

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1808

RIN 1559-AA01

Guarantees for Bonds Issued for Community or Economic Development Purposes

AGENCY: Community Development Financial Institutions (CDFI) Fund, Department of the Treasury.

ACTION: Interim rule with request for public comment.

SUMMARY: The Department of the Treasury is issuing the interim rule implementing the Community Development Financial Institutions (CDFI) Bond Guarantee Program, established through section 1134 of the Small Business Jobs Act of 2010 and administered by the CDFI Fund, under authority delegated by the Secretary of the Treasury.

DATES: Interim rule effective April 8, 2013. Comment due date: Comments on the interim rule must be received in the offices of the CDFI Fund on or before April 8, 2013.

ADDRESSES: All comments concerning the interim rule should be submitted and viewed through the Federal e-Rulemaking Portal, <http://www.regulations.gov>. Comments may also be addressed to Lisa M. Jones, Manager, CDFI Bond Guarantee Program, by mail to the CDFI Fund,

Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220; by email to cdfihelp@cdfi.treas.gov; or by facsimile at (202) 508-0090 (this is not a toll free number). Comments will be made available for public review on the CDFI Fund's Web site at www.cdfifund.gov.

FOR FURTHER INFORMATION CONTACT: Lisa M. Jones, Manager, CDFI Bond Guarantee Program, CDFI Fund, at (202) 653-0421 (this is not a toll free number). Information regarding the CDFI Fund and the CDFI Bond Guarantee Program may be downloaded from the CDFI Fund's Web site at <http://www.cdfifund.gov>.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

1. *The need for the regulatory action and how the action will meet that need:* The CDFI Bond Guarantee Program is authorized by section 1134 of the Small Business Jobs Act of 2010 (Pub. L. 111-240; 12 U.S.C. 4713a) (the Act), which requires the Secretary of the Treasury to promulgate regulations to carry out that section of the Act. Capitalized terms used herein and not defined elsewhere are defined in section 1808.102 of the interim rule.

2. *Statement of legal authority for the regulatory action:* 12 U.S.C. 4713a (j)(1).

B. Summary of the Major Provisions of the Regulatory Action

1. *General provisions:* Subpart A (sections 1808.100-106) sets forth the CDFI Bond Guarantee Program's

purpose, summary, program definitions, deviations, and relationship to other programs, among other provisions.

2. *Eligibility:* Subpart B (sections 1808.200-202) sets forth eligibility requirements and responsibilities for certain CDFI Bond Guarantee Program participants, particularly the Qualified Issuer, Designated Bonding Authority, and Eligible CDFIs.

3. *Eligible activities:* Subpart C (sections 1808.300-309) sets forth the activities that are allowable under the CDFI Bond Guarantee Program, as well as interest rates, terms and conditions for Bonds, Bond Issues, the Risk-Share Pool, Bond Loans, Secondary Loans, and the Relending Account.

4. *Applications for Guarantee and Qualified Issuer:* Subpart D (sections 1808.400-401) sets forth the parameters of the Notice of Guarantee Availability, the Guarantee Application (which includes the Capital Distribution Plan), and the Qualified Issuer Application.

5. *Evaluation and selection:* Subpart E (sections 1808.500-504) describes how the CDFI Fund will evaluate applications submitted by certain interested parties.

6. *Terms and conditions of Guarantee:* Subpart F (sections 1808.600-627) sets forth terms and conditions of the Guarantee, certain parties' roles and duties, representations and warranties, covenants, and reporting, conflict of interest, compliance, and other requirements.

II. Summary of Estimated Economic Benefits

	Discounting by 3%		Discounting by 7%	
	\$200 million issuance	\$2 billion issuance	\$200 million issuance	\$2 billion issuance
COSTS				
Government costs	\$19.9 million	\$28.8 million	\$13.4 million	\$18.6 million.
Eligible CDFIs	\$4.6 million	\$45.7 million	\$4.2 million	\$41.9 million.
Low-Income communities	n/a	n/a	n/a	n/a
TRANSFERS				
Low-Income communities	\$200 million	\$2 billion	\$200 million	\$2 billion.

III. Background

The Community Development Financial Institutions (CDFI) Bond Guarantee Program is authorized by the Small Business Jobs Act of 2010 (Pub. L. 111-240; 12 U.S.C. 4713a) (the Act). Section 1134 of the Act amended the Riegle Community Development and Regulatory Improvement Act of 1994 (the Riegle Act) (12 U.S.C. 4701, et seq.) to provide authority to the Secretary of the Treasury to establish and administer

the CDFI Bond Guarantee Program. Under authority delegated by the Secretary of the Treasury, the CDFI Bond Guarantee Program is administered by the Community Development Financial Institutions Fund (CDFI) Fund, a wholly owned government corporation within the U.S. Department of the Treasury. Pursuant to the Act the Secretary of the Treasury will provide a Guarantee for the repayment of the full amount of the

Bond Issue, including the Verifiable Principal, Interest, and Call Premium, issued to finance Bond Loans to Certified CDFIs for Eligible Community or Economic Development Purposes for a period not to exceed 30 years. The Bonds will support CDFI lending in Investment Areas by providing a source of low-cost, long-term capital to Eligible CDFIs.

Consistent with the Office of Management and Budget (OMB)

Circular A-129 (Policies for Federal Credit Programs and Non-Tax Receivables), Bonds issued pursuant to the CDFI Bond Guarantee Program will be purchased by the Federal Financing Bank (FFB), a body corporate and instrumentality of the Federal Government under the general supervision and direction of the Secretary of the Treasury. As required by the Act, the Guarantee will be fully assignable and transferable to capital markets on terms and conditions that are consistent with comparable Federal Government-guaranteed bonds and satisfactory to the CDFI Fund, the Guarantor, and the FFB.

The interim rule creates the regulatory requirements and parameters for CDFI Bond Guarantee Program implementation and administration including, among others, Qualified Issuer eligibility, application requirements, application review, selection criteria, Guarantee and Bond Loan documentation, eligible uses of Bond Proceeds and Bond Loan proceeds, terms and conditions, and reporting requirements. The CDFI Fund seeks public comment on the entire interim rule.

IV. Responses to the Request for Public Comment

On July 1, 2011, the CDFI Fund published in the **Federal Register** a Request for Public Comment (76 FR 38577) (the RPC), seeking public responses to specific questions regarding CDFI Bond Guarantee Program design, implementation, and administration. The CDFI Fund posed specific questions regarding a number of issues, including the following: how certain terms should be defined in the regulations; the eligible uses of funds (specifically, whether there should be any limitations on the types of loans that can be financed or refinanced with Bond Proceeds); provisions of the Guarantee; the eligibility of entities participating in the CDFI Bond Guarantee Program; and how the CDFI Fund should determine that a Qualified Issuer has the appropriate expertise, capacity, and experience to make Bond Loans for Eligible Community or Economic Development Purposes.

The CDFI Fund received more than 60 comment letters in response to the RPC. All comments have been reviewed by the CDFI Fund and have been taken into consideration in the drafting of the interim rule. A summary of the collective comments received in response to the RPC (as well as the CDFI Fund's responses) follows.

A. Definitions

The Act requires that Bond Proceeds be used to make Bond Loans to Eligible CDFIs and that those Eligible CDFIs use the Bond Loan proceeds for Eligible Purposes. Such purposes include the various uses of financial assistance authorized under the Riegle Act, as well as the provision of community or economic development in "low-income or underserved rural areas." Comments were solicited as to how the CDFI Fund should define those terms.

(1) Low-Income

With respect to defining Low-Income, the majority of comments suggested that the U.S. Department of Housing and Urban Development (HUD) definitions for States and Metropolitan Statistical Areas (MSAs) should be followed, including HUD definitions that are not based on census tracts. Other comments suggested that Low-Income should be defined: (i) In alignment with definitions used in other CDFI Fund programs such as the Community Development Financial Institutions (CDFI) Program, the Native American CDFI Assistance (NACA) Program, and the New Markets Tax Credit Program; (ii) as up to 120 percent of the Area Median Income as defined by HUD; (iii) based upon low-income school districts; (iv) based upon low wealth rather than income level; or (v) using Federal banking agencies' definitions for determining Community Reinvestment Act compliance.

The CDFI Fund's Response:

The CDFI Fund has adopted the definition of Low-Income that is set forth in section 1808.102 of the CDFI Bond Guarantee Program interim rule. This definition is in accordance with the Low-Income definition found in the CDFI Program regulations at 12 CFR 1805.104(ee). The CDFI Fund selected a definition of Low-Income that is: (i) a standardized definition that is widely understood within the CDFI industry; (ii) a definition that the CDFI Fund can independently verify because the CDFI Fund has collected data under this definition over the past 10 years; (iii) more inclusive and allows for more Low-Income areas to comply with the CDFI Bond Guarantee Program; and (iv) consistent with the eligibility criteria for other CDFI Fund programs.

(2) Underserved Rural Areas

Regarding the term Underserved Rural Areas, the majority of comments suggested a definition consistent with the definition of Investment Area or Targeted Population set forth in the CDFI Program regulations (12 CFR

1805.104 (dd) and (kk), respectively). The majority of comments suggested using the U.S. Department of Agriculture (USDA) definition of Rural Areas. Other comments suggested that Rural Areas should be defined using the Federal Financial Institutions Examination Council definition for non-metro areas, and that the CDFI Fund should include Colonias in the definition of Rural Areas even when they otherwise fall within Metropolitan Statistical Areas (MSAs). Other suggestions included using: all non-MSA or HUD Fair Market Rent areas; the new Rural-Urban Commuting Area Codes definition established by the Office of Rural Health Policy; or the 2008 Farm Bill definition of Substantially Underserved Trust Areas.

The CDFI Fund's Response:

The CDFI Fund has adopted the definition of Underserved Rural Area that is forth in section 1808.102 of the interim rule. This definition is consistent with the definition of Investment Area as used in the CDFI Program (at 12 CFR 1805.104(dd)) and the definition of non-metropolitan as used in the New Markets Tax Credit Program. The CDFI Fund selected a combined definition of Underserved Rural Area because it is: (i) A standardized definition that is widely understood within the CDFI industry; (ii) a definition that the CDFI Fund can independently verify because the CDFI Fund has collected data under these definitions over the past 10 years; (iii) more inclusive and allows for more Low-Income areas to comply with the CDFI Bond Guarantee Program; and (iv) consistent with the eligibility criteria for other CDFI Fund programs.

B. Use of Funds

The Act requires that Bond Proceeds be used to make loans to Certified CDFIs for Eligible Purposes.

(1) Eligible Uses of Bond Proceeds

The CDFI Fund requested comments regarding the authorized uses of Bond Proceeds to finance Bond Loans. Specifically, comments were invited regarding any limitations on the types of Bond Loans to be financed, limitations on the percentage of Bond Loans that could be used to refinance outstanding loans, and any other restrictions that the CDFI Fund should impose on the Bond Loans such as interest rate and fee restrictions.

The majority of comments were not in favor of limitations on the types of Bond Loans that can be financed with the Bond Proceeds, especially when the Bond Loans meet the provisions of the

Act and are similar in purpose to those that are permissible under other programs, such as the Financial Assistance Component of the CDFI Program.

The majority of comments indicated that there should not be any limits on the percentage of Bond Loans that can be used to refinance outstanding loans with the Bond Proceeds. A few comments suggested that refinancing should be limited to 25 or 50 percent so as to encourage focus on new projects. Some comments suggested that any refinanced loans should meet minimum quality standards and should be non-delinquent in order to be refinanced with Bond Proceeds.

The CDFI Fund's Response:

Bond Proceeds must be used by the Qualified Issuer to finance or Refinance loans to Eligible CDFIs for Eligible Purposes as set forth in sections 1808.301 and 1808.302 of the interim rule. The CDFI Fund will not limit the amount of Bond Proceeds that the Qualified Issuer can use to Refinance loans. The Qualified Issuer must have a Capital Distribution Plan with the requisite Eligible CDFIs configured to on-lend the Bond Loans to Secondary Borrowers. Eligible CDFIs must on-lend the Bond Loans as Secondary Loans to Secondary Borrowers consistent with the Secondary Loan Requirements established by the CDFI Fund and defined in section 1808.102. The Secondary Loans must demonstrate a repayment source and collateral provisions consistent with the Secondary Loan Requirements.

(2) Eligible Uses of Bond Loan Proceeds

The CDFI Fund requested comments on the use of Bond Loan proceeds by CDFIs: specifically, the authorization of revolving loan funds; the permissibility of loan purchases with Bond Proceeds; and any other restrictions that the CDFI Fund should impose.

The majority of comments indicated that eligible Bond Loan purposes should include: (i) Capitalization of revolving loan funds; (ii) capitalization of equity positions for regulated institutions; and (iii) loan loss reserves, debt service reserves, and/or sinking funds in support of a Federally guaranteed bond.

Comments showed unanimous support for permitting loan proceeds to be used to purchase loans from other CDFIs. Comments also indicated that the purchase of loans is an important liquidity and aggregation mechanism and should be encouraged in order to increase capital flows in the CDFI industry. Suggested restrictions included restricting purchases to loans

made after the enactment date of the Act, and requiring that the majority of loan purchase proceeds should be used for community development activities.

The CDFI Fund's Response:

The CDFI Fund selected eligible uses for the Bond Loan proceeds that are consistent with the eligible uses of funds in the CDFI and NACA Programs and the Act. Bond Loan proceeds must be used for Eligible Purposes that include (i) The capitalization of Loan Loss Reserves in an amount that is up to five percent of the par amount of the Bond Loan; (ii) the financing or Refinancing for community or economic development purposes described in 12 U.S.C. 4707 (b), which includes community or economic development purposes in Low-Income Areas or Underserved Rural Areas; (iii) prepaying one monthly installment of Bond Loan payments, and (iv) paying Bond Issuance Fees. The CDFI Fund included the capitalization of Loan Loss Reserves as an Eligible Purpose with the provision that Eligible CDFIs must obtain a Principal Loss Collateral Provision as collateral for this Eligible Purpose. Additional limitations, special rules, procedures and restrictions will be specified in the applicable Notice of Guarantee Availability (as described in section 1808.400 of the interim rule), as well as the Agreement to Guarantee, Bond Documents, and Bond Loan documents.

(3) Bond Proceeds Deployment; Relending Account; Risk-Share Pool

Pursuant to the Act, Qualified Issuers are required to use not less than 90 percent of principal amount of a Bond (other than cost of Bond Issuance Fees) to make loans within one year after the Bond Issue Date. Not more than 10 percent of the maximum principal amount of a Bond may be held in a Relending Account which may be made available for additional loans for Eligible Purposes. Each Eligible CDFI must contribute to a Risk-Share Pool equal to three percent of the principal amount of the Bond. The CDFI Fund requested comments regarding the 90 percent loan requirement, use of the Relending Account, scope of the Risk-Share Pool, and other measures that should be taken to minimize the risk of loss to the Federal Government.

Commentators suggested that Qualified Issuers may face challenges disbursing Bond Loans to CDFIs equal to 90 percent of the Bond principal within one year. In their comments, they cited that CDFI business models often provide binding permanent loan commitments to small businesses and

entities that engage in construction and development financing. CDFIs lend to these entities under a total commitment structure that includes draws on an as needed basis. In addition, commentators indicated that a one-year deployment requirement for 100 percent of Bond Loans would require: (1) CDFIs to have an actual pipeline of loans; (2) immediate funding availability for the pipeline of loans; and (3) CDFIs to close quickly on the loans. Commenters indicated that it would be impractical for CDFIs to present an actual pipeline as part of the Capital Distribution Plan, but to instead require the Qualified Issuer to demonstrate a CDFI's intended versus actual pipeline of loans. Under a one-year deployment rule, CDFIs would face the undesirable prospect of having to develop a new financing program hastily and then terminate it prematurely. Commentators also suggested that most Qualified Issuers would be able to close Bond Loan commitments within one year of the Bond Issue Date but would require a period longer than one year, depending upon the end-borrowers' needs, to disburse the Bond Loan funds.

The majority of commentators stated that the Relending Account should be used to absorb and relend prepayments, permit early refinancing, and facilitate maturities shorter than the Bond duration. Some suggested that the Relending Account should be used for Bond payments if a default occurs, and that the 10 percent Relending Account should be calculated on a rolling-average basis.

Strong opinions were expressed against interest rate increases or requiring specific restrictions, covenants, or conditions not articulated in the statutory provisions. Some comments were in favor of requiring a larger Risk-Share Pool. Many comments suggested a variety of forms of supplemental credit enhancement. A "one size fits all" approach was not endorsed and several suggestions were made, including: the purchase of insurance; collateral liens; increased rates on end borrowers; and a "repurchase structure" where delinquent loans in an asset-backed portfolio were replaced after 180 days. The majority of the comments were in favor of allowing the Qualified Issuer to set aside the three percent from the Bond Proceeds for financing of the Risk-Share Pool. Some commentators suggested that they favored flexible systems allowing for various funding streams, e.g., surety or escrow from the issuer pending approval of application, third party funding, or cash flows from investment.

The CDFI Fund's Response:

The CDFI Fund will require the Qualified Issuer to execute Bond Loan agreements for not less than 100 percent of the Bond principal on the Bond Issue Date. If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers, as follows: (i) not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of such Eligible CDFI's Bond Loan proceeds allocated to Secondary Loans, and (ii) not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of such Eligible CDFI's Bond Loan proceeds allocated to Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

The CDFI Fund defines the Relending Account and the Capital Distribution Plan in section 1808.102 of the interim rule.

The Risk-Share Pool, described in 12 U.S.C. 4713a(d), must be funded by the Eligible CDFIs. The CDFI Fund will not allow the Bond Proceeds, or funds received from other CDFI Fund programs, to be used to fund the Risk-Share Pool. The CDFI Fund defines the Risk-Share Pool in section 1808.102 of the interim rule.

If the CDFI Fund determines that there is a need for protections to mitigate the risk of loss to the Federal Government, the CDFI Fund may require in the terms and conditions of the Guarantee that the Qualified Issuer implement various tools, in addition to the Risk-Share Pool, to compensate for risk which may include, but not be limited to, requiring the Eligible CDFI to provide for third-party Credit Enhancements.

C. Guarantee Provisions

The Act provides for a 100 percent guarantee for bonds issued as part of a Bond Issue under the CDFI Bond Guarantee Program. Consistent with the Office of Management and Budget (OMB) Circular A-129 (Policies for Federal Credit Programs and Non-Tax Receivables), these bonds will be purchased by the Federal Financing Bank (FFB). The CDFI Fund requested comments regarding potential loss remedies prior to the Bond Purchaser seeking reimbursement under the Guarantee, as well as any other terms, conditions, or Bond structure requirements that should be imposed to protect the taxpayer.

The majority of comments stated that the CDFI Fund should work with the Qualified Issuer, aggregators (designated entities acting on behalf of the Qualified Issuers), and originators and Servicers of loans to exercise all rights and remedies available under law before calling the Guarantee. Some comments suggested that, for non-performing assets underlying a Bond, the CDFI Fund should consider using special servicers to deal with these assets. Recommended remedies include the substitution of non-performing assets, liquidation of underlying collateral, liquidation of risk-share and supplemental credit reserves, and the exercise of recourse.

The majority of comments stated that the CDFI Fund should not set specific guidelines for the structure of the Bonds. It was suggested instead that the CDFI Fund should allow the marketplace to encourage the development of models for structuring the Bonds. Commentators recommended that the CDFI Fund require Qualified Issuers to issue Bonds of \$100,000,000 or more, but allow them to make incremental drawdowns of Bond Proceeds. Some comments suggested that Bonds could be issued in smaller increments as part of one application, as long as each Guarantee covered no less than \$100,000,000 of Bonds.

The CDFI Fund's Response:

The CDFI Fund defines Verifiable Losses of Principal, Interest, and Call Premium in section 1808.102 of the interim rule. When the Qualified Issuer has delinquent payments, the CDFI Fund and the Guarantor will exercise all available rights and remedies to protect the Federal Government's interests.

With regard to the structure of the Bond, the CDFI Fund will allow a Qualified Issuer to utilize multiple Bond Loans to CDFIs to meet the \$100,000,000 minimum Guarantee requirement of the Act. However, each Bond Loan must be a minimum of \$10,000,000.

D. Eligible Entities

The Act defines Eligible CDFI at 12 U.S.C. 4713a(a)(1) as a CDFI certified by the Secretary that has applied to the Qualified Issuer for, or been granted by a Qualified Issuer, a loan under the program, and authorizes the CDFI Fund to determine which entities may serve as Qualified Issuers and Master Servicer. The CDFI Fund requested comments regarding the criteria that should be used to approve entities to participate in the CDFI Bond Guarantee Program. Specifically, the CDFI Fund solicited comments on the number of Qualified Issuers and Master Servicers

that should be approved under the CDFI Bond Guarantee Program, as well as any eligibility criteria that should be applied to Eligible CDFIs beyond CDFI certification.

The majority of commentators indicated that they were not in favor of the CDFI Fund requiring only one Qualified Issuer for all Bonds issued under the CDFI Bond Guarantee Program. Respondents stated that this requirement would be an unnecessary limitation that would prevent multiple CDFIs from serving as Qualified Issuers. Comments suggested, however, that it may be effective to have one Qualified Issuer issue most of the Bonds initially. There were mixed views regarding whether the CDFI Fund should permit an entity that is not a Certified CDFI to apply for CDFI certification simultaneously with submission of a Guarantee Application and a Capital Distribution Plan. The majority of commentators stated that only a CDFI that has been designated as a Certified CDFI prior to the applicable Guarantee Application deadline should be allowed to participate in the program. In contrast, some commentators stated that the CDFI Fund should permit non-certified entities the ability to apply to the CDFI Bond Guarantee Program while these entities pursue CDFI certification. The majority of commentators stated that the CDFI Fund should allow all existing CDFIs (or their designees) that are Certified CDFIs in good standing to apply to the CDFI Bond Guarantee Program. Respondents were consistent in stating that a CDFI that applies to the CDFI Bond Guarantee Program should demonstrate strong financial and capital positions, as well as a significant and sustained track record of economic development in Low-Income communities. Many respondents requested that the CDFI Fund require that Eligible CDFIs be certified by the CDFI Fund for a period of at least two to three years.

The majority of commentators indicated that CDFIs should be allowed to service their own Bond Loans and the CDFI Fund should not require one Servicer for all Bonds issued under the CDFI Bond Guarantee Program. The comments suggested that the CDFI Fund should instead choose to limit the number of Servicers in order to keep program costs low. Comments were in favor of the CDFI Fund requiring the Master Servicer and Servicers to have a track record of providing similar services, and they stated that a key factor in determining CDFI Bond Guarantee Program success will be the level and skill of the Servicers responsible for remitting principal and

interest payments on the Bonds. It was proposed that the Master Servicer should be rated by a national rating agency and should have broad experience in servicing community development needs. In addition, some commentators stated that the CDFI Fund should pre-qualify the Master Servicer and make it known to CDFIs prior to submission of a Guarantee Application. Respondents were in favor of a CDFI being allowed to serve as its own Servicer, and they cited that the unique asset and/or borrower characteristics provide strength to CDFIs with respect to their loan servicing capabilities. Comments also suggested that the CDFI Fund should recognize a consortium of non-profit entities, led by a certified CDFI, as an eligible applicant.

