

# Entity Structure Memorandum

## Civic Engine Guaranty Fund

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## Executive Summary

This memorandum analyzes entity structure options for the Civic Engine Guaranty Fund and provides recommendations for the Fund entity and Manager/GP structure. Based on the analysis of tax efficiency for foundation Program-Related Investments (PRIs), liability isolation, administrative simplicity, and investor familiarity, we recommend:

1. **Fund Entity:** Delaware Limited Liability Company (LLC)
2. **Manager Structure:** Separate Manager entity (Civic Engine Fund Management LLC)

## 1. Fund Overview

Attribute	Specification
Fund Name	Civic Engine Guaranty Fund, LLC
Target Size	\$200,000,000
Initial Fund Size	\$30,000,000
Minimum Fund Size	\$10,000,000 (Initial Closing — required for HNEL guarantee)
Investment Strategy	Treasury-backed construction guarantee facility
First Deployment	Historic Northeast Lofts — \$10M guarantee (JPMC SPE requirement)
Target Investors	Foundations (PRIs), DAFs, CDFIs, Family Offices
Target Return	~4.35% net annual (after ~0.15% actual operating expenses)
Regulatory Exemption	Regulation D, Rule 506(c)
State of Formation	Delaware

**First Deployment Context:** The Fund's immediate use case is providing a \$10 million guarantee for Historic Northeast Lofts (HNEL), a \$451M, 395-unit adaptive reuse development under construction in Kansas City. JPMC, as the Federal Historic Tax Credit investor, requires a warm-body guarantor or SPE with \$10M in assets. The Fund structure was designed specifically to fill this institutional requirement while creating a scalable platform for subsequent projects.

## 2. Entity Type Analysis

### 2.1 Options Evaluated

Option	Description	Common Use
Delaware LLC	Single-tier entity with members and manager	Most common for private funds
Delaware LP with LLC GP	Two-tier structure with limited partners and general partner	Traditional PE/VC structure
Series LLC	LLC with segregated series for asset isolation	Multi-strategy or multi-project funds

## **2.2 Evaluation Criteria**

### **2.2.1 Tax Efficiency for Foundation PRIs**

#### **Delaware LLC (Recommended):**

- Pass-through taxation allows foundations to receive character of income
- No entity-level tax on Treasury interest income
- Foundations can receive PRI-eligible treatment for their membership interests
- K-1 reporting compatible with foundation tax compliance
- No Unrelated Business Taxable Income (UBTI) concerns for Treasury interest and guarantee fees

#### **Delaware LP:**

- Similar pass-through treatment
- Slightly more complex K-1 due to GP/LP distinction
- No material tax disadvantage vs. LLC

#### **Series LLC:**

- Pass-through treatment preserved
- Added complexity in K-1 reporting if multiple series used
- Not necessary for single-project fund

**Conclusion:** All three structures provide adequate tax efficiency. LLC offers simplest K-1 administration.

### **2.2.2 Liability Isolation**

#### **Delaware LLC:**

- Members' liability limited to capital contributions
- Manager has liability shield if properly structured
- Well-established case law supporting liability protection
- No personal liability for members for Fund obligations

#### **Delaware LP:**

- Limited partners have strong liability protection

- General partner faces unlimited liability unless structured as LLC
- Requires additional entity (LLC GP) for full protection

**Series LLC:**

- Each series can have isolated assets and liabilities
- Useful if Fund intends to guarantee multiple unrelated projects
- For single-project Fund, adds unnecessary complexity

**Conclusion:** Delaware LLC provides strong liability protection with single-entity simplicity.

### **2.2.3 Administrative Simplicity**

**Delaware LLC:**

- Single entity to form and maintain
- One set of governing documents (Operating Agreement)
- One state filing and annual franchise tax
- Straightforward capital account maintenance
- Most investors familiar with membership interest structure

**Delaware LP:**

- Requires formation of two entities (LP + LLC GP)
- Two sets of governing documents
- Two state filings and franchise taxes
- Added complexity for no meaningful benefit in this context

**Series LLC:**

- Single entity but complex internal structure
- Separate books required for each series
- Uncertain legal treatment in some states
- Investor unfamiliarity may raise questions

**Conclusion:** Delaware LLC offers lowest administrative burden.

### **2.2.4 Investor Familiarity**

**Delaware LLC:**

- Standard structure for impact funds, CDFIs, and affordable housing vehicles
- Foundation investors routinely make PRIs in LLC membership interests
- Family offices comfortable with LLC investments
- Clean, simple documentation

