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Ms. Jodie Harris  
Director  
Community Development Financial Institutions Fund  
U.S. Department of Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Re: Comments regarding Proposed CDFI Certification Application

Dear Director Harris:

Logue Advisory Group ("LAG") appreciates the opportunity to submit comments to the Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury, concerning the Community Development Financial Institutions Program – Certification Application, which Applicants will submit through the CDFI Fund's Awards Management Information System (AMIS).

Logue Advisory Group is a consulting firm that represents 60 CDFI banks and 49 CDFI depository institution holding companies. We have submitted applications for CDFI Certification on behalf of 14 additional banks and 12 depository institution holding companies. Our clients are in distressed and underserved communities located across eight states, serving both urban and rural areas.

Our comments below are in the order in which they appear in the content of the revised CDFI Certification Application.

#### **CDFI CERTIFICATION APPLICATION**

##### **LEGAL ENTITY**

As regulated entities, banks and depository institution holding companies are routinely examined by state and federal regulators on a rotating basis. The FDIC maintains an online registry of all FDIC insured banks, which identifies much of the criteria required by the legal entity section of the application. The FDIC Bank Find Tool provides much of the data requested in the Legal Entity Section including:

LE04 – Date of Incorporation  
LE05 – Applicant Institution Type  
LE06 – Applicant Federal Regulator  
LE08 – Applicant FDIC Insurance Certificate Number  
LE09 – Applicant RSSID Number  
LE10 - Applicant State or Other Regulator  
LE11 – Applicant’s insurer

The FFIEC maintains a similar registry for depository institution holding companies that contains similar data. Many banks were chartered over 100 years ago. The requirement to provide copies of legal entity documentation and all amendments thereto can be a time consuming and sometimes challenging task to locate all such documentation. Moreover, if the organization is reflected in the FDIC database as an “Active” FDIC insured institution, this requirement seems duplicative. LAG would propose that any “Active” FDIC insured institution be exempt from the requirement to upload copies of its legal documentation.

Similarly, the requirement for an official letter from the IRS providing EIN information can prove challenging as applicants are often placed on hold for hours while waiting for an IRS agent to pick up the phone to request EIN documentation and awaiting receipt of written confirmation can cause unnecessary delays. SAM.gov registration requires EIN validation by the IRS and the issuance of a Unique Entity Identifier (UEI). SAM registration is now a pre-requisite to AMIS registration. EIN documentation seems duplicative for Applicants that have an active SAM.gov account.

## **RESPONSIBLE FINANCING PRACTICES**

To meet CDFI Certification requirements for responsible financing practices, an entity should provide financial products and financial services in a way that does not harm consumers. LAG would propose that FDIC insured banks who are subject to bank regulatory agencies’ enforcement of current consumer lending protection statutes and regulations be exempt from the detailed line of questioning regarding products and services, more particularly those enumerated in PM 12-26.

Moreover, the questions in this section regarding whether the Applicant’s underwriting standards for each of its consumer, mortgage and/or small business loan products include measures to ensure the borrower has an ability to repay the loan according to the terms of the loan are in direct conflict with the blanket exemption afforded to CDFI banks from the Truth-In-Lending Ability to Repay Rule.

Additionally, the list of prohibitive practices includes products specifically designed by CDFI banks to provide greater financial access to distressed and underserved populations and communities. A prime example of this is the practice of offering mortgage loan products that include balloon payments which is listed as a prohibitive practice that would make any Applicant engaging in this practice ineligible for CDFI Certification. Most community banks do not offer 30-year mortgage loans. Rather, their in-house mortgage loan products are designed to provide affordable housing financing for those that cannot qualify for a 30-year mortgage from a more mainstream mortgage lender or in the secondary market. Most community banks offer balloon mortgages to help these consumers (5, 7 and 10-year balloons) during which time they are working with the consumers to improve their credit so they can assist them in placing the mortgage in the secondary market for long term financing at maturity. This is a tremendous asset to LMI consumers without which many would not otherwise qualify for financing.

Moreover, the smaller community banks cannot withstand the interest rate risk associated with long term permanent mortgage financing. We conducted a survey of our 60 certified banks, and all responded. Of our 60 CDFI bank clients, 50 offer in-house mortgage loans with balloon payments. Additionally, their construction mortgage loans are offered on an interest only basis during the construction phase then converted to an amortization schedule upon completion. Several of our clients also responded that their HELOCs (Home Equity Lines of Credit) are set up on an interest only basis.

## **TARGET MARKET**

LAG is supportive of the CDFI Fund's proposed changes regarding pre-qualified investment areas. We would ask for further clarification about Customized Investment Areas.

