Children's Investment Fund

November 4, 2020

Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington DC 20220

Dear Ms. McInnis:

Thank you for the opportunity to submit public comments concerning the Community Development Financial Institutions Program - Certification Application revisions (85 FR 27275).

The Children's Investment Fund (CIF) is a Community Development Financial Institution with a mission to improve the quality of and expand access to early learning and school-age child care programs for low- and moderate-income families. CIF also supports affordable housing for low-income families through place-based two-generation and other strategies that result in safer, healthier and more stable environments for young children. Through flexible project financing and technical assistance services, CIF has created a comprehensive support system for child care facilities in Massachusetts, modeled after more traditional community development approaches but applied to the child care sector in an innovative way. CIF's certified Target Market includes all CDFI-qualified Investment Area (IA) census tracts in the Commonwealth of Massachusetts. Although the early education facilities that CIF funds serve a high-proportion of low-income children and families, current CDFI Fund policies do not allow it to be certified for a Low-Income Targeted Population (LITP) Target Market (TM).

We urge you to consider a change in policy to allow CDFIs like CIF, which finance community facilities, to be certified for a LITP TM. Specifically, we request that a financial product benefitting a community facility be considered to serve an LITP TM if at least 25% of the facility's beneficiaries are low-income. This proposed policy directly mirrors the way that affordable housing-focused CDFIs are able to claim a LITP TM through a set-aside of housing units for low-income residents. We ask you to extend this policy to community facilities like child care centers that meet a requirement to set-aside classroom slots to serve children from families with low incomes.

CIF requires all the child care centers in its portfolio to reserve at least 25% of their enrollment for low-income children, as defined by those that attend a federally-assisted Head Start slot or receive a public child care subsidy. In Massachusetts, a family must be at or below 50% of the State Median Income (SMI) to initially qualify for a childcare subsidy. For a family of two for

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example, this income limit is $42,614[1] which is lower than HUD's 80% AMI limit for a family of two throughout all Metropolitan Statistical Areas of the state.[2] The state of Massachusetts offers a capital bond program that CIF co-manages with its affiliate, the Community Economic Development Assistance Corporation, and the Department of Early Education and Care. This bond program statutorily requires that grantees set aside a certain percentage of classroom slots for children from families with low incomes. This requirement is outlined in a recorded Land Use Restriction that requires grantees to maintain this level of affordability for 15 years (if leased) or 25 years (if owned).

As an example, in FY20, CIF made a strategic business decision to commit construction financing for a child care facility in Belchertown, Massachusetts that also received a state capital bond program grant. The child care facility is not located in an IA – and, therefore, CIF is not able to count it toward its Target Market lending – however 32% of the 110 children that will be served by the new facility will be from low-income families receiving a child care subsidy. The center is required to maintain this level of affordability for 25 years. Although the new childcare facility did not meet CIF's IA TM criteria, it is part of the economic infrastructure needed to transform a former state school campus into a new mixed-use commercial, residential, and industrial park. The Massachusetts Development Finance Agency recently received a federal Economic Development Administration (EDA) grant to promote the redevelopment of this site which is in close proximity to an Opportunity Zone. We know that this child care center is important for the many low-income families in the area who need affordable, high-quality child care in order to participate in the workforce, which is directly in service of our mission and the mission of the CDFI Fund. Yet because we cannot claim an LITP TM, we had to closely consider whether to participate in this mission-focused loan because it could jeopardize our status as a certified CDFI.

The child care industry was fragile before the COVID-19 pandemic and continues to suffer from an unstable business model and immense sustainability challenges. At the same time, it is essential to the nation's economic recovery. We urge the CDFI Fund to support CDFIs that serve this vital sector through the same policy that supports CDFIs focused on the affordable housing sector. We are available for further engagement or education on this issue and thank you for your consideration.

Sincerely,

Theresa Jordan
Director

[1] Massachusetts Department of Early Education and Care. FY21 Child Care Subsidy Income Eligibility Table. Available via: https://www.mass.gov/doc/state-median-income-smi-eligibility-chart-fy2020/download

[2] MassHousing. HUD 2020 Income and Rent Limits for Massachusetts. (See Page 8 for 80% AMI). Available via: https://www.masshousingrental.com/portal/server.pt/document/15608/2020_income___rent_limits_for_19_massachusetts_income_limit_areas

Heartland
Credit Union Association

November 5, 2020

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

Re: Comments on the Proposed CDFI Certification Application, the Annual Certification and Data Collection Report, and the Certification Transaction Level Report

Dear Sir or Madame:

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the Community Development Financial Institution (CDFI) Funds' (the Fund) notice and request for public comment on the CDFI Certification Application. This CDFI Fund also issued a contemporaneous notice and request for public comment concerning the Annual Certification and Data Collection Report Form (ACR) and the Certification Transaction Level Report (CTLR).

CDFIs are specialized financial institutions that work in markets that are underserved by traditional financial institutions. These entities, including many CDFI certified credit unions, are charged with supplying low-income, financially-distressed communities with banking services and offering individuals the tools needed to become self-sufficient stakeholders in their own future. A financial institution seeking to become CDFI certified and gain access financial assistance from the CDFI Fund must complete the CDFI Certification Application.

The CDFI Fund recently proposed potential revisions to the CDFI Certification Application as part of its ongoing review of policies and procedures. This review is intended to ensure the program continues to meet certain statutory and regulatory requirements, is responsive to the evolving nature of the CDFI industry, and protects government resources. In a related notice, the CDFI Fund has proposed several revisions to the data points for the ACR and adoption of a new CTLR, which would provide a standardized data collection capability.

HCUA believes the proposed revisions to the certification application fail to achieve these goals nor would they further the purposes of the CDFI Program. In fact, the proposed application changes could ultimately serve as unnecessary barriers for qualified credit unions to access the CDFI designation. The proposed application would ultimately discourage new credit unions' interest in the CDFI program and could potentially harm the credit unions currently participating. We strongly encourage the Fund to reconsider its proposed amendments and refocus its efforts on finding ways to encourage, rather than discourage, participation from community-based credit unions.

Recommended modifications

All credit unions are required by law to be democratically controlled cooperatives, the addition of multiple questions on the Basic Information section is redundant and unnecessary. In this section, the proposal would include ten questions requiring a credit union to demonstrate its board is democratically elected. In the aggregate, this proposal would only serve to increase the time and cost to complete the CDFI Certification Application, which could have a detrimental effect on participation.

Similarly, the proposed Primary Mission section, fails to recognize that CDFI designated credit unions already operate pursuant to comprehensive regulatory requirements implemented by the National Credit Union Administration (NCUA) and the Consumer Financial Protection Bureau (CFPB). Under the regulation and supervision of these federal regulators, not to mention relevant state laws, credit unions comply with a host of rules meant to be a safeguard against anti-consumer products and practices. Despite this, the proposed Primary Mission section would add a series of questions about each and every financial product and service offered by the credit union – all in the name of demonstrating the credit union is complying with CDFI principles. These additions would unjustifiably add to the overall time and cost of completing the CDFI application and do not appropriately reflect the wide array of low-cost products and services offered at credit unions.

Using the MAPR as the exclusive lens through which to evaluate all consumer credit products is inappropriate and we strongly object to the CDFI Fund adopting this change. It is particularly troubling that the application proposes to ask questions using the annualized rate of interest and other fees charged to a borrower based on the Military Annual Percentage Rate (MAPR) – irrespective of the borrower's status as an active duty servicemember or dependent. These additional questions not only significantly misunderstand the Military Lending Act's (MLA) definition of a covered borrower, but are also an attempt to create an across-the-board standard for evaluating consumer financial products that fails to reflect the realities of the consumer credit market or how finance charges are calculated for non-MLA borrowers. If adopted, these questions could inadvertently result in the arbitrary cessation of or reduction in the availability of products that might have a seemingly high MAPR or "all-in" cost of credit but reflect reasonable pricing determinations.

HCUA is concerned that the proposed certification application changes could create unnecessary barriers to accessing the program for community-based credit unions. The Fund should reconsider this proposal and, instead, focus on evaluating its participants by further developing a partnership with the NCUA and using the information collected by NCUA during its routine examination process to encourage greater CDFI participation among America's credit unions.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Bradley D. Douglas

Brad Douglas
President/CEO

Hi,

Thank you all for the great work you do. From our small CDFI in Southeast Alaska, I don't have specific comments on the proposed ACR changes, but I would just highlight that it's unfortunate that the deadline for submitting the ACR report doesn't show up in the Reporting Schedule tab on AMIS. That feature would go a long way in making sure the report is submitted on time every year.

Thanks again - I hope everyone is safe and healthy.
Aldyn

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Aldyn Brudie
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October 23, 2020

Greg Bischak
Financial Strategies and Research Program Manager
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Email: CDFI-FinancialStrategiesandResearch@cdfi.treas.gov

Subj: Comments on Proposed Annual Certification Report (ACR) and Certification Transaction Level Report (CTLR)

Dear Mr. Bischak:

On behalf of Carolina Foothills Federal Credit Union, I would like to thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a certified CDFI serving 16,500+ members in Greenville, Spartanburg, Cherokee Counties of Upstate South Carolina and surrounding areas, we recognize the need for accurate data for the purposes of CDFI certification and recertification. We also strongly believe that data collection should be:

- **strictly limited to information required for specific and identifiable business purposes;**
- **proportionate to participation in (and benefits from) CDFI programs; and,**
- **safe and secure to ensure the confidentiality of sensitive consumer information.**

We are deeply concerned that the proposed data collection fails to meet these standards and, if implemented, would render CDFI Certification unsustainable for ourselves and for countless credit unions across the country. The letter below summarizes our specific concerns and proposes practical alternatives to strengthen compliance and promote continued credit union participation in the CDFI movement.

Major Concerns

As a regulated CDFI, Carolina Foothills Federal Credit Union has extensive experience with complex and secure reporting. Every quarter we provide more than 2,000 fields of financial data for our 5300 call reports; every NCUA examination requires that we provide detailed and confidential account-level AIRES data through highly secure channels. In return for these complex reports, our credit union receives a clear and commensurate benefit; deposit insurance up to $250,000 on each and every member account. We also receive assurance from our regulator that confidential member data will be protected, but no cyber security system is impenetrable; NCUA itself has experienced data breaches of confidential member information.

The CDFI Fund has proposed that all CDFIs submit detailed data on every loan transaction every year simply to retain certification. The proposed Certification Transaction Level Report (CTLR) would require the upload of a single file that contains sensitive data on member home locations and financial transactions. While the CDFI Fund promises that "transactional address and latitude and longitude data will be purged" to protect confidentiality, the risk of a data breach is a real and present danger. Credit unions simply cannot risk the irreparable harm that would result from such a breach merely for the privilege of CDFI certification.

And certification alone is the sole benefit of this process: Financial Assistance (FA) awardees that submit grant reports would be exempt from the ACR. In other words, the CDFI Fund proposal would impose its most costly and risky transaction-level reporting requirements on CDFIs that – by definition – have received the least benefits from their certification. These costs would fall disproportionately on small and minority designated (MDI) credit unions.

Fortunately, there is an alternative.

A Better Way

First, to address concerns about data security, the CDFI Fund should design its enhanced mapping system to provide Investment Area (IA) and Low Income Targeted Population (LITP) classifications based on a simple upload of addresses – without any loan data of any kind. This would eliminate any risk to sensitive consumer information. It also would help CDFIs to identify, track and manage activities and impacts in CDFI Target Markets – a clear benefit to the field. To further protect consumer privacy, any consumer loan activity should not be reported as individual transactions, but rather in aggregate at the census tract level, as is currently required for FA Consumer Loan Reports (CLRs).

Second, we believe a more efficient and equitable reporting system must be appropriately scaled for three categories of CDFIs:

1. FA Awardees: **FA awards provide significant capital and require a significant degree of transaction-level reporting for grant compliance. As proposed by the CDFI Fund, we agree that FA awardees therefore be exempt from a second transaction-level report for annual recertification.**

2. Non-FA Awardees that intend to apply for FA: **CDFIs that wish to apply for FA can reasonably be asked to provide more detailed activity data for the review of their FA application. This supplemental data should be aggregated at the census tract level, as is done with the CLR.**

3. Non-FA Awardees that do not intend to apply for FA: **CDFIs that do not intend to apply for FA should be able to recertify by submitting a streamlined ACR with data on target market lending activities aggregated at the institutional level.**

Carolina Foothills Federal Credit Union believes that a reporting system structured along these lines would protect consumer information, ensure compliance and provide the CDFI Fund and industry with the data needed to expand our reach and impact.

Again, many thanks for this opportunity.

Sincerely,

R. Scott Weaver
President and CEO
Carolina Foothills Federal Credit Union

Copies: **Jodie Harris, Director, CDFI Fund (HarrisJ@cdfi.treas.gov)**
Cathie Mahon, President/CEO, Inclusiv (cmahon@inclusiv.org)

October 26, 2020

Greg Bischak
Financial Strategies and Research Program Manager
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Subj: Comments on Proposed Annual Certification Report (ACR) and Certification Transaction Level Report (CTLR)

Dear Mr. Bischak:

On behalf of CASE Credit Union, I would like to thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a certified CDFI serving 45,000 members in 68 counties of Lower Michigan, we recognize the need for accurate data for the purposes of CDFI certification and recertification. We also strongly believe that data collection should be:

- strictly limited to information required for specific and identifiable business purposes;
- proportionate to participation in (and benefits from) CDFI programs; and,
- safe and secure to ensure the confidentiality of sensitive consumer information.

We are deeply concerned that the proposed data collection fails to meet these standards and, if implemented, would render CDFI Certification unsustainable for ourselves and for countless credit unions across the country. The letter below summarizes our specific concerns and proposes practical alternatives to strengthen compliance and promote continued credit union participation in the CDFI movement.

Major Concerns

As a regulated CDFI, CASE Credit Union has extensive experience with complex and secure reporting. Every quarter we provide more than 2,000 fields of financial data for our 5300 call reports; every NCUA examination requires that we provide detailed and confidential account-level AIRES data through highly secure channels. In return for these complex reports, our credit union receives a clear and commensurate benefit; deposit insurance up to $250,000 on each and every member account. We also receive assurance from our regulator that confidential member data will be protected, but no cyber security system is impenetrable; NCUA itself has experienced data breaches of confidential member information.

The CDFI Fund has proposed that all CDFIs submit detailed data on every loan transaction every year simply to retain certification. The proposed Certification Transaction Level Report (CTLR) would require the upload of a single file that contains sensitive data on member home locations and financial transactions. While the CDFI Fund promises that "transactional address and latitude and longitude data will be purged" to protect confidentiality, the risk of a data breach is a real and present danger. Credit unions simply cannot risk the irreparable harm that would result from such a breach merely for the privilege of CDFI certification.

And certification alone is the sole benefit of this process: Financial Assistance (FA) awardees that submit grant reports would be exempt from the ACR. In other words, the CDFI Fund proposal would impose its most costly and risky transaction-level reporting requirements on CDFIs that – by definition – have received the least benefits from their certification. These costs would fall disproportionately on small and minority designated (MDI) credit unions.

Fortunately, there is an alternative.

A Better Way

First, to address concerns about data security, the CDFI Fund should design its enhanced mapping system to provide Investment Area (IA) and Low Income Targeted Population (LITP) classifications based on a simple upload of addresses – without any loan data of any kind. This would eliminate any risk to sensitive consumer information. It also would help CDFIs to identify, track and manage activities and impacts in CDFI Target Markets – a clear benefit to the field. To further protect consumer privacy, any consumer loan activity should not be reported as individual transactions, but rather in aggregate at the census tract level, as is currently required for FA Consumer Loan Reports (CLRs).

Second, we believe a more efficient and equitable reporting system must be appropriately scaled for three categories of CDFIs:

1. **FA Awardees**: FA awards provide significant capital and require a significant degree of transaction-level reporting for grant compliance. As proposed by the CDFI Fund, we agree that FA awardees therefore be exempt from a second transaction-level report for annual recertification.

2. **Non-FA Awardees that intend to apply for FA**: CDFIs that wish to apply for FA can reasonably be asked to provide more detailed activity data for the review of their FA application. This supplemental data should be aggregated at the census tract level, as is done with the CLR.

3. **Non-FA Awardees that do not intend to apply for FA:** CDFIs that do not intend to apply for FA should be able to recertify by submitting a streamlined ACR with data on target market lending activities aggregated at the institutional level.

CASE Credit Union believes that a reporting system structured along these lines would protect consumer information, ensure compliance and provide the CDFI Fund and industry with the data needed to expand our reach and impact.

Again, many thanks for this opportunity.

Sincerely,

Jeffrey S. Benson

Jeffrey S. Benson, President & CEO
CASE Credit Union

Copies: Jodie Harris, Director, CDFI Fund (HarrisJ@cdfi.treas.gov)
Cathie Mahon, President/CEO, Inclusiv (cmahon@inclusiv.org)

Dear Greg

Thank you for the opportunity to review and comment on the Fund's proposed changes to the CDFI Certification program.

I am a consultant and regularly work with organizations that are interested in applying for certification as a CDFI. I also used to review cert applications when I was at the Fund.

I like the Fund's effort to be more specific about defining a primary mission of community development and putting more parameters on accountability.

My two biggest concerns are what level of demonstration of a community development mission the Fund plans to require of affiliates and small business lending target market options.

Controlling Entity Mission: A significant reason that organizations create subsidiaries that they want to get certified as CDFI is that the current organization (the Controlling Entity) does not qualify as a CDFI. Generally the CE does not qualify because of its asset mix (it owns too much real estate) or because its mission is not specific enough to meet the Fund's definition of community development. I think it is fine to require the parent to have a mission that is purposefully directed to improving social or economic conditions with two very important caveats. First, the parent needs to be able to demonstrate their community development mission via the activities of the CDFI sub. If only community development, mission oriented organizations can be parents, we will lose a significant portion of the current industry and will cut off a key pathway for growth of the industry. I think this model (non-CDFI parent of a CDFI sub) provides a public benefit, it helps CDFIs achieve the mission of serving underserved communities.

Second, generally for-profit organizations don't have mission statements, this is kind of a non-profit thing. I would strongly encourage the Fund to be flexible in accepting guiding principles, vision statements, and related statements from for-profit parent companies. I also think it will be burdensome to ask that a for-profit parent be operating under a "mission" statement or related statement for at least a year, especially since this is likely going to be a hoop that the parent is going to jump through specifically to satisfy the Fund. I strongly encourage the Fund to be flexible about the time frame a parent has been operating under said "mission" or related statement.

Small business lending LITP Target Market option: Though not a stated, proposed change, I am very concerned about the Fund's policy on defining how a CDFI is able to define its target market lending to small businesses (defined as loans over $50,000). Currently, it is nearly impossible for CDFIs to qualify their small business lending to a Low Income Targeted Population. Generally, if CDFIs are successful, they are helping entrepreneurs grow their businesses to a point that the income to the owner rises above 80% of AMI. One of the primary policy objectives for supporting small business creation and growth is job creation. The NMTC program defines a job that is accessible to Low Income people as one that does not require more than a HS diploma or equivalent. If one of the CDFI Program's policy objectives is to create jobs for un and underemployed people and communities experiencing high unemployment, then it makes sense to qualify a small business as meeting the definition of LITP through its beneficiaries, its employees. I would like to see the Fund allow small businesses to meet the LITP definition if at least 50% of the jobs they create or retain require no more than a HS Diploma or equivalent.

One last concern. The definition of Primary Mission includes a default rate under 5%, small loans needing a term of at least a year, and fees that are pro-rated over the term of loan and refundable with early repayment. The Fund's MPS defined a prudent loss rate for a CDFI Micro or consumer lender as well in excess of 5% (it was 9%) and up to 5% for small business lenders. I think a higher default rate is evidence of risk taking that is evidence of serving an underserved market. I encourage the Fund to not use default rate as a measure of primary mission. Additionally, I have read and written a LOT of funding applications (upwards of 500 over the last 20 years) and I have yet to see a CDFI offer to pro-rate or refund their upfront, application fees. The fee covers part of the cost of underwriting the loan. I don't think the Fund should ask CDFIs to pro-rate or refund their application or origination fees.

I am supportive of:

- counting a loan purchased from a non-CDFI if it was made to a member of a TM.
- Increased flexibility about the asset mix – allowing some real estate (presumably the CDFI's offices)
- Relaxation of the geographic requirement for accountability

I am not supportive of:

- The 1 year requirement for lending operations, under a qualifying mission statement – I think this is unnecessarily burdensome
- Completely removing the geographic requirement for accountability. I have some concerns about how representative an AB or GB member can be if they have little to no connection to the CDFI's geographic target market. It is painful trying to match up county by county resonance between representative members and borrowers, but maybe consider a compromise? Maybe some portion of the accountable members need to be connected to state that the Target Market is located in?
- I think that having only one representative required for any particular target market and only 33% of GB members being representative overall is too little, I would like to see this be a bit more stringent, maybe 50% overall and ideally more than 1 rep to any particular TM (depending on the size of the board of course).
- I think that trying to manage the "discretion" of an external DS provider's (other than the CDFI) could be logistically difficult.

Thank you for your time and attention.

Alice Veenstra

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Supporting Your Development of Your Community

/ inclusiv /

November 4, 2020

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Email: CDFI-FinancialStrategiesandResearch@cdfi.treas.gov

Subj: Comments on Proposed Annual Certification Report (ACR) and Certification Transaction Level Report (CTLR)

Dear Mr. Bischak:

On behalf of Inclusiv[1], I would like to thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a CDFI-certified intermediary, a founder of the CDFI movement, and a trade association representing more than 300 community development credit that serve more than ten million residents of low-income and underserved communities across the country, Inclusiv is deeply committed to strengthening the CDFI Fund and the CDFI industry. Credit unions are a central pillar of this industry; CDFI credit unions account for more than 75% of total CDFI assets and serve more people than the rest of the CDFI industry combined. For this reason, we strongly support the collection of data that helps to describe the scale, scope and impact of CDFI credit unions and the rapidly growing CDFI industry as a whole. We also support the collection of data that strengthens compliance and provides useful management information for CDFIs themselves. However, we cannot support the Annual Certification Report (ACR) and Certification Transaction Level Report (CTLR) in its proposed form.

Inclusiv believes that CDFI data collection should be:

- strictly limited to information required for specific and identifiable business purposes (e.g., compliance with Assistance Agreements, reports to Congress);
- proportionate to participation in -- and benefits from -- CDFI programs (e.g., CDFI Financial Assistance, Capital Magnet Fund, NMTC awards);
- consistent with other CDFI and regulatory reporting systems in terms of timing and content without duplication, conflict or redundancy
- completely free from risk that a data breach would compromise sensitive and confidential consumer information; and
- consistent and complementary with CDFI performance management information systems.

[1] Inclusiv is the new name of the National Federation of Community Development Credit Unions

We are deeply concerned that the proposed data collection fails to meet these standards and, if implemented, would render CDFI Certification unsustainable for countless CDFI credit unions across the country. The letter below summarizes our specific concerns and offers some practical alternatives to strengthen compliance and promote continued credit union participation in the CDFI movement.

Major Concerns

CDFI credit unions are regulated, insured depositories that have extensive experience with complex and secure reporting. Every quarter credit unions provide more than 2,500 fields of financial data to regulators that are reflected in public call reports, and every NCUA examination requires credit unions to provide detailed and confidential account-level AIRES data through highly secure channels. In return for these complex reports, credit unions receives clear and commensurate benefits; deposit insurance up to $250,000 on each and every member account plus transparent industry-wide data that facilitates peer comparisons and performance management. Credit unions also receive assurance that confidential member data will be protected to the fullest extent possible. That said, no cyber security system is impenetrable; like countless private sector corporations and financial institutions, NCUA itself has experienced data breaches of confidential member information.

The CDFI Fund has proposed that all CDFIs submit detailed data on every loan transaction every year simply to retain certification. The proposed ACR/CTLR process raises the following significant concerns.

1. **Security of Confidential Member Data**: The CTLR system – as amended in recently released FAQs -- would require the upload of two files, linked by transaction IDs, that contain sensitive data on member home locations and financial transactions. While the CDFI Fund has promised that "transactional address and latitude and longitude data will be purged" to protect confidentiality, the risk of a data breach is a real and present danger. Credit unions simply cannot risk the irreparable harm that would result from such a breach merely for the privilege of CDFI certification. And certification alone is the sole benefit of this process, as explained in point number 2, below.

2. **Disproportionate Burden for Small and MDI Credit Unions**: The CDFI Fund proposes to exempt all recent Financial Assistance (FA) awardees from the ACR – a sensible and welcome move to reduce the wasteful cost of redundant reporting. However, depository CDFIs with FA awards only submit Transaction-Level Reports (TLRs) for commercial and real-estate loans; all other loans are reported in aggregate at the census tract level in the Consumer Loan Report (CLR). By contrast, the proposed CTLR does not allow data to be aggregated but demands line-by-line reporting of every loan of every type. In short, the CDFI Fund would impose its most costly and risky transaction-level reporting requirement on CDFIs that have received the least capital benefits from their certification. Experience shows that these costs fall disproportionately on credit unions that can least afford them; small and minority designated (MDI) credit unions. There is ample evidence of this disparate impact; since the current ACR was introduced in 2016 95 active credit unions serving 1.5 million members in 30 states have allowed their certifications to lapse. Of these lapsed CDFIs, 73% are small credit unions and 25% are Minority Depository Institutions that remain fully eligible for certification.

3. **Inconsistent Data Collection for Consumer Loans**: As noted above, the transaction-level reporting requirements of the CTLR for non-FA awardees exceed those of the Consumer Loan

Report (CLR) for CDFI depositories that receive FA awards. One of the key strengths of the current CLR is its absolute protection of confidential consumer data and relatively straightforward aggregation at the census tract level, yet CDFIs that have invested in systems to fulfill the requirements of the CLR would now be asked to invest in a parallel system to prepare CTLRs that have slightly different technical specifications, data formats and submission requirements.

4. **Exponential Growth in Cost of Report Preparation and Error Correction:** One of the key weaknesses in the current CLR grant report is the sensitivity of AMIS to even the smallest of software-induced errors – such as the removal of a leading zero from a census tract FIPS code. These small errors can generate multiple error reports and require significant staff time to identify, correct and re-upload, including service requests, emails and phone calls with technical staff at the CDFI Fund. The CTLR would multiply these costs for credit unions by a factor of twenty: (i) by doubling the number of credit unions required to submit these reports (currently 160 credit unions – fully half of all that are certified -- do not have FA reporting obligations and would be subject to the CTLR); and (ii) by requiring transaction-level reporting of consumer loans, which will require more than ten times more lines of data than the aggregated CLR for FA awardees. If the proposed system had been in place this year, 160 CDFI credit unions would have been required to submit ACR reports with <u>more than 1.4 million lines of transaction data</u> uploaded through the CTLR in AMIS. Based on experience with the current grant reporting system, we would expect such volume to generate errors that would occupy staff at credit unions and the CDFI Fund for months.

5. **Lack of Identified Business Need for Transaction-Level Data from Non-Awardees**: The CDFI Fund has a clear business need for detailed reports to verify compliance with Assistance Agreements attached to capital grants. For CDFIs without FA awards, the CDFI Fund has two clear business requirements: (i) verification that credit unions meet standards for certification; and (b) data that can describe the scale and scope of CDFI activities in reports to congress. Transaction-level loan data is not necessary to meet either of these requirements – especially when more efficient and reasonable alternatives exist.

6. **Incompatibility and Conflict with Existing Institutional and Regulatory Systems**: The CTLR is designed as a sealed system that would provide post-facto classifications of transactions for two eligible Target Markets: Investment Areas (IAs) and, for the first time, Low-Income Targeted Populations (LITP). Inclusiv strongly supports the creation of an automated system for LITP classification comparable to the approach long in use by NCUA for Low Income Designation, but the proposed CTLR is incompatible with the performance management systems of CDFI credit unions in two critical areas:

    a) **Lack of Batch Address/API Interface for Pro-Active Target Market Classification:** The word "target" implies something that can be seen, but the proposed CTLR will keep LITP geographies invisible until after the transaction-level data is submitted. CDFIs need the ability to identify target markets in advance and in real time, not at the end of the performance period.

    b) **Inconsistency with NCUA Low Income Geographies**: The proposed CTLR would classify LITP based on a 12-digit code that identifies Census Block Groups, but the proposal does not acknowledge that every year NCUA releases a detailed and updated list of Low Income

Geographies that includes 12-digit Census Block Groups. Without coordination with NCUA the CDFI Fund is likely to create a parallel low-income classification system that conflicts with the established regulatory standard and obligates credit unions to track two separate low-income classifications for all of their members.

A Better Way Forward

Inclusiv believes the proposed ACR/CTLR would cripple the CDFI industry and deprive countless communities of desperately needed access to capital and financial services. Fortunately, there are better alternatives.

First, to address concerns about data security, the CDFI Fund should design its enhanced mapping system to provide Investment Area (IA) and Low Income Targeted Population (LITP) classifications based on a simple upload of addresses – without any loan data of any kind. This would eliminate any risk to sensitive consumer information. It also would help CDFIs to identify, track and manage activities and impacts in CDFI Target Markets – a clear benefit to the field. To further protect consumer privacy, any consumer loan activity should not be reported as individual transactions, but rather in aggregate at the census tract level, as is currently required for FA Consumer Loan Reports (CLRs).

Second, we believe a more efficient and equitable reporting system must be appropriately scaled for three categories of CDFIs:

1. **FA Awardees**: FA awards provide significant capital and require a significant degree of transaction-level reporting for grant compliance. As proposed by the CDFI Fund, we agree that FA awardees therefore be exempt from a second transaction-level report for annual recertification.

2. **Non-FA Awardees that intend to apply for FA**: CDFIs that wish to apply for FA can reasonably be asked to provide more detailed activity data for the review of their FA application. This supplemental data should be aggregated at the census tract level, as is done with the CLR.

3. **Non-FA Awardees that do not intend to apply for FA:** CDFIs that do not intend to apply for FA should be able to recertify by submitting a streamlined ACR with data on target market lending activities aggregated at the institutional level. If the CDFI Fund needs better data on the geographic distribution of loans for its reports to Congress, non-FA awardees could be required to report loan data aggregated at the county level. Attestations should be retained as the default mechanism for the majority of remaining recertification tests, while reserving the right to conduct audits and review of public records as appropriate.

Finally, Inclusiv believes that any data collection proposed by the CDFI Fund can only be evaluated in the context of all current and proposed requirements. Over the past five years CDFIs have experienced numerous changes in report formats and due dates that overlap or conflict with other CDFI and regulatory reporting obligations. We believe the CDFI Fund should develop, in consultation with the CDFI field, a comprehensive schedule for all reports and data collection instruments that are consistent across CDFI programs.

Inclusiv believes that a reporting system structured along these lines would protect consumer information, ensure compliance and provide the CDFI Fund and industry with the data needed to expand our reach and impact.

Again, many thanks for this opportunity to comment.

Sincerely,

Terry Ratigan
Senior CDFI Specialist
Inclusiv

Copies: Jodie Harris, Director, CDFI Fund
Cathie Mahon, President/CEO, Inclusiv
Pablo DeFilippi, SVP, Membership and Network Engagement, Inclusiv
Pamela Owens, SVP, Organizational Development & Capacity Building, Inclusiv
Clarissa Ritter, Vice President, Marketing & Communications, Inclusiv
Jules Epstein-Hebert, Director of Membership, Inclusiv

From:	CCME
To:	Dickens, Michelle
Subject:	FW: Comments from CUNA Mutual Group on Proposed Changes to CDFI Certification Application
Date:	Wednesday, November 4, 2020 10:37:40 AM
Attachments:	image001.png

From: Meier, Michelle M. <Michelle.Meier@cunamutual.com> **On Behalf Of** Roe, Christopher P.
Sent: Tuesday, November 3, 2020 9:29 AM
To: CCME <ccme@cdfi.treas.gov>
Subject: [EXTERNAL]Comments from CUNA Mutual Group on Proposed Changes to CDFI Certification Application

Christopher P. Roe
SVP – Corporate & Legislative Affairs
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CUNA MUTUAL GROUP

November 3, 2020

Tanya McInnis
Program Manager, Office of Certification, Compliance, Monitoring and Evaluation
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Also sent via e-mail on 11/3/2020

Dear Ms. McInnis:

On behalf of CUNA Mutual Group, I would like to comment on the Notice of Information Collection and Request for Public Comment published by the Community Development Financial Institutions (CDFI) Fund in the Federal Register on May 7, 2020.

CUNA Mutual Group is the nation's leading provider of financial products and services to credit unions and credit union members. As part of the cooperative movement, we embrace the credit union philosophy of "people helping people" and work with intermediaries, like Inclusiv, to identify eligible credit unions and assist them through the certification process. CUNA Mutual Group strongly supports efforts to establish clear, strong, and consistent standards for CDFI certification, with an efficient and effective certification process that facilitates entry for eligible institutions and denies entry to those not eligible.

However, for those reasons outlined in the Inclusiv comment letter, CUNA Mutual Group believes that the proposed CDFI certification application would not achieve these objectives. Instead, we agree that the proposed application erects significant and costly barriers that would dissuade and exclude many highly committed and fully qualified credit unions. Without fundamental changes, the proposed application could very well encourage an exodus of credit unions from the ranks of certified institutions, depriving the CDFI movement of an irreplaceable source of community-based capital, innovation, impact, and integrity.

Indeed, the depth and breadth of these concerns have led us to join other CDFI trade associations in a call for the CDFI Fund to engage in a series of substantive consultations with the CDFI industry as part of a substantial redesign of the application, with a redesigned proposal published for a second round of formal comments prior to implementation.

We strongly support the continuing efforts of the CDFI Fund to develop a certification application that strengthens the credit union system.

Thank you again for this opportunity to comment.

Sincerely,

Christopher Roe

Christopher P. Roe
SVP – Corporate & Legislative Affairs
CUNA Mutual Group

CPR:mm

Christopher P. Roe
SVP | Corporate & Legislative Affairs
CUNA Mutual Group
800.356.2644, Ext. 665.8684

/ inclusiv /

November 4, 2020

Tanya McInnis
Program Manager, Office of Certification, Compliance, Monitoring and Evaluation
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Email: ccme@cdfi.treas.gov

Subj: Comments on Proposed Changes to CDFI Certification Application

Dear Ms. McInnis:

On behalf of Inclusiv[1], I would like to thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a CDFI-certified intermediary, a founder of the CDFI movement, and a trade association representing more than 300 community development credit unions that serve more than ten million residents of low-income, underserved urban and rural communities across the country, Inclusiv is deeply committed to strengthening the CDFI Fund and the CDFI industry.

Credit unions are a central pillar of the CDFI movement; CDFI credit unions account for more than 75% of total CDFI assets and serve more people than the rest of the CDFI industry combined. For this reason we strongly support efforts to establish clear, strong and consistent standards for CDFI certification, with an efficient and effective Certification process that facilitates entry for eligible institutions and denies entry to those that are not. Unfortunately, the proposed CDFI Certification Application would not achieve these objectives. Instead, the proposed application erects significant and costly barriers that would dissuade and exclude many highly committed and fully qualified CDFIs while still allowing entry to less scrupulous institutions backed by the resources needed to game a needlessly complex and inefficient application. Without fundamental changes, the proposed application would encourage an exodus of credit unions from the ranks of certified institutions, depriving the CDFI movement of an irreplaceable source of community-based capital, innovation, impact and integrity.

Inclusiv does not believe that the proposed CDFI Certification Application can be repaired by simple adjustments, corrections and alterations. In just 44 pages of the proposed application we have noted 96 specific areas that require substantial modification, extensive restructuring or simple deletion[2]. We note that many of our CDFI partners have similar long lists of exceptions to the proposed application. Indeed, the depth and breadth of these concerns have led us to join our partner CDFI trade associations in a call for the CDFI Fund to engage in series of substantive consultations with the CDFI industry as part

[1] Inclusiv is the new name of the National Federation of Community Development Credit Unions
[2] Inclusiv's specific concerns relate to the following sections of FR Cert Application 2020-09747: Key Definitions (pp 3-4); Applicant Basic Information (pp 9-10); Legal Entity (pp 26-28); Primary Mission (pp 29-42); Target Market (pp 53-61); Development Services (pp 62-67); and, Accountability (pp 68-79).

of a substantial redesign of the application, with a redesigned proposal published for a second round of formal comments prior to implementation.

This letter does not list each of Inclusiv's 96 specific exceptions to the proposed application, as many of our concerns are connected to fundamental changes that are needed to the application's underlying strategy and structure. Instead, this letter summarizes our comments according to the outline of the proposed application and offers alternative approaches that would address our major concerns. Our responses to the specific questions asked in the Request for Public Comment are contained in the Annex to this letter.

Summary of Major Concerns and Alternatives

1. Key Definitions (pp 3-4)

a) Major Concerns

Inclusiv is concerned that the proposed definitions of financial products and services have been developed without regard to the regulatory environment occupied by banks and credit unions. Our concerns for each category of proposed definitions are summarized below.

- ***Financial Products:*** As regulated entities, credit union financial products are defined by regulatory standards. For example, the National Credit Union Administration (NCUA) provides credit unions with specific instructions for how financial products should be classified and reported in quarterly 5300 call reports, including the proper accounting of loan participations as new lending activity – incidentally, a loan product that does not appear on the CDFI Fund's list.

- ***Financial Services:*** Inclusiv is grateful for the CDFI Fund's efforts to recognize the importance of financial services for CDFI depositories. However, the fatal flaw lies in the proposed methodology for counting financial services, which is apparent from definitions that blur the lines between account *types* (e.g., checking and savings) and account *features* (e.g. check-cashing, ATMs). Financial services are an area of dynamic innovation and expansion, with features such as mobile banking, billpay, PopMoney™, remote deposit, no-contact payment, text alerts and other high-impact services rapidly moving from the cutting edge to standard practice within one or two years. Yet the CDFI Fund proposes that any financial services not on their list – such as all that were listed in the previous sentence – must be "specially approved by the CDFI Fund to be recognized as a Financial Service." There is no explanation of why such "recognition" would matter, since the CDFI Fund specifies that only the narrowest slice of financial services – "the direct holding of depository accounts" -- would count for the Target Market test. As further explained in the FAQs released by the CDFI Fund, the Target Market test only would count <u>new</u> depository accounts opened during the prior fiscal year. This well-intentioned attempt to "count" financial services suffers from four fundamental flaws:

   i. The number of accounts is a significantly biased measure, since wealthier members will always have many more savings, money market, investment, IRA Keogh and other accounts than our low-income members.

ii. High frequency financial services such as check cashing, pre-paid debit and money orders are critically important to many low- and very-low income consumers, but the volume of these services is not captured by counting deposit accounts.

iii. Specialized deposit accounts like certificates of deposit are tools for asset/liability management, with the number of accounts opened in a year subject to large fluctuations based on external factors such as, cost of capital, liquidity and lending – factors that are essential for credit unions to serve CDFI Target Markets but do not reflect the delivery of financial services in CDFI Target Markets.

iv. While the *number* of new deposit accounts is a relatively meaningless measure for credit unions, the CDFI Fund's proposal would incentivize the costly collection of irrelevant data, which would diminish focus on meaningful financial services and open the door for unscrupulous players who could easily manipulate the "number of new deposit accounts" metric.

b) Better Alternative

- ***Financial Products:*** While key product definitions may be useful and necessary for unregulated CDFIs, the CDFI Fund should defer to the definitions provided by regulatory authorities for banks and credit unions. To avoid confusion, the application should clearly state that CDFI banks and credit unions are expected to follow the applicable guidance of their regulators for defining and reporting financial product activities.

- ***Financial Services***: Since it is not possible to "count" total financial service activities, a better proxy measure would be the total number of unique and active members served by credit unions (or the number of unique account holders served by CDFI banks). This would provide a more accurate indicator of the full range of access to financial services -- without giving more weight to wealthier members who will always have more deposit accounts. It would also eliminate any incentive to manipulate "new" account openings or saddle low-income members with more accounts than they require – a practice that lay at the heart of a major bank scandal in 2016.

2. Applicant Basic Information (pp 9-10)

a) Major Concern

After more than two decades of credit union certifications Inclusiv is disappointed to find that the CDFI Fund still does not recognize a fundamental philosophical and legal requirement for all credit unions; specifically, that all credit unions are financial cooperatives governed by a board of directors who are democratically elected by members on the basis of one-member, one vote. This requirement applies equally to every credit union, whether chartered at the federal level by NCUA, by state regulatory authorities or by COSSEC in Puerto Rico. Nevertheless, the proposed Basic Information section includes ten questions that ask credit unions to demonstrate through short answers and uploaded documentation that their governing boards are democratically elected by members.

b) Better Alternative

The Certification Application should recognize that all credit union boards are democratically elected by membership and recognize that democratic governance ensures accountability to all segments of a credit union's membership. As noted in the Accountability section below, the "special" provision for credit union accountability should be available for any type of CDFI that has a governing board democratically elected by the people they serve. If CDFI Fund does extend this provision to any democratically governed CDFI, then these questions may be appropriate for <u>non-credit union</u> CDFIs that wish to qualify for the special provision.

3. Legal Entity (pp 26-28)

a) Major Concern

Inclusiv is concerned that Legal Entity verification remains substantially unchanged from the cumbersome manual process introduced with the first certifications in 1996. The proposed application continues to rely on copies of historic documents to confirm the legal status of each CDFI; a costly process that ultimately does nothing to establish whether an entity is an active legal entity. For example, after decades of consolidation in the financial sector there are literally thousands of inactive banks and credit unions that no longer exist for which the full list of documentation requested by the CDFI Fund could be provided.

b) Better Alternative

The Federal Government's System for Award Management (SAM.GOV) conducts due diligence and validates the legal and operational status of institutions without need for submission of historical organizational documents to the CDFI Fund – or lengthy review by CDFI Fund staff. The Legal Entity test could be streamlined by requiring all applicants to complete their registration with SAM.GOV, which would provide efficient due diligence on legal status and also would ensure that all certified CDFIs are prepared to apply for CDFI financial awards. New CDFIs frequently miss the opportunity to apply for FA and TA grants because their SAM registrations are not completed in time, but early SAM registration would prevent this from ever happening again.

4. Primary Mission Test (pp 29-42)

a) Major Concerns

Inclusiv recognizes the CDFI Fund's desire to discern an organization's primary mission through a review of its activities, but the proposed attempt to set objective boundaries for all varieties of financial products and financial services is akin to trying to build a permanent wall around a dynamic and rapidly growing community. The CDFI Fund is not a regulator and does not have the capacity to establish static boundaries for acceptable products and practices in a financial sector undergoing accelerating innovation. Nevertheless, the proposed application attempts to do just that. In so doing, the application does not acknowledge that credit unions and other regulated CDFIs already operate within strict parameters imposed by our regulators and CFPB to safeguard against predatory products and practices. Instead, the section requires regulated CDFIs to describe each and every product and service in a virtually endless series of repetitive questions with limited drop-down choices and descriptive narratives. The drop-down options themselves are deeply problematic, with non-standard terminology (e.g. "below market rate," "lower than standard," "less established," "mainstream underwriting criteria," etc.) that would distort the view of a credit union's ever-evolving business model and yield little insight into its primary mission.

Our review of the proposed Primary Mission section identified significant concerns with almost every question that would be asked of credit unions. We find the design of the proposed Primary Mission section to be fundamentally flawed in two significant ways:

i. it would impose disproportionate costs on regulated CDFIs that offer a comprehensive and ever-evolving range of products and services; and,

ii. it would not achieve the intended goal of protecting the integrity of CDFI certification but would be an ineffective and porous barrier that could be easily breached by unscrupulous institutions seeking to "game" the certification process.

b) Better Alternative

Inclusiv believes an efficient and effective Primary Mission test would include the following elements:

- ***Strong and Informed Support from Governing Board***: The CDFI Fund proposes to continue the current practice of parsing documents and checking dates to see if there is a paper trail with sufficient evidence of primary mission. While virtually all credit union bylaws contain language that speaks to a mission of community development, the CDFI Fund's time-consuming desk review does not yield useful insight into organizational commitment. While NCUA requires credit union boards to formally accept low-income designation, CDFI certification has never required any comparable participation from governing boards. We believe the Primary Mission test should require applicants to submit board resolutions that:

  i. attest to the institutional commitment to the CDFI mission;

  ii. provide a <u>brief</u> narrative to summarize activities that demonstrate that commitment; and,

  iii. confirm that the board understands the seven certification requirements and obligations for annual recertification and reporting.

- ***Attestations of Consumer Protection***: The CDFI Fund could ask certification applicants a series of questions that would identify any products or practices that exceed design parameters established by financial regulators or CFPB and whether they have been the subject of consumer complaints, lawsuits or judgements. Regulated entities would be asked to attest that all products and services adhere to regulatory standards and whether they have received a negative finding related to consumer regulations. Applicants would be able to provide narrative explanations for any exceptions to the requested attestations.

- ***Due Diligence on Consumer Protection***: Based on the attestations provided by applicants, the CDFI Fund can conduct due diligence with regulatory authorities and public reporting agencies such as the Consumer Financial Protection Bureau (CFPB), Better Business Bureau, state and local authorities and media scans. The CDFI Fund should also review consumer-facing product information to further validate the attestations. Any exceptions noted in the due diligence process would require additional follow-up with certification applicants before making a final determination.

A Primary Mission test structured along these lines would take full advantage of existing regulatory and consumer protection structures and would redirect the energies of the CDFI Fund away from the inward scrutiny of application data and outward to an open review of institutional operations, communications and consumer performance in the real world.

5. Target Market Test (pp 53-61)

a) Major Concerns

The CDFI Fund has proposed that Insured Depositories could qualify for a lower (i.e., 50%) threshold for Target Market financial product activities provided that more than 60% of "financial services" are in CDFI Target Markets. We support the CDFI Fund's effort to recognize the special obligation of depositories to diversify risk across markets and the challenges that CDFI depositories may face in meeting a strict 60% target market lending standard. Indeed, 2020 provides ample evidence of the need for flexibility on the <u>dollar</u> side of the Target Market test, particularly for banks and credit unions with significant mortgage lending operations. For example, low interest rates from the current pandemic and economic crisis have fueled a tremendous boom in mortgage refinancing across the country. For a CDFI credit union, one single Jumbo mortgage that is refinanced outside their CDFI Target Market can be as large as ten affordable housing loans inside their Target Market. In other words, even if more than 90% of mortgage loans are issued in CDFI Target Markets, they may only account for 50% of total financing dollars. CDFI credit unions across the country are confronting this challenge in real time; while the current refi boom provides much-needed income that allows increased lending in CDFI Target Markets, the large size of the average refi drags down the calculation of dollars deployed in CDFI Target Markets and puts their certification at risk.

As this example illustrates, the CDFI Fund has correctly determined that Insured Depositories require a measure of flexibility in meeting the Target Market test for certification. However, the CDFI Fund's proposal to condition this flexibility on the provision of financial services – as measured by *number of new deposit accounts* – is fundamentally flawed by its overwhelming bias. As noted in the "Key Definitions" comments above, some of the most critical innovations in financial services in recent years – mobile banking, text alerts, cashless payments and the like – are delivered as ***<u>features</u>*** of deposit accounts, not as new deposit accounts in and of themselves.

The additional problems with this approach, as noted above, bear repeating:

i. Wealthier members will always have many more savings, money market, investment, IRA Keogh and other accounts than low-income members, so contrary to the democratic governance ethos of credit unions, wealthier members will be counted more than low-income members.

ii. High frequency financial services such as check cashing, pre-paid debit and money orders are critically important to many low- and very-low income consumers, but the volume of these services is not captured by counting deposit accounts.

iii. Credit unions use specialized deposit accounts, such as certificates of deposit, as tools for asset/liability management with the number of accounts opened in a year subject to large fluctuations based on external factors such as cost of capital, liquidity and lending – factors that are essential for credit unions to serve CDFI Target Markets but do not reflect the delivery of financial services in CDFI Target Markets.

iv. The *number* of new deposit accounts opened in any given year is a relatively meaningless measure for credit unions, but the CDFI Fund's proposal would incentivize the costly collection of this irrelevant data, which would diminish focus on meaningful financial services and open the door for unscrupulous players who could easily manipulate the "number of new deposit accounts" metric.

These fundamental flaws in the proposed financial services test for Insured Depositories means it could never actually be used by the CDFI credit unions and banks for which it was intended. As a result, many large CDFI depositories that consistently lend more than 50% of their dollars in CDFI Target Markets – and were historically certified on that basis – would be forced to leave the ranks of CDFI certified institutions.

b) Better Alternative

Inclusiv supports the CDFI Fund's proposal to lower the Target Market percentage for financial products of Insured Depositories to 50%, but we believe that threshold should only be lowered for *dollars* deployed – not for number of loans. In short, Insured Depositories – and perhaps all CDFIs -- should be able to fulfill the Target Market requirement for certification provided that:

- More than 50% of the total dollar volume of financial products are deployed in CDFI Target Markets
- More than 60% of the number of financial products are deployed in CDFI Target Markets

In the absence of any standard, meaningful or practical measure of financial services activities that could be tracked and reported by Insured Depositories, Inclusiv recommends that the CDFI Fund does not use the number of deposit accounts as a proxy for this purpose. If the Fund believes and additional Target Market metric is warranted, it may consider a test to verify that more than 60% of unique members (for credit unions) or unique account holders (for banks) are in CDFI Target Markets. The use of unique members or unique account holders is a stronger proxy measure for financial services as it more accurately reflects the reach of financial services in the communities served. The metric is also rooted in a meaningful number that is tracked and publicly reported by credit unions and subject to regulatory examination.

6. Development Services Test (pp 62-67)

a) Major Concerns

The proposed application narrows the definition of Development Services and adds a number of inflexible requirements that rule out many of the most effective educational, counseling and coaching services we provide to our members. For example, the CDFI Fund proposes to eliminate consideration of any one-on-one support provided in conjunction with a product or service. This ignores considerable research – including recent work by Inclusiv and CFSI -- that challenge the effectiveness of stand-alone financial education and counseling and instead emphasize the importance and positive impact of delivering key messages at "teachable moments," specifically in conjunction with the delivery of appropriate products and services[3]. In a sense, the CDFI Fund has proposed that meaningful driver training can only take place as a stand-alone activity in a classroom, and anything delivered behind the wheel of an actual car simply does not count.

The narrowed definition of Development Services strikes out a number of other activities that many credit unions consider to be important ways to connect unbanked and underbanked communities with credit union products and services. For example, community educational events, marketing events and activities, and youth financial education are not considered, even though all of these can be important activities that build financial capability among credit union members.

b) Better Alternative

With the rapid expansion of online learning and the COVID-accelerated need to deliver content without in-person contact, the CDFI Fund should acknowledge a broader range of Development Services activities.

7. Accountability Test (pp 68-79)

a) Major Concerns

The proposed application offers a "special provision" for credit unions to demonstrate Target Market Accountability, but the draft provision reflects a lack of understanding about corporate governance in general and cooperative institutions in particular. The "special provision" only recognizes the accountability of democratically elected boards for target markets that make up more than 50% of credit union members. In corporate governance, more than 50% of voting shares is defined as a "controlling interest," but activist investors do not need a controlling interest to hold corporate boards accountable; they demand accountability -- and even change board composition -- with as little as 4% of voting shares. Nevertheless, the CDFI Fund maintains that democratically elected board members are not accountable to large segments of their members, simply because they do not represent a controlling interest. This is an unsupportable position; credit union boards are democratically elected on the basis of one-member, one-vote; they are directly accountable to all members, not just a majority that is defined through a narrow lens of Target Market characteristics.

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[3] The Pathways financial counseling and coaching model, developed by Inclusiv and Neighborhood Trust Financial Partners and currently in use by more than 30 CDFI credit unions, is specifically designed to integrate the delivery of counseling and coaching with appropriate credit union products and services.

While the CDFI Fund has focused on a limited set of proxy indicators for Target Market accountability, the proposed application makes no mention of diversity, equity and inclusion (DEI). Since the inception of certification CDFIs have been deemed fully accountable to their Target Markets, whether or not their boards are at all representative of the racial, ethnic and gender diversity of the communities they serve. While the status quo in corporate board rooms – and even among many high-performing CDFIs – is less than fully representative, this is a reason to elevate the discussion of DEI, not ignore it. Inclusiv is concerned that the absence of any consideration of DEI in CDFI certification reduces the concept of accountability to a narrow technical question and diminishes the power of CDFIs as agents of meaningful, positive change.

b) Better Alternative

Inclusiv believes the Accountability test should have two components: (i) Target Market Accountability test; and, (ii) Plan to Promote Diversity, Equity and Inclusion.

(i) Target Market Accountability:

- Any CDFI that has a governing board that is democratically elected by the people they serve should be deemed accountable to any Target Markets that meet the Target Market test for certification. Credit unions should be automatically recognized as democratically governed financial institutions; other types of CDFIs would need to demonstrate to their democratic governance to qualify for the special provision.

- CDFIs that are not democratically governed would be evaluated based on the CDFI Fund's proxy indicators of accountability for governing and advisory boards. Inclusiv will defer to our CDFI partners for specific recommendations on evaluating non-credit union Accountability.

(ii) ***Plan for Diversity, Equity and Inclusion***: Inclusiv understands that the CDFI Fund cannot suddenly require all CDFIs to have fully representative governing boards, but we do believe that all CDFIs can be asked to have a plan. A redesigned Accountability section could ask CDFIs for two pieces of information:

- the degree to which governing and advisory boards reflect the characteristics of the communities they serve; and,

- their plan to move towards and/or maintain diversity, equity and inclusion in their financial institution.

Conclusion

The Request for Public Comment listed five policy objectives for the revised certification policies and objectives, but the proposed revisions fall far short on all fronts. Instead, as shown in the examples provided above, the proposed revisions are far more likely to:

1. ***Reduce the diversity of CDFI Types, activities and geographies*** by generating an exodus of credit unions from the CDFI field due to increased cost of basic compliance, inconsistency with regulatory

standards and incompatibility with business practices -- with severe impacts on larger mortgage lenders as well as with small and minority-designated credit unions;

2. ***Stifle growth, reach and innovation among CDFIs*** by requiring a bureaucratic "approval" process for every new financial product or financial service added by individual CDFIs, with no clearly defined purpose for these approvals;

3. ***Weaken the CDFI Brand*** by discouraging participation of regulated institutions and increasing the compliance costs of legitimate CDFIs while still allowing the entry of questionable actors that can exploit loopholes in the process;

4. ***Maximize burden on CDFIs by imposing costly collection of data with little utility,*** including the exhaustive descriptions of every financial product and service, demand for historic organizational documentation, onerous requirements for Development Services and unnecessarily detailed collection of transaction-level data on millions of loans; and,

5. ***Reduce efficiency of CDFI Fund staff in rendering CDFI Certification determinations*** due to the increased volume and complexity of applicant data that would need to be reviewed, increased likelihood of technical delays in processing of transaction data, incompatibility with regulatory standards, and lack of integration with existing systems for due diligence (i.e., SAM.GOV) and financial regulation (e.g., NCUA, FDIC, CFPB).

Inclusiv is proud of our status as a certified CDFI and representative of CDFI credit unions across the country. We strongly support the continuing efforts of the CDFI Fund to develop a certification application that strengthens our field and hope that our comments will contribute to that goal.

Thank you again for this opportunity to comment. As always, we would welcome the opportunity to discuss any of our comments or recommendations at your convenience.

Many thanks for your consideration.

Sincerely,

Terry Ratigan
Senior CDFI Specialist
Inclusiv

Copies: Jodie Harris, Director, CDFI Fund
Cathie Mahon, President/CEO, Inclusiv
Pablo DeFilippi, SVP, Membership and Network Engagement, Inclusiv
Pamela Owens, SVP, Organizational Development & Capacity Building, Inclusiv
Clarissa Ritter, Vice President, Marketing & Communications, Inclusiv
Jules Epstein-Hebert, Director of Membership, Inclusiv

Annex

Responses to Specific Questions from the CDFI Fund

1. ***Is the information that will be collected by the revised application necessary and appropriate for the CDFI Fund to consider for the purpose of CDFI certification?***

   Response: No. As explained in the body of our comment letter, above, the revised application would collect a significant amount of documentation and data that is irrelevant, inappropriate and unnecessary for the CDFI Fund to determine if an applicant meets threshold requirements for the Legal Entity, Primary Mission, Target Market, Development Services, and Accountability tests. Inclusiv is concerned that the volume of unnecessary information would impose a costly burden on CDFIs and the CDFI Fund itself, which already has difficulty completing timely reviews and determinations of much more concise certification applications, target market modifications, CLR/TLR grant reports and annual recertification reports.

2. ***Are certain questions or tables redundant or unnecessary?***

   Response: As noted in our comment letter, Inclusiv has noted 96 specific areas that require substantial modification, extensive restructuring or simple deletion within just 44 pages of the revised application. For this reason we recommend a substantial redesign of the proposed application.

3. ***Should any questions or tables be added to ensure collection of relevant information?***

   Response: Most of our recommendations would remove or reduce the number of questions and tables, such as the needless and repetitive descriptions of every financial product and financial service. But as noted in our comment letter, Inclusiv also recommends that the CDFI Fund add questions on Diversity, Equity and Inclusion to the Accountability section of a redesigned application.

4. ***Are there questions where the intent or the purpose of the question is not clear? If so, which questions, and what needs to be clarified in order to provide a comprehensive response?***

   Response: There are numerous questions for which the purpose is unclear. For example, it is not clear how the CDFI Fund will use the exhaustive (yet still significantly incomplete and misleading) data and information requested on every financial product and service to divine the Primary Mission of applicants. There also is no clear purpose for the CDFI Fund's proposed "approval" of financial products and services that are not listed in the limited menu of options on the revised application, or what would be the basis for approval or disapproval of such products. The CDFI Fund also has not described how the review of historic organizational documentation establishes its current Legal Entity status, nor how the number of new deposit accounts is a meaningful measure of financial services. Inclusiv believes the large number of needed revisions or simple deletions of questions is due to fundamental structural or strategic elements that miss the mark. For this reason, Inclusiv has recommended a significant redesign of the proposed application.

5. Are there questions that would require additional guidance to respond adequately? If so, which questions, and what type of instructions would be helpful in order to be able to provide a response?

Response: It would be a mistake to focus on the need for additional guidance for questions that need to be extensively revised or removed altogether.

6. What is a reasonable grace period for currently certified CDFIs to come into compliance with the new certification criteria?

Response: We believe existing CDFIs should be provided 24 months to come into compliance with any new certification criteria.

7. **Should the CDFI Fund transition to a quarterly CDFI Certification Application cycle?**

Response: If a quarterly application cycle would increase efficiency at the CDFI Fund, then Inclusiv would be supportive as any costs to the field would be offset by the increased efficiency and predictability of the process.

8. Are the questions in the revised application appropriate to determine an entity's community development intent?

Response: No. See the Primary Mission session of our comment letter and response to questions 1, 2 and 4, above.

9. Are there other practices related to the provision of Financial Products and/or Financial Services that should be considered indicators of an entity's community development intent?

Response: No. As noted in our comment letter, it is not possible for the CDFI Fund to make a meaningful determination of an entity's community development intent through a desk review of applicant data and information about financial products and services. Instead, the CDFI Fund should ask CDFIs to identify and discuss only those with characteristics that fall outside of established consumer protection parameters. The CDFI Fund's due diligence process using publicly available information can then be used to determine whether the applicant's performance reflects a primary mission of community development.

10. Should any of the questions in the application related to responsible financing practices be used as a basis to automatically disqualify an Applicant from eligibility for CDFI Certification, or are there alternative criteria that should be met or used in such a manner?

Response: No. Most of the questions are inappropriate for regulated entities and would not yield useful information for unregulated entities on which to base such a clear-cut determination by the CDFI Fund. As noted in our comment letter, a better alternative is to focus only on products that exceed existing consumer protection parameters and conduct due diligence with cognizant reporting agencies and the applicants themselves.

11. If there are practices that should be considered either disqualifying or a prerequisite for CDFI Certification, should there be exceptions for any entities that engage or fail to engage, respectively, in such practices and, if so, under what circumstances?

Response: There are certainly predatory practices that should be considered disqualifying, but it would be surpassingly difficult to draw a stable set of bright lines to determine CDFI eligibility. As noted above, products, services and features continue to evolve in consequential ways and there is no practical way to eliminate the grey area where an otherwise responsible product may be tweaked in a new way that puts consumers at risk. The CDFI Fund should monitor consumer protection standards as they continue to evolve and focus attention on products, services and features that exceed those standards.

12. Are there any other practices related to the responsible provision of Financial Products, especially those related to mortgage or other real estate lending, and to equity investments, for which either the presence or absence of which should be considered for purposes of CDFI Certification?

Response: See previous comment.

13. For purposes of CDFI Certification, should an entity be required to indicate that it offers or engages in at least one or more of the types of Financial Services and practices identified in the questions on "Responsible Financing Practices – Financial Services?"

Response: It does not seem that this question would yield useful information.

14. Are there any practices related to the provision of Financial Services for which either the presence or absence of which should be considered disqualifying for purposes of CDFI Certification?

Response: See answer to question 11.

15. (RE Primary Mission – Affiliates) Are there circumstances that the CDFI Fund should consider as an exception to this rule?

Response: No comment.

16. Are there other circumstances under which the CDFI Fund should continue to require entities to map their Target Markets and, by implication, limit eligible Target Market activity to such geographic areas?

Response: The CDFI Fund should not require any CDFI to limit their activities in any eligible Target Markets. CDFIs should continue to have the option of designating a custom Investment

Area if they so choose, but they should not be required to do so. There should be no requirement to map LITP, OTP or non-contiguous (i.e., non-custom) CDFI Investment Areas.

17. Are there other Financial Services that the CDFI Fund should consider measuring toward the Target Market test? If so, how should they be incorporated into a single measure, with depository accounts, of an entity's Financial Services activity?

Response: As noted above, there is no practical way to count Financial Services activities and the CDFI Fund's proposed proxy measure fails on a number of fronts. If the CDFI Fund wants to assess Target Market access to Financial Services, then a better measure would be based on the number of unique credit union members or unique account holders.

18. Are the proposed thresholds for Financial Product and Financial Services activity appropriate when both are used to meet the Target Market test?

Response: No. As noted above, more appropriate thresholds would be 60% Target Market deployment of financial products by *number* and 50% Target Market deployment of financial products by *dollar amount*. As noted above, there is no practical way to "count" financial services activities, but a better proxy would be based on unique members or unique account holders.

19. Are any of the revised accountability requirements unduly burdensome?

Response: Yes. As noted in our comment letter, the CDFI Fund places undue burdens on itself and on credit unions by trying to apply abstract tests of Accountability to democratically governed cooperatives.

20. Are there alternative ways an entity can demonstrate decision-making accountability to its Target Market(s) that the CDFI Fund should consider?

Response: Yes. The CDFI Fund should consider any CDFI to be accountable if it has a board of directors that is democratically elected by account holders on the basis of one person, one vote. The CDFI Fund should also consider the CDFI's plan to promote or maintain diversity, equity and inclusion.

21. Should the methods to demonstrate accountability differ based on type of CDFI (e.g., regulated, non-profit, private sector)?

Response: No comment.

October 28, 2020

Tanya McInnis
Program Manager, Office of Certification, Compliance, Monitoring and Evaluation
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Email: ccme@cdfi.treas.gov

Subj: Comments on Proposed Changes to CDFI Certification Application

Dear Ms. McInnis:

On behalf of VSECU (Vermont State Employees Credit Union), I would like to thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a values-led community credit union that is exploring certification as a CDFI serving over 65,000 members in Vermont, we support this effort to establish an efficient path to CDFI certification for eligible institutions and establish clear, strong and consistent standards. Unfortunately, the application proposed by the CDFI Fund would not achieve these objectives. An effective Certification application should serve as a gateway that facilitates entry for eligible institutions and denies entry to those that are not, but the proposed application erects significant and costly barriers that would dissuade and exclude many highly committed and fully qualified CDFI credit unions. Without fundamental changes, the proposed application would encourage an exodus of credit unions from the ranks of certified institutions, depriving the CDFI movement of irreplaceable sources of capital, innovation, and community impact.

Our concerns are rooted in our identity. First, as an insured depository subject to rigorous regulatory standards, intensive examination and public reporting, VSECU is concerned that the proposed application creates a parallel, quasi-regulatory process that ignores the clear parameters already established by our actual regulators. Second, as a credit union, we are disheartened by numerous elements that ignore or misunderstand fundamental characteristics of our legal and operational structure. Finally, as a potential CDFI and current member of Inclusiv, we share a concern that the proposed changes would make CDFI certification too costly for the vast majority of eligible credit unions, with a disproportionate impact on those that serve rural and minority communities. As a result, we strongly support Inclusiv's call for a fundamental redesign of the proposed certification application based on the comments collected during this period and also with substantive consultation with the CDFI field during the redesign process itself.

The examples below will demonstrate some of the reasons why we believe such a fundamental overhaul is warranted:

- The proposed **Basic Information** section includes ten questions that ask credit unions to demonstrate that our governing boards are democratically elected by our members. Since every credit union[1] is required by law to have governing boards that are democratically elected by members, these questions reflect a basic lack of understanding of the credit union model.
- The proposed **Accountability** section amplifies this fundamental misunderstanding by only recognizing the accountability of our democratically elected boards for narrowly defined target markets that make up more than 50% of our members. In the private sector more than 50% of voting shares is defined as a “controlling interest” and activist investors often change corporate boards with just 4% of the voting shares. Since credit union boards are democratically elected on the basis of one-member, one-vote, our boards are directly accountable to all of our members, not just a segment with a controlling interest. The provision for “special” accountability should be available to any CDFI with a board that is democratically elected by the people they serve, and should confer automatic accountability on any credit union or other democratically governed institution that meets the Target Market requirement for certification. In addition, as Diversity, Equity and Inclusion (DEI) has been adopted as the 8th Cooperative Principle for all credit unions, we support Inclusiv’s proposal to add a question regarding institutional plans to promote and sustain DEI.
- The proposed **Primary Mission** section fails to recognize that credit unions and other regulated CDFIs already operate within strict parameters imposed by our regulators and CFPB to safeguard against predatory products and practices. Instead, the section requires a virtually endless series of questions with drop-down answers and descriptive narratives on each and every financial product and financial service we provide. These questions often use non-standard terminology and provide limited drop-down options that would distort any understanding of the wide array of credit union products and services, which are subject to vigorous and ongoing innovation and expansion across our industry.
- The proposed **Target Market** section would lower the Target Market threshold for loans to 50% for Insured Depositories provided that more than 60% of “financial services” are in CDFI Target Markets. We support this effort to recognize the special obligation of depositories to diversify risk across markets. However, the proposal to count financial services as *number of accounts* is fatally biased, since wealthier members will always have many more savings, money market, investment, IRA Keogh and other accounts than our low-income members. Indeed, many of our lowest-income members only have basic share or share draft accounts that give them access to the check-cashing, money order, bill-pay and other transaction services they depend on most heavily. In other words, contrary to the democratic ethos of credit unions, the CDFI Fund proposes to measure financial services by counting our wealthier members many more times than our lower income members. We strongly support the Inclusiv proposal to use a straightforward count of unique credit union members as a more accurate proxy indicator for financial services.

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VSECU

- The proposed **Development Services** section adds inflexible requirements that rule out many of the most effective educational, counseling and coaching services we provide to our members. For example, the CDFI Fund proposes to eliminate consideration of any one-on-one support provided in conjunction with a product or service. This ignores considerable research – including recent work by Inclusiv and CFSI -- that challenge the effectiveness of stand-alone financial education and counseling and instead emphasize the importance and positive impact of delivering key messages at “teachable moments,” in conjunction with appropriate products and services. In a sense, the CDFI Fund has proposed that meaningful driver training only takes place in a classroom, and anything delivered behind the wheel simply doesn’t matter.
- The proposed **Legal Entity** section continues to rely on copies of historic documents to confirm the legal status of each CDFI. The cumbersome collection and review of old documents does not establish whether an entity is both legal and currently active, but there is a readily available federal system that does. We support Inclusiv’s proposal to use registration with SAM.GOV to meet the legal entity requirement for certification. In addition to efficiently addressing the legal entity requirement, SAM registration would ensure that every CDFI is ready to participate in CDFI Program funding rounds as soon as they are certified.

VSECU is proud of our history as a community driven financial cooperative and strongly supports the goals of the CDFI movement. We believe changes to the CDFI Certification Application are needed to more sharply define the field. But these changes must be done with care and consideration of the complex and committed institutions that make up our movement. VSECU hopes that our comments will help the CDFI Fund in a comprehensive and consultative redesign of the certification application. We look forward to participating in that process.

Thank you for your consideration.

Sincerely,

Simeon Chapin
Community Impact Officer
VSECU

Copies: Jodie Harris, Director, CDFI Fund (HarrisJ@cdfi.treas.gov)
Cathie Mahon, President/CEO, Inclusiv (cmahon@inclusiv.org)

From:	Harris, Jodie
To:	Merkowitz, Jeff; Dickens, Michelle
Subject:	FW: Comments on Proposed Annual Certification Report (ACR) and Certification Transaction Level Report (CTLR)
Date:	Tuesday, October 20, 2020 6:40:23 PM

FYI. Not sure if Greg sent this on.

From: Pam Fleuette <PFleuette@tidemarkfcu.org>
Sent: Tuesday, October 20, 2020 2:25 PM
To: CDFI-Financial Strategies and Research <CDFI-FinancialStrategiesandResearch@cdfi.treas.gov>
Cc: Harris, Jodie <HarrisJ@cdfi.treas.gov>; cmahon@inclusiv.org
Subject: [EXTERNAL]Comments on Proposed Annual Certification Report (ACR) and Certification Transaction Level Report (CTLR)

October 20, 2020

Greg Bischak
Financial Strategies and Research Program Manager
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Email: CDFI-FinancialStrategiesandResearch@cdfi.treas.gov

Subj: Comments on Proposed Annual Certification Report (ACR) and Certification Transaction Level Report (CTLR)

Dear Mr. Bischak:

On behalf of Tidemark Federal Credit Union, i would like to thank you for this opportunity to submit comments on the notice of information collection and request for public comment published by the CDFI fund in the federal register on May 7, 2020. As a certified CDFI serving Tidemark Federal Credit Union members in Sussex County, DE and Worcester, Wicomico and Somerset Counties, MD, we recognize the need for accurate data for the purposes of CDFI certification and recertification. We also strongly believe that data collection should be:

- strictly limited to information required for specific and identifiable business purposes;
- proportionate to participation in (and benefits from) CDFI programs; and,
- safe and secure to ensure the confidentiality of sensitive consumer information.

We are deeply concerned that the proposed data collection fails to meet these standards and, if implemented, would render CDFI Certification unsustainable for ourselves and for countless credit unions across the country. The letter below summarizes our specific concerns and proposes practical alternatives to strengthen compliance and promote continued credit union participation in the CDFI movement.

Major Concerns

As a regulated CDFI, Tidemark Federal Credit Union has extensive experience with complex and secure reporting. Every quarter we provide more than 2,000 fields of financial data for our 5300 call reports; every NCUA examination requires that we provide detailed and confidential account-level AIRES data through highly secure channels. In return for these complex reports, our credit union receives a clear and commensurate benefit; deposit insurance up to $250,000 on each and every member account. We also receive assurance from our regulator that confidential member data will be protected, but no cyber security system is impenetrable; NCUA itself has experienced data breaches of confidential member information.

The CDFI Fund has proposed that all CDFIs submit detailed data on every loan transaction every year simply to retain certification. The proposed Certification Transaction Level Report (CTLR) would require the upload of a single file that contains sensitive data on member home locations and financial transactions. While the CDFI Fund promises that "transactional address and latitude and longitude data will be purged" to protect confidentiality, the risk of a data breach is a real and present danger. Credit unions simply cannot risk the irreparable harm that would result from such a breach merely for the privilege of CDFI certification.

And certification alone is the sole benefit of this process: Financial Assistance (FA) awardees that submit grant reports would be exempt from the ACR. In other words, the CDFI Fund proposal would impose its most costly and risky transaction-level reporting requirements on CDFIs that – by definition – have received the least benefits from their certification. These costs would fall disproportionately on small and minority designated (MDI) credit unions.

Fortunately, there is an alternative.

A Better Way

First, to address concerns about data security, the CDFI Fund should design its enhanced mapping system to provide Investment Area (IA) and Low Income Targeted Population (LITP) classifications based on a simple upload of addresses – without any loan data of any kind. This would eliminate any risk to sensitive consumer information. It also would help CDFIs to identify, track and manage activities and impacts in CDFI Target Markets – a clear benefit to the field. To further protect consumer privacy, any consumer loan activity should not be reported as individual transactions, but rather in aggregate at the census tract level, as is currently required for FA Consumer Loan Reports (CLRs).

Second, we believe a more efficient and equitable reporting system must be appropriately scaled for three categories of CDFIs:

1. **FA Awardees**: FA awards provide significant capital and require a significant degree of transaction-level reporting for grant compliance. As proposed by the CDFI Fund, we agree that FA awardees therefore be exempt from a second transaction-level report for annual recertification.

2. **Non-FA Awardees that intend to apply for FA**: CDFIs that wish to apply for FA can reasonably be asked to provide more detailed activity data for the review of their FA application. This supplemental data should be aggregated at the census tract level, as is done with the CLR.

3. **Non-FA Awardees that do not intend to apply for FA:** CDFIs that do not intend to apply for FA should be able to recertify by submitting a streamlined ACR with data on target market lending activities aggregated at the institutional level.

Tidemark Federal Credit Union believes that a reporting system structured along these lines would protect consumer information, ensure compliance and provide the CDFI Fund and industry with the data needed to expand our reach and impact.

Again, many thanks for this opportunity.

Sincerely,

Pamela A. Fleuette
CEO
Tidemark Federal Credit Union

Copies: Jodie Harris, Director, CDFI Fund (HarrisJ@cdfi.treas.gov)
Cathie Mahon, President/CEO, Inclusiv (cmahon@inclusiv.org)

Pamela A. Fleuette, CEO
302-629-0100 x 102
pfleuette@tidemarkfcu.org

TIDEMARK
FEDERAL CREDIT UNION

CAROLINA FOOTHILLS
FEDERAL CREDIT UNION
We move you *forward.*

October 23, 2020

Greg Bischak
Financial Strategies and Research Program Manager
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Email: CDFI-FinancialStrategiesandResearch@cdfi.treas.gov

Subj: Comments on Proposed Annual Certification Report (ACR) and Certification Transaction Level Report (CTLR)

Dear Mr. Bischak:

On behalf of Carolina Foothills Federal Credit Union, I would like to thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a certified CDFI serving 16,500+ members in Greenville, Spartanburg, Cherokee Counties of Upstate South Carolina and surrounding areas, we recognize the need for accurate data for the purposes of CDFI certification and recertification. We also strongly believe that data collection should be:

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Sincerely,

R. Scott Weaver
President and CEO
Carolina Foothills Federal Credit Union

Copies: Jodie Harris, Director, CDFI Fund (HarrisJ@cdfi.treas.gov)
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CAROLINA FOOTHILLS
FEDERAL CREDIT UNION
We move you forward.

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Tanya McInnis
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VSECU

- The proposed **Development Services** section adds inflexible requirements that rule out many of the most effective educational, counseling and coaching services we provide to our members. For example, the CDFI Fund proposes to eliminate consideration of any one-on-one support provided in conjunction with a product or service. This ignores considerable research – including recent work by Inclusiv and CFSI -- that challenge the effectiveness of stand-alone financial education and counseling and instead emphasize the importance and positive impact of delivering key messages at "teachable moments," in conjunction with appropriate products and services. In a sense, the CDFI Fund has proposed that meaningful driver training only takes place in a classroom, and anything delivered behind the wheel simply doesn't matter.
- The proposed **Legal Entity** section continues to rely on copies of historic documents to confirm the legal status of each CDFI. The cumbersome collection and review of old documents does not establish whether an entity is both legal and currently active, but there is a readily available federal system that does. We support Inclusiv's proposal to use registration with SAM.GOV to meet the legal entity requirement for certification. In addition to efficiently addressing the legal entity requirement, SAM registration would ensure that every CDFI is ready to participate in CDFI Program funding rounds as soon as they are certified.

VSECU is proud of our history as a community driven financial cooperative and strongly supports the goals of the CDFI movement. We believe changes to the CDFI Certification Application are needed to more sharply define the field. But these changes must be done with care and consideration of the complex and committed institutions that make up our movement. VSECU hopes that our comments will help the CDFI Fund in a comprehensive and consultative redesign of the certification application. We look forward to participating in that process.

Thank you for your consideration.

Sincerely,

Simeon Chapin
Community Impact Officer
VSECU

Copies: Jodie Harris, Director, CDFI Fund (HarrisJ@cdfi.treas.gov)
Cathie Mahon, President/CEO, Inclusiv (cmahon@inclusiv.org)

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carsey.unh.edu

July 24, 2020

Dear Mr. Bischak

The Center for Impact Finance at the Carsey School of Public Policy, University of New Hampshire, has played a leading role in researching the contributions of CDFIs to the community development field. Studies we have conducted include a CDFI Industry Analysis (2012) and an impact evaluation of the CDFI program (2014).

Both of these studies were heavily reliant on data that CDFIs reported to the CDFI Fund – and were hampered by the incompleteness of that data. In the case of the 2012 Industry Analysis, the Center did not have access to complete financial information to study trends in capitalization and liquidity across all certified CDFIs. In the case of the 2014 evaluation, the Center was only able to obtain data on the loans made by CDFIs who had recently received an award from the Fund. These issues not only presented limitations for our research: they create limitations for the CDFI field itself to present the true state of the industry and its impacts to others, including the taxpayers who subsidize CDFIs and the banks and impact investors who provide capital to the field. They furthermore hamper CDFIs' own efforts to benchmark themselves against others in the field to inform their efforts to improve.

For these reasons, the Center strongly supports the creation of a Certification Transaction Level Report (CTLR) to analyze transaction-level characteristics of CDFI lending, and further supports any changes to the existing Annual Certification and Data Collection Report (ACR) that would successfully promote the goals of reducing costs of reporting while improving data quality.

Sincerely,

Michael Swack

Michael Swack

Director, Center for Impact Finance
Carsey School of Public Policy, University of New Hampshire
michael.swack@unh.edu

Dear Mr. Bischak,

Having worked as a researcher, financial analyst, and now a consultant in the CDFI industry for over 17 years, I feel compelled to express my support for the creation of a Certification Transaction Level Report (CTLR) to analyze transaction-level characteristics of CDFI lending. And I further support any changes to the existing Annual Certification and Data Collection Report (ACR) that would reduce reporting costs while simultaneously improving data quality.

Since 2005, I have frequently used CDFI Fund data to analyze financial performance, capital ratios, geographic markets, and other CDFI characteristics. While existing CDFI Fund data is very useful, it lacks comprehensive coverage for all certified CDFIs at the transaction level, which is critical for geospatial analysis of CDFI lending. Geospatial analysis of transaction-level data helps CDFIs measure impact, illustrate their geographic reach, and demonstrate other nuanced outcomes; these are instrumental when CDFIs design data-driven lending strategies and draft funding proposals to public- and private-sector entities. In addition to the benefits of having CTLR data for all certified CDFIs, more accurate and comprehensive institution-level data (via the ACR) will allow for meaningful trend analysis of capitalization and liquidity across all certified CDFIs.

I was employed by a CDFI for 12 years and a CDFI trade association for five years—I know firsthand that more efficient and comprehensive data reporting processes are much-needed and should be welcomed by all CDFIs. I believe your estimates for time burdens are accurate and reasonable. I think the value of your proposed data collection changes far exceeds any additional time requirements. As for timing, I think 90 days following fiscal year-end is reasonable and necessary to make sure CDFIs are able to provide timely data to funders, investors, and other stakeholders. In addition to helping CDFIs and those working in the CDFI industry, the CDFI Fund itself will see an improved ability to analyze and evaluate CDFIs for a variety of purposes, including impact assessment and compliance reporting.

Lastly, I would encourage the CDFI Fund to adopt transparent data sharing model, whereby each certified CDFI's name is included in all public releases of ACR and CTLR data, including any and all FOIA requests. CDFI certification is a privilege and should abide by the same transparency required of FDIC insured lending institutions. De-identified data sources impose severe limitations on our industry's ability to demonstrate our social and economic impacts.

Thank you for accepting public comments on this important matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Lance Loethen
Tract Advisors
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267.971.8190

Request for Public Comment on CDFI Annual Certification Report

OMB Number: 1559-0046

Submitted by NYBDC Local Development Corporation d/b/a Pursuit

Proposed Deletions to current ACR data points due to CTLR Data Collection

Section 1, Q. 49-53, delete Target Market (TM) attestations since the CTLR will auto-calculate deployment to Target Markets based on validated transaction data. In addition, the CTLR results will automatically compute whether a certified CDFI meets or falls below the 60% Target Market threshold. If a certified CDFI's CTLR results, based on a three-year average through the last day of their most recently completed fiscal year fall below the 60% threshold, a certification compliance review will be triggered.

Recommendation: We recommend that the standard evaluation for the 60% target market threshold be either the three-year average OR the most recently completed fiscal year. If a CDFI meets either measure, they should be deemed in compliance.

Explanation: CDFIs may have had target market compliance issues that have since been resolved. In these cases, the ACR has already been reviewed with an explanation that was found to be satisfactory. Under this proposed new rule, CDFIs will be re-evaluated based on its three-year average. Re-evaluation of previous years resolved issues with explanations already deemed satisfactory should not occur.

Brad Seader

Vice President

Pursuit

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bseader@pursuitlending.com

November 1, 2020

Greg Bischak
Financial Strategies and Research Program Manager
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Email: CDFI-FinancialStrategiesandResearch@cdfi.treas.gov

Subj: Comments on Proposed Annual Certification Report (ACR) and Certification Transaction Level Report (CTLR)

Dear Mr. Bischak:

On behalf of Alltru Credit Union (formerly 1st Financial Federal Credit Union), I would like to thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a certified CDFI serving 35,895 members in the City of St. Louis as well as St. Louis and St. Charles counties, we recognize the need for accurate data for the purposes of CDFI certification and recertification. We also strongly believe that data collection should be:

- strictly limited to information required for specific and identifiable business purposes;
- proportionate to participation in (and benefits from) CDFI programs; and,
- safe and secure to ensure the confidentiality of sensitive consumer information.

We are deeply concerned that the proposed data collection fails to meet these standards and, if implemented, would render CDFI Certification unsustainable for ourselves and for countless credit unions across the country. The letter below summarizes our specific concerns and proposes practical alternatives to strengthen compliance and promote continued credit union participation in the CDFI movement.

Major Concerns

As a regulated CDFI, Alltru Credit Union has extensive experience with complex and secure reporting. Every quarter we provide more than 2,000 fields of financial data for our 5300 call reports; every NCUA examination requires that we provide detailed and confidential account-level AIRES data through highly secure channels. In return for these complex reports, our credit union receives a clear and commensurate benefit; deposit insurance up to $250,000 on each and every member account. We also receive assurance from our regulator that confidential member data will be protected, but no cyber security system is impenetrable; NCUA itself has experienced data breaches of confidential member information.

alltru.
CREDIT UNION

The CDFI Fund has proposed that all CDFIs submit detailed data on every loan transaction every year simply to retain certification. The proposed Certification Transaction Level Report (CTLR) would require the upload of a single file that contains sensitive data on member home locations and financial transactions. While the CDFI Fund promises that "transactional address and latitude and longitude data will be purged" to protect confidentiality, the risk of a data breach is a real and present danger. Credit unions simply cannot risk the irreparable harm that would result from such a breach merely for the privilege of CDFI certification.

And certification alone is the sole benefit of this process: Financial Assistance (FA) awardees that submit grant reports would be exempt from the ACR. In other words, the CDFI Fund proposal would impose its most costly and risky transaction-level reporting requirements on CDFIs that – by definition – have received the least benefits from their certification. These costs would fall disproportionately on small and minority designated (MDI) credit unions.

Fortunately, there is an alternative.

A Better Way

First, to address concerns about data security, the CDFI Fund should design its enhanced mapping system to provide Investment Area (IA) and Low Income Targeted Population (LITP) classifications based on a simple upload of addresses – without any loan data of any kind. This would eliminate any risk to sensitive consumer information. It also would help CDFIs to identify, track and manage activities and impacts in CDFI Target Markets – a clear benefit to the field. To further protect consumer privacy, any consumer loan activity should not be reported as individual transactions, but rather in aggregate at the census tract level, as is currently required for FA Consumer Loan Reports (CLRs).

Second, we believe a more efficient and equitable reporting system must be appropriately scaled for three categories of CDFIs:

1. **FA Awardees**: FA awards provide significant capital and require a significant degree of transaction-level reporting for grant compliance. As proposed by the CDFI Fund, we agree that FA awardees therefore be exempt from a second transaction-level report for annual recertification.

2. **Non-FA Awardees that intend to apply for FA**: CDFIs that wish to apply for FA can reasonably be asked to provide more detailed activity data for the review of their FA application. This supplemental data should be aggregated at the census tract level, as is done with the CLR.

3. **Non-FA Awardees that do not intend to apply for FA:** CDFIs that do not intend to apply for FA should be able to recertify by submitting a streamlined ACR with data on target market lending activities aggregated at the institutional level.

Alltru Credit Union believes that a reporting system structured along these lines would protect consumer information, ensure compliance and provide the CDFI Fund and industry with the data needed to expand our reach and impact.

Again, many thanks for the opportunity to comment on this important change.

Sincerely,

Carol Minges
Chief Executive Officer

Copies: Jodie Harris, Director, CDFI Fund (HarrisJ@cdfi.treas.gov)
Cathie Mahon, President/CEO, Inclusiv (cmahon@inclusiv.org)

November 4, 2020

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

RE: Proposed CDFI Certification Application and Reports

Dear Director Harris:

The undersigned trade associations and intermediaries write to express our strong concern about the direction and complexity of the proposed new Community Development Financial Institution (CDFI) Certification Application, Annual Certification and Data Collection Report (ACR), and new Certification Transaction Level Report (CTLR). Each of the undersigned organizations will submit a separate letter outlining its individual observations and concerns.

We share the CDFI Fund's desire to ensure CDFI certification evolves to reflect changes in the industry and safeguard government resources. We have great respect for the CDFI Fund and its staff. We appreciate the hard work they do to support the CDFI industry and our clients every single day. We fully understand the formal rulemaking requirements that the CDFI Fund must follow as part of a Federal agency.

We support updating the CDFI certification process and reporting, and believe that the task is exceptionally consequential for the future of the CDFI industry. We are concerned, however, that the CDFI Fund is on a path to create a set of standards and reporting that are too complex and rigid. These well-intentioned steps may have the unintended consequence of screening out a large portion of current CDFIs and discouraging small and new organizations from seeking certification.

After reviewing submissions to the request for public comment published on May 6, 2020, we ask that the CDFI Fund staff take a pause before publishing a final application or guidance. We ask that you arrange a series of direct conversations (surveys, interviews, roundtables, as appropriate) with the CDFI industry. The purpose of the discussions should be to gain a full understanding the complexity of issues and challenges associated with implementing such dramatic changes in the certification requirements. The conversations should aim to gather direct feedback on how the proposals will affect a wide range of business models and gather suggestions for alternative ideas. After engaging in such conversations and considering written feedback, we ask that the CDFI Fund publish and seek feedback on a revised proposal prior to implementation. The CDFI industry seeks to collaborate with the agency to develop a proposal that will accomplish the goals of safeguarding government resources, reflect changes in the industry, and that is feasible and not cost prohibitive to implement.

In addition, to the issues raised above, we also recommend the CDFI Fund's review and improvement of certification and reporting include gathering information that will sharpen its ability to assess the performance of the Fund and CDFIs with regard to serving communities of color, recognizing that there are certain legal and regulatory limitations on collection of such data.

We appreciate the opportunity to provide feedback in order to maximize the effectiveness of the CDFI Fund's programs for the benefit of the most underserved communities in the nation.

We look forward to future discussion on these important issues.

Thank you for considering our request.

African American Alliance of CDFI CEOs
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Orlando, FL 32801

Association for Enterprise Opportunity
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Washington, D.C. 20005

Coalition of Community Development Financial Institutions
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Community Development Bankers Association
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Native CDFI Network
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Washington, DC 20013

Opportunity Finance Network
901 D Street SW
Washington, D.C. 20024

cc:
Mr. Greg Bischak, Program Manager, Financial Strategies and Research
Ms. Tanya McInnis, Program Manager, Certification, Compliance Monitoring & Evaluation
Mr. Jeff Merkowitz, Senior Advisor
Ms. Marcia Sigal, Deputy Director for Programs and Policy

November 4, 2020

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

RE: Proposed CDFI Certification Application and Reports

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We support updating the CDFI certification process and reporting, and believe that the task is exceptionally consequential for the future of the CDFI industry. We are concerned, however, that the CDFI Fund is on a path to create a set of standards and reporting that are too complex and rigid. These well-intentioned steps may have the unintended consequence of screening out a large portion of current CDFIs and discouraging small and new organizations from seeking certification.

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cc:
Mr. Greg Bischak, Program Manager, Financial Strategies and Research
Ms. Tanya McInnis, Program Manager, Certification, Compliance Monitoring & Evaluation
Mr. Jeff Merkowitz, Senior Advisor
Ms. Marcia Sigal, Deputy Director for Programs and Policy

American Bankers Association
Building Success. Together.

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By e-mail: email to Tanya McInnis
ccme@cdfi.treas.gov

November 5, 2020

Ms. Tanya McInnis
Program Manager for the Office of
Certification Compliance Monitoring and Evaluation
CDFI Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220

RE: Request for Public Comment
Community Development Financial Institutions Program
Certification Applications
85 *Federal Register* 27275

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Treasury Department's Community Development Financial Institutions Fund's (CDFI Fund) proposed revisions to its Community Development Financial Institutions (CDFI) certification policies and applications published in the May 7, 2020 *Federal Register*.[2] The proposed revisions are intended to ensure that the certification policies and applications continue to meet the statutory and regulatory requirements are responsive to the evolving nature of the CDFI industry, and protect government resources.

As noted CDFI Fund Director Jodie L. Harris noted,[3] the Riegle Community Development and Regulatory Improvement Act established the criteria to become a CDFI more than 25 years ago. While nothing in the proposal alters the underlying tenants for determining CDFI status, the proposal refines and revamps the requirements to account for evolution in the marketplace and rising expectations for CDFIs to deliver capital and credit for underserved families, businesses, and communities across the nation.

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1 The American Bankers Association is the voice of the nation's $18.6 trillion banking industry, which is composed of small, regional and large banks. Together, America's banks employ more than 2 million men and women, safeguard $14.5 trillion in deposits and extend more than $10.5 trillion in loans.

2 Request for Public Comment, 85 Fed. Reg. 27,275 (May 7, 2020), https://www.govinfo.gov/content/pkg/FR-2020-05-07/pdf/2020-09746.pdf.

3 Press Release, U.S. Dept. of the Treasury, Cmty. Dev. Fin. Inst. Fund, Request for Public Comment on CDFI Certification Application and Reporting Tools (May 6, 2020), https://www.cdfifund.gov/news-events/Pages/news-detail.aspx?NewsID=378&Category=Update.

Summary of the Comment

ABA supports the goals of the proposal, which will strengthen the Primary Mission test and examine the extent to which an entity's community development strategy is supported by the financial products and services it offers to distressed and underserved communities. We agree that CDFI Certification should not be used to subsidize entities whose products, services, or policies do not align with the CDFI Fund's mission to expand economic opportunity for underserved people and communities; that applicants should demonstrate that their products are affordable and based on a borrower's ability to repay; and that terms and conditions are clear and understandable. However, we caution against use of a loan price cap based on the Military Lending Act's "all-in" military annual percentage rate (MAPR) or similar calculation as an automatic disqualifier for CDFI Certification. Rather, if an application reveals that annualized interest rates and fees applicable to a credit product may exceed a defined metric, that should initiate a holistic evaluation of the product and the applicant's experience with it to determine its merit in assisting underserved populations. Moreover, if the CDFI Fund uses a metric, it should ensure that it is meaningful and accurate. We urge Treasury to correct flaws in the MAPR calculation if it is retained.

Finally, in the interest of preserving the integrity of CDFI Certification, we urge the CDFI Fund not to rely on the National Credit Union Administration's Low Income Credit Union designation in the CDFI designation process for credit union CDFIs.

