDFI Fund should recognize that to be responsible stewards of CBGP resources, issuers will need to set aside cash accounts for liquidity (to manage asset-liability matching) and for credit or risk share purposes (to protect the guarantor and bond holder). We recommend that all reserves be excluded from being counted as part of the relending account. Instead, all reserves should be counted as part of the 90% deployment lest there not be sufficient remaining capacity to accommodate prepayments and shorter term maturities.

(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: Flexibility and maximizing consistency with the CDFI Fund's other programs should be a priority for the CBGP. Use of bond proceeds should be allowed for capitalization of revolving loan funds in a manner consistent with the activities deemed eligible under the CDFI Fund's other programs (CDFI Program, Bank Enterprise Awards, and New Markets Tax Credits). We recommend no limitations concerning the use of proceeds, repayments or prepayments beyond any limitations already established in such programs. This flexibility is particularly important for certain types of lending that create jobs --- such as construction lending, small business working capital, and lines of credit.

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

(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 other reserves are needed or required by the CDFI Fund or U.S. Treasury Department for payment of debt service, such reserves should not be included in the definition of the relending account. Further, such reserve amounts should be countered as deployed for the purposes of satisfying the 90% deployment standard.

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

Recommendation: If the CDFI Fund/U.S. Treasury determines that the risk of loss is greater than the 3% discussed in the CBGP's authorizing statute (and the Congress does not appropriate funds for a supplemental reserve), we strongly recommend that the CDFI Fund engage qualified issuers or applicants to propose supplemental credit enhancement vehicles to compensate for additional risk. Again, we urge the CDFI Fund to remain flexible; thus allowing issuers to propose credit enhancement tools that are most appropriate given the proposed structure, asset types and program strategies. Some examples of credit enhancements include affirmative covenants, third party guarantees, bond insurance, over-collateralization, higher pricing, and creation of a supplemental risk pool to complement the three percent provided by third parties, issuers, or pledge of other assets. Over the course of the life of the bond, as the portfolio of loans comprising the bond issue seasons, the CDFI Fund may allow for a downward adjustment of the risk share

where performance justifies it.

(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: Should the CDFI Fund take into account the participation of a risk-sharing partner? What should be the parameters of any such risk-sharing? Should the Fund take into account an independent, third-party credit rating from a major rating agency?)

Recommendation: Congress deliberately gave the CDFI Fund broad latitude to craft a CBGP that works to support a variety of bond structure options and asset types, as well as to ensure the program could reach a wide range of CDFIs working in many different types of markets. Thus, a “cookie cutter” approach to assessing and compensating for risk is not realistically feasible and would work against the intent of Congress. Within the traditional bond markets, risk assessment is often done on the individual merits of the issue. Similarly, the CDFI Fund should evaluate each application based on its individual merits by engaging appropriate experts both inside and outside of the Federal government. As part of such evaluation, it should review performance of the CDFI industry at the asset level. We strongly discourage you from using asset performance data from the conventional market as a proxy given the striking differences in products, strategies, and approaches to the community development finance sector.

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

Recommendation: As noted above, we urge the CDFI Fund to remain flexible; thus allowing issuers to propose credit enhancement tools that are most appropriate given their proposed structure, asset types and program strategies.

(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: As noted above, we urge the CDFI Fund to remain flexible; thus allowing issuers to propose credit enhancement tools that are most appropriate given their proposed structure, asset types and program strategies. The CDFI Fund should allow risk share pools to be funded from one or a variety of internal and external sources.

Part 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: Yes. This definition should be straight forward and include losses on

principal, interest and call premium as a failure of an issuer to make bond payments in amount and on dates prescribed within the underlying and legally binding bond documents.

(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 economic or other circumstances create a condition whereby an issuer is unable to make contractual payments on a bond issue, the purpose of the guarantee is to ensure that the holder does not experience any interruption in expected payments. In such a circumstance, the CDFI Fund should first work with all parties and exercise all rights and remedies available under law to mitigate and reduce risk to reduction in the underlying bond balance. To the extent 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: At this early stage in the evolution of the CBGP, it is not appropriate – or likely feasible -- to anticipate the types of structures or strategies that may be proposed. As noted above, Congress deliberately gave the CDFI Fund broad latitude to craft a CBGP that could reach a wide range of CDFIs working in many different types of markets. During this pilot phase, we discourage the CDFI Fund from prospectively discouraging any specific type of bond structure. Instead, it should evaluate each application and proposed bond structure in balanced manner on: (1) its merits and viability; (2) the extent to which it achieves the community and economic development purposes intended by Congress; and (3) the economic interests of the Treasury to manage risk and potential losses. Only after it has had an opportunity to gain experience and data working with at least one annual round of CBGP issuers, should it make decisions about issuing potential guideline or prohibitions on the features of any bond structures.

