

IMPACT

COMMUNITY CAPITAL LLC

July 26, 2011

By E-mail: rule-comments@sec.gov

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549-1090

Attn: Elizabeth M. Murphy, Secretary

Re: Release No. 34-64148 (File No. S7-14-11)

By E-mail: regs.comments@occ.treas.gov

Office of the Comptroller of the Currency

250 E Street, SW, Mail Stop 2-3

Washington, DC 20219

Re: Credit Risk Retention - Docket Number OCC-2011-0002

By E-mail: regs.comments@federalreserve.gov

Board of Governors of the Federal Reserve System

20th Street and Constitution Avenue, NW

Washington, DC 20551

Attn: Jennifer J. Johnson, Secretary

Re: Docket No. R-1411

By E-mail: Comments@FDIC.gov

Federal Deposit Insurance Corporation

550 17th Street, NW

Washington, DC 20429

Attn: Robert E. Feldman, Executive Secretary, Comments

Re: RIN 3064-AD74

Ladies and Gentlemen:

Impact Community Capital LLC submits this letter in response to the request for comment by the Department of the Treasury, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission (the "Commission"), the Federal Housing Finance Agency and the Department of Housing and Urban Development (collectively, the "Agencies") on the Agencies' jointly proposed rules to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The proposed rules implement the credit risk retention requirements of

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Section 15G of the Securities Exchange Act of 1934 (the "Exchange Act") in accordance with Section 941(b) of the Dodd-Frank Act. Generally, the proposed rules mandate the securitizer of asset-backed securities ("ABS") to retain not less than five percent of the aggregate credit risk of the assets collateralizing an issuance of ABS.

This letter proposes that, as permitted by Section 15G, the final rules exempt a certain class of ABS transactions from the credit risk retention requirements of Section 15G. For the reasons set forth below, we believe that it is critical to the success of the Community Development Financial Institution ("CDFI") Bond Guarantee Program that guaranteed ABS issued thereunder be exempt from credit risk retention requirements. These ABS transactions are described below under "CDFI Bond Guarantee Program." Our company has a long history of involvement in both the CMBS securitization market and the community development financing market, as described below, and we are submitting this comment letter to ensure that the regulations applicable to these important markets are appropriate given their unique characteristics.

Impact Community Capital LLC and Affiliates

Impact Community Capital LLC ("Impact") is a for-profit corporation founded by leading insurers to promote socially responsible investments in underserved communities. Impact focuses on financing affordable housing and a variety of community facilities to benefit lower income individuals, families and communities while also meeting insurer investment requirements for the prudent management of policyholder funds.

Impact investments and investment commitments currently exceed \$1.6 billion.

Impact is a certified CDFI by the State of California, Impact's wholly owned affiliate, Impact Community Capital CDE, LLC is certified as a Community Development Entity by the Community Development Financial Institutions Fund, and its subsidiary Impact Investment Adviser LLC is a registered investment adviser.

Impact has had numerous successes in the community development financing market.

- Impact actively seeks socially responsible investments on behalf of its insurance company owners and investors.¹ These investments result in meaningful community improvements. To date, Impact has over \$1.6 billion committed to invest in underserved communities.

¹

Current investors include: Allstate Insurance Company, Genworth Financial, Farmers Insurance Companies, Metropolitan Life Insurance Company, Nationwide Mutual Insurance Companies, Pacific Life Insurance Company, PMI Mortgage Insurance Company, Safeco Insurance, State Farm Insurance Companies, Teachers Insurance & Annuity Association and 21st Century Insurance Company

- Responding to increasing demands for quality childcare facilities and dwindling public and charitable revenues, Impact financed construction and expansion of childcare and preschool centers in California. The childcare investment takes advantage of a \$40 million New Markets Tax Credit (“NMTC”) allocation Impact received in 2002.
- Impact has also financed loans for qualifying primary healthcare facilities serving low and moderate income communities primarily in California.
- Impact committed true risk capital for the development of predominantly affordable for-sale infill housing located near job centers and transit hubs, which are “smart growth” opportunities to create housing for moderate income families and individuals.
- Impact has made significant debt and equity investments to help expand small and medium sized businesses as well as in commercial real estate that create and support jobs in low and moderate income areas and expects to play a vital role in the CDFI Bond Guarantee Program.
- Impact’s wholly owned affiliate, Impact Funding LLC, has securitized approximately \$500 million of affordable multifamily mortgages.