1. *If the CDFI Fund retains an inquiry about loan prices that exceed an annualized rate of interest, a positive response should be considered as one factor in the evaluation of a loan product that triggers a more holistic review of the product, and any metric to measure the cost of credit for these purposes should be meaningful and accurate.*

The CDFI Fund is proposing revisions to its Certification Application (Application) to enhance the tests it utilizes to verify an applicant's status as a community development focused organization by examining the extent to which the applicant's financial products and services align with its community development mission. To accomplish this, the CDFI Fund proposes to require applicants for CDFI Certification to attest to and provide additional information to determine their adherence to certain community development mission-driven principles, including the alignment of their financial products and services to their community development strategy and to responsible financing practices.

To measure compliance with community development mission-driven principles, the Application asks a series of questions related to the applicant's financial products and service. Among the questions is one about the annualized rate of interest and other fees that may be charged to borrowers in conjunction with particular credit products. Specifically, Question PM17 asks whether any of the applicant's loan products (including credit cards or purchased loans) allow for an annual percentage rate (APR) in excess of 36 percent when the rate is calculated using the MAPR standard. If the answer is yes, applicants answer a series of additional questions (Questions PM 17.1 to 17.9), including questions about underwriting standards, default rates, loan terms for small loans, limits on refinancing, cooling off periods before a sequential or replacement loan, and payment amount and fee uniformity.

For purposes of calculating the annualized interest rate, the CDFI Fund proposes using the methodology prescribed in 32 C.F.R. §232.4 of the MLA Rule. Under that rule, the MAPR is only calculated for certain types of consumer loans[4] made to active service members and their families. Creditors are not required to disclose the MAPR. The MAPR differs from the more ubiquitous and standard APR that creditors must calculate and disclose for all consumer loans pursuant to Regulation Z (Truth in Lending Act) in that the MAPR includes certain fees excluded from the APR, such as application and annual fees.[5] The CDFI Fund explains its purpose for requiring the MAPR calculation is to set a single standard for all applicants and to ensure that applicants do not have incentives to disguise their rates by not including certain fees in calculating the APR.[6]

ABA agrees with the CDFI Fund's goal of promoting transparency about fees that may be charged for financial products and services. However, we caution against using or relying exclusively on a threshold based on the MAPR or a similar cost measurement for these purposes. Rather, if the Application retains a question about products that exceed a threshold based on the MAPR or a similar calculation, the CDFI Fund should use a positive response to the question as one factor in the evaluation of a financial product, i.e., as a trigger initiating a more holistic review of the product and the applicant's experience with it rather than an automatic disqualifier. We believe that the Application's series of questions regarding underwriting standards, default rates, loan terms for small loans, limits on refinancing, cooling off periods before a sequential or replacement loan, and payment amount and fee uniformity provide appropriate information for this assessment. In addition, if the Application retains a cost measurement based on the MAPR, it should adjust the calculation to be more accurate and informative by treating an annual fee as if it is imposed once rather than 12 times, as it is under the MLA Rule.

While we support the CDFI Fund's goal to identify institutions that may not be fully committed to community development, we are concerned that use of a litmus test such as a threshold based on an MAPR, or similar calculation, will discourage or eliminate financial products that are valuable to and

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4 The MLA Rule does not cover mortgages or other loans secured by a dwelling or loans used to purchase the property securing the loan such as car loans. *See* 32 C.F.R. § 232.2(f)(2) (2020).

5 Question 6 of the CDFI Fund's FAQs asserts that the MAPR is a "widely used" measurement of a loan's interest and other charges. We disagree. The MAPR does not apply to a vast swath of loans such as mortgages and other loans secured by a home or to loans used to purchase an item secured by the loan such as a car loan. Moreover, it only applies to loans made to active servicemembers and their families, a small percentage of the population. In contrast, all consumer loans must calculate an APR pursuant to Regulation Z. The additional requirement to calculate an MAPR adds costs to the application process and inhibits availability of certain products. U.S. Dept. of the Treasury, Cmty. Dev. Fin. Inst. Fund, Frequently Asked Questions: Proposed CDFI Certification Application, ACR and CTLR 6 (2020), https://www.cdfifund.gov/programs-training/certification/cdfi/Documents/Frequently%20Asked%20Questions%20Proposed%20CDFI%20Certification%20Application,%20ACR%20and%20CTLR.pdf.

6 *See* U.S. Dept. of the Treasury, Cmty. Dev. Fin. Inst. Fund, CDFI Certification Application (For Public Comment Only) 30 (last visited Oct. 28, 2020), https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf; U.S. Dept. of the Treasury, Frequently Asked Questions: Proposed CDFI Certification Application, *supra* note 5, at 6 (FAQs Question 6).

appropriate for underserved and underbanked people. If used as an automatic disqualifier, it will discourage the development of desirable, innovative, and effective products that promote the CDFI mission and prevent entities that offer responsible and valuable products from applying to become or remain a CDFI.

First, it is important to understand that, in many cases, the MAPR calculation distorts and inflates the cost of credit, especially with regard to short-term, small-dollar loans that are an important source of credit, particularly for financially underserved consumers. To illustrate, a $500 loan with a 60-day term, modest 15% simple interest rate, and (financed) $20 administrative fee would only accrue approximately $13 in interest but have an MAPR of about 40 percent. For products such as credit cards and overdraft lines of credit, the rate is calculated retroactively each month, and costs, such as annual fees and cash advance fees, are included in the calculation. A typical $5 cash advance fee on a $100 transaction could easily exceed the 36 percent MAPR depending on the balance. Virtually any annual fee has the potential to cause an MAPR far in excess of 36 percent. Even a modest $12 annual fee can cause an MAPR to be in the four figures if the balance on the account happens to be low.[7]

Second, for annual fees on open-end credit, the MAPR calculation is seriously flawed—i.e., mathematically incorrect—as it calculates the MAPR for open-end credit as though an annual fee is paid monthly, creating an absurd result. Specifically, under the MAPR calculation, the annual fee is added to the total amount of fees imposed for the billing cycle that is divided by the balance. That number—which includes a fee only imposed once a year—is then *multiplied by 12 as though it is imposed every month*. Thus, the MAPR is inflated to reflect 11 fees that are not actually charged. The result is a significantly false representation of the total cost of credit.

Not only is the calculation incorrect, it leads to an irrational result. Programs charging a *single* annual fee on an open line of credit have the *same MAPR* as programs that *charge the same fee each month*, making such accounts appear comparable. To illustrate, assume a borrower has a balance of $500 on a credit card plan with an 8.25 percent interest rate and $15 annual fee. It would have an MAPR of *68.26 percent*. If the MAPR is calculated based on the assumption that the annual fee is only imposed once—not 12 times—during the year, the MAPR is *13.25 percent.*[8]

While this MAPR calculation error may have been inadvertent when the Department of Defense adopted it, if the CDFI Fund retains the MAPR formula in Question PM17, it should adjust it so it reflects annual fees accurately. Doing so will not only make the calculation correct, it will ensure the credibility

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7 For example, a $12 annual fee in month where the balance is $12, results in an MAPR of 1,200 percent.

8 Under § 232.4(c)(2)(ii) of the MLA regulation, the MAPR is calculated pursuant to §1026.14(c) and (d) of Regulation Z, that is, by "dividing the total finance charge for the billing cycle" which is $3.44 (corresponding to 0.006875 multiplied by $500), plus $25—"by the amount of the balance to which is it applicable"— $500— "and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year"—12, which is 68.26 percent. The MAPR includes the entire $25 annual fee in the numerator of this equation. If the MAPR were modified to include only the amount of that annual fee that is pro-rated for one billing cycle, it would calculate the total cost of credit as follows: it would divide the annual fee by 12 ($2.08); add that number to the monthly interest charge ($5.52); divide that amount by $500; and multiply the resulting amount by 12. This calculation results in a total cost of credit of 13.25 percent.

of and confidence in the Application process and the CDFI Fund's evaluation of an applicant's financial products.

Third, a rate threshold, whether based on the MAPR or similar formula, that automatically disqualifies applicants will constrain CDFIs' ability to offer credit products that are vital for expanding the credit opportunities for low-income and underserved people, especially with regard to small dollar loans. The fixed costs of providing credit represent a higher percentage of a small loan amount than they do a larger one. Thus, a small-dollar loan that covers most, but not all costs, will have a high rate, however calculated, and is likely to exceed a 36 percent MAPR cap.

Although financial institutions may lower the MAPR, for example, by increasing the amount of the loan, that may not be in the interest of a borrower who does not want or is unable to manage a larger loan amount. Other products, such as credit cards with even a modest annual fee to support other innovative, non-credit features and services useful and attractive to underserved groups, will be unavailable. While CDFI's may be able to absorb some losses through subsidies, they need flexibility to manage risk and offer sustainable products through appropriate pricing.

For these reasons, if the CDFI Fund Application requires applicants to calculate the MAPR (as adjusted to accurately reflect the cost of annual fees), we strongly recommend that it not use the MAPR component to automatically disqualify an applicant. Rather it should use it as a trigger to evaluate a financial product more holistically, using the proposed Questions PM 17.1 through 17.9 to understand the product based on a totality of its features and terms.

We appreciate the fact that Questions PM 17.1 through 17.9 are consistent with the May 2020 "Interagency Lending Principles for Offering Responsible Small-Dollar Loans"[9] (Interagency Principles), which we believe offer an appropriate framework for evaluating small dollar credit. For example, the Interagency Principles provide that:

> Reasonable loan policies and sound risk management practices and controls for responsible small-dollar lending [include] [l]oan amounts and repayment terms that align with eligibility and underwriting criteria and that promote…product structures, including shorter-term single payment structures, that support borrower affordability and successful repayment of principal and interest/fees in a reasonable time frame rather than reborrowing, rollovers, or immediate collectability in the event of default.[10]

This principle reflects critical questions in the proposal designed to evaluate whether a particular credit product is fair and reasonable, such as those asking about a borrower's ability to repay and meet other basic expenses, (Question PM 17.2), time limits on the number of times a borrower can refinance, (Question PM 17.6) and cooling off periods between loans. Question PM 17.7).

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[9] Bd. of Governors of the Fed. Reserve Sys., et al., Interagency Lending Principles for Offering Responsible Small-Dollar Loans (2020), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200520a1.pdf.

[10] *Id.* at 3.

Using a formula to measure a financial product's costs as a *trigger* for additional CDFI Fund analysis of financial products and services rather than an *automatic disqualifier* will serve the goal of disqualifying those trying to disguise the nature and costs of their products without discouraging development of fair, responsible, and effective financial products and legitimate applications for CDFI status. We also recommend that the Application and any FAQs make clear that exceeding any rate threshold is not necessarily indicative of an unsustainable product.

2. The CDFI Fund should eliminate any inquiry about "effective" APRs.

Question PM18 asks whether the applicant discloses certain information about costs and payments, including the "effective APR" of the loan for open-end credit. Currently, neither Regulation Z nor the MLA Rule requires creditors to disclose the "effective APR." Indeed, the Federal Reserve Board, in 2009, eliminated this disclosure requirement based on extensive consumer testing that found that the disclosure confused and misled consumers.[11] Requiring creditors to calculate and disclose the effective APR will impose new burdens and additional costs on applicants. For these reasons, we recommend that the CDFI omit any reference to an effective APR.

*3. CDFI status should be fully decoupled from the Low Income Credit Union designation***.**

ABA commends credit unions that serve a true community development mission and provide service to low income communities. However, over the past decade the National Credit Union Administration (NCUA) has made changes to the Low Income Credit Union (LICU) designation that raise serious questions about whether these credit unions always can be assumed to serve a community development function, or for that matter, can even be assumed to focus their business on service to low-income consumers and underserved communities. As a result, a credit union's status as an LICU should not be demonstrative of any component of the CDFI designation and should be decoupled from the CDFI certification process. Instead, credit unions and banks should be evaluated under the same standards.

Congress created the LICU designation to provide a targeted benefit in the form of additional powers to those credit unions that serve low-income communities. The powers provided to low-income credit unions—an exemption from the statutory member business loan cap, the authority to issue supplemental capital, and the authority to accept non-member deposits from any source, including deposit brokers—are significant. Structured properly, those additional powers provide a strong incentive for credit unions to serve low-income communities.

However, with nearly *half* of all credit unions now classified as "low-income," we question whether the NCUA's "low-income" designation accurately identifies credit unions that are committed to the

[11] "With regard to the effective APR, testing overwhelmingly showed that few consumers understood the disclosure and that some consumers were less able to locate the interest rate applicable to cash advances when the effective APR also was disclosed on the periodic statement." Truth in Lending, 74 Fed. Reg. 5244, 5248 (Jan. 29, 2009) (to be codified at 12 C.F.R. pt. 226), https://www.govinfo.gov/content/pkg/FR-2009-01-29/pdf/E8-31185.pdf#page=5. For a general description, see Truth in Lending Final Rule in Federal Register at page 5252.

development of low income and under-served communities. Indeed, following recent changes by NCUA (as well as aggressive marketing by the NCUA of this charter option), NCUA's definition of "low-income" is so broad that it captures tens of millions of people who are far from low-income. For example, NCUA classifies all active duty military personnel (regardless of rank or income),[12] and students (regardless of socio-economic status, degree status, or family income)[13] as low-income persons for purposes of a credit union's qualification as a LICU. For community-chartered credit unions, NCUA's area median income requirements can produce absurd results. For example, a person earning $114,255 would qualify as a "low income" person in Greenwich, Connecticut (80% of the area median income of $142,819[14]), and Greenwich and Fairfield County actually have an LICU that any resident is eligible to join.[15] Coupled with the lack of documented accountability that low-income people are actually served in those communities—credit unions are exempt from Community Reinvestment Act requirements or any requirement to document service to low- and moderate-income households—the broad definition of "low-income" undermines it as indicative of a credit union's mission or function.

Ultimately, the broad designation of institutions as CDFIs hurts the entire community, including credit unions and banks that take community development seriously, given the limited funds available for CDFIs. For these reasons, LICU status should not be used in the CDFI designation process.

Conclusion

ABA appreciates the opportunity to comment on this important matter. We strongly support the CDFI Fund's efforts to strengthen the Primary Mission test to ensure that the financial products and services CDFIs offer benefit distressed and underserved communities and are consistent with their community development mission. We urge the CDFI Fund, if it retains a question about prices that

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12 *See, e.g.*, Press Release, Nat'l Credit Union Admin., NCUA Changes Low Income Designation to Include Military Personnel in Calculation (May 7, 2020), https://www.ncua.gov/newsroom/press-release/2020/ncua-changes-low-income-designation-include-military-personnel-calculation.

13 *Id*.

14 U.S. Census Bureau, Quick Facts: Greenwich Town, Fairfield County, Conn., https://www.census.gov/quickfacts/greenwichtownfairfieldcountyconnecticut (last visited Oct. 28, 2020).

15 *See, e.g.*, Sound Federal Credit Union, Membership: About Us, https://mysoundcu.org/membership (last visited Oct. 28, 2020) (showing geographic boundaries including Bridgeport, Darien, Easton, Fairfield, Greenwich, Monroe, New Canaan, Norwalk, Shelton, Stamford, Stratford, Trumbull, Weston, Westport, and Wilton, CT); *cf.* Nat'l Cred Union Admin., Research a Credit Union: Sound Federal Credit Union, https://mapping.ncua.gov/SingleResult.aspx?ID=24705&IsCorpCU=0 (last visited Oct. 28, 2020) (showing LICU designation).

exceed a stated threshold, to use that question only for purposes of further inquiry about the features of the product rather than as an automatic disqualifier. In addition, if it retains the MAPR to measure the cost of credit, it should adjust the calculation to be accurate and credible. Finally, we urge the CDFI Fund to not use LICU status in the designation process. We are happy to provide any additional information.

Sincerely,

Joseph Pigg
Senior Vice President, Fair and Responsible Banking
American Bankers Association

November 5, 2020

Ms. Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Re: Community Development Financial Institutions Program—Certification Application; OMB Number: 1559–0028

Dear Ms. McInnis:

The American Financial Services Association (AFSA)[1] appreciates the opportunity to comment on the revised Community Development Financial Institutions (CDFI) certification application proposed by the CDFI Fund and the Treasury Department.

AFSA agrees with the CDFI Fund and the Treasury Department that CDFI applicants should engage in responsible financing practices. We strongly disagree, though, with how the application defines responsible financing practices. The application asks whether the applicant offers a loan product that exceeds a 36% Military Annual Percentage Rate (MAPR). Using a 36% MAPR as a measurement for whether a loan product is responsible, is flawed and will end up hurting consumers.

An MAPR rate cap is poor policy because it: (a) will reduce access to credit; (b) should not be used as the comparison tool; and (c) undermines the underlying purpose of the Truth in Lending Act (TILA). There are better ways to evaluate whether loan products are responsible.

I. CDFI Fund Policy Objectives and Certification Requirements for Responsible Financing Practices

In developing the revised policies and application, the CDFI Fund maintained five policy objectives:

1.) Continue to foster a diversity of CDFI types, activities, and geographies;
2.) Support the growth and reach of CDFIs, especially as it relates to their ability to innovate and take advantage of new technologies;
3.) Protect the CDFI brand;
4.) Minimize burden on CDFIs while improving data quality and collection methods; and

[1] Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

5.) Promote efficiency for CDFI Fund staff in rendering CDFI Certification determinations.

According to the Notice of Information Collection and Request for Public Comment (Notice), "The revised Certification policies and application attempt both to provide the flexibility necessary for CDFIs to grow and to serve the hardest to reach distressed communities, and to maintain the integrity of what it means to be a certified CDFI from a mission perspective."[2] AFSA appreciates that the CDFI Fund is working to preserve flexibility. Reaching distressed communities in a way that works for both consumers and financial institutions requires a flexible approach.

The Notice continues, "Given the CDFI Fund's limited resources to review an entity's products or services individually, the application asks entities a series of questions and/or attestations about their activities. The aim of these questions is to determine, to the extent possible, whether an entity—and the Financial Products and Financial Services it offers—adheres to a set of mission related principles."[3]

"To meet the CDFI Certification requirements for responsible financing practices," the Notice explains, "An entity should provide Financial Products and Financial Services in a way that does not harm consumers. Financial Products should be affordable and based upon a borrower's ability to repay. CDFIs should practice transparency, fair collections, and be in compliance with federal, state, and local laws and regulations."[4]

AFSA agrees completely. In fact, we have always believed that all financial products and services should be affordable, transparent, based upon a borrower's ability to repay, and in compliance with applicable regulations.

II. Responsible Financing Practices

While the CDFI Fund's requirement that applicants engage in responsible financing practices is correct, the way in which the CDFI Fund identifies which products are responsible is flawed.

To measure compliance with these five principles, the proposed application asks questions about the interest rate and other fees charged to borrowers. For the purposes of calculating the interest rate, the CDFI Fund requires that applicants use the methodology prescribed in 32 CFR § 232.4 of the Military Lending Act (referred to as the MAPR), regardless of whether the borrower is actually a member of the military or not. However, using the MAPR does not compare lending products in a direct, apples-to-apples comparison because the MAPR unnecessarily inserts the cost of products that vary greatly among providers, to what should be a cost of credit (or interest) discussion.

The clear way to achieve uniformity in evaluating the cost of credit (or interest) is to use the TILA definition of APR. That method has, for over 50 years, been the gold standard in comparing different lenders' costs of credit. APR considers only the true costs of the credit transaction. MAPR

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[2] 85 Fed. Reg. 27,276 (May 7, 2020).
[3] 85 Fed. Reg. 27,277 (May 7, 2020).
[4] *Ibid.*

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throws into the calculation of APR an additional element: whatever a borrower chooses to purchase as “ancillary products” such as credit life insurance or credit involuntary unemployment insurance. Adding the cost of these products—which are anything but finance charges—to a calculation of the cost of credit is erroneous. It would be far better to use the gold standard: TILA APR.

The rationale provided in the Notice for using MAPR is that, “This methodology captures interest and other charges, including application fees and participation fees, sets a single standard for all Applicants, and ensures that Applicants do not have incentives to disguise their rates by not including certain fees in calculating the Annual Percentage Rate.” This statement is simply untrue. Interest, application fees, and participation fees are included in the TILA APR without arbitrarily adding the cost of products voluntarily chosen by the consumer[5] that have no relationship to finance charges or interest—products that simply are not related to the cost of the credit. One would not add the cost of the refrigerator being purchased on credit to the MAPR, just as one should not add the cost of insurance.

According to the proposed application, if the applicant does offer loan products that exceed a 36% MAPR, the applicant will be required to respond to additional financing practices questions about the loan products. Depending on those answers, the application may be denied. Moreover, the CDFI Fund is considering whether certain practices that do not align with these principles should be considered disqualifying for the purposes of CDFI Certification.

Using a 36% MAPR as test to determine whether a loan product is responsible is an unsound approach, and will end up harming the very borrowers the CDFI Fund is intending to protect. Evaluating how responsible a financial product is using this metric is faulty and inadvisable because:

1.) Rate caps reduce access to credit;
2.) APR should be used as a comparison tool for comparable loan products; and
3.) “All-in” APRs, such as MAPR, undermine the TILA.

Below, we elaborate on each of those reasons and explain a better way to evaluate small-dollar loan products.

III. Rate Caps Reduce Access to Credit.

Discouraging institutions from lending above a 36% MAPR will reduce access to credit by the very borrowers CDFIs should be serving.

A recent Federal Reserve study entitled, *The Cost Structure of Consumer Finance Companies and Its Implications for Interest Rates: Evidence from the Federal Reserve Board’s 2015 Survey of Finance Companies* found that a loan amount of $2,530 is necessary to **break even** at a 36% TILA

[5] Note that if a voluntarily purchased product is not truly voluntary, then the cost of the product is added, as prescribed by TILA, to the cost of credit and is included in the TILA APR.

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APR.[6] For a loan to be made **profitably** with a total cost of credit of 36%, the loan would have to be between $3,500 - $4,000.

"While larger loan amounts have much lower interest rates than smaller loan amounts," the study authors wrote, "Larger loans entail greater interest payments (finance charges) and a longer period of indebtedness. In addition, risky consumers may not qualify for larger loan amounts."[7] With substantial fixed costs, high interest rates are necessary to provide sufficient revenue to cover the costs of providing such loans.

Larger loans can be profitable because a lender gets a larger dollar return on a larger loan, even though the proportional return is the same. Lenders' costs to originate and service loans are fixed, so lenders need to make a certain amount on each loan in order to cover overhead including rent, utilities, computers and supplies, internet, paper, insurance, taxes (including taxes levied on the loan itself), salaries, employee benefits like health insurance, and rising compliance.

The authors concluded, "If small loan revenue is constrained by rate ceilings, only large loans will be provided. Consumers who need a small loan or only qualify for a small loan would not be served."[8]

If the CDFI Fund discourages lending by CDFIs above a 36% MAPR, borrowers will not be able to access small-dollar loans from CDFIs.

IV. APR Should be Used as a Comparison Tool

While imperfect with respect to smaller, shorter term loans, APR was created by Congress half a century ago to aid consumers in comparing products of like term and amount—such as the terms of two credit card offers, or the cost of two 30-year mortgages, or the cost of two installment loans from different lenders. But APR is a better measure of time than it is of true cost. It is a great comparison tool, but it can be an imperfect means of determining the "cost of a loan."

This sort of comparison gives rise to what some perceive to be sensationally high "APRs" for these smaller loans, which would make them illegal were rate caps to become law. This is in spite of the fact that this artificial figure is intended to be used for comparisons of like products and bears no relation to the *actual* cost of the loan.

In simplified terms, APR is just a mathematical tool that has value only as a comparator. The misuse of APR to compare different financial products will lead both consumers and policymakers to erroneous conclusions. For that reason, TILA requires that creditors disclose not only APR, but

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[6] Elliehausen, Gregory. *The Cost Structure of Consumer Finance Companies and Its Implications for Interest Rates: Evidence from the Federal Reserve Board's 2015 Survey of Finance Companies.* Federal Reserve FEDS Notes, Aug. 122020. Available at: https://www.federalreserve.gov/econres/notes/feds-notes/the-cost-structure-of-consumer-finance-companies-and-its-implications-for-interest-rates-20200812.htm.
[7] *Ibid.*
[8] *Ibid.*

also Amount Financed (the size or quantity of the credit product), Finance Charge (the absolute dollar cost of the credit) and the Total of Payments (the cash flow that will be required to service the credit over its stated life). The only way to make a valid comparison, and thereby make an informed choice, when making a loan or obtaining products on credit is to look at all four of these elements and determine which credit proposal what product is right for the individual consumer and the consumer's unique circumstances.

Imagine what would happen if TILA-type disclosures were required to be disclosed as a measure of the cost of other financial transactions or everyday consumer items. The results would be alarming for sure, but as just with traditional installment loans, misleading as to true cost. Consider these common examples:

EXAMPLE A: **Converting coins using a supermarket change machine*** Amount in coins: $100 Fee: 8.9% Fee Calculated as APR: **3,248.5%**	**EXAMPLE B:** **Cost of a bounced check*** Amount of check: $100 NSF Fee: $30 NSF charge calculated as APR: **10,950%**
EXAMPLE C: **Using an out-of-network ATM*** Typical withdrawal: $40 Fee for out-of-network ATM use: $2.50 Fee calculated as APR: **2,281%**	**EXAMPLE D:** **Borrowing $100 from a friend and paying her back $101 the next day** Fee paid to friend: $1 Fee calculated as APR: **365%**
EXAMPLE E: **Parking Ticket (Meter Violation)*** Amount of Ticket: $25 Fee for late payment: $10 Fee calculated as APR: **14,600%**	**EXAMPLE F:** **IRS Late Fee (1%)*** Taxes Owed: $800 Fee for late payment: $8.00 Fee calculated as APR: **365%**

** Note: Prices/fees provided are estimated. Calculations are based on an assumption of a one-day loan.*

It is also important to bear in mind the cost of making small loans. Often the underwriting that must take place to measure the borrower's ability to repay and protect lenders against default is similar to that required for much larger loans. It follows then that there is a minimum cost to lenders which must be recouped in order to make a profit. Installment lenders across the country are committed to keeping their loans affordable, safe and manageable. It is vital that the unhelpful—even nonsensical—attempts to impose APR caps must not be allowed to destroy business models that have safely and efficiently served customers in the United States for generations, since 1916.

V. "All-in" APRs Undermine TILA

TILA was enacted to promote the informed use of consumer credit through clear and unequivocal disclosures relating to the terms and costs of credit. As mentioned above in Section IV, APR is a required disclosure of the cost of consumer credit under TILA.

APR is a defined and well-understood term that has been the gold standard for comparing like credit products for decades. It is a useful tool for comparing like credit transactions by setting a single standard to determine the cost of credit in each proposed transaction. It was not intended to be (and is useless as) a tool to measure credit transactions that also include voluntary protection products that the consumer may choose to purchase.

Because APR is valid only for comparing comparable credit transactions and relates ***only*** to the cost of the credit, APR has never been associated with the cost of goods, services, or insurance. This is why, in TILA, the cost of voluntary ancillary products like credit insurance are ***expressly excluded from the finance charge*** if the creditor provides the consumer with certain written disclosures, and hence, excluded from the APR.

The introduction of the MAPR undermines legislative intent in TILA because it includes the cost of products (*i.e.,* goods, services, or insurance) that are unrelated to the cost of credit, and which are not comparable from credit offering to credit offering. We emphasize, though, that even if voluntary protection products are not included in the APR calculation, they are still included in the lender's ability-to-repay analysis.

For over 50 years, TILA has provided a standard of how to calculate APR, ensuring that all references to APR are consistent and require little interpretation. Until the MAPR, all creditors calculated APR the same way—the TILA way. This allowed consumers to draw conclusions as to the comparative costs of similar loan products. It also ensured consistency in disclosures relating to voluntary ancillary products. TILA benefits consumers by ensuring a single uniform disclosure of the cost of credit as well as any voluntary ancillary products.

MAPR obscures the true cost of credit by including voluntary protection products in the calculation. Five decades of jurisprudence and regulatory guidance have led to confidence in the term "APR"—what it means, what is included, and what is not included in its calculation. It is not useful to add the cost of voluntary products as a "cost of credit" by inclusion in APR.

The definition of **finance charge** in Reg Z, 1026.4(a) is:

> Definition. The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer **and imposed** directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. (*emphasis added*.)

Credit insurance, and other ancillary products, are usually voluntary. If purchasing the product is mandatory, then it must be included in the finance charge under TILA.

Clearly, under Reg. Z, ancillary product fees are *not* finance charges. Thomas A. Durkin, a former senior economist at the Federal Reserve, explained these concepts clearly:

> "First, if ancillary products are not required as part of the credit, then the fees for them are not payment for the credit granted and the fees economically are not finance charges. … Second, in 1968, Congress understood that debt protection that is not required is economically not part of the underlying credit and the fee for debt protection is not part of the finance charge. … Third, since debt protection fees are not finance charges economically, arbitrarily declaring them to be finance charges confounds the ability of consumers to shop effectively for credit costs, frustrating the basic purpose and intent of TILA in the first place. This is bad public policy."[9]

We add that Congress has spoken. TILA expressly excludes the cost of certain voluntary protection products from the cost of credit, as long as the products are not required to be purchased by the consumer.

Courts and regulators prohibit a creditor from advertising the cost of credit without expressing the APR, and they prohibit a creditor from giving the term any meaning different than the one it is assigned in TILA. Not only do courts and regulators prohibit a creditor from advertising an APR term that is calculated differently from how Regulation Z calculates the rate, they regard a creditor's use of an APR variant as a particularly pernicious TILA violation because such behavior undermines the universality of the term. In fact, some regulators have rejected arguments by payday lenders that an *Annual* Percentage Rate is an inappropriate metric for measuring the cost of a two-week loan, reasoning that APR is always the appropriate tool for measuring the cost of credit, no matter the loan product, because APR enjoys a single and universally-understood meaning.

Most recently, the Consumer Financial Protection Bureau (CFPB), the agency whose mission is the protection of consumers, decided against using an "all-in" APR as a metric. Former CFPB Director Richard Cordray considered using an "all-in" APR in the Bureau's proposed Payday, Vehicle Title, and Certain High-Cost Installment Loans rule (Payday Rule), but rejected the concept in the final rule.

The final Payday Rule stated, "… in view of the comments received, the Bureau concludes that the advantages of simplicity and consistency militate in favor of adopting an APR threshold as the measure of the cost of credit, which is widely accepted and built into many State laws, and which is the cost that will be disclosed to consumers under Regulation Z."[10]

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[9] Durkin, Thomas A., *Conceptual Difficulties with the "All In" Finance Charge and APR Proposal from the Consumer Financial Protection Bureau*. Consumer Finance Law Quarterly Report. Vol. 67, Nos. 1-2. p. 53.
[10] 82 Fed. Reg. 54,527 (Nov. 17, 2017).

It is concerning, therefore, that the Treasury Department proposes to use MAPR. That decision is clearly a public policy choice and is without data driven basis in fact. By using an APR variant and assigning a non-TILA meaning to the term, the Treasury Department would radically alter a longstanding and important consumer protection.

VI. A Better Way to Evaluate Small-dollar Loan Products

We suggest that the Treasury Department and CDFI Fund use the resolutions put forth by the National Black Caucus of State Legislators (NBCSL) and the National Hispanic Caucus of State Legislators (NHCSL) as a guide for how to evaluate safe and affordable lending practices. The resolutions are attached as an appendix and a summary is below.

Both resolutions state that, in 1998, the United Nations defined poverty as the lack of access to certain essential goods and services, including access to credit. They agree that there is a need for small-dollar credit in every community throughout the country. They also agree that not all loan types are equally safe and affordable, and the structure of certain loans significantly increases the likelihood of borrowers falling into a cycle of debt.

Both resolutions explain that responsibly structured credit is essential to support a household's ability to save, build a sound credit history, and facilitate crucial investments that can provide a foundation for other wealth-building activities. The resolutions state that the key structural qualities of loans that are safe and affordable are that the lender: (a) makes a good faith efforts to assess the borrower's ability to repay the loan, and (b) that the loan is repayable in substantially equal installments of principal and interest, with no balloon payments.

Importantly, the resolutions emphasize that, "… it is the intention of this body to ensure access to loans that are low cost rather than low rate, since consumers buy goods with dollars and cents and not with annual percentage rates."

Beyond that, NHCSL resolved that:

- Lenders should support and observe all applicable state laws regarding collection practices;
- Lenders should make good faith attempts with borrowers to remedy a delinquent account;
- Any loan should be structured in such a way as to minimize the danger of that a borrower might fall into the cycle of debt;
- Lenders take care to explain to borrowers the terms of a possible loan transaction in as clear and transparent a manner as possible; and
- Lenders should be a vital part of the communities in which they operate and actively participate in community activities and charitable endeavors.

NBCSL also resolved that:

- All small-dollar, closed-end credit should be fully-amortized and repaid in substantially equal installments over at least an 120 day period;

- Small-dollar loans should not include balloon payments; and
- Lenders should report payment history to at least one of the three major credit bureaus;

Using those resolutions as guidelines, we suggest that the CDFI Fund ask applicants the following:

1) "Are all of your closed-end credit products fixed rate, fully-amortizing loans that are repaid in substantially equal monthly installments?"
2) "Do your loan products include transparent, easy-to understand terms, due dates, and payment amounts?"
3) "Do you evaluate each customer's ability to repay?"
4) "Do you report payment history to a credit bureau?"
5) "Do you *require* one-time balloon payments or the use of ACH?"

If the applicant answers "yes" to Questions #1 – 4 and "no" to Question 5, the lender should be deemed to offer responsible credit products.

VII. Conclusion

The CDFI Fund's goals are admirable. AFSA agrees that the CDFI Fund should foster diversity of types, activities and geography; support the growth and reach of CDFIs; protect the CDFI brand; minimize burden on CDFIs; and promote efficiency. We agree that in order to do that, CDFI applicants should engage in responsible lending practices.

The criteria for measuring whether an applicant is engaging in responsible lending practices should *not* be whether the applicant lends above a 36% MAPR, but: whether it offers transparent, fully-amortized loans that are repaid in substantially equal payments, whether it evaluates a borrower's ability to repay, whether it reports to a credit bureau, and whether it requires a balloon payment or the use of ACH.

We encourage the Treasury Department and CDFI Fund to amend its application to ask these questions.

Sincerely,

Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association

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APPENDIX

Resolution BED-16-21

A RESOLUTION PROMOTING SAFE AND AFFORDABLE LENDING PRACTICES[11]

WHEREAS, the National Black Caucus of State Legislators (NBCSL) has always been committed to financial empowerment through improved access to capital as well as a marketplace that offers safe and affordable lending products and services;

WHEREAS, in 1998, the United Nations defined poverty as the lack of access to certain essential goods and services, including access to credit;

WHEREAS, the need for small-dollar closed end credit exists in every community throughout the country;

WHEREAS, not all loan types are equally safe and affordable, and the structure of certain loans significantly increases the likelihood of borrowers falling into a cycle of debt;

WHEREAS, responsibly structured credit is essential to support a household's ability to save, build a sound credit history, and facilitate crucial investments that can provide a foundation for other wealth-building activities;

WHEREAS, the key structural qualities of closed end loans that are safe and affordable are that the lender makes a good faith effort to assess the borrower's ability to repay the loan and that the loan is repayable in substantially equal installments, with no balloon payments;

WHEREAS, it is the intention of this body to ensure access to loans that are low cost rather than low rate, since consumers buy goods with dollars and cents and not with annual percentage rates;

WHEREAS, NBCSL passed Resolution BFI-13-14, "PROMOTING SAFE AND AFFORDABLE LENDING PRACTICES," among the 2013 Ratified Resolutions and that resolution promotes adequate safeguards to protect the general community from abusive financial services;

WHEREAS, this resolution maintains that responsibly structured credit is an essential part of the wealth-building ecosystem, that includes building a sound credit history, as well as saving and wise investment;

WHEREAS, all small-dollar closed end credit should be "fully amortized," meaning that the Total of Payments defined under the Federal Truth in Lending Act, is repaid in substantially equal multiple installments at fixed intervals to fulfill the consumer's obligation;

WHEREAS, small-dollar closed end credit, when used prudently by consumers, may help establish, re-establish or improve credit scores;

WHEREAS, all small-dollar closed end credit should be reported to at least one of the three major credit agencies: Equifax, Experian and TransUnion;

WHEREAS, all small-dollar closed end credit should provide that the Total of Payments as defined in the Truth in Lending Act be repaid over at least a 120 day period in substantially equal payments; and

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[11] Available at: https://nbcsl.org/public-policy/docs/file/56-resolution-bed-16-21.html.

WHEREAS, Traditional Installment Loan Lenders offering amortizing small-dollar closed end credit, may prevent cycle of debt issues inherent with non-amortizing balloon payment loans.

THEREFORE, BE IT RESOLVED, that the NBCSL supports small-dollar closed end credit in the form of traditional installment loans;

BE IT FURTHER RESOLVED, that Traditional Installment Loan Lenders should be reasonably protected;

BE IT FURTHER RESOLVED, that the NBCSL supports the expansion of Traditional Installment Loans as an affordable means for borrowers to establish and secure small dollar closed end credit while preventing cycle of debt issues inherent with non-amortizing balloon payment loans; and

BE IT FINALLY RESOLVED, that a copy of this resolution be transmitted to the President of the United States, Vice President of the United States, members of the United States House of Representatives and the United States Senate, and other federal and state government officials as appropriate.

SPONSOR: Representative Karla May (MO)
Committee of Jurisdiction: Business and Economic Development Policy Committee
Certified by Committee Co-Chairs: Senator Jeffery Hayden (MN) and Representative Angela Williams (CO)
Ratified in Plenary Session: Ratification Date is December 4, 2015
Ratification is certified by: Senator Catherine Pugh (MD), President

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2013-10
Promoting Safe and Affordable Lending Practices[12]

SENATOR LETICIA VAN DE PUTTE (TX) LAW & CRIMINAL JUSTICE TASK FORCE

WHEREAS, the National Hispanic Caucus of State Legislators (NHCSL) has always been committed to financial empowerment through improved access to capital as well as a marketplace that offers safe and affordable lending products and services;

WHEREAS, in 1998, the United Nations defined poverty as the lack of access to certain essential goods and services, including access to credit;

WHEREAS, the need for small-dollar credit exists in every community throughout the country;

WHEREAS, not all loan types are equally safe and affordable, and the structure of certain loans significantly increases the likelihood of borrowers falling into a cycle of debt;
WHEREAS, responsibly structured credit is essential to support a household's ability to save, build a

[12] Available at: https://nhcsl.org/resources/resolutions/2013/2013-10/.

sound credit history, and facilitate crucial investments that can provide a foundation for other wealth-building activities;

WHEREAS, the key structural qualities of loans that are safe and affordable are that the lender makes a good faith efforts to assess the borrower's ability to repay the loan and that the loan is repayable in substantially equal installments of principal and interest, with no balloon payments;

WHEREAS, it is the intention of this body to ensure access to loans that are low cost rather than low rate, since consumers buy goods with dollars and cents and not with annual percentage rates;

WHEREAS, government subsidized loans do not exist in meaningful numbers and whenever they do exist, their availability is only temporary, and so loan products must be available at commercially sustainable rates;

WHEREAS, it is important that safe and affordable small-dollar loans be made from offices located within communities and licensed and audited by state authorities to protect from predatory lenders and lending practices.

THEREFORE BE IT RESOLVED, that the National Hispanic Caucus of State Legislators (NHCSL) supports the development of lending products that encourage responsible underwriting, and attempts to assess a borrower's stability, ability, and willingness to repay the loan;

BE IT FURTHER RESOLVED, that NHCSL encourages policymakers to take the following into account:
That lenders should support and observe all applicable state laws regarding collection practices and that they should make good faith attempts with borrowers to remedy a delinquent account;
That any loan should be structured in such a way as to minimize the danger of that a borrower might fall into the cycle of debt;
That lenders take care to explain to borrowers, the terms of a possible loan transaction in as clear and transparent a manner as possible;
That lenders should be a vital part of the communities in which they operate and actively participate in community activities and charitable endeavors;
That lenders should support and participate in financial literacy programs by contributing financially to organizations that offer these services to borrowers; and
That lenders, non-profit organizations, and government entities should work together to improve financial literacy;

BE IT FURTHER RESOLVED, that the NHCSL supports efforts to protect consumers who need short-term loans; and

BE IT FINALLY RESOLVED, that a copy of this resolution be transmitted to the President of the United States, Vice President of the United States, members of the United States House of Representatives and the United States Senate, and other federal and state government officials as appropriate.

THIS RESOLUTION WAS ADOPTED ON JULY 13, 2013, AT THE NHCSL EXECUTIVE COMMITTEE MEETING HELD IN MASHANTUCKET, CONNECTICUT AND RATIFIED ON NOVEMBER 16, 2013 AT THE NHCSL ANNUAL MEETING HELD IN ORLANDO, FLORIDA.

SPONSORED BY: Senator Leticia Van De Putte (TX)
CO-SPONSOR: Senator Juan Pichardo (RI)
CO-SPONSOR: Iris Y. Martinez (IL)

Community Development Bankers Association
1444 Eye Street, Suite 201 • Washington, D.C. 20005 • (202) 689-8935 • (202) 689-8938 (fax)

November 5, 2020

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

Ms. Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund
US Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Responses to Proposed CDFI Certification Application Requirements, Federal Register Document Number 2020-09747

Dear Director Harris and Ms. McInnis:

The members of the Community Development Bankers Association (CDBA) respectfully submit the enclosed comments on the Notice of Information Collection and Request for Public Comment published by the Community Development Financial Institutions Fund (CDFI Fund or the Fund) in the Federal Register on May 7, 2020. As stated, the CDFI Fund is seeking comment on the content of the revised CDFI Certification Application.

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. There are 147 banks and 104 bank holding companies with the Treasury's Community Development Financial Institutions (CDFIs) designation. CDBA membership comprises 64% of the total assets of the certified CDFI bank sector, and 56% of all CDFI banks by number.

CDBA members appreciate the hard work of CDFI Fund staff to support the CDFI industry. We appreciate the CDFI Fund's focus on ensuring transparency and consistency through annual reporting. We are concerned, however, that the proposed new certification application puts the CDFI Fund potentially on a path to create a set of standards and reporting that are too complex and rigid. These well-intentioned steps may have the unintended consequence of screening out a large portion of current CDFIs and discouraging small and new organizations from seeking certification.

We strongly support the recommendations of the CDFI industry trades joint letter dated November 4, 2020. In particular, we ask that following receipt of public comments, the CDFI Fund engage in direct conversations with the CDFI industry to discuss and fully understand the complexity of issues and challenges associated with implementing such dramatic changes in the annual reporting.

We also wish to emphasize our agreement with the recommendation of the CDFI Coalition that the CDFI Fund grandfather in existing certified CDFIs after the CDFI Certification application is finalized and allow a grace period of at least 18 months for organizations to make any changes necessary to maintain their certification.

COMMENTS ON PROPOSED CERTIFICATION APPLICATION

Our comments are organized below to respond to questions raised in the Notice and Request for Information.

1. **Basic Information**

CDBA acknowledges that there are no substantial revisions or policy changes to the Basic Information section of the CDFI Certification Application compared to current practices for depository CDFIs. With regard to non-depository CDFIs, CDBA will defer to the recommendations of trade associations whose membership principally consists of such entities on the appropriate Affiliate information standards.

2. **Legal Information**

Within the proposed Legal Information section, CDBA believes there is an opportunity to streamline documentation. The Legal Information, while substantively appropriate, requires applicants to devote significant time to redundantly uploading documents that are already required elsewhere. The CDFI Fund can achieve the same result by relying on an entities' successful registration with SAM.gov to determine legal entity status. We support the use of registration with SAM.gov to meet the legal entity requirement for certification. In addition to efficiently addressing the legal entity requirement, SAM registration will ensure that every CDFI is ready to participate in CDFI Program funding rounds as soon as they are certified.

3. **Primary Mission/Responsible Financing**

We agree with the CDFI Fund on its policy goals for this section. We believe that the Primary Mission Test is the most important tool for safeguarding the integrity of the CDFI industry.

We strongly disagree, however, with the proposed approach for implementation of a revised Primary Mission Test. We have great concern that the approach outlined in the proposed application will not be effective in screening out entities engaged in predatory practices. We believe it will, however, impose a heavy and unnecessary burden on the rest of the industry while creating an exponentially greater workload for CDFI Fund staff. The approach will result in a slower and more bogged down certification process — rather than a streamlined one that the CDFI Fund has expressed as its desired outcome. That said, we share the significant concerns that have surfaced about the predatory nature of consumer and small business lending products offered by some unscrupulous entities that often target low income, unbanked, underbanked, or other vulnerable populations. Such entities should never be certified as CDFIs. Safeguarding the integrity of the CDFI industry is a top priority for us all; thus, we advance an alternative strategy.

PROPOSED ALTERNATIVE APPROACH

We fully appreciate the CDFI Fund's desire to create a strong nexus between an entity's mission statement and community development intent. The vast majority of CDFIs do good work and want to provide opportunities to empower their customers and communities. Unfortunately, there are a few bad actors. As a practical matter, we do not believe it is realistic for the CDFI Fund, in implementing the Primary Mission Test, to look into the "hearts and minds" of every Applicant's management team and/or board of directors to subjectively assess the "purity" of their motivations. The CDFI Fund's efforts should focus on creating a mechanism for removing the bad actors rather than burdening the vast majority that are doing the right thing.

We know where bad actors are most often found. Voluminous media, government, and nonprofit studies place the great majority of predatory practices squarely in the unregulated consumer and small business lending sphere. Thus, we strongly recommend the CDFI Fund set clear standards for all CDFIs and grant itself broad authority to deny or decertify the bad actors that violate such standards.

The CDFI Fund should reposition CDFI certification as a privilege — not the right of any organization that meets the letter of the regulations but violates its spirit. CDFI certification should be a badge of honor for those that demonstrate good behavior.

Our proposed approach is multi-prong. First, the CDFI Fund should set clear standards of performance for treatment of consumers and small businesses. Second, every CDFI should be required annually to sign a Consumer and Small Business Protection Attestation. Third, the CDFI Fund should grant itself the broad authority to deny or revoke certifications for those violating the letter or spirit of the attestation. Fourth, the CDFI Fund should clearly put all parties on notice that it has the right, at its discretion, to look outside of the materials provided by an Applicant seeking certification or recertification. If an entity's products, services, or practices appear predatory or are otherwise questionable, the Fund can, and should, deny or revoke certification.

CONSUMER AND SMALL BUSINESS PROTECTION STANDARD:

We recommend that the CDFI Fund outline a set of guidelines and practices for products, services, and implementation that every CDFI engaged in consumer-oriented lending must commit to follow, including for consumer loans, mortgages, small business loans, and other loans made directly to individuals. Examples:

1. All CDFIs should be required to provide clear and transparent information on fees and pricing;
2. An entity offering small dollar loan products that meets the Consumer Financial Protection Bureau (CFPB) definition of a "covered" loan should not be eligible for CDFI certification.[1]

The development of such a list of criteria and practices should begin with an examination of consumer protection statutes and regulations under the jurisdiction of the CFPB. To be noted, we are NOT recommending that non-depository CDFIs become regulated by the CFPB; rather, we believe the principles articulated in these rules can be helpful in identifying guiding principles that can be used as part of the CDFI Fund's "consumer and small business protection standards" that should become part of the certification process.

ENFORCEMENT AUTHORITY

DEPOSITORY CDFIs: In the case of depository CDFIs, we believe the CDFI Fund can rely on the efforts of regulatory agencies to monitor such entities for compliance with the relevant consumer protection statutes and regulations. Depository CDFI banks and credit unions represent half of the CDFI industry and are subject to oversight by their primary regulators and CFPB. These policies are enforced vigorously by the regulatory agencies and constitute a powerful safeguard against CDFIs offering predatory or inappropriate products and practices. The CDFI Fund should consult directly with a depository's appropriate regulatory agency to assess compliance with relevant consumer protection statutes and regulations as part of the annual certification review process. If the CDFI Fund identifies regulatory concerns, such as fair lending violations or other sanctions handed down by regulatory authorities, the Fund may suspend or revoke a certification based on the context and circumstances. Below we outline the

[1] CFPB proposed rule for Payday, Vehicle Title, and Certain High-Cost Installment Loans as published in the Federal Register on June 2, 2016

several regulatory provisions that the CDFI Fund can look toward to address concerns raised in the Request for Public Comment.

NON-DEPOSITORY CDFIs: In the case of non-depositories, we recommend the CDFI Fund create a monitoring system that will allow it to take action if it believes a certified entity is engaged in harmful practices. Non-depository CDFIs engage in a wide variety of different types of lending, including consumer, small business, mortgage lending, affordable housing development, nonprofit facilities, commercial real estate, and more. As noted above, consumer and small business lending is where the preponderance of predatory practices occur within the marketplace. Thus, these types of lending are where the CDFI Fund should focus its most intense scrutiny. Non-depository CDFIs predominantly engaged in activities that serve nonprofit or institutional borrowers (i.e. affordable housing developers) may be exempt.

A revamped certification process should grant the CDFI Fund broad authority to block certification or decertify bad actors if it obtains credible information that an entity has previously violated, or its current products and practices violate, the principles of the attestation. The CDFI Fund's certification process should allow the agency to consider external sources of information about the products and practices of an entity seeking certification or re-certification. For example, such sources may include a history of Fair Lending violations, consumer complaints filed with the CFPB, a local Better Business Bureau, or state, local, and other Federal authorities; lawsuits or judgements against the lender; reputable news media reports; and credible reports posted on social media.

We fully recognize the resource constraints of the CDFI Fund. We believe the vast majority of non-depository institutions do good work and do not need extra scrutiny. We believe the CDFI Fund should have full discretion to determine which organizations may require additional due diligence and analysis. As part of such an enhanced certification process, the CDFI Fund should have the authority to request and review all consumer facing product information (i.e. websites, brochures, loan agreements, pricing, and fee calculations) as are presented to prospective and actual customers. Finally, we recommend that the Fund allow the public to report questionable practices of certified entities to the CDFI Fund. The CDFI Fund may use such reports to open an investigation. Such information and facts should be reviewed as a whole in context to determine whether an entity is offering a product or service that is harmful to consumers. If so, the CDFI Fund should have the right to revoke a certification.

PRIMARY MISSION APPLICATION QUESTIONS

We believe that several of the questions proposed in the Primary Mission portion of the application are unnecessary and should be eliminated. As discussed above, depository CDFIs are subject to numerous regulations by their primary regulators (the Office of the Comptroller of the Currency, the Federal Depository Insurance Corporation, the Federal Reserve, the

National Credit Union Administration, and state banking authorities) that safeguard against offering predatory or inappropriate products and practices as well as by the CFPB. The agencies are vigorous in their enforcement of these policies, and their enforcement makes these questions redundant and unnecessary.

We are also concerned that in an attempt to "automate" the certification process, the proposed application creates a system that: (1) inadequately captures the work of the broad spectrum of mission-focused CDFIs; and (2) will be ineffective in screening out non-mission-oriented actors.

The progressive questionnaire asks applicants to describe their work using a waterfall of drop down boxes. Unfortunately, the options in the drop down menus are highly subjective, utilize undefined terminology, and require the applicant to make sweeping statements that may or may not reflect their actual activities. By the time the applicant works though the PM 09-16 questions, it is highly unlikely the answers will reflect their actual products. The hallmark of the CDFI industry is CDFIs' willingness to be flexible and tailor their products and services to the needs of their customers – rather than offer rigidly defined products that can easily be fit into a drop down menu.

The CDFI Fund needs to be transparent about what products, features, and practices would violate the Primary Mission Test. Simply, asking questions in a certification application does not set a clear standard for what may or may not be a disqualifying action. We understand that, as part of the public comment process, the CDFI Fund is currently evaluating whether any particular activities should be required or prohibited for organizations seeking CDFI certification. Whatever the outcome, CDBA urges that the application state transparently whether any particular responses (i.e. use of debt collectors, failure to offer low-cost checking accounts, etc.) will result in the Applicant not meeting the Primary Mission requirement. This transparency will ensure that organizations can plan and adapt, where appropriate, to meet best practices and comply with CDFI certification requirements.

The following are questions – which we believe do not achieve the intended purpose – and should be eliminated and revised as recommended below:

- PM 09 asks Applicants to select "community development objectives" using a very narrow, yet overlapping, list of drop down options. This answer prepopulates PM 10.
- PM 10 asks Applicants to define how they address the "social and/or economic conditions of underserved people and/or residents of economically distressed communities." The answers to PM 10 prepopulate PM 11.
- PM 11 asks applicants to select from another very narrow drop down list of options that omit many of the potential objectives of CDFIs. The answers to PM 11 prepopulate PM 12.

- PM 12 asks applicants to select from yet another narrow and ill-fitting drop down list of highly subjective options. We note that these options appear to be substantially the same as product features under the NMTC application. Using NMTC-subsidized products as a benchmark for all other CDFI products is inappropriate. Most non-NMTC product do not have the deep subsidy offered by NMTC; thus, it is unrealistic to expect CDFIs to provide products with the same features. Most of the options assume incorrectly that there are standards and standardized product and pricing definitions in use within the CDFI or the financial services sector (i.e. "below market rate," "lower than standard," "nontraditional," "less established," "lower profitability," "mainstream underwriting criteria," etc.). All of the options force lenders to make blanket statements about products that may or may not be uniformly stated across products and borrowers. In sum, this list of options is wholly inappropriate for CDFI certification purposes and should not be used. The answers on PM 12 prepopulate PM 13.
- PM 13 asks the applicant to write a series of essays on every term, condition, or practice among the products it offers. Unlike many small non-depository CDFIs, depository CDFIs offer a broad array of products. Some products are standardized, but most (such as small business loans or personal loans) are tailored to customers' needs. The amount of work required for applicants to identify and describe every iteration of these loans (as well as review work for CDFI staff) is overwhelming and will be highly unlikely to yield useful information on alignment of the products with the CDFI's mission.
- In PMs 14-16, CDFIs are required to answer a series of questions on their financial services, drawn from the answers in PM 09. Like PM 12, PM 15 inappropriately asks applicants to select from a list of highly subjective drop down options that lack standardized definitions and ask applicants to make uniform statements about all of their services.

To mitigate the difficulties noted above, we strongly urge Questions PM 09 through PM 11 be replaced with a single narrative character-limited question:

- *What are the Applicant's goals and/or objectives for improving the social and/or economic conditions of its community (or communities) served, with a specific focus on residents and/or the underserved people?*

The application could provide a list of sample prompts to help applicants understand the requested format. The sample prompts might parallel Community Reinvestment Act "buckets" (e.g. affordable housing, community services targeting low- and moderate-income individuals, economic development, revitalize or stabilize an low- and moderate-income geographies, etc.) or other community development themes (e.g. narrowing the racial wealth gap).

We recommend Questions PM 12 and PM 13 be replaced with a single question. For example:

For each loan or product line that comprises 5% or more of loans originated in the last fiscal year, please provide the following information:	• Type of product (single-family housing, multifamily housing, commercial real estate, etc.) (NOTE: AMIS should be tailored by CDFI business model (e.g. bank, credit union, loan fund, venture fund) with options that fit definitional categories established by the regulatory agencies or appropriate for the type of transaction (e.g. loans, investments, etc.).) • What is the range of Annual Percentage Rates (APR) charged? • What is the average term (in months)? • How are fees calculated? (Multiple choice) • What type of collateral is required? • Do you have ability to tailor your product to borrower needs? Yes/No; describe how. • How does the product align with the goals or objectives discussed in PM 09?

We recommend replacing Questions PM 14 through PM 16 with a single question that might read:

For the top five financial services offered by number of accounts open, the Applicant should answer the following questions:	• What is the name of the service (savings accounts, checking accounts, checkless checking/debit only checking, money market, certificate of deposit, etc.)? • What are the minimum balance requirements? • What fees are charged? How are they calculated?

CDBA recommends that proposed Questions PM 17 through PM 22 be replaced with the Consumer and Small Business Protection Standards and Attestation discussed above.

The CFPB and bank and credit union regulatory agencies have a wealth of experience developing standards to protect customers from potentially harmful practices. We strongly encourage the CDFI staff to confer with these agencies in developing Consumer and Small Business Protection Standards and utilize the existing Federal standards already in place.

For illustration, we include the following potentially "disqualifying practices" and their corresponding regulation or compliance standards. In the case of depository CDFIs, existing Federal policies already address the issues raised in proposed Questions PM 17 through PM 22. Thus, depository CDFIs should be exempt from these questions as there is already a robust system in place to ensure compliance. In the case of non-depository CDFIs, these regulations can serve as a guide for the Consumer and Small Business Protection Standards and Attestation discussed above.

Potentially Disqualifying Activity	**Bank Regulatory Coverage**	**Bank Regulatory Summary**
Making consumer *and/or* commercial loans that cannot be repaid, triggering a potential debt spiral for the borrower.	OCC/FDIC/FRB - Safety and Soundness and Compliance Examinations[2]	Safety and Soundness exams consider numerous aspects of the credit portfolio to determine whether the financial analysis of borrowers is adequate, the financing needs and repayment capacity are sufficient, the prospects for security, and portfolio management practices taken in response to borrower needs or delinquencies.
The lender is inflexible in its accommodation of distressed borrowers.	Truth In Lending Act/Real Estate Settlement Procedures Act (TILA/RESPA)[3]	These rules dictate what information lenders need to provide to borrowers and when they must provide it. They also regulate what fees lenders can charge and how these fees can change.
Applicant's debt collection practices are aggressive, or avail of aggressive third parties.	Unfair, Deceptive, and Abusive Acts and Practices Act (UDAAP)[4]	A financial institution's practices in collecting debt are reviewed during a Compliance Examination for compliance with the requirements of UDAAP, which prohibits harassment of borrowers.
The applicant contributes to the exclusion of borrowers from main stream finance by not reporting potentially favorable activity to credit agencies.	Reporting loan performance to credit bureaus is standard practice among CDFI banks.	Proper reporting of credit activity is required under the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA). A CDFI Bank's compliance with these requirements is assessed during Compliance Examinations by its Federal regulatory agency.
Lender offers an overdraft or other forms of small dollar	OCC/FDIC/FRB Small Dollar Loan Guidance:	The interagency lending principles specify the positive characteristics of a successful small dollar lending program, specifically

[2] OCC - https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/index-comptrollers-handbook.html; FRB - https://www.stlouisfed.org/bank-supervision/supervision-and-regulation/safety-soundness-supervision; FDIC - https://www.fdic.gov/regulations/safety/manual/

[3] https://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/tila-respa-integrated-disclosures/

[4] https://files.consumerfinance.gov/f/documents/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf

loan products that harm consumers.	"Interagency Lending Principles for Offering Responsible Small-Dollar Loans"[5]	loan structures, pricing, underwriting, marketing and disclosures, and servicing and safeguards

CDBA has concerns about adopting the Military Annual Percentage Rate (MAPR) as a strictly applied disqualifying standard as proposed.

All depository CDFIs are already subject to calculation of Annual Percentage Rates (APRs) for consumer and business loans in compliance with the Truth in Lending Act (TILA). APRs incorporate interest rates, origination fees, and other processing fees. TILA accomplishes the same objective as MAPR of ensuring transparency in pricing. Very few CDFIs engage in lending covered under the Military Lending Act (MLA). Thus, it is an inappropriate standard to apply to all CDFI lending. Requiring regulated CDFIs to comply with two competing regulations (TILA and MLA) will be very expensive. Regulated CDFIs will need to amend all consumer financing disclosures, the methodology underpinning them, and make expensive programming changes to their core systems. Instead of MAPR, we recommend all CDFIs use the widely accepted TILA standards for calculating APRs.

Context is important in assessing whether a product is appropriate or harmful to customers. If a CDFI reports product pricing in excess of the 36% APR, the CDFI Fund should investigate to gain a better understanding of the product, its context, and impact on customers. A strict application of any standard can have unintended consequences. For example, very small loans with modest fees can trigger a 36% APR. We are certain that the CDFI Fund does not wish to prevent CDFIs from offering microenterprise loans or small consumer loans, yet this is a potential outcome if context is not considered. As another example, many depository CDFIs offer credit card products. Depending on the design of the product or how a customer uses the card, it can trigger a 36% APR. For example, if a customer uses a credit card for a cash advance — rather than their debit card — it can easily trigger a rate approaching 36%. Most consumers and small businesses find credit cards a useful and safe way to make purchases. Thus, the CDFI Fund should not bar depository CDFIs from offering credit cards; rather, the CDFI Fund should continuously gather information about products available and assess context in determining whether a product is aligned with market standards and/or will have disproportionately negative impact.

[5] https://www.fdic.gov/news/press-releases/2020/pr20061a.pdf

CDBA strongly urges the CDFI Fund to clarify that PM 23 and PM 24 are not applicable to loans or investment vehicles using the Low Income Housing Tax Credit (LIHTC), New Markets Tax Credit (NMTC) and any other tax credit programs.

We recommend questions PM 25 through PM 29 be deleted. The need for these questions is obviated by the recommended replacement for PM 14 through PM 16.

CDBA urges the CDFI Fund to be cognizant of how its certification standards may interact with other Federal regulations. For example, the CFPB exempts CDFIs engaged in mortgage lending from the Ability to Repay (ATR) rule. The CFPB provided this exemption to give CDFIs flexibility to design mortgage products suited to the needs of low wealth households. Thus, any application of APR rules needs to recognize this exemption.

TREATMENT OF AFFILIATES: We agree with the CDFI Coalition that the CDFI Fund should consider the size or percentage of Financial Products and Financial Services of an Affiliate relative to the CDFI Certification Applicant (i.e. balance sheet, number of employees, and percent of overall lending). Many CDFIs have Affiliates that provide specialized financing and services that may not necessarily specifically target low-income people and places, but are not otherwise contrary to the Primary Mission Test (e.g. predatory). Some of these Affiliates may also represent only a very small part of the parent company's operations. Affiliates that reflect a small percentage (perhaps less than 10 percent) of their parent entity's annual Financial Product and/or Financial Service activity (as measured by volume of activity or commitment of staff resources), but that do not exhibit any predatory behavior, should be exempt from the Primary Mission requirements.

4. Financing Entity Test

CDBA believes that the current standard whereby depositories are presumed to meet the CDFI Certification Financing Entity requirements should not change. We are pleased that the current proposal retains this provision.

CDBA agrees with the requirement that an applicant must be established as a Financing Entity for a minimum of 12 months prior to the submission of a new CDFI Certification Application. With regard to non-depository CDFIs, CDBA will defer to the recommendations of trade associations whose membership principally consists of such entities on the appropriate Financing Entity standards.

5. Target Market Test

NEW OPTIONS FOR DEPOSITORY CDFIs

CDBA welcomes the proposed change giving depository CDFIs a new Target Market option of directing at least 60% of Financial Services (depository accounts) and 50% of Financial Products to a Target Market.

CDBA urges refinement of the threshold for Financial Services. The proposed threshold for Financial Services is “number of accounts” only. A better metric is the “number of unique account holders,” and we urge certain deposits to be excluded from the calculation. CDFI banks provide Financial Products in low-income communities where deposit balances are typically modest. To support lending in low-income communities, CDFI banks actively cultivate deposits from socially motivated individuals and institutions who, though often located outside of our Target Markets, nonetheless embrace our missions. These socially-motivated deposit accounts are heavily weighted with customers with higher incomes and higher account balances. Such “imported” deposits do not reflect our Target Markets but are nonetheless critically important to our ability to serve our Target Markets. Any new Target Market threshold for deposit accounts needs to recognize, carve out, and support the important role of socially motivated depositors.

TIME PERIOD

CDBA welcomes the change to the Target Market Test whereby compliance is assessed based on a three-year average (through the last day of the most recently completed fiscal year) of Financial Products and Financial Services (if elected) provided for currently certified CDFIs. Ebbs and flows in demand make a three-year average more representative of an organization’s commitment to its Target Market than the current standard.

CDBA is very concerned about allowing a lower standard for new certifications. As proposed, new certifications will be based on activity over only a 12-month period. All CDFIs should be required to comply with the same three-year average standard. CDBA recognizes that start-up organizations will have difficulty meeting a three-year standard. As a compromise, we propose that start-up organizations be granted “provisional CDFI status” that is clearly listed on the CDFI certification list. Such entities should be limited to apply only to the CDFI Program’s Small and Emerging CDFI or Technical Assistance programs. Once an organization has demonstrated satisfactory performance over a three-year period, the “provisional” designation can be transitioned into a standard, non-provisional status.

That said, we share the concern of industry colleagues that the certification process should not conflate two related, but distinct, requirements. The first is the CDFI Fund’s policy of requiring CDFI Certification Applicants to demonstrate that their community development mission has been in place for at least 12 months. We agree with this policy. The second is the suggestion in question PM 08 that appears to explicitly require a 12-month waiting period between adoption of *formal board-approved documentation* and submission of the CDFI Certification Application. We do not support a formal waiting period to follow the adoption of formal documentation, particularly as applied to banks and other regulated institutions. While formal documentation is an appropriate requirement, another subsequent waiting period is not, so long as the Applicant can meet the further requirements for Certification.

INVESTMENT AREAS

CDBA strongly supports the proposed changes to the designation of Investment Areas. We support eliminating geographic boundaries and mapping requirements for Target Markets. This change will enable CDFIs to be more responsive to shifts in demand from eligible Target Markets.

CUSTOMIZED INVESTMENT AREAS

CDBA appreciates the CDFI Fund's allowing CDFIs to create Customized Investment Areas (CIAs) that consist of both qualified and non-qualified census tracts. We urge, however, the CDFI Fund to refine its approach to the CIAs. Specifically, the CIA loses its utility for CDFIs by counting only the Financial Products and/or Financial Services within the boundaries of the mix of census tracts that comprise the CIA. Part of the problem lies in the fact that census tract data may not accurately portray economic distress. Census tract qualification is based on data from a distinct point in time that is only updated every five years. Further, most CDFI banks and credit unions rely on branches to conduct their business. The challenge is more acute for banks — per the Community Reinvestment Act, they are also obliged to demonstrate a proportionate level of low- and moderate-income-directed activity in the communities served by those branches. These business realities may create conflicts when CIA qualifying activity is narrowly focused on census tract, while economic distress is not consistent across a census tract and is not bound by census tract delineations. CDBA agrees with CDFI industry colleagues' findings that lending in non-qualified tracts is frequently located in tracts that are contiguous with qualified tracts. Lending nearby, but not within, a qualified tract may be just as beneficial to that tract.

CDBA is concerned about new language included on page 55 of the proposed questionnaire that specifically includes "non-Metro counties" as one of the mix of geographic units to establish a CIA but appears (by omission) to exclude Metropolitan Counties. This proposed change therefore appears to prohibit Metro Counties. This provision risks excluding depository CDFIs in Metro Counties from an otherwise potentially valuable update to the certification standards. In addition, as is well documented, the designation of Metropolitan and non-Metropolitan counties is highly problematic given that counties in small states are very large and encompass geographies very far from urban places.

MINIMUM THRESHOLD

CDBA strongly opposes increasing the Target Market test above a 60% minimum level. The CIA section, unfortunately, creates higher targeting requirements of 85% within CIAs. If the intention of these requirements are not to force CDFIs even more tightly into arbitrary and shifting borders, we urge the CDFI Fund to eliminate the requirement and subject the assumptions underlying the requirement to further review and refinement to clarify its intent.

Generally, mission is core to a CDFI's purpose and most CDFIs exceed the 60% threshold — in fact, most do so by a significant margin. Yet, CDFIs also need to be responsive to market demand, earn sufficient returns to cover operations, and build equity that is ultimately deployed into the community. Not every loan a CDFI originates or customer they serve will (or should be expected to) meet the Target Market qualifications, and additional 85% thresholds remove that flexibility.

CDFI industry colleagues have received conflicting information during conversations with CDFI Fund staff around two instances that mention an 85% minimum within CIAs. The first is the requirement that a CIA be validated based on "More than 85% of the population [being] in qualified [contiguous] geographic units." The second is the new requirement that a CDFI operating within a CIA "direct at least 85% of [its] financing activity within individually qualified census tracts." These changes, based on possible interpretations, make it especially difficult for CDFI banks serving urban geographies to design and operate within a CIA.

To substantiate this assertion, CDBA requests that the CDFI Fund refer specifically to analysis conducted by FUND Consulting, which identifies a percentage of their clients with CIAs who will not be able to meet the new 85% criteria. FUND Consulting's work with a range of clients finds that CDFIs currently certified using CIAs take an appropriately holistic view of serving the broader community that includes many economically distressed tracts that may not be captured through current tract level IA qualification data. Ideally, all lending and investing within a CIA should count toward Target Market lending.

LOW INCOME TARGET POPULATIONS (LITP):

LITP METHODOLOGIES & PROXIES

CDBA agrees with the CDFI Coalition's recommendation to clarify the LITP definition. Specifically, the CDFI Fund should recognize the validity of end users to qualify for a Low Income Target Population (LITP). CDBA strongly urges the CDFI Fund to work with CDFI practitioners to develop methodologies and proxies for service to LITPs. While some CDFIs provide direct "retail" loans to LITPs and can collect annual income data as part of a loan application process, many CDFIs do not engage in direct lending. A large portion of highly impactful CDFIs are focused on creating benefits that improve the economic stability and mobility of LITPs but do not make loans directly to LITPs. For example, many CDFIs make loans to finance affordable housing, educational facilities, childcare centers, health care clinics, social service organizations, and other institutions that predominantly serve LITPs. In these circumstances, CDFIs currently use income proxies, such as number of students that qualify for free and reduced lunch, number of patients utilizing Medicaid to pay for medical services, and household income restrictions associated within subsidized affordable housing programs. Some CDFIs provide small business financing that create jobs for LITPs. Many have adopted alternative methodologies for capturing or estimating impact. We strongly recommend that a list of approved methodologies and proxies should be published prior to implementation of a new application to give CDFIs time (if needed) to amend their data collection processes.

SUPPORTING INNOVATIVE & NEW METHODOLOGIES FOR LITPS

As technology is rapidly changing how financial products and services are delivered using online and mobile channels, CDBA urges the CDFI Fund to work with practitioners to develop additional alternative sets of proxies or methodologies for measuring financial inclusion and service to low income, unbanked, underbanked, and other vulnerable populations in lieu of solely the current 80% of area median income methodology. Some CDFIs are interested in establishing a LITP using low- and moderate-income block groups but remain challenged by the requirement to collect customer information to ensure they meet the “80% or less of median family income” standard.

In the 25 years since the CDFI Fund began certifying CDFIs, technology has sparked fundamental changes in the financial services landscape. Technology advances are expanding access to financial products among underserved customers, yet some of these offerings have been predatory and harmful. The CDFI Fund should encourage CDFIs to be innovative and use technology to offer products and services that are good for customers and communities. The CDFI Fund should explore creating a new category of “emerging products” that can count toward meeting the Target Market Test requirements if they promote financial inclusion under alternative sets of proxies or methodologies.

The CFPB’s Project Catalyst provides a framework for evaluating products and services that may be useful to the CDFI Fund. Interested CDFIs could apply to the CDFI Fund for an “emerging products” flexibility waiver for how the Target Market Test is applied. The CDFI Fund would review each product to ensure it is appropriately structured and not harmful to customers. Approved “emerging product” pilots should be granted flexibility to develop alternative proxies for collection of income data. Pilot participants should be required to report to the CDFI Fund on how the product meets the financial inclusion goals. Such Emerging Products would provide a path for CDFIs to have a blanket, *temporary* qualification for innovative, non-predatory products based on the nature of the product and their utility to less rigid Target Populations (such as Low Income Block Groups), rather than the geographic location.

OTHER TARGET POPULATIONS:

The national conversation about racial equity has sparked renewed interest in finding new ways of ensuring communities of color have fair access to capital. Most CDFIs have a strong interest in maximizing service to such customers. As discussed below, there are real statutory and regulatory barriers preventing depository institutions from collecting racial and other demographic data. Today, the CFPB is in the process of rulemaking to implement the Dodd-Frank Act's Section 1071 and updating the Equal Credit Opportunity Act (ECOA). We strongly urge the CDFI Fund to engage in these discussions with the CFPB and bank regulatory agencies to ensure that depository CDFIs are able to collect race and other demographic data without fear of negative reprisals from examiners.

A relatively small number of CDFI banks opt to certify based on Other Targeted Populations (OTPs), but, among those that do, technological innovation increasingly drives how they serve populations that are not strictly confined to discrete geographic areas. Over the past 20 years, technology has radically changed how a large number of consumers access financial products and services. While studies show some customers still prefer to go to a branch or ATM for services, online banking, mobile banking, debit cards, and other media are rapidly gaining popularity. As such, long-term trends increasingly suggest that CDFI banks will likely be serving a mix of geographic areas and Target Populations.

As noted, some CDFI banks have successfully targeted OTPs. With the exception of home mortgages under the Home Mortgage Disclosure Act (HMDA), ECOA imposes regulatory restrictions on collection of race and other demographic characteristics during the loan application process; this makes OTPs difficult to manage. Some banks have attempted to ask borrowers to "self-identify" by race or other characteristics post-loan closing. Yet, these CDFIs have been discouraged when the CDFI Fund has required the bank to "verify" the borrowers' self-identified demographic, which is an essentially impossible task. Such a request is insensitive to customers. It is particularly problematic for communities of color that are too often disrespected due to their race — yet their self-identification is not taken as fact by the CDFI Fund. We strongly recommend the CDFI Fund cease this practice. CDBA urges the CDFI Fund to accept borrowers' post-closing self-identification in the Other Target Population process.

CDFI banks will be more likely to adopt OTPs if the CDFI Fund demonstrated more flexibility and acknowledged the regulatory hurdles depository CDFIs face in demonstrating service to OTPs. Currently, obtaining customer demographic data, such as race and ethnicity, is not feasible and carries tremendous compliance and reputation risk for depository CDFIs. For example, in an edition of the Consumer Compliance Outlook[6] published by the Federal Reserve Bank of Philadelphia, the Fed shares some percentages of violations they observed during 1,328 examinations in a recent five-year period.

According to the Fed, in 2013, 10.2% of examinations cited Home Mortgage Disclosure Act/Regulation C violations and 10.3% of examinations cited Equal Credit Opportunity

[6] Consumer Compliance Outlook: Q4 2013 - Government Monitoring Information Requirements Under the HMDA and the ECOA, www.consumercomplianceoutlook.org/2013/fourth-quarter/calendar-of-events/

Act/Regulation B violations. While all of these violations related to "either deficiencies concerning the method of collecting demographic information/government monitoring information or failing to collect" the demographic information/government monitoring information, institutions were also cited for collecting demographic information/government monitoring information when it is not required. Fully, 8.3% of examinations also included Regulation B violations for collecting demographic information/government monitoring information on loans that are not subject to such collection.

CDBA suggests that one option with a successful precedent is conducting periodic, third party administered customer surveys. These have been successfully used by several CDFI banks in support of FA applications. The CDFI Fund can encourage this by providing guidance on best-practices or even a framework to conduct these surveys safely and to an appropriate standard of statistical reliability.

TARGET MARKET VERIFICATION

CDBA believes that Question TM 03 (related to types of community development products needed within the Investment Area) is inappropriate, and we recommend deleting it from the certification application. As presented, the question is impossible for CDFIs to answer authoritatively and creates an unnecessary barrier to certification. While it is good business practice for any business to understand the dynamics of a market, it is not incumbent on CDFIs to demonstrate any level of supply-side analysis to the CDFI Fund. While this question may be appropriate in the context of a request for funding, if a CDFI is entering a new market, or establishing the need for introducing a new product, it is wholly inappropriate for establishing eligibility for certification.

6. Accountability

CDBA recommends that the CDFI Fund take a flexible approach in applying the Accountability Test. CDFIs serve different types of Target Markets. In the coming years, as technological advances reshape the financial services sector, all CDFIs will be challenged to serve their customers in new ways. We anticipate the scope of a "community" — within the financial services sector — will likely expand beyond the geographic, demographic, and other boundaries that have traditionally defined community development. If the Accountability standards are too rigid, it may prevent CDFIs from adapting to market changes.

CDBA is particularly concerned that the CDFI Fund's Governing and Advisory Board Target Market Accountability Test proposal is too narrow and rigid for depository CDFIs. In determining the right balance of "Accountability" representatives, we believe the CDFI Fund should consider the context within which each CDFI operates. CDBA is opposed to setting strict numeric Accountability standards for the composition of members of a CDFI bank's Governing Board (a.k.a. board of directors).

The proposed requirements — which establish *inflexible Governing Board minimums (20% governing board accountability)* — create real problems for CDFI banks. To begin, a bank charter requires only a minimum of five directors.[7] The proposed 20% Governing Board Accountability standard is simply set too high for CDFI banks.

FIDUCIARY OBLIGATIONS: The expertise and fiduciary requirements of bank directors are markedly different than those of nonprofit directors. Bank directors have specific legal and fiduciary obligations prescribed by the Federal banking regulators and can be personally liable for the actions of the bank. These obligations are a significant disincentive for a small business owner, neighborhood resident, nonprofit representative, or other community representatives to serve on a bank board. This circumstance has made is increasingly more difficult for banks to recruit qualified directors that meet CDFI Accountability requirements.

OWNERSHIP & RELATED INDIVIDUALS: A complication to the Governing Board minimum is that the CDFI Fund currently does not allow individuals related to any bank employee — or a significant bank shareholder — to be counted toward meeting the Accountability Test. This prohibition is particularly problematic for the many rural, minority-owned and other small CDFI banks that are family owned. Thus, the board may be comprised of a significant number of related individuals and have no outside ownership. In these cases, the contribution of capital and expertise from these shareholders are the lifeblood of the institution as well as the community. Yet these individual members of the Governing Board cannot be used under CDFI rules to establish Accountability. To remedy this challenge, family owned banks have named Advisory Boards to achieve the independent Target Market Accountability required. In the case of rural CDFI banks, meeting the Accountability requirements may be a further challenge because the pool of qualified individuals is small; thus, limiting the number of qualified Governing Board members and making the strict minimum impractical to achieve without potentially compromising the bank's fiduciary obligations.

SENIOR EXECUTIVES: Another technical challenge of the Accountability Test for Governing Boards is that the CDFI Fund currently does not allow a CDFI bank's CEO to be considered in the numerator when using a numeric percentage to the Governing Board Accountability Test. Yet, the CEO remains in the denominator. Regulators require a bank's CEO to be on the board. Thus, it is unfair to keep the CEO of a CDFI bank in the denominator, and this practice should be ceased.

ADVISORY BOARDS: CDBA strongly urges the CDFI Fund to continue to allow Advisory Boards to meet the Accountability Test. Advisory Boards are valuable because they are flexible in their composition — in ways that boards of directors cannot be, given safety and soundness regulations. Advisory Boards offer key insights to the needs of markets and submarkets that

[7] FDIC: https://www.fdic.gov/regulations/applications/handbook.pdf, Page 8

may be beyond the purview of a bank director who fills a primarily fiduciary or regulatory compliance role. To ensure the views of the Advisory Boards are taken into consideration by the Governance Board, the CDFI Fund can require that at least one Governing Board member participate in the Advisory Board and/or minutes from Advisory Board meetings be shared with the Board of Directors. Alternatively, an Advisory Board can become a subcommittee of the Board. The Committee Charter can be written to ensure that significant matters are reported the full Governing Board. Governing Board representation on the Advisory Board will further ensure Accountability. At least one CDBA member has considered this option to increase NMTC Advisory Board Accountability. Currently two members of that bank's Governing Board sit on its Advisory Board, along with three low income community representatives.

KEY GOVERNANCE ISSUES

GOVERNING BOARD APPOINTEES: CDBA is alarmed at the CDFI Fund's assertion in Question 17 of Published FAQs[8] that:

> *"An employee of a CDFI may still serve on the board of other CDFIs that do not have a Target Market of OTP-CDFI, but must meet the accountability test based on other accountability criteria."*
>
> The FAQ further states: *"A white employee of a certified CDFI would not meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-Hispanic, even if the CDFI by which the board member is employed also has a Target Market of OTP-Hispanic".*

Taken together, these statements infer that the CDFI Fund intends to prohibit a CDFI employee appointed to the Governing Board of another CDFI toward meeting the Accountability Test. CDBA opposes such a prohibition. It is common practice for a CDFI's employees to sit on the Governing Boards of other CDFIs given their strong expertise and intimate experience providing financial products and services to Target Markets. CDFI employees are often the most strategic Governing Board members because they understand both the needs of the Target Market and how to balance it with the needs of the organization. Such a prohibition risks two potentially negative outcomes: first, individuals with attributes that would otherwise meet the Accountability Test intent are disqualified; second, turning down such qualified individuals hurts low-income communities that need committed and experienced problem solvers. Over the past several decades, as the CDFI industry has matured, this practice has proven to strengthen the CDFI industry, promote enhanced sharing of best practices, and enhanced Governing Board knowledge of how to serve Target Markets. To prohibit CDFI appointees from

[8] "Do employees of a certified CDFI that serves a Targeted Population meet the accountability test to serve on the board of another entity serving that Targeted Population?"

meeting the Accountability Test will be a set-back for the maturing industry. CDBA urges the CDFI Fund to reconsider such a policy as harmful to CDFIs and communities.

CDBA shares FUND Consulting's concern that the proposed application emphasizes the qualification of census tracts when referencing accountable Board members' affiliations (page 71). One example is the option to identify Governing Board members accountable to an Investment Area through their affiliation with a third-party organization. Per the application, these Governing Board members must demonstrate that a majority of the third-party organization's activities are deployed among residents of qualified census tracts. However, the idea of tracking services in qualified census tracts is foreign to organizations that are not themselves CDFIs. It is therefore unlikely that any organization that is not itself a CDFI will be able to report whether activities are primarily being deployed among residents of qualified tracts. Moreover, it is not likely that third party organizations will be willing to share addresses of service recipients with an outside organization seeking this data for purposes of CDFI Certification. In this scenario, a CDFI might lose accountability for Governing Board members who hold senior positions at otherwise eligible community-based nonprofits that are unable to demonstrate their provision of services in this strict manner. This would be a grave loss.

7. Development Services

CDBA strongly opposes several of the proposed changes to Development Services. Despite CDFI Fund assertions to the contrary,[9] we believe that the CDFI Fund has indeed proposed very substantive policy changes to the Development Services portion of the proposed Certification Application. These changes are contrary to the spirit of the CDFI legislation and counterproductive to the stated purpose of the proposed change.

In recent years, the CDFI Fund appears to have shifted its preferences in funding applications and certification to Development Services offered in the form of structured classroom style training. CDBA recommends that all Development Services — especially those that have proven to be critical to low- and moderate-income communities and that do not fit the CDFI Fund's proposed, strict parameters — be valued equally.

Most notably, we strongly believe the most important and effective Development Service that CDFIs offer is one-on-one technical assistance (TA), provided in conjunction with a product or other service. Yet, in the proposed application, the CDFI Fund eliminates this foundational element of Development Service from eligibility by defining a Development Service *as "a formal stand-alone training, counseling, or technical assistance service . . . that the entity offers separately and distinctly from its other products/services"* (emphasis added by CDBA). We

[9] On slide 29 of the CDFI Fund presentation entitled, "Slides-CDFI Certification Application May 2020 FINAL," the CDFI Fund states, "No substantive policy changes are being implemented in the Development Services section of the CDFI Certification Application."

believe this proposed change is in direct conflict with how CDFIs operate and with Congressional intent as articulated in authorizing hearings in 1993-1994.

The nature, frequency, and amount of Development Services provided by a CDFI to its customers must be left to the discretion of each CDFI. Every customer is different, and CDFIs of all types are experts in recognizing and responding constructively to each customer's individuality. Some customers require support from a CDFI — but others do not. Some customers require and respond to structured, repeated classroom TA — but most do not. The definition of Development Services should remain highly flexible. In cases where the delivery of services may require additional context to evaluate, CDBA and its members recommend that the CDFI Fund seek input from the CDFI bank's Federal regulator on the institution's record.

Setting inflexible and onerous parameters for Development Services particularly harms the customers of depository CDFIs that offer a wide range of financial products and services. In fact, research — including recent work by Inclusiv and the Financial Health Network[10] — challenges the effectiveness of stand-alone financial education and counseling and instead emphasizes the importance and positive impact of delivering key messages at "teachable moments." Additionally, inflexible parameters harm every CDFI type that meets and services customers where they are, at their time of need. This necessarily includes loan funds and venture capital.

The CDFI Fund's clarifications in the proposed Certification Application further compound the problem. Specifically problematic are the provisions which impose onerous requirements on CDFIs:

1. "*Demonstrate that [the CDFI] maintain[s] control over the content and delivery parameters of their Development Service(s).*"
    a. This broad provision appears to implicitly prohibit CDFIs from receiving credit for delivering valuable and widely available financial literacy curricula, including, for example, the FDIC's "Money Smart" financial literacy program or third-party technology solutions such as Banzai which provide financial literacy education. These are common resources for CDFI bank customers precisely because they are effective, and are often integral to a CDFI bank's education platform, but because the CDFI does not "control the content," these services risk being excluded. Requiring CDFIs to "control the content" implies that all CDFIs, including small, resource-constrained organizations, should manage to create innumerable, individualized curricula. CDBA strongly urges the CDFI Fund to clarify that this language does not to prevent CDFIs from receiving credit for delivering content created by another entity.

[10] Partnerships for Financial Capability: Diagnostic Frameworks for Financial Institutions and Partners; Inclusiv and the Financial Health Network, 2015, www.inclusiv.org/wp-content/uploads/2015/09/Partnerships-for-Fin-Cap-Sept-2015.pdf

2. *"Make at least one Development Service available on an ongoing basis at least four times per year."*
    a. This provision creates unnecessary risk and tension, potentially forcing CDFIs to alter otherwise responsive, existing programs to fit an arbitrary format. For example, small, rural CDFIs may have found the local demand for formal Development Services only supports one, two, or three events per year. Under this provision, CDFIs will be compelled to fit a "round peg in a square hole." CDBA strongly urges the CDFI Fund not to require CDFIs to make formal Delivery Services available any minimum number of times, and certainly not "at least four times per year."

Moreover, the following provisions which exclude or prohibit certain services will also threaten the ability of CDFIs to serve their communities:

3. "*Training, counseling, or technical assistance not clearly intended to prepare consumers to access and/or be successful with a Financial Product and/or Financial Service offered by the Applicant."*
    a. This provision, like provision #1 (above), potentially prohibits CDFIs from delivering valuable and widely available curricula, including the FDIC's "Money Smart" financial literacy program, a commonly used resource for CDFI banks. Such curricula will be prohibited because the provision is broadly applicable to a number of products that may not be "offered by the Applicant," but which are often used in tandem or in a complementary capacity. For example, will the CDFI Fund really argue that loan funds should not deliver curricula that include information on savings accounts? CDBA strongly urges the CDFI Fund not to disqualify materials delivered by CDFIs that address products or services not offered by the applicant. Enacting this provision inhibits the flow of valuable information to many potential CDFI customers by unnecessarily restricting what information may be presented at any given time.
2. *"Information presented in newsletters, flyers, or online."*
    a. During this period of national emergency caused by the COVID-19 pandemic, CDBA strongly urges the CDFI Fund not to exclude any services that allow CDFIs to safely serve their communities at a distance, <u>especially through online delivery</u>, which has been deemed adequate for other essential services ranging from primary-level education to the CDFI Fund's own hearings.
3. *"Workshops for children or conferences/workshops for broad audiences."*
    a. Early childhood financial literacy is essential to establishing long-term positive behaviors in low- and moderate-income communities. Unfortunately, it has long been neglected in its most natural home — the elementary, middle and high school classrooms of America. This historic neglect has contributed to an environment of opportunity for predatory financial service providers —

pawnshops, payday lenders, high-rate credit card banks and check cashers — some of the very threats that CDFIs work to neutralize. <u>CDBA strongly urges the CDFI Fund not to contribute to the perpetuation of financial illiteracy by excluding workshops for children from qualifying for Development Services.</u>

4. *"Presentations made at one-off events (like annual fairs), or at regular events held by other entities."*
    a. Every contact that a CDFI makes with a potential customer is valuable to a low- and moderate-income community. Presentations made at fairs, such as health fairs, are opportunities for CDFI professionals to present valuable, if quickly digested content, that is otherwise unavailable in the physical environments of low- and moderate-income communities dominated by predatory providers such as storefront pawn shops, check cashers, and payday lenders, as well as a media environment which is exclusively the realm of large providers, mainstream or otherwise. Local fairs are opportunities for CDFI banks to deliver brief presentations on the value of safe and accessible bank products to low- and moderate-income communities whose members might be otherwise unaware of both the product *and* the CDFI. <u>CDBA strongly urges the CDFI Fund not to exclude appropriately themed presentations made at one-off events (like community health fairs) from qualifying.</u>
5. <u>"Non-structured conversations with consumers on Development Services subject matter."</u>
    a. It is unclear what constitutes a "non-structured conversation." However, "informal" conversations that provide timely, dispassionate advice are the core of a CDFI's relationship with its customers. Examples of these critical moments include explaining the benefits of a no-minimum balance checking account, outlining the relative costs and advantages of a longer loan term, or encouraging a customer to deposit a portion of a tax refund into a savings account. <u>CDBA strongly urges the CDFI Fund not to invalidate the innumerable hours of mentorship shared during appropriately themed, non-structured conversations by excluding them from qualifying as Development Services.</u>

The expansion of technology-driven products and services further complicates the question of what type of Development Services a customer needs or wants and how much and how often the customer uses those services. We encourage the CDFI Fund to allow CDFIs the flexibility to offer Development Services in the form most appropriate to each customer. Mandating how and when CDFIs provide Development Services as a condition for certification will: (1) unnecessarily increase the costs of delivering community development services *and* products; (2) put the CDFI Fund in the position of micromanaging how CDFIs serve their customers; and (3) remove the flexibility needed to tailor services to each customer. Such unnecessary, burdensome, and inflexible provisions will harm the customers living in the low- and moderate-income communities that CDFIs are dedicated to serve.

8. **Native American CDFIs**

In previous comments, CDBA has recommended that no changes be made to the CDFI Fund's current policies allowing Native CDFIs to self-designate. We strongly urge the CDFI Fund not to implement changes to board representation and activity thresholds. The CDFI Fund has proposed changes, adding Governing and Advisory Board representation requirements and activity thresholds, and has modified the definition of Native Communities.

By their nature, the two proposed options add reporting requirements and complexity to a process that already has more than its fair share. While we urge the CDFI Fund to adopt neither option, Option 1, "Governing Board Only" poses less of a burden than Option 2, "Advisory and Governing Board." Further, Option 2 is entirely untenable for Native CDFI banks.

Regarding Option 1, CDBA members note that most Native CDFIs are based in their local Native communities. Therefore, some CDBA members believe the burden posed by meeting the proposed Governing Board requirements[11] should be manageable. However, the fact remains that Native reserved lands are vastly under-resourced, and individuals seeking opportunity must often do so away from Native reserved lands. This reduces the pool of eligible Governing Board members who can meet the Accountability standard based on geography. CDBA urges the CDFI Fund to emphasize that individuals' "membership" in a Native Community is in every way adequate and coequal to "residency" (geography) to meet the Governing Board threshold.

Regarding Option 2, the cascading thresholds for qualification may pose a serious threat to the CDFI status of some Native CDFI banks.[12] As proposed, this option risks reducing crucial capacity-building support in the name of Accountability. The inflexible qualifications this option requires defy both the needs of, and the resources available to, Native communities. Native CDFI bank Advisory Board members often bring diverse skills, experiences, and contacts into these resource-starved communities. In many cases, these individuals are financial supporters of the Native CDFI. These Advisory Board members are also often not members of Native communities. These individuals are nevertheless extraordinary supporters who embrace the mission aspect of the CDFI. As such, part of the value these individuals provide is in directing resources *into* the Native community *from* other communities with more resources. The accountability of these individuals is evident in their support for the mission, and their participation on the Advisory Board is, in any case, subject to the discretion of management

[11] 33% of total Governing Board must be community members or residents of native communities, and 50% of that portion must be community members

[12] 60% Advisory Board must be of native community members or residents, 50% of the previous portion must be community members, and 20% Governing Board must be members or residents

and the Governing Board. CDBA urges the CDFI Fund to continue to allow Native CDFI banks to set their own priorities and recruit Advisory Board members from any community without regard to Native Community residency or Native Community membership.