The CDFI Fund's Response:

The CDFI Fund has defined the criteria for Qualified Issuers and the Master Servicer in section 1808.200 and section 1808.606, respectively, of the interim rule. The CDFI Fund considered the servicing capabilities of the CDFI industry when defining the criteria for Qualified Issuers. As a result, the CDFI Fund will allow the Qualified Issuer to provide, in its Qualified Issuer Application, information on the proposed Servicer for each Bond Issue. In response to commenters request to keep the program costs low, the CDFI Fund will only allow one Master Servicer/Trustee for the CDFI Bond Guarantee Program.

The CDFI Fund may also select a Designated Bonding Authority (DBA) to serve as a Qualified Issuer for CDFIs seeking Bond Loans that do not wish to designate their own Qualified Issuer and/or that cannot alone prepare a Capital Distribution Plan that meets the requirements for participation in the CDFI Bond Guarantee Program. A DBA will be prequalified as meeting the requirements for Qualified Issuers by the CDFI Fund; however, a Guarantee Application submitted by a DBA will not receive any preference in the selection process. The qualifications for a DBA are described in section 1808.201 of the interim rule. The DBA will be selected in accordance with section 1808.502, which requires interested parties to submit a Qualified Issuer Application in response to the applicable Notice of Guarantee Availability.

Eligible CDFIs must be certified by the CDFI Fund and must meet the requirements set forth in section 1808.202 of the interim rule.

E. Capital Distribution Plan

There were multiple recommendations as to what applicants should be required to submit in their Capital Distribution Plans. Comments were consistent in suggesting that the CDFI Fund should require applicants to detail (in a Capital Distribution Plan) their fixed and ongoing costs of deploying capital, including a detailed breakdown of the uses of funds, which would entail the 90 percent or greater portion of Bond Proceeds used to make Bond Loans for Eligible Purposes and managing a multitude of CDFI entities. In addition, respondents suggested that a detailed breakdown of uses of the remaining portion of Bond Proceeds should be submitted. Comments stated that the CDFI Fund should not impose a limit on the number of Bonds and Guarantees for which Qualified Issuers are allowed to apply or qualify; however, it was suggested that the CDFI Fund implement the CDFI Bond Guarantee Program in a broad manner that would potentially mitigate a concentration among too small a number of participants. In general, commentators recommended that, in their respective Capital Distribution Plans, applicants should demonstrate an intended pipeline of underlying assets as well as the ability to service the Bond based on the expected terms and conditions of the assets in the pipeline. Respondents were consistent in stating that the CDFI Fund should not set minimum underwriting criteria for borrowers.

The CDFI Fund's Response:

The CDFI Fund defines Capital Distribution Plan in section 1808.102 of the interim rule. The CDFI Fund will require the Qualified Issuer to execute Bond Loan agreements for no less than 100 percent of the Bond Proceeds on the Bond Issue Date. If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows: (i) not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans, and (ii) not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

A Qualified Issuer may apply for and receive more than one Guarantee under the CDFI Bond Guarantee Program; provided, however, that the Qualified Issuer must demonstrate in subsequent Guarantee Applications that all prior Bonds have been issued and executed as Bond Loans in accordance with the applicable Guarantee Application, Capital Distribution Plan, and Bond Documents.

F. Accountability of Qualified Issuers

Comments indicated a considerable push for allowing flexibility with regard to mandating the performance outcomes of the Qualified Issuer. Comments were in favor of accountability measures, including the submittal of an annual report, but did not indicate the need for any additional reporting. In addition, commentators agreed that all risk share, credit, and liquidity reserves should be included in calculating the annual percentage of Bond principal used to make Bond Loans. Comments expressed a key interest in ensuring that the CDFI Fund shows consistency across its various program areas. Some respondents expressed a need for the CDFI Fund to provide continuous training opportunities on compliance and reporting requirements for the CDFI Bond Guarantee Program.

The CDFI Fund's Response:

Subsequent to publication of the interim rule, the CDFI Fund will provide outreach and training on the application process, compliance, and reporting requirements as defined in subsection 1808.619 for Qualified Issuers and Eligible CDFIs. To be eligible to participate in the CDFI Bond Guarantee Program, the CDFI Fund will require Qualified Issuers and Eligible CDFIs applicants that are prior awardees/allocates of the CDFI Fund to be compliant under their assistance, allocation, or award agreements under all other CDFI Fund programs at the time of submission of the Guarantee Application. The CDFI Fund will not include the three percent Risk-Share Pool or any additional reserves in calculating the requirements of the Capital Distribution Plan.

G. Prohibited Uses

Commentators generally did not express a desire for additional mandates regarding prohibited uses. Commentators did advise, however, that the CDFI Fund adopt, as a model, the rules of the Financial Assistance Component of the CDFI Program, which permit a wide range of financing activities and allow for flexibility and innovation.

The CDFI Fund's Response:

The CDFI Fund selected Eligible Purposes that are consistent with the eligible uses of funds under the CDFI Program, NACA Program, and the Act. Uses of Bond Proceeds must be consistent with Eligible Community or Economic Development Purposes defined in 12 U.S.C. 4713a(a)(2) and sections 1808.301 and 1808.302 of the interim rule.

The CDFI Fund prohibits certain uses of the Bond Proceeds as set forth in 12 U.S.C. 4713a(c)(5) and section 1808.309 of the interim rule. The CDFI Fund prohibits the use of Bond Proceeds to fund the Risk-Share Pool to further incentivize Eligible CDFIs to perform quality underwriting of Secondary Loans and repayment of Bond Loans. Other risk mitigations include Eligible CDFIs providing collateral and full recourse obligations to receive Bond Loans.

H. Servicing of Transactions

Commentators expressed an interest in limiting the duties of the CDFI Fund to the general administration and management of the CDFI Bond Guarantee Program, and stated that the CDFI Fund should not be involved in a Bond transaction. There were split opinions regarding the requirement that each Qualified Issuer have a designated Program Administrator.

The CDFI Fund's Response:

The CDFI Fund addresses the aforementioned concerns in the interim rule, which delineates the roles of the CDFI Fund, the Guarantor, Program Administrators, and Qualified Issuers. The CDFI Fund will issue a solicitation to select the Master Servicer/Trustee, which will serve as a fiduciary, maintain funds and accounts, serve as the Special Servicer, oversee the Servicers, provide loan monitoring and reporting, and perform the duties described in 12 U.S.C. 4713a(f)(4) and section 1808.606 of the interim rule.

I. General Compliance

The majority of comments indicated that annual financial statements and a report of asset or portfolio performance should be collected and reviewed by the Master Servicer. A range of recommendations were made for the types of reports that should be submitted, including: institution level reports; disbursement reports; and a report verifying that Bond Proceeds are used for Eligible Purposes. With respect to the Act's mandate regarding repayment of Bonds, respondents stated that there should be a cure period of 90 days before action is taken. After the 90-

day period, part of the Risk-Share Pool should be released to meet Bond terms in a way that preserves the outstanding Bond characteristics, such as coupon and term. Further, it was recommended that the CDFI Fund should retain the right to extend the cure period as deemed necessary and appropriate. Comments advised that before the CDFI Fund imposes penalties on a Qualified Issuer for noncompliance, the CDFI Fund should work collaboratively to resolve the issue and have a menu of additional options available for resolution. Suggested options included written notification, suspension from participation, and requiring repayment of the Bond, depending on the seriousness of the infraction and circumstances. These actions should be undertaken after a 90-day cure period.

The CDFI Fund's Response:

Qualified Issuers must provide information requested by the CDFI Fund as described in section 1808.619 of the interim rule and be subject to periodic on-site audits by the CDFI Fund or its designee as needed to determine compliance with the requirements of the CDFI Bond Guarantee Program. The CDFI Fund will not exempt the Qualified Issuer from complying with all applicable Federal, State, and local laws, regulations, ordinances, OMB Circulars and Executive Orders. Bond payments must be made in accordance with the terms and conditions of the underlying Bond documents. Qualified Issuers will be required to include disclosure statements in all Bond Loan documents that identify the obligations of the parties to comply with the applicable statutes and regulations.

J. General Comments

The majority of comments stated that CDFI Bond Guarantee Program rules should be written to allow for maximum program flexibility. This includes a wide variety of issues such as: Multiple structures (special purpose entities and single-issuers); allowance of proceeds for lending and equity capital, loan loss reserves, and refinancing; flexible definitions of Eligible Purposes; allowing revolving loan funds in the program structure that meet the 90 percent loan requirement; and allowing for smaller tranches of issuances as part of a total \$100,000,000 package. Respondents stated that the CDFI Bond Guarantee Program regulations should foster immediate operability in the interest of time to expedite the issuance of Bonds. In addition, comments stated that requirements such as reporting and eligibility should align with other CDFI Fund programs such as the Financial

Assistance Component of the CDFI Program.

Several respondents raised a concern about the need to prepare CDFIs for access to mainstream financial institutions and capital markets. With respect to rulemaking, commentators stated that the regulations should not carry limiting constraints or be unnecessarily complicated such as requiring burdensome credit enhancements, agency credit ratings, or preset underwriting criteria.

The CDFI Fund's Response:

The CDFI Fund agrees that the CDFI Bond Guarantee Program has the potential to provide expansive opportunity by offering low-cost capital to CDFIs. However, the CDFI Fund recognizes the need to balance flexibility for program participants against the need to mitigate risk to the taxpayer, and stay within the confines of various existing statutes, regulations, and guidance documents including, but not limited to, the Riegle Community Development and Regulatory Improvement Act of 1994, the Small Business Jobs Act of 2010, the Federal Credit Reform Act of 1990, as amended, and OMB Circular A-129 (Policies for Federal Credit Programs and Non-Tax Receivables). The CDFI Fund will develop and promulgate Bond Loan Requirements and Secondary Loan Requirements.

V. Rulemaking Analysis

A. Executive Order (E.O.) 12866; Regulatory Impact Analysis

It has been determined that the interim rule of the CDFI Bond Guarantee Program is a significant regulatory action as defined in Executive Order 12866 in that the program will result in an annual effect of \$100 million of more on the economy. Accordingly, the interim rule has been reviewed by the Office of Management and Budget. The Regulatory Impact Analysis prepared by the CDFI Fund for the interim rule is provided below.

1. Description of Need for the Regulatory Action

The CDFI Bond Guarantee Program was authorized by the Small Business Jobs Act of 2010 (Pub. L. 111-240) (the Act), passed by Congress and signed into law by the President on September 27, 2010. Sections 1134 and 1703 of the Act provide authority to the Secretary of the Department of the Treasury to establish the program by regulation, which will be administered by the CDFI Fund, a wholly owned government corporation within the U.S. Department

of the Treasury, pursuant to authority delegated by the Secretary of the Treasury.

The Act authorizes the Secretary to guarantee the full amount of Bonds, including the principal, interest, and call premiums, with terms not to exceed 30 years, issued to finance or refinance loans for Eligible Community or Economic Development Purposes. The Bond Issues will support CDFI lending and investment in Investment Areas by providing a source of low-cost, long-term capital to CDFIs. The Act provides that the Secretary of the Treasury will not issue more than ten Guarantees in any calendar year. No Guarantee amount may be less than \$100,000,000, provided the total principal amount of guaranteed Bond Issues outstanding for any one fiscal year may not exceed \$1 billion.

2. Provision—Affected Populations

The CDFI Fund was established through the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325) for the purpose of promoting economic and community development through investment in and assistance to CDFIs. The two target populations served by the CDFI Fund that will be affected by the CDFI Bond Guarantee Program are (i) Certified CDFIs and (ii) rural and urban Low-Income communities served by Certified CDFIs throughout the United States.

Certified CDFIs are specialized, community-based financial institutions that serve rural and urban Low-Income communities or work in economically distressed areas, often operating in market niches that may be underserved by traditional financial institutions. Only financial institutions certified by the CDFI Fund can receive financial assistance awards through the CDFI Program and the NACA Program. Certified CDFIs include depository institutions such as community development banks, thrifts, and credit unions; and non-depository institutions such as loan and venture capital funds. Certified CDFIs provide a wide range of financial products and services in Low-Income Areas.¹ While the types of products made available are generally similar to those provided by mainstream financial institutions (such as small

business lending and lending for community facilities and commercial real estate development), Certified CDFIs often lend to and make equity investments in markets that may not be served by mainstream financial institutions. In addition, Certified CDFIs may offer rates and terms that are more flexible to Low-Income borrowers. Certified CDFIs also provide services that help ensure that credit is used effectively, such as technical assistance to small businesses, and home buying and credit counseling to consumers.

As of April 2012, there were over 980 Certified CDFIs (including Certified CDFI banks and their Certified CDFI bank holding companies) that provide financial products and services to underserved populations and distressed communities in the United States. A thorough analysis was conducted of a subset of 904 Certified CDFIs, excluding bank holding companies, to compile consistent asset data on this population, which is reported below. These 904 Certified CDFIs are financial institutions that have average total assets of \$55.6 million (although average asset size varies by institution type).

a. Community development loan funds (CDLFs) constitute about 66 percent of Certified CDFIs and have average assets of about \$19.9 million. CDLFs are usually nonprofits that provide financing and development services to businesses, organizations and individuals in Low-Income urban and rural areas. CDLFs can be further categorized based on the type of clients served, such as microenterprises, small businesses, housing, and community service organizations (e.g., health care providers, charter school operators).

b. Community development credit unions (CDCUs) constitute about 22 percent of Certified CDFIs and have average assets of \$66.9 million. CDCUs are nonprofit cooperatives owned by members that promote ownership of assets and savings and provide affordable credit and retail financial services to Low-Income people.

c. Community development banks and bank holding companies constitute about nine percent of Certified CDFIs and have average assets of \$298.3 million. CDFI banks provide capital to rebuild economically distressed communities through targeted lending and investment and the provision of financial services to community residents and business owners.

d. Community development venture capital funds constitute about three

percent of all Certified CDFIs, have average assets of \$9.7 million, and include both for-profit and nonprofit organizations that provide equity and debt-with-equity features for businesses in distressed communities.

A preliminary analysis conducted by the CDFI Fund shows that Certified CDFIs that are large enough to deploy at least \$10 million in new lending to Low-Income communities are the most likely participants in the CDFI Bond Guarantee Program. The rationale is that only larger CDFIs will be able to absorb and deploy \$10 million in new capital. In particular, non-profit CDFI loan funds are expected to be the primary participants in the CDFI Bond Guarantee Program.

a. Analysis of CDFI Fund awardees.

First, the CDFI Fund used its Community Investment Impact System (CIIS), which collects data from CDFIs that have received awards from the CDFI Fund. CDFI Program and NACA Program awardees are required to report total portfolio and financial data for three years. A total of 68 Certified CDFI loan funds were identified that provided consistent data for a five year period from 2006 to 2010 on assets, new lending, and type of lending. The results showed that a total of 59 CDFI loan funds out of the 68 originated more than \$10 million in loans. These 59 loan funds, that annually originated more than \$10 million in loans, had assets that ranged from \$25 million to nearly \$400 million. As a result, a cutoff point of a minimum of \$25 million in assets was established as a preliminary estimate of the threshold to participate in the CDFI Bond Guarantee Program. Due to data limitations, this estimate is based on a sample of CDFI awardees and not on the total universe of Certified CDFIs. However, given the lack of data on non-awardee Certified CDFIs, it is possible there are eligible CDFIs below the \$25 million threshold capable of participating in the CDFI Bond Guarantee Program.

b. Analysis of CDFI Fund Certified CDFIs. Second, the CDFI Fund certification database was used to query the number and type of Certified CDFIs that had assets over \$25 million. A total of 243 Certified CDFIs have assets over \$25 million, including 77 CDFI banks, 74 credit unions, 91 loan funds, and one venture capital fund. This group is a sample of potential participants in the CDFI Bond Guarantee Program.

¹ The terms Low-Income and Low-Income Area are defined in section 1808.102 of the interim rule. These definitions may be different from those used in the economic studies cited hereafter. For specific definitions related to the studies, please refer to the cited articles.

TABLE 1—CDFIS WITH MORE THAN \$25 MILLION IN ASSETS

CDFI type	Count	Share %	Sum of assets	Share of assets %	Average assets	Minimum asset size	Maximum asset size
Bank or Thrift	77	32	\$24,705,263,619	53	\$320,847,579	\$26,655,000	\$2,144,987,000
Credit Union	74	30	12,589,364,746	27	170,126,551	26,456,363	1,623,228,958
Loan Fund	91	37	9,073,961,136	20	99,713,859	25,379,706	1,424,547,537
Venture Capital Fund	1	0	59,151,038	0	59,151,038	59,151,038	59,151,038
Grand Total	243	100	46,427,740,539	100	191,060,661	25,379,706	2,144,987,000

Source: CDFI Fund Community Investment Impact System (CIIS) and Certification Database.

a. Targeted Populations. In general, Certified CDFIs primarily serve Low-Income communities and Low-Income targeted populations. A Certified CDFI's Investment Area is defined as a geographic unit (state, county, census tract, block group, Indian/Native areas), or as contiguous geographic units entirely located within the United States that meets one of the following criteria:

(1) Has a population poverty rate of at least 20 percent;

(2) has an unemployment rate 1.5 times the national average;

(3) for a Metropolitan Area, has a median family income (MFI) at or below 80 percent of the greater of either the Metropolitan or national Metropolitan MFI;

(4) for a non-Metropolitan area, has an MFI at or below 80 percent of the greater of either the Statewide or national Non-Metropolitan MFI;

(5) is wholly located within an Empowerment Zone or Enterprise Community; or

(6) has a county population loss greater than or equal to 10 percent between the two most recent census periods for Metropolitan Areas or five percent over last five years for Non-Metropolitan areas.

Under these criteria, there are 27,275 census tracts (41 percent) that qualify as CDFI investment areas out of 66,285 total census tracts in U.S. Of these, 22,360 are Metropolitan census tracts and 4,915 Non-Metropolitan census tracts. There are 269 counties that qualify as a result of the combined impact of the population loss and outmigration criteria. Based on the most recent three-year of reporting by CDFIs awardees, about 20 percent of eligible census tracts are served; however, no transactional lending and investment data is available from Certified non-awardee CDFIs and therefore no estimates of lending in target markets can be provided for four-fifths of Certified CDFIs.

However, it is noteworthy that CDFI investment areas and target markets are highly correlated with the distressed and underserved areas as defined in the

Community Reinvestment Act.² In general, Certified CDFIs provide financial products and services in areas that are historically underserved by mainstream depository institutions.

b. Financial products offered by CDFIs. According to the CDFI Fund Agency Financial Report for Fiscal Year 2012, CDFIs originated over \$1.3 billion in loans in 2011. Of these, 15.6 percent were commercial real estate originations, which included investments in charter schools and community facilities such as health clinics, employment and training facilities, and centers that provide services for low-income children and youth. In addition, 28 percent of these annual originations supported small businesses and microenterprises, including support for business incubators. In 2011, CDFIs also financed over 24,000 affordable housing rental units. The majority of these investments were located in very Low-Income communities where lending for community infrastructure is limited.

3. Description of the problem.

The availability of long-term debt and equity capital for CDFIs, particularly non-profit loan funds, is one of the major structural issues facing the CDFI industry. Certified CDFIs face challenges accessing long term capital to support their lending and investment; such challenges are related to broader structural impediments faced by Low-Income communities in accessing affordable and appropriate financial services.

Certified CDFIs traditionally receive grants, loans, and other forms of financing from various sources, notably banks incentivized by the Community Reinvestment Act (CRA). However, that capital tends to be short- or medium-term, and expensive as compared to products non-CDFI or for-profit lenders can obtain.³ Lenders and investors to

Certified CDFIs typically provide Certified CDFIs with capital that has maturities of ten years or less. As a result, Certified CDFIs endure asset liability mismatches when they offer longer term lending products (i.e., mortgages) to their target borrowers.

According to an analysis by the Carsey Institute at the University of New Hampshire, which was prepared for and funded by the CDFI Fund, "the lack of long-term debt financing forces CDFIs to [save cash] pushing down leverage and giving the appearance that many underleveraged CDFIs are not lending as much as they could, thus neglecting demand among its targeted consumers."⁴ Certified CDFI loan funds are generally not well leveraged, possibly reflecting the cost of debt available to them. Additionally, the non-profit status of many CDFIs also means that they do not enjoy the tax benefits of debt leverage which for-profit financial institutions are able to take advantage of. According to the Carsey analysis, "[p]articularly among loan funds, a large number of CDFIs have very little leverage (i.e., they fund themselves mainly through net assets, not debt). The median CDFI loan fund in 2009 was leveraged at just \$1.10 in liabilities for every \$1 in net assets. About eight percent of loan funds had no liabilities whatsoever. Banks and credit unions are typically leveraged at a rate of 10:1 or more."⁵

The reasons behind the lack of access to long-term debt available in capital markets are complex; however, a market-based approach focuses on one key element: the risk of Certified CDFIs. Capital markets typically rely on the credit ratings by rating agencies to determine the interest rate and terms of

University of New Hampshire, Durham, New Hampshire, p. 37.

⁴ Michael Swack, Jack Northrup, and Eric Hangen. *CDFI Industry Analysis*, Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 15.

⁵ Michael Swack, Jack Northrup, and Eric Hangen. *CDFI Industry Analysis*, Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 10.

² <http://www.ffiec.gov/craadweb/naaginfs.htm>.

³ Charles Tansey, Michael Swack, Michael Tansey, Vicky Stein. *Capital Markets, CDFIs, and Organizational Credit Risk*, Carsey Institute,

an investment. According to Tansey et al., the inability of credit rating agencies to accurately assess credit risk of CDFIs is due to: the absence of standardized data of risk performance; the lack of consistent audited financials limiting the ability to discern assets, specifically cash, available for repayment; the need for the development of comparable ratios to analyze financial health; Certified CDFIs' willingness to engage in non-conventional lending; and, the perceived risk of lending to Low-Income communities. Such challenges result in proposed investments to CDFIs that are unrated or rated as below investment grade, thus not attractive to the capital markets.

a. *Distributional issues in provision of financial services in Low-Income Areas.* The risk of lending to Certified CDFIs and ultimately to Low-Income communities is steeped in the chronic distributional gaps in the provision of financial services and products to Rural and urban Low-Income Areas of the United States, thus contributing to limited credit risk information for mainstream financial institutions to underwrite new activity in these communities. The lack of credit information for many Low-Income households in addition to smaller loan sizes typical of Low-Income communities often results in higher transaction costs for current lending. In addition, the substantial lack of data and higher costs in serving these communities also inhibits the access to long-term capital for CDFIs that serve these communities.

