

NOTE: The attached form document is provided for illustrative purposes only and should not be revised or relied on for any other purpose and is subject to further modification by the CDFI Fund. The exact terms and conditions of this document will be set forth in the final document that is executed by each party.

[CLOSING DATE]

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Secretary of the Treasury
The Department of the Treasury
c/o Deputy Assistant Secretary for
Small Business, Community Development
and Housing Policy
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Bank of New York Mellon
101 Barclay Street, Floor 11W
New York, New York 10286

**[\$[DOLLAR AMOUNT]
[QUALIFIED ISSUER]
Future Advance Promissory Bond
[YEAR-NUMBER]
([ELIGIBLE CDFI])**

Ladies and Gentlemen:

We have acted as special [STATE] counsel for [QUALIFIED ISSUER] (“Qualified Issuer”) in connection with the issuance by the Qualified Issuer of the [QUALIFIED ISSUER] Future Advance Promissory Bond, [YEAR-NUMBER] ([ELIGIBLE CDFI]), in the maximum principal amount of \$[DOLLAR AMOUNT] (the “Bond”).

We have been advised that the following document has been entered into in connection with the issuance of the Bond:

1. Bond Loan Agreement, dated as of [CLOSING DATE] (the “Agreement”), between [ELIGIBLE CDFI] (the “Borrower”) and the Qualified Issuer.

You have requested that we opine as to whether the extension of credit to the Borrower under the Loan Agreement and the granting by the Borrower to the Qualified Issuer of security, title and interest in the Bond Loan Collateral (as defined in the Agreement) by the execution and delivery of the Agreement requires the Qualified Issuer to qualify to do business in the State of [STATE] (the “State”) by obtaining a certificate of authority from the [STATE] Secretary of State.

Analysis

1. Under the laws of the State, a foreign [CORPORATE STRUCTURE] may carry on certain enumerated activities in the State without being required to qualify to transact business. In this connection, section [SECTION NUMBER] of the [STATE] Code provides, that:

The following activities of a foreign [CORPORATE STRUCTURE], among others, do not constitute transacting business:

(1) [INSERT EXCERPT FROM STATE STATUTE]

If a foreign [CORPORATE STRUCTURE] is not transacting business in the State, no qualification fees are payable by it to the State and such foreign [CORPORATE STRUCTURE] is not required under the State law to obtain a certificate of authority. Although a foreign [CORPORATE STRUCTURE] transacting business in the state without a certificate of authority may not maintain a proceeding in any court of the State, it may do so at such time as it obtains a certificate of authority. See section [SECTION NUMBER]. However, section [SECTION NUMBER] of the [STATE] Code provides that the failure of a foreign [CORPORATE STRUCTURE] to obtain a certificate of authority does not impair: (1) the validity of any contract or act of the foreign [CORPORATE STRUCTURE] or (2) the foreign [CORPORATE STRUCTURE] from defending any action, suit, or proceeding in any court of the State.

Qualifications

The issue of when an entity is doing business is a question of fact and is resolved on a case-by-case basis based on all the circumstances of that case. For purposes of this opinion, we have assumed that (i) the activity of the Qualified Issuer and any assignee of the Qualified Issuer in the State consists solely of creating, acquiring, or collecting indebtedness, enforcing security interests in collateral securing such indebtedness and owning, without more, real or personal property in the State, all as contemplated by section [SECTION NUMBER] of the [STATE] Code; (ii) the Qualified Issuer does not maintain its principal place of business or administration of any trust within the State; and (iii) the Qualified Issuer will not engage in any activities or business in the State other than the mere extension of credit to the Borrower under the Loan Agreement, including the receipt of payment thereunder.

Opinions

Based upon and subject to the foregoing and subject also to the comments and qualifications set forth above, we are of the opinion that:

1. Entering into the Loan Agreement, and performing its obligations thereunder does not, by itself, constitute transacting business in the State by the Qualified Issuer for the purposes of requiring a certificate of authority to transact business under section [SECTION NUMBER] of the [STATE] Code.
2. Entering into the Loan Agreement, and performing its obligations thereunder does not, by itself, require qualification by, or any licensing of, the Qualified Issuer as a foreign [CORPORATE STRUCTURE] or a foreign mortgage banker or require any other qualification or licensing of the Qualified Issuer in the State. However, the Qualified Issuer may be required to qualify to transact business in the State if it (i) maintains an office or agency in the State for conducting its lending or loan servicing operations, (ii) acquires and operates the Bond Loan Collateral other than as permitted by section [SECTION NUMBER] of the [STATE] Code, or (iii) elects to collect a tax and/or insurance escrow and to pay taxes and/or insurance for the Borrower from such account.
3. The failure of the Qualified Issuer to obtain a certificate of authority would not invalidate its actions in entering into the Loan Agreement and the Security Deed or the creation of the encumbrances, liens and security interests contemplated by the Loan Agreement and Security Deed.

The conclusion that a foreign [CORPORATE STRUCTURE] is not transacting business in the State for purposes of qualification as a foreign [CORPORATE STRUCTURE] does not exclude the possibility that a State court (or a federal court applying State law) may conclude that such foreign [CORPORATE STRUCTURE] is transacting business within the State so as to allow such court to subject such [CORPORATE STRUCTURE] to taxation or service of process under the laws of the State. See section [SECTION NUMBER].

Anything contained herein to the contrary notwithstanding, no opinion is expressed herein as to whether the foreclosure by a lender of an operating property constitutes transacting business within the State.

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Federal Financing Bank
Secretary of the Treasury
[The Bank of New York Mellon
[CLOSING DATE]
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Our opinions set forth herein are limited to the matters expressly set forth in this opinion letter, and no opinion is implied or may be inferred beyond the matters expressly so stated. We have made no factual investigation of any matters addressed herein. We expressly disclaim any obligation to advise you of any changes of law or facts that may hereafter come to our attention which would alter the opinions set forth. The opinions rendered herein may not be used or relied upon by any person or entity other than the addressees and their successors and assigns for any purpose whatsoever. Delivery of this opinion to a non-client does not create an attorney-client relationship.

Respectfully submitted,

[LOCAL COUNSEL]*

*Can and should be Bond Counsel, if possible.