(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: Flexibility will be a key to successful implementation of the CBGP. As noted in the question above, at this early stage in the evolution of the CBGP, it is not appropriate – or likely feasible -- to anticipate the types of bond structures that may be proposed. Moreover, it will be difficult to anticipate the asset types that will be included in any proposed structure – let alone to define specific terms and conditions. We recommend that the CDFI Fund refrain from prospectively establishing terms and conditions on individual asset types at least until it has successfully allocated at least one annual round and can set standards based on experience.

As part of evaluating any Capital Distribution Plan, the CDFI Fund has the right and obligation to assess the risk of any bond issue based on the parameters of each individual

application. Some asset classes or borrowers will likely be deemed as riskier than others. As such, the CDFI Fund has the right to require that an issuer supplement the 3% risk pool with other forms of enhancement, but should give full consideration to alternative credit enhancement vehicles that may be proposed by issuers.

(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: In the interests of promoting a robust and diverse CDFI industry infrastructure to support and successfully implement the CBGP, we recommend that no issuer may apply for multiple issuances per annual period. It is important that the CBGP serve the full diversity of CDFI types and assets. Achieving diversity will likely require specialization on the part of issuers. The CDFI Fund should seek to avoid concentration of bond allocation authority among too small a number of entities. We do, however, recommend that issuers that have been successful in substantially deploying the CBGP resources be allowed to apply for additional issuances in subsequent application periods.

Part 4: Eligible Entities

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

Recommendation: No. We strongly discourage the CDFI Fund from adopting a one-size-fits-all strategy for implementing the CBGP. At this early stage in the CBGP's development, we urge The Fund to fully utilize the broad flexibility granted by Congress to craft a program that serves all low income communities. We believe this is best achieved by allowing a variety of institutions, models and strategies that can meet the needs of diverse CDFI markets and communities. Congress gave the Treasury Department the flexibility to designate up to ten (10) issuers per year; thus, we believe the regulations and CDFI Fund's implementation strategy should utilize this authority to create a robust program that services a variety of CDFI sectors and community credit needs.

(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?

Recommendation: In the interests of implementing the CBGP in an expeditious manner, we recommend that only entities that have obtained CDFI certification prior to the deadline for submission of the CBGP application be permitted to apply. The only exception to this recommendation would be new entities (i.e. Special Purpose Entities (SPEs)) created and principally controlled by a previously certified CDFI. We recommend that all entities eligible to apply as a CBGP issuer have a significant and sustained track record of investing in CDFIs and/or supporting economic and community development in low income communities consistent with the requirements described in 12 CFR part 1805.301. In the case of an SPE, we recommend the bond holder's recourse be limited to the assets of the

SPE (including all reserves). This is a critical provision for regulated CDFIs in particular. Without limitations of recourse, CDFI banks and credit unions will be required by their regulators to maintain the same capital ratios for loan assets transferred to the SPE as they would if they still remain within their portfolios; thus, creating a strong financial incentive for regulated CDFIs to forgo participation in the CBGP.

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

(iv) How should the CDFI Fund determine that a qualified issuer meets these requirements?

Recommendation: The CBGP's authorizing statute gives the CDFI Fund significant flexibility with respect to the types of potential structures and strategies that issuers may utilize. Developing a one-size-fits-all set of eligibility requirements may be impractical at this juncture given the different types of strategies that potential issuers maybe contemplating. At this time, it may be most appropriate to: (1) use the statutorily defined eligibility requirements as the minimum for the first round of applications; and (2) utilize the competitive selection process and evaluation criteria to screen and select issuers. The lessons learned from the evaluation of process will likely lead to better informed decisions about appropriate minimum eligibility criteria for future annual application rounds.

We recommend that the selection process evaluation criteria ensure that only entities that have "appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes" be selected as issuers. This assessment should include financial and organizational capacity, as well as having a strong demonstrated track record in the community development finance field. The "appropriateness" of the expertise of an applicant (or its designee(s)) will likely, in part, hinge on the structure, strategies and roles they propose. Only entities that can demonstrate that they can (directly or through a designee) successfully and prudently manage the issuance of a \$100 million bond based on the structure and/or strategies proposed should be selected. If fewer than ten entities can demonstrate such capacity as part of any application round, the CDFI Fund should select only those entities it believes have the capacity to be successful and fully allocate the available bond authority.