The proposed changes provide that an Applicant can establish a Customized Investment Area which includes a contiguous mix of both qualified and non-qualified geographic units of a single type, which may be census tracts, **non-Metro counties** (emphasis added), or parishes; and validate as a distressed community per the CDFI Fund's mapping system. Is it the intent of the CDFI Fund to intentionally exclude Metro counties from Customized Investment Areas or is this an oversight? LAG would propose that if an area selected validates as a distressed community, Metro counties should likewise qualify as a Customized Investment Area if: a) More than 85% of the population is in qualified geographic units and b) the geographic units are contiguous. It is our understanding that if a county is selected in the CDFI Fund's mapping system (metro or non-metro) it will not validate unless it meets these criteria.

LAG would object to the CDFI Fund's additional requirement that if designating a Customized Investment Area as its Target Market, an Applicant must direct at least 85% of their financing activity within individually qualified census tracts. This seems to be in direct conflict with the ability to establish a Customized Investment Area. For example:

Hinds County, MS qualifies as an Investment Area in the CDFI Fund mapping system at the county level. Not every census tract in Hinds County qualifies as an Investment Area, however, at least 85% of the population of Hinds County is in qualified geographic units and if selected on the census tract level in the mapping system, all geographic units are contiguous. An Applicant that identifies Hinds County as its Target Market should meet the criteria if 60% of its financial products and services are directed to Hinds County. To require an Applicant to direct at least 85% of their financing activity within individually qualified tracts is more onerous than the requirement that 60% of an Applicant's financing activities be directed to pre-qualified investment areas (regardless of geographic boundaries). If the Applicant met the 60% threshold (or 50% of financial products and 60% of the # of financial services), there would be no need to establish a Customized Investment Area.

Regarding Low-Income Targeted Populations, LAG would recommend the CDFI Fund provide permitted proxy data and/or acceptable methodologies for determining services directed to low- income targeted populations.

Regarding Other Targeted Populations, LAG would propose that regulated MDIs (Minority Depository Institutions) be exempt from the verification processes to demonstrate that they are serving an Other Targeted Population, as this would be duplicative of the efforts required of them to obtain the MDI designation. For non-MDIs, due to regulatory restraints regarding ethnicity, LAG would request the CDFI

Fund provide permitted proxy data and/or acceptable methodologies for determining service directed to Other Targeted Populations.

### **DEVELOPMENT SERVICES**

Development services are an integral part of promoting community development. LAG would comment that the proposed changes regarding development services are too restrictive. We would like to offer specific comments about the following provisions:

- A Development Service is a formal stand-alone training, counseling, or technical assistance service that promotes access to and/or success with an entity's Financial Products and/or Financial Services, and that the entity offers separately and distinctly from its other products/services.
- CDFI Applicants must demonstrate that they maintain control over the content and delivery parameters of their development services.
- CDFI Applicants must make at least one Development Service available on an ongoing basis at least four times per year

One of the most impactful development service tools a bank offers is its one-on-one credit counseling with consumers. When a consumer can sit down one on one with a bank officer to understand why his credit was denied, the steps he can take to improve his credit so he can qualify for financial products in the future, how much he/she can qualify for, or pre-or post-homeownership counseling, the results are much more impactful than those from a "group" program. To not allow this one-on-one credit counseling or home ownership counseling to count toward development services would be contrary to the spirit of the requirement that applicants provide development services. The same would hold true regarding business technical assistance. What is more impactful from a development services perspective, working one on one with a small business owner to review his cash flows and his profit and loss statements or requiring that individual to sit through a classroom presentation?

This proposed requirement has a second "prong" which requires the development service promote access to an entity's financial products and/or services. Financial literacy/financial education activities provide a solid foundation for supporting life goals such as savings for education or retirement, using debt responsibility and running a business. To require that development service activities be tied to a particular one of the applicant's products/services defeats the purpose of financial education in general. Bank officers, directors and employees spend countless hours at area schools, colleges, senior centers, and the like teaching basic financial literacy skills as life tools. Moreover, the proposed rules provide that the CDFI Fund does not consider workshops for children or conferences/workshops for broad audiences to be Development Services. Financial literacy is important at any age and without it, we lack a solid foundation for success. To not consider financial literacy education at workshops or conferences for students (elementary, high school, junior college, and university level) would impede a vital resource to building that foundation for our consumers as CDFIs would turn their attention to providing Development Services that "count" for CDFI purposes and may not have the necessary staffing to continue this important service for our students and in our schools.