In rural areas, lack of access also stems from the more limited deal flows, limited supporting infrastructure, and the difficulty of providing oversight for sparsely populated areas. Furthermore, CDFI investments are often characterized by the small scale of individual transactions and the perception of a high degree of risk.⁶

Using census panel data on economically distressed areas, persistent poverty has been located in the same geographic areas for over half a century, including the lower Mississippi Delta, areas along the Rio Grande, and traditional Native American territories in the West.⁷ Many households in persistent poverty counties are "unbanked" and have little

⁶Michael Swack, Jack Northrup, and Eric Hangen. *CDFI Industry Analysis*. Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 14. Available at <http://www.cdfifund.gov/docs/CBI/2012/Carsey%20Report%20PR%20042512.pdf>.

⁷For a list of persistent poverty counties used by the CDFI Fund, see http://www.cdfifund.gov/what_we_do/persistentpoverty.asp.

or no credit score information because they may operate with cash in the informal economy; many live in areas characterized by poverty rates of more than 20 percent. About three quarters of persistent poverty areas reflect the minority status of their populations, showing a concentration of persistent poverty, low incomes, and lack of financial services in minority communities. According to the Economic Research Service (ERS) at the U.S. Department of Agriculture (USDA), of the 442 "high-poverty counties in 2000 (based on 1999 income), three-fourths reflect the low income of their racial and ethnic minorities and are classified as Black, Hispanic, or Native American high-poverty counties. In these counties, either a majority of the poor are Black, Hispanic, or Native American, or it is only the high incidence of poverty among these minority groups that brings the county's overall rate above 20 percent. Of the remaining fourth of high-poverty counties, most (91 counties) are located in the Southern Highlands of eastern Kentucky, West Virginia, and parts of Missouri and Oklahoma. In these areas, the poor are predominantly non-Hispanic Whites."⁸

b. *Market failure.* Rural and urban Low-Income, very Low-Income, and persistent poverty areas are underserved by mainstream financial institutions and lack access to investment, capital, and credit. Low lending rates in these communities create an information deficit for assessing risk for individual households and neighborhoods in mortgage, business, and consumer credit markets, and contribute to higher transaction costs. Furthermore, credit rationing can affect both Low-Income communities and Certified CDFIs that serve this market niche.

Market failures in the provision of financial services to Low-Income areas have been well-documented in the academic literature (see Akerlof, Stieglitz, Klausner, Richardson, Mills and Lubuele).⁹ One market imperfection

⁸See <http://www.ers.usda.gov/Briefing/incomepovertywelfare/povertygeography.htm>.

⁹(A) Akerlof, George A. 1970. "The Market for Lemons: Quality Uncertainty and the Market Mechanism." *The Quarterly Journal of Economics*. 84 (3): 488–500. Akerlof argues that underdeveloped areas, such as Low-Income and persistent poverty areas, may remain undeveloped due to the lack of information (such as the lack of credit scores for households operating in the informal economy) and the high costs of obtaining accurate information on these credit risks.

According to Akerlof, "Credit markets in underdeveloped areas often strongly reflect the operation of the Lemons Principle." In the Lemons Principle, "bad cars drive out the good because they sell at the same prices as the good cars." In other words, the perception of average higher risk in Low-

is the inherently asymmetric information between a lender and a borrower. Klausner notes that "borrowers often know more about their own risk of default than do lenders. [* * *] When a bank makes a loan it does so based on information regarding the default risk of the borrower."¹⁰

Both targeted and mainstream financial lending programs depend on credit scores to assess risk to provide financial services to their customers. However, credit scores are often limited in Low-Income communities due to the low level of lending by mainstream financial institutions in these communities and the resulting lack of information on the risk of default for these loan products. In addition, Low-Income households may operate in the informal economy and may not have credit score information.

Credit rationing is likely to occur in Low-Income Areas because generating individual credit risk scores would be too costly for lenders. Klausner and Richardson note that because banks seek to maximize their profit, they [and other financial institutions] may be averse to lending to Low-Income Areas due to the low value of financial transactions and the lack of credit score information to assess the riskiness of loans.

Income Areas may prevent deserving borrowers from accessing credit and capital from mainstream lenders. However, non-traditional lenders such as CDFIs are willing to conduct individual underwriting and are able to enter these markets.

(B) Stiglitz, Joseph E., and Andrew Weiss. 1980. *Credit rationing in markets with imperfect information*. Princeton, N.J.: Econometric Research Program, Princeton University.

(C) Klausner, Michael, "Market failure and the Community Reinvestment Act: A market-oriented alternative to the Community Reinvestment Act." *University of Pennsylvania Law Review*, Vol. 143, No. 5 (May 1995) pp. 1561–1593.

(D) Richardson, Christopher, "The Community Reinvestment Act and the economics of regulatory policy." *Fordham Urban Law Journal*, Vol. 29, Issue 4, 2001, Article 11. Richardson argues that "low levels of lending in low- and moderate-income (LMI) areas result from the inability of rational lending decisions made by profit-maximizing lenders to achieve a socially optimal flow of credit to LMI areas. The market failure occurs because the marginal cost of a single lender acquiring the information necessary to adequately assess risk and identify profitable lending opportunities in LMI areas outweighs the potential marginal benefit the lender can expect to accrue. In the extreme case, if no single lender will rationally decide to lend in the area, and no loans will be made" (p. 1614).

(E) Mills, E.S. and L.S. Lubuele. 1994. "Performance of residential mortgages in low-income and moderate-income neighborhoods." *Journal of Real Estate Finance and Economics* 9(3): 245–260.

¹⁰Klausner, Michael, "A tradable obligation approach to the Community Reinvestment Act" in Chakrabarti, Prabal. 2009. *Revisiting the CRA: perspectives on the future of the Community Reinvestment Act*. Boston, Mass: Federal Reserve Bank of Boston. http://www.frbfsf.org/publications/community/cra/visiting_cra.pdf.

4. Solutions to the Problem.

Through the CDFI Bond Guarantee Program, Certified CDFIs will demonstrate the ability to successfully deploy conventional long-term debt, with maturity dates, payment schedules, conditions, covenants, and reporting requirements similar to those required and provided by capital markets. The CDFI Bond Guarantee Program will require standardized data collection and portfolio monitoring, develop a mechanism for accurately assessing Certified CDFI credit risk, and provide capital markets with a track record on which to base future lending and investment. Moreover, the CDFI Bond Guarantee Program, because of the maximum 30 year maturity, will allow Certified CDFIs to offer a higher volume of longer term products to their borrowers as well as manage their interest rate and duration risk because of improved asset/liability matching. This will further close the gap in the provision of investments in community facilities, business lending, and financial services to rural and Low-Income residents and businesses, addressing distributional issues in the provision of financial services.

a. *Certified CDFIs as potential solution to underserved markets and market failure.* A potential solution to distributional issues in the provision of financial services and market failure is lending by financial institutions such as Certified CDFIs. However, due to their customer base (Low-Income residents and small businesses and nonprofits serving Low-Income communities), the credit rationing that limits access to capital for those customers also limits the ability of Certified CDFIs to secure affordable long-term capital. Moreover, there is no standardized data on the universe of Certified CDFIs, especially unregulated loan funds that do not have award reporting history. The CDFI Bond Guarantee Program would provide access to a maximum of \$2 billion in 30-year long-term capital to address the distributional effects and market failure faced by Low-Income residents and communities as well as the inability of Certified CDFIs to secure long-term capital to support their lending and investment efforts.

b. *Lowering the transaction costs of lending to Low-Income Areas.* Transaction costs for the provision of financial services in Low-Income Areas are often higher because many Low-Income households have no credit score data that can be used to standardize and lower the cost of the underwriting process. In part, this is due to the fact that many Low-Income households do

not use traditional financial institutions for banking needs, relying on fringe banking services (e.g., check cashers, payday lenders, etc.) to conduct financial transactions, thereby limiting available credit histories and credit score data. The CDFI Fund estimates that, based on credit score data at the census tract level, a total of 27 percent of very Low-Income households are missing credit FICO scores, compared to eight percent for higher-income areas (see Table 2 below). These figures may underestimate the number of households without credit scores because they are based on a sample of households that provided data, adjusted for the population.

TABLE 2—CREDIT SCORE INFORMATION

Median family income as a percent of area income by census tract	Population share in sample %	Percent missing credit scores %
a. <50%	5.99	27
b. 50%<80%	26.83	18
c. 80%<120%	46.99	12
d. 120%<200%	18.40	9
e. >200%	1.79	8
Grand Total	100.00	14

Source: analysis by the CDFI Fund using Census Bureau 2000 Summary File 1 demographic data and FICO scores by census tract.

Another factor inhibiting credit provisioning is the lower profitability associated with lower-value loans. This, combined with expensive underwriting, make the provision of loans and services to Low-Income populations unprofitable for mainstream financial institutions. According to the Carsey Institute “[t]hese transactions costs can be high for CDFIs because CDFIs market, underwrite, and originate smaller loans, and provide more intensive services. As a cost driver for CDFI Loan Funds, operating expense [as a result of high transactions costs to collect information on Low-Income communities and to underwrite smaller value loans] is by far the largest component of an organization’s expenses, dwarfing both cost of capital and loan loss expense.”¹¹

If the \$200 million to \$2 billion range is used to estimate the minimum and maximum impact range for the CDFI Bond Guarantee program, using the average loan size of \$75,000 for CDFIs, a total of 2,667 loans to 26,670 loans

may be issued. A share of these loans—potentially over half—will involve detailed and costly underwriting information at the household and firm level for loan recipients that otherwise would not receive funding. A share of these loans will include households and firms that do not have credit available elsewhere from mainstream financial institutions for long-term mortgages, community facilities such as charter schools, small business and microloans, and financial banking services. As a result of lending by participating Certified CDFIs, the Certified CDFIs will generate new credit score data from the loans to such consumers, which in turn will provide new credit information on these products and market segments, which should mitigate the risk associated with a lack of credit data on Low-Income and rural communities and borrowers. This information can lower transaction costs and encourage increased participation of traditional financial institutions in underserved areas, thereby attracting additional capital from the private sector.¹²

c. *Providing long-term debt and leverage.* According to the Carsey Institute, “[t]he availability of long-term debt and equity capital for CDFIs, particularly loan funds, is one of the major structural issues facing the industry. [* * *] The lack of long-term debt financing forces CDFIs to [save cash] pushing down leverage and giving the appearance that many underleveraged CDFIs are not lending as much as they could, thus neglecting demand among its targeted consumers.”¹³ The analysis by the Carsey Institute noted that Certified CDFIs have access to short-term capital and cannot access longer-term capital. Lenders and investors to Certified CDFIs typically provide Certified CDFIs with capital that has maturities of ten years or less. As a result, Certified CDFIs endure asset liability mismatches when they offer longer term lending products (i.e., mortgages) to their target borrowers.

The analysis by the Carsey Institute also found that Certified CDFI loan funds are generally not well leveraged, possibly reflecting the cost of debt available to them. According to the

¹² See: “Collaborators or Competitors? Examining the Relationship Between CDFIs and Mainstream Banks in Lending to Small Businesses in Underserved Markets” by Geoff Smith, Sean Zielenbach, Jennifer Newon and Sarah Duda, The Woodstock Institute, published by the CDFI Fund, 2009 http://www.cdfifund.gov/impact_we_make/research/community-economic-development.

¹³ Michael Swack, Jack Northrup, and Eric Hangen. CDFI Industry Analysis, Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 15.

¹¹ Michael Swack, Jack Northrup, and Eric Hangen. CDFI Industry Analysis, Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 9. Available at <http://www.cdfifund.gov/docs/CBI/2012/Carsey%20Report%20PR%20042512.pdf>.

analysis, “[p]articularly among loan funds, a large number of CDFIs have very little leverage (i.e., they fund themselves mainly through net assets, not debt). The median CDFI loan fund in 2009 was leveraged at just \$1.10 in liabilities for every \$1 in net assets. About eight percent of loan funds had no liabilities whatsoever. Banks and credit unions are typically leveraged at a rate of 10:1 or more.”¹⁴ The CDFI Bond Guarantee Program, because of the maximum 30 year maturity, will allow

Certified CDFIs to offer a higher volume of longer term products to their borrowers as well as manage their interest rate and duration risk because of improved asset/liability matching. This will further close the gap in the provision of services to Low-Income residents and businesses.

Finally, the Carsey analysis indicates that the average term for credit provided to CDFIs is rarely above 15 years. When appropriately compared based on term, the cost of funds under the CDFI Bond

Guarantee Program is significantly lower than what is currently available in the market. The Carsey analysis notes that CDFIs typically borrow on a secured basis at more than 100 basis points above the London Interbank Offered Rate (LIBOR), and that this is for shorter terms than contemplated under the CDFI Bond Guarantee Program.

5. Baseline

Currently, the CDFI Fund administers six grant and tax allocation programs:

TABLE 3—CDFI FUND AWARD PROGRAMS

Program	Type/Status	Purpose	Total amount awarded/number of award-ees last funding round	Highest award amount
CDFI Program	Grant/Annual Appropriations.	Provides financial assistance awards to institutions that are certified as CDFIs, and technical assistance grants to Certified CDFIs and entities that will become certified as CDFIs within three years. Note: The CDFI Fund may give a financial assistance award in the form of a loan if the CDFI provides a loan as its matching fund. Direct loans are dictated by the term and conditions of the loan submitted as matching funds.	\$149 million/144 awardees.	\$1.4 million.
Native Initiatives	Grant/Annual Appropriations.	Assists entities in overcoming barriers that prevent access to credit, capital, and financial services in Native American, Alaskan Native, and Native Hawaiian communities (Native Communities). The Native Initiatives' central component is the Native American CDFI Assistance (NACA) Program, which increases the number and capacity of existing or new CDFIs serving Native Communities.	\$11.5 million/33 awardees.	\$750,000.
Bank Enterprise Award Program.	Grant/Annual Appropriations.	Provides grants to FDIC-insured banks for increasing their investment in Low-Income communities and/or in CDFIs.	\$18 million*	\$500,000*.
New Markets Tax Credit Program.	Non-cash Tax Credit Authority/Annual Renewal.	Provides tax credit allocation authority to certified Community Development Entities (CDEs), enabling investors to claim tax credits against their Federal income taxes. The CDEs in turn use the capital raised to make investments in Low-Income communities.	\$3.5 billion in annual authority.	n/a.
Capital Magnet Fund	Grant/FY 2010 only ...	Provides grants for CDFIs and other non-profits to finance the development, rehabilitation, and purchase of affordable housing for Low-Income people.	\$80 million/23 award-ees.	\$6 million.
Financial Education and Counseling Pilot Program.	Grant/FY 2009 and FY 2010 only.	Provides financial assistance awards to enable Certified CDFIs and other eligible organizations to deliver a variety of financial education and counseling services to prospective homebuyers.	\$4.1 million/4 award-ees**.	\$3.15 million/\$400,000**.

* Based on most recent funding round.

** In FY 2010, the CDFI Fund was appropriated \$4.1 million for the FEC Pilot Program, of which \$3.1 million was specifically appropriated for an award to an organization located in the State of Hawaii and \$1 million was appropriated in FY 2010 for the FEC Pilot Program.

a. *Size of loans under the CDFI Bond Guarantee Program greater than current CDFI Fund programs.* While valuable, CDFI Fund programs provide limited, short-term capital for CDFIs. The

increased competitiveness, small award size, and annual uncertainty in the total amounts to be awarded limit CDFIs' ability to plan effectively for long-term project and capital needs. For the

baseline analysis without the CDFI Bond Guarantee Program, the CDFI Fund assumes that the above-mentioned programs would be appropriated at historical levels and estimates that

¹⁴ Michael Swack, Jack Northrup, and Eric Hangen. *CDFI Industry Analysis*, Spring 2012.

Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 14.

Certified CDFIs would borrow and lend at current levels.

b. *CDFI lending at current levels.* In FY 2011, CDFI Fund awardees reported originating 16,313 loans or investments totaling \$1.2 billion, based on their portfolio of activities in 2010. This includes \$357.3 million for 5,010 home improvement and purchase loans, \$296.8 million for 5,233 business and microenterprise loans, and \$289.2 million for 679 residential real estate transactions. These data on the amount and number of loans or investments originated provide baselines for benchmarking and targeting program performance. Under the CDFI Program, real estate loans financed 17,778 affordable housing units, including 15,979 rental units and 1,799 owner units. CDFIs also provided extensive financial products and services to unbanked and underserved individuals by opening 6,537 new bank accounts and maintaining 7,007 Individual Development Accounts totaling \$9,131,382 in savings. CDFIs reported providing financial literacy counseling and other training opportunities to 177,252 individuals. Finally, loans and investments originated by CDFIs over the last three years were located in more than 22 percent of eligible census tracts, exceeding the target of 10 percent. Average Certified CDFI awardee loan sizes for all loan types from 2003 to 2010 are \$62,000, and the average term is 5.9 years. Average commercial real estate loan sizes are \$694,000 with an average term of 6.4 years.

c. *What would occur in the absence of the CDFI Bond Guarantee Program.* The absence of the CDFI Bond Guarantee Program limits the ability of Certified CDFIs to provide long-term affordable loans and investments to Low-Income borrowers, individuals, and small businesses. Financial innovation and development of products specifically tailored to Low-Income communities may be curtailed and the potential for Certified CDFIs entering private capital markets would also be limited. The CDFI Bond Guarantee Program would result in a share of lending that would not otherwise occur in Low-Income areas, as well as leveraging and relending which could result in potential economic benefits. The CDFI Fund's award and tax credit programs would remain the primary source of Federally funded programs for Certified CDFIs.

6. Time Horizon for the Analysis

The CDFI Bond Guarantee Program is authorized to guarantee up to \$1 billion in Bonds issued each year through FY 2014, and the maximum maturity of the

Bonds cannot exceed 30 years. Therefore, the appropriate time horizon for analysis is FY 2013–FY 2044.

7. Alternative Approaches Considered

To address the distributional gaps and market failure identified above, the CDFI Bond Guarantee Program structure should allow for participation by Eligible CDFIs that demonstrate the ability to deploy Bond Loan proceeds within the guidelines and credit subsidy constraints as written in the Act. The CDFI Fund has chosen to structure the program pursuant to alternatives c and d described below.

Regulatory alternatives for the CDFI Bond Guarantee Program considered are: (a) Requiring minimum participation size to equal \$100 million per institution per Guarantee; (b) requiring a pool of CDFIs with a minimum participation size equal to \$500,000 per institution in a \$100 million Guarantee; (c) requiring a pool of CDFIs with a minimum participation size of \$10 million per institution in a \$100 million minimum Guarantee; or (d) requiring general recourse obligations by CDFI Borrowers.

a. *Minimum Bond Loan size of \$100 million.* This alternative would only allow a maximum of ten Eligible CDFIs to participate in the CDFI Bond Guarantee Program each year, limiting the ability of a significant percentage of Certified CDFIs from accessing the Bond Proceeds and lending them to Low-Income households and businesses in Low-Income areas. Given the requirements of a zero-subsidy program and the debt service burden of a \$100 million liability, it is likely that only ten or fewer Certified CDFIs would be able to participate based upon estimates of the additional debt service burden imposed by a \$100 million obligation. The reduced number of applicants would lead to a more streamlined approval and implementation process (e.g., faster processing, less variation in documentation) resulting in lower bond issuance costs for the Qualified Issuers and Eligible CDFIs in the obligation. Cumulative administrative costs for Eligible CDFIs would be lower legal fees, and the absence of Secondary Borrower applications that would require underwriting and due diligence. These cost reductions would be achieved in part by reduced reliance on outside counsel and consultants by applicants.

However, the benefits of the CDFI Bond Guarantee Program would also be reduced due to the concentration of benefits in a handful of Certified CDFIs. It is less likely that the funds would be disbursed among various market

segments categorized by geography, industry sector, ethnicity, and other socioeconomic factors. This alternative is less likely to address the credit rationing and distribution problems and therefore yield lower social benefits. The benefit of risk diversification would also be lessened, and could impose a greater overall cost in terms of interest rates to Secondary Borrowers.

b. *Minimum Bond Loan size of \$500,000.* Maximizing the number of organizations that can participate as an Eligible CDFI by setting a low Bond Loan limit does not result in the greatest net benefits due to the corresponding increase in administrative costs. The CDFI Fund could set the minimum Bond Loan size to \$500,000. This number is representative of the approximate average size of loans disbursed through the CDFI Program.¹⁵ Under this scenario, up to 200 Eligible CDFIs could participate in a minimum \$100 million issuance. There is a greater likelihood of the benefits being distributed among underserved market segments as measured by geography, industry sector, ethnicity, and other socioeconomic factors. Long-term capital would be provided to many of the smaller institutions certified by the CDFI Fund, and as a result these institutions would most likely be able to reduce asset-liability mismatches previously described.

Increasing the number of possible Eligible CDFIs in a single Guarantee pool would:

(1) Decrease the likelihood of issuing the maximum number of Bonds in a fiscal year due to the difficulty in grouping large numbers of Certified CDFIs into homogeneous credit qualities for credit scoring approval by the Office of Management and Budget (OMB); and

(2) for Eligible CDFIs, significantly increase costs associated with loan documentation, legal counsel, underwriting and due diligence, as well as ongoing compliance and loan monitoring.

The 10 basis point Agency Administrative Fee authorized by the Act would equal only \$500 per institution on an annual basis based on a minimum participation of \$500,000. This annual fee declines based upon outstanding principal balance. Further, Eligible CDFIs participating in the program would each incur fees associated with their own legal counsel and possibly consulting services in addition to the 10 basis point Agency Administration Fee. Although scale

¹⁵ Through the CDFI Program, the CDFI Fund has made 157 loans with an average principal of approximately \$512,000 from 1996–2008.

effects exist, there is a minimum fixed cost of issuance associated with such services that each individual Eligible CDFI would incur, thus raising the aggregate total costs of issuance for Eligible CDFIs. Therefore, this alternative is less likely to address the credit rationing and distribution problems, and therefore does not maximize social benefits.

c. *Minimum participation size of \$10 million.* The CDFI Fund has chosen to require a minimum Bond Loan size of \$10 million so long as the aggregate principal amount is at least a \$100 million minimum Bond Issue. This has been determined as the best alternative that maximizes net benefits. The proposed structure of the CDFI Bond Guarantee Program would allow two-tier borrowing: Eligible CDFIs would borrow at the \$10 million minimum and then lend to Secondary Borrowers (in some cases also CDFIs) in increments below the \$10 million minimum. Given this proposed structure, up to 100 Eligible CDFIs could theoretically participate in a fiscal year; however, several dozen Eligible CDFIs may choose to apply for larger Bond Loan amounts.

