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United States Government Accountability Office
Washington, DC 20548

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February 27, 2013

The Honorable Tim Johnson
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Community Development Financial Institutions Fund: Guarantees for Bonds Issued for Community or Economic Development Purposes*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Community Development Financial Institutions Fund (CDFI), entitled “Guarantees for Bonds Issued for Community or Economic Development Purposes” (RIN: 1559-AA01). We received the rule on February 12, 2013. It was published in the *Federal Register* as an interim rule with request for public comment on February 5, 2013. 78 Fed. Reg. 8296.

The interim rule implements the CDFI Bond Guarantee Program, established through section 1134 of the Small Business Jobs Act of 2010 and administered by CDFI, under authority delegated by the Secretary of the Treasury.

The interim rule has an effective date of April 8, 2013. The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The interim rule was published in the *Federal Register* on February 5, 2013, but we did not receive the interim rule until February 12, 2013. Therefore, the interim rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of CDFI's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that CDFI complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Donna J. Gambrell
Director, Community Development
Financial Institutions Fund
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND
ENTITLED
"GUARANTEES FOR BONDS ISSUED FOR COMMUNITY
OR ECONOMIC DEVELOPMENT PURPOSES"
(RIN: 1559-AA01)

(i) Cost-benefit analysis

CDFI included a summary of estimated economic benefits, costs, and transfers in the interim rule. The CDFI includes costs to government, eligible CDFIs, and low-income communities at a \$200 million issuance and \$2 billion issuance, each discounted by 3 percent and 7 percent. CDFI also includes transfers to low-income communities at a \$200 million issuance and \$2 billion issuance, each discounted by 3 percent and 7 percent.

With regard to benefits, CDFI notes that the absence of the CDFI program would limit the ability of Certified CDFIs to provide long-term affordable loans and investments to low-income borrowers, individuals, and small businesses. CDFI believes 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. According to CDFI, 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. CDFI notes that the CDFI's award and tax credit programs would remain the primary source of federally funded programs for certified CDFIs.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

CDFI states that 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.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

In its submission to the Comptroller General, CDFI did not include an analysis of the interim rule under the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On July 1, 2011, CDFI published in the *Federal Register* a Request for Public Comment (RPC) entitled Bond Guarantee Program. 76 Fed. Reg. 38,577. The CDFI received more than 60 comment letters in response to the RPC. All comments have been reviewed by the CDFI 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's responses, are included in the interim rule. CDFI also states that 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.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

CDFI states that 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 for approval and issuance of an OMB Control Number.

Statutory authorization for the rule

CDFI states the interim rule is authorized by section 1134 of the Small Business Jobs Act of 2010.

Executive Order No. 12,866 (Regulatory Planning and Review)

CDFI states that the interim rule of the CDFI Bond Guarantee Program is a significant regulatory action, and accordingly, the interim rule has been reviewed by the Office of Management and Budget. CDFI also notes that the Regulatory Impact Analysis prepared by the CDFI is included in the interim rule.

Executive Order No. 13,132 (Federalism)

In its submission to the Comptroller General, CDFI did not include an analysis of the interim rule under the Order.