CDFI Bond Guarantee Program

The Community Development Financial Institutions Fund (the “CDFI Fund”) has been authorized by Sections 1134 and 1703 of the Small Business Jobs Act of 2010² authorized in order to administer a program that offers a federal guarantee for bonds that are issued for community or economic development purposes. Pursuant to the legislation, the U.S. Department of the Treasury may issue up to \$1,000,000,000 per fiscal year in bond authority. The CDFI Bond Guarantee Program (the “Program”) has the potential to provide an important and previously unavailable new source of capital that CDFIs can access to better serve their markets. Under the Program, CDFIs apply to the CDFI Fund for the authority to issue a federally guaranteed bond. The bond proceeds are used to originate loans that support vitally important community or economic development purposes.

The United States Treasury has invited comments from the public regarding the Program to be submitted by August 15, 2011 in anticipation of promulgating final regulations to implement the Program by September 27, 2011.³ We respectfully request that the credit risk retention rules specify that the Program is exempt from the rules for the reasons set forth below. We fear that

² Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1134, §1703, 12 U.S.C. §4713 (2011).

³ 76 Fed. Reg. 38577 (July 1, 2011.)

without this exemption, the Program will never be utilized. We also note that the Program is of limited duration and is set to expire on September 30, 2014. With this very limited duration, we want to ensure that there are no impediments to CDFI participants accessing the Program.

Impact has discussed the benefits of the Program with numerous CDFIs (including NCB Capital Impact and the Low Income Investment Fund) who share our concerns about the negative impact of the risk retention requirements in this context. Impact has also been working closely with The Carsey Institute which conducts national and regional policy research on sustainable community development. We have all concluded that the Program will not succeed unless it is exempted from the risk retention requirements of the Dodd-Frank Act. We have attached the comment letter from The Carsey Institute as Exhibit A hereto for your convenience.

Congress Already Mandated Risk Retention Under the CDFI Bond Guarantee Program

The Program legislation includes a risk-share provision whereby each guaranteed bond issuer shall establish a risk-share pool capitalized by contributions from CDFI participants in an amount equal to 3 percent of the guaranteed amount outstanding on the subject bonds for the term of the guarantee provided under the Program.⁴ It is our view that because credit risk retention was addressed and built into the Program, the Program transactions were designed to be exempt from the final credit risk retention requirements of Section 15G of the Exchange Act in accordance with Section 941(b) of the Dodd-Frank Act.

CDFI Bond Guarantee Program Transactions Should Be Exempt From the Risk Retention Requirements of the Dodd-Frank Act

Through the CDFI Fund, the United States Treasury has awarded over \$1,000,000,000 to CDFIs. The Program may materially increase the amount of funds made available for an important public interest initiative that the U.S. Congress and the United States Treasury have vigorously supported. By granting an exemption for the Program, you will ensure that the full impact of the Program is realized.

In light of the 3% risk-share pool requirement already included by Congress in the statute creating the Program, it is our view that an exemption for the Program is appropriate. Congress has effectively set the level of “skin in the game” necessary for the Program participants in the statute specifically establishing the Program. We do not believe it would be appropriate for the Dodd-Frank Act regulations that apply generally to all ABS to override Congress’s intent on risk retention as evidenced by the plain meaning of the Small Business Jobs Act of 2010. In addition, by setting the Program’s risk-share pool at 3%, Congress recognized that any higher level would be unduly burdensome on not-for-profit CDFIs who otherwise would have very limited access to the capital markets if not for the Program. In addition, strict underwriting is already a feature of

⁴ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1134, 12 U.S.C. §4713 (2011).

the Program as all of the loans must satisfy statutory guidelines. CDFI lenders must also be specifically approved by the CDFI Fund.

Section __.21(a)(1)(ii) of the proposed rules (*General exemptions*) states that exempt from the rules are issuances of ABS that “(A) Are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States; and (B) Are collateralized solely (excluding cash and cash equivalents) by residential, multifamily, or health care facility mortgage loan assets or interests in such assets.”⁵ While ABS issued under the Program meet __.21(a)(1)(ii)(A), such ABS do not meet the requirements for exemption under __.21(a)(1)(ii)(B) or any other exemption as currently proposed.

As noted in the proposed rules, Section 15G(c)(1)(G)(ii) of the Exchange Act contemplates and permits a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, or an agency of the United States, as the Federal banking agencies and the Commission jointly determine appropriate in the public interest and for the protection of investors.⁶ In addition, Section 15G(e)(1) permits the joint adoption or issuance of additional exemptions, exceptions or adjustments to the risk retention requirements of the rules, including exemptions, exceptions or adjustments for classes of institutions or assets, if the exemption, exception or adjustment would: (A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access by consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investor.⁷

Request

We respectfully request that a general exemption from the final rules be adopted for Program transactions as permitted by Exchange Act sections 15G(c)(1)(G)(i) and 15G(e)(1). We hereby request that Section __.21(a) of the final rules (*General exemptions*) include ABS that “(A) Are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States; and (B) Are collateralized by any credit instrument that is extended under the guarantee program for bonds and notes issued for eligible community or economic development purposes established under [Sec. 114A of The Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.)].”