This program is not meant to be a reproduction of the CDFI Program, which provides hundreds of Certified CDFIs awards between \$100,000 and \$1,000,000 each year in an effort to support the capacity of Certified CDFIs to build direct equity in support of their capital needs. The minimum participation of \$10 million targets Certified CDFIs that have the financial and operating capacity to quickly deploy capital to Low-Income communities as well as lend Secondary Loans of smaller amounts to Certified CDFIs that are unable to absorb large amounts of debt on their balance sheets. These Certified CDFIs will also be required to demonstrate the capacity to track and measure performance and impact of the Bond Loan proceeds,

which will build the data needed to help counter the distributional issues noted in the earlier sections.

By demonstrating that Low-Income households and businesses are able to borrow and repay loans of greater amounts and tenor, the transactional costs of lending to such borrowers will decrease over time and the ability of the participating Eligible CDFIs to re-lend and leverage those funds will increase as the loans are repaid. This regulatory alternative is best suited to ameliorating the credit rationing and distribution problems, and thus maximizes net social benefits.

d. *On-balance sheet, general recourse obligations.* The CDFI Fund has chosen to require general recourse obligations that will be on-balance sheet liabilities of Eligible CDFIs. Eligible CDFIs will be underwritten for their financial strength, management capacity, and general probability of default based upon various factors. Additionally, the Eligible CDFIs are required to lend funds subject to Secondary Loan Requirements that satisfy a certain minimum recovery rate in the case of default or temporary financial hardship by an Eligible CDFI.

The benefits of this approach include a streamlined application process where the Eligible CDFI is underwritten rather than each individual asset financed by Bond Loan proceeds. Where necessary, the Credit Enhancements required to increase an Eligible CDFI's credit quality are more easily quantified and enforceable. Additionally, more Eligible CDFIs may be able to participate by achieving the zero subsidy level required of the program.

Additional costs may be incurred in order to participate in the program, including the cost of acquiring Credit Enhancements and documenting the Eligible CDFI's financial strength, management capacity, and other characteristics indicative of capacity to reduce the probability of default. Costs

such as legal and consultant fees may be reduced because each individual asset financed by Bond Loan proceeds does not need to be underwritten.

Although difficult to estimate, it is likely that this regulatory alternative is both the net most beneficial and least costly alternative. This alternative also allows the CDFI industry to demonstrate its ability to manage capital, mitigate risk, and leverage funds long-term in a way not currently captured or adequately assessed. This alternative is best suited to ameliorating the credit rationing and distribution issues identified.

Therefore, the CDFI Fund has chosen to pursue regulatory alternatives (c) and (d), above, in the design and implementation of the CDFI Bond Guarantee Program.

8. Economic Effects of Selected Approach.

Per the Act, the CDFI Bond Guarantee Program will expire at the end of FY 2014; therefore, in FY 2013 and FY 2014 the Secretary of the Treasury can provide guarantees for Bond Issues with maturities up to 30 years. The CDFI Bond Guarantee Program would provide a maximum of \$2 billion in long-term capital to fill the gap in mortgage lending, consumer lending, and business lending. A summary of the projected transfers and costs under two scenarios is provided in Table 3: One Bond Issue per fiscal year (\$200 million) and 10 Bond Issues per fiscal year (\$2 billion).

Transfers and costs have been discounted using a net present value methodology over a 30-year period using a three percent discount rate that reflects the cost of capital and seven percent discount value for benefits recommended by OMB in its guidance for Regulatory Impact Analyses. Table 3 describes the transfers and costs discounted at both the three percent and seven percent levels.

TABLE 4—POTENTIAL COSTS AND TRANSFERS

	Discounting by 3%		Discounting by 7%	
	\$200 million issuance	\$2 billion issuance	\$200 million issuance	\$2 billion issuance
COSTS				
Government Costs	\$19.9 million	\$28.8 million	\$13.4 million	\$18.6 million.
Eligible CDFIs	\$4.6 million	\$45.7 million	\$4.2 million	\$41.9 million.
Low-Income communities ...	n/a	n/a	n/a	n/a.
TRANSFERS				
Low-Income communities ...	\$200 million	\$2 billion	\$200 million	\$2 billion.

a. *Government costs.* The estimate of the administrative costs to the CDFI Fund (Government Costs) are based on current administrative costs of implementation and the FY 2014 budget request for additional Full-Time Employees (FTEs), as well as the staff required to administer and manage the program for the remaining 30 years of the program. Government costs may fluctuate depending on the size of the guaranteed Bond Issues. The costs do not reflect inflation factors or the use of non-governmental contractors to carry out administrative functions after FY 2013 and FY 2014.

b. *Eligible CDFI costs.* The estimated administrative costs to Eligible CDFIs for the CDFI Bond Guarantee Program are based on: (1) The future costs of 10 basis points in Agency Administrative Fees of the amount of the unpaid principal of the Bonds, up to the maximum maturity of 30 years, for Bonds issued through September 30, 2014, the expiration of the program, and these costs discounted back to the present value; and (2) the Bond Issue costs through September 30, 2014, the expiration of the program, and these costs discounted back to the present value. The Bond Issuance Fees are estimated to be one percent of principle value of the Bond Issue.

9. Non-Quantified and Non-Monetized Benefits and Costs

Non-quantified benefits include the reduction of information asymmetry between Eligible CDFI and mainstream financial institutions cited in section 3(b), above. Regulated banks, thrifts, and credit unions are subject to intense and standard reporting requirements by their respective regulators. However, non-regulated Certified CDFIs frequently utilize disparate accounting methodologies and report certain data points, such as borrower defaults and delinquencies, in ways that are difficult to compare across organizations. Non-profit Certified CDFIs are yet more difficult to compare due to the variety of reporting options available to non-profit institutions under generally accepted accounting principles (GAAP). By addressing the information asymmetry challenge, Eligible CDFIs in the CDFI Bond Guarantee Program may be able to provide sufficient information to traditional capital market participants to access private sources of long-term capital. This non-quantified benefit would further result in the amelioration of credit rationing, thereby increasing the amount of credit information available for traditional financial institutions.

Ancillary non-quantified benefits include additional information that the CDFI Fund will be able to develop using standardized data collection within the CDFI industry, creating consistent reporting within other programs, such as the CDFI Program, and within other related agencies and regulators that interact with Certified CDFIs. In addition, the CDFI industry will be able to develop innovative financial products to meet the long-term needs of their borrowers, thus increasing the level of direct investment from the Bond Proceeds and leveraging additional investment from the private sector. The program may also result in standardized credit rating information on the Low-Income communities served by Certified CDFIs. This would result in further reductions of informational asymmetry to the benefit of both individual borrowers and the CDFIs which serve them.

Countervailing non-monetized costs include the increased reporting and monitoring requirements for participants in the CDFI Bond Guarantee Program and administrative burden posed by data collection and verification. Depending upon the structure and composition of Eligible CDFIs that may pool together for a minimum \$100 million Bond Issue, non-monetized costs may vary greatly based on necessary legal counsel, labor hours of staff, travel requirements, and other overhead costs. CDFIs that are awardees of current CDFI Fund programs are already required to provide detailed reporting on an annualized basis. In compliance with OMB Circular A-129, the CDFI Bond Guarantee Program will collect all necessary information to manage the portfolio effectively, and track progress towards policy goals. Therefore, the non-quantified costs for participants in the CDFI Bond Guarantee Program would be the incremental burden of providing necessary reporting for the CDFI Fund to proactively manage portfolio risks and performance.

10. Uncertainty in Economic Impacts

The impact estimates are very dependent on a nested set of assumptions that presuppose knowledge of which Certified CDFIs will participate in the CDFI Bond Guarantee Program, their target markets, and the characteristics of the typical Certified CDFI lending portfolio. While the CDFI Fund could estimate average community and economic impacts based on reporting awardees, the reliability of such estimates would be misleading; econometric estimates based on awardee reporting would be

inefficient and biased since such estimates would not necessarily reflect the subgroup of Certified CDFIs that would be deemed eligible given the asset and underwriting requirements of the CDFI Bond Guarantee Program.

A firm estimate of the impacts of the CDFI Bond Guarantee Program is not feasible without understanding the costs of the assistance to participating CDFIs, which includes the interest rate on the Bond Loans and the costs of other terms and Credit Enhancements necessary to result in an estimated zero subsidy cost for the CDFI Bond Guarantee Program. The CDFI Fund intends to estimate the subsidy cost separately for each Guarantee, to account more accurately for the differing characteristics of each facility. Accordingly, the cost of capital to participating CDFIs will depend on these characteristics, as will the number of CDFIs that will participate (the take rate by type of institution) in the CDFI Bond Guarantee Program. Certified CDFI participation will also be affected by the cost of alternative financing that may be available.

The Carsey Institute¹⁶ report indicates that CDFIs typically can borrow, on a secured basis, on the open market at rates that are approximately 75–100 basis points above the LIBOR. As of May 22, 2012, the one-year LIBOR Rate was 1.05 percent,¹⁷ or 85 basis points above the 0.20 percent 1-year Treasury Yield Curve Rate.¹⁸ Although it may not be appropriate to extrapolate due to other factors which affect yield spreads as duration increases, Certified CDFIs may face borrowing costs that are 160–185 basis points above comparable Treasury securities. It is likely that the yield spread charged on 30-year maturities, which are not available to Certified CDFIs, would be significantly higher due to the additional interest-rate risk inherent to long-term debt issuances. Moreover, it is not possible to anticipate the amount of relending that CDFIs would engage in over the course of 30 years.

Uncertainty in cost estimates results from the variety and complexity of financial structures that may be presented to the CDFI Bond Guarantee Program during the application process. Complex legal structures, Credit Enhancements, and tailored provisions in each Agreement to Guarantee may result in vastly different administrative burdens for the Eligible CDFI, as well as

¹⁶ Capital Markets, CDFIs, and Organization Credit Risk, p. 47.

¹⁷ <http://www.bankrate.com/rates/interest-rates/1-year-libor.aspx>.

¹⁸ <http://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield>.

the CDFI Fund. Depending upon the structure and composition of Eligible CDFIs that may pool together for a minimum \$100 million Bond Issue, non-monetized costs may vary greatly based on necessary legal counsel, labor hours of staff, travel requirements, and other overhead costs. Further, the increased burden of compliance costs by participating Eligible CDFIs will depend on the degree of sophistication and ability of each organization's management, staff, and information systems to process and submit data required throughout the life of the program.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The collection of information contained in the interim rule will be separately submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (PRA) for approval and issuance of an OMB Control Number. Under the PRA, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. The CDFI Fund will publish a PRA Notice in the **Federal Register** to solicit comments on the information collections. In the PRA Notice published in the **Federal Register**, the CDFI Fund will specifically invite comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The CDFI Fund will solicit public comment on each of these issues for the following sections of this document that contain information collection (ICs):

1. *ICs Regarding the Application Process (12 CFR 1808.401)*. This section provides the requirements for the Qualified Issuer Application and Guarantee Application. For the

Qualified Issuer Application, the estimated burden for Qualified Issuer applicants is 240 hours. The estimated number of Qualified Issuer respondents is 10 per year. The estimated total annual burden regarding the Qualified Issuer Application process is 2,400 hours. For the Guarantee Application, the estimated burden for Qualified Issuer applicants is 240 hours. The estimated burden for Eligible CDFI applicants is 50 hours. The estimated number of Qualified Issuer respondents is 10 per year. The estimated number of Eligible CDFI respondents is 100 per year. The estimated total annual burden regarding the Guarantee Application process is 7,400 hours. These estimates may be revised in the final PRA Notices published in the **Federal Register**.

2. *ICs Regarding Reporting Requirements (12 CFR 1808.619)*. This section provides the reporting requirements for the Qualified Issuer and Eligible CDFI participants. The estimated burden for a Qualified Issuer participant is 80 hours, consisting of monthly, quarterly, and annual reporting. The estimated burden for Eligible CDFI participants is 86 hours, consisting of monthly, quarterly, and annual reporting. The estimated number of Qualified Issuer participants is 5 per year. The estimated number of Eligible CDFI participants is 50 per year. The estimated total annual burden regarding the reporting requirements is 4,700 hours. These estimates may be revised in the final PRA Notices published in the **Federal Register**.

Comments concerning suggestions for reducing the burden of collections of information should be directed by mail to the Deputy Director, CDFI Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, and to the Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

D. National Environmental Policy Act

The interim rule has been reviewed in accordance with 12 CFR part 1815, the CDFI Fund's environmental quality regulations published pursuant to the National Environmental Protection Act of 1969 (NEPA), which require that the CDFI Fund adequately consider the cumulative impact proposed activities have upon the human environment. It is the determination of the CDFI Fund that the interim rule does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with NEPA and the CDFI Fund's

environmental quality regulations at 12 CFR part 1815, neither an Environmental Assessment nor an Environmental Impact Statement is required.

E. Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(a)(2), the interim rule related to loans is exempt from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 551 et seq., including the requirement to provide prior notice and an opportunity for public comment.

List of Subjects in 12 CFR Part 1808

Community development, Guaranteed bonds, Guaranteed loans, Loan programs—housing and community development, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 12 CFR chapter XVIII is amended by adding part 1808 to read as follows:

PART 1808—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS BOND GUARANTEE PROGRAM

Subpart A—General Provisions

Sec.

- 1808.100 Purpose.
- 1808.101 Summary.
- 1808.102 Definitions.
- 1808.103 Participant not instrumentality.
- 1808.104 Deviations.
- 1808.105 Relationship to other CDFI Fund programs.
- 1808.106 OMB control number.

Subpart B—Eligibility

- 1808.200 Qualified Issuers.
- 1808.201 Designated Bonding Authority.
- 1808.202 Eligible CDFIs.

Subpart C—Interest Rates; Terms and Conditions of Bonds, Bond Loans, and Secondary Loans

- 1808.300 Interest rates.
- 1808.301 Eligible uses of Bond Proceeds.
- 1808.302 Bond terms and conditions.
- 1808.303 Risk-Share Pool.
- 1808.304 Eligible uses of Bond Loan proceeds.
- 1808.305 Bond Loan terms and conditions.
- 1808.306 Conditions precedent to Bond and Bond Loan.
- 1808.307 Secondary Loan Eligible Purposes; Terms and conditions.
- 1808.308 Relending Fund; Relending Account.
- 1808.309 Restrictions on uses of Bond Proceeds and Bond Loan proceeds.

Subpart D—Applications for Guarantee and Qualified Issuer

- 1808.400 Notice of Guarantee Availability.
- 1808.401 Application requirements.

Subpart E—Evaluation and Selection

- 1808.500 Evaluation of Qualified Issuer Applications.
- 1808.501 Evaluation of Guarantee Applications.
- 1808.502 Evaluation of Designated Bonding Authority Applications.
- 1808.503 Consultation with Appropriate Regulatory Agencies.
- 1808.504 Selection of Qualified Issuers; Approval for Guarantee.

Subpart F—Terms and Conditions of Guarantee

- 1808.600 Full faith and credit and incontestability of Guarantee.
- 1808.601 Assignment and transfer of Guarantee.
- 1808.602 Offer of Guarantee.
- 1808.603 Issuance of Guarantee.
- 1808.604 Agreement to Guarantee.
- 1808.605 Agency Administrative Fee.
- 1808.606 Program Administrator; Servicer; Master Servicer/Trustee.
- 1808.607 Representations and warranties of Qualified Issuer with respect to Guarantee.
- 1808.608 Representations and warranties of Eligible CDFI with respect to each Bond Loan.
- 1808.609 Representations and warranties of Secondary Borrower.
- 1808.610 Covenants of Qualified Issuer with respect to Guarantee.
- 1808.611 Covenants of Eligible CDFI with respect to Bond and each Bond Loan.
- 1808.612 Specific financial covenants of Eligible CDFI.
- 1808.613 Negative covenants of Eligible CDFI.
- 1808.614 Covenants of Secondary Borrower with respect to Secondary Loan.
- 1808.615 Negative covenants of Secondary Borrower.
- 1808.616 Events of default and remedies with respect to Bonds.
- 1808.617 Events of default and remedies with respect to Bond Loans.
- 1808.618 Events of default and remedies with respect to Secondary Loans.
- 1808.619 Reporting requirements.
- 1808.620 Investments in Guaranteed Bonds ineligible for Community Reinvestment Act Purposes.
- 1808.621 Conflict of interest requirements.
- 1808.622 Compliance with government requirements.
- 1808.623 Lobbying restrictions.
- 1808.624 Criminal provisions.
- 1808.625 CDFI Fund deemed not to control.
- 1808.626 Limitation on liability.
- 1808.627 Fraud, waste and abuse.

Authority: The Small Business Jobs Act of 2010, Pub. L. 111–240, §§ 1134 and 1703; 12 U.S.C. 4713a.

Subpart A—General Provisions**§ 1808.100 Purpose.**

The purpose of the Community Development Financial Institutions (CDFI) Bond Guarantee Program is to support CDFI lending by providing

Guarantees for Bonds issued as part of a Bond Issue for Eligible Community or Economic Development Purposes, as authorized by sections 1134 and 1703 of the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a).

§ 1808.101 Summary.

This section provides a summary overview of certain key provisions of the interim rule, the detailed requirements of which are set forth in subsequent subparts.

(a) *Guarantee.* Through the CDFI Bond Guarantee Program, the Guarantor will provide a Guarantee for Bonds issued by Qualified Issuers as part of a Bond Issue.

(b) *Bonds.* Pursuant to the Act at 12 U.S.C. 4713a(e), a Bond Issue shall comprise Bonds having a minimum aggregate principal amount of \$100,000,000 and a maximum aggregate principal amount of \$1,000,000,000. The principal amount of each Bond (or series of Bonds) shall not be less than \$10,000,000. A Bond Rate for each advance of funds under a Bond will be established by the Bond Purchaser as of the date of the respective advance, as provided in the Bond.

(c) *Bond Loans to Eligible CDFIs.* The Qualified Issuer will use Bond Proceeds to make Bond Loans to Eligible CDFIs for Eligible Purposes, as those terms are defined in section 1808.102. The CDFI Fund will evaluate each Eligible CDFI using standard Bond Loan Requirements to assess their creditworthiness and capacity to receive a Bond Loan. Each Eligible CDFI may borrow a Bond Loan in an amount that is at least \$10,000,000. The Bond Loan Rate shall be the same as the Bond Rate on the particular advance of funds under the Bond that funds the Bond Loan. The aggregate of the principal amounts of the Bond Loans must not exceed the maximum principal amount of the corresponding Bond Issue. The Qualified Issuer must execute Bond Loan documents for 100 percent of the principal amount of each Bond on the Bond Issue Date. Bond Loan proceeds may not be drawn down from the Qualified Issuer until the Eligible CDFI has an immediate use for the Bond Loan proceeds. Five percent, or such other amount that is determined by the CDFI Fund in its sole discretion, of Bond Loan proceeds may be used by an Eligible CDFI to capitalize Loan Loss Reserves.

(d) *Secondary Loans to Secondary Borrowers.* If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form

of promissory notes) with Secondary Borrowers as follows:

(1) Not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans; and

(2) Not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

(e) *Terms and conditions.* Bonds, Bond Loans and Secondary Loans shall have terms and conditions as set forth in Subpart F of this interim rule including at a minimum, that:

(1) Each Bond shall be a nonrecourse obligation of the Qualified Issuer, payable solely from amounts available pursuant to the Bond Documents. Each promissory note evidencing a Bond Loan shall be a general recourse obligation of the Eligible CDFI and secured by a first lien on collateral. Each Secondary Loan shall be secured by a first lien on collateral and payable solely from amounts available pursuant to the Secondary Loan documents;

(2) The maturity date of a Bond shall not be later than 30 years after the Bond Issue Date. The maturity date of Bond Loans and Secondary Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond;

(3) The Bonds shall be purchased by the Bond Purchaser on terms and conditions that are satisfactory to the Bond Purchaser, the Guarantor, and the CDFI Fund (under specific requirements set forth in § 1808.302 and the Bond Documents); and

(4) The Guarantor shall guarantee payments on Bonds issued as part of a Bond Issue in such forms and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as set forth in this interim rule in Subpart F. These requirements may be expanded upon through the program's Notice of Guarantee Availability, the Bond Documents, and the Bond Loan documents. The Qualified Issuer shall enter into the applicable Bond Documents to evidence its acceptance of the terms and conditions of the Guarantee.

§ 1808.102 Definitions.