**Delaware LP:**

- Traditional PE/VC structure
- Some foundation investors may prefer LP interests
- Adds perception of institutional sophistication
- Not necessary for Treasury-backed guarantee fund

**Series LLC:**

- Less familiar to most investors
- May require additional explanation
- Could raise unnecessary due diligence questions

**Conclusion:** Delaware LLC is familiar and accepted by target investor base.

## 2.3 Entity Type Recommendation

**Recommendation: Delaware Limited Liability Company**

Criterion	LLC	LP + LLC GP	Series LLC
Tax Efficiency	Strong	Strong	Strong
Liability Isolation	Strong	Strong	Strong
Administrative Simplicity	<b>Best</b>	Moderate	Complex
Investor Familiarity	<b>Best</b>	Good	Limited
Formation Cost	Lower	Higher	Moderate
<b>Overall</b>	<b>Recommended</b>	Acceptable	Not Recommended

### 3. Manager/GP Structure Analysis

#### 3.1 Options Evaluated

Option	Description	Implications
<b>Arnold Holdings as Direct Manager</b>	Arnold Holdings LLC serves as Manager of the Fund	Simpler, but exposes Arnold Holdings to Fund-related liabilities
<b>Separate Manager Entity</b>	New LLC (Civic Engine Fund Management LLC) serves as Manager	Additional entity, but isolates Arnold Holdings from direct Fund exposure

#### 3.2 Evaluation

##### 3.2.1 Fiduciary Duties

###### Arnold Holdings as Direct Manager:

- Arnold Holdings directly assumes fiduciary duties to Fund members
- Fiduciary claims flow directly to Arnold Holdings
- Potential conflict with Arnold Holdings' other activities

###### Separate Manager Entity:

- Manager entity assumes fiduciary duties
- Claims against Manager do not automatically flow to Arnold Holdings
- Cleaner separation between fund management and development activities
- Manager can have dedicated resources and governance

**Recommendation:** Separate Manager entity provides cleaner fiduciary structure.

##### 3.2.2 Liability Protection

###### Arnold Holdings as Direct Manager:

- Arnold Holdings directly exposed to management-related claims
- Investor lawsuits would name Arnold Holdings directly
- Potential impact on Arnold Holdings' other activities

###### Separate Manager Entity:

- Creates liability buffer between investors and Arnold Holdings

- Claims flow first to Manager entity
- Arnold Holdings' exposure limited to its ownership of Manager
- Standard industry practice for institutional funds

**Recommendation:** Separate Manager entity provides superior liability protection.

### **3.2.3 Future Fund Scalability**

#### **Arnold Holdings as Direct Manager:**

- If Arnold Holdings manages multiple funds, all under same entity
- No separation between Fund I and potential Fund II activities
- More complex to bring in third-party investment professionals

#### **Separate Manager Entity:**

- Can be structured as platform for multiple funds
- Easier to allocate personnel, track costs, and measure performance
- Facilitates potential future strategic transactions
- Industry standard for institutional fund managers

**Recommendation:** Separate Manager entity supports future growth.

### **3.2.4 Cost Consideration**

#### **Arnold Holdings as Direct Manager:**

- No additional entity formation or maintenance costs
- Simpler organizational structure

#### **Separate Manager Entity:**

- Delaware LLC formation: ~\$500
- Annual franchise tax: ~\$300
- Additional operating agreement: Legal cost ~\$2,000-5,000
- Ongoing administrative burden: Minimal