⁵ 76 Fed. Reg. at 24172.

⁶ 76 Fed. Reg. at 24136.

⁷ 76 Fed. Reg. at 24136.

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We thank you for your consideration of this request to exempt CDFI Bond Guarantee Program transactions. If you have any comments or questions, please feel free to contact me at (415) 981-1074; ext. 30 or dsheehy@impactcapital.net.

Sincerely,



Daniel F. Sheehy,
President and Chief Executive Officer

cc: United States Department of the Treasury
Assistant General Counsel, Law, Ethics and Regulation
1500 Pennsylvania Avenue, NW
Washington DC 20220

United States Department of the Treasury
Mr. Benson F. Roberts, Senior Policy Analyst, Financial Institutions
1500 Pennsylvania Avenue, NW
Washington DC 20220

CDFI Fund
Office of Legislative and External Affairs
601 Thirteenth Street, NW
Suite 200, South
Washington DC 20005

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Office of Legal Counsel
601 Thirteenth Street, NW
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EXHIBIT A

The Carsey Institute Comment Letter



UNIVERSITY of NEW HAMPSHIRE

July 26, 2011

The Carsey Institute
The University of New Hampshire
73 Main Street, Huddleston Hall
Durham, NH 03824

By E-mail: rule-comments@sec.gov
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Elizabeth M. Murphy, Secretary
Re: Release No. 34-64148 (File No. S7-14-11)

PROFESSOR MICHAEL SWACK

<http://unh.edu>

By E-mail: regs.comments@occ.treas.gov
Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219
Re: Credit Risk Retention - Docket Number OCC-2011-0002

By E-mail: regs.comments@federalreserve.gov
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Jennifer J. Johnson, Secretary
Re: Docket No. R-1411

By E-mail: Comments@FDIC.gov
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: Robert E. Feldman, Executive Secretary, Comments
Re: RIN 3064-AD74

Ladies and Gentlemen:

The Carsey Institute submits this letter in response to the request for comment by the Department of the Treasury, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission (the "Commission"), the Federal Housing Finance Agency and the Department of Housing and Urban Development (collectively, the "Agencies") on the Agencies' jointly proposed rules to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the

THE CARSEY INSTITUTE

Building knowledge for families and communities

“Dodd-Frank Act”). The proposed rules implement the credit risk retention requirements of Section 15G of the Securities Exchange Act of 1934 (the “Exchange Act”) in accordance with Section 941(b) of the Dodd-Frank Act. Generally, the proposed rules mandate the securitizer of asset-backed securities (“ABS”) to retain not less than five percent of the aggregate credit risk of the assets collateralizing an issuance of ABS.

This letter proposes that, as permitted by Section 15G, the final rules exempt a special class of ABS transactions from the credit risk retention requirements of Section 15G. These ABS transactions are described below under “CDFI Bond Guarantee Program.”

The Carsey Institute

The Carsey Institute conducts national and regional policy research on vulnerable children, youth and families and on sustainable community development. The institute has a rigorous, engaged team of applied social scientists and natural resource experts a well-established communications and outreach program and an extensive list of published reports, policy briefs and fact sheets. The Carsey Institute produces topical reports and briefs that present complex data analysis on pressing issues that are grounded in real-world conditions and tied to current policy debates and practical solutions. This publications program is the core of the Carsey Institute’s work to offer high quality, powerful resources to decision makers working with vulnerable rural families and communities.

CDFI Bond Guarantee Program

Sections 1134 and 1703 of the Small Business Jobs Act of 2010¹ authorize the Community Development Financial Institutions Fund (the “CDFI Fund”) to administer a program that offers a federal guarantee for bonds issued for community or economic purposes. Under the legislation, the U.S. Department of the Treasury may issue up to \$1 billion a year in bond authority terminating on September 30, 2014. The CDFI Bond Program (the “Program”) links community development financial institutions (“CDFIs”) with the capital markets and has the potential to provide an important, and previously unavailable, new source of capital that CDFIs can access to better serve their markets. Under the Program, CDFIs apply to the CDFI Fund for the authority to issue a federally guaranteed bond by submitting a capital distribution plan. Authorized uses of the loans financed may include a variety of financial activities, such as supporting commercial facilities that promote revitalization, community stability and job creation and retention; community facilities; the provision of basic financial services; housing that is principally affordable to low-income people; businesses that provide jobs for low-income people or are owned by low-income people; and community or economic development in low-income or underserved rural areas.