For purposes of this part, capitalized terms used herein and not defined elsewhere are defined as follows:

(a) *Act* means the Small Business Jobs Act of 2010, Pub. L. 111-240, sections 1134 and 1703, 12 U.S.C. 4713a;

(b) *Affiliate* means any entity that Controls, is Controlled by, or is under common Control with, another entity. Control is defined as:

(1) Ownership, control or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities (as that term is defined in 12 CFR 1805.104(mm)) of any legal entity, directly or indirectly or acting through one or more other persons; or

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any legal entity; or

(3) The power to exercise, directly or indirectly, a controlling influence, as determined by the CDFI Fund, over the management, credit decisions, investment decisions, or policies of any legal entity;

(c) *Agency Administrative Fee* means a fee in an amount equal to 10 basis points (0.1 percent) of the amount of the unpaid principal of the Bond Issue, payable annually to the CDFI Fund by a Qualified Issuer;

(d) *Agreement to Guarantee* means the written agreement between the Guarantor and the Qualified Issuer which sets forth the terms and conditions on which the Guarantor will provide the Guarantee;

(e) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q), and includes, with respect to an Insured Credit Union (as such term is defined in 12 CFR 1805.104(bb)), the National Credit Union Administration;

(f) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union (as such term is defined in 12 CFR 1805.104(e));

(g) *Bond* means a security in the form of a draw-down bond or note issued by the Qualified Issuer, with each advance of funds thereunder bearing interest at an applicable Bond Rate established by the Bond Purchaser in accordance with section 1808.300 of this part, and sold to the Bond Purchaser, the proceeds of which will be used for Eligible Purposes, and which benefit from a Guarantee;

(h) *Bond Documents* mean, for each Bond, the respective Bond, Bond Trust Indenture, Agreement to Guarantee, Bond purchase agreement, and all other instruments and documentation pertaining to the issuance of the Bond;

(i) *Bond Issuance Fees* mean amounts paid by an Eligible CDFI for reasonable and appropriate expenses, administrative costs, and fees for services incurred in connection with the issuance of the Bond (but not including the Agency Administrative Fee) and the making of the Bond Loan;

(j) *Bond Issue* means at least \$100,000,000, and no more than \$1,000,000,000, in aggregate principal amount of Bonds secured by a single Guarantee; each Bond (or series of Bonds) in the Bond Issue being in the minimum principal amount of at least \$10,000,000;

(k) *Bond Issue Date* means the date on which the Bond is deemed to be issued or originated;

(l) *Bond Loan* means a loan of Bond Proceeds by a Qualified Issuer to an Eligible CDFI. A Bond Loan must be in an initial principal amount that is not less than \$10,000,000, and Bond Loan proceeds must be used for Eligible Purposes;

(m) *Bond Loan Payment Default Rate* means, in the event of a Bond Loan payment default, the applicable interest rate on any overdue amount from its due date to the date of actual payment and shall be calculated in the same manner as a late charge rate is calculated in the underlying Bond;

(n) *Bond Loan Rate* means the rate of interest for each advance of funds under a Bond Loan, which shall be the same as the Bond Rate;

(o) *Bond Loan Requirements* means the credit criteria, established by the CDFI Fund, for assessing the creditworthiness and capacity of each Eligible CDFI applicant to receive a Bond Loan;

(p) *Bond Proceeds* means the funds that are advanced by the Bond Purchaser to the Qualified Issuer under a Bond;

(q) *Bond Purchaser (or Bondholder)* means the Federal Financing Bank, the body corporate and instrumentality of the Federal Government created by the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq.);

(r) *Bond Rate* means the rate of interest for each advance of funds under a Bond;

(s) *Bond Trust Indenture* means the agreement between the Qualified Issuer and the Master Servicer/Trustee that sets forth the rights, duties, responsibilities and remedies of the Qualified Issuer and Master Servicer/Trustee with respect to the Bonds, to include responsibilities regarding the management of the collateral, the management of the funds and accounts, the repayment and redemption of the

Bonds, and the circumstances and processes surrounding any default;

(t) *Capital Distribution Plan* means the component of the Guarantee Application that demonstrates the Qualified Issuer's comprehensive plan for lending, disbursing, servicing, and monitoring each Bond Loan and that meets the requirements of § 1808.401 of this interim rule and such other requirements as may be designated in the applicable Notice of Guarantee Availability. The Capital Distribution Plan includes, among other components (specified in § 1808.401 of this interim rule), a Statement of Proposed Sources and Uses of Funds, and shall include one or more Secondary Capital Distribution Plans;

(u) *CDFI Bond Guarantee Program (or Program)* means the program of providing Guarantees for Bonds issued as part of a Bond Issue by Qualified Issuers to make Bond Loans to Eligible CDFIs for Eligible Purposes, as authorized by subsections 1134 and 1703 of the Act (12 U.S.C. 4713a), and implemented under this part;

(v) *Certified Community Development Financial Institution (or Certified CDFI)* means a financing entity that has a primary mission of promoting community development and that has been certified by the CDFI Fund as meeting the eligibility requirements set forth in 12 CFR 1805.201;

(w) *Community Development Financial Institutions Fund (or CDFI Fund)* means the Community Development Financial Institutions Fund, a wholly owned government corporation within the U.S. Department of the Treasury, established under the Riegle Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.), as amended;

(x) *Credit Enhancement* means such instrument or document proffered by an Eligible CDFI to enhance the credit quality of a Bond and/or Bond Loan. Credit Enhancements may include, but are not limited to, pledges of financial resources and lines and letters of credit issued by: an Eligible CDFI; an Affiliate; a regulated financial institution; a foundation; or another entity. The Risk-Share Pool is not a form of Credit Enhancement;

(y) *Department Opinion* means an internal opinion by the CDFI Fund regarding compliance by the Qualified Issuer with the requirements for approval of a Guarantee;

(z) *Designated Bonding Authority (or DBA)* means a Qualified Issuer selected by the CDFI Fund to issue Bonds on behalf of certain Eligible CDFIs and

make Bond Loans to such Eligible CDFIs, pursuant to this interim rule;

(aa) *Eligible Community Development Financial Institution (or Eligible CDFI)* means a Certified CDFI that has submitted an application to a Qualified Issuer for a Bond Loan, has been deemed creditworthy based on the Bond Loan Requirements, and has received a Bond Loan;

(bb) *Eligible Community or Economic Development Purpose (or Eligible Purpose)* means the allowable uses of Bond Proceeds and Bond Loan proceeds, which includes financing or Refinancing for community or economic development purposes described in 12 U.S.C. 4707(b), including but not limited to community or economic development purposes in Low-Income Areas or Underserved Rural Areas, as deemed eligible by the CDFI Fund in its sole discretion; Bond Issuance Fees in an amount not to exceed one percent of Bond Loan proceeds; and capitalization of Loan Loss Reserves in an amount that is up to five percent of the par amount of the Bond Loan, or such other amount that is determined by the CDFI Fund in its sole discretion;

(cc) *Guarantee* means the guarantee by the Guarantor, pursuant to an Agreement to Guarantee, of the repayment of 100 percent of the Verifiable Losses of Principal, Interest, and Call Premium, if any, on the corresponding Bonds issued as part of a Bond Issue; each Guarantee shall be for a Bond Issue of at least \$100,000,000, plus the related interest and call premiums;

(dd) *Guarantee Application* means the application document that a Qualified Issuer submits in order to apply for a Guarantee;

(ee) *Guarantor* means the Secretary of the Treasury or the Secretary's designee;

(ff) *Investment Area* means a geographic area meeting the requirements of 12 CFR 1805.201(b)(3)(ii);

(gg) *Loan Loss Reserves* means the use of Bond Loan proceeds (secured by a Principal Loss Collateral Provision) for a set aside in the form of cash reserves that serve as a safeguard to protect the Eligible CDFI against future losses for any loans for community or economic development purposes described in 12 U.S.C. 4707 (b), including community or economic development purposes in Low-Income Areas or Underserved Rural Areas, within the Eligible CDFI's portfolio;

(hh) *Low-Income* means an income, adjusted for family size, of not more than: (1) for Metropolitan Areas, 80 percent of the area median family income; and (2) for non-Metropolitan

Areas, the greater of: (1) 80 percent of the area median family income; or (2) 80 percent of the Statewide non-Metropolitan Area median family income;

(ii) *Low-Income Area* means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located. With respect to a census tract or block numbering area located within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater. In the case of a census tract or block numbering area located outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(jj) *Master Servicer/Trustee* means a third party trust company or financial institution that is in the business of administering facilities similar to the Bonds and Bond Loans, has been deemed acceptable by the CDFI Fund, and whose duties include, among others, exercising fiduciary powers to enforce the terms of Bonds and Bond Loans pursuant to the Bond Trust Indenture entered into by and between the Master Servicer/Trustee and the Qualified Issuer, overseeing the activities of Servicers, and facilitating Bond principal and interest payments to the Bond Purchaser;

(kk) *Metropolitan Area* means an area that contains an urban core based statistical area of 50,000 or more population and is designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e), 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(ll) *Notice of Guarantee Availability (or NOGA)* means the notice, published by the CDFI Fund, that announces to all interested parties the opportunity to submit Qualified Issuer Applications and Guarantee Applications pursuant sections 1808.400 and 1808.401 of this interim rule;

(mm) *Principal Loss Collateral Provision* means a cash or cash equivalent guarantee or facility provided in lieu of pledged collateral set forth in the Bond Documents and Bond Loan documents;

(nn) *Program Administrator* means the Qualified Issuer, or an entity designated by the Qualified Issuer and approved by the CDFI Fund, that

performs certain administrative duties related to application preparation, compliance monitoring, and reporting, as well as other duties set forth under section 1808.606 of this interim rule;

(oo) *Qualified Issuer* means a Certified CDFI, or any entity designated by a Certified CDFI to issue Bonds on its behalf, that meets the qualification requirements set forth in section 1808.200 of this interim rule, and that has been approved as such by the CDFI Fund pursuant to review and evaluation of the Qualified Issuer Application;

(pp) *Qualified Issuer Application* means the application document that a Certified CDFI (or any entity designated by a Certified CDFI to issue Bonds on its behalf) submits to the CDFI Fund in order to be approved as a Qualified Issuer prior to, or simultaneously with, a Guarantee Application;

(qq) *Qualified Secondary Loan Receivable* means payment receivables from the Secondary Loan(s) relating to the corresponding Bond Loan;

(rr) *Refinance (or Refinancing)* means the use of Bond Proceeds to refinance an Eligible CDFI's or Secondary Borrower's existing loan, which must have been used for an Eligible Purpose;

(ss) *Relending Fund* means the fund maintained by the Master Servicer/Trustee to allow an Eligible CDFI to relend Secondary Loan repayments for Eligible Purposes, not to exceed 10 percent of the principal amount outstanding of the Bonds, minus the Risk Share Pool; the Relending Fund will include a Relending Account for each Bond Issue; and each Relending Account will include a Relending Subaccount for each Bond Loan;

(tt) *Risk-Share Pool* means an account maintained by the Master Servicer/Trustee throughout the term of a Guarantee to cover losses before the Guarantee is exercised; the Risk-Share Pool is capitalized by pro rata payments equal to three percent of the amount disbursed on the Bonds from all Eligible CDFIs within a Bond Issue; payments must be funded at each disbursement under the Bond and associated Bond Loan; amounts in the Risk-Share Pool will not be returned to the Eligible CDFIs until maturity of all of the Bonds, and termination of all Bond Loans, within a Bond Issue;

(uu) *Secondary Borrower* means an entity that has made application to the Eligible CDFI for a Secondary Loan, been deemed creditworthy by the Eligible CDFI, meets the criteria set forth in the applicable Secondary Loan Requirements to receive a Secondary Loan, and has received a Secondary Loan;

(vv) *Secondary Capital Distribution Plan* means the component of the Capital Distribution Plan that pertains to the making of Secondary Loans, demonstrates the Eligible CDFI's comprehensive plan for lending, disbursing, servicing and monitoring Secondary Loans, includes a description of how the proposed Secondary Loan will meet Eligible Purposes and meets such other the requirements as may be designated in the applicable Notice of Guarantee Availability;

(ww) *Secondary Loan* means the use of Bond Loan proceeds by an Eligible CDFI to finance or Refinance a loan to a Secondary Borrower for Eligible Purposes, which meets the applicable Secondary Loan Requirements;

(xx) *Secondary Loan Requirements* mean the minimum required criteria used by each Eligible CDFI (in addition to the Eligible CDFI's underwriting criteria) to evaluate a request by a Secondary Borrower applicant for a Secondary Loan. The Secondary Loan Requirements will be established by the CDFI Fund and incorporated into the Bond Loan documents;

(yy) *Servicer* means the Qualified Issuer, or an entity designated by the Qualified Issuer and approved by the CDFI Fund, to perform various Bond Loan servicing duties, as set forth in this part;

(zz) *Special Servicer* means the Master Servicer/Trustee, or an entity designated by the Master Servicer/Trustee and approved by the CDFI Fund, that performs certain administrative duties related to the restructuring of Bond Loans that are in or about to enter into an event of default as well as other duties set forth under section 1808.606(d) of this interim rule;

(aaa) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory of the United States;

(bbb) *Statement of Proposed Sources and Uses of Funds* means the component of the Guarantee Application that describes the proposed uses of Bond Proceeds and the proposed sources of funds to repay principal and interest on the Bonds and the Bond Loans;

(ccc) *Targeted Population* means individuals or an identifiable group of individuals who are Low-Income persons or lack adequate access to Financial Products or Financial Services and meet the requirements of 12 CFR 1805.201(b)(3)(iii);

(ddd) *Trust Estate* means the Bond Loan agreement and promissory notes evidencing the Bond Loan, all funds and accounts related to the Bonds and held by the Master Servicer/Trustee pursuant to the Bond Trust Indenture including, but not limited to, the Revenue Accounts and the Relending Accounts (as such terms are defined in subsection 1808.606(f)), and any additional collateral pledged directly by the Eligible CDFI;

(eee) *Underserved Rural Area* means an area that has significant unmet needs for loans, Equity Investments, or Financial Services (as those terms are defined in 12 CFR 1805.104) and is not contained within either a Consolidated Metropolitan Statistical Areas (CMSA) or Primary Metropolitan Statistical Areas (PMSA), as such areas are defined in OMB Bulletin No. 99-04 (Revised Statistical Definitions of Metropolitan Areas (MAs) and Guidance on Uses of MA Definitions); and

(fff) *Verifiable Losses of Principal, Interest, and Call Premium* means any portion of required debt payments related to or arising out of a Bond and Bond Loan, or the enforcement of either of them, that the Qualified Issuer is unable satisfy.

§ 1808.103 Participant not instrumentality.

No participant in the CDFI Bond Guarantee Program shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1808.104 Deviations.

To the extent that such requirements are not specified by statute, the Secretary of the Treasury in consultation with the Office of Management and Budget, may authorize deviations on an individual or general basis from the requirements of this interim rule upon a finding that such deviation is essential to program objectives, and the special circumstances stated in the proposal make such deviation clearly in the best interest of the Federal Government. All proposals must be in writing and supported by a statement of the facts and the grounds forming the basis of the deviation. For deviations of general applicability, after a determination is made by the Secretary of the Treasury based on the deviation proposal, the CDFI Fund must publish notification of granted deviations in the **Federal Register**. Any deviation that was not captured in the original credit subsidy cost estimate will require either additional fees, or discretionary appropriations to cover the cost.

§ 1808.105 Relationship to other CDFI Fund programs.

Award funds received under any other CDFI Fund program cannot be used by any participant, including Qualified Issuers, Eligible CDFIs and Secondary Borrowers, to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool.

§ 1808.106 OMB control number.

The collection of information requirements in this part are subject to the review of the Office of Management and Budget (OMB).

Subpart B—Eligibility

§ 1808.200 Qualified Issuers.

(a) *Requirements and qualifications.* An applicant shall be deemed a Qualified Issuer if it is determined, in writing by the CDFI Fund, to meet the following criteria:

(1) The applicant must be a Certified CDFI, or an entity designated by a Certified CDFI to issue Bonds on its behalf;

(2) The applicant must have appropriate expertise, capacity, and experience, or otherwise be qualified to issue Bonds for Eligible Purposes;

(3) The applicant must have appropriate expertise, capacity, and experience, or otherwise be qualified to make Bond Loans for Eligible Purposes;

(4) The applicant must have appropriate expertise, capacity, and experience to serve or have identified qualified entities that will serve as its Program Administrator and Servicer; and

(5) The applicant must meet such other criteria as may be required by the CDFI Fund pursuant to this interim rule and the applicable Notice of Guarantee Availability.

(b) *Approval.* The designation of an applicant as a Qualified Issuer does not ensure that the Guarantor will approve a Guarantee Application or issue a Guarantee. In order for the Guarantor to approve a Qualified Issuer's Guarantee Application, the Qualified Issuer must meet all applicable Guarantee Application requirements including, but not limited to, creditworthiness and other requirements.

(c) *Qualified Issuer responsibilities.* The responsibilities of a Qualified Issuer shall include, but are not limited to:

(1) Preparing and submitting the Guarantee Application on behalf of Eligible CDFI applicants that designated it to serve as Qualified Issuer, including providing any additional information needed for review by the CDFI Fund;

(2) During the CDFI Fund's review and evaluation of the Guarantee Application, serving as primary point of contact between the CDFI Fund and the Eligible CDFI applicants that designated the Qualified Issuer to serve on their behalf;

(3) Issuing the Bond for purchase by the Bond Purchaser;

(4) Making Bond Loans to Eligible CDFIs, ensuring that 100 percent of Bond Proceeds are used to make Bond Loans;

(5) Charging interest on the Bond Loans as set forth in this interim rule and Bond Loan documents, and providing for such a schedule of repayment of Bond Loans as will, upon the timely repayment of the Bond Loans, provide adequate and timely funds for the payment of principal and interest on the Bonds;

(6) During the duration of the Bonds and the Bond Loans, serving as primary point of contact between the CDFI Fund and Eligible CDFIs;

(7) Overseeing the work of, or serving in the capacity of, the Program Administrator and Servicer;

(8) Enforcing the terms and requirements of the Bond Trust Indenture including, but not limited to: ensuring the repayment of Bond Loans in a timely manner pursuant to the terms of Bond Loan documents; assigning delinquent Bond Loans to the Guarantor upon demand by the CDFI Fund or the Guarantor; and ensuring that the Master Servicer/Trustee establishes and maintains the Risk-Share Pool throughout the term of the Guarantee;

(9) Reviewing collateral and Credit Enhancement requirements for each Bond Loan and providing information on such collateral and Credit Enhancement, as requested, to the CDFI Fund;

(10) Making payment of the Agency Administrative Fee to the CDFI Fund;

(11) Submitting all required reports and additional documentation (including reconciling financial data and Capital Distribution Plan updates, as necessary); and

(12) Such other duties and responsibilities as the CDFI Fund, the Guarantor, or the Bondholder may require.

(d) **Bond Issuance Fees.** The Qualified Issuer may charge Bond Issuance Fees and all fees reasonable and necessary for administering and servicing the Bonds or the Bond Loans, post issuance, to Eligible CDFIs.

(e) **Restriction.** A Qualified Issuer may not receive a Bond Loan under any Bond Issuance for which it serves as a Qualified Issuer.

§ 1808.201 Designated Bonding Authority.

(a) **General.** In its sole discretion, the CDFI Fund may solicit Qualified Issuer Applications from entities proposing to serve as the Designated Bonding Authority (DBA). The CDFI Bond Guarantee Program shall only have one DBA at any given time. In order to be selected to serve as the DBA, the entity must meet all qualifications of a Qualified Issuer set forth in section 1808.200 of this interim rule; additional qualifications may be set forth in the applicable NOGA as determined by the CDFI Fund.

(b) **Selection.** The DBA will serve as a CDFI Fund-selected Qualified Issuer and designated Qualified Issuer for Eligible CDFIs that do not elect to designate another Qualified Issuer. The DBA will prepare and submit a Guarantee Application on behalf of such Eligible CDFI applicants, in accordance with such criteria set forth in this interim rule, the applicable Notice of Guarantee Availability and the Qualified Issuer Application.

§ 1808.202 Eligible CDFIs.

Each Eligible CDFI applicant seeking a Bond Loan must meet the following criteria:

(a) Be certified by the CDFI Fund as meeting the eligibility requirements set forth in 12 CFR 1805.201;

(b) Have the appropriate expertise, capacity, and experience, or otherwise be qualified to use the proceeds of Bond Loans for Eligible Purposes; and

(c) Meet such other criteria and requirements set forth in the applicable Notice of Guarantee Availability, the Guarantee Application, the Bond Loan Requirements, related Bond and Bond Loan documents, and such other requirements of the CDFI Fund.

Subpart C—Interest Rates; Terms and Conditions of Bonds, Bond Loans, and Secondary Loans

§ 1808.300 Interest rates.

(a) **Interest rates.** (1) A Bond Rate will be established by the Bond Purchaser as of the date of the respective advance of funds, as provided in the Bond. The Bond Rate for each advance of funds must be fixed and consistent with Federal credit policies outlined in OMB Circular A-129. The FFB, as Bond Purchaser, will set rates to the borrower pursuant to section 6(b) of the Federal Financing Bank Act (12 U.S.C. 2285(b)) and the FFB Lending Policy. This rate will be indexed to the appropriate Treasury rate based on the Treasury yield curve and include a spread to be determined by the Bond Purchaser; variable Bond Rates are not permitted.

(2) Interest on each advance of funds under a Bond shall be computed as provided in the Bond.

(3) A principal and interest payment schedule will be determined and provided to the Qualified Issuer for each advance of funds under a Bond, based on the Bond Rate established for the respective advance. The final principal and interest payment schedule for amounts due under a Bond will be the aggregation of the individual principal and interest payment schedules for all advances of funds under the Bond.

(4) The Bond Loan Rate shall be the same as the Bond Rate on the particular advance of funds under the Bond that funds the Bond Loan.

(5) The rate of interest for each Secondary Loan shall be established by the Eligible CDFI in accordance with subsection 1808.307(c), and may be subject to limitations specified in the applicable NOGA.

(b) **Bond Loan payment default interest rate.** In the event of a payment default on a Bond Loan, the Eligible CDFI shall pay interest on any overdue amount from its due date to the date of actual payment at the Bond Loan Payment Default Rate. The Bond Loan Payment Default Rate shall be calculated in the same manner as a late charge is calculated under the underlying Bond.

§ 1808.301 Eligible uses of Bond Proceeds.

Bond Proceeds must be used by a Qualified Issuer to finance Bond Loans or Refinance loans to Eligible CDFIs for Eligible Purposes as defined in section 1808.102 of this interim rule. A Qualified Issuer that is also a Certified CDFI may not finance a Bond Loan to itself or refinance its own loan. One hundred percent of the principal amount of each Bond must be used to make Bond Loans. As a Bond Loan is repaid, such repaid Bond Loan proceeds in excess of those required for debt service payments on the Bond must be used to repay the Bond or held in the Relending Account and used for additional Secondary Loans, to the extent authorized under § 1808.308.

§ 1808.302 Bond terms and conditions.

(a) **Maturity date.** As required by 12 U.S.C. 4713a(e)(1)(D), the maturity date of a Bond shall not be later than 30 years after the Bond Issue Date. The maturity date for any advance of funds under a Bond shall not be later than the maturity date of the Bond.

(b) **Nonrecourse obligation.** Each Bond shall be a nonrecourse obligation of the Qualified Issuer, payable solely

from amounts available pursuant to the Bond Documents.

(c) *Terms.* The Bonds may contain only terms that are consistent with the lending policies and terms of the Bond Purchaser.

(d) *No subordination.* The Bonds or Bond Loans may not be subordinated to any new or existing liability and effective subordination of the Bonds or Bond Loans to tax-exempt obligations will render the Guarantee void, in accordance with OMB Circular No. A-129 (Policies for Federal Credit Programs and Non-Tax Receivables) and applicable provisions of the Internal Revenue Code.

(e) *Other limitations.* The CDFI Fund may impose other limitations as appropriate to administer the CDFI Bond Guarantee Program including, but not limited to, requiring Qualified Issuers to obtain Credit Enhancement to safeguard against the risk of default.

(f) *Terms for Bond issuance and disbursement of Bond Proceeds.* (1) The Qualified Issuer must execute Bond Loan documents for 100 percent of the principal amount of each Bond on the Bond Issue Date. There will be an annual assessment to determine whether the Qualified Issuer is subject to the repayment provision established in 12 U.S.C. 4713a(c)(4). Terms and conditions for the annual assessment will be set forth in the applicable Notice of Guarantee Availability.

(2) Disbursements of Bond Proceeds to the Qualified Issuer shall be made pursuant to an advance request process established by the Bond Purchaser and the CDFI Fund under which the Qualified Issuer shall request an advance of funds under a Bond.