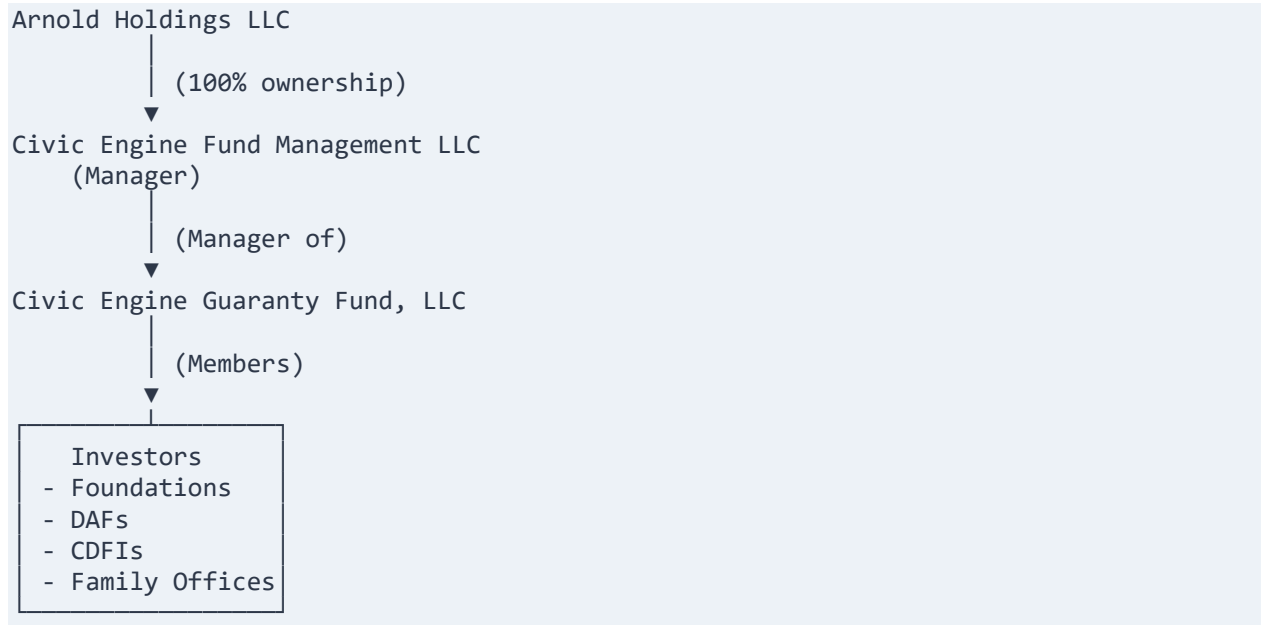
**Total incremental cost: ~\$3,000-6,000 initial, ~\$300/year ongoing**

**Recommendation:** Incremental cost is minimal relative to liability and structural benefits.

### 3.3 Manager Structure Recommendation

**Recommendation: Create Civic Engine Fund Management LLC as separate Manager entity**

**Proposed Structure:**



## 4. Formation Requirements

### 4.1 Civic Engine Guaranty Fund, LLC

Requirement	Details
State of Formation	Delaware
Formation Document	Certificate of Formation
Governing Document	Operating Agreement
Registered Agent	Required in Delaware
EIN	Required from IRS
Bank Accounts	Operating account, Treasury custody account
Initial Members	Manager (may hold nominal interest)

## 4.2 Civic Engine Fund Management LLC

Requirement	Details
State of Formation	Delaware
Formation Document	Certificate of Formation
Governing Document	Operating Agreement
Sole Member	Arnold Holdings LLC
EIN	Required from IRS
Bank Account	For cost-recovery management fee receipts

## 4.3 Estimated Formation Timeline

Task	Timing
Draft Operating Agreements	Weeks 1-3
File Certificates of Formation	Week 3
Obtain EINs	Week 3-4
Establish Bank Accounts	Week 4-5
Finalize Operating Agreements	Weeks 4-6
Execute Operating Agreements	Week 6

## 5. Key Operating Agreement Provisions

The Fund Operating Agreement shall include the following key provisions:

### 5.1 Purpose and Powers

- Acquire and hold U.S. Treasury securities
- Issue guarantees to construction lenders for qualified affordable housing developments
- Collect guarantee fees and Treasury interest
- Retain and compound returns within Fund; distribute at termination

### 5.2 Capital Contributions

- Minimum investment: \$1,000,000
- Capital calls: Upon subscription acceptance and as needed for Treasury purchases
- No obligation to make additional contributions beyond commitment

### **5.3 Allocations and Returns**

- Allocate Treasury interest income and guarantee fees pro rata to Members
- Target net return: ~4.35% annually (retained and compounding within Fund)
- Returns compound to support capital recycling; distributed at Fund termination
- Reserve for expenses, contingencies, and guarantee obligations

### **5.4 Management**

- Manager has exclusive authority to manage Fund operations
- Manager compensation: 0.25% annual cost-recovery management fee on committed capital (excess returned to Fund)
- Revenue sources: Treasury interest income, guarantee fees, cash flow participation from Arnold Holdings equity, and Arnold Holdings contribution from development fees
- Manager subject to investment guidelines and restrictions
- Key Person provision: [To be determined]