To require that CDFI Applicants demonstrate that they maintain control over the content of their development services may deter some applicants from offering certain programs. Banks often use curriculum designed by education and other professionals for the curriculum used in financial education/financial literacy activities. Many banks offer the various Money Smart Programs designed by

the FDIC such as Money Smart for Teens, Money Smart for seniors and more. Others participate in programs sponsored by their state trade associations such as the Bank at School and Banker in the Classroom Programs. These programs provide very impactful financial education tools.

To require that Applicants provide a development service on an ongoing basis at least four times a year is unduly burdensome on the Applicant. This could result in applicant's simply offering "stock" programs to meet the requisite criteria with the results being not as meaningful as programs purposefully directed to a particular market and/or one on one sessions with consumers.

The proposed Application expressly states that the CDFI Fund does not consider the following activities to be Development Services:

- Information presented in newsletters, flyers, or online
- Workshops for children or conferences/workshops for broad audiences
- Presentations made at one-off events

Considering the current national emergency resulting from the COVID-19 pandemic, online delivery has become an essential tool through which Applicants can safely serve their communities at a distance. Many have established online Learning Centers that are extremely effective tools for development service activities. Early childhood financial education activities are essential to setting the foundation for lifelong financial literacy skills. One off events such as activities at senior centers where bank representatives make presentations on issues such as fraud and identify theft, which tend to target seniors, are impactful tools. To disallow these types of activities as qualifying development services would be a disservice to those who volunteer their valuable time and energy making such presentations.

### **Accountability**

LAG appreciates the CDFI Fund's transparency in disclosing the requisite thresholds required to establish accountability for Certification. We would like to offer the following comments regarding the proposed changes as they relate to the financial interest policy.

Serving on the Governing Board of Directors of an FDIC insured depository institution is regarded as an honor; however, the position also includes associated risk. Aside from statutory and/or regulatory qualifications that typically include taking an oath of office, unencumbered ownership of a specific amount of the bank's capital stock, and residential and citizenship requirements, there is a level of accountability that distinguishes the office of a bank director from directorships in most other corporate enterprises. There are laws and provisions, fiduciary responsibilities and penalties related to the activities of bank directors that can result in criminal convictions that have no counterpart in general corporate law. The unique role of the bank director and the grave responsibilities of the office make the position of bank director as one not to be offered or entered into lightly.

The Financial Interest Policy for CDFI Certification Accountability provides that a financial conflict of interest includes board members who have active loan products from the Applicant or that receive financial compensation for their board service above and beyond any reasonable cost reimbursement for travel or expenses incurred. This would include board members whose relevant family members have active loans from the Applicant.

LAG conducted a survey of our 60 certified CDFI bank clients and the results showed that 58 of our CDFI banks have loans to board members and/or their relevant family members or employers. CDFI banks are FDIC insured institutions subject to regulatory restrictions. As such, it is important to note that approval

for all loans to insiders must be made in compliance with Federal Reserve Board Regulation O and all loans are made on terms consistent with those provided to other similarly situated borrowers. Restricting an Applicant's ability to loan to board members in compliance with Regulation O would be detrimental to the institution both financially and from a community perception perspective. Most of our CDFI banks are small rural banks and operate in very small rural communities. In many instances, the Applicant bank is the only bank in town. Characteristics of these communities frequently include close familial ties to employees, board members and customers which enhances their perceived relevance and value in the communities. Quite often, familial ties are unavoidable in small communities.

Our survey of our 60 certified CDFI bank clients also revealed that 47 of those CDFIs remit some sort of compensation to their board members for their service. Board member responsibilities and obligations have a heightened level of risk and board members have come under the highest regulatory scrutiny ever in recent years. Moreover, service on a bank board is a time-consuming obligation that often takes time and income away from the director's primary occupation. If unable to compensate board members for their service, Applicants will struggle to find competent directors to serve their institutions. While most "director fees" are nominal, these fees are not typically identified as "reimbursement for travel or expenses incurred" and as such, would be in violation of the proposed financial interest policy.

These new components to the Financial Interest Policy were not contained in the prior iteration of the proposed Certification Application issued in May 2020 and we have not previously had an opportunity to comment on these changes. We would strongly object to the financial conflict of interest policy including board members who have active loan products from the Applicant or that receive financial compensation for their board service.

In conclusion, Logue Advisory Group appreciates the opportunity to provide comments and feedback from the perspective of this firm and its many CDFI bank and CDFI depository institution holding company clients, and we look forward to further discussion of these issues.

Should you have any questions, or if we may be of further assistance to you, please do not hesitate to contact Holly Logue at (601) 427-9122 or [hlogue@logueadvisory.com](mailto:hlogue@logueadvisory.com)

With kindest regards,

Logue Advisory Group, LLC



Holly R. Logue, President/CEO