In regards to the proposed percentage of activity that must be directed to Native Communities, CDBA agrees that directing at least 50% of Financial Products by dollar and number to Native Communities is a realistic threshold. However, CDBA urges the CDFI Fund to consider our recommendation in Section 5, "Target Market Test," that a more appropriate measure for Financial Services is "number of unique account *holders*," and to reconsider the threshold based on a CDFI bank market review subsequent to the submission of these comments.

Given the immense disparity in economic resources in Native Communities, the number of individual accounts may introduce a bias towards higher income and more affluent customers; it does not reflect success in providing services to lower income, less affluent customers. For the latter customer, one account may itself be a sign of success and a signal that a major hurdle has been overcome on the path to financial inclusion and stability. Native CDFI banks provide Financial Products in their communities by bringing deposits (in the form of Financial Services) from, quite literally, anywhere they can be sourced. A Financial Services threshold based on dollars and/or number of individual accounts risks severing resource-starved Native communities from essential funding sources which take the form of accounts sourced from higher income/higher asset communities.

CDBA does not propose any changes to the definition of Native Communities.

CONCLUSION:

In conclusion, the membership of CDBA fully appreciates the thoughtful consideration of the CDFI Fund and its staff in continuously seeking to improve the effectiveness of the CDFI certification process. We sincerely appreciate the opportunity to comment and offer feedback. 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, Public Policy Director at (646) 283-7929 or *blakeb@pcgloanfund.org.*

Thank you for considering our recommendations.

The Membership of the Community Development Bankers Association

Bank of Anguilla (MS)
Bank of Brookhaven (MS)
Bank of Cherokee County, Inc. (OK)

Bank of Commerce (MS)
Bank of Franklin (MS)
Bank of Kilmichael (MS)
Bank of Lake Village (AR)
Bank of Moundville (AL)
Bank of St. Francisville (LA)
Bank of Winona (MS)
BankFirst Financial Services (MS)
BankPlus (MS)
Bay Bank (WI)
Beneficial State Bank (CA)
BNA Bank (MS)
BOM Bank (LA)
Broadway Federal Bank (CA)
Carver Federal Savings Bank (NY)
Carver State Bank (GA)
Central Bank of Kansas City (MO)
Century Bank of the Ozarks (MO)
Citizens Bank & Trust Company (MS)
Citizens National Bank of Meridian (MS)
City First Bank of D.C., N.A. (DC)
Commercial Bank, Kemper County (MS)
Commercial Capital Bank (LA)
Community Bank of the Bay (CA)
Copiah Bank (MS)
Farmers & Merchants Bank (MS)
Farmers State Bank (MS)
FBT Bank & Mortgage (AR)
First Bank (MS)
First Eagle Bank (IL)
First Independence Bank (MI)
First NaturalState Bank (AR)
First Security Bank (MS)
First SouthWest Bank (CO)
FNBC Bank (AR)
Friend Bank (AL)
GN Bank (IL)
Great Southern Bank (MS)
Guaranty Bank & Trust (MS)
Harbor Bank of Maryland (MD)
Homes County Bank and Trust Company (MS)
Industrial Bank (DC)

Industrial Bank of Chicago (IL)
Legacy Bank & Trust Company (MO)
M&F Bank (NC)
Merchants & Planters Bank (MS)
Mission Valley Bank (CA)
Native American Bank, N.A. (CO)
New Haven Bank (CT)
Noah Bank (PA)
OneUnited Bank (MA)
Optus Bank (SC)
Pan American Bank & Trust (IL)
Partners Bank (AR)
Peoples Bank (MS)
Planters Bank and Trust (MS)
Priority One Bank (MS)
Quontic Bank (NY)
Security Federal Bank (SC)
Security State Bank of Oklahoma (OK)
Southern Bancorp Bank (AR)
Spring Bank (NY)
Sunrise Banks, N.A. (MN)
Sycamore Bank (MS)
Texas National Bank (TX)
The Bank of Vernon (AL)
The Cleveland State Bank (MS)
The First National Bank & Trust (AL)
The First, A National Banking Association (MS)
The Jefferson Bank (MS)
The Peoples Bank (MS)
Tri-State Bank of Memphis (TN)
Union Bank & Trust Company (AK)
United Bank (AL)
United Bank of Philadelphia (PA)
United Mississippi Bank (MS)
Virginia Community Capital Bank (VA)

November 5, 2020

Ms. Tanya McInnis
Program Manager for Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions (CDFI) Fund
U.S. Department of the Treasury
1801 L Street NW
Washington, D.C. 20006

RE: CDFI Program - Certification Application Request for Public Comments (OMB Number 1559-0028)

Dear Ms. McInnis:

The Coalition of Community Development Financial Institutions thank the CDFI Fund for the opportunity to provide comments on proposed changes to the CDFI Certification application.

The CDFI Coalition ("Coalition") is the national voice for CDFIs of every type. The Coalition supports CDFIs nationwide to help them better provide credit, capital, development services, and financial services to underserved people and communities. The Coalition provides an opportunity for CDFIs and their many partners, including the full spectrum of community development finance funders and researchers, to have a unified voice in support of the role of CDFIs as an integral segment of the nation's financial services industry.

We appreciate the CDFI Fund's ongoing engagement with stakeholders and encourage Treasury to continue to work with the public as CDFI Certification policies and procedures are updated.

General Comments

In addition to the specific questions posed in the Federal Register Notice, we have some general comments about CDFI Certification. As you know, the seven statutory criteria to become a certified CDFI have remain unchanged since the passage of the Riegle Act. The certification standards keep bad actors with predatory and abusive lending practices often targeted at low-income and marginalized communities from becoming certified CDFIs. Because the certification is often used as a "seal of approval" for federal and philanthropic resources, in addition to CDFI Fund resources, it is important the process qualifies only responsible, mission-based lenders. For these reasons, the Coalition strongly supports strengthening the CDFI Certification application review policies and procedures.

The Coalition also supports incorporating the CDFI Certification application into the Awards Management Information System (AMIS) and linking it with the new CDFI Certification Transaction Level Report (CTLR). This will lower the burden on CDFI Certification applications since it will reduce the number of application questions and overall public burden. We believe most of the proposed changes are positive since they strengthen the CDFI Certification standard and decrease applicant burden by automating processes and streamlining the application process.

However, the CDFI Fund is proposing numerous changes which could impact the CDFI certification status of many organizations. Investing in the technological or staff resources needed to comply with the new certification requirements and updated reporting requirements in the Annual Certification Report and new Certification Transaction Level Report will cause financial and capacity strain on organizations at a time they can least afford it. The impacts of COVID-19 make it even more difficult to make the major, upfront investments in new software or systems needed to accurately report and capture this information, especially for smaller CDFIs. In particular, the new requirements for CDFIs that are not Financial Assistance awardees to complete and submit Transaction Level Reporting may impose a significant new compliance burden.

The Coalition recommends that the CDFI Fund grandfather in existing certified CDFIs after the CDFI Certification application is finalized and allow a grace period of at least 18 months for organizations to make any changes necessary to maintain their certification.

Primary Mission Test

The CDFI Fund's statute states that a CDFI must have "a primary mission of promoting community development." In addition, the CDFI Fund's regulations state that, "In determining whether an Applicant has such a primary mission, the CDFI Fund will consider whether the activities of the Applicant are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of economically distressed communities.'' Implicit in those words is promise that CDFIs will not engage in predatory or discriminatory practices and will provide customers with a greater level of assistance than the market would otherwise bear – to serve the underserved.

Recommendations:
The CDFI Coalition supports the CDFI Fund's efforts to strengthen the primary mission test by evaluating the Financial Products that Applicants provide to underserved borrowers. Indeed, we believe that the primary mission test is the most important tool for protecting the CDFI brand and ensuring all CDFIs offer responsible Financial Products that truly benefit underserved people and communities. The following recommendations would improve the test and ensure that it aligns with trends in the CDFI industry.

Aligning with other federal programs benefiting underserved borrowers

- **A CDFI Certification Applicant or Affiliate with a mission to support underserved markets through approved federal government loan programs should be deemed to satisfy the Documenting Mission and Community Development Strategy test.** It is unclear from the proposed CDFI Certification guidance if a CDFI Certification applicant or its Affiliate would meet the proposed Documenting Mission or Community Development Strategy components of the Primary Mission test if they were created solely for the purpose of serving underserved borrowers who can't receive credit elsewhere. CDFI Certification Applicants or Affiliates that are required by federal statute to provide financial products and services to underserved borrowers should automatically meet the Documenting Mission and Community Development Strategy sections of the Primary Mission test. For instance, SBA 7a and Microlenders are required to document that their loans went to businesses that couldn't otherwise access the capital, and are typically eligible for Community Reinvestment Act credit. The Coalition believes that other federal program requirements should serve as a sufficient proxy for meeting the Documenting Mission and Community Development Strategy sections of the Primary Mission test.

The flip side of that equation is that the CDFI Fund should recognize fair lending violations or other sanctions handed down by other regulatory authorities. Organizations that have a history of regulatory sanctions, predatory practices, or recent unsatisfactory ratings on Community Reinvestment Act exams, should be considered ineligible for CDFI certification.

We agree with CDBA's recommendation that the CDFI Fund's certification process should allow the agency to consider external sources of information about the products and practices of an entity seeking certification or re-certification. For example, such sources may include consumer complaints filed with the Consumer Financial Protection Bureau, a local Better Business Bureau, or state, local and Federal authorities, lawsuits or judgements against the lender, news media reports, and negative reports posted on social media. As part of its certification process, the CDFI Fund should have the authority to request and review all consumer facing product information (i.e. websites, brochures, loan agreements, pricing and fee calculations) as are presented to prospective and actual customers.

The treatment of affiliates

- **The CDFI Fund should consider the size or percentage of Financial Products and Financial Services of an Affiliate relative to the CDFI Certification Applicant (i.e., balance sheet, number of employees, percent of overall lending) such that an Applicant would not be found ineligible on the activities of a relatively small Affiliate**. Many CDFIs have Affiliates that provide specialized financing and services that may not necessarily specifically target low-income people and places, but may also only represent a very small part of the parent company's operations. Often, these Affiliates are created from their parent entity for legal and financial reasons.

  The Coalition recommends that Affiliates that reflect a small portion of a CDFI Certification applicant's overall Financial Product and/or Financial Services activity should not hinder the ability of the applicant from becoming or remaining certified. The Coalition supports LISC's recommendation that the CDFI Fund exempt Affiliates that reflect less than 10 percent of their parent entity's annual Financial Product and/or Financial Service activity (as measured by volume of activity or commitment of staff resources) from the Primary Mission requirements.

- **The CDFI Fund should exempt Affiliates of nonprofit CDFIs that distribute their profits to the CDFI Certification Applicant, as long as they can meet all facets of the Primary Mission test.** Some CDFI Affiliates are structured so that any annual profits are distributed to the parent entity to further their CDFI and community development mission. The CDFI Fund should exempt such Affiliates from the Primary Mission test since these entities further the capacity of the CDFI Certification applicant. These affiliates often help ensure the financial sustainability of the CDFI.

Financial Products and Services:

- **Allow flexibility for the diverse needs of underserved communities:** The Coalition agrees with the comments from OFN that many of the options in the application questions assume incorrectly that there are standardized product and pricing definitions and standards in use within the CDFI or the financial services sector (i.e. "below market rate," "lower than standard," "nontraditional," "less established," "lower profitability," "mainstream underwriting criteria" among others). All the options force lenders to make blanket statements about products that may or may not be asserted uniformly across products and borrowers.

  CDFIs offer different products and development services to reach their Target Markets. The rates and fees charged to borrowers are reflective of the borrower's risk profile, market conditions, and the cost of capital to the CDFI. It is not always feasible to offer products at below market rate or other subordinate financing mechanisms. Further, loans made at market rates can still have a positive community development impact, especially for borrowers that cannot access mainstream finance OR borrowers that would potentially seek high-cost, predatory financing options.

  In addition, as outlined in the CDBA recommendations, the Coalition believes that the nature, frequency, and amount of development services provided by a CDFI to its customers must be left to the discretion of each CDFI. Every customer is different, and CDFIs of all types are experts in recognizing and responding constructively to that individuality.

  For example, CDBA notes that the requirement that CDFIs "Demonstrate that (the CDFI) maintain control over the content and delivery parameters of their Development Service(s)" would prohibit CDFIs from receiving credit for delivering valuable and widely available financial literacy curricula. Requiring CDFIs to "control the content" implies that all CDFIs, including small, resource-constrained organizations, should manage to create innumerable, individualized curricula. The Coalition recommends that the CDFI Fund clarify that this language would not prevent CDFIs from receiving credit for delivering content created by another entity.

- **With more than 1,100 CDFIs in all 50 states, simply evaluating an Applicant's board-approved organizational documents or a narrative statement will not always be sufficient to ensure that an organization is practicing responsible lending and providing fair Financial Products.** The Coalition recommends the CDFI Fund set clear standards for and create broad authority to deny or decertify entities that do not meet the letter or spirit of the CDFI mission. The strategies for accomplishing this would require a multi-prong approach based on CDFI business model type and lending products. This approach should be created with the input of the CDFI industry.

- **Set the following baseline standards for mortgage products:** The Coalition supports Self-Help's recommendation that for any home mortgages offered, product protections consistent with the qualified mortgage (QM) statutory protections: (a) no negative amortization, interest-only payments, or balloon payments; (b) adjustable rate mortgages underwritten at the maximum rate in the first five years; (c) maximum term of 30 years; and 4) total points and fees generally not exceeding three percent of the loan amount. These product protections will help ensure responsible mortgage lending while allowing innovation in underwriting that may benefit communities CDFIs serve.

- **Reconsider the use of the Military Lending Act standards:** The Coalition recommends allowing CDFIs to report using their existing APR calculations. We concur with OFN's comments that using the Military Lending Act (MLA) standard to calculate annual percentage rate (APR) would allow for standardized calculation across the industry, but requiring CDFIs to report APR using the MLA methodology adds yet another layer of complexity to the existing web of reporting requirements. CDFIs would either have to choose to switch to the MAPR calculation for their lending to ease the CDFI Fund compliance burden, which would require amending their financing disclosures as well as the methodology underpinning them. Or they create an entirely separate system to make the MAPR calculation specifically for the CDFI Fund, which would also be costly and burdensome.

  As states provide greater oversight to consumer lending, CDFIs are already making multiple calculations of interest rates using different formulas: CDFIs engaged in small business lending in California are now required to make APR calculations under a formula in Regulation Z. A pending small business lending disclosure bill in New York would use another calculation of APR. A bill introduced in Congress by House Small Business Committee Chairwoman Nydia Velazquez (D-NY) would calculate APR using, yet again, a different formula.

Minimum Standards

CDFIs should be required to lend based on the borrower's ability-to-repay.
We were pleased to see the Fund's advisement that loans should be made based on the borrower's ability-to-repay. We agree with the following comments submitted by Self-Help that lending be based on a borrower's ability to repay – while meeting other expenses, without needing to refinance/re-borrow, and without relying on collateral – is a fundamental tenet of responsible lending. Thus, a meaningful ability-to-repay determination considers both the borrower's income and expenses. Responsible underwriting is especially important when, like most online loans today, a lender has access to the borrower's checking account and can repay itself automatically out of the account before a borrower can pay other essential expenses.

Payment-to-income (PTI) ratios cannot substitute for underwriting. We also concur with Self-Help that the Fund should also monitor default rates, which may signal unaffordability. But low default rates alone do not mean borrowers have the ability-to-repay. Refinances mask unaffordability. And when a lender has a repayment mechanism, like electronic access to the account, the lender will often collect payment even when the borrower cannot afford the loan. Thus, review of default rates does not substitute for an upfront ability-to-repay determination.

Community Development Objectives

- **Allow business development as a community development objective:** Many CDFIs have a mission to support communities through incubators, small business development and entrepreneurship.

- **Job creation and the creation of quality jobs:** The community development objectives should include job creation. Quality jobs could be defined using recent research by the Federal Reserve.[1]

- **Addressing the racial wealth gap:** The CDFI Fund should also consider activities undertaken to close the racial wealth gap as a community development objective.

Financing Entity

CDFIs are required to be financing entities and CDFI certification applicants must demonstrate that their predominant business activity is the provision of arm's-length Financial Products and/or Financial Services. The CDFI Fund specifically requires that an applicant demonstrate a predominance of both its assets and staff time is for the direct provision of Financial Products and/or Financial Services.

The Coalition believes that the predominance standards are appropriate for CDFI certification since an entity should demonstrate to the CDFI Fund that the majority of its business is for Financial Products and/or Financial Services. However, the current application standards though do not allow the CDFI Fund any flexibility for maintaining an organization's certification if it does not meet this test during their annual certification review. This is particularly critical during an economic downturn when CDFI customers need access to working capital and grants.

Recommendations:

- **Allow CDFIs to adapt to the needs of communities during an economic downturn.** The Coalition believes flexibility is needed during periods of economic instability. Many CDFIs often scale their grant making activity during periods of crisis, which can cause an applicant to fail the Financing Entity test for one year even if they have always met it historically. Meeting the needs of underserved communities is more critical than ever during an economic downturn. The CDFI Fund should adopt policies to ensure CDFIs are not punished for doing so.

  One way of achieving this would be to allow currently certified CDFIs to meet a three-year average for the predominance test if an Applicant fails it during any given year. This is allowed for currently certified CDFIs in the Target Market test and would allow CDFIs to be responsive during periods of crisis without jeopardizing their certification status.

Target Markets

The Coalition strongly supports the CDFI Fund's proposal to eliminate geographic restrictions on most Target Markets. Current practice requires that CDFI Certification applicants delineate boundaries for their Target Markets, which can result in CDFIs not receiving credit for activities outside of these places, which would otherwise be eligible. The current practice can inhibit CDFI financing for underserved people and communities due to administrative concerns on whether it will satisfy CDFI Certification and CDFI Fund award compliance requirements, which often mandate a certain percentage of activity in a CDFI's certified Target Market. This

[1] Cite FRB Atlanta, Boston, Kansas City literature

commonsense change will lower administrative burden for CDFIs and has the potential to increase impact.

However, we have strong reservations concerning the removal of the flexibility on Target Market Thresholds.

The RFIs and FAQ elude to a list of approved Target market verification processes, but this list does not yet exist. It states that CDFIs may request approval of an alternate process, but, again, that approval process and any guidelines also do not exist at this time. This information is necessary for the industry to review before the CDFI Fund finalizes the certification application and CTLR.

As the CDFI Fund develops its list, we recommend the inclusion of the following Target Market Verification Processes:

Verification of Low-Income Target Population (LITP).

- **Clarify the LITP definition with regard to end users:** Some CDFIs verify their targeting of LITPs by documenting the benefits to the end user, rather than the income of the borrower. This is allowed in the regulation and can include affordable housing tenants, low-income users of community facilities, and low-income workers; however, the processes for verifying and documenting these end users (including the use of federal proxies such as Supplemental Nutrition Assistance Program, or SNAP, eligibility) has never been defined by the Fund, and the practice has not been explicitly permitted. The CDFI Fund should recognize the validity of end users to qualify for LITP. For example, a childcare facility that serves low-income children whose families qualify for SNAP.

- **LITP Census Block Group geocoding:** While we realize this is an optional method, and believe it is intended to provide more flexibility, we are concerned that the geocoding tool has not yet been built. We look forward to seeing the tool.

Other recommendations

- **Reconsider requiring that Target Market goals must be achieved by both dollar volume and number.** The Coalition urges the CDFI Fund to continue its consideration reasonable explanations when a CDFI meets one metric but not the other. For example, a Microlender makes many small dollar loans in their LITP Target Market. However, the Microlender also made a few larger loans outside that Target Market to support Black business owners impacted by the pandemic. Due to the size of the loans, which were outside their Target Market, the Microlender may fall below the percentage on dollar volume, even though they exceed the percentage on loan numbers and Black entrepreneurs are underserved by traditional financial institutions.

Accountability

The Coalition supports efforts to strengthen the Accountability test and offers the following recommendations:

- **Allow consideration of local and geographic specific Advisory Boards for CDFIs which serve a regional or national Target Market.** The Accountability portion of the current CDFI certification application is much more qualitative than the new proposed standards. Although Advisory Board is not defined in the CDFI Fund's regulations, the proposed guidance would restrict it to national Advisory Boards since it requires the Fund to consider "how the Advisory Board input is incorporated into the organization's Governing Board's decision-making process." The CDFI Fund should allow local and geographic specific Advisory Boards to be included in the Accountability test's standards for CDFIs serving regional, national, and geographic specific Target Markets, such as rural communities. These Advisory Boards ensure accountability to low-income people and places for local offices and rural activities of regional and national CDFIs.

- **Further clarification needed on how employees of CDFIs help a CDFI meet the accountability test.** *Question #17 of the FAQs for the Proposed CDFI Certification Application, ACR & CTLR* raises a number of concerns and would benefit from further clarification or explanation by the CDFI Fund. It states that "An employee of a certified CDFI may meet the accountability test on the basis of her or his employment for a certified CDFI *only* (emphasis added) when serving as a board member for a CDFI with a Target Market of OTP-CDFI. An employee of a CDFI may still serve on the board of other CDFIs that do not have a Target Market of OTP-CDFI, but must meet the accountability test based on other accountability criteria.

  For example, a Hispanic employee of a certified CDFI may meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-Hispanic on the basis of being a member of the Other Targeted Population. However, a white employee of a certified CDFI would not meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-Hispanic, even if the CDFI by which the board member is employed also has a Target Market of OTP-Hispanic. Either employee would meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-CDFI."[2]

  The current language appears to indicate that CDFI employees/board members could only serve on the board of a CDFI that is serving other CDFIs (i.e. CDFI Intermediaries) or if the employee demonstrates accountability through another characteristic (such as race or ethnicity). This rule is particularly perplexing for CDFIs with a Low Income Targeted Population (LITP) Target Market, which is also a Targeted Population Target Market. Other examples of this issue have also been identified in comments submitted by OFN.

  It is common practice for leaders of CDFIs to sit on each other's governing boards to meet the accountability requirements for CDFI Certification as well as to provide their expertise and partnership opportunities. The Coalition urges the CDFI Fund to provide additional clarity on Question 17 of the FAQs regarding the Revised CDFI Certification Application, the Revised Annual Certification Report and the Certified Transaction Level Report. **Specifically, the Coalition would appreciate language that says CDFI employees and board members *may* serve on the governing boards of other CDFIs (particularly those with an LITP Target Market), as is currently common practice, and explain *any* situations where such a practice would not be permitted and why.**

[2] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Public%20Comment%20FAQ%2009242020.pdf Proposed CDFI Certification Application, ACR & CTLR – Request for Public Comment, Frequently Asked Questions Updated September 24, 2020, Q.#13, pg.8, accessed 10/19/20.

We thank the CDFI Fund for the opportunity to offer comments and welcome opportunities to explore these and other possible improvements to CDFI Certification policies and procedures.

Sincerely,

John Holdsclaw, IV
Chair
CDFI Coalition
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Community Development Venture Capital Alliance
Private equity for the public good.

November 5, 2020

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RE: CDFI Program - Certification Application Request for Public Comments (OMB Number 1559-0028)

Dear Ms. McInnis:

The Community Development Venture Capital Alliance (CDVCA) appreciates the opportunity to comment on the CDFI Fund's Request for Information on CDFI Certification. CDVCA is the national network of community development venture capital (CDVC) funds, which invest in businesses in under-invested communities to create good jobs, productive wealth, and entrepreneurial capacity that advance the livelihoods of low-income people and the economies of distressed communities.

CDVCA is an active board member of the CDFI Coalition, and we support the comments and recommendations that the Coalition is providing in its comment letter. We focus in our comments below on issues that are unique to the CDVC industry or are particularly important to it.

We are also a signatory to the letter to Director Jodie Foster dated November 4th from the CDFI trade associations, and we agree with its content: because the changes proposed are so substantial and could have unintended negative effects on the industry, we urge the Fund to slow down the process and engage with the various CDFI industry sectors to address the effects of these changes. We also support the recommendation of the Coalition and others that, when new standards are instituted, an 18-month grace period be given to existing CDFIs and that the Fund use this time to work out kinks and anomalies in the system.

General Comments

CDFI certification is a valuable "seal of approval" conferred on mission-driven financing organizations, and we strongly support efforts to protect and enhance the CDFI "brand." At the same time, as the Fund considers the substantial changes it has proposed to the certification process, it is important to remember that CDFIs are highly varied in their operation, as well as their intermediate (though not ultimate) goals. A CDVC fund that makes relatively large, high impact equity investments in high-growth businesses of substantial size (whose owners probably are not low-income) to create good jobs for low-income people is different from a micro lender that makes very small loans to low-income business borrowers, which in turn differs from a lender to a developer of low-income housing. Similarly, a venture fund organized as a limited partnership with a 10-year life and outside equity investors is different in form from a commercial bank or not-for-profit loan fund with perpetual life. (See Kerwin Tesdell's letter to Jeff Merkowitz regarding certification issues of CDVC funds, dated April 12, 2019, hereinafter referred to as the "Merkowitz Letter".) While we appreciate the Fund's practical desire to create standards that apply across the board to all CDFI types, we urge you to make an effort to create tailored standards that make sense for individual CDFI types and preserve the important diversity of the industry. Indeed, the first policy objective listed in the notice in the Federal Register is to "Continue to foster a diversity of CDFI types, activities, and geographies." We fear that some of the proposed changes may unintentionally make it undesirable or impossible to gain certification for most traditionally-structured CDVC funds, despite their being strongly mission driven and serving crucial needs in low-income communities.

Primary Mission Test

Subsidiaries and Affiliates

- **CDVC business investments.** The Fund's new proposal to consider the mission of subsidiary and affiliate organizations may unintentionally make it impossible for most CDVC funds to gain CDFI certification. Unlike all other types of CDFIs, CDVC funds make investments rather than loans. In fact, the whole purpose of a CDVC fund is to make equity investments in—and therefore to become part owners and controllers of—businesses. In most cases, these businesses, themselves, do not have a community development mission, but the CDVC fund accomplishes its mission by providing financing to the business to help it grow and create jobs. **Recommendation:** Ownership or control of a business acquired through investment consistent with a CDFI's or CDVC's financing business plan should not be considered for purposes of identifying subsidiaries and affiliates. Note that the business should not be required to be part of the CDFI's target market. For example, a business in which a venture fund invests that happens not to be in a low-income census tract, but which the fund has invested in as part of its overall investment program, should not be considered a subsidiary so long as the CDVC fund overall meets the requirements for CDFI certification. (E.g., the fund meets the 60% low-income community test, but the business in question is part of the 40% outside of the community.) Note also that the outcome might be different if the control relationship is reversed, and the CDFI is controlled by the non-mission-driven business. In that case, the mission of the company probably should be considered.

- **Investments in funds.** CDVCA and other CDFI intermediaries achieve our community development missions in part by providing capital to funds that benefit low-income communities and people. Unlike other CDFI intermediaries, CDVCA typically makes equity investments in such funds, rather than loans. For example, we might purchase limited partnership interests in a fund organized as a limited partnership. Analogously to the recommendation above, we do not believe that an ownership interest in a fund that results from such an investment should be considered in determining a CDFI's subsidiaries and affiliates. **Recommendation:** Ownership or control of a fund or other financing entity acquired through investment consistent with a CDFI's or CDVC's investment business plan should not be considered for purposes of identifying subsidiaries and affiliates. Note that such investments should not be limited to investments in certified CDFI funds. For example, CDVCA and our Puerto Rico Fund for Growth have invested in funds that finance businesses in Puerto Rico that are not certified CDFIs but that further CDVCA's mission of promoting economic development and job creation in Puerto Rico. In fact, we think that making investments in funds that are not certified is an important way to accomplish our mission, providing capital to funds that might be too small or otherwise not interested in applying for certification. The relevant consideration should be furtherance of *CDVCA's mission*, not the stated mission of the fund in which we invest. (However, the CDFI Fund might reasonably inquire into how and whether our investment actually does further *CDVCA's* mission. For example, in the case of our investments in business finance funds in Puerto Rico, we might respond that our mission is furthered by supporting a fund that invests primarily in low-income census tracts in Puerto Rico, as almost all of them are, and by helping to develop the indigenous business finance ecosystem on the island.)

- **Size of affiliate or subsidiary in relation to overall size of CDFI.** CDVCA supports the recommendation of the CDFI Coalition that subsidiaries that are relatively small in relation to the overall size of a CDFI should not jeopardize certification of the CDFI.

- **Affiliates and subsidiaries of not-for-profit CDFIs that distribute profits to support the mission of the CDFI.** We agree with the recommendation of the Coalition that these should be exempt.

Financial Products and Services

- **Below market terms.** We strongly disagree with the Fund's apparent movement toward the idea that provision of loans and investments on below market terms should be a criterion of CDFI certification. This concept is not in the Fund's authorizing legislation and in fact is contrary to an important goal of CDFIs to engage actively in financing markets. In addition, this may be an instance in which CDVC funds are in a different position from some other types of CDFIs for the following reasons.
    - CDVC funds have always seen our missions as providing *access* to capital rather than providing *cheap* capital. While it might be desirable for a lender to a low-income housing development to provide inexpensive financing to a project to help keep rents low, if a business is exited successfully, it can provide good returns to investors without harming employment. "Leaving money on the table" in a transaction simply puts money in the pocket of a business owner and does not necessarily help employees, who are the target of our mission. It's better that the returns go to a CDVC fund for future investment. **Recommendation:** In general, the Fund should resist the temptation to allow "below market" to creep into the CDFI certification process. We agree with the Coalition's recommendation that "bad actors" be screened out by focusing on predatory terms and characteristics rather than using language such as "below market" or "favorable." Focus on abusive practices and do not try to

control or regulate the extremely varied terms that CDVC funds offer to businesses.
  - Access to equity capital is a big deal in the communities where we work. While debt may be hard for companies in low-income communities to secure, equity capital is virtually nonexistent. 75% of venture investments are made in just three states, and rural and inner-city businesses have virtually no access. Access is enough; businesses don't need cheap capital. **Recommendation:** Make equity investments and debt with equity features qualify *per se*, without delving into their exact terms.
  - We share the concern of the Coalition that the Fund seems to be heading in the direction of requiring CDFIs to define their products in certain "boxes." One of the great strengths of CDVC funds is that we provide extremely flexible capital on terms tailored to the individual needs of each business at a particular point in its development. There are no standard products with specified terms. Furthermore, return requirements will vary widely depending on the risk involved. **Recommendation:** CDVC funds should be required simply to describe their products broadly (e.g., preferred stock, debt with warrants, debt with royalties) and not define terms further.
  - Requiring a statement regarding below market returns would make it virtually impossible for most CDVC funds to raise capital from investors, since investors in CDVC funds are typically making equity investments in the fund (whose return depends on the return produced by the CDVC fund) rather than lending to the fund (where an set interest rate is offered). It's hard enough to raise capital by saying "we're going to invest in places and in businesses that no one else wants to invest in," but adding a statement about below market returns would be suicide. No traditionally structured CDVC fund would ever apply for CDFI status under these circumstances.

Ability to pay

- Discussion of "ability to pay" raises concerns for the CDVC industry. We understand the reason for this and fully support it: predatory lenders that provide mortgages to low-income people who may not have the ability to pay and may lose their homes (in which case the lender gets repaid through sale of the home) can be extremely detrimental to low-income home owners. But the Fund should address this concern through a carefully-targeted "rifle" approach rather than a "shotgun" approach covering all CDFIs. It would make absolutely no sense for an equity investor to make an investment in a company with intention or understanding that it wouldn't be repaid, because equity investors typically take no mortgage or security interest in a business in return for its investment. If the business has no "ability to repay," the equity investor will lose all of its money. However, it is certainly true that equity investors make high-risk investments that may not be repaid—providing risk capital that others will not provide is central to our mission. **Recommendation:** Ability to repay should not be considered with respect to equity and near equity investments.

Community Development Objectives

- Business development and job creation are the central objectives of CDVC funds, and many have the additional objective of addressing the racial wealth gap. We therefore share the following **recommendations** of the Coalition:

- **Include business development and support as a community development objective.**

- **Include job creation and possibly the creation of quality jobs as a community development objective**. (But we caution that the definition of a "quality job" may be quite different, depending on context. For example, a living wage and good benefits may vary widely between rural Appalachia and San Francisco and between a small startup and an older, established company. Therefore, the Fund should be careful in promulgating one-size-fits-all standards for job quality, and—as much as job quality is central to the CDVC mission—should perhaps not venture into this territory, not because it isn't important, but because it is hard to define and measure.)

- **Addressing the racial wealth gap**. CDVCA and many CDVC funds share the objective of increasing the number of entrepreneurs and business owners and the number of minority fund managers.

Financing Entity

- The Financing Entity test is perhaps the major reason that traditionally-structured CDVC funds with community development missions often never apply for CDFI certification. To be very brief, the problem is that, unlike other types of CDFIs, CDVC funds raise all of their capital up front, before they begin financing, and therefore many find no use in becoming certified after all their capital is raised and they can start investing. If the Fund wants to address the low numbers of venture capital funds among certified CDFIs, it must address this problem. And Congress and many others are extremely interested in increasing the availability of equity capital for businesses in low-income and rural areas and for businesses owned by entrepreneurs of color, so this is a problem worth focusing on. We have provided detailed comments at other times about this problem; we will not repeat that full discussion here.
  Recommendation: As detailed in the Merkowitz Letter, we recommend that CDVC funds be given conditional certification in advance of raising capital. This would be analogous to the "Advance Ruling" that a 501(c)(3) organization receives from the IRS. Absent this, we **recommend** that CDVC funds be given as much flexibility as possible to pass the Financing Entity test soon after formation, and that they not have to wait for 12 months. We also **recommend** that the management company of a CDVC fund (this structure is explained in the Merkowitz Letter) be certified as a CDFI and that each subsequent fund formed and managed by that CDFI be granted automatic certification or be presumed to qualify for certification.
- It appears that the Fund is proposing to require CDFIs to re-qualify for certification each year based on loans or investments made in the past 12 months. This is unworkable for traditionally-structured CDVC funds. Unlike other CDFIs, CDVC funds make relatively few investments (perhaps 10-15 throughout the life of a fund). As limited life funds (typically 10-year), they follow a life cycle. They raise all of their money up front; then they have an "investment period" in the next 3-5 years, when they make their investments; and they have a "harvest period" for another 5-10 years during which they are extremely actively engaged with their portfolio companies,

helping them to grow and exit, but they are not making new investments. If the Fund follows the standards as we understand your proposal, you will be saying to CDVC funds: "We will not give you CDFI certification when you really need it, when you are raising your capital; then you can apply for certification after that, when you don't need it; but then we will take it away again a few years later at the end of your investment period, even though you are still very actively engaged in the business of venture capital." This is not compelling. **Recommendation:** First, the Fund should recognize that CDVC funds usually make very few investments, even during their investment period, and not require the volume of financing that it might require of other CDFI types. Second, the Fund should consider the portfolio of investments that a CDVC fund manages on an ongoing basis, rather than just investments made in the prior year. A CDVC fund should not lose its certification when it enters its harvest period.

- Proposed (and current) certification standards require that a majority of assets *and* staff time be dedicated to financing, but in a traditionally-structured CDVC fund assets and staff are separated in different legal entities. As explained more fully in the Merkowitz Letter, the staff is typically in a management company (or a parent organization of the management company) and the assets are in a separate fund structure managed by the management company. **Recommendation:** While the Fund is making major changes to the certification process, it should clarify that it will look at the management company together with the "fund" for purposes of the Financing Entity test.

Target Market

CDVCA strongly supports the CDFI Fund's proposal to eliminate geographic restrictions on most Target Markets. Because of the nature of equity investing, CDVC funds typically extend over large geographic areas to generate sufficient deal flow. We focus our investment in low-income communities, but not specific, pre-identified census tracts.

However, we share the Coalition's concern regarding apparent removal of the flexibility on Target Market Thresholds. We look forward to engaging with the Fund and the industry regarding Target Market verification processes.

In particular, the CDVC philosophy has always been to provide financing to businesses in both low-income and non-low-income communities, if those businesses provide good jobs that are accessible to low-income people. Is a low-income person who happens to live in a higher income census tract any less deserving of a good job than one who lives in a low-income census tract? This is particularly salient in urban areas, where labor markets are regional, and most people do not work in the same census tract where they live (although, that may have changed with COVID! 😊). However, because the CDFI Fund is primarily a geography-based program, most CDFIs engaged in business finance have defaulted to serving low-income geographies rather than low-income people seeking good job opportunities. In theory, low-income employees could qualify as low-income targeted populations, but the standard of proof for LITP in the employment context is notoriously difficult to meet, and most CDFIs do not try. **Recommendation:** As the Fund revisits its certification standards, it should take the opportunity to rework the LITP criteria and standard of proof, particularly as they relate to employees of large businesses, where the business owner is not low-income. CDVCA looks forward to working with the Fund and the industry to develop a workable solution to this problem.

Accountability

CDVCA supports the recommendations of the Coalition regarding accountability. In this letter we take the opportunity to address the special case of intermediary CDFIs, such as CDVCA. In the case of an intermediary CDFI, we believe that the governing and/or advisory boards should be composed primarily of leaders of funds similar to the ones in which the intermediary invests. For example, in CDVCA's case, that would include leaders of the CDVC industry. These leaders should have expertise in the industry write large and not necessarily in particular geographies. Note that we do not believe this should be limited exclusively to certified CDFIs. For reasons explained above and in the Merkowitz Letter, many excellent, mission-driven CDVC funds do not bother to become certified because they do not find it worthwhile. CDVCA considers it an important part of our mission to serve funds that provide important financing to businesses in low-income communities that create high quality employment opportunities for low-income people, whether or not they are certified.

Thank you for the opportunity to offer comments on this important change in CDFI Fund policy and procedure. We welcome the opportunity to explore these and other possible improvements to CDFI certification in the future.

Sincerely yours,

Kerwin Tesdell

Kerwin Tesdell
President

CEDAC | Community Economic Development Assistance Corporation

November 4, 2020

Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund
U.S. Department of the Treasury
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Washington DC 20220

RE: CDFI Fund Request for Public Comment on Certification Application

Dear Ms. McInnis:

Thank you for the opportunity to submit public comments concerning the Community Development Financial Institutions Program - Certification Application revisions (85 FR 27275).

The Community Economic Development Assistance Corporation (CEDAC) is a quasi-public agency in Massachusetts that provides non-profit community development organizations with the project financing and technical assistance they need to develop new and preserve existing affordable housing. Its affiliate, Children's Investment Fund (CIF), is a Community Development Financial Institution that supports the development of high-quality early childhood education and care facilities through financing, training, and technical assistance. CIF's certified Target Market includes all CDFI-qualified Investment Area (IA) census tracts in the Commonwealth of Massachusetts. Although the early education facilities that CIF funds serve a high-proportion of low-income children and families, current CDFI Fund policies do not allow it to be certified for a Low-Income Targeted Population (LITP) Target Market (TM).

We urge you to consider a change in policy to allow CDFIs like CIF, which finance community facilities, to be certified for a LITP TM. Specifically, we request that a financial product benefitting a community facility be considered to serve an LITP TM if at least 25% of the facility's beneficiaries are low-income. This proposed policy directly mirrors the way that affordable housing-focused CDFIs are able to claim a LITP TM through a set-aside of housing units for low-income residents. We ask you to extend this policy to community facilities like child care centers that meet a requirement to set-aside classroom slots to serve children from families with low incomes.

CIF requires all the child care centers in its portfolio to reserve at least 25% of their enrollment for low-income children, as defined by those that attend a federally-assisted Head Start slot or receive a public child care subsidy. In Massachusetts, a family must be at or below 50% of the State Median Income (SMI) to initially qualify for a childcare subsidy. For a family of two for example, this income limit is $42,614[1] which is lower than HUD’s 80% AMI limit for a family of two throughout all Metropolitan Statistical Areas of the state.[2] The state of Massachusetts offers a capital bond program that CIF and CEDAC manage with the Department of Early Education and Care. This bond program statutorily requires that grantees set aside a certain percentage of classroom slots for children from families with low incomes. This requirement is outlined in a recorded Land Use Restriction that requires grantees to maintain this level of affordability for 15 years (if leased) or 25 years (if owned).

As an example, in FY20, CIF made a strategic business decision to commit construction financing for a child care facility in Belchertown, Massachusetts that also received a state capital bond program grant. The child care facility is not located in an IA – and, therefore, CIF is not able to count it toward its Target Market lending – however 32% of the 110 children that will be served by the new facility will be from low-income families receiving a child care subsidy. The center is required to maintain this level of affordability for 25 years. Although the new childcare facility did not meet CIF’s IA TM criteria, it is part of the economic infrastructure needed to transform a former state school campus into a new mixed-use commercial, residential, and industrial park. The Massachusetts Development Finance Agency recently received a federal Economic Development Administration (EDA) grant to promote the redevelopment of this site which is in close proximity to an Opportunity Zone. This child care center is important for the many low-income families in the area who need affordable, high-quality child care in order to participate in the workforce, which is directly in service of CIF’s mission and the mission of the CDFI Fund. Yet because CIF cannot claim an LITP TM, it had to closely consider whether to participate in this mission-focused loan because it could jeopardize its status as a certified CDFI.

The child care industry was fragile before the COVID-19 pandemic and continues to suffer from an unstable business model and immense sustainability challenges. At the same time, it is essential to the nation’s economic recovery. We urge the CDFI Fund to support CDFIs that serve this vital sector through the same policy that supports CDFIs focused on the affordable housing sector. Thank you for your consideration.

Sincerely,

Roger Herzog
Executive Director

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[1] Massachusetts Department of Early Education and Care. FY21 Child Care Subsidy Income Eligibility Table. Available via: https://www.mass.gov/doc/state-median-income-smi-eligibility-chart-fy2020/download

[2] MassHousing. HUD 2020 Income and Rent Limits for Massachusetts. (See Page 8 for 80% AMI). Available via: https://www.masshousingrental.com/portal/server.pt/document/15608/2020_income___rent_limits_for_19_massachusetts_income_limit_areas

November 5, 2020

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RE: Comments on Notice and Request for Public Comment on proposed CDFI Certification Requirements and Documents

Introduction
Coastal Enterprises, Inc. (CEI), appreciates the opportunity to comment on the CDFI Fund's (the Fund) proposed changes to CDFI certification, information collection, and compliance. The Fund has requested public comments on three key documents that reflect the Fund's proposed changes to the certification criteria: the revised CDFI Certification Application, the revised Annual Certification and Data Collection Report (ACR) and the new Certification Transaction Level Report (CTLR).

Because these three processes are closely linked, CEI is combining our comments on all three into one letter. We think it is critical that the data collection and recertification processes reflect and are informed by the new certification requirements), and we urge the Fund to review all three proposals in light of how they interact.

CEI appreciates the efforts of the CDFI Fund to clarify and streamline the certification and reporting processes for new and existing CDFIs. We applaud the move toward increased automation and data sharing and its intent to lessen the burden on both CDFI fund staff and CDFIs.

We have deep concerns, however, about a number of aspects of the proposed changes and the potential for unintended consequences if these changes go through without thorough review and active input from a wide range of CDFIs. While this Request for Comment is a step toward that input, we believe it is insufficient. Some of the proposed changes are in areas that would benefit

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from – truly, demand – an iterative process of discussion, testing, and revision rather than immediate implementation.

CEI is particularly concerned about several key issues:

1. Target Market verification processes. The three documents refer to a list of approved verification processes, but the FAQ acknowledges that this list does not yet exist. As we will discuss below, we believe this will create challenges in particular for CDFIs that finance small businesses, community facilities, and affordable rental housing, and which document benefits to end users as a way to qualify these deals in an LITP Target Market. We urge the Fund not to finalize a new Certification rule before developing the list of approved processes with full and active participation of a wide range of CDFIs that can provide their own best practices for qualifying and documenting Target Market transactions.
2. The lack of a defined timeline for existing CDFIs to achieve compliance with the new Certification requirements.
3. CEI supports the proposed revised policies that will remove the geographic boundaries on most Target Market designations and will measure all of an entity's eligible activity to its designated Target Market type(s) (i.e., Investment Areas and/or Targeted Populations) toward the applicable percentage threshold. We believe that these revisions will allow for more flexibility and result in greater Target Market impact for many CDFIs. However, these changes give rise to some lack of clarity and certainty around Accountability to expanded Target Markets.

We will discuss these issues in more detail below, along with responses to specific aspects of the proposed Certification Application, CTLR, and ACR.

Comments on the Revised Certification policies and application

Overview
CEI appreciates and supports the goals of the revised application to:

1. Continue to foster a diversity of CDFI types, activities, and geographies;
2. Support the growth and reach of CDFIs, especially as it relates to their ability to innovate and take advantage of new technologies;
3. Protect the CDFI brand;
4. Minimize burden on CDFIs while improving data quality and collection methods; and
5. Promote efficiency for CDFI Fund staff in rendering CDFI Certification determinations.

We believe that the lessening of geographic constraints will be a significant benefit to CDFIs and their beneficiaries. We also think the use of the new CTLR will streamline both the certification process and recertification, thereby lessening the burden on CDFIs.

We strongly urge the Fund to provide sufficient time – we recommend three years – for currently certified CDFIs to come into compliance with the new certification criteria. We think it is critical that the new policies and process not result in well-established CDFIs with a strong track record of impact in their Target Markets being disqualified for minor or technical violations. CDFIs may need to make changes in their processes, revise or adjust their Financial Products and Services, or otherwise respond to the new rules. In addition, a three-year grace period would give the Fund time to understand how its new processes and policies are working and identify problematic areas.

Following are our specific comments on the proposed Certification application. CEI does not have comments on every section, nor responses to every question posed in the Request for Comments.

Basic Information
Affiliates:
CEI agrees that it is appropriate to include Affiliates of non DIHCs in the Basic Information section, but wishes to clarify that these are only Affiliates that provide Financial Products – i.e., a social enterprise or other entity (such as a Low Income Housing Tax Credit partnership) would not be included. We have further concerns related to how these Affiliates are evaluated for Primary Mission adherence – discussed below.

Primary Mission
Questions Related to Primary Mission—Financial Products and Services:

Question 8. Are the questions in the revised application appropriate to determine an entity's community development intent?

The questions are appropriate but may not be sufficient. While we understand that one goal is to minimize the burden on CDFI Fund staff, we believe that there may be occasions when it is appropriate and important to look beyond the answers to these questions and review other information – for instance, the applicant's website, social media presence, and marketing strategies.

Additionally, we question the use of the Military Annual Percentage Rate (MAPR). We are not aware that this is a calculation method used widely by CDFIs, and we are concerned that it may be a one-size-fits-all method that does not, in fact, fit all. In particular, for CDFIs that provide flexible products (interest-only for a period; equity-like loans; or, as in CEI's case, a fee-based non-interest-bearing product designed to address the needs of Muslims who are forbidden to pay interest), will the MAPR capture the real costs of these products? Why not simply ask CDFIs to describe their products, including interest rates, fees, and other characteristics?

Question 10. Should any of the questions in the application related to responsible financing practices be used as a basis to automatically disqualify an Applicant from eligibility for CDFI Certification, or are there alternative criteria that should be met or used in such a manner?

We don't believe so. Applicants should have the opportunity to describe and explain their practices in the context of their markets and communities.

Primary Mission—Affiliates*:* The Request for Comment states:
"Subsidiaries of Insured Depository Institutions (IDIs), Depository Institution Holding Companies (DIHCs), and Affiliates or Subsidiaries of DIHCs currently are required by statute to meet the certification test collectively. To avoid disparate treatment among financial service providers, the CDFI Fund is proposing to apply the primary mission test, regardless of entity type, to all parent entities and to any Subsidiary or Affiliate that engages in financing activities."

Questions Related to Primary Mission—Affiliates:

Question 15. Are there circumstances that the CDFI Fund should consider as an exception to this rule?

While we agree that it is appropriate to include Affiliates of non DIHCs in the Primary mission test, we believe that the Fund needs to clarify whether Affiliates that are separately certified by the Fund should be included.

CEI has several wholly-owned subsidiary entities that we believe may fall into one of these categories, but we want to clarify this requirement. In particular, we are unsure whether this requirement would or should apply to an affiliate that provides New Market Tax Credit (NMTC) financing, since NMTC entities and their Certified Development Entities (CDEs) are separately certified by the CDFI Fund and by definition adhere to a *primary mission of serving, or providing investment capital for, Low Income Communities or Low-Income Persons.*

CEI also has a mission-focused venture capital subsidiary; that entity has separately applied for and received CDFI certification for several of its investment funds. Would CEI also be required to list the venture capital entity and its funds, and separately attest to their adherence to the Primary Mission requirements?

Comments on specific application questions– Primary Mission

Q. PM-11 asks the Applicant: For each community development objective selected in question PM10, identify the type of output or outcome supported by the Financial Product(s) in which the Applicant engages.

The question appears to allow for only one output/outcome per community development objective. The question should allow for multiple responses.

Q. PM-19 asks: for each of the Applicant's loan products, does the Applicant disclose the periodic payment due, the total amount to be repaid over the life of the loan, the total finance charges over the life of the loan, and the annual percentage rate (APR) – or for open-end loans, the effective APR – of the loan?

This question seems designed more for consumer loans than small business loans. Many CDFIs, especially those that lend to small businesses, provide variable rate loans, which would preclude the ability to provide the total amount to be repaid and APR over the life of the loan.

Financing Entity

The proposed Certification Application defines a Financing Entity as one that "dedicate(s) a predominance of both its assets and its staff time to the direct provision of Financial Products and/or Financial Services."

Please clarify whether "predominance" of staff time can include Development Services. Previous guidance from the Fund (2018 CDFI Application Supplemental Guidance and Tips) is explicit that Development Services are included in the "predominance" definition for a non-regulated CDFI to qualify as a Financing Entity. This makes sense, as Development Services are critical to the financing activities of a CDFI. Further, Development Services may be high-touch and staff-intensive, leading to a greater number of FTEs providing these services than may be required to directly support Financial Products.

Target Market-geographic expansion
With the revised policies, the CDFI Fund will remove the geographic boundaries on most Target Market designations and will measure all of an entity's eligible activity to its designated Target Market type(s) (*i.e.,* Investment Areas and/or Targeted Populations) toward the applicable percentage threshold. This change, in effect, will allow any CDFI to serve its designated Target Market type(s) at whatever level it is capable, including nationally and/ or through the use of financial technology, without having to seek additional approval.

CEI strongly supports this change. We believe it will provide much-needed flexibility and opportunities for increased impact for CDFIs while reducing the data analysis and collection burden. This change, however, does raise some questions for us around Accountability, which we discuss below.

Target Market – 60% minimum
The revised Certification requirements state that a CDFI must meet a threshold of "at least 60% of both the number and dollar volume of arm's-length, on-balance sheet Financial Products to one or more eligible Target Market types." Previously, CDFIs had the option to request a waiver if they could meet only one of these (either number OR dollar volume).

This proposed change poses concerns for the Fund and prospective as well as existing CDFIs. We are puzzled as to why the Fund decided to rescind its ability to use discretion to provide exceptions to the Target Market threshold requirement. Implementing a hard and fast rule may result in an Applicant being denied certification (or an existing CDFI losing its certification status) due to mathematical anomalies that do not reflect a failure on the part of the CDFI to direct its financing activities to approved Target Markets. For example, when a CDFI makes loans of very different amounts or sizes and in different quantities, it may fail to meet the 60% threshold for *either the number of units or the dollar amount.* This situation can arise when a CDFI makes a small number of large facilities loans while also originating a significant volume of business loans that are much smaller in size. We urge the Fund to retain its discretion to waive this requirement.

Target Market Verification Processes
The revised Certification Application states that Applicants *must* use an approved Target Market verification process or a combination of approved processes to verify or qualify that their Financial Products or Financial Services meet the Target Market criteria. Moreover, "only those Target Market verification process(es) approved by the CDFI Fund may be used when compiling Target Market data. Applicants may request approval of a Target Market verification process(es) not already accepted by the CDFI Fund. To use a new Target Market verification process(es) when compiling Target Market data for the CDFI Certification Application, the new process(es) must be approved by the CDFI Fund prior to submission of the application. Approved CDFI Fund Target Market Verification Processes must be used exactly as approved unless and until modification of the process is authorized by the CDFI Fund."

The proposed Target Market Verification Process raises a number of concerns that have not been addressed in the revised Certification Application or elsewhere in the supporting documents. In particular:

1. **When will the Fund develop a list of "approved verification processes"?**

Question #11 of the FAQs for the Proposed CDFI Certification Application, ACR & CTLR, states that the CDFI Fund is "developing a comprehensive list of approved [Target Market verification] processes an entity may use without seeking prior approval and this list will be made available prior to the finalization of the revised application… Entities still will be able to request approval of a Target Market verification process(es) not already accepted by the CDFI Fund."

CEI is deeply concerned that the Fund is requesting comments on this application, the CTLR, and the ACR, without providing CDFIs with a list of approved Target Market verification processes, and without inviting input from practitioners into the development of this list. We *strongly* urge the Fund <u>not</u> to finalize the revised application until industry practitioners have had an opportunity to review and respond to this list of approved processes.

2. **What is the process for requesting approval from the CDFI Fund of a new Target Market verification process?**

   Question #12 of the FAQs states that "Applicants or CDFIs requesting approval for a currently unapproved Target Market verification methodology will need to submit the request in writing for review. The details and timeframe for submission are under development."

   Again, we are disturbed by the fact that the process and the timeline for submitting unapproved Target Market verification methodologies to the CDFI Fund for approval have yet to be determined. It would appear the Fund has not anticipated or fully developed all aspects of the revised Certification Application and the supporting rules and/or guidance. The lack of detail and clarity makes it very challenging for CDFIs to operate, much less innovate new products and services, if they lack the certainty of how such offerings could affect their Certification Application and/or current Certification status.

   We strongly urge the CDFI Fund to develop and publish the details of this approval process prior to finalizing and implementing the revised Certification Application as well as the Annual Certification and Data Collection Report (ACR) and the Certification Transaction Level Report (CTLR), all of which will be directly affected by this process.

   We are concerned that the CDFI Fund will finalize the certification application and CTLR without having created these – and most concerned that they will do so without industry involvement. CEI is especially concerned about LITP verification, as discussed below:

   a. **LITP definition and end users: As a small business lender, CEI qualifies some of its deals as LITP based not on the income of the borrower, but on benefits to End Users. This is allowed in the regulation and can include affordable housing tenants, low income users of community facilities, and low-income workers; however, the processes for verifying and documenting these end users has never been defined by the Fund. Accordingly, CEI has developed its own methodology and documentation, especially for low-income workers – we have a legally binding Employment and Training Agreement, or ETAG, with the borrower, in which they commit to a certain**

level of low-income hires, along with wages and benefits. These agreements are tailored to the needs and capacity of the business, to they are customized. We ask each business to provide wage and household information at least annually – but we can't individually certify each LI household ourselves. Our specific concerns are:

   i. **That the Fund recognize the validity of End Users to qualify for LITP. While this is mentioned in the CTLR, the FAQ makes no mention of it, and says: "CDFIs that do not elect to use the LITP Census Block Group geocoding for designating a transaction as LITP may manually enter 'Yes' to the LITP status. When doing so, the CDFI will need to retain all of the required documentation for the loan record, as detailed in the Certification Guidance, to show that household income for the borrower is less than or equal to 80% of AMI."**
   ii. **That our verification processes, which we have described in our certification renewals going back to 2013, would in fact qualify as an alternate method; and that the Fund review verification processes used by other CDFIs as well, before finalizing these revisions. We believe we are not the only CDFI that relies on benefits to LI workers to qualify loans as LITP. We strongly urge the Fund to get input from industry practitioners before determining its list of verification processes and/or the application for alternate processes.**

Accountability
Accountability to National Investment Area Target Market and National LITP

As noted, CEI strongly supports the establishment of a National Target Market comprising Investment Areas (IA) or eligible census tracts anywhere in the United States. This pre-qualified National IA Target Market is particularly welcome news for CEI, which often partners with other CDFIs across the country in small business or community facilities projects. We appreciate the added flexibility and potential for greater impact that this change provides.

In addition, the Fund has greatly simplified the Accountability requirements associated with CDFI governing boards as well as advisory boards. The new rules provide clear guidance to CDFIs as how many board members must be accountable to each proposed Target Market as well as the total percentage of board members that must be accountable to the overall proposed Target Market(s). This guidance will enable CDFIs as to create with certainty a board structure that meets the Accountability criteria – a welcome change.

These changes do raise some practical questions, however:

1. **If a CDFI has an Investment Area Target Market with a specific focus on one community, neighborhood, state, or region, can that CDFI still qualify for the pre-qualified National IA TM? In other words, if CEI's primary focus is on Maine IAs, can CEI nevertheless qualify for the National IA TM?**
2. **And if so, what are the requirements regarding Accountability? Can our board members who represent IAs in Maine provide Accountability for the National TM? CEI believes that this is the intent of the change, and we support this – but we ask the Fund to confirm and clarify.**
3. **As we read the proposals, it appears that the requirement for geographic delineation is also removed for other TMs, including LITP. If that is the case, do board members need to**

represent a national LITP TM, or can a board member who represents a local or regional LITP TM provide accountability beyond the area they represent?

<u>Question #17 of the FAQs for the Proposed CDFI Certification Application, ACR & CTLR</u>
Do employees of a certified CDFI that serves a Targeted Population meet the accountability test to serve on the board of another entity serving that Targeted Population? The FAQ states that "An employee of a certified CDFI may meet the accountability test on the basis of her or his employment for a certified CDFI only when serving as a board member for a CDFI with a Target Market of OTP-CDFI."

In reading the Certification Application, we believe it is clear that this question applies ONLY to board members who provide accountability for OTP TMs; however, the FAQ does not make this clear. We want to be sure that the Fund understands that employees of CDFIs serve on our boards for many reasons; among them, to provide industry expertise, knowledge of the communities they serve; and accountability as employees of CDFIs that serve low-income people and communities. In particular, CDFIs with an LITP TM may have staff of other CDFIs that serve LI people and communities serving on their boards, and it stands to reason that these board members can provide accountability for LITP.

We ask the Fund to clarify that this is indeed the case – and if not, then we would have serious objections. Please clarify that employees and board members of CDFIs serving low-income people *may* serve on the governing board of another CDFI with an LITP Target Market and provide accountability to this Target Market for Certification purposes, as is currently common practice.

<u>CERTIFICATION TRANSACTION LEVEL REPORT (CTLR)</u>

Overview

The Fund proposes to introduce a new reporting mechanism, the Certification Transaction Level Report (CTLR), which will support both the revised Certification Application and the Annual Certification and Data Collection Report (ACR). Applicants seeking CDFI Certification and certified CDFIs that are not current Financial Assistance recipients and therefore do not submit an annual Transaction Level Report (TLR) to the CDFI Fund will be required to file this new report. The CTLR is designed to improve data quality in both the revised Certification Application and the ACR by replacing unverifiable summary data on lending and investment in Target Markets with the transaction data captured in this report and used to automatically compute answers to questions about the composition and distribution of lending and investment activities.

Question Related to the CTLR
Will the methods for qualifying loans outlined in the proposed in this new Report also be applied in the TLR, which CDFIs that have received a Financial Assistance (FA) award are required to file? Specifically, will CDFIs filing the TLR be required to use the same methods for qualifying LITP loans as detailed in the proposed CTLR? If so, when would this new methodology be incorporated into the TLR and when would CDFI award recipients be required to comply?

Specific Topics/Questions
LITP End Users and Implications for Small Business Lending

The issue of Target Market verification processes is discussed above in our comments on the revised Certification Application. (see Target Market Verification section pps. 4-5). TM verification can be challenging for CDFIs with LITP Target Market(s) engaged in small business lending, especially those that provide LITP benefit to End Users such as LI workers.

The CTLR states that entities may code loans as serving an LITP Target Market and that such coding should be based on the collection of income data per the CDFI Fund's Regulations and the CDFI Fund's approved LITP income verification processes. For cases where the CDFI Fund has approved an entity's method to determine LITP End Users that method can be used to designate transactions as long as there is supporting documentation. Similarly, the revised Certification Application states that "only those Target Market verification processes approved by the CDFI Fund may be used when compiling Target Market data" and refers CDFIs to "the full list of approved CDFI Fund verification processes." Unfortunately, as is explained in Questions 11 and 12 of the FAQs for the proposed Certification Application, ACR and CTLR, the CDFI Fund is still "developing a comprehensive list of all approved processes an entity may use" as well as a "process for obtaining approval for a verification methodology that is not yet approved."

CEI strongly recommends that the CDFI Fund refrain from finalizing new CDFI Certification documents and rules until practitioners and industry participants have had a reasonable opportunity to offer specific comments on and input into potential LITP Target Market verification processes and protocols. Without standard processes or guidance from the CDFI Fund and due to the significant challenges of collecting household income data from small business employees, many CDFIs have developed their own verification methodologies, including the Employment Training Agreements pioneered by CEI and described above, or by using proxies to confirm that loans benefitting low-income end users. This approach was modeled after similar practices used by CDFIs lending to affordable housing projects, charter schools, community health centers and other community organizations, where they routinely utilized low-income proxies (e.g. the Low Income Housing Tax Credit, students receiving free and reduced lunches, Medicaid eligible patients, etc.) to demonstrate that the end users or ultimate beneficiaries of their financing activities were supporting a certain percentage of low-income people. Small business lending CDFIs have relied on their verification methodologies for many years, perhaps decades. To potentially upend them without a reasonable comment period and the opportunity to gain uniform Fund approval for a broader list of verification processes could have negative repercussions for the CDFI industry as well as the small businesses that depend on them.

CIMS Census Block Group Geocoding
To address the difficulties of collecting income data from small business employees, the CDFI Fund introduced its own proxy or alternative method for qualifying small business loans as serving LITP Target Markets. This approved alternative proxy method is known as Census Block Group Geocoding and would be available to CDFIs through the CDFI Information Mapping System (CIMS). According to the CTLR, "This proxy LITP method provides a standardized approach for determining LITP status that overcomes a data limitation that many CDFIs confront when attempting to implement the statutory guidance for collecting household income adjusted for family size. With the exception of mortgage loans, CDFIs and other lenders underwriting consumer and business

loans typically do not collect information on family or household income adjusted for family size, which means they cannot readily categorize whether the loan meets the statutory requirements for a Low-Income Targeted Population. The LITP Census Block method provides an approved alternative approach for coding transactions that constitutes a safe harbor."

Our concerns about the Census Block Group Geocoder are two-fold. First, this new geocoding capability has not yet been built in CIMs as the Fund makes quite clear in Question 20 of the FAQs. Second, without the ability to test this LITP methodology, CDFIs engaged in small business lending have no way of knowing whether this alternative verification process will allow them to qualify their loans. Since CDFIs have their lending criteria and processes in place, it is essential that they be able to determine if the loans they are making or have made would be deemed to be transactions serving their LITP Target Market(s). If, for some reason, this alternative methodology is not a good option/fit for some CDFIs, the Fund should provide an expedited process to review Target Market verification processes developed by individual CDFIs to assure a smooth and uninterrupted transition to the new Certification rules and guidance.

CDFIs that serve predominantly rural areas will be especially challenged to make this method work. The location of the business may or may not be in a LITP Census Block, but may still provide much-needed, good jobs for LI workers.

We recognize that the Census Block Group Geocoder may provide a useful alternative method for some CDFIs, but note that it is still untested. We recommend that the Fund make this tool available as soon as possible so that CDFIs can test this alternative LITP methodology for verifying their loans, especially small business loans. The Fund should also provide a detailed process and timeframe for reviewing and approving LITP methodologies developed by individual CDFIs in the event that the Census Block Group Geocoder is not a suitable option for some entities. Finally, the Fund should not implement a final set of revised and/or new Certification documents and rules until CDFI practitioners and industry participants/representatives have had an opportunity to provide comments and feedback on both the Census Block Group Geocoder as well as the process for vetting other LITP Target Market verification processes.

ANNUAL CERTIFICATION AND DATA COLLECTION REPORT FORM (ACR)

Overview

The CDFI Fund requires certified CDFIs to annually assess and report on any changes to data supporting its CDFI certification, as well as some additional organizational, financial and other data. The ACR allows the Fund to monitor the CDFI's compliance with certification criteria and collect data to gain greater insight on the CDFI industry. The Fund has proposed changes to the ACR to align this report with revisions to the CDFI Certification Application and the introduction of the new CTLR.

Question Related to the ACR

Section 1. Primary Mission / Community Development Strategy of the ACR states, "Currently certified CDFIs that received their certifications prior to the implementation of the revised application will be required to submit a revised Certification Application separately and will not be required to respond to this question in the ACR until such time." This statement makes it clear that currently certified CDFIs will be required submit a revised Certification Application to be recertified. This requirement is not stated in the revised Certification Application itself and should be clearly reflected in this document.

The CDFI Fund should clarify if, and when, currently certified CDFIs will be required to prepare and submit a revised Certification Application. The Fund should allow a grace period of at least three years for current CDFIs to submit the new Certification Application, and should work with current CDFIs to ensure that the new rules and processes do not result in an unintended consequence of decertifying strong, well-established CDFIs that have a documented history of impact in their Target Markets.

CONCLUSION

Thank you again for the opportunity to comment on these proposed changes. We appreciate and support the intent of the Fund to strengthen the CDFI Certification criteria, streamline its processes, and better document the impact of CDFIs.

Because the changes proposed are significant and broad, we ask that the Fund carefully review and take into account the comments of industry stakeholders – and that the Fund consider delaying certain aspects of these proposals in order to allow testing and more detailed input. The Fund should provide an opportunity for additional comments and input where appropriate to ensure the new policy is thoroughly considered and vetted.

Please do not hesitate to contact me for more information.

Sincerely,

Keith R. Bisson
President

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November 2, 2020

Tanya McInnis
Program Manager for the Office of Certification, Compliance Monitoring and Evaluation, CDFI Fund
Submitted via email: ccme@cdfi.treas.gov

Re: Community Development Financial Institutions Program—Certification Application
OMB Number: 1559–0028

Dear Ms. McInnis:

Thank you for the opportunity to provide input to the proposed Community Development Financial Institutions ("CDFIs") Program—Certification Application ("Proposed Application").

These comments are submitted on behalf of the Consumer Credit Industry Association ("CCIA"). CCIA is a national trade association comprised of manufacturers, administrators and distributors of optional consumer asset and credit protection products such as credit insurance and other products (collectively, "Voluntary Protection Products" or "VPPs"). Typically made available to U.S. households through lenders, retailers and other outlets as part of the extension of a loan, VPPs help U.S. borrowing households withstand financial shocks by helping them cover their essential financial obligations when something adverse occurs like death, disability, involuntary unemployment, or other unforeseen adverse events happen to their household assets. For over 60 years, CCIA has worked to foster the financial security of American households by assuring a healthy market for these consumer financial protection products; a market where consumers are empowered to protect their credit, assets and essential financial obligations.

CCIA supports the shared common goal of CDFIs to expand economic opportunity in low-income communities by providing access to financial products and services for the people in that community[1]. However, use of the Military Annual Percentage Rate ("MAPR") in the Proposed Application as a means to measure "responsible financing" will not help achieve that goal, and will inhibit the opportunity for consumers to opt for the financial safety net afforded by VPPs.

We therefore respectfully request the CDFI Fund to replace the MAPR with the commonly understood and consumer-friendly APR as defined in the Truth-In-Lending Act and its implementing Regulation Z ("TILA APR").

[1] CDFI Fund Infographic, https://www.cdfifund.gov/Documents/CDFI_infographic_v08A.pdf

I. Equating MAPR with responsible financing practices is flawed and harms consumers.

In the Proposed Application, the applicant is also required to explain – presumably justify – the use of loan products that exceed 36% under the MAPR calculation:

> If yes, the Applicant will be required to respond to additional financing practices questions about the loan products that allow for an annual percentage rate in excess of 36 percent when that rate is calculated using MAPR standard.[2]

By this query, the CDFI Fund has extended the use of the MAPR as simply a measurement tool to imply the lender should use the MAPR in everyday transactions to abide by "responsible financing practices." This application of the MAPR as a so-called "responsible financing practice" – whether as a measure or implied as an everyday tool -- is flawed and inappropriate.

By using the MAPR, the CDFI Fund has effectively decreed that when borrowers purchase voluntary products like VPPs, those borrowers have purchased something with no intrinsic value (We will expound on the value of VPPs in a later section). Here, we observe by using the MAPR, the cost of VPPs are inappropriately defined as a cost of credit, rather than separate, valued products.

In addition, does the ability to purchase a separate product for cash imply value vs. a product financed with the loan? For example, consumers can purchase a vehicle service contract – or any other VPP for that matter -- separate from the loan for cash. In so doing, the MAPR would exclude this cash purchase as a cost of credit. However under the Proposed Application, VPPs like credit insurance are treated as a cost of credit since it is financed with the loan. Treating products differently based on the method of purchase is illogical and inappropriate.

Consider two loans, where one loan does not have any VPPs purchased while the second loan includes the purchase of two VPPs, credit disability and credit life insurance. By using the MAPR, the CDFI Fund's methodology in the Proposed Application suggests that a loan at a 36% interest rate without VPPs is a more "responsible financing practice" than that same loan with VPPs purchased.

The table below illustrates the increase in the APR (using the MAPR) for a $2,000, 12-month loan, where credit disability and credit life were purchased. The MAPR increases to 39.46%, while covering the borrower's loan balance (in the case of death) and loan payments (in the case of disability). Obviously, for a TILA-APR disclosure, the APR remains at 36% whether VPPs are purchased or not.

Scenarios ($2,000 principal loan for 12 months)	36% Interest Rate	36% Interest Rate + Credit Disability + Credit Life
MAPR*	36%	39.46%
Monthly Payment	$200.92	$204.40
Interest Charges	$411.09	$418.20

[2] CDFI Fund, Notice of Information Collection and Request for Public Comment, May 7, 2020

Credit Insurance Premium		$34.60
Total Payments	$2,411.09	$2,452.80

*MAPR used for illustrative purposes only; VPPs are properly excluded from the TILA-APR disclosure calculation.

The unprotected loan is at the [arbitrary] 36% APR cap, while the latter, despite inclusion of protection from unforeseen events that can adversely impact the borrower's ability to repay the loan, is deemed a less "responsible financing practice."

Does leaving borrowers without a safety net to cover financial obligations align with CDFI principles? How does it align with the CDFI Fund objectives?

In describing the rationale for the changes to the Certification Application, the CDFI Fund delineated maintaining five (5) objectives:

1. Continue to foster a diversity of CDFI types, activities, and geographies;
2. Support the growth and reach of CDFIs, especially as it relates to their ability to innovate and take advantage of new technologies;
3. Protect the CDFI brand;
4. Minimize burden on CDFIs while improving data quality and collection methods; and
5. Promote efficiency for CDFI Fund staff in rendering CDFI Certification determinations.[3]

The CDFI Fund also stated in the request for public comment that the "The revised Certification policies and application attempt both to provide the flexibility necessary for CDFIs to grow and to serve the hardest to reach distressed communities."

Noted earlier, we observed that the Proposed Application may compel CDFIs to leave finances exposed for borrowing households. Borrowers will lack access to products like VPPs that help them protect their credit, their assets and their essential financial obligations. We offer the following questions for the CDFI Fund to consider:

1. How does this change promote the CDFI brand when the borrowers' household is confronted with loan payments and the borrower(s) lose their job, become disabled, or die? What if they total their car and they still owe on the loan? What if they can't afford to repair their car or an essential appliance in their home?

2. How does this change minimize the burden on CDFIs when they now have to make system, policy, process, procedure, training and compliance and risk management changes to accommodate the MAPR calculation, after complying with the commonly understood TILA-APR for over 50 years?

3. How does this help CDFIs grow and serve the hardest to reach distressed communities when borrowers are left without a financial safety net if something unforeseen happens to them such as job loss, disablement, or death, or if something happens to their car or home appliance such as a total loss or an expensive repair?

[3] Ibid.

This cannot be what the CDFI Fund intended in the Proposed Application.
Note earlier, on pages 38-39 of the Proposed Application, the CDFI Fund has extended the use of the MAPR as simply a measurement tool by implying the lender should use the MAPR in everyday transactions. Should a CDFI lender acquiesce and deviate from the TILA-APR by using the MAPR, this will expose household finances from unforeseen financial setbacks.

Unfortunately, if an "all-in APR" structure like the MAPR is deployed, consumers' finances will be left unprotected from unforeseen financial setbacks. Lenders need to cover the risk and expense of originating and servicing loans. An all-in APR crowds out the lenders' ability to offer voluntary services like VPPs since there is only limited room in the available APR. Consequently, borrowers will lose the ability to protect their credit, assets or other essential financial obligations.

On the other hand, if there *is* room in the available interest rate to offer VPPs on a loan, the borrower(s) may self-select from purchasing VPPs since the APR is artificially inflated by the inclusion of the cost for these separate voluntary services.

Either way, the MAPR calculation causes consumers to lose access to products like VPPs to protect their finances.

Because equating the MAPR with responsible financing practices is flawed and harms consumers, we respectfully urge the CDFI Fund to continue use of the TILA-APR and discard the proposed use of the MAPR.

II. TILA-APR is the better measure.

Since 1968, the TILA-APR has been the commonly understood and accepted single standard for consumers to evaluate the cost of like credit. The TILA-APR also excludes the cost of voluntary services like VPPs from the APR disclosure calculation provided certain conditions are met:

- The purchase of the product must be voluntary and not required to obtain credit, and that fact must be disclosed to the consumer in writing;
- That the additional, *separate* charge for the coverage is disclosed in writing to the consumer; and
- The consumer signs or initials an affirmative written request to purchase the coverage.

Using this consumer-friendly APR disclosure under TILA allows consumers to distinguish between the cost of credit and the separate cost of VPPs. By rightly excluding the cost of VPPs from the APR, the TILA-APR avoids creating unnecessary consumer confusion and makes it easier for them to compare different credit offers.

In the Proposed Application, the section on Responsible Financing Practices stipulates that a CDFI applicant's compliance with the CDFI principles will be measured using the MAPR to calculate the "annualized rate of interest and other fees charged" to a borrower:

> For purposes of calculating this rate, the CDFI Fund requires Applicants use the methodology prescribed in 32 CFR § 232.4 of the Military Lending Act (referred to as the Military Annual Percentage Rate (MAPR)), regardless of borrower status.[4]

VPPs are not fees, they are products. The assertion in the Proposed Application that the use of the MAPR will "set a single [APR] standard for all CDFI Applicants"[5] is flawed. The MAPR inappropriately includes the cost of voluntary products like VPPs in the cost of credit. Since VPP price, features offered, and actual features purchased can vary by state, by lender and by loan, this confounds the ability to measure and compare lender compliance with CDFI principles.

For example, since credit life insurance rates are set by each state, the same loan amount, term and interest rate would display a different MAPR in almost every state with just the simple inclusion of a credit life insurance purchase. Every loan would thus have varying "interest rates and other fees charged" if VPPs are included in the calculation using the MAPR in the Proposed Application.

Hence, the TILA-APR is the better measure since it separates the cost of voluntary products like VPPs from the true cost of credit, thereby better enabling the CDFI Fund's intended measurement strategy.

III. VPPs provide significant value to consumers.

Consumers need and value VPPs, as evidenced by market analysis and academic research demonstrated below. Maintaining the TILA-APR in the Proposed Application rather than the MAPR will assure such products continue to be widely available to consumers.

<u>VPPs Address Consumer Needs</u>

VPPs help consumers protect their credit, assets and essential payment obligations by covering their payment obligations should something unforeseen occur, such as death, disability, involuntary unemployment, vehicle repair, or total loss or theft of their vehicle.

The consumer need for VPPs is clear. The state of many U.S. household finances is in strikingly poor shape:

- 40% of American households said an unforeseen $400 expense would be challenging to pay off in the same month[6]
- 75% of Americans would find it difficult or somewhat difficult to meet their current financial obligations if their paycheck was delayed for one week[7]
- Only 50% of American adults indicate they have enough savings to cover three months of living expenses in the event they're not earning any income[8]

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[4] Proposed Application, page 30.
[5] Ibid.
[6] Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020", May 2020 link
[7] American Payroll Association, "Getting Paid in America" Survey, 2019, link
[8] Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2020, May 2020

Life events can imperil individuals and families. A period of disability is more common than most people think. More than 1 in 4 of today's 20-year-olds will become disabled before they retire.[9] Many Americans unexpectedly lose their jobs due to periodic budget tightening or due to more cataclysmic events like the Great Recession and this ongoing pandemic. As we live longer, some of us will need to care for our parents and perhaps take a leave from our jobs. In addition, the average vehicle [breakdown] repair costs in 2019 were $385, which happens to match almost exactly the $400 expense challenge cited earlier[10].

The significant cash flow exposure is exacerbated by the fact that many Americans lack protection from adverse life events:

- 43% of U.S. adults do not own any life insurance.[11]
- 50% of consumers say they would use life insurance proceeds to replace income if the primary wage-earner died.[12]
- 67% of the private sector workforce has no long-term disability insurance.[13]
- Just over 25% of today's 20 year-olds will become disabled before reaching age 67.[14]
- 5.6% of working Americans will experience a short-term disability (six months or less) due to illness, injury, or pregnancy on average every year. Almost all of these are non-occupational in origin.[15]

U.S. household finances are exposed to financial shocks. Millions are struggling financially where even a mere $400 expense can imbalance their finances. It is fair to say that Americans are underinsured or uninsured for the financial risks in their lives.

In 2016 the CFPB initiated a Request for Information on Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit ("RFI") which reinforced the consumer need for VPPs as well. In section III. Potential Consumer Harm from Garnishment Orders, Judgment Liens, or Other Forms of Enhanced Collection, the CFPB stated:

> The Bureau anticipates that, if the Concurrent Proposal [on small-dollar loans] is finalized, even where lenders do successfully determine a consumer's ability to repay, some consumers will nonetheless end up defaulting on their loans **if, for example, the consumer becomes disabled and is unable to work** for a prolonged period of time.[16] (emphasis added)

Further, in section V. Potential Consumer Harm from Default Interest Rates, Late Payment Penalties, Teaser Rate Loans, or Other Back-End Pricing Practices, the CFPB again illustrates the need for VPPs:

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[9]Council Disability Awareness, "Chances of Disability – Me Disabled?", 2016, link
[10] CarMD®, 2020 Vehicle Health Index, April 2020, link
[11] LIMRA, Facts About Life 2019, link
[12] Ibid.
[13] Social Security Basic Facts, 2019, link
[14] Ibid.
[15] Council for Disability Awareness, Disability Statistics, Last updated March 2018, link
[16] CFPB, Request for Information on Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit, Docket No. CFPB-2016-0026, RIN 3170–AA40, 2016

> For example, some consumers may have the ability to repay at origination but changes in their circumstances **such as illness, loss of employment, family disruptions such as divorce or separation, or unexpected expenses** could nevertheless lead to delinquency or default.[17] (emphasis added)

The CFPB affirmed in the RFI that unforeseen adverse consumer life events can lead to consumer default. The list of unforeseen events stated in the RFI – illness, disability, unemployment and unexpected expenses – is only a partial list of the consumer perils that VPPs protect against. In addition to the RFI list, VPPs also protect consumer debt against such perils as death, family leave and damage to secured collateral. For consumers of "higher-cost" loans that may struggle managing cash flows, have little to no emergency savings and are challenged to secure credit – the very consumers of loans in the CDFI target market -- the RFI reinforces consumer needs for VPPs.

<u>VPPs provide real value beyond direct claim payments</u>

Consider the quantitative implications of these consumer needs and how VPPs provide real value to consumers with respect to the cost of credit. For instance, credit scores are important to U.S. households in the areas of:

- **Cash flows:** the cost of credit, or the amount of interest and fees in the loan, is a key factor in the total loan payment which impacts the household's cash outflows
- **Financial resiliency:** the amount of the loan payment(s) relative to household emergency funds / liquid assets impacts the household's ability to withstand financial shocks
- **Financial mobility:** the size of the loan payment (as influenced by the interest rate) impacts the household's ability to save for future needs and/or build net worth.

Credit scores are a quantitative proxy for borrower risk level: higher risk borrowers – those with lower credit scores – are typically charged higher interest rates. An estimated 75% of Americans have a credit score below 700[18] while almost 30% have a credit score below 580.[19] According to the long-standing credit education and counseling non-profit Credit.org, the latter segment equates to "poor credit" and much of the "sub-prime" segment (sub-prime is 550-620).[20]

The National Foundation for Credit Counseling states that approximately 35% of a consumer credit score is based on payment history: ***late payments***, judgements, bankruptcy and tax liens can lower your [credit] score.[21] (emphasis added). Indeed, Freddie Mac suggests (with their own emphasis added) that "***The most important component of your credit report is whether you make your payments on time.*** Any time that your credit report shows a late payment—30 days, 60 days, or

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[17] Ibid, page 30
[18] Motley Fool, "The Average American Has This Credit Score. How Do You compare?" Todd Campbell, January 11, 2015, http://www.fool.com/investing/general/2015/01/11/the-average-american-has-this-credit-score-how-do.aspx
[19] Ibid., data quoted from Credit Karma
[20] "What Credit Scores Are Good Credit Scores?" Credit.org, November 6, 2014, http://www.credit.org/2014/11/06/credit-scores-good-credit-scores/
[21] National Foundation for Credit Counseling, <u>Better Fortunes: Control Your Money. Control Your Life</u>, 2006

90 days—a "red flag" is raised and you may be denied credit or pay more to get it."[22] Keeping current on payments clearly helps maintain and possibly improve consumer credit scores.

It is estimated by FICO that if a consumer's credit score is 680 (i.e., at the lower bound of "good credit" per Credit.org[23]) and a consumer becomes 90-days delinquent, then the consumer's credit score will drop 60 to 80 points to 600-620 on average and as low as 530.[24] The following data[25] illustrates the financial implications of such a drop for a 60-month, $10,000 auto loan:

Score	APR %	APR Change	Increased Costs over 720 Score
720 - 850	3.319		n/a*
690 - 719	4.647	1.328	$359
660 - 689	6.764	2.117	$948
620 - 659	9.483	2.719	$1,730
590 - 619	13.862	4.379	$3,052
500 - 589	14.925	1.063	$3,384
Mean Average		2.3212	$1,895

From the table, one observes an incremental cost of dropping from the 680-range to the 600-range costs a consumer $2,104 (from $948 to $3,052) in increased interest for a modest [car] loan. The cost is even higher, at $2,436 (from $948 to $3,384) in increased interest, if the consumer's score drops to the 530-range cited above.[26]

Noted earlier, when something unforeseen arises, such as the death, disability and/or job loss of the borrower(s), VPPs help households weather these perils by making loan payments that help keep consumers current on their loans. With an average disability claim duration of 8 to 9 months and an involuntary unemployment claim duration of 6-7 months,[27] VPPs cover multiples of the critical 90-day delinquency trigger.

Importantly, VPPs do not exclude losses caused by pandemics like the novel coronavirus. CCIA member companies report that credit involuntary unemployment insurance claim frequency increased 1,005% when comparing April 2020 to April 2021. Imagine the financial safety net afforded to those consumers that purchased VPPs heading into the pandemic.

When consumers stay current on their loans, the risk of their credit score dropping decreases. Thus, ***VPPs help consumers maintain and perhaps improve their cost of credit, especially for consumers aspiring to achieve, or return to, a "good credit" standing.***

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[22] Freddie Mac, "CreditSmart® - A Guide to Better Credit, Money Management, and Responsible Homeownership," Publication Number 169, http://www.freddiemac.com/creditsmart/pdf/YourCreditYourHomeYourFuture.pdf
[23] Credit.org, "What Credit Scores Are Good Credit Scores?", November 6, 2014, http://www.credit.org/2014/11/06/credit-scores-good-credit-scores/
[24] Sam Dogen, Financial Samurai, "Will A Late Credit Card Payment Hurt My Credit Score?", Updated for 2016 and Beyond, http://www.financialsamurai.com/will-a-missed-or-late-credit-card-payment-hurt-credit-score/
[25] FICO, myFICO.com, interest rates as of 3/22/16
[26] $2,104 = $3,052 - $948; $2,436 = 3,384 - $948
[27] The Society of Actuaries Credit Insurance Experience Committee, "A Credit Disability Insurance and Credit Involuntary Unemployment Insurance Claim Termination Study," December, 2012

Thankfully, VPPs are highly accessible to consumers at point-of-loan through lenders, retailers and other outlets. There is little to no individual underwriting at point-of-sale, thereby enabling consumers to conveniently opt for a financial safety net when they need it most. Accessibility and convenience is meaningful to consumers. Consider consumer consumption of individual life insurance as an example. VPPs help address eight of the top ten reasons why people do not buy life insurance[28,29]:

1. *It costs too much* – Per the information stated later in this comment letter, VPPs are cost-effective.
2. *I don't need it because I have plenty of assets to leave my loved ones* – Cited above, U.S. households are struggling financially, with very few assets; VPPs protect consumers of all financial means, especially struggling households that cannot afford to miss loan payments.
3. *I've got too many other things to worry about right now* – since VPPs are offered at point-of-loan, consumers are focused on the purchase, the loan and the exposure. Thus, VPPs fit well into the consumer purchase process.
4. *I don't understand it well enough to buy it* – VPPs are simple, short-form contracts with fewer exclusions, stipulations and features than individual insurance products.
5. *I find the process intimidating* – VPPs do not require invasive testing nor represent large purchases; rather, a few health questions are asked (if any) and the amount of coverage is scaled to the loan amount or plan selected.
6. *I have other financial obligations that are more important than life insurance* – For a nominal cost, VPPs in fact help protect the family's other financial obligations by providing a safety net.
7. *I don't trust insurance companies or agents* – VPPs are offered through lenders, retailers and other outlets. As a result, VPPs are offered in a process engendered with higher trust and often times by lenders with whom the consumer already has an established relationship.
8. *I'll get to it eventually* – VPPs are conveniently offered at point-of-loan in a process where the consumer is highly engaged, thereby reducing consumer procrastination over purchasing insurance.

Research Shows Consumers Value VPPs

Academic research over three and a half decades indicates that consumers value VPPs. The highly respected Survey Research Center of the University of Michigan ("SRC") conducted a survey of over one thousand consumers about their experiences with VPPs, which included credit insurance and debt protection. Thomas A. Durkin (retired) and Gregory Elliehausen, Senior Economists with

[28] Bryan Ochalla, "Top 10 Reasons People Don't Buy Life Insurance," October, 2016, https://quotewizard.com/life-insurance/why-people-dont-buy-life-insurance; the author synthesizes readings from the Consumer Federation of American and LIMRA's and Life Happens' 2015 Insurance Barometer Study

[29] Remaining two reasons include: "I'm healthy" and "It makes me think about death"

the Federal Reserve Board's Division of Research and Statistics, published a report[30] in 2017 after analyzing the SRC's data set. The results of their analysis show that consumers value the products:

- For over three decades, 9 out of 10 installment loan consumers that purchased VPPs consistently rated the products as "Good"
- Even installment loan consumers that did not purchase VPPs rated the products as "Good" *over half the time*
- Almost 75% of installment loan consumers that purchased a VPP would purchase it again (while this is down from 94% in 2001, it is still a very strong indicator of consumer desire for the protection afforded by VPPs)

The academic research clearly shows consumers are highly satisfied with their purchase and would purchase VPPs again.

Extremely Low Consumer Complaint Levels

Consumer complaints on insurance can span multiple topics, such as marketing, billing, cancellations, refunds, general servicing (e.g., name/address change) and claims. According to the National Association of Insurance Commissioners ("NAIC"), consumers filed only seven (7) total complaints across the entire country for credit life and credit disability insurance combined, or a mere 0.01997% of total complaints for all consumer insurance products in the NAIC complaint database.[31]

Consumers Can Cancel at Any Time

While the statistics and research show that consumers clearly need and value VPPs, the ability to cancel VPPs at any time should not be overlooked. Similar to buyers of other products or services, some purchasers get "buyer's remorse" or simply find they no longer need or want the product. Those consumers can simply request a cancellation and in most instances, receive a refund for the "unused" portion of coverage. Most VPPs in fact include a "free look period" period, where the purchaser can cancel coverage in the first 30 days and receive a full refund. The cancelability of VPPs is an important feature that enables consumer flexibility and choice.

Stakeholders assert inaccuracies and misconceptions

Some stakeholders incorrectly assert that "Add-ons like credit insurance dramatically drive up the cost of loans, incentivize lenders to push refinances, and provide little-to-no value to borrowers" and that "these [products] should be prohibited outright."[32]

First, VPPs such as credit insurance do not drive up the cost of the loan. It is important to recognize that the borrower is *purchasing a thing of value* separate from the loan proceeds. The cost of a

[30] Durkin, Thomas A. and Elliehausen, Gregory, New Evidence on an Old Unanswered Question: Why Some Borrowers Purchase Credit Insurance and Other Debt Protection and Some Do Not (October 20, 2017). Available at SSRN: https://ssrn.com/abstract=3072624 or http://dx.doi.org/10.2139/ssrn.3072624.
[31] NAIC Closed Confirmed Consumer Complaints by Coverage Type, May 30, 2019
[32] Center for Responsible Lending, National Consumer Law Center, NAACP, Americans for Financial Reform Education Fund, Consumer Federation of America, and Public Citizen, Response to CDFI Fund Request for Information on Small Dollar Loan Program, September 2020.

VPP is the cost of a VPP. The cost of the loan is measured by the finance charges – interest and fees -- which does not include the cost of VPPs in the TILA-APR.

Second, credit insurance is cost-effective for small-dollar loans. Reconsider the example from above to illustrate. If a lender charges 36% for the loan and offers credit disability on this same loan, a 12 month $2,000 loan would have an all-in APR of 38.64%, with insurance premium charges of $26.40, or only $2.20 per month. If the customer says they would like credit disability *and* credit life coverage, the insurance premiums charges are $34.60, or only $2.88 per month to cover *two* very real life events.

Scenarios (each with $2,000 principal loan for 12 months)	36% Interest Rate	36% Interest Rate + Credit Disability	36% Interest Rate + Credit Disability + Credit Life
All-In APR*	36%	38.6445%	39.4622%
Monthly Payment	$200.92	$203.95	$204.40
Interest Charges	$411.09	$416.52	$418.20
Credit Insurance Premium		$26.40	$34.60
Credit Insurance Monthly Cost		$2.20	$2.88
Total Payments	$2,411.09	$2,442.92	$2,452.80

*All-In APR used for illustrative purposes only; VPPs are properly excluded from the TILA-APR disclosure calculation.

Third, credit insurance does not incentivize lenders to push refinances. Noted earlier, when a product like single premium credit insurance is canceled (again, at any time during the loan), any refund to the borrower would also include all unearned commissions from the seller, thereby removing this phantom incentive asserted by other stakeholders.

Fourth, contrary to stakeholder assertions, credit insurance provides real value to consumers, to the tune of almost one billion in borrower debt either reduced or eliminated through claims paid in 2019[33]. Noted earlier, since VPPs do not exclude losses caused by pandemics like the novel coronavirus, CCIA member companies report that the credit involuntary unemployment insurance claim frequency increased 1,005% when comparing April 2020 to April 2021. Further, the academic research cited above clearly shows that consumers value the products and a strong majority would purchase them again.

Based on the accessibility, affordability and value of VPPs, policymakers such as the CDFI Fund should undertake efforts to assure such products are more widely available to more consumers that need them. One step in that direction is the continued use of the TILA-APR in the Proposed Application, not the MAPR.

IV. Responsible financing entails transparent, voluntary services.

In the Proposed Application, among other practices, the CDFI Fund urges applicants to practice transparency when offering products and services.

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[33] NAIC Credit Insurance Experience Exhibit, 2019 data.

CCIA ardently supports the transparent offering of loans and separate voluntary services like VPPs. Based on the information in this material, CCIA would submit that the offering of VPPs to borrowers to help them protect their finances is in fact a responsible financing practice. The TILA-APR and regulatory regime surrounding products like credit insurance provides a robust framework to that end.

The highly favorable consumer perceptions and the extremely low complaint levels noted earlier are in part a result of stringent regulation of insurance VPPs like credit insurance.

The underpinnings of today's robust state credit insurance regulation stem from decades of regulatory and industry experience and the NAIC Consumer Credit Insurance Model Act[34] and Model Regulation[35]. The Model Act defines the products and the Model Regulation addresses policy forms, premium rates, benefits, eligibility and disclosures for both closed-end and open-end credit transactions. All states have adopted some form of the Model Act and the Model Regulation, creating a strong regulatory framework for credit insurance.