(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 a CDFI loses its certification status while participating in the CBGP, the CDFI Fund should provide: (1) a "cure" period to remedy the problems; and (2) expedited consideration in the recertification process. If such CDFI is a participant in a pooled asset back structure, the issuer should have the authority to replace that CDFI participant with another certified CDFI.

Roles & Responsibilities:

(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. The CDFI Fund should not require one servicer for all bonds and notes issued under the program. The CDFI Fund should solicit proposals from a variety of institutions and select only those with appropriate expertise and track record as servicers. Priority should be given to experienced servicers that are knowledgeable about specific types of lending assets (e.g. business, real estate) and the community development finance sector generally. CDFIs interested in submitting a Capital Distribution Plan should have the flexibility to select a servicer best suited for the type(s) of assets it expects to originate. In many cases, CDFI issuers may prefer to service their own loans. The CDFI Fund should preserve the option for them to do so. To the extent the CDFI Fund prefers to have a single master servicer or a select group of servicers perform this function, they should consider offering CDFI issuers financial incentives to encourage them to select a third-party servicer (e.g. a reduction in bond pricing).

(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: . As noted above, the CDFI Fund should solicit proposals from a variety of institutions and select only those with appropriate expertise and track record as servicers. Priority should be given to experienced servicers that are knowledgeable about specific types of lending assets (e.g. business, real estate) and the community development finance sector generally. As required by the CBGP's authorizing statute, the CDFI Fund and Treasury Department should evaluate a select Master servicer(s) of the basis of demonstrated track record and capacity in "(a) loan administration, servicing, and loan monitoring; (b) managing regional or national loan intake, processing, or servicing operational systems and infrastructure; (c) managing regional or national originator communication systems and infrastructure; (d) developing and implementing training and other risk management strategies on a regional or national basis; and (e) compliance monitoring, investor relations, and reporting."

(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: Pre-qualifying servicers would be helpful to CDFIs that are interested in a) becoming issuers under the CBGP, and b) delegating this function to a third party. It is, however, critically important that such a process not delay implementation of the program beyond the deadlines established in the CBGP's authorizing statute.

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

Recommendation: Yes. Many CDFIs have built significant capacity to service loans in-house and may prefer to service their own loans as issuers under the CBGP. The CDFI Fund should preserve the option for them to choose to do so. To the extent the CDFI Fund prefers to have a single master servicer or a select group of servicers perform this function, the agency should consider offering financial incentives (e.g. a 25 basis-point reduction in bond pricing) to encourage CDFI issuers to choose a third party servicer.

(ii) 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. In the interests of preventing conflicts of interest among various parties performing different functions under the program, it is recommended that certain key functions reside only with the Program Administrator (preferably the CDFI Fund). In particular, decisions about: (1) CDFI certification; (2) eligibility determination; and (3) selection of issuers to participate in the program; and (4) resolution of issues of non-compliance. Designation of third parties can enhance efficiency in some circumstances, but can also easily create conflicts of interest if incentives are not properly aligned.

(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 demonstration of community development expertise, the CDFI Fund should require that all applicants meet a mission alignment test. As per the authorizing statute only certified CDFIs shall be permitted to apply to be an issuer under the CBGP. If a potential issuer has been in operation and certified as a CDFI for at least two years prior to deadline for application submission they will be considered to have met the mission alignment test. If a potential issuer has been certified for less than two years, it must be able to demonstrate a proven and substantial track record of engaging in mission focused lending activities that are well aligned with the community and economic development purposes of the CBGP. In the case of a Special Purpose Entity created and controlled by one (or more) CDFI(s), the CDFI Fund should examine the track record of the controlling CDFI(s) to assess expertise in mission aligned community development finance activities.

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

Recommendation: CDFIs created solely for the purpose of applying to the CBGP should not be eligible to participate in the program until they have been in operation as a certified CDFI for at least two years. The only entities that should be exempt from this requirement are SPEs created and controlled by one (or more) CDFI(s).