(g) *Amortization of Bond.* The principal amount of each advance of funds under a Bond shall amortize in level debt service payments of principal and interest, which payments shall be due either quarterly or semi-annually, as determined by the Qualified Issuer and the Bond Purchaser, and which shall begin on the first principal payment date specified in the Bond, as determined by the Qualified Issuer and the Bond Purchaser. Prior to the first principal payment date, interest accrued shall be due on the payment dates specified in the Bond, as determined by the Qualified Issuer and the Bond Purchaser.

(h) *Optional prepayment of Bonds.* All or a portion of any advance of funds under a Bond, or the Bond in its entirety, may be prepaid by the Qualified Issuer at any time. Any partial prepayment of an advance shall be in an amount equal to at least \$100,000 of principal. Each partial prepayment of an

advance of funds under a Bond shall be applied in the manner set forth in the Bond. Any partial or full prepayment of an advance of funds under a Bond shall be subject to the payment of a prepayment price, as provided in the Bond Documents.

(i) *Mandatory prepayment of Bonds.* (1) Any Bond shall be subject to mandatory prepayment if Bond Loans or Secondary Loans are not made in a timely manner, as follows:

(i) On the Calculation Date (as defined in subsection 1808.308(e)) of each year, any amount retained in the Relending Subaccount that exceeds the Relending Subaccount Maximum (as defined in subsection 1808.308(d)) by \$100,000 or more shall be applied to prepay Bonds on the next succeeding payment date.

(ii) Any amounts derived from the liquidation of collateral from the Bond Loan and/or Secondary Loan in connection with the exercise by the Guarantor, the Qualified Issuer or the Bondholder of remedies upon default of the Bond Loan shall be applied, immediately upon liquidation, in the following order (inclusive of reasonable fees and expenses associated therewith):

(A) To the repayment of any amounts drawn under the Guarantee;

(B) To the prepayment of Bonds, in a like amount;

(C) To the replenishment of any funds drawn from the Risk-Share Pool Fund; and

(D) To the Eligible CDFI for application in accordance with the Secondary Loan documents.

(2) When an amount is required to be applied as a mandatory prepayment of Bonds, the Qualified Issuer may select which advances of funds under a Bond are to be prepaid. Any amount applied as a partial prepayment of an advance under a Bond shall be applied as provided in the Bond. Any partial or full prepayment of an advance of funds under a Bond shall be subject to the payment of a prepayment price, as provided in the Bond Documents.

§ 1808.303 Risk-Share Pool.

The Master Servicer/Trustee, on behalf of the Qualified Issuer and for the benefit of the Bondholder, shall establish a Risk-Share Pool that is funded at each disbursement of the Bond Loan proceeds by payment from each Eligible CDFI in accordance with 12 U.S.C. 4713a(d). The Risk-Share Pool must remain in place throughout the term of the Guarantee. Amounts in the Risk Share Pool Fund will not be returned to Eligible CDFIs until maturity of all of the Bonds, and termination of all of the Bond Loans, within a Bond Issue.

(a) At each disbursement of the Bond Loan proceeds, each Eligible CDFI shall deposit an amount that is equal to three percent of the disbursement, for a total of three percent of the guaranteed amount outstanding of the Bond, from monies other than Bond Loan proceeds, into the applicable subaccount of the Risk-Share Pool Fund. Such monies shall remain in said account throughout the term of the Bond.

(b) Any interest on a Bond Loan in excess of the Bond Loan Rate derived by the Qualified Issuer during any period during which the Bond Loan Payment Default Rate applies shall also be deposited in the Risk-Share Pool Fund.

(c) The Risk-Share Pool Fund shall be applied by the Master Servicer/Trustee to payments of debt service on the Bond Issue in the event that the Eligible CDFI defaults in the corresponding payment of debt service on the Bond Loan. The defaulted Eligible CDFI's deposit shall be applied first to any such payment of debt service. After depletion of the defaulted Eligible CDFI's deposit, each remaining Eligible CDFI's deposit shall be applied prorata to any such payment of debt service. Monies on deposit in the Risk-Share Pool Fund shall be applied to such payments and shall be depleted in full prior to any draw on the Guarantee.

(d) Eligible CDFIs (excluding the Eligible CDFI in default and responsible for a draw) shall not be required to replenish the Risk-Share Pool Fund in the event of a draw.

(e) The Risk Share Pool deposit shall be sufficient collateral to secure any draw on Bond Loan proceeds related to the costs of issuance pursuant to 1808.304(b).

(f) In the event of a payment default on the Bond Loan by an Eligible CDFI, the Qualified Issuer shall notify the CDFI Fund and request permission to draw from the Risk-Share Pool to cover any default of principal and interest payments due to the Bond Purchaser.

(g) Amounts in the Risk Share Pool Fund will not be returned to Eligible CDFIs until maturity of all of the Bonds, and termination of all of the Bond Loans, within a Bond Issue. Upon maturity of all of the Bonds, and termination of the Bond Loans, within a Bond Issue, the pro rata amount of each Eligible CDFI's payments in the Risk-Share Pool shall be returned to each Eligible CDFI; provided however, that such Eligible CDFI has properly replenished any draws on the Risk-Share Pool attributed to nonpayment of its Bond Loan and the corresponding Bond.

§ 1808.304 Eligible uses of Bond Loan proceeds.

(a) *Eligible uses.* Bond Loan proceeds shall be only used for Eligible Purposes, to prefund one monthly installment of Bond Loan payments, and to pay Bond Issuance Fees. As a Bond Loan is repaid, such repaid Bond Loan proceeds must be held in the Relending Account and used for additional Secondary Loans, to the extent authorized under § 1808.308.

(b) *Bond Issuance Fees.* (1) Amounts not to exceed one percent of Bond Loan proceeds may be applied to pay Bond Issuance Fees. Bond Loan proceeds that are used to pay Bond Issuance Fees shall be applied in the following order of priority:

(i) To pay reasonable transaction fees and expenses of the Qualified Issuer, its advisors and consultants, related to the Bond issuance (but not including any salaries or administrative costs of the Qualified Issuer unrelated to the Bond issuance);

(ii) To pay reasonable transaction fees and expenses of the Master Servicer/Trustee, its advisors and consultants, related to the Bond issuance; and

(iii) To pay reasonable transaction fees and expenses of the Eligible CDFI, its advisors and consultants, related to the making of the Bond Loan.

(2) Any fees and expenses arising out of each transaction which, in the aggregate, exceed the one percent limit on Bond Issuance Fees payable from Bond Loan proceeds must be paid by the Eligible CDFI from monies other than Bond Loan proceeds.

(c) *Prefunding of Bond Loan payments.* Bond Loan proceeds may be used to prefund one monthly installment of Bond Loan payments.

§ 1808.305 Bond Loan terms and conditions.

(a) *Maturity date.* The maturity date of a Bond Loan shall not be later than 30 years after the Bond Issue Date. The maturity date of Bond Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond.

(b) *Bond Loan general recourse obligation; Collateral.* (1) The Bond Loan shall be a general recourse obligation of the Eligible CDFI.

(2) The Bond Loan shall be further secured by a first lien of the Master Servicer/Trustee, on behalf of the Bondholder, on:

(i) The Trust Estate;

(ii) Qualified Secondary Loan Receivables; and

(iii) Either:

(A) An assignment of the Secondary Loan collateral (other than a Principal Loss Collateral Provision) from the

Eligible CDFI to the Master Servicer/Trustee; or

(B) Provision of a Principal Loss Collateral Provision for the benefit of the Master Servicer/Trustee, in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(3) The CDFI Fund may, in its sole discretion, approve alternative forms of Bond Loan collateral.

(4) A parity first lien on pledged collateral may be accepted, in the sole discretion of the CDFI Fund.

(5) If any collateral becomes non-performing during the term of the Bond Loan, the Guarantor may require the applicable Eligible CDFI to substitute other collateral that is of equal quality to the initial collateral, when performing, acceptable to the Guarantor in its sole discretion.

(6) An Eligible CDFI's parent organization, Affiliate, or an entity that is related to the Eligible CDFI through its management structure, may assume limited recourse obligation for the Bond Loan if it provides Credit Enhancement and/or pledges financial resources or such other financial support or risk mitigation that would enhance the Eligible CDFI's creditworthiness and its ability to repay the Bond Loan, thereby decreasing the risk underlying the Guarantee.

(c) *Disbursement of Bond Loan proceeds.* (1) Bond Loans shall be draw-down loans. Disbursements of Bond Loan proceeds to the Eligible CDFI shall be made pursuant to a requisition process established by the Bond Purchaser and the CDFI Fund, which shall include a process by which the Qualified Issuer shall request an advance from the Bondholder under the Bond and a process by which the Eligible CDFI shall request disbursement from the Qualified Issuer.

(2) Each requisition shall be accompanied by invoices and certifications by the Eligible CDFI (and the Secondary Borrower, if applicable) as to expenditure of proceeds for Eligible Purposes.

(3) No Bond Loan proceeds may be disbursed later than 60 months after the Bond Issue Date. Any Bond Loan proceeds not disbursed will have been forfeited by the Eligible CDFI.

(4) Disbursements to capitalize the Eligible CDFI's Loan Loss Reserves shall be made pursuant to a requisition process established by the Qualified Issuer and the CDFI Fund.

(d) *Amortization of Bond Loan.* Each Bond Loan shall amortize in the same manner as the corresponding Bond; provided that principal and/or interest on each Bond Loan shall be payable to

the Qualified Issuer in monthly installments based on the required quarterly or semi-annual installments, as applicable, due on the corresponding Bond; provided further, that each Eligible CDFI shall prefund one monthly payment installment not later than the thirtieth day prior to the first payment date of the corresponding Bond so that on the thirtieth day prior to such Bond payment date, the Eligible CDFI shall have paid in full all amounts due on the Bond payment date.

(e) *Optional prepayment of Bond Loan.* The Bond Loan shall be subject to prepayment, in whole or in part, at the option of the Eligible CDFI in accordance with the optional prepayment provisions of the corresponding Bond (including the required prepayment minimums of \$100,000) and shall be subject to the payment of a prepayment price, as determined by the Bondholder in accordance with the corresponding Bond.

(f) *Mandatory prepayment of Bond Loan.* The Bond Loan shall be subject to mandatory prepayment by the Eligible CDFI in accordance with the mandatory prepayment provisions of the corresponding Bond.

§ 1808.306 Conditions precedent to Bond and Bond Loan.

The ability of the Qualified Issuer to issue a Bond and make a Bond Loan shall be subject to the satisfaction of the following conditions precedent:

(a) Evidence satisfactory to the Qualified Issuer that the Eligible CDFI will comply with the terms and conditions of the Bond Loan documents, including repayment of the Bond Loan;

(b) Evidence satisfactory to the Qualified Issuer, the Guarantor, and the CDFI Fund that the Eligible CDFI has the authority to enter into the Bond Loan, has secured the Credit Enhancement, if any, demonstrated a reasonable prospect of repayment of the Bond Loan, and pledged the collateral (including executed security documents, UCC-1 financing statements or mortgages, as applicable);

(c) A Guarantee Application that has been approved by the Guarantor;

(d) A satisfactory credit review by the CDFI Fund and in compliance with the Bond Loan Requirements, including submission of complete and accurate Guarantee Application materials, submitted in a timely manner, demonstrating the Eligible CDFI's ability to repay the Bond Loan;

(e) Opinions of legal counsel to the Qualified Issuer and the Eligible CDFI;

(f) Executed Bond Loan documents;

(g) Organizational documents of the Eligible CDFI;

(h) Certifications by the Qualified Issuer and Eligible CDFIs that Bond Proceeds and Bond Loan proceeds will not be used for lobbying by recipients of Federal loans or guarantees;

(i) A statement that no default, event of default, or due and unsatisfied liability has occurred and is continuing with respect to any obligations of the Qualified Issuer and each Eligible CDFI to the CDFI Fund, the Guarantor, the Bond Purchaser, the U.S. Internal Revenue Service, or any other agency, authority or instrumentality of the Federal Government; and

(j) Any other conditions precedent set forth in the Bond Loan documents, including documentation that any credit enhancements have been secured by the Eligible CDFI.

§ 1808.307 Secondary Loan Eligible Purposes; Terms and conditions.

(a) *Eligible Purposes.* Eligible CDFIs must make Secondary Loans for Eligible Purposes. Secondary Loan proceeds may not be used to capitalize loan loss reserves.

(b) *Making Secondary Loans.* (1) If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows:

(i) Not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of the Eligible CDFIs' Bond Loan proceeds allocated for Secondary Loans; and

(ii) Not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of the Eligible CDFIs' Bond Loan proceeds allocated for Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

(2) In the event that the Eligible CDFI does not comply with the foregoing requirements of paragraphs (b)(1)(i) and (ii) of this section, the available Bond Loan proceeds at the end of the applicable period shall be reduced by an amount equal to the difference between the amount required by paragraphs (b)(1)(i) and (ii) minus the amount previously committed to the Secondary Loans in the applicable period. Consistent with the corresponding Bond Loan, the Secondary Loans shall be drawn down by the Secondary Borrowers upon demonstration of an Eligible Purpose.

(c) *Secondary Loan interest rate.* The rate of interest with respect to each

Secondary Loan shall be determined by each Eligible CDFI in accordance with the following limitations:

(1) With respect to each Secondary Loan, the Eligible CDFI will be required to propose to the CDFI Fund:

(i) A minimum and maximum spread over the corresponding Bond Loan Rate which will represent the standard minimum and maximum interest rate (Minimum Secondary Loan Rate and Maximum Secondary Loan Rate, respectively); and

(ii) A maximum spread over the Maximum Secondary Loan Rate in event of a Secondary Loan default (Maximum Secondary Loan Default Spread).

(2) The CDFI Fund reserves the right to evaluate, approve, modify, or disapprove the proposed Minimum Secondary Loan Rate, Maximum Secondary Loan Rate, and Maximum Secondary Loan Default Spread before approving any Guarantee Application.

(d) *Secondary Loan default rate.* The Eligible CDFI may charge a default rate on the Secondary Loan so long as such rate does not exceed the Maximum Secondary Rate, plus the Maximum Secondary Loan Default Spread.

(e) *Secondary Loan maturity.* The maturity date with respect to the Secondary Loan shall be in accordance with the requirements of the applicable Secondary Loan Requirements. The maturity date of Secondary Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond.

(f) *Secondary Loan collateral.* (1) The Secondary Loan shall be payable from amounts made available pursuant to the Secondary Loan documents, and secured by:

(i) A first lien of the Eligible CDFI on pledged collateral in an amount that is consistent with the loan-to-value ratio requirements set forth in the Secondary Loan Requirements; or

(ii) A Principal Loss Collateral Provision for the benefit of the Master Servicer/Trustee, in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(2) Qualified Secondary Loan Receivables may be used as collateral; provided however, that such collateral is secured by a first lien on the Secondary Loan collateral in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(3) A parity first lien on pledged collateral may be accepted, in the sole discretion of the CDFI Fund.

(g) *Commitments for Secondary Loans.* Each proposed Secondary Loan shall be approved by the credit

committee of the Eligible CDFI or its equivalent, in accordance with the applicable Secondary Loan Requirements and the Eligible CDFI's own underwriting requirements.

(h) *Disbursement of Secondary Loan proceeds.* (1) Consistent with the corresponding Bond Loan, Secondary Loans shall be draw-down loans. Disbursements of Secondary Loan proceeds to the Secondary Borrower shall be made pursuant to a requisition process established by the Qualified Issuer and the CDFI Fund and shall mirror the requirements for the disbursement of Bond Proceeds.

(2) Each requisition shall be accompanied by invoices and certifications by the Secondary Borrower as to expenditure of proceeds for Eligible Purposes. The Eligible CDFI must also attest that the Secondary Loan conforms to the requirements set forth in the applicable Secondary Loan Requirements. In the case of Refinancings, the Eligible CDFI must also attest that the original loan was used for an Eligible Purpose.

(3) Secondary Loan proceeds shall be disbursed in accordance with the applicable Secondary Loan Requirements which shall set forth, among other requirements, that Secondary Loan disbursements shall be made in accordance with commercially reasonable standards and timeframes for disbursement based on the nature of the Eligible Purposes. The Secondary Loan Requirements shall also specify what constitutes a commercially reasonable timeframe for disbursement in connection with specific types of Eligible Purposes. Notwithstanding the foregoing, each Eligible CDFI shall propose a timeframe for disbursement in connection with each Secondary Loan, which timeframe shall be subject to the requirements set forth in the Secondary Loan Requirements.

(i) *Amortization of Secondary Loans.* Secondary Loans shall amortize as determined by the Eligible CDFI; provided that Secondary Loan amortization installments shall conform to the requirements of the applicable Secondary Loan Requirements.

(j) *Prepayment of Secondary Loans.* Secondary Loans shall be subject to prepayment as determined by the Eligible CDFI; provided that the Secondary Loan documents may provide for modification of Secondary Loan terms (so long as such modification does not affect the corresponding Bond or Bond Loan) and shall provide for mandatory prepayment of the Secondary Loan from liquidation of collateral upon the exercise of default remedies by the Eligible CDFI, the

Qualified Issuer or the Guarantor as required by the Bond, the Bond Loan documents, or the Agreement to Guarantee, as applicable.

(k) *Repayment of Secondary Loans.* As Secondary Loans are repaid, the Eligible CDFI may, through the Relending Fund, Refinance and substitute as collateral for the Bond Loan other loan(s) for Eligible Purposes that meet the required Secondary Loan Requirements, provided that the Eligible CDFI makes Bond Loan payments as required. If the outstanding principal balance of the Bond Loan exceeds the outstanding principal balance of the Bond Loan in use for the Eligible Purposes, the Eligible CDFI shall repay the difference, which shall be deposited in the Relending Account, and credited to the corresponding Relending Subaccount.

§ 1808.308 Relending Fund; Relending Account.

(a) *General.* As Bond Loans are repaid, such amounts in excess of those required for debt service payments on the Bonds may be held in the Relending Account and used for additional Secondary Loans, to the extent authorized in this section.

(b) *Application of funds to Secondary Loans.* Amounts on deposit in the Relending Account shall be applied by the Eligible CDFI to make additional Secondary Loans, the term of which shall not exceed the maturity of the Bond.

(c) *Requirements of Secondary Loans from Relending Account.* Secondary Loans made from the Relending Account shall meet all the requirements of the Secondary Loan Requirements, and conform to the following additional conditions:

(1) The Qualified Issuer has received and approved a Bond Loan commitment request submitted by the Eligible CDFI;

(2) No material event has occurred and is continuing or is threatened at the Eligible CDFI level or Qualified Issuer level that adversely affects the Eligible CDFI, the Bond or the Bond Loan;

(3) No Eligible CDFI event of default has occurred and is continuing with respect to the Bond Loan;

(4) No Qualified Issuer event of default has occurred and is continuing with respect to the Bond;

(5) There exists no unreplenished draw on the Risk-Share Pool Fund by the Eligible CDFI;

(6) The maturity of Secondary Loans made from the Relending Fund shall not extend beyond the maturity date of the corresponding Bond; and

(7) Any other conditions set forth in this interim rule, the applicable Notice

of Guarantee Availability, the Secondary Loan Requirements or the Bond Loan documents.

(d) *Relending Subaccounts.* The balance of each subaccount of the Relending Fund (each a Relending Subaccount) shall not equal more than 10 percent of the principal amount outstanding of the Bond Loan, minus the prorata share of the Risk-Share Pool, as of the Calculation Date (the Relending Subaccount Maximum).

(e) *Notification Date.* For purposes of this section, Notification Date means the date on which the Master Servicer/Trustee notifies the Eligible CDFI that the balance in the applicable Relending Subaccount exceeds the applicable Relending Subaccount Maximum. Calculation Date means, following the Notification Date, the earlier of:

(1) The date on which the balance in such Relending Subaccount becomes less than or equal to the applicable Relending Subaccount Maximum, or

(2) Six months following the Notification Date.

(f) *Mandatory redemption.* Any amounts retained in the Relending Subaccount that exceeds the Relending Subaccount Maximum by \$100,000 or more as of the applicable Calculation Date shall be transferred to the Redemption Account of the Debt Service Fund (as defined in § 1808.606(f)) to effectuate a mandatory redemption of the corresponding Bond in accordance with the terms of the Bond Trust Indenture. The determination of the actual amount on deposit on any Calculation Date shall exclude amounts then obligated pursuant to any executed promissory notes, whether then disbursed or undisbursed.

§ 1808.309 Restrictions on uses of Bond Proceeds and Bond Loan proceeds.

Pursuant to 12 U.S.C. 47123a(c)(5), Bond Loan proceeds shall not be used for:

- (a) Political activities;
- (b) Lobbying, whether directly or through other parties;
- (c) Outreach;
- (d) Counseling services;
- (e) Travel expenses;
- (f) For the salaries or administrative costs of the Qualified Issuer or any recipients of Bond Proceeds, other than those costs covered by Bond Issuance Fees;

(g) To fund the Risk-Share Pool;

(h) To pay fees other than Bond Issuance Fees; or

(i) Any other use as may be specified in the applicable Notice of Guarantee Availability.

Subpart D—Applications for Guarantee and Qualified Issuer

§ 1808.400 Notice of Guarantee Availability.

Interested parties will be invited to submit Qualified Issuer Applications and Guarantee Applications in accordance with this interim rule and the applicable Notice of Guarantee Availability. The NOGA will set forth application and eligibility requirements for an entity that wishes to be designated as a Qualified Issuer (including, in the CDFI Fund's sole discretion, the Designated Bonding Authority) and a Qualified Issuer that wishes to be approved to receive a Guarantee. The NOGA may also contain eligibility requirements, application procedures, and additional terms and conditions for entities wishing to serve as Servicers, Program Administrators, and other roles as may be determined by the CDFI Fund. The NOGA will advise interested parties on how to apply and will establish criteria, deadlines, and other Qualified Issuer and Guarantee Application requirements, including specifying any additional terms and conditions, limitations, special rules, procedures, and restrictions for a given application period.

§ 1808.401 Application requirements.

(a) *Qualified Issuer Application.* A Qualified Issuer applicant shall provide all required information in its Qualified Issuer Application to establish that it meets all criteria for designation as a Qualified Issuer and can carry out all Qualified Issuer responsibilities and requirements including, but not limited to, information that demonstrates that the applicant has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes. After receipt of a Qualified Issuer Application, the CDFI Fund may request additional information and clarifying or technical information on the materials submitted as part of the Qualified Issuer Application. The CDFI Fund will provide the template for the Qualified Issuer Application.

(b) *Guarantee Application.* (1) A Qualified Issuer shall provide all required information in its Guarantee Application to establish that it meets all criteria set forth in this interim rule to receive a Guarantee and can carry out all Guarantee requirements including, but not limited to, information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes. The Guarantee

Application shall include a Capital Distribution Plan and a Secondary Capital Distribution Plan for each potential Eligible CDFI, as well as any other requirements set forth in the applicable Notice of Guarantee Availability or as may be required by the CDFI Fund in its sole discretion for the evaluation and selection of Guarantee applicants. After receipt of a Guarantee Application, the CDFI Fund may request additional information and clarifying or technical information on the materials submitted as part of the Guarantee Application. The CDFI Fund will provide the template for the Guarantee Application.