Product Pricing. Premium rates for credit insurance are strictly regulated by the states. Every year, each state insurance department requires credit insurers to file an experience report of consumer credit insurance written during the calendar year. State insurance departments regularly review the losses paid by insurance companies and the premium rates or prices currently approved in that state. The departments of insurance set the pricing for credit insurance.

Product Structure. States define permissible product features for credit insurance including coverage terms, maximum limits, eligibility requirements, premium calculation and refunding methods. Insurance companies must file consumer forms for approval by the state insurance department.

State insurance laws allow consumers to cancel their credit insurance at any time and the laws provide the formula to calculate any refund due. Additionally, state laws provide each consumer with a "free look period" which typically is 30 days – meaning that any consumer can cancel coverage within 30 days and receive a full refund of any premiums charged. Refunding methods set by the state are well aligned with and actuarially justified for an insurance exposure that decreases with the term of the installment loan.

Consumer Disclosures. State laws and regulations provide for very specific protections for credit insurance consumers. Consumers electing credit insurance must receive evidence of coverage. This requires the delivery of a policy or certificate and proscribes the details that such forms must contain, including: a full description of the coverage; any limits, exceptions and exclusions; the term of the insurance; the premium charged; who receives the benefits and how benefits are obtained.

*Market Conduct***.** As a highly regulated insurance product, consumers purchasing credit insurance can rely upon rigorous state insurance department oversight of insurers' financial reporting, producer licensing, marketing, consumer disclosures, policy benefits and terms, pricing, claims

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[34] http://www.naic.org/store/free/MDL-360.pdf
[35] http://www.naic.org/store/free/MDL-370.pdf

handling, and complaint handling conducted through their regular market and financial conduct examinations. Failure to comply with regulations and laws subjects insurers to potential fines, penalties, corrective actions, consumer refunds, and often heightened scrutiny.

Coupled with a regulatory framework for credit insurance that inures to the benefit of consumers, the TILA-APR empowers consumers to protect their finances and the MAPR does not. The CDFI Fund should consider the offering of VPPs as a responsible financing practice. To that end, the Proposed Application should be changed by replacing the MAPR with the TILA-APR

* * *

To reiterate, CCIA supports the mission and objectives of the CDFI Fund. In so doing, we strongly urge the CDFI Fund to resist the temptation of implementing the MAPR to the detriment of accurate CDFI measurements and to the detriment of America's borrowing consumers. The CDFI Fund should continue the use of the long-standing and commonly understood TILA-APR for CDFIs.

The CCIA team stands ready to assist the CDFI Fund on the Proposed Application and any other matters that relate to VPPs. Thank you for your consideration.

Sincerely,

Tom Keepers

Strengthening nonprofits and the communities they serve.

Sharing a mission of change

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November 5, 2020

Greg Bischak
Program Manager, Financial Strategies and Research
Community Development Financial Institutions (CDFI) Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Comments for CDFI Certification Application (OMB Number 1559-0028)

Dear Mr. Bischak:

Thank you for the opportunity provide comments on the proposed changes to the CDFI certification process. IFF supports the CDFI Fund's efforts to maintain and strengthen certification processes to best ensure capital flows to the communities that the Fund was established to support.

As a community facilities lender that is focused on supporting nonprofits working in low-income communities, we recommend the Fund adopt eligibility reporting guidelines that better account for and reflect this type of lending work. Currently, and under the proposed rules, CDFIs with a Target Market of Low-Income Targeted Population (LITP) who lend to nonprofits and small businesses must engage in burdensome and at times impractical efforts to document that a borrower is serving an LITP, which in turn unfairly makes it harder to comply with lending re-certification criteria.

To date, the Fund has addressed this issue with IFF and others on a case-by-case basis through informal side agreements that provide permissible proxies to document that borrowers are serving an LITP. An example of this would be the percentage of patients of a health clinic that receive Medicaid.

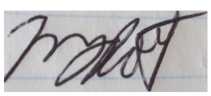
To address this in a more codified and straightforward manner, IFF recommends that CDFI lenders have the flexibility to obtain from nonprofit borrowers an attestation that the borrowing entity serves an LITP. As an alternative, IFF recommends that certain classifications of borrowers be granted automatic eligibility as serving an LITP. These would include:

1) Emergency housing organizations (e.g., homeless shelters)
2) Food pantries
3) Restorative justice and reentry organizations
4) Organizations working with immigrant and/or refugee populations
5) HFFI-eligible grocery stores

All of the organizations listed above work deeply and almost by definition exclusively with low-income communities, and yet because they do not gather income data from those they serve these loans currently do not count towards meeting CDFI certification requirements. We recommend this change be incorporated into the final rules around certification.

Again, thank you very much for the opportunity to comment on the CDFI certification process. If you have any questions, please do not hesitate to contact me at mroth@iff.org. Thank you for your consideration of our views.

Best,



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Capital for Communities –
Opportunities for People®

November 4, 2020

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RE: Comments on Notice and Request for Public Comment on proposed CDFI Certification Requirements and Documents

Dear Director Harris, Ms. McInnes and Mr. Bischak:

Thank you for this opportunity to comment on the Notice of Information Collection and Request for Public Comment published by the Community Development Financial Institutions (CDFI) Fund in the Federal Register on May 7, 2020. The CDFI Fund is seeking comments on its proposed and/or continuing information collection activities certifying CDFIs and assessing their on-going compliance with such requirements. Over the past several years, there has been an effort underway to update the CDFI Certification Application and associated reporting requirements. This effort culminated with the request for public comments on three key Certification documents which reflect the Fund's proposed changes to the Certification criteria: the revised CDFI Certification Application, the revised Annual Certification and Data Collection Report (ACR) and the new Certification Transaction Level Report (CTLR).

The changes being proposed by the CDFI Fund are critical to maintaining the strength and integrity of the CDFI "brand" which has become a passport for certified CDFIs to access other federal programs and to receive significant funding from both private and public philanthropic organizations. The revised Certification rule, as reflected in these three documents, will determine the standards entities will have to meet to become or maintain their status as a Certified CDFI going forward. It is critical that the industry participate and inform these standards and that they reflect the diversity of the CDFI industry. Community Reinvestment Fund, USA (CRF) has been actively engaged in the review effort and has provided detailed comments on many aspects of the criteria at each stage of the process. We appreciate the transparency and openness the Fund staff have shown as they reviewed the Certification framework in great detail. We have chosen to compile our comments on all three documents into a single letter for simplicity purposes and we urge the Fund to carefully consider our recommendations as well as those of our industry partners.

BACKGROUND

Community Reinvestment Fund, USA, a national Community Development Financial Institution (CDFI), is a leader in channeling resources from the capital markets to support community economic development and helping mission-driven organizations improve efficiency and build capacity. Our mission is *to empower people to improve their lives and strengthen their communities through innovative financial solutions*. For the past 32 years we have worked with community partners, investors, foundations, and financial institutions to deliver over $3 billion in loans, investments, and bonds, resulting in the creation or preservation of 140,000 jobs, the financing of nearly 19,600 affordable housing units and funding for a wide range of community facilities. Since its inception, CRF has funded more than 4,400 small business loans, over 2,400 of which were made to businesses owned by women or people of color. CRF has deployed resources in more than 1,000 communities in 49 states and the District of Columbia and served more than 1.9 million people.

CRF was founded on a vision of improving the lives of people living and working in economically challenged communities by providing access, in partnership with local community development organizations, to public and private sector resources throughout the country. We are best known as a financial innovator with expertise in adapting financing tools that connect underserved communities to new sources of capital including establishing the first secondary market for small business and affordable housing loans to supply liquidity to development finance agencies, CDFIs and other mission-driven lenders. We pioneered the creation of securities collateralized by community development assets to offer mainstream institutional investors (banks, pension funds, and insurance companies) with a way to invest capital at scale in projects and businesses serving low-income people and revitalizing distressed communities. Since 1989, CRF has issued 19 series of Notes totaling $284.7 million backed by community development loans. Three of our debt offerings totaling $176 million have been rated and all of which included a senior tranche rated “AAA” by Standard & Poor’s. We have also issued three multifamily affordable housing securities, including one Standard & Poor’s rated issue totaling $84.9 million, backed by 45 multifamily affordable housing loans.

Similarly, CRF played an instrumental role in shaping and launching key federal community development programs, including the New Markets Tax Credit (NMTC) and the CDFI Bond Guarantee Program (BGP). Together with its affiliate, National New Markets Tax Credit Fund, Inc., (NNMTCF), we have received $919.5 million in tax credits of which $869.5 million have been deployed in the form of flexible loans for both non-profit and for profit operating businesses located in low-income communities throughout the country. Since 2003, we have made 335 Qualified Low Income Community Investments (QLICIs) with $869.5 million of deployed Qualified Equity Investments (QEIs).

In 2013, CRF was named the first Qualified Issuer (QI) for the CDFI Bond Guarantee Program. We are the only QI to issue bonds in six of the seven funding rounds conducted to date, and our total issuance since 2014 stands at $940 million on behalf of eight CDFIs.

When faced with the dramatic contraction in bank lending during the Great Recession, CRF found a way to bring responsible credit to marginalized small businesses unable to secure conventional bank loans. We acquired one of 14 national non-depository SBA 7(a) licenses to offer this Government guaranteed loan product to support our mission of lending to small businesses located in LMI areas or owned by people of color, women and/or veterans. Since launching our SBA 7(a) lending product in 2012, CRF has made more than 511 7(a) loans totaling nearly $276 million helping to create or retain more than 12,373 jobs. With the onset of the COVID-19 pandemic, CRF used its SBA expertise and its proprietary loan origination software to originate Paycheck Protection Program Loans for a total of $519 million in closed loans and $527 million in disbursed loans which preserved 51,045 jobs. We also participated in an early and novel recovery loan fund in Chicago where we originated 862 loans for nearly $22 million which retained 2,022 jobs and created 813 jobs. CRF is a Preferred Lender under the SBA 7(a) program and has been ranked among the top SBA 7(a) lenders nationally.

General Comments: Overview of Proposed new Certification Application and Accompanying Documents

The CDFI Fund staff is to be commended for undertaking the complex task of modernizing the CDFI Certification criteria. The current framework has been in place since the Riegle Community Development and Regulatory Improvement Act of 1994 was passed and the Fund was created. It is a testament to the framers of the Riegle Act that the industry has grown from 196 certified CDFIs in 1997 to nearly 1,100 such organizations today. However, the technological changes and the evolution of the CDFI industry have made it necessary to revisit and revise key Certification requirements.

We appreciate the effort to update the Certification criteria and the current proposal has several positive aspects which we strongly endorse. In particular, the recognition and implementation of a National Target Market comprised of Investment Areas is a welcome and long overdue policy change. National CDFIs, like CRF, will now be able to make loans to worthy small business borrowers regardless of where they are located and receive credit towards the 69% threshold under the Target Market test. Policy changes to the Accountability requirements are also quite favorable by introducing more flexible and manageable ways an entity can demonstrate it is accountable to its designated Target Market(s).

The revised Certification documents do, however, raise a number of concerns and questions which should be addressed before finalizing the new criteria. First, the CDFI Fund's approach to strengthening the Primary Mission test by asking overly detailed questions about an Applicant's Financial Products and/or Services will not achieve its objective of screening out organizations that should *not* be certified. The details of the CDFI's Financial Products and/or Services should be determined by the Applicant's management and overseen by its governing board, not the CDFI Fund. The proposed approach is not a foolproof means for confirming an Applicant has a Primary Mission of community developing and it makes the Application process significantly more burdensome without assurances it will improve data quality and collection methods. It also places the CDFI Fund in a role of evaluating the products and/or services of Applicants which may be better left to other agencies such as the Consumer Financial Protection Bureau.

A second key concern is the CDFI Fund's decision to revoke its right to exercise discretion when an Applicant is unable to meet the 60% threshold required for the Target Market test. This is a serious and dangerous policy change that could have unintended consequences as described in greater detail in our discussion of the Sixty Percent Threshold Requirement (Target Market section). The Fund should reconsider implementing this change.

Finally, we are concerned about all the policy changes related to Low Income Targeted Population Target Markets referenced in the revised Certification documents that are still under development. Specifically, under the new criteria the CDFI Fund will require Applicants and CDFIs to use only "approved" Target Market Verification Processes to confirm that at least 60% of their financing activities are being directed to their designated Target Market(s). However the Fund has yet to publish a list of "approved" processes, nor has it established a process for Applicants to seek approval for Target Market Verification Processes that they have developed themselves. For instance, many CDFIs serving a Low Income Targeted Population look to the "end beneficiaries" to qualify the loans they are making to their Target Market(s). This long standing approach needs to be included in the Fund's list of "approved" Target Market Verification Processes so that CDFIs can continue to finance vital housing, community facilities and small business borrowers across the country. Lastly, while the Fund has introduced an alternative method for qualifying loans to a LITP Target Market known as the Census Block Group geocoder, this new CDFI Information Mapping System tool has not been created and therefore cannot be tested. It is impossible for CDFIs and industry stakeholders to fully understand and comment on the revised Certification documents until *all* the outstanding components of the new criteria have been completed and reviewed.

We respectfully recommend that the CDFI Fund review all comments carefully and engage in a collaborative dialogue with the industry and all interested stakeholders to address all the unfinished aspects of the proposed Certification criteria. We strongly advise against publishing a final rule on this important policy at this time.

REVISED CDFI CERTIFICATION APPLICATION

Section by Section Review and Detailed Comments:

Applicant Basic Information

Overview

Under the current CDFI Certification Application, the Basic Information (BI) section collects general information about the Applicant (and for a regulated financial institution, its Affiliates[1]) that must be provided for the CDFI Fund to evaluate

[1] Affiliate: a company or entity that Controls, is Controlled by, or operates under common Control with another company. https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 3, accessed 10/07/20.

whether an Applicant meets the requirements for CDFI Certification. The CDFI Fund is proposing to require that non-regulated entities (e.g. nonprofit loan funds) be subject to the same requirement and include Affiliate information in the BI section. (See discussion below.)

Questions Related to Basic Information

Question #6. What is a reasonable grace period for currently certified CDFIs to come into compliance with the new certification criteria?

The CDFI Fund should allow existing CDFIs up to three (3) years to comply with the new certification requirements. This process could require some CDFIs to change their business models, their governing and/or advisory board structures, methods of verifying loans directed to approved Target Markets, as well as potentially selling or allowing loans or lines of business to be sold, run off, or otherwise discontinued in order to meet the new certification criteria.

Question #7. Currently applicants are allowed to submit CDFI Certification Applications at any time throughout the year. The CDFI Fund is considering transitioning to a quarterly submission schedule, which would allow applicants to submit CDFI Certification Applications only within a specific time period every three months. Should the CDFI Fund transition to a quarterly CDFI Certification Application cycle?

The CDFI Fund should maintain a rolling Certification Application process as a quarterly Application cycle could lead to long delays and significant backlogs of pending applications. This could make it difficult for entities to become certified in a timely fashion and provide Financial Products and Financial Services to borrowers in their approved Target Markets. The current COVID-19 crisis is an example of how an Applicant seeking to become a CDFI might be forced to wait three months to file their application and receive a designation which, in turn, could directly enhance the organization's ability to raise and deploy funds in its defined Target Markets as rapidly as possible.

Specific Application Questions/Topics

Affiliates

As noted above, the key change to the Basic Information section[2] is to place Depository Institution Holding Companies (DHICs) and (Nonprofit) Loan Funds on equal footing with regard to the treatment of Affiliates. Thus, if the CDFI Certification Applicant is **not** a DIHC, an Affiliate of a DIHC, or a Subsidiary of an Insured Depository Institution (IDI), in addition to presenting Affiliates relevant to any special CDFI Certification provision or exception, it must identify any Affiliate in its family of entities that meets any of the following criteria for consideration in connection with the Primary Mission requirements:

[2] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, page 18, accessed 10/07/20.

1. The Affiliate Controls[3] the Applicant, except if the Controlling entity is a Tribal Government;
2. The Affiliate directly engages in Financial Product and/or Financial Services activity and the Applicant and the Affiliate are under the mutual Control of another entity; or
3. The Affiliate directly engages in Financial Product and/or Financial Services activity and the Applicant Controls the Affiliate.

Comment

We wish to offer some general comments on Affiliates pertaining to the Basic Information section of the revised Certification Application. Generally speaking, many CDFIs use off-balance sheet special purpose entities (SPEs) or vehicles which do not have any employees and whose role is primarily to hold assets. These SPEs are sometimes referred to as "brain dead" in that they exist for legal reasons but are not fully functional affiliates. We assume the CDFI Fund is not expecting Applicants to include each of these vehicles in the Application as they are simply financing structures without day-to-day operations. CDFIs may appoint the board of such entities, however investors tend to retain control and therefore these entities should not be captured in the BI section. CRF has a number of these off-balance sheet entities associated with its New Markets Tax Credit (NMTC) Program. Since the activities of these NMTC entities have never been included the 60% threshold required under the Target Market test, we assume they would not be listed as Affiliates for the purposes of CDFI Certification.

There are also instances where a CDFI or Applicant may have an entity which it controls but which was established in order to allow the organization to access a license to participate in another federal program. In this case, the affiliate or subsidiary is wholly owned by the CDFI with whom it contracts to provide staff, as well as other resources to carry out its activities. We believe these types of entities should not be reflected in the BI section as well since they were created to meet programmatic requirements but, for all intents and purposes, are one in the same with the parent CDFI or Applicant.

Primary Mission

Overview

In the past, it has been difficult to articulate and apply the Primary Mission test through a specific set of standards or criteria. The Fund proposes requiring CDFI Certification Applicants to attest to and provide additional information to determine their dedication to a series of community development principles including:

- Documenting a community development mission for a 12 month period prior to applying for certification;

[3] Ibid, pg. 3. "Control, Controlled or Controlling: (1) Ownership, control, or power to vote 25% or more of the outstanding shares of any class of voting securities of any company, directly or indirectly or acting through one or more other persons; (2) Control in any manner over the election of a majority of the directors, trustees, general partners or individuals exercising similar functions of any company; or (3) Power to exercise, directly or indirectly, a controlling influence over the management, credit, or investment decisions or policies of any company."

- Alignment between its community development strategy and its Financial Products and/or Financial Services provided to distressed communities and/or underserved populations;
- Demonstrating responsible financing practices that do not harm consumers as evidenced by affordable and transparent products or services, fair collections practices and compliance with federal, state and local laws and regulations;
- Affiliates that offer Financial Products and Financial Services must provide evidence of a primary mission of community development (except if the parent or Affiliate is a tribal government) as has been required of DIHCs, affiliates of DIHCs and Subsidiaries of IDIs.

While this approach provides a more robust set of criteria for verifying an Applicant meets this test, there are potential drawbacks of relying so heavily on its Financial Products and/or Financial Services to confirm a Primary Mission of community development. Placing an affirmative obligation on the Applicant to show its products and/or services do not harm consumers could unintentionally limit the flexibility for entities to offer Financial Products or Services that strike the appropriate balance between the needs of their borrowers and their own financial viability based on the credit risks they assume. We recognize this is delicate balance but several of the questions, especially Q. PM12 & Q. PM13, suggest the CDFI Fund is applying a "litmus test based on a laundry list" of terms and conditions to assess whether an entity has Primary Mission of community development based on its products and services. If the objective is to screen out organizations that offer predatory credit products, we are not convinced this approach will keep these organizations from being certified. Applicants do have the opportunity to explain why their Financial Products may exceed certain restrictions (such as interest rate ceilings) but it is unclear what criteria the CDFI Fund will apply to include or exclude such products.

It is also unclear whether the Fund can use its discretion to consider qualitative factors beyond the terms of an Applicant's Financial Products or Financial Services. The Fund should have the ability to look beyond the Application to review an Applicant's website, its messaging and any social media campaigns to see how the entity's online presence aligns with its stated mission of promoting community development. We also see benefit in continuing to request that Applicants provide a narrative describing their history and how they carry out their mission through their financing activities.

The changes proposed to the Primary Mission test warrant further investigation by the CDFI Fund by soliciting additional, in-depth industry input, holding stakeholder interviews and conducting surveys to ensure the revised Application only confers certification on entities that embody and preserve the CDFI "brand".

Questions Related to Primary Mission

Question #8. Are the questions in the revised application appropriate to determine an entity's community development intent?

In an effort to protect and preserve the integrity of the CDFI Certification "brand," the Fund has taken an approach to assessing or evaluating an entity's community development intent that we believe is flawed. The objective, which we wholeheartedly support, is to ensure that "bad actors" such as predatory lenders offering abusive loan products are not certified as CDFIs. However, while the Fund's intent is commendable, the approach of examining every aspect of an

Applicant's Financial Products or Services through a detailed list of drop down boxes will not achieve the stated goal. In our view, the Fund is asking for too much detail about an Applicant's products and services in this section and appears to be "micromanaging" CDFI financing activities. This approach could have the unintended effect of driving CDFIs to offer "plain vanilla" products and services to avoid burdensome scrutiny while stifling innovation.

Recommendation: The nature and terms of an Applicant's/CDFI's Financial Products and Financial Services should be determined by the organization's leadership and governing board. It should not be the purview of the CDFI Fund to set the terms of such products and services.

Question #12. Are there any other practices related to the responsible provision of Financial Products, especially those related to mortgage or other real estate lending, and to equity investments, for which either the presence or absence of which should be considered for purposes of CDFI Certification?

CRF conceived of and helped to launch an innovative single family mortgage product and supporting rehabilitation fund in the City of Detroit in which banks received regulatory approval to offer home mortgages with higher than normal loan-to-value (LTV) ratios in order to restart conventional mortgage lending in this market. We offer this initiative an example of a responsible lending product with nontraditional terms designed to meet a specific need in the mortgage market at a particular time. Mission-driven lenders often innovate and create products to address a need in the local market. The terms of such products should be carefully considered and should not preclude an entity from being certified simply because the terms are outside the norm.

We have serious concerns about the CDFI Fund's approach to evaluating Applicants' Primary Mission. The Fund should not attempt to regulate CDFIs' products as there are other agencies, such as the Consumer Financial Protections Bureau charged with this responsibility. However, should the Fund decide to collect information about CDFIs' financial products, we would encourage you to inquire about abusive practices related to small business loan products – especially given the exponential growth of online lending platforms many of which offer predatory products. This question should include suspicious or deceptive practices related to small business loans not just those pertaining to consumer products and equity investing. Loans carrying excessive interest rates with hidden fees, a speedy application process requiring no credit check, often encouraging repeated refinancing and rollovers, and where the cost of loan is not clearly stated, or where products may be disguised as savings or credit repair loans are examples of the types of products that raise serious concerns. Merchant cash advances (which are technically not loans) and loans targeted to borrowers with low or no-credit scores or history should also be captured in this question.

Question #13. For purposes of CDFI Certification, should an entity be required to indicate that it offers or engages in at least one or more of the types of Financial Services and practices identified in the questions on "Responsible Financing Practices – Financial Services"?

This question is confusing as it is not clear *how* such a requirement would apply to non-depository Applicants that do not offer and do not have the capacity to offer Financial Services[4] to meet CDFI Certification requirements? Would an applicant financing multifamily housing be required to offer checking or savings accounts? Moreover, unregulated Applicants (those that are not banks, bank holding companies, or credit unions) are not permitted to offer Financial Services which only compounds the confusion surrounding this question. The CDFI Fund should provide additional clarification regarding this question.

Question #15. Are there circumstances that the CDFI Fund should consider as an exception to the rule related to the treatment of Affiliates under the Primary Mission requirement?

Under the current framework, Subsidiaries of Insured Depository Institutions (IDIs), Depository Institution Holding Companies (DIHCs), and Affiliates or Subsidiaries of DIHCs are required by statute to meet the certification test collectively. To avoid disparate treatment among financial services providers, the CDFI Fund is proposing to apply the primary mission test, regardless of entity type, to all parent entities and to any Subsidiary or Affiliate *that engages in financing activities (emphasis added).*

The Fund is proposing to require that an Applicant and any relevant Affiliate must be able to demonstrate an acceptable Primary Mission of community development in place for at least the full 12 months completed just prior to the submission of the application.[5] This new policy may inadvertently pose a problem for established CDFIs in the following scenario. If a CDFI were seeking to recertify while at the same time considering an investment in a newly established affiliate, the start-entity would be deemed an Affiliate under the proposed certification guidelines. Often a start-up affiliate raises capital before making loans or investments and thus, such an entity would not meet the proposed Primary Mission test even though the existing CDFI would have had a Primary Mission in place for the 12 months prior to submitting its recertification application. We don't believe the CDFI Fund intends to preclude these types of investments by Applicants or CDFIs seeking to become certified or recertified and should clarify its position.

<u>Recommendation</u>: The CDFI Fund should clarify that Applicants or CDFIs seeking to be certified may make investments into newly established Affiliates that have a Primary Mission of community development but which, as start-ups, have not had this mission in place for at least 12 months prior to the submission of their application.

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[4] See the definition of Financial Services and how such Services are considered by the CDFI Fund for Certification purposes at https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 3, accessed 10/07/20.

[5] Ibid, pg. 30.

Specific Topics / Application Questions

Responsible Financing Practices – Military Annual Percentage Rate (MAPR)

CRF strongly supports policies that encourage responsible financing practices, however, the mandated use of the Military Annual Percentage Rate (MAPR)[6] method to calculate the Annual Percentage Rate for Certification purposes, regardless of the type of borrower or credit product, raises several questions and recommendations the Fund should consider and address. In particular:

1. Were other methodologies to calculate the Annual Percentage Rate considered and if so, which ones and why were they not selected?
2. As noted in the Updated Frequently Asked Questions, the MAPR is required by statute for certain types of consumer credit extended to active duty service members and their family members.[7] It appears this methodology was designed for consumer loan products. Nevertheless, the revised CDFI Certification Application states that the MAPR is being implemented "***regardless of borrower status***"(emphasis added).[8]

Does the Fund intend to apply this methodology to small business loans, commercial real estate loans, consumer loans (such as mortgages and auto loans), etc.? If so, we strongly suggest that the CDFI industry be provided more time to assess this methodology and test it to make sure it works for all types of loans. For instance, as a national SBA 7(a) lender, CRF would like to know what the implications would be of using the MAPR for this government guaranteed loan product? This policy change may also require adjusting various technology and reporting software tools used to originate, monitor and service 7(a) as well as other types of loans CDFIs offer. Did the CDFI Fund consult with the SBA to understand how the MAPR could be applied to the Agency's loan products used by CDFIs?

We are also concerned that using the MAPR to calculate the APR might actually increase confusion among small business borrowers, especially those working with both banks and CDFIs on a loan request. If CDFIs are required to use the MAPR calculation method but a bank is not, then the borrower would be comparing two rates that are calculated differently. Borrowers unfamiliar with the MAPR would need information as to how the APR is calculated under this method. Imposing

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[6] See 32 CFR § 232.4 of the Military Lending Act. Additional information may be found at the Consumer Financial Protection Bureau's Military Lending Act (MLA), Interagency Examination Procedures – 2015 Amendments, Terms of Consumer Credit Extended to Covered Borrowers (Calculation of MAPR), pg. 6-9.

[7] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Public%20Comment%20FAQ%2009242020.pdf Proposed CDFI Certification Application, ACR & CTLR – Request for Public Comment, Frequently Asked Questions Updated October 2020, Q. 7, pg.6, accessed 10/08/20.

[8] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 30, accessed 10/07/20.

universal adoption of the MAPR method creates additional complexity and burden for both CDFIs and their small business customers without providing offsetting benefits.

Recommendation: The CDFI Fund should seek further comment on the MAPR, giving CDFIs an opportunity to familiarize themselves and test this methodology on their loan products to determine if requiring this standard across the board would improve transparency and comparability without adding significant compliance burden. The Fund should also consider how this policy will affect CDFIs' lending activities when they are part of a larger transaction with other types of lenders, such as banks and credit unions, who are not required to use this APR calculation method.

Question PM09 What are the Applicant's community development objective(s)?

In reviewing the drop down options available, another option specifically designed for CDFIs engaged in small businesses (not micro) lending should be included to capture the outputs or objectives of this activity which include, but are not limited to, creating jobs for local residents, building wealth, delivering essential goods and services, and strengthening the social fabric of the community. Options such as *promoting financial access*, *economic development*, or *community revitalization* don't fully reflect the benefits of a robust, vibrant small business ecosystem in economically distressed communities.

Recommendation: We recommend adding the following drop-down option to the current list in the proposed Certification Application - "***Promote access to capital and credit for underserved small businesses***". We believe this option would apply to a substantial segment of the CDFI industry focused on small business (but not microenterprise) lending.

Question PM11 For each community development objective selected in question PM10, identify the type of output or outcome supported by the Financial Product(s) in which the Applicant engages.

Question #1 in the Notice of Information Collection and Request for Public Comment asks commenters, "Is the information that will be collected by the revised application necessary and appropriate for the CDFI Fund to consider for the purposes of CDFI Certification?" Question PM11 is seeking to collect information on outputs and outcomes. In our opinion, such information is better suited to impact data collection efforts or activities rather than the CDFI Certification process. If the entity seeking to be certified is a relatively new organization it may be difficult to predict or identify what outcomes (even in the short or medium term) will be supported by the Financial Products the Applicant intends to offer even if it can identify likely outputs. Moreover, what if the Applicant's outputs and/or outcomes change over time? Is there a plan to update and collect these data points on an on-going basis? If so, please describe this plan.

Recommendation: If the CDFI Fund intends to collect impact data, such as outputs and outcomes, they should do so through the Transaction Level Report (TLR), the proposed Certification Transaction Level Report (CTLR), or an impact reporting document rather than through the Certification Application as impact is not one of the criteria for becoming a certified CDFI. The Certification Application should not serve as a "backdoor" for the Fund to gather impact information.

Question PM12 For each output selected in question PM11, what Financial Product terms, conditions, or practices does the Applicant employ to promote positive community development results for underserved population(s) and/or residents of economically distressed communities?

Question PM12 seems to draw a one-to-one correlation between the terms of Financial Products and positive community development impact. The multiple choice nature of this question oversimplifies how CDFIs use a customized set of products, services, expertise, partnerships, etc., to improve opportunities for underserved populations and/or economically distressed communities. CDFIs conduct their financing activities in a nuanced way rather than using a “cookie-cutter” approach as suggested by the structure of this question. They are intentional and creative in addressing the credit and capital needs of their borrowers taking both quantitative and qualitative factors into consideration. Often, CDFIs improvise and adapt their products to fit the needs of a particular customer or set of circumstances. Thus it may be difficult to match the options in the drop list to specific positive community development results. We also observed that the list of drop down options included in this question bear a strong resemblance to the list used in Question #14 in the Business Strategy Section of the New Markets Tax Credit Allocation Application.

We are also concerned that the Fund appears to associate CDFI Financial Products with characteristics such as below-market pricing, reduced fees and/or more flexible loan terms. There are many CDFI products which offer borrowers *access to capital or credit* without any subsidy. These borrowers may be unable to secure a loan or investment from a mainstream financial institution and simply having access to credit is what defines or differentiates a CDFI’s Financial Product(s). CDFI lenders, like CRF, offering government guaranteed credit products, must adhere to the terms dictated by the loan program and therefore have limited leeway to modify such terms. Products, like the SBA 7(a), are designed for small businesses unable to obtain conventional credit and borrowers must demonstrate they are unable to obtain credit elsewhere as part of the loan application process.

If CDFIs offer concessionary terms on their loan products they may not be properly pricing the risks they are assuming, which could compromise their financial sustainability. Over the years, the CDFI Fund has set expectations and industry benchmarks for financial ratios (e.g. Net Assets ratio) and would appear to be working at cross purposes if it were to require below-market rate pricing or concessionary terms on CDFI loan products. Subsidy is only one tool in the CDFI toolbox to make their Financial Products accessible and appropriate for underserved borrowers and those located in low- and moderate-income communities. Drawing a one-to-one correspondence between each output a CDFI selects and the terms of one or more of its Financial Products without the context of a particular transaction does not tell the full story of how CDFIs take a flexible approach to adjusting terms of their capital and credit products to fit the needs of a borrower.

Finally, it is not clear how the Fund will keep up with new innovations in product terms that CDFIs may offer either prior to or after being certified. Will the current list of drop down options be regularly reviewed and updated?

Recommendation: We ask the CDFI Fund to re-examine its approach to this question and determine if requesting a narrative in place of the current list of drop down options would be a better approach. The Fund should also consider the questions we raised above and, **at the very least, we recommend that an option such as "*Unable to access credit elsewhere*" be added to the list of drop down options in Question PM09.**

Question PM13 For each Financial Product term, condition, or practice selected in question PM12, explain how positive community development results for underserved population(s) and/or residents of economically distressed communities are supported?

As discussed in question PM12, there is not a one-to-one correlation between the terms, conditions, or practices reflected in a CDFI's Financial Product(s) and its community development results. Like the previous question, this question fails to account for qualitative factors and assumes a causal relationship between the terms, conditions, or practices of a CDFI's Financial Product(s) and the community development outcomes it achieves. The Fund's approach to both PM12 and PM13 appears to be flawed as it rests on the assumption that primary mission can be accurately assessed through a granular examination of the characteristics of an Applicant's Financial Products and that these Products generally offer some form of subsidy rather than providing access to credit that the borrower would not otherwise be able to secure.

Recommendation: The Fund needs to re-examine its approach to assessing an Applicant's Primary Mission through a detailed review of its Financial Products. We suggest considering alternative methods for evaluating Primary Mission which would include an analysis of an Applicant's Financial Product(s) as well as a careful review of its web presence, marketing materials, social media campaigns and any other pertinent information. We also see value in combining these two questions into a single narrative describing an entity's mission, its theory of change, and how its products and financing activities, advance positive community development in the markets or populations it serves. This would present a more complete picture than simply selecting a predetermined series of drop down options. It should be noted. the process outlined in question PM13 must be repeated for each Financial Product output selected. Some Applicants may find this process so laborious they simply choose fewer outputs to shorten the process and reduce the amount of information they must provide. The Fund should explore ways to obtain the information needed without placing undue burden on Applicants.

Question PM19 As of at least 12 months completed just prior to submission of the CDFI Certification Application, for each of the Applicant's loan products, does the Applicant disclose the periodic payment due, the total amount to be repaid over the life of the loan, the total finance charges over the life of the loan, the annual percentage rate (APR) – or for open-ended loans, the effective APR – of the loan?

We are confused as whether this question applies to small business loans or is intended to encourage transparency and disclosure for consumer loan products? Disclosing the Annual Percentage Rate (APR) and the total amount to be repaid by the borrower over the life of the loan may not be meaningful or tell the whole story if applied to some types of small business loans like the 7(a) product which carries a variable rate prescribed by the SBA as a spread above the Prime Rate. As the Prime Rate fluctuates it can be difficult to calculate the APR and to provide the borrower with a total amount to be repaid over the life of the loan. In addition, the APR includes not only the interest rate a borrower will pay but also the fees and other transactions costs associated with a loan. The 7(a) loan product has a few such fees (e.g. a guarantee fee, packaging fee, etc.) and they are disclosed separately and not built into the APR.

Recommendation: CRF appreciates the CDFI Fund's objective of requiring lenders to fully disclosure the terms of their loans to borrowers so they can make informed decisions about taking on credit obligations. However, we encourage the Fund to review whether this question should apply to all small business loans products, such as the SBA 7(a) and other government-related small business loan products. Applying the same disclosure requirements to small business and consumer loans without careful consideration of whether such an approach is meaningful for business loans, may result in inappropriate requirements for certain types of loans that provide little or no benefit for the customer.

Question PM20 Has the Applicant had programs for each of its loan products (including credit cards) to waive fees or interest, reduce interest rates, forgive principal or otherwise modify loans to assist struggling borrowers for at least the 12 full months completed just prior to the submission of the CDFI Application?

Question PM20 assumes CDFIs have the ability to waive fees or reduce interest payments, forgive or otherwise modify loans to assist struggling borrowers. As a full SBA 7(a) lender, CRF is prohibited by the program from offering fee, interest waivers, or forgiveness on 7(a) loans (excluding Paycheck Protection Program Loans). This question does not account for program requirements over which Applicants have no control and must abide by if they wish to offer these government (guaranteed) loan products. We are also confused by the reference to loan forgiveness in this question as the Fund clearly defines Financial Products as *excluding* "forgivable loans unless they have been pre-approved".[9]

Recommendation: We request that the CDFI Fund clarify how this question would apply to CDFIs or Applicants using government loan programs, such as the SBA 7(a), that may preclude them from offering the concessionary terms described in PM20. Furthermore, it would be helpful for the Fund to reconcile its definition of a Financial Product (which excludes forgivable loans) with its references to forgiveness as a possible form of loan modification.

Financing Entity

Overview

The revised Certification Application reminds us that a Certified CDFI must be an entity whose predominant activity is the provision, in arms-length transactions, of Financial Products and/or Financial Services, and that it has been engaged in such activity for at least 12 months. Unless otherwise indicated, the provision of Financial Products must be arm's-length and on balance sheet.

When determining the "**Assets Dedicated to the Direct Provision of Financial Products and /or Financial Services**" the revised Certification Application notes that ***"unless otherwise directed, the asset information provided in the***

[9]Ibid, pg. 2.

Financing Entity section of the application should be based on the Applicant's information only. Do not use a consolidated statement."[10] (emphasis added)

<u>Specific Topics / Application Questions</u>

<u>Question FE-AO7</u> Instructs the Applicant to attach its non-consolidated, current fiscal year-to-date financial statements.

Under Generally Accepted Accounting Principles (GAAP) accounting rules, many CDFIs are required to prepare consolidated financial statements. The CDFI Fund should align its Certification requirements for the Financing Entity test with GAAP rather than mandating that Applicants prepare non-consolidated fiscal year-to-date financial statements which would only impose additional reporting burdens on entities.

Target Market

<u>Overview</u>

To be a Certified CDFI, an entity must demonstrate that it serves at least one eligible Target Market (either an Investment Area or Targeted Population). In addition, it must direct at least 60% of both the number and dollar volume of arm's-length, on-balance sheet Financial Products to one or more eligible Target Markets. Under current guidance, if an Applicant fails to meet the 60% threshold, an exception may be provided based on a justification that is satisfactory to the CDFI Fund.

Under the proposed certification framework, all new CDFI Applicants must meet the applicable Target Market percentage benchmarks over the 12 full months completed just prior to submission of the application. To maintain the certification status, Certified CDFIs are required to demonstrate compliance with the Target Market percentage benchmarks based on a three-year average through the last day of their most recently completed fiscal year.[11] To confirm activity to the Target Market(s), transaction level data will be submitted annually through the CTLR for those CDFIs that do not submit a TLR.

Finally, new CDFI Certification Applicants must meet the relevant Financial Product activity percentage threshold, without exception, in both the number and dollar amount of such activity—the CDFI Fund will discontinue its current practice of providing exceptions to the Target Market threshold requirement.[12] An entity may continue to serve a combination of eligible Target Market types, for the purposes of calculating the overall Target Market percentage of an entity's activity,

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[10]Ibid, pg. 45.

[11] Certified CDFIs with less than three years of CDFI Certification will be measured based upon the full history of their financing activity, up to three full fiscal years but not earlier than through the 12 months prior to the submission of their application. CDFI Certification Application for public comment, pg. 53, https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf accessed on 10/12/20.

[12]https://www.cdfifund.gov/Documents/FY%2020%20CDFI%20Certification%20Quick%20Facts%2005052020%20508%20compliant%20FINAL.pdf, Proposed CDFI Certification Application, Request for Public Comment, Revision Quick Reference, Community Development Financial Institutions Fund , U.S. Department of Treasury, May 2020, pg. 8, accessed 10/13/20.

each Financial Product transaction or Financial Service item may be counted towards only one Target Market type (even if the transaction or account qualifies as having been directed to more than one Target Market). If an Applicant falls below the required level for any of the applicable Target Market percentage benchmarks, ***it will not be eligible for CDFI Certification***. (emphasis added)[13]

Investment Areas

Under the new certification policy, entities serving an Investment Area consisting solely of individual qualified census tracts as their Target Market will be able to count *all* activity in qualified census tracts toward their Target Market requirements. Similarly, entities that serve certain Targeted Populations will be able to count all qualifying activity toward their Target Market requirements, regardless of location. This is a departure from current policy which requires entities to identify the specific geographic area(s) within which they propose to serve an Investment Area(s) and/or Targeted Population(s) as their Target Market. Only transactions within the identified geographic area(s) are eligible to count toward the 60% level of financing activity that must be directed to their approved Target Market(s).[14] By removing the geographic boundaries on most Target Market designations and measuring all of an entity's eligible activity to its designated Target Market type(s) (i.e., Investment Areas and/or Targeted Populations) toward the 60% threshold, a CDFI will be able to serve its designated Target Market type(s) at whatever level it is capable, including nationally and or through the use of financial technology, without having to seek additional approval.[15]

Targeted Population

A Targeted Population is defined as individuals, or an identifiable group of individuals who are low-income or lack adequate access to Financial Products or Financial Services. The Targeted Population is specific to the individual borrowers whose socio-economic characteristics are used to determine inclusion in the Target Market.[16] Targeted Populations that are not already approved by the CDFI Fund, in the future these Target Markets must be submitted for

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[13] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 53, accessed 10/13/20.

[14] https://www.cdfifund.gov/Documents/2020-09747-Certification%20Application.pdf, Federal Register / Vol. 85, No. 89 / Thursday, May 7, 2020, pgs. 27277 – 27278, accessed 10/13/20.

[15] https://www.cdfifund.gov/Documents/2020-09747-Certification%20Application.pdf, Federal Register, May 7, 2020, Vol. 85, No. 89, pg. 27278, accessed on 10/07/20.

[16] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 55, accessed 10/13/20.

approval prior to being proposed in a CDFI Certification Application.[17] The Applicant must use the CDFI Fund's approved verification processes to demonstrate that it is serving the Targeted Population.[18]

Target Market Verification Processes

A Target Market verification process or combination of such processes will be used to verify whether the appropriate percentage of an Applicant's Financial Products and/or Financial Services are being deployed to their designated Target Market(s). Only those Target Market verification processes approved by the CDFI Fund may be used when compiling Target Market data.[19]

Applicants may request approval of a Target Market verification process(es) not already accepted by the CDFI Fund to compile Target Market data for the CDFI Certification Application, however, the new process(es) must be approved by the CDFI Fund prior to submission of the application. Approved CDFI Fund Target Market Verification Processes must be used exactly as approved unless and until modification of the process is authorized by the CDFI Fund.[20]

Specific Topics / Application Questions

Sixty Percent Threshold Requirement

The revised CDFI Certification Application – Revision Quick Reference document states that Applicants seeking to become CDFIs will be required to direct the prescribed percentage of their lending and/or investing activity to the Target Market Types for which they are certified both in terms of the number and dollar amount of such activity. This requirement will be applied without exception meaning the CDFI Fund will no longer provide exceptions on a discretionary basis to the Target Market threshold requirement."[21] It is important to emphasize that neither the statute nor the regulations states what

[17] https://www.cdfifund.gov/Documents/FY%2020%20CDFI%20Certification%20Quick%20Facts%2005052020%20508%20compliant%20FINAL.pdf, Proposed CDFI Certification Application, Request for Public Comment, Revision Quick Reference, Community Development Financial Institutions Fund , U.S. Department of Treasury, May 2020, pg. 8, accessed 10/13/20.

[18] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 55, accessed 10/13/20.

[19] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 57, accessed 10/13/20.

[20] Ibid.

[21] https://www.cdfifund.gov/Documents/FY%2020%20CDFI%20Certification%20Quick%20Facts%2005052020%20508%20compliant%20FINAL.pdf, Proposed CDFI Certification Application, Request for Public Comment, Revision Quick Reference, Community Development Financial Institutions Fund, U.S. Department of Treasury, May 2020, pg. 8, accessed 10/13/20.

percentage of a CDFI's activities must be devoted to its Target Market(s).[22] However, the Fund's guidance for completing a certification application requires that at least 60% of a CDFI's "Financial Product" activities must be in qualified Target Markets (Investment Areas, Low Income Targeted Populations or Other Targeted Populations).[23]

This proposed change poses risks for both the CDFI Fund as well as Applicants and existing CDFIs. It is not clear why the Fund decided to rescind its ability to provide exceptions to the Target Market threshold requirement. Such discretion is crucial to maintaining flexibility to consider the specific circumstances of a particular Applicant's lending and/or investing activities. Implementing an inflexible rule could result in an Applicant being denied certification (or an existing CDFI being decertified even using a three-year average) often because of mathematical anomalies rather than a failure by the entity to direct its financing activities to its approved Target Markets. For example, when an entity makes loans of very different sizes and in differing quantities, it may fail to meet the 60% threshold for ***either the number of units or the dollar amount.*** For example, let's assume an entity originates five loans in a given year. Three of the five loans (60% of the units) are made to its approved Target Markets however, two of the loans are for $500,000 each and one loan is for $1 million. In this case, the dollar value of the eligible loans is only $2 million or 40% of the total value of the loans originated. A similar situation could arise if an entity makes a small number of large facilities or affordable housing loans while also originating a larger volume of small business loans. For instance, if a CDFI originates 100 loans in a year of which five loans of $2 million each and 55 loans of $1,000 each are made in its approved Target Markets. The remaining 45 loans for $35,000 each are *not* in its eligible Target Markets. In this scenario, only 55% of the units are directed to approved Target Markets but 86% of the dollar value of the loans originated are serving its approved Target Markets. Situations like these occur frequently and therefore it is critical that the CDFI Fund preserve its discretion with regard to the 60% threshold for the Target Market test. In addition, national emergencies, such as the current COVID-19 pandemic and economic crises, like the Great Recession, offer compelling examples of circumstances where the CDFI Fund may wish to retain discretion as it relates to the 60% test.

Recommendation: The CDFI Fund *should* maintain its discretion related to the 60% threshold for the Target Market test.

National Investment Area / Targeted Population Target Markets

The single most important and positive change to the CDFI Certification policies is the removal of geographic boundaries on most types of Target Markets, including those comprised of Investment Areas and some Targeted Populations. This change is particularly noteworthy for two reasons: (1) it recognizes the changing nature of delivering Financial Products and/or Financial Services in all communities across the country, including low- and moderate-income areas; and (2) it no longer discourages CDFIs from providing loans in eligible census tracts or to eligible populations outside of the geographic areas specified for their approved Target Market(s). Under current policy, transactions outside of a CDFI's approved

[22] Memorandum to Annie Donovan, Director of the CDFI Fund from the CDFI Coalition re: Modernizing the CDFI Certification Process, May 6, 2016.

[23] CDFI Fund Supplemental Guidance and Tips (February 2014) p. 20.

Target Market(s) *cannot* be counted towards the 60% threshold of their financing they are required to direct to their approved Target Market(s), even if the loan is made in a qualified census tract or to a qualified member of a Targeted Population. These qualified loans actually counted *against* a CDFI seeking to meet the Target Market test reducing the amount of credit available to eligible borrowers. As the geographical and technological reach of CDFIs has expanded, this policy has become a barrier to advancing the CDFI Fund's goals and its mission. CRF has long argued for a National Investment Area Target Market and applauds this decision by the Fund to allow CDFIs to address the credit needs of small businesses anywhere in the country with safe, appropriate credit products. This policy change comes at a critical time for our economy and for small businesses struggling to recover from the coronavirus pandemic. It will also encourage CDFIs to embrace and adopt new financial technology which is critical to the success of the industry reaching and effectively supporting small business owners, nonprofits and other community-based organizations in the recovery phase of this public health crisis. We commend the Fund staff for taking this important step in modernizing the CDFI Certification criteria.

With the advent of a National Investment Area Target Market, we request the CDFI Fund implement the following policy changes:

1. Automatically grant CDFIs a blanket National Investment Area (IA) Target Market (assuming they can meet the Accountability requirements) so that they can address the critical need for credit in the COVID-19 crisis
2. Consider adopting the Accountability model applied to the certification of Community Development Entities (CDEs) in the New Markets Tax Credit Program for CDFIs that wish to have a National IA Target Market. To be a certified CDE, 20 percent of the governing or advisory board members must be accountable and can be accountable to larger geographic areas.[24] For CDE certification, a governing or advisory board member can be "an employee or board member of a non-affiliated community-based or charitable organization that provides more than 50 percent of its activities or services to Low-Income Persons and/or LICs [Low-income Communities].[25] Utilizing the CDE Accountability requirements for CDFIs with a National IA Target Market will

[24] In the Fund's CDE Certification Question and Answer guidance, the Fund directly addresses having board members accountable to large regions or nationwide: "**26) How do I demonstrate accountability to LICs in my service area if I am serving a large geographic area (e.g., a state, a multi-state region or the entire nation)?** The Fund advises entities that serve a large geographic area should appoint at least one person that is accountable to LICs throughout the service area to its board or advisory board. For example, an organization serving the entire nation should appoint to its board a staff person or a board member from a nationwide community development organization primarily serving LICs. An organization without at least one person on its governing board or advisory board(s) that can reasonably be deemed to be representative of LICs throughout the organization's service area may still be certified as a CDE, provided that the Fund determines that at least 20% of its governing board or advisory board(s) is representative of a cross-section (e.g., urban and rural) of LICs in its service area. Determinations regarding what constitutes a cross-section of a particular service area will be made on a case-by-case basis by the Fund. Organizations, particularly those serving multi-state geographies, may wish to establish multiple advisory boards in order to meet this requirement."

[25] CDE Certification Board Table pdf, available on the CDFI Fund's websites at https://www.cdfifund.gov/programs-training/certification/cde/Pages/default.aspx, accessed 10/31/20.

better align the CDFI and CDE Certification rules, simplifying reporting and regulatory requirements for Applicants participating in both programs.

Target Market Verification Processes

The revised Certification Application states that Applicants ***must*** use an approved Target Market verification process or a combination of approved processes to verify or qualify that their Financial Products or Financial Services meet the Target Market criteria.[26] Moreover, "only those Target Market verification process(es) approved by the CDFI Fund may be used when compiling Target Market data. Applicants may request approval of a Target Market verification process(es) not already accepted by the CDFI Fund however, to use a new Target Market verification process(es) when compiling Target Market data for the CDFI Certification Application, the new process(es) must be approved by the CDFI Fund prior to submission of the application. Approved CDFI Fund Target Market Verification Processes must be used exactly as approved unless and until modification of the process is authorized by the CDFI Fund."[27]

The proposed Target Market Verification Process policy raises a number of questions that have not been addressed in the revised Certification Application or elsewhere in the supporting documents. In particular:

1. Is there a list of "approved verification processes" and, if so, where can it be found?

   Question #11 of the Updated FAQs for the Proposed CDFI Certification Application, ACR & CTLR states that the CDFI Fund is "developing a comprehensive list of approved [Target Market verification] processes an entity may use without seeking prior approval and this list will be made available prior to the finalization of the revised application… Entities still will be able to request approval of a Target Market verification process(es) not already accepted by the CDFI Fund."[28]

   With all due respect, we find it *unacceptable* that the list of approved Target Market verification processes is still being developed and therefore, we are unable to comment or provide input on this crucial aspect of the Certification criteria.

   Recommendation: We *strongly* urge the Fund **not** to finalize the revised application until industry practitioners have had an opportunity to review and respond to this list of approved processes.

[26] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 57, accessed 10/14/20.

[27] Ibid.

[28] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Public%20Comment%20FAQ%2009242020.pdf Proposed CDFI Certification Application, ACR & CTLR – Request for Public Comment, Frequently Asked Questions Updated October 2020, Q.11, pg.8, accessed 10/16/20.

2. What is the process for requesting approval from the CDFI Fund of a new Target Market verification process?

   Question #12 of the Updated FAQs for the Proposed CDFI Certification Application, ACR & CTLR states that "Applicants or CDFIs requesting approval for a currently unapproved Target Market verification methodology will need to submit the request in writing for review. The details and timeframe for submission are under development."[29]

   Again, we are troubled that the process and the timeline for submitting unapproved Target Market verification methodologies to the CDFI Fund for approval have yet to be determined. It would appear the Fund has not anticipated or fully developed all aspects of the revised Certification Application and the supporting rules and/or guidance. The lack of detail and clarity makes it very challenging for CDFIs to operate, much less innovate new products and services, if they lack the certainty of how such offerings could affect their Certification Application and/or current Certification status.

   <u>Recommendation</u>: We *strongly* urge the CDFI Fund to develop and publish the details of this approval process prior to finalizing and implementing the revised Certification Application as well as the Annual Certification and Data Collection Report (ACR) and the Certification Transaction Level Report (CTLR), all of which will be directly affected by this process.

3. A large influx of requests to approve individual verification processes could overwhelm the CDFI Fund staff. How would such a situation be handled? What is the timeframe for review and approval of such a process?

4. Is there an opportunity to discuss or amend a proposed verification process should the Fund decline to accept a new verification process(es)?

5. What happens if you answer "No" to Question TM07? Would this prevent the Applicant from being certified without approval of its Target Market verification process? If so, this should be clearly stated in the Application along with guidance as to what Applicants in this situation should do.

As noted in our past comment letters,[30] many CDFIs serving an LITP Target Market qualify or verify that their loans serve their approved Target Market(s) by looking through the borrower to the "end user or beneficiary" of the financing being provided. For example, a loan to finance a multifamily affordable housing project using a government program, like the Low-Income Housing Tax Credit (LIHTC), qualifies as serving a Low-income Targeted Population based on program requirements mandating that a certain percentage of the housing units be rented to low-income families. Similarly, a CDFI making a loan to a charter school or a community health center may "look through" the project to the "end beneficiaries"

[29] Ibid, Q. 12, pgs.8-9, accessed10/16/20.

[30] See CRF's Comment Letters on the CDFI Fund's Certification Policies and Procedures, March 10, 2017, its Interim Rule implementing the CDFI Fund Program, October 26, 2015 and its Annual Certification and Data Collection Report Form, September 8, 2014.

using proxies, such as the number of students receiving free or reduced lunches or the number of Medicaid eligible patients, to verify the financing is serving low-income people. However, to the best of our knowledge, none of these practices have been approved by the Fund in regulation or guidance.

The situation becomes more nuanced when applied to small business lending activities since “end users or beneficiaries” are not as easily identified or measured. CDFIs with a LITP Target Market certification have developed their own methodologies for qualifying small business loans as serving low-income populations based on information demonstrating (1) the business owner is a low-income person (such as for microenterprise businesses); (2) the business is hiring low-income people; (3) the business provides jobs accessible to low-income people; or (4) the employees are residents of low-income communities. However, each of these methods may require the collection of sensitive or personal data and may be burdensome for small businesses with limited capacity. The absence of CDFI Fund guidance on how to verify that these loans are serving LITP “end users/beneficiaries” means each CDFI has developed its own approach and metrics for qualifying their small business loans balancing the need for information and the limited bandwidth of small firms.

The absence of uniform industry standards for CDFIs means these organizations run the risk of unintentional non-compliance. We have requested the Fund develop specific protocols for verifying different types of loans or investments with input from industry practitioners based on the nature of the borrower or project and the “end users/beneficiaries”. CDFIs should be permitted to use various proxies (as described above) to easily qualify their loans and demonstrate they are directing their lending to their approved Targeted Population (TP) Target Market(s). The Fund should not implement a policy on Target Market verification processes without first seeking comments and detailed input from the CDFI industry and interested stakeholders on specific proxies and/or methodologies to be used to qualify financing activities that support “end users/beneficiaries”. The list of proxies should be regularly updated as CDFIs are continually finding new ways to serve “end users/beneficiaries.

In the case of small business lenders serving a LITP Target Market, the Fund staff should solicit additional comments from CDFIs engaged in this type of financing to develop a specific set of protocols for this asset class. Due to the difficulties of qualifying all small business loans using a single methodology or measure, we recommend that CDFIs be allowed to demonstrate they are serving small business “end users/beneficiaries” based on one of the four approaches described above: lending to low-income business owners, businesses that hire low-income people; businesses that provide jobs accessible to low-income people; or whose employees live in low-income areas. There may be other ways to qualify small business loans serving “end users/beneficiaries” as well. We have provided additional comments in Certification Transaction Level Report (CTLR) section below where we also address questions related to LITP Target Market verification processes.

<u>Recommendation</u>: We ask the CDFI Fund to respond to all the questions noted above, and *strongly encourage* the staff to seek input and feedback from the CDFI industry on this critical aspect of the certification criteria. Not doing so, runs the risk of upending existing Target Market verification processes and practices that CDFIs have used for decades and could place their certification status in jeopardy. The approved Target Market verification processes must be clearly stated and must entail reasonable data collection requirements that do not impose an undue burden on CDFIs or their customers. Finally,

there must be a well-articulated path for Applicants to anticipate and address Fund staff concerns about the verification processes they propose to use. Without such assurances, new and existing CDFIs will be left in limbo, unable to deliver vital capital and credit to the communities and people that depend on them.

Question TM03.1 What type(s) of Financial Product(s) and/or Financial Service(s) is needed within the Investment Area but is not currently available at a level sufficient to meet the need?

Noticeably absent from the drop down list of options for this question is a "Small Business Loan" option. We distinguish a Small Business Loan from a Small Dollar Loan and/or a Microenterprise Loan on the basis of size. As a national SBA 7(a) lender, CRF generally originates loans above $150,000 and offers loans of up to $5 million under the program guidelines.

Recommendation: The CDFI Fund should add "Small Business Loan" to the drop down list included in Question TM03.1.

Question TM03.2 & TM03.3 Indicate the basis for the Applicant's determination that the Financial Products and/or Financial Services identified as being needed within the Investment Area are actually needed within the area.

Indicate the basis for the Applicant's determination that the Financial Products and/or Financial Services identified as being needed within the Investment Area are not currently available at levels sufficient to meet the existing need.

What information is the Fund looking for in these questions? Banks or other types of lenders may be present in a given area but may not making loans to borrowers typically served by CDFIs. Is the Fund asking if other lenders are offering loans with similar or equivalent terms and conditions? If so, this should be clearly stated. It should be noted that fintech lenders are active everywhere because they are online which makes these questions even more confusing.

Additionally, we are concerned that Question TM03.3 may unintentionally imply that there is a certain level at which Financial Product(s) and/or Financial Service(s) are deemed "*sufficiently available*". If such a level has been reached, would the Fund assume that additional Financial Products or Services are not necessary since the need has been met with an adequate supply? The dangerous assumption underlying this question is that the Fund is suggesting customers or organizations in Investment Area(s) should not have an abundance of credit options/services available to them, as is the case for customers in affluent areas. Instead customers in low-income areas are *only* require a *sufficient supply* of such Products and/or Services. We don't believe this is the Fund's intention and it should clarify this point in Question TM03.3.

Finally, these two questions are closely related and provide a clear example of where the revised Certification Application could be streamlined for efficiency purposes. Since both questions require the Applicant to provide a narrative, it would seem beneficial to combine the two into a single question and ask respondents to address both the *need* and the *current availability* of particular Financial Product(s) and/or Financial Service(s) within the Investment Area.

Recommendation: The CDFI Fund should clarify what information it is seeking in Questions TM03.2 and TM03.3 and that it does not intend to certify Applicants *only* when there is an *insufficient supply or level* of Financial Product(s) or Financial Service(s) to avoid the appearance of credit allocation or to suggest that customers operating in Investment Area(s) should not have choices when seeking such Products or Services. These questions should be combined into a single narrative.

Question TM07 Is the Applicant using a Target Market verification process that is not identified on the full list of approved CDFI verification processes to determine whether or not Financial Product transactions have been directed to an allowed Target Market?

This question allows the Applicant to respond either in the affirmative or the negative. However, Questions TM07.1 and TM07.2 are predicated on a "Yes" response and assume that the CDFI has obtained separate approval for such a verification process. It offers no path or guidance for entities that answer "Yes" to this question but *have not* secured separate approval of their Target Market Verification process.

Recommendation: This oversight should be addressed so Applicants know how to proceed if they are using a Target Market verification process that is not identified on the full list of approved Target Market verification processes and have not received approval from the CDFI Fund to use their process.

Development Services

Overview

Applicants seeking to be Certified as a CDFI must demonstrate a track record of providing (directly or through an Affiliate or a contract with another provider) Development Services in conjunction with its Financial Products or Financial Services. Development Services are activities that promote community development and prepare or assist current or potential borrowers to access a CDFI's Financial Products or Financial Services. These activities may include financial or credit counseling, homeownership counseling, and business planning.[31]

According to the Revision Quick Reference to the Proposed CDFI Certification Application "no substantive policy changes are being implemented in the Development Services section of the CDFI Certification Application."[32] However, the revised Certification Application characterizes a Development Service as "…a formal *stand-alone* (emphasis added) 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."[33]

Moreover, the revised Certification Application details a specific list of Development Service requirements including:[34]

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[31] https://www.cdfifund.gov/Documents/FY%2020%20CDFI%20Certification%20Quick%20Facts%2005052020%20508%20compliant%20FINAL.pdf, Proposed CDFI Certification Application, Request for Public Comment, Revision Quick Reference, Community Development Financial Institutions Fund , U.S. Department of Treasury, May 2020, pg. 10, accessed 10/16/20.

[32] Ibid.

[33] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 62, accessed 10/16/20.

[34] Ibid.

- Offering at least one Development Service;
- Demonstrating control over the content and delivery parameters of their Development Service(s);
- Clearly linking the Development Service(s) provided by the Applicant or a relevant Affiliate, to at least one of the Applicant's Financial Products or Financial Services;
- Making at least one Development Service available on an ongoing basis at least four times per year;
- Tracking delivery of and participation in the Development Service(s); and
- Tracking staff time spent on the administration and delivery of the Development Service, if the Applicant is the provider.

Publicly-available online training can be considered a Development Service only if the Applicant can demonstrate that it has a relationship with the developer of the training, either because the Applicant is the developer, an Affiliate is the developer, or the Applicant has a service agreement in place with the developer.[35]

The proposed Certification Application also describes those activities that CDFI Fund does not consider to be Development Services:[36]

- Training, counseling, or technical assistance not clearly intended to prepare consumers to access and/or be successful with a Financial Product and/or Financial Service offered by the Applicant.
- Making referrals, to training, counseling, or technical assistance services provided by other entities.
- Information presented in newsletters, flyers, or online.
- Workshops for children or conferences/workshops for broad audiences.
- Presentations made at one-off events or at regular events held by other entities.
- Marketing events/activities.
- Services provided at the will and discretion of other entities (e.g., publicly available online training).
- Non-structured conversations with consumers on Development Services subject matter.

Specific Topics / Application Questions

Changes to Development Services

Although the CDFI Fund asserts that it is not making any "substantive policy changes" to the Development Services section of the revised Certification Application, we are concerned by the subtle shift in the Fund's approach to this criteria. In particular, we were surprised by the addition of language characterizing Development Services as "a formal *stand-alone*"(emphasis added) training, counseling, or technical assistance service. This language was not contained in existing Certification guidance documents including, but not limited to, CDFI Fund Glossaries, the AMIS - Submission Guidance for CDFI Certification Application Updated – November 01, 2018, or the CDFI Certification Application Supplemental

[35] Ibid.

[36] Ibid.

Guidance and Tips Updated – November 01, 2018. The addition of this language raises the question as to whether the Fund has changed its view on what kind of technical assistance activities meet the definition of Development Services?

CRF has long provided Development Services in the form of highly customized, one one-on-one technical assistance (TA) to our small business customers seeking to access our loan products – especially our SBA 7(a) loan. This technical assistance, while focused on helping customers secure a small business loan, can be wide ranging, including but not limited to, developing financial statements and/or projections, preparing market analyses, restructuring existing debt to improve cash flow, building a borrower's credit profile, and explaining specific requirements of a loan product, like the SBA 7(a). To best support and strengthen the small business owner, these business advisory services are embedded in credit discussions with the prospective customer rather than being offered as a formal standardized offering. This form of TA has been at the foundation of CRF's lending process and is essential to how we offer our loan products. It is integral to the ability of our customers to be successful in using our Financial Products.

In addition to providing technical assistance directly to our customers, CRF frequently refers small business borrowers to local Small Business Development Centers (SBDCs) and business advisory organizations, like SCORE, that can provide specialized SBA expertise and knowledge that complements and augments the capacity of our staff. These referral recommendations are made to trusted partners to ensure that customers get the best possible advice and guidance when seeking a loan.

The nature, format, frequency, and amount of TA services provided to its customers should be left to the discretion of the individual CDFI. Every customer is different, and CDFIs have developed the necessary expertise to recognize and respond appropriately to each customer's needs. Some may require support from a CDFI while others may not. It is vital that the Fund maintain a flexible definition of Development Services so as to allow CDFIs to deliver the type and form of assistance that fits the needs of the customer rather than dictating a one-size-fits all approach to this important aspect of CDFI Certification. Inflexible parameters will limit CDFIs but even more importantly, they will rob customers, especially those that are underserved or operating in low- and moderate-income communities, of this critical element that can help them achieve their dreams through economic opportunity.

Recommendation: We urge the CDFI Fund to confirm its commitment to allow CDFIs to offer flexible, tailored, Development Services that reflect the needs of CDFI customers and the challenges they may be facing (e.g. the COVID-19 pandemic). Regardless of whether these services are delivered in person, through technology, as part of the lending process, and/or at a frequency that is best suited to the individual customer, it should be clear that such activities meet the criteria for CDFI Certification. Dictating the types of Development Services a CDFI provides to its customers will undermine the trust these organizations have built and the success they have achieved in helping to improve the economic health and well-being of low- and moderate-income communities and their residents.

Accountability

Overview[37]

Under the existing rules, a Certified CDFI must maintain accountability to its Target Market—the residents of an Investment Area(s) or members of a Targeted Population(s)—through representation on its governing board or advisory board. Currently, governing and advisory board members must represent both the Target Market(s) and the related geography(ies).

The revised CDFI Certification Application does not require there to be a geographic connection in order to satisfy board member accountability requirements. This is to conform with elimination of the requirement to identify geographic boundaries for most Target Markets.

An Applicant or CDFI must maintain accountability to residents of its Investment Area or Targeted Population, through representation on its governing board and/or advisory board(s). The CDFI Fund requires that a board consist of no less than three (3) members. In determining whether an Applicant maintains accountability to its proposed Target Market(s), the governing board structure must be assembled in the following manner: (1) at least one governing board member is accountable to each proposed Target Market; *and* (2) at least 33% of the governing board is accountable to the overall proposed Target Market(s).

Specific Topics / Application Questions

Accountability to National Investment Area Target Market

As noted in the Target Market section, CRF is extremely pleased to see the implementation of a National Target Market comprised of Investment Areas (IA) or eligible census tracts anywhere in the United States. This pre-qualified National IA Target Market is welcome news for CDFIs engaged in small business lending with a national service area and recognizes there is an *urgent* need for CDFIs to be able to respond to credit requests from potential customers in pre-qualified or eligible census tracts regardless of where they are located. We commend the Fund staff for taking this important step to enable CDFIs to serve the critical credit needs of their customers throughout the country.

[37] This section draws from two sources: https://www.cdfifund.gov/Documents/FY%2020%20CDFI%20Certification%20Quick%20Facts%2005052020%20508%20compliant%20FINAL.pdf, Proposed CDFI Certification Application, Request for Public Comment, Revision Quick Reference, Community Development Financial Institutions Fund, U.S. Department of Treasury, May 2020, pg. 9, accessed 10/16/20 and https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 68, accessed 10/16/20.

The Fund has also greatly simplified the Accountability requirements associated with CDFI governing boards as well as advisory boards. The new rules provide clear guidance to CDFIs as how many board members must be accountable to each proposed Target Market as well as the total percentage of board members that must be accountable to the overall proposed Target Market(s). This guidance will enable CDFIs as to create a board structure that meets the Accountability criteria – a welcome change.

Nonetheless, we believe additional clarification should be provided to CDFIs seeking to serve a National IA Target Market. The Fund should confirm that a CDFI with a National IA Target Market can meet its accountability requirements by including *at least* one member of a national organization on its governing board (assuming this accountability method is being used) who is an "*individual who works for (as an employee or board member) an organization that primarily provides services to residents of the Investment Area*."[38] (emphasis added) Of course the CDFI's governing board must meet *all* the requirements of the new rules outlined above. It might be helpful to provide an example of how a CDFI could meet this new accountability requirement for the purposes of CDFI Certification. Note, as we recommended in the National Investment Area / Targeted Population Target Markets section above, the Fund should consider aligning the Accountability criteria for National IA Target Markets with the guidance provided to Community Development Entities (CDEs) in the New Markets Tax Credit (NMTC) program by the Fund in its CDE Certification Question and Answer document.[39]

Related to the changes in Accountability criteria, we also assume if an Applicant or CDFI is approved to serve a National IA Target Market and demonstrates Accountability to this Target Market through its governing board, they would not be required to maintain previously established Advisory Board(s) that served as accountability mechanisms for one or more approved statewide or regional IA Target Markets. If an Applicant or CDFI can meet the Accountability requirements through its governing board under the new Certification criteria then these Advisory boards would be redundant though an entity might choose to keep and utilize them for other purposes (market research, partnership opportunities, etc.).

Recommendation: We encourage the CDFI Fund to issue additional clarifying guidance on two aspects of the Accountability requirements associated with the new National IA Target Market. First, we suggest the Fund provide specific guidance on the types of representatives of national organizations that could demonstrate accountability to this Target Market for CDFI Certification. Second, if a CDFI is able to satisfy the new Accountability criteria through its governing board, then such an entity would not be required to retain existing Advisory Boards previously established to comply with Accountability requirements for formerly designated statewide or regional IA Target Markets that are no longer applicable.

[38] https://www.cdfifund.gov/Documents/FY%2020%20CDFI%20Certification%20Quick%20Facts%2005052020%20508%20compliant%20FINAL.pdf, Proposed CDFI Certification Application, Request for Public Comment, Revision Quick Reference, Community Development Financial Institutions Fund, U.S. Department of Treasury, May 2020, pg. 9, accessed 10/19/20

[39] "The Fund advises entities that serve a large geographic area to appoint at least one person that is accountable to LICs throughout the service area to its board or advisory board. For example, an organization serving the entire nation should appoint to its board a staff person or a board member from a nationwide community development organization primarily serving LICs." New Market Tax Credit CDE Certification Question & Answer, Community Development Financial Institutions Fund, July 2005, pgs. 9 – 10.

Question #16 of the Updated FAQs for the Proposed Certification Application, ACR & CTLR

We are pleased to see Question 16 in the Updated FAQs clarifies that a board member of a CDFI *may* meet the Accountability test for more than one Target Market. Allowing board members to represent more than one Target Market will make it much easier for Applicants and CDFIs to have manageably sized governing boards while serving a diverse set of Target Markets. We applaud this change as it will enable us to expand our Target Markets to include Targeted Populations we are already serving but for which we could not be certified as the Accountability requirements would have made our governing board unusually large and potentially unwieldy.

Question #17 of the Updated FAQs for the Proposed CDFI Certification Application, ACR & CTLR

Do employees of a certified CDFI that serves a Targeted Population meet the accountability test to serve on the board of another entity serving that Targeted Population?

The CDFI Fund should further clarify of this question. It states that "An employee of a certified CDFI may meet the accountability test on the basis of her or his employment for a certified CDFI *only* (emphasis added) when serving as a board member for a CDFI with a Target Market of OTP-CDFI. An employee of a CDFI may still serve on the board of other CDFIs that do not have a Target Market of OTP-CDFI but must meet the accountability test based on other accountability criteria. For example, a Hispanic employee of a certified CDFI may meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-Hispanic on the basis of being a member of the Other Targeted Population. However, a white employee of a certified CDFI would not meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-Hispanic, even if the CDFI by which the board member is employed also has a Target Market of OTP-Hispanic. Either employee would meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-CDFI."[40]

We assume this question is *only* applies to the Accountability requirements for the governing boards of CDFIs serving OTP Target Markets and *does not* apply to such requirements for governing boards of CDFIs serving LITP Target Markets. We find it hard to believe that the CDFI Fund would not allow an employee or a board member of a CDFI (with an LITP Target Market) to provide accountability as a representative of an organization that serves low-income people or communities on the governing board of another CDFI. Otherwise, it would appear that CDFI employees / board members could *only* serve on the board of a CDFI that is serving other CDFIs (i.e. CDFI Intermediaries) or if the employee demonstrates accountability through another characteristic (such as race or ethnicity). This rule makes no sense for CDFIs with an LITP Target Market. In fact, it is common practice for leaders of CDFIs to sit on each other's governing boards to meet the accountability requirements for CDFI Certification as well as to provide their expertise and partnership opportunities. For

[40] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Public%20Comment%20FAQ%2009242020.pdf Proposed CDFI Certification Application, ACR & CTLR – Request for Public Comment, Frequently Asked Questions Updated October 2020, Q.17, pg.11, accessed 10/19/20.

these reasons, we believe the guidance provided in Question 17 was intended to focus *exclusively* on the accountability criteria for OTP Target Markets which mandates that board representatives be members of the OTP in order for them to be deemed accountable to the Targeted Population.

Recommendation: The CDFI Fund should clarify that Question 17 of the Updated FAQs applies *only* to the Accountability requirements for OTP Target Markets and not for LITP Target Markets. We do not believe the Fund intends to restrict the ability of CDFI employees and/or board members serving an LITP Target Market(s) to provide accountability to such populations when serving on the governing boards of other CDFIs with a similar Target Market(s).

CERTIFICATION TRANSACTION LEVEL REPORT (CTLR)

Overview

The Certification Transaction Level Report (CTLR) is a new reporting document intended to support both the revised Certification Application and the Annual Certification and Data Collection Report (ACR). Applicants seeking CDFI Certification and certified CDFIs that are not current Financial Assistance recipients and therefore do not submit an annual Transaction Level Report (TLR) to the CDFI Fund will be required to file this new report.

Questions Related to the CTLR

Will the methods for qualifying loans outlined in the CTLR be applied in the TLR which CDFIs that have received a Financial Assistance (FA) award are required to file? Specifically, will CDFIs filing the TLR be required to use the same methods for qualifying LITP loans as detailed in the proposed CTLR? If so, when will this new methodology be incorporated into the TLR and when will CDFI award recipients be required to comply?

Specific Topics/Questions

LITP End Users and Implications for Small Business Lending

The issue of which Target Market verification processes CDFIs use is extensively discussed in above (see Target Market Verification section). These processes are particularly challenging for CDFIs with LITP Target Market(s) engaged in small business lending. We will briefly recap several concerns discussed above related to LITP End Users.

The CTLR explicitly states that entities may code loans as serving an LITP Target Market however, such coding should be based on the collection of income data per the CDFI Fund's Regulations and the CDFI Fund's approved LITP income verification processes. For cases where the CDFI Fund has approved an entity's method to determine LITP End Users that method can be used to designate transactions as long as there is supporting documentation.[41] Similarly, the revised Certification Application states that "only those Target Market verification processes approved by the CDFI Fund may be used when compiling Target Market data" and refers CDFIs to "the full list of approved CDFI Fund verification

[41] https://www.cdfifund.gov/Documents/CTLR%20FINAL%20MAY%202020.pdf, Certification Transaction Level Report, pg. 4.

processes."[42] Unfortunately, as is explained in Questions 11 and 12 of the Updated FAQs for the proposed Certification Application, ACR and CTLR, the CDFI Fund is still "developing a comprehensive list of all approved processes an entity may use" as well as a "process for obtaining approval for a verification methodology that is not yet approved."[43]

Recommendation: The CDFI Fund should ***refrain*** from finalizing new CDFI Certification documents and criteria until practitioners and industry participants have a reasonable opportunity to offer comments and input on potential LITP Target Market verification processes and protocols. Without standard processes or guidance from the CDFI Fund and due to the significant challenges of collecting household (family) income from small business employees, many CDFIs developed their own verification methodologies by using proxies to confirm that their loans are being directed to low-income end users. This approach was modeled after similar practices used by CDFIs lending to affordable housing projects, charter schools, community health centers and other community organizations, where they routinely utilized low-income proxies (e.g. the Low Income Housing Tax Credit, students receiving free and reduced lunches, Medicaid eligible patients, etc.) to demonstrate that the end users or ultimate beneficiaries of their financing activities are low-income people. Small business lending CDFIs have relied on their own verification methodologies for many years, perhaps decades. To potentially upend them without a reasonable comment period and the opportunity to gain uniform Fund approval for a broader list of verification processes could have negative repercussions for the CDFI industry as well as the small businesses that depend on them.

CIMS Census Block Group Geocoding

To address the difficulties of collecting income data from small business employees, the CDFI Fund introduced its own proxy or alternative method for qualifying small business loans as serving LITP Target Markets. This approved alternative proxy method is known as Census Block Group Geocoding and would be available to CDFIs through the CDFI Information Mapping System (CIMS). According to the CTLR, "This proxy LITP method provides a standardized approach for determining LITP status that overcomes a data limitation that many CDFIs confront when attempting to implement the statutory guidance for collecting household income adjusted for family size. With the exception of mortgage loans, CDFIs and other lenders underwriting consumer and business loans typically do not collect information on family or household income adjusted for family size, which means they cannot readily confirm whether the loan meets the statutory requirements for a Low-Income Targeted Population. The LITP Census Block method provides an approved alternative approach for coding transactions that constitutes a safe harbor."[44]

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[42] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Application%20for%20Comment%20May%202020.pdf, CDFI Certification Application for public comment, pg. 57, accessed 10/14/20.

[43] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Public%20Comment%20FAQ%2009242020.pdf Proposed CDFI Certification Application, ACR & CTLR – Request for Public Comment, Frequently Asked Questions Updated October 2020, Qs.11 & 12, pg.8, accessed 10/20/20.

[44] https://www.cdfifund.gov/Documents/CTLR%20FINAL%20MAY%202020.pdf, Certification Transaction Level Report, pg. 4.

Question 13 of the Updated FAQs explains how the Census Block Group geocoder actually works. This LITP methodology uses a combination of a borrower's location and the income distribution of a Census Block Group. It generates a 12-digit code for a loan based on its geocoded location in a Census Block Group. Unlike the geocoding of Investment Areas (which are based on census tracts), the proposed LITP methodology would be based on an underlying Census Block Group's percentile distribution (i.e. the block group's rank compared to other block groups) of household income that is less than or equal to 80% of Area Median Income. This approach would enable CDFIs to code transactions as low-income based on a borrower's location in a qualified LITP census block group that is outside of a qualified Investment Area census tract.[45]

Our concerns about the Census Block Group Geocoder are three-fold. First, CDFIs are not familiar with and therefore do not understand the Census Block Group Geocoding method at this time. They need an opportunity to familiarize themselves with this proposed approach. Second, this new geocoding capability has not yet been built in CIMs as the Fund makes quite clear in Question 20 of the Updated FAQs.[46] Third, without the ability to test this LITP methodology, CDFIs engaged in small business lending have no way of knowing whether this alternative verification process will allow them to qualify their loans. Since most CDFIs have had their lending criteria and processes in place for many years, it is *essential* that they be able to determine if the loans they are making or have made would be deemed to be serving their LITP Target Market(s). If, for some reason, this alternative methodology is not a good fit for some CDFIs, the Fund should provide an expedited process to review Target Market verification processes developed by individual CDFIs to assure a smooth and uninterrupted transition to the new Certification rules.

Recommendation: The CDFI Fund should provide educational webinars on the Census Block Group Geocoder to help CDFIs understand this alternative LITP verification methodology. They should also make this new tool ***available as soon as possible*** in CIMS so CDFIs, especially small business lenders, can test this alternative approach. Along with this new geocoding tool, the Fund needs to provide a detailed process and timeframe for reviewing and approving LITP methodologies developed by individual CDFIs in the event that this tool is not a suitable option for some entities. Finally, the Fund ***should not*** implement a final set of revised and/or new Certification documents and criteria until CDFI practitioners and industry participants have had an opportunity to provide comments and feedback on both the Census Block Group Geocoder as well as the Fund's process for vetting other LITP Target Market verification processes.

ANNUAL CERTIFICATION AND DATA COLLECTION REPORT FORM (ACR)

Overview

Question Related to the ACR

[45] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Public%20Comment%20FAQ%2009242020.pdf, Proposed CDFI Certification Application, ACR & CTLR – Request for Public Comment, Frequently Asked Questions Updated October 2020, Q.13, pg.9, accessed 10/20/20.

[46] Ibid, Q. 20, pg.12.

Section 1. Primary Mission / Community Development Strategy of the ACR states, "*Currently certified CDFIs that received their certifications prior to the implementation of the revised application* ***will be required to submit a revised Certification Application separately*** *and will not be required to respond to this question in the ACR until such time.*"[47] (emphasis added) This statement makes it clear that currently certified CDFIs *will* be required to be recertified by submitting a revised Certification Application. This requirement is not stated in the revised Certification Application itself and should be clearly reflected in that document.

Recommendation: The CDFI Fund should clearly indicate that *all* currently certified CDFIs will be required to prepare and submit a revised CDFI Certification Application to demonstrate adherence to and compliance with the new Certification criteria once it has been implemented. The Fund should also provide a timeframe within which certified CDFIs will be expected to submit this Application and the process that will be used to ensure timely review and recertification of these organizations.

CONCLUSION

We appreciate the significant efforts of the CDFI Fund staff to strengthen the CDFI Certification criteria. This has been a long and challenging process due to the diverse CDFI landscape and the critical nature of preserving the CDFI "brand". Changes in product offerings and technology as well as dramatic shifts in the economic environment have added complexity to this effort.

In light of these factors, we respectfully request that the Fund look carefully at all the comments submitted by industry stakeholders before finalizing its certification policy. There are several aspects of the certification criteria that merit further industry input and where tools and processes necessary to implement this new rule have yet to be developed. The Fund should provide an opportunity for additional comments and input where appropriate to ensure the new policy is thoroughly considered and achieves the objectives the CDFI Fund has articulated.

Thank you again for your on-going efforts to support and grow the CDFI industry. We stand ready to assist you in efforts to strengthen CDFI Certification criteria. Please do not hesitate to contact me if you have any questions about the comments contained in this letter.

Sincerely,

Frank Altman
CEO

[47] https://www.cdfifund.gov/Documents/Annual%20Certification%20Report%202020%20Final.pdf, Annual Certification and Data Collection Report for public comment, August 12, 2019, pg. 3, accessed 10/21/20.

Community Reinvestment Fund, USA
Questions Regarding revised CDFI Annual Certification & Data Collection Report (ACR) and new Certification Transaction Level Report (CTLR) (7/04/20)

I. *Certification Transaction Level Report (CTLR)*

a. General
   i. Pleas clarify if the methods for qualifying loans outlined in the proposed CTLR will be applied in the TLR for CDFIs that have received an FA award are required to file? Specifically, will CDFIs filing the TLR be required to use the same methodology for qualifying LITP loans as detailed in the proposed CTLR? If so, when would this new methodology be incorporated into the TLR and when would CDFI award recipients be required to comply?

b. LITP end users as applied to small businesses
   i. Only those Target Market verification processes approved by the CDFI Fund may be used when compiling Target Market data," and refers to "the full list of approved CDFI Fund verification processes."
      1. Does such a list exist or is it being developed? If so, where can it be found?
      2. Does the list include methods to account for LITP end users by project type (e.g. affordable housing, community facility, charter school, health center, childcare center, etc.)?
      3. We assume these approved processes are an alternative to the CIMS Census Block Group method which would be used if the Applicant / CDFI did not wish to use an approved CDFI Fund verification process". Are we correct?
   ii. Could you clarify the process for obtaining CDFI Fund approval for a method to determine LITP end users as well as an expected timeline for this process? How would the Fund handle a significant influx of requests for approval of methods used by CDFIs for many years in a timely manner?

c. CIMS Census Block Group Geocoding
   i. Census Block Group geocoding is a new concept for many CDFIs. Could you clarify exactly what data is geocoded and how it is different from using Area Median Income as a factor in determining whether a census tract qualifies as an Investment Area?
      1. Is this geocoder being used to geocode the address of the business or the address of the employees?
         a. If the business address does not qualify the loan as serving an LITP Target Market, then would the geocoder be used to geocode the addresses of the employees though this could be a burdensome and challenging?
         b. If the Census Block Group geocoder is used to geocode employee addresses, how many employees would have to qualify as LITP in order for a loan to be deemed an LITP loan?
   ii. Please clarify how the Census Block Group geocoder would be used for qualifying small business loans? What data is being used to determine if the loan to a small business qualifies on the basis of its address?
   iii. Is the Census Block Group Geocoder currently available in CIMs today?

iv. Could the CDFI Fund staff demonstrate how this geocoder works? We strongly suggest the Fund offer 3 – 5 demonstrations so CDFIs could become familiar with how this geocoder works as well as producing a set of detailed instructions with screen shots to guide users through this process.

d. If a CDFI is unable to obtain the latitude and longitude from a GPS locator for a transaction that uses a P.O. Box address (as described on page 16 of the CTLR), is it simply impossible to qualify this transaction and if so, what are the implications for CDFIs with large numbers of transactions where only a P.O. Box address is available?

II. ***Annual Certification and Data Collection Report Changes (ACR)***

a. The Annual Certification and Data Collection Report is confusing with regard the Certification Transaction Level Report (CTLR). On the one hand, the CTLR is a requirement for CDFI Certification Applicants and certified CDFIs that are not current Financial Assistance awardees and therefore do not submit a Transaction Level Report (TLR). However, the CTLR appears to auto-populate several sections of the ACR. Please clarify, **must all currently certified CDFIs submit a revised Certification Application as well as a CTLR (even though they also submit at TLR because they have received a recent FA award)?**

i. Footnote #2 on page 2 of the ACR states "The Target Market Deployment test will use a certified CDFI's latest CTLR report of new originations combined with the last two years of originations from prior submissions (or at least the prior year's originations for newly certified CDFIs) to compute the proportion of transactions within qualified and approved Target Markets." If the CDFI is currently filing a TLR, why would it also submit a CTLR unless it was in the process of being recertified?

ii. Similarly, page 3, *Section 1. Primary Mission / Community Development Strategy* of the ACR notes, "Currently certified CDFIs that received their certifications prior to the implementation of the revised application **will be required to submit a revised Certification Application separately** and will not be required to respond to this question in the ACR until such time." This would suggest currently certified CDFIs will need to be recertified. Will they also be required to file a CTLR or will the TLR they are filing provide the same information that auto-populates the ACR?

CU Strategic Planning

September 2, 2020

Greg Bischak, Program Manager
Office of Financial Strategies & Research
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220
Via Email: CDFI-FinancialStrategiesandResearch@cdfi.treas.gov

Subject: Request for Public Comment: Annual Certification and Data Collection Report Form and the Certification Transaction Level Report, OMB Number: 1559-0046

CU Strategic Planning is a consultancy working with both CDFI certified and emerging CDFI credit unions across the country. On behalf of our clients we appreciate the opportunity to provide comments in response to the CDFI Fund's request for public comment on its proposed changes to annual certification requirements and the development of a Certification Transaction Level Report.

Public Policy Concerns

The CDFI Fund proposes the introduction of a new reporting Certification Transaction Level Report (CTLR) that would collect loan origination data annually for all non-FA Award recipients. While we appreciate the CDFI Fund's emphasis on creating data-driven and quantitative evaluation process that can be used to evaluate the effectiveness of certified CDFIs and CDFI applicants, we believe that the proposal is unduly burdensome.

The proposal increases the burden of becoming a CDFI considerably and disincentivizes participation in the CDFI Fund's certification process. Among first-time applicants, the difficulty of completing a CTLR will be made particularly difficult for organizations applying without the assistance of a third party expert. While this seems contrary to CU Strategic Planning's interests (as a third party expert), we believe that public policy should encourage organizations to become CDFIs and maintain the standards of a CDFI. We believe this public policy of encouraging organizations to become CDFIs is aligned with Congress' intent in establishing the CDFI Fund, and that CDFIs are perfectly poised to assist with economic and community development in America.

The proposal increases the burden of maintaining a current CDFI's certification far beyond the current annual reporting requirements. Realistically, we expect this burden to cause some CDFIs to withdraw from certification. During her comments before the CDFI Fund's Advisory Board Meeting this year, Inclusiv CEO Cathie Mahon indicated that obstacles to certification have resulted in the loss of 103 credit union CDFIs in recent years, and that many of these CDFIs served minority populations. If the CDFI Fund's current compliance requirements have resulted in the loss of this many credit union CDFIs, ramping up the burden associated with compliance will dramatically reduce participation in the program, reducing economic opportunity for underserved people and communities—the very mission of the CDFI Fund.

Grant recipients understand that grant reporting creates accountability and represents a trade-off to the receipt of federal funds. If adopted as proposed, we believe that the CDFI Fund's CTLR requirements would cause organizations to re-certify when anticipating a grant application, followed by de-certification following their required grant reporting creating a merry-go-round of organizations coming into and out of CDFI status and generating additional unproductive administrative burden for the CDFI Fund itself.

Specifically, because the proposed annual CTLR requirement mirrors many of the requirements of grant reporting, and because we estimate that, on average, grant reporting takes an average of 40 hours to complete (compared to an average of 13 hours needed to complete an Annual Certification Report under current guidelines), the CDFI Fund's proposal will create a regulatory burden of 27 additional hours to comply with the proposed requirement. A reporting requirement that directs an additional 27 hours away from mission-focused lending is simply too high, and for some organizations this burden will be much higher.

Technical Concerns

The CDFI Fund's CTLR proposal requires CDFI applicants and certified CDFIs that are not current active FA recipients to submit all new loan originations closed during the most recently completed fiscal year. This proposal creates some technical concerns.

Loan Sampling: Currently, the CDFI Fund's certification/ACR analysis allows for loan sampling. While it might sometimes be easier to simply submit all loans for analysis, submitting all loans can create an inaccurate portrait of an organization's lending over the short-term. For example, we'll often see one of our clients make one or two large commercial loans during a fiscal year, which can dramatically impact the analysis of dollars loaned to the organization's Target Market. Statistically valid loan sampling represents an important tool for illustrating true service to an eligible Target Market. If the CDFI Fund's analysis is based on 12-months of history in deploying Financial Products (and possibly Financial Services) to an eligible Target Market, depending on the volume of the applicant's lending, one commercial loan can dramatically impact and skew the results of the calculations used to determine whether the applicant is meeting its benchmarks. (Rural areas with a higher percentage of mailing addresses associated with P.O. Boxes represents another example of addresses that should probably be removed from an analysis rather than mapping the location of a consumer's local post office (or other P.O. Box provider).)

File Upload Capability: For other, large applicants, requiring 12-months of loan data represents its own challenge. Large credit unions can easily produce over 100,000 loans during a 12-month period. For grant reporting purposes AMIS has been unable to accept file uploads over 1,000 records. During grant reporting, this requires high-volume lenders originating 100,000 loans during a year to break their files into an estimated 100 separate uploads (issues that "time out" the upload appear to depend on file size, so it's difficult to estimate the exact number of loan files AMIS can routinely support before erroring out, however we've found that reducing the number of loan records to 1,000 or less generally circumvents the upload error). On several larger credit unions we've worked with, we've needed to enlist CDFI Fund staff support to be able to submit records. If the CDFI Fund is proposing that all certification applications and annual reporting include a full 12-months of lending data, we have concerns over whether the systems used to collect the data can support it.

Community Investment Mapping System (CIMS) Capability: The CDFI Fund's CTLR proposal continues to rely on CIMS to geocode transaction addresses. It's worth noting that CIMS continues to produce errors that add time and burden to processes that rely on it, producing enigmatic error codes or becoming seemingly unavailable for hours or days on end.

Proxy LITP Safeharbor: Section I, Footnote 3 (page 4) of the proposal describes a safeharbor approach for determining LITP status when a lender doesn't have information on family size. This LITP Census Block method for determining LITP status is very helpful and creatively overcomes a difficult barrier to determining LITP status.

CTLR for Financial Services: Section III (page 6) of the proposal allows a CDFI to document Financial Services based on qualified Investment Area and LITP Census block assessments. This method is very helpful and creatively overcomes a difficult barrier for organizations that are providing Financial Services to a consumer, but haven't collected information on the consumer's income.

Geocoding CTLR Addresses: The CDFI Fund's proposal recognizes that P.O. Boxes aren't often precise enough to geocode because they often cross Census Tract boundaries. The proposal requests the input of a transaction's latitude and longitude derived from a GPS locator. However, if an organization does not have the street address of a consumer's home or business, the only latitude and longitude that could be derived using technology would be the latitude and longitude of the consumer's P.O. Box. Again, we'd suggest that P.O. Box addresses simply be removed from the analysis unless the organization has location information in addition to the consumer's mailing address.