- (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 CDFI Fund should not establish minimum criteria, asset size, net asset size, or other disqualifying criteria for serving as a qualified issuer. Furthermore,

requiring issuers to obtain an independent, third-party credit rating from a major rating agency will have the effect of discouraging and/or excluding the vast majority of the CDFI industry from their participation since none of the major credit rating agencies have the appropriate expertise or methodology to fairly rate CDFIs. At this early stage in the evolution of the program, the CDFI Fund should utilize the statutory eligibility definition without additional limitations or requirements. The CDFI Fund should use the application evaluation criteria to screen out those CDFIs that lack the sufficient capacity to be successful issuers. After completing a couple of annual rounds of bond authority allocations, the CDFI Fund will gain significant knowledge from that experience to enable it to make an informed decision about any minimum criteria.

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)(I). 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: As previously noted, there will likely be multiple potential structures for the CBGP. The application materials (including the Capital Distribution Plan and sources of uses) will need to be sufficiently flexible to accommodate a variety of approaches. In creating its application materials, the CDFI should consider the types of information that will be needed to evaluate the three structures that have been discussed extensively within the industry to date (but not exclude other structures that may emerge). The three structures are: (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 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 debt-like investments in, CDFIs whereby a trust or SPE would issue a bond backed by a pool of at least \$100 million of loans to or other debt-like investments in CDFIs. Regardless of structure, all applicants should demonstrate that they have a portfolio, pipeline, network, and/or demand to generate a sufficient volume of eligible assets needed to aggregate and assemble a bond. The applicant should provide evidence that they have the ability to service the guaranteed bond based on reasonable assumptions of costs and revenues.

- (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: We strongly discourage the CDFI Fund from establishing minimum underwriting criteria. By definition CDFIs serve unique market niches that others cannot serve. They succeed because they are nimble and flexible and have the ability to tailor products and services to the needs of their borrowers, as well as evolve as markets change. CDFIs have a strong historic track record of understanding how to assess risk and the use of flexible criteria in a manner that gets capital to communities within minimal losses and delinquencies relative to their peers in the traditional financial service industry. Establishing a standardized (even expressed as a minimum) set of underwriting criteria will undermine the core principals of what enable CDFIs to reach people and places others cannot. While there are some elements of CDFI operations that are more appropriate for setting minimum standards (e.g. loan servicing, financial reporting, loan documentation) to increase industry efficiency and mitigate risk to the Treasury Department, establishing minimum underwriting criteria is not inappropriate.

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:

(i) 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: For purposes of meeting the 90% deployment test, the CDFI Fund needs to look at the whole picture of what resources a CDFI needs to properly manage risk for itself, the guarantor, and the bond holder. To ensure the CDFI Fund does not create unintended incentives for CDFI issuers to scrimp (lest they not meet the 90% test) on maintaining appropriate reserves, we urge the CDFI Fund to include all risk share and credit liquidity reserves as part of deployed assets for the purposes of the 90% deployment test. Furthermore, closed loan facilities should be counted toward the 90% based on the full amount of the loan approved (versus outstanding loan balances). Similarly, any revolving credit facilities should count as deployed assets up to the maximum approved amount for the facility. To enable maximum responsiveness to borrower needs and provide maximum flexibility in managing liquidity and asset-liability matching, the 90% deployment test should not be applied more frequently than once per year.

(ii) 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: None

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

Recommendation: Training should be available from the CDFI Fund to ensure all participants are familiar with the compliance and reporting requirements of the CBGP. The CDFI Fund should also organize or contract out trainings featuring experts from the bond and CDFI industry to familiarize staff at individual CDFIs about how bonds work and can benefit their strategies to serve their communities. Training should be available through a variety of mechanisms (e.g. in-person, webinars, written) to accommodate the budgets,

schedules, and learning styles of lending and financial staff working at CDFIs.

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: As previously stated, we urge the CDFI Fund to be consistent in the use of definitions, reporting requirements, and other program implementation features with the CDFI Fund's existing programs. We also urge you to take the opportunity created by the launch of the CDFI CBGP to better integrate the data and other information collected from all CDFI Fund programs (e.g. CDFI Program, NMTC, BEA, Certification) into one integrated and streamlined reporting system. Any impact measurements for the CDFI CBGP should be consistent with those already collected by other programs.

Should achievement of some standards or outcome measures be mandatory?

Recommendation: No. Collecting impact data is difficult, costly and often highly subjective, thus establishing mandatory outcomes becomes impractical. Such mandates could also discourage participation. Furthermore, the wide variety of different types of bond structures, assets, and CDFI issuers will make establishment of mandatory outcomes wholly impractical.