### **5.5 Transfers**

- Membership interests not transferable without Manager consent
- Manager may consent to transfers to Permitted Transferees
- Right of first refusal in favor of Fund/other Members

### **5.6 Reports and Information**

- Quarterly financial reports within 45 days of quarter end
- Annual audited financial statements within 90 days of year end
- Annual K-1 tax information by March 15
- Special reporting for foundation PRIs (expenditure responsibility)

### **5.7 Amendments**

- Amendments require Manager consent
- Material amendments require approval of Members holding [majority/supermajority] of interests
- Certain fundamental matters require unanimous consent

### **5.8 Term and Dissolution**

- Initial term: 15 years from first close

- Extension: Manager may extend up to two (2) additional two-year periods (19 years max)
- Dissolution upon: Term expiration, Manager determination, or Member vote

## **6. State Law Considerations**

### **6.1 Delaware**

- Most widely used jurisdiction for entity formation
- Well-developed LLC statute and case law
- Favorable for manager authority and flexibility
- Annual franchise tax: \$300 minimum

### **6.2 Foreign Qualification**

The Fund may need to qualify as a foreign LLC in:

- **Missouri:** If Fund has office or conducts business in state (Civic Engine project location)
- **Other states:** Based on investor locations and business activities

### **6.3 State Securities (Blue Sky)**

- File notice in states where investors reside
- Coordinate with securities counsel on state-specific requirements

## **7. Tax Considerations**

### **7.1 Federal Income Tax**

- Fund treated as partnership for federal income tax purposes
- No entity-level tax
- Income, gain, loss, deduction, and credit pass through to Members
- Members receive Schedule K-1 annually

### **7.2 Treasury Interest Income**

- Interest income from U.S. Treasury securities
- Generally exempt from state and local income tax
- Passed through to Members retaining character

### 7.3 PRI Qualification

- Structure designed to qualify for Program-Related Investment treatment under IRC 4944(c)
- Charitable purpose: Financing affordable housing and reducing carbon emissions
- No significant purpose of producing income or capital appreciation
- Tax counsel opinion to be obtained

### 7.4 UBTI Considerations

- Treasury interest income is not UBTI for tax-exempt investors
- Guarantee fee income is not debt-financed and should not generate UBTI
- Structure avoids common UBTI triggers

## 8. Recommendations and Next Steps

### 8.1 Recommendations

Decision	Recommendation	Rationale
Fund Entity Type	Delaware LLC	Simplicity, familiarity, tax efficiency
Manager Structure	Separate Manager LLC	Liability protection, scalability
Fund Name	Civic Engine Guaranty Fund, LLC	Clear identification with project
Manager Name	Civic Engine Fund Management LLC	Consistent branding

### 8.2 Immediate Next Steps

1. **Engage Fund Counsel:** Retain experienced fund formation counsel to draft Operating Agreements
2. **Form Manager Entity:** File Certificate of Formation for Civic Engine Fund Management LLC
3. **Draft Operating Agreements:** Prepare comprehensive Operating Agreements for both entities
4. **Form Fund Entity:** File Certificate of Formation for Civic Engine Guaranty Fund, LLC
5. **Obtain Tax Counsel Opinion:** Engage tax counsel to confirm PRI qualification

### 8.3 Items Requiring Further Decision

Item	Options	Decision Maker
Key Person Trigger	Jonathan Arnold only vs. Jonathan Arnold + one other	ADG Leadership
Amendment Threshold	Majority vs. 2/3 vs. 75%	ADG Leadership with investor input
Fund Term	15 years vs. 20 years	ADG Leadership
Extension Rights	2 x 2-year vs. 3 x 2-year	ADG Leadership

## 9. Appendices

### Appendix A: Delaware LLC Formation Checklist

- Prepare Certificate of Formation
- Select Registered Agent
- File Certificate of Formation with Delaware Secretary of State
- Obtain certified copy of filed Certificate
- Prepare Operating Agreement
- Apply for EIN from IRS
- Open bank accounts
- Qualify as foreign LLC in necessary states

### Appendix B: Comparable Fund Structures

Fund	Entity Type	Manager Structure
Enterprise Community Loan Fund	Delaware LLC	Separate Manager
LISC Strategic Investments	Delaware LP	LLC GP
Capital Magnet Fund Recipients	Varies	Varies
MacArthur WOO PRIs	Direct investment	N/A

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