(2) The Capital Distribution Plan shall include, but not be limited to, the following information:

(i) Statement of Proposed Sources and Uses of Funds;

(ii) For the Qualified Issuer and each Certified CDFI seeking a Bond Loan, an organizational capacity statement, a plan that describes how the proposed Bond Loan will meet Eligible Purposes, and a description of Credit Enhancement, if any;

(iii) A Secondary Capital Distribution Plan, if applicable; and

(iv) Assurances and certifications that not less than 100 percent of the principal amount of Bonds will be used to make Bond Loans for Eligible Purposes beginning on the Bond Issue Date, and that Secondary Loans shall be made as set forth in subsection 1808.307(b).

Subpart E—Evaluation and Selection

§ 1808.500 Evaluation of Qualified Issuer Applications.

(a) *General.* Each Qualified Issuer Application will be evaluated by the CDFI Fund and, if acceptable, the applicant will be designated as a Qualified Issuer, at the sole discretion of the CDFI Fund. The Qualified Issuer Application review and evaluation process will be based on established standard operating procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the application review process, the CDFI Fund will evaluate Qualified Issuer applicants on a merit basis and in a fair and consistent manner. Each Qualified Issuer applicant will be reviewed on its ability to successfully implement the activities proposed in its Qualified Issuer Application and carry out the responsibilities of a Qualified Issuer over the life of the Bond. The CDFI Fund will periodically reevaluate the Qualified Issuer over the life of the

Bond to ensure it meets the performance standards over the life of the facilities.

(b) *Eligibility and completeness.* A Qualified Issuer applicant will not be eligible to be designated as a Qualified Issuer if it fails to meet the eligibility requirements described in § 1808.200 of this part and the applicable NOGA, or if it has not submitted complete and timely Qualified Issuer Application materials. The CDFI Fund reserves the right to request additional information from the Qualified Issuer applicant, as the CDFI Fund deems appropriate.

(c) *Substantive review.* When evaluating Qualified Issuer Applications and selecting applicants to be designated as Qualified Issuers, the CDFI Fund will apply the criteria set forth in the Act at 12 U.S.C. 4713a(a)(8), this interim rule, and the applicable NOGA including, but not limited to, the following evaluation factors:

(1) The extent to which the Qualified Issuer Application demonstrates that the applicant possesses the appropriate expertise, capacity and experience, or other qualifications to manage the Bond Issue on the terms and conditions set forth in this interim rule and the applicable NOGA;

(2) The expertise and experience of its Program Administrator and Servicers;

(3) The Qualified Issuer applicant's demonstrated performance of financially sound business practices relative to the industry norm for bond issuers, as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, and/or auditors;

(4) Information that demonstrates the applicant, its Program Administrator and Servicers have the appropriate expertise, capacity, and experience or otherwise be qualified to originate, underwrite, service and monitor loan portfolios that serve Eligible Purposes and are targeted toward Low-Income and Underserved Rural Areas; and

(5) Such other criteria that the CDFI Fund deems appropriate for purposes of evaluating the merits of a Qualified Issuer Application.

§ 1808.501 Evaluation of Guarantee Applications.

(a) *General.* After being designated as a Qualified Issuer, the Qualified Issuer may submit a Guarantee Application, seeking authority to issue Bonds and receive a Guarantee on the proposed Bond Issue. A successful Guarantee Application must:

(1) Demonstrate that the Qualified Issuer and the proposed Eligible CDFIs have a feasible plan to successfully repay the Bond (including principal, interest, and call premium) and Bond

Loans according to their respective terms, to the satisfaction of the CDFI Fund; and

(2) Meet any other requirements deemed appropriate by the CDFI Fund and the Guarantor.

(b) *Eligibility and completeness.* A Qualified Issuer will not be eligible to receive a Guarantee if it fails to meet the eligibility requirements set forth in § 1808.200 of this part and the applicable NOGA, or if it has not submitted complete and timely Guarantee Application materials. The CDFI Fund reserves the right to request additional information from the Qualified Issuer, or to reject a Guarantee Application as the CDFI Fund may deem appropriate.

(c) *Substantive review.* In evaluating Guarantee Applications and selecting a Qualified Issuer to receive a Guarantee, the CDFI Fund and the Guarantor will apply the criteria set forth in this interim rule and the applicable NOGA including, but not limited to, the following evaluation factors:

(1) The extent to which the Guarantee Application proposes strategies that demonstrate the Qualified Issuer's ability to implement the Capital Distribution Plan;

(2) The adequacy of proposed risk mitigation provisions designed to protect the financial interests of the Federal Government based on information that includes, but is not limited to: the amount and quality of any Credit Enhancements; the amount and quality of any other financial resources to be pledged or risk mitigation to be provided by an Affiliate to the Eligible CDFI through its management structure, that will assume limited obligation for the Bond Loan and enhance the Eligible CDFI's creditworthiness and its ability to repay the Bond Loan; and the provision for an orderly retirement of principal;

(3) The extent to which the Guarantee Application demonstrates that the Qualified Issuer possesses the appropriate expertise, capacity and experience, or other qualifications to manage the Bond Issue on the terms and conditions set forth in this interim rule and the applicable NOGA;

(4) The Qualified Issuer's demonstrated performance of financially sound business practices relative to the industry norm for bond issuers, as evidenced by financial audits and reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, independent regulators, or auditors;

(5) Information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience or is

otherwise qualified to make, service and monitor Bond Loans;

(6) The extent to which the proposed Bond Loans are likely to serve Low-Income Areas or Underserved Rural Areas; and

(7) Such other criteria that the CDFI Fund and the Guarantor deem appropriate for purposes of evaluating the merits of a Guarantee Application.

§ 1808.502 Evaluation of Designated Bonding Authority Applications.

In addition to the evaluation criteria for Qualified Issuers set forth above, DBA applicants must demonstrate the existence of resources to perform functions of the DBA as set forth in section 1808.201 and meet any other criteria set forth in the applicable NOGA and that may be required by the CDFI Fund.

§ 1808.503 Consultation with Appropriate Regulatory Agencies.

In the case of any CDFI Bond Guarantee Program applicant that is a Federally regulated financial institution (or an Affiliate thereof), the CDFI Fund may consult with the Appropriate Federal Banking Agency or Appropriate State Agency prior to designating the applicant as a Qualified Issuer, Servicer, Master Servicer/Trustee, Program Administrator or other role, making a final Guarantee commitment, issuing a Guarantee, and/or entering into an Agreement to Guarantee. The CDFI Fund also reserves the right, in its sole discretion, to consult with the Appropriate Federal Banking Agency and Appropriate State Agency with respect to any Eligible CDFI that is proposed to receive a Bond Loan or any Secondary Borrower that is proposed to receive a Secondary Loan.

§ 1808.504 Selection of Qualified Issuers; Approval for Guarantee.

(a) *General.* Designation of an applicant as a Qualified Issuer shall be based on the foregoing evaluation criteria and processes, and any other requirements or processes that may be set forth in the applicable NOGA. An applicant may simultaneously apply for Qualified Issuer designation and a Guarantee; however, the entity must be designated as a Qualified Issuer before being selected to receive a Guarantee.

(b) The Guarantor will determine whether a Qualified Issuer will be authorized to issue Bonds and receive a Guarantee based on the foregoing evaluation criteria and processes, and any other requirements or processes set forth in the applicable NOGA.

(1) Not later than 30 days after receipt of a complete Guarantee Application (or 30 days after designation as a Qualified

Issuer, if submitting simultaneous applications) by a Qualified Issuer, the CDFI Fund shall provide an internal Department Opinion regarding compliance by the Qualified Issuer with the requirements of the CDFI Bond Guarantee Program.

(2) The Guarantor shall approve or deny a Guarantee Application no later than 90 days after receipt of a complete Guarantee Application, and all other required information by the CDFI Fund or the Guarantor with respect to a request for such Guarantee.

(c) The Guarantor may limit the number of Guarantees made per year or Guarantee Applications accepted to ensure that a sufficient examination of Guarantee Applications is conducted.

(d) The CDFI Fund shall notify the Qualified Issuer in writing of the Guarantor's approval or disapproval of a Guarantee Application.

(e) The Guarantor reserves the sole discretion to approve a Guarantee Application for a Guarantee amount that is less than that which is requested.

(f) In the event that there are material changes after submission of a Guarantee Application (including, but not limited to, a revision of the Capital Distribution Plan or a change in the Certified CDFIs that are proposed for receiving Bond Loans) prior to or after the designation as a Qualified Issuer or approval of a Guarantee Application or Guarantee, the Qualified Issuer or Guarantee applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The Guarantor will evaluate such material changes, along with the Guarantee Application, to approve or deny the Guarantee Application and/or determine whether to modify the terms and conditions of the Guarantee.

Subpart F—Terms and Conditions of Guarantee

§ 1808.600 Full faith and credit and incontestability of Guarantee.

The full faith and credit of the Federal Government is pledged to the payment of all Bonds issued as part of a Bond Issue with respect to Verifiable Losses of Principal, Interest, and Call Premium. An executed Guarantee shall be conclusive evidence that: the Guarantee has been properly authorized; the underlying Bond qualified for such Guarantee; and, but for fraud or material misrepresentation, such Guarantee will be presumed to be legally valid, binding, and enforceable.

§ 1808.601 Assignment and transfer of Guarantee.

The Guarantee shall be fully assignable and transferrable to the

capital markets, on terms and conditions that are consistent with comparable bonds guaranteed by the Federal Government and satisfactory to the Guarantor and the CDFI Fund.

§ 1808.602 Offer of Guarantee.

Upon approval of the Guarantee Application, the Qualified Issuer will receive from the Guarantor an offer of Guarantee that will set forth certain required terms and conditions to be fulfilled prior to issuance of the Guarantee.

§ 1808.603 Issuance of Guarantee.

(a) *Conditions precedent.* The commitment of the Guarantor to issue a Guarantee shall be subject to conditions precedent that are usual and customary for financings of this type or otherwise deemed appropriate by the Guarantor including, but not limited to, the following:

(1) The conditions precedent to the Bond Issue and the making of the Bond Loan have been satisfied, including a credit review that indicates a reasonable prospect of repayment as demonstrated by the CDFI Fund's analysis of the cash flow and collateral provisions of the Eligible CDFI;

(2) The Qualified Issuer shall have submitted to the CDFI Fund a complete Guarantee Application, containing all required information relating to the Bond and the Bond Loan, as required by the Guarantor;

(3) There have been no material changes to the Bond and Bond Loan documents from the forms thereof approved by the Guarantor and the CDFI Fund;

(4) The Bond Purchaser and the Qualified Issuer shall have executed a Bond Purchase Agreement; and

(5) Such additional information or documents as may be required by the CDFI Fund, the Guarantor, or the Bond Purchaser.

(b) *Rescission of approval.* The Guarantor, in its sole discretion, may rescind its approval of a Guarantee Application if:

(1) The Guarantor or the CDFI Fund determines that the Qualified Issuer cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer of Guarantee, or

(2) The Guarantor or the CDFI Fund determines, in its sole discretion, that the Qualified Issuer no longer meets applicable CDFI Bond Guarantee Program criteria and requirements.

§ 1808.604 Agreement to Guarantee.

(a) *General.* The Qualified Issuer must enter into an Agreement to Guarantee

that sets forth the terms and conditions on which the Guarantor will provide the Guarantee of the Bonds issued as part of a Bond Issue.

(b) *Terms and conditions.* The terms and conditions of the Agreement to Guarantee may include, but are not limited to, the following:

- (1) The form and amount of Guarantee;
- (2) Any prohibited amendments of Bond Documents or limitations on transfer of the Guarantee;
- (3) Terms and conditions of the Risk-Share Pool and any Credit Enhancement that may be required by the CDFI Fund and the Guarantor;
- (4) Provisions regarding the Agency Administrative Fee;
- (5) Representations and warranties of the Qualified Issuer;
- (6) Pledged security;
- (7) Financial covenants;
- (8) Events of default and remedies;
- (9) Assignment of Bond Loans to the Guarantor;
- (10) Guarantor payment does not discharge Qualified Issuer; subrogation;
- (11) Undertakings for the benefit of the Bondholder including: notices, registration, prohibited amendments, prohibited transfers, and indemnification;
- (12) Governing law;
- (13) Terms and conditions of Bond Loans;
- (14) Prohibition against subordination; and
- (15) Such other matters as the Guarantor or the CDFI Fund may deem necessary or appropriate.

(c) *Access to funds.* In the event that the Qualified Issuer does not execute Bond Loan agreements for 100 percent of the Bond principal on the Bond Issue Date, the Qualified Issuer will have no further access to the amount of funds for which Bond Loan agreements were not executed.

§ 1808.605 Agency Administrative Fee.

The Qualified Issuer shall pay the CDFI Fund annually a fee equal to 10 basis points (0.1 percent) of the amount of the unpaid principal of the Bond(s). The initial Agency Administrative Fee must be paid in full as a condition to closing any Agreement to Guarantee, no later than the effective date of the Agreement to Guarantee.

§ 1808.606 Program Administrator; Servicer; Master Servicer/Trustee.

(a) *General.* Bond Loans shall be overseen by qualified Program Administrators, Servicers, and a Master Servicer/Trustee. For purposes of maximizing efficiencies and minimizing costs, Program Administrator and

Servicer duties may be consolidated and performed by Qualified Issuers.

(b) *Program Administrator.* (1) *Duties.* The duties of a Program Administrator, which may be performed by the Qualified Issuer, shall include, but not be limited to:

- (i) Approving and qualifying Eligible CDFI applications for participation in the Guarantee Application;
- (ii) Bond and Bond Loan packaging;
- (iii) Reviewing and approving Secondary Loan commitments from Eligible CDFIs for funds from the Bondholder or the Relending Account based on the Secondary Loan Requirements;
- (iv) Compliance monitoring of Bond Loans and Secondary Loans;
- (v) Preparing and submitting reports required by this interim rule; and
- (vi) All other duties and related services that are customarily expected of a Program Administrator, and as may be required by the CDFI Fund or the Guarantor.

(2) *Selection.* There shall be one Program Administrator for each Bond Issue. The Qualified Issuer applicant shall provide, in its Qualified Issuer Application, information on its proposed Program Administrator that demonstrates the appropriate expertise, capacity and experience, as well as any additional information that may be required to meet the criteria set forth in the applicable Notice of Guarantee Availability, including, but not limited to, information on the entity's management and organization, loan administration, and financial capability.

(3) *Fees and expenses.* The Program Administrator's administrative fees and expenses shall be paid by the Eligible CDFI in accordance with applicable financing documents.

(c) *Servicer.* (1) *Duties.* The duties of a Servicer, which may be performed by the Qualified Issuer, shall include, but not be limited to:

- (i) Billing and collecting Bond Loan payments from Eligible CDFIs;
- (ii) Initiating collection activities on past-due Bond Loans;
- (iii) Transferring Bond Loan payments to the respective funds and accounts managed by the Master Servicer/Trustee;
- (iv) Bond Loan administration and servicing;
- (v) Systematic and timely reporting of Bond Loan performance through remittance and servicing reports, and providing such reports as may be required by this interim rule;
- (vi) Proper measurement of annual outstanding Bond Loan requirements; and
- (vii) All other duties and related services that are customarily expected of

Servicers, and as may be required by the CDFI Fund or the Guarantor.

(2) *Selection.* There shall be one Servicer for each Bond Issue. Each Qualified Issuer applicant shall provide, in its Qualified Issuer Application, information on its proposed Servicer that demonstrates the appropriate expertise, capacity and experience, as well as any additional information that as may be required to meet the criteria set forth in the applicable Notice of Guarantee Availability including, but not limited to, information on the entity's management and organization, loan servicing, and financial capability.

(3) *Fees and expenses.* The Servicer's administrative fees and expenses for each Bond Issue shall be paid by the associated Eligible CDFIs in accordance with applicable financing documents.

(d) *Special Servicer.* (1) *Duties.* The duties of the Special Servicer shall be performed by the Master Servicer/Trustee and shall include, but not be limited to:

- (i) Negotiating the restructuring of Bond Loans that are in or about to enter into an event of Default;
- (ii) Initiating foreclosure action and appointing a receiver; and
- (iii) Enforcing deficiency judgments.

(2) *Evaluation.* The Master Servicer/Trustee applicant shall provide, in its Master Servicer/Trustee application, information on its proposed Special Servicer capabilities and experience. These capabilities may be performed by the Master Servicer/Trustee or an entity designated by the Master Servicer/Trustee. The CDFI Fund shall evaluate the Master Servicer/Trustee applicant's or its designee's ability to perform the duties of Special Servicer based on the capacity and experience in the following areas:

- (i) Restructuring, recovery, and foreclosure of loans that are similar to Bond Loans;
- (ii) Financial strength and capacity;
- (iii) Managing regional or national intake, processing, or servicing operational systems and infrastructure of loans that are similar to Bond Loans;
- (iv) Managing regional or national originator communication systems and infrastructure;
- (v) Developing and implementing training and other risk management strategies on a regional or national basis;
- (vi) Compliance monitoring and reporting; and
- (vii) Such other criteria that may be required by the CDFI Fund.

(3) *Fees and expenses.* The Bond Trust Indenture will outline the Special Servicer's administrative fees and expenses; these fees shall be paid by the Eligible CDFI in accordance with the

Bond Trust Indenture and related documents.

(e) *Master Servicer/Trustee.* (1) *Duties.* The duties of the Master Servicer/Trustee shall include, but not be limited to:

(i) The fiduciary power to enforce the terms of Bonds and the Bond Loans pursuant to the Bond Trust Indenture;

(ii) Establishing and managing the funds and accounts set forth in this interim rule;

(iii) Providing such reports as required;

(iv) Overseeing the activities of Servicers and managing loan administration;

(v) Servicing and monitoring of Bond Issues with respect to repayment obligations to the Bondholder and the terms of the Agreement to Guarantee;

(vi) Tracking the movement of funds between the accounts of the Master Servicer/Trustee and all Servicers;

(vii) Ensuring orderly receipt of the monthly remittance and servicing reports of the Servicers;

(viii) Monitoring collection and foreclosure actions;

(ix) Aggregating the reporting and distribution of funds to the Qualified Issuer, CDFI Fund, and the Bondholder, as necessary;

(x) Removing and replacing Servicers, as necessary;

(xi) Performing systematic and timely reporting of Bond Loan performance compiled from Servicers' reports, and providing such reports as required in this interim rule;

(xii) Ensuring proper distribution of funds to Eligible CDFIs, servicing the Bonds, and repayment to the Bondholder; and

(xiii) All other duties and related services that are customarily expected of a Master Servicer/Trustee, and as may be required by the CDFI Fund.

(2) *Selection.* There shall be one Master Servicer/Trustee for the CDFI Bond Guarantee Program. The CDFI Fund shall solicit applications and make a selection of a Master Servicer/Trustee based on the capacity and experience of the applicant in the areas set forth in paragraph (a)(1) of this section and in the following paragraphs (a)(2)(i) through (vi):

(i) Administration, servicing, and monitoring of loans that are similar to Bond Loans;

(ii) Financial strength and capacity;

(ii) Managing regional or national intake, processing, or servicing operational systems and infrastructure of loans that are similar to Bond Loans;

(iii) Managing regional or national originator communication systems and infrastructure;

(iv) Developing and implementing training and other risk management strategies on a regional or national basis;

(v) Compliance monitoring and reporting; and

(vi) Such other criteria that may be required by the CDFI Fund.

(3) *Fees and expenses.* The Master Servicer/Trustee's administrative fees and expenses shall be paid by the Eligible CDFI in accordance with the Bond Trust Indenture and related documents.

(f) *Funds and accounts.* The following funds shall be established by the Master Servicer/Trustee at the time of execution of the Bond Trust Indenture, on behalf of the Qualified Issuer and for the benefit of the Bondholder. On the Bond Issue Date, separate accounts shall be established therein for each Bond and, furthermore, within each account there shall be established a subaccount for each Bond Loan on the date of the closing of each Bond Loan:

(1) The Project Fund, and therein a Project Account for each Bond: All disbursements of Bond Proceeds from the Bondholder pursuant to the requisition processes shall be deposited in the applicable Project Account or Subaccount, and the Master Servicer/Trustee shall disburse advances with respect to the Bond Loan to the Eligible CDFI therefrom;

(2) The Revenue Fund, and therein a Revenue Account for each Bond: All payments of debt service or prepayments on the Bond Loan pursuant to the Bond Loan documents, other payments by the Eligible CDFI pursuant to the Bond Loan documents, and any investment income derived from the corresponding accounts or subaccounts in the Debt Service Fund shall be deposited in the accounts and subaccounts of the Revenue Fund;

(3) The Debt Service Fund, and therein an Interest Account, a Principal Account and a Redemption Account for each Bond: Not later than 30 days prior to a Bond payment date, the Master Servicer/Trustee shall make the following transfers from the applicable account or subaccount of the Revenue Fund:

(i) All scheduled payments (amortization installments or at maturity) of principal received from the Eligible CDFI on the Bond Loan shall be transferred to the Principal Account or Subaccount;

(ii) All scheduled payments (amortization installments or at maturity) of interest received from the Eligible CDFI on the Bond Loan shall be transferred to the Interest Account or Subaccount; and

(iii) All prepayments of principal, interest and premium, if any, received from the Eligible CDFI on the Bond Loan shall be transferred to the Redemption Account or Subaccount;

(4) The Administrative Fees Fund, and therein an Administrative Fees Account for each Bond: All fees necessary for administering and servicing the Bond or the Bond Loan (including the Agency Administrative Fee and Bond Issuance Fees), payable by the Eligible CDFI pursuant to the Bond Loan documents, shall be deposited in the applicable account or subaccount of the Administrative Fees Fund and, thereafter, shall be disbursed by the Master Servicer/Trustee to the subject recipient in accordance with the terms of each such payment;

(5) The Risk-Share Pool Fund, and therein a Risk-Share Pool Account for each Bond, in accordance with § 1808.303 of this part;

(6) The Relending Fund, and therein a Relending Account for each Bond, in accordance with § 1808.308 of this part; and

(7) Such other funds and accounts as may be required by the CDFI Fund and the Qualified Issuer in connection with a Bond Issue, Bond or Bond Loan.

(g) *Other funds and accounts.* The Master Servicer/Trustee shall be permitted to establish such other funds and accounts as deemed necessary to administer the requirements of the Bond Trust Indenture. Each account shall be designated by the name of the applicable Bond and each subaccount shall be designated by the name of the applicable Bond Loan.