¹ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1134, §1703, 12 U.S.C. §4713 (2011).

The United States Treasury has invited comments from the public regarding the Program to be submitted by August 15, 2011 in anticipation of promulgating final regulations to implement the Program by September 27, 2011.² We respectfully request that the credit risk retention rules specify that the Program is exempt from the rules for the reasons set forth below. We fear that without this exemption, the Program will never be utilized. We also note that the Program is of limited duration and is set to expire on September 30, 2014. With this very limited duration, we want to ensure that there are no impediments to CDFI participants accessing this Program so as to increase the volume of loans made in the United States for vital community development purposes.

CDFI Bond Guarantee Program Risk-Share Pool

The Program legislation includes a risk-share provision whereby each qualified issuer of bonds shall, during the term of the guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from CDFI participants in an amount equal to 3 percent of the guaranteed amount outstanding on the subject bonds.³ Therefore, because credit risk retention was addressed and tailored specifically for the Program, it is our view that the Program transactions were designed to be exempt from the final credit risk retention requirements of Section 15G of the Exchange Act in accordance with Section 941(b) of the Dodd-Frank Act.

Exemption for CDFI Bond Guarantee Program Transactions

Section __.21(a)(1)(ii) of the proposed rules (*General exemptions*) states that exempt from the rules are issuances of ABS that “(A) Are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States; and (B) Are collateralized solely (excluding cash and cash equivalents) by residential, multifamily, or health care facility mortgage loan assets or interests in such assets.”⁴ While ABS issued under the Program meet __.21(a)(1)(ii)(A), such ABS do not meet the requirements for exemption under __.21(a)(1)(ii)(B) or any other exemption as currently proposed.

As noted in the proposed rules, Section 15G(c)(1)(G)(ii) of the Exchange Act contemplates and permits a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, or an agency of the United States, as the Federal banking agencies and the Commission jointly determine appropriate in the public interest and for the protection of investors.⁵ In addition, Section 15G(e)(1) permits the joint adoption or issuance of additional

² 76 Fed. Reg. 38577 (July 1, 2011.)

³ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1134, 12 U.S.C. §4713 (2011).

⁴ 76 Fed. Reg. at 24172.

⁵ 76 Fed. Reg. at 24136.

exemptions, exceptions or adjustments to the risk retention requirements of the rules, including exemptions, exceptions or adjustments for classes of institutions or assets, if the exemption, exception or adjustment would: (A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access by consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investor.⁶

As stated in the proposed rules:

As indicated in the legislative history of section 15G, “When securitizers retain a material amount of risk, they have ‘skin in the game,’ aligning their economic interest with those of investors in asset-backed securities.” By requiring that the securitizer retain a portion of the credit risk of the assets being securitized, section 15G provides securitizers an incentive to monitor and ensure the quality of the assets underlying a securitization transaction, and thereby helps align the interests of the securitizer with the interests of investors.⁷

Through the CDFI Fund, the United States Treasury has awarded over \$1 billion to Community Development Financial Institutions. The Program represents an important means of materially increasing the amount of funds made available for this important public interest initiative which the U.S. Congress and the United States Treasury have vigorously supported. By granting an exemption for the Program, you will ensure that the full impact of the Program is realized. We also believe that an exemption for the Program is appropriate in light of the 3% risk-share pool requirement already included by Congress in the statute creating the Program. In setting the Program’s risk-share pool at 3%, Congress recognized that any higher level would be unduly burdensome on the not-for-profit CDFIs utilizing the Program who otherwise would have very limited access to the capital markets. Moreover, Congress recognized that strict underwriting is already a feature of the Program as all of the loans must satisfy statutory guidelines and moreover, CDFI lenders must be specifically approved by the CDFI Fund.

Conclusion

We respectfully request that a general exemption from the final rules be adopted for Program transactions as permitted by Exchange Act sections 15G(c)(1)(G)(i) and 15G(e)(1). We hereby request that Section __.21(a) of the final rules (*General exemptions*) include ABS that “(A) Are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States; and (B) Are collateralized by any credit instrument that is extended

⁶ 76 Fed. Reg. at 24136.

⁷ 76 Fed. Reg. at 24096.

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under the guarantee program for bonds and notes issued for eligible community or economic development purposes established under [Sec. 114A of The Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.).”

We appreciate your consideration of this request to exempt CDFI Bond Guarantee Program transactions. If you have any comments or questions, please feel free to contact the undersigned at (603) 862-3201 or michael.swack@unh.edu.

Sincerely,



Michael Swack, Professor
The Carsey Institute and the Whittemore School of Business and Economics

cc: United States Department of the Treasury
Assistant General Counsel, Law, Ethics and Regulation
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