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Broad public policy should encourage organizations with a community development mission to apply for and maintain CDFI certification, which represents a laudable and recognizable credential. We respect the CDFI Fund's mission of protecting the "CDFI brand" by ensuring that all certified applicants meet reasonable benchmarks, and its desire to develop a more data-driven and quantitative evaluation of CDFI applicants and CDFI performance, however, the CDFI Fund's CTLR proposal adds substantive burden and creates a tangible, measurable disincentive to CDFI certification—a policy not aligned with Congress' intent in creating and encouraging those organizations with a community development mission.

The CDFI Fund's proposed certification changes are clearly the product of much time and intensive effort. Thank you for the opportunity to provide our input on this important proposal. As always, if you have any questions concerning these comments, please do not hesitate to reach out.

Respectfully yours,

Stacy S. Augustine
President/CEO

Credit Union National Association
CUNA

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November 5, 2020

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

Re: Comments on the Proposed CDFI Certification Application, the Annual Certification and Data Collection Report, and the Certification Transaction Level Report

Dear Sir or Madame:

The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members. On behalf of our members, I am writing in response to the Community Development Financial Institution (CDFI) Fund' (the Fund) notice and request for public comment on the CDFI Certification Application.[1] This CDFI Fund also issued a contemporaneous notice and request for public comment concerning the Annual Certification and Data Collection Report Form (ACR) and the Certification Transaction Level Report (CTLR).[2]

Background

CDFIs are specialized financial institutions that work in markets that are underserved by traditional financial institutions. These entities, including many CDFI certified credit unions, are charged with supplying low-income, financially distressed communities with banking services and offering individuals the tools needed to become self-sufficient stakeholders in their own future. A financial institution seeking to become CDFI-certified and gain access to financial assistance from the CDFI Fund must complete the CDFI Certification Application.

The CDFI Fund recently proposed potential revisions to the CDFI Certification Application as part of its ongoing review of policies and procedures. This review is intended to ensure the program continues to meet certain statutory and regulatory requirements, is responsive to the evolving nature of the CDFI industry and protects government resources. In a related notice, the CDFI Fund has proposed several revisions to the data points for the ACR and adoption of a new CTLR, which would provide a standardized data collection capability.

General Comment

While CUNA supports the CDFI Fund's ongoing efforts to evaluate and consider the efficiency and relevance of its certification and monitoring process, we strongly believe the proposed revisions to the

[1] Notice of Information Collection and Request for Public Comment, 85 Fed. Reg. 27275 (May 7, 2020).
[2] Agency Information Collection Activities; Proposed Collection: Comment Request, 85 Fed. Reg. 27274 (May 7, 2020).

certification application fail to achieve these goals nor would they further the purposes of the CDFI Program. In fact, the proposed application changes could ultimately serve as unnecessary barriers for qualified credit unions to access the CDFI designation. In addition, the proposed amendments were not supported by relevant research, not developed in coordination with relevant stakeholders, and do not clearly state how and why the current program application needs such substantial revision. As a result, the proposed application would ultimately discourage new credit unions' interest in the CDFI program and could potentially harm the credit unions currently participating.

Credit unions are and have always been deeply committed to serving their communities and, without credit unions' active participation in the CDFI program, these communities would be further disadvantaged. We strongly encourage the Fund to reconsider its proposed amendments and refocus its efforts on finding ways to encourage, rather than discourage, participation from community-based credit unions.

The Proposed CDFI Certification Application is flawed and should be reconsidered

Credit unions are community-based, not-for-profit depository institutions subject to rigorous regulatory oversight, regular examinations, public reporting, and member accountability. The proposed CDFI Certification ignores the complex regulatory environment surrounding credit unions and fundamentally misunderstands their structure and mission.

In the proposed Basic Information section, the proposal would include ten questions requiring a credit union to demonstrate its board is democratically elected. As all credit unions are required *by law* to be democratically controlled cooperatives, the addition of multiple questions on this subject is redundant and unnecessary. In the aggregate, this proposal would only serve to increase the time and cost to complete the CDFI Certification Application, which could have a detrimental effect on participation.

Similarly, the proposed Primary Mission section fails to recognize that CDFI-designated credit unions already operate pursuant to comprehensive regulatory requirements implemented by the National Credit Union Administration (NCUA) and the Consumer Financial Protection Bureau (CFPB). Under the regulation and supervision of these federal regulators, not to mention relevant state laws, credit unions comply with a host of rules meant to be a safeguard against anti-consumer products and practices. Despite this fact, the proposed Primary Mission section would add a series of questions about each and every financial product and service offered by the credit union – all in the name of demonstrating the credit union is complying with CDFI principles. These additions would unjustifiably add to the overall time and cost of completing the CDFI application.

It is particularly troubling that the proposed application would ask additional questions for all the applicant's product offerings regarding the annualized rate of interest and other fees charged to borrowers. In particular, for purposes of calculating this rate, the Fund would require applicants to use the methodology prescribed in 32 CFR § 232.4 of the Military Lending Act (MLA) (referred to as the Military Annual Percentage Rate (MAPR)) – irrespective of the borrower's status as an active duty servicemember or dependent. Evaluating all products using the MAPR would not only misunderstand the MLA's definition of a covered borrower, but is an attempt to create an across-the-board standard for evaluating consumer financial products that does not reflect the realities of the consumer credit market nor how finance charges are calculated for non-MLA borrowers. If adopted, these questions could inadvertently result in the arbitrary cessation of or reduction in the availability of products that might have a *seemingly* high MAPR or "all-in" cost of credit but reflect reasonable pricing determinations.[3]

In addition, federal credit unions, unlike other financial institutions, comply with a usury cap determined by the Federal Credit Union Act and the NCUA Board.[4] The current 18 percent cap applies to all federal credit union loans except originations made under NCUA's consumer-friendly Payday Alternative Loan program, which are capped at 28 percent.[5] NCUA's long held practice is to follow the definition of "finance charge" found in section 1026.4(a) of Regulation Z, <u>not</u> the MLA's "all-in" MAPR, to determine compliance with the usury cap.[6] State-chartered credit unions comply with usury laws set by their respective jurisdictions. Using the MAPR as the exclusive lens through which to evaluate all consumer credit products is inappropriate and we strongly object to the CDFI Fund adopting this change.

While CUNA agrees the CDFI Fund should seek to ensure that entities receiving its certification reflect the Fund's principles, we are concerned that the proposed certification application changes could create unnecessary barriers to accessing the program for community-based credit unions. The Fund should reconsider this proposal and instead focus on evaluating its credit union participants by further developing a partnership with the NCUA and using the information collected by NCUA during its routine examination process to encourage greater CDFI participation.

<u>Conclusion</u>

On behalf of America's credit unions and their 120 million members, thank you for the opportunity to share our thoughts on the CDFI Certification Application. If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 508-3629 or amonterrubio@cuna.coop.

Sincerely,

Alexander Monterrubio
Senior Director of Advocacy & Counsel

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[3] For example, a Pennsylvania state-chartered credit union could offer a consumer-friendly small dollar closed-end loan through the Credit Union Better Choice program. These loans are endorsed by state authorities and feature a 21 percent interest rate, a 90-day maximum term, a loan amount is $100-500, a $25 application fee, and include a savings component. However, these loans – despite their pro-consumer nature – would be considered to have a 51.46 percent "all-in" APR or MAPR.

[4] 12 U.S.C §1757(5)(A)(vi)(I).

[5] 12 CFR 701.21(c)(7)(A).

[6] *See* NCUA Legal Opinion Letter, 91-0412 *available at* https://www.ncua.gov/files/legal-opinions/OL1991-0412.pdf; see also 12 CFR 226.4 (2010).

From:	CCME
To:	Dickens, Michelle
Subject:	FW: Comments on CDFI Certification Application--Submitted by the Economic Opportunities Fund
Date:	Thursday, November 5, 2020 9:28:59 AM

From: Lynne Cutler <LCutler@worc-pa.com>
Sent: Wednesday, November 4, 2020 6:19 PM
To: CCME <ccme@cdfi.treas.gov>
Subject: [EXTERNAL]Comments on CDFI Certification Application--Submitted by the Economic Opportunities Fund

Dear Ms. McInnis:

The CDFI Fund is adapting its verification process relating to Applicants' status as community development-focused organizations and requests comments on proposed changes. The Economic Opportunities Fund (EOF) is raising concerns about two aspects of these proposed changes in the CDFI recertification process:

Key Definitions of Financial Products (p 4)

In the Definition section, it is stated that the CDFI Fund recognizes loans as a type of Financial Product but it stipulates that this "does not include forgivable loans, unless pre-approved by the CDFI Fund". Regarding loan products such as paycheck protection, EOF recommends that forgivable loans—especially those funded by the Federal government—be included automatically.

Accountability (p 68)

The new guidance on formally established board and advisory council structures removes the geographic connection from the source of board member accountability to conform with the removal of the geographic boundaries for most Target Markets. It sets clear board member percentage standards: Applicants with formally established governing boards must demonstrate that —

BOARD

- At least one governing board member is accountable to each proposed Target Market component; and
- At least 33% of the governing board is accountable to the proposed Target Market(s)

ADVISORY BOARD

- At least one advisory board member is accountable to each proposed Target Market;
- At least 60% of the advisory board is accountable to the proposed Target Market(s);
- At least 20% of the governing board members are accountable to the proposed Target Market; and
- At least one governing board member has a seat on the advisory board.

The new criteria present a challenge for EOF which has, in the past, achieved accountability through a combination of its Board and Advisory Board. The Advisory Board, which reviews all loan applications, is comprised of lenders, community representatives and small business owners. In the past, EOF used its Advisory Board as a supplement to its Board to meet its target market as well as to garner the Advisory Board members' specialized skills—e.g., lending.

Thank you for your attention to these matters.

Sincerely,

Lynne Cutler
President
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President
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Tanya McInnis
Program Manager for the Office of Certification,
Compliance Monitoring and Evaluation
CDFI Fund
1500 Pennsylvania Avenue NW.
Washington, DC 20220

November 4, 2020

Dear Ms. McInnis,

RE: Request for comments on CDFI Certification Proposed Changes, Federal Register Vol. 85, No. 89, Thursday May 7, 2020

Founded in 1983, Enterprise Community Loan Fund, Inc. (ECLF) is a high performing national CDFI and part of the capital platform of Enterprise Community Partners, Inc. ("Enterprise") and Affiliate organizations. ECLF works with Enterprise local markets to identify financing gaps and evaluate high priority projects, leveraging each market's expertise and technical assistance with our investments to serve low income families and communities. Over the course of its almost 30-year history, ECLF's cumulative loan volume (including commitments) of over $2.1 billion has generated significant measurable impacts. In the affordable housing sector, ECLF has supported the development or preservation of over 119,300 affordable housing units. As an organization with a strong track-record in community lending, we believe that the rules and policies for becoming a CDFI and maintaining that status are critical for maintaining the integrity of the CDFI industry.

We thank the CDFI Fund for the opportunity to provide feedback on the proposed changes to the CDFI Certification application. We appreciate the CDFI Fund's ongoing engagement with stakeholders and encourage Treasury to continue to work with the public as CDFI Certification policies and procedures are updated. While we are supportive of the majority of the proposed changes, we have several comments and suggested language. Our goal in making these suggestions is to ensure that the proposed language does not have the unintended consequence of creating barriers for long standing and new CDFIs to continue to serve distressed communities. We offer the following comments with respect to the proposed changes in the CDFI Certification Application under Section III - Primary Mission and Section VI - Accountability as issued by the CDFI Fund:

Section III Primary Mission

The CDFI Fund is proposing to implement a new Primary Mission standard by reviewing the mission, community development strategy, and responsible financing practices of the certified CDFI applicant and each Affiliate providing Financial Products and/or Financial Services. Applicants must evidence their Primary Mission of promoting community development, as well as that of their Affiliate entities, through legal entity documents, bylaws, governing or managing board resolution, or owner resolution/directive. We are supportive of most of the proposed changes under the Affiliates definition and suggest that the language be broader as many CDFIs have affiliates that serve and support low income communities, though the mission of these affiliates may be broader in scope and therefore not their "primary" mission. The organizational structure of many CDFIs and their Affiliates are diverse and encompass varying operational and legal structures. While the organizational documents of CDFI Affiliates may reflect a broad mandate of permissible corporate purposes, CDFI Affiliates often operate in a manner that is substantially mission-aligned with CDFI applicants and parent entities, by devoting substantial operational and financial resources towards activities to support their missions of serving low income communities.

ECLF has the following recommendations:

1. **The CDFI Fund should look at "primary" mission more broadly.**
   Many CDFIs have numerous Affiliates that support and act in furtherance of their mission of serving low income communities and community development, (e.g., through their operations, revenues, and staff), though such Affiliates may not have a stated primary purpose of promoting community development in their constitutive documents. Often, these Affiliates are created by a charitable parent entity for legal and financial reasons and ultimately support the CDFI Certified Applicant and/or parent company's mission to support low income communities and community development.

2. **Affiliates of nonprofit CDFIs contributing cash or other resources to the CDFI Certification Applicant, Affiliates and/or the Parent Company, should satisfy the primary mission test as long as such contributions serve distressed communities.**
   Enterprise's founder, Jim Rouse created the organization's structure with a parent company and Affiliates based on a guiding principal that a diverse organizational structure allows organizations to approach their collective mission with the highest possible impact. Enterprise Affiliates contribute funds to the parent entity to further Enterprise's Certified CDFI and community development mission.

3. **A CDFI Certification Applicant Affiliate which serves underserved markets through approved federal affordable housing programs, such as Fannie Mae, Freddie Mac, FHA, and USDA, should be deemed to satisfy the "Documenting Mission and Community Development Strategy" test.** CDFI Certification Applicants or Affiliates that provide loans through these highly-regulated federal programs, which are directed by statute to underserved communities, should automatically meet the Documenting Mission and Community Development Strategy sections of the Primary Mission test.

As stated above, we recommend greater flexibility regarding the definition to account for a CDFI Certification Applicant that has Affiliates whose revenue contributions support the CDFI Applicant and/or parent company, along with mission-aligned work in supporting underserved markets through approved federal government programs. We propose the following language under the "Affiliates" definition:

"***Affiliates***: *Parent entities of all Applicants for CDFI Certification, as well as any of their Affiliates that provide Financial Products or Financial Services must provide evidence ~~of a~~*

~~primary mission of community development~~ ***<u>that their activities are mission aligned with the CDFI Applicant and supporting community development activities</u>****, except if the parent or Affiliate is a tribal government (enhancing an existing rule currently applied solely to DIHCs, Affiliates of DIHCs and Subsidiaries of insured depository institutions).”*

Section VI Accountability

Current Certification requires a CDFI must “maintain, through representation on its governing board or otherwise, accountability to residents of its Investment Area or Targeted Population.” The current policy allows for Target Market accountability to be met through representation on a CDFI governing board and/or advisory boards, but also allows CDFIs to demonstrate accountability through other means as well.

The CDFI Fund is proposing more stringent requirements that CDFIs may only meet their accountability requirements through either governing boards or advisory boards as follows:

- Demonstrating that at least one governing board member is accountable to each proposed Target Market component and at least 33% of the governing board is accountable to the proposed Target Market overall; OR
- Demonstrating that at least one advisory board member is accountable to each proposed Target Market component; and
    - 60% of the advisory board is accountable to the proposed Target Market overall;
    - at least 20% of the governing board members are accountable to the proposed Target Market (with no specific representation required); and
    - at least one governing board member has a seat on the advisory board.
- Applicants without a formally established governing board must demonstrate that at least one advisory board member is accountable to each proposed Target Market component; at least 80% of the advisory board members are accountable to the proposed Target Market overall; and at least one partner/owner/management leader has a seat on the advisory board.

We agree that a Certified CDFI must maintain accountability to its Target Market through representation on its governing board and/or advisory board through the parent company and/or Affiliates. The representation should be reflective of either residents and/or members that serve the Targeted Population and/or Target Market. However, it is important for CDFIs to be able to recruit the most qualified and suitable board members and advisory members who align with their strategic and operational plans. Most specifically, for national and/or regional CDFIs that serve a diverse population and operate throughout the country, CDFIs need flexibility to manage these boards to accommodate shifting priorities and markets. Additionally, CDFIs with small boards are challenged to identify people who have the capacity to sit on both the CDFI’s advisory board and on the CDFI’s governing board.

Therefore, we suggest that the proposed language about governing board and advisory board accountability, as well as those requirements around specific percentages for representation be eliminated and continue to follow the current accountability requirements. This would allow CDFIs with an established and robust commitment from its boards to maintain the flexibility to recruit board members and advisory members who bring a diverse set of experiences and skills. A

CDFI that is able to demonstrate representation reflective of the interests of "end-beneficiaries" on its governing and/or advisory board should be deemed to satisfy this threshold without being subject to the new prospective requirements.

We appreciate the opportunity to comment and look forward to answering any questions you may have.

Sincerely,

Lori Chatman

Lori Chatman
President
Enterprise Community Loan Fund, Inc.

November 5, 2020

Ms. Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund
US Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: FUND Consulting Response to Proposed CDFI Certification Requirements

Dear Ms. McInnis:

FUND Consulting submits these comments in response to the Community Development Financial Institutions (CDFI) Fund's Request for Public Comment on the CDFI Certification Application. FUND Consulting strongly supports the CDFI Fund's efforts to create a streamlined and transparent process for CDFIs to apply for their Certification. Our comments below are organized to respond to the different sections of both the CDFI Certification Application as well as to answer the questions raised in the Notice and Request for Information.

Since 2000, FUND Consulting has worked with more than 350 CDFIs nationwide, including CDFI banks, credit unions and loan funds. FUND Consulting has helped these CDFIs gain and maintain CDFI Certification, follow CDFI Fund compliance goals, and raise capital, including through the successful submission of CDFI Fund grants and allocations totaling more than $582 million. FUND Consulting has also assisted CDFI clients in increasing their capacity by understanding their markets, evaluating the effectiveness of their programs, developing their boards, and creating strategies to manage growth and maximize impact. During this time, FUND has worked on more than 450 CDFI Certification and Recertification applications.

CERTIFICATION REPORT

FUND Consulting appreciates the thoughtfulness that CDFI Fund staff have brought to the work of updating the CDFI Certification application to ensure that requirements are in line with the CDFI mission while allowing increased flexibility to organizations in meeting the Certification criteria. While in some cases these changes will result in additional complexity for applicants to navigate, this increased flexibility will benefit many CDFIs. The proposed special provisions relating to spinoff entities and those seeking Certification solely to participate in the Bond Guarantee Program are two examples of this flexibility.

There are also aspects of the proposed application that will add complexity or burden to applicants without a clear benefit to CDFIs. In some cases, these changes seem to be driven by a desire for improved data on the CDFI industry. FUND Consulting recognizes that this data collection is a legitimate function for the CDFI Certification application to serve. However, at points there may be tradeoffs between this goal and the goal of an application that can be readily navigated and completed by applicants. As an example, when completing the Basic Information section, applicants will be asked to complete an array of questions for each of their products, such as providing the earliest date that a transaction in each product was closed, in addition to providing a “free response” description for each. Many CDFIs offer dozens of products, and the requirement to provide these details for each product offered by the applicant and any affiliates may add considerable burden. As an alternative, the CDFI Fund may consider requesting this level of detail at the level of product purposes, so that applicants could instead describe the range of their product offerings within a given purpose rather than describing each product offering separately. FUND Consulting believes that this change would both reduce applicant burden and improve the quality of information provided by applicants.

The ultimate utility and burden of many of the proposed changes will depend on the implementation of the new application requirements, such as the timeframe for existing CDFIs to meet the new requirements and the functionality of the new CTLR report within AMIS. FUND expresses confidence that the CDFI Fund staff will bring the same level of thoughtfulness to these details as has been demonstrated by the process thus far.

Relating to the question of implementation of the new Certification application, FUND believes that implementing quarterly deadlines for submission of new Certification applications would make the process more time intensive for applicants. There are often technical issues relating to the application and particularly the CIMS mapping system that require follow-up with CDFI Fund staff. Navigating these issues could prevent applicants from submitting ahead of the submission deadline, even if they have started the application process well ahead of time. The introduction of the CTLR is likely to increase the need for this type of follow-up, causing more organizations to miss quarterly deadlines.

LEGAL ENTITY REQUIREMENT

FUND recognizes that the Legal Entity section of the application is substantially unchanged from the current Certification process and does not have comments to share relating to this aspect of the application.

PRIMARY MISSION REQUIREMENT

FUND recognizes that the changes to the Primary Mission requirement are being proposed in order to collect additional detail to verify that applicants are carrying out their stated missions of improving the economic conditions of underserved people and residents of distressed communities. FUND believes that the structure of the Primary Mission section can be improved to capture this detail in a manner that is more in line with the way that organizations think about their mission and work. Additionally, FUND believes that additional clarification is needed to describe how responses to the Primary Mission section of the application result in an applicant meeting or failing to meet the requirements for Certification.

Requiring applicants to articulate their community development strategy as it relates to their mission and work is certainly a reasonable addition to the CDFI Certification application. However, FUND believes that the proposed structure of the community development strategy, with applicants selecting objectives from a list that are then individually associated with outcomes that are in turn associated with discrete qualities of product offerings, is not in line with the way that organizations conceive of their work. Further, given that the product characteristics listed seem to have been selected because of their benefit to underserved populations, it is not clear what utility is added by the requirement that applicants provide support for the positive impacts of each individual product characteristic. FUND believes that this structure will add burden to the process of completing the application without improving the quality of information collected by the CDFI Fund.

As an alternative to this structure, FUND recommends that the CDFI Fund instead ask applicants to describe their community development strategy as referenced in their internal business planning documents and ongoing business practices. After articulating this strategy in their own terms, applicants could then be asked to describe how their products and services carry out this strategy and achieve impacts in the community. While this method would be more in line with the Primary Mission section of the Certification application as it currently exists, the requirement that applicants reference internal planning documents would help ensure that CDFIs set community development objectives and plan their activities in order to accomplish these objectives. This alternative structure would not result in standardized data among applicants as the current proposed structure would facilitate, but it would likely improve the ability of applicants to meaningfully convey their strategy and how they execute it, improving the CDFI Fund's ability to evaluate their fulfillment of the Primary Mission requirement.

If the CDFI Fund prefers to leave the current structure as it has been proposed, applicant burden could be reduced by requiring PM13 responses only when applicants select product characteristics of "Other."

FUND recognizes that the range of information requested in the "responsible financing practices" section is relevant to the question of Primary Mission and that the CDFI Fund's ability to evaluate these practices is an important component of deciding whether an organization is carrying out a community development mission. FUND notes that while product interest rates are mentioned in the financial product descriptions component of the Basic Information section, applicants are not currently instructed to provide their products' rates in any standardized fashion—the CDFI Fund may wish to explicitly request that applicants provide weighted average interest rates for each product category in order to ensure standardized information is provided among applicants.

FUND understands that as part of the public comment process the CDFI Fund is currently evaluating whether any particular activities should be required or prohibited for organizations to be certified as CDFIs. Once the CDFI Fund has arrived at a decision regarding this question, FUND urges that the application state transparently whether any of particular responses, such as the use of debt collectors, or a failure to offer low-cost checking accounts, would result in the applicant not meeting the Primary Mission requirement. This transparency would ensure that organizations are able to modify their activities where necessary to meet best practices in the CDFI industry and comply with CDFI certification requirements.

Finally, FUND recommends that applicants be given the opportunity to explain responses to questions PM25-28 if not attesting affirmatively.

FINANCING ENTITY REQUIREMENT

FUND appreciates the CDFI Fund's changes to the Financing Entity test and believes that the proposed changes will allow a greater number of entities engaged in financing activity in underserved and economically distressed communities to gain CDFI certification. In particular, FUND is strongly supportive of two of the proposed changes to the Financing Entity requirement. First, FUND strongly believes that the CDFI Fund's updated definition of predominance, that the provision of financial products and services no longer needs to represent the majority of a CDFI's assets and staff time, but rather, needs to be the activity that represents the greatest share of assets and time, will be extremely beneficial for many CDFIs, particularly those engaged in real estate development. Second, FUND believes that the provision for Spinoff entities will aid larger organizations in leveraging existing resources to reduce the time needed to apply for Certification while still ensuring that the newly certified entity meets all of the criteria for CDFI certification.

TARGET MARKET REQUIREMENT

FUND Consulting is strongly supportive of the CDFI Fund's proposal to remove geographic boundaries from CDFI Target Market lending. FUND believes that this change will enable CDFIs to be more responsive to geographic shifts in where distressed and underserved communities are located within their Target Markets over time. FUND also strongly supports the CDFI Fund's proposal to assess Target Market lending based on a three-year average for currently Certified CDFIs. FUND believes this proposal will generate many benefits for CDFIs as well we the communities they serve, including:

- Providing CDFIs with much needed flexibility during natural disasters and economic downturns;
- Enabling CDFIs to ensure the long-term financial stability of their organizations;
- Allowing CDFIs to more rapidly respond to geographic shifts in need and demand within the communities they serve;
- Reflecting more accurately a CDFI's ongoing ability to serve their identified Target Market.

FUND also believes that Custom Investment Areas (IAs) serve a critical role for many CDFIs who are committed to meeting the financial needs of underserved and distressed communities within a distinct geographic area. While IA qualified census tracts provide CDFIs with a rough guideline of where some of the areas of greatest economic distress are in the communities they serve, census tracts may not accurately portray economic distress on the ground for several reasons:

1) Tract level IA qualification is based on American Community Survey data from a distinct point in time that is only updated once every five years. As such, this data does not reflect the impact that either local or national economic cycles can have on a community and can quickly become outdated, particularly in period of economic downturns. For example, the CDFI Fund's current IA Qualified tracts are based on American Community Survey 2011-2015 5-Year data estimates. This data reflects a period of overall national economic prosperity when poverty and unemployment were at record lows and income was at a record high. Today, the country is on the brink of experiencing the most severe economic downturn since the Great Recession as a result of the COVID-19 pandemic. Many communities that are currently considered to be located in non-qualified tracts are facing widespread unemployment, rising poverty rates, and plummeting income. CDFIs should not be discouraged from serving these communities simply because they were not considered qualified five years ago in 2015.
2) Economic distress is not consistent across a census tract and is not bound by census tract delineations. In FUND's 20 years of experience, we have found that, for CDFIs serving IAs, lending in non-qualified

tracts is frequently located in tracts that are contiguous to qualified tracts. In many cases, the difference between lending in a qualified or non-qualified tract is a matter of crossing a street. This does not mean that this lending is less beneficial or that the business or person that received financing is located in an area that is not distressed. It simply points to the limitations of solely tract-based qualifications.

3) The benefits of investing in economically distressed communities are also not bound by census tract borders. For example, investing in a small business that is close to IA qualified census tracts but not in a qualified census tract does not mean that residents of the IA qualified tracts will not benefit from that business's products and services or the employment opportunities that small business provides.

While FUND appreciates that the CDFI Fund intends to maintain the ability for CDFIs to serve a Custom IA, FUND believes that the proposed CDFI Certification guidance disincentivizes the use of Custom IAs. FUND strongly believes that the new requirement that 85% of a CDFI's activity within a Custom IA occur within qualified census tracts will be extremely harmful for CDFIs with Custom IAs, and, in particular, for CDFI banks that primarily serve urban areas. Of the 22 clients that FUND currently works with to assess Target Market lending in the first 6 months of their FY2020 that have a Custom IA, 82% would not be able to meet the new 85% criteria based on current lending activity. To better understand why this is the case FUND analyzed where the Custom IA lending in non-qualified tracts occurred within the Custom IA for a sample of clients. FUND's analysis showed that much of this lending is in non-qualified tracts that are contiguous to qualified tracts in the Custom IA. Therefore, these CDFIs are not intentionally targeting activities in communities that are not economically distressed. Rather, they are taking a holistic view of serving the broader community that includes many economically distressed tracts that may not be captured through the CDFI Fund's current tract level IA qualification data.

FUND strongly urges the CDFI Fund to eliminate the new 85% financial activity requirement for Custom IAs. Ideally, FUND believes that CDFIs should be allowed to count all lending within their Custom IA toward Target Market lending since in order to serve a Custom IA, the area in aggregate must mee the CDFI Fund's qualifications for an Investment Area. However, if the CDFI Fund is concerned that the majority of a CDFI's activity is taking place far away from qualified tracts, FUND proposes that the CDFI Fund allow CDFIs to count activity in non-qualified tracts that are contiguous to qualified tracts in the 85% requirement. This would align with the way that the CDFI Fund, in particular with the BEA program, and other Federal programs give CDFIs credit for activities that occur in census tracts that are contiguous to, but not in, fully qualified tracts.

FUND supports the CDFI Fund's efforts to allow depository CDFIs to use a combination of financial product and service activity to demonstrate that they meet the Target Market lending criteria. However, in FUND's experience working with CDFI depository institutions, many of these institutions have thousands of depository accounts at any point in time. Additionally, CDFIs do not always have an address associated with each depository account. Even if they did, FUND routinely encounters system outages and slow processing times within the CDFI Fund's geocoding and TLR report systems, meaning it would be practically impossible to report all of those accounts in a TLR in a timely manner. For example, it can take multiple attempts to upload a file for geocoding, each timing out before successfully processing. For a file with 100 addresses, FUND has found it can take up to 20 minutes to upload that file into the CDFI Fund's mapping system, CIMS, and successfully geocode once uploaded. If a file contains more than 100 addresses, the processing time can take significantly longer, or, more often than not, will fail. Once addresses are geocoded, the current AMIS system can only upload a limited number of TLR transactions at a time, which also takes an extensive amount of time to upload and frequently results in upload errors due to discrepancies in TLR input data that differs from published CDFI Fund guidance. As a result, FUND has found that to simply upload a TLR with a few thousand entries, if the system is working correctly, it takes at least several hours. If AMIS or CIMS are experiencing system wide errors (which occur frequently when many users are working on uploading addresses and TLRs close to reporting deadlines) it can take several days to complete a TLR upload. Therefore, FUND recommends that the CDFI Fund introduce the new ability to meet the Target Market lending criteria using financial service activity only if the CDFI Fund can make significant upgrades to its current software systems.

FUND also recommends that, rather than ask for information on each individual deposit account for the purposes of calculating Target Market activity, that the CDFI Fund instead ask CDFIs to report on the number of households that have at least one deposit product at the bank. Based on CDFI bank customer experience, higher income households located outside of the Target Market often have multiple types of deposit accounts with a bank to serve a wide variety of needs, such as a money market account, checking account, high yield savings account, etc. Alternatively, lower income households often have a smaller number of deposit accounts, but are highly reliant upon these products for their financial well-being. As such, counting the number of deposit accounts alone could skew Target Market activity as higher income households likely to be located outside of the Target Market may be counted more frequently than lower income households. Asking banks to report on the number of households to be served, which could easily be done by looking at the number of accounts with the same address information, would more accurately capture the number of families located within a CDFI's Target Market that are benefitting from a CDFI's services.

Finally, FUND is concerned that the new provision requiring Depository Institution Holding Companies (DIHCs) to meet Target Market requirements both individually and collectively could have negative repercussions for several CDFI banks. In order to meet their regulatory requirements to provide products and services to their entire service area while fulfilling their CDFI mission, several CDFI depository institutions have entities that are formed to conduct specific types of Target Market lending, for example in certain geographic areas with high levels of needs and demand or for specific financial products that may be difficult for a bank to provide due to regulatory constraints. Others have created Community Development Entities (CDEs) to partake in the CDFI Fund's New Market Tax Credits program and their role in the proposed certification changes is yet unclear. These structures allow CDFI DIHCs to holistically meet the needs of their Target Markets in a way that is both more flexible and responsive than would be possible if all of their entities were held to the same Target Market lending requirements. FUND suggests that the CDFI Fund continue requiring CDFI DIHCs that use their affiliate bank's activity to fulfill Target Market lending requirements to meet the requirement alongside their affiliated bank entity, but not include other affiliate entities into the collective Target Market requirement.

DEVELOPMENT SERVICES REQUIREMENT

FUND Consulting supports most of the changes regarding Development Services; however, FUND is concerned that one of the proposed changes will weaken a CDFI's ability to provide borrowers with the type of personalized and timely support for which they have become known.

FUND believes that the CDFI Fund's new definition of development services as "a formal stand-alone training, counseling, or technical assistance service . . . that the entity offers separately and distinctly from its other products/services" as well as the elimination of "Non-structured conversations with consumers on Development Services subject matter" as an eligible development service will hinder CDFIs' ability to provide borrowers with tailored and applicable development services when they are most needed. In our 20 years of experience working with CDFIs, we have found that some of the most effective development services are those "non-structured" conversations that provide CDFI borrowers with the tailored information they need to access and responsibly manage financial products and services that otherwise would be unavailable to them. Non-structured conversations also allow CDFIs to respond to changing situations quickly, outside of the development of formal training documents. We regularly conduct Customer Surveys for our CDFI clients to help them to better understand the needs and demand for development services within their Target Markets. Within those surveys, customers often agree that development services are important, but do not express demand for formal stand-alone training, counseling, or technical assistance. Instead, customers make it very clear that they value the "unstructured conversations" they receive from CDFI staff that go above and beyond helping them navigate the loan application process to provide them with the critical skills they need to ensure they successfully leverage the financial capital and services a CDFI is making available to them. For example, in a recent survey conducted on behalf of a CDFI bank, 43.20% of all their customers, and 55% of low income customers, reported that they would like the bank to provide them with more opportunities for individual counseling, while only 28.16% of customers reported that they would like the bank to offer additional technical assistance classes. The importance of these unstructured one-on-one conversations was particularly evident during the outset of the COVID-19 crisis, when many small businesses were struggling to stay above water during shelter-in-place orders. Several of our CDFI clients used the Paycheck Protection Program (PPP) loan application process to also provide borrowers with critical business advice and to connect them to other community resources to help them navigate their way through the crisis. But for these unstructured conversations, these business owners would not have received this critical information that was often the difference between keeping their business open or being forced to close permanently.

ACCOUNTABILITY REQUIREMENT

FUND applauds the efforts of the CDFI Fund to increase CDFIs' flexibility in demonstrating Accountability to their Target Markets. That said, there are several areas of the proposed changes to the Accountability section that could prevent CDFIs working to ensure Accountability to their Target Market from meeting the proposed thresholds set by the CDFI Fund, without clear benefit.

Creating an aggregate threshold of Accountable members across Target Markets, rather than requiring CDFIs to meet thresholds for each Target Market separately, will allow organizations with multiple Target Markets to demonstrate their Accountability without necessitating the creation of separate Advisory Boards. While FUND appreciates the CDFI Fund's efforts to provide more flexibility in meeting the accountability requirements, FUND recommends the CDFI Fund reconsider the proposed change that only having one board member accountable to each Target Market is enough to show Accountability as it goes against best practices in

Diversity, Equity, and Inclusion (DEI). To create a truly diverse and inclusive environment, best practices call for representation to go beyond one member of the population serving as a representative for all, discounting the varying perspectives and experiences within the community and putting undue burden on the individual. And while DEI conversations often focus on race and ethnicity, this approach is important to employ across all underrepresented communities. As such, FUND recommends the CDFI Fund instead implement the standard currently utilized for NMTC accountability: at least 2 members of a board, or 30% of the overall board, is required to be accountable to the Target Market, whichever is the greater number of board members.

While there have been and continue to be many conversations in the industry at large regarding DEI and many CDFIs are working to implement DEI best practices, we believe the CDFI Fund has the opportunity to outline parameters that set the standard and facilitate DEI best practices in the industry. Along these lines, we also recommend the CDFI Fund reconsider the use of the word “Other” in “Other Targeted Population” as the term is seen by many to be diminishing to the population referenced. FUND recommends the CDFI instead use “Targeted Population.” Finally, our team appreciated the CDFI Fund’s clarification in the comment letter FAQs that being an employee of a CDFI with an OTP alone does not suffice for accountability, and that the individual would still need to be a member of the population to meet the accountability requirements. This will further ensure that CDFIs are again employing DEI best practices. We recommend the CDFI Fund take this same approach for all OTPs, including Persons with Disabilities.

Requiring that Advisory Boards include at least one member of the Governing Board is a reasonable mechanism for ensuring that Advisory Boards’ input is shared with the Governing Board. However, the proposed requirement that organizations meeting the Accountability requirement through Advisory Boards also maintain a 20% level of Accountability through their Governing Board is likely to be problematic for many CDFIs, with CDFI banks especially likely to face challenges.

CDFI banks and their Governing Boards are required to meet fiduciary and legal requirements set by their regulators—for this reason it is not necessarily possible for banks to modify their Governing Boards to meet Accountability requirements. Further, many CDFIs and CDFI banks in particular have staff or shareholders serving on their Governing Boards who are ineligible to provide Accountability—it is possible that these CDFIs may have Governing Boards made up entirely of individuals who cannot provide Accountability. These CDFIs would be unable to meet the updated Accountability requirements as currently proposed, despite formal mechanisms to ensure Accountability through Advisory Boards.

The proposed application states that in addition to reviewing Advisory Board members, the CDFI Fund will assess several factors relating to Advisory Board operations. FUND understands that this is necessary for the CDFI Fund to evaluate whether an Advisory Board is legitimately providing Target Market Accountability and acknowledges that this information is also collected as part of the existing Certification application. FUND requests that in finalizing the new Certification application the CDFI Fund clearly state any concrete requirements that exist in assessing the operations of Advisory Boards—for example, whether any particular process is required for organizations in selecting their Advisory Boards or for Advisory Board members in obtaining input from the Target Market.

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Finally, FUND has noted that in evaluating board member Accountability to Investment Areas, the proposed application places an increased emphasis on the qualification of census tracts relating to the Board member's affiliations. Examples include requiring that Board members that are accountable to Investment Areas through affiliations with a third-party organization serving the Investment Area must demonstrate that a majority of the organization's activities are deployed among residents of qualified census tracts, and the requirement that elected officials can only provide accountability to an Investment Area if a majority of the census tracts in their jurisdiction are qualified. In the case of the former, it is unlikely that any organization that is not itself a CDFI would be able to report if its activities are primarily being deployed among residents of qualified tracts, and it is not likely that organizations would be willing to share addresses of service recipients with an outside organization seeking this data for purposes of CDFI Certification. In the case of the latter, it is not clear that the proportion of census tracts that are qualified is a meaningful measurement of an official's Accountability to the Investment Area—as a counterexample the majority of a county's population may live in the one census tract in the county that is qualified, while a greater number of non-qualified tracts exist in the county. For these reasons FUND recommends that the CDFI Fund continue its practices of following up to request additional information from applicants when it is not clear whether a Board member is accountable rather than instituting these inflexible standards.

NON-GOVERNMENT ENTITY REQUIREMENT

FUND recognizes that the Non-Government Entity section of the application is substantially unchanged from the current Certification process and does not have comments to share related to this aspect of the application.

We would like to extend our thanks for the opportunity to provide comments on the Certification application. The CDFI Fund is a vital resource to help CDFIs build capacity and leverage additional resources to continue providing credit, capital, and financial services in our nation's most distressed and underserved communities. Please feel free to contact us at 773-281-8845 should you wish to further discuss any of the above comments.

Sincerely,

Manjima Bose
Partner

Maggie Brennan
Senior Consultant

Daniel Sloan
Senior Consultant

& the FUND Consulting Team

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Re: Proposed CDFI Program--Certification Application and Annual Reporting

November 5, 2020

Dear Ms. McInnis and Mr. Bischak:

Please find below the comments of the Hope Enterprise Corporation / Hope Credit Union / Hope Policy Institute (HOPE) in response to the CDFI Fund's proposed certification application and annual reporting requirements published on May 6, 2020.

HOPE is a community development financial institution, credit union, loan fund and policy institute that provides affordable financial services; leverages private, public and philanthropic resources; and engages in policy analysis to fulfill its mission of strengthening communities, building assets, and improving lives in economically distressed areas throughout Alabama, Arkansas, Louisiana, Mississippi and Tennessee. HOPE exists to mitigate the extent to which factors such as race, gender, birthplace and wealth limit one's ability to prosper. Since 1994, HOPE has generated more than $2.5 billion in financing that has benefitted more than 1.5 million people in the Deep South.

The CDFI Fund should use the opportunity of its review of the certification and annual reporting process to assess how well CDFIs and the CDFI Fund are serving communities of color, including CDFIs owned/controlled by people of color. HOPE brings the unique perspective of serving communities of color, particularly in rural communities and others in the Deep South.

In this comment, HOPE urges the CDFI Fund to:

1. Gather information on the race and ethnicity demographics of CDFI leadership, ownership, and borrowers and communities served by all certified CDFIs.
2. Preserve the geographic boundaries of the Target Market test, and preserve the 60% threshold for financial products even if financial services are also considered for depository institutions.
3. Ensure the quality of products and practices build and protect, rather than strip, wealth from borrowers and communities served by CDFIs.

The following comments provide more detail on each of these recommendations.

1. Gather information on the race and ethnicity demographics of CDFI leadership, ownership, and borrowers and communities served by all certified CDFIs.

Currently, the CDFI Fund does not gather information about the race and ethnicity of CDFI leadership or ownership for all certified CDFIs. The only CDFIs for which this information is gathered are CDFI Fund awardees, which provide this information as part of their institutional level reports (ILR). Even so, the CDFI Fund does not report or publish the amount of CDFI Funds awarded in a way to assess the initial award amounts by minority ownership status. Even for CDFI Fund awardees, not all awardees report the information consistently. As discussed in this section, this information gap creates a tremendous information gap for the CDFI Fund and the CDFI industry as whole to measure the extent to which the CDFI Fund resources are equitably distributed and sufficiently reaching borrowers and communities of color. The proposed CDFI certification and annual reporting requirements do not fill these gaps. As such, this section provides new analysis on why this information is necessary and recommends four questions to ask of all CDFIs.

Existing Gaps

In April 2020, Hope Policy Institute completed an initial analysis of assets held by CDFI Fund awardees in FY 2014 and FY 2017. In that analysis, HOPE found that in FY 2017, the average assets held by white-owned CDFIs were more than double that of minority-owned CDFIs.[1] HOPE expanded this analysis to cover all years for which the data are available (FY 2003 – FY 2017) to see if racial disparities existed overtime. This expanded analysis, attached hereto, finds the following:

- **The number of white-owned CDFI Fund awardees has significantly outpaced minority awardees every year.** The number of minority awardees has never exceeded more than 34% of the total number of awardees in any given year, and collectively represent just 291 (32%) of all 922 unique awardees during this timeframe.
- **While the asset size for all CDFI Fund awardees has grown over time, the growth has not been evenly distributed.** For example, in FY 2017, white-owned awardees held \$35.1 billion in assets, up from \$4 billion in 2003, whereas minority-owned awardees held \$5.7 billion in assets in 2017, up from \$530 million in 2003. It took minority

awardees until 2013 --10 years--to exceed the median asset size of white awardees in 2003 ($5.5 million).

- **There has been no progress in closing the asset gap between white and minority-owned CDFIs.** Every year, the median asset size of white-owned awardees has been at least twice the median asset size of minority-owned awardees. In some years, it was three times as high.

This analysis is limited to CDFI Fund awardees because it is the only data which provides ownership demographics, along with asset size. It is not possible to make further conclusions about the relationship between CDFI Fund awardees and the field as a whole, or the relationship to CDFI Fund initial award amounts and ownership demographics, because this data are not available.[2]

Additionally, the data gathered by the proposed CDFI certification application and annual report do not require any data about the race or ethnicity demographics of communities served by CDFIs. It only requires information about the race of the borrower if the CDFI has chosen to meet its Target Market test through meeting the needs of a racial or ethnic group as part of the Other Targeted Population option. The current certification and annual report process allows CDFIs to avoid the issue of race or ethnicity altogether by choosing its Target Market based on Investment Area and/or Low-Income Population.

In places like Mississippi, the ability to rely just on serving low-income communities has allowed CDFIs to by-pass borrowers of color. Analysis of Home Mortgage Disclosure Data (HMDA) provides insight into how deeply CDFIs in Mississippi may or may not be lending to communities of color. As a brief example, HOPE analyzed 2019 HMDA mortgage lending data for 10 Bank CDFIs in Mississippi and found that 71% of mortgage loans went to white borrowers while only 14% went to Black borrowers.[3] By contrast, Hope Federal Credit Union made 82% of its mortgage loans to Black borrowers, and less than 20% of its loans to white borrowers. Economic disparities along racial lines is also important context. In Mississippi, 55% of households statewide are liquid asset poor, but for Black households its 72% and 42% for white households. [4]In terms of median household income, statewide it is $45,792, but for Black households it is $31,067 and for white households, it is $57,191.[5]

The proposal does not yet a seek to gather sufficient information to close the gaps identified in the above analysis, but could easily do so by including questions outlined below.

Recommendations

While it is encouraging to see that the proposal asks whether the applicant is a Minority Depository Institution (MDI) or not; there is no proposed definition for a MDI and it is unclear how this would apply to non-depository loan funds, many of which are minority-led. As such, to ensure robust gathering of this information, while balancing a variety of CDFI business models, the CDFI Fund should include the following questions in the Basic Information section of the CDFI Application and collected annually from all CDFIs:

- Is the CDFI designated as a MDI by the FDIC or NCUA?
- What is the race, ethnicity, and gender of the CDFI's CEO/Executive Director/President?
- Are more than 50% of the Board of Directors minority individuals?

"Minority" should be defined as any person who is Black American, Hispanic American, Asian American, Native American, Native Alaskan, Native Hawaiian, or Pacific Islander.

The CDFI Fund should make this information publicly available as part of the information on the spreadsheet of certified CDFIs available on the CDFI Fund website. Doing so is consistent with the helpful practices of both the FDIC and NCUA publishing public lists of MDI credit union and banks on their websites. The information gathered above should also be part of the public reporting for CDFI Fund awardees.

CDFI Fund should also gather data about how well CDFIs are providing Financial Products to borrowers and communities of color, regardless of the method chosen to meet its Target Market. Towards this end, the CDFI Fund should require, as part of the certification and annual reporting, CDFIs to provide the following information:

- Over the last three years, did the CDFI provide more than 50% of its lending, in number and dollar amount, to census tracts where more than 50% of the residents are minority?

The CDFI Fund should also monitor how well CDFIs are serving borrowers of color. A good starting point would be monitoring HMDA reporting, and once finalized, reporting required under Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

If the CDFI Fund does not gather and publicly report this information, it will not be possible to know if the Fund is closing or perpetuating resource gaps for minority-led, minority-owned, and minority-serving CDFIs. Data from the 15 years of CDFI Fund awards show little progress in closing the asset gaps and funding gaps between minority-owned and white-owned CDFIs. These findings described below underscore the importance of gathering this data going forward in order to inform policy decisions and resource allocations in the future.

2. Preserve the geographic boundaries of the Target Market test, and preserve the 60% threshold for Financial Products even if Financial Services are also considered for depository institutions' Target Market test.

As currently proposed, two significant changes to the Target Market test – removal of geographic boundaries and lowering of the required lending threshold into the Target Market – raises significant concern. In each individual proposal scenario and particularly when combined, these will allow CDFIs, particularly depositories, to be located in and take deposits from underserved Target Markets while having a diminished obligation to lend in those same communities. As described more fully below, HOPE is concerned about the dilution of funds to the most economically distressed communities as well as diversion of investments from CDFIs with experience in these markets. This is not the direction the CDFI industry should be headed.

Geographic Boundaries

HOPE urges the CDFI Fund to preserve geographic boundaries for Target Market tests. The removal of geographic boundaries risks diluting the amount of resources invested in the hardest to serve communities. If CDFIs can chose economically distressed census tracts anywhere in the country, then it is likely more national CDFIs will chose to invest in the tracts in larger, urban areas rather than reaching into harder to serve tracts with deeper poverty rates and fewer resources such as rural and majority people of color communities. Maintaining the geographic boundaries helps ensure that regional and local CDFIs remain competitive in the application process for scarce resources to serve the hardest to reach areas in any given market.

Our concern is not hypothetical. In looking at other CDFI Fund programs, New Market Tax Credit activity provides an informative example. While there is New Market Tax Credit investment in the Deep South, it is heavily concentrated in New Orleans, a market where capital has been plentiful to fund projects over the last 15 years as the city rebuilt after Hurricane Katrina. These concerns hold true beyond the Deep South, and for rural, persistent poverty counties generally. Hope Policy Institute analysis found that from FY 2003 to FY 2017, 75% of NMTC investments in persistent poverty counties were in metro areas.[6] By comparison, for HOPE's NMTC activity over this same time, more than 55% of its investments in persistent poverty counties were in non-metro areas.

Crucial for HOPE in funding projects in harder to reach communities is the ability to have a mix of projects on our balance sheet. Generally, local and regional CDFIs need to balance these types of transactions with the ones that are more expensive to manage risk. It becomes harder to accomplish this goal if out-of-region or national CDFIs are able to more easily do these deals in urban areas at the risk of pushing out those already located in these markets. An additional concern is that there are weaker ties for community accountability if the CDFI is not located in the market, particularly when coupled with the proposed removal of geographic requirements for the Board members in relation to the target markets served. As such, HOPE is concerned that this proposal will further disadvantage CDFIs with a long track record serving the most economically distressed areas.

For these reasons, HOPE urges the CDFI Fund to maintain its geographic boundaries for the Target Market test. To the extent that the CDFI Fund does chose to let lenders count activities outside of their geographic boundaries towards the Target Market test, it should be in limited circumstances. Specifically, it should only be activity in investment areas in persistent poverty counties or to investment areas in times of national crisis, such as COVID-19 where CDFIs expanded to meet emergency needs in areas beyond their geographic footprint.

Financial Products Threshold

The CDFI Fund also proposes to lower the threshold of Financial Products required to reach a CDFI's Target Market. Currently, a CDFI must provide 60% of the number and dollar value of its Financial Products to the Target Market. The CDFI Fund is proposing to allow depositories to reach a lower threshold of 50% of Financial Products to the Target Market if the depository also provides 60% of its depository accounts to the Target Market. Located in the region of the country with the highest unbanked population, particularly for communities of color, HOPE recognizes the need for bank account access to underserved communities. However, increased incentives to provide bank accounts should not come at the expense of providing sorely needed capital into these same communities. HOPE agrees with the proposal that depository accounts should be the only Financial Services be counted towards this test. The count, however, should be by number of unique customers with an account(s) rather than number of individual accounts, and it should be based on the address of the customer/member. Rather than allowing a lower threshold for Financial Products, the CDFI Fund, in its operationalization of accounting for Financial Services as part of the Target Market Test, should require for both Financial Services and Financial Products, that 60% each reach the designated Target Market**.**

3. **Ensure the quality of products and practices build and protect, rather than strip, wealth from borrowers and communities served by CDFIs.**

HOPE concurs with the CDFI Fund's goal of these proposed revisions "to maintain the integrity of what it means to be a certified CDFI from a mission perspective."[7] The quality of products and services offered cannot be separated from to question of how CDFI's fulfill their mission of serving economic distressed communities. HOPE is generally supportive of the information the CDFI proposes to gather, and would like to highlight three specific areas of note: pricing, mortgage loans, and debt collection practices.

HOPE affirms the gathering of information about pricing in terms of the Military annual percentage rate (MAPR), and urges the Fund to prohibit certified CFDIs from making loans in excess of 36% MAPR (unless lower as required by state law). For example, HOPE is aware of CDFIs making loans with small dollars loans reaching up to 190% APR. These high rates are not only inconsistent with, but undermine, CDFIs' Fund's goal, which as it says, "is an inclusive economy: an America where all citizens have the chance to participate in the mainstream economy."[8] HOPE hears first-hand from our members and people in the communities where our branches are located about the troubles caused by unaffordable high-cost loans, such as difficulty paying other bills, the psychological stress caused by unaffordable debt, and the subsequent inability to build wealth in the future. Beyond HOPE members, research shows that high-cost loans, even when structured with longer-terms and over installments, can have devastating effects on people's financial situation.[9]

HOPE also urges the CDFI Fund to require CDFI mortgage loans to be compliant with qualified mortgage (QM) standards as provided in the Dodd-Frank Wall Street Reform and Consumer Protection Act. In summary, this means: (a) no negative amortization, interest-only payments, or balloon payments; (b) adjustable rate mortgages underwritten at the maximum rate in the first five years; (c) original maximum term of 30 years; and 4) total points and fees generally not exceeding three percent of the loan amount. These product protections, along with provisions to ensure CDFI mortgage lenders adequately assess a borrower's ability to repay, will help ensure responsible mortgage lending while allowing innovation in underwriting that may benefit communities that CDFIs serve.[10]

Each of the five states in HOPE's footprint has a 20-point difference between the Black and white homeownership gap. High-cost mortgage loans, with predatory terms, increase the likelihood the borrowers will default on those loans, and research shows these are disproportionately made to Black borrowers. The CDFI Fund can play a critical role in closing this gap by ensuring that CDFI mortgage loans are made on terms that are safe and affordable rather than terms that strip wealth from underserved communities. In the six years since their implementation, QM standards are now well-established and lending institutions, including CDFIs, have had ample time to adapt lending practices to meet these standards in their markets.

Finally, HOPE appreciates the attention to CDFIs' debt collection practices. Unfair and unsafe debt collection practices are disproportionately borne by communities of color, particularly here in the Deep South. In each of HOPE's five Deep South states, approximately 40% of consumers have a debt in collection. This number jumps to an eye-popping over 60% of consumers in communities of color in Alabama and Louisiana.[11] As such, the long term consequences of debt-related abuses, such as people being pursued by debt buyers for debt they may not even owe, perpetuate the racial wealth gap. The CDFI Fund is correct to examine the debt collection practices of CDFIs to ensure they are not also a contributing factor.

Thank you for the CDFI Fund's work and thoughtfulness into this process and proposals, and for your consideration of this feedback on these critical matters.

Sincerely,

William J. Bynum
Chief Executive Officer

Diane Standaert
Director, Hope Policy Institute

[1] Kiyadh Burt, Hope Policy Institute, "Closing the CDFI Asset Gap," April 21, 2020, http://hopepolicy.org/blog/closing-the-cdfi-asset-gap/

[2] Kiyadh Burt, Hope Policy Institute, "Analyzing the CDFI Asset Gap: Examining Racial Disparities in CDFI Fund Awardees from 2003 to 2017," Nov. 4, 2020, http://hopepolicy.org/briefs/analyzing-the-cdfi-asset-gap-examining-racial-disparities-in-cdfi-fund-awardees-from-2003-to-2017-2/

[3] Analysis of 2019 HMDA data, available at https://ffiec.cfpb.gov

[4] Prosperity Now Scorecard, "Liquid Asset Poverty," https://scorecard.prosperitynow.org/data-by-issue#finance/outcome/liquid-asset-poverty-rate (defining liquid asset poverty rate as "percentage of households without sufficient liquid assets to subsist at the poverty level for three months in the absence of income.)

[5] U.S. Census Bureau American Communities Survey 2019, Table S1903

[6] Sara Miller, Hope Policy Institute, Analysis of data from the CDFI Fund FY 2019 NMTC Public Data Release: 2003-2017 Data File and CDFI Fund Persistent Poverty County data

[7] CDFI Fund, Notice of Information Collection and Request for Public Comment, Federal Register, Vol. 85, No. 89, page 27276, May 7, 2020, https://www.cdfifund.gov/Documents/2020-09747-Certification%20Application.pdf

[8] CDFI Fund, "CDFI Fund's Fact Sheet," https://www.cdfifund.gov/Documents/CDFI_Brochure%20Updated%20Dec2017.pdf

[9] HOPE Comments to the Office of the Comptroller of the Currency, Sept. 2, 2020 http://hopepolicy.org/blog/hope-submits-comments-opposing-occ-true-lender

[10] For more discussion on this recommendation, see Self-Help and Center for Responsible Lending, Comments to the CDFI Fund, Proposed CDFI Program--Certification Application, Nov. 5, 2020.

[11] Calandra Davis, Hope Policy Institute, "Southern States Must Act With Urgency to Protect Stimulus Checks from Debt Collectors," May 4, 2020 (analyzing data from the Urban Institute, Debt in America), http://hopepolicy.org/blog/southern-states-must-act-with-urgency-to-protect-stimulus-checks-from-debt-collectors/

Analyzing the CDFI Asset Gap: Examining Racial Disparities in CDFI Fund Awardees from 2003 to 2017

By: Kiyadh Burt
November 5, 2020

Overview

Hope Policy Institute is interested in understanding trends in assets and capital held by minority ownership for CDFI Program awardees. Using institutional level reports (ILR) provided by the CDFI Fund, we completed an initial analysis of fiscal years 2014 and 2017. We found that average assets held by white-owned CDFI Program awardees significantly increased from FY2014 and FY2017 while minority-owned CDFI Program awardees experienced a slight decrease in average assets held. We also found that in FY2017, the average assets held by white-owned CDFIs were more than double that of minority-owned CDFIs. For our next analysis, we wanted to see if racial disparities existed across the full tenure of the CDFI Fund award program.

Key Takeaways

- **The number of white-owned CDFI Fund awardees has significantly outpaced minority-owned awardees every year.** The number of minority-owned awardees has never exceeded more than 34% of the total number of awardees in any given year, and collectively represent just 291 (31%) of all 922 unique awardees during this timeframe.
- **While the asset size for all CDFI Fund awardees has grown over time, the growth has not been evenly distributed.** For example, in FY2017, white-owned awardees held $35.1 billion in assets, up from $4 billion in 2003, whereas minority-owned awardees held $5.7 billion in assets in 2017, up from $530 million in 2003. It took minority awardees until 2013 –10 years -- to exceed the median asset size of white-owned awardees in 2003 ($5.5 million).
- **There has been no progress in closing the asset gap between white and minority-owned CDFIs.** Every year, the median asset size of white-owned awardees has been at least twice the median asset size of minority-owned awardees. In some years, it was 3 times as high.
- **Additional analysis is limited by the lack of data collected by the CDFI Fund.** Currently, the CDFI Fund does not collect minority-ownership for certified CDFIs. Without this data, it is not possible to know if the number of minority-owned CDFI Fund awardees is proportional to the CDFI field as a whole, and likewise we are unable to assess any broad trends within the CDFI industry by race.

Data and Methodology

The Community Development Financial Institutions Fund (CDFI Fund) serves as a primary driver of economic investment for over 1,100 certified Community Development Financial Institutions (CDFIs) in the nation. The CDFI Fund offers resources, technical assistance, and innovative programs such as the CDFI Program to bolster the impact of CDFIs in economically distressed communities. The CDFI Program grants monetary awards and training opportunities to build and increase the capacity of CDFIs to amplify community revitalization and organizational stability. As of FY2019, CDFI Program awardees have financed more than 19,000 businesses, provided funding for more than 51,300 housing units, and have originated more than $21.5 million in loans and investments[1]. Awardees, which can be credit unions, loan funds, and banks, submit various data on lending impact, capitalization, demographics served, and institutional characteristics.

The CDFI Fund collects this data in two databases, institutional level reports and transactional level reports. Institutional level reports collect data on the organization, financial position, financing, and minority-ownership dating back to 2003. The transactional level reports collect data on the lending activities of each organization for the most recent fiscal year. This analysis uses the institutional level report to explore the number of CDFI Program awardees, minority-ownership, assets held, and capital held from the CDFI Fund from 2003 to 2017, the most recent year for which data has been published. This dataset includes awardees that received a financial award, technical assistance, or received assistance through the Native American CDFI Assistance Program (NACA). Data is available on the CDFI Fund website.[2]

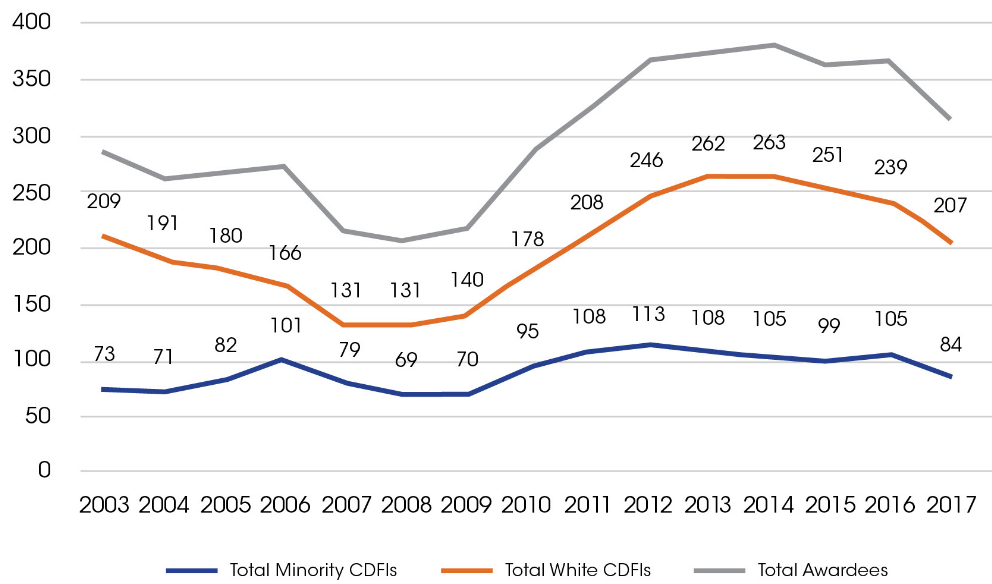
There are three variables of interest for this analysis: total assets held, minority status of ownership, and capital held from the CDFI Fund. Awardees self-reported all values.

- *Total assets held* - Total assets held is measured as the total dollar amount of unrestricted, temporarily restricted, and permanently restricted assets for an organization at the reporting period end.[3]
- *Minority-ownership* - Minority-ownership is determined by a CDFI's self-reporting to the CDFI Fund on its ILR. The ILR instructs reporting CDFIs to, "select whether the Organization was minority owned or controlled at the reporting period end OR select Don't Know. A non-profit is considered to be minority owned or controlled if more than 50 percent of its Board members are minorities, or the Chief Executive Officer, Executive Director, General Partner, or Managing Member is a minority."[4] For-profit institutions define minority-ownership and control according to their own definition.
- *Capital held from CDFI Fund* - Capital held from the CDFI Fund represents the amount of investment capital received from the CDFI Fund at reporting end. Investment capital includes idle capital that is available to lend and invest, deployed capital, and capital only reflected on the organization's balance sheet.[5]

Analysis

To understand the relationship between minority ownership, assets and capital held, we begin with an overview of CDFI Fund awardees. Overall, there have been 922 unique CDFI Fund awardees[6]. Of these, about 31% (291) were minority owned[7]. CDFI Fund awardees frequently receive awards for multiple years. Table 1 shows the total number of CDFI Fund awardees by year and minority-ownership.

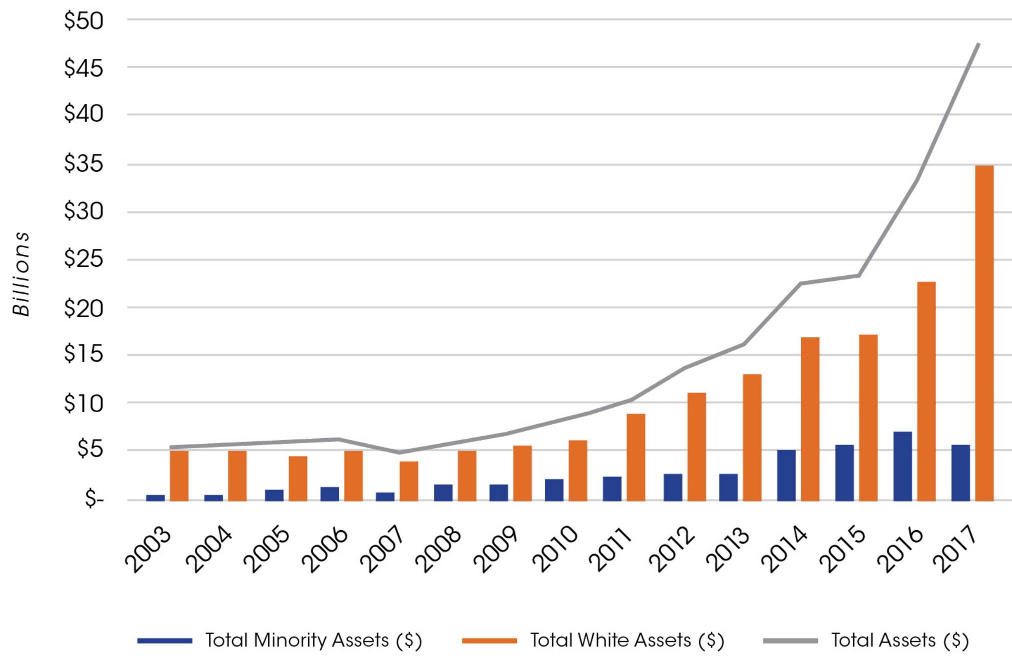
Table 1: Number of CDFI Fund Program Awardees by Minority-Ownership, FY2003 – FY2017



Despite the similar trend in growth to minority-owned awardees, white-owned awardees have outpaced minority-owned awardees in number and peak growth. There are approximately twice as many white-owned awardees than minority-owned awardees every year of the program. Now consider the peaks of awardees. The number of minority-owned awardees reached the highest peak in 2012 with 113 awardees. The number of white-owned awardees peaked in 2014 with 263 awardees. In looking across all years, the highest number of minority-owned awardees (113) has never exceeded the lowest number of white-owned awardees (128). When comparing minority-owned and white-owned awardees for two points in time a decade a part, a difference persists. In looking at 2006 versus 2016, the number of minority-owned awardees had only increased by four while the number of white-owned awardees increased by 73.

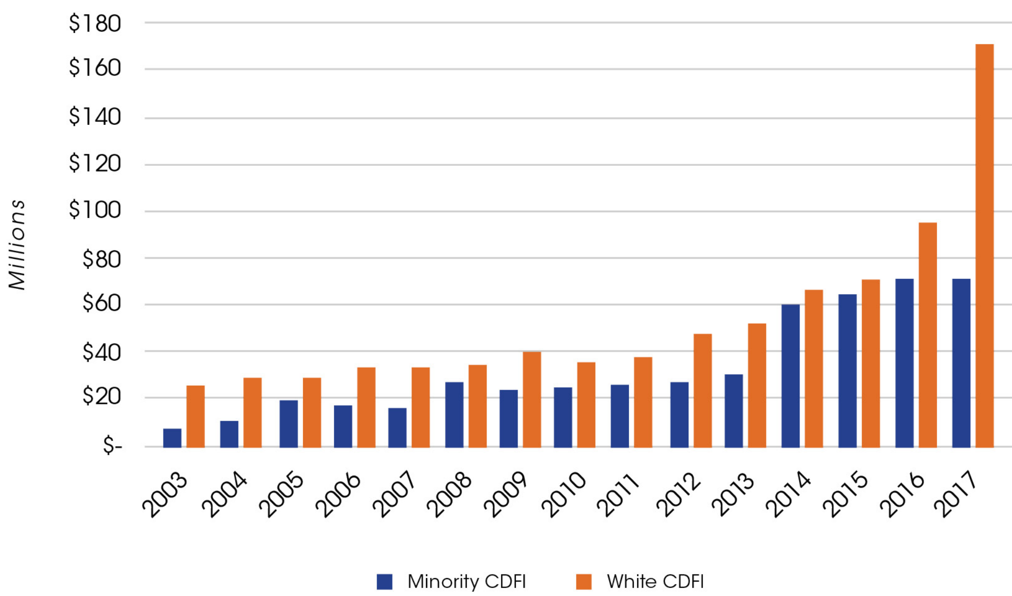
The disparity between minority-owned and white-owned awardees is not in number only, but in amount of assets held also. White-owned awardees outpace minority-owned awardees in assets held every year. While the asset size for all CDFI Fund awardees has grown over time, the growth has not been evenly distributed. For example, in FY2017, white-owned awardees held $35.1 billion in assets, up from $4 billion in 2003, whereas minority-owned awardees held $5.7 billion in assets in 2017, up from $530 million in 2003. See Table 2.

Table 2: Total Assets Held by Minority-Ownership, FY2003-FY2017



Examining the average assets held by minority ownership further reveals the persistence of these disparities. Every year, white-owned awardees have held larger assets on average than minority-owned awardees. For the first two years of the program, white-owned CDFIs held three times more assets on average than minority-led CDFIs. For the remaining years of the program, white-owned awardees have held twice as many assets on average than their counterparts. See Table 3.

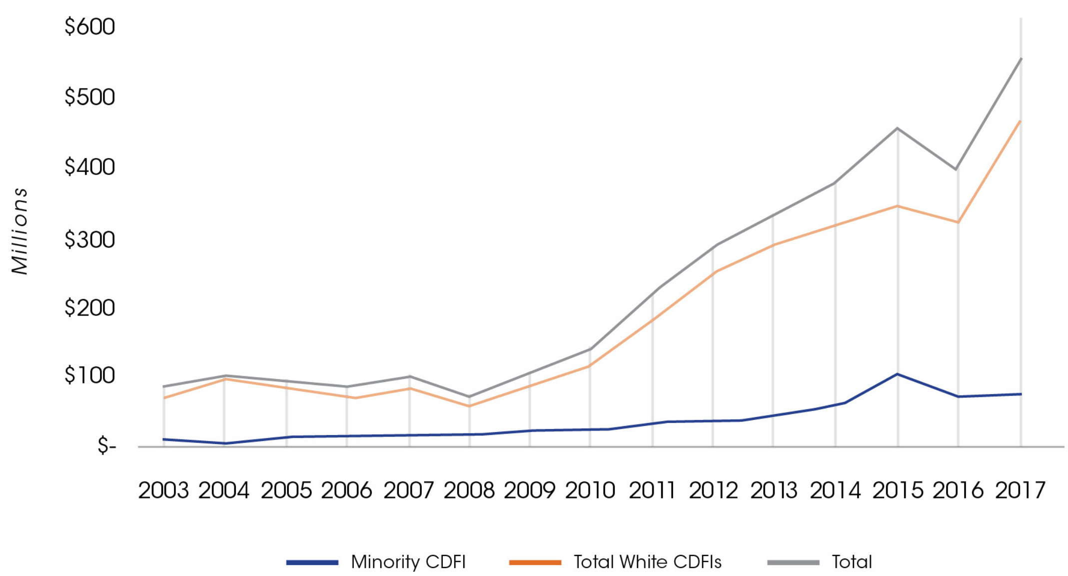
Table 3: Average Assets Held by Minority-Ownership, FY2003-FY2017



CDFI Fund awardees that are exceptionally large or small may explain the stark gap in assets held. However, the asset gap persists when comparing median assets held. Every year of the program, white-owned awardees had a median asset size at least twice as large as the median asset size of minority-owned awardees. In some years, it reached three times as large.

The gap between minority-owned and white-owned awardees continues with capital held from the CDFI Fund. White-owned awardees reported holding capital amounts from the CDFI Fund at least three times greater than minority-owned awardees every year of the program. See Table 4. White-owned awardees held six times the amount of capital from the CDFI Fund than minority-owned awardees in 2017. In total, minority-owned awardees have reported low amounts of capital held with the peak amount being $108,526,695 in 2015. To be clear, this data is the best proxy for amount of CDFI Funds awarded by minority-ownership since the CDFI Fund does not publicly report that data.

Table 4: CDFI Fund Capital Held by Minority-Ownership, FY2003-FY2017



Data Limitations

There are two categories of data limitations: issues with measurement and limitation of the type of data collected. As is the case with any analysis of public data, there were issues with variable measurement and data collection. The primary issue with variables used in our analysis was non-responsiveness. Several awardees failed to respond to questions on minority-ownership, assets held, or capital received from the CDFI Fund. When measuring minority-ownership, we simply categorized the institution as "owner missing" and excluded them from the analysis. Institutions that reported "0" for assets held or capital received from the CDFI Fund were also excluded from analysis[8].

Concerning limitations in the type of data collected, we were hindered in our ability to draw relationships between minority-ownership and CDFI Fund award amount. First, the current CDFI Program award process does not collect or report minority ownership at time of allocation of award. The closest proxy, capital received from CDFI Fund, reflects the amount of capital remaining in the institution at the time of reporting. There are several different reasons to explain how and why some institutions report more or less capital held from the CDFI Fund at the end of the reporting period. It could be, for example, that by the time of reporting they have fully expended the CDFI Funds awarded that year. Furthermore, the current definition of minority-ownership may vary across institutions. As it stands, CDFI awardees of all types are required to answer the question as part of their ILR, yet there is only clear guidance for non-profits. For-profits, like CDFI banks, are able to define minority-ownership as they see fit. The definition, then, may vary by type of institution and any analysis using the ILR will not reflect the reality of board composition or leadership. Lastly, the current CDFI certification process does not collect minority- ownership status of all CDFIs. Without this data, we are unable to know if the number of minority-owned CDFI Fund awardees is proportional to the CDFI field as a whole, and likewise unable to assess any broad trends of the CDFI industry by race. At best, we can use institutional level reports of CDFI Fund awardees, which represent just a fraction of all CDFIs.[9]

Conclusion

Disparities exist between minority-owned and white-owned awardees for the number of awardees, assets held, and capital held. Unfortunately, over the course of the 14 years examined in this analysis, there has been little progress in closing the asset gap between minority-owned and white-owned CDFIs. This analysis also suggests that the minority-owned CDFIs face challenges in gaining access to not just CDFI program funding, but philanthropic and bank funding as well. At the same time, we are unable to draw stronger conclusions about the relationship between race, assets held, and CDFI Program award because of several data limitations in the CDFI certification process and the CDFI Program allocation. To this end, race should be collected and reported for certified CDFIs and CDFI Program awardees at time of allocation. The upcoming comment period on the CDFI Certification process is an opportunity for the CDFI Fund to consider these changes.

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[1] Community Development Financial Institutions Fund. "CDFI Program". https://www.cdfifund.gov/programs-training/Programs/cdfi-program/Pages/default.aspx. Accessed October 21, 2020.

[2] Community Development Financial Institutions Fund. "Data Releases". https://www.cdfifund.gov/Documents/CDFI%20Performance%202017%20Approval%2006-14-2019_508%20Compliance.pdf

[3] Community Development Financial Institutions Fund. "CDFI Institution Level Report Instructions CIIS 15.0". Pg.14. https://www.cdfifund.gov/Documents/FY%202017%20Data,%20Documentation,%20Instructions.zip

[4] Community Development Financial Institutions Fund. "CDFI Institution Level Report Instructions CIIS 15.0". Pg.6. https://www.cdfifund.gov/Documents/FY%202017%20Data,%20Documentation,%20Instructions.zip

[5] Community Development Financial Institutions Fund. "CDFI Institution Level Report Instructions CIIS 15.0". Pgs.9-11. https://www.cdfifund.gov/Documents/FY%202017%20Data,%20Documentation,%20Instructions.zip

[6] There are 4,489 CDFI awardees in total, which accounts for CDFIs that received awards for multiple years.

[7] Forty-four unique CDFI Fund awardees did not report minority-ownership status.

[8] Overall, there are 4,489 CDFI awardees. There were 125 CDFI awardees that did not supply minority-status of ownership, 277 awardees did not provide total assets held, and 2,644 (59%) awardees reported "0" capital held from the CDFI Fund or did not report a value.

[9] For FY2017, there were 315 CDFI Program awardees, which is less than one-third of all certified CDFIs.

Via electronic submission

November 5, 2020

Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Regarding the CDFI Certification Application, the Annual Certification and Data Collection Report, and the Certification Transaction Level Report

Dear Ms. McInnis:

The Independent Community Bankers of America ("ICBA")[1] welcomes the opportunity to respond to the Community Development Financial Institution ("CDFI") Fund's ("Fund") Notice of Information Collection and Request for Public Comment ("Notice") regarding the Certification Application ("Application"), the Annual Certification and Data Collection Report ("ACR"), and the Certification Transaction Level Report ("CTLR"). While ICBA strongly supports the mission of all CDFIs and the Fund's efforts to effectively oversee and manage the program, we are concerned that the proposed changes discussed in the Notice will harm existing CDFI banks and significantly deter interest from new CDFI applicants. This will have the net effect of diminishing the number of CDFI banks in the country, and as such, threaten the survival of the program.

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[1] *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than $5 trillion in assets, over $4.4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.*

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The Fund has neglected to clearly articulate whether the existing program parameters are deficient, and if so, how the proposed changes would remedy those deficiencies. Further, if such deficiencies do exist, ICBA urges the Fund to explore how alternative solutions might better achieve the desired remedies.

Background

Community banks provide a wide range of financial products and services in economically distressed target markets, including mortgage financing for low-income and first-time homebuyers, flexible underwriting, consultative services, and personal relationships that help provide development financing for their communities. Approximately 150 of these community banks are recognized as CDFI banks, comprising nearly 15 percent of all CDFIs.

To first achieve certification, banks must submit a CDFI application, which stipulates seven criteria. Once the certification is obtained, CDFI banks must then submit an annual certification, which demonstrates continued compliance with the stipulated criteria. In 2017, the Fund initiated a review of its CDFI initial certification and annual certification policies and procedures. The stated reason for the review was to ensure that "practices continue to reflect and represent the evolving nature of CDFIs, as well as to safeguard government resources."

The CDFI Fund should articulate why changes are required, and seek comment on those reasons, before proposing these changes.

The Fund contends that the proposed changes in the Notice reflect the comments raised in the 2017 review, yet there is no substantive discussion of how the proposed changes "reflect and represent" the evolving nature of CDFIs, nor is there discussion of how CDFIs are "evolving," and why such changes are necessary.

Community banks already comply with several dozen consumer finance laws and regulations, aimed at creating a responsible lending environment. Further, these community banks, regardless of CDFI status, are annually examined and audited to ensure compliance with these consumer protection laws. While the Fund's stated intention behind this proposal – ensuring that financial institutions originate responsible products – ICBA contends that every community bank already does, and each federal or state banking agency ensures that responsibility. In addition to ensuring responsible products originated in compliance with consumer protection laws are adhered to, the federal and state banking agencies are also charged with ensuring the safety and soundness of banking operations. The state and federal banking agencies are already experienced to consider this delicate balance when examining community banks. However, if the CDFI Fund were to supplant the FDIC's or other regulatory entity's judgement with its own, then regulated and federally-insured community banks will be caught in the middle between two governing bodies. The proposal does not attend to safety and soundness concerns with which community banks must contend.

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In terms of accountability and responsibility to their communities, community banks are once again unique among all CDFIs entities in that they must adhere to the Community Reinvestment Act ("CRA"). Through CRA exams and public reports, community banks already produce the information that the Fund proposes to collect. Rather than creating a new, redundant reporting mechanism on community banks, ICBA urges the Fund to collaborate with the FDIC, FRB and OCC to collect data that can already be ascertained through the normal course of CRA examinations and reports.

ICBA research indicates that there are likely several hundred community banks that already perform CDFI-type mission work, yet to do not have their certification due to the complexities, costs, or unnecessary or superfluous burden to seek and receive certification. From these banks' perspective, they are fulfilling their mission by serving their communities – anything that detracts from that mission, such as additional paperwork and reporting, is hard to justify. ICBA is currently engaged in raising awareness and justifying that the extra paperwork and reporting is worth the effort, but unfortunately, these proposals will likely undermine that campaign. Worse yet, many banks that currently hold their certification will likely find these new burdens not worth the benefit of continued certification. The Fund needs to reexplore how it can protect the CDFI brand by tamping out bad actors without unintentionally discouraging and burdening good actors. Failure to do so will undoubtedly lead to numerous CDFI banks, which are good actors, exiting the program. This is even more true for those community banks that currently have no CDFI Award or grant. The burden must be commensurate with the benefit – yet the CDFI Fund has not explored an appropriately elastic scope.

ICBA recommends the Fund repropose a rule that includes a crisp explanation of (1) the problems for which it is trying to solve, (2) how the proposed solutions will efficiently address those problems, and (3) why the proposed solutions are better suited or more cost-effective than other solutions.

Primary Mission—Financial Products and Services

The governing statute for the CDFI Fund states that a CDFI must have ''a primary mission of promoting community development.'' The CDFI Fund proposes to "strengthen" the primary mission test and examine the extent to which an entity's financial products and services align with that mission by assessing several factors, including whether the product/service improves the social and/or economic conditions of underserved people and/or residents of economically distressed communities and is affordable and based upon a borrower's ability to repay.

The Fund is proposing to revise its application and annual certification to ensure that entities provide financial products and services in a way that do not harm consumers. While ICBA supports this goal, the way the Fund proposes to assess these criteria could prove to be troublesome. To assess compliance with these principles, the application asks a series of questions related to <u>every</u> financial product and service offered by the applicant, including

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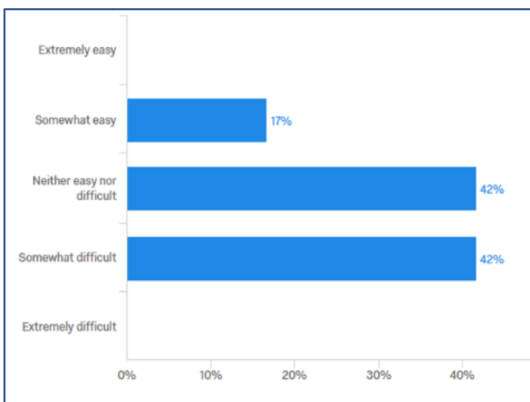
questions on the annualized rate of interest and other fees charged to a borrower using the Military Annual Percentage Rate (“MAPR”).

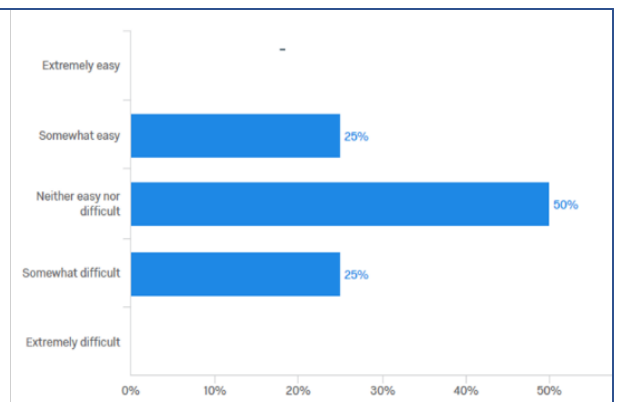
Though the Fund intends to provide an apples to apples comparison of products across the board, ICBA is concerned that the Fund will arbitrarily discourage or foreclose upon certain products that might have a comparatively high MAPR to other products, despite extenuating circumstances that would justify the higher-priced product. Because CDFI banks serve populations that are traditionally un- or under-banked, the risk profiles of the customers may dictate pricing for a financial product or service that is not commensurate with more fully-banked populations. Indeed, this may be required from the prudential regulator as a risk mitigant against safety-and-soundness concerns.

Separate from the issues stemming from the use of MAPR, the remaining process to assess primary mission for financial products is extremely onerous, asking a series of questions for every single financial product and service offered. Again, if the purpose is to tamp down on bad actors and eliminate abusive products or services, the Fund should recognize safeguards and reports already put in place by federal regulators and their routine examinations. These requirements would be better targeted toward CDFIs that are not routinely supervised by state or federal agencies.

Community banks are responsible stewards of their communities.
CDFI banks have taken the extra step of achieving a CDFI certification from the Fund. As it currently stands, the process to apply for and maintain a CDFI designation is a substantial endeavor. Though all community banks serve their communities as a primary mission, recent surveys of CDFI community banks found that the application and annual certification process stands as a barrier to even more community banks being recognized as CDFIs. Nearly half of all respondents found the application difficult.



Response to question: “How easy was the process of applying for certification?”



Response to question: “How easy is the annual certification report?”

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While it is understandable that the Fund wants to ensure that the entities that achieve certification actually pursue and meet the criteria, ICBA contends that the Fund should not create an undue burden of demonstrating compliance with that criteria. Otherwise, the result is an exercise that prioritizes form over function. Rather than add to the administrative burden of demonstrating compliance with regulations, ICBA recommends that the Fund explore opportunities to leverage data and resources that community banks already produce and provide as the result of being examined and supervised entities.

Thank you for giving ICBA the opportunity to provide comments to the Fund's Notice. ICBA hopes that the Fund will continue in its goal to strengthen the CDFI brand, but that it will not do so to the detriment of the hundreds of mission-driven community banks and CDFI banks that strive to better their communities and serve their populations. If you wish to discuss these comments further, please do not hesitate to contact me at Michael.Emancipator@icba.org or 202-821-4469.

Sincerely,

/s/

Michael Emancipator
Vice President and Regulatory Counsel

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November 5, 2020

Ms. Tanya McInnis
Program Manager for the Office of Certification, Compliance and Evaluation
Community Development Financial Institutions Fund
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Comments on the Proposed CDFI Certification Application, the Annual Certification and Data Collection Report, and the Certification Transaction Level Report

Dear Ms. McInnis:

The Indiana Credit Union League (ICUL) appreciates the opportunity to submit comments on the Community Development Financial Institutions (CDFI) Fund's proposed certification application, the annual certification collection report, and the certification transaction level report. The ICUL's member credit unions represent 99% of assets and members of Indiana's federally and state-chartered credit unions, with those memberships totaling more than 2.6 million consumers. As an organization that represents eight community development credit unions, we continue to look for ways to streamline and ease their compliance burden.

ICUL commends CDFI Funds' policy objectives particularly to minimize the burden of CDFIs, fostering diversity, and supporting CDFIs growth. We do understand the desire to protect the CDFI brand and staff efficiency; however, the initial certification process already leads some credit unions to obtaining third-party assistance because of its complexity. We understand it is difficult to balance oversight with expanding the CDFI availability to distressed communities. Our desire is to simplify the process even further for financial institutions. Credit unions are especially member-focused financial institutions, and many serve low-income or underserved communities.

The information requested can be streamlined even further by simply recognizing credit unions are democratically controlled, people-helping-people-focused financial institutions, and their boards are elected by their members, not by outsiders or individuals seeking profit. This is a matter of either federal or state law, and CDFI Fund should eliminate the information requirements ranging from primary mission, accountability, bylaws, etc. In addition, NCUA has a low-income designation (LID) classification for credit unions that meet certain membership criteria. A federal credit union qualifies for LID when a majority of its membership (50% + one member) qualifies as low-income members. We understand that CDFI Fund recognizes the LID classification by simplifying the initial and annual certification process/information, and NCUA even assists with processing information to help streamline the certification. We ask the CDFI Fund to reevaluate the magnitude of information that is needed from these credit unions and remove burdens, so these credit unions can serve these communities.

ICUL also strongly opposes the proposed use of the Military Annual Percentage Rate (MAPR). The MAPR is only required for borrowers that are active-duty servicemembers or dependents. Many credit

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unions manually calculate this number. To mandate this on all loans would be a significant burden and unnecessary because financial institutions are already adhering to Regulation Z when calculating an annual percentage rate (APR). The calculation is automated and incorporated into the borrowers account files. Also, federal credit unions already have a usury cap (currently 18 percent) determined by the Federal Credit Union Act. NCUA does allow small-dollar Payday Alternative Loans which are capped at 28 percent. These loans have very stringent restrictions and are typically under $1,000. We share this because adding MAPR requirement is unnecessary for credit unions and would be burdensome.

We appreciate the opportunity to comment, and we ask the CDFI Fund to consider our comments as discussed above. If you have any questions about our letter, please do not hesitate to give me a call at (317) 594-5320.

Sincerely,

John McKenzie
President, Indiana Credit Union League

From:	CCME
To:	Dickens, Michelle
Subject:	FW: CDFI Request for Public Comments due November 5, 2020 for Proposed Changes to Certification - Lakeview Community Capital, LLC 181CE014761
Date:	Thursday, November 5, 2020 9:32:37 AM

From: Karen Fugok <KarenFugok@lakeviewcommunitycapital.com>
Sent: Wednesday, November 4, 2020 11:52 AM
To: CCME <ccme@cdfi.treas.gov>
Cc: Dickens, Michelle <dickensm@cdfi.treas.gov>
Subject: [EXTERNAL]CDFI Request for Public Comments due November 5, 2020 for Proposed Changes to Certification - Lakeview Community Capital, LLC 181CE014761

To Tanya McInnis, Program Manager Certification, Compliance Monitoring and Evaluations (CCME), CDFI Fund:

> In response to CDFI request for public comments, Lakeview Community Capital, LLC (LCC) requests clarification regarding the proposed change to the CDFI Annual Certification Report / Certification Application regarding certain Affiliates of NDI CDFIs to meet the Primary Mission (PM) requirement.
>
> LCC (the Certified CDFI 181CE014761) is a subsidiary of Lakeview Loan Servicing, LLC ("LLS"). LLS's sole owner is ultimately an investment fund which is managed by its general partner (see more below) and owned by multiple investors, none of which hold an ownership interest in the fund that equals or exceeds 25 percent or singularly holds a majority. The power to exercise control of the investment fund resides with the general partner, which is an affiliate of Bayview Asset Management, LLC ("BAM"). As of 9/30/2020, BAM owns 1.126% of the investment fund.
>
> LCC and its parent, LLS, work to improve economic conditions by providing affordable home mortgages to CDFI-targeted underserved populations, which helps promote financial access and community development.
>
> **Would the proposed PM requirement apply to the entire family tree (LLS & BAM & any LLS/BAM investors) or just LLS?** We believe the PM requirement should stop at the parent LLS who is the only entity in the family with "control" of LCC the certified CDFI.

Thank you.

Best Regards,

Karen Fugok, NMLS ID:97865
Sr. Vice President
Lakeview Community Capital, LLC
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Faith Capital For Building Communities

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November 5, 2020

Mr. Greg Bischak
Program Manager, Financial Strategies & Research
CDFI Fund
1500 Pennsylvania Avenue NW
Washington, DC

Dear Mr. Bischak,

I write on behalf of the Leviticus Fund, a non-regulated loan fund, in response to the CDFI Fund's call for public comment to proposed revisions in the Certification Application, the Annual Certification and Data Collection Report (ACR) and the new Certification Transaction Level Report (CTLR).

At the onset, I affirm the Fund's efforts through these proposed revisions to further promote responsible financing practices within our sector, and to effectively use technology to streamline the collection and analysis of data that reflects our collective impact.

Back in March of 2017, Leviticus submitted responses to the Fund's Request for Information regarding possible changes in compliance reporting requirements that might prove to be onerous to our staff. The proposed changes to the ACR – specifically the addition of the three data tables for sources of investment capital, operating revenue, and more detailed loan-related data – will add to our staff's reporting obligation. However, the requested data is relevant and appropriate to our community development work and will contribute to higher standards of transparency.

To ensure that CDFIs can meet this new data obligation, it is our recommendation that the Fund extend – at least for a two-year transition period – the reporting period from 90 to 120 days from fiscal year end. This reporting schedule change should provide sufficient time for CDFIs to design and implement the necessary procedures to accurately capture the new data.

Leviticus affirms the Fund's proposal to remove geographic boundaries on most Target Market designations. In its history, Leviticus has fallen well within its tri-state Target Market investment test. However, some of our lending initiatives, for example promoting resident ownership of manufactured home communities that preserves existing, deeply affordable housing, largely falls outside of our defined TM. Allowing this lending to now be included in our performance tally will eliminate any apprehension on the part of Leviticus to remain agile and responsive to emerging opportunities that otherwise meet our lending program values.

Leviticus also affirms the Fund's more rigorous review of a CDFI's Primary Mission to confirm alignment between mission, strategies and lending products and services. Under the guidance of our Board of Directors, Leviticus has dedicated attention and resources to its mission-driven lending and believes further oversight by the Fund within our sector is a crucial testament to the caliber of certified CDFIs.

In closing, the proposed change to have at least one governing board member accountable to each TM component and at least 33% of the governing board accountable to the overall TM does not appear unduly burdensome. It is Leviticus' understanding, based on the information shared by the Fund, that the options for a governing board member to demonstrate representation will still include either employment or board member status to another organization that primarily serves low-income individuals.

Thank you for this opportunity to offer our comments and suggestions.

Sincerely,

Greg Maher

Greg Maher
Executive Director

capital for healthy
families & communities

November 5, 2020

Tanya McInnis
Program Manager, Office of Certification, Compliance, Monitoring Evaluation
Community Development Financial Institutions (CDFI) Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

RE: CDFI Program - Certification Application Request for Public Comments (OMB Number 1559-0028)

Dear Ms. McInnis:

The Low Income Investment Fund (LIIF) is pleased to offer feedback to the CDFI Fund on proposed changes to the CDFI Certification application.

