Community Development Bankers Association
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May 28, 2021

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

RE: New TLR Report Instructions for Loan Participations and Loan Purchases

Dear Director Harris:

On behalf of the members of the Community Development Bankers Association (CDBA), we respectfully write to express strong concern over newly issued instructions related to the annual Transaction Level Report (TLR). CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. There are 176 banks and 136 bank holding companies (BHCs) with the Treasury's Community Development Financial Institutions (CDFIs) designation.

LOAN PARTICIPATIONS

In September 2020, the CDFI Fund published a new set of TLR instructions. As all CDFI banks have fiscal years ending on 12/31, these changes only recently came to the attention of reporting institutions while preparing TLRs due on June 30, 2021. Specifically, on page 20, the new instructions state:

> *"For loan participation, report your portion of the participation **ONLY** when the participation occurs on the same date of loan origination date."*

In some circumstances, it is feasible for all parties to a participation transaction to close on the same date. In many other cases, it is not feasible for all of the parties to close on identical dates due to the complexity of transactions, varying approval timelines and processes of different lenders, institutional capacity, other customary business reasons, and events outside the control of the CDFI. As an industry practice, there is no expectation that all lenders need to be on the same timeline as long as there is good communication and trust among lead and participating lenders that all parties will fulfill their written and/or verbal representations.

Engaging in participation lending is a long standing practice among community banks. Participation lending is a tool that enables lenders to better respond to the needs of borrowers that may have lending needs in excess of a bank's legal lending limits. Likewise, this practice can help a small bank manage individual borrower lending limits, borrower concentration risk, and institutional liquidity challenges. The CDFI Fund's new ILR reporting policy will greatly disrupt long standing industry practices -- significantly complicating operations, adding greater burden on lenders seeking to collaborate, and discouraging cooperation among CDFIs. Moreover, it severely and needlessly penalizes participating lenders and their communities by denying lenders the opportunity to get entirely appropriate credit for impactful transactions that require capital from multiple parties to be successful.

As the CDFI Fund seeks to integrate annual reporting with the CDFI certification process, the new reporting restrictions could affect certification status for lenders that regularly engage in participation lending. As outlined in the TLR, the definition of participation lending is narrowed and limited to only those transactions whereby all parties can close on the same date. This limit could easily prevent CDFIs that have met lending volume goals from meeting Performance Goals and Measures (PG&Ms) if transactions are arbitrarily disqualified for reasons outside the control of the CDFI. This problem is particularly acute for small banks with lower loan limits that often depend on participation lending to meet borrowers' needs.

If the CDFI Fund was planning such a significant change in reporting and what counts as eligible lending, it should have provided an opportunity for public comment prior to implementation. The ILR instructions did not provide any explanation for this change; thus, we can only speculate on the reasons. If there is a specific problem -- such as the potential risk of "double counting" if multiple parties to a participation loan report the transaction in their ILRs -- the CDFI industry can provide ideas on how to ameliorate the risk without disrupting common lending practices or unfairly penalizing participating lenders. CDBA is happy to engage with the CDFI Fund to provide constructive feedback on alternative reporting options.

LOAN PURCHASES

CDBA strongly supports the recommendations advanced by Inclusiv in their recent letter to the CDFI Fund. Specifically, Inclusiv correctly argues that loan purchase activities should not be excluded from reporting under the TLR instructions. CDFI banks do purchase, from time to time, loans from other lenders. Loan purchases can be an effective tool to managing earnings and helping other lenders manage liquidity and risk. Like credit unions, banks are required to report loan purchases on their call reports like all other loans.

The CDFI Fund explicitly authorizes loan purchases as an Eligible Activity under the CDFI Program's Financial Assistance component. Thus, is it confusing that the CDFI Fund does not allow loan purchases to be reported under the TLR. We believe it would greatly benefit the CDFI industry to understand the full scope of Eligible Activities being carried out by CDFIs by allowing both loan participation and loan purchase activities to be reported.

The Treasury Department's new Emergency Capital Investment Program (ECIP) explicitly acknowledges the value of loan purchases and loan participations. In fact, in its March 4, 2021 Rate Reduction Guidelines, the agency classifies loan purchases and loan participations by CDFI and MDI banks and credit unions as a "Deep Impact" activity. This designation allows ECIP participants to qualify for reductions in the annual dividend or interest rate as these activities support *"[b]orrowers or projects that create direct benefits for LMI communities or to Other Targeted Populations."* Specifically, the guidelines state:

> *"Non-depository CDFI Loan Funds: Purchases of, or participations in, loans made by non-profit non-depository CDFI Funds in deep impact target communities that were originated within one year of the purchase by the participating financial institution.*

Thus, CDBA believes these activities should be recognized within the TRL reporting instructions to ensure consistent treatment with CDFI Fund programs and Treasury's new ECIP Program.

RECOMMENDATION

We strongly urge the CDFI Fund to reconsider and amend the reporting requirements to reflect industry practices. More specifically, we urge the CDFI Fund to suspend this reporting limitation for CDFIs with TLR reports due on June 30, 2021. CDFIs with reports previously due on 12/31/2020 and 3/31/2020 should be afforded the opportunity to amend their IRL reports if they choose. We urge you to engage with the CDFI industry to develop a workable definition and reporting methodology for participation loans.

We also urge the CDFI Fund to revisit and amend reporting of loan purchases. As discussed above, the current reporting instructions conflict with banking regulator practices, the CDFI Fund's own Financial Assistance "Eligible Activity" definition, and the Treasury Department's Emergency Capital Investment Program definition of "Deep Impact" activities. Like the recommendation on loan participations, CDBA stands ready to work with the CDFI Fund to help craft a reporting methodology that works for the industry and the CDFI Fund's need to collect accurate data on awardees' activities.

The membership of CDBA appreciates the opportunity to provide feedback in order to maximize the effectiveness of all programs for the benefit of the most underserved communities in the nation. We look forward to future discussion on these important issues.

If you have any questions, please contact Jeannine Jacokes, CDBA Chief Executive Officer, at (202) 207-8728 or *jacokesj@pcgloanfund.org* or Brian Blake, Director of Public Policy at (646) 283-7929 or blakeb@pcgloanfund.org, Thank you for considering our recommendations.

Sincerely,

Jeannine Jacokes
Chief Executive Officer