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

Recommendation: We have no specific recommendations.

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: We have no specific recommendations that are unique to this program. As previously stated, we urge the CDFI Fund to be consistent in the use of definitions, reporting requirements, and other program implementation features with the CDFI Fund's existing programs. As it pertains to this question, we recommend the CDFI Fund use the prohibitions as are used in its other programs.

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)?**
- (iii) **If so, should the servicer be eligible to serve as a program administrator for a qualified issuer?**
- (iv) **Who should be responsible for resolving troubled loans?**
- (v) **On what basis should servicers be compensated?**
- (vi) **Are there any duties not listed that should included in sections 114A(f)(2) through 114A(f)(4)? Are there any prohibitions or limitations that should be applied?**

Recommendation: The CDFI Fund should be home for many of the operating functions of the CBGP (e.g. establishing regulations and program guidelines, managing the evaluation process with teams of government and external experts, making final selections on applications selected for bond guarantee authority, executing bond authority legal documentation, establishing reporting and compliance requirements). Other functions are more discretionary and could be contracted out to qualified third parties or delegated to participants (e.g. servicing, compliance monitoring). As a principle, the CDFI Fund should not directly or indirectly engage in activities that could be viewed as managing the operations of issuers or transaction-related functions the issuers (or their designees).

Given the anticipated variety of potential bond structures, it is impractical at this time to suggest a one-size-fits-all set of recommendations on which functions should be handled by certain parties. Instead, as part of the application, the CDFI Fund should outline the key roles and functions (e.g. servicing, monitoring, packaging) needed to successfully issue a bond and ask prospective issuers to discuss how and whom will carry out its function as part of their proposal.

Troubled or nonperforming loans present a complex set of questions with regard to roles and functions – which may distinguish CDFIs from others. Within traditional markets, a Special Servicer is very often used to deal with such loans. Special Services can purchase the loans themselves or just the servicing rights. Given the strong CDFI industry philosophy around exercising patience and the importance of working with borrowers to resolve problems, requiring the use of a Special Servicer will likely encounter strong resistance. Some CDFIs may choose to use such a service as a way to efficiently deal with nonperforming loans if the CDFI Fund were to designate a third party to perform this function. Many CDFIs, however, would likely prefer to manage troubled loans themselves.

Given the anticipated variety of potential bond structures, it is impractical at this time to suggest a one-size-fits-all set of recommendations on compensation of servicers. As part of an application to the CBGP, prospective issuers should outline their compensation structure, which may include fees based on: (1) a percentage of assets; and (2) number of loans in a bond that is backed by the guarantee.

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: Like other CDFI Fund programs, participants should be required to annually report on their CBGP activities. Such reports should focus on: (1) institution level financial reports; (2) deployment levels as they relate to the "90% rule;" and (3) data to verify that bond proceeds issued by a CDFI Fund (or its designee(s)) were used for purposes consistent with statutory or regulatory requirements. In the case of a direct bond issuer, these reporting requirements should be directly applicable to the CDFI issuer. In the case where a Single Purpose Entity (SPE) (or other comparable structure) in which the bond issuer manages a pooled structure, such reporting should be applicable to the SPE on behalf of the participating CDFI issuers.

As previously stated, to the maximum extent practicable, the CDFI Fund should seek to be consistent in the use of definitions, reporting requirements, and other program implementation features with the CDFI Fund's existing programs. Hence, the CDFI Fund should review the reporting requirements of its existing programs and try to piggyback on data already collected as not to create duplicative and unnecessary reporting burden.

To remedy issues of noncompliance, the CDFI Fund should first seek to work collaboratively with the CDFI issuer to develop a plan-of-action to resolve any issue(s) creating an event of noncompliance. If a CDFI does not work diligently to resolve the issue within a reasonable time (this period should be not less than 90 days), the CDFI Fund should have a menu of tools or sanctions to address problems. The menu should range from written notification to suspending a CDFI from participation to requiring repayment of the bond depending on the circumstances and seriousness of the infraction(s). In the unfortunate event that the CDFI Fund must enforce repayment of the bond upon an issuer that fails to remedy an event of noncompliance, it should be cautious to preserve the remaining outstanding balance of the bond at its original terms and release a proportional amount of risk share or other reserves to maintain the original risk profile of the guaranteed bond. In the interests of administrative efficiency, the 10 basis point administration fee should be priced into the bond issuance.