Since the Riegle Act was enacted in 1994, CDFIs have grown in strength and number to now encompass innovative models across a diversity of activities and geographies. The CDFI brand's success is in large part thanks to strong CDFI Certification policies and procedures. The seven statutory criteria for CDFI certification, which have been in place since 1994, have ensured that only mission-based lenders who are accountable to low-income communities are able to access CDFI Fund resources. Retaining strong and robust Certification policies and procedures is vital to the strength of the CDFI industry and the communities we serve. This is especially true in the midst of the current pandemic and economic recession as CDFIs again demonstrate our ability to reach underserved markets and deliver critical support to low-income communities.

LIIF appreciates the CDFI Fund's efforts to strengthen CDFI Certification application review policies and procedures. Given that the proposed changes would have significant impacts across the industry, including impacting the CDFI certification status of many CDFIs, LIIF recommends that the CDFI Fund adopt additional flexibility to ensure existing certified CDFIs can work to maintain their certification within a grace period of at least 18 months after the publication of the new, final application. This grace period is especially important as the COVID-19 pandemic disrupts CDFI functions and business and makes it even more difficult to make the major, upfront investments in software or systems that may be needed to accurately report and capture this information.

Below, we offer specific comments on the proposed changes to the Primary Mission, Financing Entity, Target Market, and Accountability sections of the CDFI Certification application.

Primary Mission

LIIF supports the CDFI Fund's efforts to strengthen the Primary Mission test, although we also have questions on key items. First, we agree with Opportunity Finance Network (OFN) that the lack of definition around many key terms creates confusion. The CDFI and financial services sector does not necessarily use standardized products and pricing definitions across the sector; for example, "below market rate," "lower than standard," "nontraditional," "less established," "lower profitability," "mainstream underwriting

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criteria" and other terms include a subjective element. We are concerned that the lack of definitions will force lenders to make blanket statements about products that may not have uniformity across products and borrowers.

Second, LIIF recommends that the CDFI Fund also consider activities undertaken to close the racial wealth gap as a community development objective. This is an important industry goal that the CDFI Fund can support by emphasizing it on the community development objectives list.

Third, LIIF supports collecting information on pricing of CDFI products since this is an important way to determine if a product is high cost or predatory. While using the Military Lending Act standard to calculate annual percentage rate (APR) would allow for standardized calculation across the industry, requiring CDFIs to report APR using the MLA methodology adds yet another layer of complexity to the existing web of reporting requirements. We join with OFN, the CDFI Coalition, and others to recommend that the CDFI Fund carefully consider if the additional compliance burden of reporting MAPR is warranted, or if there is a way to allow CDFIs to report using their existing APR calculations.

LIIF also joins several of our partners to offer the following recommendations to ensure Affiliates are incorporated into the review process:

- A CDFI Certification Applicant or Affiliate whose mission is to serve underserved markets through approved federal government programs should be deemed to satisfy the Documenting Mission and Community Development Strategy test. This is important for Affiliates who may not have a codified mission statement but who nevertheless deliver an end product that is consistent with community development. For example, this includes Affiliates with a mission to invest in programs like the Low Income Housing Tax Credit. Program requirements should serve as a sufficient proxy for meeting the Documenting Mission and Community Development Strategy sections of the Primary Mission test.

- To ensure that an Applicant is not found ineligible based on the activities of a relatively small Affiliate, the CDFI Fund should consider the size or percentage of Financial Products and Financial Services of an Affiliate relative to the CDFI Certification Applicant (i.e, balance sheet, number of employees, percent of overall lending). Many CDFIs have Affiliates which provide specialized financing and services which may not necessarily specifically target low-income people and places, but may also only represent a very small part of the parent company's operations. Often, these Affiliates are created from their parent entity for legal and financial reasons. We support LISC's recommendation that Affiliates that reflect less than 10 percent of their parent entity's annual Financial Product and/or Financial Service activity (as measured by volume of activity or commitment of staff resources) should be exempt from the Primary Mission requirements.

- The CDFI Fund should exempt Affiliates of nonprofit CDFIs which distribute their profits to the CDFI Certification Applicant, as long as they can meet all facets of the Primary Mission test. Some CDFI Affiliates are structured so that any annual profits are distributed to the parent entity to further their CDFI and community development mission. The CDFI Fund should exempt such Affiliates from the Primary Mission test since these entities further the capacity of the CDFI Certification applicant.

Finally, LIIF agrees with OFN's assessment that it is appropriate to flag or prohibit behavior by entities that engage in activities that negatively impact the economic wellbeing of underserved communities. Organizations that have any kind of fair lending violation or other related sanctions, a history of high cost lending and/or predatory practices, or recent unsatisfactory ratings on Community Reinvestment Act exams, should be considered ineligible for CDFI certification.

Financing Entity

LIIF supports the requirements that CDFIs must be financing entities that demonstrate their predominant business activity is the provision of arm's-length Financial Products and/or Financial Services. However, we are concerned that the new "predominance of assets" proposal lacks transparency.

Under the new certification guidelines, the CDFI Fund will assess whether the Applicant has closed an appropriate number and/or dollar volume of eligible Financial Product transactions during the timeframe under review. We are concerned that the application states that the Fund will "use its sole discretion in determining the appropriate level of activity with the provision of Financial Products." The application outlines that the Fund *may* consider whether the Applicant's level of Financial Product activity is consistent with its business strategy and expected typical level of activity for the timeframe under review and how the level of Financial Product activity compares to the Applicant's capitalization level for the period under review. We join OFN in recommending that the Fund provide benchmarks or guidelines for applicants to understand the evaluation process for this portion of the application.

The Financing Entity Section of the application also states that asset information should be based on the Applicant's information only and should not use a consolidated statement, although some CDFIs only prepare a consolidated set of financial statements. We support OFN's request that the CDFI Fund clarify how an Applicant should respond to this question if they only produce consolidated financial statements, and if organizations will be permitted to use these consolidated statements for the purposes of certification. We also recommend that the Fund do a cost analysis to determine the burden CDFIs may face if they are unable to use their consolidated financial statement. If the Fund determines that CDFIs cannot use their consolidated financial statements, we recommend providing an 18-month transition period for CDFIs to update their processes and systems.

We also support additional flexibility for maintaining an organization's certification if it does not meet this test during an annual certification review. For example, in times of crisis like the current pandemic, CDFIs often increase our grant making activity which could result in a CDFI failing the Financing Entity test for one year even if they have historically been in compliance. Further, this flexibility may be particularly critical for newly formed CDFIs that have a robust social justice and racial equity mission. Financing these highly impactful projects can be incredibly time and resource intensive so additional flexibility is important to ensure the Fund is not unintentionally discouraging this work. LIIF joins with several industry partners to support applying a three-year average if the CDFI fails to meet the predominance test in any given year, which is similar to the three-year average allowed in the Target Market test.

Target Market

LIIF is supportive of the CDFI Fund's proposal to eliminate geographic restrictions on most Target Markets. The current practice can inhibit CDFI financing activity in otherwise eligible places simply because of administrative concerns related to CDFI Certification or award compliance requirements. The proposed change offers the chance to increase impactful CDFI investments in an expanded geographic area while also lowering administration burden.

However, LIIF does have concerns about the Fund developing a list of approved Target Market Verification Processes without giving the CDFI industry an opportunity to weigh in. The proposal does not outline the process for requesting approval of a new Target Market verification process not already accepted by the CDFI Fund. LIIF recommends that the Fund outline their timeframe for review and approval of a proposed process and clarify if there will be an opportunity to discuss or amend a proposed verification process if the Fund declines to accept a new verification process.

As the CDFI Fund develops its list of Target Market Verification Processes, LIIF joins the CDFI Coalition in recommending that the Fund clarify the Low-Income Target Population (LITP) definition with regard to end users. Some CDFIs verify their targeting of LITPs by documenting the benefits to the end user, rather than the income of the borrower. LIIF strongly supports the ability to document benefits to the end user and cautions that assessing the income of the borrower is often inappropriate given the intermediary structure through which we work. Documenting the benefits to the end user is allowed in the regulation and can include affordable housing tenants, low income users of community facilities, and low-income workers; however, the processes for verifying and documenting these end users (including the use of federal proxies such as SNAP eligibility) has never been defined by the Fund, and the practice has not been explicitly permitted. The CDFI Fund should recognize the validity of end users to qualify for LITP. For example, a child care facility that serves low-income children whose families qualify for SNAP.

LIIF is also concerned by the Certification application's statement that "Applicants for CDFI Certification must meet the relevant Financial Product activity percentage threshold, without exception, in both the number and dollar amount of such activity – the CDFI Fund will discontinue its current practice of providing exceptions to the Target Market threshold requirement." The Fund implemented the 60 percent threshold through guidance, which builds flexibility into the certification process. Unforeseen events can impact a CDFIs ability to meet the 60 percent threshold, like the current global pandemic. We recommend that the Fund continue to provide reasonable flexibility to account for exceptional circumstances and temporary imbalances in the Target Market threshold.

Accountability

LIIF supports the proposed changes to the Accountability test, which seek to strengthen CDFI accountability requirements by focusing on Governing Boards or Advisory Boards and providing greater flexibility on the geography of Board members. However, CDFIs will need time to bring their Boards into compliance with the new accountability requirements. Many Boards have multiyear terms for members so the timing of the implementation of this aspect will be consequential. We recommend that the Fund provide a grace period for compliance so that as exiting Board members term off the Boards, they are replaced with Board members to meet the accountability requirements.

In addition to the proposed changes, we recommend that the CDFI Fund allow consideration of local and geographic specific Advisory Boards for CDFIs which serve a regional or national Target Market. We are concerned that the proposed guidance would restrict Advisory Boards to national Advisory Boards, which limits the importance of local and geographic specific Advisory Boards that help ensure accountability for local offices and rural activities of regional and national CDFIs.

Streamlined Process

LIIF supports moving to a quarterly application cycle but we recommend that the CDFI Fund publish and commit to a timeline that provides applicants with sufficient advance notice. This should coincide with the CDFI Program application cycle, and decisions about applications should be shared in the same quarter in which the application is submitted.

As stated above, LIIF also recommends a minimum 18-month grace period for currently certified CDFIs to come into compliance. We also recommend that the CDFI Fund should provide thorough and ongoing training on the new application and reporting requirements.

Annual Certification and Data Collection Report Changes

LIIF would like to propose a change to the reporting period for the Annual Certification and Data Collection Report from 90 days to 150 days after the fiscal year end of the reporting entity, to allow for additional time for audited financial statements to become available, for the reporting entity to use the financial data from the audited financial statements for the most recently completed fiscal year, to the extent the audited financial statements become timely available.

Finally, LIIF supports incorporating the CDFI Certification application into the Awards Management Information System (AMIS) and linking it with the new CDFI Certification Transaction Level Report (CTLR). We believe these changes will reduce the number of application questions and overall public burden.

We appreciate the CDFI Fund's significant efforts to strengthen the CDFI Certification application and ensure the ongoing ability of our industry to provide impactful, mission-oriented support to underserved communities. Please contact Olivia Barrow, Policy Manager, at obarrow@liifund.org for any clarification or questions about our comments.

Sincerely,

Daniel A. Nissenbaum
Chief Executive Officer
Low Income Investment Fund

LISC
LOCAL INITIATIVES
SUPPORT CORPORATION

November 4, 2020

Tanya McInnis
Program Manager, Office of Certification, Compliance, Monitoring Evaluation
Community Development Financial Institutions (CDFI) Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

RE: CDFI Program - Certification Application Request for Public Comments (OMB Number 1559-0028)

Dear Ms. McInnis:

The Local Initiatives Support Corporation (LISC) thanks the CDFI Fund for the opportunity to provide feedback on proposed changes to the CDFI Certification application. We appreciate the CDFI Fund's ongoing engagement with stakeholders and encourage Treasury to continue to work with the public as CDFI Certification policies and procedures are updated.

I) General Comments

Before we address specific questions posed in the Federal Register Notice, we have some general comments about CDFI Certification. As you know, the seven statutory criteria to become a certified CDFI have remain unchanged since the passage of the Riegle Act. These standards ensure that only mission-based lenders, which are accountable to their low-income clients and communities are able to achieve CDFI Certification. Robust CDFI Certification policies and procedures are vitally important to protecting the CDFI Certification standard and ensuring that only true mission-based lenders are able to access CDFI Fund and other resources, which use certification as an eligibility proxy for CDFI assistance. LISC supports the CDFI Fund's efforts to strengthen CDFI Certification application review policies and procedures.

We support the CDFI Fund's proposal to eliminate geographic restrictions on most Target Markets. Current practice requires CDFI Certification applicants to create maps around their Target Markets, which can result in CDFIs not receiving credit for activities outside of these places, which would otherwise be eligible. The current practice can inhibit CDFI financing activity due to administrative concerns on whether it will satisfy CDFI Certification and CDFI Fund award compliance requirements, which often mandate a certain percentage of activity in a CDFI's certified Target Market. This commonsense change will lower administrative burden for CDFIs and has the potential to increase impact.

LISC also supports incorporating the CDFI Certification application into the Awards Management Information System (AMIS) and linking it with the new CDFI Certification Transaction Level Report (CTLR). This will lower burden on CDFI Certification applications since it will reduce the number of application questions and overall public burden. We believe most of the proposed changes are positive since they strengthen the CDFI Certification standard and decrease applicant burden.

The CDFI Fund is proposing numerous changes which could impact the CDFI certification status of many organizations. LISC recommends that the CDFI Fund grandfather in existing certified CDFIs after the CDFI Certification application is finalized and allow a grace period of at least one year for organizations to make any changes necessary to maintain their certification.

II) Specific Comments

The CDFI Fund is proposing changes to the Primary Mission, Financing Entity, Target Market, and Accountability sections of the CDFI Certification application. LISC offers the following specific recommendations on the proposed policy and review procedure changes.

Primary Mission

Per statute, a CDFI must have a "primary mission of promoting community development." CDFI Fund regulations require that in "determining whether an Applicant has such a primary mission, the CDFI Fund will consider whether the activities of the Applicant are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of economically distressed communities." The CDFI Fund currently allows Applicants to meet this test by providing board-approved organizational documents along with a narrative statement demonstrating they have a primary mission of promoting community development, as well as a brief description of Financial Products/Financial Services offered.

The CDFI Fund is proposing new Primary Mission standards, which will require Affiliates of certified CDFIs that provide Financial Products and/or Financial Services to also demonstrate a Primary Mission of community development. The current process only looks at the certified CDFI and not Affiliates for non-depository applicants. The CDFI Fund is proposing to implement the new Primary Mission standard by reviewing the mission, community development strategy, and responsible financing practices of the certified CDFI applicant and each Affiliate providing Financial Products and/or Financial Services. Applicants must evidence their Primary Mission of promoting community development, and that of their Affiliate entities, through legal entity documents, bylaws, governing or managing board resolution, or owner resolution/directive.

Recommendations:

LISC supports efforts to strengthen the Primary Mission test and offers the following recommendations, which are primarily focused on incorporating Affiliates of CDFI Certification applicants into the review process:

1. **A CDFI Certification Applicant or Affiliate whose mission is to serve underserved markets through approved federal government loan programs should be deemed to satisfy the Documenting Mission and Community Development Strategy test.** It's not clear from the proposed CDFI Certification guidance if a CDFI Certification applicant or its Affiliate would meet the proposed Documenting Mission or Community Development Strategy components of the Primary Mission test if they were created solely for the purpose of serving underserved borrowers which can't receive credit elsewhere. LISC recommends that CDFI Certification Applicants or Affiliates that provide specific federal loans which are directed by statute to underserved borrowers automatically meet the Documenting Mission and Community Development Strategy sections of the Primary Mission test. For instance, SBA 7a lenders are required to document that their loans went to businesses that couldn't otherwise access the capital, and are typically eligible for Community Reinvestment Act credit. LISC believes that these program requirements should serve as a sufficient proxy for meeting the Documenting Mission and Community Development Strategy sections of the Primary Mission test.

2. **The CDFI Fund should consider the size or percentage of Financial Products and Financial Services of an Affiliate relative to the CDFI Certification Applicant (i.e, balance sheet, number of employees, percent of overall lending) such that an Applicant would not be found ineligible on the activities of a relatively small Affiliate**. Many CDFIs have Affiliates which provide specialized financing and services which may not necessarily specifically target low-income people and places, but may also only represent a very small part of the parent company's operations. Often, these Affiliates are created from their parent entity for legal and financial reasons. LISC recommends that Affiliates which reflect a small portion of a CDFI Certification applicant's overall Financial Product and/or Financial Services activity shouldn't hinder the ability of a CDFI Certification applicant for becoming or remaining certified. LISC recommends that the CDFI Fund exempt Affiliates which reflect less than 10 percent of their parent entity's annual Financial Product and/or Financial Service activity (as measured by volume of activity or commitment of staff resources) from the Primary Mission requirements.

3. **The CDFI Fund should exempt Affiliates of nonprofit CDFIs which distribute their profits to the CDFI Certification Applicant, as long as they can meet all facets of the Primary Mission test.** Some CDFI Affiliates are structured so that any annual profits are distributed to the parent entity to further their CDFI and community development mission. The CDFI Fund should exempt such Affiliates from the Primary Mission test since these entities further the capacity of the CDFI Certification applicant.

Accountability
Per statute, a CDFI must "maintain, through representation on its governing board or otherwise, accountability to residents of its Investment Area or Targeted Population." The current policy allows for Target Market accountability to be met through representation on a CDFI governing board and/or advisory boards, but also allows CDFIs to demonstrate accountability through other means, including collecting feedback through surveys. A CDFI with multiple Target Markets must meet the Accountability test for each Target Market it serves, separately.

The CDFI Fund is proposing that CDFIs may now only meet their accountability requirements through either governing boards or advisory boards as follows:

- Demonstrating that at least one Governing Board member is accountable to each proposed Target Market component and at least 33% of the governing board is accountable to the proposed Target Market overall; OR
- Demonstrating that at least one Advisory Board member is accountable to each proposed Target Market component; and
    - 60% of the Advisory Board is accountable to the proposed Target Market overall;
    - at least 20% of the Governing Board members are accountable to the proposed Target Market (with no specific representation required); and
    - at least one Governing Board member has a seat on the advisory board.
- Applicants without a formally established Governing Board must demonstrate that at least one Advisory Board member is accountable to each proposed Target Market component; at least 80% of the Advisory Board members are accountable to the proposed Target Market overall; and at least one partner/owner/management leader has a seat on the Advisory Board.

<u>*Recommendation*</u>:
LISC supports efforts to strengthen the Accountability test and offers the following recommendation:

1. **Allow consideration of local and geographic specific Advisory Boards for CDFIs which serve a regional or national Target Market.** The Accountability portion of the current CDFI certification application is much more qualitative than the new proposed standards. Although Advisory Board is not defined in the CDFI Fund's regulations, the proposed guidance would

restrict it to national Advisory Boards since it requires the Fund to consider "how the Advisory Board input is incorporated into the organization's Governing Board's decision-making process." The CDFI Fund should allow local and geographic specific Advisory Boards to be included in the Accountability test's standards for CDFIs serving regional, national, and geographic specific Target Markets, such as rural communities. These Advisory Boards ensure accountability to low-income people and places for local offices and rural activities of regional and national CDFIs.

Financing Entity
CDFIs are required to be financing entities and applicants must demonstrate that their predominant business activity is the provision of arm's-length Financial Products and/or Financial Services. The CDFI Fund specifically requires that an applicant demonstrate a predominance of both its assets and staff time is for the direct provision of Financial Products and/or Financial Services.

Recommendation:
LISC believes that the predominance standards are appropriate for CDFI certification since an entity should demonstrate to the CDFI Fund that the majority of its business is for Financial Products and/or Financial Services. The current application standards though don't allow the CDFI Fund any flexibility for maintaining an organization's certification if it does not meet this test during their annual certification review. LISC believes flexibility is needed since many CDFIs often scale their grant making activity during periods of crisis, which could cause an applicant to fail the Financing Entity test for one year even if they have always met it historically. The CDFI Fund should allow currently certified CDFIs to meet a three year average for the predominance test if an Applicant fails it during any given year. This is allowed for currently certified CDFIs in the Target Market test and would allow CDFIs to be responsive during periods of crisis without jeopardizing their certification status.

We thank the CDFI Fund for the opportunity to offer suggestions and welcome opportunities to explore these and other possible improvements to CDFI Certification policies and procedures. Please contact Mark Kudlowitz (mkudlowitz@lisc.org), LISC Policy Director, if you need additional clarification or follow up on any of the recommendations provided in this letter.

Sincerely,

Matt Josephs
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October 26, 2020

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

Ms. Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund
US Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Comments regarding Proposed CDFI Certification Requirements

Dear Director Harris and Ms. McInnis:

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 34 CDFI banks and 27 CDFI depository institution holding companies. We currently have applications pending for CDFI Certification on behalf of 13 additional banks and 12 depository institution holding companies. Our clients are located in distressed and underserved communities located across seven 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
LE09- Is the Applicant FDIC – insured
LE09 – Applicant FDIC Insurance Certificate Number
LE10- Applicant State or Other Regulator

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. SAM.gov registration requires EIN validation by the IRS and DUNS confirmation from Dunn and Bradstreet. Again, EIN documentation seems duplicative for Applicants that have an active SAM.gov account.

PRIMARY MISSION

LAG understands the CDFI Fund's concern with regard to primary mission and determining whether an entity's activities are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of economically distressed communities. LAG, however, questions whether requiring an applicant to have an acceptable primary mission in place for at least the 12 full months completed just prior to submission of the application will accomplish that goal. LAG proposes that an Applicant's ability to demonstrate that it has an acceptable community development strategy by providing information with regard to financial products and services and development services offered is a much more meaningful tool to evaluate an Applicant's commitment to the mission of the CDFI Fund than a simple mission statement.

The requirement that a primary mission statement be in place for 12 months does not provide further evidence of the intentionality of an Applicant's activities in promoting community development. Rather the types of financial products and services offered and the associated requirements for responsible financing products are much more indicative of intentionality than a mission statement that may or may not be backed by activities in support of that mission. There are many ways in which an Applicant can demonstrate intentionality without a "canned" mission statement. Furthermore, if a mission statement were required, LAG would ask for greater clarification with regard to what constitutes an acceptable primary mission statement of promoting community development. Must these exact words be incorporated into a mission statement (a primary mission of promoting community development) or could language about serving an applicant's distressed and underserved market, providing products and services to meet community needs, or similar language that is indicative of a primary mission of promoting community development, when coupled with activities that clearly support said mission, be acceptable?

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 with regard to products and services, more particularly those enumerated in PM 17-29. Moreover, the questions in this section ask for sweeping generalizations by product and do not allow for one on one banking and financial products that are specifically designed for individual customers to meet their particular needs. This is one of the most impactful aspects of a CDFI bank – to create a unique product, with terms and conditions expressly designed to meet a customer's needs. Many banks do this on a one on one basis with individual borrowers without formal "programs" to reduce rates or waive fees, etc. such as that implied in PM20. Regulated institutions are required to have certain policies and procedures in place to meet safety and soundness requirements. Exceptions to policy are permissible in certain instances on a case-by-case basis. Such would be the case for example when an Applicant modifies loans to assist struggling borrowers. The Applicant, however, would not have a "formal program" as required by PM20 for each of its products along these lines, rather, would make exceptions to policy on a case-by-case basis to assist the distressed customer.

TARGET MARKET

LAG is supportive of the CDFI Fund's proposed changes with regard to Pre-qualified investment areas. We would ask for further clarification with regard to 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 as long as: 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.

With regard to 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.

With regard to 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 with regard to 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 with regard to development services are too restrictive. We would like to offer specific comments with regard to 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

Perhaps one of the most impactful development service tools a bank offers is its one on one credit counseling with consumers. When a consumer has the ability to 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 with regard to 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 strong 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.

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 Applicant's 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 nearly 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

In light of 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 type 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 with regard to the proposed changes. Serving on the Governing Board of Directors of an FDIC insured depository institution is generally 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.

Many banks are closely held and all members of the Governing Board are related. Others have very small governing boards due to stock ownership and other requirements. In these instances, many banks name an Advisory Board comprised of local business, civic and economic development leaders and/or elected officials to serve on one or more Advisory Boards to provide greater flexibility in structure, benefit from the knowledge of others, to be advocates throughout the community and to provide feedback from the community to the Governing Board of Directors. To require that at least 20% of the governing board members be accountable to the proposed target market in addition to the Advisory Board will be impossible for many small and/or closely held banks to meet. In some instances family held and/or small rural banks, do not have a single individual serving on the Governing Board that is not a) a principal shareholder b) a bank employee and/or c) related to a bank employee. In these circumstances, these entities have "0" accountability on the Governing Board and have intentionally created Advisory Boards to be their advocates in the local community and the local community's advocates within the banks' decision making process. To not permit these organizations to obtain the CDFI Certification designation because they cannot establish 20% accountability on their Governing Board would be a disservice to these organizations that provide tremendous impact in their respective distressed communities. Without organizations such as these, many local residents would not otherwise qualify for financing from mainstream financial institutions.

Larger regional banks serving multiple markets have often created multiple Advisory Boards to provide representation and advocacy in each market served or to provide greater and more geographically disbursed representation throughout the organization's entire market. CDFI Staff have advised us that the CDFI Fund will not look cross-board to establish accountability; rather, an applicant must establish accountability either through its governing board or through an Advisory Board. This appears to be in direct conflict with the attempt to provide geographic diversity with respect to Accountability.

We would also ask for clarification with regard to Accountability under the proposed Target Market revisions that intend to eliminate geographic boundaries. If an Applicant can establish 33% accountability on its governing board, as long as 33% of the board members meet one/more of the eligibility criteria, is that sufficient, regardless of geographic diversity?

In conclusion, Logue Advisory Group greatly 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

With kindest regards,

Logue Advisory Group, LLC

Holly R. Logue, President/CEO

Midwest Minnesota Community Development Corporation
Comments in Response to
Proposed Changes to CDFI Certification, CTLR and ACR

We respectfully request consideration of the following comments.

1) It is our understanding that mapping capability through CIMS will allow block-level data in non-MSA (rural) geographies. Because much of rural poverty is concentrated within the incorporated boundaries of small cities, and because those cities may be contained within larger census tracts, mapping to a smaller level –either a city or a block(s) area—will help to capture this data. We further understand this will be allowed in lieu of capturing all required data to determine low-income status where a loan typically does not require such data. Both of these changes are helpful in rural areas and to small CDFIs and we are in favor of them.

2) A vital question is asked about how long existing CDFIs should be allowed to come into compliance. If CDFIs report retroactively on three years of data, the likelihood of noncompliance is high in the first round unless a three-year window is provided. Any finding of noncompliance for CDFIs with existing grant awards will hinder the effectiveness of those CDFIs, particularly in fund-raising and reputation as it likely will result in a negative finding in audited financial statements regarding noncompliance with federal funds. To ensure a proper transition, one approach would be to define a grace period as "through the performance period of grant awards and allocations approved prior to the effective date of the new CDFI Certification rules." Another alternative would be a shorter look-back period of one year in the initial application and a three-year window prior to the first application. This allows two years for complex CDFIs to phase in all requirements.

3) An alternative would be to reduce or eliminate requirements pertaining to affiliates, as these require business model changes for complex CDFIs that will be challenging to accomplish in a brief period.

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National Association of Federally-Insured Credit Unions

November 5, 2020

Tanya McInnis
Program Manager, Office of Certification, Compliance, Monitoring and Evaluation
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Request for Public Comment on Community Development Financial Institutions Program—Certification Application

Dear Ms. McInnis:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to you to provide comments in response to the Community Development Financial Institutions (CDFI) Program Certification Application proposed by the CDFI Fund—Certification Application. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 122 million consumers with personal and small business financial service products. Credit unions represent more than 75% of CDFI assets and serve more members than the rest of the CDFI industry combined. NAFCU supports and values the mission of the CDFI Fund and appreciates the opportunity to provide comments on the Certification Application. The application process for CDFI-designation must be clear and effective without representing significant barriers to entry, especially for small- and medium-sized credit unions. However, NAFCU is concerned the proposed application creates many such barriers, which ultimately will make it more difficult and unlikely that credit unions will obtain and maintain CDFI-designation damaging both credit unions and the communities they serve.

Aligning the Application Process with the Legal and Regulatory Environment

As federally-insured financial institutions, credit unions are examined for compliance with federal regulations and safety and soundness by the National Credit Union Administration (NCUA), and, depending on their size, the Bureau of Consumer Financial Protection (CFPB). These federal regulators, along with their state counterparts, establish a detailed and complex environment of regulatory and legal requirements. Credit unions have designed their products and services, informational and reporting systems, processes, procedures, and operations in response to this environment. In order to reduce the additional burden of the application process, the CDFI Fund must work to align and reconcile its application process with that existing environment and credit union operations.

Unfortunately, the proposal fails to achieve this alignment in several areas. For example, the definitions of “financial products” and “financial services” do not align with the distinctions formed by federal regulators. Similarly, the requirement to describe individual products and services in the primary mission test is burdensome and uses terminology that does not align with the existing regulatory environment. Further, the application should minimize the burden on applying credit unions by recognizing the unique nature of credit unions as democratically-controlled, member-owned financial institutions and eliminating duplicative, irrelevant items regarding basic applicant information and accountability tests. Aligning terminology, reconciling the application with the existing regulatory environment and recognizing the unique governance structure of credit unions would reduce the burden posed by the application process. It would enable credit unions to leverage their current systems and procedures in completing the application and create a simplified and more efficient application process.

Conclusion

NAFCU supports and believes in the mission of the CDFI Fund and appreciates the opportunity to provide feedback in response to this proposed Certification Application. Aligning this requirement with existing requirements will allow more credit unions to obtain CDFI designation, benefiting the communities they serve. If you have any question or concerns, please do not hesitate to contact me at elaberge@nafcu.org or (703) 842-2272.

Sincerely,

EYoungLaBerge

Elizabeth M. Young LaBerge
Senior Regulatory Counsel

Attn:
Community Development Financial Institutions Fund
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1500 Pennsylvania Ave. NW
Washington DC 20220
Delivered via email to: Tanya McInnis, Program Manager for the Office of Certification, Compliance Monitoring and Evaluation at ccme@cdfi.treas.gov

Re: ***Community Development Financial Institutions Program Certification Application. OMB Number: 1559–0028***

Date: November 5, 2020

BACKGROUND

The Native CDFI Network (NCN), the only member organization of emerging and certified Community Development Financial Institutions (CDFIs) that serve American Indian, Alaska Native, and Native Hawaiian communities across the United States, submits the following comments in response to the CDFI Fund's revised Certification Application.

The Native CDFI Network shares the CDFI Fund's objectives behind the revised Certification Application. Those objectives include: 1. To continue to foster a diversity of CDFI types, activities, and geographies; 2. Support the growth and reach of CDFIs, especially as it relates to their ability to innovate and take advantage of new technologies; 3. Protect the CDFI brand; 4. Minimize burden on CDFIs while improving data quality and collection methods; and 5. Promote efficiency for CDFI Fund staff in rendering CDFI Certification determinations. There are certain aspects of the update, such as the transition to a fully-electronic application which appear hopeful. Furthermore, NCN has great respect for the CDFI Fund staff and their work to support Native CDFIs.

However, **NCN has concerns about any changes to the existing Certification requirements that could add additional compliance burdens to Native CDFIs who's missions and target market have consistently met the CDFI Fund's goals**. The actions of a few bad actors could potentially result in significantly increased compliance and certification burdens for CDFIs who serve their communities respectively. NCN strongly believes that any update to the Certification Application *should not* result in additional or new certification requirements to current Native CDFIs already in good standing. Therefore, NCN strongly urges that the grace period mentioned in the revised Certification be extended indefinitely. Additionally, NCN concurs with other CDFI trade associations and urges the CDFI Fund hold direct conversations with CDFIs who will be impacted by these new certification regulations before implementation.

Additional Background About Native CDFIs

Native CDFIs operate across 27 states and provide access to capital where it is most sorely needed -- in some of the most remote, rural, and disadvantaged communities in the country. Collectively, the CDFIs have helped increase financial literacy, repair credit, expand homeownership, and grow financial assets for Native American families and entrepreneurs in rural areas.

As the only organization led by and for Native CDFIs (NCDFIs), NCN is deeply committed to their collective mission of creating fair access to capital and resources for Native people – primarily in rural and low-moderate income communities. NCDFIs' missions align with the motivations of the CDFI Fund. The 2010 Census found that roughly 23 percent of Native American families lived below the poverty line; the coronavirus pandemic's impact has further strained this challenging economic picture. Despite these challenges, Native CDFIs utilize all available tools to help these rural communities, including, and most significantly, the Native American CDFI Assistance (NACA) program.

NCN has several recommendations and concerns regarding the revision to the CDFI Certification. These are outlined on the following table. Ultimately, NCN recommends against adding any new certification barriers which could take much needed resources from Native CDFIs who often operate with staffs of 2-5 employees. New reporting requirements might be helpful when certifying larger CDFIs, but they could become burdensome for smaller offices.

TABLE 1. NCN CERTIFICATION APPLICATION RECOMMENDATIONS

A. **Minimize or eliminate any new Certification requirements for existing and smaller Native CDFIs.**	Most Native CDFIs have staff sizes between 2-5 employees. If these smaller lenders are forced to prioritize even more time towards compliance, this will come at a cost to operational efficiency. This could result in fewer loans being made. *Recommendation: minimize or eliminate any new Certification requirements for existing and smaller Native CDFIs.*
B. **The CDFI Fund should hold direct conversations with CDFIs and CDFI groups to get direct feedback on new Certification regulations.**	NCN supports several other trade associations' requests to hold direct conversations with CDFIs to discuss the revised Certification regulations. This should allow for even more regulation improvement and refinement. *Recommendation: hold several direct conversations with CDFI associations and Native CDFIs prior to implementing the new regulations.*
B.1. **Hold direct conversations with NCDFIs regarding the Native CDFI Designation** (Pages 82-86)	NCN strongly urges several direct conversations with individual Native CDFIs to determine if the Native CDFI Designation for Native Community Representation is fair, or overly prohibitive. The revised Certification application questions regarding the Native CDFI Designation are unprecedented and should undergo further scrutiny by all Native CDFIs before implementation. *Recommendation: hold direct conversations with NCDFIs regarding the Native CDFI Designation to avoid any unintended consequences.*
C. **Extend the grace period for existing CDFIs.**	The Federal Register notice states there will be a grace period after the new Certification requirements are finalized, and before existing CDFIs will be required to submit information. This period must be extended for at least 2 years after new regulations are finalized. *Recommendation: ensure at least a 2-year grace period for existing CDFIs to submit new information for Certification after rules are finalized. Ideally, this will come after direct conversations between the Fund and the CDFIs.*
D. **Conflicts of interest should be dealt with by the governing body of the individual CDFI and should not be dictated by the Treasury.** (Pages 8, 69, 70, 84 of the Application for Public Comment)	The revised Certification application prohibits services to family members of staff or board members from being used to demonstrate Target Market Accountability. Depending upon the definition of "family," this could prove problematic for many smaller market, rural, and Native CDFIs. In particular, Native CDFIs could have smaller employee and customer pools. Many Native CDFIs have already developed robust conflict of interest policies and have unbiased loan committees to prevent further conflicts. Furthermore, the vast majority of Native CDFIs are not-for-profit organizations (both 501(c)3's and Tribally-chartered IRC-7871's). These not-for-profit organizations are required to undergo rigorous audits which would identify any potential conflicts of interest that were not already accounted for by the given CDFI's governing body. Therefore, nonprofit Native CDFIs (both Tribal and independent) already have built-in oversight from auditors and the IRS, in addition to the individual CDFI's governing board.

	The CDFI Fund should work with Native CDFIs to adjust the Target Market Accountability section to reflect that Native CDFIs already have mechanisms to address conflicts of interest as well as oversight from auditors and the IRS. *Recommendation: remove rigid section on Target Market Accountability with respect to family and or board members serving concurrently.* *<u>Specifically, we recommend striking section AC07</u>. We believe that current requirements on individual CDFI boards to regulate conflicts of interest have proven effective. Additionally, nonprofit CDFIs (both Tribal and independent) are already subject to IRS guidelines and independent audits which further mitigate conflicts of interest. We encourage additional dialogue on this subject through direct conversations with individual CDFIs.*
E. **Allow Native CDFIs flexibility in using localities with regards to the 80% MFI requirement.**	Many Native CDFIs often do not neatly fit within a given metropolitan, or non-metropolitan market. While NCN understands the need to create and follow requirements, there are also likely some CDFIs who serve markets where the entire (Median Family Income) MFI is inherently low (for example, if the market is entirely a reservation), which further drives down the 80% MFI. The CDFI Fund should allow for flexibility for Native CDFIs when using MFI benchmarks. *Recommendation: allow for CDFI Fund staff flexibility when determining MFI benchmarks for Native CDFIs.*

LONG TERM SUPPORT FOR NATIVE CDFIS

NCN hopes to build upon the history of CDFI Fund and NACA program successes. Native CDFIs understand the rationale for performing periodic updates such as digitizing the Certification process, however, NCN also has real concerns about new Certification regulations which could become burdensome for native CDFIs with smaller staff. NCN recommends addressing the concerns outlined in this comment letter as well as opening a direct dialogue with impacted CDFIs prior to implementation. The members of the Native CDFI Network are working hard across 27 states increase access to capital in underserved areas in Indian Country. NCN is hopeful that the revised final CDFI Certification rule will help advance our shared priorities of increasing access to capital in underserved markets while minimizing new reporting requirements for existing CDFIs.

Native CDFI Network looks forward to working together with the CDFI Fund to grow the next generation of rural Native American business leaders, entrepreneurs, and families who will engage, participate, and flourish in the American economy. We want to follow up on any concerns or questions related to this comment letter; we can be reached at jbrossy@nativecdfi.net.

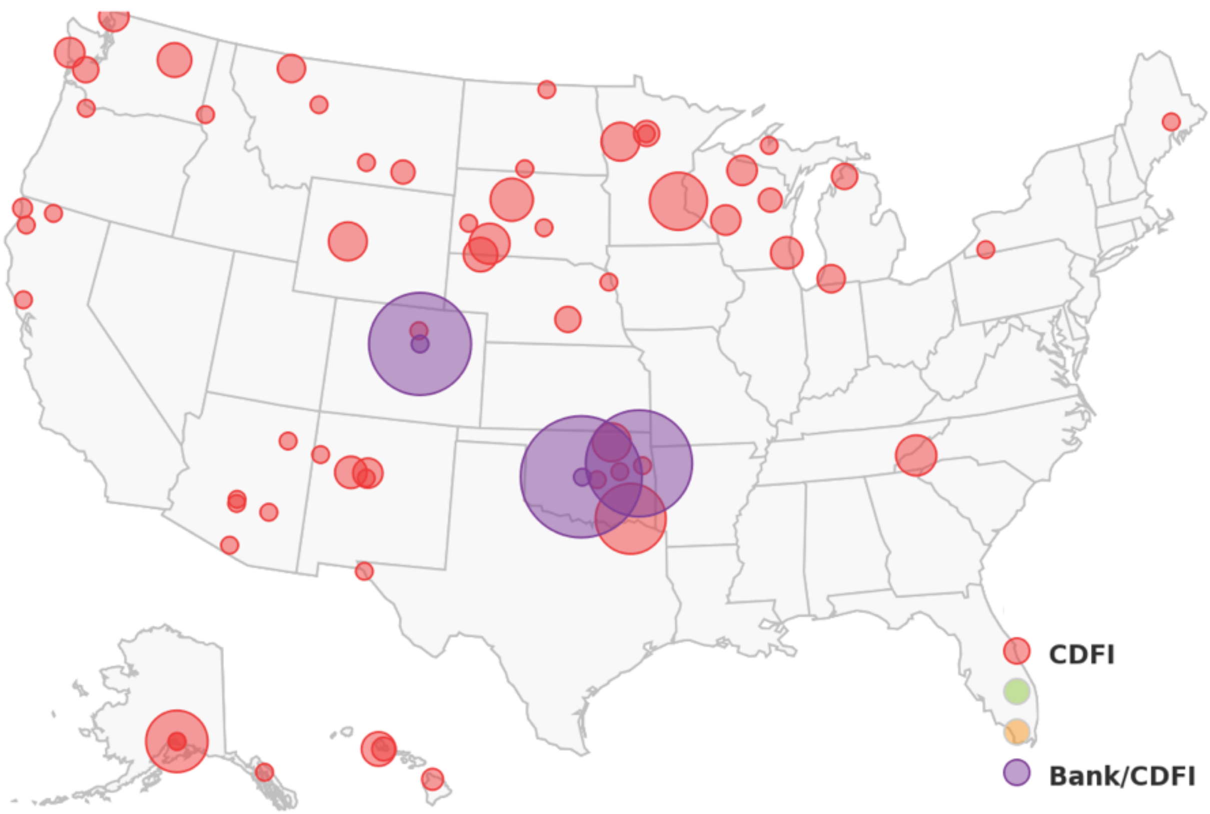
Sincerely,

Jack Brossy

Jackson Brossy, Executive Director
Native CDFI Network

Appendix

A. US Treasury-Certified Native CDFIs & Emerging NCDFIs Across the US



Source: Federal Reserve Bank of Minneapolis – Center for Indian Country Development

November 5, 2020

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Program Manager, Office of Certification, Compliance Monitoring and Evaluation
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Re: Proposed CDFI Program–Certification Application and Annual Reporting

I. Introduction and Overview

The **Center for Responsible Lending**, **Self-Help Credit Union**, **Self-Help Federal Credit Union**, and **Self-Help Ventures Fund**, the latter three all CDFIs and all four related to the Center for Community Self-Help (collectively, Self-Help), appreciate the opportunity to comment on the CDFI Fund (Fund)'s proposed revisions to the CDFI certification and reporting requirements. For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 154,000 mostly low-income families through 62 credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, and Wisconsin.

We welcome the Fund's efforts to more vigorously ensure that the primary mission of any CDFI is to promote community development. To that end, **we urge the Fund to establish lending standards that function as clear, bright-line eligibility requirements for CDFI certification or renewal:**

(1) **a fee-inclusive annual percentage rate (APR) limit of 36%, computed consistent with the current Military Lending Act regulations (or lower if required by state law)**;[1] and

(2) **for any mortgages offered, product protections consistent with the qualified mortgage (QM) statutory protections**: (a) no negative amortization, interest-only payments, or balloon payments; (b) adjustable rate mortgages underwritten at the maximum rate in the first five years; (c) original maximum term of 30 years; and 4) total points and fees generally not exceeding three percent of the loan amount. These product protections will help ensure responsible mortgage lending while allowing innovation in underwriting that may benefit communities that CDFIs serve.

We further urge the Fund to **require that lenders assess borrowers' ability-to-repay** and **monitor other lending metrics like defaults, refinancings, and debt collection practices**. For mortgage loans, although CDFIs are exempt by regulation from the ability-to-repay provisions of the Dodd-Frank Act, CDFIs should still demonstrate that they consider and verify borrower debts, income, and assets.

Moreover, we urge the Fund to **evaluate an institution's fair lending record** in advance of certification, particularly compliance with the Equal Credit Opportunity Act and Fair Housing Act.

In addition, we urge the Fund to **establish an eligibility requirement that CDFIs charge no more than six overdraft fees in a rolling 12 months**, consistent with the FDIC's 2010 guidance addressing overdraft programs.

We also strongly support the Fund's proposal to **require that the primary mission test be applied as a whole to non-depository parents, affiliates, and subsidiaries engaged in financing.**

We support **the removal of geographic boundaries on most Target Market designations, while emphasizing that the eligibility requirements are critical to ensuring that CDFIs operating on any scale are promoting rather than eroding community development.** We further urge the Fund to **monitor the extent to which CDFIs with national Target Markets are responsibly reaching borrowers of color.**

Finally, we urge the Fund to **collect more robust race and ethnicity data with respect to CDFIs and the borrowers and communities they serve, as well as transaction level data for all CDFIs.**

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[1] As discussed in Section III, we also urge the Fund to require that non-bank CDFIs partnering with banks abide by the interest rate limits in the state where the borrower resides. And we encourage an exception from rate limits for federal credit unions whose only product exceeding this rate is the payday alternative loan (PAL).

CDFIs are uniquely suited to promote community development and expand financial inclusion. Too often, however, we see "financial inclusion" as the central purported justification for permitting irresponsible lending practices, unreasonably high rates, and erosion of longstanding consumer protections and fair lending requirements. It is becoming difficult to keep track of all the affirmatively harmful regulatory actions taken in recent years in the name of "access to credit" and "financial inclusion" – which in reality exacerbate *exclusion*. At present, we are particularly concerned about a growing push to "promote financial inclusion" by online consumer lenders that charge high interest rates, some of which scheming with banks to evade state interest rate limits – an essential protection against predatory lending.[2] At least one CDFI is charging rates as high as 190% APR. Moreover, in the mortgage space, we are concerned that some CDFI mortgage lenders are using the certification not to promote community development but to avoid the sensible underwriting requirements that apply to most non-CDFI lenders.

High-cost and/or unaffordable indebtedness and default inflict misery of all kinds on borrowers and their families,[3] ultimately leaving them worse off than when they started. Communities of color are targeted and disproportionately harmed by such lending, which exploits and fuels the racial wealth gap.[4]

We urge the Fund to put its imprimatur only on lending practices that, in the spirit of the CDFI mission, carry reasonable interest rates and promote asset building rather than saddling consumers with high-cost, harmful debt.

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[2] The OCC and the FDIC are taking a lead role in this effort despite their lack of authority to regulate non-banks. The OCC's fintech charter would enable non-banks to ignore state rate caps. It has been successfully challenged by New York in Federal District Court, though the OCC is appealing the decision to the Second Circuit. Both the OCC and FDIC recently issued final rules providing that non-bank assignees of bank loans can ignore state interest rate caps and continue charging whatever interest the bank charged. These rules are being challenged in court by a number of State Attorneys General. The OCC also last week finalized a rule that would enable non-banks to ignore state rate caps by laundering loans through banks. The rule attacks the centuries-old anti-evasion doctrine by providing that the "true lender" in a rent-a-bank scheme is the bank, so long as the bank's name is on the loan document. *See* Comments on the OCC's proposal to gut the true lender doctrine from a coalition of national consumer and civil rights groups, filed Sept. 3, 2020, at https://www.responsiblelending.org/research-publication/comment-occ-rule-would-allow-payday-lenders-use-rent-bank-schemes-evade-state.

[3] For discussion of financial impacts as well as growing research documenting health impacts of the high-cost debt treadmill, *see* Comments from CRL, NCLC and additional consumer and civil rights groups to the OCC at 39-42, filed Sept. 3, 2020, at https://www.responsiblelending.org/research-publication/comment-occ-rule-would-allow-payday-lenders-use-rent-bank-schemes-evade-state.

[4] *Id.* at 43-44.

II. Some CDFIs' current practices provide examples of what the CDFI Fund should clearly not support.

Consumer lending

Several CDFIs are engaged in lending at high rates and/or abusive debt collection practices. We provide these as clear examples of what the CDFI Fund should not permit. But we emphasize that many programs far less irresponsible than these outliers still would not satisfy the standards that CDFIs should uphold.

Fig Loans, which describes itself as the "first fintech" to receive CDFI certification, discloses an "example" APR of an extraordinary 190%.[5] The terms of its "Fig Loan" product range from $300-$750, from 4 to 6 months.[6] Fig Loans touts that it "provide[s] credit building alternatives to payday loans," and proudly shows the CDFI seal on its website. (See Appendix for a screenshot of the CDFI seal sharing a screen with a 190% APR loan.) There is no universe in which an entity charging 190% APR should have the imprimatur of the CDFI Fund.

Aura (formerly Insikt/Lendify) makes high-rate loans through finders. Aura charged between 40% and 69.99% APR on three-fourths of its loans in 2017.[7] Available loan performance data raise serious questions about the affordability of Aura loans. In 2017, 57% of Aura's average loans outstanding incurred a late fee, and those that were charged late fees incurred, on average, 4.5 late fees each. Aura charged off over 5,200 loans during 2017, or 15.8% of its average number of loans outstanding. Aura securitizes loans it brands as "social impact bonds."[8] Aura has also lobbied to weaken state usury laws – in California, Florida, and New York, for example – by pushing for exceptions that would allow it to lend at higher rates than the laws allow.

Aura's finder model also skirts broker laws in a number of states and encourages unaffordable lending. Aura pays these finders for marketing, brokering, and loan servicing. But these finders, though acting as brokers, are not licensed or regulated as brokers, even as they have access to a borrower's social security number, credit report, and other personal information. Aura also has pushed for laws that would enable it to pay finders more for larger loans than for smaller ones – a strong incentive for brokers to push borrowers into larger, less affordable loans.

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[5] https://www.figloans.com/.

[6] *Id.*

[7] Aura's 2018 report, reporting on 2017 loans, to the California Department of Business Oversight, on file with CRL. These loans were all under $2,500, with most in the $500-$1,999 range, and with an average contracted term of 12 months.

[8] https://myaura.com/invest

Oportun, another CDFI, also has a history of charging high rates up to 69.99%. While its refinance rates are not available, 80% of its dollars loaned go to repeat customers.[9] Its late fees also signal unaffordability: In 2018, it collected late fees on roughly 75% of its loans.[10] Oportun has recently made headlines for grossly abusive debt collection practices.[11] ProPublica investigated Oportun's sue-to-intimidate method, finding that the company filed 47,000 suits across Texas over the last four years, making it the state's most litigious personal loan company. Oportun has filed over 5,000 suits in Texas since the start of the pandemic. The Guardian found that Oportun accounted for at least 15% of small claims filings in California from mid-2017 to mid-2018 and had filed 14,000 suits in the state during the first half of 2020.[12] The company drops suits in the rare cases where borrowers obtain lawyers, signaling it sues only to intimidate and/or collect default judgments. Oportun lends primarily to the Latino community, where its litigation tactics are prone to evoke pronounced fear in light of fear of immigration enforcement.[13]

Following media inquiries into its litigation practices, Oportun announced it would lower its maximum APR to a fee-inclusive 36%; drop its pending lawsuits; suspend new filings for the time being; and reduce its filing rate going forward by 60%.[14] Even if meets that target, Oportun would be the fifth most litigious debt collector in Texas – showing that interest rate alone does not guarantee affordability.[15]

Some CDFI banks and credit unions also engage in abusive checking account overdraft practices, which we discuss in Section VII below.

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[9] Kiah Collier, Ren Larson and Perla Trevizo, *The Loan Company That Sued Thousands of Low-Income Latinos During the Pandemic*, ProPublica, Aug. 31, 2020, https://www.propublica.org/article/the-loan-company-that-sued-thousands-of-low-income-latinos-during-the-pandemic#:~:text=A%20monthslong%20investigation%20revealed%20that,%E2%80%94%20even%20amid%20COVID%2D19 (ProPublica, Aug. 2020).

[10] Raheem Hosseini, *Exclusive: the litigious debt collectors targeting Latinos during a pandemic*, The Guardian, Aug. 2, 2020, https://www.theguardian.com/us-news/2020/aug/02/oportun-loans-lawsuits-latino-small-claims-californi (The Guardian, Aug. 2020).

[11] *See* ProPublica, Aug. 2020 and The Guardian, Aug. 2020 for in-depth descriptions of Oportun's practices, including accounts of the impact of these practices on the financially distressed Latino borrowers featured.

[12] The Guardian, Aug. 2020.

[13] ProPublica found that of 467 lawsuits reviewed in Texas, fewer than half included the defendant's Social Security number. ProPublica, Aug. 2020.

[14] Oportun Statement, *Oportun to cap new loan originations at an "all-in" 36% APR*, July 28, 2020, https://oportun.com/about/press/oportun-to-cap-new-loan-originations-at-an-all-in-36-apr/.

[15] ProPublica, Aug. 2020.

Mortgage

We are concerned that some financial institutions seek CDFI certification to skirt mortgage requirements. For example, after the CFPB's Ability-to-Repay/Qualified Mortgage regulation was published in January 2013 and became effective in January 2014, there was a large uptick in depositories obtaining CDFI certification. The Fund maintains a list of CDFIs and the date they were certified. Out of 147 CDFIs categorized as banks/thrifts, at least 75 became certified in the last quarter of 2013 or 2014. Likewise, of CDFIs categorized as bank holding companies or depository institution holding companies, a large percentage of them gained certification in 2013 or 2014. It does not seem to be a coincidence that this increase occurred immediately after CFPB determined CDFIs were exempt from the Ability-to-Repay/Qualified Mortgage regulation. This does not by itself, of course, mean that CDFIs are engaging in irresponsible practices. But it suggests that additional tightening would be helpful to ensure that bad actors are not given room to thrive.

Additionally, we have observed a CDFI state that it offers mortgages that require little to no income verification or will rely on a borrower-prepared profit and loss statement to document income. If a lender is indeed relying on a statement by the borrower as proof of income, without more, this could indicate a stated income/no doc loan. These dangerous loans were done during the boom leading up to the housing crisis. It is critical to ensure that CDFIs do not permit a resurgence of this practice. Despite their exemption from the CFPB's ATR regulation, CDFI mortgage lenders should still demonstrate that they utilize sound underwriting practices – specifically, that they considered and verified borrower debts, income, and assets.

III. CDFI designation should be reserved for lenders not offering loans exceeding a fee-inclusive 36% APR (or lower state limits under state law).

Interest rate limits are the single most effective way to prevent predatory lending. For CDFIs to meet their statutory objective to promote community development, they must operate within reasonable interest rate limits.

For small loans, the 36% fee-inclusive rate cap under the Military Lending Act (MLA) (MAPR) that protects servicemembers and their dependents is a widely accepted dividing line between reasonably priced loans and high-cost ones.[16] For larger loans, most states impose lower rate limits: a median of 31% APR including fees for a $2,000 loan and a median of 25% APR for a $10,000 loan.[17] CDFIs should be encouraged to keep rates at these limits or well below on these

[16] *See* Lauren Saunders, *Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap*, NCLC (April 2013), https://www.nclc.org/images/pdf/pr-reports/why36pct.pdf.

[17] NCLC, *State Annual Percentage Rate (APR) Caps for $500, $2,000 and $10,000 Installment Loans* (2019), https://www.nclc.org/images/pdf/high_cost_small_loans/fact-sheet-apr-caps-for-installment-loans.pdf.

larger loans.[18] But a fee-inclusive 36% APR eligibility requirement provides a clear, bright-line standard, rooted in federal precedent. It is also a threshold that all lenders are already required by federal law to know whether or not their consumer loans exceed, so establishing it as an eligibility threshold should not create significant additional administrative burden.

A bright line requirement is far preferable to the Fund's current proposal to make the interest rate a benchmark that triggers higher scrutiny. First, a bright line limit of 36% MAPR is appropriate to fulfill the statutory objective. It makes little sense to provide a federal imprimatur, and often subsidy, for lenders making loans so expensive that Congress has prohibited them for our nation's servicemembers or that are illegal in most states. An exception should be provided for federal credit unions whose only product that exceeds these rates is payday alternative loans (PALs). By federal regulation, PAL pricing is limited; its features are clearly prescribed; and its frequency is limited to six in a twelve-month period, all of which serve to make PALs far less likely to inflict harm on borrowers than other loans exceeding a 36% MAPR.

Moreover, a clear eligibility requirement avoids charging the Fund with policing whether or not lenders that, by definition, are operating far outside the norms of propriety in lending, may nonetheless merit CDFI certification. As we fail to think of such an entity, expending Fund resources on this task is both unnecessary and inefficient.

The notion that higher-cost loans should be allowed because they expand financial inclusion, or otherwise promote community development, is not supportable. So-called "fintechs" offering online installment loans at high rates are among the loudest pushing for schemes to avoid state interest rate caps in the name of "access to credit." These lenders, using "soaring rhetoric,"[19] portray their loans as better alternatives to payday loans, but their loans often lead to similar problems. They often carry extremely high rates, with repayment still tied to payday, with little regard for the borrower's ability to repay while meeting other expenses – all part of a business model where lenders can profit despite high borrower defaults.

Data show time and again that high-cost credit, like that offered by many of these so-called "fintechs" – and some CDFIs, discussed in Section II above – does not drive out other, higher-

[18] In our recent comments to the Fund on its Small Dollar Loan Program, we urged the following limits on that program, which CDFIs should be encouraged to adhere to across the board, to the extent state laws permit such rates:

- For loans up to $1,000, a fee-inclusive 36% under the MLA;
- For loans $1,001 to $2,500, a fee-inclusive 31% (calculated consistent with the MLA);
- For loans above $2,500, a fee-inclusive 25% (calculated consistent with the MLA).

[19] *See* Christopher K. Odinet, *Predatory Fintech and the Politics of Banking* 19, 20, 22-28 (Iowa Law Review (2021 Forthcoming)) (Aug. 2020), https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3677283.

cost unaffordable credit. It simply piles more unaffordable credit onto already financially vulnerable borrowers.[20]

Harm caused by high-rate loans extends far beyond the higher cost itself. High-cost lending turns incentives on their head, so that lenders succeed when borrowers fail – that is, lenders can easily profit even when large portions of borrowers default.[21] Once even small portions of principal are paid down, lenders aggressively push refinances to borrowers to keep them on a high-cost debt treadmill.[22] Even with these high refinance rates, defaults on high-cost loans are extraordinarily high. Elevate, a lender whose loans average 122% APR,[23] describes its mission as "Good Today, Better Tomorrow."[24] But Elevate has net charge-offs as a percentage of revenues of 50%.[25]

High-cost lenders peddling unaffordable loans cause particular harm to communities of color,[26] often in the same geographic areas that experienced redlining. Storefront high-cost lenders have long targeted borrowers of color, more likely to locate stores even in more affluent communities of color than in less affluent white communities.[27] Online high-cost lenders may

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[20] *See* Comments of CRL, NCLC and other consumer and civil rights groups on the FDIC's Request for Information on Small-Dollar Lending at 5-8, Jan. 22, 2019, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-fdic-smalldollar-rfi-22jan2019.pdf.

[21] *See generally*, NCLC, *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default* (July 2016), https://www.nclc.org/issues/misaligned-incentives.html.

[22] The CFPB found that for online payday installment loans (the channel for most new "fintech" loans) refinance rates were very high. CFPB Supplemental Findings on payday, payday installment, and vehicle title loans (June 2, 2016) at 15 (35% for storefront, 22% for online); *see also* Elevate Credit, Inc., Form 10K, 2019, https://www.sec.gov/Archives/edgar/data/1651094/000165109420000010/elevate10-kx2019.htm, at 15 (noting "[a]pproximately 55% of Rise installment customers in good standing had refinanced or taken out a subsequent loan as of December 31, 2019, with 40% of the outstanding Rise installment loan balances on that date consisting of new customer loans and 60% related to returning customer loans."). While mainstream lenders also often have substantial rates of refinancings, those lenders also charge rates that permit reasonable amortization of loan balances.

[23] Elevate Form 10K, 2019, at 75.

[24] Elevate Form 10K, 2019, at 6; *see also* Elevate's website at https://www.elevate.com/company.html.

[25] Elevate Form 10K, 2019, at 75; CFPB Supplemental Findings on payday, payday installment, and vehicle title loans (June 2, 2016) at 9 (the CFPB found that 55% of online loan sequences ended in default).

[26] *See* CFPB Payday Rule, 82 Fed. Reg. at 54556-57 (African Americans are payday borrowers at three times the rate, and Hispanics at twice the rate, of non-Hispanic whites (citing 2015 FDIC National Survey of Unbanked and Underbanked Households (calculations using custom data tool)). Vehicle title borrowers are also disproportionately African American and Hispanic. *Id*.)

[27] Li, et al., *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California,* Center for Responsible Lending (2009), http://www.responsiblelending.org/payday-lending/research-

focus more on subprime credit score than geography, although we understand that some lenders use zip codes to target online marketing. But historical discrimination against communities of color is also reflected in credit scores.[28] Lenders that focus on borrowers with subprime credit scores will inevitably disproportionately target borrowers of color. The algorithms and big data that "fintech" lenders use may also result in disparate impacts on these communities.[29]

Moreover, when online lenders promote their models as expanding economic inclusion, this often puts borrowers of color among their target borrowers. Communities of color have historically been disproportionately left out of the traditional banking system, a disparity that persists today. Some defend the high-cost "fintech" loans as bringing communities of color into the economic mainstream.[30] But high-cost loans, particularly with their high association with lost bank accounts,[31] drive borrowers out of the banking system and exacerbate this disparity. By sustaining and exacerbating an existing precarious financial situation, high-cost lending reinforces and magnifies existing income and wealth gaps – legacies of continuing discrimination – and perpetuates discrimination today.

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analysis/predatory-profiling.pdf; Brandon Coleman and Delvin Davis, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law*, Center for Responsible Lending at 7, Chart 2 (March 2016); Delvin Davis and Lisa Stifler, *Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities*, Center for Responsible Lending (Aug. 2018), https://www.responsiblelending.org/research-publication/power-steering-payday-lenders-targeting-vulnerable-michigan-communities; Delvin Davis, *Mile High Money: Payday Stores Target Colorado Communities of Color*, Center for Responsible Lending (Aug. 2017; amended Feb. 2018), https://www.responsiblelending.org/research-publication/mile-high-money-payday-stores-target-colorado-communities-color.

[28] *See* Chi Chi Wu, *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination*, National Consumer Law Center (May 2016), https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

[29] *See* Testimony of Chi Chi Wu, National Consumer Law Center, Before the U.S. House Committee on Financial Services Task Force on Financial Technology Regarding "Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit" (July 25, 2019); Carol A. Evans, *Keeping Fintech Fair: Thinking about Fair Lending and UDAP* Risks, Consumer Compliance Outlook (2017), https://consumercomplianceoutlook.org/2017/second-issue/keeping-fintech-fair-thinking-about-fair-lending-and-udap-risks/; *see also* Christopher K. Odinet, *Predatory Fintech and the Politics of Banking* 19-20 (Iowa Law Review (2021 Forthcoming) (Aug. 2020), https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3677283.

[30] *See* Remarks of Acting Comptroller of the Currency Brian Brooks to the Online Lending Policy Institute, June 11, 2020, https://www.youtube.com/watch?v=Ae_SoZeRbxM, at 33:00 (stating "I want to make poor people rich" while addressing financial inclusion, in a conversation where he also states that his personal belief is that "price controls generally create shortages" and that "if we believe in market pricing for hamburgers, for jeans, for automobiles, I'm not sure why we don't believe in market rates for money, it's another commodity, and we want it to flow freely").

[31] CFPB found that about half of borrowers with online payday or other high-cost online loans paid a nonsufficient funds (NSF) or overdraft fee. These borrowers paid an average of $185 in such fees, while 10% paid at least $432. It further found that 36% of borrowers with a bounced payday payment later had their checking accounts closed involuntarily by the bank. CFPB Online Payday Loan Payments at 3-4, 22 (April 2016).

Thus, interest rate limits are an essential component of responsible lending because they better align lender incentives with borrower incentives by making it more difficult for a lender to build a business model with high defaults; they enable borrowers to make progress on paying down principal; and they make the loan cost reasonable for the borrower.

We also urge the Fund to require that non-bank CDFIs partnering with banks abide by the interest rate limits in the state where the borrower resides. We caution the Fund to be alert to potential "rent-a-bank" schemes, where non-bank CDFIs may seek to scheme with banks to take advantage of banks' preemption privileges in order to evade state laws that prohibit high interest rates.[32] If rates in these arrangements are not required to comply with the state law where the borrower resides, then non-bank CDFIs will be able to launder their loans through a bank to evade state rate caps.[33]

While interest rates limits are critical, lenders can still make unaffordable loans even operating under reasonable rate limits – through coercive payment collection devices, loan flipping, and aggressive debt collection, including legal actions and garnishment. So an upfront ability-to-repay determination and protections from other harmful practices are also essential.

IV. CDFIs should be required to lend based on the borrower's ability-to-repay.

We were pleased to see the Fund's advisement that loans should be made based on the borrower's ability to repay.[34] Indeed, lending based on a borrower's ability to repay – while meeting other expenses, without needing to refinance/reborrow, and without relying on collateral – is a fundamental tenet of responsible lending.[35] Thus, a meaningful ability-to-repay

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[32] Comments on the OCC's proposal to gut the true lender doctrine from a coalition of national consumer and civil rights groups, filed Sept. 3, 2020, at https://www.responsiblelending.org/research-publication/comment-occ-rule-would-allow-payday-lenders-use-rent-bank-schemes-evade-state.

[33] For detailed discussion of our concerns about rent-a-bank schemes, *see id.*

[34] Proposed Application at 30.

[35] HOEPA statutory language since 1994 requires that repayment ability include "current and expected income, *current obligations*, and employment." 15 U.S.C. 1639(h): ". . . A creditor shall not engage in a pattern or practice of extending credit to consumers under [high-cost] mortgages . . . *based on the consumers' collateral* without regard to the consumers' repayment ability, including the consumers' current and expected income*, current obligations*, and employment" (emphasis added).

The 2000 OCC Advisory Letter on Abusive Lending Practices discusses equity stripping as "*reliance on . . . collateral, rather than the borrower's independent ability to repay*. . . ."OCC Advisory Letter on Abusive Lending Practices, AL 2000-7 (June 25, 2000), *available at* http://www.occ.gov/static/news-issuances/memos-advisory-letters/2000/advisory-letter-2000-7.pdf (emphasis added).

The 2001 Interagency Subprime Guidance provides that abusive lending practices occur when "the lender structures a loan to a borrower who has little or no ability to repay the loan *from sources other than the collateral pledged."* Interagency Expanded Guidance or Subprime Lending Programs, FIL 9-2001, January 31, 2001. The FDIC's 2005 payday loan guidelines also notes that it clarifies previously issued guidance, including the 2001 Expanded determination considers both the borrower's income and expenses. Responsible underwriting is especially important when, like with most online loans today, a lender has access to the borrower's checking account and can repay itself automatically out of the account before a borrower can pay other essential expenses.

Payment-to-income (PTI) ratios cannot substitute for underwriting. Consider a family of four living just below the federal poverty level of $24,300 annually or $2,025 monthly. A 5% PTI standard would unrealistically assume that the borrower has $101 in extra cash each month, or $1,215 annually, that they can spare toward service of additional debt. Yet, by definition, the poverty level is the level below which a family already has insufficient income. Even at somewhat higher income levels, it is far-fetched to categorically assume that a borrower who is already struggling financially has an extra 5% of her income available to put towards a new debt.

The Fund should also monitor default rates (noted below) because high default rates signal unaffordability. But low default rates alone do not mean borrowers have the ability to repay. Refinances mask unaffordability. And when a lender has a repayment mechanism, like electronic access to the account, the lender will often collect payment even when the borrower

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Subprime Guidance; the 2001 Expanded Subprime Guidance also contemplates equity stripping outside the context of mortgage lending, noting that lenders may make a loan to a borrower who has little or no ability to repay other than from the collateral pledged, then take possession of the borrower's home or automobile upon default.

The FDIC's 2005 payday loan guidelines describe concerns with "payday loans to individuals who do not have the ability to repay, or that may result in repeated renewals or extensions and fee payments over a relatively short span of weeks." FDIC Guidelines for Payday Lending (revised Nov. 2015), https://www.fdic.gov/news/financial-institution-letters/2005/fil1405a.html#:~:text=Provide%20that%20no%20more%20than,during%20the%20previous%2012%20months.

The Federal Reserve's 2009 HOEPA rules required verification of income, assets *and obligations* for both high-cost and higher-priced loans. They also note that "[l]ending without regard to repayment ability . . . facilitates an abusive strategy of 'flipping' borrowers in a succession of refinancings." Federal Reserve System, Truth in Lending, Regulation Z; Final Rule, 73 Fed. Reg. 44522, 44542, 445446. (July 30, 2008).

The Wall Street Reform Act, 2010, for all residential mortgages, requires "a reasonable and good faith determination based on verified and documented information," 15 U.S.C. § 1639c(a)(1), including, among other items, expected income, *current obligations*, *debt-to-income ratio or residual income*, and other financial resources other than the consumer's equity. 15 U.S.C. § 1639c(a)(3).

The regulations implementing the ability-to-repay provision of the Credit CARD Act of 2009 also require credit card issuers to consider "the consumer's current obligations." 12 C.F.R. § 1026.51(a)(1)(i).

NCUA's PAL program provides the following: "[T]he FCU must consider the borrower's *entire financial position*, *including debt burden*, and make an informed judgment consistent with responsible lending principles regarding whether to extend a PALs loan to a borrower. Accordingly, the FCU should conduct some inquiry into whether the borrower can manage to repay the PALs loan *without the need for additional PALs loans or traditional payday loans*." 84 Fed. Reg. 51942, 51946 (Oct. 1, 2019) (emphasis added).

The recent Interagency Lending Principles for Offering Responsible Small-Dollar Loans from the Federal Reserve, FDIC, NCUA, and OCC, states that characteristics of "responsible programs" include successful repayment "in accordance with original terms," and minimizing "cycles of debt due to rollovers or reborrowing." https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200520a1.pdf.

cannot afford the loan. Thus, review of default rates does not substitute for an upfront ability-to-repay determination.

V. Additional structural and procedural safeguards on consumer loans are important to protect borrowers.

We appreciate the series of questions on the proposed application that appear aimed at assessing the risk and harm of loans made above 36%,[36] as well as those related to troubled loans and debt collection. Generally, protections along the lines of those contemplated by these questions are sensible regardless of interest rate.

We urge the Fund to require that all CDFIs adhere to the following:

- **For consumer loans, equal, fully amortizing installments due at equal intervals**. CDFI loans should carry a traditional responsible loan structure with no balloon payments or other surprises for borrowers.

- **No forced arbitration clause or class action ban.** These contractual provisions promote irresponsible lending by sheltering lenders from accountability for violating the law. CDFIs should not be permitted to include these in their loan contracts.

- **No sale of defaulted debt.** Debt buyers are notorious for their abusive debt collection practices.

- **No coerced automated repayment.** Regulation E makes it illegal for lenders to require installment loan borrowers to repay by preauthorized electronic fund transfer (EFT). But some lenders coerce automated repayment by, for example, delaying loan disbursement for borrowers who do not agree to automatic repayment; making it unreasonably onerous to sign up for manual payment; charging fees for manual payment that have no relationship to the cost of processing those payments; or requiring repayment by remotely created check if the borrower does not agree to an EFT.

We further urge that the Fund collect data on, monitor, and encourage the following:

- **Reasonable refinance and default rates, as excessive rates signal unaffordable lending.** High refinance rates are a hallmark feature of unaffordable loan programs. Refinancing can mask defaults or lengthen the debt trap, and upfront fees provide lenders added incentives to push refinances. High default rates also signal unaffordable lending.

[36] Proposed Application at 39-40.

- **Monitoring of any add-ons.** Add-ons like credit insurance can dramatically drive up the cost of loans, incentivize lenders to push refinances, and often provide little-to-no value for borrowers. A 36% MAPR limit for eligibility would go a long way toward addressing this problem. If this benchmark were not made a bright-line eligibility requirement, add-ons would require closer monitoring.

- **Minimum and maximum loan terms.** Minimum loan terms promote affordable installment payments. Maximum loan terms help to ensure that relatively small payments, repaid over a very long period of time, don't end up costing borrowers an unreasonable amount in interest relative to principal borrowed.

- **Workout program.** Lenders should offer and prominently disclose reasonable accommodations to struggling borrowers before pursuing other debt collection avenues.

- **Savings features on small consumer loans should be encouraged.** Savings features promote a more stable financial future. The cushion they build also makes borrowers less vulnerable to predatory lenders going forward. The savings component can be built into the regularly-scheduled payments on a loan – provided that the resulting payment is still affordable – or, at a minimum, loans can be structured so that, subject to the consumer's consent, payments continue for a period of time after the loan is repaid with all of the payments going into a savings vehicle.

- **Responsible debt collection practices, including not over-relying on lawsuits to collect debt.** Aggressive debt collection practices are another sign of unaffordable lending. In addition to not selling debt to debt buyers, which we suggest prohibiting above, lenders should not over-rely on lawsuits to collect debt – another sign of unaffordable lending; see, for example, discussion of Oportun's practices in Section II above. Lawsuits to collect unaffordable debt often lead to legal nightmares for borrowers, including wage or bank account garnishment and compounding fees.

VI. The Fund should require CDFIs to adhere to the Qualified Mortgage (QM) product protections.

Although CDFIs are exempt from the Ability-to-Repay/Qualified Mortgage rule (ATR/QM rule), that does not imply that CDFIs should be permitted to disregard affordability and the ability of borrowers to repay a mortgage loan. Indeed, considering that CDFIs are mission-based organizations with a particular aim to ensure access to underserved borrowers, arguably it is even more vital for the Fund to ensure that CDFIs are offering quality mortgage products that facilitate wealth-building. We recognize that the majority of entities applying for CDFI certification are truly mission-driven entities. However, as discussed in Section II, there is a genuine risk that some institutions have pursued and will pursue CDFI certification to skirt certain requirements, including complying with the ATR/QM rule. It is critical to ensure that the certification process is robust. When it comes to mortgages from CDFIs, the CFPB relies on the Fund to serve as a gatekeeper. The CFPB's preamble to the ATR/QM final rule references the Fund's certification process, stating: "[G]overnment approval and oversight associated with [the CDFI and other] designations ensures that there is little risk that consumers would be subject to abusive lending practices."[37]

Thus, the CDFI Fund should adopt an objective gating requirement to help ensure that CDFIs are offering responsible mortgage products. We recommend that the gating requirement be that certified CDFIs must abide by the QM product protections. These protections are 1) the loan cannot have negative amortization, interest-only payments, or balloon payments; 2) ARMs must be underwritten at the maximum rate in the first five years; 3) the original mortgage term must be 30 years or less; and 4) total points and fees generally cannot exceed 3 percent of the loan amount. In addition, lenders should be able to demonstrate that they considered and verified borrower debts, income, and assets.

The QM statutory product protections provide for the most transparent and sustainable mortgages. On the contrary, non-QM mortgages may build in payment shock and high fees. In fact, non-QM loans provide for artificial and temporary affordability through product structures that inherently cause payments to rise to unaffordable levels when they begin amortizing or teaser rates expire – the precise opposite what legitimate CDFIs should offer their borrowers. While there may be room for product innovation in the non-QM space that complies with fair lending laws, non-QM is generally the province of jumbo loans and specialized products for wealthier borrowers – not the borrowers CDFIs are mission-bound to serve. CDFIs should not be permitted to devise complex products that ostensibly permit underserved borrowers to access homeownership through lower initial payments, yet in reality, are prone to cause harm for underserved communities by product design.

The importance of safe product protections is illustrated by recent history. During the subprime lending boom, lenders steered millions of families into abusive loans that were not sustainable and that were inconsistent with the QM product protections, even as those borrowers would have qualified for safer and more affordable credit. Leading up to the crisis, these dangerous niche products that lenders mass-marketed included interest-only loans, ARM loans that combined "teaser" rates with subsequent large jumps in payments, negative amortization loans, and loans made with limited or no documentation of the borrower's income or assets.[38] Studies have shown that these products in and of themselves caused about half of the increased risk in mortgage lending that led to the Great Recession.[39]

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[37] 78 Fed. Reg. 35429, 35564 (June 12, 2013).

[38] Financial Crisis Inquiry Commission, *The Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, at pp. 104-111 (2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[39] Morris A. Davis, William D. Larson, Stephen D. Oliner, and Benjamin R. Smith, *A Quarter Century of Mortgage Risk*, FHFA Staff Working Paper 19-02, at p. 35, October 2019 (revised) January 2019 (original) (finding that "risky

These abusive products were disproportionately targeted to communities of color. Roughly half of all mortgages made to Black and Latino families during the run-up to the crisis were subprime loans, which included patently unsustainable terms.[40] Evidence shows that many of those borrowers were steered into toxic mortgages even when they qualified for safer and more responsible loans with cheaper costs.[41] As a consequence of these lending practices, Black and Latino families lost over $1 trillion dollars in wealth during the crisis.[42]

In response to these abuses, the Dodd-Frank Act established rules ensuring that borrowers have a reasonable ability to repay their mortgage loans at consummation and requiring full

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product features accounted for more than half of the rise in risk during the boom years", defining "risky product features" as those ineligible for QM status). The definition of "risky product features" is conservative because it does not include many loans that would also be ineligible for QM status. Namely, the definition excludes the 22% of subprime loans that were 30-year ARMs (40% of subprime loans were) and that were fully documented (60% of subprime loans were, and 40% times 56% equals 22%). These loans would not have been QM because they almost certainly were not underwritten at the maximum interest rate for the first five years of the loan and a high percentage had prepayment penalties and did not escrow for taxes and insurance. Prepayment penalties are prohibited and escrows are required for loans over 1.5% over APOR by Dodd-Frank. For characteristics of subprime loans, see Testimony of Eric Stein before the U.S. Senate Committee on Banking, Housing and Urban Affairs, *Turmoil in the U.S. Credit Markets: The Genesis of the Current Economic Crisis*, Center for Responsible Lending (October 16, 2008) at pp. 11-14, 34-39, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/senate-testimony-10-16-08-hearing-stein-final.pdf. *See also* Lei Ding, Roberto Quercia, Wei Li, and Janneke Ratcliffe, *Risky Borrowers or Risky Mortgages Disaggregating Effects Using Propensity Score Models*, at pp. 245-277, Journal of Real Estate Research: Vol. 33, No. 2 (2011).

[40] Federal Reserve researchers, using data from 2004 through 2008, have reported that higher-rate conventional mortgages were disproportionately distributed to borrowers of color, including African-American, Latino, American Indians, Alaskan Natives, Native Hawaiians, Pacific Islanders, and Hispanic borrowers. *See* R.B. Avery, K.P. Brevoort, and G.B. Canner, *Higher-Priced Home Lending and the 2005 HMDA Data*, Federal Reserve Bulletin (September 2006), http://www.federalreserve.gov/pubs/bulletin/2006/hmda/bull06hmda.pdf. For example, in 2006, among consumers who received conventional mortgages for single-family homes, roughly half of African-American (53.7 percent) and Hispanic borrowers (46.5 percent) received a higher-rate mortgage compared to about one-fifth of non-Hispanic white borrowers (17.7 percent). According to the researchers, "[F]or higher-priced conventional first-lien loans for an owner-occupied site-built home, the mean APR spreads were about 5 percentage points above the yields on comparable Treasury securities both for purchase loans and refinancings". R.B. Avery, K.P. Brevoort, and G.B. Canner, *The 2006 HMDA Data*, at p. A88, Federal Reserve Bulletin (December 2007), http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf. For a discussion of the unsustainable subprime lending terms and practices, see Testimony of Eric Stein before the U.S. Senate Committee on Banking, Housing and Urban Affairs, ibid.

[41] Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, Wall Street Journal, December 2007, https://www.wsj.com/articles/SB119662974358911035; *see* Debbie Gruenstein Bocian, Keith Ernst and Wei Lee, *Race, Ethnicity and Subprime Loan Pricing*, Center for Responsible Lending, Journal of Economics and Business, at pp. 110-124, Vol. 60, Issues 1-2, January-February 2008.

[42] Debbie Gruenstein Bocian, Peter Smith, and Wei Li, *Collateral Damage: The Spillover Costs of Foreclosures*, Center for Responsible Lending, at p. 2 (Oct. 24, 2012), https://www.responsiblelending.org/mortgage-lending/research-analysis/collateral-damage.pdf.

documentation of income and assets. Given the CDFI exemption from ATR/QM, it is essential to ensure that CDFIs are providing sustainable mortgages. The QM statutory product protections would serve as the threshold to ensure that CDFIs are not able to offer products that disregard ability to repay, have built-in payment shock, or impose excessive fees.

If CDFIs abide by safe product protections, it is appropriate for CDFIs to be exempt from the affordability limits that CFPB may apply to other creditors, such as the current strict DTI limit; applied to CDFIs, these limits may unreasonably constrict access to credit, and exempting them is consistent with the portfolio exemption for small creditors.[43] As CFPB states in the preamble to the ATR/QM final rule, "ability-to-repay requirements generally differ from the unique underwriting criteria which are related to the characteristics of the consumers served by [CDFIs]."[44] The affordability requirements "primarily consist of quantitative underwriting considerations," such as the consumer's DTI ratio.[45] Conversely, CDFIs engage in a more qualitative underwriting process that considers compensating factors. Given that many CDFIs focus on mission-based lending, roots in the community, and knowledge of their borrowers, it is reasonable for CDFIs to deviate from the specific affordability requirements of the ATR/QM rule in order to responsibly increase access to credit. Still, CDFIs should ensure that their practices are responsible by abiding by the QM product protections and demonstrating that they consider and verify borrower debts, income, and assets when underwriting a loan.

Furthermore, requiring CDFIs to abide by the product protections would not inhibit innovation in underwriting, such as relying on qualitative compensating factors, alternative data, or alternative credit models to qualify borrowers. CDFIs need not strictly adhere to mainstream underwriting criteria. In fact, as the CFPB stated in the ATR/QM final rule, CDFIs that provide mortgage loans generally employ underwriting guidelines tailored to the needs of LMI consumers. Unlike creditors that rely on industry-wide underwriting guidelines, which generally do not account for the unique credit characteristics of LMI consumers, CDFIs "typically engage in a lengthy underwriting process that is specifically tailored to the needs of these consumers by incorporating a variety of compensating factors."[46] This enables more inclusive access to credit for borrowers underserved by traditional underwriting and credit scoring mechanisms. Yet, alternative structures must still be subject to fair lending compliance reviews to ensure that these systems do not create an unjustified disparate impact on any protected class of borrowers.

In sum, the CDFI Fund should require certified CDFIs to adhere to the QM product protections to bolster safe and responsible mortgage lending, while permitting the flexible underwriting appropriate for meeting the needs of LMI communities.

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[43] 12 C.F.R. § 1026.43(e)(5).

[44] 78 Fed. Reg. at 35564.

[45] *Id.*

[46] *Id.*

VII. The Fund should impose clear limits on high-cost overdraft programs.

Overdraft fees strip billions of dollars annually from struggling consumers, leaving them less able to save to weather shortfalls, more vulnerable to predatory promises of "short-term" loans, and generally financially worse off.[47] Any CDFI's effort to promote community development is substantially hampered when paired with a high-cost overdraft program.

We appreciate the Fund's recognition of this problem in the proposed application.[48] At the same time, the proposed questions should not be expected to meaningfully address the problem. The application asks whether the CDFI offers at least one account without overdraft fees,[49] but most financial institutions that offer such accounts do so alongside an account that charges typical, abusive overdraft fees. The institution's financial incentives to enroll accountholders in the no-overdraft account are thus significantly compromised. The application also asks whether the CDFI establishes limits on the number and frequency of overdraft fees, but without establishing any benchmark or limit.[50]

We urge the Fund to establish an eligibility requirement that CDFIs charge no more than six overdraft fees in a rolling 12 months, consistent with the FDIC's 2010 guidance addressing overdraft programs.[51] Overdraft fees charged any more frequently are clearly operating not as an occasional courtesy but as a routine, exorbitantly priced credit product that should be operated and regulated as a credit product.

Further, we urge the Fund not to include questions that could be read to discourage depositories from charging a modest monthly fee for checking accounts. Currently, the application suggests that a fee of more than $5 is too much unless it is waivable.[52] But a shift toward modest monthly checking account fees promotes a departure from back-end, unreasonably high overdraft fees that are disproportionately borne by depositories' most vulnerable accountholders.

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[47] *See*, *generally*, Peter Smith et. al, *Overdraft Fees: Banks Must Stop Gouging Consumers During the COVID-19 Crisis*, Center for Responsible Lending (June 2020), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-overdraft-covid19-jun2019.pdf.

[48] Proposed Certification Application at 41, 42.

[49] Proposed Certification Application at 41, PM27.

[50] Proposed Certification Application at 42, PM29.

[51] https://www.fdic.gov/news/financial-institution-letters/2010/fil10081.html.

[52] Proposed Certification Application at 41, PM26.

VIII. We support assessing non-depository parents, affiliates, and subsidiaries as a whole.

We strongly support the Fund's proposal to apply the primary mission test as a whole to non-depository parents, affiliates, and subsidiaries engaged in financing. We have been very concerned in recent years about mortgage bankers establishing affiliates that obtain CDFI certification, the merits of which are unclear, and, as a result, receive access to Federal Home Loan Bank advances and the regulatory exemption from Dodd-Frank's ability-to-repay requirements for mortgages. This revised test is essential to helping to keep out lenders that seek CDFI certification without having the purposeful "community development intent" the Fund's proposal emphasizes.[53]

IX. We support the removal of geographic boundaries on most Target Market designations.

Self-Help supports the proposed removal of geographic limits on certified Target Markets. As CDFIs grow, they face the administrative burden of continually requesting Target Market expansions, creating work for both CDFIs and the CDFI Fund staff. This in effect acts as a dis-incentive for CDFIs to lend in new markets and open new branches. Flexibility to lend in broad geographic markets is particularly important for specialized sectors such as food systems, charter schools, and renewable energy, where CDFIs with specific expertise often work to target borrowers on a national scale. Geographic flexibility will also encourage more partnering between CDFIs, particularly where smaller CDFIs need partners to fully finance large high-impact projects.

We emphasize that the eligibility requirements we discuss throughout this comment are critical to ensuring that CDFIs operating on any scale are promoting rather than eroding community development. We further urge the Fund to monitor the extent to which CDFIs with national Target Markets are responsibly reaching borrowers of color; see discussion of Reporting Requirements in the following section. In addition, we urge the Fund to encourage that CDFIs, particularly those serving a national Target Market, prioritize contracting with minority-owned and women-owned suppliers.

X. We urge enhanced reporting of race and ethnicity data with respect to CDFIs and the borrowers and communities they serve, as well as transaction level data for all CDFIs.

We urge the Fund to collect and analyze additional data to aid its ability to assess the extent to which the Fund and CDFIs are serving borrowers and communities of color. These include:

[53] 85 Fed. Reg. 27277.

- whether the CDFI is designated as a minority depository institution (MDI) by the FDIC or NCUA;
- race, ethnicity and gender of a CDFI's leadership;
- race and ethnicity of a CDFI's board of directors;
- race data on borrowers and communities served, even for CDFIs that have not designated a Target Population for their target market; and
- HMDA data for mortgages and, once finalized by the CFPB, reporting on small business lending required under Section 1071 of the Dodd-Frank Act.

It is to be expected that the above metrics for CDFIs serving target markets with fewer residents of color will not reflect the diversity that those serving more diverse target markets will reflect. But collecting and assessing this information is still important, in part to aid the Fund in assessing the extent to which the Fund as a whole is supporting community development for communities of color.

In addition, we support the proposal to require the Certification Transaction Level Report for all CDFIs. Currently, requiring this data only from recent financial assistance (FA) awardees provides the CDFI Fund with an incomplete picture of the CDFI landscape. For Self-Help, the CTLR will not be burdensome even for all of our entities. The fields are relevant fields lenders should be collecting. Requiring only the past 12 months of originations will be effective in limiting reporting burden.

Finally, we note that certain changes to questions on the proposed applications would be needed to reflect the changes to the certification requirements recommended in this comment.

XI. Conclusion

Thank you for considering these comments. We would be happy to discuss them further.

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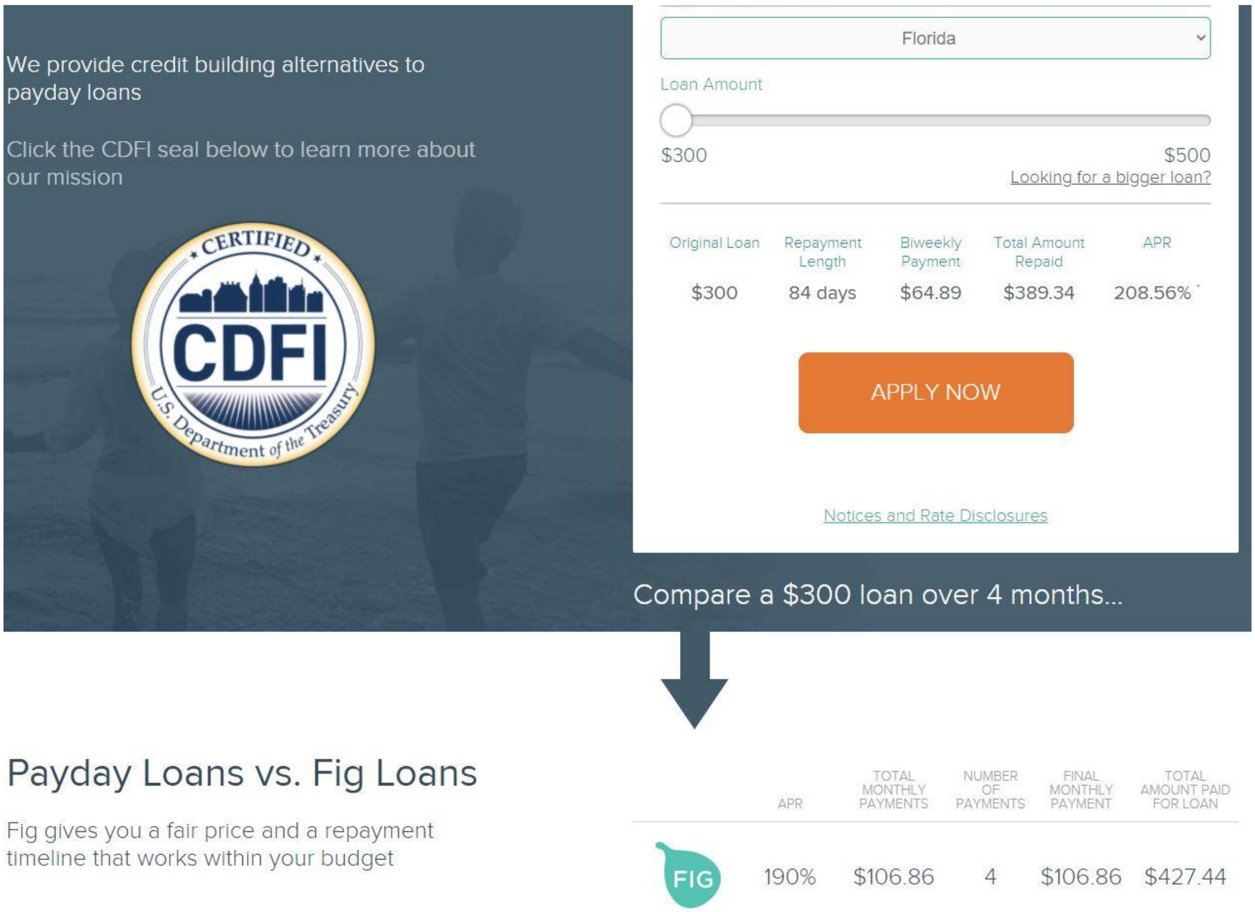
(see following page for Appendix)

Appendix

Screenshot from Fig Loans website showing CDFI seal beside an example rate of 190% APR



November 5, 2020

Ms. Tanya McInnis
Program Manager, Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions (CDFI) Fund
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington DC 20220
Submitted via email to ccme@cdfi.treas.gov

Re: Proposed CDFI Program--Certification Application

The undersigned consumer, civil rights, and housing organizations welcome the CDFI Fund (Fund)'s efforts to more vigorously ensure that the primary mission of any CDFI is to promote community development.

CDFIs are uniquely suited to promote community development and expand financial inclusion. At times, however, we see CDFIs use "financial inclusion" as the central purported justification for permitting irresponsible lending practices, unreasonably high interest rates, and erosion of longstanding consumer protections.

It is becoming difficult to keep track of all the affirmatively harmful financial products and practices being encouraged in recent years in the name of "access to credit" and "financial inclusion" – which in reality exacerbate *exclusion*. Most CDFIs stay away from these harmful products and are true to their mission. But others do not, and at least one CDFI is charging rates as high as 190% APR in the name of financial inclusion. Moreover, in the mortgage space, we are concerned that some CDFI mortgage lenders are using the certification not to promote community development but to promote their ability to avoid the sensible underwriting requirements that apply to most non-CDFI lenders.

High-cost and/or unaffordable indebtedness and default inflict misery of all kinds on borrowers and their families, ultimately leaving them worse off than when they started. Communities of color are targeted and disproportionately harmed by such lending, which exploits and fuels the racial wealth gap.