(h) *No commingling of funds.* No commingling of monies shall be permitted between accounts or subaccounts.

(i) *Permitted investments.* Monies on deposit in the Revenue Fund, the Debt Service Fund, the Risk-Share Pool Fund, the Relending Fund, if invested, shall be invested in U.S. Treasury securities with maturities that do not exceed the dates on which monies will be required for anticipated purposes and may be sold to the extent funds are needed sooner than anticipated. All interest shall be credited to the relevant account in the relevant fund.

§ 1808.607 Representations and warranties of Qualified Issuer with respect to Guarantee.

The Qualified Issuer shall represent and warrant to the Guarantor, at the execution of any Agreement to Guarantee to which it is a party and thereafter at the closing of any Bond Loan and the issuance of any Bond, the following:

(a) The Qualified Issuer is duly organized, validly existing and in good standing in its State of organization with the power and authority to enter into the agreements and consummate the transactions thereby contemplated;

(b) The information contained in the Qualified Issuer Application is true and correct;

(c) The Bonds, when executed, are and will be duly authorized, executed, valid, binding and enforceable obligations of the Qualified Issuer;

(d) Except as disclosed to the Guarantor, no claim or litigation is pending or threatened which would materially adversely affect the Qualified Issuer's ability to consummate the transactions contemplated by the Agreement to Guarantee, the Bond, or the Bond Loan;

(e) The consummation of the transactions contemplated by the Agreement to Guarantee, the Bond, and the Bond Loan will not conflict with or constitute an event of default under any law or agreement to which the Qualified Issuer is subject;

(f) No authorization, approval or consent of a governmental authority is necessary on the part of the Qualified Issuer to consummate the transactions contemplated by the Bond or the Bond Loan which has not been obtained;

(g) No funds from any other CDFI Fund program are being used to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool; and

(h) Any other representation or warranty deemed appropriate by the Guarantor, the CDFI Fund or the Bond Purchaser.

§ 1808.608 Representations and warranties of Eligible CDFI with respect to each Bond Loan.

The Eligible CDFI shall represent and warrant to the Qualified Issuer, at the execution of each set of Bond Loan documents and, thereafter, until repayment in full of such Bond Loan, the following:

(a) The performance by the Eligible CDFI under the Bond Loan documents is duly authorized, does not require consent or approval of any governmental authority not already obtained, does not constitute a default of any law or agreement to which the Eligible CDFI is subject, will not result in the imposition of any lien (other than pursuant to the Bond Loan), and constitutes a valid, binding and enforceable obligation of the Eligible CDFI;

(b) The information provided by the Eligible CDFI fairly represents the financial position (in conformity with generally accepted accounting principles), experience and capacity of the Eligible CDFI, and there have been no material adverse changes in the Eligible CDFI's financial condition since the date of such financial information;

(c) No claim or litigation is pending or threatened which would materially adversely affect the Eligible CDFI's ability to consummate the transactions contemplated by the Bond Loan, or repay the Bond Loan;

(d) No event of default or other material event which could become an event of default has occurred and is continuing;

(e) The Eligible CDFI has filed all Federal, State and local tax returns required and paid all liabilities in connection therewith;

(f) The Eligible CDFI has good and marketable title to the collateral;

(g) The Bond Loan will be applied to Eligible Purposes;

(h) The information provided in the Guarantee Application is true and accurate;

(i) No default, event of default or due and unsatisfied liability has occurred and is continuing with respect to any obligations of the Eligible CDFI to the Guarantor, the CDFI Fund, the Bond Purchaser, the U. S. Internal Revenue Service, or any other agency, authority or instrumentality of the Federal Government;

(j) No funds from any other CDFI Fund program are being used to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool; and

(k) Any other representations and warranties set forth in the Bond Loan documents.

§ 1808.609 Representations and warranties of Secondary Borrower.

Each Secondary Borrower shall make identical representations and warranties as the Eligible CDFI and shall make specific representations and warranties with respect to the collateral and the project that is proposed to be financed by the Secondary Loan, upon which the Eligible CDFI, the Qualified Issuer, the Bondholder, the Guarantor, and the CDFI Fund may rely. These representation and warranties shall be to the satisfaction of the Guarantor and the CDFI Fund.

§ 1808.610 Covenants of Qualified Issuer with respect to Guarantee.

The Qualified Issuer shall covenant in the Agreement to Guarantee that it will:

(a) Furnish to the CDFI Fund, at the Qualified Issuer's expense, all annual and periodic financial reporting as described in § 1808.619 of this part;

(b) Maintain books and records related to each Bond Loan, the collateral and the project that is to be financed by Bond Proceeds, and allow inspection thereof;

(c) Preserve its corporate existence and Certified CDFI status, if applicable;

(d) Comply with all laws to which it is subject;

(e) Maintain its solvency;

(f) To the extent it assigns any of its obligations under the agreement to an Affiliate, guarantee performance of such obligations;

(g) Allow audits and investigations by the CDFI Fund, the Treasury Inspector General, the Comptroller General, or such other Federal Government offices as may be designated by the Guarantor or the CDFI Fund;

(h) Provide such reports as required in § 1808.619 of this part;

(i) Make, execute and deliver such instruments as the Guarantor or the CDFI Fund may reasonably request;

(j) Sign and certify as true and correct all Bond Documents and Bond Loan documents;

(k) Not amend or modify any agreement related to the Bond without the consent of the Bondholder, the Guarantor, or the CDFI Fund, as applicable;

(l) Comply with the terms and conditions of the Agreement to Guarantee, the Bond Trust Indenture, and the Bond and Bond Loan documents;

(m) Immediately notify the Guarantor and the CDFI Fund of any material change or event that affects any representation, warranty or covenant of the Guarantee, Bond or Bond Loan documents;

(n) Pay and discharge all Federal, State and local taxes;

and

(o) Comply with all other covenants set forth in the Bond Documents and Bond Loan documents.

§ 1808.611 Covenants of Eligible CDFI with respect to Bond and each Bond Loan.

The Eligible CDFI shall covenant in the Bond Loan agreement that it will:

(a) Furnish to the Qualified Issuer, at the Eligible CDFI's expense, certain annual and periodic financial and performance reporting;

(b) Maintain books and records related to the Bond Loan and Secondary Loans, the collateral and the project that is to be financed by Bond Loan proceeds, and allow inspection thereof;

(c) Preserve its corporate existence and Certified CDFI status;

(d) Comply with all laws to which it is subject;

(e) Maintain insurance, as required by the Qualified Issuer, against such risks as would customarily be maintained by commercially reasonable companies in a similar line of business;

(f) Pay and discharge all Federal, State and local taxes;

(g) Ensure proper use of proceeds of the Bond Loan;

(h) Pay all required administrative expenses;

(i) Indemnify the Guarantor, the CDFI Fund, the Qualified Issuer and the Master Servicer/Trustee and their Affiliates;

(j) Collaterally assign all rights, title, and interest in and to Secondary Loan collateral to the Master Servicer/Trustee;

(k) Maintain the collateral;

(l) Enforce the covenants against the Secondary Borrowers;

(m) Be bound, to the extent applicable, to provisions of the Bond Trust Indenture;

(n) Periodically, as directed by the CDFI Fund, furnish certain information designed to measure the impacts of the Bond Loan and the CDFI Bond Guarantee Program;

(o) Periodically, as directed by the CDFI Fund, furnish to the Qualified Issuer and/or the CDFI Fund updates to the Capital Distribution Plan; and

(p) Comply with all other representations and warranties set forth in the Bond Loan documents.

§ 1808.612 Specific financial covenants of Eligible CDFI.

The Eligible CDFI shall covenant in Bond Loan documents that it will comply with specific financial requirements as required by the Guarantor and the CDFI Fund. Such financial requirements will be determined based upon the quantity and the character of the existing loan facilities of the Eligible CDFI, among other factors. The specific financial covenants may include, but are not limited to, one or more of the following measures: consolidated net asset ratio; consolidated unrestricted net asset ratio; and minimum available liquidity (or, in the case of Eligible CDFIs that are regulated financial institutions, such ratios and information as may be required by the applicable Appropriate Federal Banking Agency or Appropriate State Agency). The specific financial requirements shall be measured based upon such Eligible CDFI's financial statements prepared in accordance with generally accepted accounting principles and consistent with historically applied accounting policies and practices.

§ 1808.613 Negative covenants of Eligible CDFI.

The Eligible CDFI will covenant in Bond Loan documents that it will comply with certain negative covenants, as required by the CDFI Fund including, but not limited to, that it will:

(a) Not incur or issue additional long-term or short-term debt to the extent that the incurrence of such additional debt would violate the specific financial covenants of such Eligible CDFI under the Bond Loan; and

(b) Not permit liens on all or any part of the Bond Loan collateral, except as permitted pursuant to the Bond Loan documents, and only then to the extent consistent with the applicable laws and regulations governing the Bond Loan and as approved by the CDFI Fund.

§ 1808.614 Covenants of Secondary Borrower with respect to Secondary Loan.

In addition to making specific representations and warranties with respect to the collateral and the project being financed by the Secondary Loan proceeds, each Secondary Borrower shall covenant in the Secondary Loan agreement that it will:

(a) Periodically, as directed by the Eligible CDFI, furnish to the Eligible CDFI certain annual and periodic financial and performance reporting;

(b) Maintain books and records related to the Secondary Loan, the collateral and the project that is to be financed by Bond Loan proceeds, and allow inspection thereof;

(c) Preserve its corporate existence, as applicable;

(d) Comply with all laws to which it is subject;

(e) Maintain insurance, as directed by the Eligible CDFI, against such risks as would customarily be maintained by commercially reasonable companies in a similar line of business;

(f) Pay and discharge all Federal, State and local taxes;

(g) Ensure proper use of proceeds of the Secondary Loan;

(h) Maintain the collateral;

(i) Periodically, as directed by the Eligible CDFI, furnish to the Eligible CDFI certain information designed to measure the impacts of the Bond Loan and the CDFI Bond Guarantee Program; and

(j) Comply with all other representations and warranties set forth in the Secondary Loan documents.

§ 1808.615 Negative covenants of Secondary Borrower.

Any additional debt of the Secondary Borrower shall be in accordance with the requirements set forth in the applicable Secondary Loan

Requirements and the Secondary Loan agreement, and may include, but shall not be limited to, that:

(a) The Secondary Borrower will not incur or issue additional long-term or short-term debt payable from and having a lien on all or a portion of the Secondary Loan collateral that is

(1) Equally and ratably secured; or

(2) Superior or senior to the lien thereon of the Secondary Loan as more specifically set forth in the Secondary Loan agreement; and

(b) So long as no event of default has occurred and is continuing, the Secondary Borrower may, subject to the approval of the Eligible CDFI, incur or issue at any time additional debt payable from and having a lien on all or a portion of the Secondary Loan collateral that is subordinate or junior to the lien thereon of the Secondary Loan and enter into subordinate credit facility agreements, provided that no events of default have occurred and are continuing under the Secondary Loan documents or any parity senior loan documents and that such debt meets the requirements set forth in paragraph (a) of this section.

§ 1808.616 Events of default and remedies with respect to Bonds.

(a) *Events of default.* An event of default with respect to any Bond shall include, but not be limited to:

(1) Nonpayment of interest or the Agency Administrative Fee when due and payable;

(2) Nonpayment of principal or prepayment price when due and payable;

(3) The use of Bond Proceeds for any purpose other than an Eligible Purpose; and

(4) Any other events of default set forth in the Bond or the Bond Trust Indenture.

(b) *Default of other Bonds.* An event of default under one Bond shall not constitute an event of default under another Bond.

(c) *Remedies.* Pursuant to the Agreement to Guarantee and the Bond Trust Indenture, remedies upon an event of default shall include, but not be limited to, the following:

(1) Declaring the entire amount of unpaid principal and interest on the applicable Bond immediately due and payable; and

(2) Exercising all remedies available under the applicable Agreement to Guarantee and the Bond Trust Indenture.

(d) Notice and comment. Prior to imposing any remedies pursuant to this section or the Agreement to Guarantee, the Guarantor shall, to the maximum

extent practicable, provide the Qualified Issuer with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide a Qualified Issuer the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1808.617 Events of default and remedies with respect to Bond Loans.

(a) *Events of default.* The following shall constitute an event of default with respect to each Bond Loan:

(1) Nonpayment of interest when due and payable;

(2) Nonpayment of principal or prepayment price when due and payable;

(3) Failure of the Eligible CDFI to perform any condition or covenant under any Bond Loan document;

(4) Any representation or warranty of the Eligible CDFI made in connection with the Guarantee Application or the Bond Loan is false or incorrect in any material respect;

(5) Principal or interest on any indebtedness of the Eligible CDFI or any subsidiary of the Eligible CDFI in excess of \$100,000 is not paid when due (subject to a cure period);

(6) The holder of any junior or parity lien on collateral institutes a proceeding to enforce a lien on the collateral;

(7) The Eligible CDFI files bankruptcy or consents to the appointment of a receiver or trustee for itself or the collateral;

(8) Any money judgment is filed against the Eligible CDFI and remains unvacated for a period of 60 days from filing;

(9) The use of Bond Loan proceeds for any purpose other than an Eligible Purpose; or

(10) Any other events of default set forth in the Bond Loan documents.

(b) *Remedies.* Remedies of the Qualified Issuer upon an event of default include, but are not limited to, the following:

(1) Declaring the entire amount of unpaid principal and interest on the applicable Bond Loan immediately due and payable;

(2) Applying for appointment of a receiver or trustee for the collateral;

(3) At the direction of the Guarantor, terminating the Bond Loan agreement, declaring the entire amount of unpaid principal and interest on the applicable Bond Loan immediately due and payable; and

(4) Exercising all remedies available under the applicable Bond Loan agreement, including declaring the Bond Loan Payment Default Rate in effect.

(c) *Enforcement rights.* The Guarantor reserves all rights to enforce remedies upon an event of default.

§ 1808.618 Events of default and remedies with respect to Secondary Loans.

(a) *Events of default.* The following shall constitute an event of default with respect to each Secondary Loan:

(1) Nonpayment of interest when due and payable;

(2) Nonpayment of principal when due and payable;

(3) Failure of the Secondary Borrower to perform any condition or covenant under any Secondary Loan document;

(4) Any representation or warranty of the Secondary Borrower made in connection with the Secondary Loan application or the Secondary Loan documents is false or incorrect in any material respect;

(5) Principal or interest on any indebtedness of the Secondary Borrower or any subsidiary of the Secondary Borrower in excess of \$100,000 is not paid when due (subject to a cure period);

(6) The holder of any junior or parity lien on collateral institutes a proceeding to enforce a lien on the collateral;

(7) The Secondary Borrower files bankruptcy or consents to the appointment of a receiver or trustee for itself or the collateral;

(8) Any money judgment is filed against the Secondary Borrower and remains unvacated for a period of 60 days from filing; or

(9) Any other events of default set forth in the Secondary Loan documents.

(b) *Remedies.* The Qualified Issuer and the Guarantor will reserve certain rights to enforce (or direct enforcement of) remedies upon an event of default under the Secondary Loan documents.

§ 1808.619 Reporting requirements.

The Bond Documents and Bond Loan documents shall specify such monitoring and financial reporting requirements as deemed appropriate by the CDFI Fund including, but not limited to the following:

(a) *Data—General.* As long as the Bonds remain outstanding, a Qualified Issuer shall provide such reports and shall maintain such records as may be prescribed by the CDFI Fund that are necessary to:

(1) Disclose the manner in which Bond Proceeds are used, including providing documentation to demonstrate proceeds of the Bond Loans were used for Eligible Purposes;

(2) Demonstrate compliance with the requirements of this part and the Bond Documents;

(3) Evaluate the impact of the CDFI Bond Guarantee Program;

(4) Ensure the Qualified Issuer meets the performance standards over the life of the facilities; and

(5) Accomplish such other purposes that the CDFI Fund may deem appropriate.

(b) *Customer profiles.* The Qualified Issuer shall require each Eligible CDFI to compile such data on the gender, race, ethnicity, national origin, or other information on individuals and entities that utilize its products and services as the CDFI Fund shall prescribe and as is permissible under applicable law. In general, such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Bond Guarantee Program.

(c) *Audits; Access to records.* (1) The CDFI Fund may, if it deems appropriate, audit Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, and/or the Master Servicer/Trustee, or provide for or require an audit, at least annually. Portfolio management and loan monitoring will also employ risk-based, on-site verification of the Eligible CDFI's lending activities to Secondary Borrowers and compliance with the terms in Secondary Lending Requirements.

(2) Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, the Master Servicer/Trustee, as applicable, must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the CDFI Fund to ensure compliance with the requirements of this interim rule and to evaluate the impact of the CDFI Bond Guarantee Program.

(3) The Federal Government, including the U.S. Department of the Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to such entities' offices and facilities and all books, documents, records, and financial statements relating to the Guarantee and may copy such documents as they deem appropriate.

(4) The CDFI Fund, if it deems appropriate, may prescribe audit and access to record requirements for Eligible CDFIs and Secondary Borrowers.

(d) *Retention of records.* Qualified Issuers, Eligible CDFIs, Program Administrators, the Master Servicer/Trustee, and Servicers shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable).

(e) *Data collection and reporting.* Qualified Issuers, Eligible CDFIs, the

Program Administrator, the Master Servicer/Trustee, and Servicers, as applicable, shall submit to the CDFI Fund, monthly, quarterly, and annually, as specified in the Bond Documents, and as long as the Bond shall remain outstanding, such information and documentation that will permit the CDFI Fund to review compliance with the Capital Distribution Plan and the terms and conditions of the Bond Documents, and to perform adequate portfolio management and loan monitoring. The information and documentation may include, but not be limited to, the following:

(1) Financial statements, including but not limited to:

(i) Annual financial statements for the Qualified Issuer and each Eligible CDFI that have been audited in conformity with generally accepted auditing principles; and

(ii) With respect to any nonprofit Qualified Issuer and any Eligible CDFI that is required to have its financial statements audited pursuant to OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations, annual A-133 audited financial statements. Non-profit Qualified Issuers and Eligible CDFIs that are not required to have financial statements audited pursuant to OMB Circular A-133 must submit to the CDFI Fund a statement signed by the Qualified Issuer or Eligible CDFI's authorized representative or certified public accountant, asserting that a single audit pursuant OMB Circular A-133 is not required;

(2) Pro forma projection of the Qualified Issuer's and Eligible CDFI's respective balance sheet, income statement, and statement of cash flows over the ensuing five years, or such other time period as specified by the CDFI Fund;

(3) Such institution-level and transaction-level reports as may be required by the CDFI Fund;

(4) Information necessary to measure the financial condition of the Eligible CDFI. This includes, but is not limited to, measuring solvency by collecting data on fixed charge coverage, capital adequacy, debt coverage, and measuring liquidity by collecting data on core financial ratios, including current ratios, quick ratios, working capital, and operating liquidity ratio. This will also include credit reporting, financial statement analysis, trend analysis of financial conditions, market valuation, loan performance (30/60/90 payment history) of Bond Loans and Secondary Loans, valuation and eligibility of Secondary Loan collateral, and management and organization changes;

(5) Information necessary to assess Program impact performance and outcome measures, including information necessary to evaluate the credit-worthiness of loan applicants; and

(6) Other such information and reports as may be requested by the CDFI Fund.

(f) *Qualified Issuer reports.* Qualified Issuers are responsible for the timely and complete submission of all required information and reports, even if all or a portion of the documents actually are completed by the Eligible CDFI. The CDFI Fund reserves the right to contact the Qualified Issuer or Eligible CDFI and require that additional information and documentation be provided.

(g) *Regulator information.* The CDFI Fund's review of a regulated Qualified Issuer's or regulated Eligible CDFI's performance or compliance with the Bond Documents may also include information provided by the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(h) *Public inspection.* The CDFI Fund shall make reports described in this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests pursuant to all applicable laws and regulations.

(i) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (http://www.whitehouse.gov/omb/grants_circulars/); and

(2) Government Accountability Office materials may be obtained from GAO Distribution, 700 4th Street NW., Suite 1100, Washington, DC 20548.

§ 1808.620 Investments in Guaranteed Bonds ineligible for Community Reinvestment Act Purposes.

Notwithstanding any other provision of law, any investment by a financial institution in Bonds shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901). Other forms of participation by financial institutions in CDFI Bond Guarantee Program transactions may be eligible for inclusion in Community Reinvestment Act records to the extent permitted by the Appropriate Federal Banking Agency.

§ 1808.621 Conflict of interest requirements.

(a) *Provision of Bond Loans or Secondary Loans to Affiliates.* (1) A Qualified Issuer or Eligible CDFI that is not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency may not use any Bond Proceeds or Bond Loan proceeds to make any Bond Loans or Secondary Loans available to an Affiliate unless it meets the following restrictions:

(i) The loan must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Affiliate receiving the loan shall not participate in any way in the decision-making regarding such loan;

(iii) The board of directors or other governing body of the lender shall approve the extension of the loan; and

(iv) The loan must be provided in accordance with a policy regarding credit to Affiliates that has been approved in advance by the CDFI Fund.

(2) A Qualified Issuer or Eligible CDFI that is an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union (as such terms are defined in 12 CFR 1805.104) shall comply with the restrictions on insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(b) *Standards of conduct.* Qualified Issuers, Eligible CDFIs, Program Administrators, the Master Servicer, and Servicers shall maintain a code or standards of conduct acceptable to the CDFI Fund that govern the performance of employees engaged in the awarding and administration of any loan. No employee of a Qualified Issuer, Eligible CDFI, Program Administrators, the Master Servicer, and Servicer shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers for such loans. Such policies shall provide for disciplinary actions to be applied for violation of the standards by employees.

§ 1808.622 Compliance with government requirements.

In carrying out its responsibilities pursuant to any agreements associated with the CDFI Bond Guarantee Program, all Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, and the Master Servicer/Trustee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders, including restrictions on lending to entities with delinquent Federal debt.

§ 1808.623 Lobbying restrictions.

No fees or funds made available under this part may be expended by a party to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1808.624 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all CDFI Bond Guarantee Program participants and insiders.

§ 1808.625 CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to control a CDFI Bond Guarantee Program participant by reason of any Guarantee provided under the Act for the purpose of any applicable law.

§ 1808.626 Limitation on liability.

The liability of the Federal Government arising out of any fees or funds obtained by a CDFI Bond Guarantee Program participant in accordance with this interim rule shall be limited to the amount of the fees or funds obtained by the CDFI Bond Guarantee Program participant. The Federal Government shall be exempt from any assessments and other liabilities that may be imposed on

controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1808.627 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of any Guarantee, Bond, Bond Loan or Secondary Loan provided under this interim rule must report such incidents to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: January 24, 2013.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

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