We urge the Fund to put its imprimatur only on lending practices that, in the spirit of the CDFI mission, carry reasonable interest rates and promote asset building, rather than saddling consumers with high-cost, harmful debt.

We urge the Fund to establish lending standards that function as clear, bright-line eligibility requirements for CDFI certification or renewal:

(1) **a fee-inclusive annual percentage rate (APR) limit of 36%, computed consistent with the current Military Lending Act (MLA) regulations (or lower if required by state law)**; and

(2) **for any mortgages offered, product protections consistent with the qualified mortgage (QM) statutory protections**: (a) no negative amortization, interest-only payments, or balloon payments; (b) adjustable rate mortgages underwritten at the maximum rate in the first five years; (c) original maximum term of 30 years; and 4) total points and fees generally not exceeding three percent of the loan amount. These product protections will help ensure responsible mortgage lending while allowing innovation in underwriting that may benefit communities that CDFIs serve.

For small loans, the 36% fee-inclusive rate cap under the MLA is a widely accepted dividing line between affordable loans and high-cost ones. For larger loans, most states impose lower rate limits: a median of 31% APR including fees for a $2,000 loan and a median of 25% APR for a $10,000 loan. CDFIs should be encouraged to keep rates at these limits or well below on these larger loans. But a fee-inclusive 36% APR eligibility requirement provides a clear, bright-line standard, rooted in federal precedent.

A bright line requirement is far preferable to the Fund's current proposal to make the interest rate a benchmark that triggers higher scrutiny. First, a bright line limit of 36% MAPR is appropriate to fulfill the statutory objective. It makes little sense to provide a federal imprimatur, and often subsidy, for lenders making loans so expensive that Congress has prohibited them for our nation's servicemembers or that are illegal in most states.[1] Second, a clear eligibility requirement avoids charging the Fund with policing whether or not high-cost lenders may nonetheless merit CDFI certification. As we fail to think of such an entity, expending Fund resources on this task is both unnecessary and inefficient.

We further urge the Fund to **require that lenders assess borrowers' ability-to-repay and monitor other lending metrics like defaults, refinancings, debt collection practices, and compliance with fair lending laws**. For mortgage loans, although CDFIs are exempt by regulation from the ability-to-repay provisions of the Dodd-Frank Act, CDFIs should still demonstrate that they consider and verify borrower debts, income, and assets.

In addition, we urge the Fund to **establish an eligibility requirement that CDFIs charge no more than six overdraft fees in a rolling 12 months**, consistent with the FDIC's 2010 guidance addressing overdraft programs.

We also strongly support the Fund's proposal to **require that the primary mission test be applied as a whole to non-depository parents, affiliates, and subsidiaries engaged in financing.**

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[1] An exception could be provided for federal credit unions whose only product that exceeds these rates is payday alternative loans (PAL)s.

Sincerely,

National groups

Americans for Financial Reform Education Fund
Center for Responsible Lending
Consumer Action
Consumer Federation of America
The Leadership Conference on Civil and Human Rights
NAACP
National Consumer Law Center (on behalf of its low income clients)
National Fair Housing Alliance
National NeighborWorks Association
National Urban League

State-based groups

Alaska PIRG
Arkansans Against Abusive Payday Lending
Center for Economic Integrity (AZ)
Delaware Community Reinvestment Action Council, Inc.
New Economy Project (NY)
New Georgia Project
New Jersey Citizen Action
SC Appleseed Legal Justice Center
Texas Appleseed
Virginia Citizens Consumer Council
Voice-OKC (OK)

November 5, 2020

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

RE: Community Development Financial Institutions Program— Certification Application (OMB Number: 1559–0028)

Dear Ms. Harris:

On behalf of NeighborWorks America (statutorily the Neighborhood Reinvestment Corporation) I want to thank the CDFI Fund for the opportunity to provide comments regarding the standards and criteria for CDFI certification. Please note that these comments have not been submitted to or approved by NeighborWorks America's Board. They reflect the view of NeighborWorks America management and do not necessarily represent the views of its Board members, either collectively or as individuals.

NeighborWorks offers specialized supports to our network organizations that engage in lending, particularly to the eighty-one U.S. Treasury-designated Community Development Financial Institutions currently in the network. CDFIs play a critical role in promoting homeownership by offering first and second mortgages, down payment assistance for homebuyers, and rehabilitation loans. They also support the broader community development industry by offering commercial loans for economic development, real estate development, and community facilities, as well as consumer loans. Loans made by NeighborWorks network CDFIs have tremendous local impact. In FY 2019, these CDFIs made 9,545 residential loans totaling $441 million. In addition, NeighborWorks America organizations made $313 million in commercial loans, split between economic development (35 percent), real estate development (36 percent), and other types of projects (28 percent). In addition to the principal investment, the commercial loans made by CDFIs leveraged $752 million in additional investment. For FY 2019, NeighborWorks assisted 26 network CDFIs to successfully compete for a total of over $19 million in awards from the CDFI Fund. NeighborWorks also supports network organizations who are interested in becoming CDFIs to assess their readiness.

We are pleased to offer the following comments in response to the CDFI Fund's solicitation of public comment on the CDFI Certification Application.

Emphasis on Mission

NeighborWorks supports the Fund's proposal to raise the bar for certification by strengthening the primary mission test. Importantly, strengthening the mission test allows the Fund to provide CDFIs with additional flexibilities around defining their Target Markets while maintaining appropriate safeguards.

Certification as a CDFI provides organizations with myriad benefits beyond simple access to the Fund's programs. Organizations can leverage this credential to create and strengthen partnerships, gain access to additional resources, and bolster their reputation within their community. By placing additional emphasis on the primary mission test, the Fund will reinforce and elevate the community development work. Additionally, in a system where resources are limited, it is critical that the Fund's grants be restricted only to those organizations that truly meet the spirit of the designation. However, NeighborWorks is concerned about the potential for unintended consequences. The proposal (p. 18) would apply the mission test not just to the CDFI and parent entity, but also to other affiliates. As corporate structures become increasingly complex and organizations work to diversify revenue sources to become self-sustaining, some have incorporated for-profit affiliates whose revenues support the work of the CDFI. Individually, these affiliates may not pass the mission test, but they should be evaluated within their context. For example, an affiliate could be deemed to pass the test if a) its activities are not inconsistent with the CDFI's community development mission, b) the affiliate is controlled by the applicant and not vice versa, and c) any profits would support the CDFI's mission.

Reporting Burden

As an organization that collects and analyzes data from grantees to demonstrate the impacts of our resources, NeighborWorks is sympathetic to the Fund's desire to collect additional data. Comprehensive data collection can inform strategies, demonstrate outcomes, and play a critical role in building support for the work of the Fund and the community development sector as a whole. However, NeighborWorks is concerned that the proposed reporting will create burdens that are too great for small or emerging CDFIs. The CLTR will be new for groups that have not yet received certification and never received an award, and needing to prospectively report this data could present an insurmountable obstacle to achieving certification. As a result, NeighborWorks recommends that the Fund scale back this proposal and require this data only of those organizations that are under an active FA or TA award. This change would provide a more appropriate balance between the Fund's desire to better understand the work of CDFIs and the needs of small and emerging CDFIs to achieve and maintain certification.

Of the 81 CDFIs in the NeighborWorks network, 24 organizations have not received an FA or TA award in the past 6 award years (including 2020). These organizations maintain certification for the cache or entrée it provides in other applications, and the burdens imposed on them would be significantly and unduly increased. While they may appear dormant from the perspective of the Fund, we know that they continue to engage in lending activities. NeighborWorks is concerned that far more would be lost than gained by weeding out these CDFIs and encourages the Fund to tailor its actions so as not to inadvertently penalize these organizations.

Based on past challenges with technology infrastructure, we would urge the Fund to ensure that the necessary investments are in place to successfully collect this information and allow for it to be used for meaningful evaluation. The incremental burden being placed on CDFIs can only be justified if the data collected is utilized to advance programmatic design or policy. Historically, the CDFI Fund has been understaffed, leading NeighborWorks to question whether the Fund truly has the capacity and resources to make meaningful use of this information. NeighborWorks also urges the Fund to make any data collected available to the public in an appropriately deidentified fashion. Access to these data would allow CDFIs, researchers, public policy makers, and other interested stakeholders to better understand the work of CDFIs and the value they bring to their communities. This data could help to demonstrate the differences between the populations served, products offered, and capital sources accessed by CDFIs and the traditional marketplace, helping to illustrate the value-add of the CDFI sector.

In general, NeighborWorks urges the Fund to focus on the clarity of its reporting and application guidance while ensuring that Fund staff are accessible and knowledgeable enough to assist organizations with the data requirements. Uncertainty often leads organizations to feel that they must rely on the expertise of expensive consultants to interpret and understand the requirements, draining resources away from other purposes.

Accountability

NeighborWorks is concerned that the accountability measures created by the board governance requirements are too weak to reliably serve their purpose. With a three-member board, only a single representative would be required to be accountable to the Target Market. Industry best practices recommend a minimum of five unrelated members for a governing board, and often recommend additional members to better serve the range of needs and interests of the organization. NeighborWorks urges the Fund to adopt this minimum standard for CDFIs to better ensure that they are accountable to their Target Markets.

Target Markets

NeighborWorks supports the Fund's move away from imposing a geographic requirement on target markets. Based on the experience of CDFIs within our network, geographic requirements can become an impediment to CDFIs' ability to serve additional needs in new places, constraining their growth. The proposed changes would eliminate these barriers.

Specific Comments

BI-A08 (p. 20): NeighborWorks supports the proposal to create a special certification for spinoffs, which would allow up-and-coming organizations to rely on the history of efforts of the larger organization.

(p. 30): While NeighborWorks supports the Fund's desire to ensure that certified entities engage in responsible financing practices, the standards for assessing this should not be overly prescriptive such that they improperly limit CDFIs' ability to serve consumers. For example, CDFIs within the NeighborWorks network have created alternatives to payday lending products that meet consumers' needs for access to financing without subjecting them to the predatory and abusive practices of others serving this market. The Fund should support efforts such as these by finding flexible ways to ensure consumer safeguards are in place without creating rigid ratios or metrics.

PM-17 (p. 38): This type of scrutiny should not be reserved only for loan products with an MAPR that exceeds 36%. Loan products with interest rates at or below 36% should also be subjected to these questions to ensure that they are safe lending products.

(p.44): NeighborWorks is disappointed that forgivable loans are not listed as eligible financial products and urges that they be added. Forgivable loans are one of the most powerful tools that organizations like NeighborWorks possess for bringing sustainable homeownership within reach. In fact, NeighborWorks has helped over 24,000 families become homeowners through our LIFT Down Payment Assistance Program. Like LIFT, HOME funds provided through local DPA and closing cost programs, and others encourage longevity and are distinct from grants. Just like other loan products, these loans still require origination activity and portfolio management. They are serviced and, depending on how the organization does their accounting, they also may appear on the entity's balance sheet. Even some traditional loans contain a clause permitting the loan to be forgiven at resale if proceeds are insufficient to cover repayment. NeighborWorks does not believe that a pre-approval process is the best way to address these products and would welcome the opportunity to engage the Fund in additional conversation to develop a more appropriate definition of eligible forgivable loans based on features and characteristics of the loan products.

FE-A05 (p. 48): This section of questions would create enormous burdens as most organizations do not structure their accounting in this way. To provide this data, organizations would need to deploy additional professional resources to create these records. As proposed, these categories are confusing and should be further clarified. Previously, the Fund has requested information about the organization's balance sheet assets dedicated to lending and the assets available for lending. Given that it is not apparent what additional value the questions enumerated in this section offer, NeighborWorks encourages the Fund to consider whether the anticipated benefits of collecting this data are sufficient to merit such administrative burdens.

FE-AS (p. 50): This question does not request information about staff dedicated to loan servicing and development services. Along with the other activities listed, these services should count as Financing Activities.

FE-AS11.2 (p.51): This question seeks a level of detail that is not necessary and would require significant new recordkeeping. Instead, the Fund should maintain the current practice of requesting only the total number of FTEs engaged in non-financing activities.

(p. 55): NeighborWorks is concerned that a customized investment area threshold of 85% could be a barrier to focused place-based work.

TM-03.1 (p. 58): Mortgage lending should be included on the list of activities.

(p. 60): It is not clear from the definition of Development Services whether online homebuyer education courses such as eHome America are included. For CDFIs engaged in mortgage lending, these types of publicly available, fee-based courses are a primary tool for educating and preparing customers. While individual CDFIs do enter into a contract with eHome, the CDFI does not maintain control over the content. NeighborWorks encourages the Fund to consider a more tailored definition that includes these arrangements.

This definition could focus instead on the quality of the Development Services. NeighborWorks and a network of partners including national lenders, Freddie Mac and Fannie Mae, HUD, mortgage insurers, and other national counseling organizations have developed the National Industry Standards for Homeownership Education and Counseling. The Standards were developed to ensure a higher quality of homeownership education and counseling. When a counseling organization adopts the standards, it strengthens the professional credentials of its homeownership educators and counselors to ensure consumers have access to high quality, ethical and comprehensive housing information and services.

We appreciate the opportunity to engage with the Fund on changes to the certification application as we work towards our mutual goal of strengthening the CDFI industry. We would be happy to answer any questions or offer additional information if needed.

Sincerely,

Kirsten T. Johnson-Obey
Senior Vice President, Public Policy and Legislative Affairs

New Covenant Dominion Federal Credit Union

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November 1, 2020

Tanya McInnis
Program Manager, Office of Certification, Compliance, Monitoring and Evaluation
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Email: ccme@cdfi.treas.gov

Subj: Comments on Proposed Changes to CDFI Certification Application

Dear Ms. McInnis:

On behalf of New Covenant Dominion Federal Credit Union, I would like to thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a certified CDFI serving 350 members in the South Bronx, NYC, we support this effort to establish an efficient path to CDFI certification for eligible institutions and establish clear, strong and consistent standards. Unfortunately, the application proposed by the CDFI Fund would not achieve these objectives. An effective Certification application should serve as a gateway that facilitates entry for eligible institutions and denies entry to those that are not, but the proposed application erects significant and costly barriers that would dissuade and exclude many highly committed and fully qualified CDFI credit unions. Without fundamental changes, the proposed application would encourage an exodus of credit unions from the ranks of certified institutions, depriving the CDFI movement of irreplaceable sources of capital, innovation, and community impact.

Our concerns are rooted in our identity. First, as an insured depository subject to rigorous regulatory standards, intensive examination and public reporting, New Covenant Dominion Federal Credit Union is concerned that the proposed application creates a parallel, quasi-regulatory process that ignores the clear parameters already established by our actual regulators. Second, as a credit union, we are disheartened by numerous elements that ignore or misunderstand fundamental characteristics of our legal and operational structure. Finally, as a CDFI and member of Inclusiv, we share a concern that the proposed changes would make CDFI certification too costly for the vast majority of eligible credit unions, with a disproportionate impact on those that serve rural and minority communities. As a result, we strongly support Inclusiv's call for a fundamental redesign of the proposed certification application based on the comments collected during this period and also with substantive consultation with the CDFI field during the redesign process itself.

The examples below will demonstrate some of the reasons why we believe such a fundamental overhaul is warranted:

- The proposed **Basic Information** section includes ten questions that ask credit unions to demonstrate that our governing boards are democratically elected by our members. Since every credit union[1] is required by law to have governing boards that are democratically elected by members, these questions reflect a basic lack of understanding of the credit union model.

[1] This applies equally to every state-chartered and federally-chartered credit union, including *cooperativas* chartered by COSSEC in Puerto Rico

- The proposed **Accountability** section amplifies this fundamental misunderstanding by only recognizing the accountability of our democratically elected boards for narrowly defined target markets that make up more than 50% of our members. In the private sector more than 50% of voting shares is defined as a "controlling interest" and activist investors often change corporate boards with just 4% of the voting shares. Since credit union boards are democratically elected on the basis of one-member, one-vote, our boards are directly accountable to all of our members, not just a segment with a controlling interest. The provision for "special" accountability should be available to <u>any</u> CDFI with a board that is democratically elected by the people they serve, and should confer automatic accountability on any credit union or other democratically governed institution that meets the Target Market requirement for certification. In addition, as Diversity, Equity and Inclusion (DEI) has been adopted as the 8th Cooperative Principle for all credit unions, we support Inclusiv's proposal to add a question regarding institutional plans to promote and sustain DEI.

- The proposed **Primary Mission** section fails to recognize that credit unions and other regulated CDFIs already operate within strict parameters imposed by our regulators and CFPB to safeguard against predatory products and practices. Instead, the section requires a virtually endless series of questions with drop-down answers and descriptive narratives on each and every financial product and financial service we provide. These questions often use non-standard terminology and provide limited drop-down options that would distort any understanding of the wide array of credit union products and services, which are subject to vigorous and ongoing innovation and expansion across our industry.

- The proposed **Target Market** section would lower the Target Market threshold for loans to 50% for Insured Depositories provided that more than 60% of "financial services" are in CDFI Target Markets. We support this effort to recognize the special obligation of depositories to diversify risk across markets. However, the proposal to count financial services as *number of accounts* is fatally biased, since wealthier members will always have many more savings, money market, investment, IRA Keogh and other accounts than our low-income members. Indeed, many of our lowest-income members only have basic share or share draft accounts that give them access to the check-cashing, money order, bill-pay and other transaction services they depend on most heavily. In other words, contrary to the democratic ethos of credit unions, the CDFI Fund proposes to measure financial services by counting our wealthier members many more times than our lower income members. We strongly support the Inclusiv proposal to use a straightforward count of unique credit union members as a more accurate proxy indicator for financial services.

- The proposed **Development Services** section adds inflexible requirements that rule out many of the most effective educational, counseling and coaching services we provide to our members. For example, the CDFI Fund proposes to eliminate consideration of any one-on-one support provided in conjunction with a product or service. This ignores considerable research – including recent work by Inclusiv and CFSI -- that challenge the effectiveness of stand-alone financial education and counseling and instead emphasize the importance and positive impact of delivering key messages at "teachable moments," in conjunction with appropriate products and services. In a sense, the CDFI Fund has proposed that meaningful driver training only takes place in a classroom, and anything delivered behind the wheel simply doesn't matter.

- The proposed **Legal Entity** section continues to rely on copies of historic documents to confirm the legal status of each CDFI. The cumbersome collection and review of old documents does not establish whether an entity is both legal and currently active, but there is a readily available federal system that does. We support Inclusiv's proposal to use registration with SAM.GOV to meet the legal entity requirement for certification. In addition to efficiently addressing the legal entity requirement, SAM registration would ensure that every CDFI is ready to participate in CDFI Program funding rounds as soon as they are certified.

New Covenant Dominion Federal Credit Union is proud of our status as a certified CDFI and strongly supports the goals of the CDFI movement. We believe changes to the CDFI Certification Application are needed to more sharply define our field. But these changes must be done with care and consideration of the complex and committed institutions that make up our movement. New Covenant Dominion Federal Credit Union hopes that our comments will help the CDFI Fund in a comprehensive and consultative redesign of the certification application. We look forward to participating in that process.

Thank you for your consideration.

Sincerely,

Rachel Macarthy
Acting CEO
New Covenant Dominion Federal Credit Union

Copies: Jodie Harris, Director, CDFI Fund (HarrisJ@cdfi.treas.gov)
Cathie Mahon, President/CEO, Inclusiv (cmahon@inclusiv.org)

November 5, 2020

Ms. Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund,
U.S. Department of the Treasury,
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Re: Community Development Financial Institutions Program — Certification Application OMB Number 1559–0028

Opportunity Finance Network (OFN) appreciates the opportunity to comment on the CDFI Fund's proposed CDFI certification application. OFN is a national network of more than 300 community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other under-resourced communities across America. Our membership has originated $74 billion in financing in urban, rural and Native communities through 2018.[1]

We strongly support the CDFI Fund's diligence in protecting the integrity of CDFI certification. CDFI certification is a mission test that serves not only as an eligibility screen for CDFI Fund programs, but as a valuable credential with private, philanthropic and other public sector investors in CDFIs.

We support the Fund's commitment to keep certification standards high so that unsavory financial service providers in low-wealth communities are prevented from becoming certified CDFIs. CDFI certification is a privilege and the CDFI Fund must safeguard it to ensure those receiving the designation are truly community development focused. At the same time, the Fund must be cautious about imposing onerous, costly requirements and high barriers to entry that make the certification process so restrictive that worthy applicants are not able to obtain the status. If certification becomes so complex that existing CDFIs cannot navigate the changes and potential applicants are dissuaded from applying, it will not result in a process improvement or better outcomes for the communities CDFIs serve. Some aspects of the Fund's proposal are a step in the right direction, while others could be improved.

OFN members, in general, expressed support for the direction of the CDFI Fund's proposed changes to streamline the certification process to enable better evaluation of CDFI applicants' lending, coverage, and products. OFN is particularly pleased to see the CDFI Fund's efforts to automate processes and streamline the application process. The use of the CDFI Fund's Award Management Information System (AMIS) to auto-complete portions of the application and only present questions relevant to the Applicant will reduce some of the overall burden.

[1]Opportunity Finance Network, "Inside the Membership: Statistical Highlights from OFN Membership: 2018", Published December 6, 2019. https://ofn-drupal-pub.s3.amazonaws.com/s3fspublic/insidemembership_fy2018.pdf.

At the same time, OFN members have expressed serious concerns about the Fund implementing major changes to certification, reporting and compliance amid a major health and economic crisis. The COVID-19 pandemic has impacted CDFI capacity, leaving some organizations stretched thin and making tough choices about how to use limited resources, like whether to offer additional flexibility to their current borrowers, meet the growing demand for new lending and technical assistance, allocate additional funds to loan loss reserves, or to retain staff.

The impacts of COVID-19 make it even more difficult to make the major, upfront investments in new software or systems needed to accurately report and capture information the Fund may require, especially for smaller CDFIs. In particular, the new requirements for CDFIs that are not Financial Assistance awardees to complete and submit Transaction Level Reporting generated concern from OFN members that this might impose a significant new compliance burden.[2]

OFN offers the following comments on the Proposed Certification Application:

Timeline for Implementation

The changes proposed are significant and require an extended timeline for implementation. OFN recommends a grace period for currently certified CDFIs to come into compliance with the new certification criteria, a minimum of 18 months after the publication of the new, final application. The CDFI Fund should also provide thorough and ongoing training on the new application and reporting requirements.

Quarterly CDFI Certification Application Cycle

Moving to a quarterly application cycle would be an improvement as long as CDFIs applying for certification have certainty about how long the CDFI Fund will take to review the application and have information about the status of their applications once submitted. The CDFI Fund should also commit to making decisions about applications in the same quarter in which they are submitted. There also must be assurances that CDFIs that need to become certified to apply for Financial Assistance awards have the ability to do so, so any quarterly certification timetable must coincide with the annual CDFI Program application cycle.

Primary Mission—Financial Products and Services

OFN fully supports the CDFI Fund's role in ensuring that only qualified entities with an intentional community development strategy focused on "improving the social and/or economic conditions of underserved people and/or residents of economically distressed communities are eligible to be certified."

As the CDFI Coalition notes, with more than 1,100 CDFIs in all 50 states, simply evaluating an Applicant's board-approved organizational documents or a narrative statement will not always be sufficient to ensure that an organization is providing access to affordable, responsible capital. OFN

[2] OFN is commenting on OMB 1559–0046 separately.

urges the CDFI Fund to use this reform of the certification process to set clear standards and guidelines and create broad authority to deny or decertify entities that do not meet the letter or spirit of the CDFI mission. Many of the proposed changes are a step in the right direction but OFN members identified several concerns with the new application related to Primary Mission:

- **Key terms not defined** - Many of the options assume incorrectly that there are standardized product and pricing definitions and standards in use within the CDFI or the financial services sector (i.e. "below market rate," "lower than standard," "nontraditional," "less established," "lower profitability," "mainstream underwriting criteria" among others.) All the options force lenders to make blanket statements about products that may or may not be uniformly defined across products and borrowers.

- **Community development objectives list is too narrow -** Business development is listed as an output/outcome but should be considered its own community development objective. Many CDFIs have a mission to support communities through small business development and entrepreneurship. In addition, the new application does not include job creation as a positive community development objective. OFN recommends the Fund include the promotion of "quality jobs", using recent publications by the Federal Reserve Bank of Boston to define quality jobs.[3] The CDFI Fund should also consider activities undertaken to close the racial wealth gap as a community development objective. As part of the CDFI Fund's review and improvement of certification and reporting, OFN recommends the Fund collect information that will sharpen its ability to assess the performance of the Fund and CDFIs in serving communities of color.

- **Assumptions about CDFI business models** - Some of the questions in the new application presume that the business model for all CDFIs is to provide below market rate financing or other favorable terms to all borrowers in all circumstances. Access to credit, as well as the terms of the credit, must be considered. CDFIs offer different products and development services to reach their Target Markets. The rates and fees charged to borrowers are reflective of the borrower's risk profile, market conditions, and the cost of capital to the CDFI. CDFIs also need to generate revenue to cover operating costs and continue to make loans. It is not always feasible to offer products at below market rate or to use other subordinate financing mechanisms. Further, loans made at market rates can still have a positive community development impact, especially for borrowers that cannot access mainstream finance OR borrowers that would potentially seek high-cost, predatory financing options.

Responsible Financing Practices

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[3] Jay Lindsay, "When a job isn't enough: New Boston Fed initiative focuses on promoting 'quality jobs' and their impacts", Federal Reserve Bank of Boston, Published October 29, 2018. Accessed October 31, 2020. https://www.bostonfed.org/news-and-events/news/2018/quality-jobs-effort-announced.aspx

- **Use of the Military Lending Act methodology:** As members of the Responsible Business Lending Coalition (RBLC),[4] OFN whole-heartedly agrees with the Fund that "Financial Products should be affordable and based upon a borrower's ability to repay and CDFIs should practice transparency, fair collections, and compliance with federal, state, and local laws and regulations." The RBLC created the Small Business Borrowers Bill of Rights to provide guidelines for fair disclosure and transparent pricing in small business lending, some of which can be helpful in determining if an applicant is providing affordable, responsible financial products.[5]

  In particular, collecting information on pricing of CDFI products is important to determine if a product is high cost or predatory. While using the Military Lending Act(MLA) standard to calculate annual percentage rate (APR) would allow for standardized calculation across the industry, some in our network expressed unfamiliarity with this method of calculation, while others noted they already have copious state and federal rules on how to calculate interest.

  As states provide greater oversight to consumer lending, CDFIs are already making multiple interest rate calculations using different formulas: CDFIs engaged in small business lending in California are now required to make certain APR calculations as part of the implementation of Senate Bill 1235 which requires consumer-style disclosures for commercial financing. A pending small business lending disclosure bill in New York would use a different calculation of APR. A bill introduced in Congress by House Small Business Committee Chairwoman Nydia Velazquez (D-NY) would calculate APR using yet a different formula.

  Requiring CDFIs to report APR using the MLA methodology adds another layer of complexity to the existing web of reporting requirements. CDFIs would have to choose to switch to the MLA APR calculation for their lending to ease the CDFI Fund compliance burden, which would require amending their financing disclosures as well as the methodology underpinning them. Or they would need to create an entirely separate system to make the MAPR calculation specifically for the CDFI Fund, which would also be costly and burdensome. The CDFI Fund should carefully consider if the additional compliance burden of reporting MAPR is warranted, or if there is an alternative way to allow CDFIs to report on their financing terms using their existing APR calculations.

- **CDFI industry standards for mortgage products -** OFN supports Self-Help's recommendation that for any home mortgages offered, the CDFI Fund review the products

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[4] The Responsible Business Lending Coalition is a network of non-profit and for-profit lenders, investors, and small business advocates that share a commitment to innovation in small business lending and serious concerns about the rise of irresponsible small business lending.

[5] The Borrowers' Bill of Rights includes the Right to Transparent Pricing and Terms, which calls for small business financing providers to clearly disclose seven key elements to businesses applying for credit: loan amount, and total amount provided after deducting fees or charges; annual percentage rate (APR) or estimated APR; payment amount and frequency, including the actual or estimated total payment amount per month if payment frequency is other than monthly; term or estimated term; all upfront and scheduled charges; collateral requirements, and any prepayment charges.

offered for protections consistent with the qualified mortgage (QM) statutory protections: (a) no negative amortization, interest-only payments, or balloon payments; (b) adjustable rate mortgages underwritten at the maximum rate in the first five years; (c) maximum term of 30 years; and 4) total points and fees generally not exceeding three percent of the loan amount. These product protections will help ensure responsible mortgage lending while allowing innovation in underwriting that may benefit communities CDFIs serve. It will also help prevent organizations from seeking CDFI certification status to circumvent QM rules and make high cost mortgages.

- **Disqualifying activities related to responsible financing practices -** Organizations that have any kind of fair lending violation or other related sanctions, a history of high cost lending and/or predatory practices, or recent unsatisfactory ratings on Community Reinvestment Act exams, should be considered ineligible for CDFI certification. While the CDFI Fund is not a regulatory agency, receiving certification status should require, at a minimum, adherence to certain responsible financing practices required by other federal regulators or laws. The CDFI Fund must protect the CDFI brand, the reputation of the industry, and a responsible steward of federal resources. It is appropriate to flag or prohibit behavior by entities that engage in activities that negatively impact the economic wellbeing of underserved communities.

  The Fund could consider allowing organizations with one of the disqualifying practices listed above to appeal a decision denying certification and provide an explanation of why the CDFI applicant is not approved, giving entities the option to remedy any deficiencies and continue to pursue certification. In the case of an appeal or when an Applicant's community development focus is unclear, OFN agrees with the Community Development Bankers Association (CDBA) that the CDFI Fund's certification process should allow the agency to consider external sources of information about the products and practices of an entity seeking certification or re-certification.[6] As part of its certification process, the CDFI Fund should have the authority to request and review all consumer facing product information (i.e. websites, brochures, loan agreements, pricing and fee calculations) that are presented to prospective and actual customers.

Primary Mission—Affiliates

OFN supports the CDFI Fund's proposal to require all Applicants to demonstrate the mission focus of their parent and affiliate organizations to meet the primary mission test. This will help determine if an Applicant is truly serving low-income people and communities by providing affordable, responsible financial products and services, and prevent organizations that are not mission-driven from creating subsidiaries or affiliates that can be certified as CDFIs. At the same time, there are CDFIs doing meaningful, impactful community development work that might be adversely impacted by this new requirement. The Fund must be careful to not create too many loopholes that weaken

[6] Such sources may include consumer complaints filed with the Consumer Financial Protection Bureau, a local Better Business Bureau, or state, local and Federal authorities, lawsuits or judgements against the lender, news media reports, and negative reports posted on social media.

the impact of this important change, but CDFIs have identified several cases where the Fund could consider exempting certain Affiliates from the Primary Mission test:

- **CDFI Affiliate profits are distributed to further community development mission** - The CDFI Fund could consider exempting Affiliates of nonprofit CDFIs which distribute their profits to the CDFI Certification Applicant, as long as they can meet all facets of the Primary Mission test. The CDFI Fund should exempt such Affiliates from the Primary Mission test since these entities further the capacity of the CDFI Certification applicant.

- **Affiliate activity comprises small portion of parent company's operations** - If the affiliate makes only one or two loans per year that doesn't comprise a significant amount of budget activity, that should not impact the ability for the applicant to obtain certification. OFN agrees with LISC's recommendation that the CDFI Fund exempt Affiliates which reflect less than 10 percent of their parent entity's annual Financial Product and/or Financial Service activity (as measured by volume of activity or commitment of staff resources) from the Primary Mission requirements.

  Impact on 7(a) lenders - There were also questions about how this affiliate rule would impact CDFIs that participate in the Small Business Administration's 7(a) program through an affiliate entity, and if 7(a) loans – with the exception of 7(a) Community Advantage pilot program loans that have an explicit focus on underserved markets - would be considered to have a community development intent.

Financing Entity

Under the new certification guidelines, the CDFI Fund will assess whether the Applicant has closed an appropriate number and/or dollar volume of eligible Financial Product transactions during the timeframe under review. This change builds important flexibility into the process by allowing the Fund to "use its sole discretion in determining the appropriate level of activity with the provision of Financial Products." As stated earlier in the letter, OFN recommends SBA microlenders be considered to have a community development intent. However, for some of these microlenders, their loan portfolio might appear relatively small in comparison to the technical assistance or grants they might make as a percentage of budget/staff time. These entities could still be making significant number of loans, have positive community development impact and could be good candidates for certification. The flexibility built into the Financing Entity test could be an opportunity for more microlenders to become certified.

OFN also agrees with the CDFI Coalition that the Financing Entity standard should be flexible during economic downturns. Many CDFIs often scale their grant making activity during periods of crisis, which can cause an applicant to fail the Financing Entity test for one year even if they have always met it historically. Meeting the needs of underserved communities is more critical than ever during an economic downturn. The CDFI Fund should adopt policies to ensure CDFIs are not punished in these circumstances

The Financing Entity Section of the application also states that asset information provided should be based on the Applicant's information only and should not use a consolidated statement.

Questions in this section request Applicant's non-consolidated, current fiscal year-to-date financial statements. Some CDFIs only prepare a consolidated set of financial statements. The CDFI Fund should clarify how an Applicant should respond to this question if they only produce consolidated financial statements, and if organizations will be permitted to use these consolidated statements for the purposes of certification.

Target Market

OFN strongly supports the new certification policy that will remove the geographic boundaries on most Target Market designations. We are especially pleased to see that CDFIs that serve certain Targeted Populations will be able to count all qualifying activity toward their Target Market requirements, regardless of geographic location. This policy change gives CDFIs more flexibility to make investments based on market conditions and need and eliminates a lengthy approval process to update their Target Markets.

For CDFIs engaged in the Paycheck Protection Program and other COVID small business relief efforts, geographic restrictions on CDFI activity presented a difficult decision for many lenders: make PPP loans available or turn away businesses during a pandemic to preserve compliance with CDFI certification. For those CDFIs that made PPP loans to otherwise eligible borrowers, this change would ease the concern that they risk losing their CDFI certification by engaging in significant lending activity outside of their geographic Target Market.

OFN agrees with the Fund that this change will allow CDFIs to expand their geographic footprint and serve more communities, while also allowing greater use of technology and reducing administrative burden.

- **CDFIs Serving a Low-Income Targeted Population (LITP) -** In general, OFN supports the Fund's flexible approach to Target Market verification processes, and the publication of a list of preapproved processes. This list will provide certainty for lenders as the new certification process is implemented and will also reduce the administrative burden on the Fund to review a large volume of requests.

  However, OFN is concerned that the Fund has not included this list of approved verification processes in this request for comment for input from the CDFI industry. If there will not be an opportunity to formally comment on the list, OFN urges the CDFI Fund to work with a cross-sector group of industry practitioners to develop the verification processes.

  Additionally, the proposed application does not outline the process for requesting approval of a new Target Market verification process not already accepted by the CDFI Fund. The Fund should outline their timeframe for review and approval of a proposed process and clarify if there will be an opportunity to discuss or amend a proposed verification process if the Fund declines to accept the proposed process. Since this approval can impact an organization's business decisions, the Fund should not implement the new requirements before consulting with CDFIs and fully developing the process for getting other methodologies approved.

- **Small business lenders with Low Income Targeted Population (LITP) Target Markets -** Small business lenders in OFN's membership also expressed concern about using a verification methodology that qualifies deals as LITP based on benefits to End Users, not the borrower income. This method is allowed in the CDFI Fund regulations which states that "An entity may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve such members." [7] This can include affordable housing tenants, low-income users of community facilities, and low-income workers. However, the processes for verifying and documenting these End Users as has never been defined by the Fund.

  In the absence of guidance from the CDFI Fund, CDFIs developed their own methodology and documentation for reaching End Users, especially for low-income workers. As an example, a CDFI might lend to a business owner that has income above 80 percent of the area median income but employs low-income workers. The CDFI uses a legally binding Employment and Training Agreement in which the borrower commits to a certain level of low-income hires, along with wages and benefits. These agreements are customized to the needs and capacity of the business. The business provides wage and household information to the CDFI at least annually so that the CDFI does not have to individually certify each low-income household for every loan. The organization has been recertified based on that methodology without explicit recognition from the Fund. There is concern about what happens if that CDFI's process is found to be invalid under the new guidance. OFN urges the CDFI Fund to remove this uncertainty by explicitly recognizing the validity of considering End Users to qualify for LITP.

- **Allowing community facilities lenders to qualify for LITP Target Market** – The Fund should allow CDFIs that finance community facilities, to be certified for a LITP Target Market if at least 25 percent of the facility's beneficiaries are low-income. Community facilities like child care centers that meet a requirement to set-aside classroom slots to serve children from families with low incomes should be able to designate a LITP TM the way that affordable housing-focused CDFIs can serve a LITP TM through a set-aside of housing units for low-income residents.

- **Removing flexibility from Target Market threshold -** OFN was also concerned that the certification application states "Applicants for CDFI Certification must meet the relevant Financial Product activity percentage threshold, without exception, in both the number and dollar amount of such activity – the CDFI Fund will discontinue its current practice of providing exceptions to the Target Market threshold requirement." There is no statutory nor regulatory requirement that states what percentage of a CDFI's activities must be devoted to Target Markets.[8] The Fund implemented the 60 percent threshold through guidance,

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[7] Electronic Code of Federal Regulations, Title 12: Banks and Banking
PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM
Subpart B—Eligibility, Accessed October 31, 2020. https://ecfr.federalregister.gov/current/title-12/chapter-XVIII/part-1805/subpart-B

[8] Memorandum to Annie Donovan, Director of the CDFI Fund from the CDFI Coalition re: Modernizing the CDFI Certification Process, May 6, 2016.

which builds critical flexibility into the certification process. Unforeseen events can impact a CDFIs ability to meet the 60 percent threshold, like a global pandemic forcing a short-term shift in a CDFI's lending activity. Organizations also pointed out that when a CDFI makes loans of very different sizes and in different quantities, for instance a CDFI whose core business is microlending but makes one or two larger business loans. Such a CDFI may fail to meet the 60 percent threshold for both units and dollar amount. The proposed change is too rigid and needs to retain flexibility for the Fund to consider truly exceptional circumstances and temporary imbalances in the Target Market threshold.

Accountability

OFN supports efforts to enhance accountability to Target Markets with new requirements for governing and advisory board participation. We also support the efforts to require greater representation from board members representing Other Targeted Populations (OTP) for CDFIs with OTP Target Markets. However, CDFIs in OFN's membership noted significant confusion about the practical implications of this requirement and raised several substantive questions about the proposal:

- **CDFI employees serving on other CDFI boards -** Can a CDFI board representative provide accountability as the representative of an organization that serves low income people or communities? One CDFI noted their board includes the Executive Director of another local CDFI. This individual is Native American, but the CDFI has a Low-Income Targeted Population Target Market, not an OTP-Native American Target Market. Under the current system, she would be considered as providing accountability for the LITP, because her organization serves low income people. However, the FAQs seem to suggest that her participation on the board could ONLY provide accountability for OTP-Native American or OTP-CDFI, neither of which is the organization's Target Market.

- **Local and regional Advisory Boards** - Are local and geographic specific Advisory Boards included in the Accountability test's standards for CDFIs serving regional, national, and geographic specific Target Markets, such as rural communities?

While the changes are designed to ensure CDFIs are meaningfully connected to the needs of the communities they serve, CDFIs will need time to bring their boards into compliance with the new accountability requirements. Most Board members have multiyear terms so the timing of the implementation requirement will be consequential. OFN recommends that currently certified CDFIs have a grace period for compliance so that as exiting board members term off the boards, they are replaced with board members to meet the accountability requirements.

Development Services

OFN urges the CDFI Fund to reconsider some of the changes proposed to the Development Services requirement. The new application will impose restrictions on the delivery of technical assistance, which is highly customized to each organization and does not lend itself well to arbitrary standards. It is particularly crucial that the CDFI Fund recognize the importance of flexibility as the country navigates the COVID-19 pandemic and much of our collective activities move online.

We encourage the CDFI Fund to allow CDFIs the flexibility to offer Development Services in the form most appropriate to each customer. OFN echoes CDBA's concern that mandating how and when CDFIs provide Development Services as a condition for certification will: (1) unnecessarily increase the costs of delivering community development services *and* products; (2) put the CDFI Fund in the position of micro managing how CDFIs serve their customers; and (3) remove the flexibility needed to tailor services to each customer.

Below are some key concerns:

- **Elimination of one on one technical assistance** - Defining a Development Service as "a formal stand-alone training, counseling, or technical assistance service . . . that the entity offers separately and distinctly from its other products/services." The CDFI Fund proposes eliminating one-on-one technical assistance (TA), provided in conjunction with a product or other service as an eligible Development Service. Every customer is different, and CDFIs of all types are experts in recognizing and responding constructively to that individuality. Not all clients want or need, nor is it always feasible for CDFIs to offer structured, classroom-based TA. CDFIs should have flexibility in how they deliver TA based on the needs of their customers.

- **Prohibiting "Information presented in newsletters, flyers, or online."** - During this period of national emergency caused by the COVID-19 pandemic, OFN urges the CDFI Fund to allow CDFIs to safely serve their communities at a distance, especially through online delivery, which has been deemed adequate for other essential services ranging from primary-level education to the CDFI Fund's own advisory board meetings.

Conclusion

CDFI certification is one of the most critical components of the CDFI Fund's mission. We are deeply appreciative of the CDFI Fund's efforts to design a certification process that strengthen and updates the CDFI certification credential and provides meaningful insight into the size and scope of the CDFI industry. We look forward to continuing a dialogue with the CDFI Fund to ensure that these changes are implemented in a manner that upholds stringent standards while minimizing the burden and cost to CDFIs. Please do not hesitate to contact me if you have questions or concerns about these recommendations via email or phone at dwilliams@ofn.org or 202.868.6922.

Thank you,

Dafina Williams

Dafina Williams

Senior Vice President, Public Policy

Email to: ccme@cdfi.treas.gov; bischakg@cdfi.treas.gov

To whom it may concern,

I would like to submit public comments on the CDFI certification application.

Thank you for this opportunity. My organization has applied for this certification twice. The first submission we received positive and direct feedback on how to improve the application although it was declined. Our comments and experiences are as follows:

1) **The Technical Assistance Application vs The CDFI Application:** For start-up companies and smaller organizations it would be helpful if the CDFI Fund would award grants or support to specifically address the reason for the application. We recognize that there is a technical assistance application, but the certification application does not differ in difficulty of completion. Thus decline applications should be fast tracked or automatically referred to the Technical Assistance Program.

    a) **Provision Suggestion:** Another improvement is that there could be a provisional certification for strong applications. Allowing the organization to do the work for 1-2 years and cure whatever issue that did not allow for full approval.
    b) **Funding/Supporting Suggestion:** By creating the sandbox, startups and small organizations can raise funds and support to complete our project.

2) **The CIMS Map Technology**: An major issue we encountered was using the map technology provided to show and lock in target markets. We struggled to use this interface as it would crash and often show as offline. The mapping application is slow, it takes more than 3 seconds to startup. There are numerous other mapping interfaces that can show target markets at a more granular level. It would be helpful to be able to submit supporting documentation to the application.

    a) **Browser Suggestion:** We believe the software needs to be updated as we were informed that only internet explorer works when needing to access the map. Support for popular browsers edge,chrome, safari. Internet explorer has been deprecated and Microsoft no longer provides support for it.
    b) **Login Platform Suggestion:** Login for the maps, application and the advisory board are in separate places. It would be helpful to eliminate the need to login into 3 different apps to complete the CDFI application.

3) **The Loan Portfolio System:** When we added the transactions in the Loan Receivable and Equity Investment section, we had to do it manually for each loan and it was time-consuming. To verify the completion of each transaction, we had to keep clicking the update button for every time the loan was added. It would be better if we can have the folder to upload our loan portfolio into the system or a way to add multiple entries all together.

November 5, 2020

Ms. Tanya McInnis
Program Manager for Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions (CDFI) Fund
U.S. Department of the Treasury
1801 L Street NW
Washington, D.C. 20006

RE: CDFI Program - Certification Application Request for Public Comments (OMB Number 1559-0028)

Dear Ms. McInnis:

The Coalition of Community Development Financial Institutions thank the CDFI Fund for the opportunity to provide comments on proposed changes to the CDFI Certification application.

The CDFI Coalition ("Coalition") is the national voice for CDFIs of every type. The Coalition supports CDFIs nationwide to help them better provide credit, capital, development services, and financial services to underserved people and communities. The Coalition provides an opportunity for CDFIs and their many partners, including the full spectrum of community development finance funders and researchers, to have a unified voice in support of the role of CDFIs as an integral segment of the nation's financial services industry.

We appreciate the CDFI Fund's ongoing engagement with stakeholders and encourage Treasury to continue to work with the public as CDFI Certification policies and procedures are updated.

General Comments

In addition to the specific questions posed in the Federal Register Notice, we have some general comments about CDFI Certification. As you know, the seven statutory criteria to become a certified CDFI have remain unchanged since the passage of the Riegle Act. The certification standards keep bad actors with predatory and abusive lending practices often targeted at low-income and marginalized communities from becoming certified CDFIs. Because the certification is often used as a "seal of approval" for federal and philanthropic resources, in addition to CDFI Fund resources, it is important the process qualifies only responsible, mission-based lenders. For these reasons, the Coalition strongly supports strengthening the CDFI Certification application review policies and procedures.

The Coalition also supports incorporating the CDFI Certification application into the Awards Management Information System (AMIS) and linking it with the new CDFI Certification Transaction Level Report (CTLR). This will lower the burden on CDFI Certification applications since it will reduce the number of application questions and overall public burden. We believe most of the proposed changes are positive since they strengthen the CDFI Certification standard and decrease applicant burden by automating processes and streamlining the application process.

However, the CDFI Fund is proposing numerous changes which could impact the CDFI certification status of many organizations. Investing in the technological or staff resources needed to comply with the new certification requirements and updated reporting requirements in the Annual Certification Report and new Certification Transaction Level Report will cause financial and capacity strain on organizations at a time they can least afford it. The impacts of COVID-19 make it even more difficult to make the major, upfront investments in new software or systems needed to accurately report and capture this information, especially for smaller CDFIs. In particular, the new requirements for CDFIs that are not Financial Assistance awardees to complete and submit Transaction Level Reporting may impose a significant new compliance burden.

The Coalition recommends that the CDFI Fund grandfather in existing certified CDFIs after the CDFI Certification application is finalized and allow a grace period of at least 18 months for organizations to make any changes necessary to maintain their certification.

Primary Mission Test

The CDFI Fund's statute states that a CDFI must have "a primary mission of promoting community development." In addition, the CDFI Fund's regulations state that, "In determining whether an Applicant has such a primary mission, the CDFI Fund will consider whether the activities of the Applicant are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of economically distressed communities.'' Implicit in those words is promise that CDFIs will not engage in predatory or discriminatory practices and will provide customers with a greater level of assistance than the market would otherwise bear – to serve the underserved.

Recommendations:
The CDFI Coalition supports the CDFI Fund's efforts to strengthen the primary mission test by evaluating the Financial Products that Applicants provide to underserved borrowers. Indeed, we believe that the primary mission test is the most important tool for protecting the CDFI brand and ensuring all CDFIs offer responsible Financial Products that truly benefit underserved people and communities. The following recommendations would improve the test and ensure that it aligns with trends in the CDFI industry.

Aligning with other federal programs benefiting underserved borrowers

- **A CDFI Certification Applicant or Affiliate with a mission to support underserved markets through approved federal government loan programs should be deemed to satisfy the Documenting Mission and Community Development Strategy test.** It is unclear from the proposed CDFI Certification guidance if a CDFI Certification applicant or its Affiliate would meet the proposed Documenting Mission or Community Development Strategy components of the Primary Mission test if they were created solely for the purpose of serving underserved borrowers who can't receive credit elsewhere. CDFI Certification Applicants or Affiliates that are required by federal statute to provide financial products and services to underserved borrowers should automatically meet the Documenting Mission and Community Development Strategy sections of the Primary Mission test. For instance, SBA 7a and Microlenders are required to document that their loans went to businesses that couldn't otherwise access the capital, and are typically eligible for Community Reinvestment Act credit. The Coalition believes that other federal program requirements should serve as a sufficient proxy for meeting the Documenting Mission and Community Development Strategy sections of the Primary Mission test.

The flip side of that equation is that the CDFI Fund should recognize fair lending violations or other sanctions handed down by other regulatory authorities. Organizations that have a history of regulatory sanctions, predatory practices, or recent unsatisfactory ratings on Community Reinvestment Act exams, should be considered ineligible for CDFI certification.

We agree with CDBA's recommendation that the CDFI Fund's certification process should allow the agency to consider external sources of information about the products and practices of an entity seeking certification or re-certification. For example, such sources may include consumer complaints filed with the Consumer Financial Protection Bureau, a local Better Business Bureau, or state, local and Federal authorities, lawsuits or judgements against the lender, news media reports, and negative reports posted on social media. As part of its certification process, the CDFI Fund should have the authority to request and review all consumer facing product information (i.e. websites, brochures, loan agreements, pricing and fee calculations) as are presented to prospective and actual customers.

The treatment of affiliates

- **The CDFI Fund should consider the size or percentage of Financial Products and Financial Services of an Affiliate relative to the CDFI Certification Applicant (i.e., balance sheet, number of employees, percent of overall lending) such that an Applicant would not be found ineligible on the activities of a relatively small Affiliate**. Many CDFIs have Affiliates that provide specialized financing and services that may not necessarily specifically target low-income people and places, but may also only represent a very small part of the parent company's operations. Often, these Affiliates are created from their parent entity for legal and financial reasons.

  The Coalition recommends that Affiliates that reflect a small portion of a CDFI Certification applicant's overall Financial Product and/or Financial Services activity should not hinder the ability of the applicant from becoming or remaining certified. The Coalition supports LISC's recommendation that the CDFI Fund exempt Affiliates that reflect less than 10 percent of their parent entity's annual Financial Product and/or Financial Service activity (as measured by volume of activity or commitment of staff resources) from the Primary Mission requirements.

- **The CDFI Fund should exempt Affiliates of nonprofit CDFIs that distribute their profits to the CDFI Certification Applicant, as long as they can meet all facets of the Primary Mission test.** Some CDFI Affiliates are structured so that any annual profits are distributed to the parent entity to further their CDFI and community development mission. The CDFI Fund should exempt such Affiliates from the Primary Mission test since these entities further the capacity of the CDFI Certification applicant. These affiliates often help ensure the financial sustainability of the CDFI.

Financial Products and Services:

- **Allow flexibility for the diverse needs of underserved communities:** The Coalition agrees with the comments from OFN that many of the options in the application questions assume incorrectly that there are standardized product and pricing definitions and standards in use within the CDFI or the financial services sector (i.e. “below market rate,” “lower than standard,” “nontraditional,” “less established,” “lower profitability,” “mainstream underwriting criteria” among others). All the options force lenders to make blanket statements about products that may or may not be asserted uniformly across products and borrowers.

  CDFIs offer different products and development services to reach their Target Markets. The rates and fees charged to borrowers are reflective of the borrower’s risk profile, market conditions, and the cost of capital to the CDFI. It is not always feasible to offer products at below market rate or other subordinate financing mechanisms. Further, loans made at market rates can still have a positive community development impact, especially for borrowers that cannot access mainstream finance OR borrowers that would potentially seek high-cost, predatory financing options.

  In addition, as outlined in the CDBA recommendations, the Coalition believes that the nature, frequency, and amount of development services provided by a CDFI to its customers must be left to the discretion of each CDFI. Every customer is different, and CDFIs of all types are experts in recognizing and responding constructively to that individuality.

  For example, CDBA notes that the requirement that CDFIs “Demonstrate that (the CDFI) maintain control over the content and delivery parameters of their Development Service(s)” would prohibit CDFIs from receiving credit for delivering valuable and widely available financial literacy curricula. Requiring CDFIs to “control the content” implies that all CDFIs, including small, resource-constrained organizations, should manage to create innumerable, individualized curricula. The Coalition recommends that the CDFI Fund clarify that this language would not prevent CDFIs from receiving credit for delivering content created by another entity.

- **With more than 1,100 CDFIs in all 50 states, simply evaluating an Applicant’s board-approved organizational documents or a narrative statement will not always be sufficient to ensure that an organization is practicing responsible lending and providing fair Financial Products.** The Coalition recommends the CDFI Fund set clear standards for and create broad authority to deny or decertify entities that do not meet the letter or spirit of the CDFI mission. The strategies for accomplishing this would require a multi-prong approach based on CDFI business model type and lending products. This approach should be created with the input of the CDFI industry.

- **Set the following baseline standards for mortgage products:** The Coalition supports Self-Help’s recommendation that for any home mortgages offered, product protections consistent with the qualified mortgage (QM) statutory protections: (a) no negative amortization, interest-only payments, or balloon payments; (b) adjustable rate mortgages underwritten at the maximum rate in the first five years; (c) maximum term of 30 years; and 4) total points and fees generally not exceeding three percent of the loan amount. These product protections will help ensure responsible mortgage lending while allowing innovation in underwriting that may benefit communities CDFIs serve.

- **Reconsider the use of the Military Lending Act standards:** The Coalition recommends allowing CDFIs to report using their existing APR calculations. We concur with OFN's comments that using the Military Lending Act (MLA) standard to calculate annual percentage rate (APR) would allow for standardized calculation across the industry, but requiring CDFIs to report APR using the MLA methodology adds yet another layer of complexity to the existing web of reporting requirements. CDFIs would either have to choose to switch to the MAPR calculation for their lending to ease the CDFI Fund compliance burden, which would require amending their financing disclosures as well as the methodology underpinning them. Or they create an entirely separate system to make the MAPR calculation specifically for the CDFI Fund, which would also be costly and burdensome.

  As states provide greater oversight to consumer lending, CDFIs are already making multiple calculations of interest rates using different formulas: CDFIs engaged in small business lending in California are now required to make APR calculations under a formula in Regulation Z. A pending small business lending disclosure bill in New York would use another calculation of APR. A bill introduced in Congress by House Small Business Committee Chairwoman Nydia Velazquez (D-NY) would calculate APR using, yet again, a different formula.

Minimum Standards

CDFIs should be required to lend based on the borrower's ability-to-repay.
We were pleased to see the Fund's advisement that loans should be made based on the borrower's ability-to-repay. We agree with the following comments submitted by Self-Help that lending be based on a borrower's ability to repay – while meeting other expenses, without needing to refinance/re-borrow, and without relying on collateral – is a fundamental tenet of responsible lending. Thus, a meaningful ability-to-repay determination considers both the borrower's income and expenses. Responsible underwriting is especially important when, like most online loans today, a lender has access to the borrower's checking account and can repay itself automatically out of the account before a borrower can pay other essential expenses.

Payment-to-income (PTI) ratios cannot substitute for underwriting. We also concur with Self-Help that the Fund should also monitor default rates, which may signal unaffordability. But low default rates alone do not mean borrowers have the ability-to-repay. Refinances mask unaffordability. And when a lender has a repayment mechanism, like electronic access to the account, the lender will often collect payment even when the borrower cannot afford the loan. Thus, review of default rates does not substitute for an upfront ability-to-repay determination.

Community Development Objectives

- **Allow business development as a community development objective:** Many CDFIs have a mission to support communities through incubators, small business development and entrepreneurship.

- **Job creation and the creation of quality jobs:** The community development objectives should include job creation. Quality jobs could be defined using recent research by the Federal Reserve.[1]

- **Addressing the racial wealth gap:** The CDFI Fund should also consider activities undertaken to close the racial wealth gap as a community development objective.

Financing Entity

CDFIs are required to be financing entities and CDFI certification applicants must demonstrate that their predominant business activity is the provision of arm's-length Financial Products and/or Financial Services. The CDFI Fund specifically requires that an applicant demonstrate a predominance of both its assets and staff time is for the direct provision of Financial Products and/or Financial Services.

The Coalition believes that the predominance standards are appropriate for CDFI certification since an entity should demonstrate to the CDFI Fund that the majority of its business is for Financial Products and/or Financial Services. However, the current application standards though do not allow the CDFI Fund any flexibility for maintaining an organization's certification if it does not meet this test during their annual certification review. This is particularly critical during an economic downturn when CDFI customers need access to working capital and grants.

Recommendations:

- **Allow CDFIs to adapt to the needs of communities during an economic downturn.** The Coalition believes flexibility is needed during periods of economic instability. Many CDFIs often scale their grant making activity during periods of crisis, which can cause an applicant to fail the Financing Entity test for one year even if they have always met it historically. Meeting the needs of underserved communities is more critical than ever during an economic downturn. The CDFI Fund should adopt policies to ensure CDFIs are not punished for doing so.

  One way of achieving this would be to allow currently certified CDFIs to meet a three-year average for the predominance test if an Applicant fails it during any given year. This is allowed for currently certified CDFIs in the Target Market test and would allow CDFIs to be responsive during periods of crisis without jeopardizing their certification status.

Target Markets

The Coalition strongly supports the CDFI Fund's proposal to eliminate geographic restrictions on most Target Markets. Current practice requires that CDFI Certification applicants delineate boundaries for their Target Markets, which can result in CDFIs not receiving credit for activities outside of these places, which would otherwise be eligible. The current practice can inhibit CDFI financing for underserved people and communities due to administrative concerns on whether it will satisfy CDFI Certification and CDFI Fund award compliance requirements, which often mandate a certain percentage of activity in a CDFI's certified Target Market. This

[1] Cite FRB Atlanta, Boston, Kansas City literature

commonsense change will lower administrative burden for CDFIs and has the potential to increase impact.

However, we have strong reservations concerning the removal of the flexibility on Target Market Thresholds.

The RFIs and FAQ elude to a list of approved Target market verification processes, but this list does not yet exist. It states that CDFIs may request approval of an alternate process, but, again, that approval process and any guidelines also do not exist at this time. This information is necessary for the industry to review before the CDFI Fund finalizes the certification application and CTLR.

As the CDFI Fund develops its list, we recommend the inclusion of the following Target Market Verification Processes:

Verification of Low-Income Target Population (LITP).

- **Clarify the LITP definition with regard to end users:** Some CDFIs verify their targeting of LITPs by documenting the benefits to the end user, rather than the income of the borrower. This is allowed in the regulation and can include affordable housing tenants, low-income users of community facilities, and low-income workers; however, the processes for verifying and documenting these end users (including the use of federal proxies such as Supplemental Nutrition Assistance Program, or SNAP, eligibility) has never been defined by the Fund, and the practice has not been explicitly permitted. The CDFI Fund should recognize the validity of end users to qualify for LITP. For example, a childcare facility that serves low-income children whose families qualify for SNAP.

- **LITP Census Block Group geocoding:** While we realize this is an optional method, and believe it is intended to provide more flexibility, we are concerned that the geocoding tool has not yet been built. We look forward to seeing the tool.

Other recommendations

- **Reconsider requiring that Target Market goals must be achieved by both dollar volume and number.** The Coalition urges the CDFI Fund to continue its consideration reasonable explanations when a CDFI meets one metric but not the other. For example, a Microlender makes many small dollar loans in their LITP Target Market. However, the Microlender also made a few larger loans outside that Target Market to support Black business owners impacted by the pandemic. Due to the size of the loans, which were outside their Target Market, the Microlender may fall below the percentage on dollar volume, even though they exceed the percentage on loan numbers and Black entrepreneurs are underserved by traditional financial institutions.

Accountability

The Coalition supports efforts to strengthen the Accountability test and offers the following recommendations:

- **Allow consideration of local and geographic specific Advisory Boards for CDFIs which serve a regional or national Target Market.** The Accountability portion of the current CDFI certification application is much more qualitative than the new proposed standards. Although Advisory Board is not defined in the CDFI Fund's regulations, the proposed guidance would restrict it to national Advisory Boards since it requires the Fund to consider "how the Advisory Board input is incorporated into the organization's Governing Board's decision-making process." The CDFI Fund should allow local and geographic specific Advisory Boards to be included in the Accountability test's standards for CDFIs serving regional, national, and geographic specific Target Markets, such as rural communities. These Advisory Boards ensure accountability to low-income people and places for local offices and rural activities of regional and national CDFIs.

- **Further clarification needed on how employees of CDFIs help a CDFI meet the accountability test.** *Question #17 of the FAQs for the Proposed CDFI Certification Application, ACR & CTLR* raises a number of concerns and would benefit from further clarification or explanation by the CDFI Fund. It states that "An employee of a certified CDFI may meet the accountability test on the basis of her or his employment for a certified CDFI *only* (emphasis added) when serving as a board member for a CDFI with a Target Market of OTP-CDFI. An employee of a CDFI may still serve on the board of other CDFIs that do not have a Target Market of OTP-CDFI, but must meet the accountability test based on other accountability criteria.

  For example, a Hispanic employee of a certified CDFI may meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-Hispanic on the basis of being a member of the Other Targeted Population. However, a white employee of a certified CDFI would not meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-Hispanic, even if the CDFI by which the board member is employed also has a Target Market of OTP-Hispanic. Either employee would meet the accountability test if serving on the board of another CDFI with a Target Market of OTP-CDFI."[2]

  The current language appears to indicate that CDFI employees/board members could only serve on the board of a CDFI that is serving other CDFIs (i.e. CDFI Intermediaries) or if the employee demonstrates accountability through another characteristic (such as race or ethnicity). This rule is particularly perplexing for CDFIs with a Low Income Targeted Population (LITP) Target Market, which is also a Targeted Population Target Market. Other examples of this issue have also been identified in comments submitted by OFN.

  It is common practice for leaders of CDFIs to sit on each other's governing boards to meet the accountability requirements for CDFI Certification as well as to provide their expertise and partnership opportunities. The Coalition urges the CDFI Fund to provide additional clarity on Question 17 of the FAQs regarding the Revised CDFI Certification Application, the Revised Annual Certification Report and the Certified Transaction Level Report. **Specifically, the Coalition would appreciate language that says CDFI employees and board members *may* serve on the governing boards of other CDFIs (particularly those with an LITP Target Market), as is currently common practice, and explain *any* situations where such a practice would not be permitted and why.**

[2] https://www.cdfifund.gov/Documents/CDFI%20Certification%20Public%20Comment%20FAQ%2009242020.pdf Proposed CDFI Certification Application, ACR & CTLR – Request for Public Comment, Frequently Asked Questions Updated September 24, 2020, Q.#13, pg.8, accessed 10/19/20.

We thank the CDFI Fund for the opportunity to offer comments and welcome opportunities to explore these and other possible improvements to CDFI Certification policies and procedures.

Sincerely,

John Holdsclaw, IV
Chair
CDFI Coalition
1155 15th Street NW, Suite 400
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October 23, 2020

Tanya McInnis
Program Manager, Office of Certification, Compliance, Monitoring and Evaluation
CDFI Fund
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1500 Pennsylvania Avenue, NW
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Email: ccme@cdfi.treas.gov
Subj: Comments on Proposed Changes to CDFI Certification Application

Dear Ms. McInnis:

On behalf of Royal Credit Union, I thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a certified CDFI serving nearly 230,000 members in Western Wisconsin and Eastern Minnesota, we support this effort to establish an efficient path to CDFI certification for eligible institutions and establish clear, strong and consistent standards. However, the proposed application erects significant and costly barriers that would dissuade and exclude many highly committed and fully qualified CDFI credit unions. Without fundamental changes, the proposed application may result in an exodus of credit unions from the ranks of certified institutions, depriving the CDFI movement of irreplaceable sources of capital, innovation, and community impact.

As an insured depository subject to rigorous regulatory standards, intensive examination and public reporting, Royal Credit Union is concerned that the proposed application creates a parallel, quasi-regulatory process that ignores the clear parameters already established by our regulators. In addition, there are numerous elements that ignore or misunderstand characteristics of credit union legal and operational structure. Finally, as a CDFI and member of Inclusiv, we share a concern that the proposed changes would make CDFI certification too costly for the vast majority of eligible credit unions, with a disproportionate impact on those that serve rural and minority communities. As a result, we support Inclusiv's call for a redesign of the proposed certification application based on the comments collected during this period and also with substantive consultation with the CDFI field during the redesign process itself. The examples below demonstrate reasons why we agree with Inclusiv that a fundamental overhaul is warranted:

- The proposed **Basic Information** section includes ten questions that ask credit unions to demonstrate that our governing boards are democratically elected by our members. Since every credit union[1] is required by law to have governing boards that are democratically elected by members, these questions reflect a lack of understanding of the credit union model.
- The proposed **Accountability** section amplifies this fundamental misunderstanding by only recognizing the accountability of our democratically elected boards for narrowly defined target markets that make up more than 50% of our members. In the private sector more than 50% of voting shares is defined as a "controlling interest" and activist investors often change corporate boards with just 4% of the voting shares. Since credit union boards are democratically elected on the basis of one-member, one-vote, our boards are directly accountable to all of our members, not just a segment with a controlling interest. The provision for "special" accountability should be available to <u>any</u> CDFI with a board that is democratically elected by the people they serve, and should confer automatic accountability on any credit union or other democratically governed institution that meets the Target Market requirement for certification. In addition, as Diversity, Equity and Inclusion (DEI) has been adopted as the 8th Cooperative Principle for all credit unions, we support Inclusiv's proposal to add a question regarding institutional plans to promote and sustain DEI.

[1] This applies equally to every state-chartered and federally-chartered credit union, including *cooperativas* chartered by COSSEC in Puerto Rico.

- The proposed **Primary Mission** section fails to recognize that credit unions and other regulated CDFIs already operate within strict parameters imposed by our regulators and CFPB to safeguard against predatory products and practices. Instead, the section requires a series of questions with drop-down answers and descriptive narratives on every financial product and service we provide. These questions often use non-standard terminology and provide limited drop-down options that would distort understanding of the variety of credit union products/services, which are subject to vigorous and ongoing innovation and expansion.
- The proposed **Target Market** section would lower the Target Market threshold for loans to 50% for Insured Depositories provided that more than 60% of "financial services" are in CDFI Target Markets. We support this effort to recognize the special obligation of depositories to diversify risk across markets. However, the proposal to count financial services as *number of accounts* is biased, since wealthier members will always have many more savings, money market, investment, IRA Keogh and other accounts than our low-income members. Indeed, many of our lowest-income members only have basic share or share draft accounts that give them access to the check-cashing, money order, bill-pay and other transaction services they depend on most heavily. In other words, contrary to the democratic ethos of credit unions, the CDFI Fund proposes to measure financial services by counting our wealthier members many more times than our lower income members. We support the Inclusiv proposal to use a straightforward count of unique credit union members as a more accurate proxy indicator for financial services.
- The proposed **Development Services** section adds inflexible requirements that rule out many of the most effective educational, counseling and coaching services we provide to our members. For example, the CDFI Fund proposes to eliminate consideration of one-on-one support provided in conjunction with a product or service. This ignores considerable research – including recent work by Inclusiv and CFSI – that challenge the effectiveness of stand-alone financial education and counseling and instead emphasize the importance and positive impact of delivering key messages at "teachable moments," in conjunction with appropriate products and services.
- The proposed **Legal Entity** section continues to rely on copies of historic documents to confirm the legal status of each CDFI. The cumbersome collection and review of old documents does not establish whether an entity is both legal and currently active, but there is a readily available federal system that does. We support Inclusiv's proposal to use registration with SAM.GOV to meet the legal entity requirement for certification. In addition to efficiently addressing the legal entity requirement, SAM registration would ensure that every CDFI is ready to participate in CDFI Program funding rounds as soon as they are certified.

Royal Credit Union is proud of our status as a certified CDFI and strongly supports the goals of the CDFI movement. We believe changes to the CDFI Certification Application are needed to more sharply define our field. But these changes must be done with care and consideration of the complex and committed institutions that make up our movement. Royal Credit Union hopes that our comments will help the CDFI Fund in a comprehensive and consultative redesign of the certification application. We look forward to participating in that process. Thank you for your consideration.

Sincerely,

Heather Johnson Schmitz
Grant & Giving Coordinator
Royal Credit Union

Copies: Cathie Mahon, President/CEO, Inclusiv (cmahon@inclusiv.org)

SONES & WHITE

CONSULTANTS

November 5, 2020

Via Email Only

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Re: Comments on the CDFI Fund's Proposed Revised Certification Application and Annual Certification and Data Collection Report Form (ACR)/ Certification Transaction Level Report (CTLR)

Dear Director Harris, Ms. McInnis, and Mr. Bischak:

Sones & White Consulting (SWC) respectfully submits the following comments in response to the Fund's Notice and Request for Public Comment published in the Federal Register on May 7, 2020. SWC is a consulting firm headquartered in Mississippi. We are writing on behalf of our firm and the 60 community banks and 55 bank holding companies to which we provide CDFI consulting services across Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, South Carolina, Tennessee, and Texas. Our consultants have assisted banks and their holding companies in preparing approximately 100 CDFI Certification Applications.

We are thankful for the opportunity to comment on the proposed changes and appreciate how responsive the Fund has always been to questions and concerns from the CDFI industry. At the outset, we want to acknowledge the massive effort the Fund has undertaken to improve the CDFI certification process through these proposed changes. We also appreciate the Fund's effort to communicate these changes to stakeholders in an effective way through summary slide decks and FAQs.

SWC supports the policy objectives identified by the CDFI Fund, namely diversity of CDFI type, protecting the CDFI brand, growth and reach, minimizing burden, and efficiency. We also agree with the goals that would be advanced by many of the changes. With respect to Primary Mission, for instance, we agree a CDFI should be intentional about its mission to promote community development, and its activities should align with its mission. As to serving qualified Target Markets, the Pre-qualified Investment Areas are a welcome innovation and provide much needed flexibility in serving qualified areas. Likewise, preserving Customized Investment Areas (but striking the proposed new 85% rule, as detailed below) is essential for many CDFI banks to effectively serve their entire market.

We do, however, have very serious concerns about many of the proposed changes, and we urge the fund to engage further with stakeholders before finalizing these changes. If implemented, they would create unnecessary barriers to become or remain a CDFI and would result in unintended consequences, such as requiring CDFI banks to intentionally limit their activities in certain portions of their Target Markets. The proposed changes would also introduce, for the first time, a great level of uncertainty as to exactly what is required to become a CDFI.

In addition, some of these proposed changes disproportionately harm banks and other regulated institutions or fail to address the unique role that these institutions play in serving in their communities. Banks, by their very nature, promote community development. Moreover, because of its history and its Federally regulated structure, the community banking industry is unique. It plays a special role in meeting community financing needs and has many other characteristics that set banks apart from unregulated financial institutions. Unlike other types of financial institutions, most banks offer the full array of financial products and services to residents and businesses throughout their markets. Their operations are generally centered around a geographic network of physical branch locations. Their officers typically live in their markets. They are often closely held and sometimes controlled by one family group. And perhaps most importantly, they are highly regulated at the state and federal level and are compelled by law to have responsible financing practices and to serve the underserved areas within their markets. Where applicable, we seek to highlight how these differences might be applied in connection with the Primary Mission, Target Market, Accountability, and Development Services requirements.

Given the volume and complexity of the proposed changes, we urge the Fund to engage further with stakeholders prior to finalizing any changes to the certification process. Many of these proposed changes are interconnected to other provisions and require multiple layers of discussion to fully address the implications. Although we have made a good faith effort here, we do not think it's feasible to adequately address all of the issues in a letter.

Our comments below will be structured as follows. First, we will (I) lay out several primary examples of changes to which we want to draw special attention, including (A) the proposed 85% rule relating to CIAs, (B) the effective creation of a 12-month waiting period after Primary Mission adoption, and (C) the exclusion of non-Metro counties as a basic geographic unit of Investment Area eligibility for many purposes. We will then address each section of the proposed Certification Application: (II) Basic Information & Legal Entity, (III) Primary Mission, (IV) Target Market, (V) Development Services, and (VI) Accountability. We will then (VII) address the proposed changes to ACR and the introduction of the CTLR. Lastly, we will (VIII) make recommendations regarding how the Fund should treat existing CDFI banks.

I. Primary Examples of Problematic Changes

A. The "85% Rule" for Customized Investment Areas

The chief example of a problematic change relates to the proposed new requirements for Customized Investment Areas (CIA). CIAs are a critically important feature for banks because they are required by law to serve their entire market, not just qualified tracts. But the new requirement that 85% of activity directed to a CIA must be to qualified census tracts in the CIA effectively renders the entire option irrelevant. To comply, many banks would have to refuse to serve ineligible census tracts in their Target Market, as though community bank lending in individual census tracts can be turned on and off like a kitchen faucet. Even if CDFI banks could effectively limit their lending within certain portions of their Target Markets, which is not possible, the frequent monitoring required to satisfy this counterintuitive requirement would be prohibitive, and in any case, very few banks would be able to meet the 85% mark. From a purely mathematical standpoint, even those that could designate a CIA which meets the 85% mark would likely also satisfy the Pre-qualified Investment Area and prefer that option anyway. Thus, the new 85% rule essentially renders the Customized Investment Area useless, depriving it of its primary benefits, especially for CDFI community banks, which are bound by tradition and regulation to serve their entire geographic market areas. We discuss this issue in greater detail and propose alternative approaches below.

B. Twelve-month Waiting Period after Primary Mission Adoption

Another example of a problematic change is the required timing of Board-approved Primary Mission documentation. Promoting community development to a geographic market area is the *sine qua non* of community banking, and nearly all banks considering whether to apply for CDFI certification have previously adopted written mission statements providing that they seek to do so. In our experience, however, banks' existing written mission statements do not satisfy every technical requirement of 12 CFR § 1805.201(b)(1); as a result, nearly every community bank that applies for CDFI certification has its board of directors review and approve a CDFI Primary Mission statement, ensuring that the bank's mission explicitly includes language satisfying the regulatory requirements for certification. The proposal to require that a board-approved mission statement be in place for 12 months prior to applying is therefore tantamount to an automatic one-year waiting period for otherwise-eligible community banks to apply for CDFI certification. This is a significant and unnecessary barrier to entry, and we have proposed an alternative rule below.

C. Exclusion of Non-Metro Counties

A third example is the proposed exclusion of non-Metro counties as an option for the basic geographic unit. The regulations place the census tract and the non-Metro county at the same level—either can serve as the foundational unit of an Investment Area—but the Fund frequently selects census tracts as the *only* available unit for certain purposes. The new 85% rule for Customized Investment Areas and the accountability requirements for board members, to name just two examples, are keyed to qualified *census tracts* only. This affects banks in rural communities disproportionately because they often are required to serve their entire counties as part of their market and cannot realistically tailor their mission to particular tracts within these counties.

We provide more detailed comments and proposals below regarding each of these three issues, as well as a variety of other matters included in the proposal.

II. Basic Information & Legal Entity

Our comments regarding these two sections of the proposed Application relate primarily to the issues of clarity and the reduction of unnecessary burden.

With respect to the Basic Information section, we request that the Fund modify the proposal to clarify that one set of responses to BI-FP03 through BI-FP10 is needed. As it is currently worded, this portion of the proposed Application could be interpreted as requiring many separate sets of responses to BI-FP03 through BI-FP10 for a typical CDFI bank. For example, a typical community bank Applicant could respond separately regarding each of the following categories of loan:

- Home mortgage loans
- Home mortgage lines of credit
- Residential real estate development loans
- Residential real estate development lines of credit
- Residential real estate loans purchased from Certified CDFIs
- Residential real estate loans directed to the Applicant's proposed Target Market purchased from entities without CDFI Certification
- Commercial real estate loans
- Commercial real estate lines of credit
- Commercial real estate loans purchased from Certified CDFIs
- Commercial real estate loans directed to the Applicant's proposed Target Market purchased from entities without CDFI Certification
- Consumer loans
- Consumer lines of credit
- Business loans
- Business lines of credit
- Microenterprise loans
- Microenterprise lines of credit
- Auto loans
- Other (*e.g.*, county and municipality loans)

Thus, the proposal can be interpreted as requiring a typical bank applicant to respond to these questions 18 times. If this interpretation is correct, then the proposed questions need to be simplified and generalized so that Applicants only have to reply to these questions once. If this interpretation is incorrect, then clarification is needed.

We have the same comment with respect to questions BI-FS02.1 through BI-FS02.5, since most community bank Applicants provide all or most of the following Financial Services:

- Savings Accounts
- Checking Accounts
- Certificates of Deposits
- Money Market Accounts
- Check Cashing
- Money Orders
- Certified Checks
- Automated Teller Machines
- Safe Deposit Box Services

To require most community bank Applicants to answer these questions nine separate times would be unduly burdensome.

In addition, BI-FP07 ("Is this Financial Product on-balance sheet for the Applicant?") needs clarification. Does this mean, "Was this Financial Product closed in the name of the Applicant and with the Applicant's own funds?" Or does it mean, "Does this Financial Product remain on the Applicant's balance sheet at the present time?" Or does it have another meaning entirely? We believe the first meaning suggested above is the one intended by the Fund, but confirmation is needed.

Our only comment regarding the Legal Entity section of the proposed Application is that this provision of information and documentation is redundant and unnecessary, since all or nearly all certified CDFIs also maintain a registration with SAM.gov. We suggest that the Fund should consider requiring Certification Applicants to first become registered with SAM.gov, so that the Fund can then rely on the SAM.gov vetting process to establish that the Applicant is in fact a legal entity.

III. Primary Mission

A CDFI "must have a primary mission of promoting community development."[1] The CDFI Fund, in determining whether an entity has such a primary mission, "will consider whether the activities of the entity are purposefully directed toward improving the social and/or economic conditions of underserved people…and/or residents of economically distressed communities (which may include Investment Areas)."[2]

In the current Certification Application, an Applicant must demonstrate that its primary mission is (a) evidenced in "board-approved organizational documents" and (b) consistent with the CDFI Certification definition of primary mission.[3] The Applicant selects from a drop down menu which board-approved organization documents evidence its primary mission; attaches the documentation; states the primary mission in a narrative response; and then describes how its primary mission is consistent with the Fund's definition, including a description of how its products/services support the mission and a profile of the Applicant's customers.

In the Proposed Certification Application, the Fund describes its new approach to the Primary Mission requirement this way: "the CDFI Fund will consider whether the activities of the Applicant (and of certain Affiliates) are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of economically distressed

[1] 12 C.F.R. § 1805.201(b)(1).
[2] *Id*.
[3] AMIS Submission Guide (Updated November 2018) at § 5.3.1.

communities."[4] As part of its assessment, the Fund states that it "will consider whether the entity has a reasonable community development strategy and, to the extent the CDFI Fund is able, whether the entity engages in responsible financing practices."[5]

The Fund is proposing three categories of substantive changes to the Primary Mission requirement: (1) heightened documentation requirements, potentially including a *de facto* 12-month waiting period to become a CDFI; (2) a new series of questions aimed at discerning whether the Applicant has a "reasonable community development strategy"; and (3) additional questions about the Applicant's Financial Products and Services to confirm that it engages in "responsible financing practices."[6] In its published response to FAQs, the Fund explained that the rationale behind these changes is to "strengthen the Primary Mission test and examine the extent to which an entity's Financial Products and Services align with that mission…."

We support the Fund in its desire to have a meaningful Primary Mission requirement, and we believe that a strong Primary Mission requirement is key to protecting the CDFI brand. But we also have serious concerns about each of the three proposed categories of changes. As set forth in more detail below, the proposed documentation requirements create a *12-month waiting period* that is unwarranted, especially if applied to community banks and other regulated institutions. Moreover, the lengthy series of questions regarding reasonable *community development strategy* and *responsible financing practices* are confusing, create great uncertainty as to whether an entity satisfies the Primary Mission requirement, and are largely unnecessary for community banks that are regulated by other state and federal agencies.

A. *Twelve-Month Waiting Period*

The Fund proposes to require that an Applicant must have "an acceptable Primary Mission of community development *in place for at least the 12 full months completed just prior to submission of the application*… [and] must present documentation of an acceptable mission approved by its board or owner."[7] We agree with the Fund's policy of requiring CDFI Certification Applicants to demonstrate that their community development mission has been in place for at least 12 months, but we are opposed to the Fund's proposal as written.

Proposed PM08 appears to explicitly require a 12-month waiting requirement between adoption of formal board-approved documentation and submission of the CDFI Certification Application. We oppose any formal waiting period, particularly as applied to banks and other regulated institutions, for the reasons discussed below.

[4] Proposed Certification Application at p. 29 (emphasis in original).
[5] *Id*.
[6] Proposed Certification Application at pp. 29-30.
[7] Proposed Certification Application at p. 30 (emphasis added).

To our knowledge, in preparing approximately 100 CDFI Certification Applications on behalf of banks and bank holding companies, four facts have consistently held true:

1. Every one of these regulated institutions had an existing primary mission of promoting community development in its geographic market and had been delivering a high volume of financial products and services to its market for multiple years in furtherance of that mission.
2. Not a single institution had previously adopted a Primary Mission statement that technically satisfied each element of the regulatory language in 12 CFR § 1805.201(b)(1).
3. Every institution's Board adopted a CDFI-compliant Primary Mission statement prior to submitting an Application, having concluded that the newly adopted language did not represent a substantive change from the institution's existing mission.
4. No institution has materially altered its operations after adopting its CDFI Primary Mission statement.

As these facts show, requiring a 12-month waiting period after board adoption of the Primary Mission documentation would not in any way serve to verify or substantiate regulated institutions' community development missions. Rather, such a waiting period would present an unnecessary barrier to entry for prospective CDFI banks that have existing community development missions and seek to engage in the certification process. Simply put, if the provision of Financial Products shows that a regulated institution has been faithfully serving a qualified Investment Area for years, why should they have to wait a year to become a CDFI?

We urge the Fund to eliminate the 12-month waiting requirement after adoption of formal Primary Mission documentation. But if it remains, we invite the Fund to create an expedited path for community banks and other regulated institutions to satisfy this Primary Mission requirement. To that end, we propose the following rule for regulated Applicants utilizing Investment Area Target Markets:

> **If an Applicant that is a regulated institution can establish that (a) at least 50% of its branch locations have been physically located within its proposed Investment Area(s) for at least 12 months prior to the Applicant's submission of a CDFI Certification Application and (b) the Applicant otherwise demonstrates an acceptable Primary Mission of community development, then the Applicant will be deemed to satisfy the Primary Mission requirement even if its board-approved Primary Mission documentation was adopted less than 12 months prior to the submission of its CDFI Certification Application.**

Such a rule acknowledges that a continuous branch presence in the Target Market for at least 12 months demonstrates that a regulated institution's community development mission has been "purposefully directed" towards the Target Market throughout that period.

In sum, we agree that CDFI Certification Applicants should be required to demonstrate that their community development mission has been in place for at least 12 months. However, it does not follow that the Fund should require in every case that 12 months must elapse between board approval of the Primary Mission documentation and submission of the CDFI Certification Application. We would ask that the proposed Application be amended to eliminate this formal waiting period. Moreover, we advocate an explicit policy relating to community banks and other regulated institutions, permitting them to utilize their continuous branch presence in their proposed Investment Area(s) to demonstrate that their community development mission has been "purposefully directed" to their Target Market for 12 months.

B. Community Development Strategy

Our fundamental issues with the proposed "reasonable community development strategy" requirement are (1) its lack of clarity and (2) its narrowness and inflexibility.

Turning first to clarity, this portion of the proposed Application creates a great deal of uncertainty. How many questions require a "Yes" before your strategy is reasonable? Is a "No" on any particular question fatal? We acknowledge that the Fund has asked for comment on these very questions, but the proposed changes are sweeping and multifaceted, making it difficult to provide helpful comment in the form of a letter.

Clarity is a hallmark of the current CDFI Certification Application. An entity seeking to become certified as a CDFI can know in advance, with a high degree of confidence, whether it meets all applicable criteria. The proposed CDFI Certification Application's Primary Mission questions introduce a great deal of uncertainty as to whether an Application will be approved. This uncertainty will serve as a major barrier to entry for potential Applicants, thus reducing the number of newly certified CDFIs over time.

Regarding narrowness and inflexibility, we are left wondering why many of the proposed community development strategy questions require the Applicant to select a specific option from a dropdown menu, implying that all CDFI community development strategies fit within a handful of narrowly tailored categories.

Diversity and innovation are key policy objectives for the CDFI industry, which seeks to serve as a "big tent" including community banks, credit unions, and a variety of unregulated financial institutions, both for-profit and nonprofit. And these diverse institutions have pioneered a wide variety of Financial Products, Financial Services, outreach efforts, delivery channels, technical innovations, and other community development strategies. We do not see the utility of baking into the Application prescribed lists of acceptable "community development objectives"; supported "outputs or outcomes"; and special "terms, conditions, or practices" for Financial Products and Services. Either Applicants are *required* to include such terms in their Financial Products and Services, which is narrow and unavoidably arbitrary, or they are *not required* to include such terms in their Financial Products and Services, which begs the question as to why these questions are included in the first place.

The proposed changes to this portion of the Application are wide-ranging and consequential, and as presented they produce more questions than answers for stakeholders. Indeed, these proposed changes raise so many questions that it is difficult for stakeholders to comment in any comprehensive way. Depending on the answers to these questions, further questions will arise, creating the need for a nuanced and multi-layered discussion between stakeholders and Fund staff before adopting such sweeping changes.

This underscores our overarching request that the Fund engage further with stakeholders before moving forward with finalizing changes.

C. *Responsible Financing Practices*

The Responsible Financing Practices section of the proposed Application is similarly perplexing for stakeholders. The following are just a few examples of the questions that arise in reading through this section:

i. *PM17*

Why MAPR? The Military Annual Percentage Rate is used very infrequently by consumer lenders. Most lenders are much more accustomed to the "Annual Percentage Rate" (APR), which is required by the Truth in Lending Act (Regulation Z) to be disclosed in connection with all consumer loans.

What is the consequence if an Applicant does have a product that exceeds 36% MAPR? What kind of explanation suffices?

ii. *PM18*

Why does PM18 ask about "ability to repay"? For regulated institutions, this language is laden with regulatory baggage, since the "ability to repay" rule is a very specific rule within Regulation Z which governs certain dwelling-secured loans—a rule from which CDFIs are exempt. While all banks ensure their borrowers can afford their loans, this use of "ability to repay" language is problematic.

Also, why does the "ability to repay" question apply only to "non-consumer" loan products? If it is to be limited in its application, we would suggest the opposite—that it should apply only to consumer loans.

What is the consequence if an Applicant has a product for which the answer to PM18 is "No"? For example, the majority of small community banks offer affordable home loans which have 3- to 7-year terms but amortize over a longer period (*e.g.*, 15 years). These loans are then renewed (*i.e.*, refinanced) for successive terms until they fully amortize. These products often serve as the only affordable home lending option for many borrowers in distressed and underserved market areas. The proposed rule would create uncertainty for most community bank Applicants, since they would have to answer "No" to PM18 and would not be certain whether their narrative explanation might prove acceptable to CDFI Fund reviewers.

iii. *PM19*

Why does this question apply to "each of the Applicant's loan products," when such disclosures are not required, and often not provided, for commercial loans?

iv. *PM20*

How formal does a "program" for struggling borrowers have to be in order for an Applicant to answer "Yes" to PM20? Most local community bank CDFIs are exceptional at providing a variety of flexible modification and workout solutions for struggling borrowers, but many bankers may not consider these solutions to be part of a formal "program."

v. *PM25-PM29*

Why these particular deposit account features? We believe most CDFI banks would be able to respond with a "Yes" to many or most of these questions, but the terms indicated are very specific and cannot avoid being somewhat arbitrarily chosen. Is it required that a depository institution CDFI offer accounts with these terms? If not (or if only some are required, but not all), why are depository institution clients burdened with providing additional narratives for each "No" response to these questions?

As the questions noted above demonstrate, the Responsible Financing Practices section of the proposed Application creates a great deal of uncertainty and appears to rigidly favor certain specified account features and programs. Most importantly, these proposed questions greatly increase the burden associated with applying for CDFI Certification, since Applicants will be called upon frequently to provide narratives explaining why the Applicant is unable to answer "Yes" to this or that question. When coupled with the uncertainty as to whether reviewers will accept these narrative explanations as sufficient, this added burden creates a substantial barrier to entry for institutions considering applying for CDFI Certification.

IV. Target Market

The proposed changes to the Target Market requirement will potentially have a more dramatic impact on the CDFI industry than any other class of change. Our comments on these changes are limited to (A) two matters concerning Investment Areas generally; (B) the modifications to what is now called a Customized Investment Area (CIA), specifically the new 85% rule; and (C) the application of these requirements to bank holding companies that own more than one bank.

A. Investment Areas Generally

While we strongly support both the retaining of Customized Investment Areas (without the new 85% rule) and the creation of Pre-qualified Investment Areas, we have two comments that apply equally to both CIAs and Pre-qualified IAs.

First, the amended Certification Application should fully embrace the *non-Metro county* as a basic geographic unit for all Investment Area-related purposes. As written, a Pre-qualified IA can be "comprised of qualified census tracts only."[8] We propose that qualified non-Metro counties be added as an option. Our proposal is supported by the applicable regulation, which places non-Metro counties and census tracts on the same footing. Specifically, the regulation provides that an IA "shall consist of a geographic unit that is a county (or equivalent area),…census tract, or Indian Reservation."[9] There is an exception for Metropolitan areas, where geographic units "shall be limited to census tracts[] and Indian Reservations"[10], but the rule for non-Metro areas is that *counties and census tracts are both geographic units that can serve as the basis of an IA.* For both Pre-qualified IAs and CIAs, Applicants should have the option to elect either census tracts or non-Metro counties as the basis geographic unit of the Investment Area.

Our proposal to include non-Metro counties is also supported by the fact that regulated institutions operating in non-Metro counties are propelled by both their business model and regulatory requirements to serve the entire county. Most non-Metro counties have populations of between 1,000 and 40,000 people, so that many non-Metro counties are comparable in population to individual census tracts in Metro areas. For example, Jim Hogg County, Texas has a total population of 5,200 residents divided into two census tracts, whereas single census tracts in Metropolitan areas often have populations in excess of 10,000. In non-Metro areas, it is not

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[8] Proposed Certification Application at p. 55.
[9] 12 C.F.R. § 1805.201(b)(3).
[10] *Id*.

feasible for regulated institutions, which traditionally provide a full array of loan and deposit services to the entire community, to pick and choose between individual census tracts. Further, regulated institutions serving non-Metro counties are required to include the entire counties in their CRA Assessment Areas. For these reasons, it is particularly important for regulated institutions serving non-Metro counties to be permitted the option to include these counties as a basic Investment Area unit.

Our second comment regarding Investment Areas generally concerns the method for calculating the number of *deposit accounts* for purposes of satisfying the 60% requirement for Financial Services activity. In the October 2020 FAQ, the Fund articulated its methodology, announcing that Applicants "must demonstrate that at least 60% of all depository accounts newly opened during the prior 12-month period were held by a member of a Target Market…." The Fund reasoned that this test is similar to the loan origination test for Financial Products. Prior to the October 2020 FAQ, the Fund's intention to use newly opened accounts opened during the prior year rather than all accounts held at a point in time was not apparent.

This proposed methodology is a significant departure from the current methodology, which considers dollar balances (rather than individual accounts) and includes all deposits held at a point in time (not just new accounts opened during the prior year). We support the focus on individual accounts rather than dollar balances, since this measure more accurately reflects the total mix of Financial Services recipients served by the Applicant.

However, we oppose the proposed shift to focus on new accounts opened rather than all accounts held at year end. In the first place, depository institutions provide services to deposit accounts throughout the life of the account, so each account held at the time should count as a Financial Service provided for purposes of the Target Market calculation. Second, only considering new accounts opened during a 12-month period will provide an insufficient sample size, will result in less stable Target Market calculations that vary greatly from year to year, and will unduly prejudice a depository institution that may have just entered a new market or acquired a branch in an area with a mix of qualified and nonqualified areas. We therefore recommend that the Fund should count each unique account held at a point in time (not just new accounts opened during the prior year) for purposes of the calculation.

B. Customized Investment Areas

We are grateful that the Fund recognizes the value of retaining the option to create CIAs. Retaining the CIA option is essential for diversity of both CDFI types and geographies, since these customized geographic Investment Areas are the primary Target Market vehicle employed by CDFI banks, especially those in rural areas.

Many CDFI banks and other regulated institutions serve a market that is a combination of both qualified and non-qualified areas, and they are prevented by the community banking business model and applicable regulatory requirements from refusing to serve specific geographic areas within their markets. Thus, the ability to select one or more contiguous IAs that fairly represents their market is both equitable and essential for these institutions to become or remain certified CDFIs.

We also support the Fund's impulse to create some sort of proportionality between the level of activities that a CDFI directs to eligible areas in its CIA and the level directed to ineligible areas. But the proposed rule requiring that 85% of financing activity directed to a CIA[11]—presumably by both number and dollar volume?—must be in qualified census tracts in the CIA is absolutely unworkable and is the functional equivalent of eliminating CIAs altogether. As the discussion below demonstrates, this 85% rule should be removed or dramatically revised.

i. *Initial Considerations*

It must initially be noted that this 85% rule is one of the most profound changes in the entire Application but was embedded in the proposal as a sort of programmatic "Easter Egg." We initially misread this 85% rule as an inartful phrasing of the 85% population rule regarding inclusion of ineligible geographic units within an Investment Area, but on closer inspection we found that a new rule regarding percentage of activities directed to eligible census tracts was in fact plainly stated (though quite briefly and in passing). **This proposed 85% rule is a sea change in how Investment Areas work.** We highlight this issue because we are aware of several other stakeholders who did not notice this change and may not provide extensive comment, since it was not highlighted in any of the published documents, was not mentioned in the Fund's summary slide deck, and is confusingly similar to the 85% population rule, thus blending into the Investment Area description.

Moreover, we want to respectfully challenge what appears to be the foundational assumption underlying this new rule: that if 85% of the population in a CIA lives in *eligible* areas, then 85% of the CDFI's financing activities in the CIA should be directed to *eligible* areas. This assumption is not tethered to economic reality. The average loan amount in non-qualifying areas is often significantly higher than in eligible areas. Similarly, loan demand in non-qualifying areas typically outpaces loan demand in eligible areas by a wide margin. In short, it is simply not

[11] "Although financing activity can occur and be counted in individually non-qualifying census tracts within a Customized Investment Area, the Applicant must direct at least 85% of their financing activity within individually qualified census tracts." Proposed Certification Application at p. 55.

The Proposed Application also states that "financing activity to individually non-qualifying census tracts within a Customized Investment Area should support the financing activity within the qualified census tracts." It is not clear what the Fund means by "support" in this context. We request that this be clarified.

feasible for many institutions—especially regulated institutions—to meet their obligations to serve their entire market *and* satisfy this proposed 85% rule. In fact, our analysis of 42 CDFI banks presently utilizing geographic Investment Areas reveals that **less than 17%** of them currently satisfy the proposed rule. This is a stunning indicator of how vastly this rule would alter the existing CDFI diversity landscape.

ii. *Specific Objections*

Below are a variety of additional reasons why we strongly oppose the 85% rule.

The rule is *unnecessary*. Under the current regime, an IA must be contiguous and more than 85% of the population must be in qualified geographic units. These population and contiguity requirements, in combination with the 60% threshold, work together to ensure that financing activities in IAs actually benefit distressed areas. Even if a higher percentage of a CDFI's financing activities are directed to non-qualified geographic units, the benefits of this financing do not end at the county line or census tract boundary because communities of people do not conform to map boundaries. Thus, financing in non-qualifying areas necessarily supports and revitalizes the surrounding eligible areas. Moreover, the 85% population requirement provides an effective limit on the non-qualified areas that can be included in an IA.

The rule is *impossible* for many regulated CDFIs. As noted above, unlike loan funds and other unregulated institutions, regulated CDFIs are required by the community banking business model and by applicable law to adequately serve their entire market. They are regularly examined on whether they are effectively meeting the needs of their entire market. If this 85% rule were enacted, banks would be faced with a catch-22 of either complying with their regulatory mandate or violating the mandate in order to remain certified as a CDFI. This catch-22 would effectively eliminate CIAs as a continuing option for most CDFI banks seeking to serve their entire market; therefore, the proposed new 85% rule will severely damage the CDFI banking sector and greatly limit the diversity of institution types in the CDFI industry.

The rule renders CIAs *irrelevant* for nearly all CDFIs. If the 85% rule stands, CIAs will become obsolete. Virtually all CDFIs will be forced to try and meet the Pre-qualified IA test. Expressing the math effectively in a comment letter would be difficult, but suffice it to say that with the new 85% rule in place, the scenarios in which a CDFI would elect to designate a CIA rather than a Pre-qualified IA are extraordinarily limited. Let us refer again to the stunning statistic cited above—that less than 17% of the 42 CDFI banks we analyzed currently satisfy the new 85% rule. We went one step further in this analysis and found that, of those few CDFI banks (7 out of 42) that actually do currently meet the proposed new 85% rule, **every single one of those banks also directs at least 60% of its loan volume to Pre-qualified IAs**. We thus failed to locate a single bank that satisfies the new 85% rule for CIAs but does not satisfy the thresholds for designating a Pre-qualified IA. In other words, not one of the 42 CDFI banks we analyzed would benefit from designating a CIA with the new 85% rule in place.

Lastly, the rule creates a *perverse incentive*. For the few Depository Institutions that may decide to use CIAs under the new 85% rule, the rule creates a perverse incentive to intentionally ignore demand from ineligible areas that are *included* in their CIA. This concept of intentionally *not targeting* portions of your *Target Market* is counterintuitive and untenable. Imagine, for example, a loan officer apologizing to a prospective customer that the bank refuses to finance the purchase of a building because the census tract is not eligible and the loan would bump the bank over the 85% threshold. This ludicrous scenario demonstrates afresh how the proposed 85% rule would disproportionally impact the CDFI banking sector in a negative way.

iii. *Alternatives to the Proposed New 85% Rule*

For the reasons discussed above, we urge the Fund to eliminate the proposed 85% rule for CIAs and continue with the current rules regarding Target Market calculations. The existing CIA structure already provides meaningful limitations to activities directed to non-qualifying areas without adding in this new rule. Alternatively, there are other options that achieve similar ends while preserving CIAs as a meaningful choice.

One option is to get rid of the proposed 85% rule but *modify the contiguity requirement*. To increase the likelihood that activity directed to non-qualifying geographic units will benefit the same communities as those found in eligible units, the Fund could require that each non-qualifying census tract or county included in a CIA must be immediately contiguous to an eligible census tract or county. This would obviate the need to cap the level of activity in non-qualifying tracts or counties.

If the Fund were to decide to keep the 85% rule (which we strongly oppose), it should at a minimum *lower the threshold for dollar volume to 60%*. In our experience with CDFI banks, loans in non-qualifying areas have larger average loan amounts than loans in eligible areas. This is likely true across all institution types. An institution should not be penalized for making a relatively small number of large loans in ineligible areas if 85% of its loans (by number) are made in eligible areas. If the requirement for dollar volume directed to eligible areas in a CIA were reduced to 60%, for instance, then the CIA may become a viable option for community banks. Nevertheless, by preserving the 85% rule in any form, this modified version of the rule is still subject to the criticisms of being *unnecessary*, being *impossible* for many banks, and creating a *perverse incentive* to avoid serving certain portions of one's Target Market, as discussed at greater length above.

Finally, if this 85% rule were kept (which, again, we strongly oppose), this underscores the importance of restoring the *non-Metro county* to its rightful place in the geographic unit hierarchy, as noted in sub-section "A" above. The rule as drafted requires that 85% of activities directed to a CIA must be directed to "individually qualified *census tracts*" within the CIA. The non-Metro county, however, is not a second-class unit. According to the implementing regulation, it should be considered an acceptable option as the basic or foundational unit for all IA calculations, including the calculation of activities directed to non-qualifying areas. With the non-Metro county as a basic unit, a limited number of community banks may be able to satisfy the 85% rule, thus rendering the CIA option at least minimally relevant for some CDFIs.

In sum, the 85% rule was not sufficiently emphasized in the proposal, although it represents a massive alteration to the Investment Area framework. This proposed new rule should be eliminated because it is unnecessary, impossible to comply with for many banks, renders CIAs irrelevant, and creates perverse incentives. If the rule were eliminated, perhaps the Fund could explore whether a similar objective could be achieved by modifying the contiguity requirement to require that non-qualifying areas must be immediately contiguous to eligible areas. If the rule is not eliminated, then the Fund should at least lower the CIA non-qualifying area dollar volume threshold from 85% to 60% and restore the non-Metro county as a basic unit for this threshold calculation.

C. *Bank Holding Companies and Their Subsidiary Banks*

We are unclear on exactly how the Target Market requirements will be applied to multi-bank holding companies and their subsidiary banks. The Proposed Certification Application states that a DIHC, an Affiliate of a DIHC, or a Subsidiary of an IDI must meet the requirements "[i]ndividually, based on the Applicant's own Financial Product and, if elected, Financial Services activity," which is clear enough. But then it states that they must also meet the requirements "[c]ollectively, based on the aggregate Financial Product and, if elected, Financial Services activity of the Applicant and any Affiliate in its family of entities." This part creates confusion.

Consider an example in which a bank holding company owns 100% of two banks, Bank A and Bank B. The banks are roughly the same asset size and have separate boards, separate officers, and operate in separate markets. If Bank A wants to apply for CDFI certification, how are the Financial Products of Bank B to be considered or aggregated? Are Bank B's products—directed entirely outside of Bank A's Target Market—to be simply added to Bank A's? If so, Bank A will almost certainly fail the 60% test. To avoid this, can Bank B have its own Target Market for purposes of the calculations even though it is not applying for CDFI certification? Are there other alternatives?

At a minimum, further clarification is needed, with examples included, as to how such calculations should work in the context of multi-bank holding companies.

V. Development Services

The Fund may not have intended to propose substantive changes to the Development Services (DS) requirements,[12] but the proposed changes are certainly substantive. They impose several specific and sometimes counterintuitive requirements and exclusions that would put most of the traditional DS offered by banks outside of the definition. We oppose the proposed changes and believe that the current DS requirements provide the necessary flexibility for institutions to serve residents and businesses within their Target Markets most effectively.

Under the Community Development Banking and Financial Institutions Act of 1994, DS are defined as "activities that promote community development and are integral to lending or investment activities." The definition specifically references business planning, financial and credit counseling, and marketing and management assistance as examples of DS. The regulations define DS as activities that "promote community development and shall prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services."[13] The regulations include financial or credit counseling, homeownership counseling, and business planning and management assistance as examples of DS.[14]

The current AMIS Submission Guide elaborates on the Act and the regulations, providing that "[a]n organization must provide at least one Development Services activity in conjunction with the Financial Products it provides [and that] [t]he Development Services must be clearly linked to Financial Products offered by the organization (*e.g.*, offering first-time home buyer counseling to applicants for down-payment assistance loans)."[15] The Submission Guide goes on to state that "[a]n organization must exercise significant control in directing the provision of its Development Services through its own staff, an Affiliate or a contract with another provider." The Submission Guide then clarifies that "[i]t is not acceptable for an organization to simply refer its customers or potential customers to a non-affiliated provider."

In our view, the Act, the regulations, and the current Submission Guide provide sufficient guidance on DS while maintaining necessary flexibility. The proposed changes, by contrast, constrict institutions' ability to deliver DS in the ways most helpful to their customers and will unfortunately result in many institutions adopting a formal, check-the-box DS program to comply with these requirements.

The proposal would require that DS meet the following criteria: "formal," "stand-alone," and "delivered separately and distinctly from its other products/services." The proposal requires

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[12] "No substantive policy changes are being implemented in the Development Services section of the CDFI Certification Application." Slides-CDFI Certification Application May 2020 FINAL at Slide 29.
[13] 12 C.F.R. § 1805.104.
[14] *Id*.
[15] AMIS Submission Guide (Updated November 2018) at § 5.7.

that CDFIs must make these formal DS programs "available on an ongoing basis at least four times per year," "track delivery of and participation in" these programs, and "track the amount of staff time spent on the administration and delivery" of these programs.[16]

In addition, the proposal expressly excludes many activities from being considered DS. These include the use of "publically-available online training," unless the Applicant has a relationship with the developer; "workshops for children or conferences/workshops for broad audiences"; and "non-structured conversations with consumers on Development Services subject matter," just to name a few of the exclusions.

Our main objections are twofold: (1) these proposed requirements are arbitrarily constrictive and limiting and will remove many CDFIs' most flexible and effective DS from consideration, and (2) most of these proposed requirements do not appear to further CDFI policy objectives.

First, these proposed requirements are constrictive and limiting. As a result, some of the best work being done by CDFIs will be ignored by the CDFI Certification Application and, presumably, in CDFI Program funding applications. In its place, CDFIs will be forced to create formal programs, often creating little impact, in order to achieve technical compliance with these new DS rules.

Two examples serve to illustrate our main objections to the proposed rules: *informal credit counseling* and *financial education to students*.

Informal Credit Counseling. Many of the most effective DS are delivered in informal settings and are not part of a formal program. For example, most CDFI banks provide informal credit counseling to loan applicants. Lenders talk with applicants to learn their financial need, walk them through the various loan products available to address those needs, and help applicants understand the underwriting process. If applicants have trouble qualifying for the loan they need, lenders help them understand why they may not qualify and discuss additional options, such as providing nontraditional collateral, locating a co-signer, or taking measures to address issues in their credit report. This highly individualized approach is the most helpful way to prepare consumers to access the Applicant's financing, and it is enormously effective. This DS is inherent within the CDFI community bank lending process, and CDFI banks are justifiably very committed to it.

This counseling, however, would not qualify as a DS under the proposal. It is not *formal*. It is not *stand-alone*. It is not delivered *separately and distinctly* from the CDFI's Financial Products, but rather is an integral part of its provision of Financial Products. It is not formally provided *four times per year*. It is so ubiquitous and integral to the CDFI's mission that it is impossible to *track*

[16] Proposed Certification Application at p. 62.

delivery of and participation in this DS, nor to track the *amount of staff time spent* on this DS. Finally, this DS necessarily involves *non-structured conversations with consumers*.

In other words, arguably the most valuable DS offered by community bank CDFIs would not come remotely close to even qualifying as a DS under the proposal.

Financial Education to Students. Many CDFI banks offer financial education in a classroom setting to students in partnership with local schools. These programs are sometimes offered in conjunction with other events hosted by the school, such as annual job fairs. Topics covered include personal finance, budgeting, building a credit history, saving, buying a first home, and ID theft prevention. CDFI banks use these programs to facilitate the development of a banking relationship early in life, utilizing them to transition students from the educational programs to the opening of a savings account, and from the opening of a savings account to securing an auto or home loan as these students graduate and enter the workforce. By leveraging partnerships with schools, these programs have an expansive reach, enabling CDFI banks to reach Target Market residents who may not otherwise have ever visited a bank branch. For CDFI banks seeking to meet the full array of financing needs for an entire community, such broad, early DS efforts are vital.

By definition, such financial education programs include *workshops for children*. They also often utilize a combination of in-person classroom education and *online training tools*. Therefore, these efforts also fail to qualify as DS under the new rules.

Thus, two of the primary DS provided by CDFI banks will no longer be considered DS under the wooden requirements that the proposal seeks to impose.

Our second main objection is that these proposed strictures do not seem to further the policy objectives of the CDFI Fund. Most significantly, they limit *diversity of CDFI type* by disfavoring the informal DS offered by most CDFI banks. They also discourage *flexibility and innovation* by CDFIs seeking to utilize a variety of DS to facilitate access to their products and services; rather, some of the best programs currently offered by CDFIs will no longer be considered DS, with the result that some CDFIs may cease to offer these programs. Meanwhile, many CDFIs will satisfy the proposed DS requirement by means of limited, formal, stand-alone programs that satisfy the new rules' lengthy checklist of features but likely result in a lesser benefit to their Target Markets. Furthermore, they create additional *burden* by imposing a checklist of formal requirements and exclusions, and compliance with these rules must be carefully trained and monitored. Finally, by arbitrarily limiting the types of services that can be considered DS, they fail in their effort to *protect the CDFI brand*. Requirements such as formality, meeting at least four times per year, and being offered separately and distinctly from the CDFI's other products and services, as well as the exclusion of certain delivery channels and formats, do not have any readily apparent connection to the objectives of the DS requirement—namely, to promote community development and to prepare or assist residents and businesses to use the CDFI's Financial Products.

Finally, we would note that one of the proposed DS requirements seems to directly contradict the language of the Community Development Banking and Financial Institutions Act of 1994, which requires that DS must be "integral to lending or investment activities." In furtherance of this statutory mandate, the current AMIS Submission Guide states that DS must be provided "in conjunction with the Financial Products [the CDFI] provides."[17] The proposed rules, by contrast, require that DS *must* be "delivered separately and distinctly from its other products/services"—seemingly the exact opposite of the statutory mandate and current guidance.

For all of the reasons indicated above, we request that the proposed rules be modified to permit to provide greater flexibility and permit a broader range of activities to satisfy the DS requirement. If, however, the Fund determines that it will nevertheless retain the structure being proposed, then we would request at a minimum that specific provision be made for informal credit counseling. For example, the Fund might provide that informal credit counseling constitutes a DS provided that it includes at least *three* of the following *six* features:

- Discussion of the customer's financial need and the various Financial Products available to meet such needs
- Explanation of credit score and how it might be improved
- Qualitative discussion of information in the credit report
- Discussion of alternative sources of collateral, possible co-signers, or other alternative means of qualifying the credit
- Discussion of extenuating circumstances which may be relevant in determining whether a loan policy exception is appropriate
- Counseling regarding government or private programs available to assist in meeting the borrower's financial need or enabling the borrower to access the CDFI's Financial Products

Such a special provision would not address the overarching concerns regarding the rigidity of the proposed DS rules, but it would at least enable CDFIs to continue including this service within their DS calculations.

VI. Accountability

We generally support the Fund's proposed changes to the accountability requirements. We support, for example, the Fund's proposed removal of any geographic connection requirement

[17] AMIS Submission Guide (Updated November 2018) at § 5.7.

for accountable board members[18]; it would have been difficult for many CDFIs to create nationwide advisory boards to provide accountability to a Pre-qualified IA. The following are our general comments and questions on the proposed changes to the accountability requirement.

As an initial matter, we request clarification on what the term "investor" means for purposes of conflicts.[19] It cannot mean any person who owns any stock in the bank. Such an interpretation would conflict out nearly all community bank governing board members, since most bank board members are required by law to own stock in the bank. We request that all such references to "investors" be eliminated in favor of references to "principals," *i.e.*, shareholders owning or controlling at least 25% of the bank.

Our second comment is that the accountability requirement for the governing board to the overall proposed Target Market(s) should be reduced from 33% of the board's members[20] to 30% to reflect current certification practice. This would eliminate the need for existing CDFIs who relied on the current 30% expectation to alter their board composition in order to maintain certification.

Our next comment relates to the proposed requirement that, in order for an advisory board to provide accountability, "at least 20% the governing board members [must be] accountable to at least one proposed Target Market."[21] We request that this proposed 20% governing board accountability requirement be eliminated, that an exemption be granted, or that conflicts for principals and staff members be waived for this purpose. In our experience, the governing boards of most community banks contain several principals or staff members. One reason is that most community banks are locally owned and governed, and many are closely held by one family group. For closely held community banks, the governing board is often comprised primarily of principals, staff members, and their families. Another reason that bank boards have a high number of conflicted members is that, given the highly regulated nature of the industry and the obligations of bank board members, the Chief Executive Officer and one or more senior executives are typically on the board. These boards usually include a high concentration of board members who would be considered Target Market representatives but for the fact that they or their family members are principals or staff members of the bank. As a result, banks in these situations use an advisory board to satisfy the accountability requirement. The Fund should recognize these facts about community banks and either eliminate the 20% requirement,

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[18] "The revised CDFI Certification Application does not require there to be a geographic connection in order to satisfy board member accountability requirements. This is to conform with elimination of the requirement to identify geographic boundaries for most Target Markets." Proposed CDFI Certification Application (For Public Comment) – Revision Quick Reference – May 2020 at Slide 9.
[19] Proposed Certification Application at p. 69-70.
[20] *Id*. at p. 68.
[21] *Id*.

give banks and bank holding companies an exemption from this requirement, or waive the normal conflicts rules for the limited purpose of complying with the 20% requirement.

We also ask the Fund to provide clear, unequivocal guidance on what an advisory board must do to satisfy the accountability requirement. The Proposed Certification Application states that the Fund will review each board member and consider a number of factors in assessing whether an advisory board provides accountability. How, exactly, should the board members be selected? Are some ways members obtain input from the Target Market(s) acceptable, while other ways are not? Does the Fund have a preference as to how the advisory board input is incorporated into the organization's governing board's decision-making process? Does this proposed Application ask about these issues so that the Fund can disapprove the Certification Application if it does not like the answers, or are they primarily being asked for informational purposes? Clarity as to the Fund's minimum expectations regarding advisory boards is needed.

Lastly, we repeat our request that the Fund allow non-Metro counties to serve as a basic geographic unit. Just as CDFIs should have the option of using the non-Metro county as the basic unit when designating an Investment Area and calculating Investment Area percentages, consistency requires that the same unit should also serve as the basic unit for board member accountability.

In addition to the general comments and questions above, we have specific comments and questions on the dropdown selections:

- **AC14.1**: What percentage of ownership must a board member have in the business?
- **AC14.3**: What if less than 51% of the business's locations are in qualified census tracts, but over 51% of the business's total revenue is generated in the locations that are in qualified census tracts? Is that acceptable?
- **AC15.1**: Should a geographic unit be included if only a portion of it is under the elected official's jurisdiction?
- **AC16.3**: What if the organization's market is not defined in terms of counties or states?
- **AC17**: There is no question here analogous to AC16.3 (geography of market served). Is this intentional?

VII. Annual Certification and Data Collection Report (ACR) and Certification Transaction Level Report (CTLR)

In its current form, the ACR requires CDFIs to calculate and attest that they directed 60% or more of their Financial Products and Services to their qualified Target Markets in the prior year. CDFIs that received a Financial Assistance (FA) Award under the CDFI Program must also submit a Transaction Level Report (TLR) that provides certain data on each and every loan originated by the CDFI during the prior year. The Fund is now proposing that every CDFI who does not submit a TLR that year must submit a CTLR, which contains 11 data points on each and every loan originated by the CDFI in the prior year.

While we understand the Fund's desire to obtain more data regarding how CDFIs are serving qualified investment areas, we oppose the introduction of the CTLR and corresponding changes to ACR. We request that the Fund keep the ACR in its current form or modify ACR and CTLR as discussed below.

First, the current attestation in the ACR strikes the appropriate balance between burden and transparency. The current ACR requires CDFIs to analyze their activities and demonstrate to the Fund—through the 60% attestation and product portfolio breakdown—that they are in fact serving their Target Markets. The current ACR, however, does not saddle them with the additional burden of marshaling various data points about each transaction and then uploading those transactions into a database. The CTLR would provide the Fund with transaction-level data, but the attendant cost to CDFIs is too high. The report would impose an immense burden on CDFIs, and on banks in particular. Given the high volume of bank transactions and the limitations of bank systems to generate reports with all of the requested data points, completing the report will require a significant degree of manual processing for many banks and will take CDFI banks significantly longer than the estimated 8 hours to complete.

Second, we respectfully question whether the Fund currently has the technology and human resources infrastructure to effectively implement the CTLR. We have extensive experience in preparing and submitting TLRs and in using all of the Fund's systems and interfaces (CIMS, AMIS, etc.). In our experience, as the volume of users or data increases, the speed and overall functionality of the Fund's technology systems dramatically decreases. For example, it is not uncommon during the closing days of the Bank Enterprise Award (BEA) Program for the Fund's mapping system, CIMS, to be completely unavailable or to be so slow as to be effectively inoperable. The Fund's staff has always been very responsive and made every effort to correct these issues, but the underlying technology simply has limitations, and those limitations are exacerbated by high traffic.

Likewise, the process of submitting a TLR is not for the faint of heart. There are invariably a host of technical issues unrelated to user error—unpredictable geocoding issues, lengthy delays in the uploading and certifying process, and confusing error messages, to name a few. We estimate that each TLR takes over 50 total hours to compile, finalize, upload, and certify. Again, the Fund staff has been a pleasure to deal with on TLR issues, but these underlying technology issues are prevalent every year. If the systems slow down and malfunction with increased activity from 140 or so banks during BEA and for the few hundred FA award recipients submitting TLRs, how will they hold up when roughly 1,000 CDFIs submit a CTLR during the same timeframe?

In addition to, and partly because of, the technology issues, the strain on the Fund's staff will be enormous. The volume of CTLR-related Service Requests alone will be staggering. On top of that, the burden of following up with CDFIs who had an issue flagged in their CTLR will be significant. The Fund has poured extensive resources into the CTLR proposal and has undoubtedly considered these technology and human resource issues, but as practitioners who regularly engage with the Fund's systems, we wanted to highlight them and suggest additional engagement with stakeholders on the best way to address these issues prior to implementing any CDFI-wide reporting system.

The following are our specific comments and questions on the modified ACR and new CTLR:

- We support the Fund pulling financial information from Call Reports (Section 2, Q. 80-114).
- We propose that the ACR and CTLR be due 180 days after year end, instead of 90, to give CDFIs more time to complete the ACR and CTLR after the close of the FA and BEA application windows which (typically around April and May, respectively).
- We have no objection to the proposed deletions of questions or to the revisions to questions 25 and 27.
- With respect to the additional Primary Mission questions regarding Community Development Strategy and Responsible Financing Practices, we incorporate our prior comments from the Primary Mission section of this letter.
- Will Section 2, Source of Investment Capital Table, apply to regulated depository institutions and holding companies? We request that the Fund clarify that it will not.
- When will the deposit CTLR be available for comment? Stakeholders have not had the opportunity to review and comment on this proposed reporting.

VIII. Treatment of Existing CDFIs

The Fund has requested comment on what sort of "grace period" should be given to existing CDFIs to come into compliance with any new rules related to certification. The short answer is: the maximum amount. The proposed changes to the CDFI certification process would fundamentally change the CDFI Certification requirements and would create a much narrower path for becoming and remaining certified. Narrowing the path may thin out some of the undesirable CDFIs and prevent predatory lenders from getting certified, but the proposed changes would also jeopardize the certification status of many institutions that have been model CDFIs. In fact, the effective elimination of CIAs through the new 85% rule would by itself cull many solid CDFI banks from the current ranks and keep many more out.

We don't believe the Fund intends to see a dramatic reduction in CDFI banks—that would be contrary to the goal of diversity of CDFI types. Moreover, changing the rules in such a way as to force currently compliant CDFIs to de-certify would be unjust. Therefore, we propose that CDFI banks be grandfathered in and given the ability to opt into or out of the new regime. Alternatively, we recommend that existing bank CDFIs be given a long runway to transition and that awards received in the interim be unaffected by a subsequent loss of certification status.

Specifically, we propose that certified CDFI banks be given the option to remain under the current certification regime indefinitely and the ability to elect at any time to be subject to the new regime. In the alternative, we propose that CDFI banks be given a three-year transition period to comply with the new rules. With respect to the new Target Market requirements, we propose that, after year three of the transition period, CDFI banks would submit an ACR/CTLR and would able to satisfy the requirement either through their activity in the prior 12 months or through an average of the prior three years. We further propose a blanket modification of all award and assistance agreements to include explicit language that an awardee will not be in violation of the agreement by virtue of losing its status as a certified CDFI. We believe these accommodations are equitable considering the nature of the proposed changes and the difficulty that many CDFI banks may have in altering their lending patterns to comply.

In conclusion, Sones & White Consulting greatly appreciates the opportunity to provide comments and feedback from the perspective of this firm and its many CDFI bank clients, and we look forward to further discussion of these issues.

If you have any questions, or if we may be of further assistance, please do not hesitate to contact Ben Sones or Everett White at 601.790.1500 or bsones@soneswhite.com and ewhite@soneswhite.com.

With kindest regards,

SONES & WHITE CONSULTING, LLC

Ben Sones
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November 5, 2020

Via Email Only

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Re: Comments on the CDFI Fund's Proposed Revised Certification Application and Annual Certification and Data Collection Report Form (ACR)/ Certification Transaction Level Report (CTLR)

Dear Director Harris, Ms. McInnis, and Mr. Bischak:

Sones & White Consulting (SWC) respectfully submits the following comments in response to the Fund's Notice and Request for Public Comment published in the Federal Register on May 7, 2020. SWC is a consulting firm headquartered in Mississippi. We are writing on behalf of our firm and the 60 community banks and 55 bank holding companies to which we provide CDFI consulting services across Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, South Carolina, Tennessee, and Texas. Our consultants have assisted banks and their holding companies in preparing approximately 100 CDFI Certification Applications.

We are thankful for the opportunity to comment on the proposed changes and appreciate how responsive the Fund has always been to questions and concerns from the CDFI industry. At the outset, we want to acknowledge the massive effort the Fund has undertaken to improve the CDFI certification process through these proposed changes. We also appreciate the Fund's effort to communicate these changes to stakeholders in an effective way through summary slide decks and FAQs.

SWC supports the policy objectives identified by the CDFI Fund, namely diversity of CDFI type, protecting the CDFI brand, growth and reach, minimizing burden, and efficiency. We also agree with the goals that would be advanced by many of the changes. With respect to Primary Mission, for instance, we agree a CDFI should be intentional about its mission to promote community development, and its activities should align with its mission. As to serving qualified Target Markets, the Pre-qualified Investment Areas are a welcome innovation and provide much needed flexibility in serving qualified areas. Likewise, preserving Customized Investment Areas (but striking the proposed new 85% rule, as detailed below) is essential for many CDFI banks to effectively serve their entire market.

We do, however, have very serious concerns about many of the proposed changes, and we urge the fund to engage further with stakeholders before finalizing these changes. If implemented, they would create unnecessary barriers to become or remain a CDFI and would result in unintended consequences, such as requiring CDFI banks to intentionally limit their activities in certain portions of their Target Markets. The proposed changes would also introduce, for the first time, a great level of uncertainty as to exactly what is required to become a CDFI.

In addition, some of these proposed changes disproportionately harm banks and other regulated institutions or fail to address the unique role that these institutions play in serving in their communities. Banks, by their very nature, promote community development. Moreover, because of its history and its Federally regulated structure, the community banking industry is unique. It plays a special role in meeting community financing needs and has many other characteristics that set banks apart from unregulated financial institutions. Unlike other types of financial institutions, most banks offer the full array of financial products and services to residents and businesses throughout their markets. Their operations are generally centered around a geographic network of physical branch locations. Their officers typically live in their markets. They are often closely held and sometimes controlled by one family group. And perhaps most importantly, they are highly regulated at the state and federal level and are compelled by law to have responsible financing practices and to serve the underserved areas within their markets. Where applicable, we seek to highlight how these differences might be applied in connection with the Primary Mission, Target Market, Accountability, and Development Services requirements.

Given the volume and complexity of the proposed changes, we urge the Fund to engage further with stakeholders prior to finalizing any changes to the certification process. Many of these proposed changes are interconnected to other provisions and require multiple layers of discussion to fully address the implications. Although we have made a good faith effort here, we do not think it's feasible to adequately address all of the issues in a letter.

Our comments below will be structured as follows. First, we will (I) lay out several primary examples of changes to which we want to draw special attention, including (A) the proposed 85% rule relating to CIAs, (B) the effective creation of a 12-month waiting period after Primary Mission adoption, and (C) the exclusion of non-Metro counties as a basic geographic unit of Investment Area eligibility for many purposes. We will then address each section of the proposed Certification Application: (II) Basic Information & Legal Entity, (III) Primary Mission, (IV) Target Market, (V) Development Services, and (VI) Accountability. We will then (VII) address the proposed changes to ACR and the introduction of the CTLR. Lastly, we will (VIII) make recommendations regarding how the Fund should treat existing CDFI banks.

I. Primary Examples of Problematic Changes

A. The "85% Rule" for Customized Investment Areas

The chief example of a problematic change relates to the proposed new requirements for Customized Investment Areas (CIA). CIAs are a critically important feature for banks because they are required by law to serve their entire market, not just qualified tracts. But the new requirement that 85% of activity directed to a CIA must be to qualified census tracts in the CIA effectively renders the entire option irrelevant. To comply, many banks would have to refuse to serve ineligible census tracts in their Target Market, as though community bank lending in individual census tracts can be turned on and off like a kitchen faucet. Even if CDFI banks could effectively limit their lending within certain portions of their Target Markets, which is not possible, the frequent monitoring required to satisfy this counterintuitive requirement would be prohibitive, and in any case, very few banks would be able to meet the 85% mark. From a purely mathematical standpoint, even those that could designate a CIA which meets the 85% mark would likely also satisfy the Pre-qualified Investment Area and prefer that option anyway. Thus, the new 85% rule essentially renders the Customized Investment Area useless, depriving it of its primary benefits, especially for CDFI community banks, which are bound by tradition and regulation to serve their entire geographic market areas. We discuss this issue in greater detail and propose alternative approaches below.

B. Twelve-month Waiting Period after Primary Mission Adoption

Another example of a problematic change is the required timing of Board-approved Primary Mission documentation. Promoting community development to a geographic market area is the *sine qua non* of community banking, and nearly all banks considering whether to apply for CDFI certification have previously adopted written mission statements providing that they seek to do so. In our experience, however, banks' existing written mission statements do not satisfy every technical requirement of 12 CFR § 1805.201(b)(1); as a result, nearly every community bank that applies for CDFI certification has its board of directors review and approve a CDFI Primary Mission statement, ensuring that the bank's mission explicitly includes language satisfying the regulatory requirements for certification. The proposal to require that a board-approved mission statement be in place for 12 months prior to applying is therefore tantamount to an automatic one-year waiting period for otherwise-eligible community banks to apply for CDFI certification. This is a significant and unnecessary barrier to entry, and we have proposed an alternative rule below.

C. Exclusion of Non-Metro Counties

A third example is the proposed exclusion of non-Metro counties as an option for the basic geographic unit. The regulations place the census tract and the non-Metro county at the same level—either can serve as the foundational unit of an Investment Area—but the Fund frequently selects census tracts as the *only* available unit for certain purposes. The new 85% rule for Customized Investment Areas and the accountability requirements for board members, to name just two examples, are keyed to qualified *census tracts* only. This affects banks in rural communities disproportionately because they often are required to serve their entire counties as part of their market and cannot realistically tailor their mission to particular tracts within these counties.

We provide more detailed comments and proposals below regarding each of these three issues, as well as a variety of other matters included in the proposal.

II. Basic Information & Legal Entity

Our comments regarding these two sections of the proposed Application relate primarily to the issues of clarity and the reduction of unnecessary burden.

With respect to the Basic Information section, we request that the Fund modify the proposal to clarify that one set of responses to BI-FP03 through BI-FP10 is needed. As it is currently worded, this portion of the proposed Application could be interpreted as requiring many separate sets of responses to BI-FP03 through BI-FP10 for a typical CDFI bank. For example, a typical community bank Applicant could respond separately regarding each of the following categories of loan:

- Home mortgage loans
- Home mortgage lines of credit
- Residential real estate development loans
- Residential real estate development lines of credit
- Residential real estate loans purchased from Certified CDFIs
- Residential real estate loans directed to the Applicant's proposed Target Market purchased from entities without CDFI Certification
- Commercial real estate loans
- Commercial real estate lines of credit
- Commercial real estate loans purchased from Certified CDFIs
- Commercial real estate loans directed to the Applicant's proposed Target Market purchased from entities without CDFI Certification
- Consumer loans
- Consumer lines of credit
- Business loans
- Business lines of credit
- Microenterprise loans
- Microenterprise lines of credit
- Auto loans
- Other (*e.g.*, county and municipality loans)

Thus, the proposal can be interpreted as requiring a typical bank applicant to respond to these questions 18 times. If this interpretation is correct, then the proposed questions need to be simplified and generalized so that Applicants only have to reply to these questions once. If this interpretation is incorrect, then clarification is needed.

We have the same comment with respect to questions BI-FS02.1 through BI-FS02.5, since most community bank Applicants provide all or most of the following Financial Services:

- Savings Accounts
- Checking Accounts
- Certificates of Deposits
- Money Market Accounts
- Check Cashing
- Money Orders
- Certified Checks
- Automated Teller Machines
- Safe Deposit Box Services

To require most community bank Applicants to answer these questions nine separate times would be unduly burdensome.

In addition, BI-FP07 ("Is this Financial Product on-balance sheet for the Applicant?") needs clarification. Does this mean, "Was this Financial Product closed in the name of the Applicant and with the Applicant's own funds?" Or does it mean, "Does this Financial Product remain on the Applicant's balance sheet at the present time?" Or does it have another meaning entirely? We believe the first meaning suggested above is the one intended by the Fund, but confirmation is needed.

Our only comment regarding the Legal Entity section of the proposed Application is that this provision of information and documentation is redundant and unnecessary, since all or nearly all certified CDFIs also maintain a registration with SAM.gov. We suggest that the Fund should consider requiring Certification Applicants to first become registered with SAM.gov, so that the Fund can then rely on the SAM.gov vetting process to establish that the Applicant is in fact a legal entity.

III. Primary Mission

A CDFI "must have a primary mission of promoting community development."[1] The CDFI Fund, in determining whether an entity has such a primary mission, "will consider whether the activities of the entity are purposefully directed toward improving the social and/or economic conditions of underserved people…and/or residents of economically distressed communities (which may include Investment Areas)."[2]

In the current Certification Application, an Applicant must demonstrate that its primary mission is (a) evidenced in "board-approved organizational documents" and (b) consistent with the CDFI Certification definition of primary mission.[3] The Applicant selects from a drop down menu which board-approved organization documents evidence its primary mission; attaches the documentation; states the primary mission in a narrative response; and then describes how its primary mission is consistent with the Fund's definition, including a description of how its products/services support the mission and a profile of the Applicant's customers.

In the Proposed Certification Application, the Fund describes its new approach to the Primary Mission requirement this way: "the CDFI Fund will consider whether the activities of the Applicant (and of certain Affiliates) are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of economically distressed

[1] 12 C.F.R. § 1805.201(b)(1).
[2] *Id*.
[3] AMIS Submission Guide (Updated November 2018) at § 5.3.1.

communities."[4] As part of its assessment, the Fund states that it "will consider whether the entity has a reasonable community development strategy and, to the extent the CDFI Fund is able, whether the entity engages in responsible financing practices."[5]

The Fund is proposing three categories of substantive changes to the Primary Mission requirement: (1) heightened documentation requirements, potentially including a *de facto* 12-month waiting period to become a CDFI; (2) a new series of questions aimed at discerning whether the Applicant has a "reasonable community development strategy"; and (3) additional questions about the Applicant's Financial Products and Services to confirm that it engages in "responsible financing practices."[6] In its published response to FAQs, the Fund explained that the rationale behind these changes is to "strengthen the Primary Mission test and examine the extent to which an entity's Financial Products and Services align with that mission…."

We support the Fund in its desire to have a meaningful Primary Mission requirement, and we believe that a strong Primary Mission requirement is key to protecting the CDFI brand. But we also have serious concerns about each of the three proposed categories of changes. As set forth in more detail below, the proposed documentation requirements create a *12-month waiting period* that is unwarranted, especially if applied to community banks and other regulated institutions. Moreover, the lengthy series of questions regarding reasonable *community development strategy* and *responsible financing practices* are confusing, create great uncertainty as to whether an entity satisfies the Primary Mission requirement, and are largely unnecessary for community banks that are regulated by other state and federal agencies.

A. Twelve-Month Waiting Period

The Fund proposes to require that an Applicant must have "an acceptable Primary Mission of community development *in place for at least the 12 full months completed just prior to submission of the application*… [and] must present documentation of an acceptable mission approved by its board or owner."[7] We agree with the Fund's policy of requiring CDFI Certification Applicants to demonstrate that their community development mission has been in place for at least 12 months, but we are opposed to the Fund's proposal as written.

Proposed PM08 appears to explicitly require a 12-month waiting requirement between adoption of formal board-approved documentation and submission of the CDFI Certification Application. We oppose any formal waiting period, particularly as applied to banks and other regulated institutions, for the reasons discussed below.

[4] Proposed Certification Application at p. 29 (emphasis in original).
[5] *Id*.
[6] Proposed Certification Application at pp. 29-30.
[7] Proposed Certification Application at p. 30 (emphasis added).

To our knowledge, in preparing approximately 100 CDFI Certification Applications on behalf of banks and bank holding companies, four facts have consistently held true:

1. Every one of these regulated institutions had an existing primary mission of promoting community development in its geographic market and had been delivering a high volume of financial products and services to its market for multiple years in furtherance of that mission.
2. Not a single institution had previously adopted a Primary Mission statement that technically satisfied each element of the regulatory language in 12 CFR § 1805.201(b)(1).
3. Every institution's Board adopted a CDFI-compliant Primary Mission statement prior to submitting an Application, having concluded that the newly adopted language did not represent a substantive change from the institution's existing mission.
4. No institution has materially altered its operations after adopting its CDFI Primary Mission statement.

As these facts show, requiring a 12-month waiting period after board adoption of the Primary Mission documentation would not in any way serve to verify or substantiate regulated institutions' community development missions. Rather, such a waiting period would present an unnecessary barrier to entry for prospective CDFI banks that have existing community development missions and seek to engage in the certification process. Simply put, if the provision of Financial Products shows that a regulated institution has been faithfully serving a qualified Investment Area for years, why should they have to wait a year to become a CDFI?

We urge the Fund to eliminate the 12-month waiting requirement after adoption of formal Primary Mission documentation. But if it remains, we invite the Fund to create an expedited path for community banks and other regulated institutions to satisfy this Primary Mission requirement. To that end, we propose the following rule for regulated Applicants utilizing Investment Area Target Markets:

> **If an Applicant that is a regulated institution can establish that (a) at least 50% of its branch locations have been physically located within its proposed Investment Area(s) for at least 12 months prior to the Applicant's submission of a CDFI Certification Application and (b) the Applicant otherwise demonstrates an acceptable Primary Mission of community development, then the Applicant will be deemed to satisfy the Primary Mission requirement even if its board-approved Primary Mission documentation was adopted less than 12 months prior to the submission of its CDFI Certification Application.**

Such a rule acknowledges that a continuous branch presence in the Target Market for at least 12 months demonstrates that a regulated institution's community development mission has been "purposefully directed" towards the Target Market throughout that period.

In sum, we agree that CDFI Certification Applicants should be required to demonstrate that their community development mission has been in place for at least 12 months. However, it does not follow that the Fund should require in every case that 12 months must elapse between board approval of the Primary Mission documentation and submission of the CDFI Certification Application. We would ask that the proposed Application be amended to eliminate this formal waiting period. Moreover, we advocate an explicit policy relating to community banks and other regulated institutions, permitting them to utilize their continuous branch presence in their proposed Investment Area(s) to demonstrate that their community development mission has been "purposefully directed" to their Target Market for 12 months.

B. Community Development Strategy

Our fundamental issues with the proposed "reasonable community development strategy" requirement are (1) its lack of clarity and (2) its narrowness and inflexibility.

Turning first to clarity, this portion of the proposed Application creates a great deal of uncertainty. How many questions require a "Yes" before your strategy is reasonable? Is a "No" on any particular question fatal? We acknowledge that the Fund has asked for comment on these very questions, but the proposed changes are sweeping and multifaceted, making it difficult to provide helpful comment in the form of a letter.

Clarity is a hallmark of the current CDFI Certification Application. An entity seeking to become certified as a CDFI can know in advance, with a high degree of confidence, whether it meets all applicable criteria. The proposed CDFI Certification Application's Primary Mission questions introduce a great deal of uncertainty as to whether an Application will be approved. This uncertainty will serve as a major barrier to entry for potential Applicants, thus reducing the number of newly certified CDFIs over time.

Regarding narrowness and inflexibility, we are left wondering why many of the proposed community development strategy questions require the Applicant to select a specific option from a dropdown menu, implying that all CDFI community development strategies fit within a handful of narrowly tailored categories.

Diversity and innovation are key policy objectives for the CDFI industry, which seeks to serve as a "big tent" including community banks, credit unions, and a variety of unregulated financial institutions, both for-profit and nonprofit. And these diverse institutions have pioneered a wide variety of Financial Products, Financial Services, outreach efforts, delivery channels, technical innovations, and other community development strategies. We do not see the utility of baking into the Application prescribed lists of acceptable "community development objectives"; supported "outputs or outcomes"; and special "terms, conditions, or practices" for Financial Products and Services. Either Applicants are *required* to include such terms in their Financial Products and Services, which is narrow and unavoidably arbitrary, or they are *not required* to include such terms in their Financial Products and Services, which begs the question as to why these questions are included in the first place.

The proposed changes to this portion of the Application are wide-ranging and consequential, and as presented they produce more questions than answers for stakeholders. Indeed, these proposed changes raise so many questions that it is difficult for stakeholders to comment in any comprehensive way. Depending on the answers to these questions, further questions will arise, creating the need for a nuanced and multi-layered discussion between stakeholders and Fund staff before adopting such sweeping changes.

This underscores our overarching request that the Fund engage further with stakeholders before moving forward with finalizing changes.

C. Responsible Financing Practices

The Responsible Financing Practices section of the proposed Application is similarly perplexing for stakeholders. The following are just a few examples of the questions that arise in reading through this section:

i. *PM17*

Why MAPR? The Military Annual Percentage Rate is used very infrequently by consumer lenders. Most lenders are much more accustomed to the "Annual Percentage Rate" (APR), which is required by the Truth in Lending Act (Regulation Z) to be disclosed in connection with all consumer loans.

What is the consequence if an Applicant does have a product that exceeds 36% MAPR? What kind of explanation suffices?

ii. *PM18*

Why does PM18 ask about "ability to repay"? For regulated institutions, this language is laden with regulatory baggage, since the "ability to repay" rule is a very specific rule within Regulation Z which governs certain dwelling-secured loans—a rule from which CDFIs are exempt. While all banks ensure their borrowers can afford their loans, this use of "ability to repay" language is problematic.

Also, why does the "ability to repay" question apply only to "non-consumer" loan products? If it is to be limited in its application, we would suggest the opposite—that it should apply only to consumer loans.

What is the consequence if an Applicant has a product for which the answer to PM18 is "No"? For example, the majority of small community banks offer affordable home loans which have 3- to 7-year terms but amortize over a longer period (*e.g.*, 15 years). These loans are then renewed (*i.e.*, refinanced) for successive terms until they fully amortize. These products often serve as the only affordable home lending option for many borrowers in distressed and underserved market areas. The proposed rule would create uncertainty for most community bank Applicants, since they would have to answer "No" to PM18 and would not be certain whether their narrative explanation might prove acceptable to CDFI Fund reviewers.

iii. *PM19*

Why does this question apply to "each of the Applicant's loan products," when such disclosures are not required, and often not provided, for commercial loans?

iv. *PM20*

How formal does a "program" for struggling borrowers have to be in order for an Applicant to answer "Yes" to PM20? Most local community bank CDFIs are exceptional at providing a variety of flexible modification and workout solutions for struggling borrowers, but many bankers may not consider these solutions to be part of a formal "program."

v. *PM25-PM29*

Why these particular deposit account features? We believe most CDFI banks would be able to respond with a "Yes" to many or most of these questions, but the terms indicated are very specific and cannot avoid being somewhat arbitrarily chosen. Is it required that a depository institution CDFI offer accounts with these terms? If not (or if only some are required, but not all), why are depository institution clients burdened with providing additional narratives for each "No" response to these questions?

As the questions noted above demonstrate, the Responsible Financing Practices section of the proposed Application creates a great deal of uncertainty and appears to rigidly favor certain specified account features and programs. Most importantly, these proposed questions greatly increase the burden associated with applying for CDFI Certification, since Applicants will be called upon frequently to provide narratives explaining why the Applicant is unable to answer "Yes" to this or that question. When coupled with the uncertainty as to whether reviewers will accept these narrative explanations as sufficient, this added burden creates a substantial barrier to entry for institutions considering applying for CDFI Certification.

IV. Target Market

The proposed changes to the Target Market requirement will potentially have a more dramatic impact on the CDFI industry than any other class of change. Our comments on these changes are limited to (A) two matters concerning Investment Areas generally; (B) the modifications to what is now called a Customized Investment Area (CIA), specifically the new 85% rule; and (C) the application of these requirements to bank holding companies that own more than one bank.

A. Investment Areas Generally

While we strongly support both the retaining of Customized Investment Areas (without the new 85% rule) and the creation of Pre-qualified Investment Areas, we have two comments that apply equally to both CIAs and Pre-qualified IAs.

First, the amended Certification Application should fully embrace the *non-Metro county* as a basic geographic unit for all Investment Area-related purposes. As written, a Pre-qualified IA can be "comprised of qualified census tracts only."[8] We propose that qualified non-Metro counties be added as an option. Our proposal is supported by the applicable regulation, which places non-Metro counties and census tracts on the same footing. Specifically, the regulation provides that an IA "shall consist of a geographic unit that is a county (or equivalent area),…census tract, or Indian Reservation."[9] There is an exception for Metropolitan areas, where geographic units "shall be limited to census tracts[] and Indian Reservations"[10], but the rule for non-Metro areas is that *counties and census tracts are both geographic units that can serve as the basis of an IA.* For both Pre-qualified IAs and CIAs, Applicants should have the option to elect either census tracts or non-Metro counties as the basis geographic unit of the Investment Area.

Our proposal to include non-Metro counties is also supported by the fact that regulated institutions operating in non-Metro counties are propelled by both their business model and regulatory requirements to serve the entire county. Most non-Metro counties have populations of between 1,000 and 40,000 people, so that many non-Metro counties are comparable in population to individual census tracts in Metro areas. For example, Jim Hogg County, Texas has a total population of 5,200 residents divided into two census tracts, whereas single census tracts in Metropolitan areas often have populations in excess of 10,000. In non-Metro areas, it is not

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[8] Proposed Certification Application at p. 55.
[9] 12 C.F.R. § 1805.201(b)(3).
[10] *Id*.

feasible for regulated institutions, which traditionally provide a full array of loan and deposit services to the entire community, to pick and choose between individual census tracts. Further, regulated institutions serving non-Metro counties are required to include the entire counties in their CRA Assessment Areas. For these reasons, it is particularly important for regulated institutions serving non-Metro counties to be permitted the option to include these counties as a basic Investment Area unit.

Our second comment regarding Investment Areas generally concerns the method for calculating the number of *deposit accounts* for purposes of satisfying the 60% requirement for Financial Services activity. In the October 2020 FAQ, the Fund articulated its methodology, announcing that Applicants "must demonstrate that at least 60% of all depository accounts newly opened during the prior 12-month period were held by a member of a Target Market…." The Fund reasoned that this test is similar to the loan origination test for Financial Products. Prior to the October 2020 FAQ, the Fund's intention to use newly opened accounts opened during the prior year rather than all accounts held at a point in time was not apparent.

This proposed methodology is a significant departure from the current methodology, which considers dollar balances (rather than individual accounts) and includes all deposits held at a point in time (not just new accounts opened during the prior year). We support the focus on individual accounts rather than dollar balances, since this measure more accurately reflects the total mix of Financial Services recipients served by the Applicant.

However, we oppose the proposed shift to focus on new accounts opened rather than all accounts held at year end. In the first place, depository institutions provide services to deposit accounts throughout the life of the account, so each account held at the time should count as a Financial Service provided for purposes of the Target Market calculation. Second, only considering new accounts opened during a 12-month period will provide an insufficient sample size, will result in less stable Target Market calculations that vary greatly from year to year, and will unduly prejudice a depository institution that may have just entered a new market or acquired a branch in an area with a mix of qualified and nonqualified areas. We therefore recommend that the Fund should count each unique account held at a point in time (not just new accounts opened during the prior year) for purposes of the calculation.

B. Customized Investment Areas

We are grateful that the Fund recognizes the value of retaining the option to create CIAs. Retaining the CIA option is essential for diversity of both CDFI types and geographies, since these customized geographic Investment Areas are the primary Target Market vehicle employed by CDFI banks, especially those in rural areas.

Many CDFI banks and other regulated institutions serve a market that is a combination of both qualified and non-qualified areas, and they are prevented by the community banking business model and applicable regulatory requirements from refusing to serve specific geographic areas within their markets. Thus, the ability to select one or more contiguous IAs that fairly represents their market is both equitable and essential for these institutions to become or remain certified CDFIs.

We also support the Fund's impulse to create some sort of proportionality between the level of activities that a CDFI directs to eligible areas in its CIA and the level directed to ineligible areas. But the proposed rule requiring that 85% of financing activity directed to a CIA[11]—presumably by both number and dollar volume?—must be in qualified census tracts in the CIA is absolutely unworkable and is the functional equivalent of eliminating CIAs altogether. As the discussion below demonstrates, this 85% rule should be removed or dramatically revised.

i. *Initial Considerations*

It must initially be noted that this 85% rule is one of the most profound changes in the entire Application but was embedded in the proposal as a sort of programmatic "Easter Egg." We initially misread this 85% rule as an inartful phrasing of the 85% population rule regarding inclusion of ineligible geographic units within an Investment Area, but on closer inspection we found that a new rule regarding percentage of activities directed to eligible census tracts was in fact plainly stated (though quite briefly and in passing). **This proposed 85% rule is a sea change in how Investment Areas work.** We highlight this issue because we are aware of several other stakeholders who did not notice this change and may not provide extensive comment, since it was not highlighted in any of the published documents, was not mentioned in the Fund's summary slide deck, and is confusingly similar to the 85% population rule, thus blending into the Investment Area description.

Moreover, we want to respectfully challenge what appears to be the foundational assumption underlying this new rule: that if 85% of the population in a CIA lives in *eligible* areas, then 85% of the CDFI's financing activities in the CIA should be directed to *eligible* areas. This assumption is not tethered to economic reality. The average loan amount in non-qualifying areas is often significantly higher than in eligible areas. Similarly, loan demand in non-qualifying areas typically outpaces loan demand in eligible areas by a wide margin. In short, it is simply not

[11] "Although financing activity can occur and be counted in individually non-qualifying census tracts within a Customized Investment Area, the Applicant must direct at least 85% of their financing activity within individually qualified census tracts." Proposed Certification Application at p. 55.

The Proposed Application also states that "financing activity to individually non-qualifying census tracts within a Customized Investment Area should support the financing activity within the qualified census tracts." It is not clear what the Fund means by "support" in this context. We request that this be clarified.

feasible for many institutions—especially regulated institutions—to meet their obligations to serve their entire market *and* satisfy this proposed 85% rule. In fact, our analysis of 42 CDFI banks presently utilizing geographic Investment Areas reveals that **less than 17%** of them currently satisfy the proposed rule. This is a stunning indicator of how vastly this rule would alter the existing CDFI diversity landscape.

ii. *Specific Objections*

Below are a variety of additional reasons why we strongly oppose the 85% rule.

The rule is *unnecessary*. Under the current regime, an IA must be contiguous and more than 85% of the population must be in qualified geographic units. These population and contiguity requirements, in combination with the 60% threshold, work together to ensure that financing activities in IAs actually benefit distressed areas. Even if a higher percentage of a CDFI's financing activities are directed to non-qualified geographic units, the benefits of this financing do not end at the county line or census tract boundary because communities of people do not conform to map boundaries. Thus, financing in non-qualifying areas necessarily supports and revitalizes the surrounding eligible areas. Moreover, the 85% population requirement provides an effective limit on the non-qualified areas that can be included in an IA.

The rule is *impossible* for many regulated CDFIs. As noted above, unlike loan funds and other unregulated institutions, regulated CDFIs are required by the community banking business model and by applicable law to adequately serve their entire market. They are regularly examined on whether they are effectively meeting the needs of their entire market. If this 85% rule were enacted, banks would be faced with a catch-22 of either complying with their regulatory mandate or violating the mandate in order to remain certified as a CDFI. This catch-22 would effectively eliminate CIAs as a continuing option for most CDFI banks seeking to serve their entire market; therefore, the proposed new 85% rule will severely damage the CDFI banking sector and greatly limit the diversity of institution types in the CDFI industry.

The rule renders CIAs *irrelevant* for nearly all CDFIs. If the 85% rule stands, CIAs will become obsolete. Virtually all CDFIs will be forced to try and meet the Pre-qualified IA test. Expressing the math effectively in a comment letter would be difficult, but suffice it to say that with the new 85% rule in place, the scenarios in which a CDFI would elect to designate a CIA rather than a Pre-qualified IA are extraordinarily limited. Let us refer again to the stunning statistic cited above—that less than 17% of the 42 CDFI banks we analyzed currently satisfy the new 85% rule. We went one step further in this analysis and found that, of those few CDFI banks (7 out of 42) that actually do currently meet the proposed new 85% rule, **every single one of those banks also directs at least 60% of its loan volume to Pre-qualified IAs**. We thus failed to locate a single bank that satisfies the new 85% rule for CIAs but does not satisfy the thresholds for designating a Pre-qualified IA. In other words, not one of the 42 CDFI banks we analyzed would benefit from designating a CIA with the new 85% rule in place.

Lastly, the rule creates a *perverse incentive*. For the few Depository Institutions that may decide to use CIAs under the new 85% rule, the rule creates a perverse incentive to intentionally ignore demand from ineligible areas that are *included* in their CIA. This concept of intentionally *not targeting* portions of your *Target Market* is counterintuitive and untenable. Imagine, for example, a loan officer apologizing to a prospective customer that the bank refuses to finance the purchase of a building because the census tract is not eligible and the loan would bump the bank over the 85% threshold. This ludicrous scenario demonstrates afresh how the proposed 85% rule would disproportionally impact the CDFI banking sector in a negative way.

iii. *Alternatives to the Proposed New 85% Rule*

For the reasons discussed above, we urge the Fund to eliminate the proposed 85% rule for CIAs and continue with the current rules regarding Target Market calculations. The existing CIA structure already provides meaningful limitations to activities directed to non-qualifying areas without adding in this new rule. Alternatively, there are other options that achieve similar ends while preserving CIAs as a meaningful choice.

One option is to get rid of the proposed 85% rule but *modify the contiguity requirement*. To increase the likelihood that activity directed to non-qualifying geographic units will benefit the same communities as those found in eligible units, the Fund could require that each non-qualifying census tract or county included in a CIA must be immediately contiguous to an eligible census tract or county. This would obviate the need to cap the level of activity in non-qualifying tracts or counties.

If the Fund were to decide to keep the 85% rule (which we strongly oppose), it should at a minimum *lower the threshold for dollar volume to 60%*. In our experience with CDFI banks, loans in non-qualifying areas have larger average loan amounts than loans in eligible areas. This is likely true across all institution types. An institution should not be penalized for making a relatively small number of large loans in ineligible areas if 85% of its loans (by number) are made in eligible areas. If the requirement for dollar volume directed to eligible areas in a CIA were reduced to 60%, for instance, then the CIA may become a viable option for community banks. Nevertheless, by preserving the 85% rule in any form, this modified version of the rule is still subject to the criticisms of being *unnecessary*, being *impossible* for many banks, and creating a *perverse incentive* to avoid serving certain portions of one's Target Market, as discussed at greater length above.

Finally, if this 85% rule were kept (which, again, we strongly oppose), this underscores the importance of restoring the *non-Metro county* to its rightful place in the geographic unit hierarchy, as noted in sub-section "A" above. The rule as drafted requires that 85% of activities directed to a CIA must be directed to "individually qualified *census tracts*" within the CIA. The non-Metro county, however, is not a second-class unit. According to the implementing regulation, it should be considered an acceptable option as the basic or foundational unit for all IA calculations, including the calculation of activities directed to non-qualifying areas. With the non-Metro county as a basic unit, a limited number of community banks may be able to satisfy the 85% rule, thus rendering the CIA option at least minimally relevant for some CDFIs.

In sum, the 85% rule was not sufficiently emphasized in the proposal, although it represents a massive alteration to the Investment Area framework. This proposed new rule should be eliminated because it is unnecessary, impossible to comply with for many banks, renders CIAs irrelevant, and creates perverse incentives. If the rule were eliminated, perhaps the Fund could explore whether a similar objective could be achieved by modifying the contiguity requirement to require that non-qualifying areas must be immediately contiguous to eligible areas. If the rule is not eliminated, then the Fund should at least lower the CIA non-qualifying area dollar volume threshold from 85% to 60% and restore the non-Metro county as a basic unit for this threshold calculation.

C. *Bank Holding Companies and Their Subsidiary Banks*

We are unclear on exactly how the Target Market requirements will be applied to multi-bank holding companies and their subsidiary banks. The Proposed Certification Application states that a DIHC, an Affiliate of a DIHC, or a Subsidiary of an IDI must meet the requirements "[i]ndividually, based on the Applicant's own Financial Product and, if elected, Financial Services activity," which is clear enough. But then it states that they must also meet the requirements "[c]ollectively, based on the aggregate Financial Product and, if elected, Financial Services activity of the Applicant and any Affiliate in its family of entities." This part creates confusion.

Consider an example in which a bank holding company owns 100% of two banks, Bank A and Bank B. The banks are roughly the same asset size and have separate boards, separate officers, and operate in separate markets. If Bank A wants to apply for CDFI certification, how are the Financial Products of Bank B to be considered or aggregated? Are Bank B's products—directed entirely outside of Bank A's Target Market—to be simply added to Bank A's? If so, Bank A will almost certainly fail the 60% test. To avoid this, can Bank B have its own Target Market for purposes of the calculations even though it is not applying for CDFI certification? Are there other alternatives?

At a minimum, further clarification is needed, with examples included, as to how such calculations should work in the context of multi-bank holding companies.

V. Development Services

The Fund may not have intended to propose substantive changes to the Development Services (DS) requirements,[12] but the proposed changes are certainly substantive. They impose several specific and sometimes counterintuitive requirements and exclusions that would put most of the traditional DS offered by banks outside of the definition. We oppose the proposed changes and believe that the current DS requirements provide the necessary flexibility for institutions to serve residents and businesses within their Target Markets most effectively.

Under the Community Development Banking and Financial Institutions Act of 1994, DS are defined as "activities that promote community development and are integral to lending or investment activities." The definition specifically references business planning, financial and credit counseling, and marketing and management assistance as examples of DS. The regulations define DS as activities that "promote community development and shall prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services."[13] The regulations include financial or credit counseling, homeownership counseling, and business planning and management assistance as examples of DS.[14]

The current AMIS Submission Guide elaborates on the Act and the regulations, providing that "[a]n organization must provide at least one Development Services activity in conjunction with the Financial Products it provides [and that] [t]he Development Services must be clearly linked to Financial Products offered by the organization (*e.g.*, offering first-time home buyer counseling to applicants for down-payment assistance loans)."[15] The Submission Guide goes on to state that "[a]n organization must exercise significant control in directing the provision of its Development Services through its own staff, an Affiliate or a contract with another provider." The Submission Guide then clarifies that "[i]t is not acceptable for an organization to simply refer its customers or potential customers to a non-affiliated provider."

In our view, the Act, the regulations, and the current Submission Guide provide sufficient guidance on DS while maintaining necessary flexibility. The proposed changes, by contrast, constrict institutions' ability to deliver DS in the ways most helpful to their customers and will unfortunately result in many institutions adopting a formal, check-the-box DS program to comply with these requirements.

The proposal would require that DS meet the following criteria: "formal," "stand-alone," and "delivered separately and distinctly from its other products/services." The proposal requires

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[12] "No substantive policy changes are being implemented in the Development Services section of the CDFI Certification Application." Slides-CDFI Certification Application May 2020 FINAL at Slide 29.
[13] 12 C.F.R. § 1805.104.
[14] *Id*.
[15] AMIS Submission Guide (Updated November 2018) at § 5.7.

that CDFIs must make these formal DS programs "available on an ongoing basis at least four times per year," "track delivery of and participation in" these programs, and "track the amount of staff time spent on the administration and delivery" of these programs.[16]

In addition, the proposal expressly excludes many activities from being considered DS. These include the use of "publically-available online training," unless the Applicant has a relationship with the developer; "workshops for children or conferences/workshops for broad audiences"; and "non-structured conversations with consumers on Development Services subject matter," just to name a few of the exclusions.

Our main objections are twofold: (1) these proposed requirements are arbitrarily constrictive and limiting and will remove many CDFIs' most flexible and effective DS from consideration, and (2) most of these proposed requirements do not appear to further CDFI policy objectives.

First, these proposed requirements are constrictive and limiting. As a result, some of the best work being done by CDFIs will be ignored by the CDFI Certification Application and, presumably, in CDFI Program funding applications. In its place, CDFIs will be forced to create formal programs, often creating little impact, in order to achieve technical compliance with these new DS rules.

Two examples serve to illustrate our main objections to the proposed rules: *informal credit counseling* and *financial education to students*.

Informal Credit Counseling. Many of the most effective DS are delivered in informal settings and are not part of a formal program. For example, most CDFI banks provide informal credit counseling to loan applicants. Lenders talk with applicants to learn their financial need, walk them through the various loan products available to address those needs, and help applicants understand the underwriting process. If applicants have trouble qualifying for the loan they need, lenders help them understand why they may not qualify and discuss additional options, such as providing nontraditional collateral, locating a co-signer, or taking measures to address issues in their credit report. This highly individualized approach is the most helpful way to prepare consumers to access the Applicant's financing, and it is enormously effective. This DS is inherent within the CDFI community bank lending process, and CDFI banks are justifiably very committed to it.

This counseling, however, would not qualify as a DS under the proposal. It is not *formal*. It is not *stand-alone*. It is not delivered *separately and distinctly* from the CDFI's Financial Products, but rather is an integral part of its provision of Financial Products. It is not formally provided *four times per year*. It is so ubiquitous and integral to the CDFI's mission that it is impossible to *track*

[16] Proposed Certification Application at p. 62.

delivery of and participation in this DS, nor to track the *amount of staff time spent* on this DS. Finally, this DS necessarily involves *non-structured conversations with consumers*.

In other words, arguably the most valuable DS offered by community bank CDFIs would not come remotely close to even qualifying as a DS under the proposal.

Financial Education to Students. Many CDFI banks offer financial education in a classroom setting to students in partnership with local schools. These programs are sometimes offered in conjunction with other events hosted by the school, such as annual job fairs. Topics covered include personal finance, budgeting, building a credit history, saving, buying a first home, and ID theft prevention. CDFI banks use these programs to facilitate the development of a banking relationship early in life, utilizing them to transition students from the educational programs to the opening of a savings account, and from the opening of a savings account to securing an auto or home loan as these students graduate and enter the workforce. By leveraging partnerships with schools, these programs have an expansive reach, enabling CDFI banks to reach Target Market residents who may not otherwise have ever visited a bank branch. For CDFI banks seeking to meet the full array of financing needs for an entire community, such broad, early DS efforts are vital.

By definition, such financial education programs include *workshops for children*. They also often utilize a combination of in-person classroom education and *online training tools*. Therefore, these efforts also fail to qualify as DS under the new rules.

Thus, two of the primary DS provided by CDFI banks will no longer be considered DS under the wooden requirements that the proposal seeks to impose.

Our second main objection is that these proposed strictures do not seem to further the policy objectives of the CDFI Fund. Most significantly, they limit *diversity of CDFI type* by disfavoring the informal DS offered by most CDFI banks. They also discourage *flexibility and innovation* by CDFIs seeking to utilize a variety of DS to facilitate access to their products and services; rather, some of the best programs currently offered by CDFIs will no longer be considered DS, with the result that some CDFIs may cease to offer these programs. Meanwhile, many CDFIs will satisfy the proposed DS requirement by means of limited, formal, stand-alone programs that satisfy the new rules' lengthy checklist of features but likely result in a lesser benefit to their Target Markets. Furthermore, they create additional *burden* by imposing a checklist of formal requirements and exclusions, and compliance with these rules must be carefully trained and monitored. Finally, by arbitrarily limiting the types of services that can be considered DS, they fail in their effort to *protect the CDFI brand*. Requirements such as formality, meeting at least four times per year, and being offered separately and distinctly from the CDFI's other products and services, as well as the exclusion of certain delivery channels and formats, do not have any readily apparent connection to the objectives of the DS requirement—namely, to promote community development and to prepare or assist residents and businesses to use the CDFI's Financial Products.

Finally, we would note that one of the proposed DS requirements seems to directly contradict the language of the Community Development Banking and Financial Institutions Act of 1994, which requires that DS must be "integral to lending or investment activities." In furtherance of this statutory mandate, the current AMIS Submission Guide states that DS must be provided "in conjunction with the Financial Products [the CDFI] provides."[17] The proposed rules, by contrast, require that DS *must* be "delivered separately and distinctly from its other products/services"—seemingly the exact opposite of the statutory mandate and current guidance.

For all of the reasons indicated above, we request that the proposed rules be modified to permit to provide greater flexibility and permit a broader range of activities to satisfy the DS requirement. If, however, the Fund determines that it will nevertheless retain the structure being proposed, then we would request at a minimum that specific provision be made for informal credit counseling. For example, the Fund might provide that informal credit counseling constitutes a DS provided that it includes at least *three* of the following *six* features:

- Discussion of the customer's financial need and the various Financial Products available to meet such needs
- Explanation of credit score and how it might be improved
- Qualitative discussion of information in the credit report
- Discussion of alternative sources of collateral, possible co-signers, or other alternative means of qualifying the credit
- Discussion of extenuating circumstances which may be relevant in determining whether a loan policy exception is appropriate
- Counseling regarding government or private programs available to assist in meeting the borrower's financial need or enabling the borrower to access the CDFI's Financial Products

Such a special provision would not address the overarching concerns regarding the rigidity of the proposed DS rules, but it would at least enable CDFIs to continue including this service within their DS calculations.

VI. Accountability

We generally support the Fund's proposed changes to the accountability requirements. We support, for example, the Fund's proposed removal of any geographic connection requirement

[17] AMIS Submission Guide (Updated November 2018) at § 5.7.

for accountable board members[18]; it would have been difficult for many CDFIs to create nationwide advisory boards to provide accountability to a Pre-qualified IA. The following are our general comments and questions on the proposed changes to the accountability requirement.

As an initial matter, we request clarification on what the term "investor" means for purposes of conflicts.[19] It cannot mean any person who owns any stock in the bank. Such an interpretation would conflict out nearly all community bank governing board members, since most bank board members are required by law to own stock in the bank. We request that all such references to "investors" be eliminated in favor of references to "principals," *i.e.*, shareholders owning or controlling at least 25% of the bank.

Our second comment is that the accountability requirement for the governing board to the overall proposed Target Market(s) should be reduced from 33% of the board's members[20] to 30% to reflect current certification practice. This would eliminate the need for existing CDFIs who relied on the current 30% expectation to alter their board composition in order to maintain certification.

Our next comment relates to the proposed requirement that, in order for an advisory board to provide accountability, "at least 20% the governing board members [must be] accountable to at least one proposed Target Market."[21] We request that this proposed 20% governing board accountability requirement be eliminated, that an exemption be granted, or that conflicts for principals and staff members be waived for this purpose. In our experience, the governing boards of most community banks contain several principals or staff members. One reason is that most community banks are locally owned and governed, and many are closely held by one family group. For closely held community banks, the governing board is often comprised primarily of principals, staff members, and their families. Another reason that bank boards have a high number of conflicted members is that, given the highly regulated nature of the industry and the obligations of bank board members, the Chief Executive Officer and one or more senior executives are typically on the board. These boards usually include a high concentration of board members who would be considered Target Market representatives but for the fact that they or their family members are principals or staff members of the bank. As a result, banks in these situations use an advisory board to satisfy the accountability requirement. The Fund should recognize these facts about community banks and either eliminate the 20% requirement,

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[18] "The revised CDFI Certification Application does not require there to be a geographic connection in order to satisfy board member accountability requirements. This is to conform with elimination of the requirement to identify geographic boundaries for most Target Markets." Proposed CDFI Certification Application (For Public Comment) – Revision Quick Reference – May 2020 at Slide 9.
[19] Proposed Certification Application at p. 69-70.
[20] *Id*. at p. 68.
[21] *Id*.

give banks and bank holding companies an exemption from this requirement, or waive the normal conflicts rules for the limited purpose of complying with the 20% requirement.

We also ask the Fund to provide clear, unequivocal guidance on what an advisory board must do to satisfy the accountability requirement. The Proposed Certification Application states that the Fund will review each board member and consider a number of factors in assessing whether an advisory board provides accountability. How, exactly, should the board members be selected? Are some ways members obtain input from the Target Market(s) acceptable, while other ways are not? Does the Fund have a preference as to how the advisory board input is incorporated into the organization's governing board's decision-making process? Does this proposed Application ask about these issues so that the Fund can disapprove the Certification Application if it does not like the answers, or are they primarily being asked for informational purposes? Clarity as to the Fund's minimum expectations regarding advisory boards is needed.

Lastly, we repeat our request that the Fund allow non-Metro counties to serve as a basic geographic unit. Just as CDFIs should have the option of using the non-Metro county as the basic unit when designating an Investment Area and calculating Investment Area percentages, consistency requires that the same unit should also serve as the basic unit for board member accountability.

In addition to the general comments and questions above, we have specific comments and questions on the dropdown selections:

- **AC14.1**: What percentage of ownership must a board member have in the business?
- **AC14.3**: What if less than 51% of the business's locations are in qualified census tracts, but over 51% of the business's total revenue is generated in the locations that are in qualified census tracts? Is that acceptable?
- **AC15.1**: Should a geographic unit be included if only a portion of it is under the elected official's jurisdiction?
- **AC16.3**: What if the organization's market is not defined in terms of counties or states?
- **AC17**: There is no question here analogous to AC16.3 (geography of market served). Is this intentional?

VII. Annual Certification and Data Collection Report (ACR) and Certification Transaction Level Report (CTLR)

In its current form, the ACR requires CDFIs to calculate and attest that they directed 60% or more of their Financial Products and Services to their qualified Target Markets in the prior year. CDFIs that received a Financial Assistance (FA) Award under the CDFI Program must also submit a Transaction Level Report (TLR) that provides certain data on each and every loan originated by the CDFI during the prior year. The Fund is now proposing that every CDFI who does not submit a TLR that year must submit a CTLR, which contains 11 data points on each and every loan originated by the CDFI in the prior year.

While we understand the Fund's desire to obtain more data regarding how CDFIs are serving qualified investment areas, we oppose the introduction of the CTLR and corresponding changes to ACR. We request that the Fund keep the ACR in its current form or modify ACR and CTLR as discussed below.

First, the current attestation in the ACR strikes the appropriate balance between burden and transparency. The current ACR requires CDFIs to analyze their activities and demonstrate to the Fund—through the 60% attestation and product portfolio breakdown—that they are in fact serving their Target Markets. The current ACR, however, does not saddle them with the additional burden of marshaling various data points about each transaction and then uploading those transactions into a database. The CTLR would provide the Fund with transaction-level data, but the attendant cost to CDFIs is too high. The report would impose an immense burden on CDFIs, and on banks in particular. Given the high volume of bank transactions and the limitations of bank systems to generate reports with all of the requested data points, completing the report will require a significant degree of manual processing for many banks and will take CDFI banks significantly longer than the estimated 8 hours to complete.

Second, we respectfully question whether the Fund currently has the technology and human resources infrastructure to effectively implement the CTLR. We have extensive experience in preparing and submitting TLRs and in using all of the Fund's systems and interfaces (CIMS, AMIS, etc.). In our experience, as the volume of users or data increases, the speed and overall functionality of the Fund's technology systems dramatically decreases. For example, it is not uncommon during the closing days of the Bank Enterprise Award (BEA) Program for the Fund's mapping system, CIMS, to be completely unavailable or to be so slow as to be effectively inoperable. The Fund's staff has always been very responsive and made every effort to correct these issues, but the underlying technology simply has limitations, and those limitations are exacerbated by high traffic.

Likewise, the process of submitting a TLR is not for the faint of heart. There are invariably a host of technical issues unrelated to user error—unpredictable geocoding issues, lengthy delays in the uploading and certifying process, and confusing error messages, to name a few. We estimate that each TLR takes over 50 total hours to compile, finalize, upload, and certify. Again, the Fund staff has been a pleasure to deal with on TLR issues, but these underlying technology issues are prevalent every year. If the systems slow down and malfunction with increased activity from 140 or so banks during BEA and for the few hundred FA award recipients submitting TLRs, how will they hold up when roughly 1,000 CDFIs submit a CTLR during the same timeframe?

In addition to, and partly because of, the technology issues, the strain on the Fund's staff will be enormous. The volume of CTLR-related Service Requests alone will be staggering. On top of that, the burden of following up with CDFIs who had an issue flagged in their CTLR will be significant. The Fund has poured extensive resources into the CTLR proposal and has undoubtedly considered these technology and human resource issues, but as practitioners who regularly engage with the Fund's systems, we wanted to highlight them and suggest additional engagement with stakeholders on the best way to address these issues prior to implementing any CDFI-wide reporting system.

The following are our specific comments and questions on the modified ACR and new CTLR:

- We support the Fund pulling financial information from Call Reports (Section 2, Q. 80-114).
- We propose that the ACR and CTLR be due 180 days after year end, instead of 90, to give CDFIs more time to complete the ACR and CTLR after the close of the FA and BEA application windows which (typically around April and May, respectively).
- We have no objection to the proposed deletions of questions or to the revisions to questions 25 and 27.
- With respect to the additional Primary Mission questions regarding Community Development Strategy and Responsible Financing Practices, we incorporate our prior comments from the Primary Mission section of this letter.
- Will Section 2, Source of Investment Capital Table, apply to regulated depository institutions and holding companies? We request that the Fund clarify that it will not.
- When will the deposit CTLR be available for comment? Stakeholders have not had the opportunity to review and comment on this proposed reporting.

VIII. Treatment of Existing CDFIs

The Fund has requested comment on what sort of "grace period" should be given to existing CDFIs to come into compliance with any new rules related to certification. The short answer is: the maximum amount. The proposed changes to the CDFI certification process would fundamentally change the CDFI Certification requirements and would create a much narrower path for becoming and remaining certified. Narrowing the path may thin out some of the undesirable CDFIs and prevent predatory lenders from getting certified, but the proposed changes would also jeopardize the certification status of many institutions that have been model CDFIs. In fact, the effective elimination of CIAs through the new 85% rule would by itself cull many solid CDFI banks from the current ranks and keep many more out.

We don't believe the Fund intends to see a dramatic reduction in CDFI banks—that would be contrary to the goal of diversity of CDFI types. Moreover, changing the rules in such a way as to force currently compliant CDFIs to de-certify would be unjust. Therefore, we propose that CDFI banks be grandfathered in and given the ability to opt into or out of the new regime. Alternatively, we recommend that existing bank CDFIs be given a long runway to transition and that awards received in the interim be unaffected by a subsequent loss of certification status.

Specifically, we propose that certified CDFI banks be given the option to remain under the current certification regime indefinitely and the ability to elect at any time to be subject to the new regime. In the alternative, we propose that CDFI banks be given a three-year transition period to comply with the new rules. With respect to the new Target Market requirements, we propose that, after year three of the transition period, CDFI banks would submit an ACR/CTLR and would able to satisfy the requirement either through their activity in the prior 12 months or through an average of the prior three years. We further propose a blanket modification of all award and assistance agreements to include explicit language that an awardee will not be in violation of the agreement by virtue of losing its status as a certified CDFI. We believe these accommodations are equitable considering the nature of the proposed changes and the difficulty that many CDFI banks may have in altering their lending patterns to comply.

In conclusion, Sones & White Consulting greatly appreciates the opportunity to provide comments and feedback from the perspective of this firm and its many CDFI bank clients, and we look forward to further discussion of these issues.

If you have any questions, or if we may be of further assistance, please do not hesitate to contact Ben Sones or Everett White at 601.790.1500 or bsones@soneswhite.com and ewhite@soneswhite.com.

With kindest regards,

SONES & WHITE CONSULTING, LLC

Ben Sones
Member

Everett White
Member

St. Louis Community Credit Union

October 28, 2020

Tanya McInnis
Program Manager, Office of Certification, Compliance, Monitoring and Evaluation
CDFI Fund
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Email: ccme@cdfi.treas.gov

Subj: Comments on Proposed Changes to CDFI Certification Application

Dear Ms. McInnis:

On behalf of St. Louis Community Credit Union, I would like to thank you for this opportunity to submit comments on the Notice of Information Collection and Request for Public Comment published by the CDFI Fund in the Federal Register on May 7, 2020. As a certified CDFI serving 62,000 members in St. Louis's most under-resourced communities, we support this effort to establish an efficient path to CDFI certification for eligible institutions and establish clear, strong and consistent standards. Unfortunately, the application proposed by the CDFI Fund would not achieve these objectives. An effective Certification application should serve as a gateway that facilitates entry for eligible institutions and denies entry to those that are not, but the proposed application erects significant and costly barriers that would dissuade and exclude many highly committed and fully qualified CDFI credit unions. Without fundamental changes, the proposed application would encourage an exodus of credit unions from the ranks of certified institutions, depriving the CDFI movement of irreplaceable sources of capital, innovation, and community impact.

Our concerns are rooted in our identity. First, as an insured depository subject to rigorous regulatory standards, intensive examination and public reporting, St. Louis Community Credit Union is concerned that the proposed application creates a parallel, quasi-regulatory process that ignores the clear parameters already established by our actual regulators. Second, as a credit union, we are disheartened by numerous elements that ignore or misunderstand fundamental characteristics of our legal and operational structure. Finally, as a CDFI and member of Inclusiv, we share a concern that the proposed changes would make CDFI certification too costly for the vast majority of eligible credit unions, with a disproportionate impact on those that serve rural and minority communities. As a result, we strongly support Inclusiv's call for a fundamental redesign of the proposed certification application based on the comments collected during this period and also with substantive consultation with the CDFI field during the redesign process itself.

The examples below will demonstrate some of the reasons why we believe such a fundamental overhaul is warranted:

- The proposed **Basic Information** section includes ten questions that ask credit unions to demonstrate that our governing boards are democratically elected by our members. Since every credit union[1] is required by law to have governing boards that are democratically elected by members, these questions reflect a basic lack of understanding of the credit union model.
- The proposed **Accountability** section amplifies this fundamental misunderstanding by only recognizing the accountability of our democratically elected boards for narrowly defined target markets that make up more than 50% of our members. In the private sector more than 50% of voting shares is defined as a "controlling interest" and activist investors often change corporate boards with just 4% of the voting shares. Since credit union boards are democratically elected on the basis of one-member, one-vote, our boards are directly accountable to

[1] This applies equally to every state-chartered and federally-chartered credit union, including *cooperativas* chartered by COSSEC in Puerto Rico

all of our members, not just a segment with a controlling interest. The provision for "special" accountability should be available to any CDFI with a board that is democratically elected by the people they serve, and should confer automatic accountability on any credit union or other democratically governed institution that meets the Target Market requirement for certification. In addition, as Diversity, Equity and Inclusion (DEI) has been adopted as the 8th Cooperative Principle for all credit unions, we support Inclusiv's proposal to add a question regarding institutional plans to promote and sustain DEI.

- The proposed **Primary Mission** section fails to recognize that credit unions and other regulated CDFIs already operate within strict parameters imposed by our regulators and CFPB to safeguard against predatory products and practices. Instead, the section requires a virtually endless series of questions with drop-down answers and descriptive narratives on each and every financial product and financial service we provide. These questions often use non-standard terminology and provide limited drop-down options that would distort any understanding of the wide array of credit union products and services, which are subject to vigorous and ongoing innovation and expansion across our industry.
- The proposed **Target Market** section would lower the Target Market threshold for loans to 50% for Insured Depositories provided that more than 60% of "financial services" are in CDFI Target Markets. We support this effort to recognize the special obligation of depositories to diversify risk across markets. However, the proposal to count financial services as *number of accounts* is fatally biased, since wealthier members will always have many more savings, money market, investment, IRA Keogh and other accounts than our low-income members. Indeed, **many of our lowest-income members only have basic share or share draft accounts that give them access to the check-cashing,** money order, bill-pay and other transaction services they depend on most heavily. In other words, contrary to the democratic ethos of credit unions, **the CDFI Fund proposes to measure financial services by counting our wealthier members many more times than our lower income members.** We strongly support the Inclusiv proposal to use a straightforward count of unique credit union members as a more accurate proxy indicator for financial services.
- The proposed **Development Services** section adds inflexible requirements that rule out many of the most effective educational, counseling and coaching services we provide to our members. For example, the CDFI Fund proposes to eliminate consideration of any one-on-one support provided in conjunction with a product or service. This ignores considerable research – including recent work by Inclusiv and CFSI -- that challenge the effectiveness of stand-alone financial education and counseling and instead emphasize the importance and positive impact of delivering key messages at "teachable moments," in conjunction with appropriate products and services. In a sense, the CDFI Fund has proposed that meaningful driver training only takes place in a classroom, and anything delivered behind the wheel simply doesn't matter.
- The proposed **Legal Entity** section continues to rely on copies of historic documents to confirm the legal status of each CDFI. The cumbersome collection and review of old documents does not establish whether an entity is both legal and currently active, but there is a readily available federal system that does. We support Inclusiv's proposal to use registration with SAM.GOV to meet the legal entity requirement for certification. In addition to efficiently addressing the legal entity requirement, SAM registration would ensure that every CDFI is ready to participate in CDFI Program funding rounds as soon as they are certified.

St. Louis Community Credit Union is proud of our status as a certified CDFI and strongly supports the goals of the CDFI movement. We believe changes to the CDFI Certification Application are needed to more sharply define our field. But these changes must be done with care and consideration of the complex and committed institutions that make up our movement. Thank you for your consideration.

Sincerely,

Maria Langston
AVP Community Development
St. Louis Community Credit Union
3651 Forest Park Ave
St. Louis, MO 63108

NALCAB
National Association for Latino Community Asset Builders

November 5, 2020

Ms. Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund,
U.S. Department of the Treasury,
1500 Pennsylvania Ave. NW

Re: Title: Community Development Financial Institutions Program— Certification Application. OMB Number: 1559–0028.

The National Association for Latino Community Asset Builders, NALCAB, is pleased to provide the following comments on the CDFI Fund's Request for Information on CDFI Certification. NALCAB is the hub of a national network of asset building community development organizations including more than 40 certified CDFIs. Members of the NALCAB Network invest in their communities by building affordable housing, addressing gentrification, supporting small business growth, and providing financial counseling on issues such as credit building and homeownership. Many of the people served by the NALCAB Network are low- to moderate-income individuals who are immigrants, or the children of immigrants.

We urge the Fund to maintain strong certification standards that ensure that certified CDFIs are truly focused on producing a positive social and economic impact for populations that have been traditionally underserved by our nation's financial services system. This can be achieved without unnecessarily complex and onerous re certification requirements. Further, an effective certification process must create a realistic "on ramp" for emerging mission lenders that are seeking certification for the first time.

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Is the information that will be collected by the revised application necessary and appropriate for the CDFI Fund to consider for the purpose of CDFI certification?

NALCAB encourages the CDFI Fund to continue with its efforts to automate processes and streamline the application process. This may require smaller CDFIs to invest in new software or technology and the CDFI fund should even more explicitly match its Technical Assistance resources with CDFIs and mission lenders seeking certification to support them in meeting the requirements of any new certification system. NALCAB is concerned that the new requirements for CDFIs that are not Financial Assistance awardees to complete and submit Transaction Level Reporting represents a significant new compliance burden without providing any resources.

What is a reasonable grace period for currently certified CDFIs to come into compliance with the new certification criteria?

The phase in period for a new certification process should be 24 months. CDFI Fund should establish and actively utilize flexibility for smaller or newer CDFIs and those that do not receive resources from the Fund to ensure any new burdens are reasonably phased in. The CDFI Fund should also provide training on the new application and reporting requirements.

Primary Mission—Financial Products and Services:

Are the questions in the revised application appropriate to determine an entity's community development intent?

In general, the CDFI Fund should define principles or key objectives more specific than the mission statement to guide its determinations about an entity's community development intent. Given the diversity and innovation of activities undertaken by CDFIs, any attempt to list all potential objectives or activities will inevitably be inadequate. The Fund does need flexibility to make determinations beyond a specific list, and the utilization of that discretion should be clearly anchored in a set of principles. For example, the more a mission lender serves low income populations, the more flexibility the Fund should show with respect to any other criteria.

Many of the options listed in the proposed application (i.e. "below market rate," "lower than standard," "nontraditional," "less established," "lower profitability," "mainstream underwriting criteria") need to be better defined or the Fund needs to ensure that interpretations are made by more than a single reviewer – which would certainly lead to inconsistency.
Further, the list of community development objectives list is too narrow. Specifically, small business development should be a community development objective. Closing the racial wealth gap, creating quality jobs and providing access to capital in persistent poverty communities should be community development objectives.

Some of the questions in the new application assume that CDFI's business model is primarily defined or identifiable based on rates and fees. Access to capital is often far more important than cost of capital, as long as there are clear definitions of abusive rates and fees (for example at least a 36% rate cap on small business and consumer lending). The CDFI Fund should take great care not to assume that all CDFIs should always provide "below market rate" or "lower cost" capital when the real issue is that their customers do not have any non-abusive options for accessing capital. Overemphasis on pricing and fees is a mistake, except when defining abusive practices.

Are there other practices related to the provision of Financial Products and/or Financial Services that should be considered indicators of an entity's community development intent?

NALCAB strongly agrees with Opportunity Finance Network when they have asserted that the CDFI Fund should consider cross-agency efforts to certify certain mission lenders like SBA Community Advantage and Microlenders as well as Low-Income Designated Credit Unions. Certification should not be automatic, but some aspects of the certification could be met like allowing SBA microlenders and Community Advantage lenders be assumed to meet the Primary Mission test.

Should any of the questions in the application related to responsible financing practices be used as a basis to automatically disqualify an Applicant from eligibility for CDFI Certification, or are there alternative criteria that should be met or used in such a manner?

If there are practices that should be considered either disqualifying or a prerequisite for CDFI Certification, should there be exceptions for any entities that engage or fail to engage, respectively, in such practices and, if so, under what circumstances?

CDFI certification status should require adherence to certain responsible financing practices. It is appropriate to prohibit behavior by entities that engage in activities that negatively impact underserved communities. This includes payday and auto title lending, merchant cash advance and abusive overdraft fees. Any lending with "all in" annual percentage rates in excess of 36% should be viewed by the CDFI Fund as disqualifying of an applicant or existing CDFI.

Consumer complaints filed with the Consumer Financial Protection Bureau and judgements against the lender should be taken into account. In the case of CDFI certified banks, this should be correlated with their Community Reinvestment Act rating and that of any parent company.

CDFIs providing services to, or partnering with, businesses or organizations that deliver to the community abusive financial, housing, or other practice, should not qualify for certification.

Are there any other practices related to the responsible provision of Financial Products, especially those related to mortgage or other real estate lending, and to equity investments, for which either the presence or absence of which should be considered for purposes of CDFI Certification?

The Responsible Business Lending Coalition's Small Business Borrowers Bill of Rights provides helpful guidelines for fair disclosure and transparent pricing in small business lending, some of which can be helpful in determining if an applicant is providing affordable, responsible financial products. With regard to interest rates, the CDFI Fund should establish a standard (36% "all in" APR, for example) and require CDFI's to certify their compliance, rather than collecting detailed pricing data, which may frequently change based on the balance of mission and financial return in any given project or deal.

Primary Mission—Affiliates

Are there circumstances that the CDFI Fund should consider as an exception to this rule? NALCAB supports the CDFI Fund's proposal to apply this standard to all CDFI types and require applicants to demonstrate the mission focus of their parent and affiliate organizations to meet the primary mission test.

Financing Entity

The current "predominance of assets" test should remain unchanged. The CDFI Fund's proposal to change this is insufficiently transparent.

Target Market

NALCAB supports removing geographic boundaries on most Target Market designations.

Removing Flexibility from Target Market Threshold

The following statement is concerning, "Applicants for CDFI Certification must meet the relevant Financial Product activity percentage threshold, without exception, in both the number and dollar amount of such activity – the CDFI Fund will discontinue its current practice of providing exceptions to the Target Market threshold requirement." The Fund should always reserve the ability to exercise some level of flexibility to address exceptional circumstances and market fluctuations due to factors like an unforeseen global pandemic. Using a rolling three-year average would help to ensure one-time fluctuations are not used to unreasonably disqualify an otherwise strongly mission driven organization.

Accountability

Accountability to OTP Target Markets should be established with two tests. First, using a rolling three-year average, a CDFI should show it actually invests 60% of its loans by volume and dollar amount in the other targeted population. Second, the CDFI's board should include at least 50% representation from individuals who self-identify as from the other targeted population OR the CDFI's board should include at least 25% representation from individuals who self-identify as from the other targeted population and the CDFI's senior leadership (as defined by the CDFI itself) should include at least 50% representation from individuals who self-identify as from the other targeted population.

NALCAB supports providing greater flexibility on the geography of board members.

Sincerely,

Noel Poyo
Executive Director